

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

TOMAS ALFREDO MACARIO MORALES,

Petitioner,

v.

JOHN DOE, in his capacity as Warden of Camp East Montana Detention Facility; MARISA FLORES, in her official capacity as Acting Field Office Director, El Paso Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; TODD LYONS, in his official capacity as Acting Director U.S. Immigrations and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the U.S.; SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No. 3:25-cv-00546

**REPLY IN SUPPORT
OF HABEAS PETITION**

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INTRODUCTION

Respondents lack any colorable basis to justify Mr. Macario Morales’s continued detention without a bond hearing or to oppose his request for relief. They are required by an existing order of another federal court to provide Mr. Macario Morales with a bond hearing. Far from disputing this, Respondents simply ignore this order. Two of their jurisdictional arguments are squarely barred by holdings of the Supreme Court that Respondents also ignore, while the third has no basis whatsoever in the language of the statute on which they purport to rely. Their interpretation of the INA is likewise precluded by a Supreme Court opinion—and has also been rejected by dozens, and at this point likely hundreds, of courts throughout the country. And their response to Mr. Macario Morales’s due process claim rests on a completely inapposite case—as numerous courts have already concluded—while not even attempting to show that Mr. Macario Morales somehow poses a flight risk or a danger to the community.

ARGUMENT

I. The Decision in *Bautista v. Santacruz* Requires Respondents to Provide Mr. Macario Morales With a Bond Hearing

Although they never so much as acknowledge it, Respondents are bound by a federal court opinion to provide Mr. Macario Morales with a bond hearing. As Mr. Macario Morales has explained, *see* Dkt. 7-1, at 1-2, the court in *Bautista v. Santacruz*, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), issued declaratory relief holding that members of a nationwide class of noncitizens arrested in the interior of the United States are detained under 8 U.S.C. § 1226(a) and are thus eligible for bond. Mr. Macario Morales is a member of that class, *see* Dkt. 7-1, at 3, and Respondents do not contend otherwise.

Given *Bautista*, proceedings in this case should no longer be necessary. *See, e.g.,* *Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45, 47 (D.C. Cir. 1992) (“Government

lawyers, we have no doubt, should ... refrain from continuing litigation that is obviously pointless, that could easily be resolved, and that wastes Court time and taxpayer money.”).

Respondents, however, have chosen not to comply with *Bautista*. Respondents have instead continued to refuse bond hearings to members of the *Bautista* class unless, and until, a different district court orders them to do so in response to an individual habeas petition. *See, e.g., Carrillo Fernandez v. Knight*, 2025 WL 3485800, at *2 (D. Nev. Dec. 4, 2025); *Alatore Rodriguez v. Larose*, 2025 WL 3456475, at *5 n.4 (S.D. Cal. Dec. 2, 2025); *Santuario v. Bondi*, 2025 WL 3469577, at *2 n.4 (D. Minn. Dec. 2, 2025). But Respondents’ willful non-compliance with the *Bautista* court’s order cannot drain that order of its force. That ends the matter: *Bautista* requires Respondents to, at a minimum, provide Mr. Macario Morales with a bond hearing.

II. Respondents’ Jurisdictional Arguments Are Without Merit

Respondents contend that this Court lacks jurisdiction over Mr. Macario Morales’s claims. *See* Resp. 9-11. Courts in this district—and throughout the country—have repeatedly rejected Respondents’ jurisdictional arguments on the basis of Supreme Court precedent and the plain language of the relevant statutes. *See, among many others, Tinoco Pineda v. Noem*, 2025 WL 3471418, at *3 (W.D. Tex. Dec. 2, 2025); *Granados v. Noem*, 2025 WL 3296314, at *3 (W.D. Tex. Nov. 26, 2025); *Cardona-Lozano v. Noem*, 2025 WL 3218244, at *1-*2 (W.D. Tex. Nov. 14, 2025); *Becerra Vargas v. Bondi*, 2025 WL 3300446, at *2-*3 (W.D. Tex. Nov. 12, 2025); *Vieira v. De Anda-Ybarra*, ___ F. Supp. 3d ___, 2025 WL 29327880, at *2-*3 (W.D. Tex. Oct. 16, 2025); *Santiago v. Noem*, 2025 WL 2792588, at *3-*5 (W.D. Tex. Oct. 2, 2025). Nevertheless, Respondents again promote the same arguments without any recognition of either those decisions or the dispositive authorities on which they are based. Petitioner finds it deeply troubling that members of the U.S. Attorney’s Office—whose “title is a privilege” that “requires [them] to adhere to the highest standards of fairness and justice,” *United States v. Leslie*, 759

F.2d 366, 373 (5th Cir. 1985)—have taken that approach to briefing in a case involving fundamental liberty interests.

Respondents first claim that Mr. Macario Morales’s petition is barred by 8 U.S.C. § 1252(g). Resp. 9-10. But contrary to their characterization of that provision as barring any “challenge[] to any part of the process by which ... removability will be determined,” *id.* at 10, the Supreme Court has expressly held that § 1252(g) “applies only to three discrete actions” in that process—the decisions to “commence proceedings, adjudicate cases, or execute removal orders.” *Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 482 (1999). Mr. Macario Morales’s petition challenges his detention, not any of those three actions. Respondents simply ignore *Reno*. And although they do cite *Jennings v. Rodriguez*, 583 U.S. 281 (2018), *see* Resp. 10, they mischaracterize that opinion, which reiterated that the Supreme Court “read[s] the language [of § 1252(g)] to refer just to those three specific actions themselves.” *Id.* at 294 (plurality op.).¹

Respondents fare no better with their argument that 8 U.S.C. § 1225(b)(4) bars this action. *See* Resp. 10-11. By its plain terms, that section simply allows “any other immigration officer” to “challenge” an immigration judge’s decision that is “favorable to the admission of any” noncitizen. 8 U.S.C. § 1225(b)(4). That language has no bearing on any kind of challenge that *any* noncitizen might bring in federal court—much less a noncitizen like Mr. Macario Morales who has not received a favorable admissibility decision. *See, e.g., Tinoco Pineda*, 2025 WL 3471418, at *3; *Granados*, 2025 WL 3296314, at *3.

¹ Respondents also fail to recognize that the portion of *Jennings* on which they seek to rely spoke only for a plurality of the justices.

Respondents finally seek support in 8 U.S.C. § 1252(b)(9), Resp. 10, but they again ignore binding precedent that precludes their position. The Supreme Court has held that § 1252(b)(9) “does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.” *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). The Fifth Circuit has similarly held that § 1252(b)(9) does not apply to “claims with only a remote or attenuated connection to the removal of a” noncitizen or claims that “cannot be raised efficaciously within the administrative proceedings already available.” *Duron v. Johnson*, 898 F.3d 644, 647 (5th Cir. 2018) (quotation omitted). And as numerous courts in this district have already concluded, those limits on § 1252(b)(9) mean that it cannot bar challenges to detention by noncitizens that Respondents claim are not eligible for bond. *See, e.g., Tinoco Pineda*, 2025 WL 3471418, at *3; *Granados*, 2025 WL 3296314, at *2-*3; *Aguilar v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 3471417, at *3-*4 (W.D. Tex. Nov. 26, 2025).

III. As Countless Courts Have Held, the Theory on Which Respondents Have Detained Mr. Macario Morales Violates the INA

Respondents purported to detain Mr. Macario Morales under the authority of 8 U.S.C. § 1225(b)(2)(A). But as an overwhelming number of federal courts have since held, noncitizens who are, like Mr. Macario Morales, arrested in the interior of the United States may not be detained under that section. Rather, as a general matter, they may be detained only under 8 U.S.C. § 1226(a), which renders them eligible for bond. *See, e.g., Ortega Munoz v. Noem*, 2025 WL 3218241, at (W.D. Tex. Nov. 7, 2025); *Tinoco Pineda*, 2025 WL 3471418; *Galdamez Martinez v. Noem*, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Cardona-Lozano*, 2025 WL 3218244; *see also* Dkt. 3, at 11-12 (citing further cases). Respondents pretend these cases do not exist. But there are good reasons for the mountain of precedent rejecting Respondents’

position—including that their position is inconsistent with binding statements of the Supreme Court.

Section 1225(b)(2)(A) applies only “in the case of ... an applicant for admission, if the examining immigration officer determines that [a noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, [the noncitizen] shall be detained.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The plain language of the statute thus demonstrates that it applies only to noncitizens who are “applicants for admission” and are “seeking admission” to the United States. *Ortega Munoz*, 2025 WL 3218241, at *2; *accord, e.g., Tinoco Pineda*, 2025 WL 3471418, at *5; *Galdamez Martinez*, 2025 WL 3471575, at *6; *Cardona-Lozano*, 2025 WL 3218244, at *4.

Indeed, the Supreme Court said as much in portions of *Jennings* that did speak for a majority. In a lengthy, detailed discussion of the INA’s detention provisions, the Court drew an express distinction between noncitizens “seeking admission into the country,” who are detained under § 1225(b)(2)(A), and those “already in the country,” who are instead detained under § 1226 and are generally eligible for bond. *Jennings*, 583 U.S. at 289; *accord id.* at 303; *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d). And although Respondents fail to mention this part of *Jennings*, it is binding even if the justices spoke in *dicta*. *See McRorey v. Garland*, 99 F.4th 831, 837 (5th Cir. 2024) (“We ... are generally bound by Supreme Court dicta, especially when it is recent and detailed.”) (quotation omitted).

In any event, a close reading of § 1225(b)(2)(A) bears out the reading of the Court in *Jennings* and the innumerable opinions agreeing with that reading. “Congress’ use of verb tense is significant in construing statutes,” *United States v. Wilson*, 503 U.S. 329, 333 (1992), and § 1225(b)(2)(A) uses the present participle “seeking admission.” That tense “denotes an ongoing

process” that “necessarily implies some sort of present-tense action.” *Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (quotation omitted). After all, “someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater.” *Lopez Benitez*, 2025 WL 2371588, at *7. And Respondents’ longstanding regulations implementing § 1225 similarly refer to “arriving [noncitizens],” 8 C.F.R. § 235.3(c), a term defined to include only “applicant[s] for admission coming or attempting to come into the United States at a port-of-entry,” 8 C.F.R. § 1.2; *see, e.g., Lopez Santos v. Noem*, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025) (noting Respondents’ longstanding position).

Furthermore, a provision Congress added to § 1226 just this year demonstrates that—contrary to Respondents’ position—some noncitizens who enter without inspection are subject to detention under § 1226(a). Section 1226(c)(1)(E) states that people who are “inadmissible under” 8 U.S.C. § 1182(a)(6)(A), which covers only noncitizens who enter without inspection, are subject to mandatory detention if they are charged with, arrested for, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E). By creating a “specific exception” to § 1226(a) that requires mandatory detention of *some* noncitizens who entered without inspection, Congress directly indicated its understanding that *not all* such noncitizens are subject to mandatory detention. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (quoting *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see, e.g., Gutierrez v. Thompson*, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025); *Cardona-Lozano*, 2025 WL 3218244, at *5. And Respondents’ position that all noncitizens who enter without inspection are subject to mandatory detention would render this recent addition to the statute superfluous. *See, e.g.,*

United States v. Menasche, 348 U.S. 528, 538-39 (1955) (“duty” of courts is “to give effect, if possible, to every clause and word of a statute”).²

Respondents have no meaningful response. They ignore both the dispositive language from *Jennings* and the myriad cases reading the INA in the same way as *Jennings*. And although they cite *Jennings* to argue that § 1225(b)(2)(A) is a “catchall” provision, Resp. 3-4, that is true only insofar as it covers all people applying for admission. *Jennings*, 583 U.S. at 286-87. As someone not seeking admission, Mr. Macario Morales is entirely outside the net of § 1225(b).

Respondents next contend that under § 1225(b)(2)(A), what matters is whether “DHS has determined that” a noncitizen “is seeking admission.” Resp. 4 (emphasis omitted). But the statute does not provide DHS with that authority; it gives DHS only the ability to determine admissibility, not to decree that a person is seeking admission. Nor may Respondents circumvent *Jennings* and the plain-language distinction between § 1225 and § 1226 by asserting that Mr. Macario Morales was somehow “seeking admission” long after he entered the United States.

Respondents then attempt to draw a convoluted analogy between the situation here and *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008), *see* Resp. 5-7, but that opinion supports Mr. Macario-Morales. *Martinez* involved the question whether a lawful permanent resident was eligible for a discretionary waiver of inadmissibility despite a bank fraud conviction. *See* 519 F.3d at 536. In clarifying that the waiver provision at issue could apply to people facing removal, the Fifth Circuit drew the same distinction as the Supreme Court in *Jennings*—between noncitizens “seeking admission (entry) into the United States” and those “who are already here.” *Id.* at 541. Thus, both *Jennings* and *Martinez* show that Mr. Macario Morales is not subject to

² The secondary source Respondents cite includes the same general rule, *see* Scalia & Garner, *Reading Law* 174 (2012); Resp. 9, and Respondents provide no reason to suggest the rule does not apply here.

§ 1225(b)(2)(A). And Respondents’ protracted commentary on the single word “admission,” Resp. 5-7, is simply beside the point. *See, e.g., Tinoco Pineda*, 2025 WL 3471418, at *5; *Cardona-Lozano*, 2025 WL 3218244, at *5; *Aguilar*, 2025 WL 3471417, at *5 (all quoting or discussing *Martinez*).

Finally, Respondents cite *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), as support for their position. But *Chavez* was a decision on a temporary restraining order, not the ultimate merits, and it can have minimal weight given the countless cases rejecting Respondents’ position as contrary to the INA. Thus, even absent the class relief in *Bautista*, Mr. Macario Morales would remain entitled to relief on the ground that his detention violates the INA.

IV. As Numerous Courts Have Held, Mr. Macario Morales’s Detention Violates Due Process

Mr. Macario Morales should also be released on the ground that his detention violates his due process rights. The fact that Mr. Macario Morales is detained under a theory that violates the INA without any finding of dangerousness or flight risk shows that detention violates his substantive due process rights. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (flight risk and dangerousness are the only legitimate purposes for discretionary civil immigration detention).

Mr. Macario Morales’s detention independently violates his procedural due process rights. The sufficiency of a process is determined by weighing three factors: (i) the private interest that will be affected by the official action; (ii) the risk of erroneous deprivation of that interest through the available procedures; and (iii) the government’s interest. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Numerous courts, once again including courts in this district, have held that these factors require habeas relief—including immediate release—for noncitizens in Mr. Macario Morales’s position. *See, e.g., Santiago*, 2025 WL 2792588, at *10-*14; *Vieira*, 2025 WL 2937880, at *5-*7; *Gonzalez Martinez v. Noem*, 2025 WL 2965859, at *3-

*5 (W.D. Tex. Oct. 21, 2025); *Lopez-Arevelo v. Ripa*, ___ F. Supp. 3d ___, 2025 WL 2691828, at *10-*12 (W.D. Tex. Sept. 22, 2025).

Indeed, it is undisputed that each factor weighs heavily in favor of Mr. Macario Morales. *First*, “[t]he interest in being free from physical detention” is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). This interest applies with full force to noncitizens, especially those who, like Mr. Macario Morales, have never been in immigration detention. *See, e.g., Lopez-Arevelo*, 2025 WL 2691828, at *11; *Gonzalez Martinez*, 2025 WL 2965859, at *4; *Vieira*, 2025 WL 2937880, at *6.

Second, the risk of erroneous deprivation under existing procedures is extreme. Respondents offered Mr. Macario Morales no opportunity to challenge his detention at all, and they have provided no reason to believe he poses any kind of individualized risk. *See, e.g., Vieira*, 2025 WL 2937880, at *7; *Lopez-Arevelo*, 2025 WL 2691828, at *11.

Third, Respondents’ interests in continuing to detain Mr. Macario Morales are minimal at best. Respondents have offered no evidence that Mr. Macario Morales’s current detention is justified to prevent flight or mitigate the risks of danger to the community. *See Zadvydas*, 533 U.S. at 690. Further, Mr. Macario Morales has strong economic and community ties to his home in New York and has demonstrated that he is a law-abiding member of his community, and Respondents have offered no individualized explanation for his continued detention. *See, e.g., Vieira*, 2025 WL 2937880, at *6; *Santiago*, 2025 WL 2792588, at *12. And given that Respondents have routinely performed the type of custody hearing sought here, the limited administrative burden of providing such a hearing to Mr. Macario Morales carries no meaningful weight. *See, e.g., Lopez-Arevelo*, 2025 WL 2691828, at *12.

Respondents dispute none of this. Instead, they argue only that *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), is binding and precludes Mr. Macario Morales’s due process claim. Resp. 11-12. Respondents badly misread *Thuraissigiam*. That case centered around the notion that “[noncitizen] at the threshold of initial entry cannot claim any greater rights under the Due Process Clause than those set by Congress.” *Thuraissigiam*, 591 U.S. at 107 (emphasis added). But Mr. Macario Morales, far from being “at the threshold of initial entry,” had lived in the United States for almost three years before Respondents detained him. And it is longstanding law, undisturbed by *Thuraissigiam*, that noncitizens in the United States have constitutional rights that those “at the threshold of initial entry” do not. *See, e.g., Zadvydas*, 533 U.S. at 693; *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025). Moreover, *Thuraissigiam* involved the denial of an asylum claim, not a challenge to detention. The analysis in *Thuraissigiam* thus has no application here, and the *Mathews* factors control. *See, e.g., Lopez-Arevalo*, 2025 WL 2691828, at *7-*10; *Vieira*, 2025 WL 2937880, at *4-*5; *Gonzalez Martinez*, 2025 WL 2965859, at *3.³

CONCLUSION

This Court should grant Mr. Macario Morales’s petition and order Respondents to provide him with a bond hearing within five days or, in the alternative, release him from detention.

³ Respondents’ musings about the Ex Post Facto Clause, *see* Resp. 14-15, are irrelevant; Mr. Macario Morales has not brought a claim under that clause.

December 11, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on December 11, 2025, a true and correct copy of this document was properly served on all counsel of record served in accordance with the Federal Rules of Civil Procedure.

/s/ Farha Rizvi

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