UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Marco JEREZ-LOPEZ, Petitioner, v. Kristi NOEM, et al., Respondents.	Case No. CIV-26-0041-SLP

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

I. INTRODUCTION

Petitioner, by and through his undersigned counsel, hereby submits this Reply to Respondents' Response in Opposition to Writ of Habeas Corpus. It is important to note that prior to the Order to Show Cause, Respondents transferred Petitioner to Diamondback Detention Facility in Watonga, OK. Watonga is in Blaine County, OK, so jurisdiction remains with this Court. Respondents' opposition rests on fundamental errors: first, they mischaracterize Petitioner's challenge to his detention authority under 8 U.S.C. § 1225(b)(2)(A) as a forbidden challenge to the "commencement of removal proceedings"; second, they distort the structure and history of the Immigration and Nationality Act ("INA") to suggest Congress intended to allow mandatory, no-bond detention for any noncitizen present without admission, no matter how long they have lived in the United States.

Neither claim withstands scrutiny. Petitioner's habeas petition challenges only the legality of his custody, not the initiation or merits of his removal case, and thus falls squarely within the district court's jurisdiction under 28 U.S.C. § 2241.

Additionally, Respondents' attempt to avoid constitutional scrutiny fails. The Fifth Amendment prohibits categorical detention without individualized review. This Court should therefore reject Respondents' position and grant habeas relief.

ARGUMENT

II. JURISDICTION IS PROPER UNDER 28 U.S.C. § 2241

Respondents argue that 8 U.S.C. § 1252(a)(5), (b)(9), and (g) strip this Court of jurisdiction. Respondents' reading misstates precedent and the scope of the provisions.

A. Habeas jurisdiction remains for detention challenges.

The Supreme Court has repeatedly held that § 1252's jurisdictional bars do not preclude review of detention authority. *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Demore v. Kim*, 538 U.S. 510 (2003). Both decisions addressed identical habeas challenges to the legality of immigration custody while removal proceedings were pending. This is the very claim raised here.

B. Petitioner does not challenge a "decision to commence proceedings."

Respondents' reliance on § 1252(g) and *Alvarez v. ICE*, 818 F.3d 1194 (11th Cir. 2016) is misplaced. Petitioner does not contest the filing of a Notice to Appear (NTA) or any prosecutorial discretion. Petitioner challenges which detention statute DHS invoked to hold him without bond. Courts across circuits have treated such challenges as distinct and reviewable.

C. Section 1252(b)(9) does not consume all claims.

Section 1252(b)(9), the "zipper clause," consolidates judicial review of questions arising from removal orders, not stand-alone detention claims. Otherwise, district courts could never adjudicate habeas petitions under § 2241. *Jennings* expressly rejected such a result. This petition challenges only the legality and constitutionality of ongoing detention, and therefore falls within this Court's jurisdiction.

III. SECTION 1225(b)(2)(A) DOES NOT AUTHORIZE DETENTION OF NON-ARRIVING ALIENS

A. Statutory Text and Structure

Respondents read § 1225(b)(2)(A) to apply to any person present without admission, regardless of when or how they entered. The interpretation conflicts with the statute's plain structure. Section 1225(b)(1) governs "inspection of aliens arriving in the United States," while § 1225(b)(2) governs "inspection of other aliens." Both provisions describe individuals subject to inspection. That is, a process that occurs at or near the border when admission is sought.

Once an individual is apprehended in the interior, the inspection phase is complete. At that point, detention falls under § 1226(a), which authorizes arrest "pending a decision on whether the alien is to be removed."

Respondents' claim that Congress intended § 1225(b)(2)(A) to encompass everyone who entered unlawfully renders § 1226(a) meaningless and violates the canon against surplusage. Congress enacted § 1226 to provide a discretionary bond framework for interior arrests. If DHS could detain every noncitizen who entered the United States without undergoing lawful inspection at a port of entry, commonly termed "EWI" or "entry without inspection," under § 1225, then § 1226(a)'s separate procedures governing detention and bond for individuals apprehended within the United States would have no practical effect. Therefore, Respondents' interpretation should be rejected.

B. Historical and Regulatory Practice

For nearly three decades after the 1996 IIRIRA amendments, DHS and EOIR treated long-term residents apprehended inside the United States as detained under § 1226(a), not § 1225. Respondents admit this shift as "a change in policy by the new administration,"

not a textual mandate. Policy changes cannot rewrite statutory limits. Further, the 1997 implementing regulations (62 Fed. Reg. 10312, 10323) explicitly recognized that EWIs, though technically "applicants for admission," "will be eligible for bond and bond redetermination." This is further confirmation that they are processed under § 1226(a). Respondents' brief does not acknowledge this context.

C. Legislative Intent

Respondents invoke IIRIRA's purpose of "placing all non-admitted immigrants on equal footing." The amendment addressed procedural parity. It ensured that EWIs, like arriving aliens, are placed in removal proceedings under § 1229a, not that they be subject to identical custody rules. Congress sought to eliminate the old "entry fiction," not to impose permanent mandatory detention on interior residents.

This Court, including the assigned U.S. District Judge, has already joined the dozens of courts throughout the country, including several within the Tenth Circuit, holding § 1226(a) is the proper statute of detention. *See Gonzalez Cortes v. Holt,* No. 25-cv-1176 (W.D. Okla. Jan. 20, 2026); *Escarcega v. Jones*, 5:25-CV-1129-J (W.D. Okla, Nov. 20, 2025); *Salinas Gallardo v. Olson*, No. 25-cv-1090 (W.D. Okla. Oct. 28, 2025), *Martinez Diaz v. Holt,* No. 25-cv-1179 (W.D. Okla. Nov. 26, 2025), *Colin v. Holt,* No. 25-cv-1189 (Dec. 16, 2025), *Cruz-Hernandez v. Noem,* No. 25-cv-1378 (W.D. Okla. Jan. 2, 2026), *Morocho Morocho v. Kelley,* No. 25-cv-1247 (W.D. Okla. Jan. 6, 2026), *Ramirez-*

Rojas v. Noem, No. 25-cv-1236 (W.D. Okla. Jan. 13, 2026); and *Maldonado v. Noem,* No. 25-cv-1379 (W.D. Okla. Jan. 20, 2026).[1]

IV. CONSTITUTIONAL AVOIDANCE REQUIRES APPLICATION OF § 1226(a)

Even if § 1225(b)(2)(A) were ambiguous, the constitutional-avoidance canon compels reading it to exclude long-term residents. Mandatory, indefinite detention without bond raises Fifth Amendment concerns.

In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court held that the Due Process Clause prohibits prolonged detention absent a reasonable relation to removal. *Jennings* did not authorize limitless no-bond detention. Rather, it remanded to allow constitutional claims to proceed. Similarly, *Demore* upheld short-term detention pending completion of streamlined proceedings for recent entrants. It did not authorize months-long confinement of individuals like Petitioner, who has resided in the U.S. since 2016.

V. RESPONDENTS' REMAINING ARGUMENTS LACK MERIT

A. "*Maldonado Bautista v. Noem, No. 5:25-cv 01873-SSS-BFM (C.D. Cal.)*

Respondents argue that Petitioner relies on *Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.)* [2] in one portion of their response but in another portion note that Petitioner takes issue with the fact that the Immigration Courts are not recognizing

[1] Petitioner acknowledges there are a few cases in the Western District holding otherwise, but the majority hold in favor of jurisdiction and Judge Palk has already ruled in favor of jurisdiction in a case with almost identical facts. *Gonzalez Cortes v. Holt,* No. 25-cv-1176 (W.D. Okla. Jan. 20, 2026).

[2] *See* ECF 9 at 3

the class action. To be clear, Petitioner is not relying on the purported nationwide injunction and thus this is the reason he filed the habeas action -- knowing that the immigration courts are not recognizing the opinion and thus filing the bond relying on said opinion would be futile.

B. Petitioner's Request that this Court order a bond hearing with instructions to not violate due process.

Respondents argue that Petitioner makes an extraordinary request asking the court to restrict the immigration judge's future actions in proceedings. Petitioner does not ask the Court to restrict the immigration judge's findings nor make any findings. Rather, Petitioner asks this Court, that if the Court is going to grant habeas to demand a bond hearing, such demand come with reminders of law that ability to pay must be considered and that bonds cannot be constructively denied without considering ability to pay and alternatives to detention.

C. "Premature" Due-Process Claims.

Respondents incorrectly pply *Zadvydas*'s six-month post-removal presumption to pre-removal detention. Pre-removal custody implicates a liberty interest from the moment of arrest. A categorical bar on bond violates procedural due process regardless of duration.

VI. CONCLUSION

Respondents' attempt to stretch § 1225(b)(2)(A) to cover all noncitizens inside the United States contradicts statutory text, structure, decades of agency practice, and constitutional principles. Petitioner has been detained without the opportunity to demonstrate his eligibility for release—contrary to the INA and the Fifth Amendment.

Accordingly, Petitioner respectfully requests that this Court:

1. Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a),
2. Order that he be provided a prompt bond hearing before an Immigration Judge, at which the Immigration Judge must consider Petitioner's due process rights, including ability to pay and alternatives to detention;
3. Order that Petitioner be released if he is not provided a lawful bond hearing before an Immigration Judge within a time frame set by this Court; and
4. Grant such other relief as the Court deems just and proper.

DATED this 2nd of February 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on February 2, 2026, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a notice of electronic filing to counsel of record:

Sarah.McMurray@usdoj.gov

/s/ Kelli J. Stump
Kelli J. Stump