UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Rubelio Gilberto RAMIREZ ROJAS, Petitioner, v. 1. Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; 2. Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; 3. Joshua JOHNSON, Field Office Director of Enforcement and Removal Operations, ICE Dallas Field Office, Immigration and Customs Enforcement; 4. Scarlett GRANT, Warden of Cimarron Correctional Facility, Respondents.	Case No. CIV-25-1236-HE

PETITIONER'S REPLY TO THE RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

I. INTRODUCTION

Respondents' opposition rests on two fundamental errors: first, they mischaracterize Petitioner's challenge to his *detention authority* under 8 U.S.C. § 1225(b)(2)(A) as a forbidden challenge to the "commencement of removal proceedings"; second, they distort the structure and history of the Immigration and Nationality Act ("INA") to suggest Congress intended to allow mandatory, no-bond detention for any noncitizen present without admission, no matter how long they have lived in the United States.

Neither claim withstands scrutiny. Petitioner's habeas petition challenges only the legality of his *custody*—not the initiation or merits of his removal case—and thus falls squarely within the district court's jurisdiction under 28 U.S.C. § 2241. Moreover, the government's sweeping interpretation of § 1225(b)(2)(A) conflicts with the statutory text, structure, and long-standing practice of distinguishing between "arriving aliens" subject to inspection at the border and noncitizens arrested within the United States, who are detained under § 1226(a) and entitled to a bond hearing.

Finally, the government's attempt to avoid constitutional scrutiny fails. The Fifth Amendment prohibits categorical detention without individualized review, particularly for noncitizens who have long resided in the United States. This Court should therefore reject Respondents' position and grant habeas relief.

II. JURISDICTION IS PROPER UNDER 28 U.S.C. § 2241

Respondents argue that 8 U.S.C. § 1252(a)(5), (b)(9), and (g) strip this Court of jurisdiction. That reading misstates both precedent and the scope of those provisions.

A. Habeas jurisdiction remains for detention challenges.

The Supreme Court has repeatedly held that § 1252's jurisdictional bars do not preclude review of *detention authority*. *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Demore v. Kim*, 538 U.S. 510 (2003). Those decisions addressed identical habeas challenges to the legality of immigration custody while removal proceedings were pending—precisely the claim here.

B. Petitioner does not challenge a "decision to commence proceedings."

The government's reliance on § 1252(g) and *Alvarez v. ICE*, 818 F.3d 1194 (11th Cir. 2016) is misplaced. Petitioner does not contest the filing of a Notice to Appea (NTA) or any prosecutorial discretion; he challenges *which detention statute* DHS invoked to hold him without bond. Courts across circuits have treated such challenges as distinct and reviewable.

C. Section 1252(b)(9) does not swallow all claims.

The "zipper clause" consolidates judicial review of questions *arising from removal orders*, not stand-alone detention claims. Otherwise, district courts could never adjudicate habeas petitions under § 2241—a result *Jennings* expressly rejected.

Because this petition challenges only the *legality and constitutionality of ongoing detention*, it falls well within this Court's jurisdiction.

III. SECTION 1225(b)(2)(A) DOES NOT AUTHORIZE DETENTION OF NON-ARRIVING ALIENS

A. Statutory Text and Structure

The government reads § 1225(b)(2)(A) to apply to any person present without admission, regardless of when or how they entered. That interpretation conflicts with the statute's plain structure.

Section 1225(b)(1) governs "inspection of aliens arriving in the United States," while § 1225(b)(2) governs "inspection of other aliens." Both provisions describe individuals subject to *inspection*—a process that occurs at or near the border when admission is sought. Once an individual is apprehended in the interior, the inspection phase is complete. At that point, detention falls under § 1226(a), which authorizes arrest "pending a decision on whether the alien is to be removed."

The government's claim that Congress intended § 1225(b)(2)(A) to encompass everyone who entered unlawfully renders § 1226(a) meaningless, violating the canon against surplusage. Congress enacted § 1226 precisely to provide a discretionary bond framework for interior arrests. If DHS could detain every noncitizen who entered the United States without undergoing lawful inspection at a port of entry—commonly termed "EWI" or "entry without

inspection"—under § 1225, then § 1226(a)'s separate procedures governing detention and bond for individuals apprehended within the United States would have no operative effect.

B. Historical and Regulatory Practice

For nearly three decades after the 1996 IIRIRA amendments, DHS and EOIR treated long-term residents apprehended inside the United States as detained under § 1226(a), not § 1225. Respondents admit this shift represents "a change in policy by the new administration," not a textual mandate. Policy changes cannot rewrite statutory limits.

The 1997 implementing regulations (62 Fed. Reg. 10312, 10323) explicitly recognized that EWIs, though technically "applicants for admission," *"will be eligible for bond and bond redetermination"*—confirming that they are processed under § 1226(a). The government's brief omits this key context.

C. Legislative Intent

Respondents invoke IIRIRA's purpose of "placing all non-admitted immigrants on equal footing." But that amendment addressed *procedural parity*, ensuring that EWIs, like arriving aliens, are placed in removal proceedings under § 1229a—not that they face identical custody rules. Congress sought to eliminate the old "entry fiction," not to impose permanent mandatory detention on interior residents.

Courts rejecting the government's recent reinterpretation have recognized this. See *Escarcega v. Olson*, No. 25-cv-1129 (W.D. Okla. Oct. 28, 2025); *Salinas Gallardo v. Olson*, No. 25-cv-1090 (W.D. Okla. Oct. 28, 2025) (holding § 1226(a) governs detention of non-arriving aliens arrested in the interior).

IV. CONSTITUTIONAL AVOIDANCE REQUIRES APPLICATION OF § 1226(a)

Even if § 1225(b)(2)(A) were ambiguous, the constitutional-avoidance canon compels reading it to exclude long-term residents. Mandatory, indefinite detention without bond raises grave Fifth Amendment concerns.

Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Due Process Clause prohibits prolonged detention absent a reasonable relation to removal. *Jennings* did not bless limitless no-bond detention; it remanded to allow constitutional claims to proceed. Similarly, *Demore* upheld short-term detention pending completion of streamlined proceedings for recent entrants—not months-long confinement of individuals like Mr. Ramirez, who has resided in the U.S. since 2006.

Respondents' reliance on *Thuraissigiam*, 591 U.S. 103 (2020), is misplaced. That case addressed procedural rights of arriving asylum applicants at the border, not residents apprehended in Oklahoma after nearly

two decades of residence. The Fifth Amendment requires at least an individualized custody review by a neutral decision-maker.

V. THE GOVERNMENT'S REMAINING ARGUMENTS LACK MERIT

A. "Passive Residency" and "Applicant for Admission."

Labeling a person who entered nearly twenty years ago as "seeking admission" is a legal fiction. Courts have rejected this approach because it produces absurd results and erases statutory distinctions Congress preserved.

B. Superfluity and the Laken Riley Act.

The government's "Venn diagram" theory proves too much. The 2025 Laken Riley Act expanded *criminal-based mandatory detention* under § 1226(c); it did not retroactively redefine § 1225(b)(2)(A). Congress legislates against a background where § 1226 governs interior custody.

C. "Premature" Due-Process Claims.

The government incorrectly applies *Zadvydas*'s six-month post-removal presumption to pre-removal detention. Pre-removal custody implicates a liberty interest from the moment of arrest. A categorical bar on bond violates procedural due process regardless of duration.

VI. CONCLUSION

The government's attempt to stretch § 1225(b)(2)(A) to cover all noncitizens inside the United States contradicts statutory text, structure, decades of agency practice, and constitutional principles. Mr. Ramirez has

been detained for months without the opportunity to demonstrate his eligibility for release—contrary to the INA and the Fifth Amendment.

Accordingly, Petitioner respectfully requests that this Court:

1. Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a),
2. Order that he be provided a prompt bond hearing before an Immigration Judge,
3. Order that Petitioner be released if he is not provided a lawful bond hearing before an Immigration Judge within a time frame set by this Court; and
4. Grant such other relief as the Court deems just and proper.

DATED this 17th of November, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on November 17, 2025, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a notice of electronic filing to counsel of record

/s/ Michelle L. Edstrom
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