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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Fernando Rosabal-Morandeira

Petitioner,

v.

Warden of South Texas ICE Processing Center, in their official capacity; **BRET BRADFORD**, Supervisory ICE Official, in his official capacity, **TODD M. LYONS**, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity; and, **KRISTI NOEM**, Secretary of the Department of Homeland Security, in her official capacity.

Respondents.

Civil Action No.5:26-CV-672-OLG

Agency No. 

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE**

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE

Petitioner does not seek review of his removal order. His appeal is pending before the Board of Immigration Appeals, and an automatic administrative stay prevents execution of removal. This petition challenges only the legality of his continued civil detention.

Respondents attempt to reframe this case as either a statutory classification issue resolved by recent authority or as a premature collateral challenge barred by § 1252. It is neither.

JURISDICTION

Section 1252(g) does not apply because Petitioner does not challenge the decision to commence proceedings, adjudicate removability, or execute a removal order. Section 1252(b)(9) likewise does not bar jurisdiction because Petitioner is not seeking review of the removal process itself. He challenges only his ongoing physical confinement. The Supreme Court has rejected expansive readings of § 1252(b)(9) that would collapse detention claims into removal review. Jennings v. Rodriguez, 583 U.S. 281, 293–95 (2018).

This Court has repeatedly exercised jurisdiction over materially similar detention challenges. In its Order for Service, the Court directed Respondents to identify any material differences between this case and prior decisions addressing detention under § 1225 and § 1226. Respondents do not meaningfully do so.

STATUTORY AUTHORITY

Respondents rely on Matter of Yajure-Hurtado to support the jurisdictional denial of bond. Although other federal courts have rejected the BIA's interpretation underlying Yajure-Hurtado, the Fifth Circuit has taken a different view regarding statutory classification. Petitioner does not seek to relitigate that question here. Even assuming detention falls under § 1225, continued civil confinement must still comply with the Fifth Amendment.

Section 1225(b) applies to individuals “seeking admission.” Petitioner was not seeking admission when detained. He had been living in the interior of the United States for more than three years after DHS released him. He complied with supervision. He appeared at a routine ICE check-in. He was not presenting himself for entry, nor was he apprehended at the border.

The government’s position collapses the distinction between being an “applicant for admission” and actively “seeking admission.” Congress used both phrases. They are not interchangeable. Interior re-detention of an individual already present and placed in full removal proceedings under § 1229a falls under § 1226(a), not § 1225(b). The Court directed Respondents to identify material factual distinctions from prior decisions addressing detention under § 1225 and § 1226. Respondents do not do so.

LENGTH AND PURPOSE OF DETENTION

Even assuming a statutory detention authority exists, continued confinement must remain reasonably related to removal. Civil detention is regulatory, not punitive.

Petitioner has been detained since October 29, 2025. His appeal is pending. An automatic administrative stay prevents removal. Respondents do not demonstrate that Ecuador has agreed to accept him, that travel documents have been issued, or that removal has been scheduled. There is no projected removal date.

The Supreme Court has upheld immigration detention for limited periods tied to ongoing proceedings. See *Demore v. Kim*, 538 U.S. 510 (2003). Demore did not authorize indefinite detention without individualized safeguards. Justice Kennedy’s concurrence makes clear that where detention becomes unreasonable in duration or detached from its regulatory purpose, judicial review is appropriate.

Here, detention persists without evidence that removal is significantly likely in the reasonably foreseeable future. Respondents offer no concrete evidence that removal is significantly likely in the reasonably foreseeable future, particularly where an administrative stay remains in effect, and no travel documents or removal date have been identified.

LACK OF A MEANINGFUL CUSTODY DETERMINATION

Independent of the statutory debate, Petitioner has never received a meaningful custody determination. A bond hearing was scheduled for January 15, 2026. Counsel appeared and waited to be called. The Immigration Judge stated that Petitioner was not on the bond calendar and that the record had not been reviewed. No testimony was taken. No evidence was considered. Approximately one hour later, a written order denying bond was issued.

No individualized findings were made regarding flight risk, danger, or alternatives to detention. Respondents argue that Petitioner must exhaust administrative remedies by appealing the bond denial. That argument presupposes that a bond hearing occurred. It did not.

A written denial issued without a hearing, without review of the record, and without individualized findings regarding flight risk, danger, or alternatives to detention is not a meaningful custody determination. Petitioner has never received a merits-based bond hearing. His continued detention, therefore, rests solely on statutory interpretation, not on any individualized assessment.

Habeas review is appropriate where no meaningful process has been provided.

PRACTICAL REALITY

Petitioner was released into the interior in 2022 and complied with supervision and court requirements for more than three years. He did not abscond or violate reporting conditions. He was

detained during a routine ICE check-in. He now remains confined despite the absence of imminent removal and without having received a custody hearing.

The government's response focuses on categorical statutory language but does not address these facts. The Court specifically directed Respondents to identify factual distinctions from prior cases. They have not done so.

RELIEF

For these reasons, Petitioner respectfully requests that the Court order a bond hearing under § 1226(a) within a defined period, at which the government bears the burden of justifying continued detention, or alternatively order his release.

If the Court determines detention falls under § 1231, Respondents should be required to demonstrate that removal is significantly likely in the reasonably foreseeable future. They have not made that showing.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February 2026, a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

02/25/2026

DATE



Dr. Sahar Jalili Pawelski, Esq.