

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOSE ADOLFO GALDAMEZ)
MARTINEZ, (A );)
Petitioner,)

v.)

) Case No. 5:25-cv-1373-JKP-RBF

KRISTI NOEM, Secretary of Homeland)
Security, in her official capacity;)
PAMELA BONDI, U.S. Attorney General,)
in her official capacity; MIGUEL)
VERGARA, Director of Enforcement and)
Removal Operations, ICE San Antonio)
Field Office, in his official capacity; ROSE)
THOMPSON, Warden of Karnes County)
Immigration Processing Center, in her)
official capacity,)
Respondents.)

REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

Respondents have not demonstrated that Mr. Galdamez has not established eligibility for the injunctive relief sought. As a threshold matter, Respondents ask this Court to deny Mr. Galdamez’s motion for a temporary restraining order or preliminary injunction because the motion seeks the same relief—release from unlawful detention—as he seeks on the merits of his petition. Opp. at 1-2 (quoting *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974)). But Respondents miss the mark in arguing that the “status quo” to maintain is Mr. Galdamez’s detention. In fact, Mr. Galdamez has been in the United States for decades. He has never been in immigration detention. The status quo pending resolution of this case is Mr. Galdamez’s release from custody. *Granny Goose Foods, Inc. v. Brotherhood of Teamsters and Auto Truck Drivers Local No. 70 of Alabama*, 415 U.S. 423, 439 (1974) (noting that the purpose of a temporary restraining order is to preserve the status quo and prevent irreparable harm). Indeed, the irreparable harm is Mr. Galdamez’s continued detention without due process. In any event, should the Court deny the motion on the basis that the injunctive relief sought overlaps with the ultimate relief requested in the petition, it should then grant the petition for the reasons discussed below.

I. Mr. Galdamez is likely to succeed on the merits of his petition

A. This Court has jurisdiction.

First, Respondents’ blanket assertion that § 1252(b)(9) bars this Court’s review is meritless. Section 1252(b)(9) works in conjunction with 8 U.S.C. § 1252(a)(5) to channel review of “questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” through a petition for review of a final order of removal filed with an appropriate court of appeals. 8 U.S.C. §§ 1252(a)(5), (b)(9); see *Aguilar v. U.S. Immigr. & Customs Enforcement*, 510 F.3d 1, 11 (1st Cir. 2007) (describing § 1252(b)(9) as “a judicial channeling provision, not a claim-barring one”). However, Mr. Galdamez does not argue that he

may not be detained, he argues simply that he cannot be detained without the bond hearing that due process and the INA require. As the Supreme Court recognized in *Jennings v. Rodriguez*, § 1252(b)(9) does not bar such claims. 583 U.S. 281, 292-94 (2018).

Second, Mr. Galdamez's claim is not barred by 8 U.S.C. § 1252(e)(3). Opp. 8. Section 1252(e)(3) requires challenges to the expedited removal statute or corresponding regulations be brought in the District Court for the District of Columbia. But Mr. Galdamez does not challenge the expedited removal statute or implementing regulation; he instead argues that he is not subject to it. Those are very different arguments.

Finally, 8 U.S.C. § 1252(g) does not strip jurisdiction here. Section 1252(g) bars courts from hearing “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.” 8 U.S.C. § 1252(g). Consistent with the plain statutory language, the Supreme Court has adopted a “narrow reading” of 1252(g), holding that “the provision applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination*, 525 U.S. 471, 482, 487 (1999) (emphasis in original). Mr. Galdamez does not challenge or claim that the Government does not have the right to place him in removal proceedings. He does not claim that Respondents may not adjudicate his case. And he has no removal order to execute. Mr. Galdamez merely challenges the Government's authority to detain him without the ability to seek release on bond pending those removal proceedings. *See Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (holding that § 1252(g) does not bar claims that challenge “detention while the administrative process lasts.”); *Jennings*, 583 U.S. at 294. Accordingly, none of the statutory provisions cited by Respondents preclude this Court from exercising jurisdiction in this case.

B. 8 U.S.C. § 1252(b)(2) is not the proper statute of detention.

District courts across the country, including this one, have almost universally concluded that noncitizens like Mr. Galdamez who have entered the United States without inspection and have continued residing in the United States for years after entry are subject to detention under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b)(2), as Respondents assert. *See, e.g., Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, -- F. Supp. 3d--, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex., Sept. 8, 2025); *see also Lopez Benitez v. Francis*, No. 25-cv-5937, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Martinez v. Hyde*, No. 25-cv-11613, -- F. Supp. 3d --, 2025 WL 2084238 (D. Mass. July 24, 2025). The plain text of the Immigration and Nationality Act and the Due Process Clause should compel this Court to reach the same conclusion.

A. Mr. Galdamez's Detention is Contrary to Law

As numerous courts have held, Section 1225 governs the detention and procedures available to individuals encountered at a port of entry or who are in the process of seeking inspection and are “arriving in the United States,” 8 U.S.C. § 1225(b)(1)(A)(i), while § 1226 “sets forth the default rule’ for detaining and removing aliens ‘already present in the United States.’” *Hasan*, 2025 WL 2682255, at *6 (quoting *Jennings*, 583 U.S. at 303); *see Mendoza Gutierrez v. Baltazar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *5 (D. Colo. Oct. 17, 2025) (stating that the “plain text, overall structure, and uniform case law interpreting” § 1225 and § 1226 “compels the conclusion that § 1225’s provision for mandatory detention of noncitizens ‘seeking admission’ does not apply to someone like Mr. Gutierrez, who has been residing in the United States for more than two years”) (cleaned up) (collecting citations). To read the statute as applying to all applicants

for admission regardless of when and how the noncitizen was encountered ignores the titles and headings of the sections¹ and improperly applies the provisions and policies of cases falling under § 1225(b) to individuals who are not seeking inspection by an immigration officer at a port of entry or close in time to an unlawful entry into the United States. *See Zumba*, 2025 WL 2753496, *8.

To be sure, Respondents ask the Court to deviate from *Jennings* and the overwhelming weight of authority and conclude that 8 U.S.C. § 1225(b)(2) mandates the detention of *all* applicants for admission as defined at 8 U.S.C. § 1225(a)(1), notwithstanding the plain text limiting its scope to “applicant[s] for admission” who are “seeking admission” and who an inspecting immigration officer determined to be not clearly and beyond a doubt entitled to be admitted. *See Mendoza Gutierrez*, 2025 WL 2962908, at *6 (recognizing that § 1252(b)(2)(A) is “a catchall provision” that applies to noncitizens seeking admission who are not otherwise covered by § 1252(b)(1), but concluding that such “catch-all” status “does not mean that § 1225(b)(2) applies to all other noncitizens in the United States who have not been admitted.”); *see also Lopez Benitez*, 2025 WL 2371588. Critically, § 1225(b)(2)(A) contains three “criteria”: (1) that the noncitizen is an “applicant for admission”; (2) that the noncitizen is actively “seeking admission”; and (3) that the “examining immigration officer determines ‘is not clearly and beyond a doubt entitled to be admitted.’” *Lopez Benitez*, 2025 WL 2371588, at *6 (quoting *Martinez*, 2025 WL 2084238, and 8 U.S.C. § 1225(b)(2)(A)). Respondents fail to distinguish and instead combine the first two criteria: being an “applicant for admission” who is actively “seeking admission.” Opp. 3-4. But if “applicant for admission” was the same as “seeking admission,” the statute would violate

¹ Section 1225 is titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.” Section 1226 is titled “Apprehension and detention of aliens.” *See Zumba*, 2025 WL 2753496, *8 (“§ 1225 repeatedly cabin[s] its application to “Inspections,” which, as petitioner convincingly argues, occurs as ports of entry, their functional equivalent, or near the border.”).

the rule against surplusage. *See id.*; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“[N]o clause, sentence, or word shall be superfluous, void, or insignificant.”) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)); *Martinez*, 2025 WL 2084238, at *6; *Quispe*, 2025 WL 2783799, at *5.

Respondents’ interpretation also would nullify recent amendments to the INA in the Laken Riley Act, now codified within 8 U.S.C. § 1226(c). *See Hasan*, 2025 WL 2682255, at *8. Among other things, the Laken Riley Act mandates detention for noncitizens who are subject to certain inadmissibility grounds *and* meet certain criminal criteria. 8 U.S.C. § 1226(c)(1)(E). Such a statute would be entirely redundant if a noncitizen’s inadmissibility alone rendered him subject to mandatory detention under § 1225(b)(2)(A). *See id.*; *Lopez Benitez*, 2025 WL 2371588, at *3.

Without acknowledging the overwhelming weight of decisions ruling against the government on this issue, Respondents assert: “Courts that have done a *close* review of the plain language of this statute agree.” Opp. 4 (listing cases) (emphasis added). This assertion ignores the close review and analysis provided in the hundreds of decisions adverse to the government. Moreover, the cases listed by Respondents either failed to substantially engage with the “seeking admission” analysis,² or they adopted entirely new interpretations that are already being summarily rejected.³⁴ *See Orellana v. Noem*, -- F. Supp. 3d --, 2025 WL 3006763, *3-4 (W.D. Ky. Oct. 27, 2025) (recognizing that *Vargas Lopez* and *Chavez* do not make “any reference to the existing body of case law” on this issue, and “did not analyze the entirety of the statutes”); *see Covarrubias v.*

² *See, e.g., Vargas v. Lopez*, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Barrios Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025), and *Silva Oliveira v. Patterson, et al.*, 2025 WL 3095973 (W.D. La. Nov. 4, 2025).

³ The court in *Varas Lopez* also did not do the “close” statutory analysis Respondents allege; instead, the court in that case recognized that the “Petitioner been hampered by the mistakes made in it.” 2025 WL 2780351, *1. Indeed, the court in *Vargas* did not address any of the arguments raised in this petition.

⁴ Respondents also cite *Garibay-Roledo v. Noem*, No. 25-cv-177 (N.D. Tex. Sept. 15, 2025), but the court’s decision denying the motion for injunctive relief in that case does not address the issues presented in this case.

Vergara, No. 5:25-CV-112, 2025 WL 2950097, at *5 n.2 (S.D. Tex., Oct. 8, 2025) (declining to follow *Vargas*); *Cordero Pelico v. Kaiser*, 2025 WL 2822876, at *14 (N.D. Cal. Oct. 3, 2025) (noting that the critical issue of whether petitioners were “seeking admission” was “not address[ed] at all” by *Chavez*).⁵ Additionally, this Court should not follow the cited decisions relying on the lack of an issued warrant on the theory that § 1226(a) could not be the statute of detention because a warrant is required for detention under that section. *See Vargas*, 2025 WL 2780351, *6-7. This reasoning is circular and should not be followed by this Court; the government cannot pick a statute of detention solely based on whether it wants to issue a warrant (or, likewise, unlawfully chooses to detain someone without a required warrant). Further, the court failed to acknowledge that no warrant is needed for border apprehensions and thus it only makes sense for § 1225(b)(2) to apply to individuals encountered at or near the border crossing. Finally, the Court should not follow the reasoning from the Western District of Louisiana in *Barrrios Sandoval* and *Silva Oliveira* because the judge in those cases mistakenly considered removal proceedings before an immigration judge part of the “inspection process.” *Barrrios Sandoval*, 2025 WL 3048926 *4; *Silva Oliveira*, 2025 WL 3095972, *4. Not only does this assertion fail to engage with the statutory analysis described above and instead conflates “applicant for admission” and “seeking admission,” but it overlooks that an immigration judge—the arbiter in removal proceedings—is not tasked with inspection of the noncitizens who appear in that court. *See* 8 U.S.C. § 1229a (discussing removal proceedings); 8 C.F.R. § 1003.14 (discussing the authority and jurisdiction of immigration judges).

This Court should also reject Respondents’ attempt to equate the issues in this case with the unrelated consideration of a waiver of inadmissibility in a different context. *Opp.* 5 (citing

⁵ *See also Vasquez v. Feeley*, No. 25-cv-1542-RFB-EJY, 2025 WL 2676082, at *14 (D. Nev. Sept. 17, 2025) (“But the differences between § 1225 and § 1226 . . . indicate that Congress intended for different classes of noncitizens to be subject to each provision, i.e., mandatory versus discretionary detention.”).

Martinez v. Mukasey, 519 F.3d 532, 541 (5th Cir. 2008). In that case, the Fifth Circuit differentiated an immigration officer's inspection and authorization to enter the United States from a non-citizen seeking to adjust status to that of lawful permanent residence. *Id.* at 544. But those issues are not present here. In fact, if this Court were to consider the analysis in *Martinez* it should find that it supports Mr. Galdamez's arguments (and undermines the cases Respondents cite, including *Barrios Sandoval*, and *Silva Oliveira*). Critically, individuals addressing their immigration status while inside the United States *are* in a different posture than those seeking inspection and entry into the United States at the border. 519 F.3d at 544.

Furthermore, with respect to the statutory interpretation, the Court should reject Respondents' arguments that Congress intended § 1225(b)(2)(A) to apply broadly to everyone in the United States who has not been admitted. *Opp.* 6-7. Critically, IIRIRA was a massive immigration reform effort changing the way immigration cases are considered and processed as a whole, and not a simple "statutory fix" as Respondents assert. *See Opp.* 6; *see also Vartelas v. Holder*, 566 U.S. 257, 261-62 (2012) (discussing some of the changes made by IIRIRA). As outlined in the petition, the legislative history relating to expedited removal and detention does not demonstrate that Congress intended for expedited removal to apply to *everyone* who did not enter the United States with a visa, irrespective of when they were encountered by immigration officials. *See ECF No. 1* ¶ 49. Rather, Congress intended for "arriving alien" to be limited to individuals in the process of arriving in the United States or whom had very recently arrived. *Id.*

B. Mr. Galdamez's Detention Violates his Constitutional Rights

The government's insistence that Mr. Galdamez is subject to mandatory detention also violates Mr. Galdamez's Constitutional rights. Respondents assert that Mr. Galdamez is only entitled to the due process provided by the INA, which, they argue, is limited because he is seeking

admission into the United States. Opp. 9-11. But the case relied upon by Respondents focus on due process rights for those encountered on the threshold of entry into the United States. *See Thuraissigiam*, 591 U.S. at 139 (noting petitioner was apprehended 25 yards into U.S. territory). Indeed, the Supreme Court has stressed that once noncitizens “enter the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent.” *Zadvydas*, 533 U.S. at 693; *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Mr. Galdamez is not on the threshold of initial entry; he has been living in the United States for years.

Indeed, Mr. Galdamez has met the standard under *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). First, the government is undeniably restricting his liberty and freedom from custody. While Respondents attempt to minimize his liberty interest and imply that Mr. Galdamez’s release from custody would support an ongoing violation of U.S. law, they have not charged Mr. Galdamez with violating 8 U.S.C. § 1325, nor have they explained how providing Mr. Galdamez a bond hearing would be in furtherance of a crime. Second, any ordered bond would be the applicable safeguard to protect against erroneous deprivation of Mr. Galdamez’s liberty interest. Finally, the government has articulated no claim that Mr. Galdamez is either a flight risk or a danger to the community, thus warranting his continued detention. As such, the government’s interest is minimal at best.

Furthermore, Respondents’ insistence that due process requirements are met here through removal proceedings misses the point. Opp. 10. The protections built into proceedings based on the merits of removability do not address whether the government has the authority to *detain* someone pending those proceedings. *See Jennings*, 583 U.S. at 295-96; *see also Zadvydas*, 533

U.S. at 690. Furthermore, Respondents state that Mr. Galdamez’s continued detention without a bond hearing is not punitive. Opp. 11. In so arguing, Respondents admit that the government’s position on who is subject to § 1225(b)(2)(A) detention has changed but that such new policy and practice can permissively be applied retroactively to individuals who, like Mr. Galdamez, entered the United States decades ago. Opp. 12-13. But Respondents overgeneralize the issue in this case and improperly import those subject to expedited removal under § 1225(b)(1) to individuals they assert are now subject to detention under § 1225(b)(2). But Mr. Galdamez’s statutory analysis does not “reward[noncitizens] who entered without inspection” by providing them “with greater procedural and substantive rights.” Opp. 13. All individuals subject to expedited removal processing under § 1225(b)(1) are subject to mandatory detention—that includes individuals who arrive at a port of entry without proper travel documents, § 1225(b)(1)(A)(i), and those who enter without inspection and are encountered within the time and distance from the border as designated by the government, § 1225(b)(1)(A)(iii). Mr. Galdamez, who entered more than twenty years ago and was not encountered within the designated time and distance from the border, is not subject to expedited removal under either provision. Thus, his continued detention without an opportunity to seek bond is punitive. *Maniar v. Warden Pine Prairie Corr. Ctr.*, No. 6:18-CV-00544, 2018 WL 11544220, at *4 (W.D. La. July 11, 2018) (citing *United States v. Hare*, 873 F.2d 796, 800 (5th Cir. 1989)).

Finally, the Court should order Mr. Galdamez’s release because his warrantless arrest was unlawful and unconstitutional. In responding to the petition, Respondents make no attempt to justify the warrantless arrest, either in regard to Count One (no probable cause for arrest) or Count Two (no flight risk analysis). The Court should thus also grant the petition on the basis that the warrantless arrests violated Petitioner’s due process rights.

II. Mr. Galdamez will suffer irreparable harm and the balance of equities and Public Interest weigh in favor of Mr. Galdamez.

Respondents barely contend with the remaining factors relating to injunctive relief. Opp. 14. Indeed, Respondents do not address the precedent that “unlawful detention is a sufficient irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017). Nor do Respondents acknowledge that Mr. Galdamez has now been detained for several weeks, without any evidence that the government considers him a flight risk nor a danger to the community. Furthermore, Respondents’ interest in enforcing immigration laws does not justify Mr. Galdamez’s continued detention; Respondents have placed him in removal proceedings and can continue to seek a removal order against Mr. Galdamez regardless of whether he is detained without bond.

CONCLUSION

For the foregoing reasons, the Court should grant relief and order Mr. Galdamez released from custody.

Dated: November 12, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 11/12/2025, I filed the foregoing reply with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all parties.

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