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I. INTRODUCTION

The Petitioner, Mr. Hernandez Hervert, timely submits his traverse to Respondents' response to his habeas petition. On November 4, 2025, this Court ordered Respondents to respond on or before November 7, 2025. Dkt. 4. Respondents filed their response on November 7, 2025, urging denial. Dkt. 5. Federal Respondents maintain that Petitioner's detention is lawful. Dkt. 5.

In issuing its show-cause order, the Court made clear that it has already, at least preliminarily, addressed Respondents' construction of § 1225 and the BIA's decision in *Matter of Yajure-Hurtado* in related cases. *See Gonzalez Guerrero v. Noem*, No. 1:25-CV-1334-RP, Dkt. 20; *Vallecillo-Osorio*, No. 1:25-CV-1711-RP, Dkt. 13. The Court ordered Respondents to show cause on an expedited basis why the writ should not be granted, expressly noting that if they have "no new arguments to offer that have not already been addressed by the Court," they may simply say so by referencing their prior briefing while reserving appellate rights, and must file that briefing as an attachment for Petitioner's review. Dkt. 13 at 2. In response, Respondents largely reprise the same statutory, jurisdictional, and constitutional theories this Court has already considered in *Gonzalez Guerrero* and *Vallecillo-Osorio*, without identifying any materially new argument that would warrant a different result here.

Respondents first argue that ICE may lawfully detain Petitioner on a mandatory basis as an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) because he has never been admitted and is charged as inadmissible under § 1182, and that § 1226(a) bond procedures apply only to previously admitted noncitizens charged under § 1227, not to applicants for admission. On their reading, Congress, especially through IIRIRA, intended mandatory detention for this entire class. Dkt. 5 at 3–9. Second, they contend that Petitioner's U-visa bona fide determination and resulting deferred action do not confer lawful status, do not guarantee any ultimate visa, and do not strip

DHS of detention authority, emphasizing that the cited regulations govern deferred action and work authorization, not custody, and therefore do not require revocation of deferred action before detention. Dkt. 5 at 3. Third, the Government asserts that this Court lacks jurisdiction over most of Petitioner’s challenges because (i) § 1252(e)(3) channels challenges to the “implementation” of § 1225(b) and related written policies to the District of Columbia; (ii) § 1252(g) bars review of claims arising from DHS’s decision to commence, adjudicate, or execute removal proceedings, which they characterize as including the decision to detain; and (iii) §§ 1252(b)(9) and 1252(a)(5) require that questions of law and fact “arising from” actions taken to remove be raised, if at all, in a petition for review of a final removal order rather than via district-court habeas, with *Jennings* cited to foreclose a threshold challenge to the initial decision to detain. Dkt. 5 at 10–11. Fourth, on the merits, Respondents maintain that mandatory pre-order detention under § 1225(b)(2)(A) is facially constitutional and constitutional as applied here because applicants for admission are entitled only to the process Congress has specified, *Thuraissigiam* holds that the Due Process Clause “provides nothing more” in this context, Petitioner’s detention has been brief and tethered to ongoing § 1229a proceedings on a detained docket, and the INA’s detention and removal scheme is civil and nonpunitive, such that the Ex Post Facto Clause does not apply and, in any event, the statute itself has not changed. Dkt. 5 at 14–16. Finally, they argue that habeas cannot be used to obtain discovery, A-file production, or a stay of removal, that injunctive relief (including a TRO or preliminary injunction) is an “extraordinary” remedy for which Petitioner has not shown likelihood of success, irreparable harm, or a favorable balance of equities, and that release would provide no lawful status and would undermine the Government’s interest in enforcing the immigration laws; they therefore ask the Court to deny the TRO and preliminary-injunction request and to deny habeas relief (and any non-habeas claims) in full. Dkt. 5 at 19–18.

This case is fully postured for a decision on the merits of the habeas petition. The relevant facts are undisputed, and the questions presented are purely legal: whether Petitioner’s custody is governed by 8 U.S.C. § 1226(a) or § 1225(b), and whether Respondents may continue to detain him without a bond hearing. Petitioner is a U-visa applicant who has received a bona fide determination and deferred action from removal, reflecting DHS’s own judgment that he warrants protection and is not a danger or threat to the United States—making his continued civil detention especially unwarranted. The Court has before it the Petition, supporting exhibits, Respondents’ show-cause response, and the underlying agency and immigration-court records, and it has already, at least preliminarily, addressed Respondents’ core statutory theory and reliance on *Matter of Yajure-Hurtado* in related cases. See *Gonzalez Guerrero v. Noem*, No. 1:25-CV-1334-RP, Dkt. 20; *Vallecillo-Osorio v. Lyons*, No. 1:25-CV-1711-RP, Dkt. 13. In light of this record and the Court’s stated willingness to rule on the papers, there is no procedural or factual barrier to granting the writ.

II. BRIEF SUMMARY OF FACTS

As detailed in the habeas petition and supporting exhibits, Petitioner Nestor David Hernandez Hervert (“Mr. Hernandez Hervert”), 50,¹ has lived in the United States for over two decades, resides in Taylor, Texas with his U.S.-citizen wife and two adult U.S.-citizen children, and is the primary financial support for the household while his daughter completes graduate school. He has a single pending misdemeanor DWI charge from December 2024, for which he will participate in a pre-trial intervention program. Exh. 1. He has no criminal convictions. USCIS granted his U-visa petition a bona fide determination on November 16, 2023, together with four years of deferred action and employment authorization, and he held a valid Texas driver’s license

¹ Petitioner respectfully clarifies that the habeas petition mistakenly listed his age as 40. He is 50. The earlier reference was a typographical error.

and employment authorization document at the time of his September 16, 2025 traffic stop in Taylor, after which he was turned over to ICE and detained at the T. Don Hutto Detention Center without bond. DHS now asserts that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Relying on *Matter of Yajure-Hurtado*, IJ Tijerina denied his motion for administrative closure and later his bond request for lack of jurisdiction, and his next removal hearing is set for November 20, 2025. Exh. 2. In practical terms, detention has stripped the family of its main income, transportation, and daily support and has significantly impeded Petitioner’s ability to coordinate with counsel, gather evidence, and pursue the U-visa relief and related protections that USCIS has already recognized through its unrevoked grant of deferred action and work authorization.

III. ARGUMENT

A. The Court Should Reject Respondents’ Novel Reading of §§ 1225 and 1226 and Decline to Defer to *Matter of Yajure-Hurtado*

Respondents argue that the “plain language” of the statute requires treating Petitioner—a long-resident, interior arrestee—as an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2) for the duration of his § 1229a proceedings, with § 1226(a) categorically off the table. Dkt. 5 at 3–10. As multiple courts have already recognized², this is a recent and novel position, announced in the Lyons memorandum and in September 2025 the BIA followed with *Matter of Yajure-Hurtado*, abruptly discarding decades of practice under which long-resident interior arrestees were treated as § 1226(a) detainees with access to bond.³ DHS now

² See Dkt. 1 at 15 n.3 (collecting decisions from this District and others holding that § 1226(a), not § 1225(b)(2), governs custody for long-resident noncitizens arrested in the interior and ordering bond process or habeas relief).

³ Respondents devote several pages to arguing that the Ex Post Facto Clause does not apply because removal is “civil.” Dkt. 5 at 14–15. Petitioner has not asserted an Ex Post Facto Clause claim. His point is narrower: for nearly three decades after IIRIRA, long-resident noncitizens arrested in the interior and placed in § 240 proceedings were treated as § 1226(a) detainees, eligible to seek bond, and Congress legislated against that backdrop—including in the recent Laken Riley Act. The 2025 Lyons memorandum and *Matter of Yajure-Hurtado* discard that settled regime and, for the first time, classify those same long-resident interior arrestees as “mandatory” § 1225(b)(2) detainees with no IJ bond jurisdiction. Petitioner invokes that sharp break to confirm the best reading of the INA (and to show arbitrariness

asserts that virtually all noncitizens who entered without inspection and are later encountered in the interior are “applicants for admission” detained under § 1225(b), with parole as the only safety valve and no IJ bond jurisdiction. *See, e.g., Romero v. Hyde*, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (describing DHS’s § 1225 theory as a “novel interpretation” adopted “about a month ago”); *Benitez v. Hyde*, 2025 WL 2371588, at *5 (D. Mass. Aug. 14, 2025). Courts across the country—including repeatedly in this District—have rejected that reading and ordered § 1226(a) process or habeas relief in materially indistinguishable cases. *See Gonzalez Guerrero v. Noem*, No. 1:25-cv-01334-RP (W.D. Tex. Oct. 27, 2025); *Vallecillo-Osorio*, No. 1:25-CV-1711-RP (W.D. Tex. Oct. 30, 2025); *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Alvarez Martinez v. Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Martinez v. Noem*, No. 3:25-cv-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Souza Vieira v. De-Anda Ybarra*, No. 3:25-cv-432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Erazo Rojas v. Noem*, No. 3:25-cv-443-KC (W.D. Tex. Oct. 30, 2025). These decisions reflect a clear judicial consensus that the Government’s reliance on § 1225(b)(2) is misplaced where § 1226(a) applies.

Textually, Respondents’ argument fails because § 1225(b)(2)(A) applies only when three conditions are met: an “examining immigration officer” must determine that the person is (1) an “applicant for admission,” (2) “seeking admission,” and (3) “not clearly and beyond a doubt

under the APA and serious due-process concerns), not to assert an Ex Post Facto Clause violation.

entitled to be admitted.” See *Benitez*, 2025 WL 2371588, at *5 (quoting *Martinez v. Hyde*, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025)); 8 U.S.C. § 1225(b)(2)(A). Whatever § 1225(a)(1) may “deem” for charging purposes, a noncitizen who has lived in the interior for decades is not presently “seeking admission” in any ordinary or statutory sense. As *Romero* explained, the phrase “seeking admission,” otherwise undefined, “necessarily requires some sort of present-tense action.” 2025 WL 2403827, at *9 (quotation marks omitted); see also *Doe v. Moniz*, 2025 WL 2576819, at *1 (D. Mass. 2025); *Campos-Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD (S.D. Ind. Sept. 22, 2025). The Supreme Court likewise described § 1225(b) as concerned “primarily [with those] seeking entry,” generally at “the Nation’s borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). The statute repeatedly speaks in terms of “inspection,” and the implementing regulations at 8 C.F.R. § 1.2 speak of noncitizens “coming or attempting to come into the United States”—present-tense language that does not reach long-resident interior arrestees. On that straightforward textual ground, § 1225(b)(2)(A)’s mandatory-detention clause does not apply here.

Respondents and the BIA in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025), insist that if a noncitizen is not “admitted” yet is not “seeking admission,” the statute produces a “legal conundrum” with no status category. *Id.* at 221. There is no such conundrum—Congress created a separate, residual detention framework in 8 U.S.C. § 1226 that governs interior arrests, including of inadmissible noncitizens, and that framework presumes eligibility for bond under § 1226(a) subject to specific carve-outs in § 1226(c). Notably, § 1226(c)(1)(E), as amended by the Laken Riley Act, now requires mandatory detention of certain noncitizens who are inadmissible under 8 U.S.C. § 1182(a)(6)(A) and (7)—precisely the category of individuals DHS now claims

are exclusively governed by § 1225(b)(2). If § 1226(a) never covered inadmissible entrants without inspection (EWI) noncitizens in the first place, those inadmissibility-based carve-outs in § 1226(c) and Congress’s recent decision to expand mandatory detention for that group through § 1226(c), rather than § 1225(b), would be surplusage. The better reading, and the reading that has been followed for almost 30 years, which has been adopted by the decisions cited above and by multiple judges in this District, is that § 1225(b)(2) governs those at or just beyond the border who are presently seeking admission, while § 1226(a) governs interior custody, regardless of whether the person was ever “admitted,”

Finally, under *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), this Court owes no Chevron-type deference to the BIA’s new reading of §§ 1225 and 1226. The Court must interpret the statute de novo using traditional tools of construction. *Yajure-Hurtado* is not contemporaneous with enactment, departs from the Government’s longstanding practice of treating long-resident EWIs as § 1226(a) detainees eligible for bond, and conflicts with the growing body of federal district-court decisions, including in this District, that reject DHS’s § 1225(b)(2) theory. The Court should follow the text, structure, and history of the INA—and its own and sister courts’ recent decisions—and hold that § 1226(a), not § 1225(b)(2), governs Petitioner’s custody.

B. *Thuraissigiam* Is an Admission-Process Case and Does Not Bar this Habeas Petition

Respondents’ reliance on *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 1 (2020), is misplaced. See Dkt. 5 at 12–14. *Thuraissigiam* was an expedited-removal case about access to additional admission-related process. There the petitioner sought another opportunity to obtain relief from removal, not release from custody. The Court framed its holding around the limited “scope of habeas” in that admission context—explaining that habeas cannot be used to demand

authorization “to remain in this country.” *Id.* at 24–26. It did not decide whether, or how, noncitizens may challenge the fact or length of immigration detention. That issue was expressly left open in *Jennings v. Rodriguez*, which resolved only statutory questions and remanded the due-process claims, 583 U.S. 281, 297–301, 312 (2018), and the Government has since acknowledged that “as-applied constitutional challenges remain available” in the detention setting. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022).

This District has already drawn this exact line. In *Santiago v. Noem*, the court held that *Thuraissigiam* addresses admission and removal procedures, “not whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention”—precisely the claim raised there and here. No. 3:25-cv-00361-KC, slip op. at 10–13 (W.D. Tex. Oct. 15, 2025). Other judges in this District have granted TROs or habeas relief in § 1225(b) cases notwithstanding *Thuraissigiam*, recognizing that a petition seeking release or a bond hearing is fundamentally different from a petition seeking a new opportunity to avoid removal. *See, e.g., Gonzalez Guerrero*, No. 1:25-cv-01334-RP; *Lopez-Arevalo*, No. EP-25-CV-337-KC, 2025 WL 2691828; *Hernandez-Fernandez*, No. 5:25-CV-00773-JKP, 2025 WL 2976923; and *Erazo Rojas*, No. 3:25-cv-443-KC. Respondents do not engage with this line of authority. They simply cite *Thuraissigiam* as if it foreclosed all detention challenges by anyone ever “deemed” an applicant for admission. It does not.

Nor do the snippets of dicta Respondents quote carry their argument. That *Thuraissigiam* noted detention during expedited-removal proceedings was not in dispute, 591 U.S. at 24, does not amount to a blanket endorsement of mandatory, bondless detention for long-resident noncitizens arrested in the interior or a bar on habeas review of such custody. As *Santiago* explains, *Thuraissigiam* “constrained itself” to the admission context and left intact the longstanding rule

that “the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings,” including with respect to civil confinement. Slip op. at 11–14 (citing *Jennings*, 583 U.S. at 312; *Arteaga-Martinez*, 596 U.S. at 583; *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Petitioner, like the habeas litigants in those cases and in *Santiago*, challenges only the legality and duration of his detention and the denial of a bond hearing—not any entitlement to remain in the United States. Properly read, *Thuraissigiam* has nothing to say about that claim, and it does not bar this Court from granting habeas relief.

C. This Court Has Jurisdiction Over Petitioner’s Detention Habeas

Respondents argue that § 1252(g) bars this Court from reviewing ICE’s decision to detain Petitioner. Dkt. 5 at 10–12. But § 1252(g) “refer[s] to just three specific actions”—the decision or action “to commence proceedings, adjudicate cases, or execute removal orders”—and must not be read to “sweep in any claim that can technically be said to ‘arise from’” those actions. *Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 482–83 (1999).

The Fifth Circuit has squarely held that § 1252(g) does not bar review of immigration detention because a custody decision, “while intimately related to efforts to deport, is not itself a decision to ‘execute removal orders.’” *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000). More recently, the Fifth Circuit reiterated that § 1252(g) protects only the core discretion “to decide whether and when to prosecute or adjudicate removal proceedings,” not all conduct tangential to removal. *Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022) (quotation marks omitted).

Petitioner does not challenge DHS’s decision to commence, adjudicate, or execute removal. He challenges the legality of his ongoing civil detention and the statute DHS claims authorizes it. Under *AADC*, *Cardoso*, and *Duarte*, § 1252(g) does not bar this habeas action.

i. *Sections 1252(b)(9) and 1252(a)(5) Do Not “Zipper” This Case Out of District Court*

Respondents also invoke §§ 1252(b)(9) and 1252(a)(5), claiming they channel all of Petitioner’s claims to the courts of appeals. Dkt. 5 at 10–12. That is exactly the overbroad reading the Supreme Court has rejected. Section 1252(b)(9) is a channeling (“zipper”) provision, not a universal bar. In *Jennings v. Rodriguez*, the Court warned that the Government’s expansive interpretation “would make claims of prolonged detention effectively unreviewable” and held that § 1252(b)(9) does not bar detention challenges that do not seek review of an order of removal. 583 U.S. 281, 293–95 & n.3 (2018) (plurality).

The Court later summarized *Jennings* this way: § 1252(b)(9) “does not present a jurisdictional bar” where plaintiffs are not seeking review of a removal order, the decision to seek removal, or the process of determining removability. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). The Fifth Circuit has adopted that understanding. *Duarte* confirms that §§ 1252(a)(5) and 1252(b)(9) do not bar district-court jurisdiction where the suit does not attack the validity of a removal order or the process by which removability will be decided. 27 F.4th at 1056. And in the DACA litigation, the Fifth Circuit quoted *Regents* verbatim: § 1252(b)(9) “does not present a jurisdictional bar” where litigants are not asking for review of “an order of removal, the decision to seek removal, or the process by which removability will be determined.” *Texas v. United States*, 126 F.4th 392, 417 (5th Cir. 2025).

District courts in this Circuit have applied that rule in detention cases, including § 1225(b) cases, and exercised jurisdiction over habeas challenges to custody. *See, e.g., Ayobi v. Castro*, No. 5:19-cv-1311-OLG, 2020 WL 13411861, at *3 (W.D. Tex. Feb. 25, 2020); *Lopez Santos v. Noem*, 2025 WL 2642278, at *2–3 (W.D. La. Sept. 11, 2025). Other circuits are in accord. *See Ozturk v. Hyde*, 136 F.4th 382, 399 (2d Cir. 2025).

Section 1252(a)(5) simply makes a petition for review in the court of appeals the “sole and exclusive means” to review “an order of removal.” 8 U.S.C. § 1252(a)(5). There is no removal order here, and Petitioner does not seek review of any such order, of DHS’s decision to seek removal, or of the process by which removability will be determined. Under *Jennings*, *Regents*, *Texas*, and *Duarte*, §§ 1252(b)(9) and 1252(a)(5) do not strip this Court of jurisdiction over a stand-alone detention habeas.

ii. *Respondents Mischaracterize the Claim; Petitioner Challenges Statutory Authority for Detention, Not a Discretionary Decision “to Detain in the First Place”*

Respondents assert that Petitioner “challenges the decision to detain him in the first place” and argue that this converts the case into an attack on removal decisions barred by § 1252(b)(9). Dkt. 5 at 12. That misreads both the petition and the law. Petitioner does not seek to restrain DHS’s discretion “whether and when to prosecute or adjudicate removal proceedings.” *Duarte*, 27 F.4th at 1055. He challenges the legal authority for his ongoing confinement—whether § 1225(b)(2) or § 1226(a) governs his custody, and whether the Government may continue to detain him without a bond hearing.

Jennings expressly distinguished between challenges to removal actions and challenges to detention authority, and cautioned that reading § 1252(b)(9) to bar the latter would render detention claims “effectively unreviewable.” 583 U.S. at 293–95 & n.3. *Regents* then crystallized the rule: § 1252(b)(9) is not a bar absent a request to review (1) an order of removal, (2) the decision to seek removal, or (3) the process by which removability will be determined. 591 U.S. at 19. The Fifth Circuit has followed that framework. *See Texas*, 126 F.4th at 417; *Duarte*, 27 F.4th at 1056.

That is precisely how this District has analyzed materially similar claims. In *Santiago v. Noem*, No. 3:25-cv-00361-KC, the court held that § 1252(g) does not bar detention challenges

because custody is not one of § 1252(g)'s three discrete actions, and that §§ 1252(b)(9) and 1252(a)(5) do not channel detention claims to the courts of appeals where the petitioner is not seeking review of a removal order, the decision to seek removal, or the removability process. *Lopez Santos* reached the same conclusion. 2025 WL 2642278, at *2–3.

In short, controlling Supreme Court and Fifth Circuit precedent—and on-point decisions in this Circuit—do not support Respondents' effort to recharacterize a custody challenge as an unreviewable attack on removal. Petitioner asks only what statute authorizes his present civil confinement and whether he may continue to be held without a bond hearing. Those are classic habeas questions.

iii. *Petitioner's U-Visa BFD Underscores That This Is a Pure Detention Case, Not a Challenge to Discretionary Immigration or Removal Decisions*

Petitioner's posture as a U-visa applicant with a bona fide determination and deferred action reinforces, rather than undermines, this Court's jurisdiction. Petitioner does not challenge USCIS's discretionary decision to grant him a U-visa bona fide determination, employment authorization, or four years of deferred action; he relies on those favorable decisions. Nor does he seek review of any removal order (there is none) or of DHS's decision to initiate or pursue removal.

Instead, Petitioner challenges only the Government's decision to detain him as a supposed § 1225(b)(2) "applicant for admission" despite the agency's prior choice to forbear removal through deferred action. In other words, he asks: which detention statute governs his custody in light of that deferred-action posture, and can the Government continue to hold him without a bond hearing? That is a collateral, legal question about detention authority, not about visa eligibility or removal outcomes.

The Supreme Court and the Fifth Circuit have made clear that such collateral legal questions are not barred by § 1252's channeling provisions. *See Regents*, 591 U.S. at 12–13, 19 (holding § 1252(b)(9) did not bar a challenge to DACA rescission because plaintiffs were not seeking review of removal orders or the removability process); *Texas*, 126 F.4th at 417 (same). And § 1252(a)(2)(B)(ii) limits review only of decisions “the authority for which is specified under this subchapter to be in the discretion” of the agency; it does not shield judicial review of what statute governs detention or allow DHS to disregard the legal consequences of its own grant of deferred action.

Petitioner thus falls squarely within the category of litigants whom *Jennings*, *Regents*, *Texas*, *Cardoso*, *Duarte*, *Santiago*, and *Lopez Santos* all recognize may bring a habeas challenge to the lawfulness of their civil confinement in district court. The Court has jurisdiction to decide that question.

D. Due Process Forbids Petitioner's Ongoing Detention Without an Individualized Bond Hearing

Respondents ask the Court to reject Petitioner's constitutional claim on the theory that, as an “applicant for admission,” he is entitled only to whatever process § 1225(b) provides, and that detention for the duration of removal proceedings is constitutionally sufficient. Dkt. 5 at 12–14. That argument fails.

First, the due-process right at stake is not a right to remain in the United States, but a right to be free from unjustified physical confinement. The Supreme Court has long held that “the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). As summarized above, neither *Thuraissigiam* nor *Demore* holds that the Government may detain a noncitizen for months, without any individualized custody determination under the correct statute, simply by labeling him an “applicant for admission.”

Jennings and *Arteaga-Martinez* make clear that as-applied constitutional challenges to immigration detention remain available.

Second, applying *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the balance strongly favors Petitioner. His liberty interest is substantial: he has lived here for decades, is the primary financial support for his U.S.-citizen family, and is a U-visa crime victim whom USCIS has already found bona fide and granted four years of deferred action and work authorization. Detention separates him from his household, disrupts their finances and caregiving, and materially impairs his ability to defend against removal. The risk of erroneous deprivation is high where there has been no individualized bond hearing under § 1226(a), and where DHS's own grant of deferred action sharply undercuts any presumption of danger. The value of a bond hearing—at which the Government must justify continued confinement by clear and convincing evidence of danger or flight risk—is obvious. By contrast, the Government's interests can be fully protected through the type of routine custody hearings immigration courts already conduct every day; requiring DHS to carry a meaningful burden in such a hearing imposes only a modest procedural cost.

Third, this is not an abstract proposition. Courts in this District have already recognized, in materially similar cases, that due process requires exactly this kind of safeguard. In *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP (W.D. Tex. Oct. 21, 2025), the court rejected the Government's jurisdictional and statutory arguments and granted habeas relief, requiring a prompt bond hearing under § 1226 at which the Government bore the burden to justify continued detention or else release the petitioner. Other decisions—*Lopez-Arevelo*, *Erazo Rojas*, *Martinez v. Noem*, *Santiago*—likewise ordered or endorsed individualized custody hearings with a meaningful burden on DHS in cases the Government tried to treat as “mandatory” detention. Respondents offer no principled way to distinguish Petitioner's circumstances from that line of cases.

For these reasons, the Court should hold that Petitioner’s continued civil detention without an individualized bond hearing violates the Fifth Amendment. The writ should issue and Petitioner should be ordered released. In the alternative, if the Court declines to order outright release, it should require DHS to provide a prompt bond hearing under § 1226(a), at which the Government bears a clear-and-convincing burden to show danger or flight risk, and order Petitioner’s release if it fails to meet that burden.

IV. CONCLUSION

The writ of habeas corpus should be granted. His detention is illegal. The writ is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F.2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978); *Fay v. Noia*, 372 U.S. 391, 400 (1963) (“The writ must be construed to afford ‘a swift and imperative remedy in all cases of illegal restraint or confinement.’”).

For the reasons set out in the Petition and this response, Petitioner respectfully asks the Court to grant the writ, declare that 8 U.S.C. § 1226(a) governs his custody, and order his immediate release under reasonable supervision. In the alternative, he requests an order requiring a prompt custody redetermination under § 1226(a) before an Immigration Judge within three days, at which the Government bears a clear-and-convincing burden to show danger or flight risk, with release if it cannot meet that burden.

Respectfully submitted on this 11th day of November, 2025.

/s/ Maria Nereida Jaimes

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE OF PETITIONER TO THE RESPONDENTS' ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS in the case of *Hernandez Hervert v. Bondi*, 1:25-cv-01763-RP was sent to Lacy L. McAndrew, Assistant United States Attorney, Western District of Texas, 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216 through the District Clerk's electronic case filing system on thus the 11t day of November, 2025.

Dated this 11th day of November, 2025

s/ Maria Nereida Jaimes

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