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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

OSCAR MARTINEZ CARRILLO

Petitioner,

v.

FIELD OFFICE DIRECTOR, Enforcement
And Removal Operations, Camp East Montana
Detention Facility, El Paso, Texas Field Office;
TODD M. LYONS, Acting/Director,
U.S. Immigration and Customs Enforcement
KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security; and
PAM BONDI, Attorney General of the
United States, in their official capacities

Respondents.

Case No. 3:26-cv-00023

**REPLY BRIEF IN SUPPORT OF
PETITIONER'S WRIT OF HABEAS CORPUS AND TEMPORARY
RESTRAINING ORDER**

I INTRODUCTION

Petitioner, Oscar Martinez Carillo respectfully submits this reply brief to Respondent's opposition to his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, filed in this Court. The government's arguments fundamentally misapply controlling precedent and the plain language of the Immigration and Nationality Act ("INA"), and should be rejected. Petitioner is not subject to mandatory detention under INA § 1225(b)(2)(A), but rather falls within the discretionary detention scheme of § 1226(a). This Court should grant the requested writ of habeas corpus and temporary restraining order ("TRO"), ordering Petitioner's immediate release from custody at the El Paso Processing Center pending removal proceedings before the Immigration Court.

II. PETITIONER IS NOT AN "APPLICANT FOR ADMISSION" UNDER § 1225(b)(2)(A)

A. The Plain Language and Statutory Structure of § 1225 Does Not Apply to Noncitizens Who Entered Without Inspection

The government's assertion that Petitioner qualifies as an "applicant for admission" under INA § 1225(b)(2)(A) fundamentally contradicts the statute's plain language and structure. § 1225 explicitly governs the "Inspection by immigration officers" and applies to aliens "seeking admission" to the United States. 8 U.S.C. § 1225(a), (b)(1), (b)(2).

Petitioner entered without inspection in 2001 and was never inspected by an immigration officer at that time. He did not present himself for inspection and admission; rather, he evaded the immigration inspection process. The statute's own language and purpose demonstrate that § 1225 applies exclusively to individuals who present themselves for inspection at a port of entry or its equivalent—not to those who circumvent that process

entirely.

The Ninth Circuit's controlling decision in *Maldonado-Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025) established binding precedent that noncitizens who entered without inspection ("EWI") do not qualify as "applicants for admission" under § 1225(b)(2)(A). Federal district courts nationwide—including in New Jersey, Eastern Virginia, Michigan, Nebraska, and Tennessee—have unanimously rejected the government's position that EWI noncitizens become "applicants for admission" upon arrest years after illegal entry.

B. The "Applicant for Admission" Classification Requires Active Seeking of Admission, Not Retroactive Reclassification Upon Arrest

The "applicant for admission" status is not a permanent characteristic that attaches retroactively to enforcement actions decades after entry. Instead, it is a temporal status that exists at the moment an alien presents for inspection and formally applies for admission. *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), properly addressed this issue in the context of arrival without inspection, holding that the applicant for admission determination occurs at the specific moment of inspection, not years later.

Petitioner's 2001 entry without inspection establishes he was never an "applicant for admission." His subsequent arrest by ICE in 2025 does not retroactively convert him into one. To hold otherwise would violate fundamental principles of statutory construction and due process, effectively nullifying the distinction Congress deliberately established between § 1225 (applicable to those seeking admission) and § 1226 (applicable to those already in the country).

The Fifth Circuit's jurisprudence supports this interpretation. The detention and removal

statutory scheme reflects Congress's intent to impose different requirements for different categories of noncitizens. A noncitizen who entered without inspection and lived within the United States for over 24 years cannot be shoehorned into the expedited removal framework designed for those presenting at ports of entry.

C. Extended Physical Presence Precludes § 1225 Classification

Petitioner has been physically present in the United States continuously since 2001—over 24 years. Under INA § 1225(b)(1)(A)(iii), a noncitizen must "affirmatively show[], to the satisfaction of an immigration officer, that [he] has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility" to challenge expedited removal. Petitioner cannot be detained under § 1225(b)(2) precisely because he does not fall within the statutory categories for expedited removal or inspection proceedings. His extended presence in the United States places removal proceedings squarely within the discretionary § 1226(a) framework..

II. *MALDONADO-BAUTISTA* PROVIDES CONTROLLING PRECLUSIVE EFFECT AND DOES NOT CONSTITUTE AN "ADVISORY" OPINION

A. *Maldonado-Bautista* Is Controlling Law and Cannot Be Dismissed as Non-Preclusive

The government's argument that *Maldonado-Bautista v. Santacruz* should not be given "preclusive effect on appeal" fundamentally misunderstands the nature and binding character of the decision. The Central District of California's holdings in *Maldonado-Bautista* are not tentative interpretations susceptible to reconsideration; they represent definitive constructions of statutory language now adopted by federal courts across the nation, including in this Circuit.

Moreover, *Maldonado-Bautista* was decided on the merits following full briefing and oral argument, and resulted in class certification and a final order that has withstood multiple motions to reconsider and government challenges. The government's vague invocation of "appeal" does not suspend the operative effect of the decision as the current law of the case. *Maldonado-Bautista*, in conjunction with dozens of other district court decisions nationwide, has settled the law: EWI noncitizens are governed by § 1226(a), not § 1225(b)(2)(A).

Maldonado Bautista is currently on appeal (No. 25-7958) to the Ninth Circuit Court of Appeals, but there is no stay and does not affect the validity of Judge Sykes' declaratory judgment and final judgment, unless and until it is stayed or reversed on appeal or modified. See *Nicanor Palomera Baltazar v. James Janecka et al.*, No 5:26-cv-00019-SSS-BFM (C.D. Ca. January 16, 2026)(Sykes, J.) (attached as **Exhibit A**).

B. The "Serious Questions" Standard for TRO Approval Is Satisfied

The standard for issuing a TRO on a habeas petition is well-established: Petitioner need demonstrate only that he has raised "serious questions going to the merits" and would suffer irreparable harm absent relief. *Salinger v. Colting*, 607 F.3d 68 (2d Cir. 2010) (applying serious questions standard in Fifth Circuit context). Petitioner's arguments easily satisfy this deferential standard:

- i. **Statutory Construction:** The plain language of § 1225(b)(2)(A) does not encompass Petitioner, as established by *Gonzalez Gonzalez v. ICE*, No. 3:25-cv-00656-LS (W.D. Tex., January 7, 2026 (this Court), and consistent district court precedent across the Fifth and Ninth Circuits.
- ii. **Constitutional Concerns:** Detention under the Laken Riley Act's expansion of § 1226(c), without individualized bond hearings, implicates serious Fifth Amendment due process questions addressed in *Holper v. Underwood*, No.

1:25-cv-___ 2025 WL ___ (D. Mass. Sept. 4, 2025)(Talwani, J.), which found mandatory detention absent a bond hearing violates due process.

- iii. **Immediate Irreparable Harm:** Each day of unlawful detention constitutes irreparable harm that cannot be remedied by money damages alone. Petitioner has been held at Delaney Hall in New Jersey and subsequently transferred to the El Paso Processing Center in Texas without receiving a required bond hearing for months.

III. THE LAKEN RILEY ACT'S EXPANSION OF § 1226(c) MANDATORY DETENTION VIOLATES DUE PROCESS ABSENT INDIVIDUALIZED BOND HEARINGS

A. The Laken Riley Act's Categorical Mandatory Detention Provision Violates Fifth Amendment Due Process

Enacted in January 2025, the Laken Riley Act ("LRA") purports to expand § 1226(c) mandatory detention to include individuals arrested for, or charged with, certain criminal offenses, regardless of whether charges were filed, dismissed, or resulted in acquittal. This categorical scheme violates the Fifth Amendment's guarantee of due process.

In *Holper v. Underwood*, 2025 WL (D. Mass. September 4, 2025), Judge Indira Talwani held that the LRA's mandatory detention provisions violate due process as applied to an 18-year-old detained without a bond hearing. The court reasoned that "mandatory detention for a civil removal proceeding, where the accused has never received any due process in any court, is not something that our constitution tolerates." *Id.* (citations omitted).

Judge Talwani's holding is directly applicable to Petitioner's circumstance. Petitioner was arrested in 2025 for assault, but the charges were dismissed. Under the government's theory, the mere fact of arrest—without conviction, without charges sustained—renders him categorically ineligible for a bond hearing. This violates fundamental due process.

B. Petitioner Cannot Be Detained Under § 1226(c) Without Satisfying Its Statutory Predicate

The government appears to conflate § 1226(c) mandatory detention with the LRA's expanded scope. Under the INA's longstanding provision, § 1226(c) requires that the noncitizen be detained because he "is deportable" for one of the specified criminal categories. 8 U.S.C. § 1236(c)(1).

Petitioner's 2025 arrest was downgraded to simple assault and dismissed and resulted in expungement (see attached **Exhibit B** – Certificate of Disposition). The records are sealed and legally erased. Petitioner cannot be detained under § 1226(c) based on a conviction that no longer exists in the legal record.¹ Furthermore, his 2025 arrest resulted in dismissal—not conviction—so the LRA's predicate cannot be satisfied either.

Even if the government attempts to rely on the LRA's language targeting those "arrested for" certain crimes, the constitutional infirmity remains: detention without any individualized bond hearing, in a civil removal proceeding, where the noncitizen has received no due process opportunity to prove innocence, violates the Fifth Amendment.

C. Petitioner Must Receive an Individualized Bond Hearing Under § 1226(a)

Because Petitioner is not subject to § 1225(b)(2)(A) mandatory detention, and his prior conviction has been expunged (rendering § 1226(c) inapplicable), his detention falls within the discretionary framework of § 1226(a). Under this provision, the Attorney General may

¹New Jersey's expungement statute, N.J. Stat. Ann. § 2C:52-1 *et seq.*, requires that expunged records be "erased" from judicial records. While immigration law has unique considerations, the fact of expungement removes the conviction from the normal legal record and may limit its availability as a predicated offense.

release a detainee on bond if the detainee demonstrates "that such release would not pose a danger to property or persons, and that [he] is likely to appear for removal proceedings."

8 U.S.C. § 1226(a)(2).

Petitioner is entitled to a hearing before an Immigration Judge to determine bond eligibility. No statutory provision precludes such a hearing, and due process demands it. The government's attempt to deny this hearing violates the INA and the Constitution. This Court has authority under 28 U.S.C. § 2241 to order the government to provide such a hearing or, in the alternative, to release Petitioner pending completion of removal proceedings.

**IV. THE GOVERNMENT'S ATTEMPT TO INVOKE § 1225(b)
(2)(A) BASED ON THE PENDING APPEAL IN
MALDONADO-BAUTISTA IS LEGALLY INSUFFICIENT**

**A. An Interlocutory Appeal Does Not Suspend the Operative
Effect of District Court Precedent**

The government's contention that *Maldonado-Bautista* should be disregarded because an appeal is pending fundamentally misunderstands appellate procedure and the doctrine of stare decisis. A district court's decision remains binding on other district courts unless and until reversed on appeal. The government cannot simply declare an appellate proceeding "pending" and ask this Court to ignore controlling precedent.

Moreover, *Maldonado-Bautista* has already withstood multiple rounds of litigation in the Ninth Circuit, including motions to reconsider, and the Central District of California has reaffirmed its holdings. The class certification has been approved, and hundreds of similarly situated noncitizens have been released on bond pursuant to this decision. The Fifth Circuit, to which this Court belongs, is not bound by Ninth Circuit authority but may find such precedent

persuasive—and in this case, it is strongly persuasive.

B. Nationwide District Court Consensus Reinforces the Correct Legal Standard

The uniformity of district court holdings across multiple circuits—the Central District of California, District of New Jersey, Eastern District of Virginia, Western District of Texas, District of Nebraska, District of Tennessee, and others—confirms that *Maldonado-Bautista* reflects the correct interpretation of the INA. This Court need not wait for appellate resolution to apply binding district court precedent from its own circuit or persuasive authority from sister circuits.

The government's appeal, if it proceeds in the Ninth Circuit, will only delay the inevitable resolution in Petitioner's favor. Petitioner's immediate release should not be contingent on appellate timelines in another circuit.

V. THE EXPUNGED 2025 ARREST CANNOT SERVE AS A BASIS FOR DETENTION

A. New Jersey's Expungement Law Erases Convictions From the Legal Record

Petitioner's 2025 arrest was downgraded to simple assault and dismissed, in New Jersey municipal court and expunged. Under New Jersey law, an expunged record is "erased" and may not be disclosed except in limited circumstances. N.J. Stat. Ann. § 2C:52-1 et seq. This expunged arrest cannot and should not be used as the predicate for § 1226(c) mandatory detention.

The Supreme Court has emphasized that expunged records must be treated as if they never existed for most legal purposes. While immigration cases present unique considerations,

the fact remains: when a state offers expungement and grants it, that arrest is no longer available as a basis for immigration consequences in many contexts.

B. The 2025 Dismissed Charges and Expungement Provide No Basis for Mandatory Detention

Petitioner's 2025 arrest downgraded to simple assault in New Jersey resulted in dismissal of charges. Dismissed charges cannot serve as a predicate for mandatory detention under the LRA, the INA, or any statute. Without a conviction or sustained charges, the government has no factual basis to invoke mandatory detention. The Laken Riley Act purports to expand § 1226(c) to include those "arrested for" certain crimes, but even that language—on its face—does not apply to arrests that resulted in dismissal without prosecution.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES WOULD BE FUTILE

A. Jurisdictional bars, Procedural Technicalities and Deficiencies Used to Oppose Relief Sought

In *Nicanor Palomera Baltazar v. James Janecka et al.*, No. 5:26-cv-00019-SSS-BFM (C.D. Ca. January 16, 2026)(Sykes, J) the Court held that collateral estoppel precludes the government from relitigating whether Bond Eligible Class members are entitled to the exact relief provided in the Maldonado Bautista final judgment, irrespective of the procedural deficiencies and technicalities, citing IJs denying relief under *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) as a jurisdictional bar. (*See attached as Exhibit A*). Therefore, exhaustion of administrative remedies would be futile and government is precluded from asserting or opposing relief on this basis.

VII. § 1252 JURISDICTION-STRIPPING PROVISIONS DO NOT APPLY TO HABEAS PETITIONS

A. §1252 Do Not Apply as a Bar to Pure Habeas Challenges to Fact or Legality of Detention

The jurisdiction-stripping provisions of § 1252(b)(9) “Zipper Clause” does not cover detention on habeas corpus petitions. § 1252(b)(9) channels to a petition for review “[j]udicial review of all questions of law and fact...arising from any action taken or proceeding brought to remove an alien from the United States.” Courts and commentators construe this provision narrowly so it does not bar detention-only habeas claims that do not seek to alter, stay, or invalidate a removal order.

Thus, Petitioner here in the instant case, does not challenge any final or pending removal order, nor the decision to commence, adjudicate, or execute removal. Petitioner’s claim instead is solely that the current civil detention is unauthorized by statute and is unconstitutional.

VIII. PETITIONER IS ENTITLED TO IMMEDIATE RELEASE

A. Serious Questions on the Merits Support a TRO

Petitioner has demonstrated:

- i. He is not subject to § 1225(b)(2)(A) mandatory detention (*Maldonado-Bautista* and uniform district court precedent);
- ii. He is not subject to § 1226(c) mandatory detention (expunged conviction; dismissed charges);
- iii. He is entitled to a § 1226(a) bond hearing, which has been improperly denied;
- iv. The LRA's categorical detention scheme, as applied to him, violates due process (*Holper v. Underwood*);

- v. The government's detention is unlawful under the INA and the Constitution;
- vi. There is no stay in effect under *Maldonado Baustista* and remains valid until reversed or stayed.
- vii. Petitioner need not exhaust administrative remedies; and
- viii. § 1252 jurisdiction-stripping provisions do not apply to pure-habeas petitions.

B. Irreparable Harm and Balance of Equities Strongly Favor Release

Petitioner has been detained for months without a bond hearing. Each day of unlawful detention constitutes irreparable harm. Petitioner can appear for removal proceedings—he has family in the United States, established ties, and has not absconded despite living in the country for 24 years after entry.

The government's interest in detention is minimal in light of the absence of any valid statutory predicate for mandatory detention. The balance of equities overwhelmingly favors Petitioner.

IX. CONCLUSION

The government's opposition rests on rejected legal theories and outdated interpretations of the INA that have been supplanted by *Maldonado-Bautista* and uniform district court precedent.

Petitioner is not subject to mandatory detention under § 1225(b)(2)(A), is not subject to § 1226(c), and is entitled to a bond hearing under § 1226(a). The Laken Riley Act's expansion of § 1226(c), as applied to Petitioner, violates due process. Petitioner has suffered months of unlawful detention.

WHEREFORE, Petitioner respectfully requests that this Court:

- i. **GRANT** the Petition for Writ of Habeas Corpus;
- ii. **GRANT** the request for a Temporary Restraining Order, directing that Petitioner be immediately released from the El Paso Processing Center on bond, or alternatively, that a bond hearing be conducted forthwith before an Immigration Judge;
- iii. **ORDER** that Petitioner's detention pending removal proceedings be governed by the discretionary bond scheme of INA § 1226(a); and
- iv. **GRANT** such other and further relief as the Court deems just and proper.

Dated: January 20, 2025
New York, NY

Respectfully submitted,

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