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

OSCAR VILLANTES GEORGE,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 3:25-cv-2935-S-BW

PETITIONER'S REPLY BRIEF IN SUPPORT OF HABEAS PETITION AND MOTION FOR A PRELIMINARY INJUNCTION

RESPECTFULLY SUBMITTED,

/s/ Dan Givіden
Dan Givіden
Attorney for Petitioner
Texas State Bar No. 24075434
18208 Preston Rd., Ste. D9-284
Dallas, TX 75252
972-256-8641
Dan@GividenLaw.com

TABLE OF CONTENTS

INTRODUCTION

"[O]ne's physical freedom is a paramount liberty interest, secured not just by statute but by the Constitution."[1] Indeed,"'[t]he interest in being free from physical detention' is 'the most elemental of liberty interests."[2] Accordingly, the Supreme Court has repeatedly stated that noncriminal detention must be justified by a sufficient justification, e.g. flight risk or danger, that "outweighs the "individual's constitutionally protected interest in avoiding physical restraint."[3] Where no such justification exists detention without due process is unconstitutional.[4]

Here, the government makes no attempt whatsoever to claim there is a Supreme Court approved justification for Mr. Villantes George's 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. Villantes George of his liberty and wants this Court to simply accept that no justification is necessary other than they believe they can. This claim has been consistently rejected by the overwhelming majority of courts to decide the

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[1] *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *3 (W.D. Tex. Oct. 21, 2025) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)).

[2] *Id.* (quoting *Hamdi*, 542 U.S. at 529).

[3] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)

[4] *Id.*

issue.[5] Mr. Villantes-George respectfully requests the Court do the same here, find his detention to be unlawful, and order his immediate release.

DISCUSSION

I. The government's silence in response to the overwhelming majority of arguments made in the habeas petition much less the extensive legal authorities supporting those arguments speaks volumes.

Mr. Villantes-George' Amended Habeas Petition and Motion for Preliminary injunction provided an extensive and detailed discussion of the relevant laws, regulations, and cases interpreting them.[6] The government's response—like the decisions that have found in its favor—failed to address the substantial majority of these arguments and

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[5] *See e.g., Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Choglio Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025);*Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025)(agreeing on substantive claim but oddly not ordering any real relief in this decision);*Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *S.D.B.B. v. Johnson et. al.*, No. 1:25-CV-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025).

[6] ECF Nos. 9 & 10.

authorities. Indeed, the government's response, like the cases it relies on, was completely silent on the following:

- The habeas petition provided detailed discussion and analysis of the statutory definitions of "application for admission" and "admission or admitted" in 8 U.S.C. §§ 1101(a)(4) and (13).[7] This included citations to interpretive case law from nearly every circuit, including the 5th Circuit, leaving no doubt these definitions are "expressly limited and do[] 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."[8]
    - The government's response does not even mention these statutory definitions or any of the caselaw interpreting them.
- The habeas petition addressed the fact that the *Jennings* decision was unquestionably based on the understanding that "1225(b)(2)(A)" applies to those at or near the border and § 1226 applies to aliens encountered in the interior, as well as the repeated statements by the Solicitor General explaining that EWI aliens like Petitioner encountered in the interior long after entry are entitled to bond under §

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[7] ECF No. 9 pp. 19-24.

[8] *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 (recognizing that " 'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status").

1226.[9] It further detailed the multitude of reasons the constitution permitted such an understanding but plainly does not allow for the government's new interpretation.[10]

  - The government's response was completely silent on every point made by Petitioner on this issue.

- The habeas petition provided persuasive examples of the many post-IIRIRA statutory provisions which contradict the government's claim that Congress intended to punish/deter illegal entry through mandatory detention as well as detailing the actual ways Congress sought to accomplish this goal.[11]

  - The government's response was completely silent on every point made by Petitioner on this issue.

- The habeas petition pointed to the undisputed fact that DHS has consistently treated Petitioner as though he is subject to § 1226, and therefore, have created a liberty interest that cannot be abrogated by the government unilaterally deciding to "switch tracks."[12] Further, it cited multiple well-reasoned decisions by district courts explicitly rejecting prior attempts by the government to switch an EWI alien from being subject to § 1226 detention to § 1225(b)(2)(A) in factually similar cases.[13]

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[9] ECF No. 9 pp. 46-49.

[10] ECF No. 9 pp. 57-61.

[11] ECF No. 9 pp. pp. 34-45.

[12] ECF No. 9 pp. 65-66.

[13] ECF No. 9 pp. 65-66.

- The government's response did not address this argument or the authorities cited at all in its response.

- The habeas petition detailed the reasons that, even if Hurtado were decided correctly (which it was not), it could not be retroactively applied to Petitioner under longstanding Supreme Court precedent.[14]
  - The government's response was completely devoid of a single word on this issue.

- The habeas petition provided a detailed analysis of the *Mathews* factors and the reasons those factors leave no doubt that Mr. Villantes-George current detention is unconstitutional under the due process clause.[15]
  - The government's response made no attempt to dispute this fact.

II. The "persuasive decisions" the government cites suffer from a multitude of errors resulting from a fundamental misunderstanding of who is subject to mandatory detention during removal proceedings to failing to even acknowledge controlling precedent explicitly holding the statutory definition of "admission" leaves no doubt that 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."

The government asks this Court to ignore the well-reasoned conclusions of numerous other courts who have fully considered the relevant issues and granted similar habeas petitions, in favor of the decisions from a few district courts.[16] As an initial matter,

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[14] ECF No. 1 pp. 62-64.

[15] ECF No. 1 pp. 64-69.

[16] *See* n. 13, *supra.*

those decisions—like the government's response—did not address a single one of the arguments or legal authorities included in the habeas petition filed in this case.[17]

Moreover, one such decision purported to be analyzing the plain language of the statute—but only after it changed the statute's actual language (e.g. by changing the word "applicant" to "applying"). There is no basis in any caselaw or the INA for saying that the word "applicant" and "applying" are synonymous when used in the INA. This is but one example of the mental gymnastics and word play that involved changing several words tense and meaning (e.g. it first equated being an "applicant for admission" to "applying for admission" and then said "applying" was the same as "seeking"). This does not only ignore the caselaw discussed at length in the Amended Habeas Petition, it fails entirely to account for the definition of "application for admission." in to account.

As stated in prior filings, § 1101(a)(4) explicitly states an "'application for admission' has reference to the application for admission into the United States. . . ." To summarize, Congress made clear that an "application for admission" is one "for admission into the United States" and that an admission requires one to be coming from the outside into the United States" through a POE. And yet, the government and cases it cites to claim that despite all these clear statements about where an application for admission and admission takes place are wholly irrelevant to whether all EWI aliens already present in the U.S. are—without regard to when they entered or where they are encountered—somehow engaged in "seeking admission." This simply cannot be the case.

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[17] *See* Discussion in Sec. I, pp. 7-10, *supra.*

Additionally, the government's response purports to be giving the statute its "plain meaning" while simultaneously ignoring the qualifier of its application to those "seeking admission." If it applied to all "applicants for admission" without regard for where and when they were encountered, the provision would have no need for the phrase "seeking admission" and would read:

> [I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.[18]

But Congress did include the phrase "seeking admission" and, as a result, it has always been understood to have its application at or near POEs and the border.

This statute, as countless courts have repeatedly found, does not apply to every "applicant for admission" encountered anywhere and at any time. To be subject to mandatory detention under § 1225(b)(2)(A), the plain text requires an individual to be 1) an "applicant for admission"; 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not clearly and beyond a doubt entitled to be admitted."[19] Tthe government's new interpretation conveniently ignores the emphasis Congress placed on an admission being an act that requires one to be at the door asking to come in at a POE and the second, critical element: that the person must be actively "seeking admission."

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[18] § 1225(b)(2)(A) (alteration added).

[19] 8 U.S.C. § 1225(b)(2)(A); *see also Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)).

Furthermore, the government's response and the decisions it cites rest entirely on the false premise that IIRIRA's goal of deterring entry without inspection or the "anomaly" it sought to remedy were related in any way to detention. As discussed in detail in the habeas petition, IIRIRA provisions enacted to deter EWI are unrelated to detention during INA § 1229a proceedings and the "anomaly" IIRIRA aimed to fix had nothing to do with bond.[20] 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).[21]

Further, the decisions cited by the government appear to believe that every alien who presents themselves for inspection at a POE is subject to mandatory detention in § 1229a proceedings. The many flaws with this claim have been addressed in the habeas petition and need not be repeated now.

That being said, one point from the petition which bears repeating. The Government's new position is further undermined by IIRIRA's parallel goal of eradicating immigration fraud. IIRIRA enacted severe penalties for fraud, such as the permanent, non-waivable bar for falsely claiming U.S. citizenship under INA § 1182(a)(6)(C)(ii). Yet, under the Government's strained interpretation of the detention statutes, those aliens who *would* remain eligible for a bond hearing under § 1226(a) after being placed in § 1229a proceedings for *committing* fraud—such as successfully committing fraud at a POE,

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[20] ECF No. 1 pp. 41-46.

[21] ECF No. 1 pp. 41-46.

engaging in marriage fraud, or violating the terms of their nonimmigrant visas. It defies logic and congressional intent to suggest IIRIRA created a scheme where those who commit affirmative fraud are entitled to a bond hearing, while aliens whose sole charge is entry without inspection are subject to mandatory detention.

The list of ways the cited decisions are simply incorrect could go on. But at this point Petitioner has provided overwhelming support for his position. The decisions relied on by the government like the response do not even mention the multitude of undeniably relevant statutes, regulations, case law, and constitutional provisions that make its position untenable, unlawful, and unconstitutional.

III. The most appropriate remedy, as many courts across Texas have found, is an order for immediate release.

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. Villantes George Perez is the primary provider for his family. The 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 the day after such an order is issued, 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.[22] This not only provides the shortest route to remedy the unlawful detention of Mr. Villantes-George, but also prevvents IJs from being tempted to ignore the plain facts and deny bond anyway in an effort to save their jobs.[23]

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 the day after such order is entered. 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 courts have opted to provide a short amoutn of time for a bond heairng have similarly ordered.[24]

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[22] *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).

[23] 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.

[24] *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).

CONCLUSION

For the above stated reasons and those stated in all his previous filings, Mr. Villantes-George respectfully requests the Court find Respondent's detention of him without a bond hearing is contrary to the both the statutory scheme and the U.S. Constitution for the reasons set forth in his petition and above, and as a result order ICE to immediately release him.

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

Dan Gividen
Texas State Bar No. 24075434
18208 Preston Rd., Ste. D9-284
Dallas, TX 75252
801-458-7965
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 December 15, 2025.

/s/ *Dan Gividen*

DAN GIVIDEN
Attorney for Defendant