IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

MIGUEL ANGEL GARCIA CANO, Petitioner, v. RUSSELL HOLT et al., Respondents.	Case No. CIV-25-1228-JD

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

I. PRELIMINARY STATEMENT

Detention is not a requirement of deportation. To the contrary, detention is a deprivation of liberty that carries with it serious consequences independent of any decision to deport.[1] The Respondents ignores this distinction by focusing mainly on plain statutory language to dictate their argument that Petitioner should be considered an "arriving alien" under 8 U.S.C. § 1225 and thus is subject to the statue's regulations. (Doc. 9). The Respondent vehemently disregards numerous decisions through the circuit courts that have immigrants such as Miguel are not subjected to mandatory detention. The Respondents provide no independent – let alone constitutionally adequate – justification for Miguel's current detention. Miguel's current detention serves only to take away the liberty of a man who has minimal criminal history, is married to a United States citizen, has five United States citizen children and has been living in the United States for more than twenty years.

Because "[f]reedom from imprisonment…lies at the heart of the liberty [the Due Process] Clause protects," *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), this Court should reject the Respondents' arguments and hold that Miguel should be granted a Bond hearing, or in the alternative, that Miguel should be immediately released from detention.

II. ARGUMENTS

A. The Western District Court of Oklahoma Has Jurisdiction over Writs of Habeas Corpus

[1] Immigrants in detention, including Miguel, are currently being detained in ICE detention centers. They are held behind bars and put "in orange suits, they are shackled during visitation and court visits, they are subject to surveillance and strip searches, they are referred to by number, not by name." Transcript of Oral Arguments at 8, *Jennings v. Rodriguez*, No-15-1204 (Nov. 30, 2016) (J. Sotomayor). Miguel's eligibility for Cancellation of Removal dictates his detention as arbitrary, unnecessary, waste of resources, and double punishment.

The Writ of Habeas Corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless government action.[2] There is a long-standing well established history in the American judicial system regarding their sole jurisdiction to adjudicate Writs of Habeas. The extensive history of Writs of Habeas Corpus, and the right of petitioners to the Writs of Habeas Corpus itself is rooted in the U.S. Constitution's Suspension Clause.[3] The District Courts retaining jurisdiction over Writs of Habeas Corpus can be found in the Federal Habeas Corpus statute, 28 U.S.C. § 2241, which states, in pertinent part:

> (a) Writs of Habeas Corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions…

Once 28 U.S.C. § 2241 was included in the Judiciary Act of 1789, the district courts were given jurisdiction to grant Writs of Habeas Corpus to people who are held in "custody" by the federal government in violation of the Constitution, laws, or treaties of the United States. Under this statute, federal courts have considered both *constitutional claims* and claims of *statutory interpretation*. Over the past several years, the Supreme Court has upheld the availability of Habeas Corpus in cases challenging detention.[4]

Here, Miguel has filed a Petition for Writ of Habeas Corpus due to his unlawful detention in violation of the United States Constitution by the Respondents. The Western District Court unquestionably has jurisdiction to adjudicate Miguel's Petition for Writ of Habeas Corpus. To

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[2] Harris v. Nelson, 394 U.S. 286, 290-91 (1969); Boumediene v. Bush, 128 S. Ct. 2229, 2244, 2008 WL 2369628 at *12 (2008) ("The Framers viewed freedom from unlawful restraint as fundamental precept of liberty, and they understood the writ of habeas corpus as vital instrument to secure that freedom").

[3] U.S. Const. art. I § 9, cl. 2 states: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it.

[4] *See e.g. Zadvydas v. Davis*, 533 U.S. 678 (2001) (finding that habeas corpus may be used to bring statutory and constitutional challenges to post-removal order detention); *see e.g. Demore v. Kim*, 538 U.S. 510 (2003) (Court found that Habeas corpus may be used to bring a constitutional challenge to pre-removal order detention); *See e.g. Clark v. Martinez*, 543 U.S. 371 (2005) (Court held that its decision in *Zadvydas v. Davis* also applied to government detention of persons found to be inadmissible).

obtain Habeas Corpus relief, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States."[5] Cases, such as Petitioner's, which challenge immigration detention are properly brought directly through habeas.[6]

B. The Writ of Habeas Corpus is in Regards to the Present Unlawful Detention of Petitioner, Not an Adjudication of Immigration Proceedings

The Habeas Petition was filed because of the unlawful detention of Petitioner. (Doc. 1) The Habeas Petition's scope is for the District Court to adjudicate the unlawfulness of Petitioner's detainment. Thus, the Court cannot be limited, as argued by Respondents, by the provisions found in the Immigration Nationality Act because the court is not adjudicating immigration law. The jurisdictional arguments Respondents put forth have been rejected by multiple district courts throughout the country. [7] Respondents argue that under Section 1252(g), the courts lack jurisdiction to consider "any cause or claim by or on behalf of any alien arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."[8] (Resp. 11) Respondents push this court to adopt a broad interpretation of Section 1252(g) when the Supreme Court has found that Section 1252(g) is much more narrow, only applying to three discrete actions by the Attorney General: 1. Commencement of proceedings, 2. Adjudication of Cases, and 3. Execution of Removal orders.[9] Respondents

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[5] See 28 U.S.C. § 2241(c)(3)

[6] See *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

[7] See, e.g., Hasan v. Crawford, No. 25 -CV-1408, -- F.3d. Supp. --, 2025 WL 2682255, at *3 n. 7. (E.D. Va. Sep. 19, 2025) ("Federal courts throughout the country have similarly found that these jurisdiction-stripping provisions do not deprive the federal courts of jurisdiction to review a noncitizen's challenge to the legality of his detention." (collecting cases)).

[8] 8 U.S.C. § 1252(g)

[9] See e.g. *Reno v. American – Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-85 (1999)).

erroneously choose to equate removal proceedings as synonymous with unlawful detention to incorrectly strip this Court of proper jurisdiction.

Here, within the Habeas Petition, Petitioner never requests the Court to adjudicate on the merits of removal proceedings. (Doc. 1). Petitioner does not argue for the court to adjudicate on the removal proceedings or on the merits of his immigration relief. (Doc. 1) Instead, Petitioner asks this Court to find that his detention is unlawful because Respondents wrongfully denied Petitioner of a proper Bond hearing. The court has jurisdiction over the petition as Petitioner is only challenging the way Respondents are conducting his detention – specifically the lack of bond hearing. [10]

Challenges to detention orders "are legal in nature and challenge specific conduct unrelated to removal proceedings." *Garcia Cortes v. Noem*, No. 25 – CV – 02677, 2025 WL 2652880, at *2 (D. Colo. Sep. 16, 2025)(citing *Mukantagara v. U.S. Dep't of Homeland Sec.*, 67 F.4th 1113, 1116 (10th Cir. 2023) ("Congress did not intend the zipper clause to cut off claims that have a tangential relationship with pending removal proceedings. A claim only arises from a removal proceedings when the parties in fact are challenging removal proceedings." (citation modified))); *Gutierrez v. Baltasar*, No. 25-CV-2720, 2025 WL 2962908, at *2-3 (D. Colo. Oct. 17, 2025) (rejecting jurisdictional argument, in part, because the petitioner's claims challenging detention under 8 U.S.C. § 1225 rather than § 1226 due to a change in policy was a challenge to specific conduct unrelated to removal proceedings).

Here, Petitioner is not challenging any removal order or even the process of his removability. Instead, Petitioner is challenging mandatory detention under § 1225(b)(2)(A),

[10] See Ferry v. Gonzales, 457 F.3d 1117, 1131 (10th Cir. 2006).(holding that § 1252(a)(5) does "not eliminate a district court's jurisdiction to review habeas petitions challenging an alien's detention" and affirming district court's finding that it had jurisdiction to review a habeas petition challenging "DHS's continued detention [of petitioner] without bond or without providing a bond hearing").

"Petitioner does not challenge any removal order because no order of removal has yet been entered against him. Rather, he challenges the constitutionality and legality of his detention during the period before his removal hearing." *S.D.B.B v. Johnson*, No. 25-cv-882, 2025 WL 2845170, at *3 (M.D.N.C. Oct. 7, 2025). As such, § 1252(b)(9) does not deprive the court of jurisdiction." *Id.* This interpretation of § 1252(a)(5) and § 1252(b)(9) tracks the same recent analysis of several district courts.[11]

Petitioner is only challenging "the narrow legal questions of whether [his] detention under 8 U.S.C. § 1225 violates the INA and whether he is entitled to a bond hearing under § 1226's discretionary detention framework." *Gutierrez*, 2025 WL 2962908, at *3. Because the scope of Petitioner's challenge is only regarding his detention, Petitioner is not subjected to the jurisdiction of § 1252(g) and, accordingly, § 1252(g) does not strip the court of jurisdiction. Therefore, the Western District Court of Oklahoma still has jurisdiction over Petitioner Writ of Habeas Corpus.

C. PETITIONER IS NOT AN "APPLICANT FOR ADMISSION." Petitioner is not an "Applicant for Admission," and Thus He is Entitled to a Bond Hearing as under §1226(a).

Under INA § 1225(b)(2)(A):

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

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[11] See. E.g., Caballero v. Baltazar, No. 25-CV-03120, 2025 WL 2977650, at *4 (D. Colo. Oct. 22, 2025) (ruling § 1252(b)(9) does not present a jurisdictional bar to a noncitizen challenging "the legality of his continued detention without a bond hearing"); Hasan, 2025, WL 2682255, at *4 (Section 1252(b)(9) does not insulate detention orders from judicial review because they are separate and apart from orders of removal." (citation modified)); Hernandez Marcelo v. Trump, No. 25-CV-0094, --- F. Supp. 3d ---, 2025 WL 2741230, at *6 (S.D. Iowa Sep. 10, 2025) (concluding § 1252(a)(5) and § 1252(b)(9) are inapplicable because the habeas petitioner was challenging his detention without a bond hearing, not an order of removal); Jose J.O.E. v. Bondi, No. 25-cv-3051, --- F. Supp. 3d ---, 2025 WL 2466670, at *7 (D. Minn. Aug. 27, 2025) (same) collecting cases)).

Here, the INA clearly distinguishes an alien is an applicant for admission as an alien seeking admission into the United States. Here, Petitioner is not seeking "admission" into the United States. The plain meaning of the phrase "seeking admission" requires that Petitioner must be actively seeking lawful entry into the United States. The use of the present participle in § 1225(b)(2)(A) implies action- something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Caballero*, 2025 WL 2977650, at *6 (citation modified).

Here, Petitioner has lived in the United States for over twenty years. Petitioner is not currently seeking admission. Petitioner also was not arrested when attempting to cross the border or pass through a port of entry. (Doc. 1). Noncitizens who have been 'present' in the country, have been here for years, and are not seeking to obtain any form of citizenship, are not 'seeking' admission under § 1225(b)(2)(A)."[12]

D. Petitioner Urges the Court to Find This Unlawful Detention Has Violated His Constitutional Rights.

Petitioner urges the Court to find merit in his due process claim. (Doc. 1). Firstly, the Supreme Court has found that "aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law."[13]The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty. Petitioner's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

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[12] *Caballero*, 2025 WL 2977650, at *6

[13] *Plyler v. Doe*, 457 U.S. 202 (1982).

The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall...be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "twenty years" physical presence in the United States, indeed Miguel has been in the United States for more than twenty years. Miguel is entitled to Due Process Clause protections against deprivation of liberty and property. [14] Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. [15]

Respondents have deprived Miguel of his liberty interest protected by the Fifth Amendment by detaining him since August 2025. Miguel's detention is improper because he has been deprived of a bond hearing. A hearing is, if anything a right to be heard, and here the immigration judge considered it a foregone conclusion that he was ineligible for bond, without considering the law or entertaining his counsel's arguments. Like the accused in criminal cases, habeas is proper. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

Respondents' action in detaining Miguel without any legal justification violates the Fifth Amendment. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained.[16]

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[14] *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").
[15] *Id.* at 690.
[16] *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family. For these reasons, Miguel's detention violates the Due Process Clause of the Fifth Amendment.

III. CONCLUSION

This Court should order Petitioner's immediate release, or in the alternative, find that Respondents must provide him with a bond hearing.

Respectfully submitted,
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Miguel Angel Garcia Cano, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petitioner's Reply to Respondents' Opposition to The Petition For Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 18th day of November, 2025.

Respectfully submitted,

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