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

JOSE ANTONIO CEBALLOS ALBUERNES,

Petitioner,

v.

KRISTI NOEM, et al.

Respondents.

Civil Action No.: 3:25-cv-00681-LS

PETTITIONER'S REPLY IN SUPPORT OF THE PETITION FOR WRIT OF HABEAS CORPUS

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I. This Court Has Jurisdiction over Petitioner's Claim.

Petitioner challenges the statutory authority cited by Respondent's for his current detention, a claim that falls squarely within this Court's jurisdiction pursuant to 28 U.S.C. § 2241, which authorizes a writ where the individual is detained "in violation of the Constitution or laws or treaties of the United States." §2241(c)(3). In asserting that this court lacks jurisdiction to review this claim, Respondents rely upon 8 U.S.C. §1252(g), which bars judicial review over any

claim "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." However, the Supreme Court has noted that this provision is to be read narrowly and limited to habeas challenges stemming from three specific actions taken by the Department: (1) the *commencement* of removal proceedings, (2) the *adjudication* of a removal case, or (3) the *execution* of a final removal order. *Jennings v. Rodriguez*, 583 U.S., at 294 (2018) (citing *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

Contrary to Respondents' assertion, none of the enumerated matters in this section relate to Petitioner's claim for relief. Petitioner does not challenge the legal basis for his initial arrest and detention, his subsequent finding of admissibility or removability, the decision to dismiss his removal case (which he is currently challenging in the appropriate forum), or a discretionary denial of bond. There is no final order of removal to execute in this matter. Rather, he is solely challenging the legality of his current detention pursuant to the statutory authority as cited by the Respondents and requesting limited relief in the form of release or, alternatively, a bond hearing. See, *Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025); *Granados v. Noem,* No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Galdamez Martinez v. Noem*, No. SA-25-CV-01373-JKP, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Martinez Orellana v. Noem*, No. 5:25-CV-1028-JKP, 2025 WL 3471569 (W.D. Tex. Nov. 24, 2025) (instances of judges in the Western District ordering release without bond hearing).

As to Respondent's assertions that 8 §1225(b)(4) and 8 U.S.C. §1252(b)(9) require that Petitioner raise his challenge before an Immigration Judge, courts within this Division have held repeatedly that neither provision is relevant to a petition solely challenging the legality of a

noncitizen's detention. *See, Erazo Rojas v. Noem*, No. 3:25-cv-443-KC, 2025 WL 3038262, at *2 (W.D. Tex. Oct. 30, 2025) ("[Respondent's] appeal to § 1225(b)(4) does not alter the Court's prior conclusion that § 1252(b)(9) does not bar it from hearing a habeas petitioner's challenge to their detention. Not only does § 1225(b)(4) not speak to the distinction between detention and deportability that…is essential to the jurisdictional analysis, but it is also entirely inapplicable here. Section 1225(b)(4) addresses an immigration officer's challenge to another officer's favorable determination that a noncitizen is admissible."); *Santiago*, 2025 WL 2792588, at *3–5 (rejecting §§ 1252(g) and 1252(b)(9) arguments); *Lopez-Arevelo,* 2025 WL 2691828, at *4–5 (rejecting § 1252(g) arguments). Accordingly, this court retains jurisdiction over the claim.

II. Petitioner Cannot Be Detained under 8 U.S.C. § 1225(b)(1) OR (b)(2).

Respondents argue that Petitioner was detained pursuant to 8 U.S.C. § 1225(b)(1) after he entered the U.S. in April 2022, and, therefore, the same subsection authorizes his detention now.[1] This argument fails for several reasons. First, the only detention authority explicitly cited by Respondents at the time of Petitioner's April 2022 arrest was 8 U.S.C. § 1226(a), a position they cannot now abandon the simply because it is no longer convenient. *See, Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *5 (D.N.H. Sept. 8, 2025) (explaining that the government cannot ignore the statutory authority it relied on when releasing and arresting petitioner to now apply different statutory authority to his recent re-detention);

[1] *See,* ECF No. 5 at 2. In cases involving similar fact patterns (an initial apprehension shortly after entry followed by an order of release on recognizance pursuant to 8 U.S.C. §1226), Respondents have been equivocal regarding which paragraph of §1225(b) is controlling in the context of a noncitizen's re-detention. *See, e.g., Urquiza-Orozco v. Bondi et al.*, No. 5:25-cv-01428-XR (W.D. Tex. Nov. 20, 2025); *Vega v. Thompson et al.*, No. 5:25-cv-01439-XR (W.D. Tex. Nov. 21, 2025) (citing detention authority under §1225(b)(2)) versus *Tinoco Pineda v. Noem*, No. 5:25-CV-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025) (alleging detention authority under §1225(b)(1)). Even in the present case, Respondents have asserted that §1225(b)(1) governs, but also that "even if this Court were to order his release from custody, he would be subject to re-arrest as an alien present within the United States without having been admitted," presumably pursuant to §1225(b)(2). ECF No. 5 at 2. Petitioner maintains that his current detention is neither governed by §1225(b)(1) nor (b)(2).

Sandoval v. Raycraft, 2025 WL 2977517, at *8 (E.D. Mich. Oct. 17, 2025) ("The Court cannot credit this new position that was adopted post-hac, despite clear indication that [Petitioner] was not detained under this provision when he was first apprehended, arrested and bonded in [2021].") *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007) (holding that a noncitizen released on an "Order of Release on Recognizance" necessarily must have been detained and released under § 1226 because he was not an "arriving alien" under the regulations governing § 1225 examinations).

Second, the notion that the classification and inspection regime detailed in both §1225(b)(1) and (b)(2) carries forward indefinitely into the future following an arrest, even where the noncitizen has subsequently be released into the interior, has been rejected by numerous courts, including the court in *Maldonado Bautista*, which affirmed that §1225 limited in its temporal scope. No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *15 (C.D. Cal. Nov. 25, 2025). *See also, Mendoza Euceda v. Noem, et al.,* 5:25-CV-1234-OLG at *9 (W.D. Tex. Sep. 30, 2025) ("A noncitizen who entered years ago and has since resided in the United States is not, by any plain sense meaning of the term, "seeking admission" when apprehended by interior enforcement officers"); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025) ("seeking admission" means " action – something that is currently occurring, and in this instance, would most logically occur at the border upon inspection…");

Accordingly, even assuming that Petitioner was, or could have been, classified as an "applicant for admission" under 8 U.S.C. §1225(a)(1) when he was initially arrested, the government's authority to detain him under §1225(b)(1) evaporated the moment he was released, not only because the inspection process had been abandoned, but also because the government

never satisfied the basic requirements for mandatory detention under that provision. Section 1225(b)(1) mandates the detention and expedited removal of applicants for admission who have been (1) physically present in the U.S. for less than two years and (2) who are found inadmissible pursuant to either 8 U.S.C. §1182(a)(6)(C) (misrepresentations) or (a)(7) (insufficient documents). *See,* 8 U.S.C. §1225(b)(1)(A)(i-iii). Prior to his release from DHS custody in 2022, Petitioner was not deemed inadmissible under either of those provisions. Instead, he was simply charged under §1182(a)(6)(A)(i). *See* ECF No. 2 at 33. Given this omission, Respondents cannot now assert their detention authority under §1225(b)(1) endures as Petitioner has resided in the U.S. for more than three years *See, e.g., Tinoco Pineda v. Noem*, No. 5:25-CV-01518-XR, 2025 WL 3471418 at *6-7 (W.D. Tex. Dec. 2, 2025).

Third, the expedited removal and detention scheme contemplated under §1225(b)(1) cannot co-exist with an active removal case. Respondents freely admit that rather proceeding with expedited removal, immigration agents instead exercised their discretion to place Petitioner into "full" removal proceedings under 8 U.S.C. §1229a. ECF No 5. at 3. These proceedings are still active as Petitioner has a pending case before the Board of Immigration Appeals. ECF. No 2. at 29. A noncitizen cannot simultaneously be in both "full" and "expedited" removal proceedings. *See, Patel v. Tindall,* No. 3:25-CV-373-RGJ, 2025 WL 2823607, at *5 (W.D. Ky. Oct. 3, 2025). *See also, Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *17 (E.D.N.Y. Nov. 28, 2025) ("once DHS "affirmatively cho[se]" to authorize Rodriguez-Acurio's parole and corresponding release from ICE detention, it "made the determination that it no longer intend[ed] to fast-track [her] removal and that it [would] proceed with the standard removal process under 8 U.S.C. § 1229a." *Aviles-Mena*, 2025 WL 2578215, at *5). Accordingly, even if §1225(b)(1) could apply to Petitioner under other circumstances, it

cannot in the present case as there currently is no expedited removal proceeding.

Finally, despite Respondent's assertions to the contrary, congressional intent surrounding the passage of the IIRAIRA does not support a permanent and indefinite detention regime for noncitizens classified as applicants for admission under §1226(a). This was not the position of the federal government for decades following IIRAIRA's adoption, it was not the position of U.S. Supreme Court in Jennings, and it not the position of the vast majority of federal courts today. *See,* Jennings at 297 (noting that 1225(b)(1) detention applies to applicants seeking entry and is mandatory only until certain inspection requirements are completed). *See also*, *Buenrostro Mendez v. Bondi*, 4:25-CV-03726, (S.D. Tex. Oct. 7, 2025)("Indeed, according to almost every district court that has taken up this issue — including courts in this district — *'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades* clearly support the finding that § 1226 applies, not § 1225.") Even accepting that Petitioner was initially held pursuant to the Department's §1225(b) authority (which is unclear), the clear congressional intent as affirmed by the federal courts remains that such authority was relinquished the moment he was released.

If Petitioner's mandatory detention without a bond hearing could be justified by either subsection of § 1225(b), it could only be justified by § 1225(b)(2). However, as Petitioner has previously argued, numerous federal courts have held, and Respondents appear to concede, that provision cannot apply to Petitioner's case. Because Petitioner's previous filing details the reasons that he cannot be lawfully detained under §1225(b)(2) any more than §1225(b)(1), we will not revisit those arguments in this reply.

The mandatory inspection and detention regime outlined in §1225(b) was abandoned by Respondents at the time Petitioner was initially released from custody in April 2022. Given that

there is no new factual basis to mandate detention under a different statute, Petitioner should be immediately ordered released or given a bond hearing as required by statute with the burden on the government to explain why he should remain in custody.

III. *Matter of Thuraissigiam* is Not Controlling in Petitioner's Case.

Because, as detailed above, Petitioner cannot lawfully be detained pursuant to §1225(b)(1), Respondent's reliance on *Thuraissigiam*, 591 U.S. at 140, cannot succeed. In all events, Petitioner's case is factually distinct from *Thuraissigiam* in several critical respects. Both Petitioner and Mr. Thuraissigiam were apprehended shortly after entering the U.S. and both met the definition of applicant for admission under §1225(a). However, after that apprehension their paths diverged. Mr. Thuraissigiam remained detained as he was placed into the credible fear screening process outlined in 1225(b)(1)(B). He was ultimately unsuccessful in this process and only pursued habeas relief following the issuance of an expedited removal order. He was never issued an NTA or placed into standard removal proceedings. Petitioner, meanwhile, was never subjected to the credible fear process, was arrested pursuant to §1226(2), issued a discretionary NTA, and released, again pursuant to §1226(a). As such, his current detention must also be seen as discretionary, entitling him to seek relief in the form of a bond hearing or outright release.

Lastly, Respondents reliance on due process safeguards that exist in standard removal proceedings as evidence that due process has been given to Petitioner wholly misses the point. As stated above, Petitioner does not challenge the nature of the removal process in which he was earnestly participating at the time of his most recent arrest. Rather, he is challenging the legality of his re-detention on the bases asserted by the federal government. Because the government cannot legally justify his detention, he should be released immediately or at minimum be given the opportunity to seek bond with the burden on the government to demonstrate why he should

remain in detention.

IV. The Ruling in the Matter of Maldonado Bautista Is Controlling.

The final judgment issued in *Maldonado Bautista* is binding on all class members, including Petitioner. There, the court certified a nationwide "bond eligible" class, issued declaratory relief for all class members, and further clarified that all class members are entitled to benefit from the declaratory judgment confirming that they are subject to detention under 8 U.S.C. § 1226(a) and therefore entitled to a bond hearing. No. 5:25-cv-01873-SSS-BFM 2025 WL 3713982 at * 7(C.D. Cal. Dec. 18, 2025) (clarifying order issued after evidence presented that the Government was counseling noncompliance with the Court's orders); No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (extending summary judgment to class); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (summary judgment) Petitioner is entitled The Executive Office for Immigration Review is a Defendant in *Maldonado Bautista*, and is thus bound by the ruling there, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). It is a "basic proposition that all orders and judgments of courts must be complied with promptly," *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in "suits against government officials and departments, [courts] assume that they will comply with declaratory judgments." *United Aeronautical Corp. v. United States Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023). This is because declaratory judgments like the one in *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011). This understanding of declaratory judgments, including the obligation to comply with the declaratory judgment in *Maldonado Bautista*, is consistent with the decisions of many courts. *See, e.g., Sanchez-Espinoza v. Reagan*,

770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) ("[T]he discretionary relief of declaratory judgment is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court."), abrogated on other grounds by, *Schieber v. United States*, 77 F.4th 806 (D.C. Cir. 2023), cert. denied, 144 S. Ct. 688 (2024); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as "the functional equivalent of a writ of mandamus"); *Pub. Citizen v. Carlin*, 2 F. Supp. 2d 18, 20 (D.D.C. 1998) ("The government's decision to appeal this Court's ruling does not affect the validity of the declaratory judgment unless and until the judgment is reversed on appeal or the government seeks and is granted a stay pending appeal."), rev'd on other grounds, 184 F.3d 900 (D.C. Cir. 1999).

However, even if this Court finds that *Maldonado Baustista* is not controlling in this case, it is still free to reach the same conclusions as that court (as well as hundreds of other judges in more than 1,600 similar cases)[2] and we urge it to do so.

Dated: January 9, 2026

Austin, TX

Respectfully submitted,

/s/ Robert Painter

Robert Painter
TX Bar No.24150717
MN Bar No. 0393321
Texas Immigration Law Council
5900 Balcones Dr.
#23122
Austin, TX 78731
Phone: 608-213-5661
rpainter@txilc.org

[2] Kyle Cheney, *Hundreds of judges reject Trump's mandatory detention policy, with no end in sight,* Politico, (Jan. 6, 2025), https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494

/s/ Kristin Etter
Kristin Etter
TX Bar No.
Texas Immigration Law Council
5900 Balcones Dr.
#23122
Austin, TX 78731
Phone: 512-203-3795
ketter@txilc.org

Attorneys for Petitioner