UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

ANTONIO DE JESUS GALLEGOS HERNANDEZ,
Petitioner,

v.

KRISTI NOEM,
Secretary of Homeland Security, et al.,
Respondents.

Civil No. 6:25-CV-00087-H

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO WRIT OF HABEAS CORPUS AND REQUEST FOR INJUNCTIVE RELIEF

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DISCLOSURE ON THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE

Pursuant to Local Rule 7.2(f), I hereby disclose that I have utilized generative artificial intelligence in the preparation of this document, but that I have independently cross-checked and verified the accuracy of all legal authorities, citations, facts, and arguments contained herein using Lexis+, which incorporates Shepardizing technology into brief analysis. Thus, after a reasonable inquiry, I certify that I have conducted a reasonable inquiry to verify that no unpublished, non-existent, or unverifiable authorities were included in this brief.

/s/ John M. Bray
John M. Bray
Attorney for Petitioner

DATE: December 10, 2025.

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TO THE HONORABLE JUDGE HENDRIX:

Petitioner Antonio de Jesus Gallegos Hernandez ("Mr. Gallegos") respectfully submits this brief in reply to Respondents' Response in Opposition, filed November 25, 2025 (ECF No. 7), to the writ of habeas corpus and request for a declaratory and injunctive relief, filed with the Court on November 5, 2025 (ECF No. 1), as specifically directed by the Court in its Order, dated November 5, 2025 (ECF No. 2), and the deadline for which was extended by the Court's order dated today, December 10, 2025 (ECF No. 10).

I. INTRODUCTION

Respondents' opposition confirms the need for immediate judicial intervention and confirms the central defect in this case: the Government seeks to detain a long-time "§ 240 respondent"—one who has complied with every requirement of his proceedings for more than a year and a half, whose removal case is consolidated in the immigration court with that of his family unit, and whose immigration hearing was recently scheduled on the immigration court's docket—under a detention statute that applies *only* to individuals seeking admission at the border. By recasting Mr. Gallegos, retroactively and without explanation, as an "applicant for admission" subject to 8 U.S.C. § 1225(b)(2), Respondents attempt to bypass the procedural safeguards Congress built into 8 U.S.C. § 1226, in a boldfaced attempt to strip the immigration judges of bond jurisdiction, and to insulate their unlawful detention decision from any neutral review.

That position cannot be squared with the statutory structure that governs removal proceedings, with the Government's own litigation posture over the last four years, or with the factual record reflected in DHS's Appendix. DHS initiated ordinary § 240 removal proceedings against Mr. Gallegos in February 2024 by serving a Notice to Appear, although it later issued a new NTA following DHS's apprehension of Mr. Gallegos on

September 23, 2025. *See* Gov't App'x, ECF No. 7 at 1–4. EOIR has set hearings and received filings in his immigration case. Following his detention by Respondents, EOIR scheduled Mr. Gallegos for a preliminary "master calendar" hearing before the Conroe Immigration Court on December 4, 2025, which was later reset to January 15, 2026. *See* Gov't App'x, ECF No. 7 at 8–9. Prior to his arrest, DHS treated Mr. Gallegos as a § 240 respondent—with the rights, obligations, and procedural posture accompanying that status.

But everything changed when Mr. Gallegos appeared for a routine 9:00 a.m. ICE check-in in Dallas—a check-in he had no reason to fear and every reason to expect would proceed just as it had for the past four years. Instead, without warning or explanation, ICE arrested him on the spot and transferred him to Bluebonnet Detention Center shortly thereafter. Only after this abrupt detention did DHS assert, for the first time in his nearly year-and-a-half long immigration case, that Mr. Gallegos is in essentially the same position as an "arriving alien" whose custody is governed not by § 1226 but by § 1225(b)(2), thereby placing him in mandatory detention with no bond jurisdiction and no neutral forum for review. *See* ECF No. 7 at 4 (arguing that the term "applicant for admission" includes two categories: arriving aliens and those present without admission); *see id.* at 6-7 (arguing that Mr. Gallegos, as an applicant for admission, has "no grounds to complain" that he is "not entitled to a bond hearing").

The Government's theory fails for two independent reasons. First, *Lopez-Arevelo v. Ripa* is directly on point and persuasive, as Magistrate Judge David Horan observed in the Dallas Division of this Court. *See* Pet's App'x, FCR Report in *Aparicio-Rodriguez v. Noem*, at 88-89 (stating that the magistrate agrees with the court in *Lopez-Arevelo* and other courts in the Fifth Circuit and finds that *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), is

distinguishable in context of procedural due process argument). *Lopez-Arevelo* rejected the same maneuver DHS attempts here: reclassifying a long-standing § 240 respondent as an applicant for admission to deny access to § 1226 custody hearings. Allowing DHS to toggle between statutory regimes, at will, would collapse the INA's careful distinction between border-processing statutes and interior-removal statutes, undermining Congress's design and authorizing precisely the kind of unchecked detention of which the Supreme Court has consistently been wary. *See Jennings v. Rodriguez*, 583 U.S. 281, 289–90 (2018).

Second, DHS's position contradicts its own record and fails to grapple with Mr. Gallegos's protected liberty interest. A noncitizen cannot simultaneously be (1) in active § 240 proceedings for a year and a half, charged as removable under § 212(a)(7)(A)(i)(I), with his case consolidated with that of his family, while also being deemed (2) an "arriving alien" subject to § 1225(b)(2). The Government cannot retroactively convert interior-arrest custody during long-running removal litigation into border-processing detention simply because it prefers the harsher statutory framework.

In sum, Respondents' opposition does not undermine Petitioner's entitlement to relief—it reinforces it. DHS's abrupt and unexplained shift to § 1225(b)(2) detention is legally unsustainable, factually inconsistent with the record, and constitutionally fraught. The Court should reject that position and order the Government to provide Mr. Gallegos the custody process Congress prescribed: a bond hearing under § 1226(a) before a neutral arbiter, without further delay.

II. FACTUAL BACKGROUND

The material facts in this case are straightforward and largely uncontested. The Government's own appendix confirms that DHS served a Notice to Appear ("NTA") on Mr. Gallegos on or about February 17, 2024, after which DHS released Mr. Gallegos either

on recognizance or parole without providing him with a credible fear interview. The NTA that DHS served on him alleges inadmissibility under INA § 212(a)(7)(A)(i), for being present in the country without having a valid, unexpired visa or travel document in his possession. *See* ECF No. 8, Resp's. App'x, at APP.005–009.

Although the NTA characterized Mr. Gallegos as an "arriving alien," it did not invoke the border-processing scheme of § 1225(b). Instead, it placed him squarely into the statutory framework of § 240 proceedings, which governs the vast majority of interior removability cases. As of the filing of this reply brief, EOIR has docketed his case and scheduled him for a preliminary "master calendar" hearing for January 15, 2026, before Immigration Judge McPhail. *See* Ex. 1, Updated Hearing Notice.

However, the Government's response brief adds several additional facts material to the issues raised here.[1] Firstly, the Government acknowledges that DHS released Mr. Gallegos immediately after processing him at the Paso del Norte Port of Entry—an action it describes simply as "Petitioner ... expressed a fear of return to Mexico and was released." *See* ECF No. 7, Resp's Response Brief, at 1-2. At no point does the Government assert that DHS ever initiated expedited removal under § 1225(b)(1) or that DHS complied with the statutory requirement to refer him for a credible fear interview. Nor does the Government

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[1] The Government also asserts—without submitting certified conviction records or any supporting judicial documentation—that Mr. Gallegos was previously convicted of illegal entry under 8 U.S.C. § 1325 and was at some point arrested in Dallas County for possession of a controlled substance. These claims appear only in the declaration of Deportation Officer Mario Castro, who attributes them to "information obtained from government databases," not court records. *See* ECF No. 8, Resp's App'x, at APP.002–003. The Government's Response (ECF No. 7) repeats these allegations but again offers no competent evidence establishing either a valid conviction for a § 1325 offense or that the referenced state arrest ever resulted in a charge, prosecution, or disposition. To date, Respondents have produced no documentation—judgments, charging instruments, docket sheets, or certified records—that would permit this Court to determine whether any such events occurred, whether they involved the same individual, or whether they bear any legal relevance to the detention authority now being asserted. Petitioner therefore objects to the Government's reliance on these unsubstantiated assertions and preserves all challenges to their accuracy, admissibility, and legal significance.

dispute that DHS elected to issue a standard NTA initiating § 240 removal proceedings, not a § 1225(b) order of expedited removal.

Secondly, the Government's Response confirms that, following his release, Mr. Gallegos remained at liberty for more than a year and a half until September 23, 2025, when he appeared—as required—at the Dallas ERO field office and was taken into ICE custody. *See* ECF No. 7, Resp's Response Brief, at 2. The Government concedes that this arrest occurred in connection with the already-pending § 240 case, and not under any separate border-processing authority.

Thirdly, the Government's own evidence establishes that Mr. Gallegos has been fully participating in the regular removal process set in motion by DHS's issuance of a § 240 NTA. The Response recounts that he timely filed his Form I-589 application for asylum, withholding of removal, and CAT protection on July 15, 2024, and that EOIR has continued to process his case in the ordinary course. *See* ECF No. 7, Resp's Response Brief, at 2.

Finally, the Government does not dispute that ICE's arrest of Mr. Gallegos on September 23, 2025, resulted in a sudden shift in the statutory basis asserted for his detention. Although the Government initially permitted Mr. Gallegos to remain at liberty for months while pursuing his asylum claim through ordinary § 240 proceedings, it now contends that he is retroactively subject to mandatory detention under § 1225(b)(2)(A). The Government's response brief identifies no contemporaneous DHS custody decision, no amended NTA, and no other agency action indicating that DHS considered him detained under § 1225(b) at any point prior to his arrest in September 2025. The Response also identifies no statutory authority permitting DHS to toggle between statutory detention

frameworks months after release, long after the § 240 proceedings began, and after Mr. Gallegos had established the liberty interest attendant to that release.

Taken together, these details reflect the following: DHS permitted Mr. Gallegos to enter the country with his family, they maintained § 240 proceedings for a year and a half, and they permitted Mr. Gallegos to live in the community while on an order of supervision—only to arrest him without warning and reclassify him under an entirely different statutory scheme when he dutifully appeared at his ICE supervision appointment. *See* ECF No. 1-3, Immigration Court Case Documents. Nothing in the INA authorizes this kind of retroactive recharacterization. And nothing in DHS's own filings explains, let alone justifies, this abrupt departure from over a year and a half of consistent statutory treatment.

III. ARGUMENT

A. The Statutory Scheme Makes Clear that Detention of a Noncitizen in § 240 Proceedings Is Governed by 8 U.S.C. § 1226, Not § 1225(b)(2).

Respondents' core argument—that Mr. Gallegos is detained under § 1225(b)(2) because he is an "applicant for admission"—collapses once the relevant statutory framework is accurately applied. *See* Gov't Opp., ECF No. 7 at 3-7. Congress constructed two distinct detention regimes, each tied to a specific procedural posture. Which statute governs is not a matter of agency preference or post hoc recharacterization, but of statutory command. And the statute that governs the detention of a long-term § 240 respondent like Mr. Gallegos is 8 U.S.C. § 1226, not § 1225(b)(2). Respondents' contention to the contrary ignores the text, structure, and purpose of the Immigration and Nationality Act ("INA"), as well as decades of consistent interpretation distinguishing the two detention regimes.

1. Congress reserved § 1225(b)(2) for initial processing during inspection at the border—not for respondents in ongoing § 240 removal proceedings.

Congress drew a bright line between the detention of "applicants for admission" at or near the border, governed by § 1225(b), and the detention of noncitizens already present in the United States and placed in removal proceedings, governed by § 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–90 (2018) (observed that § 1225(b) applies to aliens seeking admission into the United States, while § 1226 governs detention of aliens already in the country pending their removal proceedings). The distinction is not a matter of discretion; rather, it reflects fundamentally different statutory purposes.

Section 1225(b)(2) applies to "applicants for admission" who are encountered at or near the border, or in the context of initial inspection and processing. As the Supreme Court has repeatedly emphasized, § 1225(b) governs the inspection of aliens seeking admission and delineates what DHS must do at the threshold of entry. *See Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018) (held § 1225(b)(1)&(2) authorized brief detention of noncitizens immediately upon entering the country.

By contrast, § 1226(a) provides discretionary detention authority pending a decision on whether the alien is to be removed, expressly encompassing respondents in § 240 proceedings. *See Jennings*, 583 U.S. at 288 ("Section 1226 generally governs the process of arresting and detaining aliens . . . pending their removal" where such aliens "were inadmissible at [their] time of entry"). Once DHS files a Notice to Appear under § 239 and initiates § 240 removal proceedings, the detention authority shifts to § 1226—the statute Congress expressly designed to govern custody during ongoing removal litigation. *Jennings* draws this line sharply:

- **§ 1225** regulates *pre-admission* processing;

- **§ 1226** governs detention "pending a decision on whether the alien is to be removed," i.e., during § 240 proceedings.

See Jennings, 583 U.S. at 288-89.

Here, there is no dispute DHS served Mr. Gallegos with a Notice to Appear on February 17, 2024, charging him under § 212(a)(7)(A)(i)(I), when it initially apprehended him. *See* Gov't App'x, ECF No. 8 at 1–4 (observe charge of inadmissibility in NTA).[2] Nor is there any dispute that EOIR docketed the case, set hearings, and initially consolidated it with his family's proceedings. *See* Gov't App'x, ECF No. 1-3 at 5-6 (hearing notice). These are the hallmarks of § 240 proceedings. Nothing in the record suggests that DHS ever withdrew the NTA, terminated proceedings, or reclassified him under any expedited or border-processing provision.

For more a year and a half, the Government unequivocally—and correctly—treated him as a § 240 respondent, not as an alien undergoing inspection at the border. Respondents cannot now invoke a statute that presupposes an uncompleted inspection process simply because they prefer the detention consequences of § 1225(b)(2).

2. **The distinction between "seeking admission" and being an "applicant for admission" reinforces that § 1226 governs Petitioner's detention.**

Additionally, Petitioner would argue that § 1225 generally does not govern detention once DHS initiates § 240 proceedings.

As observed by Judge Pulliam of the San Antonio Division of the United States District Court for the Western District of Texas, under facts substantially similar to those in Mr. Gallegos's case, the petitioner there "was not seeking 'admission,' as that term is

[2] The undersigned Counsel would respectfully point out that Respondents assert Petitioner was charged as inadmissible under INA § 212(a)(6)(A)(i)(I), but this conflicts with the NTA contained in their Appendix.

defined by [8 U.S.C.] § 1101(a)(13)(A), in that he was not seeking entry, much less 'lawful entry . . . after inspection' and authorization. *See Aguinaga Trujillo v. Noem*, 5:25-cv-01266-JKP, *8 (W.D. Tex. Nov. 24, 2025) (slip op.) (citing *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008)).

For context, the INA defines an "applicant for admission" to include any noncitizen "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). A noncitizen is "admitted" only if he has effected a "lawful entry . . . into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). Petitioner, though physically present in the United States, does not fall within § 1101(a)(13)(A)'s definition of someone who has been lawfully admitted; he is therefore classified as an "applicant for admission." As the Fifth Circuit has made clear, "admission" under the statute means lawful entry following inspection—"something quite different, obviously, from post-entry adjustment of status." *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008).

Crucially, however, on the facts of this case Petitioner was not "seeking admission" at the time of his re-apprehension at his ICE check-in appointment in September 2025, at least not as that term is used in § 1101(a)(13)(A). At that time, Mr. Gallegos was not attempting to enter the United States at all, let alone to accomplish a "lawful entry ... after inspection." *Martinez*, 519 F.3d at 544. Accepting Respondents' position would collapse the distinction between being an "applicant for admission" and "seeking admission," thereby rendering the latter phrase in § 1225(b)(2)(A) meaningless and mere surplusage. *See Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025). Because Mr. Gallegos was not "seeking admission" when he was arrested

in September 2025, ICE lacks authority to detain him under § 1225(b)(2), even though they can detain him under § 1226.

Applying this distinction here, the fact that DHS immediately placed Mr. Gallegos into § 240 proceedings upon his arrival into the United States, vesting jurisdiction with the immigration court by filing the NTA with the EOIR clerk soon after his entry into the country. However, DHS decided to release him from custody, and following this, EOIR scheduled Petitioner and his family for hearings in their case at the Dallas Immigration Court. Respondents cannot now retroactively disavow Mr. Gallegos's placement in § 240, claim that the detention statute applying to border inspections governs instead, and re-apprehend Mr. Gallegos without affording him a modicum of due process.

Accepting Respondents' argument would virtually erase the structure of the INA entirely. If DHS could recast any § 240 respondent as an "applicant for admission" subject to § 1225(b)(2), then practically no respondent in removal proceedings—no matter how long they may have been in the United States—would be entitled to a bond hearing. DHS could simply wait until an opportune moment, arrest the individual, and announce that § 1225(b)(2) applies. Immigration Judges would be stripped of jurisdiction, habeas review would be hindered, and noncitizens would be locked into potentially indefinite detention until removal litigation concluded.

This is precisely the danger Judge Cardone, of the El Paso Division of the United States District Court for the Western District of Texas, flagged in a similar habeas case, which rejected DHS's attempt to toggle between statutory regimes to deny access to bond hearings. *See Lopez-Arevelo v. Ripa*, EP-25-cv-337, 2025 WL 2691828, at *7 (W.D. Tex. Sep. 22, 2025). In *Lopez-Arevelo*, Judge Cardone warned that such a maneuver would

allow DHS to collapse Congress's carefully constructed framework and impose detention without neutral review. That concern applies with full force here.

Thus, because Mr. Gallegos is not "seeking admission," Respondents here must not detain him under § 1225(b)(2), and the Court should determine that § 1226 properly governs Petitioner's detention. *Cf. Lopez Benitez*, 2025 WL 2371588, at *6.

3. The Government's reliance on *Yajure Hurtado* and *Jennings* is misplaced.

The Government cites *Matter of Yajure Hurtado*, 28 I. & N. Dec. 389 (BIA 2024), for the proposition that DHS may treat noncitizen aliens as "applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer" subject to § 1225(b)(2). *See* Gov't Opp., ECF No. 7 at 8. But *Yajure Hurtado* reflects a recent policy shift. As even Respondents concede, this departure from long-standing agency interpretation conflicts with how immigration agencies had always before interpreted this statute. *See* Gov't Opp., ECF No. 7 at 7 n.1 ("Previously . . . § 1226(a) had been interpreted as an available detention authority for aliens who were present without admission and placed in § 1229a removal proceedings. *See, e.g.*, *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747–48 (BIA 2023)."). Moreover, *Yajure Hurtado* conflicts with *Jennings* by collapsing the statutory distinction between border inspection and domestic removal proceedings.

Nor does *Jennings* support the Government. *Jennings* held only that § 1225(b) does not imply a six-month time limit on detention; it did not address, let alone approve, DHS's ability to shift an interior detainee between § 1225(b) and § 1226 regimes. *Jennings*, 583 U.S. at 313–14. The Court expressly remanded the constitutional question of prolonged

detention without bond. *Id.* at 314. DHS's reliance on *Jennings* to justify Mr. Gallegos's indefinite, unreviewable detention therefore misses the mark.

B. DHS's Reliance on § 1225(b) and *Thuraissigiam* Is Misplaced; Under *Hernandez-Fernandez*, Petitioner Possesses a Protected Liberty Interest and Is Entitled to Procedural Due Process.

Even if Respondents' statutory interpretation were correct, it would not end the inquiry. As *Hernandez-Fernandez* held, constitutional constraints apply even where the statute purports to mandate detention. 2025 U.S. Dist. LEXIS 206751, at 19. The Due Process Clause does not permit the Government to remove someone from the community and place him in civil confinement based solely on a categorical statutory label, without any opportunity to contest his confinement.

Although Respondents' opposition rests on the premise that Petitioner may be detained without recourse to due process because he is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b), that argument cannot withstand scrutiny for two independently dispositive reasons. Firstly, *DHS v. Thuraissigiam* does not apply to the kind of detention-based procedural due process claim Petitioner raises. Secondly, under *Hernandez-Fernandez v. Lyons*, DHS's own decision to release a noncitizen into the interior creates a constitutionally protected liberty interest that may not be extinguished without an individualized custody hearing.

1. *Thuraissigiam* Does Not Apply Because Petitioner Challenges His Detention, Not the Admission Process.

Respondents argue as though Petitioner were challenging the legality of his admission, the validity of an expedited-removal process, or asserting a right to enter or remain in the United States. He is not. The only question before the Court is whether DHS may detain Petitioner without providing any individualized custody determination,

notwithstanding his substantial period of physical presence and DHS's prior determination that he was safe to release.

Courts have rejected the Government's reflexive invocation of *Thuraissigiam* in precisely this posture. Most recently, Judge Pulliam held that *Thuraissigiam* "has no application" where the petitioner "does not challenge the admission process in any way or assert a right to remain" but instead "merely seeks a chance to apply for release on bond." *Hernandez-Fernandez v. Lyons*, 2025 U.S. Dist. LEXIS 206751, at 16–17 (W.D. Tex. Oct. 21, 2025). The distinction is critical: *Thuraissigiam* restricts habeas review of expedited removal determinations—not constitutional challenges to post-release re-detention.

The same distinction governs here. Petitioner seeks no judgment about his removability, admission, or eligibility for relief. He seeks only the process due before the Government may revoke the liberty it previously granted. Respondents' reliance on *Thuraissigiam* ignores this fundamental difference and should be rejected.

2. DHS's Act of Releasing Petitioner Into the United States Created a Liberty Interest Protected by the Due Process Clause.

Long-standing constitutional doctrine recognizes that when the government releases an individual into the community, that release gives rise to a protected liberty interest. This principle, rooted in *Morrissey v. Brewer*, *Young v. Harper*, and related parole-revocation cases, applies with full force to immigration custody. The Western District of Texas recently confirmed that "once released from immigration custody, noncitizens acquire a protectable liberty interest in remaining out of custody on bond." *Hernandez-Fernandez*, 2025 U.S. Dist. LEXIS 206751, at 20.

The court explained that the Government's earlier release "reflects a determination … that the noncitizen is not a danger to the community or a flight risk," and thus due

process attaches before that liberty may be revoked. *Id.* at 22. Crucially, Judge Pulliam rejected the Government's argument—identical to Respondents' here—that its new interpretation of § 1225(b) allows the agency to disregard this liberty interest and substitute mandatory detention in its place. *Id.* at 18–20. Even assuming arguendo that § 1225(b) could reach such an individual, the Constitution requires process before DHS may re-detain him.

Petitioner's circumstances are materially indistinguishable. DHS previously exercised its discretion to release Petitioner into the United States; he complied with his reporting obligations; he integrated into the community; and nothing in the record suggests dangerousness or flight risk. Under these circumstances, due process protects Petitioner's liberty interest and requires an individualized custody hearing before the Government may confine him.

3. Under *Mathews v. Eldridge*, Due Process Requires a Hearing at a Minimum, or in the Alternative, that Petitioner Be Ordered Released.

When procedural due process is at issue, courts apply the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). As shown below, the factors overwhelmingly favor Petitioner.

The Government cannot revoke a person's liberty—after previously releasing him into the United States—without providing any opportunity to be heard. Under *Mathews*, the inquiry is straightforward application of the class three-prong test: (1) the weight of Petitioner's liberty interest, (2) the danger of erroneous detention, and (3) the minimal burden on the Government all require a bond hearing. *See Mathews*, 424 U.S. at 335.

Firstly, Petitioner's liberty interest is substantial. DHS released him into the community because it determined he did not pose a danger or flight risk. He complied with supervision, lived peacefully in the United States, and developed the ordinary ties that come with daily life. Detaining someone in that position is an extraordinary intrusion on personal freedom, and due process demands scrutiny before such liberty is withdrawn. Yet, "Respondents fail to contend with the liberty interests created by the fact that the Petitioner[] in this case [was] released on recognizance *prior to the manifestation of this interpretation*." *See Lopez-Arevelo v. Ripa*, No. 3:25-CV-00337-KC, 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22. 2025).

Secondly, the risk of error in the Government's approach is acute. Respondents maintain that § 1225(b) categorically eliminates any bond hearing, meaning no decisionmaker has ever evaluated Petitioner's individual circumstances. This is exactly the kind of unreviewed, automatic deprivation that *Mathews* forbids. *See Martinez v. Sec. of Noem*, No. 5:25-CV-01007-JKP, 2025 U.S. Dist. LEXIS 174415, 2025 WL 2598379, at *3 (W.D. Tex. Sept. 8. 2025). A system in which no one asks whether detention is actually necessary practically guarantees erroneous confinement.

Thirdly, and by contrast, the Government's interest in detaining Petitioner without a hearing is negligible. DHS previously concluded he was safe to release, and nothing in the record suggests changed circumstances. *Cf. Hernandez-Fernandez*, 2025 U.S. Dist. LEXIS 206751, at *21-22 (held that alien's release three years ago "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk") (internal citation omitted). Providing a routine bond hearing imposes no meaningful burden; immigration courts conduct such hearings daily.

For these reasons, courts—including in *Hernandez-Fernandez*—have held that due process requires an individualized custody determination for noncitizens who were previously released into the interior and later re-detained based solely on a statutory reinterpretation. *See Hernandez v. Fernandez*, 2025 U.S. Dist. LEXIS 206751, *18-23. The same constitutional principle applies here: before the Government may revoke Petitioner's liberty, it must afford him a bond hearing before a neutral adjudicator. Thus, the Court should grant the for writ of habeas corpus.

IV. CONCLUSION & PRAYER

For the reasons set forth above, Petitioner Antonio de Jesus Gallegos Hernandez respectfully submits that the Department of Homeland Security lacks statutory authority to detain him under 8 U.S.C. § 1225(b)(2) and that his continued confinement without a neutral custody determination violates both the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.

The Government's own filings demonstrate that it has initiated—and continues to pursue—removal proceedings under § 240, thereby subjecting Petitioner's custody to 8 U.S.C. § 1226. Yet DHS has invoked § 235(b)(2) to deny him access to any bond hearing, trapping him in administrative limbo and depriving this Court of the orderly judicial review that Congress and the Constitution require.

Judicial intervention is thus warranted to prevent further unlawful detention and to preserve Mr. Gallegos's constitutional right to liberty pending resolution of his removal case. Accordingly, Petitioner respectfully prays that the Court grant Petitioner a hearing, and afterward, grant his writ of habeas corpus and the related relief as requested.

DATE: November 13, 2025.

Respectfully submitted,

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By: *<u>/s/ John M. Bray</u>*
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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO WRIT OF HABEAS CORPUS AND REQUEST FOR INJUNCTIVE RELIEF, as well as any and all attachments thereto, on Counsel for Respondents by serving the same via email to Assistant U.S. Attorney Ann Cuce-Haag via Ann.Haag@ice.dhs.gov and/or by filing the same using the Court's CM/ECF system.

/s/ John M. Bray
John M. Bray
Attorney for Petitioner

DATE: December 10, 2025.