

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Alvaro Roberto HUINIL DIAZ,
Petitioner,

v.

Kristi NOEM, et al.,

Respondents.

Case No. CIV-26-104-HE

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

INTRODUCTION

Petitioner, by and through his undersigned counsel, hereby submits this Reply to Respondent's Response in Opposition to Writ of Habeas Corpus. Petitioner has now been in custody since December 10, 2025, without the opportunity to have his custody redetermined due to Respondents' misinterpretation of the law. Respondents' opposition rests on several fundamental errors.

First, they mischaracterize Petitioner's challenge to his detention authority under 8 U.S.C. § 1225(b)(2)(A) as a 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

I. 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 Petitioner raises 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.

II. 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 the United States 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. 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 such individuals are processed under § 1226(a).

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 those who entered the United States without inspection, 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 has already joined the dozens of courts throughout the country, including several within the Tenth Circuit, holding § 1226(a) is the proper detention statute. *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, 2026), *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 *Ochoa-Ochoa- Maldonado v. Noem*, No. 25-cv-1379 (W.D. Okla. Jan. 20, 2026). *Maldonado v. Noem*, No. 25-cv-1379 (W.D. Okla. Jan. 20, 2026).¹

¹ Petitioner acknowledges there are cases in the Western District of Oklahoma holding otherwise, but the majority hold in favor of jurisdiction.

III. 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 September 1, 2001.

IV. “Premature” Due Process Claims.

Pre-removal custody implicates a liberty interest from the moment of arrest. A categorical bar on bond violates procedural due process regardless of duration. Due process requires that immigration detention “bear a reasonable resemblance to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). Those purposes must be reasonably related to the government’s goals preventing flight and harm to the community and be accompanied by adequate procedural protections to ensure those goals are being served. *Zadvydas*, 533 U.S. at 690-91. Through the misinterpretation of § 1225(b)(2)(A), Respondents unlawfully detained Petitioner and denied him the opportunity for a bond redetermination hearing to determine whether his detention serves its stated purpose. In doing so, Respondents have violated Petitioner’s rights to due process.

V. Petitioner does not seek an advisory decision, but requests any ordered bond hearing include explicit procedural safeguards to ensure compliance with due process.

Petitioner does not seek an advisory decision. Rather, Petitioner respectfully requests this Court to impose procedural safeguards to ensure that any bond hearing ordered is meaningful and constitutionally adequate. The “equitable and flexible nature of habeas relief” affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); see also *Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“[H]abeas corpus is, at its core, an equitable remedy”).

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 11th day of February 2026

Respectfully submitted,

s/Cassidy E. Walsh
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Dated: February 11, 2026

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 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:

scott.maule@usdoj.gov

s/Cassidy E. Walsh
Cassidy E. Walsh