

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

JOSE HERNANDEZ LOPEZ,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 5:26-cv-0051-PRW

**PETITIONER'S REPLY BRIEF IN SUPPORT OF HABEAS PETITION AND
MOTION FOR A PRELIMINARY INJUNCTION**

RESPECTFULLY SUBMITTED,

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INTRODUCTION

“The complex provisions of the INA have provoked comparisons to a ‘morass,’”¹ a “Gordian knot,”² and ‘King Minos's labyrinth in ancient Crete.’”³ These comparisons are well-deserved. Without any background or experience with immigration law it is easy to get lost in the INA's labyrinth of statutes and terms. Worse, the INA has a unique way of making it difficult for non-practitioners to realize that an interpretation they are confident is right given the “plain language” is actually incorrect as a result of the INA's repeated use of “specialized language.”⁴

As discussed below, the petition in this case sets forth in detail the reasons the specialized language and definitions Congress gave terms like “admission” demonstrate that one may not be seeking admission from within the United States. Rather, as the Tenth Circuit (like nearly every other circuit) has repeatedly held, an “admission” encompasses the action of an entry into the United States, accompanied by an inspection or authorization.” Despite having the benefit of these arguments set forth in detail by the habeas petition, the government has made zero effort to address the multitude of arguments supported by case law, statutes, and regulations which demonstrate that the government's position and claims in support of it are built on false premises and contradicted by the INA's

¹ *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) (quoting *Lacsina Pangilinan v. Holder*, 568 F.3d 708, 709 (9th Cir. 2009) (quoting *Agyeman v. I.N.S.*, 296 F.3d 871, 877 (9th Cir. 2002))

² *Id.* (quoting *Aguilar v. U.S. Immig. & Customs Enf't*, 510 F.3d 1, 6 (1st Cir. 2007)).

³ *Id.* (quoting *Lok v. I.N.S.*, 548 F.2d 37, 38 (2d Cir. 1977)).

⁴ *Lopez v. Att'y Gen.*, 49 F.4th 231, 234 (3d Cir. 2022).

statutory scheme. For these reasons, those detailed in the habeas petition, and those set forth below, Petitioner respectfully requests the Court grant the petition and order his immediate release from ICE custody.

DISCUSSION

At the outset of this reply it is helpful to quickly identify some of the most relevant statements/assertions in the government's response brief which are simply incorrect. The chart below does exactly that:

Response's Assertion	Well-Established Fact
<p>Applicants for admission are placed in removal proceedings through either:</p> <ul style="list-style-type: none"> • § 1225(b)(1) or • § 1225(b)(2)(A).⁵ 	<p>"Removal" under § 1225(b)(1) is not really a proceeding; rather, as illustrated by the sample form in the habeas petition and explained in detailed in ¶¶ 44 – 47, expedited removal is typically completed in a matter of minutes, requires nothing more than a single page Form, and is a summary process described entirely in § 1225(b)(1).</p> <p>Meanwhile, removal proceedings under § 1229a are <i>not</i> commenced via 8 U.S.C. § 1225 or § 1226. Formal § 1229a proceedings are only commenced when DHS files a Notice to Appear (NTA), issued in accordance with § 1229, with the Executive Office for Immigration Review (EOIR).⁶ Once again, this was explicitly explained and supported by legal authorities in the petition.⁷</p>
<p>Throughout the response brief assertions are made that either explicitly or implicitly assert that an alien who is not an applicant for</p>	<p>This is simply false. The grounds of inadmissibility in § 1182 are only applicable to applicants for admission and § 1227 to those</p>

⁵ (ECF No. 14 pp. 5, 13-14.)

⁶ See 8 U.S.C. §§ 1229 and 1229a (providing the procedures for initiating § 1229a proceedings through the issuance and filing of a NTA).

⁷ (ECF No. 1 at pp. 26-28 and 30-31.)

<p>admission may be placed in removal proceedings under § 1182.</p>	<p>who are not. This bears repeating—any noncitizen placed in removal proceedings under a ground in § 1182 is an "applicant for admission" as defined by § 1225(a)(1).⁸</p>
<p>All of the provisions of § 1226(c) including the Laken Riley Act apply to aliens who are not "applicants for admission."</p>	<p>Just as the grounds of inadmissibility in § 1182 are only applicable to applicants for admission and § 1227 to those who are not, the mandatory provisions of § 1226(c) specifically delineate which are applicable to aliens in proceedings under § 1182 (§ 1226(c)(1)(A) and (E), as well as the first clause of § 1226(D)) and which are applicable to aliens in proceedings under § 1227 (§ 1226(c)(1)(B),(C), and the second clause of § 1226(c)(1)(D)).</p>
<p>The government claims that Mr. Hernandez Lopez' due process argument is "premature" because he has been detained for less than 180 days and "<i>Zadvydas v. Davis</i> held that detention for six months was presumptively reasonable."⁹</p>	<p><i>Zadvydas</i> is only applicable to questions of post-removal order indefinite detention of criminal aliens under § 1231.¹⁰ There is no 180-day clock for claims like this one. The habeas petition's citations to <i>Zadvydas</i> were to the constitutional principles discussed in it which are relevant to the issues in this case.</p>

I. The government's jurisdictional arguments are based on false premises/understandings of the INA and removal proceedings.

At the outset of this section, it is important to point out that one thing every immigration practitioner, IJ, or BIA member knows full well: Removal proceedings under

⁸ In effort to assist individuals who do not have the background or understanding of the INA's specialized language, this point was made with illustrations, legal citations, and an easy to understand explanation.⁸ The petition walked through this fact in an easy to understand manner with the statutes, regulations, and other supporting authorities which explain this fact. (ECF No. 1 pp. 31 -35.) Anecdotally, the section of the petition detailing and explaining this fact was added to the petitions filed in undersigned's cases after another AUSA in WDOK attempted to make this claim which is not something that anyone practicing, presiding over, or representing the government in removal proceedings has ever made to the best of undersigned's knowledge.

⁹ ECF 14 at 26-27 (citing *Zadvydas v. Davis*, 533 U.S. 678 (2001)).

¹⁰ See generally, *Zadvydas v. Davis*, 533 U.S. 678 (2001).

are completely separate and distinct from bond proceedings. This fact is well-established and obvious from 8 C.F.R. § 1003.19(d), which states:

Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.

Given the government's jurisdictional arguments are almost entirely dependant on its false belief that bond proceedings are a part of § 1229a proceedings, this regulation seems to put their entire argument to rest.

If that's not enough, it is critical to point out that the general issues presented by this petition, i.e. whether Petitioner is entitled to a bond hearing, are in all aspects relevant to jurisdiction identical to those at issue in *Jennings* –where the Supreme Court rejected the exact same arguments the government makes here. This was recently explained by U.S. District Court Judge Cardone of the Western District of Texas:

[T]he Supreme Court has “not interpret[ed] this language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, [the Court has] read the language to refer to just those three specific actions themselves.” *Jennings*, 583 U.S. at 294, 138 S.Ct. 830 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999)). Thus, § 1252(g) applies only “to protect from judicial intervention the Attorney General's long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders.” *Duarte*, 27 F.4th at 1055 (quoting *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999)). The statute “does not bar courts from reviewing an alien detention order, because such an order, ‘while intimately related to efforts to deport, is not itself a decision to “execute removal orders” and thus does not implicate section 1252(g).” *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000) (citation omitted); *accord Kong v. United States*, 62 F.4th 608, 617–18 (1st Cir. 2023) (collecting cases).¹¹

¹¹ *Id.* at *4.

Here, Petitioner is not challenging Respondents' decision to execute a removal order, the decision to commence proceedings, or adjudicate his removal proceedings. Rather, Petitioner challenges his continued detention as unlawful, and "[s]uch claims are not barred by § 1252(g)."¹² Accordingly, none of the provisions of § 1252 deprive the Court of jurisdiction over Petitioner's claims.

II. The government's new interpretation doesn't just render the provisions of § 1226(c) added by the LRA meaningless—it renders provisions of § 1226(c) enacted as part of IIRIRA at the same time as § 1225(b)(2)(A) completely meaningless.

At the outset, it is critical to point out that the government only addresses the Laken Riley Act's Amendment's to § 1226(c) rendered superfluous by its position on § 1225(b)(2)(A). It does so while completely ignoring the provisions of § 1226(c) which were put into place by IIRIRA at the same time § 1225(b)(2)(A). As explicitly explained in the habeas petition and supported with the prior version of § 1226 attached as an exhibit, § 1226 did not exist in its current form prior to IIRIRA. The version of it immediately prior to IIRIRA was attached at Ex. 2 of the Appendix. Meanwhile, the version amended and put in place in 1996 through IIRIRA is attached to this Reply as Ex. 1.

This is significant as it illustrates that most of its provisions were passed as part of IIRIRA—i.e., at the same time § 1225(b)(2)(A) was amended to its current form. When one considers the fact that they were passed as part of the same overhaul of the statutory scheme as the provisions of § 1225 at issue here, it makes blowing off the multitude of

¹² *Id.* (citing *Lopez Santos v. Noem*, No. 25-cv-1193, 2025 WL 2642278, at *2–3 (W.D. La. Sept. 11, 2025)).

provisions rendered meaningless by the government's new position as "redundancies" or things that happen when legislating, hard to swallow.

Under the government's new interpretation, the post-IIRIRA but pre-LRA version of the § 1226 can be seen below with the provisions rendered completely meaningless by its new interpretation highlighted and underlined:

(c) Detention of criminal aliens (1) Custody The Attorney General shall take into custody any alien who-- (A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title, (B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title, (C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence¹ to a term of imprisonment of at least 1 year, (D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title;¹³

As illustrated above, subparagraph (c)(1)(A) and the first clause of subparagraph (c)(1)(D) are rendered completely meaningless by its new interpretation of § 1225(b)(2)(A). Said differently, the Court has to believe that Congress passed two statutes (§ 1225(b)(2)(A) and § 1226(c)(1)(A) and (D)) at the exact same time with one such statute rendering the other completely meaningless. When one considers the fact that they were passed as part of the same overhaul of the statutory scheme as the provisions of § 1225 at issue here, it makes blowing off the multitude of provisions rendered meaningless by the government's new position as "redundancies" or things that happen when legislating, hard to swallow.

III. The government fails to account for the fact that its interpretation violates the Fourth Amendment and would have significantly changed the *Jennings* analysis.

¹³ 8 U.S.C. § 1226(c)(emphasis added).

The Government's reliance on *Jennings v. Rodriguez* fundamentally misapprehends the Fourth Amendment implications of that decision. In *Jennings*, the Court clearly understood 8 U.S.C. § 1225(b)(2)(A) to apply at the border. Indeed, it attached significance to the fact that § 1225(b)(2)(A) does not require a warrant for the detention of aliens encountered at the border and referred to removal proceedings, stating:

For example, respondents argue that, once detention authority ends under §§ 1225(b)(1) and (b)(2), aliens can be detained only under § 1226(a). But that section authorizes detention only “[o]n a warrant issued” by the Attorney General leading to the alien's arrest. § 1226(a). If respondents' interpretation of § 1225(b) were correct, then the Government could detain an alien without a warrant at the border, but once removal proceedings began, the Attorney General would have to issue an arrest warrant in order to continue detaining the alien. To put it lightly, that makes little sense.¹⁴

This point about detention without a warrant at the border is, of course, consistent with the border exception to the warrant requirement. Moreover, in addition to the oral argument excerpts included in the habeas petition evidencing the number of times the Court was told § 1225's application was at the border, the opinion explicitly stated:

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). The primary issue is the proper interpretation of §§ 1225(b), 1226(a), and 1226(c).¹⁵

This statutory framework aligns with the well-established border exception to the Fourth Amendment's warrant requirement. In stark contrast, as the *Jennings* opinion noted, § 1226 explicitly requires a warrant for detention. This distinction is not merely procedural; it

¹⁴ *Jennings v. Rodriguez*, 583 U.S. 281, 302, (2018).

¹⁵ *Id.* at 289 (emphasis added).

reflects the Fourth Amendment's protections for individuals present within the United States—including those present unlawfully.

The *Jennings* Court reasoned that the bond provisions of § 1226 did not apply to arriving aliens because it would be illogical to allow an alien to be detained without a warrant at the border under § 1225(b)(2)(A), only to suddenly require one upon transfer to § 1229a proceedings. *Jennings* did not, however, purport to dispense with the Fourth Amendment's warrant requirement for interior enforcement, nor did it overturn decades of jurisprudence on the issue.

Indeed, “[l]ongstanding precedent establishes that ‘[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.’”¹⁶ The law in this area is not grey. Again, this was detailed in the petition and ignored by the government's response.¹⁷ Given the indisputable Fourth Amendment jurisprudence, the repeated statements indicating the *Jennings* decision understood § 1225(b)(2)(A) to be applied at the border, and *Jennings* explicit reference to the warrant requirement in § 1226 and the absence of one in § 1225(b)(2)(A), the government's new interpretation would have certainly changed the analysis completely.

IV. Mr. Gonzalez is an "applicant for admission" but he is NOT "seeking admission" which is an absolute predicate for § 1225(b)(2)(A).

¹⁶ *Morales v. Chadbourne*, 793 F.3d 208, 215 (2015) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, (1975) (citing *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16–19, (1968)); see also *Dunaway v. New York*, 442 U.S. 200, 216 (1979) (“[D]etention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest.”).

¹⁷ (ECF No. 1 pp. 17-20, 60-63.)

At the outset, it is important to point out that the government's response places a great deal of focus on the fact that § 1225(b)(2)(A) includes the term "applicant for admission" while simultaneously asking that no significance be given to the qualifier of its application to those "seeking admission." If it applied to all "applicants for admission" without regard for where and when they were encountered, the provision would have no need for the phrase "seeking admission" and would read:

[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien ~~seeking admission~~ is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.¹⁸

But Congress did include the phrase "seeking admission" and, as a result, it has always been understood to have its application at or near POEs and the border.

In *Medina-Rosales v. Holder*, the Tenth Circuit referencing the definition of "admission" at 8 U.S.C. § 1101(a)(13), explained:

This definition "is limited and does not encompass a post-entry adjustment of status," because it "refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry."¹⁹

Here, the government seeks to attribute plain and ordinary meaning to the "specialized legal language" used throughout the INA. In so doing, it has failed to realize the numerous U.S. Circuit Courts, including the Tenth Circuit, who have repeatedly and

¹⁸ § 1225(b)(2)(A) (alteration added).

¹⁹ *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) (quoting *Negrete-Ramirez*, 741 F.3d at 1051); see also *Papazoglou*, 725 F.3d at 793 ("That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization.").

unequivocally held that obtaining legal status within the United States²⁰ is not an admission. Instead, for example, if an alien files an application to become a LPR made from within the United States, they are seeking an "adjustment of status"—not an admission.²¹ Likewise, an alien who applies for relief before the IJ pursuant to 8 U.S.C. § 1229b(b) they are asking to have their "removal cancelled"—not to be admitted. Simply put, as the Tenth Circuit has plainly and repeatedly pointed out, "an admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status."²²

V. **The government's silence in response to the overwhelming majority of arguments made in the habeas petition much less the extensive legal authorities supporting those arguments speaks volumes.**

§ 1229a Mr. Hernandez Lopez' Habeas Petition and Motion for Preliminary injunction provided an extensive and detailed discussion of the relevant laws, regulations,

²⁰ *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) ("This definition "is limited and does not encompass a post-entry adjustment of status," because it "refers expressly to *entry into* the United States, denoting by its plain terms passage into the country from abroad at a port of entry."); *see also Papazoglou*, 725 F.3d at 793 ("That provision therefore encompasses the action of an entry into the United States, accompanied by an inspection or authorization."); *Bracamontes*, 675 F.3d at 385 ("Clearly, neither term includes an adjustment of status; instead, both contemplate a physical crossing of the border following the sanction and approval of United States authorities."); *Martinez*, 519 F.3d at 544 (recognizing that " 'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status")

²¹ *Id*

²² *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015) ; *see also Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008), *as amended* (June 5, 2008) (recognizing that " 'admission' is the lawful *entry* of an alien after inspection, something quite different ... from post-entry adjustment of status"); *Marques v. Lynch*, 834 F.3d 549, 558-560 (5th Cir. 2016)(discussing all the reasons an alien already in the country is not applying for admission but for an adjustment of status and pointing out the similarity to arguments the government had made during the litigation on § 1182(h)).

and cases interpreting them which were completely ignored by the government.²³ This includes but is not limited to:

- The fact that the *Jennings* decision was unquestionably based on the understanding that "1225(b)(2)(A)" applies to those at or near the border and § 1226 applies to aliens encountered in the interior, as well as the repeated statements by the Solicitor General explaining that EWI aliens like Petitioner encountered in the interior long after entry are entitled to bond under § 1226.²⁴
- The habeas petition provided persuasive examples of the many post-IIRIRA statutory provisions which contradict the government's claim that Congress intended to punish/deter illegal entry through mandatory detention as well as detailing the actual ways Congress sought to accomplish the goal of deterring entering without inspection.^{25,26}
- The habeas petition detailed the reasons that, even if *Hurtado* were decided correctly (which it was not), it could not be retroactively applied to Petitioner under longstanding Supreme Court precedent.²⁷

The government's silence on these and other well supported arguments in the petition speaks volumes.

²³ ECF Nos. 1 & 2.

²⁴ ECF No. 1 pp. 46-49.

²⁵ ECF No. 1 pp. pp. 34-45.

²⁶ ECF No. 7 pp. 1 – 33.

²⁷ ECF No. 1 pp. 62-64.

CONCLUSION

For the above stated reasons and those stated in all his previous filings, Mr. Palomo respectfully requests the Court find Respondent's detention of him without a bond hearing is contrary to the both the statutory scheme and the U.S. Constitution for the reasons set forth in his petition and above, and as a result order ICE to immediately release him.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the U.S. District Court and counsel for the government in accordance with the Federal Rules of Civil Procedure on February 6, 2026.

/s/ Dan Gividen _____

DAN GIVIDEN
Attorney for Defendant