IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SHAHEEN IQBAL, 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. 3:25-CV-429-LS

PETITIONERS' CONSOLIDATED POST-HEARING BRIEF IN SUPPORT OF HABEAS PETITION & MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION: A SUMMARY OF ARGUMENTS IN THIS BRIEF

"The complex provisions of the INA have provoked comparisons to a 'morass,',[1] a "Gordian knot,"[2], and 'King Minos's labyrinth in ancient Crete.'"[3] These comparisons are well-deserved. Since the hearing in the above captioned proceedings on October 9, 2025, Petitioners sought to navigate the dense and complex statutory scheme that is the Immigration & Nationality Act (INA). Petitioners did not do so because they doubted the conclusion they have advocated for in this Court. The Petitioners' ultimate conclusion that they are entitled to a bond hearing under both the U.S. Constitution and the INA is difficult to doubt given decades of agency practice and the multitude of district court decisions reaching the same ultimate conclusion in recent weeks.

That being said, additional examination of the relevant statutes and their purpose have led them to reconsider one aspect of their argument and their answer to one of the Court's questions. Specifically, Petitioner's indicated that the "plain language" of the statute is the reason they are not the "other aliens" described in 8 U.S.C. § 1225(b)(2)(A). Petitioner's have since concluded that the plain language does not and cannot control because the terms "admitted" and "admission" as well as "application for admission" are

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

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

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

defined terms in the INA, and therefore, they must be given the meaning explicitly provided.[4]

Through IIRIRA Congress left no doubt that an "admission" defined at 8 U.S.C. § 1101(a)(13)(A) and an "application for admission" defined at § 1101(a)(4) can only be made from outside of the U.S. knocking at the door to come in. As a result, no one can seek an admission from within the U.S. Accordingly, an alien who is placed in removal proceedings and charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), which requires that they are in fact "present in the United States," cannot simultaneously be seeking admission to it. Furthermore, as discussed below, even when applying for relief before an IJ or seeking some form of lawful status from USCIS, aliens within the country's interior are able to request an "adjustment of their status" or ask an IJ to "cancel their removal;" but, as discussed below, they cannot seek admission anywhere but from the outside asking to come in.

As further detailed below, the definitions Congress provided, the main purpose of § 1225 and the millions of aliens who are potential "other aliens" plainly described in § 1225(b)(2)(A) dictate that this statute does not subject every EWI alien to mandatory detention for the duration of removal proceedings.

In addition to being dictated by the INA, this conclusion is the only one that can be reached without rendering it unconstitutional. It is beyond dispute that the 4th Amendment requires a warrant issued on probable cause to lawfully arrest anyone in the United States

[4] 8 U.S.C. §§ 1101(a)(4) and (a)(13).

unless a valid exception to the warrant requirement exists. While Congress can certainly give greater protections than the Constitution through statutes, it cannot legislate constitutional protections away. Said differently, when applied at or in close proximity to the border—as the *Jennings* plurality repeatedly indicated a belief it was limited to—§ 1225(b)(2)(A)'s absence of a warrant requirement is simply a statutory recognition of the border exception to it.

For these reasons and those discussed below Petitioners respectfully request the Court find their detention without a bond hearing as required by the INA and constitution to be unlawful and order their immediate release.

DISCUSSION

I. Because Congress specifically defined the terms "Application for Admission," "Admission," and "Admitted," the statutory definitions they have been given dictate that one who is "seeking admission" must be physically outside of the United States and asking to come in.

Congress specifically defined the terms "Application for Admission," "Admission," and "Admitted." The statutory definitions Congress gave these terms dictate that one who is "seeking admission" must be physically outside of the United States and asking to come in.

Under the post-IIRIRA INA, it is admission, not entry, that matters. The term "admission" and "admitted," previously absent from the INA were added and defined at 8 U.S.C. § 1101(a)(13)(A), which provides:

> The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien *into the United States* after inspection and authorization by an immigration officer.

Meanwhile, the related term "application for admission" (also added by IIRIRA) defined at 8 U.S.C. § 1101(a)(4), provides: "The term 'application for admission' has reference to the application for admission *into the United States* and not to the application for the issuance of an immigrant or nonimmigrant visa."[5]

The terms "application for admission," "admission," and "admitted" all make Congress' intent clear that admission cannot happen anywhere other than when at the proverbial door asking to come in.

These definitions, which specifically use the phrase "into the United States," leave no doubt that Congress intended an "admission" to happen from the outside in. These definitions led the Fifth Circuit, when interpreting another statute in the INA, to reject the government's argument to defer to the BIA's interpretation of eligibility for a waiver under 8 U.S.C. § 1182(h).[6] In that case, the court was tasked with determining whether an alien who had adjusted their status inside the United States, (rather than being admitted as a LPR at a POE), and was subsequently convicted of an aggravated felony, was eligible for a waiver.[7] The relevant portion of the statute in that case provided:

> No waiver shall be granted under this subsection *in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if ... since the date of such admission* the alien has been convicted of an aggravated felony...[8]

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[5] 8 U.S.C. § 1101(a)(4) (emphasis added).

[6] *Martinez v. Mukasey*, 519 F.3d 532, 543-44 (5th Cir. 2008).

[7] *Id.*

[8] 8 U.S.C. § 1182(h) (emphasis added).

This led the Fifth Circuit to conclude, in part, that:

> Under this statutory definition, "admission" is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status, as done by Martinez. . . .With this definition in mind, the plain language of § [1182](h) reveals that "admitted", as employed in § [1182](h), includes an alien's lawful entry into this country with permanent-resident status.[9]

At the time of *Martinez v. Mukasey* this issue was still unsettled amongst the circuit courts. By 2015, however, nearly every circuit court had issued decisions that agreed with the Fifth Circuit's interpretation.[10] This finally led the BIA to acquiesce that their interpretation had been wrong and formally issue a decision recognizing this fact.[11]

Significantly, in addition to the terms being defined, the *Martinez* court also explained that their conclusion was:

> [B]olstered by the "longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien."[12] This canon of construction, comparable to the rule of lenity in criminal cases, is based on the drastic nature of removal. "We will not assume that Congress meant to trench on [the alien's] freedom beyond that which is required by the narrowest of several possible meanings of the words used."[13]
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> Other cases have left no doubt that the single most important requirement for an

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[9] *Martinez v. Mukasey*, 519 F.3d at 544.

[10] *Medina-Rosales v. Holder*, 778 F.3d 1140 (10th Cir. 2015); *Husic v. Holder*, 776 F.3d 59 (2d Cir. 2015); *Stanovsek v. Holder*, 768 F.3d 515 (6th Cir. 2014); *Negrete-Ramirez v. Holder*, 741 F.3d 1047 (9th Cir. 2014); *Papazoglou v. Holder*, 725 F.3d 790 (7th Cir. 2013); *Leiba v. Holder*, 699 F.3d 346 (4th Cir. 2012); *Hanif v. Att'y Gen. of U.S.*, 694 F.3d 479 (3d Cir. 2012); *Lanier v. U.S. Att'y Gen.*, 631 F.3d 1363 (11th Cir. 2011); *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008).

[11] *See Matter of J-H-J-*, 26 I. & N. Dec. 563, 564–65 (BIA 2015).

[12] *Id.* (quoting *Cardoza–Fonseca,* 480 U.S. at 449, 107 S.Ct. 1207 (citations omitted)).

[13] *Id.* (quoting *Fong Haw Tan v. Phelan,* 333 U.S. 6, 10, 68 S.Ct. 374, 92 L.Ed. 433 (1948)).

"admission" post-IIRIRA is being outside of the United States and passing through a POE after inspection by an immigration officer. This is true even when the alien does not have documents giving them lawful status. Indeed, subsequent to IIRIRA the BIA and every circuit court to address the issue has concluded that "the terms 'admitted' and 'admission,' as defined in [§ 1101(a)(13)(A)], denote procedural regularity for purposes of adjustment of status, rather than compliance with substantive legal requirements.'" [14] This means that an alien who is waived through a port of entry by an immigration officer, even though the alien did not have documents allowing them to lawfully enter.[15] Practically speaking, a procedural admission, (e.g. an entry through a POE after being "waved through"), is sufficient to allow an alien to meet the admitted requirement of 8 U.S.C. § 1255(a) for the purposes of adjustment of status within the U.S.[16]

The Fifth Circuit's decision in *Tula Rubio v. Lynch*, 787 F.3d 288 (5th Cir. 2015) further demonstrates the focus of the term "admission" is on being permitted to enter from the outside at a POE after inspection by an immigration officer—not one's legal status.[17] There "at the age of four, Tula–Rubio entered the United States while riding in a car driven by a U.S. citizen, which was physically waved through the port of entry by an immigration

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[14] *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).

[15] *Id.*

[16] *Id.*

[17] *Tula Rubio v. Lynch*, 787 F.3d 288, 290 (5th Cir. 2015).

officer."[18] The immigration officer did not ask for proof of lawful status that would allow his entry into the U.S.—which it was undisputed he had none.[19] A decade later, in 2002, Tula Rubio adjusted his status to that of a LPR.[20] And four years later he was convicted for possession of marijuana and placed in removal proceedings.[21]

The question presented in by *Tula Rubio* involved his eligibility for cancellation of removal under 8 U.S.C. § 1229b(a).[22] Specifically, the issue was whether the procedural admission at the border in 1992 constituted being "admitted in any status."[23] The statutory provision at issue there required, among other things, that the alien "has resided in the United States continuously for 7 years after having been admitted in any status."[24]

The *Tula Rubio* court concluded, consistent with others, that because the procedural admission through the POE was an "admission" as the term is defined[25] and concluded that "no status" is "any status."[26] All of which led to the conclusion that Tula Rubio had

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[18] *Id*,

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.* at 291-92.

[23] *Id.*

[24] *Id.*

[25] (quoting *In re Quilantan,* 25 I. & N. Dec. 285, 290 (B.I.A.2010) and (citing *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).

[26] *Id.*

satisfied the seven-years after being "admitted in any status" requirement under 8 U.S.C. § 1229b(a)(2) and (d)(1).[27]

In sum, the statutory definitions provided by Congress both by their use of the language "into the United States" and the case law applying those definitions throughout the INA where those terms appear, leave little room to dispute that the focus is on coming into the U.S. from outside at a designated POE.

II. Section 1225 proscribes the procedures set forth for the inspection of the millions of "applicants for admission" who arrive at the country's POEs every year.

A. The application of § 1225 at the POE—the most common location at which it applies where millions of "applicants for admission" or inspected every year.

Annually, millions of foreign nationals arrive at United States Ports of Entry (POEs)[28] seeking entry.[29] In 2022 for example, DHS granted approximately 97 million admissions into the U.S., with an estimated 45 million of those admissions being nonimmigrants who were issued an I-94.[30] The majority of these individuals present facially valid non-immigrant visas, such as B-1/B-2 visitor, F-1 student, or H-1B temporary worker visas.[31]

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[27] *Id.*

[28] The term "POE" is used throughout this brief as a short hand reference to any time or place designated by the attorney general for the admission of aliens.

[29] (*See* Consl. App. Ex. 1 – Annual Flow Report, U.S. Nonimmigrant Admissions: 2022, Alice Ward, Office of Homeland Security Statistics, U.S. Dept. of Homeland Security.)

[30] (*Id.*)

[31] (*Id.*)

Upon arrival, every such individual, regardless of their documentation, is legally deemed an "applicant for admission" pursuant to INA § 1225(a)(1). This foundational statute, which governs the inspection procedures at all POEs, defines an "applicant for admission" as either "[1] An alien present in the United States who has not been admitted or [2] who arrives in the United States..." 8 U.S.C. § 1225(a)(1). This provision thus establishes the statutory framework for processing every alien who presents themselves for inspection.

The inspection process mandated by INA § 1225 functions as a critical sorting mechanism, resulting in one of three primary outcomes. First, an inspecting officer may determine that the alien possesses valid, unexpired documents and is admissible, thereby admitting them into the United States.

Second, if the officer determines the alien is inadmissible either for seeking entry through fraud or material misrepresentation (INA § 1182(a)(6)(C)) or for lacking valid entry documents (INA § 1182(a)(7)), the alien will be subject to expedited removal (ER) pursuant to 8 U.S.C. § 1225(b)(1). Significantly, there are many grounds of inadmissibility,[32] but only aliens determined to be inadmissible under § 1182(a)(6)(C) or § 1182(a)(7) may be processed for ER.[33]

In the second scenario, the alien is subject to expedited removal under INA § 1225(b)(1)(A). This is a summary process intended to be completed in a matter of hours,

[32] *See generally* 8 U.S.C. § 1182(a).

[33] § 1225(b)(1)(A)(1).

if not minutes. At airports and seaports, this authority is most commonly invoked not for lack of documents, but for alleged fraud or willful misrepresentation under § 1182(a)(6)(C).

For example, an inspecting officer may conclude that an alien arriving with a validly issued B-2 visitor visa is misrepresenting their nonimmigrant intent and secretly plans to remain permanently. Following questioning and potentially a sworn statement, the officer issues a Form I-860, a summary order of removal. Critically, this expedited removal order is immediate and final: the alien receives no hearing before an Immigration Judge, no appeal, and none of the procedural rights afforded in formal removal proceedings.[34] While such aliens may claim a fear of return, triggering a separate review process, that distinct process itself does not shed light on the issues presented in this matter. Accordingly, this brief is not going to address that processes' intricate web of statutes and regulations.[35]

Significantly, once an alien is issued an ER order, the alien's subsequent removal (as well as any incidental detention) is under the custody and detention authority proscribed by 8 U.S.C. § 1231. The goal is for such removal at a POE, however, is for it to occur immediately either by return to the contiguous territory the alien arrived from or on the

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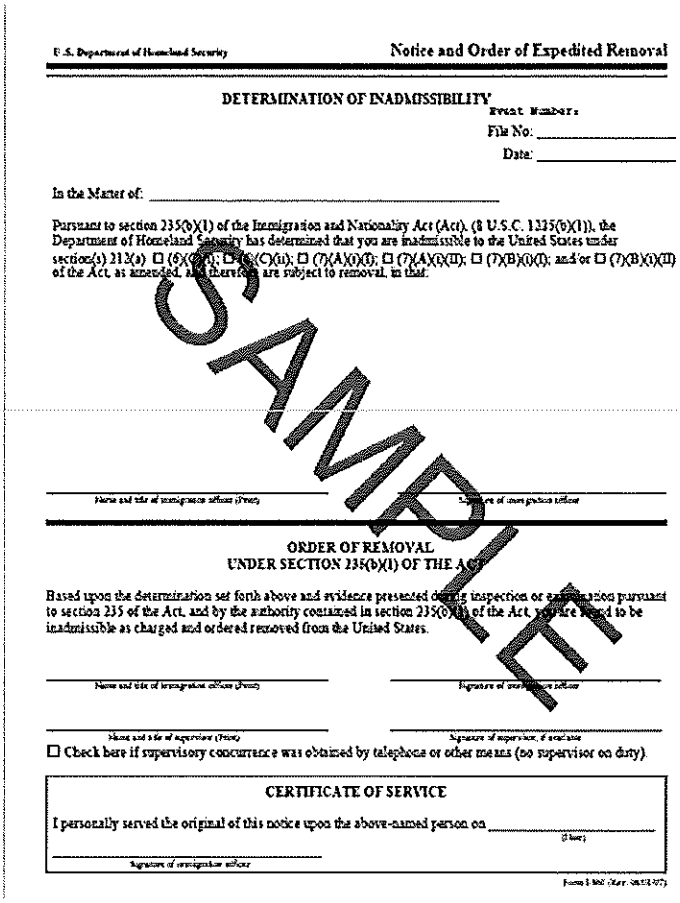
[34] § 1225(b)(1)(C).

[35] It is, nonetheless, important to point out that Congress was careful to unambiguously state its intent that aliens placed in this fear review process through § 1225(b)(2)(B)(iii)(I), explicitly titled "Mandatory detention" proscribes exactly that: "Any alien subject to procedures under this clause shall be detained pending a final determination of credible fear of persecution, and, if found not to have such a fear, until removed. The fact that Congress went out of its way to specifically mandate detention for those in this process but never sought to provide a similarly worded provision accompanying § 1225(b)(2)(A) is consistent with both Petitioner's interpretation under the statutory terms and the plain language interpretation employed by many.

carrier/vessel they arrived on if by sea or land. Issued without anything resembling a hearing or process, the ER order is issued on a single page I-860, an earlier version of which can be seen below:



U.S. Department of Homeland Security — Notice and Order of Expedited Removal

DETERMINATION OF INADMISSIBILITY

Event Number:

File No: _____

Date: _____

In the Matter of: _____

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Department of Homeland Security has determined that you are inadmissible to the United States under section(s) 212(a) ☐ (6)(C)(i); ☐ (6)(C)(ii); ☐ (7)(A)(i)(I); ☐ (7)(A)(i)(II); ☐ (7)(B)(i)(I); and/or ☐ (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

SAMPLE

_____ _____

Name and title of immigration officer (Print) — Signature of immigration officer

ORDER OF REMOVAL
UNDER SECTION 235(b)(1) OF THE ACT

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

_____ _____

Name and title of immigration officer (Print) — Signature of immigration officer

_____ _____

Name and title of supervisor (Print) — Signature of supervisor, if available

☐ Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty)

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on _____ (Date)

_____

Signature of immigration officer

Form I-860 (Rev. 08/14/07)

The third category encompasses all "other aliens" specified in § 1225(b)(2)(A). These are applicants whom the inspecting officer does not find clearly admissible, yet who are not inadmissible under the two specific grounds authorizing expedited removal.[36] This category applies to the multitude of other inadmissibility grounds detailed in INA §

[36] § 1225(b)(2)(A)

1182(a)(proscribing grounds of inadmissibility, including criminal, health related, being a potential public charge, prior unlawful presence, etc.). Every one of the grounds of inadmissibility—except one (EWI)—may be applicable at the POEs and result in a referral to § 1229a proceedings.

For instance, if an inspecting officer at an airport encounters a LPR with a conviction that potentially renders them inadmissible under the criminal grounds at § 1182(a)(2), that officer lacks the authority to issue an expedited removal order.[37] Instead, the officer's sole recourse under the statute is to refer the alien for full removal proceedings before an Immigration Judge pursuant to § 1229a, where the alien will have the opportunity to be heard and contest the charges.[38]

As this statutory framework demonstrates, the procedures detailed in § 1225 are designed for, and overwhelmingly applied at, the nation's ports of entry. Just as the plurality in *Jennings v. Rodriguez*, repeatedly alluded to, § 1225(b) authorizes detention to those applicants for admission who are "seeking admission into the country"—while it is 8 U.S.C. § 1226 which authorizes detention of those "already in the country."[39] As discussed later, this interpretation is consistent with both the purpose and main application of § 1225 as well as the 4th Amendment of the U.S. Constitution which requires a warrant issued on

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[37] *See id.* (proscribing its application only to those applicants for admission found inadmissible pursuant to § 1182(a)(6)(C) or § 1182(a)(7)).

[38] *Id.*

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

probable cause, (or the existence of a warrant exception), before the government can subject anyone to a prolonged seizure.

In sum, § 1225 is the precise mechanism by which millions of applicants for admission arriving at the POEs are inspected, admitted, referred for proceedings, or summarily removed every year. The sheer volume of inspections and admissibility determinations at POEs in a single week far exceeds the application of these specific procedures elsewhere in the country.

B. IIRIRA provided the ER provisions of § 1225 to expeditiously remove aliens who enter at place other than a POE who would have been deemed inadmissible under § 1182(a)(6)(C) or § 1182(a)(7) if at a POE.

Congress' was specific in its intent that the expedited removal provisions of § 1225(b)(1) may be applied to aliens who were not admitted or paroled into the United States, and who cannot show that they have been physically present in the United States continuously for the two-year period immediately prior to the date the alien was determined to be inadmissible under 8 U.S.C. § 1182(a)(6)(C) or 8 U.S.C. § 1182(a)(7). The application of the ER provisions set forth by § 1225(b)(1) to aliens deemed inadmissible under § 1182(a)(6)(C) or § 1182(a)(7)—and only these two provisions—was consistent with IIRIRA's goals of deterrence and efficiency.

Moreover, the ER provisions treat recent arrivals who did not go through a POE the same as those who are paroled: as though they are still at the border asking to come in. Both the expedited removal of such aliens and any detention incidental to it, is, under the legal fiction of parole, entirely consistent with the INA's longstanding distinction between the process due those aliens at the door asking to come in versus the equally longstanding

recognition that those encountered in the country are entitled to all the same constitutional protections as anyone.

Practically, as evidenced by a quick overview of the removal proceedings under § 1229a, expedited removal, at the POEs or near the border, serves to triage cases that warrant referral to removal proceedings. Indeed, given the limited time any alien subject to the provisions of ER has been in the country (if at all), there is not (in the overwhelming majority of cases) any relief individuals processed for ER are deprived of seeking as result. Meanwhile, it does keep 1,000s of cases off EOIR's dockets.

III. The statute proscribing the burden of proof in § 1229a proceedings for an "applicant for admission" illustrates the difference between being referred to 1229a proceedings as an arriving or "other alien" pursuant to § 1225(b)(2)(A) and being placed in removal proceedings when encountered in the interior as an EWI

A. The burden of proof in § 1229a proceedings depends on whether one is an "applicant for admission" or has already been admitted.

As discussed above the "other aliens" referenced in § 1225(b)(2)(A), are for the most part, those who are not inadmissible under § 1182(a)(6)(C) or § 1182(a)(7), but are determined to be inadmissible at a POE on any one of the many other grounds of inadmissibility set forth in 8 U.S.C. § 1182. In removal proceedings under § 1229a, an applicant for admission challenging that they are removable (in the first stage) bears the burden of proof. The relevant statute, 8 U.S.C. § 1229a(c)(2), states:

> In the proceeding the alien has the burden of establishing—(A) if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 1182 of this title; or (B) by clear and convincing evidence, that the alien is lawfully present in the United States

pursuant to a prior admission."[40]

Paragraph (A), by its very terms may only be applied to an alien who is arriving and seeking to be admitted, but is alleged to be inadmissible at the POE. Said differently, this option is plainly for those arriving aliens referred to as "other aliens" in § 1225(b)(2)(A) seeking admission who are referred for removal proceedings under § 1229a. Paragraph (B) on the other hand, by its terms contemplates the alien's physical presence in the U.S., and therefore, does not ask that they demonstrate they should be admitted; instead, these aliens would only be successful in denying they are inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) if they can demonstrate they were previously admitted. Admission, after all, cannot take place anywhere but from the outside coming in.

Because the concept of removal proceedings when viewed from the statutes is quite different from the actual reality of those proceedings, Petitioner believes it is helpful to provide a brief overview of § 1229a's basics in practice.

B. Removal Proceedings under 8 U.S.C. § 1229(a)

Removal proceedings under 8 U.S.C. § 1229a are initiated when DHS files a Notice to Appear (NTA) with EOIR. These "quasi-judicial" proceedings are bifurcated, unfolding in two distinct stages: the first determines removability as charged on the NTA and if the removability is established and the alien will be seeking relief before the IJ then it proceeds to the relief stage.

i. Stage 1: The Master Calendar Hearing—Determining Removability

[40] 8 U.S.C. § 1229a(c).

The primary purpose of the first stage is to determine whether the individual, referred to as the respondent, is removable as charged in the NTA. The charge may be based on grounds of inadmissibility under 8 U.S.C. § 1182 or deportability under 8 U.S.C. § 1227.

Master hearings are typically conducted on high-volume dockets. The timeline between the issuance of the NTA and the initial hearing varies significantly, with detained cases being prioritized over non-detained cases, which can sometimes wait months or years for an initial appearance.

At the initial master hearing, an unrepresented respondent is formally advised of their rights—including the right to obtain counsel at their own expense and to examine the evidence presented by the government. The Immigration Judge (IJ) also ensures the respondent understands their responsibilities, such as reporting address changes and appearing at all future hearings. Respondents are typically granted a continuance if they wish to seek legal representation.

During a master hearing, the IJ will ask the respondent to plead to the factual allegations and the charge of removability listed in the NTA. In many cases, a respondent may admit to the allegations and concede the charge of removability. This concession is often a necessary procedural step to become eligible to apply for forms of relief from removal.

If the IJ determines that the charge of removability is not sustained, the proceedings are terminated. If the charge is sustained, either by the IJ's finding or the respondent's concession, the case progresses toward the second stage. The respondent must then identify

any forms of relief from removal for which they intend to apply and demonstrate prima facie eligibility for such relief. Upon a showing of prima facie eligibility, the IJ will set deadlines for the submission of applications and evidence and schedule the case for an Individual Merits Hearing.

ii. Stage 2: The Individual Merits Hearing—Adjudicating Relief

The second stage consists of an individual, or merits, hearing focused on the respondent's application for relief from removal. This is a formal evidentiary hearing where both the respondent and the government have the opportunity to present evidence, call and cross-examine witnesses, and make legal arguments regarding the respondent's eligibility for relief. Following the hearing, the Immigration Judge will issue a decision granting or denying the application and ordering removal or terminating proceedings.

Relief in removal proceedings that may be sought by those without status, (e.g. EWIs and overstays) include:

- Cancellation of removal for certain non-permanent residents under 8 U.S.C. § 1229b(b)(1): Among other things, this form of relief requires 10-years continued presence in the U.S., no disqualifying offenses, proof of "exceptional and extremely unusual hardship" to a qualifying relative, and good moral character);

- Special rule cancellation of removal for certain non-permanent residents under 8 U.S.C. § 1229b(b)(2) for battered spouses and children: Among other things, this form of relief requires 3-years continued presence in the U.S., no disqualifying offenses, they have been battered by a U.S. citizen or LPR spouse or parent, and good moral character;

- Adjustment of status: There are many requirements for this, but often an adjustment before an IJ for an alien who is EWI is under 8 U.S.C. § 1255(i).

Before moving on, it is important to point out that each one of these forms of relief

assumes years of continuous living in the United States—without any regard to the manner in which they entered or their length of unlawful presence. Moreover, the first two forms of relief require at least three years of presence in the U.S.

Given the government's propensity for beating the proverbial "evaded immigration authorities drum," it also bears pointing out that Congress literally required aliens to continue to be unlawfully present in the U.S. to be able to avail themselves of adjustment of status under § 1255(i), which was a creation of IIRIRA. Specifically, 1255(i) requires aliens who are the beneficiaries of I-130 petitions filed after IIRIRA's effective date but before April 30, 2001, to have been physically present (no lawful requirement) in the U.S. on December 20, 2000.[41] Moreover, the benefit of adjustment of status under §1255(i) explicitly provided by Congress for EWI aliens is not having to depart the United States—which, in turn, means that as long as they remained in the U.S. from December 20, 2000 until a visa becomes available for them, they will trigger the unlawful presence grounds of inadmissibility set forth at § 1182(a)(9).

To put this in perspective, as of the date this brief is being filed, October 20, 2025, there are still aliens waiting to reach the front of the visa availability line—even though the petition of which they are the beneficiary was filed between April 16 – 30, 2001. This can be seen from the screen shot of the October 2025 visa bulletin seen below:

[41] 8 U.S.C. § 1255(i).

A. FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is earlier than the final action date listed below.)

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08NOV16	08NOV16	08NOV16	22NOV05	22JAN13
F2A	01FEB24	01FEB24	01FEB24	01FEB23	01FEB24
F2B	22NOV16	22NOV16	22NOV16	15DEC07	01OCT12
F3	08SEP11	08SEP11	08SEP11	15APR01	22SEP04
F4	08JAN08	08JAN08	01NOV06	08APR01	22MAR06

Other than the forms of relief mentioned above, the only other relief potentially available to an EWI respondent in removal proceedings are the various fear-based protections also available in ER proceedings as none of those forms of relief have a continuous presence requirement like the ones discussed above.

C. Rationale for Expedited Removal

Expedited removal under § 1225(b)(1) embodies Congress's intent to streamline the exclusion of inadmissible individuals at or near the border. None of the aliens who are potentially subject to ER will be eligible for any of the forms of relief from removal mentioned above (other than other than asylum) because they cannot meet the physical presence requirements. Meanwhile, the sole relief they may be eligible to seek, asylum, may be sought through the process outlined in § 1225(b)(1)(B). By applying it near the or at the border and providing both an avenue through which to apply for such protections and creating a "triage" type process that minimizes the time and resources expended on

meritless claims, expedited removal conforms with the U.S. constitution and the intent of IIRIRA.

Aliens who do not express a fear of return, that are encountered in the interior and issued an expedited removal order will, in the overwhelming majority of cases, spend very little time (if any) in ICE custody. Equally important, once the ER order is issued their detention converts to detention under 8 U.S.C. § 1231.

IV. Congress can give more rights than the constitution through statute, but they cannot lower the protections it provides.

Congress may expand procedural protections for 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. Likewise, the constitution's due process clause protections must be afforded to all those living in the U.S. before being deprived of their liberty.

At the nation's borders, however, the constitution's protections are lowered and almost nonexistent for those who are not in the U.S. (including those who are at the border still under the legal fiction of parole). The absence of a warrant requirement in 8 U.S.C § 1225, therefore, is in line with the longstanding principle that the search and seizure of

persons at our country's borders are not subject to the Fourth Amendment's warrant requirement.[42]

A. The absence of a warrant requirement in § 1225(b)(2)(A) requires that the statute continue to be interpreted as limited to arriving aliens at the POE, border, or in close proximity to the border, otherwise it is unconstitutional.

Just as established as the border exception to the Fourth Amendment, is the fact immigration stops and arrests elsewhere are subject to the Fourth Amendment's protections. Indeed, "[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.'"[43] The law in this area is not grey. Rather, since at least 2009, 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."[44]

The clarity of the law in this area is bolstered by the proscriptions of 8 U.S.C. § 1357, which "[c]ourts have consistently held" the inclusion of the phrase "reason to

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[42] *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.").

[43] *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.").

[44] *Id* at 215.

believe" in § 1357 "must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause."[45] 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."[46]

Despite the abundantly clear requirements of the Fourth Amendment, the government now argues that a statute with no warrant requirement (§ 1225(b)(2)(A)), historically applied at or near the border, allows DHS to arrest or detain aliens in the interior of the United States without any concern for the Fourth Amendment's protections. Such an interpretation is unconstitutional and any interpretation that would have such a result should be avoided.

Given the clarity of the law in this area, the point need not be belabored. That being said, it does merit pointing out that contrary to the government's assertions, Petitioner's position—not the government's—is supported by *Dep't of Homeland Sec. v. Thuraissigiam.* Indeed, the facts of that case indicated that the alien there only made it 25-

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[45] *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.").

[46] *Id.*

yards into the U.S. before being detained.[47] Its difficult to think of anything too much closer to the border than a mere 25-yards.

B. The deprivation of liberty in the form of detaining someone is limited to confinement for punishment related to a criminal offense, and is not permitted for civil purposes absent as significantly compelling reason to do so such as risk of flight or danger to the community—things which require due process to determine.

The Supreme Court has explained the critical distinction between those outside the U.S. and those within it when it comes to the due process required before they may be deprived of their liberty:

> The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law. It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent. Indeed, this Court has held that the Due Process Clause protects an alien subject to a final order of deportation, though the nature of that protection may vary depending upon status and circumstance.[48]

Moreover, *Zadyvdas* left no doubt that civil detention, including in the immigration context, requires a sufficient justification—namely preventing flight or danger to the community.[49] Where no such justification exists detention without due process is unconstitutional.[50]

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[47] *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–39 (2020)

[48] *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001)

[49] *Id.*

[50] *Id.*

Here, the notion that Petitioners, who are not flight risk or danger to anyone may be held without a bond hearing to determine if there is a special justification for their detention is contrary to the due process everyone was once afforded in this country.

Before moving on, it is important to point out that the actual mandatory detention provisions, § 1226(c), § 1231, and 8 C.F.R. § 1003.19(h)(ii), simply a codification of circumstances typically believed to be indicative of flight risk or danger to the community. Whether it be as a result of having no ties in the U.S. for arriving aliens, or a criminal conviction indicative of danger, these detention provisions all are rooted in flight risk and danger, which are the only two justifications for depriving one of their liberty.

V. Every alien in removal proceedings is alleged to have violated the immigration laws, and therefore, the attempt to single out those whose only violation is the equivalent of a class B misdemenaor as particularly nefarious should be taken for it is: grasping at proverbial straws.

The government's argument, both in its briefing and in *Hurtado*, fundamentally mischaracterizes the landscape of removal proceedings. The repeated assertion that granting a bond hearing to an individual who entered without inspection would contravene Congressional intent by "rewarding" a violation of law creates a false and unsupported distinction. This position critically ignores the dispositive fact that every noncitizen in removal proceedings is present in those proceedings precisely because they have violated a provision of the INA. The government's attempt to carve out a uniquely disfavored class from a universe of violators is not only illogical but also contrary to established jurisprudence.

Under its theory, a noncitizen who entered twenty years ago on a visitor visa, made an express promise to an inspecting officer to depart, and then willfully violated that promise by absconding for two decades is entitled to a bond hearing. Likewise, an individual who perpetrated an affirmative fraud upon consular and immigration officials to secure a fiancé visa would be granted a bond hearing. Yet, the government insists that Petitioners, who entered without inspection but have not committed any offenses that would subject them to mandatory detention, must be mandatorily detained without any reason to believe or consideration of whether they are a danger or flight risk. This arbitrary distinction finds no support in reason or justice and elevates the form of an immigration violation over its substance, creating indefensible and inequitable outcomes.

VI. Whether reached through applying Congress' definitions indicating that one may only seek admission from outside the country (including at a POE) or through the plain language analysis applied by many courts, both are strengthened by and consistent with the remainder of the statutory scheme, decades of agency practice, and cannons of statutory construction.

As stated at the outset of this brief, Petitioners' now believe the better reason the ultimate conclusion they respectfully request that the Court make (that they are entitled to a bond hearing under both the due process clause of the Fifth Amendment and the INA) is that Congress left no room for interpreting what it could have meant by "seeking admission." Rather, it was careful to define the term admission to require a physical entry into the United States at POE after inspection by an immigration officer. But the unambiguous manner in which it defined "admission" to be something sought at the proverbial door of the country does not stand alone.

While this brief has focused almost entirely on the questions that seemed important to the Court during the hearing on October 9, 2025, Petitioners continue believe in and stand behind the arguments made in their previous filings and during the hearing. Particularly those which demonstrate the multitude of provisions that would be rendered superfluous by the government's new position. Likewise, Petitioners continue to agree with the ultimate conclusions and the reasoning of the district court decisions previously cited to. Additionally, should the Court disagree with the way Petitioner's reached this conclusion above, then they would ask the Court to follow the same reasoning of the "chorus of courts" that have consistently found aliens like Petitioners are entitled to a bond hearing under the constitution and/or the INA.[51]

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[51] *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025);*Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 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); *Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero*, No. CV 25-11631-BEM, 2025 WL 2403827, at *8 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *dos Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Choglio Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2688160 (D. Me. Sept. 19, 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); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 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); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29,

VII. 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.'"[52] In this case, however, the question of whether this Court has jurisdiction is hardly a headlining argument as this Court already rejected nearly identical jurisdictional arguments by the government in a case raising many of the same claims raised by Petitioner

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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); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Aceros v. Kaiser, et al.*, 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Chanaguano Caiza v. Scott*, 25-cv-00500, 2025 WL 2806416, at *3 (D. Me. Oct. 2, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025);*Buenrostro-Mendez v. Bondi*, et al., No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025);*Francisco T. v. Bondi*, — F. Supp. 3d ——, 2025 WL 2629839, at *3-4 (D. Minn. 2025);*Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *5 (D. Mass. Oct. 3, 2025);*Guzman Alfaro v. Wamsley*, No. 2:25-CV-01706-TMC, 2025 WL 2822113, at *3 (W.D. Wash. Oct. 2, 2025);*Inlago Tocagon v. Moniz*, — F. Supp. 3d ——, 2025 WL 2778023 (D. Mass. 2025);*J.U. v. Maldonado*, 25-CV-04836, 2025 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);*Luna Quispe v. Crawford, et al.*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799, at *6 (E.D. Va. Sept. 29, 2025);*Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Mosqueda v. Noem*, 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Pablo Sequen v. Kaiser*, No. 25-cv-06487, 2025 WL 2650637, at *7-8 (N.D. Cal. Sept. 16, 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)

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

here.[53] Mr. Martinez respectfully requests that the Court reject the government's jurisdictional arguments in this case for the same reasons it rejected those arguments in *Lopez-Arevelo v. Ripa.*[54] Though the government asks the Court to reconsider its prior rulings on jurisdiction because "the Court did not have the benefit" "of the expanded arguments …included" in its response in this case, this request ignores the fact that this Court fully examined and considered for itself the full panoply of jurisdiction "curtail[ing]" statutes within the INA.[55]

For the reasons set forth by this Court in *Lopez-Arevelo v. Ripa* and those 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 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."[56] The government contends that because Petitioner's detention "arises from the decision to commence removal proceedings against him," his claim is barred.[57] But this

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[53] *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3.

[54] *Id.* at *3-5.

[55] *Id.*

[56] 8 U.S.C. § 1252(g).

[57] (ECF No. 7 pp. 12-13.)

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."[58] But, as the Court 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).[59]

Here, Petitioner is not challenging Respondents' decision to execute a removal order, the decision to commence proceedings, or adjudicate his removal proceedings. Rather, Petitioner challenges his continued detention as unlawful, and "[s]uch claims are not barred by § 1252(g)."[60] 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

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

[59] *Id.* at *4.

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

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."[61] 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 him in the first place."[62] This statement is simply false. Nothing about Petitioner's claim has anything to do with the government's ability to "detain him in the first place." Rather, as is abundantly clear throughout his filings, he is challenging the government's refusal to provide him with the bond hearing he is entitled to under the law and U.S. constitution. In fact, Petitioner does not even claim that EWI noncitizens are entitled to a bond—just the bond hearing proscribed by 8 U.S.C. § 1226. Petitioner simply asks for what countless courts have said he and others 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 his detention in the first place is simply incorrect.

Similarly, the government's claim that anything and everything related to removal

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[61] 8 U.S.C. § 1252(b)(9).

[62] (ECF No. 7 p. 22.)

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,[63] it conveniently ignores the fact that the Court held that § 1252(b)(9) did *not* bar jurisdiction over the respondents' claims over their detention in that very case.[64]

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.[65] The Supreme Court found jurisdiction proper because the respondents were "not challenging the decision to detain them in the first place or to seek removal."[66] 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."[67]

This is the dispositive distinction that the government's argument goes out of its way

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[63] *Jennings*, 583 U.S. at 294-95.

[64] *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).

[65] *Id.*

[66] 583 U.S. at 295.

[67] *Id.* (emphasis added).

to avoid. Petitioner is not contesting the government's discretionary decision to take him into custody at the outset of his removal proceedings. He is mounting a foundational challenge to the government's claims about the statutory and constitutional framework under which he is being detained without a bond hearing. He argues that the government's interpretation of § 1225(b) is statutorily erroneous and, as applied to him, 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.'"[68] 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 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

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

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, this Court rejected a similar argument in *Lopez-Arevelo*, 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.[69]

In sum, none of the statutes or cases relied on by the government act as jurisdictional bars to Petitioner's claim that he is being unlawfully detained in violation of the INA and U.S. constitution.[70]

VIII. The Court's habeas jurisdiction allows it to determine whether Petitioners are being unlawfully detained, and if so, to remedy it by ordering their immediate release.

During the hearing on October 9, 2025, the Court inquired as to whether it had jurisdiction to order the government to provide a bond hearing or whether it only had

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

[70] 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 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.

jurisdiction under the habeas statute to order release. It is Petitioners' position that (1) ordering their immediate release is the most appropriate remedy under the statute, and (2) to the extent that courts have found the government's detention of EWI aliens under its new interpretation of § 1225(b)(2)(A) and ordered a bond hearing within 24-hours, such an order is not ordering the government to conduct a bond hearing; rather, it is simply providing the government with notice the detention is unlawful and short window to cure the detention's unlawfulness. That being said, Petitioners believe the most appropriate remedy at this point is to simply order release.

[Nothing further on this page.]

CONCLUSION

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

a. Assume jurisdiction over this matter;

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/ Dan Givident

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the U.S. District Court and counsel for the government in accordance with the Federal Rules of Civil Procedure on October 20, 2025.

/s/ Dan Givіden
DAN GIVIDEN
Attorney for Defendant