UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

Elvin ALEXANDER COREAS,
Petitioner,

v.
Kristi NOEM, et al.,
Respondents.

Case No. CIV-26-151-J

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 Respondents' Response in Opposition to Writ of Habeas Corpus.

This habeas petition presents the question of whether the Department of Homeland Security (DHS) may invoke 8 U.S.C. § 1225(b)(2)(A) to impose mandatory, categorical no-bond detention on a noncitizen apprehended in the interior years after entry, or whether detention is governed by 8 U.S.C. § 1226(a), which provides for individualized bond review, especially when Petitioner had previously been granted a bond where no jurisdictional arguments were raised or appealed.[1] It also presents whether his detention is in violation of due process. Respondents' opposition rests on two fundamental errors. First, they mischaracterize Petitioner's challenge to his detention authority under 8 U.S.C. § 1225(b)(2)(A) as a forbidden 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 challenges only the legality of his ongoing custody, not the NTA, 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' efforts to impose categorical detention without bond cannot be reconciled with statutory structure,

[1] *See* Gov. Response Doc 13-2. Note that counsel was unaware that Petitioner had already been provided a bond hearing and a bond in 2018 and has been attending his immigration hearings in accordance with the law.

decades of agency practice, or the Fifth Amendment. This Court should therefore reject Respondents' position and grant habeas relief.

ARGUMENT

I. LEGAL STANDARD

A petition under 28 U.S.C. §2241 is the proper vehicle to challenge the statutory and constitutional authority for immigration detention. The Supreme Court has repeatedly recognized habeas jurisdiction over detention claims while removal proceedings are pending, including challenges to the legality of custody under the INA. *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Demore v. Kim*, 538 U.S. 510 (2003). The INA does not eliminate habeas review of a noncitizen's detention where the claim is independent of removal-order review and challenges the authority to detain without bond.

II. 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 and their jurisdictional arguments fail for three independent reasons.

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 raised 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 under habeas.

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.

III. 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 placed into an inspection/admission framework.

By contrast, once an individual is apprehended in the interior, the inspection phase is not what is occurring. At that point, detention falls under § 1226(a), which authorizes arrest

"pending a decision on whether the alien is to be removed" and provides discretion for bond and release.

Respondents' claim that Congress intended § 1225(b)(2)(A) to encompass everyone who entered 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. Therefore, 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 expressly recognized that EWIs, though technically treated "applicants for admission," "will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323. That regulatory understanding is incompatible with Respondents' theory of categorical, mandatory, no-bond detention under his is further confirmation that they are processed under § 1225(b)(2)(A) for all EWIs apprehended in the interior.

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 EWIs, like arriving aliens, are placed in removal proceedings under § 1229a, not that they be subject to identical custody rules.

This Court has already joined the dozens of courts throughout the country, including several within the Tenth Circuit, holding § 1226(a) is the proper statute of detention. *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, 2025), *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 *Maldonado v. Noem,* No. 25-cv-1379 (W.D. Okla. Jan. 20, 2026).[2]

Respondents argue in much of their response that the Fifth Circuit recently decided the matter to the contrary in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, (5th Cir. Feb. 6, 2026). Petitioner points out the this Court is not bound by the Fifth Circuit and if this Court in inclined to consider the 2-1 decision, Petitioner argues the strong langauge in Judge Douglas' dissent:

[2] Petitioner acknowledges there are a few cases in the Western District holding otherwise, but the majority hold in favor of jurisdiction and Judge Palk has already ruled in favor of jurisdiction in a case with almost identical facts. *Gonzalez Cortes v. Holt,* No. 25-cv-1176 (W.D. Okla. Jan. 20, 2026).

> The Congress that passed IIRIRA would be surprised to learn it had also required the detention without bond of two million people. For almost thirty years there was no sign anyone thought it had done so, and nothing in the congressional record or the history of the statute's enforcement suggests that it did. . . . No matter that this newly discovered mandate arrives without historical precedent, and in the teeth of one of the core distinctions of immigration law. The overwhelming majority of courts in this circuit and elsewhere have recognized that the government's position is totally unsupported. Undeterred, the majority and the government distort the statutory text, abstract it from its context and history, ignore the Supreme Court's clearly stated understanding of the statutory scheme, and wave away the agency's previous failure to detain millions of noncitizens as if it were a rounding error.
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> And for what? The majority stakes the largest detention initiative in American history on the possibility that "seeking admission" is like being an "applicant for admission," in a statute that has never been applied in this way, based on little more than an apparent conviction that Congress must have wanted these noncitizens detained—some of them the spouses, mothers, fathers, and grandparents of American citizens. Straining at a gnat, the majority swallows a camel.

Buenrostro-Mendez v. Bondi, Nos. 25-20496, 25-40701, Doc. 213-1, p. 22(5th Cir. Feb. 6, 2026)(Douglas, J, dissenting).

IV. 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, no-bond detention under Respondents' theory raises serious 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. Accordingly, even if Respondents'

statutory interpretation were plausible, the Court should reject it to avoid serious constitutional infirmity.

Importantly, the Fifth Circuit case that Respondents cite, *Buenrostro-Mendez v. Bondi*, --- F.4th ----, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026), decided the statutory claim in favor of mandatory detention, but the panel did not decidedly reach the due process question and remanded in part. The U.S. District Court for the Western District of Texas recently determined that redetention is a due process violation and granted a habeas petiton finding that the Petitioner "is being detained in violation of his constitutional right to procedural due process." *See Duran Aguila,* 26-cv-0241-KC (W.D.TX February 9, 2026). Citing *Buenrostro-Mendez v. Bondi*, the *Duran Aguila* Court found:

> [T]he *Buenrostro-Mendez* court did not reach the due process question, confining its analysis and holding to statutory interpretation. *See generally Buenrostro-Mendez*, 2026 WL 323330, at *1–10. And the case was remanded to the district court, not for dismissal, but "for further proceedings consistent with this opinion." *Id.* at *10. Presumably, those further proceedings will entail consideration of Buenrostro-Mendez's due process claim, which the district court declined to reach in the first instance. *Buenrostro-Mendez v. Bondi*, No. 25-cv-3726, 2025 WL 2886346, at *3 n.4 (S.D. Tex.Oct. 7, 2025). Indeed, the Government's counsel stated it bluntly during oral argument: "We have one issue before the Court now: the statutory question. There's not, in other words, a due process claim here." Oral Argument, *Buenrostro-Mendez v. Bondi*, No. 25-20496, at 44:56–45:11 (5th Cir. Feb. 3, 2026), *available at* https://www.ca5.uscourts.gov/OralArgRecordings/25/25-20496_2-3-2026.mp3. In sum, *Buenrostro-Mendez* has no bearing on this Court's determination of whether Duran Aguila is being detained in violation of his constitutional right to procedural due process.
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> Thus, after careful consideration of the entire record,[1] and for reasons explained at length in *Lopez-Arevelo*, *Santiago*, *Martinez*, *Erazo Rojas*, *Lala Barros*, and this Court's many other decisions involving habeas claims brought by petitioners subject to mandatory detention under the Government's new interpretation of 8 U.S.C. § 1225(b), Duran Aguila's Petition is **GRANTED IN PART** on ***procedural due process*** grounds.

Duran Aguila, 26-cv-0241-KC, 3-4 (W.D.TX February 9, 2026)

V. 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 his Due Process rights.

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 his detention is in violation of Due Process,
3. Order that he be released or 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;
4. 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
5. Grant such other relief as the Court deems just and proper.

DATED this 11th day of February 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to 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:

Paul.N.Jones@ice.dhs.gov

/s/ Kelli J. Stump
Kelli J. Stump