UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Medardo David Cuellar-Hidalgo, Petitioner, v. Reynaldo Castro, Warden, South Texas Detention Center, in his Official Capacity, *et al.*, Respondents.	Civil Action No. 5:25-cv-01696-OLG

REPLY TO GOVERNMENT'S ANSWER TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

PRELIMINARY STATEMENT

Petitioner, Medardo David Cuellar-Hidalgo ("Mr. Cuellar-Hidalgo"), is materially similar to the petitioner in *Mendoza Euceda v. Noem*, where this Court rejected the government's expansive—and "abrupt"—departure in applying 8 U.S.C. § 1225(b)(2)(A) to noncitizens who are already inside the United States. *Order*, No. SA-25-CV-1234-OLG (W.D. Tex. Nov. 17, 2025). There, the Court held that mandatory detention under § 1225(b)(2) was foreclosed because the petitioner was not taken into custody in connection with an encounter at the border, a lawful entry, or post-inspection authorization by an immigration officer; instead, he was detained after he had already entered and was present in the United States. Accordingly, the Court joined many others in concluding that the proper detention authority was § 1226(a), not § 1225(b)(2).[1]

Here, Mr. Cuellar-Hidalgo entered the United States as a nine-year-old child on October

[1] *See* *Buenrostro-Mendez*, 2025 WL 2886346; *Covarrubias*, 2025 WL 2950096; *Guerrero v. Noem*, No. AU-25-CV-1334-RP (W.D. Tex. Oct. 27, 2025); *Pereira-Verdi v. Lyons*, No. SA-25-CV-1187-XR (W.D. Tex. Oct. 10, 2025); *see also* *Gutierrez v. Baltasar*, No. 25-CV-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *H.G. V.U. v. Smith*, No. 25-CV-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025); *Menjivar-Sanchez v. Wofford*, No. 25-CV-1187, 2025 WL 2959274 (E.D. Cal. Oct. 17, 2025); *Avila v. Bondi*, No. 25-3741, 2025 WL 2976539 (D. Minn. Oct. 21, 2025); *Maldonado v. Baker*, No. 25-3084, 2025 WL 2968042 (D. Md. Oct. 21, 2025); *Buestan v. Chu*, No. 25-16034, 2025 WL 2972252 (D.N.J. Oct. 21, 2025); *Zamora v. Noem*, No. 25-12750, 2025 WL 2958879 (D. Mass. Oct. 17, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Casio-Majia v. Raycraft*, No. 25-CV-13032, 2025 WL 2976737 (E.D. Mich. Oct. 21, 2025); *Hernandez v. Crawford*, No. 25-CV-1565, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025); *Pablo Sequen v. Albarran*, --- F. Supp. 3d ----, 2025 WL 2935630 (N.D. Cal. 2025); *Merino v. Riga*, No. 25-23845, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Singh v. Lyons*, No. 25-CV-1606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *Alejandro v. Olson*, No. 25-CV-2027, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Rico-Tapia v. Smith*, --- F. Supp. 3d ----, 2025 WL 2950089 (D. Haw. 2025); *Chavez v. Kaiser*, No. 25-CV-6984, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *Ortiz Donis v. Chestnut*, No. 25-CV-1228, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Ballesteros v. Noem*, No. 25-CV-594, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Eliseo A.A. v. Olson*, No. 25-3381, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *S.D.B.B. v. Johnson*, No. 25-CV-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Hippolite v. Noem*, No. 25-CV-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Lomeu v. Soto*, No. 25-CV-16589, 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Del Cid v. Bondi*, No. 25-CV-304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *Aguilar Guerra v. Joyce*, No. 25-CV-5334, 2025 WL 2986316 (D. Me. Oct. 23, 2025); *Bethancourt Soto v. Soto*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Padilla v. Noem*, No. 25-CV-12462, 2025 WL 2977742 (N.D. Ill. Oct. 22, 2025); *Garcia v. Noem*, No. 25-CV-2771, 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Cortez Rivera v. Hyde*, No. 25-CV-12390, 2025 WL 2977900 (D. Mass. Oct. 22, 2025); *Moreira Aguiar v. Moniz*, No. 25-CV-12706, 2025 WL 2987656 (D. Mass. Oct. 22, 2025); *Contreras-Lomeli v. Raycraft*, No. 25-CV-12826, 2025 WL 2976739 (E.D. Mich. Oct. 21, 2025); *Pineda v. Simon*, No. 25-CV-1616, 2025 WL 2980729 (E.D. Va. Oct. 21, 2025); *Santos Franco v. Raycraft*, No. 25-CV-13188, 2025 WL 2977118 (E.D. Mich. Oct. 21, 2025); *Sanchez Alvarez v. Noem*, No. 25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Sandoval v. Raycraft*, No. 25-CV-12987, 2025 WL 2977517 (E.D. Mich. Oct. 17, 2025).

22, 2006. He was granted Special Immigrant Juvenile Status on December 28, 2012, and, in connection with that relief, received deferred action, reflecting DHS's determination that he posed neither a danger to the community nor a flight risk. He was arrested on June 17, 2025, in the interior of the United States, after nineteen continuous years of residence. An Immigration Judge subsequently granted Mr. Cuellar-Hidalgo a $10,000 bond, which the Board of Immigration Appeals ("BIA") overturned on DHS's appeal pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Accordingly, Petitioner respectfully requests that the Court declare that his detention is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2), order immediate release and in the alternative order the reinstatement of the $10,000 bond previously granted by the Immigration Judge.

ARGUMENT

I. THE COURT HAS JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 2241(c)(3) to grant a writ of habeas corpus to a person in custody in violation of the Constitution, laws, or treaties of the United States. *Demore v. Kim*, 538 U.S. 510, 517 (2003). "[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004)(citing the Suspension Clause). A habeas petitioner has "the burden of sustaining his allegations by a preponderance of evidence." *Walker v. Johnston*, 312 U.S. 275, 286 (1941). A court considering a habeas petition must "determine the facts, and dispose of the matter as law and justice require." 28 U.S.C. § 2243. When the Court finds a petitioner's constitutional rights have been violated, the petitioner is entitled to the issuance of a writ. *Id.*

A. Section 1252(g) does not bar jurisdiction over a challenge to detention.

Section 1252(g) applies only to "any cause or claim… arising from the decision or

action… to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). The Supreme Court has made clear that § 1252(g) is narrow, barring jurisdiction only over challenges to those three discrete actions—not all claims that relate in any way to removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)) (rejecting any reading that treats the "three discrete events along the road to deportation" as shorthand for all claims arising from deportation proceedings).

Here, Petitioner does not challenge the commencement of removal proceedings, the adjudication of removability, or the execution of a removal order. Petitioner challenges his detention incident to removal proceedings—*i.e.*, the government's custody decision and the resulting deprivation of liberty pending adjudication. Petitioner's claim targets detention rather than one of the three enumerated actions, § 1252(g)'s jurisdictional bar does not apply. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025).

B. Section 1252(b)(9) does not bar jurisdiction over detention-only habeas claims.

Section 1252(b)(9) channels review of "all questions of law and fact… arising from any action taken or proceeding brought to remove an alien from the United States" into the petition-for-review process. 8 U.S.C. § 1252(b)(9). But § 1252(b)(9) is not as broad as Respondents often assert, and it does not eliminate habeas jurisdiction where a petitioner challenges detention rather than seeks review of a removal order or the process by which removability will be determined. *Jennings*, 583 U.S. at 293–95 (describing the government's "expansive interpretation of § 1252(b)(9)" as "absurd" and warning it would "lead to staggering results"). The Supreme Court explained that § 1252(b)(9) does not apply where a petitioner is

challenging detention—as opposed to "asking for review of an order of removal," "challenging the decision to detain [him] in the first place or to seek removal," or "challenging any part of the process by which [his] removability will be determined." *Id.* at 294–95; *see also* Covarrubias v. Vergara, No. 5:25-CV-112, 2025 WL 2950096, at *4 n.2 (S.D. Tex. Oct. 3, 2025) (discussing Jennings).

That is exactly this case. Petitioner challenges only his ongoing detention during the pendency of removal proceedings. Because this is a detention-only habeas challenge, § 1252(b)(9) "does not present a jurisdictional bar." *Jennings*, 583 U.S. at 295.

C. Because neither jurisdiction-stripping provision applies, the Court may reach the merits and grant habeas relief.

Accordingly, neither § 1252(g) nor § 1252(b)(9) deprives this Court of jurisdiction over this habeas proceeding. The Court may therefore adjudicate Petitioner's claim that his detention is unlawful and order appropriate relief, including immediate release of Petitioner or in the alternative on his $10,000 bond that was previously granted.

II. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER THE EXPEDITED REMOVAL STATUTE, 8 U.S.C. § 1225(b)(2)(A)

Respondents argue that Petitioner is subject to mandatory detention under, 8 U.S.C. § 1225(b)(2)(A). Respondents reference a September 5, 2025, Board of Immigration Appeals decision that supports their position, *In re: Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(concluding decisively that § 1225(b)(2)(A) covers inadmissible noncitizens who lived unlawfully in the United States for longer than two years without apprehension). In *Mendoza Euceda*, the Court concluded that the plain language of §1225(b)(2) does not apply to

noncitizens encountered within the United States and mandatory detention violates a plain reading of the Immigration and Nationality Act ("INA"). *See* Mendoza Euceda v. Noem, No. 5:25-cv-01234-OLG (W.D. Tex. Nov. 17, 2025).

a. **Respondent's July 8 Policy Change**

On July 8, 2025, DHS stated a new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole**. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for applications-for-admission (emphasis original).

As a result, Petitioner was unlawfully detained without bond pursuant to this new, expansive policy. Petitioner entered the United States on October 22, 2006, was granted SIJ status on December 28, 2012, and re-arrested by DHS in June 2025. At no point was Petitioner ever issued an expedited removal order. Further, an immigration judge found that Petitioner was

eligible for bond, but that bond was rejected by the Board of Immigration appeals due to *Matter of Hurtado*.

Therefore, Petitioner's detention is unlawful because it is in violation of a plan reading of 8 U.S.C. § 1225(b)(2)(A), which governs noncitizens who are "applicants for admission, if the examining officer determines" the noncitizen *seeking* admission "is not clearly and beyond a doubt entitled to be admitted."

Full removal proceedings under § 1229a are mutually exclusive from expedited removal under § 1225. Congress expressly provided that proceedings under § 1229a "shall be the sole and exclusive procedure" for determining removability once DHS elects that pathway. 8 U.S.C. § 1229a(a)(3). Once DHS elected that statutory framework, § 236(a) governed custody.

The petitioner is not an "applicant for admission." § 1225(b)(2)(A) applies to individuals who are *seeking* [in the present tense] admission at the time they encounter immigration officers, before DHS files an NTA. The statute itself makes this clear: it applies where an officer determines that "an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." *Matter of M-S-*, 27 I. & N. Dec. 509 (emphasis added). That statutory language does not describe Petitioner. He was not seeking admission when he was arrested. He had been living in the United States and was arrested when he complied with his check-in in New York City.

In this District, courts have explained that the plain language of § 1225(b)(2) governs individuals encountered at or near the border, not long-term interior residents placed into full removal proceedings years after entry. *Covarrubias*, 2025 WL 2950097, at *4. These same courts have also rejected DHS's reliance on *Yajure-Hurtado* as a basis for mandatory detention of interior arrests. *Id.*

Accordingly, § 1225(b) provides no basis for Petitioner's detention, and Respondents' attempt to invoke that provision, without any meaningful distinction from *Mendoza Euceda*, is foreclosed by this Court's own precedent.

III. PETITIONER HAS THE RIGHT TO DUE PROCESS IN THE IMMIGRATION PROCEEDINGS

Non-citizens who have entered the United States are entitled to basic procedural protections, including notice and an opportunity to be heard. The Supreme Court has long held that noncitizens within the United States are entitled to procedural due process. *Yamataya v. Fisher*, 189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 (1903); *Bridges v. Wixon*, 326 U.S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103 (1945). Our immigration laws distinguish between individuals seeking initial admission and those who have already entered the country. *Leng May Ma v. Barber*, 357 U.S. 185, 187, 78 S. Ct. 1072, 2 L. Ed. 2d 1246 (1958). Noncitizens who are physically present in the United States "undeniably have due process rights." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 191, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020).

The Government argues that Petitioner lacks due process protections because he is an "applicant for admission." That assertion is inconsistent with the record. The petitioner is not an arriving alien. DHS arrested him in New York at a check-in almost years after his initial entry and immediately placed him in full removal proceedings under 8 U.S.C. § 1229a. Those proceedings are governed by 8 C.F.R. § 1003.12-1003.41 and § 1240.26. Individuals in § 240 proceedings are detained, if at all, under 8 U.S.C. § 1226(a). DHS treated Petitioner accordingly, and he remains in those proceedings today.

Although civil removal proceedings do not confer the "same bundle" of constitutional protections applicable in criminal trials, they do guarantee a full and fair hearing and meaningful

procedural safeguards. *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021). In *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021), the First Circuit held that when a noncitizen is detained under § 1226(a) and a bond hearing is provided, due process requires the Government to bear the burden of justifying continued detention—clear and convincing evidence for dangerousness and a preponderance for flight risk.

Petitioner is not in expedited removal proceedings, has never undergone a Credible Fear Interview, and is not subject to § 1225(b). He is a long-term resident placed squarely in the statutory framework of §1229a and §1226. Thus, he is entitled to the due-process protections available in those proceedings, including meaningful consideration of release under § 1226(a).

Accordingly, Petitioner, who remains in full § 240 removal proceedings, is entitled to the due-process protections afforded to individuals in those proceedings. DHS's effort to deny him those protections by mischaracterizing his statutory posture have no basis in fact or law.

To the extent the Government suggests that district court decisions in this Circuit rejecting the application of § 1225(b)(2) to long-term interior residents should yield to the BIA's recent precedential decisions in *Matter of Q-Li* and *Matter of Yajure-Hurtado*, that argument misstates both the law and the current judicial landscape. After *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), courts—not agencies—exercise independent judgment in interpreting statutory meaning. Chevron deference no longer applies, and agencies are owed no special weight on pure questions of statutory construction.

IV. THE APPROPRIATE REMEDY IS REINSTATEMENT OF THE IMMIGRATION JUDGE'S $10,000 BOND ORDER

Because Mr. Cuellar-Hidalgo is detained under 8 U.S.C. § 1226(a)—not § 1225(b)(2)—the proper remedy is to restore the Immigration Judge's individualized custody

determination and order his release on the same $10,000 bond previously set by the Immigration Judge. This Court has authority in habeas to "secure release from illegal custody," and may fashion relief that returns the parties to the lawful detention framework that should have governed all along. *See* Ramirez v. Noem, No. 25-cv-03076 (S.D. Cal. Dec. 3, 2025) (granting habeas and ordering release "on the same … bond and conditions … as ordered by the Immigration Judge").

A. This Court has habeas authority to order release and to craft relief that reinstates the lawful custody framework.

A district court exercising jurisdiction under 28 U.S.C. § 2241 possesses broad authority to "dispose of the matter as law and justice require," including the power to order release from unlawful detention and to fashion relief that cures the underlying statutory error. 28 U.S.C. § 2243; *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). In immigration-detention cases, courts in this District have repeatedly exercised that authority to correct unlawful detention by restoring the proper statutory framework and ordering concrete relief.

In *Mendoza Euceda v. Noem*, No. SA-25-CV-01234-OLG (W.D. Tex. Nov. 17, 2025), this Court rejected DHS's attempt to impose mandatory detention under § 1225(b)(2) and ordered Respondents to provide a § 1226(a) bond hearing or release by a date certain. That remedial approach reflects a core habeas principle: when detention is unlawful because the wrong statute was applied, the court may order relief that places the petitioner back into the custody posture required by law. Other courts confronting the same error have likewise ordered release on the same bond and conditions previously set by an Immigration Judge, recognizing that reinstatement is an appropriate and efficient remedy. *See* Ramirez v. Noem, No. 25-cv-03076

(S.D. Cal. Dec. 3, 2025) (granting habeas and ordering release "on the same … bond and conditions … as ordered by the Immigration Judge").

This case is a little different in posture because Petitioner had a bond hearing pursuant to 8 U.S.C. § 1226(a), and the immigration judge granted the Petitioner a $10,000 bond on July 28, 2025. However, due to the July 2025 policy change, DHS appealed on September 12, 2025, to the BIA, arguing that the immigration judge lacked jurisdiction pursuant to 8 U.S.C. § 1225(b)(2). The BIA sustained DHS's appeal, but only to the extent that the immigration court lacked jurisdiction due to *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 255 (BIA 2025). DHS did not appeal the immigration judge's finding on the merits.

In granting bond, the immigration judge found that the Petitioner had a significant motive to appear for his immigration proceedings, avoid deportation and is not a flight risk, not a danger given his extensive family ties in the United States, two minor U.S. citizen children, approved SIJ visa, family and community ties, and length in the United States.

Accordingly, because Petitioner's re-detention rests entirely on DHS's erroneous invocation of § 1225(b)(2) the appropriate habeas remedy is for immediate release of Petitioner from custody or reinstating the previously granted § 1226(a) bond on the same terms and conditions.

CONCLUSION

For the reasons described above, Petitioner's Petition should be granted, and Respondents should be ordered to immediately release or in the alternative release Petitioner on the previously granted bond.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Texas Western District by using the CM/ECF system.

/s/ David H. Square
David H. Square