

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

FEB 06 2026

MAILEN DIAZ GARROTE,
As next friend of DENNIS HUMBERTO MORENO CHOV,
Petitioner, No. 2:26-cv-0056-MLG-JFR

MITCHELL R. ELFERS
CLERK

DORA CASTRO, et al.,
Respondents.

PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS (Doc. 1),
EMERGENCY MOTION FOR IMMEDIATE RELEASE (Doc. 2),
AND EMERGENCY MOTION TO EXPEDITE (Doc. 3)

INTRODUCTION

Petitioner, by and through Next Friend Mailen Diaz Garrote ("Petitioner"), respectfully submits this Reply to Respondents' Response (filed January 28, 2026) opposing the Petition for Writ of Habeas Corpus (Doc. 1), Emergency Motion for Immediate Release (Doc. 2), and Emergency Motion to Expedite (Doc. 3). Respondents' brief asks this Court to adopt an expansive reading of INA § 235(b), 8 U.S.C. § 1225(b), that would eliminate bond-hearing jurisdiction for a vast class of noncitizens apprehended in the interior and placed in § 240 proceedings—despite decades of settled practice, significant constitutional concerns, and the distinct statutory structure governing post-credible-fear § 240 proceedings.

Respondents' argument depends almost entirely on a recent Board of Immigration Appeals ("BIA") decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That decision is not binding on this Court, is currently being litigated nationwide, and—critically—does not resolve the constitutional question presented here: whether continued, potentially prolonged detention without an individualized custody hearing violates the Due Process Clause where the government has elected to proceed under § 240 rather than maintaining expedited removal.

Petitioner therefore requests that the Court (1) reject Respondents' attempt to re-characterize Petitioner as detained under § 1225(b)(2)(A) for the duration of proceedings; (2) hold that Petitioner's detention is governed by § 1226(a) (or, alternatively, that due process requires a prompt individualized custody hearing even if § 1225 is invoked); and (3) order immediate release, or at minimum order an individualized bond hearing before an Immigration Judge ("IJ") with the government bearing the burden to justify continued detention by clear and convincing evidence.

PRELIMINARY STATEMENT OF FACTS AND RECORD CORRECTIONS

Respondents' Response contains internal inconsistencies and a material date error that undermine reliability. Respondents state Petitioner's immigration hearing is on "February 3, 2006," which is impossible and appears to be a typographical error for February 3, 2026. Respondents also assert Petitioner was encountered on May 16, 2025 after a local arrest in Miami-Dade County, Florida, while the Notice to Appear ("NTA") in the record alleges an entry date of April 21, 2005 at or near Key West, Florida. These contradictions matter because Respondents' statutory theory turns on the posture of the case and the government's own charging decisions.

Most importantly, DHS's NTA expressly indicates that it was issued "after an asylum officer has found that the respondent has demonstrated a credible fear," and that the § 235(b)(1) expedited removal order was "vacated" pursuant to 8 C.F.R. §§ 208.30 and

On December 16, 2025, the El Paso SPC Immigration Court denied custody redetermination for “No jurisdiction,” explicitly relying on the government’s new Hurtado posture. That ruling itself is what makes habeas review urgent: absent this Court’s intervention, Petitioner will remain detained without any meaningful custody hearing—potentially for many months—while litigating his eligibility for relief from removal.

LEGAL STANDARD

A petition under 28 U.S.C. § 2241 is the proper vehicle to challenge unlawful immigration detention and to seek release or a constitutionally adequate custody process. Even when courts disagree about the label attached to the custody authority, federal courts retain the power—and the duty—to ensure that detention does not violate the Constitution and that statutory detention authority is not applied in a manner inconsistent with congressional design.

ARGUMENT

I. THE GOVERNMENT’S RELIANCE ON MATTER OF YAJURE HURTADO IS MISPLACED AND DOES NOT CONTROL THIS COURT

Respondents attempt to transform Hurtado into a dispositive rule that governs all interior apprehensions of people who entered without inspection (“EWI”)—regardless of the case posture, the passage of time, or DHS’s decision to proceed in § 240 proceedings after credible fear. That overreads Hurtado.

First, Hurtado is an agency adjudication addressing IJ custody redetermination jurisdiction in immigration court. It does not bind an Article III court deciding a habeas petition. At most, it is persuasive authority on a question of statutory interpretation, and it is currently the subject of widespread litigation and conflicting district court decisions.

Second, Hurtado’s premise—that a person EWI remains an “applicant for admission” for all detention purposes until lawful admission—cannot be read to silently repeal or displace § 1226, which Congress enacted as the general detention statute for people placed into removal proceedings and detained “pending a decision on whether the alien is to be removed.” Statutes must be read harmoniously, avoiding interpretations that render major provisions superfluous.

Third, Hurtado does not answer the constitutional question. Even if this Court were to accept Respondents’ statutory theory, due process still constrains prolonged civil detention. A statutory interpretation that would authorize months or years of detention without any individualized custody hearing raises grave constitutional doubts and should be avoided where a plausible alternative reading exists.

II. PETITIONER’S DETENTION IS GOVERNED BY 8 U.S.C. § 1226(a) (OR, AT MINIMUM, DUE PROCESS REQUIRES AN INDIVIDUALIZED HEARING)

A. The government’s own record shows Petitioner is in § 240 proceedings after credible fear and vacatur of expedited removal

The NTA reflects that DHS issued the charging document after a credible fear finding and vacated the § 235(b)(1) expedited removal order under the governing regulations. In this posture, DHS has elected full removal proceedings under 8 U.S.C. § 1229a. That choice matters. The Supreme Court’s “threshold”/“arriving alien” cases address procedures for initial admission and expedited removal, not the government’s discretionary selection of § 240 proceedings for someone found to have a credible fear.

Once DHS places an individual into § 240 proceedings, § 1226(a) is the default detention statute “pending a decision on whether the alien is to be removed,” unless another specific mandatory provision applies. Respondents’ effort to treat § 1225(b)(2) as an all-purpose, post-credible-fear detention statute collapses the carefully designed detention framework and effectively erases § 1226(a) for a massive category of cases.

B. Respondents’ “plain text” argument ignores how § 1225(b)(2) functions in context

Respondents focus on § 1225(a)(1)’s definition that a person “present in the United States who has not been admitted” is “deemed...an applicant for admission.” But definitional deeming clauses do not automatically dictate which detention statute applies after DHS elects § 240 proceedings, especially where Congress created a separate detention provision—§ 1226—to govern detention pending those proceedings.

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The more coherent reading is that § 1225(b) governs the initial screening and detention regime for applicants for admission in the admission/expedited removal context, while § 1226 governs detention during § 240 proceedings absent a specific mandatory rule. That reading avoids rendering § 1226(a) largely meaningless for EWI respondents in § 240 proceedings.

C. The Constitution requires an individualized custody hearing for civil immigration detention that becomes prolonged

Immigration detention is civil, not punitive. Prolonged civil detention without a meaningful opportunity to obtain release based on individualized circumstances triggers heightened due process concerns. At a minimum, due process requires a prompt individualized custody hearing at which the government bears the burden to justify continued detention. This Court may order such a hearing as a remedy even if it declines to decide the ultimate statutory question.

Respondents cite *Jennings v. Rodriguez* to argue that § 1225 contains no express bond-hearing requirement. But *Jennings* was a statutory-interpretation case; the Supreme Court explicitly left constitutional questions open. This Court retains authority to adjudicate the constitutional claim and to craft a constitutional remedy.

III. RESPONDENTS' AUTHORITIES DO NOT FORECLOSE RELIEF

A. "Arriving alien" and "entry fiction" cases do not authorize indefinite detention without process in this posture

Respondents lean on cases emphasizing the limited constitutional rights of certain arriving aliens. Those cases do not grant the government a blank check to detain indefinitely without process once DHS has moved the case into full § 240 proceedings and the person has established significant ties (family, community presence, and a credible fear claim recognized by the government). Even under the "entry fiction," courts have long recognized that the Due Process Clause can apply to persons physically present in the United States.

B. Recent district court cases cited by Respondents are distinguishable and not binding

Respondents cite a set of recent district court decisions from various jurisdictions adopting the government's new reading. Those cases are not binding on this Court, several arose in different procedural postures, and the emerging case law is conflicted. This Court should conduct its own analysis grounded in statutory structure, constitutional avoidance, and the specific record here—including the credible fear finding and vacatur of expedited removal.

IV. TO THE EXTENT PETITIONER RAISED CONDITIONS-OF-CONFINEMENT FACTS, THEY SUPPORT CONSTITUTIONAL RELIEF OR, AT MINIMUM, A FACTUAL HEARING

Respondents argue that conditions-of-confinement allegations cannot be addressed in habeas. But many courts recognize that where unconstitutional conditions make continued custody unlawful, habeas may provide a remedy, including release, especially for civil detainees. At minimum, conditions evidence is relevant to whether detention is punitive in effect, whether it violates due process, and whether immediate release is necessary to prevent irreparable harm.

Respondents also complain that exhibits were not provided. If Respondents were not served with exhibits, the appropriate remedy is not dismissal, but an order ensuring complete service, production, and—if necessary—an evidentiary hearing. Petitioner stands ready to provide exhibits and declarations upon the Court's direction.

REQUESTED RELIEF

Petitioner respectfully requests that the Court: (1) grant the Petition for Writ of Habeas Corpus; (2) order Petitioner's immediate release under appropriate conditions; or, in the alternative, (3) order a prompt individualized custody/bond hearing before an Immigration Judge or this Court, at which the government bears the burden to prove by clear and convincing evidence that continued detention is necessary and that no less restrictive alternatives will reasonably assure appearance and community safety; and (4) grant such other and further relief as the Court deems just and proper.

Dated: February 2, 2026

Mailen Diaz Garrote, Next Friend
for Dennis Humberto Moreno Chov

Pro Se



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CERTIFICATE OF SERVICE

I certify that on February 2, 2026, I served a true and correct copy of the foregoing Petitioner's Reply by (1) CM/ECF electronic filing (if available to a pro se filer in this case) and/or (2) by U.S. Mail and electronic mail to counsel of record at:

Allison Shokes, Assistant United States Attorney
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and by mail/email to any additional parties as ordered by the Court.

A handwritten signature in black ink, appearing to read 'Mailen'.

/s/ Mailen Diaz Garrote