

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ANSELMO FLORES PEREZ,

Petitioner,

Case No. 3:25-CV-02920-K-BN

v.

U.S. DEPT. OF HOMELAND SECURITY,
KRISTI NOEM, in her capacity as Secretary
of Department of Homeland Security; et. al.,

Respondents.

**PETITIONER'S RESPONSE TO GOVERNMENT'S OBJECTIONS TO THE
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

RESPECTFULLY SUBMITTED,

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INTRODUCTION

Petitioner Anselmo Flores Perez respectfully submits this response to Respondents' Objections to the Magistrate Judge's Findings, Conclusions, and Recommendation (FCR).

Mr. Flores Perez, a devoted partner and loving father, has been detained in ICE custody without being provided a bond hearing as required by the INA and U.S. Constitution. The immediate impacts the loss of one's liberty are often far reaching and significant. For Mr. Flores Perez and his family, his current detention has significant impacts particularly for the family's oldest child who has been battling leukemia since 2023. For him, the loss of his father's liberty means the loss of the person who both physically and emotionally as his father is the primary financial provider and the person who got him to doctors' appointments. Mr. Flores Perez seeks this Court's urgent intervention and asks it to order the government to release Mr. Flores Perez from custody by no later than noon on December 9, 2025. In so doing, the Court should overrule the objections, adopt the FCR, and order Mr. Flores Perez immediate release.

The government's Objections are a transparent attempt to salvage a losing legal theory by raising entirely new jurisdictional arguments that were never presented to the Magistrate Judge. Having failed to persuade the Magistrate Judge on the merits, the government now resorts to a "Hail Mary" argument: claiming that 8 U.S.C. § 1252(c)(3) strips this Court—and indeed every district court outside of Washington, D.C.—of jurisdiction to hear a standard habeas petition challenging the statutory basis of immigration detention. This argument is not only procedurally waived but demonstrably wrong. It ignores Supreme Court precedent preserving habeas jurisdiction for detention

challenges and asks this Court to believe that the dozens of federal courts currently granting relief in identical cases are all acting without jurisdiction.

Critically, the government's Objections continue to ignore the elephant in the room: the Laken Riley Act. As Petitioner has repeatedly demonstrated, if the government's new interpretation of 8 U.S.C. § 1225(b) were correct—that *all* entrants without inspection are subject to mandatory detention—then Congress's passage of the Laken Riley Act earlier this year to mandate detention for *certain* criminal entrants without inspection would have been a meaningless act. The government's silence on this point in their Objections is a tacit admission that they cannot reconcile their new theory with the plain text of the Immigration and Nationality Act (INA).

For thirty years, the law has been clear: noncitizens already present in the United States are detained under § 1226(a) and entitled to a bond hearing. The Magistrate Judge correctly applied this settled law. Petitioner respectfully requests this Court do the same.

SUMMARY OF ARGUMENT

Between Petitioner's initial filings, reply brief filed November 10, 2025, and the Magistrate Judge Horan's Findings, Conclusions, and Recommendations (hereinafter "FCR"), there is a robust record of the multitude of arguments supported by numerous legal authorities which demonstrate the FCR reached the right conclusion: Mr. Flores Perez has been and continues to be unlawfully detained in ICE custody. The instant filing will seek to avoid repeating the same arguments which have already been made and were, generally, agreed with by the FCR. The failure to repeat or explicitly reaffirm a particular argument or position in this filing which was already set forth in prior filings should not be taken as

backing away from, waiving, or otherwise conceding any such arguments. Rather, Petitioner believes the reasons set forth in the FCR and his prior filings were correct and he stand by them. With this in mind Petitioner now turns to a summary of the reasons he believes the Court should overrule the objections, adopt the FCR, and order the government to release Mr. Flores Perez by noon on Tuesday, December 9, 2025.

The government's Objections are a transparent attempt to salvage a losing legal theory by raising entirely new jurisdictional arguments that were never presented to the Magistrate Judge. Having failed to persuade the Magistrate Judge on the merits, the government now resorts to a "Hail Mary" argument: claiming that 8 U.S.C. § 1252(e)(3) strips this Court—and indeed every district court outside of Washington, D.C.—of jurisdiction to hear a standard habeas petition challenging the statutory basis of immigration detention. This argument is not only procedurally waived but demonstrably wrong. It ignores Supreme Court precedent preserving habeas jurisdiction for detention challenges and asks this Court to believe that hundreds of federal courts currently granting relief in identical cases are all acting without jurisdiction. Worse still, this argument ignores the fact the Supreme Court explicitly and implicitly rejected such jurisdictional arguments in *Jennings v. Rodriguez* – the same case it has pulled a few sentences of dicta from to support its brand no position which contradicts 30-years of agency practice and understanding.

Critically, the government's Objections continue to ignore the elephant in the room: if the government's new interpretation of 8 U.S.C. § 1225(b) were correct—that *all* entrants without inspection are subject to mandatory detention—then Congress's passage of the

Laken Riley Act earlier this year to mandate detention for *certain* criminal entrants without inspection would have been a meaningless act—along with several other statutory provisions and regulations. The government’s attempt to argue otherwise simply misunderstands the INA and was not advanced by even the BIA in *Hurtado*. The government’s failure to explain or provide an example of a single alien who would be subject to such provisions but not § 1225(b)(2)(A) is a tacit admission that they cannot reconcile their new theory with the plain text of the Immigration and Nationality Act (INA).

For thirty years, the law has been clear: noncitizens already present in the United States are detained under 8 U.S.C. § 1226(a) and entitled to a bond hearing. The Magistrate Judge correctly applied this settled law. Petitioner respectfully requests this Court do the same.

ARGUMENT IN RESPONSE TO GOVERNMENT’S OBJECTIONS

I. The government’s objections make zero attempt to provide a valid justification for Mr. Flores Perez’ Detention.

As set forth (multiple times) in prior briefing, everyone in the United States is entitled to the protections of the constitution’s due process clause, and therefore, such individual’s liberty may not be taken from them for non-criminal matters unless one of two Supreme Court approved justifications exists: flight risk or danger.¹ In *Zadvydas v. Davis*, the Supreme Court left no doubt that civil detention, including in the immigration context,

¹ *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001).

requires a sufficient justification—namely preventing flight or danger to the community.² Where no such justification exists detention without due process is unconstitutional.³

Here, the government makes no attempt whatsoever to claim there is a Supreme Court approved justification for Mr. Flores Perez' detention by ICE. He has not been ordered removed. He is not a danger. And he is not a flight risk. The government knows this so it completely ignores the Supreme Court's clear statements and the arguments made in Petitioner's filings on this issue.

At its simplest, there can be no doubt that the government can provide no justifiable reason for continuing to deprive Mr. Flores Perez of his liberty and wants this Court to simply accept that no justification is necessary other than they believe they can.

II. While not an explicit basis for the FCR, the government has continued to ignore Fifth Circuit precedent repeatedly leaving no doubt that one who is “seeking admission” must be physically outside of the United States and asking to come in.

Petitioner's Reply Brief extensively discussed the well-established Fifth Circuit precedent which, like every other circuit interpreting INA provisions referencing the definition of "admission" at 8 U.S.C. § 1101(a)(13), has explained:

This definition “is limited and does not encompass a post-entry adjustment of status,” because it “refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry.”⁴

² *Id.*

³ *Id.*

⁴ *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete-Ramirez*, 741 F.3d at 1051); *see also Papazoglou*, 725 F.3d at 793 (“That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization.”); *Bracamontes*, 675 F.3d at 385 (“Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities.”); *Martinez*, 519 F.3d at 544

The government has not in this case, nor any other similar cases involving Petitioner's counsel, attempted to dispute this well-established fact which is fatal to its entire position. Its silence in this regard is telling, to say the least.

III. The government's new position relies almost entirely on false premises concerning IIRIRA's goals and the provisions that sought to achieve them.

- A. The "anomaly" IIRIRA aimed to fix had nothing to do with bond or mandatory detention—rather, it was the disparate *procedural* treatment (i.e. expedited removal) of aliens arriving at a Port of Entry (POE) versus those who entered without inspection (EWI).

The government has in this case, and countless others across the country, repeatedly claimed IIRIRA's goal to treat EWI aliens the same as those who present at a POE the same by mandating detention for the duration of removal proceedings under § 1229a. But this argument rests entirely on the false premise that aliens who present at the POE and are subjected to expedited removal are subjected to "mandatory detention."

IIRIRA's primary goals were to disincentivize illegal entry and fraud in immigration. But the provisions enacted to achieve this goal are unrelated to detention during INA § 1229a proceedings. The "anomaly" IIRIRA aimed to fix had nothing to do with bond. Rather, it concerned the disparate *procedural* treatment (i.e. expedited removal) of aliens arriving at a Port of Entry (POE) versus those who entered without inspection (EWI).

(recognizing that “ ‘admission’ is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status”).

Prior to IIRIRA, aliens arriving at a POE without proper documents were subject to expedited removal under 8 U.S.C. § 1225(b)—a summary process culminating in immediate removal without a hearing before an Immigration Judge (IJ).⁵ In stark contrast, an alien who entered without inspection, even if apprehended near the border moments after entry, was, prior to IIRIRA, statutorily entitled to full removal proceedings under 8 U.S.C. § 1229a. IIRIRA corrected this procedural disparity by expanding the expedited removal provisions to EWI aliens who were encountered within two years of entry and within a geographic area defined by regulation and inadmissible under 8 U.S.C. § 1182(a)(6)(C) or 8 U.S.C. § 1182(a)(7) to expedite removal just as they would have been if at a POE.⁶ This "anomaly" of giving aliens found a few miles from the border and hours after entering full § 1229a proceedings while those similarly situated at a POE were order removed without any hearing under the expedited removal statute was corrected by IIRIRA's expansion of expedited removal to such aliens.⁷

Both pre- and post- IIRIRA, aliens who are subjected to expedited removal that do not claim any fear of return are not supposed to be "detained" in custody—rather, the purpose and goal is immediate removal. Indeed, the very purpose of expedited removal is to effectuate an *immediate* removal, entirely bypassing the need for any detention or hearing. This goal of immediacy is codified in INA § 1231(c), which governs the "removal

⁵ See generally § 1225(b)(1); see also ECF No. 12 pp. 19-28.

⁶ See *id.*

⁷ See *id.*

of aliens arriving at [a POE]" and mandates they "shall be removed immediately," unless impracticable. This focus on *immediacy*, not custodial detention, was the paradigm IIRIRA extended to recent EWI aliens.

Furthermore, those few aliens who do not claim fear and are not immediately removed through the expedited removal summary process in 8 U.S.C. § 1225(b)(1), are not—at that point—subject to mandatory detention under either § 1225 or § 1226. Rather, once issued a removal order any subsequent detention is pursuant to 8 U.S.C. § 1231 which provides for detention during the statutory removal period which begins the moment a removal order is final.

In sum, IIRIRA did seek to streamline removal proceedings by fixing the anomaly of that only allowed for the summary expedited removal process for aliens at a POE and not those who entered recently and were encountered near the border. It had nothing to do with mandatory detention as any detention associated with the process set forth in § 1225(b)(1) is intended to last for a matter of hours—an impossibility for aliens who are placed in § 1229a proceedings.

- B. Every alien in removal proceedings under 8 U.S.C. § 1229a has committed a violation of our immigration laws and under the government's new position allows bond hearings for aliens whose violations include successfully gaining admission through fraud, failing to timely depart after promising immigration officials they would, and those who are convicted of a misdemeanor crime of moral turpitude.

The government's repeated assertions that granting a bond hearing to an EWI alien contravene Congressional intent by "rewarding" a violation of law creates a false and unsupported distinction. This position critically ignores the dispositive fact that every

noncitizen in removal proceedings is present in those proceedings precisely because they have violated a provision of the INA. The government's attempt to carve out a uniquely disfavored class from a universe of violators is not only illogical but also contrary to established jurisprudence.

Under its theory, a noncitizen who entered twenty years ago on a visitor visa, made an express promise to an inspecting officer to depart, and then willfully violated that promise by absconding for two decades is entitled to a bond hearing. Likewise, an individual who perpetrated an affirmative fraud upon consular and immigration officials to secure a fiancé visa would be granted a bond hearing. Yet, the government insists that Petitioners, who entered without inspection but have not committed any offenses that would subject them to mandatory detention, must be mandatorily detained without any reason to believe or consideration of whether they are a danger or flight risk. This arbitrary distinction finds no support in reason or justice and elevates the form of an immigration violation over its substance, creating indefensible and inequitable outcomes.

C. The significance of being an "applicant for admission" has nothing to do with bond and everything to do with the allocation of the burden of proof.

The rights provided to aliens in removal proceedings and the conduct of those proceedings are set forth in § 1229a. Specifically, § 1229a(c)(3) allocates the burden on the government to prove removability in cases involving "deportable" aliens (i.e. aliens charges under § 1227); meanwhile, aliens in removal proceedings under § 1182, have the burden pursuant to § 1229a(c)(2), which states,

In the proceeding the alien has the burden of establishing—(A) if the alien is an *applicant for admission*, that the alien is clearly and beyond doubt entitled

to be admitted and is not inadmissible under section 1182 of this title; or (B) by clear and convincing evidence, that the alien is lawfully present in the United States pursuant to a prior admission.”⁸

It is helpful to consider (c)(2) part (A) versus (B) in context. Paragraph (A), by its very terms applies to an alien who is arriving and seeking to be admitted but is alleged to be inadmissible at the POE. Said differently, this option is plainly for those arriving aliens referred to as “other aliens” in § 1225(b)(2)(A) seeking admission who are referred for removal proceedings under § 1229a. Paragraph (B) on the other hand, by its terms contemplates the alien’s physical presence in the U.S., and therefore, does not ask that they demonstrate they should be admitted; instead, these aliens would only be successful in denying they are inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) if they can demonstrate they were previously admitted. Admission, after all, cannot take place anywhere but from the outside coming in.

D. The real deterrent to entering the country EWI established by IIRIRA were the 3-year and 10-year bars for unlawful presence.

i. IIRIRA put provisions in place to deter illegally entering as well as extended stays of unlawful presence in the U.S. by penalizing such actions through bars to becoming a LPR.

Beyond expanding expedited removal, IIRIRA employed other significant statutory tools to deter illegal entry. Chief among these was the creation of the 3- and 10-year unlawful presence (ULP) bars found at INA § 1182(a)(9)(B). Because EWI aliens are generally ineligible to adjust status within the United States under 8 U.S.C. § 1255(a), they

⁸ 8 U.S.C. § 1229a(c)(emphasis added).

must depart and seek admission via consular processing.⁹ IIRIRA's new bars ensured that such a departure, after accruing sufficient unlawful presence, would trigger a multi-year, or even decade-long, bar to their lawful return.¹⁰ IIRIRA did provide a waiver for these bars in the case of aliens who have either a spouse or parent that is a U.S. citizen or LPR who will suffer hardship if the alien's application for admission as a LPR is denied.¹¹ This, not mandatory detention, was yet another deterrent aimed at the EWI population.

ii. Adjustment of status for EWI aliens under § 1255(i) provides a reprieve from the departure requirement, and therefore, ULP bars for those whom a petition was filed before April 30, 2000—a date extended twice after the passage of IIRIRA.

The usual rule that an EWI alien cannot adjust their status in the United States is not applicable if such alien is eligible for adjustment of status under 8 U.S.C. § 1255(i).¹² This provision provides a critical reprieve to the normal requirement that such aliens must depart the U.S. and then return by seeking admission through consular processing. First passed in 1994, it was amended twice after IIRIRA to extend the deadlines by which a petition must have been filed for the alien beneficiary to be eligible for adjustment under, provided their adjustment application was submitted along with a \$1,000 penalty fee."¹³

⁹ 8 U.S.C. § 1255(a) (proscribing the classes of aliens who are eligible to adjust their status to LPRs in the United States and exempting those present in the U.S. after entering without inspection).

¹⁰ 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(I).

¹¹ 8 U.S.C. § 1182(a)(9)(B)(v).

¹² This is referred to in the immigration world as being "245(i) eligible."

¹³ § 1255(i).

After being amended by the Legal Immigration Family Equity (LIFE) Act of 2000, § 1255(i) provides that an EWI alien "who is the beneficiary . . . of—(i) a petition for classification under § 1154 of this title that was filed with the Attorney General on or before April 30, 2001" may apply for adjustment of status.¹⁴ This extension further provided, however, that when such EWI aliens who are the "beneficiary of a petition" "filed after January 14, 1998" the alien must also be "physically present in the United States on December 21, 2000."¹⁵ To be clear, this last amendment literally meant EWI aliens were required to be unlawfully present in the U.S. on December 21, 2000 to receive the benefit of § 1255(i).

It is logically irreconcilable to argue that Congress intended to subject every EWI alien to the harsh loss of liberty that is mandatory detention, while simultaneously passing legislation *twice* to expand a benefit that not only requires their continued presence but, in its final form, legislatively conditioned that benefit on their physical (and unlawful) presence in the country *after* IIRIRA's passage.

IV. The *Matthews* test, applied by nearly every district court analyzing this issue including within the 5th Circuit, demonstrates Mr. Flores Perez's detention is unlawful.

The three-part test set out in *Matthews v. Eldridge*, 424 U.S. 319 (1976) is the test to determine whether civil detention violates a detainee's due process rights.¹⁶ Mr. Flores

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *Hernandez-Fernandez v. Todd Lyons*, 2025 WL 2976923, at *8 (W.D. Tex. Oct. 21, 2025).

Perez is currently being civilly detained, and he asserts that this detention is violating his due process rights. Courts across jurisdictions are applying *Mathews* to EWI cases and granting relief to petitioners on this basis.¹⁷ These courts expressed no issue as to applying *Mathews* in this context. This Court should follow suit and find *Mathews* applies here, and because all three *Mathews* factors favor Mr. Flores Perez's position, this Court should find that Mr. Flores Perez is likely to succeed in demonstrating that his detention without a bond hearing based on nothing more than being EWI contravenes his due process rights under the Fifth Amendment.¹⁸

Mr. Flores Perez provided a detailed analysis of the application of the *Mathews* factors to his case in both the habeas petition and preliminary injunction motion previously filed. Though the government's response indicates disagreement with Mr. Flores-Perez' conclusion, it does so without even mentioning the most compelling circumstances specific to his case. For example, the response indicates there is no real harm but completely ignores the fact that *he is the primary provider for a family's whose oldest child is battling leukemia.*

Meanwhile, the government argues Mr. Flores Perez "is being detained for the limited purpose of removal proceedings and determining his removability."¹⁹ The problem with this explanation is it describes the purpose of removal proceedings before an IJ

¹⁷ See *Martinez v. Kristi Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Martinez v. Secretary of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *(W.D. Tex. Sept. 8, 2025) (granting petitioner's request for a temporary restraining order).

¹⁸ See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

¹⁹ (ECF No. 10 p. 15.)

under § 1229a—but detention is not now nor has it ever been necessary to such proceedings. This, of course, is why there are literally close to if not more than a million aliens currently in § 1229a removal proceedings who are not in ICE custody. In fact, the Dallas immigration court, located in the same building a few floors below this Court, does not handle an removal proceedings for detained aliens.

Given the compelling circumstances in Mr. Flores Perez' case, the lack-luster arguments in the government's response, and countless courts repeatedly stating that the loss of liberty is irreparable harm which more than satisfies the applicable legal standard, the point will not be belabored. Instead, Mr. Flores Perez simply and respectfully requests the Court grant his petition and the preliminary injunction so he may return to his family.

V. **Exhaustion is not necessary, would be futile, and would do nothing but further backlog the always complaining about being backlogged immigratoin courts**

A. **The government's argument for exhaustion has been repeatedly made and repeatedly rejected in habeas cases involving unlawful detention claims by aliens.**

The government's brief argues Petitioner should be required to exhaust "administrative remedies."²⁰ It is well established, however, that there is no statutory requirement to exhaust remedies for alien detention claims; rather, “[u]nder the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.”²¹ In *Lopez-Arevelo*, the court in the Western District of Texas found

²⁰ (ECF No. 14 pp. 3-5.)

²¹ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025) (citing *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); *see also* 8 U.S.C. § 1252(d)(1) (“A

that “[r]equiring [the petitioner] to wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate his alleged constitutional injury—detention without a bond hearing.”²²

Here, there is no question that both an IJ and the BIA did or would apply the *Hurtado* decision to this and every other case raising the exact same issue. Said differently, the only thing filing a bond request for an EWI alien will do is create more paperwork for the immigration courts to process. In fact, in another case out of the Western District, the fact that the petitioner did not even request a bond from the IJ as there was no question the IJ would claim they are required to listen to the BIA and the BIA definitively spoke on the issue when it issue *Hurtado*.²³ There the government readily conceded all of this was true and indicated it was no longer advancing an exhaustion requirement.

B. The exhaustion cases cited by the government, though inapplicable in the exhaustion context, highlight the indisputable constitutional reasons the government's current position is plainly unconstitutional.

The government's arguments on exhaustion cite to two cases involving criminal defendants in state criminal proceedings.²⁴ Specifically, the two main cases it relies on are *Dickerson v. State of Louisiana*, 816 F.2d 220, 224 (5th Cir. 1987) and *Daves v. Dallas Cnty., Texas*, 64 F.4th 616 (5th Cir. 2023).

court may review *a final order of removal* only if ... the alien has exhausted all administrative remedies.” (emphasis added)).

²² *Id.* at *6 (citing *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021)).

²³ See *Martinez v. Kristi Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025).

²⁴ ECF No. 14 pp. 3-5.

Significantly, these cases left no room to doubt that exhaustion can only be considered to apply where "the state provides an *adequate* opportunity to bring the same constitutional claims in state court."²⁵ Here, Petitioner cannot raise any constitutional claims before either the IJ or BIA under longstanding and well-established agency precedent.²⁶ As the BIA explicitly stated in one case: "It is clear that neither we nor the Immigration Judges have authority to rule on the constitutionality of the statutes we administer."²⁷ This does not merely provide a basis for rejecting the argument, but also highlights the fundamental problem with the government's new position which subjects hundreds of thousands of human beings to being potentially stripped of their liberty and having no recourse but the less than expedient federal habeas process.

Equally, if not more important, the cases cited demonstrate the critical importance of due process being observed before stripping human beings of their liberty and locking them in a cage. For example, the petitioner in *Dickerson v. State of Louisiana* was indicted by the state for kidnapping and murder in 1983—while he was in federal prison on completely unrelated convictions.²⁸ The petitioner made no claim to being unlawfully detained and

²⁵ *Daves v. Dallas Cnty., Texas*, 64 F.4th 616, 649 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 548, 217 L. Ed. 2d 292 (2024)

²⁶ *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 807 (BIA 2020) ("We do not have the authority to entertain constitutional challenges to the statutes and regulations we administer.") (citing *Matter of Cruz de Ortiz*, 25 I&N Dec. 601, 605 (BIA 2011)).

²⁷ *Matter of Cruz De Ortiz*, 25 I. & N. Dec. 601, 605 (2011) (citing *Matter of D-R-*, 25 I&N Dec. 445, 456 (BIA 2011); *Matter of Gonzalez-Camarillo*, 21 I&N Dec. 937, 940-42 (BIA 1997) (holding that we would not address the respondent's equal protection argument because we lack jurisdiction to consider the constitutionality of the Act) and *Matter of Cenatice*, 16 I&N Dec. 162, 166 (BIA 1977)).

²⁸ *Dickerson v. State of Louisiana*, 816 F.2d 220, 224 (5th Cir. 1987).

began making his claims challenging the state's speedy trial procedures four years prior to being released from federal prison and at a time when the federal government refused to extradite him to the state because he was serving his federal sentence.²⁹ Not only was there no similar challenge to unlawful detention—his arrest by the state was indisputably unconstitutional as there were two arrest warrants validly issued by a state judge.³⁰ Though not specifically raised, it seems more than likely that the federal convict facing murder and kidnapping charges in that case was provided with a bond hearing—which he almost certainly lost on justified danger or flight risk grounds.

Conversely, Petitioner in this case was not only arrested without the same probable cause judicially issued warrant that put the petitioner in *Dickerson* in custody, but it took nothing more than a low level ICE deportation officer's belief that Petitioner was an EWI alien to subject Mr. Flores Perez to mandatory detention throughout § 1229a proceedings, under the government's position. There was no process. No determination that Mr. Flores Perez is a flight risk or danger—not by anyone much less a neutral adjudicator.

Simply put, the processes afforded to the federally convicted accused murderer and kidnapper in *Dickerson* far exceeded the complete absence of any process being provided to Petitioner.

²⁹ *Id.*

³⁰ *Id.*

Similarly, the petitioners/criminal defendants in *Daves* were charged after a probable cause finding of various misdemeanor and felony offenses.³¹ Every single one of the petitioners charged with criminal offenses in that case were given bond hearings and had bond set for them.³² The argument in that case was that the bond amounts were effectively subjecting indigent defendants to extended detention with "real bond."³³ Mr. Flores Perez has not and will not be provided a bond hearing—much less a bond—without this Court's intervention.

Before moving on, Petitioner believes that the following discussion from one of the concurring opinions in *Daves* further illustrates just how far the government's position in these cases is from the normal constitutional due process provided before depriving individuals in this country of their liberty:

[T]he [*Younger*] opinion concerned determinations of probable cause to detain someone, not bail, but the adequacy of state procedures is equally relevant to both issues. The five-justice majority opinion stated that “the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest.” Requiring judicial action before an “*extended* restraint of liberty” occurs means delay has significance. In addition, the Court reviewed the roadblocks for a detainee in getting judicial review of probable cause: the prosecutor's filing an information meant there would be no preliminary hearing, and *habeas corpus* was only available, if ever, in “exceptional circumstances.” “The only possible methods for obtaining a judicial determination of probable cause were a special statute allowing a preliminary hearing *after 30 days*, and arraignment, which the District Court found was often *delayed a month or more* after arrest.” The Court closed its summary by stating “a person charged by information could be

³¹ *Daves v. Dallas Cnty., Texas*, 22 F.4th 522, 530 (5th Cir. 2022)

³² *Id.*

³³ *Id.*

detained for a substantial period solely on the decision of a prosecutor.” The Court’s emphasis on timeliness is undeniable.³⁴

Here, Mr. Flores Perez has already been detained for a substantial period solely on the decision of an ICE officer. His only avenue for release is this habeas petition which can hardly be described as a timely review—if he were to appeal an IJ bond decision to the BIA there is zero question that appeal would never even be decided as it is no secret that the BIA more often than not waits several months and then dismisses the bond appeal when the removal proceedings below become final. Needless to say, the absence of timeliness and due process available to Mr. Flores Perez—who is not a criminal much less a flight risk.

VI. The government’s new argument that 8 U.S.C. § 1252(e)(3) strips the Court of jurisdiction is exactly what it seems like: grasping at straws to support the government’s unsupportable position.

In its objections, the government raises for the first time an argument that 8 U.S.C. § 1252(e)(3) strips this Court of jurisdiction over Mr. Flores Perez’ habeas petition.³⁵ Though the government itself concedes this argument is new, Petitioner believes it is far simpler to simply demonstrate this is incorrect than to argue it is untimely. Particularly as Petitioner is fully cognizant of the fact that jurisdiction may always be examined by a court “[b]ecause it concerns the Court’s power to decide the case.”³⁶

³⁴ *Daves v. Dallas Cnty., Texas*, 64 F.4th 616, 649 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 548, 217 L. Ed. 2d 292 (2024)(internal citations omitted and cleaned up significantly).

³⁵ ECF No. 14 pp. 5-6.

³⁶ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025) (quoting *Louisiana v. U.S. Dep’t of Energy*, 90 F.4th 461, 466 (5th Cir. 2024) (quoting *Arulnanthy v.*

The government's argument misses a key aspect of subparagraph (e). Specifically, as its title, "Judicial review of orders under section 1225(b)(1)" indicates: it is only applicable to aliens who have been or are in the process of being subject to expedited removal under § 1225(b)(1). The most glaring problem with this argument is also a fatal one: Aliens cannot simultaneously be in both § 1229a removal proceedings and expedited removal proceedings.³⁷ Indeed, this is precisely why the NTA requires DHS to indicate on the first page that any orders issued under § 1225(b)(1) were cancelled:

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

The Board's discussion and the issue in *Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520 (BIA 2011) was entirely the result of the fact that an alien may only be in expedited removal proceedings under § 1225(b)(1) or § 1229a proceedings. There the IJ had terminated § 1229a proceedings based on a belief that the alien was subject to expedited removal under § 1225(b)(1), and therefore, could not be properly placed in § 1229a proceedings.³⁸ None of the parties or EOIR adjudicators in that case, including the BIA, disputed that aliens could not simultaneously be in both.³⁹

Garland, 17 F.4th 586, 592 (5th Cir. 2021)); see also *United States v. Willis*, 76 F.4th 467, 479 (5th Cir. 2023) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, (1998)).

³⁷ See e.g., *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025) ("The Government concedes that Ms. Salcedo Aceros is currently in full removal proceedings under Section 1229, and that while those proceedings are live, she cannot be simultaneously subjected to Section 1225(b)(1)'s expedited removal proceedings.").

³⁸ *Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520, 520-21 (BIA 2011).

³⁹ *Id.*

Here, Mr. Flores Perez is not being subject to expedited removal under § 1225(b)(1)—he cannot be for countless reasons including the fact that he is indisputably in § 1229a proceedings and he was encountered long after his entry far away from the border.

Furthermore, the government's argument would require assuming that the everyone—including the Ninth Circuit and the Supreme Court—ignored this statute when both courts held they had jurisdiction over the claims in that case which included aliens who—unlike Mr. Flores Perez—were placed in § 1229a proceedings after being referred in accordance with § 1225(b)(2)(A).⁴⁰ To be clear, jurisdiction was an issue addressed in that *Jennings* at each step of the litigation process and from the district court up to the Supreme Court, every court determined it had jurisdiction over unlawful detention claims of aliens who—unlike Mr. Flores Perez—did not dispute they were properly considered detained under § 1225(b)(2)(A).⁴¹

VII. The government appears to imply, as it has in cases in other districts, that the Court does not have the power to order an agency to conduct a bond hearing under a habeas action like this one—Petitioner agrees and believes the most appropriate remedy is an order for immediate release as has been ordered by numerous district courts.

It is Petitioner's position that ordering his immediate release is the most appropriate remedy under the statute. This is true for many reasons most notably that his *unlawful* detention has already exceeded months—no one should be subjected to a day or week of unlawful detention—much less months. Mr. Flores Perez is the primary provider and

⁴⁰ *Jennings v. Rodriguez*, 583 U.S. 281, 294-96 (2018).

⁴¹ *Id.*

emotional rock for a family that includes a child that has leukemia. There government does and cannot argue he is a flight risk nor a danger. And even if it thought so, it should have done what it did for nearly thirty years and raised such arguments during a bond hearing before an IJ under § 1226. It has declined to do so despite losing hundreds and hundreds of cases on this issues throughout the country.

An order for release no later than noon on Tuesday, December 9, 2025, is consistent with the Court's jurisdiction, fairness, due process, and the orders of numerous other district courts including multiple different courts within the Western District of Texas recently.⁴² This not only provides the shortest route to remedy the unlawful detention of Mr. Flores Perez, but also prevvents IJs from being tempted to ignore the plain facts and deny bond anyway in an effort to save their jobs.⁴³

Alternatively, Petitioner requests the Court find his detention without a bond hearing unlawful and order his release unless a bond hearing has been provided by noon on Tuesday, December 9, 2025. In the event the Court believes this to be the better alternative, Petitioner requests the Court order that the government has the burden of demonstrating either flight or danger by clear and convincing evidence as the overwhelming majority of

⁴² *Martinez Orellana v. DHS, et. al.*, No. 5:25-CV-1028-JKP, 2025 WL 3471569, at *6 (W.D. Tex. Nov. 24, 2025)(in an order issued on Nov. 24th the court ordered Petitioner's release "from custody, under appropriate conditions of release, to a public place by no later than 12:00 p.m. on November 25, 2025); *Guzman Tovar v. Noem, et. al.*, No. 5:25-CV-1509-JKP, 2025 WL 3471416, at *7 (W.D. Tex. Nov. 25, 2025)(same); and *Acea Martinez v. Noem, et. al.*, 5:25-cv-1390-XR (W.D. Tex. Nov. 18, 2025)(same).

⁴³ There have been more than a few instances in which IJs conducting bond hearings after a district court orders one have been claiming danger on the basis of nothing more than the EWI alien having entered the country without inspection years ago and remained since. Indeed, even after a nationwide injunction was issued by a U.S. District Court for the Central District of California, both the IJs and DHS have refused to acknowledge it has any legal effect. *See* Ex. 1 and Ex. 2 to Reply Brief.

courts have opted to provide a short amount of time for a bond hearing have similarly ordered.⁴⁴

CONCLUSION

For the above stated reasons, Mr. Flores Perez respectfully requests the Court issue an order adopting the findings and legal conclusions of the Magistrate Judge Horan, and find Respondent's detention of Mr. Flores Perez without a bond hearing is contrary to both the statutory scheme and the U.S. Constitution for the reasons set forth in his petition, above, and in the FCR; and as a result, Order Respondent's to release Mr. Flores Perez no later than noon on Tuesday, December 9, 2025.⁴⁵

RESPECTFULLY SUBMITTED.

/s/ Dan Gividen

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⁴⁴ See e.g. *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *5 (W.D. Tex. Oct. 21, 2025); *Barros v. Noem*, No. EP-25-CV-488-KC, 2025 WL 3154059, at *1 (W.D. Tex. Nov. 10, 2025).

⁴⁵ A proposed order is being filed with this response.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the U.S. District Court and counsel for the government in accordance with the Federal Rules of Civil Procedure on December 5, 2025.

/s/ Dan Gividen
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