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

KENNI L. ESCOBAR CHANG, Petitioner,	§ §	
V.	§	Case No. 5:25-CV-01259-FB-HJB
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, et al., Respondents	§ § §	

PETITIONER'S REPLY TO FEDERAL RESPONDENTS' RESPONSE TO WRIT OF HABERAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

KENNI L. ESCOBAR CHANG, Petitioner, through undersigned counsel, files this Reply to Federal Respondents' Response to the Petition for Writ of Habeas Corpus, and shows the Court the following:

I. INTRODUCTION

Petitioner files this Reply to clarify that his detention is governed by 8 U.S.C. § 1226(a), not Section 1225(b)(2), and to rebut Federal Respondents' reliance on, but without citing as authority, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the basis for the Board of Immigration Appeals' vacatur of an Immigration Judge's proper bond order. Petitioner entered the United States in 2013 as an unaccompanied minor, was statutorily exempt from expedited removal, and lived continuously in the United States for more than a decade before DHS's filing of the June 2025 Notice to Appear. Petitioner requested a bond hearing, the Immigration Judge correctly found he was not an applicant for admission, and granted bond under 8 U.S.C. § 1226(a). ECF No. 1-1, pp. 4-7.

Federal Respondents attempt to recast this case as a challenge to DHS's "initial decision

to detain" Petitioner. ECF No. 10, p. 1. That is not what the Petition raises. Mr. Escobar challenges (1) the Federal Respondents' denial of any constitutionally required bond hearing, (2) violations of the Immigration and Nationality Act, including unlawful application of Section 1225(b)(2)(A) where it does not apply, (3) violations of the Administrative Procedure Act, and (4) violations of the Fifth Amendment Due Process Clause. *See* ECF No. 1, Filed Writ, pp. 1–23.

Importantly, Mr. Escobar does not have a final order of removal. He is not in expedited removal proceedings. He is not an "arriving alien." And he was not apprehended at the border while seeking admission. Federal Respondents' entire jurisdictional and statutory framework relies on misclassifying Petitioner as an "applicant for admission" under Section 1225(b)(2)(A), even though his removal proceedings were reopened based on the original 2013 Notice to Appear – the operative charging document – not the 2025 NTA Federal Respondents now seek to use retroactively. This Court has jurisdiction, and the detention is unlawful.

II. CONTROLLING SUPREME COURT PRECEDENT PROTECTS PETITIONER'S DUE PROCESS RIGHTS

A. The Fifth Amendment Applies to All Persons in the United States.

The Supreme Court has held: "The Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Mr. Escobar is detained at the South Texas Detention Complex in Pearsall, Texas. Federal Respondents do not challenge that fact.

B. Detention Must Bear a Reasonable Relation to Its Purpose.

The *Zadvydas* Court further held: "Where detention's goal is no longer practically attainable, detention no longer bears a reasonable relation to the purpose for which the individual was committed." *Id.* at 699. In this case, an Immigration Judge determined that Mr. Escobar had met his burden to show that he was not a danger to the community nor flight risk and granted bond

in the amount of $10,000.00, which Mr. Escobar posted. Federal Respondents' continued detention of Mr. Escobar is not "reasonably related to its purpose."

C. Habeas Relief Is Required When Detention Exceeds Statutory Authority.

The *Zadvydas* decision also made clear: "Once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 701. Mr. Escobar does not have a final order of removal. Federal Respondents do not address the absence of "foreseeable removal" for Mr. Escobar in their Response.

III. RESPONDENTS' RELIANCE ON § 1225(b)(2) AND *MATTER OF HURTADO* IS MISPLACED

The Board of Immigration Appeals granted DHS's appeal and vacated the bond based on *Matter of Hurtado*, 29 I. & N. Dec. 216, 220 (2025). *Hurtado* concluded that "aliens … present in the United States without admission are 'seeking admission' under § 235(b)(2)(A)." *Id.* at 220. But the decision did not address the statutory protections for unaccompanied minors under 8 U.S.C. § 1232(a)(2)(A)-(B), nor the 2019 DHS expedited-removal designation limiting Section 1225(b)(1) to individuals with less than two years' presence. See 84 Fed. Reg. 35409, 35413–14 (July 23, 2019). Notably, Federal Respondents do not cite *Matter of Hurtado* in their Response.

Respondents rely heavily on the statutory phrase that an alien "present in the United States who has not been admitted shall be deemed an applicant for admission." 8 U.S.C. §1225(a)(1). ECF No. 10, pp. 4-6. However, the statute requires more than mere entry without inspection. It requires the DHS's determination at the time of the encounter, and that the alien be placed into proceedings under Section 1225(b).

Here, DHS issued the NTA under Section 1229a (ECF No. 1 ¶ 54), not under Section 1225(b). The Pearsall immigration court dismissed the 2025 NTA as improvidently issued. ECF No. 10-1, Pearsall IJ Order, pp. 1–4. The Houston immigration court reopened the original 2013

removal case (ECF No. 10-3, Houston IJ Order, pp. 1–4), placing Petitioner squarely in Section 1229a proceedings, governed by Section 1226, not Section 1225(b).

Federal Respondents argue Petitioner is now an "applicant for admission" because he once entered unlawfully. But the statutory scheme – interpreted correctly – does not allow DHS to retroactively reclassify a respondent in reopened removal proceedings as an arriving alien for purposes of detention. Federal Respondents' core argument—that Mr. Escobar is detained under Section 1225(b)(2) because he is an "applicant for admission"—collapses once the relevant statutory framework is accurately applied. *See* ECF No. 10 at 6-9. Congress constructed two distinct detention regimes, each tied to a specific procedural posture. Which statute governs is not a matter of agency preference or post hoc recharacterization, but of statutory command. And the statute that governs the detention of a long-term Section 240 non-citizen like Mr. Escobar is 8 U.S.C. § 1226, not Section 1225(b)(2). Federal Respondents' contention to the contrary ignores the text, structure, and purpose of the Immigration and Nationality Act ("INA"), as well as decades of consistent interpretation distinguishing the two detention regimes.

1. Congress reserved Section 1225(b)(2) for initial processing during inspection at the border—not for respondents in ongoing Section 240 removal proceedings.

Congress drew a bright line between the detention of "applicants for admission" at or near the border, governed by Section 1225(b), and the detention of noncitizens already present in the United States and placed in removal proceedings, governed by Section 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–90 (2018) (observed that Section 1225(b) applies to aliens seeking admission into the United States, while Section 1226 governs detention of aliens already in the country pending their removal proceedings). The distinction is not a matter of discretion; rather, it reflects fundamentally different statutory purposes.

By contrast, Section 1226(a) provides discretionary detention authority pending a decision on whether the alien is to be removed, expressly encompassing respondents in Section 240 proceedings. *See Jennings*, 583 U.S. at 288 ("Section 1226 generally governs the process of arresting and detaining" aliens who were [inadmissible at the time of entry] pending their removal."). Once DHS files a Notice to Appear under Section 239 of the INA, 8 U.S.C. § 1229, and initiates removal proceedings under Section 240, 8 U.S.C. § 1229a, the detention authority shifts to 8 U.S.C. § 1226—the statute Congress expressly designed to govern custody during ongoing removal litigation. *Jennings* draws this line sharply:

- **Section 1225** regulates *pre-admission* processing;
- **Section 1226** governs detention "pending a decision on whether the alien is to be removed," i.e., during § 240 proceedings.

See Jennings, 583 U.S. at 288-89.

There is no dispute that DHS served Mr. Escobar with a Notice to Appear in 2016, charging him under Section 212(a)(6)(A)(i) of the INA, though DHS decided to re-issue the NTA in 2025 under the same inadmissibility statute. Nor is there a dispute that that EOIR docketed the case and set hearings. These are the hallmarks of Section 240, 8 U.S.C. § 1229a proceedings. Nothing in the record suggests that DHS ever withdrew the initial NTA, terminated proceedings or reclassified him under any expedited or border-crossing provision.

Federal Respondents argue that a noncitizen who was apprehended any time after entering the country illegally, is entitled to no more due process than the statute gives him, *citing Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, (2020)) ("There are procedural due process protections built into it."). In *Thuraissigiam,* the Supreme Court rejected a noncitizen's due process claim, explaining that people detained at or near the border are treated as "applicants for

admission" and are afforded "only those rights regarding admission that Congress has provided by statute." 591 U.S. at 140. Although *Thuraissigiam* certainly limited the scope of due process claims available to "applicants for admission," the decision's sweeping statements must be read in context. *See id.*

Importantly, the noncitizen in *Thuraissigiam* was detained under *8 U.S.C. § 1225*, and an asylum officer determined that he did not sufficiently establish a credible fear, so he was placed in expedited removal proceedings. *Id.* at 140. He attempted to challenge this negative credible fear determination through a writ of habeas corpus, in which he requested a "new opportunity to apply for asylum and other applicable forms of relief." *Id.* at 114-15.

This description reveals two key points of distinction between *Thuraissigiam* and Mr. Escobar's case. First, *Thuraissigiam* challenged the denial of his asylum claim, whereas Mr. Escobar challenges his detention. Nothing in Thuraissigiam suggests that Mr. Escobar lacks such a due process right. The second key point is that Mr. Thuraissigiam was stopped by the Border Patrol "within twenty-five yards of the border," immediately detained and released. *Thuraissigiam,* 591 U.S. at 114. Mr. Escobar was detained a few days after entering the country but unlike Thuraissigiam, he was released on his own recognizance to his mother. Mr. Escobar lived in the United States until he was detained by ICE when he appeared for a routine check-in appointment. ECF 1 at 4.

In sum, Federal Respondents' reliance on *Thuraissigiam* is misplaced because its holding does not prohibit Mr. Escobar from pursuing his due process claim for two reasons: First, he challenges detention, not his deportability. And second, Mr. Escobar was detained after residing in the United States for years and stripped of his bond (and now prohibited from a hearing) in violation of due process, the INA and APA.

2. *Matter of M-S-* confirms that Section 1226 governs custody once DHS initiates Section 240 proceedings

The Attorney General's decision in *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), is directly on point and forecloses DHS's argument. *Matter of M-S-* holds that once DHS has placed a noncitizen into Section 240 removal proceedings, the agency's detention authority is governed by Section 1226(a), not Section 1225(b). *See Id.* at 510–12. *Matter of M-S-* makes clear that the initiation of Section 240 proceedings is the statutory pivot point:

> … proceedings under section 240 of the Act [are] full removal proceedings."

Id. at 510. This principle applies with overwhelming force here. Federal Respondents cannot now retroactively disavow Section 240 and successfully claim that the detention statute applying to border inspections governs instead.

To say differently, once DHS exercised its prosecutorial discretion to place Mr. Escobar in Section 240 proceedings, it was bound by Section 1226 for custody purposes. *Id.*; *Jennings*, 583 U.S. at 288–90.

IV. JURISDICTION EXISTS UNDER § 2241

Federal Respondents cite Sections 1252(e)(3), 1252(g), and 1252(b)(9) of Title 8, but none bar this Court's jurisdiction to hear Mr. Escobar's claim.

1. Section 1252(e)(3) does not bar jurisdiction.

Congress limited Section 1252(e)'s application to "an order to exclude an alien in accordance with Section 235(b)(1) [of the INA]." Federal Respondents did not commence Section 235 proceedings against Mr. Escobar. Further, the "writ of habeas corpus" provisions, Section 1252(e))2), limits application to a "petitioner [who] was ordered removed under such section." *Id.* Federal Respondents do not explain why their desire to move this case to a United

States District Court in the District of Columbia is a more favorable venue to defend *Matter of Hurtado*. Nevertheless, Section 1252(e)(3) does not bar this Court's jurisdiction.

2. Section 1252(g) does not apply.

Section 1252(g) prohibits federal district courts from considering "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 under this chapter."

The 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 *(citing Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482-83.* (1999)). Thus, Section 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 v. Mavorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022) (*quoting Alvidres-Reves 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. 2020) (citation omitted); *accord Kong v. United States.* 62 F.4th 608, 617-18 (1st Cir. 2023) collecting cases).

Mr. Escobar is not challenging Federal Respondents' decision to execute a removal order (there is none). Nor is Mr. Escobar challenging Federal Respondents' decision to commence or adjudicate his removal proceedings. Mr. Escobar challenges his on-going detention and enforcing his constitutional right to due process in the context of the removal proceedings – not

the legitimacy of the removal proceedings or any removal order. Such claims are not barred by Section 1252(g).

3. Section 1252(b)(9) does strip jurisdiction.

Section 1252(b)(9) is another narrowly applicable provision providing:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from* any action taken or proceeding brought to remove an alien from the United States under this subchap-ter [including *§§ 1225* and *1226*1 shall be available only in judicial review of a final order under this section.

Jennings, 583 U.S. at 292 (citing 8 U.S.C. 1252(b)(9)) (emphasis added).

In *Jennings*, the Supreme Cout declined to apply an expansive interpretation of "arising from" and held that Section 1252(b)(9) did not present a bar to reviewing the immigration habeas petitioners' challenge to mandatory detention. *Id.* at 293. The Supreme Court found an expansive interpretation of "arising from" would make "claims of prolonged detention effectively unreviewable." *Id.*

In rejecting the premise that Section 1252(b)(9) does not present a bar because "detention is an 'action taken . . . to remove' an alien," *see id. at 318* (Thomas, J, concurring), the plurality explained that, "[t]he question is not whether *detention* is an action taken to remove an alien but whether *the legal questions* in this case arise from such an action," *Id.* at 295 n.3. The plurality opinion held that the legal questions of whether mandatory detention without a bond hearing was proper were "too remote from [removal actions] to fall within the scope of Section 1252(b)(9). *Id.*

In 2019, a plurality of the Supreme Court again found that Section 1252(b)(9) did not strip it of jurisdiction to hear a group of immigrants' challenges to their detention under Section 1226(c).

See Nielsen v. Preap, 586 U.S. 392, 402 (2019). Even more recently, a majority of the Supreme Court characterized Jennings as holding that Section 1252(b)(9) '"does not present a jurisdictional bar' where those bringing suit 'are not asking for review of an order of removal,' 'the decision ... to seek removal,' or 'the process by which ... removability will be determined." *Dept. of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). The *Regents* opinion omitted *Jennings'* reference to the possibility that detainees' challenges to "the decision to detain them in the first place" may also be barred by Section 1252(b)(9).

Federal Respondents' arguments are also foreclosed by post-*Jennings* Fifth Circuit decisions. In 2022, that court stated, "where review of any agency determination involves neither a determination as to the validity of [a noncitizen's] deportation orders or the review of any question of law or fact arising from their deportation proceedings, section 1252(a)(5) and (b)(9) should not operate as a bar to the district court's review." *Duarte v. Mayorkas*, 27 F.4th 1044, 1056 (5th Cir. 2022). This petition addresses questions of law from continued detention in EOIR "Bond Proceedings." ECF Doc. 1-1, pp. 1-12 (proceedings identified as "Bond Proceedings").

4. Section 1252(a)(5) does not apply.

Federal Respondents do not cite Section 1252(a)(5) to bar jurisdiction. However, "because jurisdiction is always first," *La. v. U.S. Dept. of Energy*, 90 F.4th 461, 466 (5th Cir. 2024), Petitioner addresses this narrowly applicable provision which "specifies 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." *Duarte v. Mayorkas*. 27 F.4th at 1051.

Section 1252(a)(5) is a "zipper clause," *id.* at 1056 (*quoting Duron v. Johnson*, 898 F.3d 644. 647 (5th Cir. 2018)), which "funnel[s] judicial review of final deportation orders ... into a single mechanism." *Id.* Thus, where there is no final removal order and a habeas petitioner's "arrest

and detention claims are independent of any future removal order," Section 1252(a)(5) does not prevent the district court from hearing such claims. *Medina v. U.S. Dep't Homeland Security*, No. 17-CV-00218, 2017 WL 2954719, at *15 (W.D. Wash. Mar. 14, 2017); accord *Jennings*, 583 U.S. at 320, (Thomas, J., concurring) (describing Section 1252(a)(5)'s narrow applicability to support a broader reading of a separate jurisdiction-channeling provision, Section 1252(b)(9)).

Here, as stated above, there is no removal order to execute. With no final order of removal, Section 1252(a)(5) poses no jurisdictional bar.

5. Section 1226(e) does not bar jurisdiction.

Federal Respondents also do not cite Section 1226(e)'s jurisdiction bar. This statute precludes an alien from "challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding detention or release." *Jennings*, 583 U.S. at 295. Section 1226(e) does not preclude "challenges to the statutory framework that permits the alien's detention without bail." *Id.* In other words, the Court retains jurisdiction to review a non-citizen's detention insofar as that detention presents constitutional issues such as those raised in a habeas petition. *Oyelude v. Chertoff*, 125 F. Ap-p'x 543, 546 (5th Cir. 2005). Mr. Escobar's claim is that his procedural due process rights are violated based on the Federal Respondent's application of *Matter of Hurtado*.

In sum, because Mr. Escobar challenges the decision to subject him to mandatory detention and vacate the prior grant of a bond, this Court has jurisdiction to hear his constitutional claim.

V. DUE PROCESS REQUIRES REINSTATMENT OF THE BOND

Petitioner has now been detained since June 2025 (ECF No. 1 at ¶¶ 54–59). The BIA vacated the IJ's bond decision solely on its holding in *Matter of Hurtado*, not mentioned in Federal Respondents' Response, and held to be legally flawed in multiple federal courts. Detention

exceeding several months—especially after the dismissal of the 2025 NTA and reopening of the 2013 case—constitutes prolonged detention requiring a hearing or reinstatement of the bond. The Government claims detention is not prolonged because removal proceedings are ongoing, but detention without a bond hearing for nearly half a year exceeds constitutional bounds, particularly when:

- Petitioner has a reopened case;
- No final order exists;
- Petitioner has substantial relief claims; and
- DHS vacated its own charging document.

Under *Zadvydas*, *Demore*, and post-*Jennings* district court decisions across the Fifth Circuit, such detention requires reinstatement of the initial bond or at minimum an individualized bond hearing.

VI. LAKEN RILEY ACT

Federal Respondents refer to the Laken Riley Act. ECF No. 10, p. 9. This Act involves mandatory detention for non-citizens charged with specified criminal conduct. Mr. Escobar has no criminal history that might be referenced in the Act. The Laken Riley Act does not apply to him or prevent habeas relief.

VII. REMEDY

The sole remedy in habeas is release and reinstatement of the Immigration Judge's prior bond order, or a constitutionally adequate bond hearing.

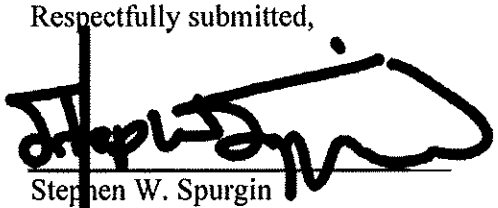
VIII. CONCLUSION

FOR THESE REASONS and in the Petition, the Court has jurisdiction, Petitioner KENNI L. ESCOBAR CHANG is not properly detained under 8 U.S.C. § 1225(b)(2)(A), Federal

Respondents violated the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause requiring the Court to enter an Order providing for Petitioner's immediate release from custody, or in the alternative, an individualized bond hearing,

Date: November 17, 2025

Respectfully submitted,



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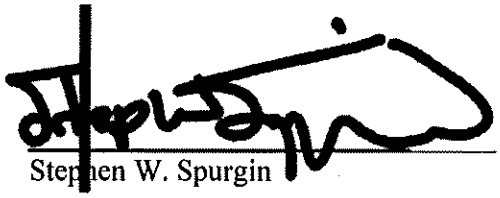
IX. CERTIFICATE OF SERVICE

I, Stephen W. Spurgin, attorney for Petitioner, affirm that a true and correct copy of the Petitioner's Reply to Federal Respondents' Response to Writ of Habeas Corpus was served upon the Federal Respondents via the Court's ECF portal on this 17th day of November 2025.



Stephen W. Spurgin