IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

JUAN DANIEL DELGADO, PETITIONER, v. KRISTI NOEM, et al., RESPONDENTS.	Civil Case No. 5:25-CV-223

PETITIONER'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS /REPLY BRIEF IN SUPPORT OF HABEAS PETITION AND MOTION FOR A PRELIMINARY INJUNCTION

RESPECTFULLY SUBMITTED,

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INTRODUCTION

The central issue presented by this habeas petition, like countless others nationwide, is straightforward: Are noncitizens like Petitioner, who are placed in removal proceedings after being encountered in the U.S. based on being present after entering without inspection (EWI), entitled to a bond hearing before a neutral adjudicator under 8 U.S.C. § 1226? Or, as the government now claims, are they subject to mandatory detention without any possibility of a bond hearing?

Petitioner's position affirms nearly three decades of settled agency practice and judicial interpretation.[1] The government's position, in stark contrast, asks this Court to adopt a radical reinterpretation of a thirty-year-old statutory scheme. This new theory would require the Court to believe that for thirty years, the agencies charged with administering these laws and the federal courts reviewing their actions have all profoundly misunderstood the statute's "plain language."[2] This Court, like the overwhelming majority

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[1] *See e.g., Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) ("The BIA's decision to pivot from three decades of consistent statutory interpretation and call for [Petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.").

[2] *See e.g., Lopez-Arevelo v. Ripa,* No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025)*; Buenrostro-Mendez v. Bondi, et al.,* No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Choglio Chafla v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v.*

of courts, has already rejected the government's arguments.[3] Mr. Delgado respectfully requests the Court do the same here, find his detention to be unlawful, and order his immediate release.

STATEMENT CONCERNING *MALDONADO BAUTISTA*

As an initial matter, Petitioner will address the *Maldonado Bautista* injunction in accordance with the Court's order on December 2, 2025.[4] As set forth below, Petitioner is a member of the *Maldonado Bautista* "bond eligible class," the court there has declared the detention of all such class members without a bond hearing under 8 U.S.C. § 1226 to be unlawful, and as a result the government should legally—not merely theoretically—be providing bond hearings to all such class members including Petitioner. But, as detailed below and explicitly, stated by the government's filed advisory, neither Petitioner's membership in the class nor the *Maldonado Bautista* declaratory relief/judgment changes the fact that this Court's intervention remains the sole avenue for Petitioner to address her unlawful detention.[5] For these reasons, those discussed below, and those set forth in the

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Kaiser, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025);*Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025)(agreeing on substantive claim but oddly not ordering any real relief in this decision);*Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *S.D.B.B. v. Johnson et. al*., No. 1:25-CV-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025).

[3] *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *5 (S.D. Tex. Oct. 8, 2025).

[4] ECF No. 8.

[5] ECF No. 10.

other filings in this matter, Petitioner respectfully requests the Court issue an order requiring his immediate release from ICE custody.

I. Petitioner is a member of the Maldonado Bautista "Bond Eligible" Class.

Petitioner is a member of the bond eligible class as he meets each of the following requirements for class membership, as she is a:

> "noncitizen[] in the United States without lawful status who (1) . . .entered . . . the United States without inspection; (2) w[as] not . . . apprehended upon arrival; and (3) [is] not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination."[6]

The government's response explicitly acknowledges Petitioner's membership in the bond eligible class in its advisory filed on December 4, 2025.[7] Accordingly, Petitioner will move to discussing the next issue.

II. The government's adivisory has left no doubt the government, IJs, and DHS, do not believe the *Maldonado Bautista* injunction has any current effect on "bond eligible" class members outside of CDCA.

As this Court's Order, correctly states the *Maldonado Bautista* court's order on November 20, 2025, "extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."[8] The declaratory relief required that bond hearings be held pursuant to § 1226(a) for all bond eligible class members. Accordingly, one would think that the *Maldonado Bautista* court's order would have the effect of all bond eligible

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[6] Maldonado Bautista v. Santacruz, Jr., No. 5:25-CV-1873, 2025 WL 3289861, at *9 (C.D. Cal. Nov. 20, 2025).

[7] ECF No. 10 p. 1.

[8] ECF No. 8 p. 1 (quoting *Maldonado Bautista v. Santacruz, Jr.*, No. 5:25-CV-1873, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025)).

class members, including Petitioner, being able to seek bond hearings before an IJ pursuant to § 1226. One would, however, be wrong to think that.

Contrary to the language from this Court's order quoting the CDCA order, the government has taken the position that the *Maldonado Bautista* "court did not issue a class-wide declaratory judgment. .. .[or] a class-wide injunction."[9] The position articulated by the government is consistent with the position being taken by IJs as they continue to deny bond hearings based on *Hurtado* to every bond eligible class member outside of CDCA.[10] To the best of Petitioner's knowledge, not a single bond eligible class members being unlawfully detained in a Texas detention facility has been granted a bond hearing in accordance with the *Maldonado Bautista* order.

Simply put, nothing has changed here in Texas as a result of the *Maldonado Bautista* court's order. And, as a result, Petitioner will continue to be unlawfully detained by ICE without a bond hearing absent this Court's intervention.

The government's seemingly nationwide refusal to give any effect to the *Maldonado Bautista* court's order provides yet another illustration of the fact that the government—ICE and EOIR in particular—will continue to ignore the rule of law.

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[9] ECF No. 18.

[10] (*See e.g.* App. to Advisory, Ex. 1 – Example of Recent IJ Order Denying Bond and Claiming *Maldonado Bautista* Does not Apply outside of CDCA and Ex. 2 – Declaration of Board Certified Immigration Attorney Belinda Arroyo.)

DISCUSSION

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

Mr. Delgado' Habeas Petition and Motion for Preliminary injunction provided an extensive and detailed discussion of the relevant laws, regulations, and cases interpreting them.[11] The government's response failed to address the substantial majority of these arguments and authorities. Indeed, the government's response was completely silent on the following:

- The habeas petition provided detailed discussion and analysis of the statutory definitions of "application for admission" and "admission or admitted" in 8 U.S.C. §§ 1101(a)(4) and (13).[12] This included citations to interpretive case law from nearly every circuit, including the 5th Circuit, leaving no doubt these definitions are "expressly limited and do[] not encompass a post-entry adjustment of status," because it "refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry."[13]

[11] ECF Nos. 1 & 2.

[12] ECF No. 1 pp. 19-24.

[13] *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete–Ramirez,* 741 F.3d at 1051); *see also Papazoglou,* 725 F.3d at 793 ("That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization."); *Bracamontes,* 675 F.3d at 385 ("Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities."); *Martinez,* 519 F.3d at 544 (recognizing that " 'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status").

- The government's response does not even mention these statutory definitions or any of the caselaw interpreting them.

- The habeas petition addressed the fact that the *Jennings* decision was unquestionably based on the understanding that "1225(b)(2)(A)" applies to those at or near the border and § 1226 applies to aliens encountered in the interior, as well as the repeated statements by the Solicitor General explaining that EWI aliens like Petitioner encountered in the interior long after entry are entitled to bond under § 1226.[14] It further detailed the multitude of reasons the constitution permitted such an understanding but plainly does not allow for the government's new interpretation.[15]
    - The government's response was completely silent on every point made by Petitioner on this issue.
- The habeas petition provided persuasive examples of the many post-IIRIRA statutory provisions which contradict the government's claim that Congress intended to punish/deter illegal entry through mandatory detention as well as detailing the actual ways Congress sought to accomplish this goal.[16]
    - The government's response was completely silent on every point made by Petitioner on this issue.

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[14] ECF No. 1 pp. 46-49.

[15] ECF No. 1 pp. 57-61.

[16] ECF No. 1 pp. pp. 34-45.

- The habeas petition pointed to the undisputed fact that DHS has consistently treated Petitioner as though he is subject to § 1226, and therefore, have created a liberty interest that cannot be abrogated by the government unilaterally deciding to "switch tracks."[17] Further, it cited multiple well-reasoned decisions by district courts explicitly rejecting prior attempts by the government to switch an EWI alien from being subject to § 1226 detention to § 1225(b)(2)(A) in factually similar cases.[18]
    - The government's response did not address this argument or the authorities cited at all in its response.
- The habeas petition detailed the reasons that, even if Hurtado were decided correctly (which it was not), it could not be retroactively applied to Petitioner under longstanding Supreme Court precedent.[19]
    - The government's response was completely devoid of a single word on this issue.
- The habeas petition provided a detailed analysis of the *Mathews* factors and the reasons those factors leave no doubt that Mr. Delgado current detention is unconstitutional under the due process clause.[20]
    - The government's response made no attempt to dispute this fact.

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[17] ECF No. 1 pp. 65-66.

[18] ECF No. 1 pp. 65-66.

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

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

II. The government's argument for exhaustion has been repeatedly made and repeatedly rejected in habeas cases involving unlawful detention claims by aliens.

The government's brief argues Petitioner should be required to exhaust "administrative remedies."[21] It is well established, however, that there is no statutory requirement to exhaust remedies for alien detention claims; rather, " '[u]nder the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.'"[22] In *Lopez-Arevelo*, the court in the Western District of Texas found that "[r]equiring [the petitioner] to wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate his alleged constitutional injury—detention without a bond hearing."[23]

Here, there is no question that both an IJ and the BIA did or would apply the *Hurtado* decision to this and every other case raising the exact same issue. Said differently, the only thing filing a bond request for an EWI alien will do is create more paperwork for the immigration courts to process. In fact, in another case out of the Western District of Texas, the fact that the petitioner did not attempt to request a bond was explicitly acknowledged and discussed.[24] There the government readily conceded all of this was true.

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[21] (ECF No. 14 pp. 6-7.)

[22] *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025) (citing *Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007); *see also* 8 U.S.C. § 1252(d)(1) ("A court may review *a final order of removal* only if ... the alien has exhausted all administrative remedies." (emphasis added)).

[23] *Id*. at *6 (citing *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672 n.14 (S.D. Tex. 2021)).

[24] *See Martinez v. Kristi Noem,* No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025).

Even the small number of courts that have agreed with the government's new interpretation of § 1225(b)(2)(A) have rejected similar exhaustion arguments.[25] Given the seemingly unanimous consensus on this issue, Petitioner will not belabor the point.

III. The government's response included the same brief unavailing claims made in *Hurtado* which were soundly and correctly rejected by this Court in *Covarrubias v. Vergara.*

The final arguments in the government's resposne are brief renditions of the exact same claims that its new position is supported by the "plain language" of § 1225(b)(2)(A). As pointed out above, the government's arguments failed to even mention or acknowledge—much less respond to—the numerous detailed arguments Petitioner made on this issue. Similarly, it failed to provide a single reason this Court's detailed and well-reasoned decision in *Covarrubias v. Vergara* rejecting the exact same argument was wrong. Given all of this, Petitioner simply requests the Court reject the government's arguments in this case for the exact same reasons it did in that one.

IV. The "persuasive decisions" the government cites suffer from a multitude of errors resulting from a fundamental misunderstanding of who is subject to mandatory detention during removal proceedings to failing to even acknowledge controlling precedent explicitly holding the statutory definition of "admission" leaves no doubt that it "refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry."

The government asks this Court to abandoned it previous well-reasoned conclusions on the relevant issues in a previous decision in favor of decisions from a few district

[25] *See e.g., Cabanas v. Bondi,* No. 4:25-CV-04830, 2025 WL 3171331, at *3 (S.D. Tex. Nov. 13, 2025)("It is well settled that a "person seeking habeas relief must first exhaust available administrative remedies.").

courts.[26] As an initial matter, those decisions—like the government's response—did not address a single one of the arguments or legal authorities included in the habeas petition filed in this case.[27]

Furthermore, those decisions rest entirely on the false premise that IIRIRA's goal of deterring entry without inspection or the "anomaly" it sought to remedy were related in any way to detention. As discussed in detail in the habeas petition, the IIRIRA provisions enacted to deter EWI are unrelated to detention during INA § 1229a proceedings and the "anomaly" IIRIRA aimed to fix had nothing to do with bond.[28] Rather, it concerned the disparate *procedural* treatment (i.e. expedited removal) of aliens arriving at a Port of Entry (POE) versus those who entered without inspection (EWI).[29]

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

That being said, one point from the petition which bears repeating. he Government's new position is further undermined by IIRIRA's parallel goal of eradicating immigration fraud. IIRIRA enacted severe penalties for fraud, such as the permanent, non-waivable bar for falsely claiming U.S. citizenship under INA § 1182(a)(6)(C)(ii). Yet, under the

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

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

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

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

Government's strained interpretation of the detention statutes, those aliens who *would* remain eligible for a bond hearing under § 1226(a) after being placed in § 1229a proceedings for *committing* fraud—such as successfully committing fraud at a POE, engaging in marriage fraud, or violating the terms of their nonimmigrant visas. It defies logic and congressional intent to suggest IIRIRA created a scheme where those who commit affirmative fraud are entitled to a bond hearing, while aliens whose sole charge is entry without inspection are subject to mandatory detention.

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

CONCLUSION

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

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the U.S. District Court and counsel for the government in accordance with the Federal Rules of Civil Procedure on December 11, 2025.

/s/ *Dan Givіden*
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