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

ANDRES ANTONIO SERRANO ZAPATA,

PETITIONER,

v.

KRISTI NOEM, et al.,

RESPONDENTS.

Civil Case No. 5:26-cv-0084-R

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

RESPECTFULLY SUBMITTED,

/s/ Dan Gividen

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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

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[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 the reasons set forth below, Petitioner respectfully requests the Court grant the relief requested by finding his detention—which the DHS created and authored documents explicitly state is under § 1226(a)—unlawful because he has not been provided a bond hearing before an IJ in accordance with 8 U.S.C. § 1226 and its implementing regulations and for the same reasons this Court granted similar petitions (e.g. *Valdez v. Holt*, No. CIV-25-1250-R, 2025 WL 3709021 (W.D. Okla. Dec. 22, 2025) and order Mr. Serrano-Zapata's release no later than February 18, 2026 at noon.

DISCUSSION

I. The DHS created, authored, and signed documents issued to petitioner all explicitly state he was subject to § 1226—this, courts have found, prevents the government from claiming a sudden switch to § 1225 as the basis for detention.

On January 20, 2026, Mr. Serrano-Zapata filed a habeas petition and evidence in support of his position that he is entitled to a bond hearing under § 1226 and its implementing regulations.[5] Critically, the evidence submitted included several DHS created and authored documents issued after he was encountered, arrested, and released by DHS in 2023. These documents leave no room to dispute that the authority for his arrest and detention was under 8 U.S.C. § 1226. Indeed, DHS issued a warrant indicating unequivocally that Mr. Serrano Zapata was "being taken into custody as authorized by [(8 U.S.C. § 1226)] section 236 of the Immigration and Nationality Act."[6]

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[5] (ECF No. 1.)

[6] (ECF No. 1-1 p. 127.)

Thereafter, he was issued a NTA created entirely by DHS which unequivocally demonstrates, the box for being an EWI alien—not the box for an arriving alien—was checked.[7] And the DHS authored documents issued on the same date when he was released on his own recognizance explicitly state that such release was under the authority provided by 8 U.S.C. § 1226.[8]

Despite the fact that all of the DHS created and authored documents leave no question that DHS has treated Mr. Serrano Zapata as an alien whose arrest and detention was pursuant to § 1226, the government claims that contrary to the documents it created, authored, signed, and issued, Mr. Serrano Zapata is being detained under § 1225(b)(2)(A). It did not provide any evidence whatsoever to support this claim. Meanwhile, the government's brief was completely silent in response to the petition's argument pointing out that courts have repeatedly rejected similar attempts by DHS to attempt to switch detention tracks.[9] As the petition pointed out, courts have explained that "settled law precludes the Government from now switching gears [from § 1226] to contend that he has actually been detained under Section 1225(b)(2)."[10] DHS' prior treatment of an alien as though they are subject to § 1226, courts have explained, has resulted the conclusion that such noncitizens "enjoy[] a liberty interest under § 1226(a) and the procedural protections

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[7] (ECF No. 1-1 p. 121.)

[8] (ECF No. 1-1 p. 125.)

[9] (ECF No. 1 pp. 67-68.)

[10] *Patel v. Crowley,* No. 25 C 11180, 2025 WL 2996787, at *6 (N.D. Ill. Oct. 24, 2025).

thereunder that cannot be unilaterally abrogated without process by the Government simply "switching tracks."[11]

The indisputable evidence demonstrating DHS has consistently treated Mr. Serrano Zapata as being subject to § 1226 and the government's failure to dispute or even attempt to address this fact is, from Petitioner's perspective, enough by itself to demonstrate his current detention is unlawful, and therefore, he respectfully requests the Court grant the petition.

II. Statements/Assertions in the Response Brief that are contradicted by well-established law/facts.

Before moving on, it is helpful to quickly identify some of the most relevant statements/assertions in the govenrment's resposne brief which are simply incorrect. The chart below does exactly that:

Response's Assertion	Well-Established Fact
Applicants for admission are placed in removal proceedings through either: • § 1225(b)(1) or • § 1225(b)(2)(A).[12]	"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). Meanwhile, removal proceedings under § 1229a are *not* 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

[11] *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *7–8 (N.D. Cal. Sept. 12, 2025) (cleaned up).

[12] (ECF No. 8 pp. 4-6.)

Response's Assertion	Well-Established Fact
	(EOIR).[13] Once again, this was explicitly explained and supported by legal authorities in the petition.[14]
Throughout the response brief assertions are made that either explicitly or implicitly assert that an alien who is not an applicant for admission may be placed in removal proceedings under § 1182.	This is simply false. The grounds of inadmissibility in § 1182 are only applicable to applicants for admission and § 1227 to those 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).[15]
All of the provisions of § 1226(c) including the Laken Riley Act apply to aliens who are not "applicants for admission."	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)).
The government claims the "anomaly" IIRIRA sought to fix had anything to do with mandatory detention.[16]	As detailed in the petition, prior to IIRIRA, aliens arriving at a POE without proper documents were subject to expedited removal under INA § 1225(b)—a summary process culminating in immediate removal without a hearing before an Immigration Judge (IJ).[17] In stark contrast, an alien who entered without inspection, even if apprehended near the border moments after entry, was, prior to IIRIRA, statutorily entitled to full removal

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

[14] (ECF No. 1 at pp. 26-28 and 30-31.

[15] 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.[15] 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.

[16] (ECF No. 8 pp. 17.)

[17] (ECF No. 1 pp. 28 – 51.)

Response's Assertion	Well-Established Fact
	proceedings under § 1229a. This "anomaly" of giving aliens found a few miles from the border and hours after entering full § 1229a proceedings while those similarly situated at a POE were order removed without any hearing under the expedited removal statute was corrected by IIRIRA's expansion of expedited removal to such aliens.[18]
The response spills much ink attempting to claim all sorts of different actions or non-actions (e.g. "not offer[ing] to voluntarily depart") are different ways of "seeking admission."	As the Petition explains, the Tenth Circuit—like nearly every circuit—put such arguments to rest long ago, explaining that post entry "adjustment of status" to that of a LPR is not an admission.[19] The government does not merely fail to explain how its arguments could be right in light of controlling Tenth Circuit precedent, but it completely ignores it altogether as the response does not mention *Medina* or attempt to respond to the detailed discussion of it and related case law in the petition.[20]
The government claims that Mr. Serrano Zapata' due process argument is "premature" because he has been detained for less than 180 days and "*Zadvydas v. Davis* held that detention for six months was presumptively reasonable."[21]	*Zadvydas* is only applicable to questions of post-removal order indefinite detention of criminal aliens under § 1231.[22] There is no 180-day clock for claims like this one. The habeas petition's citations to *Zadvydas* were to the constitutional principles discussed in it which are relevant to the issues in this case.

[18] (ECF No. 1 pp. 45-47.)

[19] *Medina-Rosales v. Holder*, 778 F.3d 1140, 1145 (10th Cir. 2015)(" Mr. Medina–Rosales was not "admitted" a non-citizen " was not admitted when he became an LPR after post-entry adjustment of status, because he did not enter the United States when he adjusted to that status.")(citing *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").

[20] (Compare ECF No. 1 pp. 21-26 *with* ECF No. 8 pp. 1 - 41.)

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

[22] *See generally, Zadvydas v. Davis*, 533 U.S. 678 (2001).

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 are completely seperate 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.

Meanwhile, this Court's prior decisions in similar cases along with the countless other courts that have done the same have all determined jurisdiction exists over this and similar habeas cases. 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.[23] .

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

[23] *Jennings*, 583 U.S. at 294.

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.[24]

Detention without a warrant at the border is, of course, consistent with the border exception to the warrant requirement. But once within the United States of America ""[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.'"[25] The law in this area is not grey. Rather, for decades, it has been "clearly established . . . that immigration stops and arrests [are] subject to the same Fourth

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[24] *Jennings v. Rodriguez*, 583 U.S. 281, 302, (2018) (emphasis added.

[25] *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.").

Amendment requirements that apply to other stops and arrests—reasonable suspicion for a brief stop, and probable cause for any further arrest and detention." [26]

Despite the petition detailing the 4th Amendment's warrant requirement along with the INA provisions explicitly requiring a warrant for interior arrests, these well-established principles and the law were not addressed by the response.[27] Accordingly, Petitioner will not belabor the point.

III. 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. Serrano Zapata' Habeas Petition and Motion for Preliminary injunction provided an extensive and detailed discussion of the relevant laws, regulations, and cases interpreting them which were completely ignored by the government.[28] 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

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[26] *Id* at 215.

[27] The government appeared to realize (like *Jennings* above) that § 1225 has no warrant requirement whereas § 1226 does. But this realization comes in what undersigned believes is a truly alarming argument. Specifically, footnote 8 of the response appears to argue that Petitioner's position "leads to the absurd result that immigration officers cannot immediately detain an alien residing the United States without determining if they were somehow actively seeking admission." (ECF No. 8 p. 27 n. 8.) This statement is alarming because it suggests a belief that immigration officers should be able to detain whoever, whenever, and where ever they want without regard for the 4th Amendment or INA. Again, the 4th Amendment and 8 U.S.C. § 1357, as discussed in detail in the petition and ignored completely by the response, dictate when, where, how, and what is required (e.g. warrant) for an immigration officer to detain and arrest a noncitizen. (ECF No. pp. 18-21 and 63-66.) This distinction is not merely procedural and its definitely not absurd; rather, it reflects the Fourth Amendment's protections for individuals present within the United States—including those present unlawfully.

[28] ECF Nos. 1 & 2.

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.[29]

- 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.[30][31]
- 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.[32]

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

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[29] ECF No. 1 pp. 46-49.

[30] ECF No. 1 pp. pp. 34-45.

[31] ECF No. 7 pp. 1 – 33.

[32] 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 12, 2026.

/s/ Dan Gividen
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