

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

DUAHIT JOB GUEVARA-VASQUEZ,

Petitioner,

vs.

ROSE THOMPSON, Warden of Karnes County  
Immigration Processing Center, *et al.*,

Respondents.

Case No. 5:25-cv-01372-XR

**PETITIONER'S REPLY BRIEF TO FEDERAL RESPONDENTS' RESPONSE TO  
PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, Mr. Duahit Job Guevara-Vasquez ("Mr. Guevara-Vasquez"), timely submits his reply per this Court's Order of October 29, 2025, not later than seven days after Respondents filed their response on November 6, 2025.

**RELEVANT FACTUAL AND PROCEDURAL HISTORY**

Mr. Guevara-Vasquez entered the United States in February 2018 and has resided here continuously since that time. Upon entry, he was apprehended and detained by the Department of Homeland Security ("DHS") until he passed a credible fear interview. Thereafter, the DHS issued a Notice to Appear ("NTA") charging him with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed him in removal proceedings, and released him on a bond of \$7,500, specifically stating in its bond decision that the bond was authorized "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act" (8 U.S.C. § 1226). ECF No.1-2 at 1; ECF No. 1-3 at 1. Subsequently, the immigration court withdrew the 8 U.S.C. § 1182(a)(7)(A)(i)(I) charge but sustained the 8 U.S.C. § 1182(a)(6)(A) charge. ECF No. 1-3 at 2. On information and belief, the DHS did not appeal

the withdrawal of the 8 U.S.C. § 1182(a)(7)(A)(i)(I) charge. Ultimately, on August 17, 2022, the DHS and Mr. Guevara-Vasquez entered into an agreement to dismiss his removal proceedings. ECF No. 1-3 at 2; ECF No. 1-5 at 1. Yet, despite having had no brushes with law enforcement of any kind since August 17, 2022, Respondents arbitrarily re-arrested him on October 14, 2025, issued a new NTA charging him with the same admissibilities as in 2018, and kept him detained and separated from his family and friends for nearly a month without a bond hearing. ECF No. 1-4 at 4.

Having no other recourse, on October 24, 2025, Mr. Guevara-Vasquez filed a Petition with this Court, seeking a writ of habeas corpus for his immediate release or, at the very least, an individualized bond hearing before a neutral immigration judge. In his Petition, Mr. Guevara-Vasquez asserted that (1) he is not subject to mandatory detention under 8 U.S.C. § 1225 but rather, he is subject to detention under 8 U.S.C. § 1226, which entitles him to a bond hearing; and (2) his continued detention without a bond hearing violates the Administrative Procedure Act (“APA”) and his right to due process under the Fifth Amendment.

On November 6, 2025, Respondents filed their response opposing Mr. Guevara-Vasquez’s request. ECF No. 6. Notably, Respondents did not assert that Mr. Guevara-Vasquez’s detention is authorized pursuant to 8 U.S.C. § 1225(b)(2). ECF No. 6 at 2. Rather, Respondents argued that Mr. Guevara-Vasquez’s detention is subject to mandatory detention without a bond hearing under 8 U.S.C. § 1225(b)(1). ECF No. 6 at 2-8. Respondents further argued that this Court lacks jurisdiction under 8 U.S.C. §§ 1252(g) and 1252(b)(9) and that Mr. Guevara-Vasquez is not entitled to any process beyond what the statute provides. ECF No. 6 at 8-11.

This reply brief follows.

## ARGUMENT

### I. Neither 8 U.S.C. § 1252(g) Nor § 1252(b)(9) Strips This Court Of Jurisdiction

In their response, Respondents asserted that this Court lacks jurisdiction under 8 U.S.C. §§ 1252(g) and 1252(b)(9). ECF No. 6 at 8-9. Contrary to Respondents' assertion, however, neither provision bars this Court from adjudicating this instant petition.

First, 8 U.S.C. § 1252(g) provides that “no court shall have jurisdiction to hear 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.” Respondents contended that because Mr. Guevara-Vasquez’s detention “arises directly from the decision to commence and/or adjudicate removal proceedings against him after encountering him upon unlawful entry at the border,” his claim is barred under 8 U.S.C. § 1252(g). ECF No. 6 at 8.

But, Respondents’ argument rests on a faulty premise as it seeks to “sweep in any claim that can technically be said to ‘arise from’ the three listed actions” identified in 8 U.S.C. § 1252(g), a premise that both the Supreme Court of the United States and other courts in this District have already rejected. *See Jennings v. Rodriguez*, 583 U.S. 281, 294, 138 S.Ct. 830, 841 (2018); *Lopez-Arevelo v. Ripa*, --- F.Supp.3d ----, 2025 WL 2691828, at \*3-5 (W.D. Tex. Sept. 22, 2025) (rejecting § 1252(g) argument); *Vieira v. Anda-Ybarra*, --- F. Supp. 3d ----, 2025 WL 2937880, at \*3 (W.D. Tex. Oct. 16, 2025) (same). Notably, in *Jennings*, the Supreme Court explicitly stated, “[w]e did not interpret [§ 1252(g)] to sweep in any claim that can technically be said to “arise from” the three listed actions of the Attorney General . . . [i]nstead, we read the language to refer to just those three specific actions themselves,” i.e., the decision or action to commence proceedings, adjudicate cases, or execute removal orders. 583 U.S. at 294, 138 S.Ct. at 841 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-83, 119 S.Ct.

936, 142 L.Ed.2d 940 (1999)).

Here, Mr. Guevara-Vasquez is not challenging Respondents' decision to execute a removal order, commence proceedings, or adjudicate his removal proceedings. Rather, Mr. Guevara-Vasquez is challenging his continued detention without a bond hearing pending his removal proceedings, and "[s]uch claims are not barred by § 1252(g)." *Lopez-Arevelo*, 2025 WL 2691828 at \*4 (citing *Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278, at \*2-3 (W.D. La. Sept. 11, 2025)).

Neither does 8 U.S.C. § 1252(b)(9) strip this Court of jurisdiction. 8 U.S.C. § 1252(b)(9) provides that "[j]udicial 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 subchapter shall be available only in judicial review of a final order under this section." Respondents argued that the issue of whether Mr. Guevara-Vasquez is an applicant for admission subject to 8 U.S.C. § 1225(b) detention is a question of statutory interpretation and/or application that must first be decided by an immigration judge pursuant to 8 U.S.C. § 1225(b)(4), and that thereafter, only the court of appeals—not this Court—may review such questions under 8 U.S.C. § 1252(b)(9). ECF No. 6 at 8-9.

But, in *Jennings*, the Supreme Court found that 8 U.S.C. § 1252(b)(9) did not preclude review of noncitizens' claims seeking bond hearings pending resolution of their immigration proceedings. 583 U.S. at 294, 138 S.Ct. at 841. In so holding, the Supreme Court found it significant that the noncitizens were "not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined." 583

U.S. at 294-95, 138 S.Ct. at 841. Instead, the noncitizens were challenging the extent of the government's authority to detain them without a bond hearing and the constitutionality of such detention. 583 U.S. at 292-95, 138 S.Ct. at 840-41.

Similarly, contrary to Respondents' assertion in their response, here, Mr. Guevara-Vasquez is not contesting the government's decision to detain him in the first place or to seek removal. ECF No. 6 at 8. Rather, he contends that the government's detention of him without providing a bond hearing violates his constitutional rights. Under *Jennings*, this Court retains jurisdiction to adjudicate such claims. Other courts in this District have reached the same conclusion. *See, e.g., Erazo Rojas v. Noem et al.*, No. 3:25-cv-00443-KC, 2025 WL 3038262, at \*2 (W.D. Tex. Oct. 30, 2025) (rejecting § 1252(b)(9) and § 1225(b)(4) argument); *Vieira*, 2025 WL 2937880, at \*3 (rejecting § 1252(b)(9) argument).

Likewise, 8 U.S.C. § 1225(b)(4) does not bar jurisdiction of this Court. Here, in relying on 8 U.S.C. § 1225(b)(4) to argue that the jurisdictional bar of 8 U.S.C. § 1252(b)(9) applies, Respondents fundamentally misconstrued § 1225(b)(4) and its relation to § 1252(b)(9). ECF No. 6 at 8-9. 8 U.S.C. § 1225(b)(4) states that “[t]he decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title.” Plainly, this provision is inapplicable to Mr. Guevara-Vasquez, who has not received any favorable determination of his admissibility. Additionally, this provision appears to address internal DHS challenges to a favorable admissibility decision—that is, when one immigration officer contests another officer's decision to admit a noncitizen. It has nothing to do with the scope of DHS's detention authority or the jurisdiction of the district courts and the courts of

appeals over noncitizens' detention challenges. Indeed, as another court in this District recently observed, § 1225(b)(4) does "not speak to the distinction between detention and deportability that this Court has explained is essential to the jurisdictional analysis." *See Erazo Rojas*, 2025 WL 3038262, at \*2. Accordingly, Respondents' reliance on 8 U.S.C. § 1225(b)(4) to invoke § 1252(b)(9)'s jurisdictional bar is misplaced.

In sum, through this Petition, Mr. Guevara-Vasquez challenges only the legality of his ongoing detention without a bond hearing. He is not challenging Respondents' decision to execute a removal order, to commence or adjudicate removal proceedings, or to detain him in the first place. Therefore, this Court's jurisdiction is not barred by either 8 U.S.C. § 1252(b)(9) or § 1252(g).

**II. Mr. Guevara-Vasquez Is Subject To Detention Under 8 U.S.C. § 1226, Not 8 U.S.C. § 1225(b)(1)**

Respondents maintained that "Petitioner is detained under § 1225(b)(1), not § 1225(b)(2)," specifically 8 U.S.C. § 1225(b)(1)(A)(ii), because he was "an applicant for admission encountered within two years of his unlawful entry who established a credible fear." ECF No. 6 at 2, 6. Mr. Guevara-Vasquez agrees that he is not detained under 8 U.S.C. § 1225(b)(2) but disputes that he is detained under 8 U.S.C. § 1225(b)(1). Respondents' argument not only upends nearly three decades of settled agency practice and judicial interpretation on 8 U.S.C. § 1225 and § 1226, but also contravenes the plain language of the statute.

As stated in the Petition, for nearly three decades, Respondents consistently considered noncitizens present in the United States without having been admitted or paroled as detained under 8 U.S.C. § 1226(a), thus entitling them to bond hearings. *See, e.g.*, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (stating that

“[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”). Yet, only recently have Respondents asserted a novel interpretation of 8 U.S.C. §§ 1225 and 1226, treating all noncitizens who were not previously admitted to the United States and who are encountered in the interior of the country any time after their entry as “applicants for admission” subject to mandatory detention. Ultimately, the Board of Immigration Appeals adopted this position in a precedential decision, *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all noncitizens present in the United States without admission or parole, no matter how long they have been present in the country, are ineligible for bond hearings before an immigration judge under 8 U.S.C. § 1225(b)(2). But this position completely defies the plain language of 8 U.S.C. § 1225 and has universally been rejected by federal courts across the nation.

Respondents here do not contend that Mr. Guevara-Vasquez is subject to § 1225(b)(2) detention, but instead asserted that he is detained under § 1225(b)(1) because, seven years ago, he was detained at the border and then passed a credible fear interview. But, not only is Respondents’ position inconsistent with the one they took in 2018, it is also contrary to the plain language of § 1225(b)(1).

8 U.S.C. § 1225(b)(1), entitled “Inspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled,” authorizes mandatory detention only for two specific classes of noncitizens pending their expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i) states,

If an immigration officer determines that an alien (other than an alien described in

subparagraph (F)<sup>1</sup>) who is arriving in the United States or is described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.

Clause (iii) of 8 U.S.C. § 1225(b)(1)(A) further provides,

- (I) In general. The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.
- (II) Aliens described. An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

8 U.S.C. § 1225(b)(1)(A)(iii).

Reading these provisions together, the plain language of 8 U.S.C. § 1225(b)(1) makes clear that mandatory detention applies only to noncitizens who were inadmissible under 8 U.S.C. § 1182(a)(6)(C) (fraud or misrepresentation) or § 1182(a)(7) (lack of valid entry document), and only if they (1) are arriving aliens, or (2) have not been admitted or paroled and have not been physically present in the United States preceding the relevant determination of inadmissibility.

Here, Mr. Guevara-Vasquez has never been designated as an arriving alien, as evidenced by both his 2018 and 2025 NTAs. ECF No. 6 at 3-1, 4-1. Thus, to contend that Mr. Guevara-Vasquez's present detention is authorized under 8 U.S.C. § 1225(b)(1), Respondents must rely on the two-year physical presence provision of 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Yet, Respondents overlook a critical statutory requirement: to be subject to 8 U.S.C. § 1225(b)(1)(A)(iii)(II), Mr. Guevara-Vasquez must be determined to be inadmissible under either

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<sup>1</sup> This subparagraph is not applicable in this matter, as it only applies to noncitizen who "is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry," which Mr. Guevara-Vasquez is not. 8 U.S.C. § 1225(b)(1)(F).

8 U.S.C. § 1182(a)(6)(C) or 8 U.S.C. § 1182(a)(7), and that determination must have been made within two years of the noncitizen's entry into the United States. While Mr. Guevara-Vasquez was originally charged under both 8 U.S.C. § 1182(a)(7) and 8 U.S.C. § 1182(a)(6)(A)(i) at the time of his entry, the § 1182(a)(7) charge was withdrawn by the immigration court, and DHS did not appeal. ECF No. 6 at 2, 3-2. Additionally, DHS later agreed to dismiss Mr. Guevara-Vasquez's removal proceedings altogether. ECF No. 6 at 5-1. At that point, any expedited removal process that Mr. Guevara-Vasquez might once have been subject to, and any "full" removal proceedings arising from it, had ended. By not appealing the withdrawal of the § 1182(a)(7) charge and by agreeing to dismissal of the proceedings, DHS therefore abandoned its right to rely on that charge to subject Mr. Guevara-Vasquez to mandatory detention. Furthermore, by releasing Mr. Guevara-Vasquez in 2018 pursuant to the authority under 8 U.S.C. § 1226, DHS effectively allowed Mr. Guevara-Vasquez to effectuate an entry into the United States and to remain present in the United States for over seven years. ECF No. 6 at 2. Accordingly, DHS's subsequent decision in 2025 to re-charge Mr. Guevara-Vasquez under § 1182(a)(7) through a newly issued NTA cannot retroactively place him within the ambit of § 1225(b)(1)(A)(iii)(II), because that charge was made after he had entered and been present in the United States for more than two years. Moreover, the newly issued NTA itself confirms that Mr. Guevara-Vasquez is no longer subject to expedited removal under 8 U.S.C. § 1225(b)(1), as the boxes referencing his credible fear interview and any prior expedited removal order were left unchecked—unlike in his 2018 NTA. ECF No. 4-1; ECF No. 3-1. Thus, 8 U.S.C. § 1225(b)(1)(A)(iii)(II) cannot authorize Mr. Guevara-Vasquez's present detention.

Indeed, the majority of federal courts that have addressed this issue, including at least one other court from this District, have agreed with Mr. Guevara-Vasquez's position. *See Lopez-*

*Arevelo*, 2025 WL 2691828 at \*10 (finding that a noncitizen who had passed a credible fear interview, was released on his own recognizance by the DHS, and was re-detained three years later was not precluded from pursuing habeas relief because “he challenges his detention, not his deportability . . . [a]nd . . . because he was detained after years of presence in the United States, rather than on the threshold of initial entry”); *Rico-Tapia v. Smith*, --- F.Supp.3d ----, 2025 WL 2950089, at \*6-7 (D. Haw. Oct. 10, 2025) (finding that § 1225(b) does not apply to “aliens who are already present in the country” and thus does not apply to Rico-Tapia, who had been present in the United States for nearly three years at the time of his detainment, notwithstanding that he was paroled into the United States, then passed a credible fear interview, and was later transferred to “full removal proceedings,” which were eventually dismissed); *Loja Lema v. FCI Berlin, Warde*, --- F.Supp.3d ----, 2025 WL 3079160 at \*2-3 (D.N.H. Nov. 4, 2025) (finding that although Loja Lema was originally detained near the border under § 1225, because DHS later released him under § 1226, the government “failed to reserve its right to treat Loja ‘in the same manner as that of any other applicant for admission to the United States’” and thus cannot now claim that Loja Lema’s re-detention fell under § 1225) (citing *De Andrade v. Moniz*, No. 25-CV-12455-FDS, --- F.Supp.3d ----, 2025 WL 2841844 at \* 5 (D. Mass. Oct. 7, 2025)); *De Andrade*, 2025 WL 2841844 at \*5-6 (finding that De Andrade was originally detained under § 1225 and that, although his conditional parole based on § 1226 violated the statute, his re-detention was nonetheless governed by § 1226 because “[t]he act of parole extinguished the legal fiction that a non-citizen who is physically present in the United States has, in fact, not effected an entry into the United States . . . [a]nd once having entered, petitioner can no longer be treated as an ‘applicant for admission’ subject to expedited removal and mandatory detention under § 1225”).

Lastly, Respondents’ reliance on the U.S. Attorney General (“USAG”)’s decision in



*Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), is misplaced. Foremost, this Court owes no deference to *Matter of M-S-* following the Supreme Court’s decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413, 144 S.Ct. 2244 (2024). See *Jimenez v. FCI Berlin, Waden*, --- F. Supp. 3d ---, 2025 WL 2639390, at \*6 n.7 (D.N.H. Sept. 8, 2025) (finding that *Matter of M-S-* misconstrues § 1225(b)(1)(B)(ii)’s plain language and is not persuasive) (citing *Loper Bright*, 603 U.S. at 386). Additionally, even assuming *Matter of M-S-* was correctly decided, it does not apply here. As the USAG expressly stated in *Matter of M-S-*, “[t]his case concerns aliens subject to expedited removal.” 27 I&N Dec. at 511. There, the noncitizen was transferred from expedited removal proceedings to “full” removal proceedings after passing a credible fear interview, and DHS determined that he was to remain detained during the pendency of his removal proceedings. *Id.* at 515. The issue was whether such a person was entitled to a bond hearing before an immigration judge during the pendency of those proceedings. *Id.* But here, Mr. Guevara-Vasquez is presently not subject to expedited removal because his expedited removal order was vacated in 2018, and any related expedited removal process, or “full” removal proceedings arising from it, was dismissed in 2022. ECF No. 3-1; ECF No. 5-1. Thus, his present detention can no longer be considered part of the § 1225(b)(1)/credible fear process. Therefore, *Matter of M-S-* does not mandate detention of Mr. Guevara-Vasquez.

In sum, regardless of the statutory authority that may have justified Mr. Guevara-Vasquez’s detention at the time of his initial entry in 2018, his current detention is governed by 8 U.S.C. § 1226—not § 1225(b)(1)—because at the time of his arrest preceding his current detention, he was not an arriving alien, his original 8 U.S.C. § 1182(a)(7)(A)(i)(I) charge (determined at the time of entry) was withdrawn, his prior removal proceedings (initiated at the time of entry) had been dismissed, he had effectuated an entry into the United States, and he had

been physically present in the country for more than two years. Additionally, as Respondents conceded, Mr. Guevara-Vasquez is not detained under 8 U.S.C. § 1225(b)(2). Therefore, Mr. Guevara-Vasquez's present detention must necessarily fall under 8 U.S.C. § 1226, entitling him to a bond hearing.

### **III. Mr. Guevara-Vasquez's Ongoing Detention Violates His Due Process Right**

In his Petition, Mr. Guevara-Vasquez asserted that his ongoing detention without a bond hearing violates his due process rights under the Fifth Amendment. In response, Respondents argued that due process was satisfied because Mr. Guevara-Vasquez had received the process provided by 8 U.S.C. § 1225—namely, the issuance of an NTA and the opportunity to be heard by an immigration judge. ECF No. 6 at 10. But, at least one other court in this District has already rejected such an argument. *Erazo Rojas*, 2025 WL 3038262, at \*2 (finding that “the process Erazo Rojas has received in relation to his removal is entirely distinct from the process he has received in relation to his detention, and whether that process is sufficient under the Fifth Amendment”). As explained above, Mr. Guevara-Vasquez's detention is governed neither by 8 U.S.C. § 1225(b)(1) nor by § 1225(b)(2), but by 8 U.S.C. § 1226. Thus, he is entitled to a bond hearing, and any continued detention without such a hearing constitutes a clear violation of his due process rights.

As stated in his Petition, Mr. Guevara-Vasquez's detention violates due process under the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893 (1976). First, Mr. Guevara-Vasquez has a strong private interest to remain free from physical detention, especially when he was released from immigration custody in 2018 and spent over seven years at liberty in the United States. See *Lopez-Arevelo*, 2025 WL 2691828 at \*10 (even assuming that government's new interpretation of 8 U.S.C. § 1225 is permissible and that going forward,

noncitizens arrested near the border must be subjected to mandatory detention, ‘Respondents fail to contend with the liberty interests created by the fact that the Petitioner[ ] in this case [was] released on recognizance *prior to the manifestation of this interpretation*’”) (citing *Espinoza v. Kaiser*, No. 25-cv-1101, 2025 WL 2581185, at \*10 (E.D. Cal. Sept. 5, 2025)). Second, there is a high risk that Mr. Guevara-Vasquez is erroneously deprived of his liberty, as evidenced by the fact that there was no individualized determination made either prior to or contemporaneously with the decision to detain him in October 2025, and there was no change in circumstances between the time the DHS released him on bond in 2018 to his re-arrest and detention in 2025. While Respondents suggest that Mr. Guevara-Vasquez could seek release through humanitarian parole by DHS, they also concede that such requests are “sparsely granted in only the most extenuating circumstances,” and the humanitarian parole process itself suffers from numerous deficiencies, “including the lack of a neutral arbiter, a statement of reasons, or an appeal process.” *Erazo Rojas*, 2025 WL 3038262, at \*3 (citing *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588, at \*11 (W.D. Tex. Oct. 2, 2025)); ECF No. 6 at 11. Third, the only government interest that Respondents allege is at stake is its “interest in enforcing the immigration laws,” ECF No. 6 at 2, but Mr. Guevara-Vasquez’s “constitutional interest in his liberty exists above and apart from the INA.” *Erazo Rojas*, 2025 WL 3038262, at \*4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94, 145 S.Ct. 1364, 1367 (2025)). And while the government has an interest in ensuring that noncitizens facing removal do not pose a danger to the public or abscond during the pendency of their removal proceedings, the DHS already determined in 2018 that Mr. Guevara-Vasquez was neither a flight risk nor a danger to the community and released him on bond, and there has been no change in circumstances since that determination. Thus, Mr. Guevara-Vasquez’s continued detention serves no significant governmental interest.

In sum, all three *Mathews* factors tip decisively in favor of Mr. Guevara-Vasquez. Therefore, this Court should find that Mr. Guevara-Vasquez's ongoing detention without a bond hearing contravenes his due process rights under the Fifth Amendment.

**IV. Mr. Guevara-Vasquez's Ongoing Detention Violates the APA**

In a footnote in their opposition brief, Respondents obliquely asserted that "the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted." ECF No. 6-1 n.2. Respondents raised this issue because Mr. Guevara-Vasquez only paid the \$5.00 fee for a habeas corpus petition, yet also asserted an APA claim, which Respondents contended was a non-habeas claim. However, Mr. Guevara-Vasquez asserts that any claim, APA or otherwise, that challenges his illegal detention is a viable habeas claim. Seemingly satisfied with their cursory "dismissal" assertion, Respondents made no effort to substantively address Mr. Guevara-Vasquez's APA claim. ECF No. 6.

In arguing for severance or dismissal, Respondents relied on *Ndudzi v. Castro*, No. SA-20-CV-0492-JKP, 2020 WL 3317107 (W.D. Tex. June 18, 2020). ECF No. 6-1 n.2. In *Ndudzi*, the petitioner, Ndudzi, brought a habeas action raising two claims: (1) seeking immediate release from immigration detention, and (2) challenging the condition of her detention based on the government's failure to provide adequate medical care during the COVID-19 pandemic. 2020 WL 3317107 at \*1. Ndudzi paid the \$5.00 filing fee for habeas actions, and the parties disputed whether her conditions-of-confinement claim could properly be brought through habeas. *Id.* at \*1, 4. After examining several applicable precedents, the Court held that "[w]hen one is confined by the government and seeks 'release from custody,' the proper vehicle is a habeas petition." *Id.* (citing *Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997)). Additionally, the Court stated, "The Fifth Circuit has thus 'adopted a simple, bright-line rule for resolving such

questions’ – a non-habeas suit is the proper vehicle when ‘a favorable determination would not automatically entitle the detainee to accelerated release.’” *Id.* (citing *Carson*, 112 F.3d at 820-21). Ultimately, the Court did not reach the issue of whether Ndudzi could pursue her conditions-of-confinement claim through habeas, finding that question moot following her transfer to another facility. *Id.* at \*5.

*Ndudzi* is readily distinguishable from the instant case. Unlike *Ndudzi*, here, Mr. Guevara-Vasquez does not challenge the conditions of his confinement. Rather, he seeks immediate release based on multiple violations of his due process rights and the APA. As recognized by both the Court in *Ndudzi* and the Fifth Circuit Court of Appeals, such claims are properly raised through habeas. *See* 2020 WL 3317107 at \*4 (citing *Carson*, 112 F.3d at 820). Applying the Fifth Circuit’s “simple, bright-line rule” for this issue, a favorable determination on Mr. Guevara-Vasquez’s APA claim would necessarily result in his “accelerated release,” either through his immediate release or through an individualized bond hearing before an immigration judge that could lead to his release. *Id.* Therefore, contrary to Respondents’ assertion, neither severance nor dismissal is warranted.

Because dismissal or severance is not warranted, and because Respondents did not challenge the substance of Mr. Guevara-Vasquez’s APA claim, this Court should consider his claim unopposed. In his Petition, Mr. Guevara-Vasquez asserted that Respondents’ detention of him without a bond hearing violates the Immigration and Nationality Act (“INA”) and the APA. Under the APA, this Court may hold unlawful and set aside an agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” or “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A), (C). As discussed above, Mr. Guevara-Vasquez’s detention is governed by 8 U.S.C. § 1226,

under which he is entitled to a bond hearing. Respondents' application of the mandatory detention provision in 8 U.S.C. § 1225(b)(1) to Mr. Guevara-Vasquez contravenes the statute's plain language and is ultra vires, because it exceeds the detention authority conferred by Congress under 8 U.S.C. §§ 1225 and 1226, and is otherwise arbitrary, capricious, and not in accordance with law.

Accordingly, this Court should find that Respondents' detention of Mr. Guevara-Vasquez violates the APA.

### CONCLUSION

For the foregoing reasons, this Court should find that Mr. Guevara-Vasquez is being unlawfully detained and grant the writ for habeas corpus, ordering his immediate release or, at a minimum, an individualized bond hearing before a neutral Immigration Judge, with the burden placed on Respondents to justify his ongoing detention. Additionally, in light of Respondents' claim that "[e]ven if this Court were to order him released from custody, he would be subject to re-arrest as an alien present within the United States without having been admitted," ECF No. 6 at 2, Mr. Guevara-Vasquez respectfully requests that this Court enter an order prohibiting Respondents from re-arresting or re-detaining him absent a material change in circumstances, in the event he is released from detention.

Respectfully submitted,

/s/ Timothy W. Davis

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>TH</sup> DAY OF NOVEMBER, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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