

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

FRANCISCO GONZALEZ MARTINEZ,

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-430-KC

**PETITIONER'S REPLY BRIEF IN SUPPORT OF HABEAS PETITION &
MOTION FOR PRELIMINARY INJUNCTION**

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 on the Laken Riley Act being rendered superfluous by its new reading of § 1225(b)(2)(A) speaks volumes.	9
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.	11
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 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.	20
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. Mr. Martinez has demonstrated that his current detention violates the due process clause of the Fifth Amendment, and as a result, he is entitled to the relief sought by his Petition, like all § 2241 petitions, an order enjoining the government from continuing to unlawfully detain him.	25
A. Mr. Martinez is likely to succeed on the merits of his claims that his detention without a bond hearing based on nothing more than being EWI is unconstitutional and unlawful.	26
B. His detention violates due process.	27
C. His Detention Violates the Relevant Statutes.	30
D. Mr. Martinez Faces Immediate and Irreparable Harm.	30
E. The Balance of Equities and Public Interest Weighs in Mr. Martinez’s Favor.	31

F. Mr. Martinez Seeks the Same Injunctive Relief Being Granted to Nearly Every Similarly Situated Habeas Petitioner.	32
VI. The government’s repeated attempts to make this issue one about not allowing those who entered the country without inspection to be “rewarded” with a bond hearing is a red herring that ignores the reality that every noncitizen in removal proceedings is alleged to have violated the Country’s immigration laws as well as illustrative jurisprudence.	33
Conclusion	36

INTRODUCTION

Petitioner, Mr. Martinez,  a 51-year-old husband and the father of five children, four of whom are United States citizens. For 22 years, he has resided in the United States, working for the same company and building a life for his family. They have built this life 1,000s of miles from Texas in New York. It was there that he was suddenly detained by ICE agents who jumped out of unmarked vehicles and started arresting any Hispanic worker they saw at the place he was working. Mr. Martinez has no criminal record. It is becoming increasingly apparent that the conditions he, and others being held at the El Paso Montano Detention center, are likely worse than those which criminals serving their sentences are detained under in this country. But Martinez is not being detained because of any individualized determination that he poses a risk of flight or a danger to the community. No, Mr. Martinez is being detained based on the government's sudden radical and unsupported reinterpretation of a 30-year-old statute. The government's new novel position has upended the removal proceedings through its abrupt reversal of nearly three decades of settled law and practice. ICE, based on this new novel position, has and will continue to keep him unlawfully detained without the bond hearing he is entitled to pursuant to 8 U.S.C. § 1226. Mr. Martinez filed the instant action seeking this Court's urgent intervention to ensure he is afforded the rights guaranteed to him 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 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 statute's "plain language."

This Court need not indulge such a sweeping and unsupported revision of established law. Petitioner's interpretation is consistent with historical practice as well as the U.S. constitution, and supported by reasoned, persuasive, and detailed analysis from Article III courts across the country who have granted similar habeas petitions in recent weeks.² The government's new novel position, meanwhile, stands in direct opposition to

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.").

² *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025); *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

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.

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, Mr. Martinez respectfully requests the Court find respondent's detention of him unlawful and order his immediate release from custody.

BRIEF STATEMENT OF THE CASE

Mr. Martinez  He spent that birthday detained by ICE at the ERO El Paso Camp East Montana facility in El Paso, Texas—literally thousands of miles away from his family and their home in New York. Mr. Martinez is a husband and father who has resided in the United States for 22 years since his entry in 2003. He and his spouse are the parents of five children, the youngest four of whom are United States citizens. In addition to being the primary financial provider, Mr. Martinez is the rock on which his family depends for support. For more than two decades, Mr. Martinez has been a valued employee, working as a laborer for the same company. He has no criminal history, having never been arrested for or convicted of any crime.

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. Mattivelo*, No. 1:25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025)).

Mr. Martinez was taken into custody by Immigration and Customs Enforcement (ICE) and is currently detained at the ERO El Paso Camp East Montana facility in El Paso, Texas. Despite his long-standing ties to the community, his U.S. citizen children, his stable employment history, and his lack of a criminal record, Respondents are holding him without providing a bond hearing. Because Mr. Martinez is not an individual described in 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19(h), his ongoing detention without a bond hearing before a neutral adjudicator is unlawful and violates his rights under the Immigration and Nationality Act and the U.S. Constitution.

On September 29, 2025, the instant proceedings were initiated when Mr. Martinez filed the instant habeas petition pursuant to 28 U.S.C. § 2241. As set forth in his petition, Mr. Martinez, seeks this Court's intervention in the form of an order compelling ICE to immediately release him or to provide a bond hearing before a neutral IJ immediately—as required by the statute and U.S. constitution.³ The next day, on September 30, 2025, the Court issued an Order that, among other things, Directed “Respondents to file an Answer to the Petition” by October 7, 2025, and Petitioner to file a Reply, if any, by October 10, 2025.⁴ Respondents timely responded on October 7, 2025. Petitioner now files this timely Reply Brief in support of his habeas petition and motion for a preliminary injunction.

LEGAL DISCUSSION AND ARGUMENT

³ (ECF No. 1.)

⁴ (ECF No. 6.)

As stated above, in recent days numerous U.S. district courts throughout the country have addressed the same legal issues presented by Mr. Martinez' Petition, with all of them reaching the same conclusion she advocates for in his Petition. Specifically, countless courts have been finding (daily) that noncitizens like Mr. 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 analyses of the statutory language and legislative history, rejected the Government's broad interpretation of section 1225(b)(2)."⁵ This, as this Court recently pointed out, "includes courts in the Fifth Circuit."⁶

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, including this Court,

⁵ *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. Mattivelo*, No. 1:25-CV-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025)).

⁶ *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)).

has also easily and quickly dismissed the exact same 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 silence on the Laken Riley Act being rendered superfluous by its new reading of § 1225(b)(2)(A) speaks volumes.

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 (hereinafter "LRA"), which added a new subparagraph to 1226(c) which is only applicable to non-citizens who (1) fall within § 1225(a)(1)'s definition of "applicant for admission" and (2) 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."⁷ In other words, if Congress and the president are to be believed, the LRA's amendments 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

⁷ See n. 34, *supra*.

completely devoid of any meaning under the government's new theory.⁸ Indeed, “If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless....”⁹

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,”¹⁰ and must avoid interpretations that render statutory language superfluous.¹¹ 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.¹²

⁸ *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).

⁹ *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)).

¹⁰ *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

¹¹ *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013).

¹² 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

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 in "conjunction with" the immigration courts.¹³ 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.¹⁴

The BIA's reasoning per *Hurtado* is that the plain language above means every "applicant for admission . . . shall be detained for" removal proceedings.¹⁵ 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."¹⁶

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.

¹³ *Matter of Hurtado*, 29 I&N Dec. 216.

¹⁴ § 1225(b)(2)(A) (emphasis added).

¹⁵ *Hurtado*, 29 I&N Dec. at 219.

¹⁶ *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-

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."¹⁷ From this, the government leaps to the conclusion that all such aliens are subject to mandatory detention under 8 U.S.C. § 1225(b).¹⁸ 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.”¹⁹ 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

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).

¹⁷ See *Hurtado*, 29 I&N Dec. at 216-220.

¹⁸ *Id.*

¹⁹ 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)).

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”—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.²⁰

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.”²¹ 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.²² In contrast, 8 U.S.C. § 1226, titled “Apprehension and detention of aliens,” governs the arrest and detention of noncitizens

²⁰ 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”).

²¹ *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009).

²² 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).

already present within the United States.²³ Petitioner, having been arrested in the interior decades after his entry, falls squarely within the purview of § 1226, and therefore, his detention is subject to the discretionary bond provisions of this statute.

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 since *Jennings* to the contrary, this claim, as one court put it, “is, to say the least, not without some doubt.”²⁴ 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)*.’”²⁵ 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” he 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

²³ *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.”).

²⁴ *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934, at *4–6 (D. Neb. Sept. 18, 2025).

²⁵ *Jennings*, 583 U.S. at 289 (emphasis added).

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 the various statutes proscribing various arrest and detention authorities depending on the circumstances.²⁶

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 a warrant is not required is simple and consistent with longstanding jurisprudence. Specifically, 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.²⁷

²⁶ 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.

²⁷ 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

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.²⁸ For example, "[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.'"²⁹ 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

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.").

²⁸ 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).

²⁹ *Id.* (second alteration in original) (quoting INA § 287, 8 U.S.C. § 1357).

examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.³⁰

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 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 8 U.S.C § 1226(a) is required to be issued for ICE to lawfully arrest aliens for removal proceedings.³¹ 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 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.”³²

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

³¹ 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).

³² 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).

For decades, noncitizens in full 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.³³

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 IJ’s bond jurisdiction explicitly strip the IJ of authority over “arriving aliens” which are a subset of noncitizens who fall under the definition of “applicants for admission.”³⁴ 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.*³⁵

³³ *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.”).

³⁴ 8 C.F.R. § 1003.19(h)(2)(iii)(B).

³⁵ 8 C.F.R. § 1.2 (emphasis added).

If, as the government now contends, every noncitizen who is an “applicant 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.³⁶ Petitioner is not an “arriving alien”; nor is he subject to mandatory detention under § 1225. Rather, he 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.’”³⁷ 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

³⁶ 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. 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.”)

³⁷ *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.³⁸ 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*.³⁹ 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.⁴⁰

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."⁴¹ The government contends that because Petitioner's detention "arises from the decision to commence removal proceedings against him," his claim is barred.⁴² But this

³⁸ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3.

³⁹ *Id.* at *3-5.

⁴⁰ *Id.*

⁴¹ 8 U.S.C. § 1252(g).

⁴² (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.”⁴³ 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).⁴⁴

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).”⁴⁵ 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

⁴³ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025).

⁴⁴ *Id.* at *4.

⁴⁵ *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."⁴⁶ 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."⁴⁷ 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

⁴⁶ 8 U.S.C. § 1252(b)(9).

⁴⁷ (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,⁴⁸ 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.⁴⁹

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.⁵⁰ 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.”⁵¹ 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.”⁵²

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

⁴⁸ *Jennings*, 583 U.S. at 294-95.

⁴⁹ *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).

⁵⁰ *Id.*

⁵¹ 583 U.S. at 295.

⁵² *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."⁵³ 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

⁵³ *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.’⁵⁴

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.⁵⁵

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

The purpose of § 2241 is to enjoin the government from continuing to unlawfully detain a person. Meanwhile, the purpose of a preliminary injunction is to preserve the status

⁵⁴ *Lopez-Arevelo*, 2025 WL 2691828, at *5 (citations omitted and cleaned up).

⁵⁵ 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.

quo and prevent irreparable harm until the court makes a final decision the relief sought.⁵⁶

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.⁵⁷

Mr. Martinez is likely to succeed on the merits of his claims.

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

Mr. Martinez is substantially likely to succeed on the merits of his claims because his 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

⁵⁶ *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

⁵⁷ *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).

understood to be eligible for them. As numerous federal district courts have already concluded, this position is legally indefensible.

B. His detention violates due process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.⁵⁸ 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

(3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.⁵⁹

Mr. Martinez addresses the *Mathews* factors in turn.

Private interest. It is undisputed Mr. 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."⁶⁰ Moreover, when assessing the private interest, courts

⁵⁸ *Demore v. Kim*, 538 U.S. 510, 523 (2003).

⁵⁹ *Mathews*, 424 U.S. at 335.

⁶⁰ *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

consider the detainee's conditions of confinement, specifically, "whether a detainee is held in conditions indistinguishable from criminal incarceration."⁶¹

Mr. 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."⁶² The first *Matthews* factor supports Mr. Martinez's claim of a Fifth Amendment violation.

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."⁶³ 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

⁶¹ *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)).

⁶² *Id.*

⁶³ *Id.* at *8.

§ 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 Mr. 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.⁶⁴ 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. Mr. Martinez is not a flight risk nor a danger to the community. Nor is Mr. 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 Mr. Martinez's habeas petition.

Because all three *Matthews* factors favor Mr. Martinez's position, this Court should determine that Mr. Martinez is likely to succeed in demonstrating that his detention without a bond hearing based on nothing more than being EWI contravenes his due process rights under the Fifth Amendment.⁶⁵

⁶⁴ *Matthews*, 424 U.S. at 335.

⁶⁵ See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

C. His 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. Mr. 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.”⁶⁶ Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that “[f]reedom from imprisonment . . . lies at the heart of the liberty” protected by the Due Process Clause.⁶⁷ Each day Mr. Martinez remains in custody, she is irreparably harmed by the loss of his fundamental liberty—a cruel irony given that it was nothing more than an Apple Watch's autonomous call to emergency services that led to his detention by ICE.

The harm is not merely abstract. Mr. 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, Mr. Martinez will remain detained in what is becoming an increasingly long removal

⁶⁶ *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

⁶⁷ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

proceeding process, and as a result, denied his liberty, removed from his 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 Mr. 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.”⁶⁸ Here, the balance of hardships weighs overwhelmingly in Mr. Martinez's favor. The injury to Mr. Martinez—unconstitutional detention and risk to his well-being—is severe and immediate. Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law.⁶⁹

Conversely, the harm to Respondents is nonexistent. Mr. Martinez is not among those Congress proscribed for mandatory detention. Nor is Mr. 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 Mr. Martinez a bond hearing, just as it has to similarly situation noncitizens for decades in accordance with the INA's statutory scheme.⁷⁰ Furthermore, the public interest is served by preserving

⁶⁸ *Nken v. Holder*, 556 U.S. 418, 435 (2009).

⁶⁹ *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).

⁷⁰ *See Martinez*, 2025 WL 2598379, at *5.

“life, liberty, and happiness” and by preventing the waste of taxpayer resources on unlawful and unnecessary detention.

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

Mr. Martinez seeks injunctive relief to maintain the status quo by requiring ICE to either immediately release him or promptly provide him 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.⁷¹ For example, “[s]ome courts have determined that the appropriate relief for an immigration detainee held in violation of due process is the petitioner’s immediate release from custody.”⁷² 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.”⁷³

⁷¹ See *Lopez-Arevelo 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).

⁷² *Id.* (citing *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025)).

⁷³ *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)).

These remedies preserve rather than alter the status quo.⁷⁴ 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 Mr. Martinez’s case.

VI. The government’s repeated attempts to make this issue one about not allowing those who entered the country without inspection to be “rewarded” with a bond hearing is a red herring that ignores the reality that every noncitizen in removal proceedings is alleged to have violated the Country’s immigration laws as well as illustrative jurisprudence.

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 Immigration and Nationality Act (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.

⁷⁴ *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).

The practical application of the government's logic borders on the absurd. 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 the petitioner, who entered without inspection but has since lived an honest and law-abiding life, must be mandatorily detained without any opportunity to demonstrate that he is not 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.

Furthermore, the government's position is irreconcilable with a significant and settled body of federal jurisprudence concerning the term "admitted" in 8 U.S.C. § 1182(h) which "governs the Attorney General's discretion to waive inadmissibility for select classes of aliens."⁷⁵ That statute provides in relevant part that:

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.....⁷⁶

The Fifth Circuit went on to explain in *Marques v. Lynch* that:

Nearly every circuit to address this issue agreed with the LPRs who had adjusted their status. The BIA, recognizing "overwhelming circuit court

⁷⁵ *Marques v. Lynch*, 834 F.3d 549, 558 (5th Cir. 2016).

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

authority” opposing its view, recently withdrew its own caselaw holding otherwise.

We addressed the Section 1182(h) issue in a case in which the petitioner had been convicted of bank fraud. Martinez's conviction triggered removal proceedings, during which the IJ categorized the conviction as an aggravated felony and held Martinez to be barred from a waiver under Section 1182(h). In his petition for review, Martinez argued the waiver bar did not apply because he had not “previously been *admitted*” as an LPR. Rather, Martinez's status was adjusted ten years after his admission, making him eligible for discretionary waiver under Section 1182(h). The Government urged that we interpret the term *admission* to include adjustment of status.

Relying on the INA's definition of *admission* and *admitted* in Section 1101(a)(13)(A), we held “ ‘admission’ is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status, as done by Martinez.” The Section 1182(h) bar applies only “when the alien is granted permission, after inspection, to enter the United States, [and then is] admitted as an LPR.” We found further support for this interpretation in the “longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien.”⁷⁷

Simply put, circuit courts, including the Fifth Circuit, have consistently held that the statutory bar to a waiver for an aggravated felony applied only to a noncitizen “admitted” as a lawful permanent resident at the time of entry into the United States, not to one who entered unlawfully or remained unlawfully and later adjusted their status. This strict interpretation of the statutory text, adopted by nearly every circuit, created an outcome where those who initially violated the law by entering without inspection were, in fact, eligible for relief unavailable to those who followed the rules to be admitted as residents from the outset.

⁷⁷ *Marques*, 834 F.3d at 558–59 (internal citations omitted) (emphasis added).

The government's argument in this case is similar to the one it made and soundly rejected by the Fifth Circuit and nearly every other circuit. Among other things, this demonstrates that the judiciary has refused to subordinate the plain language of the INA to the government's preferred, and often inconsistent, policy-driven distinctions between classes of noncitizens.

Though there are numerous other ways in which the government's wrong in its attempt to repeatedly make the issues in this case about distinguishing between those who entered through the ports of entry versus other means that evaded inspection, Mr. Martinez does not want to (1) belabor the point, or (2) venture beyond the confines of the relevant statutes because, as the 5th circuit quoting a 2nd circuit decision pointed out the INA bears "striking resemblance" to "King Minos's labyrinth in ancient Crete."⁷⁸ Unlike the Fifth Circuit in *Martinez v. Mukasey*, Mr. Martinez "[w]ith the wariness that comes from prior encounters with the labyrinth, [will not] press on [any further] to that dark and mysterious realm."⁷⁹

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.

⁷⁸ *Martinez v. Mukasey*, 519 F.3d 532, 546 (5th Cir. 2008), *as amended* (June 5, 2008) (citing *Rickey v. United States*, 592 F.2d 1251, 1256 n.5 (5th Cir. 1979) (quoting *Lok v. INS*, 548 F.2d 37, 38 (2d Cir. 1977)).

⁷⁹ *Id.*

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 Gividen

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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 10, 2025.

/s/ Dan Gividen
DAN GIVIDEN
Attorney for Defendant