

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

YACQUELINE GABRIELA MARTINEZ
ORELLANA,

Petitioner,

v.

U.S. DEPT. OF HOMELAND SECURITY,
KRISTI NOEM, in her capacity as Secretary
of Department of Homeland Security; et. al.,

Respondents.

Case No. 5:25-CV-1028-JKP

PETITIONER'S REPLY BRIEF IN SUPPORT OF HABEAS PETITION

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
INTRODUCTION	4
Brief Statement of the Case	6
Legal Discussion and Argument.....	7
I. The government’s silence in response to the fact that the Laken Riley Act is rendered superfluous and devoid of any meaning by its new reading of § 1225(b)(2)(A), speaks volumes.	8
II. The government’s new novel reading of § 1225(b)(2)(A) and claims about the “plain language,” as set forth in its Response and the BIA’s recent <i>Hurtado</i> decision, has been soundly rejected by Article III courts as contrary to the actual plain meaning and canons of statutory construction.	10
III. Contrary to the government’s response, the statutes concerning apprehension and detection, further support for the overwhelming conclusion reached by Article III courts that noncitizens like Peitioner are entitled to a bond hearing pursuant to 8 U.S.C. § 1226.....	14
IV. The government’s jurisdictional & exhaustion arguments are without merit and, like the rest of its positions, have been so rejected by Article III courts in recent weeks....	19
A. Section 1252(g) is narrowly confined to three discrete executive actions and does not preclude challenges to the legality of detention.	19
B. Neither 1252(b)(9) (alone or together with 1252(a)(5)) are applicable to Petitioner’s claims related to ongoing unlawful detention in violation of the statutes and/or constitution—as evidenced by <i>Jennings</i> which the government extracts phrases from without acknowledging that it held courts have jurisdiction to review such claims.	21
V. Ms. Martinez has demonstrated that her current detention violates the due process clause of the Fifth Amendment, and as a result, she is entitled to the relief sought by her Petition, like all § 2241 petitions, an order enjoining the government from continuing to unlawfully detain her.	25
A. Ms. Martinez is likely to succeed on the merits of her claims that her detention without a bond hearing based on nothing more than being EWI is unconstitutional and unlawful.	25
B. Her detention violates due process.	26
C. Her detention violates the relevant statutes.	29
D. Ms. Martinez faces immediate and irreparable harm.	29
E. The balance of equities and public interest weighs in Ms. Martinez’s favor.	30

F. Ms. Martinez seeks the same injunctive relief granted to nearly every similarly situated habeas petitioner.....	31
Conclusion	32

INTRODUCTION

Petitioner, Ms. Martinez, has been residing in the United States for more than a decade since entering without inspection after she left her home country of El Salvador. Ms. Martinez, who has no criminal convictions to speak of, ended up in ICE custody after her Apple Watch autonomously called emergency services to her location after she was involved in a minor traffic accident at the beginning of July. After Texas DPS officers reporting to the scene determined she did not have lawful status, they detained and subsequently held her for ICE. Since this unfortunate accident, ICE has kept her unlawfully detained without a bond hearing pursuant to 8 U.S.C. § 1226. Ms. Martinez filed the instant action seeking this Court's urgent intervention to ensure she is afforded the rights guaranteed to her by the Immigration & Nationality Act and the U.S. Constitution.

The central issue before this Court is straightforward: Are noncitizens like Petitioner, who are placed in removal proceedings based on entering without inspection (EWI) years ago, entitled to a bond hearing before a neutral adjudicator under 8 U.S.C. § 1226? Or, as the government now claims, are they subject to mandatory detention without any possibility of a bond hearing?

Petitioner's position affirms nearly three decades of settled agency practice and judicial interpretation.¹ The government's position, in stark contrast, asks this Court to adopt a radical reinterpretation of a thirty-year-old statutory scheme—a theory announced

¹ 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's decision to pivot from three decades of consistent statutory interpretation and call for [Petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.”).

and taken by the agencies in the last couple months. This new theory would require the Court to believe that for thirty years, the agencies charged with administering these laws and the federal courts reviewing their actions have all profoundly misunderstood the statutes' "plain language."

This Court need not indulge such a sweeping and unsupported revision of established law. Petitioner's interpretation is consistent with historical practice and supported by reasoned, persuasive, and detailed analysis from Article III courts across the country, including in the Western District of Texas, who have granted similar habeas petitions in recent weeks.² The government's new novel position, meanwhile, stands in direct opposition to this judicial consensus. Critically, Petitioner's reading of the Immigration and Nationality Act gives full effect to all its provisions, including Congress's most recent amendments in the Laken Riley Act of 2025. The government's interpretation renders that entire Act superfluous, violating the most basic canons of statutory construction.

² *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025) (citing *Lopez Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025)); *Chafila v. Scott*, et. al., No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *5–6 (D. Me. Sept. 21, 2025) (citing *Salcedo Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes*, 2025 WL 1869299; *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *R&R adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256 (W.D. Wash. 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); and *Diaz Diaz v. Mattivello*, No. 1:25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025)).

In sum, Petitioner asks this Court to follow the law as it has been consistently understood and applied by all three branches of government for decades. The government asks the Court to ignore that history, precedent, and logic. For these reasons and those set forth below, Ms. Martinez respectfully requests the Court find respondent's detention of her unlawful and order her immediate release from custody.

BRIEF STATEMENT OF THE CASE

Ms. Martinez is a mother of two U.S. citizen children and the spouse of a U.S. citizen.³ She has lived in Mesquite, TX since 2014 and has zero criminal history.⁴ On July 6, 2025, Ms. Martinez was involved in a car accident that caused her Apple Watch to autonomously call 911.⁵ The DPS officers who arrived on scene took her into custody solely because she lacked legal status.⁶ She was transferred into ICE custody on July 8, 2025.⁷ She has been detained unlawfully in ICE custody without a bond hearing ever since.⁸

On August 20, 2025, the instant proceedings were initiated when Ms. Martinez filed the instant habeas petition pursuant to 28 U.S.C. § 2241. As set forth in her petition, Ms.

³ (Pet. ¶¶ 62-63.)

⁴ (Pet. ¶¶ 62-63.)

⁵ (Pet. ¶¶ 62-63.)

⁶ (*Id.*)

⁷ (*Id.*)

⁸⁸ Though an IJ set a bond hearing, the IJ found she lacked jurisdiction to grant a bond based on the government's new novel interpretation of 8 U.S.C. § 1225(b)(2)(A). Accordingly, a hearing on the bond request itself (i.e. addressing issues such as flight and safety risk) was not conducted.

Martinez, seeks this Court's intervention in the form of an order compelling ICE to immediately release her or to provide a bond hearing before a neutral IJ immediately—as required by the statute and U.S. constitution.⁹ Two days later, on August 22, 2025, the Court issued an Order that, among other things, Directed “Respondents to file an Answer to the Petition within thirty days of this order, answering in substance as required by Habeas Rule 5(b).”¹⁰ Respondents Answer was, therefore, due to be filed no later than September 22, 2025.

Three days after this deadline, at nearly midnight on September 25, 2025, the government finally filed a response (claiming it to be “timely” and without a motion). Though the government's response was untimely, Petitioner's Reply Brief will focus on the substantive issues rather than the procedural failures of the government.

LEGAL DISCUSSION AND ARGUMENT

As stated above, in recent days numerous U.S. district courts throughout the country have addressed the same legal issues presented by Ms. Martinez' Petition, with all of them reaching the same conclusion she advocates for in her Petition. Specifically, countless courts have been finding (daily) that noncitizens like Ms. Martinez are entitled to discretionary bond hearings under 8 U.S.C. § 1226(a) and rejecting the new novel position taken by DHS and the immigration courts. Indeed, as one court put it: “[N]early all district courts that have considered this issue have, after conducting persuasive, well-reasoned

⁹ (ECF No. 1.)

¹⁰ (ECF No. 3.)

analyses of the statutory language and legislative history, rejected the Government's broad interpretation of section 1225(b)(2)."¹¹ This, as another court within the Western District of Texas pointed out, "includes courts in the Fifth Circuit."¹²

The government's response brief does not make a single argument that has not already been made and rejected by at least one, often far more, Article III court in recent weeks. Nearly all of which have relied in some way on the legal positions set forth in a detail by the Petition filed in this case. Moreover, every such court has also easily and quickly dismissed the exact same half-hearted unsupported jurisdictional and exhaustion claims made by the government in this case. Before reaching these issues, it is important to point out the specific legal arguments and positions taken in the Petition which the government did not even attempt to address in its Response.

I. The government's response is silent on the Laken Riley Act being rendered superfluous—devoid of any meaning—by its new reading of § 1225(b)(2)(A), speaks volumes.

¹¹ *Chafila v. Scott*, et. al., No. 2:25-CV-00437-SDN, 2025 WL 2688541, at *5–6 (D. Me. Sept. 21, 2025) (citing *Salcedo Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-00326, ECF No. 16 (D.N.H. Sept. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Gomes*, 2025 WL 1869299; *Lopez Benitez v. Francis*, No. 25 CIV. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *R&R adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256 (W.D. Wash. 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Francisco T. v. Bondi*, No. 25-CV-03219, 2025 WL 2629839 (D. Minn. Aug. 29, 2025); *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); and *Diaz Diaz v. Mattivello*, No. 1:25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025)).

¹² *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025) (citing *Lopez Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025) and *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025)).

Perhaps the most compelling evidence against the government's position is the recent amendment to the INA's primary mandatory detention statute, § 1226(c). As stated above, in January 2025, Congress passed the Laken Riley Act, which added a new subparagraph to 1226(c) which is only applicable to non-citizens who fall within § 1225(a)(1)'s definition of "applicant for admission" and have been arrested, charged with, or convicted of one of several offenses. When it was signed into law the president touted the LRA as a necessary and important amendment that would "save lives."¹³ In other words, the amendment mattered and made an important change to the existing laws.

The structure of this amendment leaves no doubt that mandatory detention under this new provision applies *only* to a noncitizen who meets both the status requirement of subclause (i) (all of which are applicants for admission) *and* the conduct requirement of subclause (ii) (a criminal charge, arrest, or conviction for a specified offense). Accordingly, the LRA, as the Petition in this case and countless courts have repeatedly pointed out, is completely devoid of any meaning under the government's new theory.¹⁴ Indeed, "If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless

¹³ See n. 34, *supra*.

¹⁴ *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *6 (E.D. Cal. Sept. 23, 2025) (Reading section 1225 as the government proposes would thus render section 1226(c)(1)(E) superfluous."); *see also Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), — F.Supp.3d —, —, 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025) ("The Court will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)."); *see also Lopez Benitez*, — F.Supp.3d at —, 2025 WL 2371588, at *7 (same); *Romero v. Hyde*, No. CV 25-11631-BEM, — F.Supp.3d at —, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025) (same).

of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless....”¹⁵

The government’s response does not even mention the LRA much less attempt to dispute or cast doubt on this a fatal fact for its position. It is, after all, a foundational principle of statutory construction that courts must “give effect, if possible, to every clause and word of a statute,”¹⁶ and must avoid interpretations that render statutory language superfluous.¹⁷ The government’s position violates this canon in the most profound way, effectively nullifying an entire act of Congress. The only logical conclusion is that Congress enacted § 1226(c)(1)(E) precisely because being EWI or an “applicant for admission” alone *does not* trigger mandatory detention.¹⁸

II. The government’s new novel reading of § 1225(b)(2)(A) and claims about the “plain language,” as set forth in its Response and the BIA’s recent *Hurtado* decision, has been soundly rejected by Article III courts as contrary to the actual plain meaning and canons of statutory construction.

On September 5, 2025, the BIA issued a decision in *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which acted as a rubberstamp to the new DHS interpretation taken

¹⁵ *Berrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (quoting *Lopez-Campos v. Raycraft*, 2025 WL 2496379 at *8 (E.D. Mich. Aug. 29, 2025)).

¹⁶ *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

¹⁷ See *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013).

¹⁸ Another (of many) applicable canons of statutory construction is the principle of *expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—further clarifies congressional intent. Within INA § 235 itself, Congress knew precisely how to mandate detention when it intended to. For example, INA § 235(b)(1)(B)(iii)(IV), titled “Mandatory detention,” explicitly states that noncitizens found *not* to have a credible fear of persecution “shall be detained” pending removal. Congress’s choice to use specific mandatory language in that subsection, while omitting it for all other “applicants for admission” under § 235(a), demonstrates a clear intent not to subject all such individuals to mandatory detention.

in “conjunction with” the immigration courts.¹⁹ The decision claimed to simply be interpreting the “plain language” of 8 U.S.C. § 1225(b)(2)(A) which states,

[I]n the case of a[] [noncitizen] who is an applicant for admission, if the examining immigration officer determines that a[] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title.²⁰

The BIA’s reasoning per *Hurtado* is that the plain language above means every “applicant for admission . . . shall be detained for” removal proceedings.²¹ But as several district courts have already pointed out:

the government’s “interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice.”²²

¹⁹ *Matter of Hurtado*, 29 I&N Dec. 216.

²⁰ § 1225(b)(2)(A) (emphasis added).

²¹ *Hurtado*, 29 I&N Dec. at 219.

²² *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) ; see also, *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, — F.Supp.3d —, —, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, — F.Supp.3d —, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, — F.Supp.3d —, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, — F.Supp.3d —, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, *13 (C.D. Cal. July 28, 2025).

The government's new position hinges on a simplistic and overbroad reading of 8 U.S.C. § 1225(a)(1), which deems any unadmitted alien an "applicant for admission."²³ From this, the government leaps to the conclusion that all such aliens are subject to mandatory detention under 8 U.S.C. § 1225(b).²⁴ This interpretation ignores the careful distinctions drawn throughout the INA and its implementing regulations.

As an initial matter, the Response and *Hurtado* ironically claim to read the plain language of § 1225(b)(2)(A), but as many courts have pointed out the BIA only reaches its conclusion by omitting "plain language" contradicting its interpretation. Specifically, to be subject to mandatory detention under § 1225(b)(2)(A), the plain text requires an individual to be 1) an "applicant for admission"; 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not clearly and beyond a doubt entitled to be admitted."²⁵ The government's new interpretation, formalized and perceived as binding on IJs by the BIA's decision in *Matter of Hurtado* issued on September 5, 2025, conveniently ignores the second, critical element: that the person must be actively "seeking admission." A noncitizen who entered years ago and has since resided in the United States is not, by any plain sense meaning of the term, "seeking admission" when apprehended by interior enforcement officers. The statute's use of the present progressive tense—"seeking"—

²³ See *Hurtado*, 29 I&N Dec. at 216-220.

²⁴ *Id.*

²⁵ 8 U.S.C. § 1225(b)(2)(A); see also *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)).

unambiguously limits its application to the context of an arrival at a port of entry or the border, not to an arrest occurring long after the act of entry is complete.²⁶

By reading the phrase “seeking admission” out of the statute, the government violates the foundational interpretive canon against surplusage, which requires that courts “give effect, if possible, to every clause and word of a statute.”²⁷ This textual distinction reflects the INA’s broader structure, which carefully distinguishes between two different contexts of enforcement. Section 1225, titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearings,” governs the process of inspection and admission at the border.²⁸ In contrast, 8 U.S.C. § 1226, titled “Apprehension and detention of aliens,” governs the arrest and detention of noncitizens already present within the United States.²⁹ Petitioner, having been arrested in the interior decades after her entry, falls squarely within the purview of § 1226, and therefore, his detention is subject to the discretionary bond provisions of this statute.

²⁶ See *Martinez v. Hyde*, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); accord *Lopez Benitez v. Francis*, 2025 WL 2371588, at *6–7 (S.D.N.Y. Aug. 13, 2025). See also *United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing “is arriving” in 8 U.S.C. Sec. 1225 (1)(A)(i) and observing that “[t]he use of the present progressive, like use of the present participle, denotes an ongoing process”).

²⁷ *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009).

²⁸ See *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (recognizing that “U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under §§ 1225(b)(1) and (b)(2) ... [and] to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)”) (emphasis added).

²⁹ *Id.* see also *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) (“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . . years.”).

Both the response and *Hurtado* appear to claim that the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) dictates the government's new novel interpretation of §1225(b)(2)(A). Given *Jennings* was decided in 2018, this begs the question, why did it take until July 2025 for the BIA to reach this conclusion? Putting aside the years of agency action to the contrary since *Jennings*, this claim, as one court put it, "is, to say the least, not without some doubt."³⁰ Contrary to the BIA's claims about *Jennings*, Article III courts have uniformly pointed out that *Jennings* actually said: "'U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under §§ 1225(b)(1) and (b)(2) ... [and] to detain certain aliens *already in the country* pending the outcome of removal proceedings *under §§ 1226(a) and (c)*.'"³¹ Said differently, the plain statements in *Jennings* explicitly support Petitioner's position: as a noncitizen "already in the country pending the outcome of removal proceedings" she is detained under § 1226 and entitled to the bond hearing set forth therein.

III. Contrary to the government's response, the statutes concerning apprehension and detection, further support for the overwhelming conclusion reached by Article III courts that noncitizens like Peitioner are entitled to a bond hearing pursuant to 8 U.S.C. § 1226.

The government's response, similar to *Hurtado*, selects a few phrases from a few statutes related to the apprehension and arrest authority provided under the INA claiming support for their unheralded position, while omitting or ignoring the entire statutory scheme. Support for Petitioner's position, not the government's, can be further found in

³⁰ *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934, at *4–6 (D. Neb. Sept. 18, 2025).

³¹ *Jennings*, 583 U.S. at 289 (emphasis added).

the various statutes proscribing various arrest and detention authorities depending on the circumstances.³²

As its title, (“Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearings”), suggests, 8 U.S.C § 1225, proscribes the statutory authority by which immigration officers may inspect, arrest, and detain aliens seeking admission to the United States. While not explicitly limited to the arrest of aliens made at a designated port of entry or in close proximity to the border, 8 U.S.C § 1225, is most often used in this setting and does not require a warrant. The reason is simple: The absence of a warrant requirement in § 1225 is in line with the longstanding principle that the search and seizure of persons at our country’s borders is not subject to the Fourth Amendment’s warrant requirement.³³

Conversely, in cases where a federal warrant has not been issued and the border exception to the warrant requirement is inapplicable, 8 U.S.C. § 1357, grants CBP and ICE-ERO authority to arrest and briefly detain aliens in limited circumstances.³⁴ For example,

³² The authority given by these statutes has been properly delegated by the Secretary of Homeland Security pursuant to the power granted to her by 8 C.F.R. § 2.1.

³³ See *United States v. Flores-Montano*, 541 U.S. 149, 153 (2004) (“Congress, since the beginning of our Government, has granted the Executive Plenary authority to conduct routine searches and seizures at the border, without probable cause or a warrant . . .”) (internal citations omitted); *United States v. Cotterman*, 637 F.3d 1068, 1076 (9th Cir. 2011) (“[T]here is [no] room for disagreement over the compelling underpinnings of the doctrine” exempting border searches and seizures from the Fourth Amendment’s warrant requirement. “It is well established that the sovereign need not make any special showing to justify its search of persons and property at the international border.”).

³⁴ See *Arizona v. United States*, 132 S. Ct. 2492, 2506 (2012) (discussing the authority granted to CBP and ICE-ERO by INA § 287, 8 U.S.C. § 1357, to arrest aliens in some circumstances where a federal warrant has not been issued).

"[t]hey may arrest an alien for being 'in the United States in violation of any [immigration] law or regulation' . . . where the alien 'is likely to escape before a warrant can be obtained.'"

³⁵ From this statute, one can see that the arrest without a warrant authority set forth in 8 U.S.C. § 1225 was intended to be limited geographically to near the border and intended only to apply to noncitizens potentially subject to expedited removal under 8 U.S.C. § 1225. Indeed, this is illustrated by the first two paragraphs of 8 U.S.C. §1357(a), titled "Powers without warrant" which expressly provide:

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

- (1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;
- (2) to arrest *any alien who in his presence or view is entering or attempting to enter the United States* in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.³⁶

By explicitly proscribing as an exception to the warrant requirement noncitizens who the officer sees entering or attempting to enter the United States, the statute implicitly proscribes that arrests made elsewhere that do not fall under one of the proscribed warrant exceptions require a warrant. Due to the fact that it is most often relied on at a designated

³⁵ *Id.* (second alteration in original) (quoting INA § 287, 8 U.S.C. § 1357).

³⁶ 8 U.S.C. § 1357(a)(1)-(2)(emphasis added).

port of entry or near the border, 8 U.S.C § 1225 is the statute primarily relied on by CBP for the authority to arrest and detain an alien; meanwhile, ICE (the interior enforcement arm of DHS) most often relies on the authority granted by 8 U.S.C § 1226(a). As a result, an arrest warrant issued pursuant to the authority granted by INA § 236(a), 8 U.S.C § 1226(a) is issued in the context of ICE arresting aliens for removal proceedings.³⁷ In addition to providing the authority under which a warrant for the arrest of an alien may be issued, 8 U.S.C § 1226(a), provides ICE-ERO with the authority to arrest an alien for which an arrest warrant has been issued “pending a decision on whether the alien is to be removed from the United States.”³⁸

For decades, noncitizens in removal proceedings found in the U.S. who are not described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2) were able to request a bond hearing and obtain a bond from an IJ.³⁹

One need not look any further than 8 C.F.R. § 1003.19(h)(2) (iii)(B) to see that the statutory and regulatory scheme was always intended to give Immigration Judges jurisdiction to grant bond to most noncitizens falling under the definition of “applicant for admission.” This is demonstrated by the fact that the regulations governing an Immigration

³⁷ Pursuant to 8 C.F.R. § 236.1(b), the authority to issue an arrest warrant has been properly delegated by the Attorney General to the list of persons found in 8 C.F.R. § 287.5(e)(2).

³⁸ Pursuant to 8 C.F.R. § 236.1(b), the authority to serve an arrest warrant and arrest an alien has been properly delegated by the Attorney General to the list of persons found in 8 C.F.R. § 287.5(e)(3).

³⁹ *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *3-4 (“Until DHS and DOJ adopted the policy described below, the longstanding practice of the agencies charged with interpreting and enforcing the INA applied § 1226(a) to noncitizens like Petitioner, who entered the U.S. without inspection and were apprehended while residing in the U.S.”).

Judge's bond jurisdiction explicitly strip the Judge of authority over "arriving aliens" which are a subset of noncitizens who fall under the definition of "applicants for admission."⁴⁰

Specifically, 8 C.F.R. § 1.2 defines an arriving alien as:

*Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section [§ 1182(d)(5)] of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section [1225(b)(1)(A)(i)] of the Act.*⁴¹

If, as the government now contends, every noncitizen who is an "applicants for admission" is subject to mandatory detention for bond purposes, there would have been no need for a regulation stating immigration judges do not have jurisdiction to grant "arriving aliens" a bond. The regulations specific prohibition against bond for "arriving aliens" implicitly confirms that Immigration Judges *do* have jurisdiction over other categories of "applicants for admission," such as those like Petitioner, who were apprehended years after entry and deep in the nation's interior.⁴² Petitioner is not an "arriving alien"; nor is he

⁴⁰ 8 C.F.R. § 1003.19(h)(2)(iii)(B).

⁴¹ 8 C.F.R. § 1.2 (emphasis added).

⁴² See *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (recognizing that "U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under §§ 1225(b)(1) and (b)(2) ... [and] to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)") (emphasis added); see also *Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D.

subject mandatory detention under § 1225. Rather, she is an alien arrested within the United States and detained under § 1226.

IV. The government's jurisdictional & exhaustion arguments are without merit and, like the rest of its positions, have been so rejected by Article III courts in recent weeks.

Because it concerns the Court's power to decide the case, "[j]urisdiction is always first."⁴³ As a result, when a party has a colorable argument against a court's jurisdiction, it is usually the first argument made. Here, the government seemed to add jurisdictional arguments to the end of its response half-heartedly—likely in recognition of the fact that there is no colorable jurisdictional issue over Petitioner's claims. One need not look any further than to a decision by another court in the Western District of Texas issued last week which specifically addressed and rejected the exact same jurisdictional arguments the government makes in its response.⁴⁴ For the reasons discussed below, the government's jurisdictional arguments are without merit.

A. Section 1252(g) is narrowly confined to three discrete executive actions and does not preclude challenges to the legality of detention.

The government first argues that 8 U.S.C. § 1252(g) divests this Court of jurisdiction. That provision states that "no court shall have jurisdiction to hear any cause

Mich. Aug. 29, 2025) ("There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . . years.")

⁴³ *Louisiana v. U.S. Dep't of Energy*, 90 F.4th 461, 466 (5th Cir. 2024) (quoting *Arulnanthy v. Garland*, 17 F.4th 586, 592 (5th Cir. 2021)); see also *United States v. Willis*, 76 F.4th 467, 479 (5th Cir. 2023) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998)).

⁴⁴ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3–6 (W.D. Tex. Sept. 22, 2025)(addressing and rejecting each one of the government's jurisdictional arguments including statutory and prudential (e.g., exhaustion)).

or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien.”⁴⁵ The government contends that because Petitioner’s detention “arises from the decision to commence removal proceedings against her,” her claim is barred.⁴⁶ But this argument is built on a faulty premise as it seeks to “sweep in any claim that can technically be said to ‘arise from’ the three listed actions.”⁴⁷ But, as explained in *Lopez-Arevelo*:

[T]he Supreme Court has “not interpret[ed] this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves.” *Jennings*, 583 U.S. at 294, 138 S.Ct. 830 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999)). Thus, § 1252(g) applies only “to protect from judicial intervention the Attorney General’s long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders.” *Duarte*, 27 F.4th at 1055 (quoting *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999)). The statute “does not bar courts from reviewing an alien detention order, because such an order, ‘while intimately related to efforts to deport, is not itself a decision to “execute removal orders” and thus does not implicate section 1252(g).’” *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000) (citation omitted); accord *Kong v. United States*, 62 F.4th 608, 617–18 (1st Cir. 2023) (collecting cases).⁴⁸

Here, Petitioner is not challenging Respondents’ decision to execute a removal order, the decision to commence proceedings, or adjudicate her removal proceedings. Rather, Petitioner challenges her continued detention as unlawful, and “[s]uch claims are

⁴⁵ 8 U.S.C. § 1252(g).

⁴⁶ (ECF No. 7 pp. 12-13.)

⁴⁷ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025).

⁴⁸ *Id.* at *4.

not barred by § 1252(g).”⁴⁹ Accordingly, § 1252(g) does not deprive the Court of jurisdiction over Petitioner’s claims and the government’s arguments to the contrary are without merit.

B. Neither 1252(b)(9) (alone or together with 1252(a)(5)) are applicable to Petitioner’s claims related to ongoing unlawful detention in violation of the statutes and/or constitution—as evidenced by *Jennings* which the government extracts phrases from without acknowledging that it held courts have jurisdiction to review such claims.

The government’s reliance on 8 U.S.C. § 1252(b)(9), the so-called “zipper clause,” is misplaced. This provision consolidates judicial review, stating that “judicial review of all questions of law and fact... arising from any action taken or proceeding brought to remove an alien from the United States... shall be available only in judicial review of a final order of removal.”⁵⁰ In an effort to give its argument merit, the government misstates both Petitioner’s claim and Supreme Court precedent. Each of these are addressed in turn.

First, the government’s response states: “In this case, Petitioner *does* challenge the government’s decision to detain her in the first place.”⁵¹ This statement is simply false. Nothing about Petitioner’s claim has anything to do with the government’s ability to “detain her in the first place.” Rather, as is abundantly clear throughout her filings, she is challenging the government’s refusal to provide her with the bond hearing she is entitled to under the law and U.S. constitution. In fact, Petitioner does not even claim that EWI

⁴⁹ *Id.* (citing *Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278, at *2–3 (W.D. La. Sept. 11, 2025)).

⁵⁰ 8 U.S.C. § 1252(b)(9).

⁵¹ (ECF No. 7 p. 16.)

noncitizens are entitled to a bond if they are not subject to mandatory detention. Petitioner simply asks for what countless courts have said she and other similarly situated are entitled to: a bond hearing before a neutral adjudicator. Much like its claims about what § 1225(b)(2)(A)'s plain language says, the government's claim that Petitioner challenges her detention in the first place has no basis in reality.

Similarly, the government's claim that anything and everything related to removal proceedings must be "zipped" into a PFR filed with a circuit court of appeals is not rooted in reality. The government's argument in this regard fundamentally misreads and misrepresents the Supreme Court's holding in *Jennings v. Rodriguez*. The government's position rests on a selective reading of *Jennings* that omits its core reasoning. While the government correctly notes that the *Jennings* court discussed challenges to "the decision to detain [an alien] in the first place" falling within § 1252(b)(9)'s scope,⁵² it conveniently ignores the fact that the Court held that § 1252(b)(9) did *not* bar jurisdiction over the respondents' claims in that very case.⁵³

The claims in *Jennings* were functionally, with respect to jurisdiction, similar in the relevant aspects to Petitioner's claim here: a challenge to the detention of noncitizens without bond hearings.⁵⁴ The Supreme Court found jurisdiction proper because the respondents were "not challenging the decision to detain them in the first place or to seek

⁵² *Jennings*, 583 U.S. at 294-95.

⁵³ *See id.* (holding it had jurisdiction to consider the claims made by the non-citizens in that case that they were being detained in violation of the law and constitution).

⁵⁴ *Id.*

removal."⁵⁵ Instead, they were challenging "the *extent of the Government's authority* to detain them without a bond hearing" and "the *constitutionality of their detention* under the Due Process Clause."⁵⁶

This is the dispositive distinction that the government's argument goes out of its way to avoid. Petitioner is not contesting the government's discretionary decision to take her into custody at the outset of her removal proceedings. She is mounting a foundational challenge to the government's claims about the statutory and constitutional framework under which she is being detained without a bond hearing. She argues that the government's interpretation of § 1225(b) is statutorily erroneous and, as applied to her, violates the Fifth Amendment's guarantee of procedural due process. This is not a challenge to a "discretionary judgment" or an "action or decision" regarding detention, which might be shielded by a provision like § 1226(e). Rather, as the court in *Lopez-Arevelo* explained in its analysis of § 1226(e), such provisions do not preclude" challenges to the statutory framework that permits the alien's detention without bail."⁵⁷ Petitioner's claim is precisely such a challenge.

The government's attempt to reframe this classic habeas claim—a challenge to a present, ongoing state of unlawful confinement—as a mere challenge to a past discretionary act is a transparent effort to force the claim into the § 1252(b)(9) box. This

⁵⁵ 583 U.S. at 295.

⁵⁶ *Id.* (emphasis added).

⁵⁷ *Lopez-Arevelo*, at 5 (quoting *Jennings*, 583 U.S. at 295).

maneuver must be rejected, not only because it contradicts *Jennings*, but also because it leads to a constitutionally suspect outcome. The government's proposed review mechanism—a petition for review to the circuit court after a final order of removal is issued by the Board of Immigration Appeals (BIA)—is a wholly illusory remedy for the injury alleged. The constitutional harm is the ongoing deprivation of liberty *without a timely bond hearing*. A judicial determination that occurs months or years later, after a final removal order, cannot retroactively provide the hearing that was unconstitutionally denied. It cannot restore the days, months, or years of liberty lost during the period of unlawful pre-order detention. Such a delayed and inadequate process would render the Great Writ a nullity for this entire class of detainees.

Furthermore, the *Lopez-Arevelo* court (in this District) rejected a similar argument, explaining:

Section 1252(a)(5) [and (b)(9) are] narrowly applicable provision[s], which ‘specif[y] that the only means of obtaining judicial review of a final order of removal, deportation, or exclusion is by filing a petition with a federal court of appeals.’ It is a ‘zipper clause,’ which ‘funnel[s] judicial review of final deportation orders ... into a single mechanism. Thus, where there is no final removal order and a habeas petitioner’s “arrest and detention claims are independent of any future removal order,” § 1252(a)(5) [and (b)(9)] do[] not prevent the district court from hearing such claims.’⁵⁸

In sum, none of the statutes or cases relied on by the government act as jurisdictional bars to Petitioner’s claim that she is being unlawfully detained in violation of the INA and U.S. constitution.⁵⁹

⁵⁸ *Lopez-Arevelo*, 2025 WL 2691828, at *5 (citations omitted and cleaned up).

⁵⁹ Though not explicitly raised and argued by the government, it should be noted that administrative exhaustion is not required in these circumstances. Exhaustion, including an appeal to the BIA, is not

V. Ms. Martinez has demonstrated that her current detention violates the due process clause of the Fifth Amendment, and as a result, she is entitled to the relief sought by her Petition, like all § 2241 petitions, an order enjoining the government from continuing to unlawfully detain her.

The purpose of § 2241 is to enjoin the government from continuing to unlawfully detain a person. Accordingly, while the government correctly points out that a separate motion for an injunction was not separately filed, the purpose and requirements of § 2241 coupled with the relief sought in it, leave no doubt that is what Petitioner has sought from the outset.⁶⁰ The purpose of a TRO or preliminary injunction is to preserve the status quo and prevent irreparable harm until the court makes a final decision the relief sought.⁶¹ To obtain an injunction, 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 order might cause the defendant; and (4) the injunction will not disserve the public interest.⁶²

Ms. Martinez is likely to succeed on the merits of her claims.

A. Ms. Martinez is likely to succeed on the merits of her claims that her detention without a bond hearing based on nothing more than being EWI is unconstitutional and unlawful.

required for habeas petitions and, in any event, would be futile here. The government's internal memorandum issued on July 8, 2025, announcing both the complete change in its interpretation of § 1225(b)(2)(A) combined with the BIA's *Hurtado* decision fulfilling Lyons prophecy that this new interpretation would be done "in conjunction" with EOIR, leave no doubt that without federal court intervention every EWI noncitizen will be deprived of a bond hearing.

⁶⁰ In the event the Court disagrees, Petitioner can remedy it by filing such motion.

⁶¹ *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

⁶² *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).

Ms. Martinez is substantially likely to succeed on the merits of her claims because her detention is unlawful under both the INA and the Due Process Clause of the Fifth Amendment. Respondents' new, radical interpretation of the INA—which subjects all noncitizens who entered without inspection (“EWI”) to mandatory detention—reverses nearly three decades of consistent agency practice, defies multiple canons of statutory construction, and violates the Constitution. This novel theory, recently rubber-stamped by the Board of Immigration Appeals (“BIA”) in *Matter of Hurtado*, 29 I & N Dec. 216 (BIA Sept. 5, 2025), is a thinly veiled attempt to achieve through executive fiat what Congress has not authorized: the categorical denial of bond hearings to a class of noncitizens long understood to be eligible for them. As numerous federal district courts have already concluded, this position is legally indefensible.

B. Her detention violates due process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.⁶³ To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Mathews*, courts weight the following factors:

- (1) the private interest that will be affected by the official action;
- (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and

⁶³ *Demore v. Kim*, 538 U.S. 510, 523 (2003).

(3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.⁶⁴

Ms. Martinez addresses the *Matthews* factors in turn.

Private interest. It is undisputed Ms. Martinez has a significant private interest in being free from detention. "The interest in being free from physical detention" is "the most elemental of liberty interests."⁶⁵ Moreover, when assessing the private interest, courts consider the detainee's conditions of confinement, Ms. Martinez ly, "whether a detainee is held in conditions indistinguishable from criminal incarceration."⁶⁶

Ms. Martinez has not only been held in ICE detention without a bond hearing or the possibility of obtaining one for weeks, he was also moved 1,000s of miles across the country in ICE's custody. As in *Günaydin*, "he is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement."⁶⁷ The first *Matthews* factor supports Ms. Martinez's claim of a Fifth Amendment violation.

⁶⁴ *Matthews*, 424 U.S. at 335.

⁶⁵ *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

⁶⁶ *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)).

⁶⁷ *Id.*

Risk of erroneous deprivation. Under this factor, courts must “assess whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.”⁶⁸ The government’s new position claiming any noncitizen present in the U.S. without having been inspected by an immigration officer (colloquially referred to as “EWI”) is subject to mandatory detention without a bond hearing is the sole reason he has been and continues to be unlawfully detained. Notably, the government’s new position contradicts nearly three decades of consistent agency action holding bond hearings and setting bond for noncitizens who are EWI. Significantly, a bond hearing before a neutral adjudicator in accordance with § 1226(a), like the ones that took place for decades prior to July 2025, is exactly the place for any claimed interest the government has in detaining Petitioner (e.g. assuring appearance at hearings and public safety) to be heard and ultimately ruled on by a neutral adjudicator. This *Matthews* factor weighs in favor of Ms. Martinez, too.

Respondents’ competing interests. Under this factor, the court weighs the private interests at stake and the risk of erroneous deprivation of those interests against Respondents’ interests.⁶⁹ Petitioner does not dispute that the government and the public have a strong interest in the enforcement of the immigration laws. Ironically, it is Petitioner who is asking the Court to enforce such laws as the currently exist; meanwhile, the government is asking everyone to ignore multiple provisions of the INA. Ms. Martinez is

⁶⁸ *Id.* at *8.

⁶⁹ *Matthews*, 424 U.S. at 335.

not a flight risk nor a danger to the community. Nor is Ms. Martinez described in any of the provisions of 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19 which would subject him to mandatory detention without the right to a bond hearing before an IJ. Accordingly, the government's interest in upholding the Constitution and immigration laws is fulfilled through the relief sought by Ms. Martinez's habeas petition.

Because all three *Matthews* factors favor Ms. Martinez's position, this Court should determine that Ms. Martinez is likely to succeed in demonstrating that her detention without a bond hearing based on nothing more than being EWI contravenes her due process rights under the Fifth Amendment.⁷⁰

C. Her Detention Violates the Relevant Statutes.

The government's detention of Petitioner without a bond hearing, based on its new interpretation of 8 U.S.C. 1225(b)(2)(A), is contrary to the INA's plain text for the reasons discussed above and set forth in the Petition itself. For those reasons, Respondents refusal to provide this statutorily required bond hearing based on its new (unsupported) interpretation of § 1225(b)(2)(A) violates the INA.

D. Ms. Martinez Faces Immediate and Irreparable Harm.

A movant "must show a real and immediate threat of future or continuing injury apart from any past injury."⁷¹ Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that "[f]reedom from imprisonment . .

⁷⁰ See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

⁷¹ *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

. lies at the heart of the liberty” protected by the Due Process Clause.⁷² Each day Ms. Martinez remains in custody, she is irreparably harmed by the loss of her fundamental liberty—a cruel irony given that it was nothing more than an Apple Watch’s autonomous call to emergency services that led to her detention by ICE.

The harm is not merely abstract. Ms. Martinez has already been subjected to extended unlawful detention and all the humiliating and degrading things that go along with it: locked in a cage, cuffed, chained, and strip searched. Absent relief from this Court, Ms. Martinez will remain detained in what is becoming an increasingly long removal proceeding process, and as a result, denied her liberty, removed from her livelihood and freedom, and removed from what had previously been a community where she belongs.

E. The Balance of Equities and Public Interest Weighs in Ms. Martinez’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.”⁷³ Here, the balance of hardships weighs overwhelmingly in Ms. Martinez’s favor. The injury to Ms. Martinez—unconstitutional detention and risk to her 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.⁷⁴

⁷² *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

⁷³ *Nken v. Holder*, 556 U.S. 418, 435 (2009).

⁷⁴ *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. Ms. Martinez is not among those Congress proscribed for mandatory detention. Nor is Ms. Martinez 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 Ms. Martinez a bond hearing, just as it has to similarly situated noncitizens for decades in accordance with the INA's statutory scheme.⁷⁵ 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.

F. Ms. Martinez Seeks the Same Injunctive Relief Being Granted to Nearly Every Similarly Situated Habeas Petitioner.

Ms. Martinez seeks injunctive relief to maintain the status quo by requiring ICE to either immediately release her or promptly provide her with a bond hearing before a neutral IJ. As stated above (repeatedly), the list of district courts that have recently concluded the government's new position is plainly incorrect is a long one that is growing by the day.

While courts have been fairly unanimous in this finding and granting relief, the specific remedy has varied slightly.⁷⁶ For example, "[s]ome courts have determined that the appropriate relief for an immigration detainee held in violation of due process is the

⁷⁵ See *Martinez*, 2025 WL 2598379, at *5.

⁷⁶ See *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025) (discussing the various forms of relief ordered by courts granting habeas relief in similar cases).

petitioner's immediate release from custody.”⁷⁷ Alternatively, “[m]any courts in recent days order[ed] a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence.”⁷⁸ These remedies preserve rather than alter the status quo.⁷⁹ The status quo ante litem is “the last uncontested status which preceded the pending controversy.”

For nearly thirty years, bond hearings before a neutral IJ were the status quo for noncitizens who were EWI and not described in § 1226(c) or 8 C.F.R. § 1003.19(h). This was the status quo, of course, because it is precisely what is required by the INA's statutory scheme. Injunctive relief is, therefore, appropriate in Ms. Martinez's case.

CONCLUSION

For the above stated reasons, Ms. Martinez respectfully requests the Court find respondent's detention of her without a a bond hearing is contrary to the both the statutory scheme and the U.S. Constitution for the reasons set forth in her petition and above. Furthermore, for the same reasons, Ms. Martinez respectfully requests this Court grant the following relief:

- a. Assume jurisdiction over this matter;

⁷⁷ *Id.* (citing *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025)).

⁷⁸ *Id.* (citing *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at *14; and *Arostegui-Maldonado v. Baltazar*, — F. Supp. 3d —, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025)).

⁷⁹ *Nguyen v. Scott*, 2025 WL 2419288, at *10 (W.D. Wa. Aug. 21, 2025) (citing *Phong Phan v. Moises Beccerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI-RML, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2024) (finding the “moment prior to the Petitioner's likely illegal detention” was the status quo)).

- b. Issue a writ of habeas corpus requiring that Respondents release Petitioner or provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 5 days;
- c. Declaratory judgment pursuant to 28 U.S.C. § 2201, declaring that noncitizens who are placed in removal proceedings under 8 U.S.C. § 1229a and charged as inadmissible under § 1182(a)(6)(A) are not, absent one of the provisions found in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h)(2) being applicable, subject to mandatory detention, and therefore, are entitled to a bond hearing before an Immigration Judge who has jurisdiction pursuant to the INA § 236(a) and 8 C.F.R. § 1003.19;
- d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA") and
- e. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Belinda Arroyo

BELINDA ARROYO

Texas State Bar No. 24051925

P.O. Box 190749

Dallas, Texas 75219

Email: barroyo@arroyolawoffice.com

Ph. 214-631-3500/Fax 817-887-4912

AND

/s/ Dan Gividen

Dan Gividen

Texas State Bar No. 24075434

18208 Preston Rd., Ste. D9-284

Dallas, TX 75252

972-256-8641

Dan@GividenLaw.com

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 September 29, 2025.

/s/ Dan Gividen
DAN GIVIDEN
Attorney for Defendant