IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JATINDER SINGH, PETITIONER, v. MARKWAYNE MULLIN, et al., RESPONDENTS.	Civil Case No. 1:26-cv-1183

PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

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INTRODUCTION

Petitioner, Jatinder Singh, by and through undersigned counsel, files this emergency motion for a Temporary Restraining Order ("TRO") and/or a Preliminary Injunction. Petitioner seeks an immediate order compelling Respondents to release her/him from the custody of U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is a citizen and native of India who last entered the United States without inspection (EWI) on March 27, 2022. Petitioner flew his country to avoid persecution and came to USA. He is a hardworking man and a law-abiding citizen. Petitioner was released on his own recognizance by ICE and timely filed his Asylum application and obtained work authorization. His aging parents and two sisters are financially dependent upon him. He took care of them financially while supporting himself working as a truck driver.

Petitioner's current detention by ICE has immediate and obvious consequences on her/his family. Because she/he is neither a flight nor safety risk, and she/he is not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2), Petitioner's arrest and detention by ICE without a warrant or a bond hearing violates the Immigration and Nationality Act, the implementing regulations, the Fourth Amendment, the retroactivity doctrine, and the due process clause of the U.S. constitution. The instant petition is being filed seeking this Court's urgent intervention in the form of an order enjoining ICE from continuing to unlawfully detain her/him. Since being detained, Petitioner has not been and will not be provided with the bond hearing in accordance with the implementing regulations (e.g. 8 C.F.R. §§ 1003.19 and 1236.1) which were properly promulgated and have not been rescinded.

The petition filed in these proceedings sets forth several claims that her/his detention is unlawful. Each such claim provides a distinct and independent basis on which to find ICE's detention unlawful. For the reasons set forth in the petition and below, Petitioner respectfully requests this Court order ICE to immediately release her/him.

STATEMENT CONCERNING THE NEED FOR PROMPT REVIEW AND ADJUDICATION

This Motion is predicated on a petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, a remedy that Congress and the courts have long recognized demands swift judicial review. Indeed, 28 U.S.C. § 2243 mandates an expedited show-cause response precisely because the petition's central claim is an ongoing, unlawful deprivation of liberty. It is axiomatic that the loss of liberty, even for a single day, constitutes profound and irreparable harm. Therefore, the failure to rule on the requested injunction within 14 days is not mere delay; it is a constructive denial of the motion itself. Each day of inaction inflicts the very irreparable injury the petition seeks to prevent, rendering the extraordinary remedy of habeas functionally meaningless and frustrating the "swift" relief that § 2243 requires.

The irreparable harm of Petitioner's unlawful detention is particularly unnecessary when one considers the fact that the government's attempt to mandate the detention of all EWI aliens is a thinly veiled strategy to coerce individuals into abandoning claims for statutory relief, such as Cancellation of Removal, for which they are eligible. This policy disproportionately affects the very aliens who would typically qualify for a bond—those eligible for relief from removal (significantly lowering flight risk and often requiring the

absence of any convictions that make them a danger or would mandate detention under § 1226(c)(1)(A)). By subjecting aliens to mandatory detention, the government forces these individuals to pursue their applications from within an ICE facility, fundamentally changing the decision-making process.

This new interpretation weaponizes detention as a coercive tool, forcing aliens into an untenable "cost-benefit" analysis. To even schedule an individual hearing for relief, an alien must first demonstrate *prima facie* eligibility to the court. However, they are then forced to weigh the *possibility* of winning their case—which is never guaranteed—against the *certainty* of remaining in detention for months. Faced with the harsh realities of confinement (such as strip searches and a total loss of liberty) for what may be a 50/50 chance of success, many individuals who are otherwise eligible for relief provided by Congress are pressured to "throw in the towel" and accept removal.

The situation is compounded by the current DHS practice of appealing *grants* of relief. An alien must now consider that even if they win their case, DHS may appeal, forcing them to remain detained throughout the lengthy appeal process, which could stretch their total time in custody to eight months or more *after* an immigration judge has already ruled in their favor. This strategy effectively deters aliens from pursuing the very relief Congress intended to make available, using procedural detention not as a tool for public safety but as means to force capitulation.

Delays in the adjudication of this habeas petition and those brought by aliens like Petitioner facilitates exactly what the government is trying to achieve. Accordingly, the

failure to promptly address Petitioner's motion (in no more than 10-days) effectively acts as a constructive denial of it.

STATEMENT OF FACTS

Petitioner, Jatinder Singh, is a native and citizen of India, who entered the United States without inspection on or about March 27, 2022. Petitioner flew his country to avoid persecution and came to USA. Petitioner was arrested by ICE near San Luis, AZ US border by ICE and issued a Notice of Appear on March 31st, 2022. He was released on his own recognizance by ICE on March 31st, 2022. Petitioner timely filed his Asylum application with the Immigration Court and his case was pending in Concord Immigration Court in California. He later obtained work authorization. His aging parents and two sisters are financially dependent upon him. He took care of them financially while supporting himself working as a truck driver. Petitioner timely filed Notice of Appeal with the Board of Immigration Appeals on May 23, 2025 after his application for asylum was denied on May 15, 2025. The appeal is still pending, and it may take several months or years to be decided.

On or about 24th February 2026, Petitioner was stopped at the port of entry near Cheyenne, WY while driving a truck, and upon showing his Identification documents, he was arrested and placed in ICE custody for not having a US citizenship proof. Petitioner has been detained by the Department of Homeland Security (DHS) since 24th February 2026 and is currently detained at the Denver Contract Detention Facility in Aurora, Colorado. DHS has not provided Petitioner with a bond, or a bond hearing, even though she/he is not a flight risk or a danger to the community.

Petitioner did not violate any law to cause his arrest. Nothing changed in terms of his prior release from the ICE custody. DHS has not provided Petitioner with a bond, or a bond hearing. Petitioner's detention without a bond hearing is solely a result of its new interpretation of the relevant statutes and policy refusing to provide noncitizens who entered the United States without admission or parole with an opportunity for bond—regardless of whether she/he poses a danger or flight risk.

Petitioner does not have any criminal history. On the contrary, he has been a benefit to, and an active member of, her/his community. He in no way poses a danger. Accordingly, his continued detention is a violation of the constitution and relevant laws.

Because Petitioner is being detained in ICE custody without being afforded the bond hearing required under the law, he seeks this Court's urgent intervention.

LEGAL STANDARD

The purpose of a TRO is to preserve the status quo and prevent irreparable harm until the court makes a final decision on injunctive relief.[1] To obtain a TRO, an applicant must establish four elements: (1) substantial likelihood of success on the merits; (2) substantial threat of irreparable harm; (3) the threatened injury outweighs any harm the

[1] *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

order might cause the defendant; and (4) the injunction will not disserve the public interest.[2]

I. Petitioner Is Likely to Succeed on the Merits of his Claims.

Petitioner is likely to succeed on each of her/his claims that her/his detention is unlawful under the INA and its implementing regulations, the Fourth Amendment, the doctrine against retroactivity, and the due process clause of the Fifth Amendment.

A. Petitioner is likely to succeed on the merits of the claim that her/his detention without a bond or bond hearing is unlawful under the INA and its implementing regulations.

At this point, the statutory construction issues raised by this petition have been repeatedly made and agreed with by the majority of courts throughout this district[3] as well

[2] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

[3] *See e.g., Garcia Abanil v. Baltazar*, No. 25-cv-04029- WJM-STV, 2026 WL 100587 (D. Colo. Jan. 14, 2026)("And '[a]s § 1225(b)(2)(A) applies only to those noncitizens who are actively 'seeking admission' to the United States, it cannot, according to its ordinary meaning, apply to [persons who have] already been residing in the United States for several years.'")(quoting *Lopez Benitez v. Francis,* 795 F. Supp. 3d 475, 489 (S.D.N.Y. 2025)); *Loa Caballero v. Baltazar,* 2025 WL 2977650, at *6 (D. Colo. Oct. 22, 2025)(finding § 1225(b)(2)(A) does not apply to noncitizens who have been present in the country and are not actively "seeking admission"); *Garcia Bautista v. Noem*, No. 26-CV-00272-NYW, 2026 WL 532427, at *3 (D. Colo. Feb. 26, 2026)(same); *Mendoza Gutierrez v. Baltasar*, No. 25-cv-02720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025) (same); *Moya Pineda v. Baltasar*, No. 25-cv-02955-GPG, 2025 WL 3516291 (D. Colo. Oct. 20, 2025) (same); *Nava Hernandez v. Baltazar*, No. 25-cv-03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025) (same); *Florez Marin v. Baltazar*, No. 25-cv-03697-PAB, 2025 WL 3677019 (D. Colo. Dec. 18, 2025) (same); *Aleman Hernandez v. Baltazar*, No. 25-cv-03688-SKC-SBP, 2025 WL 3718159 (D. Colo. Dec. 23, 2025).

as throughout the Tenth Circuit[4], and the United States recently.[5] The government's new novel position, meanwhile, stands in direct opposition to the overwhelming majority of courts.[6] For the reasons set forth in these decisions and detailed in the habeas petition,

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[4] *Valdez v. Holt*, No. CIV-25-1250-R, 2025 WL 3709021, at *1 (W.D. Okla. Dec. 22, 2025)(holding § 1226, not § 1225(b)(2)(A), applies to noncitizens who are not "actively seeking admission" and encountered in the interior of the country; *Perez v. Grant*, No. CIV-25-1560-R, 2026 WL 315065, at *1 (W.D. Okla. Feb. 5, 2026) (same); *Medina-Herrera, v. Noem.*, No. CIV-25-1203-J, 2025 WL 3460946, at *3 (W.D. Okla. Dec. 2, 2025) (same); *Ramirez Rojas v. Noem*, No. CIV-25-1236-HE, 2026 WL 94641 at *2 (W.D. Okla. Jan. 13, 2026) (same); *Urbina Garcia v. Holt*, No. CIV-25-1225-J, 2025 WL 3516071, at *4 (W.D. Okla. Dec. 8, 2025)(same); *Colin v. Holt*, No. CIV-25-1189-D, 2025 WL 3645176 (W.D. Okla. Dec. 16, 2025)(same); *Lopez v. Corecivic Cimmaron Corr. Facility*, No. CIV-25-1175-SLP, 2026 WL 165490, at *5 (W.D. Okla. Jan. 21, 2026)((collecting cases in this judicial district concluding that § 1225(b)(2) does not govern the petitioner's detention); *Lopez-Romero v. Lyons*, No. 2:25-CV-01113-MIS-JHR, 2026 WL 92873, at *4 (D.N.M. Jan. 13, 2026)(" Noncitizens who entered the country years earlier are not considered to be 'seeking admission,' and therefore fall under § 1226 rather than § 1225(b)(2)(A)."); *Melchor-Rios v. Ortiz*, Case No. 2:25-cv-01055-WJ-GJF, 2025 WL 3764775, at *2 (D.N.M. Dec. 30, 2025) ("Whether the detention of individuals like Petitioner, who previously entered and currently reside in the United States, is governed by the discretionary detention provisions of § 1226(a) or the mandatory detention provisions of § 1225(b), is a question that has been answered in near-unison by district courts nationwide: § 1226(a) governs."); *Sacvin v. Anda-Ybarra*, No. 2:25-CV-01031-KG-JFR, 2025 WL 3187432, at *3 (D.N.M. Nov. 14, 2025)(finding § 1226 applicable to noncitizen encountered in the interior and reasoning that "[n]oncitizens 'seeking admission' are those who have not 'effected an entry' into the United States"); *Cortez-Gonzalez v. Noem,* 2:25-CV-00985-MLG-KK, 2025 WL 3485771, at *3 (D.N.M. Dec. 4, 2025) (same); *Velasquez Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729, at *4 (D.N.M. Sept. 17, 2025)(same).

[5] *See e.g., Lopez-Arevelo v. Ripa,* No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi, et al.,* No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025).

[6] *See e.g., Choglio Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025

Petitioner in the instant matter is likely to succeed on the claim that her/his detention without a bond or a bond hearing constitutes a violation of the INA and the relevant implementing regulations. The well-reasoned analysis in such decisions explains that individuals like Petitioner, encountered inside the U.S. after they had already been residing in the country, are subject to § 1226—not § 1225(b)(2)(A) because they are not "seeking admission." Additional support for this conclusion is detailed extensively in the habeas petition filed in this matter and briefly addressed below.

i. The Plain Meaning of "Admission" Precludes § 1225 Application

Under 8 U.S.C. § 1101(a)(13)(A), "admission" is strictly defined as "lawful entry... after inspection and authorization by an immigration officer." Circuit courts have consistently held that this definition refers expressly to the physical crossing at a Port of Entry (POE) and does not encompass post-entry status.[7] Because Petitioner was encountered in the interior long after entry, they are not "seeking admission" in the

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WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025);*Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025)(agreeing on substantive claim but oddly not ordering any real relief in this decision);*Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *S.D.B.B. v. Johnson et. al.*, No. 1:25-CV-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *But see Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026)(holding in a 2-1 panel decision that the government's position on the statutory interpretation of § 1225(b)(2)(A) is correct).

[7] *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete–Ramirez,* 741 F.3d at 1051); *see also Papazoglou v. Holder,* 725 F.3d 790, 793 (7th Cir. 2013) ("That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization."); *Bracamontes v. Holder,* 675 F.3d 380, 385 (4th Cir. 2012) ("Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities."); *Martinez v. Mukasey,* 519 F.3d 532, 544 (5th Cir. 2008) (recognizing that " 'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status").

procedural sense contemplated by § 1225.[8] To apply a border-centric inspection statute to an individual already residing within the country ignores the plain language of the INA and the "procedural regularity" that the term admission requires.[9]

ii. The Supreme Court's Distinction in Jennings v. Rodriguez

The Supreme Court in *Jennings v. Rodriguez* explicitly recognized the divide between § 1225 and § 1226, noting that the former applies to those "seeking admission" at the border, while the latter applies to those "already in the country."[10] This distinction was not merely incidental; it was the foundation for the Court's jurisdictional analysis. During oral arguments, the Solicitor General explicitly conceded that an alien who enters without inspection and takes up residence in the interior is held under § 1226(a), thereby receiving a bond hearing.[11] The government's current attempt to retroactively apply § 1225 to interior arrivals contradicts its own prior admissions before the nation's highest court.[12]

iii. The Canon Against Superfluity

The government's new interpretation of § 1225(b)(2)(A) as a mandatory detention statute for all "applicants for admission" renders multiple other sections of the INA superfluous—including provisions of the Act passed simultaneously with §

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[8] (ECF No. 1 pp. 21-23.)

[9] *Matter of Quilantan,* 25 I. & N. Dec. 285, 290 (BIA 2010); *see also Martinez v. Att'y Gen.,* 693 F.3d 408, 414 (3d Cir.2012); *Sum v. Holder,* 602 F.3d 1092, 1096 (9th Cir.2010); *Emokah v. Mukasey,* 523 F.3d 110, 118 (2d Cir.2008).

[10] *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

[11] (Transcript of Oral Arguments in *Jennings v. Rodriguez.*)

[12] (ECF No. 1 pp. 23-26.)

1225(b)(2)(A).[13] If § 1225(b)(2)(A) already mandated detention for all non-admitted persons, multiple provisions of § 1226(c), including the Laken Riley Act (LRA), would be redundant and meaningless. Congress would have enacted statutes that accomplished nothing. Established principles of statutory construction require courts to give effect to every word; the existence of § 1226(c)(1)(A), (D), and (E) proves that being "present without admission" does not, by itself, trigger mandatory detention.[14]

iv. Bond hearings and the authority to make custody redeterminations are the product of the implementing regulations (8 C.F.R. §§ 1003.19 and 1236.1) which cannot be abrogated by the acting ICE director through an internal memorandum.

The "savings clause" in 8 U.S.C. § 1103(g) ensures that the Attorney General—and by extension, Immigration Judges—retains the adjudicative authority to review detention determinations that existed prior to the Homeland Security Act. Per 8 C.F.R. §§ 1003.19 and 1236.1, while DHS makes the initial custody decision, the power to redetermine that bond is vested in the Immigration Judge. ICE cannot unilaterally override these properly promulgated regulations through internal memoranda. To deny Petitioner a hearing is an *ultra vires* act that ignores decades of consistent agency practice and the statutory framework that separates prosecutorial functions from judicial review.[15]

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[13] *See e.g., Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) ("The BIA also argued that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. . . But. . . considering both §§ 1225(b)(2)(A) and 1226(c)(1)(E) mandate detention for inadmissible citizens, whether one includes additional conditions for such detention does not alter the redundant impact.").

[14] (ECF No. 1 pp. 36-39.)

[15] (ECF No. 1 pp. 34-39.)

v. Petitioner's position harmonizes all of the relevant laws (Constitution, INA, and regulations).

Ultimately, Petitioner's interpretation is the only one that harmonizes the INA with the Due Process Clause.[16] The statutory scheme reflects a long-standing recognition that individuals residing within the United States possess greater constitutional protections than those at the threshold of entry. Section 1226(a) serves as the default detention authority for those in the interior pending removal proceedings, providing a vital procedural safeguard. Denying a bond hearing to an interior-apprehended individual transforms a temporary administrative hold into an unconstitutional, indefinite detention without judicial oversight.

B. Petitioner is likely to succeed on the merits of the claim that ICE's warrantless arrest and detention of her/him constitutes a violation of the Fourth Amendment and 8 U.S.C. § 1357.

"Longstanding precedent establishes that '[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'"[17] The law in this area is not grey. Rather, for decades, it has been "clearly established . . . that immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention."[18] The clarity of the law

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[16] (ECF No. 1 pp. 26-39.)

[17] *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni–Ponce,* 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi,* 394 U.S. 721 (1969); *Terry v. Ohio,* 392 U.S. 1, 16–19, (1968)); *see also Dunaway v. New York,* 442 U.S. 200, 216 (1979) ("[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.").

[18] *Id* at 215.

in this area is bolstered by the statutes proscribing its arrest authority: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1357. These statutes, "[c]ourts have consistently held," "must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause."[19] The "robust consensus of cases [and] persuasive authority" in this area 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."[20]

Though *Buenrostro-Mendez* and the government take the position that *Jennings* did not limit the application of § 1225(b)(2)(A) at or near the border, these positions have completely ignored the Fourth Amendment implications which arise if it were applicable to those detained in the interior of the country. In *Jennings*, the Court clearly understood 8 U.S.C. § 1225(b)(2)(A) to apply at the border. This was made abundantly clear during oral arguments. Furthermore, *Jennings* found significance in the fact that § 1225(b)(2)(A) does not require a warrant for the detention of aliens encountered at the border and then referred to removal proceedings, stating:

> For example, respondents 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

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[19] *Id.* at 216-17 (citing *Au Yi Lau,* 445 F.2d at 222; *see, e.g., Tejeda–Mata v. Immigration & Naturalization Serv.,* 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu,* 519 F.2d 494, 496 (7th Cir.1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *see also United States v. Quintana,* 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

[20] (*Id.*)

> § 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.*[21]

This point about detention without a warrant at the border is, of course, consistent with the border exception to the warrant requirement. Moreover, in addition to the oral argument excerpts included in the habeas petition evidencing the number of times the Court was told § 1225's application was at the border, the opinion explicitly stated:

> In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission *into the country* under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c). The primary issue is the proper interpretation of §§ 1225(b), 1226(a), and 1226(c).[22]

This statutory framework aligns with the well-established border exception to the Fourth Amendment's warrant requirement. In stark contrast, as the *Jennings* opinion noted, § 1226 explicitly requires a warrant for detention. This distinction is not merely procedural; it reflects the Fourth Amendment's protections for individuals present within the United States—including those present unlawfully.

Since the government changed its position on the applicability of § 1225(b)(2)(A) to applicants for admission encountered in the interior, *Jennings* has been analyzed and interpreted by many different courts and attorneys—in many different ways. To the best of Petitioner's knowledge, however, no one has claimed that *Jennings* dispensed with the Fourth Amendment's warrant requirement for interior enforcement. *Jennings* did not

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

[22] *Id.* at 289 (emphasis added).

purport to and cannot be interpreted to overturn decades of Fourth Amendment jurisprudence.

Moreover, even if Congress wanted § 1225(b)(2)(A) to act to abrogate the Fourth Amendment one does not need a law degree to know Congress cannot abrogate a constitutional amendment simply by passing a statute. Congress may, of course, expand the protections granted by the Constitution through statute, but it cannot legislate away fundamental constitutional guarantees. The Fourth Amendment's protection against unreasonable seizures applies to all persons within the territory of the United States, including noncitizens. Immigration officials may not detain individuals encountered in the interior indefinitely or without probable cause; the Fourth Amendment simply does not permit it. As stated at the outset of this section, ""[l]ongstanding precedent establishes that '[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'"[23] Accordingly, the government's arrest and seizure of Petitioner without a warrant based on probable cause constitutes a plain violation of the Fourth Amendment.

For these reasons, Petitioner is likely to succeed on her/his Fourth Amendment claim.

C. <u>Petitioner is likely to succeed on her/his claim that the application of *Hurtado*'s new interpretation/rule to her/him violates the well—</u>

[23] *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni–Ponce,* 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi,* 394 U.S. 721 (1969); *Terry v. Ohio,* 392 U.S. 1, 16–19, (1968)); *see also Dunaway v. New York,* 442 U.S. 200, 216 (1979) ("[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.").

established retroactivity doctrine repeatedly applied by the Supreme Court and Fifth Circuit to the INA and agency interpretations of it.

Respondent's detention of Petitioner is also unlawful because it is based on an Ex Post Facto rule change that has been impermissibly applied retroactively to Petitioner's conduct: i.e. entering the United States without inspection. As discussed below, the retroactivity doctrine has been applied by the Supreme Court and Fifth Circuit to the INA and agency interpretations of it. Moreover, as recently as February 26, 2026, the BIA recognized the applicability of the doctrine to its decision which significantly changed well-established agency practice and interpretations.

vi. The Supreme Court and Tenth Circuit have repeatedly found amendments to the INA and/or interpretations of it that drastically change past expectations may not be applied retroactively.

Detention of Petitioner based on the government's new interpretation of § 1225(b)(2)(A) formalized by *Hurtado*, is also unlawful because it is based on an Ex Post Facto rule change that has been impermissibly applied retroactively to Petitioner's conduct: i.e. entering the United States without inspection. A statute, order, or edict "operates retroactively" when it seeks to impose "new legal consequences to events completed before its" announcement.[24] "[I]n service of the due process interests of 'fair notice, reasonable reliance, and settled expectations,' the law applies a presumption that new legislation governs only prospectively."[25] "This presumption serves an important equal protection

[24] *De Niz Robles v. Lynch*, 803 F.3d 1165, 1168 (10th Cir. 2015)(quoting *INS v. St. Cyr,* 533 U.S. 289, 321 (2001)).

[25] *Id.* at 1169 (quoting *Landgraf v. USI Film Prods.,* 511 U.S. 244, 270 (1994)).

interest too, preventing the state from singling out disfavored individuals or groups and condemning them for past conduct they are now powerless to change."[26]

Longstanding "precedent on administrative retroactivity instructs that 'retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles.'"[27] This doctrine against retroactivity extends not only to statutory amendments but also to new judicial interpretations of existing law that dramatically shift the legal landscape.[28] Whether such an interpretation or rule may be applied retroactively requires a court to ask whether the retroactive application of a new agency rule/interpretation "contravenes basic presumptions about our legislative system" and "would compromise the 'familiar due process considerations of fair notice, reasonable reliance, and settled expectations.'"[29]

In 2015 and again in 2016, the Tenth Circuit held that the retroactivity doctrine prevented the retroactive application of a BIA decision providing a new interpretation of an INA provision which significantly changed who was eligible to adjust status. Specifically, in both *De Niz Robles v. Lynch* and *Gutierrez-Brizuela v. Lynch*, the Tenth

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[26] *De Niz Robles*, 803 F.3d at 1169.

[27] *Faudoa-Gonzalez v. Barr*, 836 F. App'x 242, 246–47 (5th Cir. 2020)(quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947)).

[28] *See e.g., De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015) (holding a BIA decision interpreting a post-IIRIRA INA provision in a manner that significantly altered/changed who is eligible for adjustment of status could not be applied retroactively); *see also Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1147 (10th Cir. 2016)(same).

[29] *Monteon-Camargo v. Barr*, 918 F.3d 423, 430-31 (5th Cir. 2019) (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994)).

Circuit held the BIA's decision in *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007) could not be applied to a noncitizens past conduct of entering the country without inspection.[30]

Like the Tenth Circuit, the United States Court of Appeals for the Fifth Circuit, has applied the retroactivity doctrine to BIA decisions that drastically change prior practice/understandings. Specifically, in in *Monteon-Camargo v. Barr*, 918 F.3d 423 (5th Cir. 2019), it addressed the retroactive application of the Board of Immigration Appeal's decision in *Matter of Diaz-Lizarraga*, 26 I. & N. Dec. 847 (BIA 2016) which significantly expanded the scope of what constitutes a "crime involving moral turpitude" (CIMT). The court conducted a balancing test, weighing the "ills of retroactivity against the disadvantages of prospectivity" and found that the frustration of the parties' expectations outweighed any benefit of retroactive application.[31]

This consistent and robust body of case law establishes a clear rule: new statutory provisions or judicial interpretations that impose new, adverse immigration consequences for past conduct cannot be applied retroactively. Accordingly, even if the government's new interpretation and application of 8 U.S.C. § 1225(b) was correct, its detention of Petitioner based on this indisputably new rule change violates the longstanding precedent on the doctrine of retroactivity. This is true because its retroactive application "contravenes

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[30] *See e.g., De Niz Robles v. Lynch*, 803 F.3d 1165, 1169 (10th Cir. 2015) (holding a BIA decision interpreting a post-IIRIRA INA provision in a manner that significantly altered/changed who is eligible for adjustment of status could not be applied retroactively); *see also Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1147 (10th Cir. 2016)(same).

[31] *Id.* (quoting *Microcomputer Tech. Inst. v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998)).

basic presumptions about our legislative system" and "would compromise the 'familiar due process considerations of fair notice, reasonable reliance, and settled expectations.'"[32]

vii. The BIA, an agency within the Dept. of Justice, issued a decision on February 26, 2026, once again recognizing the applicability of the retroactivity doctrine to its interpretation of INA provisions—regardless of whether such provision has any criminal component.

On February 26, 2026, the BIA issued its precedential decision in *Matter of Francis Jude Forjoe*, narrowing the availability of the fraud waiver under 8 U.S.C. § 1227(a)(1)(H).[33] For decades prior to the decision, a waiver under this subparagraph was available to both noncitizens who were admitted to the country at a POE after inspection and those who adjusted their status from within it.[34] In *Forjoe*, however, the BIA' found that the phrase "at the time of admission" in § 1227(a)(1)(H) refers exclusively to a noncitizen's physical and lawful entry at a POE after inspection.[35] As a result, the BIA concluded that the plain language of the INA bars those who adjusted status within the U.S. from seeking a waiver under § 1227(a)(1)(H).[36]

Because this holding and interpretation overruled decades of consistent agency practice and understanding of the statute, the BIA determined this new interpretation could

[32] *Id.* at 430–31 (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994)).

[33] *Matter of Francis Jude Forjoe, Respondent*, 29 I. & N. Dec. 463 (BIA 2026).

[34] *Id.* at 465-470.

[35] *Id.* at 471.

[36] *Id.*

not be applied retroactively under longstanding Supreme Court, circuit court, and BIA precedent. In so doing, it explained:

> The test for retroactivity requires [one] to consider the following factors:
>
> (1) whether the particular case is one of first impression, (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive order imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.
>
> Although the issue presented here is not one of first impression, as noted above, we are explicitly overruling longstanding Board precedent to the contrary, and the first three factors in the test articulated above thus support applying our holding prospectively.
>
> Further, our holding will effectuate a significant change with respect to the longstanding rule that had provided a broader interpretation regarding whether an alien's adjustment of status constitutes an "admission" for purposes of the waiver at section 237(a)(1)(H) of the INA, 8 U.S.C. § 1227(a)(1)(H). As to the fifth factor in the test above, our interest in applying the new rule articulated does not outweigh the past expectations on the prior rule, particularly as it was articulated in Board precedent, and therefore this decision will be applied only prospectively.[37]

Putting aside the fact that the reasoning of this decision further bolsters Petitioner's position that one cannot be "seeking admission" from within the U.S., this decision provides yet another example of the fact that the retroactivity doctrine is—and always has been—applicable in the immigration context and is not limited to criminal matters. Said differently, should the government attempt to claim that retroactivity only applies to criminal matters, such a claim would be patently false.

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[37] *Matter of Francis Jude Forjoe, Respondent*, 29 I. & N. Dec. 463, 472 (BIA 2026).

D. Petitioner is likely to succeed on her/his claim that ICE is unlawfully detaining her/him in violation of the due process clause of the Fifth Amendment.

In *Zadvydas v. Davis*, the Supreme Court left no doubt that civil detention, including in the immigration context, requires a sufficient justification— namely preventing flight or danger to the community.[38] Where no such justification exists detention without due process is unconstitutional.[39]

Here, the notion that Petitioner, who is not a flight risk or danger to anyone, may continue to be detained without a bond hearing to determine if there is justification for such detention, is contrary to the due process everyone is afforded in this country.

Continued unlawful detention is, by its very nature, an irreparable injury.[40] The Supreme Court has affirmed that "[f]reedom from imprisonment...lies at the heart of the liberty" protected by the Due Process Clause.[41] "Where, as here, the 'alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary'."[42]

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[38] *Zadvydas v. Davis,* 533 U.S. 678, 693-694 (2001).

[39] *Id.*

[40] *Phong Phan v. Moises Beccerra,* No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5(E.D. Cal. July 16, 2025) ("Further, '[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

[41] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

[42] *Phan*, 2025 WL 1993735, at *5 (citing *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)).

Due process requires an opportunity to be heard at a meaningful time and in a meaningful manner.[43] Petitioner received no such opportunity and/or no such opportunity is available through the immigration courts at this time as a result of the Fifth Circuit's decision in *Buenrostro-Mendez*.

To determine whether government conduct violates procedural due process, the Court weighs three factors in *Mathews* for courts to weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures.[44]

Petitioner will address each of the *Mathews* factors in turn.

viii. Private Interest

Petitioner's private interest is the right to be free from government detention. Being free from physical detention by the government is at the core of due process protection, and "is the most elemental of liberty interests."[45] In our country, "liberty is the norm, and detention without trial "is the carefully limited exception."[46]

Even "noncitizens already in the country who have 'established a life here-albeit without authorization,' possess 'a strong liberty interest in their freedom from

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[43] *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

[44] *Id.* at 335.

[45] *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

[46] *Id.*

detention.'"[47] "This is 'consistent with the longstanding principle that due process applies to those who are present in the interior of the United States, regardless of their citizenship status.'"[48]

The private interest here is fundamental: freedom from detention. "No one can reasonably question that freedom from physical detention is one of the most sacred and elemental of liberty interests."[49] It weighs heavily in the consideration of the *Mathews* factors.

ix. Risk of Erroneous Deprivation

The second factor—the risk of erroneous deprivation of Petitioner's liberty—is likewise substantial. The government's application of § 1225(b)(2) prevents Petitioner from access to a pre-deprivation bond hearing *at all*. In so doing, the government is attempting to evade their burden to show that Petitioner presents a flight risk or danger, in direct contradiction of the law. "There is 'a very high risk of erroneous deprivation of liberty' absent an individualized custody determination."[50]

x. Government Interest

The government has no valid interest in depriving Petitioner of a bond hearing. The government's interest is *supposed* to be upholding the Constitution and laws of the United

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[47] *Mendoza v. Noem*, Case No. 5:26-cv-0728-JKP, ECF No. 9 at 12 (W.D. Tex. Feb. 26, 2026) (quoting *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025)).

[48] *Id.*

[49] *Mendoza,* ECF No. 9 at 14.

[50] *Id.* (citing *Cruz-Reyes v. Bondi*, No. 5:26-cv-60, 2026 WL 332315, at *7 (S.D. Tex. Feb. 3, 2026)).

States, both of which are plainly violated by its arrest and continued unlawful detention of Petitioner. Depriving anyone of their liberty is a serious thing that should only be done when necessary to prevent flight or danger to the community. Petitioner is neither in this case.

To balance liberty interests against interests in assuring appearance and safety, the INA explicitly provides bond hearings for noncitizens who are not described in § 1226(c) or 8 C.F.R. § 1003.19(h). The government, however, wants to detain everyone without any regard to whether they are a danger or a flight risk.[51]

On balance, the private interests affected and the risk of erroneous deprivation, under the current procedures, greatly outweigh the government's interest. "In the immigration detention context involving noncitizens with a substantial presence in the United States who have not received any individualized assessment of flight risk or dangerousness, each of the three factors – affected private interest; risks of erroneous deprivation, including 'the probable value, if any of additional or substitute procedural safeguards;' and the Government's interest – support finding that the noncitizen has been denied procedural due process."[52]

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[51] *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271, at *4 (D.Neb. Aug. 19, 2025) ("The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake.").

[52] *Mendoza*, ECF No. 9 at 13 (citing *Martinez*, 2025 WL 2965859, at *4-5).

Petitioner's continued detention without bond or the opportunity to seek an individualized bond hearing by a neutral adjudicator violates Petitioner's substantive due process rights as guaranteed by the Fifth Amendment.[53]

II. Petitioner Faces Immediate and Irreparable Harm.

A movant "must show a real and immediate threat of future or continuing injury apart from any past injury."[54] Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that "[f]reedom from imprisonment . . . lies at the heart of the liberty" protected by the Due Process Clause.[55] Each day Petitioner remains in custody, she/he is irreparably harmed by the loss of his fundamental liberty—a cruel irony for....

Here, Petitioner has complied with all conditions of his release, followed legal path seeking Asylum and secured gainful employment as a truck driver. Due to his arrest, he lost his source of income – his truck, and his liberty to be free from the detention while his case is pending before Board of Immigration Appeals. Due to his detention, he is no longer able to financially support his aging parents and two sisters in India who solely depend on him for their survival. His continued detention that may last for months or years while his BIA appeal is being adjudicated causes him immediate and irreparable harm in the form of

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[53] *See Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

[54] *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

[55] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

financial burden, extraordinary expenses in legal fees, loss of savings and personal property and severe emotional distress affecting his physical and mental health.

The harm is not merely abstract. Petitioner has already been subjected to the detention for an extend period of time and after being transported many miles from the location at which she/he was detained by ICE, and all while in ICE custody and all the humiliating and degrading things that go along with such custody (cuffs, chains, and repeated strip searches). Absent relief from this Court, Petitioner will remain detained and potentially moved again, in what is becoming an increasingly long removal proceeding process, and as a result, denied his liberty, removed from her/his livelihood and freedom, and removed from what had previously been a community where she/he belongs.

III. The Balance of Equities and Public Interest Weighs in Petitioner's Favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest— "merge when the Government is the opposing party."[56] Here, the balance of hardships weighs overwhelmingly in Petitioner's favor. The injury to Petitioner—unconstitutional detention and risk to his well-being—is severe and immediate. Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law.[57]

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[56] *Nken v. Holder*, 556 U.S. 418, 435 (2009).

[57] *Id.* at 436 (describing public interest in preventing noncitizens "from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *see also Rosa v. McAleenan*, 583 F. Supp. 3d 840 (S.D. Tex. 2019).

Conversely, the harm to Respondents is nonexistent. Petitioner is not among those Congress proscribed for mandatory detention. Nor is Petitioner a danger to the community or a flight risk. Moreover, to the extent the government disagrees with any of these statements, it has the same recourse it has had for decades: making those arguments to a neutral adjudicator during a bond hearing pursuant to § 1226. Surely, Respondents cannot claim any, much less substantial, harm would be caused by affording Petitioner a bond hearing, just as it has to similarly situation noncitizens for decades in accordance with the INA's statutory scheme.[58] Furthermore, the public interest is served by preserving "life, liberty, and happiness" and by preventing the waste of taxpayer resources on unlawful and unnecessary detention.

IV. Petitioner Seeks Injunctive Relief in the Form of Immediate Release from ICE custody.

Petitioner seeks injunctive relief to maintain the status quo by requiring ICE to immediately release her/him. As the government has conceded in similar cases in other districts, "the only relief available to Petitioner through habeas is release from custody."[59] 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 of Homeland Sec. v. Thuraissigiam*, explaining:

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[58] *See Martinez*, 2025 WL 2598379, at *5.

[59] *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).

> [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).
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> 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.[60]

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 1789.

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

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court immediately grant his petition and this motion and issue a Temporary Restraining Order and/or Preliminary Injunction ordering his immediate release from ICE custody, or in the alternative a prompt bond hearing at which the government bears the burden of demonstrating flight or safety risk by clear and convincing evidence.

RESPECTFULLY SUBMITTED,

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