

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

ALEXIS ACEA-MARTINEZ,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 5:25-cv-1390 -XR

**PETITIONER'S REPLY BRIEF IN SUPPORT OF HABEAS PETITION &
MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

Petitioner, Alexis Acea-Martinez, by and through undersigned counsel, files this Reply Brief in support of his Habeas Petition and Motion for a Preliminary Injunction. For the reasons set forth below, Petitioner respectfully requests the Court grant the relief requested by finding his detention—which the DHS created and authored documents explicitly state is under § 1226(a)—unlawful without being afforded a bond hearing before an IJ in accordance with § 1226(a), and order his release in no more than 7-days if such bond hearing is not provided.

BRIEF RESTATEMENT OF RELEVANT FACTS AND EXHIBITS

Mr. Acea-Martinez is a native and citizen of Cuba who entered the United States without inspection a few years ago. He has a loving family and no criminal history.

In 2022, Mr. Acea-Martinez was encountered by DHS after entering EWI. This encounter resulted in several DHS created and authored documents being issued. These documents leave no room to dispute that the authority for his arrest and detention was under 8 U.S.C. § 1226. Indeed, DHS issued a warrant indicating unequivocally that Mr. Acea-Martinez was "being taken into custody as authorized by [(8 U.S.C. § 1226)] section 236 of the Immigration and Nationality Act."¹ For convenience, a screenshot of the relevant portion of Ex. 2 stating this can be seen below:

¹ (Ex. 2 – DHS Issued Warrant and Release Docs Citing § 1226 as Authority.)

From evidence submitted to me, it appears that:
ALEXIS ACEA-MARTINEZ

(Full name of alien)

an alien who entered the United States at or near CALEXICO, CALIFORNIA on
July 24, 2022 is within the country in violation of the immigration laws and is
(Date) (Port)

therefore liable to being taken into custody as authorized by section 236 of the Immigration and Nationality Act.

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Thereafter, he was issued a NTA. Like every NTA, the one issued to Mr. Acea-Martinez provides three boxes at the top, as seen in the screenshot from the top of the one at Ex. 1:

In the Matter of:	DOB: [REDACTED]	Event No: CAX2207000864
Respondent:	ALEXIS ACEA-MARTINEZ	currently residing at:
	[REDACTED] (Number, street, city, state and ZIP code)	[REDACTED] (Area code and phone number)
<input type="checkbox"/> You are an arriving alien. <input checked="" type="checkbox"/> You are an alien present in the United States who has not been admitted or paroled. <input type="checkbox"/> You have been admitted to the United States, but are removable for the reasons stated below.		

As the NTA created entirely by DHS unequivocally demonstrates, the box for being an EWI alien—not the box for an arriving alien—was checked. The check in that box is consistent with the factual allegations and sole charge of removal on the NTA which is the EWI charge found at 8 U.S.C. § 1182(a)(6)(A)(i)³ The charge from Mr. Acea-Martinez' NTA and the boxes DHS is required to check if the NTA is being issued after converting

² (ECF No. 1-2 p. 2.)

³ (Ex. 3 – NTA.)

expedited removal proceedings to full proceedings under § 1229a appear on Ex. 3 as follows:

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- 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)

Additionally, on the same day he was encountered, he was also released on his own recognizance and issued a form leaving no doubt that such release was under the authority provided by 8 U.S.C. § 1226.⁴ The relevant portion of Ex. 2 showing this is seen here:

Alien's Name: ALEXIS ACEA-MARTINEZ A-File Number: [REDACTED]
 Date: 07/26/2022
 Event ID: CAX2207000864 Subject ID: [REDACTED] FIN: [REDACTED]

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

- Detained by the Department of Homeland Security.
- Released (check all that apply):

In sum, all of the DHS created and authored documents leave no question that DHS has treated Mr. Acea-Martinez as an alien whose arrest and detention were pursuant to § 1226(a).

After being released pursuant to § 1226 on his own recognizance, Mr. Acea-Martinez reported faithfully to ICE, timely filed an asylum application, and was patiently

⁴ (ECF No. 1-2 p. 1.)

awaiting his first hearing before an IJ in Dallas. Despite his compliance, absence of criminal history, and the first removal hearing scheduled a few years in the future, Mr. Acea-Martinez went to the ICE Field Office on October 21, 2025, to check in as required by the release on his own recognizance. At that time, Mr. Acea-Martinez was detained without reason or explanation. Once ICE detained him, ICE did not set a bond for him.

REPLY TO ARGUMENTS IN GOVERNMENT'S RESPONSE

- I. **The government's first argument, that Mr. Acea-Martinez is actually detained pursuant to § 1225(b)(1) is completely contradicted by the documents created by DHS when he was encountered, arrested, detained, and released after entering the country.**

The government's first argument seeks to distinguish this case from the countless others in which courts have overwhelmingly rejected the government's new position that § 1225(b)(2)(A) subjects all EWI aliens to mandatory detention. It argues his detention now is pursuant to § 1225(b)(1) because he "could have been placed in expedited removal proceedings." Simultaneously, the government does not—as it cannot—dispute that the Mr. Acea-Martinez is currently in full removal proceedings under § 1229a.

- A. The government now argues Mr. Acea-Martinez is simultaneously in § 1229a proceedings and detained under § 1225(b)(1)—a well-established impossibility under the INA.

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.⁵ 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.⁶ None of the parties or EOIR adjudicators in that case, including the BIA, disputed that aliens could not simultaneously be in both.⁷

Given the government's response insists Mr. Acea-Martinez is detained under § 1225(b)(1) and in proceedings under § 1229a, there is zero question that his detention is unlawful. This should end the analysis and this case. It is undisputed that Mr. Acea-Martinez is in § 1229a proceedings, and therefore, his detention which the government now claims to be based on expedite removal is unlawful. For this reason, Mr. Acea-Martinez respectfully requests the Court grant the petition and order ICE to immediately release him.

⁵ 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.").

⁶ *Matter of E-R-M- & L-R-M-*, 25 I & N Dec. 520, 520-21 (BIA 2011).

⁷ *Id.*

B. The only other written evidence of the provision under which Mr. Acea-Martinez is detained are the DHS created documents which all explicitly cite § 1226 for authority to arrest and detain—attempts by the government to claim a sudden switch from detention under § 1226(a) have flatly rejected such attempts.

The claims in government's response about the statute under which he is detained attempted to cure the other fatal problem with its claims: every DHS created, authored, and signed document issued in conjunction with Mr. Acea-Martinez' encounter explicitly cited § 1226 for authority; meanwhile, § 1225 is not referenced anywhere in any of those documents. This attempt by the government to switch his detention is not new to this case. Indeed, it seems to be an argument attempted—and rejected—from coast to coast.

For example, the facts with respect to entry, encounter, and the documents issued were nearly identical for the alien in *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025). There the government did not attempt to claim she was detained under § 1225(b)(1), but did attempt to claim that it was allowed to switch her from § 1226 detention to § 1225(b)(2)(A) detention for the same reason (she could have been subjected to expedited removal). The court rejected the government's attempt to make such a switch, explaining:

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. But the Government asserts that it may nevertheless detain Ms. Salcedo Aceros under Section 1225(b)(2). . . . In other words, the Government's position is that whether Ms. Salcedo Aceros is in full removal proceedings or not, and regardless of the authority under which it initially detained her, it may at any time subject her to detention without the possibility of release on bond because she is an “applicant for admission” who is “seeking admission” and thus subject mandatory detention under § 1225(b)(2).

The Government's argument does not hold. As a preliminary matter, whether the Government may have had the power to detain Ms. Salcedo Aceros under 1225(b), the reality is that the detention authority consistently applied by the government to Ms. Salcedo Aceros since her arrival in the United States has always been § 1226. In 2024, the Government placed Ms. Salcedo Aceros in normal removal proceedings under Sections § 1229, not § 1225(b)(1), and chose to release her on conditional parole under § 1226(a), not hold her in detention under § 1225(b)(2). These actions created a reliance interest in her continued freedom, so long as she abided by the terms of her release. . . .

Sections 1226(a) and 1225(b) cannot be applied simultaneously. . . . It is not possible for Ms. Salcedo Aceros to be simultaneously subject to both detention regimes. She was and is subject to Section 1226(a), not 1225(b).

Ms. Aceros enjoys a liberty interest under § 1226(a) and the procedural protections thereunder that cannot be unilaterally abrogated without process by the Government simply “switching tracks.”⁸

Moving across the country to Illinois, a district court there, like here, all of the documents issued to the alien from his encounter with ICE after entering indicated:

the Government has consistently treated Patel as detained under the authority of Section 1226(a) since the date he was first apprehended after crossing the border, and settled law precludes the Government from now switching gears to contend that he has actually been detained under Section 1225(b)(2).⁹

These facts are identical to the ones here. This led the court in *Patel* to conclude " the Government has affirmatively decided to treat Patel as being detained under Section 1226(a) and it cannot now be heard to change its position to claim that he is detained under Section 1225(b).¹⁰

⁸ *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *7–8 (N.D. Cal. Sept. 12, 2025) (cleaned up).

⁹ *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025).

¹⁰ *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025) (cleaned up). (citing *Kennedy v. Kijakazi*, No. 22-2258, 2023 WL 1990303, at *3 (7th Cir. Feb. 14, 2023), quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020) (the “*Chenery* doctrine requires [an] agency to ‘defend

Though there are likely many other cases finding similarly, Mr. Acea-Martinez will only provide one more example, this time from the east coast. Once again, the same facts as in this case with all the documents (arrest warrant, release, and NTA) stating the alien was arrested and released pursuant to § 1226 and was not treated as an arriving alien on the NTA. This led the court in that case to explain:

[I]t is indisputable that Respondents have consistently treated Mr. Lopez Benitez as subject to § 1226...Indeed, the record is devoid of any reference to § 1225 in connection with Mr. Lopez Benitez's arrest and detention until they filed their Opposition to his Petition. The Court cannot credit Respondents' new position as to the basis for Mr. Lopez Benitez's detention, which was adopted post hoc and raised for the first time in this litigation. These facts, taken together, can support only one conclusion—that Mr. Lopez Benitez was not mandatorily detained as a noncitizen “seeking admission” under § 1225(b), but rather as someone “already in the country,” pursuant to . . . Respondents' discretionary authority under § 1226(a)—which Respondents have consistently maintained . . .¹¹

As all of these decisions and common sense indicate, the government may not be permitted to consistently treat an alien as though they are subject to § 1226 then suddenly, without a valid change of law or circumstance, change their mind and claim such person is subject to having their liberty stripped from them.

its actions based on the reasons it gave when it acted' in the interest of promoting agency accountability, instilling confidence in agency decisions, and maintaining an orderly process of review.”); *Lopez-Campos*, 2025 WL 2496379, at *7 (“It was not until Lopez-Campos requested a custody redetermination hearing (bond hearing) that Respondents claimed his detention was under Section 1225(b)(2)(A). The Court cannot credit this new position that was adopted post-hac, despite clear indication that Lopez-Campos was not detained under this provision.”); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 237188, at *5 (S.D.N.Y. Aug. 13, 2025) (same); *E.C.*, 2025 WL 2916264, at *8 (rejecting Respondents' claim that Section 1225(b) should apply where they “have presented no evidence that the ... NTA was rescinded or that a new one was issued, nor any determination by ICE/DHS that Petitioner is detained under § 1225(b), other than the arguments made by Respondents in their briefing.”).

¹¹ *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025) (cleaned up).

It was not Mr. Acea-Martinez or the aliens in the cases discussed above who made the decision to consistently treat them as though they are subject to § 1226, release them into the U.S., allow them to establish a life here to include providing Mr. Acea-Martinez with work authorization in conjunction with his pending asylum application, and then suddenly without warning, reason, or legal basis, rip the rug out from under them by arresting them and claiming such detention is mandatory. Surely, such actions epitomize a violation of the fundamental principles of due process and fairness once rooted in this country's values.

In sum, the evidence shows the government has, to date, never claimed to detain him under § 1225(b)(2)(A). Instead, all of the DHS created documents indicate he has been consistently treated as being subject to § 1226. This dictates the conclusion that he is entitled to a bond hearing before an IJ under § 1226. For this reason alone, it is Mr. Acea-Martinez' position that his detention without being afforded such hearing is unlawful.

C. A quick note about Cubans, expedited removal, and the Cuban Adjustment Act

The expedited removal provisions are expressly inapplicable to Cubans arriving by aircraft at a port of entry.¹² The expedited removal process may be applied to Cubans arriving at a land border port of entry. Beginning in June 2005, however, DHS adopted a policy whereby natives or citizens of Cuba who arrive at land border ports of entry were processed for § 1229a proceedings.¹³

¹² See 8 U.S.C. § 1225(b)(1)(A)(i) and § 1225(b)(1)(F).

¹³ See U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S.- CANADA SAFE THIRD COUNTRY AGREEMENT FIRST YEAR IMPLEMENTATION REPORT Ch. 5 n.41 (2006), available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnexto>

This policy essentially recognized that the practice of placing Cuban nationals into the expedited removal process, only to have them establish a credible fear of persecution or torture and ultimately be referred for regular removal proceedings anyway, exalted form over substance, resulting in an inefficient use of detention space at land border ports of entry.

Though it is believed that this policy has been rescinded, it merits pointing out that in the case of Mr. Acea-Martinez, a Cuban, the decision to treat him as subject to § 1226 was in everyone's best interest.¹⁴

II. The government's jurisdictional & exhaustion arguments are without merit and, like the rest of its positions, have been so rejected by Article III courts in recent weeks.

“Because it concerns the Court's power to decide the case, ‘[j]urisdiction is always first.’”¹⁵ In this case, however, the question of whether this Court has jurisdiction is hardly a headlining argument as this Court already rejected nearly identical jurisdictional arguments by the government in a case raising many of the same claims raised by Petitioner here.¹⁶ Mr. Acea-Martinez respectfully requests that the Court reject the government's

id=4dab936142dee010VgnVCM1000000ecd190aRCRD&vgnnextchannel=4dab936142dee010VgnVCM1000000ecd190aRCRD (last visited Dec. 29, 2008).

¹⁴ Arguably, the person most adversely impacted by this decision is actually Mr. Acea-Martinez. Given the likelihood that he, as a Cuban, could establish a fear of return, he ultimately would have gone from the fear process to § 1229a proceedings. At which point, he likely would have been released, but such release would have been a parole of an arriving alien for humanitarian purposes. This may have made the arguments about his detention now more difficult, but it would have provided him the parole required to adjust his status under the Cuban Adjustment Act.

¹⁵ *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 *Arulmanthy v. 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, 101, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998)).

¹⁶ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3.

jurisdictional arguments in this case for the same reasons it rejected those arguments in *Lopez-Arevelo v. Ripa*.¹⁷ Though the government asks the Court to reconsider its prior rulings on jurisdiction because “the Court did not have the benefit” “of the expanded arguments ...included” in its response in this case, this request ignores the fact that this Court fully examined and considered for itself the full panoply of jurisdiction “curtail[ing]” statutes within the INA.¹⁸

For the reasons set forth by this Court in *Lopez-Arevelo v. Ripa* and those discussed below, the government’s jurisdictional arguments are without merit.

A. Section 1252(g) is narrowly confined to three discrete executive actions and does not preclude challenges to the legality of detention.

The government first argues that 8 U.S.C. § 1252(g) divests this Court of jurisdiction. That provision states 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.”¹⁹ The government contends that because Petitioner’s detention “arises from the decision to commence removal proceedings against him,” his claim is barred.²⁰ But this argument is built on a faulty premise as it seeks to “sweep in any claim that can technically

¹⁷ *Id.* at *3-5.

¹⁸ *Id.*

¹⁹ 8 U.S.C. § 1252(g).

²⁰ (ECF No. 7 pp. 12-13.)

be said to ‘arise from’ the three listed actions.”²¹ But, as another Western District of Texas court explained in *Lopez-Arevelo*:

[T]he Supreme Court has “not interpret[ed] this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves.” *Jennings*, 583 U.S. at 294, 138 S.Ct. 830 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999)). Thus, § 1252(g) applies only “to protect from judicial intervention the Attorney General’s long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders.” *Duarte*, 27 F.4th at 1055 (quoting *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999)). The statute “does not bar courts from reviewing an alien detention order, because such an order, ‘while intimately related to efforts to deport, is not itself a decision to “execute removal orders” and thus does not implicate section 1252(g).” *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000) (citation omitted); *accord Kong v. United States*, 62 F.4th 608, 617–18 (1st Cir. 2023) (collecting cases).²²

Here, Petitioner is not challenging Respondents’ decision to execute a removal order, the decision to commence proceedings, or adjudicate his removal proceedings. Rather, Petitioner challenges his continued detention as unlawful, and “[s]uch claims are not barred by § 1252(g).”²³ Accordingly, § 1252(g) does not deprive the Court of jurisdiction over Petitioner’s claims and the government’s arguments to the contrary are without merit.

B. Neither 1252(b)(9) (alone or together with 1252(a)(5)) are applicable to Petitioner’s claims related to ongoing unlawful detention in violation of the statutes and/or constitution—as evidenced by *Jennings* which the

²¹ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025).

²² *Id.* at *4.

²³ *Id.* (citing *Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278, at *2–3 (W.D. La. Sept. 11, 2025)).

government extracts phrases from without acknowledging that it held courts have jurisdiction to review such claims.

The government's reliance on 8 U.S.C. § 1252(b)(9), the so-called "zipper clause," is misplaced. This provision consolidates judicial review, stating that "judicial review of all questions of law and fact... arising from any action taken or proceeding brought to remove an alien from the United States... shall be available only in judicial review of a final order of removal."²⁴ In an effort to give its argument merit, the government misstates both Petitioner's claim and Supreme Court precedent. Each of these are addressed in turn.

First, the government's response states: "In this case, Petitioner *does* challenge the government's decision to detain him in the first place."²⁵ This statement is simply false. Nothing about Petitioner's claim has anything to do with the government's ability to "detain him in the first place." Rather, as is abundantly clear throughout his filings, he is challenging the government's refusal to provide him with the bond hearing he is entitled to under the law and U.S. constitution. In fact, Petitioner does not even claim that EWI noncitizens are entitled to a bond—just the bond hearing proscribed by 8 U.S.C. § 1226. Petitioner simply asks for what countless courts have said he and others similarly situated are entitled to: a bond hearing before a neutral adjudicator. Much like its claims about what § 1225(b)(2)(A)'s plain language says, the government's claim that Petitioner challenges his detention in the first place is simply incorrect.

Similarly, the government's claim that anything and everything related to removal

²⁴ 8 U.S.C. § 1252(b)(9).

²⁵ (ECF No. 7 p. 22.)

proceedings must be “zipped” into a PFR filed with a circuit court of appeals is not rooted in reality. The government’s argument in this regard fundamentally misreads and misrepresents the Supreme Court’s holding in *Jennings v. Rodriguez*. The government’s position rests on a selective reading of *Jennings* that omits its core reasoning. While the government correctly notes that the *Jennings* court discussed challenges to “the decision to detain [an alien] in the first place” falling within § 1252(b)(9)’s scope,²⁶ it conveniently ignores the fact that the Court held that § 1252(b)(9) did *not* bar jurisdiction over the respondents’ claims over their detention in that very case.²⁷

The claims in *Jennings* were functionally, with respect to jurisdiction, similar in the relevant aspects to Petitioner’s claim here: a challenge to the detention of noncitizens without bond hearings.²⁸ The Supreme Court found jurisdiction proper because the respondents were “not challenging the decision to detain them in the first place or to seek removal.”²⁹ Instead, they were challenging “the *extent of the Government’s authority to detain them without a bond hearing*” and “the *constitutionality of their detention* under the Due Process Clause.”³⁰

This is the dispositive distinction that the government’s argument goes out of its way

²⁶ *Jennings*, 583 U.S. at 294-95.

²⁷ *See id.* (holding it had jurisdiction to consider the claims made by the non-citizens in that case that they were being detained in violation of the law and constitution).

²⁸ *Id.*

²⁹ 583 U.S. at 295.

³⁰ *Id.* (emphasis added).

to avoid. Petitioner is not contesting the government's discretionary decision to take him into custody at the outset of his removal proceedings. He is mounting a foundational challenge to the government's claims about the statutory and constitutional framework under which he is being detained without a bond hearing. He argues that the government's interpretation of § 1225(b) is statutorily erroneous and, as applied to him, violates the Fifth Amendment's guarantee of procedural due process. This is not a challenge to a "discretionary judgment" or an "action or decision" regarding detention, which might be shielded by a provision like § 1226(e). Rather, as the court in *Lopez-Arevelo* explained in its analysis of § 1226(e), such provisions do not preclude" challenges to the statutory framework that permits the alien's detention without bail."³¹ Petitioner's claim is precisely such a challenge.

The government's attempt to reframe this classic habeas claim—a challenge to a present, ongoing state of unlawful confinement—as a mere challenge to a past discretionary act is a transparent effort to force the claim into the § 1252(b)(9) box. This maneuver must be rejected, not only because it contradicts *Jennings*, but also because it leads to a constitutionally suspect outcome. The government's proposed review mechanism—a petition for review to the circuit court after a final order of removal is issued by the Board of Immigration Appeals (BIA)—is a wholly illusory remedy for the injury alleged. The constitutional harm is the ongoing deprivation of liberty *without a timely bond hearing*. A judicial determination that occurs months or years later, after a final removal

³¹ *Lopez-Arevelo*, at 5 (quoting *Jennings*, 583 U.S. at 295).

order, cannot retroactively provide the hearing that was unconstitutionally denied. It cannot restore the days, months, or years of liberty lost during the period of unlawful pre-order detention. Such a delayed and inadequate process would render the Great Writ a nullity for this entire class of detainees.

Furthermore, this Court rejected a similar argument in *Lopez-Arevelo*, explaining:

Section 1252(a)(5) [and (b)(9) are] narrowly applicable provision[s], which ‘specif[y] that the only means of obtaining judicial review of a final order of removal, deportation, or exclusion is by filing a petition with a federal court of appeals.’ It is a ‘zipper clause,’ which ‘funnel[s] judicial review of final deportation orders ... into a single mechanism. Thus, where there is no final removal order and a habeas petitioner’s “arrest and detention claims are independent of any future removal order,” § 1252(a)(5) [and (b)(9)] do[] not prevent the district court from hearing such claims.’³²

In sum, none of the statutes or cases relied on by the government act as jurisdictional bars to Petitioner’s claim that he is being unlawfully detained in violation of the INA and U.S. constitution.³³

III. Mr. Acea-Martinez has demonstrated that his current detention violates the due process clause of the Fifth Amendment, and as a result, he is entitled to the relief sought by his Petition, like all § 2241 petitions, an order enjoining the government from continuing to unlawfully detain him.

³² *Lopez-Arevelo*, 2025 WL 2691828, at *5 (citations omitted and cleaned up).

³³ Though not explicitly raised and argued by the government, it should be noted that administrative exhaustion is not required in these circumstances. Exhaustion, including an appeal to the BIA, is not required for habeas petitions and, in any event, would be futile here. The government’s internal memorandum issued on July 8, 2025, announcing both the complete change in its interpretation of § 1225(b)(2)(A) combined with the BIA’s *Hurtado* decision fulfilling Lyons prophecy that this new interpretation would be done “in conjunction” with EOIR, leave no doubt that without federal court intervention every EWI noncitizen will be deprived of a bond hearing.

The purpose of § 2241 is to enjoin the government from continuing to unlawfully detain a person. Meanwhile, the purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm until the court makes a final decision the relief sought.³⁴ To obtain an injunction, an applicant must establish four elements: (1) substantial likelihood of success on the merits; (2) substantial threat of irreparable harm; (3) the threatened injury outweighs any harm the order might cause the defendant; and (4) the injunction will not disserve the public interest.³⁵

Mr. Acea-Martinez is likely to succeed on the merits of his claims.

A. Mr. Acea-Martinez is likely to succeed on the merits of his claims that his detention without a bond hearing based on nothing more than being EWI is unconstitutional and unlawful.

Mr. Acea-Martinez is substantially likely to succeed on the merits of his claims because his detention is unlawful under both the INA and the Due Process Clause of the Fifth Amendment. Respondents' new, radical interpretation of the INA—which subjects all noncitizens who entered without inspection (“EWI”) to mandatory detention—reverses nearly three decades of consistent agency practice, defies multiple canons of statutory construction, and violates the Constitution. This novel theory, recently rubber-stamped by the Board of Immigration Appeals (“BIA”) in *Matter of Hurtado*, 29 I & N Dec. 216 (BIA Sept. 5, 2025), is a thinly veiled attempt to achieve through executive fiat what Congress

³⁴ *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

³⁵ *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); see *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

has not authorized: the categorical denial of bond hearings to a class of noncitizens long understood to be eligible for them. As numerous federal district courts have already concluded, this position is legally indefensible.

B. His detention violates due process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.³⁶ To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Mathews*, courts weight the following factors:

(1) the private interest that will be affected by the official action;

(2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and

(3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.³⁷

Mr. Acea-Martinez addresses the *Mathews* factors in turn.

Private interest. It is undisputed Mr. Acea-Martinez has a significant private interest in being free from detention. "The interest in being free from physical detention" is "the most elemental of liberty interests."³⁸ Moreover, when assessing the private interest, courts

³⁶ *Demore v. Kim*, 538 U.S. 510, 523 (2003).

³⁷ *Mathews*, 424 U.S. at 335.

³⁸ *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

consider the detainee's conditions of confinement, specifically, "whether a detainee is held in conditions indistinguishable from criminal incarceration."³⁹

Mr. Acea-Martinez has not only been held in ICE detention without a bond hearing. As in *Günaydin*, "he is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement."⁴⁰ The first *Matthews* factor supports Mr. Acea-Martinez's claim of a Fifth Amendment violation.

Risk of erroneous deprivation. Under this factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks."⁴¹

Here, given the government's inability to consistently state which provision they are detaining Mr. Acea-Martinez under, it seems more likely than most cases to result in erroneous deprivation of his liberty. This *Matthews* factor weighs in favor of Mr. Acea-Martinez, too.

Respondents' competing interests. Under this factor, the court weighs the private interests at stake and the risk of erroneous deprivation of those interests against Respondents' interests.⁴² Petitioner does not dispute that the government and the public

³⁹ *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)).

⁴⁰ *Id.*

⁴¹ *Id.* at *8.

⁴² *Matthews*, 424 U.S. at 335.

have a strong interest in the enforcement of the immigration laws. Ironically, it is Petitioner who is asking the Court to enforce such laws as the currently exist; meanwhile, the government is asking everyone to ignore multiple provisions of the INA. Mr. Acea-Martinez is not a flight risk nor a danger to the community. Nor is Mr. Acea-Martinez described in any of the provisions of 8 U.S.C. § 1226(c) or 8 C.F.R. § 1003.19 which would subject him to mandatory detention without the right to a bond hearing before an IJ. Accordingly, the government's interest in upholding the Constitution and immigration laws is fulfilled through the relief sought by Mr. Acea-Martinez's habeas petition.

Because all three *Matthews* factors favor Mr. Acea-Martinez's position, this Court should determine that Mr. Acea-Martinez is likely to succeed in demonstrating that his detention without a bond hearing despite being consistently treated like he is subject to § 1226 contravenes his due process rights under the Fifth Amendment.⁴³

C. His Detention Violates the Relevant Statutes.

The government's detention of Petitioner without a bond hearing is contrary to the INA's plain text for the reasons discussed above and set forth in the Petition itself. For those reasons, Respondents refusal to provide this statutorily required bond hearing violates the INA.

D. Mr. Acea-Martinez Faces Immediate and Irreparable Harm.

⁴³ See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

A movant “must show a real and immediate threat of future or continuing injury apart from any past injury.”⁴⁴ Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that “[f]reedom from imprisonment . . . lies at the heart of the liberty” protected by the Due Process Clause.⁴⁵ Each day Mr. Acea-Martinez remains in custody, she is irreparably harmed by the loss of his fundamental liberty—a cruel irony given that it was nothing more than an Apple Watch’s autonomous call to emergency services that led to his detention by ICE.

The harm is not merely abstract. Mr. Acea-Martinez has already been subjected to extended unlawful detention and all the humiliating and degrading things that go along with it: locked in a cage, cuffed, chained, and strip searched. Absent relief from this Court, Mr. Acea-Martinez will remain detained in what is becoming an increasingly long removal proceeding process, and as a result, denied his liberty, removed from his livelihood and freedom, and removed from what had previously been a community where she belongs.

E. The Balance of Equities and Public Interest Weighs in Mr. Acea-Martinez’s Favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—“merge when the Government is the opposing party.”⁴⁶ Here, the balance of hardships weighs overwhelmingly in Mr. Acea-Martinez’s favor. The injury to Mr. Acea-Martinez—unconstitutional detention and risk to his well-being—is severe and immediate.

⁴⁴ *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

⁴⁵ *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

⁴⁶ *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law.⁴⁷

Conversely, the harm to Respondents is nonexistent. Mr. Acea-Martinez is not among those Congress proscribed for mandatory detention. Nor is Mr. Acea-Martinez a danger to the community or a flight risk. Moreover, to the extent the government disagrees with any of these statements, it has the same recourse it has had for decades: making those arguments to a neutral adjudicator during a bond hearing pursuant to § 1226. Surely, Respondents cannot claim any, much less substantial, harm would be caused by affording Mr. Acea-Martinez a bond hearing, just as it has to similarly situated noncitizens for decades in accordance with the INA's statutory scheme.⁴⁸ Furthermore, the public interest is served by preserving "life, liberty, and happiness" and by preventing the waste of taxpayer resources on unlawful and unnecessary detention.

F. Mr. Acea-Martinez Seeks the Same Injunctive Relief Being Granted to Nearly Every Similarly Situated Habeas Petitioner.

Mr. Acea-Martinez seeks injunctive relief to maintain the status quo by requiring ICE to either immediately release him or promptly make his detention lawful by providing him with a bond hearing before a neutral IJ.

IV. The Court's habeas jurisdiction allows it to determine whether Petitioners are being unlawfully detained, and if so, to remedy it by ordering their immediate release.

⁴⁷ *Id.* at 436 (describing public interest in preventing noncitizens "from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *see also Rosa v. McAleenan*, 583 F. Supp. 3d 840 (S.D. Tex. 2019).

⁴⁸ *See Martinez*, 2025 WL 2598379, at *5.

It is Petitioners' position that (1) ordering their immediate release is the most appropriate remedy under the statute, and (2) to the extent that courts have found the government's detention of EWI aliens under its new interpretation of § 1225(b)(2)(A) and ordered a bond hearing within 24-hours, such an order is not ordering the government to conduct a bond hearing; rather, it is simply providing the government with notice the detention is unlawful and short window to cure the detention's unlawfulness. That being said, Petitioner believes the most appropriate remedy at this point is to simply order release.

CONCLUSION

For the foregoing reasons, Petitioner Mr. Acea-Martinez respectfully requests that the Court immediately grant his petition and motion for preliminary injunction by ordering his immediate release from ICE custody.

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

Dan Gividen
Texas State Bar No. 24075434
18208 Preston Rd., Ste. D9-284
Dallas, TX 75252
972-256-8641
Dan@GividenLaw.com

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 November 13, 2025.

/s/ Dan Gividen
DAN GIVIDEN
Attorney for Defendant