UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA MONROE DIVISION

ALEXANDER ROMERO CARRETO,
Petitioner,

v.

JACKSON PARISH CORRECTIONAL CENTER WARDEN, in their official capacity;

SCOTT LADWIG, in his official capacity as Acting Field Office Director of the New Orleans Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations;

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; and

PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

Civil Action No. 3:25-cv-01809

Hon Jerry Edwards, Jr.

Hon Kayla D. McClusky

PETITIONER'S REPLY IN FURTHER SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

PRELIMINARY STATEMENT

Petitioner Alexander Romero Carreto, who was improperly detained by ICE on September 10, 2025 and has remained in ICE custody since, asks this Court to enjoin his continued unlawful detention. As established in Alexander's opening brief, ICE's purported legal basis for detention, Section 1225(b)(2), does not apply here because Alexander was already in the country at the time he was detained. Under the circumstances here, the only possible legal ground for detention is Section 1226(a), but that provision is unavailable because ICE has not performed a pre-detention individualized assessment of Alexander's flight risk or danger to the community. Accordingly, his continued detention—even though he is neither a flight risk (due to his strong community ties) nor danger to the community (due to his lack of criminal record)—violates due process. Unable to refute these dispositive legal arguments, Respondents ignore controlling authority, mischaracterize Alexander's arguments, and ignore Alexander's undisputed constitutional deprivation. Their efforts fail at every turn.

First, Respondents' argument that Alexander is properly detained under Section 1225(b)(2), the mandatory detention statute, flies in the face of extensive authority to the contrary, including two recent decisions from this very Court. Courts throughout the Fifth Circuit and the country have repeatedly ruled that, as a matter of law, Section 1225(b)(2) cannot and does not apply to individuals who were alleged to have entered without inspection and were present in the United States at the time they were detained. Respondents ignore this authority and instead ask this Court to find that Section 1225(b)(2) was properly applied based on a small minority of decisions from other courts that are not controlling.

Second, Respondents do not meaningfully address any of Alexander's constitutional arguments. They attempt to recharacterize Alexander's arguments as improper challenges to the

length and conditions of his confinement. But that is not the basis of the constitutional challenge here. Rather, Alexander is arguing that ICE violated his due process rights by failing to conduct a mandatory pre-detention assessment of his flight risk and danger to the community. Respondents do not dispute that no such assessment ever took place. As a result, they effectively concede that, if Section 1226(a) governs (and it does), Alexander has been unlawfully detained and that he suffers ongoing irreparable harm every day his unlawful detention continues.

Third, where, like here, an individual is detained in violation of their due process rights, the only appropriate remedy is immediate release. No alternative remedy would make Alexander whole, and Respondents have not shown otherwise.

Finally, Respondents' last-ditch effort to challenge this Court's jurisdiction falls flat. Where, as here, an immigration detainee is seeking to enforce their constitutional rights, not to challenge removal proceedings, jurisdiction is proper. Accordingly, Alexander's Motion (ECF 7) should be granted.

ARGUMENT[1]

I. ALEXANDER IS MORE THAN LIKELY TO SUCCEED ON THE MERITS OF HIS CONSTITUTIONAL CLAIMS

A. The Overwhelming Weight of Authority, Including Recent Precedent from This Court, Establishes the Unlawfulness of Alexander's Detention

Respondents' primary argument is that, under their proposed reinterpretation of Section 1225(b)(2), Alexander was properly detained because he is a noncitizen seeking admission. Ans. at 8-18. Remarkably, Respondents do not acknowledge that Judge Edwards has twice rejected their exact same arguments in recent months. *See Kostak v. Trump*, No. 25-1093, 2025 WL 2472136, at *2-3 (W.D. La. Aug. 27, 2025) (Edwards, J.) (granting TRO and holding that

[1] Citations to "Br.__" are to Alexander's opening brief, filed November 19, 2025 (ECF 7-1). Citations to "Ans. __" are to Respondents' Response ("Answer"), filed November 26, 2025 (ECF 15).

mandatory detention of noncitizens like Petitioner "under Section 1225 was erroneous . . . " and that they are instead subject to Section 1226); *Ventura Martinez v. Trump*, No. 25-1445, 2025 WL 3124847, at *2-3 (W.D. La. Oct. 22, 2025) (Edwards, J.) (same) (citing *Kostak*, 2025 WL 2472136, at *3).

While Respondents cite a small number of decisions reflecting a minority view, Ans. at 16, the vast majority of cases addressing this issue (including decisions issued by this Court) make clear that Section 1225(b)(2) does not apply to individuals who are alleged to have entered without inspection, and the only available basis for Alexander's detention is Section 1226(a)—the discretionary detention statute that only permits continued detention after proper due process is afforded to the noncitizen. Br. at 10–12 (collecting cases); *see also Granados v. Noem*, No. SA-25-CA-01464, 2025 WL 3296314, at *5-6 (W.D. Tex. Nov. 26, 2025); *De Leon Hernandez v. Bondi*, No. 25-CV-1384, 2025 WL 3217037, at *2 (W.D. La. Nov. 18, 2025). Respondents do not contest that they failed to provide such process to Alexander, nor do they attempt to explain (because they cannot) how Alexander's case warrants a departure from this Court's previous decisions and the weight of authority. This alone merits granting the motion.

There is a second, independent reason why Respondents' arguments fail. On November 20, 2025, after Alexander brought this case but before Respondents filed their opposition, the United States District Court for the Central District of California declared that DHS's policy of detaining pursuant to Section 1225(b)(2) noncitizens present in the United States who entered without inspection was unlawful. *See Maldonado Bautista v. Santacruz* (*"Maldonado Bautista I"*), No. 25-cv-01873, 2025 WL 3289861, at *6-11 (C.D. Cal. Nov. 20, 2025). Then, days later, the *Maldonado Bautista* court certified a nationwide class and applied its declaratory judgment to

the entire class. *See Maldonado Bautista v. Santacruz* ("*Maldonado Bautista II*"), No. 25-cv-01873, 2025 WL 3288403, at *1, *8-9 (C.D. Cal. Nov. 25, 2025).

Under *Maldonado Bautista II*, detention under Section 1225(b)(2) is unlawful as applied to anyone who meets the following criteria:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time [DHS] makes an initial custody determination.

2025 WL 3288403, at *1, *9 (alteration added). Respondents assert that Alexander "is a Guatemalan national who illegally entered the United States . . . without inspection." Ans. at 1 (ellipsis added). Thus, by Respondents' admission, Alexander falls within the certified class in *Maldonado Bautista II*. Unable to distinguish *Maldonado Bautista II*, Respondents pretend it does not exist. Respondents' failure to address *Maldonado Bautista II*, which is contrary authority issued before their filing that invalidates the basis for their substantive defense, underscores that Alexander's continue detention pursuant to Section 1225(b)(2) is unlawful.

B. Respondents Mischaracterize Alexander's Constitutional Arguments Because They Cannot Deny His Detention Violates Due Process

The crux of Alexander's plea to this Court is that his due process rights were violated because ICE did not perform any individualized pre-detention assessment as to the necessity of his detention. Respondents completely ignore—and thus concede—this issue. *See generally* Ans.; *see also, e.g.*, *United States v. Reagan*, 596 F.3d 251, 254–55 (5th Cir. 2010) (defendant's failure to offer any "arguments or explanation . . . is a failure to brief and constitutes waiver") (ellipsis added); *In re Green*, 968 F.3d 516, 522 n.17 (5th Cir. 2020) ("Arguments given short shrift . . . are forfeited.") (ellipsis added); *Kellam v. Metrocare Servs.*, No. 12-CV-352, 2013 WL 12093753, at

*3 (N.D. Tex. May 31, 2013) ("[F]ailure to respond to arguments constitutes an abandonment or waiver of the issue."), *aff'd per curium*, 560 F. App'x 360 (5th Cir. 2014).

Instead, Respondents argue that Alexander's detention does not violate due process because "[h]e has only been detained for roughly ten weeks as his process unfolds." Ans. at 19–21. But Alexander has not brought a prolonged detention claim. The length of Alexander's detention has no bearing on the claim he *did* bring—a challenge to his detention without *any* individualized determination of his flight risk or danger to the community. *See* Br. at 12–15; *see also, e.g.*, *Lopez Benitez v. Francis*, 25 Civ. 5937, 2025 WL 2371588, at *10 (S.D.N.Y. Aug. 13, 2025) ("[D]ue process must account for the wide discretion that Section 1226(a) vests in the Government to arrest any person in the United States suspected of being removable" by requiring an individualized determination of applicability); *Contreras Maldonado v. Cebezas*, No. 25-13004, 2025 WL 2985256, at *5-6 (D.N.J. Oct. 23, 2025) (petitioner's "due process rights were violated when she was detained without an individualized determination under § 1226(a) and its implementing regulations"); *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *6-10 (W.D. Tex. Oct. 2, 2025) (similar); *Gonzalez Martinez v. Noem*, No. EP-25-CV-430, 2025 WL 2965859, at *2-3 (W.D. Tex. Oct. 21, 2025) (similar). Respondents neglect to engage with this argument, cite no case to the contrary, and effectively concede that Alexander never received the pre-detention individualized assessment required to comport with due process.[2]

[2] Respondents' assertion that Alexander "raises an irreparable harm claim related to conditions of confinement," which they claim is "not cognizable in habeas," Ans. at 4 n.3, is equally meritless. Alexander raises no such claim. Instead, Alexander challenges the lack of process he received *prior to detention*. Br. at 12–15. Ultimately, the Answer does not acknowledge (and again concedes) the irreparable harm Alexander will suffer absent release. *Reagan*, 596 F.3d 251 at 254; *Green*, 968 F.3d at 522; *Kellam*, 2013 WL 12093753, at *3.

II. BECAUSE ALEANDER MADE THE REQUISITE SHOWING FOR INJUNCTIVE RELIEF, HE IS ENTITLED TO IMMEDIATE RELEASE

A. Alexander's Immediate Release is the Only Appropriate Remedy

The only appropriate remedy for Alexander's ongoing unlawful detention is his immediate release. *See Granados*, 2025 WL 3296314, at *7 (ordering immediate release where petitioner was improperly detained under Section 1225(b)(2)). Respondents cannot establish otherwise. Consistent with the weight of authority, Alexander should be released immediately because no amount of belated post-deprivation process can cure the irreparable harm he has already suffered. Br. at 3-4.

Moreover, the alternative remedy here—a bond hearing by the immigration court—would not provide Alexander any relief because DHS will undoubtedly invoke the automatic stay provision in 8 CFR § 1003.19(i)(2) (the "Automatic Stay"). Under the Automatic Stay, DHS can unilaterally stay an immigration court's custody order while it seeks appeal, preventing the liberty of someone who has been ordered released on bond. *See* 8 CFR § 1003.19(i)(2). The Automatic Stay is in place for 90 days without any opportunity for the detained individual to respond or seek judicial review, and DHS has several mechanisms to extend that detention indefinitely.[3] Courts around the country, including in this District, have found that the use of the Automatic Stay violates procedural and/or substantive due process rights. *See, e.g., De Leon Hernandez*, 2025 WL 3217037, at *2–3; *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1191 (D. Minn. 2025); *Gutierrez v. Thompson*, No. 25-4695, 2025 WL 3187521, at *8 (S.D. Tex. Nov. 14, 2025); *Herrera Toralba v. Knight*, No. 25-cv-01366, 2025 WL 2581792, at *12-13 (D. Nev. Sept. 5, 2025); *Maldonado v.*

[3] *See, e.g.*, 8 C.F.R. §§ 1003.6(c)(5) & 1003.19(i)(1) (permitting DHS to seek a discretionary stay after the Automatic Stay lapses); 8 C.F.R. § 1003.6(d) (automatically staying the decision of the Board of Immigration Appeals if it orders release on bond or denies the discretionary motion for five days, and within that five day period, permitting DHS to refer the matter to the Attorney General and seek discretionary release for the duration of the case).

Olson, No. 25-cv-3124, 2025 WL 2374411, at *15-16 (D. Minn. Aug. 15, 2025); *Martinez v. Noem*, No. 25-CV-01007, 2025 WL 2598379, at *6 (W.D. Tex. Sept. 8, 2025).

For these reasons, a bond hearing would only result in Alexander's continued and indefinite unlawful detention in violation of his due process rights, subjecting him to further irreparable harm and requiring further litigation before this Court. *Pineda Parada v. Rice*, No. 25-cv-1660, 2025 WL 3146250, at *3 (W.D. La. Nov. 4, 2025) ("[U]nconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm."); *Ventura Martinez*, 2025 WL 3124847, at *3 (same); *Kostak*, 2025 WL 2472136, at *3 (same); *J.M.P. v. Arteta*, No. 25-cv-498, 2025 WL 2984913, at *24 (S.D.N.Y. Oct. 23, 2025) (ordering immediate release on a motion to enforce where, after federal court ordered bond hearing, "the stay procedures employed here nullified the IJ's bond determination" and "render[ed] the bond hearing a mere formality.") (alteration added). Immediate release is the only appropriate remedy.[4]

B. This Motion is an Appropriate Procedural Mechanism by Which to Obtain Alexander's Release

Contrary to Respondents' assertions, this Court and courts nationwide have granted injunctive relief even when such a request is filed alongside a habeas petition. *Kostak*, 2025 WL 2472136, at *4 (decision by this Court issuing temporary restraining order brought concurrently with a detainees' habeas petition); *Ventura Martinez*, 2025 WL 3124847, at *3; *Pineda Parada*, 2025 WL 3146250, at *3; *Garcia Domingo v. Castro*, No. 1:25-cv-00979, 2025 WL 2941217, at *1, *5 (D.N.M. Oct. 15, 2025); *Pablo Sequen v. Kaiser*, 793 F. Supp. 3d 1114, 1120–21 (N.D. Cal. 2025) (granting injunctive relief and ordering immediate release of petitioner to "preserve the

[4] Alternatively, if this Court orders a bond hearing, Petitioner asks that the burden be placed on the government, as numerous courts, including those within this District, have concluded is appropriate under these circumstances. *See e.g. Pineda Parada*, 2025 WL 3146250, at *3 (ordering bond hearing where DHS "will bear the burden of proving by clear and convincing evidence that Petitioner is a danger to the community and that no financial bond and conditions can mitigate his risk of flight.").

status quo pending further briefing"); *Arrazola Gonzalez v. Noem*, No. 25-cv-01789, 2025 WL 2379285, at *3 (C.D. Cal. Aug. 15, 2025). Moreover, injunctive relief is necessary to return Alexander to his status quo—*i.e.*, his "last uncontested status which preceded the pending controversy"—as of the day before his arrest. *Pablo Sequen*, 793 F. Supp. 3d at 1120; *see also Diaz v. Kaiser*, No. 25-cv-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025); *F.R.P. v. Wamsley*, No. 25-cv-01917, 2025 WL 3037858, at *7-8 (D. Or. Oct. 30, 2025); *Maldonado*, 2025 WL 2374411, at *15-16.

None of the cases cited by Respondents establish otherwise. *See Oliveira v. Patterson*, No. 25-cv-01463, 2025 WL 3091705, at *1 (W.D. La. Oct. 9, 2025) (Ans. at 2) (denying TRO based on lack of jurisdiction, not because the remedy sought in the motion was the same as in the underlying petition); *Garcia-Aleman v. Thompson*, 25-cv-886 (W.D. Tex. Oct. 30, 2025) (Ans. at 2) (denying TRO where court already ordered an expedited habeas proceeding and a full evidentiary hearing on petitioner's habeas petition had already taken place).[5]

III. THIS COURT HAS JURISDICTION OVER ALEXANDER'S CLAIMS

As a last-ditch effort, Respondents claim that 8 U.S.C. §§ 1252(b)(9) and (g) and 8 U.S.C. § 1226(e) preclude this Court from adjudicating Alexander's request for relief. Ans. at 21–23. But nearly every court to address this issue—including every court in this District—has rejected this argument. Instead, district courts have consistently ruled that they have jurisdiction in cases where noncitizens seek to enforce their constitutional rights rather than challenge their removal proceedings or a discretionary determination by DHS. *Ventura Martinez*, 2025 WL 3124847, at *1–2; *Kostak*, 2025 WL 2472136, at *2; *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL

[5] Even if this Court were to grant Alexander's immediate release under his habeas petition rather than the current Motion, the strength of his constitutional arguments and the irreparable harm resulting from his ongoing unconstitutional detention necessitate that such release be ordered expeditiously.

2642278, at *2–3 (W.D. La. Sept. 11, 2025); *Santiago*, 2025 WL 2792588, at *3–5. That is the precise relief Alexander is seeking here.

A. Sections 1252(g) and (b)(9) Do Not Bar Jurisdiction

Respondents first assert that this Court lacks jurisdiction under Section 1252(g), which limits the federal courts' jurisdiction to "hear any cause or claim by or on behalf of any [noncitizen] arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any [noncitizen]." 8 U.S.C. § 1252(g) (alterations added). But Section 1252(g)'s jurisdiction-stripping provision only "relates to 'three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Lopez Santos*, 2025 WL 2642278, at *2 (alteration added) (citation omitted); *see also Cardoso v. Reno*, 216 F.3d 512, 516-17 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts from reviewing an alien detention order . . ."). Alexander does not challenge any of these three discrete actions. Rather, he seeks to enforce "his constitutional right to due process in the context of the removal proceedings." *Lopez Santos*, 2025 WL 2642278, at *3. As such, Section 1252(g) is irrelevant and does not preclude this Court's review. *Id.*; *see also Santiago*, 2025 WL 2792588, at *4; *Lopez-Arevelo v. Ripa*, 25-CV-337, 2025 WL 2691828, at *5 (W.D. Tex. Sept. 22, 2025).

Next, Respondents attempt to invoke Section 1225(b)(9) to deprive this Court of jurisdiction. *See* Ans. at 21–22. This argument fares no better. The Fifth Circuit recently explained that Section 1225(b)(9) does not apply "where review of an agency determination involves neither a determination as to the validity of [petitioner's] deportation orders or the review of any question of law or fact arising from their deportation proceedings. . ." *Duarte v. Mayorkas*, 27 F.4th 1044, 1056 (5th Cir. 2022) (alteration and emphasis added); *Ventura Martinez*, 2025 WL 3124847, at *2 ("Because the instant action does not constitute 'judicial review of an order of

removal' and is instead a dispute over the availability of bond, Section 1252(b)(9) does not apply."). Here, Alexander has no deportation order and is not asking the Court to review any issue of law or fact arising from the removal proceedings instituted against him after he was detained. Rather, and as noted repeatedly and unambiguously through Alexander's filings in this case, Alexander is challenging the constitutionality of his ongoing detention. Accordingly, Section 1252(b)(9) does not apply and cannot bar this Court from adjudicating his claims. *Ventura Martinez*, 2025 WL 3124847, at *2; *Santiago*, 2025 WL 2792588, at *4–5.

B. Section 1226(e) Does Not Bar Jurisdiction

Finally, Respondents claim that this Court lacks jurisdiction under Section 1226(e), which limits judicial review of "any action or decision by the Attorney General . . . regarding the detention of [a noncitizen] or denial of bond or parole." Ans. at 22–23. However, as the Fifth Circuit has determined, Section 1226(e) "does not deprive [courts] of all authority to review statutory and constitutional challenges" to a noncitizen's detention, as long as "that detention presents constitutional issues, such as those raised in a habeas petition." *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (alteration added). Accordingly, district courts within the Fifth Circuit have repeatedly rejected Respondents' argument in cases like Alexander's, where petitioners challenged their mandatory detention as a violation of their due process rights. *Lopez-Arevelo*, 2025 WL 2691828, at *5; *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950096, at *4 (S.D. Tex. Oct. 3, 2025); *see also Granados*, 2025 WL 3296314, at *4 ("[B]y taking the position that Petitioner's detention is mandatory under Section 1225(b)(2) . . . the Attorney General waived" [Section 1226(e) jurisdictional argument]. . .) (alteration and ellipsis added).

CONCLUSION

For the foregoing reasons, the Motion should be granted.

Dated: November 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael P. Sternheim, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent by mail to those indicated as non-registered participants on November 28, 2025.

/s/ Michael P. Sternheim
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