IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CESAR HERNANDEZ RESENDIZ, PETITIONER, v. KRISTI NOEM, et al., RESPONDENTS.	Civil Case No. 5:25-CV-5940

PETITIONER'S RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

RESPECTFULLY SUBMITTED,

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INTRODUCTION

"The complex provisions of the INA have provoked comparisons to a 'morass,',[1] a "Gordian knot,"[2], and 'King Minos's labyrinth in ancient Crete.'"[3] These comparisons are well-deserved. Without any background or experience with immigration law it is easy to get lost in the INA's labyrinth of statutes and terms. Worse, the INA has a unique way of making it difficult for non-practitioners to realize that an interpretation they are confident is right given the "plain language" is actually incorrect as a result of the INA's repeated use of "specialized language." As the Third Circuit explained,

> Adjustment of status" and "cancellation of removal" are not the sort of phrases you often hear at the corner coffee shop. Polling a group of ordinary and competent English speakers on what these six words mean is likely to produce equal parts blank stares and reasonable guesses. But that does not give courts license to invent a meaning to our liking. Instead, when interpreting technical and specialized legal language, we look not for the public meaning (as none is likely to exist), but what we might call the legal meaning.
>
> Often, legal meaning and ordinary public meaning travel together because interpretation using ordinary public meaning ensures that the people have received appropriate notice of the government's legitimate purpose. And notice is necessary for posited law to serve one of its central purposes, "coordinating society's members toward the common good." So when this coordinating purpose predominates, so too should the public meaning, even if a law incorporates technical terms. That is because statutes "are written to guide the actions of men.... If a statute is written for ordinary folk, it would be arbitrary not to ... read [it] with the minds of ordinary men." But "[i]f they are addressed to specialists, they must be read by judges with the minds of specialists." *Here,*

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[1] *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) (quoting *Lacsina Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009) (quoting *Agyeman v. I.N.S.*, 296 F.3d 871, 877 (9th Cir. 2002))

[2] *Id.* (quoting *Aguilar v. U.S. Immig. & Customs Enf't*, 510 F.3d 1, 6 (1st Cir. 2007)).

[3] *Id.* (quoting *Lok v. I.N.S.*, 548 F.2d 37, 38 (2d Cir. 1977)).

Congress used the language of the specialist versed in the execution of the immigration laws.[4]

As discussed below, the petition in this case sets forth in detail the reasons the specialized language and definitions Congress gave terms like "admission" demonstrate that one may not be seeking admission from within the United States. Rather, as the Fifth Circuit (like nearly every other circuit) has repeatedly held that an "admission" encompasses the action of an entry into the United States, accompanied by an inspection or authorization." Despite having the benefit of these arguments set forth in detail by the habeas petition, the government has made zero effort to address the case law or definitions given by Congress. For these reasons, those detailed in the habeas petition, and those set forth below, Petitioner respectfully requests the Court deny the government's motion for summary judgment and grant his habeas petition.

STATEMENT OF THE CASE[5]

The Petitioner, Cesar Hernandez Resendiz, is a native and citizen of Mexico who came to the United States in 2001 when he was approximately 21. He has not left since. In the nearly 25 years Mr. Hernandez has been in the U.S., he has lived, in most respects, an ordinary life. He became the father of three U.S. citizen children, now aged 22, 18 and 11. His oldest child is currently an active-duty member of the U.S. military.

Mr. Hernandez's own parents are lawful members of U.S. society, his father having become a U.S. citizen and his mother a lawful permanent resident. In 2014, Mr. Hernandez

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[4] *Lopez v. Att'y Gen.*, 49 F.4th 231, 234 (3d Cir. 2022) (emphasis added).

[5] A more detailed statement of the facts can be found in the habeas petition. ECF No. 1 pp. 15-16.

was pulled over and arrested for not having a driver's license. This resulted in him being sent to ICE custody—pursuant to 8 U.S.C. § 1226. At that time, he was released on his own recognizance and advised to attend check-ins with ICE when ordered.

For more than 10 years, Mr. Hernandez complied with his ICE check-in requirements. During that time, no removal proceeding was initiated against him. Then, at his most recent check-in in November 2025, the proverbial rug was pulled out from under him when ICE detained him and sent him to his current detention.

In sum, Mr. Resendiz has been treated as though he was subject to § 1226 for more than a decade, has no criminal history, and raised a child who has chosen to serve this Country through joining the military. Despite there being no basis to claim he is a flight risk or danger, ICE has now detained him for months for no reason other than it claims it can.

FACT IN DISPUTE

The government's motion for summary judgment does not include any legal citations or legal standard for a such a motion. More importantly, it fails to address a factual dispute implicit to the legal dispute between the parties. Specifically, it fails to address whether, as Mr. Resendiz has reason to believe, the fact that a warrant pursuant to § 1226(a) was at a minimum issued when he was transferred to ICE more than a decade ago following a traffic offense; it is likely that a warrant was issued when he was most recently arrested when he reported to ICE for an annual check-in in November 2025.

For reasons that are apparent from the discussion below, this disputed fact presents a proverbial "Catch-22" for the government. It can concede a warrant was issued pursuant

to § 1226(a) in which case there can be no dispute that he is detained under § 1226. If, on the other hand, it claims that Mr. Resendiz was taken into custody in 2014 and again in 2025 without a warrant based on a finding of probable cause by an authorized DHS official, then there can be no doubt that ICE violated both the Fourth Amendment and the provisions of 8 U.S.C. § 1357.

ARGUMENT

I. The text of the statute must be read using the definitions Congress gave to the terms used in it—not their ordinary or everyday usage.

At the outset, it is important to point out that the government's response argues that the absence of the phrase "arriving aliens" in § 1225(b)(2)(A) is significant and further presumes that the terms "applicant for admission" and "seeking admission" are synonymous. The problem with this argument is that if that were true, then there would be no need for the phrase "seeking admission" in § 1225(b)(2)(A). Afterall, if it applied to all "applicants for admission" without regard for where and when they were encountered, the provision would have no need for the phrase "seeking admission" and would read:

> [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 of this title.[6]

But Congress did include the phrase "seeking admission" and, as a result, it has generally been understood to have its application at or near POEs and the border.

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[6] § 1225(b)(2)(A) (alteration added).

A. The government's interpretation conveniently ignores the emphasis Congress placed on an admission being an act that requires one to be at the door asking to come in at a POE.

The government's response and its position on this issue seem to attribute its own beliefs about the "plain meaning" of the terms "admission," "admitted," and "application for admission." This is problematic because, as discussed in detail in the petition, Congress defined these terms, and those definitions have been applied in the many different provisions that include them throughout the INA.[7] Significantly, the government's position and arguments on this issue are remarkably similar to those it made with respect to "admission" and "admitted" during prior litigation on eligibility for a waiver under § 1182(h).

Just as it did in *Martinez v. Mukasey,* the government here argues for an interpretation of an INA provision that completely ignores the statutory definition given to the term admission which "contemplate[s] a physical crossing of the border following the sanction and approval of United States authorities."[8] Accordingly, the government's arguments here should be rejected just as their similar arguments were rejected by the Fifth Circuit in *Martinez*.

B. The notion that Petitioner can be seeking admission from within the United States has been explicitly rejected by the Fifth Circuit.

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[7] ECF No. 1 pp. 19-23.

[8] *Martinez v. Mukasey*, 519 F.3d 532, 543–44 (5th Cir. 2008), *as amended* (June 5, 2008); *see also Bracamontes v. Holder,* 675 F.3d 380, 382, 384–89 (4th Cir.2012).

In its response, the government claims that Petitioner is "still seeking admission" under § 1225(b)(2).[9] This conclusion is undoubtedly the result of Congress using the "language of specialists" throughout the INA which are easily misunderstood when using the language of ordinary people. Indeed, the Fifth Circuit has explicitly explained that seeking and being granted status from within the Country is something quite different than an admission.[10] Simply put, Petitioner, like any alien already within the United States may seek relief in various forms, including adjustment of status or cancellation of removal—but the Fifth Circuit has rejected the notion that these things are in any way the equivalent of seeking or being granted "admission" as that term is defined by the INA.

II. Prior to IIRIRA, § 1226 proscribed the process for "exclusion proceedings" and was completely replaced with current § 1226 at the same time and in conjunction with the amendments to the relevant portions of § 1225.

A. The government's new interpretation renders provisions of § 1226(c) enacted as part of IIRIRA at the same time as § 1225(b)(2)(A) completely meaningless.

At the outset, it is critical to point out that the government only addresses the Laken Riley Act's Amendment's to § 1226(c) rendered superfluous by its position on § 1225(b)(2)(A). It does so while completely ignoring the provisions of § 1226(c) which were put into place by IIRIRA at the same time § 1225(b)(2)(A). As explicitly explained during the hearing on December 22nd, § 1226 did not exist in its current form prior to

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[9] (ECF No. 9 p. 21.)

[10] *Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008), *as amended* (June 5, 2008) (recognizing that " 'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status"); *Marques v. Lynch*, 834 F.3d 549, 558-560 (5th Cir. 2016)(discussing all the reasons an alien already in the country is not applying for admission but for an adjustment of status and pointing out the similarity to arguments the government had made during the litigation on § 1182(h)).

IIRIRA. The version of it immediately prior to IIRIRA is attached at Ex. 2 of the Appendix. This is significant as it illustrates that most of its provisions were passed as part of IIRIRA—i.e., at the same time § 1225(b)(2)(A) was amended to its current form. When one considers the fact that they were passed as part of the same overhaul of the statutory scheme as the provisions of § 1225 at issue here, it makes blowing off the multitude of provisions rendered meaningless by the government's new position as "redundancies" or things that happen when legislating, hard to swallow.

It is important to recall that 100% of aliens in removal proceedings who are charged on the NTA under a ground of inadmissibility listed in § 1182 are applicants for admission; and 100% of the aliens in removal proceedings who are charged on the NTA under a ground of removability in § 1227 are NOT applicants for admission. This is important because Congress made the relevant amendments to § 1225 at the same time it amended § 1226 entirely to govern bond for aliens in § 1229a proceedings. In so doing, it provided for mandatory detention of aliens who were convicted of certain crimes, depending on whether the alien was an applicant for admission charged under § 1182 or an alien who was not applicant for admission charged under § 1227.

Under the government's new interpretation, the post-IIRIRA but pre-LRA version of the § 1226 can be seen below with the provisions rendered completely meaningless by its new interpretation highlighted and underlined:

> **(c) Detention of criminal aliens (1) Custody** The Attorney General shall take into custody any alien who-- (A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title, (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, (C) is deportable under section

> 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[1] to a term of imprisonment of at least 1 year, (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title;[11]

As illustrated above, subparagraph (c)(1)(A) and the first clause of subparagraph (c)(1)(D) are rendered completely meaningless by its new interpretation of § 1225(b)(2)(A). Said differently, the Court has to believe that Congress passed two statutes (§ 1225(b)(2)(A) and § 1226(c)(1)(A) and (D)) at the exact same time with one such statute rendering the other completely meaningless.

Further complicating the government's position are the implementing regulations rendered meaningless by its new interpretation. Indeed, the regulations governing an Immigration Judge's bond jurisdiction explicitly strip the Judge of authority over "arriving aliens" which are a subset of noncitizens who fall under the definition of "applicants for admission."[12] If, as the government now contends, every noncitizen who is an "applicants for admission" is subject to mandatory detention for bond purposes, there would have been no need for a regulation stating IJs do not have jurisdiction to grant "arriving aliens" a bond. The regulations specific prohibition against bond for "arriving aliens" implicitly confirms that Immigration Judges *do* have jurisdiction over other categories of "applicants

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[11] 8 U.S.C. § 1226(c)(emphasis added).

[12] 8 C.F.R. § 1003.19(h)(2)(iii)(B); *see also* 8 C.F.R. § 1.2 ("Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry.").

for admission," such as those like Petitioner, who were apprehended years after entry and deep in the nation's interior.[13]

B. Resendiz' interior vs. exterior distinction is a well-established distinction repeatedly made by the Supreme Court and the INA.

The government's motion for summary judgment claims there is no basis in law for the distinction between being within the country and those who are at the proverbial door asking to come in. But throughout this country's history, the difference between being within the United States—rather than at the border or a port of entry—has held great significance.[14] From the designation of Ellis Island as an immigrant processing center in 1892 to the wet-foot-dry-foot policy of the late 1900s, there can be no doubt that the United States' immigration laws have long recognized the important distinction between metaphorically knocking on the door and asking to come in, versus already being inside.[15] Indeed, prior to the passage of IRIRA the law provided for two distinct proceedings

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[13] *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (recognizing that "U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under §§ 1225(b)(1) and (b)(2) ... [and] to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)") (emphasis added); *see also Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) ("There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for . . .years.")

[14] *See Leng May Ma v. Barber,* 357 U.S. 185, 187 (1958) ("[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."); *see also Wong v. United States*, 373 F.3d 952, 971–72 (9th Cir. 2004) ("The Supreme Court has long recognized a distinction between the constitutional rights afforded those who have effected an entry into the U.S., whether legally or otherwise, and those considered never to have entered.") (citing *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001)).

[15] *See e.g., Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.")

depending on whether a non-citizen was seeking entry into the United States versus already being physically present.[16]

III. The government's motion indicates that it knows how many times the phrase "Fourth Amendment" appears in the habeas petition while simultaneously failing to realize that its new position would violate the Fourth Amendment and surely would have resulted in a different decision in *Jennings*.

The Government's reliance on *Jennings v. Rodriguez* fundamentally misapprehends the Fourth Amendment implications of that decision. In *Jennings*, the Court clearly understood 8 U.S.C. § 1225(b)(2)(A) to apply at the border. Indeed, it attached significance to the fact that § 1225(b)(2)(A) does not require a warrant for the detention of aliens encountered at the border and referred to removal proceedings, stating:

> For example, respondents argue that, once detention authority ends under §§ 1225(b)(1) and (b)(2), aliens can be detained only under § 1226(a). But that section authorizes detention only "[o]n a warrant issued" by the Attorney General leading to the alien's arrest. § 1226(a). If respondents' interpretation of § 1225(b) were correct, then the Government could detain an alien without a warrant at the border, but once removal proceedings began, the Attorney General would have to issue an arrest warrant in order to continue detaining the alien. To put it lightly, that makes little sense.[17]

This point about detention without a warrant at the border is, of course, consistent with the border exception to the warrant requirement. Moreover, in addition to the oral argument excerpts included in the habeas petition evidencing the number of times the Court was told § 1225's application was at the border, the opinion explicitly stated:

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[16] *See Vartelas v. Holder*, 566 U.S. 257, 262-63 (2012) ("In IIRIRA, Congress abolished the distinction between exclusion and deportation procedures and created a uniform proceeding known as "removal.")(citing 8 U.S.C. §§ 1229, 1229a and *Judulang v. Holder,* 565 U.S. 42, 46 (2011)).

[17] *Jennings v. Rodriguez*, 583 U.S. 281, 302, (2018).

> In sum, 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). The primary issue is the proper interpretation of §§ 1225(b), 1226(a), and 1226(c).[18]

This statutory framework aligns with the well-established border exception to the Fourth Amendment's warrant requirement. In stark contrast, as the *Jennings* opinion noted, § 1226 explicitly requires a warrant for detention. This distinction is not merely procedural; it reflects the Fourth Amendment's protections for individuals present within the United States—including those present unlawfully.

The *Jennings* Court reasoned that the bond provisions of § 1226 did not apply to arriving aliens because it would be illogical to allow an alien to be detained without a warrant at the border under § 1225(b)(2)(A), only to suddenly require one upon transfer to § 1229a proceedings. *Jennings* did not, however, purport to dispense with the Fourth Amendment's warrant requirement for interior enforcement, nor did it overturn decades of jurisprudence on the issue.

Indeed, "[l]ongstanding precedent establishes that '[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'"[19] The law in this area is not grey. Rather, for decades, it has been

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[18] *Id.* at 289 (emphasis added).

[19] *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni–Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); *see also Dunaway v. New York*, 442 U.S. 200, 216 (1979) ("[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.").

"clearly established . . . that immigration stops and arrests [are] subject to the same Fourth Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention."[20] The clarity of the law in this area is bolstered by the statutes proscribing its arrest authority: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1357. These statutes, "[c]ourts have consistently held," "must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause." [21] The "robust consensus of cases [and] persuasive authority" in this area makes it "beyond debate that an immigration officer . . . would need probable cause to arrest and detain individuals for the purpose of investigating their immigration status."[22]

Given the indisputable Fourth Amendment jurisprudence, the repeated statements indicating the *Jennings* decision understood § 1225(b)(2)(A) to be applied at the border, and *Jennings* explicit reference to the warrant requirement in § 1226 and the absence of one in § 1225(b)(2)(A), the government's new interpretation would have certainly changed the analysis completely.

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[20] *Id* at 215.

[21] *Id.* at 216-17 (citing *Au Yi Lau,* 445 F.2d at 222; *see, e.g., Tejeda–Mata v. Immigration & Naturalization Serv.,* 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu,* 519 F.2d 494, 496 (7th Cir.1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *see also United States v. Quintana,* 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

[22] (*Id.*)

IV. The government's motion misstates the Petitioner's citation to *Zadvdas* and places significant reliance on a single sentence at the end of *Demore*.

The Government mischaracterizes Petitioner's citation to *Zadvydas v. Davis*. Petitioner does not cite *Zadvydas* to claim that its holding regarding the post-removal period applies here. Rather, it was cited for the proposition that the Supreme Court has left no doubt that civil detention, including in the immigration context, requires a sufficient justification— namely preventing flight or danger to the communityy.[23] Where no such justification exists detention without due process is unconstitutional.[24]

Furthermore, the Government's reliance on a single sentence from the concluding paragraph of *Demore v. Kim*, 538 U.S. 510 (2003), is misplaced. *Demore* addressed the constitutionality of the mandatory detention provision in § 1226(c) under specific factual circumstances not present here. The *Demore* Court relied on Congressional findings that criminal aliens were evading removal by failing to appear for hearings.[25] Crucially, the Court noted that detention proceedings at that time lasted an average of 47 days—a far cry from the six-month average seen today. The sentence the Government relies upon, which quotes *Wong Wing*, 163 U.S. 228 (1896), explains confinement to be permissible when *necessary* to effectuate removal.

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[23] *Id.*

[24] *Id.*

[25] *Demore v. Kim*, 538 U.S. 510, 522-31 (2003).

Here, Petitioner was detained when showing up voluntarily to ICE for a check-in just as he has been doing for more than a decade. His current detention cannot be said to be "necessary" to effectuate his removal under such circumstances.

V. Other arguments included in the habeas petition that the government's motion completely ignored.

In addition to the above, it is important to point out that the government's motion made no attempt to address or reconcile the following arguments and authorities in the petition which contradict its position. These include but are not limited to the following:

- The habeas petition provided persuasive examples of the many post-IIRIRA statutory provisions which contradict the government's claim that Congress intended to punish/deter illegal entry through mandatory detention as well as detailing the actual ways Congress sought to accomplish this goal.[26]
    - The government's motion was completely silent on every point made by Petitioner on this issue.
- The habeas petition pointed to the undisputed fact that DHS has consistently treated Petitioner as though he is subject to § 1226, and therefore, have created a liberty interest that cannot be abrogated by the government unilaterally deciding to "switch tracks."[27] Further, it cited multiple well-reasoned decisions by district courts

[26] ECF No. 1 pp. pp. 34-45.

[27] ECF No. 1 pp. 65-66.

explicitly rejecting prior attempts by the government to switch an EWI alien from being subject to § 1226 detention to § 1225(b)(2)(A) in factually similar cases.[28]

  - The government's motion did not address this argument or the authorities cited at all in its response.

- The habeas petition provided a detailed analysis of the *Mathews* factors and the reasons those factors leave no doubt that Mr. Resendiz' current detention is unconstitutional under the due process clause.[29]

  - The government's response made no attempt to dispute this fact.

Petitioner continues to stand by each one of these points and incorporates by reference any and all such arguments made in the habeas petition in support of the position that his current detention is unlawful.

[28] ECF No. 1 pp. 65-66.

[29] ECF No. 1 pp. 64-69.

CONCLUSION

For the above stated reasons and those stated in all his previous filings, Mr. Resendiz respectfully requests the Court deny the government's motion for summary judgment, grant his habeas petition, and order ICE to immediately release him.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the U.S. District Court and counsel for the government in accordance with the Federal Rules of Civil Procedure on January 14, 2026.

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