UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

MARTIN RIOS FERREIRA,
Petitioner,

v.

KRISTI NOEM,
Secretary of Homeland Security, et al.,
Respondents.

Civil No. 1:25-cv-218-H

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO WRIT OF HABEAS CORPUS AND TEMPORARY RESTRAINING ORDER

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DISCLOSURE ON THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE

Pursuant to Local Rule 7.2(f), I hereby disclose that I have utilized generative artificial intelligence in the preparation of this document, but that I have independently cross-checked and verified the accuracy of all legal authorities, citations, facts, and arguments contained herein. No unpublished, non-existent, or unverifiable authorities were generated or relied upon.

/s/ John M. Bray
John M. Bray
Attorney for Petitioner

DATE: November 24, 2025.

TABLE OF AUTHORITIES

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TO THE HONORABLE JUDGE TOLIVER:

Petitioner Martin Rios Ferreira ("Mr. Rios") respectfully submits this brief in reply to Respondents' Response in Opposition, filed November 10, 2025 (ECF No. 11), to the writ of habeas corpus and request for a declaratory and injunctive relief, which was transferred to this Court after originally being filed with the Muskogee Division of the United States District Court of the Eastern District of Oklahoma on October 7, 2025 (ECF No. 1), and as directed by this Court in its Order to Show Cause and Setting Briefing Schedule, dated October 22, 2025 (ECF No. 8).

I. INTRODUCTION

Petitioner Martin Rios Ferreira ("Mr. Rios") files this reply in further support of his petition for writ of habeas corpus under 28 U.S.C. § 2241. The government's response fails to justify his continued civil detention and rests on a legally flawed premise: that a noncitizen who has lived inside the United States for several years, has been placed into removal proceedings under 8 U.S.C. § 1229a, and has been charged only under INA § 212(a)(6)(A)(i), is nonetheless subject to *mandatory* detention under 8 U.S.C. § 1225(b)(2) as an "applicant for admission." That theory contradicts the statutory structure Congress enacted, decades of administrative practice prior to 2025, the immigration court record in this very case, and the decisions of multiple federal courts considering materially identical circumstances.

This Court ordered an expedited response from Respondents under Rule 1(b) of the Rules Governing § 2254 Cases but did not reach the merits of Petitioner's request for a temporary restraining order. *See* ECF No. 4, Order. The government's brief now confirms that DHS's position is categorical: individuals placed in regular § 240 removal proceedings after living inside the United States without admission are, as a matter of agency policy,

ineligible for any individualized custody determination and must instead be subjected to mandatory detention under § 1225(b). For Mr. Rios and many others, this position is not only wrong but unmoored from the INA itself.

Firstly, the Government's theory that Mr. Rios is detained under § 1225(b)(2)(A) collapses once the statutory context and the actual administrative record are examined. The Notice to Appear that DHS served—which is also attached to the government's own appendix—charges him under INA § 212(a)(7)(A)(i), the standard inadmissibility ground for presence without a valid visa or other travel document, and then immediately places him into full removal proceedings under INA § 240. *See* ECF No. 1-3 (Notice to Appear).

Nothing in that charging document invokes expedited removal under § 1225(b)(1), nor does it allege any circumstance that would render him an "arriving alien" within the meaning of the statute. To the contrary, the NTA itself reflects that any earlier expedited-removal processing has been vacated; DHS affirmatively chose the § 240 track. Once DHS made that choice—by drafting the NTA accordingly, filing it with the Executive Office for Immigration Review, and securing a Master Calendar Hearing date before an Immigration Judge on November 3, 2025—its detention authority necessarily became governed by § 236(a), not § 1225(b).

The INA's structure is explicit on this point: § 1225(b) governs threshold inspection and expedited screening procedures, whereas § 236(a) governs custody pending adjudication in regular removal proceedings. DHS cannot toggle between statutory regimes at will, and it cannot repurpose § 1225(b)(2)(A) to impose mandatory detention on a noncitizen whom it has already placed into the full panoply of § 240 proceedings. Congress reserved mandatory detention under § 1225(b)(2) for individuals undergoing inspection or

expedited procedures—not for those, like Mr. Rios, whom DHS has formally charged, docketed, and treated as respondents in the ordinary removal process. In short, once the government elected the § 240 path, the statute itself foreclosed the mandatory-detention theory it now advances.

This is the longstanding rule recognized by federal courts and the agency itself. For decades, individuals present without admission—but placed in § 240 proceedings—have been eligible for custody redeterminations before an immigration judge under § 236(a). *See, e.g., Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). The government now asks this Court to disregard that settled practice and to endorse a novel and expansive reading of § 1225(b)(2) untethered from both textual constraints and structural context.

Multiple federal courts in 2025 have rejected the government's position and held that individuals like Mr. Rios—long-term residents, not recent border crossers—cannot be reclassified as "applicants for admission" for purposes of mandatory detention. Although those cases are not binding, their reasoning is consistent with *Jennings v. Rodriguez*, with the INA's structure, and with common sense. The government's attempt to apply § 1225(b)(2)(A) to every noncitizen who entered without inspection, no matter how long ago, would erase the distinction between arrival-based screening and full removal adjudication that Congress carefully preserved.

Secondly, the government's response fails to address the constitutional implications of its position. The Supreme Court has repeatedly held that persons inside the United States—even if present without admission—are entitled to due process protections. Mandatory, potentially prolonged detention without an individualized assessment of risk or flight is incompatible with those principles. The government's reading would permit

indefinite detention without review for any long-term resident who entered without inspection, no matter their circumstances, ties, or equities. The Constitution requires more.

Thirdly, the Government's reliance on its own 2025 BIA precedents does not resolve this case. Those decisions cannot override the plain text of § 236(a), cannot alter Congress's statutory scheme without notice-and-comment rulemaking, and cannot dictate the jurisdiction of federal district courts in habeas proceedings. This Court retains the authority—and responsibility—to correct unlawful detention.

Finally, Respondents' account of the facts does nothing to justify Mr. Rios's confinement. Mr. Rios has lived in Texas for over six years, has little in the way of criminal history, has a pending application for asylum, and obtained valid TPS status while in detention after an immigration judge performed review of USCIS's initial denial of his application for TPS under INA § 244(a), the result of which was an order of termination of removal proceedings by the immigration judge—and yet, Respondents continued to detain him. *See* ECF No. 1-8 (Affidavit of Petitioner's Immigration Counsel). Nothing in the record suggest Mr. Rios poses danger or flight risk. The Government's theory would allow DHS to subvert Petitioner's immigration case into a false justification for indefinite, unreviewable civil detention.

For these reasons, and those explained below, Mr. Rios respectfully requests that the Court grant his habeas petition, order his immediate release under reasonable conditions, or, at minimum, order Respondents to provide a prompt and meaningful custody redetermination under INA § 236(a).

II. FACTUAL BACKGROUND

Martin Segundo Rios Ferreira is a native and citizen of Venezuela who first sought admission to the United States at the Laredo Port of Entry on March 6, 2019. At that time,

DHS processed him as an arriving alien and issued a Notice to Appear charging inadmissibility under INA § 212(a)(7)(A)(i)(I) based on his lack of valid entry documents. The charging document from that encounter appears in the Government's Appendix as Attachment 4. *See* ECF No. 12, Appendix in Support of Gov't Opp. Removal proceedings under INA § 240 were thereafter initiated in Dallas.

While his removal case was pending, Mr. Rios resided in Texas, where he maintained significant family and community ties. In March 2025, local police in Colony, Texas, arrested him in connection with a family-violence allegation. He was detained while the case proceeded, but the matter was later resolved in September 2025 with time served and no continuing criminal custody. ICE lodged an immigration detainer following his arrest and assumed custody upon his release from local authorities.

After ICE retook custody, DHS moved to transfer venue of his immigration case from Dallas to the Los Fresnos Immigration Court, citing his detention at the Prairieland Detention Center in Alvarado, Texas. The Government's Appendix contains the Motion to Change Venue filed on or about April 14, 2025, and the Immigration Judge's order granting that request. *See* ECF No. 12, Appendix in Support of Gov't Opp. (APP.006-008).

In that same period, Mr. Rios sought a bond redetermination, but on May 13, 2025, Immigration Judge Delia Gonzalez ruled that she lacked jurisdiction to consider bond because DHS had classified him as an arriving alien subject to INA § 235(b). *See* Gov't App'x, ECF No. 12, APP.012-14.

On July 17, 2025, the case proceeded to an individual hearing before Immigration Judge Margaret MacGregor at the Los Fresnos Immigration Court. At that hearing, the Immigration Judge granted Mr. Rios's application for Temporary Protected Status ("TPS")

and terminated his removal proceedings pursuant to 8 C.F.R. § 244.10(e). The Government's Appendix includes the official EOIR order reflecting that ruling, which confirms that DHS did not reserve appeal and that removal proceedings were formally terminated. *See* Gov't App'x, ECF No. 12, APP.015-19.

Despite the Immigration Judge's grant of TPS—an immigration benefit that confers lawful status—and despite the termination of proceedings, ICE did not release Mr. Rios from custody. *See* Gov't App'x, APP.015-19 (granting TPS and terminating proceedings). Instead of releasing Mr. Rios from custody as explicitly required under INA § 244(d)(4) [8 U.S.C. § 1254a(d)(4)], DHS issued a second Notice to Appear on October 6, 2025, alleging removability under INA § 212(a)(7)(A)(i) based on presence without a valid travel document. *See* Gov't. App'x, ECF No. 12, APP.024-28. DHS then filed the NTA with the immigration court on October 7, 2025, purportedly re-initiating removal proceedings based on the same underlying facts already resolved in the terminated case.

Throughout this period, ICE continued to detain Mr. Rios under the asserted authority of INA § 235(b)—but in violation of INA § 244(d) [8 U.S.C. § 1254a(d)]. Officer Benjamin Johnson's declaration in the Government's Appendix expressly states that "removal proceedings are pending, and [he] is detained under INA § 235" as of November 4, 2025. *See* ECF No. 12, Gov't App'x, APP.004. Those statements, however, directly conflict with the EOIR termination order issued on July 17, 2025, and ignore the legal effect of the Immigration Judge's grant of TPS. *See* Gov't. App'x, APP.015-19.

At the time this habeas petition was filed on or about October 8, 2025, Mr. Rios was detained at the Cimarron Correctional Facility in Cushing, Oklahoma. Shortly thereafter, ICE transferred him to the Bluebonnet Detention Center in Anson, Texas, where

he remains in custody. At no point has DHS provided a new custody redetermination, a bond hearing, or any explanation of a statutory basis for continued detention following the immigration judge's grant of TPS and termination of proceedings—and worse yet, Respondents reinstituted proceedings against him inexplicably, months after Mr. Rios won his case in immigration case.

Therefore, Respondents' have attempted to justify Petitioner's continued detention through the filing of an additional charging document, but he has not been provided the procedural mechanisms Congress made available to individuals in his position to seek review of his custody status.

III. ARGUMENT

A. Detention of a Noncitizen Like Mr. Rios Who Is in § 240 Proceedings Is Governed by 8 U.S.C. § 1226, Not § 1225(b)(2).

Respondents' core argument—that Mr. Rios is detained under § 1225(b)(2) because he is an "applicant for admission"—collapses once the relevant statutory framework is accurately applied. *See* Gov't Opp., ECF No. 11, at 4-8. 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 § 240 respondent like Mr. Rios is 8 U.S.C. § 1226, not § 1225(b)(2). 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 § 1225(b)(2) for initial processing during inspection at the border—not for respondents in ongoing § 240 removal proceedings.

Contrary to Respondents' specious assertion that "Congress provided that mandatory detention pending removal proceedings is the norm—not the exception," see

Gov't Opp., ECF No. 11, at 8. Congress actually drew a bright line between the detention of "applicants for admission" at or near the border, governed by § 1225(b), and the detention of noncitizens already present in the United States and placed in removal proceedings, governed by § 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–90 (2018) (observed that § 1225(b) applies to aliens seeking admission into the United States, while § 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.

Section 1225(b)(2) applies to "applicants for admission" who are encountered at or near the border, or in the context of initial inspection and processing. As the Supreme Court has repeatedly emphasized, § 1225(b) governs the inspection of aliens seeking admission and delineates what DHS must do at the threshold of entry. *See Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018) (held § 1225(b)(1)&(2) authorized brief detention of noncitizens immediately upon entering the country.

By contrast, § 1226(a) provides discretionary detention authority pending a decision on whether the alien is to be removed, expressly encompassing respondents in § 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 § 239 and initiates § 240 removal proceedings, the detention authority shifts to § 1226—the statute Congress expressly designed to govern custody during ongoing removal litigation. *Jennings* draws this line sharply:

- **§ 1225** regulates *pre-admission* processing—aliens at the threshold of entry;

- **§ 1226** governs detention "pending a decision on whether the alien is to be removed," *i.e.*, during § 240 proceedings—aliens found inside the country.

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

Here, there is no dispute DHS served Mr. Rios with a Notice to Appear on October 18, 2025, charging him under § 212(a)(7)(A)(i). *See* Gov't App'x, ECF No. 12, at 1–4 (declaration of SDDO Officer Benjamin Johnson). Nor is there any dispute that EOIR docketed the case and scheduled a series hearings, the most recent of which is currently set for December 9. These are the hallmarks of § 240 proceedings. Nothing in the record suggests that DHS ever withdrew the NTA, terminated proceedings, or reclassified him under any expedited or border-processing provision.

In summary, the Government has unequivocally—and correctly—treated Mr. Rios as a § 240 respondent, not as an alien undergoing inspection at the border. Respondents cannot now invoke a statute that presupposes an uncompleted inspection process simply because they prefers the detention consequences of § 1225(b)(2).

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

Additionally, 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 § 240 removal proceedings—even if the person initially arrived at the border—the agency's detention authority is governed by § 1226(a), not § 1225(b). *See id.* at 510–12.

M-S- makes clear that the initiation of § 240 proceedings is the statutory pivot point—once DHS chooses to place an alien into full removal proceedings under § 240,

detention is governed by 8 U.S.C. § 1226. *See id.* at 510. This is because DHS's inspections of aliens "yield one of three outcomes." *Id.* As *M-S-* made clear:

> First, if an alien is 'clearly and beyond a doubt entitled to be admitted,' he will be permitted to enter, or remain in, the country without further proceedings. *Id.* § 235(b)(2)(A). Second, if the alien is not clearly admissible, then, generally, he will be placed in 'proceeding[s] under section 240' of the Act—that is, full removal proceedings. *Id.* Third, if the alien is inadmissible on one of two specified grounds and meets certain additional criteria, DHS may place him in either expedited or full proceedings.

See Matter of M-S-, 27 I. & N. Dec., at 510.

So, the fact that DHS decided to place Mr. Rios into § 240 is *critically important*. For, if DHS places an alien into regular removal proceedings under § 240, then his detention is governed under § 236(a), 8 U.S.C. § 1226(a), which is the detention scheme generally applicable to aliens in *regular* removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (explaining distinction between § 1225(b) and § 1226(a) detention schemes). As the Supreme Court further explained in *Jennings*:

> [A]liens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls "within one or more . . . classes of deportable aliens." § 1227(a). That includes aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission. See §§1227(a)(1), (2).

Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal.

Jennings, 583 U.S.. at 288 (emphasis added). The fact that the Supreme Court so clearly explained this dichotomy means that there can be no legitimate question as to which statutory scheme governs aliens, like Mr. Rios, "who were inadmissible at the time of entry" but who are also still "present in the country" when encountered by ICE. *Cf. id.*

Thus, once DHS initiated a § 240 case against Mr. Rios by filing and serving the NTA, the detention authority shifted to § 1226. *See Matter of M-S-*, 27 I. & N. Dec. 509, 510 (BIA 2019) (when DHS initiates formal removal proceedings, noncitizen's detention is under § 1226(a)). Once DHS exercised its prosecutorial discretion to place Mr. Rios in § 240 proceedings, it was bound by § 1226 for custody purposes. *See Matter of M-S-*, 27 I. & N. Dec. at 510; *Jennings*, 583 U.S. at 288–90.

As further explained by Judge Pulliam of the United States District Court in San Antonio, under facts substantially similar to those in Mr. Rios's case, the petitioner there "was not seeking 'admission,' as that term is defined by [8 U.S.C.] § 1101(a)(13)(A), in that he was not seeking entry, much less 'lawful entry . . . after inspection' and authorization. *See Aguinaga Trujillo v. Noem*, 5:25-cv-01266-JKP, *8 (W.D. Tex. Nov. 24, 2025) (slip op.) (citing *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008)). Instead, Respondents' interpretation "would render the phrase 'seeking admission' in § 1225(b)(2)(A) mere surplusage." *Id.* (internal citation omitted). Thus, because Mr. Rios is not "seeking admission," Respondents here must not detain him under § 1225(b)(2). *Cf. id.*

3. The Government's position would nullify the statutory distinction between § 1225 and § 1226 and allow DHS to evade judicial review.

Additionally, Respondents' cite to this Court's recent order denying a request for a Temporary Restraining Order in the case of *Garibay-Robledo v. Noem*, 6:25-cv-177, 2025 WL 2638672 (N.D. Tex. Oct. 24, 2025). *See* Gov't Opp., ECF No. 11, at 13. But accepting Respondents' argument would virtually erase the structure of the detention scheme in the INA entirely. If DHS could recast any § 240 respondent as an "applicant for admission" subject to § 1225(b)(2), then practically no respondent in removal proceedings—no matter how long they may have been in the United States—would be entitled to a bond hearing, despite the Supreme Court's crystal-clear mandate in *Jennings*. DHS could simply wait until an opportune moment, arrest the individual, and announce that § 1225(b)(2) applies. Immigration Judges would be stripped of jurisdiction, habeas review would be hindered, and noncitizens would be locked into potentially indefinite detention until removal litigation concluded.

This is precisely the danger Judge Horan flagged in a recent case pending before Dallas Division of the Northern District of Texas. *See* Pet's App'x. at 82-97 (Magistrate's Findings, Conclusions, and Recommendation, *Aparicio-Rodriguez v. Noem*, 3:25-cv-02858-L-BN (N.D. Tex. Nov. 6, 2025)). In that case, Judge Horan noted that a similar case from El Paso, *Lopez-Arevelo v. Noem*, EP-25-cv-337-KC (W.D. Tex. Sept. 22, 2025), had rejected DHS's attempt to toggle between statutory regimes to deny access to bond hearings, warning that such a maneuver would allow DHS to collapse Congress's carefully constructed framework and impose detention without neutral review. *Id.* That concern, which has been adopted and accepted by federal district courts all over this state and

nationwide, applies with full force here. *See* Pet's App'x (collecting cases, including a case granted just today in the San Antonio Division of the Western District of Texas).

4. § 1226 applies as a matter of law, entitling Mr. Rios to a bond hearing, despite DHS's contradictory charging decision.

Section 1226(a) authorizes detention "pending a decision on whether the alien is to be removed from the United States." That describes § 240 proceedings precisely. It also authorizes release on bond or conditional parole "as the Attorney General may prescribe." That is the authority Immigration Judges exercise when holding bond hearings.

Under the governing statutory scheme, and under binding precedent, Mr. Rios is entitled to a prompt custody redetermination under § 1226(a) before a neutral adjudicator. DHS cannot deprive him of that process by retroactively reclassifying him into a statutory category that neither applies to his circumstances nor protects any legitimate governmental interest.

DHS seeks to achieve this retroactive reclassification of Mr. Rios by asserting that he is an "applicant for admission," but that is factually incompatible with its own conduct:

- DHS charged him under § 212(a)(7)(A)(i)—a ground that presumes physical presence inside the United States, not someone encountered at the border.
- DHS placed him in § 240 proceedings, not expedited removal or other border-based processes.
- DHS refused to release Mr. Rios following his grant of TPS on July 17, 2025, despite a statutory imperative to do so at INA § 244(d) [8 U.S.C. § 1254a(d)].
- DHS kept Mr. Rios for months while it failed again and again to restart proceedings.

These facts are irreconcilable with DHS's claim that § 1225(b)(2)—a statute reserved for initial inspection of applicants for admission—now controls his custody.

5. The Government's reliance on *Yajure Hurtado* and *Jennings* is misplaced.

The Government cites *Matter of Yajure Hurtado*, 28 I. & N. Dec. 389 (BIA 2024), for the proposition that DHS may treat noncitizen aliens as "applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer" subject to § 1225(b)(2). *See* Gov't Opp., ECF No. 11 at 6-7. But *Yajure Hurtado* reflects a recent policy shift. As even Respondents concede, this departure from long-standing agency interpretation conflicts with how immigration agencies had always before interpreted this statute. *See* Gov't Opp., ECF No. 11 at 6 n.1 ("Previously, § 1226(a) had been interpreted as an available detention authority for aliens who were present without admission and placed in § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747–48 (BIA 2023)."). Moreover, *Yajure Hurtado* conflicts with both *Jennings* and *M-S-* by collapsing the statutory distinction between border inspection and domestic removal proceedings.

Nor does *Jennings* support the Government. *Jennings* held only that § 1225(b) does not imply a six-month time limit on detention; it did not address, let alone approve, DHS's ability to shift an interior detainee between § 1225(b) and § 1226 regimes. *Jennings*, 583 U.S. at 313–14. The Court expressly remanded the constitutional question of prolonged detention without bond. *Id.* at 314. DHS's reliance on *Jennings* to justify Mr. Rios's indefinite, unreviewable detention therefore misses the mark.

6. Because DHS has chosen—and continues to pursue—§ 240 removal proceedings, § 1226 governs eligibility for bond.

The record establishes that Mr. Rios's removal case is, and always has been, within the § 240 framework. *See* Gov't App'x, APP.030-31 (hearing notice); *see* Gov't App'x, APP.021-28 (observe more than one Notice to Appear issued against Mr. Rios, including

while he remained detained in ICE custody). Under that posture, detention authority lies squarely in § 1226, which provides for a bond hearing before an Immigration Judge. For this reason, the Court should therefore order Respondents to treat Mr. Rios's custody as governed by § 1226 and to afford him a prompt bond hearing—or order him released if no such hearing occurs within seven days.

B. Petitioner Has a Viable Due Process Claim.

Next, the Government argues that Petitioner does not have a viable due process claim, "because mandatory detention under § 1225(b)(2) is constitutionally permissible." *See* Gov't Opp, ECF No. 11, at 14-16. But the Government has not engaged in the proper analysis for the due process violation here, which is a procedural due process violation. "[T]o determine whether a civil detention violates a detainee's due process rights, courts apply the three-pronged set out in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)." *Martinez v. Noem*, No. 5:25-CV- 1007-JKP, 2025 U.S. Dist. LEXIS 174415, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those factors are: (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." *Id.*

As to the first prong, "'[t]he interest in being free from physical detention' is 'the most elemental of liberty interests,'" and because Mr. Rios's release from government custody prior to Respondents' recent policy change created a liberty interest. *See*

Hernandez-Fernandez v. Lyons, 5:25-cv-773, at *18-19 (W.D. Tex. Oct. 21, 2025) (citing *id.*).

Secondly, an immigration bond proceeding would give Mr. Rios the opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond, it would greatly reduce the risk of an erroneous deprivation of his liberty, especially in light of the Immigration Judge's earlier grant of TPS and termination of removal proceedings in July 2025. *Cf. id.* at 21.

Thirdly, while the Government has an interest in ensuring compliance with immigration laws and border security, it likewise has an interest . And Respondents' decision to release Mr. Rios from DHS custody years ago "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Id.* at 22.

Because all three Matthews factors are present in this case, Mr. Rios would respectfully request that the Court conclude that his ongoing detention by Respondents violates his due process rights.

IV. CONCLUSION & PRAYER

For the reasons set forth above, Petitioner Martin Rios Ferreira respectfully submits that the Department of Homeland Security lacks statutory authority to detain him under 8 U.S.C. § 1225(b)(2) and that his continued confinement without a neutral custody determination violates both the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.

The Government's own filings demonstrate that it has initiated—and continues to pursue—removal proceedings under § 240, thereby subjecting Petitioner's custody to 8 U.S.C. § 1226. Yet DHS has invoked § 235(b)(2) to deny him access to any bond

hearing, trapping him in administrative limbo and depriving this Court of the orderly judicial review that Congress and the Constitution require.

Immediate judicial intervention is therefore warranted to prevent further unlawful detention and to preserve Mr. Rios's constitutional right to liberty pending resolution of his removal case. Accordingly, Petitioner respectfully prays that the Court issue a Temporary Restraining Order, and after a hearing, grant habeas relief.

DATE: November 24, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO WRIT OF HABEAS CORPUS AND REQUEST FOR INJUNCTIVE RELIEF, as well as any and all attachments thereto, on Counsel for Respondents by serving the same via email to Assistant U.S. Attorney Ann Cuce-Haag via Ann.Haag@ice.dhs.gov and/or by filing the same using the Court's CM/ECF system.

/s/ John M. Bray DATE: November 24, 2025.
John M. Bray
Counsel for Petitioner