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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FERNANDO ESTUPINAN REYES, *Petitioner*, v. BOBBY THOMPSON, Warden of South Texas ICE Processing Center; TODD LYONS, Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States. *Respondents*.	:	Docket No. 5:25-cv-001590-XR

MEMORANDUM OF LAW IN REPLY TO FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner respectfully submits this reply to Respondents' ("Government") response to the Petition for Writ of Habeas Corpus ("Petition"). The Government's arguments fail for the following reasons. First, the Government's jurisdictional arguments fail because Petitioner is challenging the lawfulness of his detention under 8 U.S.C. 1225(b)(A), which is cognizable in habeas and not barred by any of the statutes cited by the Government. This Court, and many others, have rejected the Government's jurisdictional arguments.

Second, the plain language of 8 U.S.C. 1226(a) and 1225(b)(2)(A), and their context in the broader immigration statutory scheme, clearly demonstrate that Petitioner's detention is governed by section 1226(a) and not section 1225(b). This Court (and many others) have held so in other nearly identical cases.

For these reasons, this Court should again join the chorus of cases around the country finding that habeas relief is warranted. With respect to the type of relief, the Court should order Petitioner's immediate release from detention.

ARGUMENTS

I. THE GOVERNMENT DOES NOT DISPUTE THE CRITICAL FACTS IN THIS CASE

The Government does not dispute the important facts in this matter. Petitioner entered the United States without parole or inspection. *See* ECF No. 7 p. 2-3. He was never detained previously by DHS. *See id.* He applied for adjustment of status pursuant to the Violence Against

Women Act ("VAWA")[1]. *See id.* He was detained by ICE on August 14, 2025 and charged with inadmissibility as a noncitizen who is present without parole or inspection.

II. THIS COURT POSSESSES SUBJECT MATTER JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 2241. However, the Government contends that the Court is stripped of jurisdiction pursuant to 8 U.S.C. §§ 1252(g), (b)(9), § 1225(b)(4) and § 1226(e). The Government's claims are without merit for the following reasons. First, section 1252(g) does not preclude jurisdiction because Petitioner is not challenging the commencement or removal proceedings, the adjudication of his immigration case, or the execution of a removal order (which Petitioner does not even have). Section 1252(g) only "applies only to three discrete actions that the Attorney general may 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) (quoting 8 U.S.C. § 1252(g)). Importantly, it "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 [S]ection 1252(g)." *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 U.S. Dist. LEXIS 195616, 2025 WL 2792588, at *3 (W.D. Tex. Oct. 2, 2025) (cleaned up) (quoting *Cardoso v. Reno*, 216 F.3d 512, 516-17 (5th Cir. 2000)). Here, as this Court has recognized in another nearly identical case, "Petitioner is not challenging removal proceedings but seeks release—in habeas corpus—because Respondents have unlawfully detained him." *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 LX 590329, at *4 (W.D.

[1] The Government curiously states that Petitioner allegedly applied for adjustment of status, as if to suggest that this is merely an allegation. But the Government does not contest this fact or suggest why it is merely an allegation.

Tex. Nov. 26, 2025); *see also Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 LX 555840 (W.D. Tex. Dec. 2, 2025).

Similarly, section 1252(b)(9) does not preclude jurisdiction because it "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." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up). It does not "'sweep within its scope claims with only a remote or attenuated connection to the removal of an alien'. . . [or] preclude review of claims that 'cannot be raised efficaciously within the administrative proceedings' already available." *Duron v. Johnson*, 898 F.3d 644, 647 (5th Cir. 2018) (quoting *Aguilar v. I.C.E.*, 510 F.3d 1, 9 (1st Cir. 2007)). The Government's arguments under section 1252(b)(9) fail because Petitioner is arguing that the Government lacks the legal authority to subject him to mandatory detention under section 1225 instead of discretionary detention under section 1226(a). As this Court has recognized, "[b]ecause Petitioner challenges only his ongoing detention during the pendency of his removal proceedings, '§ 1252(b)(9) does not present a jurisdictional bar.'" *Granados*, 2025 LX 590329, at *5 (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 295 (2018)). The second reason is because "[t]he core of this dispute is whether Petitioner can be detained with no bond hearing—that is, with no administrative opportunity to contest his detention—pending a removal determination. If Section 1252(b)(9) precluded this habeas petition, Petitioner's detention would be "effectively unreviewable," *Jennings*, 583 U.S. at 293, especially considering the BIA's novel position that immigration judges lack authority to even *entertain* bond requests." *Id.* (emphasis original).

Section 1225(b)(4) also does not preclude jurisdiction because it has nothing to do with noncitizens challenging the constitutional lawfulness of their detention. Inexplicably, the

Government argues that this section bars Petitioner's claims, but in actuality it only "governs challenges brought by an immigration officer to favorable admissibility decisions made by another officer." *Granados*, 2025 LX 590329, at *7. "It has nothing to do with the scope of DHS's detention authority or the federal courts' jurisdiction over challenges to detention." *Id.*

Lastly, section 1226(e) does not preclude jurisdiction because "this section shields only the Attorney General's *discretionary* detention decisions." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828, at *5 (W.D. Tex. Sept. 22, 2025) (emphasis added). It does not preclude, e.g., "challenges to the statutory framework that permits the alien's detention without bail." *Demore v. Kim*, 538 U.S. 510, 516 (2003); *see, e.g., Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (federal courts "retain jurisdiction to review [a noncitizen's] detention insofar as that detention presents constitutional issues, such as those raised in a habeas petition.") (citing *Kim*, 538 U.S. at 516-17). As this Court has previously held, "even setting aside Petitioner's constitutional claims, Section 1226(e)'s jurisdictional bar is inapplicable for a much simpler reason: by taking the position that Petitioner's detention is *mandatory* under Section 1225(b)(2), ... the Attorney General has waived any argument that Petitioner's detention was an exercise of her discretion protected from judicial review under Section 1226(e)." *Granados*, 2025 LX 590329, at *9 (emphasis original).

III. THE PETITIONER'S DETENTION IS NOT GOVERNED BY SECTION 1225(b)(2)(A)

The crux of this matter comes down to whether Petitioner's detention is govered by section 1226(a) or 1225(b)(2). For nearly 30 years, DHS and the BIA considered noncitizens like Petitioner subject to detention under 1226(a), and therefore eligible for bond. But starting on July 8, 2025, DHS radically changed its position regarding the statutory interpretation of these two

statutes and now considers all noncitizens—except those who were admitted to the United States—to be ineligible for bond. The BIA adopted that position in its September 5, 2025 decision in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). This has left millions of noncitizens who were previously eligible for bond now subject to mandatory detention. For the reasons set forth below, this Court should again grant habeas relief.

As this Court has recognized, "[t]his is not a matter of first impression. In recent months, courts across the country, including this one, have rejected Respondents' broad interpretation of Section 1225(b)(2)." *Granados*, 2025 LX 590329, at *12 (W.D. Tex. Nov. 26, 2025) (collecting cases). The language of section 1225(b)(2) is clear, it states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" removal proceedings. 8 U.S.C. § 1225(b)(2)(A). In other words, "[s]ection 1225(b)(2) requires someone to be detained if three conditions are met: (1) the person is an 'applicant for admission'; (2) the person is 'seeking admission'; and (3) an 'examining immigration officer determines' the person 'is not clearly and beyond a doubt entitled to be admitted.'" *Granados*, 2025 LX 590329, at *14 (internal citation omitted). This Court recently explained why the Government's arguments do not make sense:

> The term "applicant for admission" includes a noncitizen "present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). "The terms 'admission' and 'admitted' mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). Because Petitioner is present in the United States and has not "lawful[ly] ent[ered] . . . after inspection and authorization by an immigration officer," he is an "applicant for admission." *Id.* §§ 1101(a)(13)(A); 1225(a)(1).
>
> But at the time of Petitioner's detention, he was not "seeking admission." Again, admission refers to "lawful entry . . . into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). When ICE detained him, Petitioner was not seeking entry, much less "lawful entry . . . after inspection and

> authorization." *See Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008), *as amended* (June 5, 2008) ("Under th[e] statutory definition, 'admission' is the lawful *entry* of an alien after inspection, something quite different, obviously, from post-entry adjustment of status." (emphasis in original)); *Lopez Benitez*, 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588, at *6 (noting that Respondents' interpretation "would render the phrase 'seeking admission' in [Section] 1225(b)(2)(A) mere surplusage"). Because Petitioner is not "seeking admission," ICE may not detain him under Section 1225(b)(2).
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> *Granados*, 2025 LX 590329, at *14-15 (W.D. Tex. Nov. 26, 2025).

Therefore, "Section 1225(b)(2) applies to noncitizens 'seeking admission,' and Section 1226 applies to noncitizens 'already in the country.' Respondents may not detain Petitioner pursuant to Section 1225(b)(2). Because the Court concludes Section 1225(b)(2) is inapplicable, Petitioner's present detention necessarily falls under 8 U.S.C. § 1226 . . . ." *Id.* at *15.

As for the form of relief, the Court should order release as it has done in previous cases. *See id.* at *16; *Pineda*, 2025 LX 555840, at *12. As this Court previously reongized, "Respondents do not claim that Petitioner's current detention is under § 1226. In fact, they assert that the only relief available to her is release from custody . . . . As such, 'the Court sees no reason to consider; § 1226 as a basis for Petitioner's current detention. *See Pineda*, 2025 LX 555840, at *13 (citing *Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 n.23 (D. Mass. 2025)); *see also Amm v. Bobby Thompson, Warden, S. Tex. ICE Processing Ctr.*, No. SA-25-CV-1210-FB (HJB), 2025 LX 594030, at *17 (W.D. Tex. Nov. 18, 2025).

CONCLUSION

For the foregoing reasons, the Court should grant habeas relief and order Petitioner released from detention.

Respectfully submitted on 11th day of December 2025

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