UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

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| LETICIA SERVIN ESPINOZA, | ) | |
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| Petitioner, | ) | |
| | ) | |
| v. | ) | |
| | ) | Case No. 3:25-cv-00618-DB |
| KRISTI NOEM, *et al.* | ) | |
| | ) | Hon. David Briones |
| Respondents. | ) | |

**REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S HABEAS PETITION**

The Petitioner, LETICIA SERVIN ESPINOZA, by and through her own and proper person and through her attorneys, KRIEZELMAN BURTON & ASSOCIATES, LLC, submits this reply to Respondents' Response to her Petition for Writ of Habeas Corpus, and in support thereof, states as follows:

**A. Petitioner Does Not Challenge Her Ongoing Removal Proceedings and 8 U.S.C. § 1252 does not deprive this Court of jurisdiction**

This Court is not deprived of jurisdiction by 8 U.S.C. § 1252(b)(9) and (g) as Petitioner's claims do not challenge any decision to commence proceedings, adjudicate cases, or execute removal orders. This Court is also not deprived of jurisdiction by 8 U.S.C. § 1252(e)(3) as Petitioner is not challenging the implementation of 8 U.S.C. § 1252(b)(2).

Section 1252(b)(9) provides:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision

> of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added).

The Supreme Court's decision in *Jennings v. Rodriguez* is instructive here and supports Petitioner's position that this Court does have jurisdiction and that Section 1252(b)(9) does not present a jurisdictional bar. The Supreme Court determined that the "arising from" language of Section 1252(b)(9) should not be interpreted so expansively as to include any action that technically follows the commencement of removal proceedings, because that would bar judicial review of questions of law and fact that are unrelated to the removal proceedings until a final order of removal was issued. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018). Petitioner, like the class in *Jennings*, "are not asking for review of an order of removal, they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined." *Id.* at 294-95.

Section 1252(g) provides:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien *arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.*

8 U.S.C. § 1252(g) (emphasis added).

The Supreme Court's decision in *Jennings* is again instructive here related to Section 1252(g). The *Jennings* court writes that "[w]e did not interpret [section 1252(g)] to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, we read the language to refer to just those three specific actions themselves." *Jennings*,

583 U.S. at 294 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)).

An immigration judge's (IJ) review of a bond determination is a distinct proceeding from an alien's underlying removal proceeding. 8 C.F.R. § 1003.19(d). It is "clear bond hearings are separate and apart from deportation proceedings." *Gornicka v. INS*, 681 F.2d 501, 505 (7th Cir. 1982). Here, Petitioner is seeking review of her unlawful detention, as she is unable to seek a bond hearing in front of the Immigration Court as a result of the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). She is not challenging a removal order or anything else listed in Section 1252(b)(9) and (g) which would strip this court of jurisdiction.

Respondents also argue that 8 U.S.C. § 1252(e)(3) prevents judicial review. They maintain that section 1252(e)(3) provides the U.S. District Court for the District of Columbia with exclusive authority to review challenges to regulations and policies issued to implement 8 U.S.C. § 1225(b). But Petitioner is not challenging the *implementation* of 8 U.S.C. § 1225(b)(2), and he does not dispute that § 1225(b)(2) requires detention of aliens detained under that subsection. Rather, Petitioner asserts that Respondents lack statutory authority to detain her under § 1225(b)(2) because that statute does not apply to a noncitizen in her circumstances. Petitioner maintains instead that 8 U.S.C. § 1226(a) provides the statutory authority for her detention. Accordingly, § 1252(e)(3) does not deprive this Court of jurisdiction.

For these reasons, this Court has jurisdiction over Petitioner's matter.

**B. Petitioner is detained under 8 U.S.C. § 1226(a) and not under 8 U.S.C. § 1225(b)(2).**

By way of review, 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of "Applicants for Admission." Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA

§ 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. The Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge's authority to hear a bond request for any noncitizen present in the United States without having been inspected and admitted and who are later apprehended by DHS.

Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226(a). This argument fails for several reasons.

First, your Honor recently rejected these same arguments and granted petitioners habeas relief in *Rodriguez Cortina v. De Anda-Ybarra*, Case No. 3:25-cv-00523 (W.D. Tex. Nov. 18, 2025); *Vasquez Chinchilla v. De Anda-Ybarra*, Case No. 3:25-cv-00548 (W.D. Tex. Nov. 24 2025). The same circumstances are present in this matter in that Petitioner entered the United States without inspection in April 2006, resided in the United States for a number of years, and was just recently detained.

Next, the arrest warrant for Petitioner plainly states that Petitioner was arrested and detained pursuant to INA § 236, 8 U.S.C. § 1226. *See* Ex. 1. The arrest warrant states that "any immigration officer authorized pursuant to section 236…to serve warrants of arrest for immigration violations." *Id.* To now argue that Petitioner is now subject to mandatory detention under 8 U.S.C. § 1225(b)(2) entirely contradicts the plain language of the arrest warrant.

Prior to and since the decision in *Matter of Yajure Hurtado*, other judges within the district courts of the Fifth Circuit, have similarly rejected Respondents' interpretation and have subsequently granted relief to habeas petitioners. *See Espinoza Andres v. Noem*, No. CV H-25-5128, 2025 WL 3458893 (S.D. Tex. Dec. 2, 2025); *Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025); *Galmadez Martinez v. Noem*, No. SA-25-CV-01373-JKP, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Morales Aguilar v. Bondi*, No. 5:25-CV-01453-JKP, 2025 WL 3471417 (W.D. Tex. Nov. 26, 2025); *Coulibaly v. Thompson*, No. 5:25-CV-1539-JKP, 2025 WL 3471573 (W.D. Tex. Nov. 25, 2025); *Guzman Tovar v. Noem*, No. 5:25-CV-1509-JKP, 2025 WL 3471416 (W.D. Tex. Nov. 25, 2025); *Aguinaga Trujillo v. Noem*, No. 5:25-CV-1266-JKP, 2025 WL 3471572 (W.D. Tex. Nov. 24, 2025); *Martinez Orellana v. Noem*, No. 5:25-CV-1028-JKP, 2025 WL 3471569 (W.D. Tex. Nov. 24, 2025); *Miralrio Gonzalez v. Ortega*, No. 5:25-CV-1156-JKP, 2025 WL 3471571 (W.D. Tex. Nov. 24, 2025); *Vasquez Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3268459 (W.D. Tex. Nov. 24, 2025); *Penuela Carlos v. Bondi*, No. 9:25-CV-00249-MJT-ZJH, 2025 WL 3252561 (E.D. Tex. Nov. 21, 2025); *Cruz Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025); *Orellana Cantarero v. Bondi*, No. 9:25-CV-00250-MJT-ZJH, 2025 WL 3252402 (E.D. Tex. Nov. 20, 2025); *Leon Hernandez v. Bondi*, No. 25-CV-1384 SEC P, 2025 WL 3217037 (W.D. La. Nov. 18, 2025); *Rodriguez Cortina v. Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 WL 3218682 (W.D. Tex. Nov. 18, 2025); *Cruz Gutierrez v. Thompson*, No. 4:25-4695, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025); *Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187 (W.D. Tex. Oct. 24, 2025); *Martinez v. Trump*, No. CV 25-1445 SEC P, 2025 WL 3124847 (W.D. La. Oct.

22, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

These decisions join other district courts across the country that have overwhelmingly rejected *Matter of Yajure Hurtado's* new interpretation that those who entered unlawfully and are later apprehended are now subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner provided a sampling in her Petition of the over 300 and counting cases that have rejected Respondents' interpretation and granted relief. Dkt. 1, App'x.

This Court is not required, and should not, give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

Respondents' new interpretation of § 1225 is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n 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 a proceeding under section 1229a[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 at *2 (D. Mass. July 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).

The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes."). In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of the statute must be read in their context and with a view to their place in the overall statutory

scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the numerous district court decisions confirm that she is subject to section 1226(a)'s discretionary detention scheme.

**C. Petitioner's Continued Detention Without a Bond Hearing is a Fifth Amendment Violation.**

Petitioner's deprivation of her liberty by being deprived of the opportunity to request a bond hearing is a violation of the Due Process Clause of the Fifth Amendment. Petitioner has not been found to be a danger to the community and Respondents do not allege that detention is to ensure Petitioner's appearance during removal proceedings. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents have not put forth a credible argument that Petitioner could not be safely released to her community and family.

Respondents contend Petitioner has no claim of right under the Fifth Amendment's Due Process Clause because she is only entitled to the due process provided to her under the INA. Dkt. 3, p. 12. Respondents cite to *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) to support their position. *Id.* But this Court has already found *Thuraissigiam* is not preclusive on the facts of these cases because (1) Petitioner is not challenging her removal, but rather detention during removal, and (2) she was not detained at the border on the threshold of initial entry, but rather after living in the United States for nearly 20 years. *See Rodriguez Cortina v. De Anda-Ybarra*, Case No. 3:25-cv-00523 (W.D. Tex. Nov. 18, 2025); *Vasquez Chinchilla v. De Anda-Ybarra*, Case No. 3:25-cv-00548 (W.D. Tex. Nov. 24 2025). Respondents' position overlooks the well-established "distinction between an alien who has effected an entry into the United States and one who has never entered [that] runs throughout

immigration law." *Zadvydas*, 533 U.S. at 693. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all "persons" within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*

The Supreme Court's balancing test in *Mathews v. Eldridge* is dispositive. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors": (1) "the private interest that will be affected by the official action"; (2) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," and (3) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Id.* at 335.

In regard to the first *Mathews* factor, Petitioner has a significant private interest in avoiding detention, one of the "most elemental of liberty interests." *See Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Additionally, Petitioner resides in the Chicagoland area, has two U.S. Citizen children, has been married for over 20 years and supports herself and her family. *See* Dkt. 1. ¶¶ 20-22. Petitioner is now detained in another state, "experiencing [many of] the deprivations of incarceration, including loss of contacts with friends and family, loss of income earning…lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025).

As to the second *Mathews* factor, a risk of erroneous deprivation is minimized through a bond hearing, where an Immigration Judge can determine whether Petitioner is a flight risk or a danger to the community. *See Lopez Campos*, 2025 WL 2496379, at *9. Petitioner has been in the United States for nearly 20 years, has two US citizen children, has been married for over 20 years, and has worked at the same job for at least the last 15 years and pays taxes, factors that would minimize her flight risk. *See* Dkt. 1. ¶¶ 20-22.

Finally, as to the third factor, while Respondents do have "a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community," here, Respondents have not established an interest in regards to detaining Petitioner who may well convince "a neutral adjudicator, following a hearing and assessment of the evidence, that his ongoing detention is not warranted." *Sampiao v. Hyde,* No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025).

As such, Petitioner's current detention under the framework of Section 1225(b)(2)(A) violates Petitioner's Fifth Amendment Due Process rights.

***D. Maldonado Bautista v. Santacruz***

On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond

Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

Petitioner is a member of the Bond Eligible Class, as she:

a. does not have lawful status in the United States and is currently detained at the El Paso Camp East Montana. She was apprehended by immigration authorities on November 12, 2025;

b. entered the United States without inspection nearly 20 years ago and was not apprehended upon arrival, *cf. id.*; and

c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite her clear entitlement to consideration for release on bond as a Bond Eligible Class member.

## CONCLUSION

For the foregoing reasons, this Court should order Petitioner's immediate release or in the alternative, order Respondents to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order.

Dated: December 10, 2025 Respectfully Submitted,

/s/ Khiabett Osuna
One of her attorneys

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