UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RAMIRO RODRIGUEZ RIVERA,	§	
Petitioner,	§	
	§	Civ. No. 1:25-CV-01979-RP
vs.	§	
PAMELA BONDI, United States Attorney General, et al.	§	

PETITIONER'S REPLY IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS AND RESPONSE TO RESPONDENTS' RETURN

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Petitioner respectfully submits this Reply in support of his Petition for Writ of Habeas Corpus and in opposition to Respondents' motion for severance and dismissal. The Petition presents a straightforward statutory question with urgent liberty consequences: whether Petitioner—an interior arrestee placed in full removal proceedings under 8 U.S.C. § 1229a—may be held under 8 U.S.C § 1225(b)(2) as if he were perpetually "seeking admission," or whether the governing detention framework is INA § 1226(a), which provides for an individualized custody determination.

Respondents' Return largely re-urges the same position the Court has already rejected, at least preliminarily, as the Court itself noted, namely, *Cardona-Lozano v. Noem*, No. 1:25-CV-1784-RP, 2025 WL 3218244, at *6 (W.D.Tex. Nov. 14, 2025); *Vallecillo-Osorio v. Lyons et al.*, No. 1:25-CV-1711-RP, Dkt. 13; *Gonzalez Guerrero v. Noem*, No. 1:25-CV-1334-RP, Dkt. 20. Dkt. 3, Order to Show Cause. The Respondents assert they may treat long-present interior residents

who entered without inspection as "applicants for admission" subject to mandatory detention under § 1225(b)(2), with parole as the only "safety valve." That position is inconsistent with the text and structure of the INA, the Supreme Court's description of the statutory scheme, and the growing body of district-court authority rejecting Respondent's recent volte-face.

Respondents filed their Return on December 12, 2025 (Dkt. 5). In their return, they argue—notwithstanding this Court's rejection of the argument—that the plain language of the statutes supports their reading requiring mandatory detention of Petitioner, and that persuasive decisions of the Board of Immigration Appeals support their reading. *Id.* at 4-6, citing *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 227 (BIA 2025). They argue that the Court lacks jurisdiction. They argue that even if the Court had jurisdiction, the Petitioner has not shown a denial of due process. *Id.* at 6-8. Finally, they argue that the *Maldonado-Bautista* class action certification and orders do not bind this Court or have a preclusive effect on the instant petition, even if arguendo he were a member. *Id.* at 11.

II. ARGUMENT

A. This Court Has Jurisdiction; the INA's Channeling and "No Review" Provisions Do Not Bar Habeas Review of Unlawful Civil Detention.

1. Section 1252(g) is narrowly targeted and does not bar review of detention claims.

Section 1252(g) "refer[s] to just three specific actions"—the decision or action "to commence proceedings, adjudicate cases, or execute removal orders"—and must not be read to "sweep in any claim that can technically be said to 'arise from'" those actions. *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 482–83 (1999). The Fifth Circuit has adhered to that narrow construction, holding that § 1252(g) does not bar federal-court review of immigration detention because a detention order, "while intimately related to efforts to deport, is not itself a decision to 'execute removal orders.'" *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th

Cir. 2000). Consistent with *Cardoso*, Fifth Circuit decisions emphasize that § 1252(g) protects charging/adjudicatory discretion—not all agency conduct tangential to removal. *See Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022) (explaining § 1252(g) preserves discretion "to decide whether and when to prosecute or adjudicate removal proceedings") (quotation marks omitted). Other courts agree that § 1252(g) does not insulate unlawful detention from judicial review. *See, e.g., Kong v. United States*, 62 F.4th 608, 617–18 (1st Cir. 2023).

Because Petitioner challenges ongoing civil custody—not DHS's decision to commence or adjudicate proceedings nor the execution of a removal order—§ 1252(g) does not apply. *See AADC*, 525 U.S. at 482–83; *Cardoso*, 216 F.3d at 516–17.

2. Sections 1252(b)(9) and 1252(a)(5) do not "zipper" this habeas challenge out of district court.

Section 1252(b)(9) is a channeling ("zipper") provision; it is not a claim-bar that renders all detention claims unreviewable in district court. The Supreme Court has rejected the expansive reading the Government urges. *See Jennings v. Rodriguez*, 583 U.S. 281, 293–95 & n.3 (2018) (plurality opinion) (warning that an expansive § 1252(b)(9) would make "claims of prolonged detention effectively unreviewable"). The Court later summarized *Jennings* this way: § 1252(b)(9) "does not present a jurisdictional bar" where plaintiffs are not seeking review of an order of removal, the decision to seek removal, or the process of determining removability. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). The Fifth Circuit has followed suit. *Duarte* confirms that § 1252(a)(5) and (b)(9) do not bar district-court review where the suit does not attack the validity of a removal order or the process by which removability will be determined. 27 F.4th at 1056. And more recently, in addressing challenges to DACA, the Fifth Circuit reiterated *Regents'* formulation verbatim: § 1252(b)(9) "does not present a jurisdictional

bar" where litigants are not asking for review of a removal order, the decision to seek removal, or the removability process. *Texas v. United States*, 126 F.4th 392, 417 (5th Cir. 2025). District courts within and beyond the Fifth Circuit likewise permit habeas challenges to immigration detention notwithstanding § 1252(b)(9). *See, e.g., Ayobi v. Castro*, No. 5:19-cv-1311-OLG, 2020 WL 13411861, at *3 (W.D. Tex. Feb. 25, 2020); *Ozturk v. Hyde*, 136 F.4th 382, 399 (2d Cir. 2025).

Section 1252(a)(5) adds nothing here. It makes a petition for review in the court of appeals the "sole and exclusive means" to review "an order of removal." 8 U.S.C. § 1252(a)(5). Petitioner does not seek review of any removal order (there is none), nor does he seek review of DHS's decision to seek removal or the process by which removability will be decided. *Regents*, 591 U.S. at 12–13, 19.

3. The Respondents mischaracterizes Petitioner's claim; he challenges the legal authority for detention, not a discretionary decision "to detain him in the first place."

The Respondent's assertion that Petitioner "challenges the decision to detain him in the first place," and that § 1252(b)(9) therefore bars review, misreads both the petition and the controlling case law. Dkt. 10 at 10. Petitioner challenges the statutory basis of his custody—i.e., whether § 1225 or § 1226 governs his detention and whether detention without a bond hearing is lawful—not the prosecution choices "to commence" or "adjudicate" removal. *Jennings* expressly distinguished between challenges to detention authority and challenges to removal actions, cautioning that an expansive § 1252(b)(9) reading would make detention claims "effectively unreviewable." 583 U.S. at 293–95 & n.3. *Regents* then crystallized the rule: § 1252(b)(9) is not a bar absent a request to review a removal order, the decision to seek removal, or the removability process. 591 U.S. at 19. The Fifth Circuit has adopted that reading. *See Texas*, 126 F.4th at 417; *Duarte*, 27 F.4th at 1056. That is precisely how the court analyzed materially similar claims in *Santiago v. Bondi*, No. 3:25-cv-00361-KC (W.D. Tex.); *see also Souza Vieira v. De-Andra Ybarra*,

No. 3:25-cv-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (rejecting §§ 1252(g) and 1252(b)(9) as jurisdictional bars; granting habeas relief). *Santiago* held that § 1252(g) does not bar detention challenges because detention is not one of the statute's three discrete actions, and that § 1252(b)(9)/(a)(5) do not channel detention claims to the courts of appeals because the petitioner was not seeking review of an order of removal, the decision to seek removal, or the removability process. *See also Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278, at *2–3 (W.D. La. Sept. 11, 2025).

4. These jurisdictional conclusions dovetail with, and reinforce, prudential-exhaustion futility.

Respondents do not raise exhaustion, but the Court may assure itself that even if they had, the prudential exhaustion doctrine would excuse Petitioner pursuing his argument of misinterpretation of the bond statutes through full agency appeal. Because this case turns on a pure question of law (which statute governs Petitioner's custody), agency fact-finding is unnecessary, and the BIA cannot resolve the constitutional issues raised. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) (courts may not defer to an agency's view of law merely because a statute is ambiguous). And, as Petitioner has shown, pursuing a BIA bond appeal is futile in light of *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 214, 221 (B.I.A. 2025)—a point that only underscores why Congress did not channel these detention-authority questions to the BIA or courts of appeals in the first instance. *See, e.g.*, *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *4–6 (E.D. Mich. Aug. 29, 2025). In short, Petitioner does not ask this Court to review a removal order, to police DHS's decision to commence or adjudicate removal, or to second-guess the removal process; rather, consistent with *Jennings*, *Regents*, and Fifth Circuit precedent, he seeks habeas review of the lawfulness of his present civil detention, and §§ 1252(g), 1252(b)(9), and 1252(a)(5) do not deprive this Court of jurisdiction to decide that question.

B. The text of § 1225(b)(2)(A) requires a present-tense "seeking admission" determination tied to the inspection/admission context.

Respondents contend that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) until full removal proceedings have concluded. Dkt. 10 at 3, 9. Their contention—as many district courts to have considered such contention have found—is novel. *Romero v. Hyde*, 2025 WL 2403827, at *9 (D.Mass., 2025) (This argument reflects a novel interpretation of the immigration detention statutes, adopted by DHS about a month ago. *See Diaz Martinez*, —— F. Supp. 3d at —— & nn.9–11, 2025 WL 2084238, *4–5 (D. Mass. July 24, 2025)). The courts have uniformly been rejecting this novel reading of the detention statutes in the INA.[1]

First, as several courts have recently explained, § 1225 imposes three conditions that must be satisfied for § 1225(b)(2)(A) to apply and justify mandatory detention. *See, e.g., Benitez*, 2025 WL 2371588, at *5 ("[F]or section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled

[1] *Ortiz-Ortiz v. Bondi,* No. 5:25-cv-00132 (S.D. Tex. Oct. 15, 2025); *Buenrostro-Mendez v. Bondi*, No. 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025); *Choglio v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *1 (D. Me. 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Martinez v. Secretary of Noem,* No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera Torralba v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); Fernandez v. Lyons, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg,* No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); Leal-Hernandez v. Noem, No. 1:25-CV-02428- JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer,* No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); Anicasio v. Kramer, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); Mohammed H. v. Trump, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5–6 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025); *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM, Dkt # 14 (C.D. Ca. Jul. 28, 2025); *Rodriguez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025); and *Santiago v. Bondi*, No. EP-25-CV-2128 (W.D. Tex. Oct. 1, 2025). But see *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal, Sept. 24, 2025) and; *Vargas Lopez v. Trump*, 2025 WL 27080351 (D. Neb. Sept. 30, 2025).

to be admitted.'") (quoting *Martinez v. Hyde*, --- F. Supp. 3d ----,. 2025 WL 2084238, at *2 (D. Mass. July 24, 2025)); § 1225(b)(2)(A). Fatal here to Respondents' argument is that Petitioner is now "seeking admission." *Id.* It is undisputed that Petitioner is an alien present United States who has not been admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. The Respondents here have not disputed that he entered the U.S. unlawfully without apprehension in 2001. Dkt. 1 at 11. The Court should find that it is axiomatic that a person *present in the United States,* here for over 15 years, is *not* an individual seeking admission to the United States. The Board of Immigration Appeals (BIA) in *Matter of Yajure-Hurtado* meanwhile has ruled in favor of Respondent's arguments, on September 5, 2025, in a published decision, however Petitioner argues here that this Court need not defer to the BIA's interpretation, and should reject its reasoning. The appellate panel in *Yajure-Hurtado* leaves aside unmentioned the geographic absurdity of seeking admission after decades of presence in the interior, and instead finds "plain statutory language" controls:

> The respondent's argument is not supported by the plain language of the INA, and actually creates a legal conundrum. If he is not admitted to the United States (as he admits) but he is not "seeking admission" (as he contends), then what is his legal status? The respondent provides no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer "seeking admission," and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA, 8 U.S.C.A. § 1226(a). See Matter of Lemus, 25 I&N Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not actually requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws").

Matter of Yajure-Hurtado, 29 I&N Dec. at 221. The BIA goes on to hold that "[t]he statutory text of the INA is not "doubtful and ambiguous" but is instead clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status. *See* INA § 235(b)(1),

(2), 8 U.S.C. § 1225(b)(1), (2)." But because Petitioner is not, nor was he at the time he was arrested, "seeking admission," *id.*, § 1225(b)(2)(A)'s mandatory detention provision does not apply. Respondents are wrong to interpret the statute as placing Petitioner within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225." Dkt. 10 at 7. *See also Romero v.Hyde*, --- F. Supp. 3d ----, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) ("[T]he phrase 'seeking admission,' otherwise undefined in the statute, necessarily requires some 'some sort of present-tense action.') (citation omitted); *Campos-Leon v Forestal*, 1:25-cv-01774-SEB-MJD, (S. D. Ind. September 22, 2025*); Doe v. Moniz*, 2025 WL 2576819, at *1 (D.Mass., 2025).

As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "*at the Nation's borders and ports of entry*, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 297, 287. Throughout its text, the statute refers to "inspections"—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. Many statutory provisions, various regulations and agency precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope.[2] Consistent with this focus on the moment of physical entry, § 1225(b)(2) is limited to those in the process of "seeking admission." Similarly, the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are presently "coming or attempting to come into the United States." The statutory and regulatory text's use of the present and present progressive tenses excludes

[2] *See* INA § 235 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); INA §§ 235(b)(1)–(2) (referring to "inspections" in their titles); INA § 235(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States").

noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States. A number of the courts cited above have agreed that § 1225(b)(2) only reaches individuals who are in the process of entering or who have just entered the United States.

Additionally, the INA's statutory structure makes clear that § 1226 also reaches individuals who have not been admitted and have entered without inspection. Section 1226(c) exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 1226(a), including noncitizens subject to certain grounds of inadmissibility. Moreover, Congress recently added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted,[3] expressly including those who are inadmissible under INA § 212(a)(6)(A), or (7)--that is, persons who entered without being admitted. If § 1226(a) did not apply to inadmissible noncitizens, then the carve out in § 1226(c) that refers to inadmissibility and Congress' most recent amendments would all be surplusage.

The statutory history also supports a limited reading of § 1225(b)'s reach. When Congress amended § 1225(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 1225(b).[4]

[3] INA § 236(c)(1)(E), *as amended by* Laken Riley Act, Pub. L. 119-1, 139 Stat. 3 (2025).
[4] *See, e.g.,* INA §§ 217(h)(2)(B)(i), 235A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010).

As almost every district court ... has concluded, "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" support application of Section 1226. *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.) (collecting cases).

Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, a federal habeas court should independently interpret the meaning and scope of § 1225(b) using the traditional tools of statutory construction.[5] Because the BIA's decision in *Matter of Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 1225 and 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, a habeas court should give it no weight under *Loper Bright* or *Skidmore*. Indeed, a number of courts have instead found that under *Loper Bright*, the prior longstanding practice of the government—under which noncitizens who resided in the United States and previously entered without inspection were deemed subject to INA § 236—is a useful interpretive aid.[6]

1. The Supreme Court's description of the scheme supports § 1226 for "aliens already in the country."

Jennings describes the statutory distinction in plain terms: "U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." 583 U.S. at 289

[5] *See, e.g., Martinez*, 2025 WL 2084238 at *6 (citing the use of present and present progressive tense to support conclusion that INA § 235(b)(2) does not apply to individuals apprehended in the interior); *accord Lopez Benitez*, 2025 WL 2371588 at *6–7. *See also United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."); *Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process").

[6] *See, e.g., Maldonado*, 2025 WL 2374411 at *11.

(emphasis added). Petitioner is "already in the country," and he is in full § 240 proceedings. The natural reading of *Jennings* and the INA's structure is that § 1226 governs his custody.

2. Recent district-court authority—especially within the Western District of Texas—confirms this reading.

In this District, courts have repeatedly rejected DHS's attempt to treat long-resident interior arrestees as perpetually "seeking admission" under § 1225(b)(2) and have ordered § 1226(a) custody process (often with a clear-and-convincing Government burden) or release. *See, e.g.*, *Gonzalez Guerrero v. Noem*, No. 1:25-cv-01334-RP (W.D. Tex. Oct. 27, 2025) (granting preliminary injunction; vacating the BIA's decision applying *Matter of Yajure-Hurtado*; reinstating the IJ's § 1226(a) bond order for a long-resident interior arrestee); *Pereira-Verdi v. Lyons*, No. 5:25-cv-01187-XR (W.D. Tex. Oct. 10, 2025) (issuing TRO requiring § 1226(a) process and enjoining re-detention without notice and a pre-deprivation hearing); *Hernandez-Ramiro v. Bondi*, No. 5:25-cv-01207-XR (W.D. Tex. Oct. 15, 2025) (granting TRO; requiring prompt § 1226(a) bond hearing with Government burden as to danger/flight, or release if no hearing provided); *Santiago v. Noem*, No. 3:25-cv-00361-KC, 2025 WL 2606118 (W.D. Tex. Sept. 9, 2025) (granting TRO and habeas relief; directing § 1226(a) custody for interior arrestee misclassified under § 1225(b)); *Alvarez Martinez v. Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025) (granting habeas; holding the automatic stay of an IJ's bond order violates due process; ordering compliance with IJ bond decision); *Lopez-Arevelo v. Ripa*, No. EP-25-cv-337-KC, 2025 WL 2691828 (W.D. Tex. Aug. 26, 2025) (granting TRO under § 2243 and the All Writs Act; enjoining transfer/removal to preserve habeas jurisdiction); *Martinez v. Noem*, No. 3:25-cv-00430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (even assuming § 1225(b) applies, holding due process requires an individualized bond hearing with Government burden under Mathews); *Souza Vieira v. De-Andra Ybarra*, No. 3:25-cv-00432-DB, 2025 WL

2937880 (W.D. Tex. Oct. 16, 2025) (rejecting §§ 1252(g) and 1252(b)(9) as jurisdictional bars; granting habeas relief); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025) (granting habeas; holding long-resident interior arrestee must be governed by § 1226 rather than § 1225(b)); *Erazo Rojas v. Noem*, No. 3:25-cv-00443-KC (W.D. Tex. Oct. 30, 2025) (requiring prompt § 1226(a) bond hearing with clear-and-convincing Government burden or release); *Dominguez Vega v. Thompson*, No. 5:25-cv-01439-XR (W.D. Tex. Nov. 19, 2025) (granting TRO and directing prompt individualized § 1226(a) bond hearing consistent with these precedents); *Hernandez-Hervert v. Bondi*, No. 1:25-cv-01763-RP (W.D. Tex. Nov. 14, 2025) (granting habeas; rejecting reliance on *Matter of Yajure-Hurtado*; requiring § 1226(a) custody process); *Becerra Vargas v. Bondi*, No. 5:25-cv-01023-FB-HJB (W.D. Tex. Nov. 26, 2025) (granting habeas in part; ordering release); and *Navarrete Perdomo v. Bondi*, No. 5:25-cv-01398 (W.D. Tex. Nov. 25, 2025) (granting habeas relief; ordering release).

These decisions are not merely persuasive in the abstract, they reflect a consistent, reasoned application of the INA's text and structure to materially identical facts: long-present interior arrestees placed in full § 240 proceedings. They also consistently hold that §§ 1252(g), 1252(b)(9), § 1225(b)(4), and § 1226(e) do not strip district-court habeas jurisdiction over detention-authority questions and constitutional claims. Respondents' request that this Court dissolve or narrow preliminary relief would put this case at odds with that settled and rapidly developing body of local precedent, and would reward precisely the type of post hoc custody maneuvering that courts have repeatedly rejected.

C. Thuraissigiam Does Not Foreclose Habeas Review of Detention Authority or Due Process Challenges to Civil Confinement.

Respondents lean on *Dep't of Homeland Sec. v. Thuraissigiam*, arguing it forecloses Petitioner's challenge to his custody and compels mandatory detention under § 1225(b)(2). *See*

Dkt. 5 at 7-8 (characterizing Petitioner as "seeking admission," invoking *Thuraissigiam* to minimize due process in the "applicant for admission" context, and insisting detention is part of the "action taken to remove"). That reliance is misplaced for three independent reasons.

First, *Thuraissigiam* is a deportability (admission-process) case, not a detention-authority case. The petitioner there sought a second chance at admission-related relief in expedited removal; he did not seek habeas release from civil custody, and the Court framed its analysis around the "scope of habeas" in the admission context—i.e., it cannot be used to demand another "opportunity to remain lawfully in the United States." 591 U.S. at 117–20, 140. Nothing in *Thuraissigiam* decided whether—much less how—noncitizens may challenge the fact or length of immigration detention. That question was expressly left open in *Jennings v. Rodriguez*, which resolved only statutory issues and remanded the constitutional due-process questions. 583 U.S. 281, 297–301, 312 (2018). Four years later, the Government told the Court that "as-applied constitutional challenges remain available" in the detention context. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022). The Western District of Texas has already drawn this precise line: in *Santiago v. Bondi*, the court explained that *Thuraissigiam* concerns admission and removal, "not whether noncitizens mandatorily detained under § 1225(b) have a constitutional due process right to challenge the fact or length of their detention"—which is exactly what Santiago (and here, Petitioner) asserted. No. 3:25-cv-00361-KC, slip op. at 10–13 (W.D. Tex. Oct. 15, 2025). Respondents' brief never engages that distinction.

Second, the text, structure, and history of the INA foreclose Respondents' "everyone is 'seeking admission' forever" theory. Section 1225(b)(2)(A) applies only when an examining officer determines the person is an "applicant for admission," is seeking admission, and **is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (present-tense

language tied to inspection/admission). That grammar and placement—as *Jennings* observed—reflect § 1225's focus "primarily [on those] seeking entry," typically "at the Nation's borders and ports of entry." 583 U.S. at 297, 287. By contrast, Congress designed § 1226 to govern custody for persons arrested in the interior and placed in full § 240 proceedings, with targeted, offense-specific mandatory-detention carveouts in § 1226(c). If § 1225(b)(2) automatically controlled everyone "present without admission," then § 1226(a)'s bond default and § 1226(c)'s tailored exceptions (including express references to inadmissibility, such as § 212(a)(6)(A) and (7)) would be surplusage—an atextual result Respondents never confront. *See* Dkt. 10 at 6–8 (invoking *Matter of Yajure-Hurtado* but not addressing § 1226's carveouts or surplusage). Courts addressing DHS's July 2025 pivot have rejected the Government's bid to erase the "seeking admission" requirement for long-present interior arrestees.[7]

[7] *See, e.g., Romero v. Hyde*, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (calling DHS's theory a "novel interpretation" adopted only weeks earlier); *Martinez v. Hyde*, 2025 WL 2084238, at *2, *8 (D. Mass. July 24, 2025) ("seeking admission" requires "present-tense action" tied to entry/inspection); *Benitez v. Hyde*, 2025 WL 2371588, at *5 (D. Mass. Aug. 13, 2025) (listing § 1225(b)(2)(A) conditions unmet in an interior arrest). Accord *Ortiz-Ortiz v. Bondi*, No. 5:25-cv-00132 (S.D. Tex. Oct. 15, 2025); *Buenrostro-Mendez v. Bondi*, No. 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025); *Chogllo v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *1 (D. Me. 2025); *Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera Torralba v. Knight*, No. 2:25-cv-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 WL 1692739, at *5–6 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025); *Lazaro Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Dkt. 14 (C.D. Cal. July 28, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025); *Santiago v. Bondi*, No. EP-25-CV-2128 (W.D. Tex. Oct. 1, 2025). But see *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, 2025 WL 27080351 (D. Neb. Sept. 30, 2025).

Third, after *Loper Bright*, *Yajure-Hurtado* is not entitled to deference—and it is unpersuasive on its own terms. The BIA's September 2025 opinion posits a false dichotomy: if a person has never been "admitted," they must still be "seeking admission," no matter how many years they have lived here. 29 I. & N. Dec. 214, 221 (B.I.A. 2025). But the statute's present-tense text, its border-inspection context, and § 1226's architecture refute that premise. Under *Loper Bright Enterprises v. Raimondo*, courts "owe no deference" to an agency's interpretation simply because the statute is ambiguous; rather, courts independently construe the statute using the traditional tools. 144 S. Ct. 2244, 2262–63 (2024). And under *Skidmore*, a late-breaking, two-page policy shift (the July 8, 2025 Lyons memo) and a fast-follow BIA decision that contradict decades of § 1226 practice and the accumulating federal case law merit little weight. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 214 (B.I.A. 2025). Respondents' brief does not grapple with *Loper Bright* at all, nor do they justify why a litigation-driven reversal should displace the longstanding reading that interior § 240 cases are governed by § 1226(a) unless § 1226(c) applies. *See* Dkt. 5 at 4-7 (asserting "plain language" and citing *Yajure-Hurtado*).

Respondents also cherry-pick dicta from *Thuraissigiam* noting that confinement during expedited-review proceedings was not disputed in that case, 591 U.S. at 118, and then treat that aside as a blanket endorsement of mandatory detention for anyone deemed an "applicant for admission." But in *Santiago v. Noem,* a judge in this district has squarely rejected that move, explaining that *Thuraissigiam* "constrain[ed] itself" to the admission process and does not foreclose due-process challenges to detention; indeed, the Supreme Court "has not addressed the viability of constitutional due-process challenges to mandatory immigration detention," and recent authority reaffirms that "the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings." *Santiago v Noem*, EP-25-CV-361-KC, slip op. at 9, 2025 WL 2792588

(W.D.Tex., 2025), *citing Jennings*, 583 U.S. at 312; *Arteaga-Martinez*, 596 U.S. at 583; and *Reno v. Flores*, 507 U.S. 292, 306 (1993)). The Government's heavy emphasis on *Thuraissigiam* thus collapses the crucial line between deportability and detention. Petitioner, like Santiago, challenges only the lawfulness of his civil confinement and the Government's refusal to afford a bond hearing—not any entitlement to remain in the United States.

In short, *Thuraissigiam* does not carry the Government's burden. Properly read, the text and structure of the INA place long-present, interior arrestees like Petitioner within § 1226(a) (subject to § 1226(c)'s specific exceptions), not § 1225(b)(2). The Government's contrary theory would transform § 1225 into an all-purpose detention mandate, nullify Congress's § 1226 framework, and disregard the deportability-versus-detention distinction recognized in *Jennings*, confirmed by the Government in *Arteaga-Martinez*, and applied by the Western District of Texas in *Santiago*. This Court should therefore reject Respondents' *Thuraissigiam* argument and decline to defer to *Yajure-Hurtado*.

The Respondents do not address the weight of case law, much of it recent, on this very issue, finding that noncitizens like Petitioner here who have lived many years in the United States, and are apprehended within the interior, are entitled to due process under the Fifth Amendment of the Constitution. See, e.g., *Martinez v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)) (the distinction is one of place—not status: "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality.") Respondents believe this Court should defer to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), Dkt. 12 at 7-9, yet they have not addressed Petitioner's arguments that this Court owes no deference, in light of the Supreme Court's

ruling in *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), to Respondents' interpretation of the INA and regulations. Dkt 1 at 20.

D. Respondents' "No Net Gain" Argument Is Not a Defense to Unlawful Detention.

To the extent the Respondents suggest that "[Petitioner] is currently scheduled for a hearing on the detained docket regarding relief from removal …on January 5, 2026", and thus habeas relief provides "no net gain" because Petitioner might still remain in proceedings, their suggestion misunderstands habeas and due process. The "gain" is freedom from unlawful executive confinement and the receipt of the custody process Congress and the Constitution require. The possibility that DHS might pursue removal proceedings is not a justification for detaining someone under the wrong statute and without a bond hearing.

Indeed, the continued detention of Petitioner separates him from her family, prohibits him removal defense in many ways, including by inhibiting her access to computers, to any counsel's office to prepare evidence, to communicate with witnesses, gather evidence, and afford legal representation, among other related harms. His detention makes it difficult for them to access counsel and prepare for the ongoing removal proceedings. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (U.S., 2003). A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690. Petitioner's detention is improper because he has been deprived of his substantive Due Process rights. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

"Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). The discretionary bond framework under Section 1226(a) requires a bond hearing to make an individualized custody determination – a hearing that here the IJ did not conduct. Dkt. 5-2, Immigration Judge Anibal Martinez's bond denial, citing *Matter of Yajure-Hurtado*. Therefore, without first evaluating Petitioner's risk of flight or dangerousness, his detention is a violation of his due process rights.

E. Respondents' Position That Maldonado Bautista Does Not Apply Is Erroneous –But Question of His Class Membership Is Not Necessary to Resolution of This Case

Petitioner noted in his petition for habeas corpus that in a parallel nationwide challenge, the Central District of California has already held that long-resident noncitizens apprehended in the interior are entitled to custody determinations. Dkt. 1 at 8. Respondents argue in their Return that the partial summary judgement does not operate as a "judgement" binding the parties, and that such litigation—even assuming Petitioner were a class member—does not preclude this Court from ruling in the instant petition. Dkt. 5 at 11. It is notable that a judge in the Southern District of Texas has recently rejected the identical government argument in *Arreola-Chavez v. Bondi,* 5:25-CV-00227 (S.D. Tex. December 12, 2025), slip op. at 6 (finding the petitioner there to be a Maldonado class member, and holding that "[i]t is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975); *see also* 28 U.S. Code § 2201 ("Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.")").

Assuming that the Court agrees he is a class member, Mr. Rodriguez is now entitled to the benefit of the district court's conclusion in *Maldonado Bautista* that his custody is governed by § 1226(a), not 1225(b)(2). But even should the Court conclude he is not a class member, or agree with the government that is not bound by the partial summary judgement, the same conclusion is dictated by the reasoning in the case as well as in countless others including from this Court. Under that reasoning, Ms. Rodriguez's detention is governed by § 1226(a). Petitioner simply restates his belief that the decision in *Maldonado Bautista* does not render the instant petition moot, nor does it determine the question of what the appropriate remedy is. In this case, Mr. Rodriguez Rivera seeks immediate release because of the statutory and due-process violations he has alleged and which Respondents have not meaningfully disputed.

F. Remedy: the Court Should Order Petitioner's Immediate Release Without First Requiring a Bond Hearing.

Notably, the Respondents here agree with him that "[t]he only relief available to petitioner through habeas is release from custody." Dkt. 5 at 2. Mr. Rodriguez Rivera for his part reasons that because his detention was unlawful ab initio, a bond hearing pursuant to 8 U.S.C. § 1226(a) is also not the appropriate or just remedy and no prudential exhaustion requirement should be imposed, irrespective of the remedy ordered in *Maldonado Bautista*. As a district judge explained last week, "a bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here. [Petitioner's] detention was unlawful from its inception because ICE detained her under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a)." *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025). Where "ICE's detention of Petitioner did not comport with the implementing regulations and § 1226(a) [] a bond hearing for a post-deprivation review is wholly inadequate to remedy that unlawful detention."

J.U. v. Maldonado, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *3 (E.D.N.Y. Sept. 29, 2025). "Such a hearing is no substitute for the requirement that ICE engage in a 'deliberative process prior to, or contemporaneous with,' the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Gonzalez v. Joyce*, No. 25 CIV. 8250 (AT), 2025 WL 2961626, at *7 (S.D.N.Y. Oct. 19, 2025) (citing *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). "The suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Id.* As Petitioner noted in his petition, many courts have ultimately decided that when Section 1225(b)(2) is applied unlawfully—as it was here—release is the most appropriate remedy, without first ordering a bond hearing. *See Montoya v. Bondi, et al.,* No. 25-CV-06363 (JMA), 2025 WL 3280762, at *1 (E.D.N.Y. Nov. 25, 2025); *Montoya, et al.,* 2025 WL 3280762, at *1; *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 at *16 (E.D.N.Y. Oct. 6, 2025); *J.U.*, 2025 WL 2772765, at *10; *Artiga v.Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *9 (E.D.N.Y. Oct. 5, 2025) ("Petitioner's allegations of his detention by ICE raise a substantial constitutional question that cannot be properly adjudicated administratively"). This was true even prior to Respondents' volte-face from 30 years of precedent and sudden invocation of Section 1225(b)(2) detention to justify the detention of individuals who entered the U.S. without inspection, as courts had already ordered numerous petitioners released following unlawful re-detention—even though Respondents' agreed in those cases that petitioners' detention was under § 1226(a). *See Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025); *Chipantiza-Sisalema v.Francis*, No. 25-CV-5528, 2025WL 1927931,

at *4 (S.D.N.Y. July 13, 2025). The Court should do the same here and not require administrative exhaustion or a bond hearing.

G. The Court Should Not Sever or Dismiss His Administrative Procedures Act Claims

The Court should not sever his Administrative Procedures Act (APA) claim. He asserted he is confined in violation of the Administrative Procedure Act because DHS arrested him without warrant and did not follow its own procedures, and it determined to detain him as mandatory without a legal basis. Under the APA, an agency action may be set aside if it is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). An action is arbitrary and capricious if the agency fails to examine relevant evidence or articulate a satisfactory explanation. *See Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 42–43 (1983). Post-hoc rationalizations will not suffice; agency action must be upheld, if at all, on the basis articulated by the agency itself. *See id.* at 50. An agency ought to lead by example and follow its own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *see also Webster v. Doe*, 486 U.S. 592, 602 n.7, 108 S.Ct. 2047, 100 L.Ed.2d 632 (1988). Here, the Respondents merely argues that he did not pay the filing fee for non-habeas claims. Dkt. 5 at 1. They do not refute his contention that their actions are arbitrary and capricious and that the Lyons memorandum and reliance on *Yajure-Hurtado* are not in accordance with law and are in excess of statutory jurisdiction. Dkt. 1 at 24. Nor do they assert that their actions are "non-final."

In *Gonzalez Boisson*, the district court in a citizenship matter held that 8 U.S.C. § 1503 (which provides a specific statute for individuals to sue to establish their citizenship) was not created as a special statutory procedure that would preclude an APA claim. *Gonzalez Boisson v. Pompeo,* 459 F. Supp. 3d 7 (D.D.C. 2020). In explaining the Supreme Court's decision in *Rusk*

v. Cort, 369 U.S. 367, 375, 82 S.Ct. 787, 7 L.Ed.2d 809 (1962), the *Gonzalez Boisson* court noted that the Supreme Court analyzed the text, legislative history and purpose of § 1503 before deciding "that a person outside the United States who has been denied a right of citizenship is not *confined to the procedures* prescribed by [Sections 1503(b) and (c)], and that the remedy pursued in the present case [(i.e., APA review)] was an appropriate one." *Gonzalez Boisson* at 11 (emphasis added) (internal citations omitted).

As one district court has held in upholding subject matter jurisdiction on an APA claim where a habeas corpus was available:

> Although the writ of habeas corpus is a powerful remedy, it is a general, one-size-fits-most vehicle for relief. As the Second Circuit stated in *Velasco Lopez*, "Habeas corpus.... is an " "adaptable remedy," " the " "precise application and scope" " of which changes " "depending upon the circumstances." *Velasco Lopez* at 855 (quoting *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S.Ct. 2229, 171 L.Ed.2d 41 (2008)). Nothing in the text of the writ of habeas corpus, or the legislative history relied on by the government, demonstrates the customization or exclusivity needed to prove, by clear and convincing evidence, that Congress created the writ as a special and adequate review procedure within the meaning of 5 U.S.C. § 704.

Valez–Chavez v. McHenry, 549 F.Supp.3d 300, 305–06 (S.D.N.Y., 2021). So too, here, the Respondents offer no purpose to "severing" of his APA claim, when so much of the claim is intertwined with their actions in unlawfully detaining him. At a minimum, his APA claim is an alternative theory of relief.

Habeas corpus is an "adaptable remedy." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). "The equitable and flexible nature of habeas relief ... gives the reviewing court considerable latitude 'to correct errors that occurred during the prior proceedings.' " *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020) (quoting *Boumediene*, 553 U.S. at 786). See also *J.I.T. v. Francis*, 2025 WL 3295851, at *3 (S.D.N.Y., 2025) (considering the burden shifting by the agency to petitioner to prove nondangerous and non-flight risk). Petitioner acknowledges that

many district courts currently considering the same issues as in the instant petition simply decline to consider the APA claim, but he believes such abstention is not an endorsement for severance or dismissal. *See, e.g., Rakhmatov v Raycraft,* 1:25-cv-1651, 2025 WL 3550798, at *8 (W.D.Mich., 2025) ("Because the Court will grant Petitioner's § 2241 petition for the reasons set forth herein, the Court does not, and need not, address other claims raised in Petitioner's § 2241 petition.")

III. RELIEF REQUESTED

Petitioner respectfully requests that the Court:

(1) Grant the Petition for Writ of Habeas Corpus and declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2);

(2) Order Respondents to release Petitioner under appropriate conditions; and

(3) Grant such other and further relief as the Court deems just and proper, including relief necessary to prevent DHS from nullifying the Court's remedy through post hoc reclassification or procedural maneuvers.

Respectfully submitted on this 14th day of December, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITIONER'S REPLY IN SUPPORT OF HIS PETITION FOR WRIT OF HABEAS CORPUS AND RESPONSE TO RESPONDENTS' RETURN in the case of *Rodriguez Rivera v. Bondi*, et al., Civil Action 1:25-CV-01979-RP, was sent to Barbara Falcon, Assistant United States Attorney, Western District of Texas, 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216 through the District Clerk's electronic case filling system on this the 14th day of December 2025.

Dated this 14th day of December 2025.

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