IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 26-cv-00882-NYW

MAIKEL AMADOR DIAZ,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary, Department of Homeland Security, TODD LYONS, in his official capacity as Acting Director of ICE; PAMELA BONDI, in her official capacity as U.S. Attorney General; George Valdez in his official capacity as Acting Denver Field Office Director of Enforcement and Removal Operations, ICE,

Respondents.

PETITIONER'S REPLY BRIEF IN SUPPORT OF HABEAS PETITION AND MOTION FOR A PRELIMINARY INJUNCTION

RESPECTFULLY SUBMITTED,

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INTRODUCTION

"'The complex provisions of the INA have provoked comparisons to a 'morass,'"[1] a "Gordian knot,"[2], and 'King Minos's labyrinth in ancient Crete.'"[3] These comparisons are well-deserved. Without any background or experience with immigration law it is easy to get lost in the INA's labyrinth of statutes and terms. Worse, the INA has a unique way of making it difficult for non-practitioners to realize that an interpretation they are confident is right given the "plain language" is actually incorrect as a result of the INA's repeated use of "specialized language."[4] As discussed below, the petition in this case sets forth in detail the reasons the specialized language and definitions Congress gave terms like "admission" demonstrate that one may not be seeking admission from within the United States.

Significantly, the government's response concedes that the legal issues and facts presented by this case do not differ materially from those this in *Loa Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650, (D. Colo. Oct. 22, 2025), in which this Court rejected the same arguments made by the government in this case. It is Petitioner's position, as detailed below, that this Court's decision and reasoning in *Loa Caballero v. Baltazar* was correct when it determined 8 U.S.C. § 1226 is applicable to individuals like Petitioner who are encountered in the interior of the U.S. For the reasons the petition in that case was

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[1] *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) (quoting *Lacsina Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009) (quoting *Agyeman v. I.N.S.*, 296 F.3d 871, 877 (9th Cir. 2002))

[2] *Id.* (quoting *Aguilar v. U.S. Immig. & Customs Enf't*, 510 F.3d 1, 6 (1st Cir. 2007)).

[3] *Id.* (quoting *Lok v. I.N.S.*, 548 F.2d 37, 38 (2d Cir. 1977)).

[4] *Lopez v. Att'y Gen.*, 49 F.4th 231, 234 (3d Cir. 2022).

granted and those set forth below, Mr. Amador Diaz respectfully requests this Court grant his petition, and as a result order ICE to immediately release him.

DISCUSSION

I. This Court got it right in *Loa Caballero v. Baltazar.*

As stated above, Petitioner's continued detention by ICE is unlawful for the same reasons articulated by this Court in *Loa Caballero v. Baltazar*, 2025 WL 2977650 (D. Colo. Oct. 22, 2025). This includes the Court's rejection of the government's jurisdictional arguments. Afterall, as this Court pointed out, jurisdiction is proper here for the same reasons the Supreme Court found jurisdiction was proper in *Jennings*.[5] Furthermore, the decision pointed out one of the biggest flaws in the government's jurisdictional argument: detention/detention hearings are completely separate and apart from the removal proceedings.[6] Simply put, *Loa Caballero* correctly determined jurisdiction exists.

Likewise, this Court should reaffirm its statutory analysis in *Loa Caballero* rejecting the government's interpretation of 8 U.S.C. § 1225(b)(2)(A). This includes the conclusion that equating all "applicants for admission" with those "seeking admission" renders the latter phrase redundant and defies plain meaning.[7] As the decision illustrated (quoting

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[5] *Loa Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650, at *3 (D. Colo. Oct. 22, 2025) ("Because the detainees in *Jennings* were not 'challenging the decision to detain them in the first place or to seek removal," and were "not even challenging any party of the process by which their removability will be determined,' the Supreme Court concluded that § 1252(b)(9) did "not present a jurisdictional bar.")(quoting *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018)).

[6] *Id* ("As a number of other district courts have held, § 1252(b)(9) 'does not insulate detention orders from judicial review because they are 'separate and apart from' orders of removal.'")(quoting *Hasan v. Crawford*, --- F. Supp. 3d ----, 2025 WL 2682255, at *4 (E.D. Va. Sept. 19, 2025) (quoting 8 C.F.R. § 1003.19(d)).

[7] *Id.* at *7 ("If *all* applicants for admission are necessarily "seeking admission" under the statute, then the "seeking admission" language in § 1225(b)(2)(A) would be redundant and superfluous.")

another court's decision on this issue) "seeking admission" naturally applies to those arriving at a boundary, not those already physically present—just as someone who sneaks into a movie theater is already inside, rather than "seeking admission," even if they later offer to pay.[8] And finally Loa Caballero correctly pointed out that the government's novel reading of § 1225(b)(2)(A) would improperly render vast swaths of the INA's statutory and regulatory provisions meaningless.[9]

Petitioner respectfully requests that the Court adopt its reasoning from *Loa Caballero* and considered incorporated by reference here. Because the government nonetheless urges reconsideration of that decision, this Reply will briefly provide additional grounds demonstrating why *Loa Caballero* was correctly decided, and therefore, ICE's detention of Petitioner is unlawful.

II. The LRA is only one of numerous provisions in § 1226 rendered meaningless by its new position—and most of them were passed simultaneously with § 1225(b)(2)(A).

As detailed in the petition filed in these proceedings, there are multiple provisions rendered meaningless by the government's new position.[10] The government's response implies that all of § 1226(c)'s provisions apply to noncitizens who are not considered "applicants for admission" under § 1225(a)(1).[11] This is simply incorrect.

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[8] *Id.* at *6 (quoting *Lopez Benitez v. Francis*, --- F. Supp. 3d ----, 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 13, 2025)).

[9] *Id.* at *7-8.

[10] ECF No. 1 pp. 53-59.

[11] ECF No. 11-1 pp. 15-17.

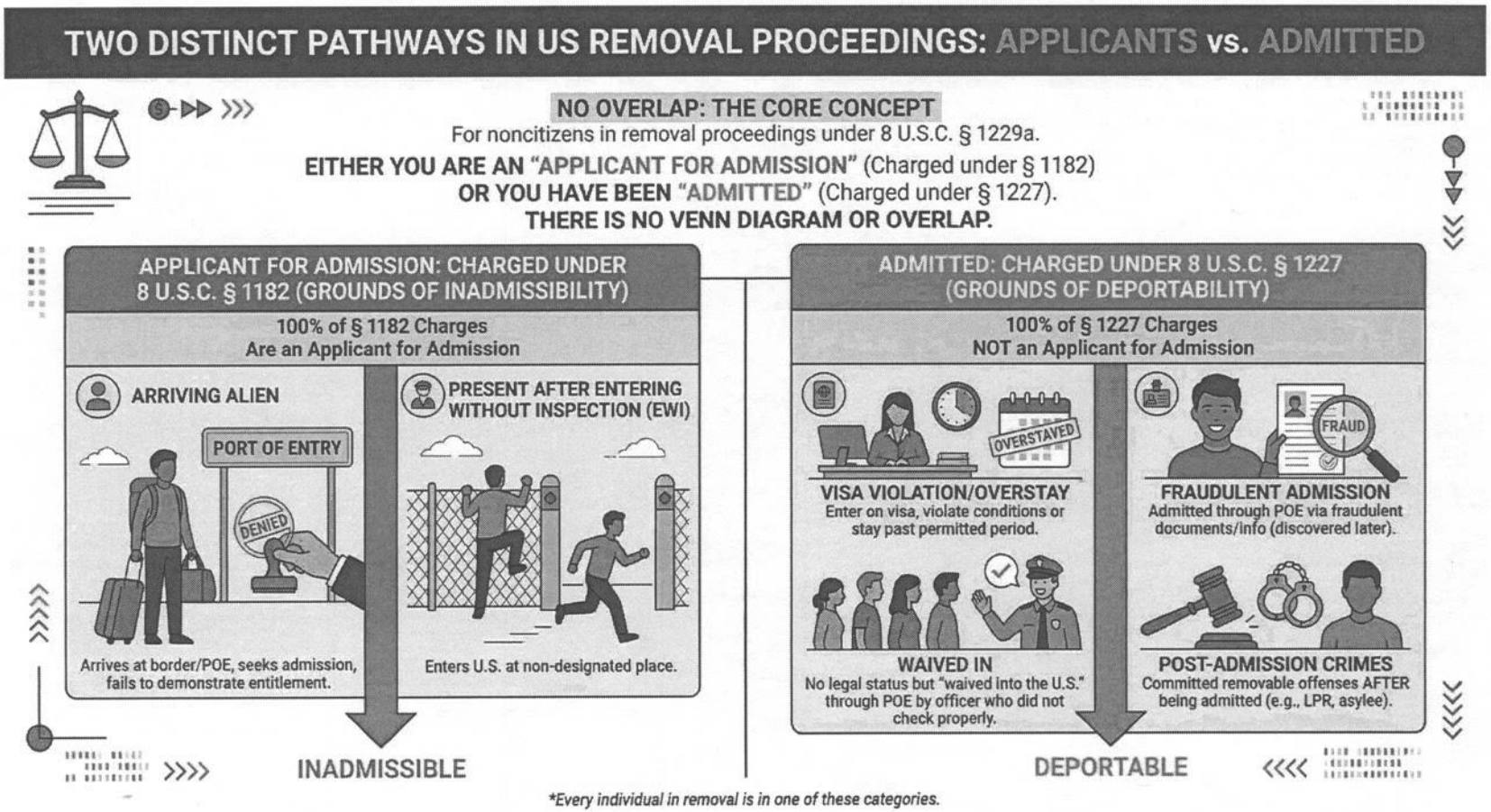
Every noncitizen placed in removal proceedings must be charged as removable on the NTA under one of two statutes: 8 U.S.C. § 1182(grounds of inadmissiblity) or 8 U.S.C. § 1227(grounds of deportability). DHS doesn't get to choose between 8 U.S.C. § 1182 and 8 U.S.C. § 1227 when initiating removal proceedings. Under the framework of 8 U.S.C. § 1229a, a bright-line rule exists: 100% of noncitizens who are "applicants for admission"—including EWI and arriving aliens—must be charged under § 1182 (grounds of inadmissibility). In these cases, the burden of proof rests on the noncitizen "applicant for admission" to establish either: (1) that they are clearly and beyond doubt entitled to be admitted for arriving aliens seeking admission or (2) by clear and convincing evidence that they lawfully present after a prior admission for EWI noncitizens.[12]

Conversely, the grounds of deportability under 8 U.S.C. § 1227 apply exclusively to noncitizens who have already been "admitted" to the United States. This category is mutually exclusive to "applicants for admission" and encompasses anyone who entered through a port of entry via inspection, including those admitted through "waive-throughs," fraudulent documents, or those who later violated the terms of a valid visa or committed post-admission crimes. In § 1229a proceedings, the government has the burden to prove the § 1227 charge by clear and convincing evidence.[13] The following page illustrates this clear distinction.

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[12] 8 U.S.C. § 1229a(c)(2).

[13] 8 U.S.C. § 1229a(c)(3).



☐ You are an arriving alien.

☒ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

Burden of Proof in § 1229a Proceedings is on Noncitizen "Applicant for Admission" – (i.e. IIRIRA goal of equal footing for noncitizens arriving and EWI in § 1229a proceedings is achieved)

Burden of Proof is on Government in § 1229a Proceedings

With this fact in mind it becomes clear that § 1226(c) includes multiple provisions rendered meaningless under the government's new interpretation. Under the government's new interpretation, the post-IIRIRA but pre-LRA version of the § 1226 can be seen below with the provisions rendered completely meaningless by its new interpretation highlighted and underlined:

> **(c) Detention of criminal aliens (1) Custody** The Attorney General shall take into custody any alien who-- (A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title, (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, (C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[1] to a term of imprisonment of at least 1 year, (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title;[14]

As illustrated above, subparagraph (c)(1)(A) and the first clause of subparagraph (c)(1)(D) are rendered completely meaningless by its new interpretation of § 1225(b)(2)(A). Said differently, the Court has to believe that Congress passed two statutes (§ 1225(b)(2)(A) and § 1226(c)(1)(A) and (D)) at the exact same time with one such statute rendering the other completely meaningless. When one considers the fact that the above highlighted provisions were passed as part of the same overhaul of the statutory scheme as the provisions of § 1225 at issue here, it makes blowing off the multitude of provisions rendered meaningless by the government's new position as "redundancies" or things that happen when legislating, hard to swallow.

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[14] 8 U.S.C. § 1226(c)(emphasis added).

III. The "anomaly" IIRIRA aimed to fix had nothing to do with bond.

As the caption in the illustration above alludes to, one way in which IIRIRA achieved its goal of treating noncitizens who are EWI and those who are arriving at a POE in the same legal position is through its allocation of the burdens of proof. This was one of the anomalies it sought to fix. But it was not the only one. Perhaps most significantly, IIRIRA sought to fix the disparate *procedural* treatment (i.e. expedited removal) of aliens arriving at a Port of Entry (POE) versus those who entered without inspection (EWI).

Prior to IIRIRA, aliens arriving at a POE without proper documents were subject to expedited removal under 8 U.S.C. § 1225(b)—a summary process culminating in immediate removal without a hearing before an IJ.[15] In stark contrast, an alien who entered without inspection, even if apprehended near the border moments after entry, was statutorily entitled to full removal proceedings under 8 U.S.C. § 1229a. IIRIRA corrected this procedural disparity by expanding the expedited removal provisions to EWI aliens who were encountered within two years of entry and within a geographic area defined by regulation and inadmissible under 8 U.S.C. § 1182(a)(6)(C) or 8 U.S.C. § 1182(a)(7) to expedite removal just as they would have been if at a POE.[16] This "anomaly" of giving aliens found a few miles from the border and hours after entering full § 1229a proceedings while those similarly situated at a POE were order removed without any hearing under the

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[15] *See generally* § 1225(b)(1); *see also* ECF No. 1 pp. 42-52.

[16] *See id.*

expedited removal statute was corrected by IIRIRA's expansion of expedited removal to such aliens.[17]

Simply put, IIRIRA fixed the anomaly related to expedited removal—a process that is completed in an hour and envisions immediate removal, not detention. Accordingly, the repeated claims by the government to the contrary are incorrect.

IV. The Attorney General (not the Secretary of DHS or ICE Director) has always had the authority to vacate, redetermine, and change ICE's initial bond decision—8 U.S.C. § 1103(g) leaves no doubt that this remains true—even after the Homeland Security Act.

The historical and statutory framework governing immigration custody leaves little doubt that 8 U.S.C. § 1226's reference to Attorney General was not meant to be replaced by DHS Secretary following the passage of the Homeland Security Act (HAS). Indeed, the history and statutes demonstrate that EOIR retains independent authority to review detention determinations. Upon the passage of IIRIRA, the former INS and EOIR maintained a distinct separation between prosecutorial and adjudicative functions.[18] This division was explicitly preserved by the Homeland Security Act of 2002. Under 8 U.S.C. § 1103(g), the Attorney General retains all "authorities and functions" that were exercised by EOIR prior to the creation of the Department of Homeland Security (DHS).[19] This "savings clause" ensures that the transfer of enforcement power to the DHS Secretary did

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[17] *See id.*

[18] (Reply Ex. 1 – Federal Register / Vol. 68, No. 40 / Friday, February 28, 2003 / Rules and Regulations, pp. 9824 – 9828.)

[19] 8 U.S.C. § 1103(g).

not strip the Attorney General—and by extension, Immigration Judges—of the fundamental power to review administrative determinations and prescribe forms of bond.[20]

While 8 U.S.C. § 1226 provides the general statutory basis for the arrest and detention of noncitizens, it is the implementing regulations that define the vesting of custodial authority. Pursuant to 8 C.F.R. §§ 1003.19 and 1236.1, the responsibility for the initial custody determination rests with DHS; however, the power to review, redetermine, and ultimately vacate those decisions is vested in the Immigration Judge. This regulatory structure creates a shared authority where the "final say" remains with the adjudicative body. For noncitizens in § 1229a proceedings—specifically those not excluded by § 1003.19(h)(2)—the right to a bond redetermination hearing is not a matter of agency discretion, but a regulatory mandate that the Executive Branch is bound to follow.

Finally, it surely goes without saying that the acting ICE director—a significant ways down from the Secretary of DHS on the DHS organizational chart—may not unilaterally determine which classes of noncitizens are eligible for bond hearings before an IJ who is an employee of DOJ. In sum, the government's claims that bond hearings before an IJ for EWI noncitizens has only been happening because the ICE director allowed in her/his discretion is false.

V. The government asks this Court to interpret *Jennings* as abrogating the Fourth Amendment and overturning longstanding well-established precedent.

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[20] *Id.*

The government's response argues that Petitioner reads too much into the statements in *Jennings* indicating that § 1225(b)(2)(A) applies at the border and § 1226 to those in the interior of the country. This oft repeated claim by the government about what *Jennings* does not explicitly state completely ignores the Fourth Amendment implications of its position. The fact that the *Jennings* Court clearly understood§ 1225(b)(2)(A) to apply at the border was well-detailed along with 4th Amendment jurisprudence in the petition filed in this case.[21] Indeed, the decision in *Jennings* specifically attached significance to the fact that § 1225(b)(2)(A) does not require a warrant for the detention of aliens encountered at the border and referred to removal proceedings, explaining:

> [R]espondents argue that, once detention authority ends under §§ 1225(b)(1) and (b)(2), aliens can be detained only under § 1226(a). But that section authorizes detention only "[o]n a warrant issued" by the Attorney General leading to the alien's arrest. § 1226(a). If respondents' interpretation of § 1225(b) were correct, then the Government could detain an alien without a warrant *at the border*, but once removal proceedings began, the Attorney General would have to issue an arrest warrant in order to continue detaining the alien. To put it lightly, that makes little sense.[22]

As illustrated by the added emphasis in the excerpt above, the statements indicating no warrant is necessary for detention under § 1225(b) are explicitly and immediately qualified by the phrase "at the border."[23] This point about detention without a warrant at the border is, of course, consistent with the border exception to the warrant requirement. Had anyone during the *Jennings* litigation before the Supreme Court claimed ICE

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[21] ECF No. 1 pp. 16-19 and 59-63.

[22] *Jennings v. Rodriguez*, 583 U.S. 281, 302, (2018) (emphasis added).

[23] *Id.*

deportation officers were in no way restrained by the Fourth Amendment—i.e. permitted to make warrantless arrests without probable cause anywhere throughout the United States—it would have resulted in a much different decision.

Simply put, the statutory framework interpreted by *Jennings* did not raise any Fourth Amendment concerns. And *Jennings* did not purport to dispense with the Fourth Amendment's warrant requirement for interior enforcement, nor did it overturn decades of jurisprudence on the issue. The "robust consensus of cases [and] persuasive authority" on the Fourth Amendment's warrant requirement applying to everyone in the country makes it "beyond debate that an immigration officer . . . would need probable cause to arrest and detain individuals for the purpose of investigating their immigration status."[24] Given these things, it would "make little sense" to claim a noncitizen is detained under § 1225(b)(2)(A) when such "seizure" plainly requires compliance with the Fourth Amendment's warrant requirement.

VI. Petitioner seeks relief in the form of requiring ICE to immediately release him.

As the government has conceded in similar cases in other districts, "the only relief available to Petitioner through habeas is release from custody."[25] Said differently, the most, if not only, appropriate relief when granting a habeas petition is immediate release. And this has been true since at least 1779. Indeed, the Supreme Court recently reaffirmed this in *Dep't*

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[24] (*Id.*)

[25] *Hurculano v. Noem, et. al.*, 3:25-cv-428-LS, ECF No. 12 filed 10/15/2015; citing 28 U.S.C. § 2241 and *DHS v. Thuraissigiam*, 591 U.S. 103, 118–19 (2020).

of Homeland Sec. v. Thuraissigiam, explaining:

> [N]either respondent nor his *amici* have shown that the writ of habeas corpus was understood at the time of the adoption of the Constitution to permit a petitioner to claim the right to enter or remain in a country or to obtain administrative review potentially leading to that result. The writ simply provided a means of contesting the lawfulness of restraint and securing release. In 1768, Blackstone's Commentaries—usually a "satisfactory exposition of the common law of England," *Schick v. United States*, 195 U.S. 65, 69, 24 S.Ct. 826, 49 L.Ed. 99 (1904)—made this clear. Blackstone wrote that habeas was a means to "remov[e] the injury of unjust and illegal confinement." 3 W. Blackstone, Commentaries on the Laws of England 137 (emphasis deleted). Justice Story described the "common law" writ the same way. See 3 Commentaries on the Constitution of the United States § 1333, p. 206 (1833). Habeas, he explained, "is the appropriate remedy to ascertain ... whether any person is rightfully in confinement or not." *Ibid.*
>
> We have often made the same point. See, *e.g.*, *Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973) ("It is clear ... from the common-law history of the writ ... that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody"); *Wilkinson v. Dotson*, 544 U.S. 74, 79, 125 S.Ct. 1242, 161 L.Ed.2d 253 (2005) (similar); *Munaf v. Geren*, 553 U.S. 674, 693, 128 S.Ct. 2207, 171 L.Ed.2d 1 (2008) (similar).
>
> In this case, however, respondent did not ask to be released.[13] Instead, he sought entirely different relief: vacatur of his "removal order" and "an order directing [the Department] to provide him with a new ... opportunity to apply for asylum and other relief from removal." App. 14 (habeas petition). See also *id.*, at 31 ("a fair procedure to apply for asylum, withholding of removal, and CAT relief"); *id.*, at 14 ("a new, meaningful opportunity to apply for asylum and other relief from removal"). Such relief might fit an injunction or writ of mandamus—which tellingly, his petition also requested, *id.*, at 33—but that relief falls outside the scope of the common-law habeas writ.[26]

The discussion above leaves little doubt that Petitioner's requested relief of immediate release is the most appropriate remedy under habeas—and it has been since

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[26] *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020).

1789. Furthermore, at this juncture, the government has had ample opportunity to make a determination as to whether Mr. Amador Diaz is a danger or flight risk through the same bond hearing process that had been in place for nearly three decades—and continues to exist in the properly passed implementing regulations. The government has declined the opportunity to make that determination and there is no evidence whatsoever to suggest the existence of any reason not to immediately release him.

CONCLUSION

For the above stated reasons, those stated in his previous filings, and the reasons set forth by this Court in *Loa Caballero v. Baltazar*, No. 25-CV-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025), Mr. Amador Diaz respectfully requests the Court find Respondent's detention of him without a bond hearing is contrary to the both the statutory scheme and the U.S. Constitution for the reasons set forth in his petition and above, and as a result order ICE to immediately release him. In the event the Court disagrees with the requested relief of immediate release, Mr. Amador Diaz respectfully requests the Court order his release if a prompt bond hearing is not held at which the government bears the burden of proof.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the U.S. District Court and counsel for the government in accordance with the Federal Rules of Civil Procedure on March 14, 2026.

/s/ *Dan Gividen*
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Attorney for Defendant