

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FELIPE VASQUEZ AVILA,
Petitioner,

v.

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

Civil No. SA-25-CV-1363-FB

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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DISCLOSURE ON THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE

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 No unpublished, non-existent, or unverifiable authorities were generated or relied upon.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
Counsel for Petitioner

DATE: November 14, 2025.

TABLE OF AUTHORITIES

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8 U.S.C. § 1226(a) *passim*

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Matter of Yajure Hurtado, 28 I. & N. Dec. 389 (BIA 2024) 4

TO THE HONORABLE JUDGE BIERY:

Petitioner Felipe Vasquez Avila (“Mr. Vasquez”) respectfully submits this brief in reply to Respondents’ Response in Opposition, filed October 29, 2025 (ECF No. 6), to the writ of habeas corpus and request for a declaratory and injunctive relief, filed with the Court on October 10, 2025 (ECF No. 1), and as specifically directed by the Court in its Order, dated November 3, 2025 (ECF No. 5).

I. INTRODUCTION

Respondents’ opposition confirms the need for immediate judicial intervention and confirms the central defect in this case: the Government seeks to detain a long-time “§ 240 respondent”—one who has complied with every requirement of his proceedings for more than four years, who has been granted a work permit under 8 C.F.R. § 274a.12(c)(10), and whose immigration hearing was recently scheduled on the immigration court’s docket—under a detention statute that applies *only* to individuals seeking admission at the border. By recasting Mr. Vasquez, retroactively and without explanation, as an “applicant for admission” subject to 8 U.S.C. § 1225(b)(2), Respondents attempt to bypass the procedural safeguards Congress built into 8 U.S.C. § 1226, in a boldfaced attempt to strip the immigration judges of bond jurisdiction, and to insulate their unlawful detention decision from any neutral review. *See* ECF No. 6 at 6–9.

That position cannot be squared with the statutory structure that governs removal proceedings, with the Government’s own litigation posture over the last several months, or with the factual record. Respondents initiated ordinary § 240 removal proceedings against Mr. Vasquez by serving a Notice to Appear (“NTA”), following DHS’s apprehension of Mr. Vasquez in August 2025. *See* ECF No. 1-3. EOIR has set hearings and received filings in his immigration case *See* ECF No. 1-5. Following his detention by Respondents, EOIR

has scheduled Mr. Vasquez for hearings before IJ Kalenna Lee of the Pearsall Immigration Court, which was later reset to December 2, 2025. *See* Pet's App'x (new hearing notice reflecting latest hearing date). In every practical and legal sense, DHS has treated Mr. Vasquez as a § 240 respondent—with the rights, obligations, and procedural posture accompanying that status.

But everything changed in August 2025, when ICE assumed custody of Mr. Vasquez in Bastrop County, following his arrest for a simple assault charge that was later dismissed. Instead, without warning or explanation, ICE arrested him on the spot and transferred him to Bluebonnet Detention Center the next day. Only after this abrupt detention did DHS assert, for the first time in his nearly four-year-long immigration case, that Mr. Vasquez is in essentially the same position as an “arriving alien” whose custody is governed not by § 1226 but by § 1225(b)(2), thereby placing him in mandatory detention with no bond jurisdiction and no neutral forum for review. *See* ECF No. 6 at 5 (arguing that the term “applicant for admission” includes two categories: arriving aliens and those present without admission); *see id.* at 4 (arguing that Mr. Vasquez remains an applicant for admission “who is “not entitled to be admitted” and thus ineligible for release).

The Government's theory fails for two independent reasons. First, *Lopez-Arevelo v. Ripa* is directly on point and persuasive, as recently observed by Magistrate Judge David Horan of the Northern District of Texas. *See* Pet's App'x, FCR Report in *Aparicio-Rodriguez v. Noem*, 3:25-cv-02858-L-BN (N.D. Tex., Nov. 6, 2025) (agreeing with the court in *Lopez-Arevelo* and other courts in the Fifth Circuit and finding that “*Thuraissigiam* is distinguishable” in context of procedural due process argument). *Lopez-Arevelo* rejected the same maneuver DHS attempts here: reclassifying a long-standing § 240 respondent as

an applicant for admission to deny access to § 1226 custody hearings. Allowing DHS to toggle between statutory regimes, at will, would collapse the INA's careful distinction between border-processing statutes and interior-removal statutes, undermining Congress's design and authorizing precisely the kind of unchecked detention the Supreme Court has consistently been wary of. *See Jennings v. Rodriguez*, 583 U.S. 281, 289–90 (2018).

Second, DHS's position contradicts its own record. A noncitizen cannot simultaneously be (1) in active § 240 proceedings for years with a merits hearing imminent, charged as removable under § 212(a)(6)(A)(i), and granted a work permit, yet also (2) an "arriving alien" subject to § 1225(b)(2). The Government cannot retroactively convert interior-arrest custody during long-running removal litigation into border-processing detention simply because it prefers the harsher statutory framework.

In sum, Respondents' opposition does not undermine Petitioner's entitlement to relief—it reinforces it. DHS's abrupt and unexplained shift to § 1225(b)(2) detention is legally unsustainable, factually inconsistent with the record, and constitutionally fraught. The Court should reject that position and order the Government to provide Mr. Vasquez the custody process Congress prescribed: a bond hearing under § 1226(a) before a neutral arbiter, without further delay.

II. FACTUAL BACKGROUND

The material facts in this case are straightforward and largely uncontested. Mr. Felipe Vasquez Avila is a fifty-seven-year-old citizen and national of Mexico who has lived in the United States for more than two decades. He has made his home in Central Texas and was residing with his U.S. citizen wife at their longtime family residence in Dale, Texas, when ICE officers apprehended him and transferred him to the South Texas Detention Center in Pearsall, Texas. ICE's own detainee locator system confirms that he is

currently confined at that facility, located at 566 Veterans Drive, Pearsall, Texas 78061. *See* ECF No. 1-2.

Mr. Vasquez first entered the United States around 2004 without inspection. Since then, he has built deep roots in Texas: he has worked steadily as a self-employed contractor, owned property, maintained a household, raised U.S. citizen stepchildren, and remained the primary source of financial and emotional support for his family. He has no criminal convictions and no history of immigration violations. The only recent criminal event—a July 2025 arrest arising from a minor dispute—was dismissed outright a few weeks later. Despite the dismissal, ICE took custody of him shortly thereafter and initiated removal proceedings.

On August 13, 2025, DHS served Mr. Vasquez with a Notice to Appear charging him as removable under INA § 212(a)(6)(A)(i). *See* ECF No. 1-3. His case was placed on the Pearsall Immigration Court’s detained docket, where it remains pending before Immigration Judge Kalenna Lee. The EOIR Automated Case Information System reflects that he remains in § 240 proceedings and has been scheduled for hearings at the Pearsall Immigration Court located inside the detention center. *See* ECF No. 1-5.

Through counsel, Mr. Vasquez requested a custody redetermination hearing under INA § 236(a). He submitted documentation of his long-term residence, family ties, medical conditions, and substantial community support. On September 10, 2025, Immigration Judge Veronica Segovia denied the custody request—not based on any individualized analysis of danger or flight risk, but solely on the view that *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), deprived immigration judges of jurisdiction to consider bond

for noncitizens treated as “applicants for admission.” The order states expressly that the request was “denied for lack of jurisdiction.” *See* ECF No. 1-7.

Because of that jurisdictional denial, Mr. Vasquez has never received any individualized custody hearing. ICE has not conducted a discretionary parole review, nor has it provided any written explanation for why his incarceration must continue. He has remained in civil detention for several months solely due to the government’s categorical position—not because of any demonstrated risk of flight or danger.

Meanwhile, Mr. Vasquez suffers from multiple chronic medical conditions, including Type 2 diabetes mellitus, hypertension, hyperlipidemia, fatty liver disease, and elevated triglycerides. The management of these conditions requires timely medication, monitoring, and dietary control. His family has reported, and counsel has corroborated, that he is increasingly concerned he will not receive adequate medical care inside the South Texas Detention Center, where dietary accommodations are limited and medical access is inconsistent. Prolonged detention under such circumstances heightens the risk of irreversible health deterioration.

Despite these factors, Mr. Vasquez remains confined in a secure immigration detention facility, separated from his family, his home, and the doctors familiar with his medical history. He continues to pursue relief in his removal case, including cancellation of removal and, in the alternative, withholding-based protection. His continued detention—without a hearing, without an individualized assessment, and without any statutory basis for mandatory confinement—has placed him in precisely the position Congress sought to prevent when it enacted the bond provision of INA § 236(a).

Petitioner remains detained today. He has not received an individualized custody determination. He has not been afforded an opportunity to request bond before an immigration judge. And for a significant period of his detention, DHS had not even initiated the formal process Congress prescribed for placing a noncitizen into removal proceedings.

Petitioner's circumstances are therefore straightforward: he is a long-term resident of Texas with no criminal history, a record of complete compliance, a pending asylum application, and deep family connections in Central Texas—who was taken into custody solely because ICE assumed custody of him following a simple assault charge that was dismissed. Petitioner's continued detention has not been supported by a filed 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. Petitioner Challenges Only His Custody, Not His Removal Case, and § 1252 Does Not Strip Jurisdiction Over Non-Removal Challenges.

Firstly, Petitioner would reply that Respondents' jurisdictional argument rests on a fundamental mischaracterization of the petition. *See* Gov't Opp., ECF No. 6 at 7-9. Mr. Vasquez does not seek judicial review of any removal order, nor does he challenge the initiation, adjudication, or execution of his removal proceedings. His habeas petition challenges only the legality of his ongoing civil detention—specifically, his confinement without any individualized custody determination, bond hearing, or meaningful review. Federal courts have long distinguished such custody-based challenges from attempts to interfere with the removal process itself, and the Supreme Court has made clear that the

INA's jurisdiction-stripping provisions do not bar habeas review of claims that fall outside the narrow scope Congress delineated.

In *Reno v. American-Arab Anti-Discrimination Committee ("AADAC")*, the Supreme Court explained that § 1252(g) "applies only to three discrete actions" by DHS—commencing proceedings, adjudicating cases, and executing removal orders—and "cannot be expanded to cover" claims merely related to removal in a broad sense. 525 U.S. 471, 482–83 (1999). Because a challenge to immigration detention does not implicate any of these three actions, § 1252(g) has no application here. Mr. Vasquez does not contest DHS's decision to place him in proceedings or the government's ability to pursue his removal; he contests only his confinement without the process the Constitution requires.

Recent district courts considering the government's identical arguments have reached the same conclusion. In *Hernandez-Fernandez v. Lyons*, the Western District of Texas reaffirmed that a habeas petition challenging civil immigration detention "falls outside the scope" of §§ 1252(g) and 1252(b)(9), because such a petition does not seek review of a removal order or interfere with the removal process. 2025 U.S. Dist. LEXIS 206751, at 5–7 (W.D. Tex. Oct. 21, 2025). The court recognized that an individual may pursue habeas relief even while removal proceedings are pending, because a custody challenge "is independent of, and collateral to, removal proceedings."

Similarly, in *Vieira v. Anda-Ybarra*, the court rejected the argument that the INA's jurisdiction-stripping provisions bar review of a habeas challenge to ongoing detention, explaining that the petitioner "does not challenge his removal proceedings themselves, but only the constitutionality of his confinement," and that such a challenge "remains within the traditional core of habeas jurisdiction." 2025 U.S. Dist. LEXIS 203930, at 6 (W.D. Tex.

Oct. 16, 2025). The court observed that construing § 1252 to bar review would “effectively insulate prolonged detention from all judicial scrutiny,” a result incompatible with both the habeas statute and the Constitution.

Just days later, in *Martinez v. Noem*, the same district reached the identical conclusion when faced with the government’s argument that §§ 1252(b)(9) and 1252(g) stripped jurisdiction over a petition challenging detention under the government’s new interpretation of § 1225(b). The court again held that these provisions do not apply because the petitioner was “not challenging a removal order,” but rather “the legality of his confinement.” 2025 U.S. Dist. LEXIS 209332, at 4–5 (W.D. Tex. Oct. 21, 2025).

The principle running through *AADC*, *Hernandez-Fernandez*, *Vieira*, and *Martinez* is both clear and controlling: when a petitioner challenges only the fact or duration of his detention, and not the government’s authority to remove him, the INA’s jurisdiction-stripping provisions do not apply. Mr. Vasquez’s petition falls squarely within that well-established category. He seeks only a constitutionally required individualized custody determination—or release if the government cannot justify continued confinement. Because that claim is wholly independent of his pending removal proceedings, § 1252 poses no bar to this Court’s jurisdiction under 28 U.S.C. § 2241.

B. Section 1225(b) Does Not Strip the Court of Authority: It Is a Detention Statute, Not a Jurisdiction-Stripping Statute.

Respondents also argue that the Court lacks jurisdiction because Mr. Vasquez is allegedly subject to “mandatory detention” under 8 U.S.C. § 1225(b), which, in their view, forecloses judicial review but still complies with due process. *See Gov’t Opp.*, ECF No. 6 at 9-11. This contention misunderstands both the structure of the statute and the nature of habeas jurisdiction. Section 1225(b) regulates DHS’s detention authority, not

the federal courts' habeas authority, and nothing within its text purports to divest district courts of jurisdiction to adjudicate constitutional challenges to civil confinement.

The Supreme Court has long cautioned that jurisdiction-stripping provisions must be interpreted narrowly and only where Congress has spoken with clear intent. In *Reno v. AADC*, the Court emphasized that the INA's limits on judicial review cannot be expanded beyond their precise terms, and that courts must resist efforts to sweep into those provisions claims that Congress did not clearly intend to remove from the jurisdiction of Article III courts. 525 U.S. at 482–83. Section 1225(b) contains no such clear statement. It is a detention statute, not a jurisdictional bar. It governs when DHS may detain certain noncitizens, but it says nothing about eliminating the historic and constitutional function of habeas review.

Recent district court decisions analyzing this exact argument confirm the point. In *Hernandez-Fernandez v. Lyons*, the court rejected the government's assertion that § 1225(b) "mandates" detention in a manner that would insulate custody decisions from judicial scrutiny. The court explained that even if DHS believed § 1225(b) required detention, that interpretation "does not diminish this Court's responsibility under § 2241 to ensure that ongoing civil confinement complies with constitutional requirements." 2025 U.S. Dist. LEXIS 206751, at 5–7 (W.D. Tex. Oct. 21, 2025). The court reaffirmed that constitutional claims concerning the legality of detention fall outside the INA's jurisdiction-stripping framework.

The court in *Vieira v. Anda-Ybarra* confronted the identical government argument advanced here: that § 1225(b) creates an unreviewable category of mandatory detention from which the federal courts are excluded. The court rejected the argument outright,

holding that even if a noncitizen falls within § 1225(b), “the statute does not, and constitutionally could not, preclude habeas review of prolonged, unexamined detention.” 2025 U.S. Dist. LEXIS 203930, at 6 (W.D. Tex. Oct. 16, 2025). The court emphasized that the government’s reading would effectively “eliminate all judicial oversight of civil immigration detention,” a result incompatible with the Suspension Clause and the core purpose of § 2241.

Likewise, in *Martinez v. Noem*, the Western District of Texas rejected the government’s contention that § 1225(b)’s detention language forecloses habeas review. The court recognized that “[n]othing in § 1225(b) purports to limit the jurisdiction of Article III courts” and that the government’s expansive interpretation had been rejected by “the overwhelming majority” of district courts to consider the issue. 2025 U.S. Dist. LEXIS 209332, at 4–6 (W.D. Tex. Oct. 21, 2025). The court treated § 1225(b) as it is written—as a directive to the Executive concerning detention authority—not as a barrier to judicial review.

Taken together, *AADC*, *Hernandez-Fernandez*, *Vieira*, and *Martinez* make one principle unmistakably clear: § 1225(b) does not extinguish the Court’s authority to review the legality of civil confinement under 28 U.S.C. § 2241. Even if DHS asserts that § 1225(b) limits its discretion to release certain noncitizens, that assertion does not—and cannot—override the Court’s obligation to evaluate whether the Constitution permits the continued detention of a person who has received no individualized custody hearing and no meaningful process of any kind.

Mr. Vasquez seeks only that constitutional minimum. Section 1225(b) does not prevent this Court from determining whether his months-long detention without any

neutral review comports with due process. Because that inquiry lies at the core of the habeas function, this Court retains jurisdiction notwithstanding the government’s strained reading of § 1225(b).

C. Section 1252(e) Does Not Apply Because Petitioner Is Not in “Expedited Removal” and Is Not Challenging a Removal Order.

Respondents’ reliance on 8 U.S.C. § 1252(e) is also misplaced. *See* Gov’t Opp., ECF No. 6, at 7-8. Section 1252(e) governs a narrow category of cases involving expedited removal orders under § 1225(b)(1). It limits judicial review only where an individual has already been subjected to a *formal expedited removal order* and seeks to challenge the validity of that removal order itself. Mr. Vasquez, however, is not in expedited removal, has never received an expedited removal order, and does not challenge any order of removal—expedited or otherwise. His petition concerns only the legality of his civil detention. Section 1252(e) therefore has no application here.

The Supreme Court has held that the INA’s jurisdictional limits must be interpreted according to their precise terms, and courts may not expand them to cover matters Congress did not clearly include. In *Reno v. AADC*, the Court emphasized that the INA’s restrictions on judicial review “cannot be read in sweeping fashion” and must be confined to the specific actions Congress enumerated. 525 U.S. at 482–83. Section 1252(e) speaks only to expedited removal challenges; it does not purport to bar review of detention claims brought by individuals in regular § 240 removal proceedings like Mr. Vasquez.

District courts applying this principle in recent cases have consistently rejected the government’s attempt to invoke § 1252(e) to block review of habeas challenges to civil detention. In *Hernandez-Fernandez v. Lyons*, the Western District of Texas

explained that § 1252(e) “has no bearing” where the petitioner “was not subjected to expedited removal” and instead “faces full removal proceedings under § 240.” 2025 U.S. Dist. LEXIS 206751, at 5–7 (W.D. Tex. Oct. 21, 2025). The court held that because the petitioner challenged only his custody, not the validity of any removal order, § 1252(e) did not restrict the court’s jurisdiction.

The court in *Vieira v. Anda-Ybarra* reached the same conclusion. There, the petitioner—like Mr. Vasquez—was placed in § 240 proceedings and challenged only his detention. The court rejected DHS’s reliance on § 1252(e), noting that the statute “applies exclusively to challenges to expedited removal orders” and “does not apply where no such order exists.” 2025 U.S. Dist. LEXIS 203930, at 6 (W.D. Tex. Oct. 16, 2025).

Because the petitioner’s habeas claim was independent of any removal adjudication, the court concluded that § 1252(e) had no jurisdictional effect.

Likewise, in *Martinez v. Noem*, the court rejected the government’s argument that § 1252(e) barred jurisdiction over a habeas petition challenging detention under the government’s recent interpretation of § 1225(b). Judge Cardone held that § 1252(e) “does not apply” where the petitioner “is not in expedited removal proceedings” and is instead contesting “the legality of his confinement.” 2025 U.S. Dist. LEXIS 209332, at 4–5 (W.D. Tex. Oct. 21, 2025). The court explained that applying § 1252(e) in such circumstances would “stretch the statute beyond its terms” in violation of *AADC*.

In short, courts across this Circuit and beyond have uniformly held that § 1252(e) is irrelevant where, as here, the petitioner is in ordinary removal proceedings and challenges only the fact of his civil detention. Mr. Vasquez has never been placed in expedited removal, never received an expedited removal order, and raises no challenge to

the government's ability to remove him if such an order ever issues. His habeas petition falls entirely outside the narrow confines of § 1252(e), and that statute offers Respondents no jurisdictional defense.

D. A § 2241 Petition Is the Proper and Historically Recognized Mechanism for Challenging Unlawful Civil Immigration Detention

Viewed against the run of recent decisions issued out of courts in the Western District of Texas, Mr. Vasquez is not an outlier—he is the next case in a now-familiar pattern. In *Hernandez-Fernandez*, *Vieira*, and *Martinez*, each petitioner was (1) in § 240 removal proceedings, (2) held under the government's new § 1225(b) "mandatory detention" theory, (3) denied a meaningful bond hearing because the immigration judge disclaimed jurisdiction, and (4) left with no forum except a § 2241 habeas petition to test the legality of ongoing confinement. In each of those cases, the court held that § 2241 was not only available, but the *proper* vehicle to challenge that detention and to require some neutral, individualized custody review.

Mr. Vasquez stands in exactly the same shoes. Like those petitioners, he is not asking this Court to decide whether he is ultimately removable, or to revisit any removal order—there is none. He is asking the Court to do what *Reno v. ADC* says Congress has not taken away: exercise habeas jurisdiction over a challenge that is collateral to removal, aimed solely at the lawfulness of his present confinement. 525 U.S. 471, 482–83 (1999). If *Hernandez-Fernandez*, *Vieira*, and *Martinez* warranted § 2241 review on materially indistinguishable facts, then Mr. Vasquez's petition does too. To hold otherwise here would not distinguish those cases; it would silently overrule them, and in the process erase the core habeas function that all four decisions—*Reno* included—recognize remains intact for immigration detainees.

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

Finally, Petitioner would contend that Respondents' core argument—that Mr. Vasquez 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. 6 at 5-7. 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. Vasquez 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.

Congress 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;
- § 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.

Here, there is no dispute DHS served Mr. Vasquez with a Notice to Appear on August 3, 2025, charging him under § 212(a)(6)(A)(i), when it apprehended him. *See* ECF No. 1-3 (observe charge of removal in NTA). Nor is there any dispute that EOIR docketed the case and set hearings. *See* ECF No. 1-5 (hearing notice); *see* Pet’s App’x (observe new hearing date). These are the hallmarks of § 240 proceedings. Nothing in the record suggests that DHS ever withdrew the NTA, terminated proceedings, or reclassified him for expedited removal proceedings or any border-processing provision.

For more than four years, the Government unequivocally—and correctly—treated him 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 prefer 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.

Matter of 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 section 240, detention is governed by section 236 [§ 1226].” *Id.* at 510.

This principle applies with overwhelming force here. DHS did not merely place Mr. Vasquez into § 240 proceedings—it vested jurisdiction with the immigration court by filing the NTA with the EOIR clerk, who then scheduled Petitioner for a hearing in his case in immigration court. Respondents cannot now retroactively disavow § 240 and claim that the detention statute applying to border inspections governs instead.

Thus, once DHS initiated a § 240 case against Mr. Vasquez 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. Vasquez 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.

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

Accepting Respondents' argument would virtually erase the structure of 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. 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 Jude Cardone, of the U.S. District Court for the Western District of Texas, flagged in a similar habeas case, which rejected DHS's attempt to toggle between statutory regimes to deny access to bond hearings. *See Lopez-Arevelo v. Ripa*, EP-25-cv-337, 2025 WL 2691828, at *7 (W.D. Tex. Sep. 22, 2025). In *Lopez-Arevelo*, Judge Cardone warned that such a maneuver would allow DHS to collapse Congress's carefully constructed framework and impose detention without neutral review. That concern applies with full force here.

IV. CONCLUSION & PRAYER

For the reasons set forth above, Petitioner Felipe Vasquez Avila 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.

Judicial intervention is thus warranted to prevent further unlawful detention and to preserve Mr. Vasquez's constitutional right to liberty pending resolution of his removal case. Accordingly, Petitioner respectfully prays that the Court grant Petitioner a hearing, and afterward, grant his request for a TRO and/or preliminary injunctive relief.

DATE: November 14, 2025.

Respectfully submitted,

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COUNSEL FOR PETITIONER

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 MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, as well as any and all attachments thereto, on Counsel for Respondents by serving the same via email to Assistant U.S. Attorney Lacy McAndrew via Lacy.McAndrew@usdoj.gov and/or by filing the same using the Court's CM/ECF system.

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

DATE: November 14, 2025.