UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
El Paso Division

HECTOR VASQUEZ CARRETO, *Petitioner*, v. KRISTI NOEM, *et al.*, *Respondents.*	Civ. No. 3:25-cv-597-LS

REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Petitioner was first encountered by immigration officials in 2025, nearly 21 years after his entry into the United States. During that first encounter, Respondents arrested him and have since subjected him to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Prior to ICE's about-face policy and reinterpretation of the mandatory detention statute, Petitioner is a quintessential noncitizen who should be eligible for a bond hearing under 8 U.S.C. § 1226(a). However, Respondents will continue to deprive him of the most basic process, a bond hearing, without intervention by this Court. Respondents' recent legal reinterpretation of the mandatory detention statute has been rejected by the vast majority of District Courts, including other jurists in this District. *See, e.g.*, *Contreras-Cervantes v. Raycraft*, 2:25-cv-13073, 2025 WL 2952796, *8 n.4 (E.D. Mich. Oct. 17, 2025) (collecting cases). This Court should reject Respondents' unlawful reinterpretation as well.

FACTS AND PROCEDURAL HISTORY

The parties generally agree as to the relevant facts of this case. Petition ¶¶ 34-40, ECF No. 1; Response 1-2 ECF No. 7. The parties agree that Petitioner entered in approximately 2004, and was not encountered by immigration officials at that time. Pet. ¶ 34; Response 1. The parties agree that Petitioner had currently pending removal proceedings. Pet. ¶ 34; Response 2.[1]

ARGUMENT

I. THIS COURT RETAINS JURISDICTION TO GRANT RELIEF IN THIS CASE.

Petitioner challenges solely the legal basis of his detention, not the removal proceedings against him, and as such this Court maintains class habeas jurisdiction. *See Lopez-Arevalo v. Ripa*, --F.Supp.3d--, NO. EP-25-CV-337-KC, 2025 WL 2691828, *3-5 (W.D. Tex. Sep. 12, 2025).

[1] Petitioner denies the unsubstantiated (and immaterial) allegation that Petitioner "evaded detection by immigration authorities for over twenty years." Response 1.

District courts are prohibited by 8 U.S.C. § 1252(g) from reviewing an immigration challenge when it arises from a decision to "commence proceedings, adjudicate cases, or execute removal orders." However, notwithstanding 8 U.S.C. § 1252(g), "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges" to detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). The Supreme Court clarified in *Jennings v. Rodriguez* that the § 1252(g) bar is limited to "those three specific actions themselves." 583 U.S. 281, 294 (2021). As the Fifth Circuit explained in *Texas v. United States*, the Supreme Court "rejected the unexamined assumption that § 1252(g) covers the universe of deportation claims—that it is a sort of 'zipper' clause that says 'no judicial review in deportation cases unless this section provides judicial review.'" 126 F.4th 392, 417 (5th Cir. 2025). Recently, in *Lopez-Arevalo*, another jurist from this district found that because Petitioner challenged his mandatory detention under § 1225(b), as here, § 1252(g) did not bar jurisdiction. 2025 WL 2691828 *5.

Nor does 8 U.S.C. § 1225(b)(4) strip this court of jurisdiction, or channel Petitioner's challenge into 8 U.S.C. § 1229a removal proceedings. Response 6. Subsection 1225(b)(4) applies only to "challenges by any other immigration officer" of a decision "favorable to the admission of any alien." Recently, the court in *Granados v. Noem,* rejected Respondents' arguments based on the plain language of the statute. No. SA-25-CA-01464-XR, 2025 WL 3296314, *3 (W.D. Tex. Nov. 26, 205). Here, the same reasoning applies.

While Respondents argue that "[t]his is consistent with the channeling provision at 8 U.S.C. § 1252(b)(9)," (Response 6), they are mistaken that the "zipper clause" would bar review either. The Supreme Court explained that, just as with § 1252(g), 8 U.S.C. § 1252(b)(9) also does not strip habeas jurisdiction over challenges to detention. *Jennings*, 583 U.S. at 292-93. *See also Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, *4 (W.D. Tex. Oct. 2, 2025). The

Jennings plurality opinion expressly rejected the concurrence by Justice Thomas which had argued that § 1252(b)(9) applied because "detention is an action taken to remove an alien." *Id.*

II. PETITIONER IS NOT SUBJECT TO § 1225(b)(2) DETENTION.

Respondents' seek to deprive Petitioner of a bond hearing because he is "an applicant for admission" and therefore subject to mandatory detention. However, Petitioner part of a group of individuals who for years, by Respondents' own prior interpretation, to discretionary detention under 8 U.S.C. § 1226(a).[2] Respondents' new interpretation of § 1225(b)(2) is fundamentally flawed: it ignores key statutory language, renders whole sections of Section 1226(c) nugatory (namely, the recently-enacted subsection (E)), and ignores decades of settled practice without good reason. Mandatory detention under 8 U.S.C. § 1225(b)(2) applies to an applicant for admission

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[2] Petitioner appears to be part of a class that was certified in *Maldonado Bautista* on November 25, 2025: "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 the Department of Homeland Security makes an initial custody determination." *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The court recently issued a final judgment, which granted vacatur of ICE's July 2025 policy to apply 8 U.S.C. § 1225(b)(2) to class members. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). However, relief sought here is injunctive, i.e. ordering Respondents to provide Petitioner with a bond hearing, or outright release. Petition at 14. The court in *Maldonado Bautista* is stripped of jurisdiction to provide such injunctive relief to the class by 8 U.S.C. § 1252(f). Accordingly, this Court is not precluded from granting relief on the instant habeas petition. *See, e.g. Shi v. Lyons*, -- F. Supp. 3d --, 2025 WL 3637288, at n.5 (S.D. Tex. Dec. 12, 2025); and *Lopez-Neria v. Bondi*, No. 5:25-CV-1650-JKP, 2025 WL 3654329, at *5 (W.D. Tex. Dec. 12, 2025). *See also Lopez v. Lyons*, No. 1:25-CV-226-H, 2025 WL 3683918, at *5 (N.D. Tex. Dec. 19, 2025). ("Several courts have treated the Central District's orders as persuasive without adopting the decision as binding. A plurality of courts have acknowledged the orders without stating whether they are binding. Other courts have joined this Court in requesting supplemental briefing on the issue. And other courts have addressed habeas claims while only citing the November 20 relief order and not the November 25 class-certification order."). Giving the final judgment a first look, the court in *Lopez v. Lyons* does not find that *Maldonado Bautista* orders binding because they lack a coercive effect. *Id.* at *7. Ultimately, the court in *Lopez v. Lyons* finds that it is not bound by the *Maldonado Bautista* orders and will reach the merits of Petitioner's claims "in due course," treating the *Maldonado Bautista* as merely persuasive out-of-district authority. *Id.*

when "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 a proceeding under section 1229a of this title." The statute defines "admission" as "the lawful entry of the alien into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13).

Respondents argue that Petitioner is subject to mandatory detention because, they claim, Petitioner is an applicant for admission. Response 3. Respondents' argument necessarily requires that *all* applicants for admission present in the U.S. are necessarily "seeking admission," thereby rendering that requirement superfluous. What's more, Respondents aver without substantiating that Petitioner "is nonetheless an applicant for admission who DHS has determined through the issuance of an NTA is an alien *seeking admission* who is not clearly and beyond a doubt entitled to be admitted to the United States." Response 3.

However, the textual requirement of "seeking admission" must do some work or it is rendered mere surplusage in the statute and interpreted out of meaning. *Corley v. United States*, 556 U.S. 303, 314 (2009). First, the statute defines an applicant for admission as an individual present who has not been admitted. All applicants for admission are already subject to § 1225(b)(2), therefore "seeking admission" must require something different. The definition of an admission requires an entry, lawful means, and "inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13). This means mandatory detention under § 1225(b)(2) is required for those applicants for admission who are "seeking [lawful entry of into the U.S. after inspection and authorization by an immigration officer] and not clearly entitled to be admitted." As explained in *Bethancourt Soto*, "[t]he phrase 'seeking admission' in § 1225(b)(2)(A) necessarily connotes some affirmative, present-tense action. The verb 'seeking' is a present participle, and the 'present participle is used to signal present and continuing action.'" --- F.Supp. 3d ---, 2025 WL 2976572,

at *5. Accordingly, to be seeking admission means to be presently seeking lawful entry.

Individuals (like Petitioner) already present in the United States are not seeking *another* entry. Many are simply seeking lawful status, without transiting the border anew. Several lawful statuses available to individuals present in the United States do not require an admission (or entry) as part of their eligibility requirements yet would still result in lawful status in the United States. *See, e.g.*, 8 U.S.C. § 1158(a)(1) (the asylum statute); or 8 U.S.C. § 1229b(b)(1)(A) (cancellation of removal statute). These applications involve lawful means and authorization by an immigration official, but do not require *entry*. So it must be possible under the statute to be an "applicant for admission" yet not necessarily "seeking admission" if they are already present. Respondents present a false-binary, as though an individual can only be seeking admission or is otherwise necessarily "seeking release via removal from the United States." Response 3-4. But as demonstrated above, it is possible for an individual to be present in United States and seeking lawful status without necessarily seeking another admission.

The subsection outlining general inspection authority, 8 U.S.C. § 1225(a)(3), supports the argument that the "applicants for admission" requirement is distinct from the "seeking admission" requirement. Section 1225(a)(3) reads in relevant part: "All aliens… who are applicants for admission or otherwise seeking admission… shall be inspected by immigration officers."

> "'Otherwise' generally means, "in a different way or manner" or "in different circumstances." *Otherwise*, Webster's Ninth New Collegiate Dictionary 835 (1984). So § 1225(a)(3)'s use of 'or otherwise' simply means that immigration officers must inspect any noncitizen who is 'seeking admission or readmission to or transit through the United States,' whether the noncitizen is an applicant for admission *or* differently situated."

Llanes Tellez v. Bondi, No. 25-CV-08982-PCP, 2025 WL 3677937, at *7 (N.D. Cal. Dec. 18, 2025). Some courts have reached the conclusion that the language in § 1225(a)(3) reinforces the non-synonymous requirements. "Surrounding language of the statute reinforces that these terms

are not synonymous. For one, § 1225 elsewhere refers to "aliens who are applicants for admission *or otherwise seeking admission*." 8 U.S.C. § 1225(a)(3) (emphasis added). Were the two requirements coterminous, that disjunctive formulation would be superfluous." *Yao v. Almodovar*, -- F. Supp. 3d --, No. 25 CIV. 9982 (PAE), 2025 WL 3653433, at *5 (S.D.N.Y. Dec. 17, 2025). *See also Mejia Diaz v. Noem,* No. 3:25-CV-960-CCB-SJF, 2025 WL 3640419, at *6 (N.D. Ind. Dec. 16, 2025) ("The phrase "otherwise seeking admission" allows that people other than an "applicant for admission" may still be subject to inspection by immigration officers.") Moreover, Respondents' interpretation renders portions of the statute superfluous. *Id.*

Moreover, Respondents fundamentally misread subsection (b)(2) and district courts continue to reject their recent reinterpretation. "Again, respondents' [§ 1225(a)(3)] argument fails to account for the fact that, in order for § 1225(b)(2)(A)'s mandatory detention provision to apply, it is not enough for a noncitizen to be an applicant for admission; he must also be seeking admission." *Florez Marin v. Baltazar*, No. 25-CV-03697-PAB, 2025 WL 3677019, at *3 (D. Colo. Dec. 18, 2025). The court explains that "to the extent respondents argue that an applicant for admission is necessarily seeking admission, "[t]he 'otherwise seeking admission' language is simply a catch-all provision to describe individuals seeking admission and subject to inspection who may not fit the definition of 'applicant for admission,' such as a person not currently present in the United States." *Id.* citing *Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 WL 2977650, at *6 n.4 (D. Colo. Oct. 22, 2025). Accordingly, this Court has firm ground upon which to reject Respondent's interpretation mistakenly equating "applicants for admission," with those "seeking admission."

Further, despite their assertions to the contrary (Response 7), Respondents' re-interpretation of 8 U.S.C. § 1225(b)(2) would also render meaningless other bases for mandatory

detention under 8 U.S.C. § 1226, including the recently enacted § 1226(c)(1)(E). Because of this, Respondents' re-interpretation cannot be correct. "The Supreme Court reasoned that courts 'do not lightly assume Congress adopts two separate clauses in the same law to perform the same work.'" *Shi v. Lyons*, --F.Supp.3d--, No. 1:25-CV-274, 2025 WL 3637288, at *5 (S.D. Tex. Dec. 12, 2025), citing *United States v. Taylor*, 596 U.S. 845, 857 (2015); and *Roberts v. Sea-Land Servs., Inc.,* 566 U.S. 93, 103 (2012) ("We will not construe § 906(c) in a manner that renders it entirely superfluous in all but the most unusual circumstances.") [internal citations omitted].

Section 1226(c) requires for mandatory detention of various classes of criminal aliens and was recently amended by the Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). "The LRA amendments mandate detention for noncitizens charged as inadmissible under Sections 1182(a)(6)(A) (the inadmissibility ground for a noncitizen "present in the United States without being admitted or paroled"), 1182(a)(6)(C) (the inadmissibility ground for misrepresentation), or 1182(a)(7) (the inadmissibility ground for lacking valid documentation) *and* if the noncitizen has been arrested for, charged with, or convicted of certain crimes. *Id.*" *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1246 (W.D. Wash. 2025). "Accepting Respondents' position would strip any "real and substantial effect" from the language that the Laken Riley Act added to Section 1226(c), as the Secretary could rely on Section 1225 to mandatorily detain every alien subject to Section 1226(c)(1)(E)." *Shi,* 2025 WL 3637288, at *6. While some "redundancies" are common across statutes, Congress is not in the business of enacting wholly redundant statutory sections.

Respondents' congressional history (Response at 4) cannot save their bad interpretation of the statutory language. "Another 'customary interpretive tool' is the principle that '[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction,'

courts 'generally presume the new provision should be understood to work in harmony with what has come before.'" *Rodriguez*, 779 F.Supp.3d at 1259, citing *Monsalvo Velazquez v. Bondi*, 604 U.S. --, 145 S.Ct. 1232 (2025). Because Respondents' interpretation of § 1225(b)(2) would render important subsections of § 1226(c) superfluous, it should not be adopted by this Court.

Lastly, Respondents' reliance on *Matter of Yajure Hurtado* is misplaced, as it is not binding on this Court. *Espinoza Andres v. Noem*, No. CV H-25-5128, 2025 WL 3458893, at *4 (S.D. Tex. Dec. 2, 2025), citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024). Moreover, the reasoning of that decision is flawed, as found by several other district courts. "The Court finds *that Hurtado's* interpretation of § 1225 and § 1226 is inconsistent with the language of the statutes themselves, as well as with the Department of Homeland Security's own longstanding interpretation and application of those statutes." *Id.* Moreover, "[b]ecause the *Hurtado* decision utterly ignores the Department's U-turn on the proper interpretation and application of § 1225 and § 1226, the Court finds that decision to be unpersuasive." *Id.* Accordingly, this Court should decline to follow *Yajure Hurtado*'s reasoning as well.

Respondents only prevail when the courts are willing to overlook key statutory language, and give meaning to all requirements as passed by Congress. For that reason, recent decisions rejecting this overly simplistic interpretation are more persuasive. *See e.g. Shi v. Lyons*, 2025 WL 3637288, at *5; *Florez Marin,* 2025 WL 3677019, at *3; and *Mejia Diaz,* 2025 WL 3640419, at *6. This Court should reject them as well, and hold that Petitioner is subject to § 1226(a).

III. RESPONDENTS' DEPRIVATION OF BOND HEARINGS FOR PETITIONER VIOLATES CONSTITUTIONAL DUE PROCESS.

In *Lopez-Arevalo*, the court also considered the due process rights of an individual who had been apprehended shortly after arriving, and distinguished *Thuraissigiam*, 591 U.S. at 103, because the petitioner challenged his detention (not his removal) and because he was detained

years after entry "rather than on the threshold of his initial entry." 2025 WL 2691828, *10. This Court should also apply *Mathews v. Eldridge*, 424 U.S. 319, 96 (1976), to the due process claim.

On the first prong, private interest, the *Lopez-Arevalo* court noted that "the Fifth Amendment entitles noncitizens to due process of law in the context of removal proceedings," and "the interest in being free from physical detention by [the] government" is "the most elemental of liberty interests[.]" 2025 WL 2691828, *10, quoting *Martinez v. Noem*, 2025 WL 2598379, at *2 and *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "[A]s other courts have noted in considering this issue, 'Respondents fail to contend with the liberty interests created by the fact that the Petitioner[ ] in this case [was] released on recognizance *prior to the manifestation of this interpretation.*'" *Id.* at 11, citing *Espinoza*, 2025 WL 2581185, at *10.

On the second prong, risk of erroneous deprivation, the very purpose of immigration detention is to reduce flight risk and danger to the community, *see Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006), it seems self-evident that a review hearing before an administrative law judge would reduce the risk of erroneously confining a noncitizen who in fact poses neither risk. The *Lopez-Arevalo* court had the benefit of an immigration court record, wherein the immigration judge had declined jurisdiction to afford the petitioner a bond hearing. *Id.* Therefore, the immigration court (and by extension the BIA) are failed to provide the necessary individualized assessments that would afford due process and mitigate an risk of erroneous deprivation (as in a standard § 1226(a) bond hearing). *Id.*, citing *Espinoza*, 2025 WL 2581185, at *10. *See Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025) ("The purpose of the bond hearing employed when the government seeks to exercise its discretion in detaining a noncitizen under § 1226(a) is to provide procedures which will better ensure that people who are, in fact, a risk of flight or a danger to the community are the people are ultimately detained.").

And on the third prong, government interest, the *Lopez Arevalo* court explained that the government's core interest (ensuring that noncitizens appear for hearings and do not endanger others) has already been achieved via their prior custody determination. "But the decision to release Lopez-Arevelo on his own recognizance three years ago, in and of itself, "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." 2025 WL 2688541, *11, citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd*, 905 F.3d 1137 (9th Cir. 2018). Nor can the government claim excessive burden when it is merely being asked to provide a procedure that it routinely provided in cases of this nature for decades without complaint. *Id.* at 12. All *Mathews* factors militate in favor of Petitioner.

Even taking at face value the statement of the Supreme Court in *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," it is clear that Congress intended Petitioner to have access bond per to 8 U.S.C. § 1226(a); that is the process that Petitioner is due.

CONCLUSION

For the foregoing reasons, the writ of habeas corpus should issue. This Court should declare that Petitioner is properly detained by Respondents (if at all) pursuant to 8 U.S.C. § 1226(a), and should order Respondents to provide Petitioner with a bond hearing in front of an Immigration Judge within 15 days.

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Respectfully submitted,

Date: December 25, 2025

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

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