

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Julio Angel Acosta Dominguez,

Petitioner,

v.

Kristi Noem, *et al.*,

Respondents.

Civil Action No. 3:25-CV-00741-DB

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

PRELIMINARY STATEMENT

Petitioner, Julio Angel Acosta Dominguez (“Mr. Acosta Dominguez”), is materially similar to the petitioner in Abdelalim-Elmetaher v. Thompson, where the court rejected Respondents’ assertion that the petitioner was detained pursuant to 8 U.S.C. § 1225(b)(1) and held that detention, if any, was governed by 8 U.S.C. § 1226(a). No. SA-25-CA-01608-XR (W.D. Tex. Dec. 16, 2025) (Rodriguez, J.). In Abdelalim-Elmetaher, the court explained that § 1225(b)(1) authorizes detention only for noncitizens placed in expedited removal proceedings. See 8 U.S.C. § 1225(b)(1), (b)(1)(B)(iii)(IV).

Here, Mr. Acosta Dominguez was not placed in expedited removal proceedings. Instead, he was issued humanitarian parole pursuant to DHS’s discretionary authority under 8 U.S.C. § 1182(d)(5)(A). As a result, Respondents may not subject him to mandatory detention under § 1225(b)(1). Mandatory detention is foreclosed by the statute’s plain language, which limits § 1225(b)(1) to designated noncitizens who “have not been admitted or paroled into the United States.” 8 U.S.C. § 1225(b)(1)(A)(iii)(II). That limiting language cannot encompass an individual who has, in fact, been paroled into the country. Moreover, DHS does not charge Mr. Acosta Dominguez as an “arriving alien,” and alleges that he was not “admitted or paroled” by an immigration officer. Therefore, Petitioner cannot be detained under § 1225(b)(1).

Nor may Respondents detain Petitioner under § 1225(b)(2). As courts—including this one—have repeatedly held, § 1225(b)(2) does not apply to individuals apprehended in the interior who are not seeking admission.¹ In cases like Acosta Dominguez, detention authority is 8

¹ See *Buenrostro-Mendez*, 2025 WL 2886346; *Covarrubias*, 2025 WL 2950096; *Guerrero v. Noem*, No. AU-25-CV-1334-RP (W.D. Tex. Oct. 27, 2025); *Pereira-Verdi v. Lyons*, No. SA-25-CV-1187-XR (W.D. Tex. Oct. 10, 2025); see also *Gutierrez v. Baltasar*, No. 25-CV-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *H.G. V.U. v. Smith*, No. 25-CV-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025); *Menjivar-Sanchez v. Wofford*, No. 25-CV-1187, 2025 WL 2959274 (E.D. Cal. Oct. 17, 2025); *Avila v. Bondi*, No. 25-3741, 2025 WL 2976539 (D. Minn. Oct. 21, 2025); *Maldonado v. Baker*, No. 25-3084, 2025 WL 2968042 (D. Md. Oct. 21, 2025); *Buestan v. Chu*, No. 25-16034, 2025 WL 2972252 (D.N.J. Oct. 21, 2025); *Zamora v. Noem*, No. 25-12750, 2025 WL 2958879 (D. Mass. Oct. 17, 2025); *Ochoa Ochoa v. Noem*, No. 25-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025);

U.S.C. § 1226(a).

Finally, where arrest and re-detention are blatantly unlawful from the start, the only commensurate and appropriate remedy to even partially restore Petitioner is to immediately release him and enjoin the Government from further similar transgressions,” Rivas Rodriguez v. Rokosky, Civ. No. 25-17419 (CPO), 2025 WL *3485628, (D.N.J. Dec. 3, 2025), quoting Martinez v. McAleenan, 385 F. Supp. 3d 349, 366, 371-73 (S.D.N.Y. 2019) (“[T]he Supreme Court has repeatedly upheld prisoners’ rights to challenge the constitutionality of their detentions, and allow[ed] courts to implement corrective remedies, regardless of whether there were other bases for the petitioners to be subsequently detained.”). Courts have declined to allow Respondents to “transform an unlawful detention into a lawful one through alternative, retrospective, *post hoc justification...*” See Rivas Rodriguez v. Rokosky, Civ. No. 25-17419 (CPO), 2025 WL 3485628, at *13 (D.N.J. Dec. 3, 2025).

Here, Mr. Acosta Dominguez entered the United States On December 7, 2022. He was issued a humanitarian parole and allowed to enter the United States, reflecting DHS’s

Casio-Majia v. Raycraft, No. 25-CV-13032, 2025 WL 2976737 (E.D. Mich. Oct. 21, 2025); *Hernandez v. Crawford*, No. 25-CV-1565, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025); *Pablo Sequen v. Albarran*, --- F. Supp. 3d ---, 2025 WL 2935630 (N.D. Cal. 2025); *Merino v. Riga*, No. 25-23845, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Singh v. Lyons*, No. 25-CV-1606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *Alejandro v. Olson*, No. 25-CV-2027, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Rico-Tapia v. Smith*, --- F. Supp. 3d ---, 2025 WL 2950089 (D. Haw. 2025); *Chavez v. Kaiser*, No. 25-CV-6984, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *Ortiz Donis v. Chestnut*, No. 25-CV-1228, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Ballesteros v. Noem*, No. 25-CV-594, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Eliseo A.A. v. Olson*, No. 25-3381, 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *S.D.B.B. v. Johnson*, No. 25-CV-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Hippolite v. Noem*, No. 25-CV-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Lomeu v. Soto*, No. 25-CV-16589, 2025 WL 2981296 (D.N.J. Oct. 23, 2025); *Del Cid v. Bondi*, No. 25-CV-304, 2025 WL 2985150 (W.D. Pa. Oct. 23, 2025); *Aguilar Guerra v. Joyce*, No. 25-CV-5334, 2025 WL 2986316 (D. Me. Oct. 23, 2025); *Bethancourt Soto v. Soto*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Padilla v. Noem*, No. 25-CV-12462, 2025 WL 2977742 (N.D. Ill. Oct. 22, 2025); *Garcia v. Noem*, No. 25-CV-2771, 2025 WL 2986672 (C.D. Cal. Oct. 22, 2025); *Cortez Rivera v. Hyde*, No. 25-CV-12390, 2025 WL 2977900 (D. Mass. Oct. 22, 2025); *Moreira Aguiar v. Moniz*, No. 25-CV-12706, 2025 WL 2987656 (D. Mass. Oct. 22, 2025); *Contreras-Lomeli v. Raycraft*, No. 25-CV-12826, 2025 WL 2976739 (E.D. Mich. Oct. 21, 2025); *Pineda v. Simon*, No. 25-CV-1616, 2025 WL 2980729 (E.D. Va. Oct. 21, 2025); *Santos Franco v. Raycraft*, No. 25-CV-13188, 2025 WL 2977118 (E.D. Mich. Oct. 21, 2025); *Sanchez Alvarez v. Noem*, No. 25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Sandoval v. Raycraft*, No. 25-CV-12987, 2025 WL 2977517 (E.D. Mich. Oct. 17, 2025).

determination that he posed neither a danger to the community nor a flight risk. He was arrested on November 26, 2025, he voluntarily went into an ICE office for a check in, (3) years after his initial entry, and was detained.

Accordingly, Petitioner respectfully requests that the Court declare that his detention is governed by 8 U.S.C. § 1226(a), not § 1225(b), and order this release.

ARGUMENT

I. THE COURT HAS JURISDICTION

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

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

Section 1252(g) applies only to “any cause or claim... arising from the decision or action... to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g). The Supreme Court has made clear that § 1252(g) is narrow, barring jurisdiction only over challenges to those three discrete actions—not all claims that relate in any way to removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (citing *Reno v. Am.-Arab*

Anti-Discrimination Comm., 525 U.S. 471, 482 (1999)) (rejecting any reading that treats the “three discrete events along the road to deportation” as shorthand for all claims arising from deportation proceedings).

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

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

Section 1252(b)(9) channels review of “all questions of law and fact... arising from any action taken or proceeding brought to remove an alien from the United States” into the petition-for-review process. 8 U.S.C. § 1252(b)(9). But § 1252(b)(9) is not as broad as Respondents often assert, and it does not eliminate habeas jurisdiction where a petitioner challenges detention rather than seeks review of a removal order or the process by which removability will be determined. Jennings, 583 U.S. at 293–95 (describing the government’s “expansive interpretation of § 1252(b)(9)” as “absurd” and warning it would “lead to staggering results”). The Supreme Court explained that § 1252(b)(9) does not apply where a petitioner is challenging detention—as opposed to “asking for review of an order of removal,” “challenging the decision to detain [him] in the first place or to seek removal,” or “challenging any part of the process by which [his] removability will be determined.” *Id.* at 294–95; see also Covarrubias v. Vergara, No. 5:25-CV-112, 2025 WL 2950096, at *4 n.2 (S.D. Tex. Oct. 3, 2025) (discussing

Jennings).

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

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

Accordingly, neither § 1252(g) nor § 1252(b)(9) deprives this Court of jurisdiction over this habeas proceeding. The Court may therefore adjudicate Petitioner’s claim that his detention is unlawful and order appropriate relief, including immediate release.

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

Respondents argue that Petitioner is subject to mandatory detention under the expedited removal statute, 8 U.S.C. § 1225(b)(1) or (b)(2). Respondents reference a September 5, 2025, Board of Immigration Appeals decision that supports their position, *In re: Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)(concluding decisively that § 1225(b)(2)(A) covers inadmissible noncitizens who lived unlawfully in the United States for longer than two years without apprehension). In *Mendoza Euceda*, the Court concluded that the plain language of §1225(b)(2) does not apply to noncitizens encountered within the United States and mandatory detention violates a plain reading of the Immigration and Nationality Act (“INA”). See *Mendoza Euceda v. Noem*, No. 5:25-cv-01234-OLG (W.D. Tex. Nov. 17, 2025).

a. Respondent’s July 8 Policy Change

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

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (emphasis original).

As a result, Petitioner was unlawfully detained without bond pursuant to this new, expansive policy. Petitioner entered the United States in December 7th 2022, had a pending noncitizen- spouse petition filed by his U.S. citizen spouse, and was re-arrested by DHS in November 2025, in the interior of the United States. At no point was Petitioner ever issued an expedited removal order.

Therefore, Petitioner’s detention is unlawful because it is in violation of a plain reading of 8 U.S.C. §§ 1225(b)(1) and (b)(2), which governs noncitizens who are “applicants for admission, if the examining officer determines” the noncitizen *seeking* admission “is not clearly and beyond a doubt entitled to be admitted.”

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

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

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

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

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

Non-citizens who have entered the United States are entitled to basic procedural protections, including notice and an opportunity to be heard. The Supreme Court has long held

that noncitizens within the United States are entitled to procedural due process. Yamataya v. Fisher, 189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 (1903); Bridges v. Wixon, 326 U.S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103 (1945). Our immigration laws distinguish between individuals seeking initial admission and those who have already entered the country. Leng May Ma v. Barber, 357 U.S. 185, 187, 78 S. Ct. 1072, 2 L. Ed. 2d 1246 (1958). Noncitizens who are physically present in the United States “undeniably have due process rights.” Dep’t of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 191, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020).

The Government argues that Petitioner lacks due process protections because he is an “applicant for admission.” That assertion is inconsistent with the record. Petitioner is not an arriving alien. DHS arrested him in New Jersey at a check-in almost (3) years after his initial entry and immediately placed him in full removal proceedings under 8 U.S.C. § 1229a. Those proceedings are governed by 8 C.F.R. § 1003.12-1003.41 and § 1240.26. Individuals in § 240 proceedings are detained, if at all, under 8 U.S.C. § 1226(a). DHS treated Petitioner accordingly, and he remains in those proceedings today.

Although civil removal proceedings do not confer the “same bundle” of constitutional protections applicable in criminal trials, they do guarantee a full and fair hearing and meaningful procedural safeguards. Hussain v. Rosen, 985 F.3d 634, 642 (9th Cir. 2021). In Hernandez-Lara v. Lyons, 10 F.4th 19 (1st Cir. 2021), the First Circuit held that when a noncitizen is detained under § 1226(a) and a bond hearing is provided, due process requires the Government to bear the burden of justifying continued detention—clear and convincing evidence for dangerousness and a preponderance for flight risk.

Petitioner is not in expedited removal proceedings, has never undergone a Credible Fear Interview, and is not subject to § 1225(b)(1). He is a long-term resident placed squarely in the

statutory framework of §1229a and §1226. Thus, he is entitled to the due-process protections available in those proceedings, including meaningful consideration of release under § 1226(a).

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

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

IV. THE APPROPRIATE REMEDY IS IMMEDIATE RELEASE

Because Mr. Acosta Dominguez is detained under 8 U.S.C. § 1226(a)—not §§ 1225(b)(1) or (b)(2)—the proper remedy is to release him. This Court has authority in habeas to “secure release from illegal custody,” and may fashion relief that returns the parties to the lawful detention framework that should have governed all along.

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

A district court exercising jurisdiction under 28 U.S.C. § 2241 possesses broad authority to “dispose of the matter as law and justice require,” including the power to order release from unlawful detention and to fashion relief that cures the underlying statutory error. 28 U.S.C. §

2243; *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). In immigration-detention cases, courts in this District have repeatedly exercised that authority to correct unlawful detention by restoring the proper statutory framework and ordering concrete relief.

Accordingly, because Petitioner's re-detention rests entirely on DHS's erroneous invocation of §§ 1225(b)(1) and (b)(2), the appropriate habeas remedy is to release Petitioner or, alternatively, require a bond hearing where the government holds the burden to prove flight risk and danger.

CONCLUSION

For the reasons described above, Petitioner's Petition should be granted, and Respondents should be ordered to immediately release Petitioner.

Respectfully Submitted,

/s/David H. Square

David H. Square

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Dated: January 7, 2026

CERTIFICATE OF SERVICE

I hereby certify that on January 7th, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the Western District of Texas by using the CM/ECF system.

/s/ David H. Square
David H. Square