

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
San Antonio Division

MELVIN EDUARDO GIRON CHELEY,	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	Civ. No. <u>5:26-cv-00128-FB</u>
	)	
KRISTI NOEM, <i>et al.</i> ,	)	
	)	
<i>Respondents.</i>	)	
	)	

**REPLY MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS**

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INTRODUCTION

This is not a case of an initial detention by ICE, or the continuation of pre-existing removal proceedings. Petitioner was previously subject to removal proceedings, which concluded when Respondents agreed to dismiss the removal case against him, prior to his final asylum hearing in 2023. Any prior authorization to subject Petitioner to mandatory detention under 8 U.S.C. § 1225(b)(1) ended concurrent to the dismissal of his related removal proceedings. Similarly, the “entry fiction” that would have attached 2013, also ended on that date. So years later, when Petitioner was re-encountered by immigration officers in September 2025, he was arrested and re-detained just as any other individual already present inside the United States. Indeed, not even the immigration judge who denied Petitioner bond argued that § 1225(b)(1) applied to Petitioner today. Accordingly, 8 U.S.C. § 1226(a) should govern his current detention, and entitles him to a bond hearing or immediate release.

FACTS

The parties do not dispute any of the material facts of this case. The parties agree that Petitioner entered the United States and was subject to expedited removal as an arriving alien. *See* ECF No. 1-1. Respondents do not dispute that Petitioner passed a credible fear interview (“CFI”). Pet. ¶ 35. Respondents do not dispute that Petitioner was placed into traditional removal proceedings under § 1229a and was released on bond under § 1226(a). Pet. ¶ 25; *see also* ECF No. 1-2. Respondents do not dispute that Petitioner continued to pursue his asylum application, and Respondents thereafter *agreed to dismiss* the removal proceedings against Petitioner prior to his final asylum hearing in 2023. Pet. ¶ 37. Respondents concede that when they rearrested Petitioner on September 9, 2025, they issued a new NTA commencing a new round of removal proceedings against Petitioner. Response 2; ECF No. 1-4, Notice to Appear at 1, 4.

ARGUMENT

I. THIS COURT RETAINS JURISDICTION TO GRANT RELIEF IN THIS CASE.

Petitioner challenges solely the legal basis of his detention, not the removal proceedings against him, and as such this Court maintains class habeas jurisdiction. *See Lopez-Arevalo v. Ripa*, 801 F.Supp.3d 668, 677-78 (W.D. Tex. Sep. 12, 2025). Respondents continue to argue that Petitioner's suit is barred by 8 U.S.C. §§ 1252(g) and 1252(b)(9) (Response 3-4), notwithstanding the fact that these jurisdictional arguments have been consistently rejected by nearly every other district court, regardless of the outcome on the substantive arguments. *See Lopez-Arevalo*, 801 F.Supp.3d at 677; *see also Canales-Melgar v. Noem et. al.*, No. SA-25-CA-01571-XR, at *3-6 (W.D. Tex. Dec. 23, 2025). There is no serious dispute that notwithstanding 8 U.S.C. § 1252(g), "§ 2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges" to detention. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001). *Jennings* has clarified that the statutory bar is limited to specific agency actions to "commence proceedings, adjudicate cases, or execute removal orders," as outlined in § 1252(g). *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2021). *See also Texas v. United States*, 126 F.4th 392, 417 (5th Cir. 2025).

Nor does 8 U.S.C. § 1225(b)(4) strip this court of jurisdiction, or channel Petitioner's challenge into 8 U.S.C. § 1229a removal proceedings. Response 4. *Canales-Melgar*, No. SA-25-CA-01571-XR, at *4, n.1. Subsection 1225(b)(4) applies only to "challenges by any other immigration officer" of a decision "favorable to the admission of any alien." Thus, Respondents' arguments have been rejected based on the plain language of the statute. *Granados v. Noem*, No. SA-25-CA-01464-XR, 2025 WL 3296314, *3 (W.D. Tex. Nov. 26, 2025). Here, the same reasoning applies. While Respondents argue that "[t]his is consistent with the channeling provision at 8 U.S.C. § 1252(b)(9)," (Response 4), they are mistaken that the "zipper clause" would bar review either. *See Canales-Melgar*, No. SA-25-CA-01571-XR, at *4, citing *Dep't of Homeland Sec. v.*

Regents of the Univ. of Cal., 591 U.S. 1, 19 (2020) (“This provision ‘does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.’”). *See also Jennings*, 583 U.S. at 292-93 (reasoning that to interpret § 1252(b)(9) to bar review of detention issues would risk “depriving that detainee of any meaningful chance for judicial review.”).

II. PETITIONER IS NOT SUBJECT TO 8 U.S.C. § 1225(b)(1) DETENTION.

Even though Petitioner was encountered and previously subject to expedited removal, Petitioner is no longer subject to detention under 8 U.S.C. § 1225(b)(1) because his initial round of removal proceedings were terminated in 2023, upon agreement with Respondents. From that point forward, Petitioner was nothing more or less than an individual present without having been admitted to the United States, as charged by Respondents in the second round of removal proceedings. *See* ECF No. 1-4 at 1, 4. In particular, Respondents do not charge Petitioner as an arriving alien, but do allege “that you are an alien present in the United States without being admitted or paroled...”. *Id.* Respondents do argue, for the first time in response to Petitioner’s habeas petition, that Petitioner is subject to mandatory detention under § 1225(b)(1) and pursuant to *Matter of M-S-*, 27 I. & N. Dec. 509 (2019). Response 2-3. Notably, the immigration judge did *not* advance this position when she denied Petitioner bond in December 2025. ECF No. 1-6. Regardless, Respondents are mistaken and overlook that even in *Matter of M-S-* a clear end-point for mandatory detention is identified: the end of removal proceedings. 27 I. & N. Dec. at 510. As such, mandatory detention under § 1225(b)(1) no longer applies to Petitioner.

At the time that Petitioner was originally apprehended in 2013, the prevailing BIA precedent permitted consideration for bond following transfer from expedited removal to standard removal proceedings. *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005). In 2019, the BIA decided

Matter of M-S-, overruled *Matter of X-K-*, and determined that § 1225(b)(1)(B)(ii) requires that if a respondent is transferred from expedited removal to traditional removal proceedings (following a CFI), he remains subject to mandatory detention. 27 I. & N. Dec. at 515.

The prior year, the Supreme Court in *Jennings* had considered a challenge to the length of mandatory detention under § 1225(b), and whether individuals were also entitled to periodic bond hearings under due process, so as to avoid indefinite detention. 583 U.S. at 297-98. The Court reasoned that there was no risk of indefinite detention, in part because the statute provided an end point to detention. *Id.* at 299. (“To start, §§ 1225(b)(1) and (b)(2), unlike § 1231(a)(6), provide for detention for a specified period of time.”) “The plain meaning of those phrases is that detention must continue until immigration officers have finished ‘consider[ing]’ the application for asylum, § 1225(b)(1)(B)(ii), or until removal proceedings have concluded, § 1225(b)(2)(A).” *Id.* *Matter of M-S-* also signaled that concluding removal proceeding would conclude the mandatory detention under § 1225(b)(1). 27 I. & N. Dec. at 515. “The Supreme Court recently held exactly that, concluding that section 235(b)(1) ‘mandate[s] detention throughout the completion of [removal] proceedings’ unless the alien is paroled. ... The Act’s implementing regulations support that interpretation.” *Id.* citing *Jennings*, 583 U.S. at 299-301.

Here, Petitioner’s original removal proceedings, and consideration of his original asylum application, were completed when removal proceedings were dismissed prior to his individual merits hearing. Pet. ¶ 37. Notably, Respondents did not reopen these original removal proceedings; instead they issued a new NTA, commencing a new round of removal proceedings and newly charged Petitioner as merely present without having been admitted or paroled. Response 2; ECF No. 1-4 at 4. As such, any continuing authority to detain Petitioner under § 1225(b)(1)

simultaneously ended when his original removal proceedings were dismissed. *Jennings*, 583 U.S. at 297-98; *Matter of M-S-*, 27 I. & N. Dec. at 515.

Respondents' reliance on the unpublished decision in *Canales-Melgar*, No. SA-25-CA-01571-XR, is understandable, but nonetheless misplaced. That case turned on the fact that the petitioner had been referred to removal proceedings from expedited removal, following a credible fear interview, and *remained* in the "entry fiction" throughout an uninterrupted removal process to the present day. *Canales-Melgar*, No. SA-25-CA-01571-XR, at *2,8. Here, however, the "entry fiction" ended along with the end of the original removal proceedings. As evidenced in the new NTA in 2025, Respondents charged him under § 1182(a)(6)(C)(i) as already present in the United States without having been admitted or paroled. Indeed, there is no evidence that Respondents themselves maintain the entry fiction with respect to Petitioner in any context today.

Accordingly, Petitioner asks this Court to enjoin Respondents from subjecting Petitioner to arrest or mandatory detention under § 1225(b)(1), and maintains his request for immediate release from custody or, in the alternative, a bond hearing pursuant to 8 U.S.C. § 1226(a).

III. PETITIONER IS SUBJECT TO 8 U.S.C. § 1226(a) DISCRETIONARY DETENTION.

Petitioner entered the United States in 2013. He was, pursuant to the prevailing standard at the time, granted bond under 8 U.S.C. § 1226(a) and released from custody. ECF No. 1-2. Moreover, Petitioner's original removal proceedings were dismissed roughly ten years after his entry. Pet. ¶ 37. Respondents have never revisited that decision and have never sought the revocation of Petitioner's original bond determination. *See* Response 1-2. When Petitioner was re-encountered in September 2025, Respondents arrested him to commence new removal proceedings against him. These facts place him squarely under the "default rule" governing immigration detention, § 1226(a), as an individual encountered who is already inside the United States.

Jennings, 583 U.S. at 289. Additionally, no other basis for mandatory detention applies to him. No criminal basis is alleged by Respondents (8 U.S.C. § 1226(c)), and there is no final order of removal (8 U.S.C. § 1231(a)). Moreover, Respondents emphatically disclaim any argument to subject Petitioner to mandatory detention under § 1225(b)(2). Response 2.

However, while Respondents do not advance an argument that Petitioner is subject to § 1225(b)(2), they also aver without further explanation that “[e]ven if this Court were to order him released from custody, he would be subject to re-arrest as an alien present within the United States without having been admitted.” Response 2. Last year, Respondent announced a complete reversal in policy that reinterprets § 1225(b)(2) to apply to all individuals present without having been admitted, regardless of when or where they are encountered. Pet. ¶¶ 20-23. This reinterpretation coincided with two BIA decisions, holding the same: *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In their primary argument, Respondents first argue that, at bottom, Petitioner is subject to mandatory detention because he is an “applicant for admission,” and intimate that this new policy would apply to him. Response 2. And the immigration judge denied bond most recently because she applied *Yajure Hurtado* to find that Petitioner was subject to mandatory detention under § 1225(b)(2). ECF No. 1-6. Accordingly, Petitioner continues to argue that any attempt to subject Petitioner to mandatory detention under § 1225(b)(2) would be similarly unlawful and should be enjoined.

Respondents should be enjoined from applying § 1225(b)(2) to Petitioner for similar reasons already advanced and considered by numerous jurists in this district, including this Court. The plain language of § 1225(b)(2) makes it clear that being labeled “an applicant for admission” is not enough, but one must also be “seeking admission” following a determination by an immigration officer that the individual is not clearly and beyond a doubt entitled to be admitted.”

See Kashranov v. Jamison, No. 2:25-CV-05555-JDW, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025) (“To trigger Section 1225(b)(2)(A), an examining immigration officer must determine three elements: that the individual is (1) an “applicant for admission,” (2) “seeking admission,” and (3) “not clearly and beyond a doubt entitled to be admitted.”)

Respondents’ interpretation would redline the “seeking admission” requirement. “As many other courts have noted, the respondents’ interpretation of the statute would render the phrase “seeking admission” meaningless.” *Sanchez v. Johnson*, No. 6:25-CV-00503-ADA-DTG, 2025 WL 3707317, at *3 (W.D. Tex. Dec. 10, 2025), *report and recommendation adopted*, No. 6:25-CV-00503-ADA-DTG, 2025 WL 3709970 (W.D. Tex. Dec. 22, 2025), citing *Trujillo v. Noem*, No. 5:25-CV-1266-JKP, 2025 WL 3471572, at *5 (W.D. Tex. Nov. 24, 2025) and *Becerra Vargas v. Bondi*, No. SA-25-CV-1023-FB (HJB), 2025 WL 3300446, at *4 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted sub nom. Vargas v. Bondi*, No. SA-25-CV-1023-FB, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025). *See also Agustin Perez v. Noem*, No. 5:25-cv-01703-FB (W.D. Tex. Jan. 13, 2026).

Petitioner is not necessarily “seeking admission,” twelve years after having effectuated an entry. “Lawful status and admission, as the [Third Circuit] below recognized, are distinct concepts in immigration law: Establishing one does not necessarily establish the other.” *Sanchez v. Mayorkas*, 593 U.S. 409, 415 (2021). While Petitioner finds himself back in removal proceedings, there are numerous forms of relief from removal that result in lawful status, but are not considered to be “admission” under immigration law. E.g. asylum, per 8 U.S.C. § 1158(a)(1); cancellation of removal under 8 U.S.C. § 1229b(b)(1)(A); temporary protected status, per 8 U.S.C. § 1254a(f)(4) (*see Sanchez* 593 U.S. at 415); and U nonimmigrant status per 8 U.S.C. §§ 1101(a)(15)(U) and 1182(d)(14)). Accordingly, while Petitioner seeks relief from removal, he is not *necessarily*

“seeking admission,” and Respondents advance no argument or evidence to demonstrate as much.

Additionally, as an individual already present inside the United States on his re-encounter with ICE, following the conclusion of prior removal proceedings, neither §§ 1225(b)(1) or (b)(2) should have applied to him, pursuant to the clear delineation outlined in *Jennings*. “In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings*, 583 U.S. at 289. Even if arguably dicta, it is nonetheless binding on courts in the Fifth Circuit. *McRorey v. Garland*, 99 F.4th 831, 837 (5th Cir. 2024). See also *Agustin Perez*, No. 5:25-cv-01703-FB at 10-11. Thus, Petitioner may only be lawfully detained under § 1226(a).

IV. RESPONDENTS’ DETENTION OF PETITIONER VIOLATES DUE PROCESS.

Because Petitioner’s original removal proceedings dismissed and entirely new proceedings were initiated following his re-arrest years later, Petitioner’s posture is distinguishable from the petitioner in *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (who had been continuously detained since his entry) and more akin to the petitioner in *Lopez-Arevelo*, 801 F. Supp. 3d at 682 (who was encountered upon entry and released).

Respondents cite to *Canales Melgar*, which considered another mandatory detention pursuant to § 1225(b)(1), and agreed that the petitioner was owed the limited due process as identified in *Thuraissigiam* because he remained subject to the “entry fiction.” *Canales-Melgar*, No. SA-25-CA-01571-XR, at *8. (“As *Thuraissigiam* puts it, noncitizens “who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’”) citing 591 U.S. at 139. *Canales-Melgar* further cites to three additional cases, for a similar proposition. *Shaughnessy v. United States ex rel. Mezei*,

345 U.S. 206 (1953), *Leng May Ma v. Barber*, 357 U.S. 185 (1958), and *Kaplan v. Tod*, 267 U.S. 228 (1925). *Id.* at *12 (noting that these three cases “make clear that the entry fiction applies to someone who, like Petitioner, was initially encountered at the threshold of entry but has been allowed to live with relative freedom in the United States while their admissibility is determined.”)

But Petitioner’s story does not end with his release in 2013 from custody, nor are the proceedings which commenced upon his entry (i.e. the original removal proceedings), pending today. The original removal proceedings were dismissed nearly a decade later, due to Respondents’ prosecutorial discretion. In that way, Petitioner is materially distinguishable from the cases cited in *Canales-Melgar*, because no process that was commenced upon entry continues today. Petitioner is subject to wholly new removal proceedings. Rather, the court noted that, “[w]here the power to admit or exclude noncitizens is not meaningfully implicated, the entry fiction and its limitation on constitutional protections do not apply.” *Canales-Melgar*, No. SA-25-CA-01571-XR at *13. Such is the case here, as Respondents voluntarily gave up that authority when they agreed to dismiss Petitioner’s removal proceedings.

Rather, Petitioner has accrued due process rights as any other individual who has remained present in the United States for a number of years. And just as in *Lopez-Arevalo*, the Court should similarly apply *Mathews v. Eldridge*, 424 U.S. 319, 96 (1976), and hold that Petitioner’s ongoing detention without access to a bond hearing violates due process. 801 F.Supp.3d at 685-87. *See also Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8-10 (W.D. Tex. Oct. 21, 2025) (same). All factors similarly cut in Petitioner’s favor, as his private interest is in how own liberty, he is at considerable risk of erroneous deprivation as he has already twice been unlawfully denied a bond hearing by an immigration judge, and the government’s possible interests are advanced in a bond hearing where flight risk and dangerousness are assessed. *Id.*

CONCLUSION

For the foregoing reasons, the writ of habeas corpus should issue. This Court should enjoin Respondents from denying Petitioner bond hearing – under either 8 U.S.C. §§ 1225(b)(1) or (b)(2) – and should order Respondents to immediately release Petitioner or provide him with a 8 U.S.C. § 1226(a) bond hearing in front of an Immigration Judge within 15 days.

Respectfully submitted,

Date: January 28, 2026

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

Date: January 28, 2026

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