

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FREDY EDUARDO MARTINEZ-
SANTOS,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Case No. 3:25-cv-0655-DCG

**REPLY BRIEF IN SUPPORT OF HABEAS PETITION AND MOTION FOR A
PRELIMINARY INJUNCTION**

RESPECTFULLY SUBMITTED,

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INTRODUCTION

The central issue presented by this habeas petition, like countless others nationwide, is straightforward: Are noncitizens like Petitioner, who are placed in removal proceedings after being encountered in the U.S. based on being present after entering without inspection (EWI), entitled to a bond hearing before a neutral adjudicator under 8 U.S.C. § 1226? Or, as the government now claims, are they subject to mandatory detention without any possibility of a bond hearing?

Petitioner's position affirms nearly three decades of settled agency practice and judicial interpretation.¹ The government's position, in stark contrast, asks this Court to adopt a radical reinterpretation of a thirty-year-old statutory scheme. This new theory would require the Court to believe that for thirty years, the agencies charged with administering these laws and the federal courts reviewing their actions have all profoundly misunderstood the statute's "plain language."² For these reasons, those stated below, and

¹ See e.g., *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6–7 (E.D. Mich. Sept. 9, 2025) ("The BIA's decision to pivot from three decades of consistent statutory interpretation and call for [Petitioner's] detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation.").

² See e.g., *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi, et al.*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Choglio Chafra v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No.

those stated in previous filings, Mr. Martinez-Santos respectfully requests the Court do the same here, find his detention to be unlawful, and order his immediate release.

DISCUSSION

I. The government's silence in response to the overwhelming majority of arguments made in the habeas petition much less the extensive legal authorities supporting those arguments speaks volumes.

Mr. Martinez-Santos' Habeas Petition and Motion for Preliminary injunction provided an extensive and detailed discussion of the relevant laws, regulations, and cases interpreting them.³ The government's response failed to address the substantial majority of these arguments and authorities. Indeed, the government's response was completely silent on the following:

- The habeas petition provided detailed discussion and analysis of the statutory definitions of "application for admission" and "admission or admitted" in 8 U.S.C. §§ 1101(a)(4) and (13).⁴ This included citations to interpretive case law from nearly every circuit, including the 5th Circuit, leaving no doubt these definitions are

1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025); *Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025)(agreeing on substantive claim but oddly not ordering any real relief in this decision); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *7 (D.N.J. Sept. 26, 2025); *S.D.B.B. v. Johnson et. al.*, No. 1:25-CV-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025).

³ ECF Nos. 1 & 2.

⁴ ECF No. 1 pp. 19-24.

"expressly limited and do[] not encompass a post-entry adjustment of status," because it "refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry."⁵

- The government's response does not even mention these statutory definitions or any of the caselaw interpreting them.
- The habeas petition addressed the fact that the *Jennings* decision was unquestionably based on the understanding that "1225(b)(2)(A)" applies to those at or near the border and § 1226 applies to aliens encountered in the interior, as well as the repeated statements by the Solicitor General explaining that EWI aliens like Petitioner encountered in the interior long after entry are entitled to bond under § 1226.⁶ It further detailed the multitude of reasons the constitution permitted such an understanding but plainly does not allow for the government's new interpretation.⁷
 - The government's response was completely silent on every point made by Petitioner on this issue.
- The habeas petition provided persuasive examples of the many post-IIRIRA statutory provisions which contradict the government's claim that Congress

⁵ *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete-Ramirez*, 741 F.3d at 1051); *see also Papazoglou*, 725 F.3d at 793 ("That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization."); *Bracamontes*, 675 F.3d at 385 ("Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities."); *Martinez*, 519 F.3d at 544 (recognizing that "'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status").

⁶ ECF No. 1 pp. 46-49.

⁷ ECF No. 1 pp. 57-61.

intended to punish/deter illegal entry through mandatory detention as well as detailing the actual ways Congress sought to accomplish this goal.⁸

- The government's response was completely silent on every point made by Petitioner on this issue.
- The habeas petition detailed the reasons that, even if Hurtado were decided correctly (which it was not), it could not be retroactively applied to Petitioner under longstanding Supreme Court precedent.⁹
 - The government's response was completely devoid of a single word on this issue.
- The habeas petition provided a detailed analysis of the *Mathews* factors and the reasons those factors leave no doubt that Mr. Martinez-Santos current detention is unconstitutional under the due process clause.¹⁰
 - The government's response made no attempt to dispute this fact.

II. Mr. Martinez-Santos is an "applicant for admission" but he is NOT "seeking admission" which is an absolute predicate for § 1225(b)(2)(A).

At the outset, it is important to point out that the government's response places a great deal of focus on the fact that § 1225(b)(2)(A) includes the term "applicant for admission" while simultaneously asking that no significance be given to the qualifier of its application to those "seeking admission." If it applied to all "applicants for admission"

⁸ ECF No. 1 pp. pp. 34-45.

⁹ ECF No. 1 pp. 62-64.

¹⁰ ECF No. 1 pp. 64-69.

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.¹¹

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

This statute, as countless courts have repeatedly found, does not apply to every "applicant for admission" encountered anywhere and at any time. To be subject to mandatory detention under § 1225(b)(2)(A), the plain text requires an individual to be 1) an "applicant for admission"; 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not clearly and beyond a doubt entitled to be admitted."^{68F68F}¹²

As discussed below, the government's new 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 and the second, critical element: that the person must be actively "seeking admission." Worse still, the government's response appears to claim that applying for relief from removal in § 1229a proceedings is "seeking admission." This is not simply

¹¹ § 1225(b)(2)(A) (alteration added).

¹² 8 U.S.C. § 1225(b)(2)(A); *see also* *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)).

false but wholly ignores Congress definitions and the terms of art associated with relief inside the U.S. versus seeking it at a POE.

A. The government's new 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 terms "admission," "admitted," and "application for admission." This is problematic because, as discussed above, Congress defined these terms, and those definitions have been applied in the many different provisions that include them throughout the INA. 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).

Here, the government asks the Court to find an EWI alien who is present in the interior of the U.S. as somehow "seeking admission" from within it, and in so doing, ignores the definitions found at §§ 1101(a)(4) and (a)(13). Meanwhile, in the litigation on the issue on eligibility for a waive under § 1182(h) , the government argued that an alien's adjustment of status to that of a LPR inside the U.S. should be interpreted to constitute being "admitted to the United States as an alien lawfully admitted for permanent residence."¹³ The Fifth Circuit, like numerous others addressing the issue, rejected the

¹³ *Medina-Rosales*, 778 F.3d at 1446.

government's attempts to effectively nullify the unambiguous definition of admission proscribed by Congress.¹⁴

Similar to ignoring the "admitted to the United States" phrase when litigating the § 1182(h) issue, the government in its litigation of this issue ignores the "seeking admission" phrase Congress specifically included in § 1225(b)(2)(A). Simply put, the case law in every circuit, including the Fifth, makes clear that an "admission" "contemplate[s] a physical crossing of the border following the sanction and approval of United States authorities."¹⁵ The government's response does not even acknowledge the expansive body of case law interpreting provisions of the INA where terms related to "admission" appear.

B. Mr. Martinez-Santos may seek to "adjust his status" or ask the IJ to "cancel his removal," but he is not "seeking admission" as that is, according to the Fifth Circuit, something that happens from the outside asking to come in.

In its response, the government claims that Petitioner is "still seeking admission" under § 1225(b)(2) because he has not agreed to leave.¹⁶ This conclusion is reached based on a number of cascading errors undoubtedly the result of Congress using the "language of specialists" throughout the INA which are easily misunderstood when using the language of ordinary people. This was pointed out by the Third Circuit, which 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

¹⁴ *Martinez v. Mukasey*, 519 F.3d 532, 543-44 (5th Cir. 2008)

¹⁵ *Bracamontes v. Holder*, 675 F.3d 380, 382, 384-89 (4th Cir.2012).

¹⁶ (ECF No. 9 p. 21.)

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, Congress used the language of the specialist versed in the execution of the immigration laws.¹⁷

Here, the government seeks to attribute plain and ordinary meaning to the "specialized legal language" used throughout the INA. In so doing, it has failed to realize the numerous U.S. Circuit Courts, including the Fifth Circuit, who have repeatedly and unequivocally held that obtaining legal status within the United States¹⁸ is not an admission. Instead, for example, if an alien files an application to become a LPR made from within the United States, they are seeking an "adjustment of status"—not an

¹⁷ *Lopez v. Att'y Gen.*, 49 F.4th 231, 234 (3d Cir. 2022) (emphasis added)(citations omitted and cleaned up extensively).

¹⁸ *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) ("This definition "is limited and does not encompass a post-entry adjustment of status," because it "refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry."); *see also Papazoglou*, 725 F.3d at 793 ("That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization."); *Bracamontes*, 675 F.3d at 385 ("Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities."); *Martinez*, 519 F.3d at 544 (recognizing that "'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status")

admission.¹⁹ Likewise, an alien who applies for relief before the IJ pursuant to 8 U.S.C. § 1229b(b) they are asking to have their "removal cancelled"—not to be admitted. Simply put, as the Fifth Circuit has plainly and repeatedly pointed out, "an admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status."²⁰

III. The government's new position relies almost entirely on false premises concerning IIRIRA's goals and the provisions that sought to achieve them.

As explained in the habeas petition, (1) the significance of being an "applicant for admission" has nothing to do with bond and everything to do with the allocation of the burden of proof in § 1229a proceedings; and (2) the real deterrent to entering the country EWI established by IIRIRA were the 3-year and 10-year bars for unlawful presence.²¹ The government made no attempt to dispute these arguments or the legal authorities supporting them. Accordingly, there is no need to repeat the arguments here.

Though the government did not address the arguments in the case initiating documents filed by Petitioner pointing out the anomaly IIRIRA sought to fix had nothing to do with mandatory detention, the government's response repeated this unsupported claim. Accordingly, Petitioner will briefly address that argument. Petitioner will then

¹⁹ *Id*

²⁰ *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)).

²¹ ECF No. 1 pp. 33-34 and 43-47.

proceed to address the government's claims that giving bond to EWI aliens somehow promotes violating the INA while simultaneously ignoring the absurd result of its new position (i.e. aliens who have committed plainly more egregious violations of the INA get bond hearings).

- A. The "anomaly" IIRIRA aimed to fix had nothing to do with bond or mandatory detention—rather, it was the disparate *procedural* treatment (i.e. expedited removal) of aliens arriving at a Port of Entry (POE) versus those who entered without inspection (EWI).

The government has in this case, and countless others across the country, repeatedly claimed IIRIRA's goal to treat EWI aliens the same as those who present at a POE the same by mandating detention for the duration of removal proceedings under § 1229a. But this argument rests entirely on the false premise that aliens who present at the POE and are subjected to expedited removal are subjected to "mandatory detention."

IIRIRA's primary goals were to disincentivize illegal entry and fraud in immigration. But the provisions enacted to achieve this goal are unrelated to detention during INA § 1229a proceedings. The "anomaly" IIRIRA aimed to fix had nothing to do with bond. Rather, it concerned the disparate *procedural* treatment (i.e. expedited removal) of aliens arriving at a Port of Entry (POE) versus those who entered without inspection (EWI).

Prior to IIRIRA, aliens arriving at a POE without proper documents were subject to expedited removal under 8 U.S.C. § 1225(b)—a summary process culminating in

immediate removal without a hearing before an Immigration Judge (IJ).²² In stark contrast, an alien who entered without inspection, even if apprehended near the border moments after entry, was, prior to IIRIRA, statutorily entitled to full removal proceedings under 8 U.S.C. § 1229a. IIRIRA corrected this procedural disparity by expanding the expedited removal provisions to EWI aliens who were encountered within two years of entry and within a geographic area defined by regulation and inadmissible under 8 U.S.C. § 1182(a)(6)(C) or 8 U.S.C. § 1182(a)(7) to expedite removal just as they would have been if at a POE.²³ This "anomaly" of giving aliens found a few miles from the border and hours after entering full § 1229a proceedings while those similarly situated at a POE were order removed without any hearing under the expedited removal statute was corrected by IIRIRA's expansion of expedited removal to such aliens.²⁴

Both pre- and post- IIRIRA, aliens who are subjected to expedited removal that do not claim any fear of return are not supposed to be "detained" in custody—rather, the purpose and goal is immediate removal. Indeed, the very purpose of expedited removal is to effectuate an *immediate* removal, entirely bypassing the need for any detention or hearing. This goal of immediacy is codified in INA § 1231(c), which governs the "removal of aliens arriving at [a POE]" and mandates they "shall be removed immediately," unless

²² See generally § 1225(b)(1); see also ECF No. 12 pp. 19-28.

²³ See *id.*

²⁴ See *id.*

impracticable. This focus on *immediacy*, not custodial detention, was the paradigm IIRIRA extended to recent EWI aliens.

Furthermore, those few aliens who do not claim fear and are not immediately removed through the expedited removal summary process in 8 U.S.C. § 1225(b)(1), are not—at that point—subject to mandatory detention under either § 1225 or § 1226. Rather, once issued a removal order any subsequent detention is pursuant to 8 U.S.C. § 1231 which provides for detention during the statutory removal period which begins the moment a removal order is final.

In sum, IIRIRA did seek to streamline removal proceedings by fixing the anomaly of that only allowed for the summary expedited removal process for aliens at a POE and not those who entered recently and were encountered near the border. It had nothing to do with mandatory detention as any detention associated with the process set forth in § 1225(b)(1) is intended to last for a matter of hours—an impossibility for aliens who are placed in § 1229a proceedings.

- B. Every alien in removal proceedings under 8 U.S.C. § 1229a has committed a violation of our immigration laws and under the government's new position allows bond hearings for aliens whose violations include successfully gaining admission through fraud, failing to timely depart after promising immigration officials they would, and those who are convicted of a misdemeanor crime of moral turpitude.

The government's repeated assertions that granting a bond hearing to an EWI alien contravene Congressional intent by "rewarding" a violation of law creates a false and unsupported distinction. This position critically ignores the dispositive fact that every noncitizen in removal proceedings is present in those proceedings precisely because they

have violated a provision of the INA. The government's attempt to carve out a uniquely disfavored class from a universe of violators is not only illogical but also contrary to established jurisprudence.

Under its theory, a noncitizen who entered twenty years ago on a visitor visa, made an express promise to an inspecting officer to depart, and then willfully violated that promise by absconding for two decades is entitled to a bond hearing. Likewise, an individual who perpetrated an affirmative fraud upon consular and immigration officials to secure a fiancé visa would be granted a bond hearing. Yet, the government insists that Petitioners, who entered without inspection but have not committed any offenses that would subject them to mandatory detention, must be mandatorily detained without any reason to believe or consideration of whether they are a danger or flight risk. This arbitrary distinction finds no support in reason or justice and elevates the form of an immigration violation over its substance, creating indefensible and inequitable outcomes.

IV. Prior to IIRIRA, § 1226 proscribed the process for "exclusion proceedings" and was completely replaced with the current version of § 1226 at the same time the amendments to the relevant portions of § 1225 were made—which the government now interprets to render 50% of § 1226(c)(1)'s subparagraphs, not just the LRA, completely meaningless.

At the outset, it is critical to point out that the government's arguments in response to the fact that that multiple provisions of § 1226(c) are rendered meaningless by its claim that every applicant for admission is subject to mandatory under § 1225(b)(2)(A), fail to account for the fact that § 1226 did not exist in its current form prior to IIRIRA. The version of it immediately prior to IIRIRA was attached to the Appendix filed with the habeas petition in this case at Exhibit 2. This is significant as it illustrates that most of its provisions

were passed as part of IIRIRA. 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. Among other reasons, 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. Then, In January 2025, Congress passed the Laken Riley Act in which it added a new subparagraph to the mandatory detention provisions of § 1226(c).

This statute, as amended by the LRA to add subparagraph (E) (in its entirety), can be seen below. The version below has been altered to highlight and underline those provisions which are only applicable to aliens who are applicants for admission, with the LRA's amendments highlighted, underlined, and italicized.

(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 sentence¹ 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, or (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.²⁵

As illustrated above, subparagraph (c)(1)(A), the first clause of subparagraph (c)(1)(D), and subparagraph (c)(1)(E), do not apply to anyone who is removable under 8 U.S.C. § 1227 (i.e. those who entered the United States legally after inspection by an immigration officer). Rather, those provisions only apply to aliens who are charged under § 1182—100% of which are applicants for admission. Put another way, of § 1226(c)'s five subparagraphs two and a half of them are only applicable to aliens falling within 1225(a)(1)'s definition of "applicant for admission."²⁶

The above also illustrates that, while the response's statement that "§ 1226 can clearly apply to another category of aliens that are not covered under § 1225—those who are *not* applicants for admission" is technically true, it is not true of the highlighted paragraphs above. For example, the alien from *Jennings* referenced by the government's response, was in proceedings under § 1227 and subject to mandatory detention under § 1226(c)(1)(B)—which is not one of the highlighted provisions above. Conversely, an LPR

²⁵ 8 U.S.C. § 1226(c)(emphasis added).

²⁶ *Id.*

encountered in the country could not and would not be subject to mandatory detention under subparagraph (E) added by the LRA.

The amendments made by the LRA were specific to proscribe mandatory detention of noncitizens who meet both the status requirement of subclause (i) (inadmissibility for EWI, fraud, or lack of documents; aka “applicants for admission”) *and* the conduct requirement of subclause (ii) (a criminal charge, arrest, or conviction for a specified offense).²⁷ After signing the LRA into law, the president touted its importance, stating: “It’s a landmark law that we are doing today, it will save countless innocent American lives.”²⁸

Claims about § 1226 simply having some redundancies, therefore, do not paint the real picture. The reality is that one must believe Congress on multiple occasions has amended § 1226(c) to include provisions that have no meaning or application whatsoever.

V. The government’s jurisdictional and exhaustion arguments are without merit and, like the rest of its positions, have been so rejected by Article III courts in recent weeks.

“Because it concerns the Court’s power to decide the case, ‘[j]urisdiction is always first.’”²⁹ In this case, however, the question of whether this Court has jurisdiction is hardly

²⁷ *Id.*; see also *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *5 (“1226(c)(1)(E) (enacted by the Laken Riley Act) requires mandatory detention for people who were charged as being (1) inadmissible under § 1182(a)(6)(A)(i) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the U.S.) *and* who (2) have been arrested, charged with, or convicted of certain crimes not relevant here.”).

²⁸ After signing the LRA into law, the president touted its importance, stating: “It’s a landmark law that we are doing today, it will save countless innocent American lives. <https://www.npr.org/2025/01/29/g-s1-45275/trump-laken-riley-act>.”

²⁹ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025) (quoting *Louisiana v. U.S. Dep’t of Energy*, 90 F.4th 461, 466 (5th Cir. 2024) (quoting *Arulnanthy v. Garland*, 17 F.4th 586, 592 (5th Cir. 2021)); see also *United States v. Willis*, 76 F.4th 467, 479 (5th Cir.

a headlining argument as another WDTX court has repeatedly rejected nearly identical jurisdictional arguments by the government in a case raising many of the same claims raised by Petitioner here.³⁰ Mr. Martinez-Santos respectfully requests that the Court reject the government's jurisdictional arguments in this case for the same reasons its been rejected by many district courts.³¹

A. Section 1252(g) is narrowly confined to three discrete executive actions and does not preclude challenges to the legality of detention.

The government argues that 8 U.S.C. § 1252(g) divests this Court of jurisdiction. That provision states that "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."³² The government contends that because Petitioner's detention "arises from the decision to commence removal proceedings against him," his claim is barred.³³ But this argument is built on a faulty premise as it seeks to "sweep in any claim that can technically be said to 'arise from' the three listed actions."³⁴ But, as the *Lopez-Arevelo* court explained:

[T]he Supreme Court has "not interpret[ed] this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three

2023) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998)).

³⁰ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025).

³¹ *Id.* at *3-5.

³² 8 U.S.C. § 1252(g).

³³ (ECF No. 7 pp. 12-13.)

³⁴ *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *3 (W.D. Tex. Sept. 22, 2025).

specific actions themselves.” *Jennings*, 583 U.S. at 294, 138 S.Ct. 830 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999)). Thus, § 1252(g) applies only “to protect from judicial intervention the Attorney General's long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders.” *Duarte*, 27 F.4th at 1055 (quoting *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999)). The statute “does not bar courts from reviewing an alien detention order, because such an order, ‘while intimately related to efforts to deport, is not itself a decision to “execute removal orders” and thus does not implicate section 1252(g).’” *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000) (citation omitted); accord *Kong v. United States*, 62 F.4th 608, 617–18 (1st Cir. 2023) (collecting cases).³⁵

Here, Petitioner is not challenging Respondents’ decision to execute a removal order, the decision to commence proceedings, or adjudicate his removal proceedings. Rather, Petitioner challenges his continued detention as unlawful, and “[s]uch claims are not barred by § 1252(g).”³⁶ Accordingly, § 1252(g) does not deprive the Court of jurisdiction over Petitioner’s claims and the government’s arguments to the contrary are without merit.

B. Neither 1252(b)(9) (alone or together with 1252(a)(5)) are applicable to Petitioner’s claims related to ongoing unlawful detention in violation of the statutes and/or constitution—as evidenced by *Jennings* which the government extracts phrases from without acknowledging that it held courts have jurisdiction to review such claims.

The government's reliance on 8 U.S.C. § 1252(b)(9), the so-called "zipper clause," is misplaced. This provision consolidates judicial review, stating that "judicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States . . . shall be available only in judicial review of a

³⁵ *Id.* at *4.

³⁶ *Id.* (citing *Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278, at *2–3 (W.D. La. Sept. 11, 2025)).

final order of removal.”³⁷ In an effort to give its argument merit, the government misstates both Petitioner’s claim and Supreme Court precedent. Each of these are addressed in turn.

First, the government’s response states that “Petitioner will no doubt try to sidestep the jurisdictional bar by claiming that he is not challenging the decision to *commence* proceedings, but merely his *detention*.”³⁸ This is not true. Rather, as is abundantly clear throughout his filings, he is challenging the government’s refusal to provide him with the bond hearing he is entitled to under the law and U.S. constitution. In fact, Petitioner does not even claim that EWI noncitizens are entitled to a bond—just the bond hearing proscribed by 8 U.S.C. § 1226. Petitioner simply asks for what countless courts have said he and others similarly situated are entitled to: a bond hearing before a neutral adjudicator. Much like its claims about what § 1225(b)(2)(A)’s plain language says, the government’s claim that Petitioner challenges his detention in the first place is simply incorrect.

Similarly, the government’s claim that anything and everything related to removal proceedings must be “zipped” into a PFR filed with a circuit court of appeals is not rooted in reality. The government’s argument in this regard fundamentally misreads and misrepresents the Supreme Court’s holding in *Jennings v. Rodriguez*. The government’s position rests on a selective reading of *Jennings* that omits its core reasoning. While the government correctly notes that the *Jennings* court discussed challenges to “the decision to

³⁷ 8 U.S.C. § 1252(b)(9).

³⁸ (ECF No. 14 at 14).

detain [an alien] in the first place" falling within § 1252(b)(9)'s scope,³⁹ it conveniently ignores the fact that the Court held that § 1252(b)(9) did *not* bar jurisdiction over the respondents' claims over their detention in that very case.⁴⁰

The claims in *Jennings* were functionally, with respect to jurisdiction, similar in the relevant aspects to Petitioner's claim here: a challenge to the detention of noncitizens without bond hearings.⁴¹ The Supreme Court found jurisdiction proper because the respondents were "not challenging the decision to detain them in the first place or to seek removal."⁴² Instead, they were challenging "the *extent of the Government's authority* to detain them without a bond hearing" and "the *constitutionality of their detention* under the Due Process Clause."⁴³

This is the dispositive distinction that the government's argument goes out of its way to avoid. Petitioner is not contesting the government's discretionary decision to take him into custody at the outset of his removal proceedings. He is mounting a foundational challenge to the government's claims about the statutory and constitutional framework under which he is being detained without a bond hearing. He argues that the government's interpretation of § 1225(b) is statutorily erroneous and, as applied to him, violates the Fifth

³⁹ *Jennings*, 583 U.S. at 294-95.

⁴⁰ *See id.* (holding it had jurisdiction to consider the claims made by the non-citizens in that case that they were being detained in violation of the law and constitution).

⁴¹ *Id.*

⁴² 583 U.S. at 295.

⁴³ *Id.* (emphasis added).

Amendment's guarantee of procedural due process. This is not a challenge to a "discretionary judgment" or an "action or decision" regarding detention, which might be shielded by a provision like § 1226(e). Rather, as the court in *Lopez-Arevelo* explained in its analysis of § 1226(e), such provisions do not preclude" challenges to the statutory framework that permits the alien's detention without bail."⁴⁴ Petitioner's claim is precisely such a challenge.

The government's attempt to reframe this classic habeas claim—a challenge to a present, ongoing state of unlawful confinement—as a mere challenge to a past discretionary act is a transparent effort to force the claim into the § 1252(b)(9) box. This maneuver must be rejected, not only because it contradicts *Jennings*, but also because it leads to a constitutionally suspect outcome. The government's proposed review mechanism—a petition for review to the circuit court after a final order of removal is issued by the Board of Immigration Appeals (BIA)—is a wholly illusory remedy for the injury alleged. The constitutional harm is the ongoing deprivation of liberty *without a timely bond hearing*. A judicial determination that occurs months or years later, after a final removal order, cannot retroactively provide the hearing that was unconstitutionally denied. It cannot restore the days, months, or years of liberty lost during the period of unlawful pre-order detention. Such a delayed and inadequate process would render the Great Writ a nullity for this entire class of detainees.

A similar argument was in *Lopez-Arevelo*, explaining:

⁴⁴ *Lopez-Arevelo*, at 5 (quoting *Jennings*, 583 U.S. at 295).

Section 1252(a)(5) [and (b)(9) are] narrowly applicable provision[s], which ‘specif[y] that the only means of obtaining judicial review of a final order of removal, deportation, or exclusion is by filing a petition with a federal court of appeals.’ It is a ‘zipper clause,’ which ‘funnel[s] judicial review of final deportation orders ... into a single mechanism. Thus, where there is no final removal order and a habeas petitioner’s “arrest and detention claims are independent of any future removal order,” § 1252(a)(5) [and (b)(9)] do[] not prevent the district court from hearing such claims.’⁴⁵

In sum, none of the statutes or cases relied on by the government act as jurisdictional bars to Petitioner’s claim that he is being unlawfully detained in violation of the INA and U.S. constitution.⁴⁶

VI. Application of the Mathew's factors, as set forth in detail in previous filings, demonstrates that Mr. Martinez-Santos' detention is unlawful.

The three-part test set out in *Matthews v. Eldridge*, 424 U.S. 319 (1976) is the test to determine whether civil detention violates a detainee’s due process rights.⁴⁷ Mr. Martinez-Santos laid out in detail the reasons his current civil detention is in violation of his due process rights.⁴⁸ Indeed, courts across jurisdictions are applying *Matthews* to EWI cases and granting relief to petitioners on this basis.⁴⁹ For the reasons set forth in detail in

⁴⁵ *Lopez-Arevelo*, 2025 WL 2691828, at *5 (citations omitted and cleaned up).

⁴⁶ Though not explicitly raised and argued by the government, it should be noted that administrative exhaustion is not required in these circumstances. Exhaustion, including an appeal to the BIA, is not required for habeas petitions and, in any event, would be futile here. The government’s internal memorandum issued on July 8, 2025, announcing both the complete change in its interpretation of § 1225(b)(2)(A) combined with the BIA’s *Hurtado* decision fulfilling Lyons prophecy that this new interpretation would be done “in conjunction” with EOIR, leave no doubt that without federal court intervention every EWI noncitizen will be deprived of a bond hearing.

⁴⁷ See *Hernandez-Fernandez v. Todd Lyons*, 2025 WL 2976923, at *8 (W.D. Tex. Oct. 21, 2025).

⁴⁸ ECF No. 1 pp. 66-71; ECF No. 2 pp. 13-25.

⁴⁹ See *Martinez v. Kristi Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Martinez v. Secretary of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *(W.D. Tex. Sept. 8, 2025) (granting petitioner’s request for a temporary restraining order).

both the habeas petition and Motion for Preliminary Injunction, Mr. Martinez-Santos respectfully requests this Court do the same here and find all three *Matthews* factors favor Mr. Martinez-Santos' position. Specifically, he requests this Court find he is likely to succeed in demonstrating that his detention without a bond hearing based on nothing more than being EWI contravenes his due process rights under the Fifth Amendment.⁵⁰

VII. Petitioner and the government agree on one thing: the remedy for unlawful detention in the context of a habeas petition is an order for immediate release.

The government's response correctly states: "The only relief available to Petitioner through habeas is release from custody."⁵¹ Petitioner agrees that ordering his immediate release is the most appropriate remedy under the statute.⁵² And, perhaps most importantly, the Supreme Court, has made this fact abundantly clear, explaining:

The writ simply provided a means of contesting the lawfulness of restraint and securing release.

In 1768, Blackstone's Commentaries—usually a “satisfactory exposition of the common law of England,”—made this clear. Blackstone wrote that habeas was a means to “remov[e] the injury of unjust and illegal confinement.” Justice Story described the “common law” writ the same way. Habeas, he explained, “is the

⁵⁰ See *Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

⁵¹ ECF No. 4 p. 2.

⁵² See e.g., *Preiser v. Rodriguez*, 411 U.S. 475, 484, (1973) (“It is clear ... from the common-law history of the writ ... that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody”); *Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005) (similar); *Munaf v. Geren*, 553 U.S. 674, 693, (2008) (similar).

appropriate remedy to ascertain ... whether any person is rightfully in confinement or not.”⁵³

In sum, it is well-established that immediate release from custody is the appropriate remedy under a habeas for unlawful detention. Accordingly, Petitioner respectfully requests this Court remedy his current unlawful detention by ordering his immediate release from custody.

CONCLUSION

For the above stated reasons and those stated in all his previous filings, Mr. Martinez-Santos respectfully requests the Court find Respondent’s detention of him without a bond hearing is contrary to the both the statutory scheme and the U.S. Constitution for the reasons set forth in his petition and above, and as a result order ICE to immediately release him.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

⁵³ *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020) (internal citations omitted and cleaned up).

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 December 18, 2025.

/s/ Dan Gividen
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