

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

Mehdi Moradi,

Petitioner,

Kristi Noem, Secretary of Homeland Security;  
Pamela Bondi, U.S. Attorney General, Todd  
M. Lyons, Acting Director of Immigration and  
Customs Enforcement; Miguel Vergara, San  
Antonio Field Office Director; Rose  
Thompson, Warden of the Karnes Immigration  
Processing Center

Respondents.

Civil Case No. 5:25-cv-1470-OLG

**REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S HABEAS PETITION**

In *Maldonado Bautista v. Santacruz*, the U.S. District Court for the Central District of California granted partial summary judgment to the petitioners on November 20, 2025, finding that the government's interpretation of the Immigration and Nationality Act (INA) is inconsistent with the statute's plain language. No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025). On November 25, 2025, the court certified a nationwide class and extended declaratory relief to all class members. *Maldonado Bautista*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25, 2025). The court held that members of the Bond Denial Class are detained under 8 U.S.C. § 1226(a)—not § 1225(b)—and therefore may not be categorically denied consideration for release on bond. *Maldonado Bautista*, 2025 WL 3289861, at \*11. Petitioner in this case is clearly a member of the bond class as his most recent apprehension was within the United States, and he is in removal proceedings under 8 U.S.C. § 1229a.

However, class counsel reports that “the government appears to have instructed IJs not to abide by the order.” As a result, IJs have continued to deny bond requests on the ground that they are not bound by *Maldonado Bautista*. See Exh. A. In light of the government’s refusal to comply with that ruling, Petitioner respectfully asks this Court to grant his temporary restraining order along with his habeas petition and order his immediate release. In the alternative, Petitioner requests that the Court direct the Respondents to provide him a bond hearing within five days of the Court’s order, at which the Government must prove by clear and convincing evidence that he is a danger or a flight risk. See *Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, --- F. Supp. 3d ---, 2025 U.S. Dist. LEXIS 217585, at \*11 (W.D. Tex. Oct. 30, 2025) (“The weight of authority also holds that when ordering a bond hearing as a habeas remedy, the burden of proof should be on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk.”).

In their response, the Respondents provide a fallacious interpretation of 8 U.S.C. § 1225(b), fail to grapple with Petitioner’s obvious bond eligibility under 8 U.S.C. § 1226(a) and provide an erroneous application of the Due Process Clause. This court recently rejected Respondents’ statutory arguments in the case of *Rahimi v. Thompson*, 5:25-cv-01338-OLG (W.D.Tex. Dec. 4, 2025) and *Mendoza-Euceda v. Noem*, 5:25-cv-01234-OLG (W.D.Tex. Nov. 17, 2025). The court should follow its own precedent along with the growing avalanche of other district court opinions made on this issue and grant the Petitioner’s temporary restraining order and writ of habeas corpus. See ECF Doc. 1 at 2-4 (collecting cases).

**A. Petitioner is detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.**

Respondents argue that Petitioner is detained pursuant to section 1225(b)(1). However,

their argument overlooks what has already occurred in Petitioner’s case. Petitioner was previously placed in full removal proceedings under 8 U.S.C. section 1229a and was released from custody. See ECF Doc. 1; *Ramirez v. Calder*, No. 25-cv-06248-BLF, 2025 WL 2419263, at \*6 (N.D. Cal. Aug. 21, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at \*4 (N.D. Cal. Sept. 3, 2025). Now, Respondents contend that the government can pursue mandatory detention under section 1225(b) at any time. But the plain language of the statute demonstrates that section 1225(b) generally involves a decision at the border. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (finding 1225(b)(1) applies to aliens initially determined to be inadmissible due to “fraud, misrepresentation, or lack of valid documentation). Expedited removal proceedings under § 1225(b)(1) only apply if three conditions are met: the applicant (1) is inadmissible because he or she lacks a valid entry document; (2) has not been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility”; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal. § 1225(b)(1)(A)(i), (iii)(I)-(II); See *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). Here, Petitioner specifically fails to meet the standards for § 1225 under the third condition, as he is no longer in expedited removal proceedings. *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at \*4 (W.D. La. Sept. 11, 2025). Respondents’ interpretation of § 1225 would render § 1226 unnecessary. *Id.*

**B. This Court has jurisdiction over the Petitioner’s habeas petition.**

This Court has jurisdiction over the legal claims brought in this habeas corpus proceeding under 28 U.S.C. § 2241(c)(3), which authorizes federal courts to grant habeas relief to individuals held “in custody in violation of the Constitution or laws or treaties of the United States.” Petitioner challenges the legality of his detention under federal immigration law and the due process clause

of the Fifth Amendment. That question falls squarely within the jurisdiction conferred by § 2241. Contrary to the Respondents' assertions, the jurisdictional bars in 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not apply. Resp'ts' Response at 4-5, ECF No. 8. Those provisions preclude review of claims arising from the removal process—but they do not strip district courts of jurisdiction to consider the legality of detention. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) (“At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”). Courts across the country have repeatedly held that habeas petitions contesting the statutory basis of immigration detention remain reviewable under § 2241. Accordingly, the Court should find that it has jurisdiction over this habeas petition.

**1. Section 1252(g) does not bar jurisdiction over Petitioner's habeas claim.**

8 U.S.C. § 1252(g) provides,

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, ... 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 under this chapter.

The Supreme Court has made clear that 1252(g) is a “narrow” jurisdictional bar that “applies only to three discrete actions that the Attorney General make take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). Indeed, the Supreme Court has “rejected as ‘implausible’ the Respondents’ argument that § 1252(g) covers ‘all claims arising from deportation proceedings’ or imposes ‘a general jurisdictional limitation.’” *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (citing *Reno*, 525 U.S. at 482)); *see also Maldonado*, 2025 WL 2374411, at \* 5; *Cardoso v. Reno*, 216 F.3d 512, 516–17

(5th Cir. 2000) (recognizing that “section 1252(g) 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).’”). Here, Petitioner’s claims fall outside of § 1252(g)’s narrow jurisdictional bar. He does not challenge the Respondents’ decision to commence proceedings, adjudicate his case, or execute a removal order. Rather, he challenges his continued detention without bond in violation of the federal immigration laws and the Fifth Amendment’s right to due process. As numerous courts have held, detention pending removal does not “arise from” the Attorney General’s decision to commence removal proceedings. *See, e.g., Hernandez Marcelo*, 2025 WL 2741230, at \*5; *Guerrero Orellana*, 2025 WL 2809996, at \*3. Thus, because Petitioner is not challenging any of the three “discrete actions” identified in *Reno*, § 1252(g) poses no bar to this Court’s jurisdiction.

The Respondents’ argument that 8 U.S.C. § 1252(g) bars habeas jurisdiction “Where an alien, like this Petitioner, challenges the decision to detain him in the first place or to seek a removal order against him, or if an alien challenges any part of the process by which his removability will be determined,” *see Resp’ts’* at 4, was squarely rejected by the majority in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). As the Southern District of Iowa recently explained, the majority declined to adopt Justice Thomas’s concurrence, which mirrored the argument raised by Respondents here: “The concurrence contends that ‘detention is an “action taken ... to remove” an alien’ and that therefore ‘even the narrowest reading of “arising from” must cover’ the claims raised by respondents. We do not follow this logic.” *Hernandez Marcelo*, 2025 WL 2741230, at \*5 (quoting *Jennings*, 583 U.S. at 295 n.3); *see also Maldonado*, 2025 WL 2374411, at \*4–5.

**2. Section 1252(b)(9) does not preclude jurisdiction over the Petitioner’s claims.**

Section 1252(b)(9) provides that:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.

8 U.S.C. § 1252(b)(9). This provision channels challenges to **removal proceedings** into the courts of appeals. *See INS*, 533 U.S. at 313. As the court explained in *D.V.D. v. U.S. Dep't of Homeland Sec.*, “[a]ctions that do not challenge final orders of removal are not subject to this channeling scheme.” 778 F. Supp. 3d 355, 370 (D. Mass. 2025) (citing *J.D.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)). Likewise, the district court in *Maldonado* emphasized that “§ 1252(b)(9) is aimed at challenges to removal proceedings,” and “is a judicial channeling provision, not a claim-barring one.” 2025 WL 2374411, at \*7 (citing *Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 11 (1st Cir. 2007)).

The Supreme Court confirmed this narrow reading in *Jennings*, explaining that the phrase “arising from” in § 1252(b)(9) does not cover all claims merely related to or resulting from the fact of removal. *Jennings*, 583 U.S. at 293–94. Interpreting it otherwise, the Court cautioned, would lead to “staggering results.” *Id.* at 293. It “would also make claims of prolonged detention effectively unreviewable. By the time a final order of removal was eventually entered, the alleged excessive detention would have already taken place.” *Id.* Because the respondents in *Jennings* did not seek review “of an order of removal; they [were] not challenging the decision to detain them in the first place or to seek removal; and they [were] not even challenging any part of the process by which their removability will be determined,” the Supreme Court held that § 1252(b)(9) did not apply. *Id.* at 294. Similarly, the Petitioner in this case is not challenging a final order of removal, the removal process, or her initial custody determination. Therefore, the case falls outside the scope of (b)(9). Numerous courts have reached the same conclusion. *See, e.g., Santiago Santiago, v. Kristi Noem, et al.*, No. EP-25-CV-361-KC, 2025 WL 2792588, at \*4–5 (W.D. Tex. Oct. 2, 2025);

*Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at \*3–4 (W.D. Tex. Sept. 22, 2025); *Hernandez Marcelo*, 2025 WL 2741230, at \*6; *Guerrero Orellana*, 2025 WL 2809996, at \*3; *Cerritos Echevarria*, 2025 WL 2821282, at \*3; *Vazquez*, 2025 WL 2676082, at \*7.

**C. Petitioner’s detention violates his right to due process under the Fifth Amendment.**

The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. “[T]he Due Process clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.” *Id.* at 690. The Petitioner has a weighty liberty interest in his freedom even if the “government wields significant discretion.” *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CBD), --- F. Supp. 3d ----, 2025 U.S. Dist. LEXIS 156344, at \*33 (D. Ariz. Aug 11, 2025). When the government, as here, is detaining a noncitizen in violation of the plain language of a statute, the detention violates procedural due process.

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). The *Mathews* factors are: (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.” *Mathews*, 424 U.S. at 335. These factors all favor a determination that the Petitioner is being held without due process of law. The deprivation of the

Petitioner's liberty interest based on *Yajure Hurtado* carries a high risk that the Petitioner's liberty is being erroneously deprived that is not outweighed by any valid governmental interest.

Instead of addressing the *Mathews* factors, the Respondents erroneously rely upon *Thuraissigiam*, 591 U.S. 103 at 140. But the Western District of Texas in *Lopez-Arevelo* and other courts in the Fifth Circuit have found that *Thuraissigiam* is distinguishable in this context. *See* 2025 WL 2691828 at \*7-10; *see also* *Vieira v. De Anda-Ybarra*, \_\_\_ F. Supp. 3d \_\_\_, No. EP-25-cv-432-DB, 2025 WL 2937880, at \*4-5 (W.D. Tex. Oct. 16, 2025); *Gonzales Martinez v. Noem*, No. EP-25-cv-430-KC, 2025 WL 2965859, at \*4 (W.D. Tex. Oct. 21, 2025); *Santiago*, 2025 WL 2792588, at \*7-10; *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773-JKP, 2025 WL 2976923, at \*7-8 (W.D. Tex. Oct. 21, 2025).

In *Thuraissigiam*, “[t]he Court did not address whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention, as [Petitioners do] here.” *Lopez-Arevelo*, 2025 WL 2691828, at \*8. Unlike in *Thuraissigiam*, where the petitioner challenged his deportability and the denial of his asylum admission, Petitioner in this case challenges his detention. *See* 591 U.S. at 114-15. In the context of detention under Sections 1225(b) and 1226(a), the Fifth Circuit has “expressly left open the constitutional due process question” for lower courts to consider. *See Lopez-Arevelo*, 2025 WL 2691828, at \*8 (citing *Jennings*, 583 U.S. at 312).

The petitioner in *Thuraissigiam* was also stopped and detained “within twenty-five yards of the border” and was not released or permitted to reside in the United States. 591 U.S. at 114. But Petitioner had been released by DHS nearly a year prior to his most recent detention. *See Lopez-Arevelo*, 2025 WL 2691828, at \*9 (distinguishing *Thuraissigiam* because petitioner had resided in the United States for three years).

Further, even when ICE has discretion to detain or release a noncitizen pending removal proceedings, after release, Petitioner has protected liberty interest in remaining out of custody. *Erazo Rojas v. Noem*, No. EP-25-CV-443-KC, 2025 WL 3038262 (W.D.Tex. Oct. 30, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at \*5 (W.D. La. Sept. 11, 2025); *Ramirez v. Calder*, No. 25-cv-06248-BLF, 2025 WL 2419263, at \*6 (N.D. Cal. Aug. 21, 2025); *Pinchi v. Noem*, 2025 WL 2084921, at \*3 (N.D. Cal. July 24, 2025). Due process requires a hearing before an immigration judge before re-detention. *Id.* Conversely, noncitizens detained under 8 U.S.C. § 1226(a) are not subject to mandatory detention and may be released on bond or on their own recognizance.

#### CONCLUSION

For the foregoing reasons, this Court should order Respondents to release Petitioner, or in the alternative, to schedule a bond hearing for Petitioner under 1226(a) within 5 days of the order, at which Respondents bear the burden to prove that Petitioner poses a danger or flight risk.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 2025, I electronically filed the foregoing with the Clerk using the CM/ECF system, which will send notification of such filing to opposing counsel.

/s/ Kathrine Russell  
Kathrine Russell  
Attorney for Petitioner