IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JORGE LUIS BECERRA PEREZ, Petitioner, v. SCARLET GRANT, et al., Respondents.	Case No. 5:25-cv-1560-JD

PETITIONER'S REPLY

The Court should hold that Petitioner should be granted a bond hearing, or in the alternative, be immediately released from detention. Petitioner incorporates by reference all arguments made in his Petition for Habeas Corpus and adds the following in reply.

I. THE COURT HAS JURISIDCTION OVER THIS PETITION BECAUSE IT CHALLENGES MERELY THE UNLAWFUL DETENTION OF PETITIONER, NOT THE LIMITED ACTIONS OR DECISIONS LISTED IN SECTION 1252.

8 U.S.C. § 1252 does not preclude this Court from issuing a decision on a petition for habeas corpus that challenges merely the unlawful detention of the Petitioner.

Under section 1252(g), federal courts lack jurisdiction to consider "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 under this chapter." Respondents press this Court to adopt an unreasonable and impermissibly broad interpretation of section 1252(g) that would strip jurisdiction over

immigration-related habeas claims. Under the plain language of 1252(g), however, Petitioner has not made any claim that is statutorily barred. The Petitioner has never asked the Court to review DHS's commencement of his removal proceedings, the immigration judge's adjudication of his case in removal proceedings, or any execution of a removal order against him. Instead, Petitioner simply asks this Court to find that his detention is unlawful because Respondents unlawfully denied Petitioner a bond hearing. The list of administrative immigration actions a court may not review under section 1252(g) simply does not include a challenge merely to the detention of the noncitizen.[1] Respondents' arguments on this basis lack any meaningful foundation.

Respondents further attack jurisdiction under subsection (b)(9) of section 1252. But the Supreme Court has already held that 8 U.S.C. § 1252(b)(9) does not bar jurisdiction for detained noncitizens requesting merely a review of their detention. *Jennings v. Rodriguez*, 583 U.S. 281, 294, 138 S. Ct. 830, 841 (2018).

This Court has jurisdiction to hear and decide a habeas corpus challenge to a noncitizen's detention, and such jurisdiction is not stripped by the narrow and enumerated circumstances of 8 U.S.C. § 1252's limits. The facts and circumstances contemplated by the statute simply are not at play here, and the statute has no effect on this Court's habeas corpus jurisdiction.

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[1] *See Escarcega v. Olson*, No. CIV-25-1129-J, 2025 U.S. Dist. LEXIS 228528, at * 2-3 (W.D. Okla. Nov. 20, 2025).

II. PETITIONER'S DETENTION IS GOVERNED BY SECTION 1226, NOT 1225, PURSUANT TO THE PLAIN LANGAUGE OF THE STATUTE.

Courts across this circuit and the nation have interpreted the plain language of the mandatory detention statute in question, 8 U.S.C. § 1225(b)(2)(A), to require *both* an "applicant for admission" who is *also* "seeking admission." *See Escarcega v. Olson*, No. CIV-25-1129-J, 2025 U.S. Dist. LEXIS 228528, at * 3 (W.D. Okla. Nov. 20, 2025); *See also Loa Caballero v. Baltazar*, No. 25-cv-03120-NYW, 2025 LX 441269 (D. Colo. Oct. 22, 2025). In doing so, these courts have patently rejected the notion that "application for admission" and "seeking admission" mean the same thing, as such a reading of the wording of the statute would violate the canon of statutory interpretation against rendering any parts of a statute "superfluous." *See Fuller v. Norton*, 86 F.3d 1016, 1024 (10th Cir. 1996).

Moreover, the Respondents' argument that Petitioner's application for cancellation of removal renders him a person "seeking admission" also fails. Even if a noncitizen enters the country illegally and later applies for some sort of relief, courts have found that later application does not mean they are "seeking admission" for the purpose of the statute in question. The District of Colorado held in a similar noncitizen's habeas case,

> Respondents also try to argue that Petitioner is "seeking admission" because he has applied for a U-Visa . . . This argument is a nonstarter. Mr. Gutierrez's U-Visa application may make him an "applicant for admission." But being an "applicant for admission" is not synonymous with "seeking admission" under § 1225(b)(2) because such a reading of the statute "would render the phrase 'seeking admission' in § 1225(b) superfluous." ORTIZ Donis, 2025 U.S. Dist. LEXIS 200565, 2025 WL 2879514, at *8.

Gutierrez v. Baltasar, No. 25-CV-2720-RMR, 2025 U.S. Dist. LEXIS 208448, at *19 (D. Colo. Oct. 17, 2025).

Similarly, in the case of a habeas petitioner who entered the country without permission and later applied for lawful status, the Southern District of New York helpfully explained why such a person is not "seeking admission":

> For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively "seeking admission" to the United States, it cannot, according to its ordinary meaning, apply to Mr. Lopez Benitez, because he has already been residing in the United States for several years.

Benitez v. Francis, No. 5:25-civ-5937 (DEH), 2025 U.S. Dist. LEXIS 157214, at *21 (S.D.N.Y. Aug. 8, 2025).

Both the clear language of the Immigration and Nationality Act and the weight of authority of courts across the nation support a holding that section 1225(b) is inapplicable to noncitizens like Petitioner who entered the country years ago and did not apply for lawful admission to enter the United States. As a result, section 1226(a) governs, rendering Petitioner eligible for a bond hearing pursuant to that section.

III. THE FIFTH AMENDMENT REQUIRES A GRANT OF HABEAS CORPUS IN PETITIONER'S SITUATION, AS HIS PROCEDURAL DUE PROCESS RIGHTS HAVE BEEN VIOLATED.

Denial of an individualized bond hearing is violation of Petitioner's procedural due process rights, which are guaranteed him under the Fifth Amendment. Courts in this circuit have held that Fifth Amendment due process applies to noncitizens similarly situated to the

Petitioner who were similarly denied the right to a bond hearing. *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 U.S. Dist. LEXIS 183335, at *15 (D.N.M. Sep. 17, 2025); *Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 U.S. Dist. LEXIS 181582, at *10 (D. Colo. Sep. 16, 2025).

As the *Salazar* court explained, the three-factor balancing test of *Mathews v. Eldridge* is employed to determine whether civil detention indeed violates procedural due process. *Salazar,* No. 1:25-cv-00835-DHU-JMR, at *15.

The first *Mathews* factor, the private interest affected by the action, weighs quite heavily in favor of Petitioner. *Id.* Petitioner's key interest at stake in this habeas claim is his liberty. As Petitioner has resided in this country for over twenty-five years and has two U.S. citizen children, the gravity of his liberty interest cannot be overstated. Petitioner suffers from the total removal of his physical freedom each day that Respondents keep him behind bars without being afforded a bond hearing. The first factor tilts the scale in favor of Petitioner.

The second *Mathews* factor is the risk of erroneous deprivation of the interest in question along with the value of any other safeguards used. *Id.* As the Salazar court found, "[S]hifting the burden to the Government at a subsequent bond hearing likely will reduce the risk of the continuing erroneous deprivation of Petitioner's liberty interests." *Id*, at *18. A bond hearing would provide Petitioner the opportunity to present his case for an individualized determination of whether he merits release on bond, satisfying procedural

due process. Respondents provide no other procedural safeguards that would reduce the risk of erroneously depriving the Petitioner of his liberty risk. Accordingly, the second factor weighs in favor of the Petitioner.

Finally, the government's interest must be considered as the third *Mathews* factor. *Id.* at *15. To be sure, the governmental Respondents have an interest in continuing to prosecute removal proceedings against the Petitioner and ensure his presence at these removal hearings. "But this interest dissolves if a noncitizen is neither a flight risk nor dangerous." *Id*, at *19. Here, where Petitioner has deep roots in the community forged over a quarter of a century and strong ties to his U.S. citizen family, the government's interest is heavily outweighed by the lack of flight or danger risks the Petitioner possesses.

Accordingly, because the government's interest is exceptionally outweighed by the Petitioner's and can be protected by the same measure that would afford Petitioner procedural due process – that is, a bond hearing – all the *Mathews* factor weigh heavily on the side of Petitioner and mandate a grant of habeas.

CONCLUSION

This Court should order Petitioner's immediate release, or in the alternative, find that Respondents must provide him with a prompt bond hearing within five days of the order.

Respectfully submitted this 30th day of January

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