UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Jose Alberto GOMEZ-GONZALEZ,
A No[redacted]
Petitioner,

v.

Miguel Vergara, et. al,

Respondents.

Case No. 5:26-CV-00598-DAE

PETITIONER'S REPLY

Introduction

Petitioner, Jose Alberto Gomez-Gonzalez, ("Mr. Gomez" or "Petitioner"), is a 24-year-old college student and asylum seeker from Mexico. On February 28, 2012, at 12 years-old, Mr. Gomez, entered the U.S. with his family by vehicle to seek asylum through the Presidio, TX port of entry. [ECF No. 1-2 at 2]. Upon entry, immigration agents treated Mr. Gomez and his family as arriving aliens despite the fact that they had in their possession B1/B2 Border Crossing Cards duly issued by the United States Consulate in Mexico. *Id.* at 11.

Since March 1, 2012, Mr. Gomez and his family were granted temporary humanitarian parole under INA § 212(d)(5)(A); 8 U.S.C. § 1182(d)(5)(A). [ECF No. 1-1 at 5]. According to the Respondents, his parole expired on January 16, 2015. [Respondents' Response at ECF No. 6 at 2]. Nonetheless, since February 28, 2012, Mr. Gomez had been allowed to live unimpeded in

the United States for over 14 years, he graduated high school, worked, lived with his family, attended college as he was about to graduate, and he assimilated into the community and established his life in the United States. [ECF No. 1-2 at 11-12]. On October 01, 2015, an El Paso Immigration Judge administratively closed Mr. Gomez's s asylum case. *See generally*, 8 C.F.R. §§ 1003.18(c)(2024); and 1003.1(l)(2024) (granting immigration judges the power to manage their dockets and administratively close cases).

On August 14, 2025, Mr. Gomez was pulled over for allegedly speeding by Concho County Deputy Sheriff Abel Quezada ("Deputy Quezada"). Mr. Gomez was driving on Highway 87 near Eden, Texas, which, according to Google maps, is over 100 air miles to the nearest Mexican border town of Ciudad Acuña, Coahuila, Mexico. At the time of his detention and arrest, Mr. Gomez was not seeking admission as the term is defined at 8 U.S.C. § 1225(a)(1).

This is so because he had already been allowed to live in the United States for over 14 years. The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer. 8 U.S.C. § 1101 (a)(13)(A).[1] Mr. Gomez was allowed to legally enter the United States to pursue his asylum case. At the time of entry, Mr. Gomez had on his person a B1/B2 Border Crossing Card. Subsequently, Mr. Gomez was seized without any reasonable suspicion that he was in violation of any immigration law and the Respondents conducted a warrantless arrest without any probable cause.

[1] Section 1101(a)(13)(B) states in relevant part that a non-citizen paroled, as here, under INA "section 212(d)(5) [8 USCS § 1182(d)(5)] ...shall not be considered to have been admitted. But see INA § 245(a) that states adjustment of status is available only to aliens who were "inspected and admitted or paroled into the United States." *See Matter of Castillo-Padilla* , 25 I. & N. Dec. 257, 260, (BIA 2010)(holding that parole under § 1182(d)(5) allows adjustment of status when conditional parole under § 1226(a)(2)(B) does not).

ARGUMENT

I. The Court Has Jurisdiction Over Petitioner's Habeas Corpus Petitions Challenging His Detention.

A writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 2004) (citing U.S. CONST. art. I, § 9, cl. 2). "Title 28 U.S.C. § 2241(c)(3) grants this Court jurisdiction to hear habeas corpus petitions from [asylum seekers] claiming they are held in violation of the Constitution or laws or treaties of the United States." *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015)("even after the passage of the REAL ID Act, district courts retain the power to hear statutory and constitutional challenges to civil immigration detention under § 2241 when those claims do not challenge a final order of removal but instead challenge the detention itself."); *Geronimo v. Mukasey*, 535 F. Supp. 2d 808 (W.D Tex. 2008) (same); *Baez v. Bureau of Immigration & Customs Enft*, 150 F. App'x 311, 312 (5th Cir. 2005) (same).

Likewise, 8 U.S.C §1252(g) is not a bar to the Court's jurisdiction because Petitioner is alleging an illegal detention that is collateral to ICE's prosecutorial decision to commence removal proceedings, the adjudication of his asylum case, or whether to stop his deportation. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19, 140 S. Ct. 1891, 1907 (2020). Accordingly, the challenge to his detention under the Fourth Amendment and Due Process clause is not one of the three discretionary acts rendered unreviewable by section 1252(g).

The Great Writ exists to "grant relief from unlawful imprisonment or custody." *Pierre v. United States*, 525 F.2d 933, 935-36 (5th Cir. 1976). In *Demore v. Kim*, the Supreme

Court held that § 1226(e) does not prohibit [asylum seekers] from bringing habeas corpus petitions that challenge the constitutionality of the statutory framework authorizing their detention. 538 U.S. 510, 516-17 (2003).

In this case, the government's response is most notable for what it does not do: meaningfully address the Petitioner's Constitutional claims at the time of his recent detention and arrest. Instead, the government's response is to invent a new jurisdictional objection, one that is contradicted by settled law; and to ask the Court to believe that Petitioner's detention is based upon pure discretion under 8 U.S.C. §§ 1225(b)(1)(A)(ii); [2] 1225(b)(2)(A) (mandatory detention statutes) rather than a warrantless arrest that targeted in him based upon his race and ethnicity as his traffic stop was prolonged. In essence, the government is arguing that they have unlimited discretion to violate the Constitution. The Respondents' position, as expressed in their response, is that Mr. Gomez's detention and arrest is lawful because he is an inadmissible arriving alien that is detained at the border under the "entry fiction" doctrine with very limited rights. [ECF No. 6 at 4].

Since March 1, 2012, Petitioner was granted admission to the United States by Customs and Border Protection (CBP) agents through parole[3] under 8 U.S.C. § 1182(d)(5), thus; he is clearly protected by the Due Process Clauses of the Fifth and Fourteenth Amendments that states:

> The fourteenth amendment to the constitution is not confined to the protection of citizens. It says: "Nor shall any state deprive any person of life, liberty, or property

[2] This is the section that reads that the Petitioner is detained after he established a credible fear of persecution and the statute states that he "shall be detained for further consideration of the application for asylum." Nonetheless, he is challenging the indefinite detention of the statutes as applied to him under his unique facts. Both statutes have mandatory detention built in, but § 1225(b)(2)(A) applies to persons deemed applicants for admission or "arriving aliens."

[3] He and his family had valid B/1/B2 visas at the time of their lasty entry to the United States.

> without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." These provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal protection of equal laws.[4]

Despite Petitioner's admission by CBP agents, the Respondents argue that the full Due Process Clause does not apply to him. The Respondents allege that he is on the threshold of initial entry and stands on different footing than non-citizens who are admitted. Respondents cite to *Dep't of Homeland Sec. v. Thuraissigiam,* but it is inapplicable, because unlike the Petitioner in *Thuraissigiam*, he is not in expedited removal proceedings as he established a credible fear of persecution and he is not seeking to vacate a removal order nor is he seeking an opportunity to seek asylum. 591 U.S. 103, 117-18, (2020). He is only seeking release. By citing *Thuraissigiam,* Respondents are alluding *to Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)("Whatever the *procedure* authorized by Congress is, it is due process as far as an alien denied entry is concerned.").

However, *Mezei* does not control in this case as it is critically distinguishable, for example, *Mezei* was held at Ellis Island during the *Korean War* and was treated as the equivalent of an "enemy combatant," thus he was treated as if had never reentered the U.S. *Mezei* was refused entry on national security grounds.

In *Rodriguez-Fernandez v. Wilkinson*, the Tenth Circuit noted that, *Mezei*, in his Habeas petition, sought both release from detention and admission to this country. 654 F.2d 1382, 1388

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[4] *See, Rosales-Garcia v. Holland*, 322 F.3d 386, 409 (6th Cir. 2003), *citing Yick Wo v. Hopkins*, 118 U.S. 356, 369, 30 L. Ed. 220, 6 S. Ct. 1064 (1886).

(10th Cir. 1981); *see also, Landon v. Plasencia*, 459 U.S. 21, 38, (1982)(Wherein the high court refused to apply *Mezei* and the court did not decide the precise contours of the process that would be constitutionally sufficient), J. *Marshall concurring and dissenting in part,* (stating that he would not hesitate to decide that the process accorded Plasencia was insufficient).

In *Mathews v. Diaz*, the Supreme Court noted that two Cuban refugee Plaintiffs who like Petitioner, were paroled into the United States by § 1182(d)(5) that "even [those] whose presence in this country [are] unlawful, involuntary, or transitory [are] are entitled to that constitutional protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]." 426 U.S. 67, 75 n.7 (1976)(stating that the amendments protect every one of these persons from deprivation of life, liberty, or property without due process of law).

Petitioner has a right to his freedom from arbitrary and prolonged *detention* that is not needed to serve its purpose. Indeed, in *Zadvydas v. Davis*, the court makes clear that the government's power to exclude and its power to detain are distinct for due process purposes. The detainees there had lost all legal right to reside in the United States, but the Supreme Court nonetheless recognized their interest in "[f]reedom from . . . physical restraint, which protects against arbitrary imprisonment. 533 U.S. 678, 690 (2001).

As stated supra, Petitioner's case is distinguishable from *Mezei* that conflated the power to detain with the power to remove, and thus *Mezei's* holding must be read considering its peculiar circumstances—an exclusion resting on national security. *See, Rosales-Garcia v. Holland*, 322 F.3d 386, 409, 413-414 (6th Cir. 2003), *citing Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886). As the *Mezei* Court stated, "to admit an alien barred from entry on security grounds nullifies the very purpose" of the exclusion order because it could unleash the very threat that the order sought to avoid. 345 U.S. at 216. That rationale does not apply to Petitioner, an asylum seeker, college

student with no criminal history, who is in proceedings to determine whether he can stay in the U.S. permanently.

Second, Petitioner, as an arriving asylum seeker, established a credible fear of persecution, and he has been referred for full adjudication of that claim in removal proceedings. Congress has afforded him a right to be in the U.S. while his asylum claim is pending. He therefore stands in a fundamentally different position from the detainee in *Mezei*, who had been ordered excluded from the U.S. Indeed, the record in *Jennings v. Rodriguez,* established that *two-thirds* of arriving asylum seekers subject to prolonged detention (defined as six months or more) win asylum and thus the right to live permanently in the United States. 138 S. Ct. 830, 860 (2018)(Breyer, J., dissenting).

Third, Petitioner, an asylum seeker who was granted a credible fear of persecution cannot voluntarily end his detention by returning to Mexico from which he fled. The liberty interests of the Petitioner, who has suffered persecution in his country of origin, cannot be dismissed on the ground that he is somehow free to go home. *See also Jennings*, 138 S.Ct. at 862-63 (Breyer, J., dissenting) (declining to apply the entry fiction because "the Constitution does not authorize arbitrary detention."). Moreover, in his dissent in *Zadvydas*, Justice Kennedy previously wrote that "inadmissible aliens" who are "stopped at the border" are "entitled to be free from detention that is arbitrary or capricious." For the above stated reasons, Petitioner respectfully requests that this Court grant his writ for habeas corpus.

In *Jennings, the* Supreme Court held that the Ninth Circuit erred in finding that 8 U.S.C. § 1225(b)(2)(A) imposed an automatic periodic custody hearing before an immigration judge when an asylum seeker, as here, has been detained during his removal proceedings for six months or longer. *Jennings at* 833. *See also Maldonado v. Macias*, *supra*, at 809 (W.D. Tex. 2015)("This

Court need not decide, and indeed is in no position to decide, whether to apply a bright line reasonableness limit of six months or whether reasonableness should be evaluated on a case-by-case basis[.]").

Because the Ninth Circuit had not decided whether the Constitution itself requires individualized hearings in cases of prolonged detention, the Court remanded *Jennings* to the Ninth Circuit to determine whether prolonged detention of immigrants violates the Constitution. The majority opinion left intact the constitutional standards limiting immigration detention. In turn, the Ninth Circuit remanded the case back to the District Court. *See Rodriguez v. Marin*, 909 F.3d 252, 255 (9th Cir. 2018) (stating that the district court should determine the minimum requirements of due process for each subclass member and that the district court has jurisdiction over the habeas claim as 8 U.S.C. §§ 1252(b)(9) and 1226(e) did not preclude jurisdiction). Accordingly, Petitioner is challenging the statutory framework of §1225(b)(1)(B)(ii) as it applies to his particular circumstances. Petitioner respectfully requests that he be released as his detention has become punitive and prolonged-specifically because he was arrested without cause or a warrant. As of today, he has been detained for more than six months and counting.

Peitioner, through counsel acknowledges that 8 U.S.C. § 1226(e) precludes judicial review of the Attorney General's discretionary decisions, including the revocation of parole. The Petitioner only requests release from custody, he is not asking this Court to order the Attorney General to grant him parole, or re-assess his parole request, or to stop his ongoing removal proceedings against him, nor is he seeking a decision to adjudicate his asylum case. Petitioner was granted credible fear, and he was placed in full asylum proceedings under 8 U.S.C. 1229a. Petitioner is not seeking additional administrative review of his asylum claim. As noted above, 8

U.S.C. §§ 1252(e)(2) or (g) does not deprive this court of jurisdiction to review his prolonged and punitive detention of six (6) months and counting.

Moreover, while it is true that the Attorney General has great discretion in making decisions concerning immigrant detention, those discretionary decisions cannot be guided by unconstitutional motives, as is the case here. In *Gutierrez-Soto v. Sessions*, the Honorable Senior Judge David C. Guaderrama held that the Attorney General, or other executive officials, do not have the discretion to violate the Constitution and when they do so, then they have exceeded their authority. 317 F. Supp. 3d 917, 925 (W.D. Tex. 2018)[5](finding that the Court had jurisdiction in a Habeas Petition on Equal Protection and First Amendment Claims). In *Gutierrez-Soto v. Sessions*, the Court further held that barring jurisdiction would raise constitutional concerns as to the Suspension Clause. *Id.* at 926. Accordingly, contrary to Respondents' arguments that the INA bars jurisdiction, this Court retains jurisdiction over Petitioner's core habeas claims pursuant to the Suspension Clause of the U.S. Constitution, which provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I § 9, cl. 2.

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[5] Citing to *Kwai Fun Wong v. United States*, 373 F.3d 952, 963 (9th Cir. 2004) ("[D]ecisions that violate the Constitution cannot be 'discretionary"); *Myers & Myers, Inc. v. U S. Postal Serv.*, 527 F.2d 1252, 1261 (2d Cir. 1975) ("It is, of course, a tautology that a federal official cannot have discretion to behave unconstitutionally"); *El Badrawi v. Dep't of Homeland Sec.*, 579 F. Supp. 2d 249, 270 (D. Conn. 2008) ("[S]ince ICE officials do not have discretion to violate the Constitution, a jurisdictional bar of this kind cannot preclude claims based on unconstitutional conduct by executive officials."), and *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (Smith, J.) ("Section 1226(e) may strip us of jurisdiction to review judgments designated as discretionary under the pertinent language of the statute, but it does not deprive us of all authority to review statutory and constitutional challenges. We retain jurisdiction to review Oyelude's detention insofar as that detention presents constitutional issues, such as those raised in a habeas petition."

"The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom." *Boumediene v. Bush*, 553 U.S. 723, 743 (2008) (granting habeas corpus review to foreign national Guantanamo Bay detainees).

Indeed, Justice Fortas noted that: "There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law." *Harris v. Nelson*, 394 U.S. 286, 292 (1969).

As the Petitioner's habeas corpus filings make clear, Respondents are detaining him for unconstitutionally impermissible reasons because they targeted him in part based on his race and ethnicity. There is no other explanation for Mr. Gomez's detention, other than he was sought out because of his race and ethnicity, and because Respondents have mandated that ICE officials must arrest at least 3,000 immigrants per day. See Jennie Taer, Trump admin's 3,000 ICE arrests per day quota is taking focus off criminals and 'killing morale': insiders warn, NY Post, June 17, 2025, available at https://nypost.com/2025/06/17/us-news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-killing-morale-insiders/ (Assessed on 01/05/2026)(noting that the quotas are undermining the agency's ability to focus on the really serious criminal aliens," citing John Sandweg, a former acting ICE director under President Barack Obama).

The proper vehicle to challenge the legality or duration of confinement is through a habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that "when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a

determination that he is entitled to the immediate release or a speedier release from that imprisonment, his sole remedy is a writ of habeas corpus[]").

The Fifth Circuit, has "emphasized that § 1252(g) is not 'a general jurisdictional limitation,' but rather 'applies only to three discrete actions that the Attorney General may take: her 'decision or action' to *commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Texas v. United States*, 809 F.3d 134, 164 (5th Cir. 2015) (emphasis original) (citing *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999)); *see also Elyakoubi v. Gonzales*, 155 F. App'x 807, 809 (5th Cir. 2005) ("Furthermore, the Court has given § 1252(g) a 'narrow' reading and stated that it 'applies to only a limited subset of deportation claims.").

Here, Mr. Gomez does not challenge any of those three actions set forth in § 1252(g). In this action, he simply challenges his detention, and only his detention. That is why the relief he seeks is a writ of habeas corpus ordering his immediate release (rather than a reversal of his parole request).

Respondents cite to the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*, --- F.4th ----, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026) for the proposition that an applicant for admission is subject to mandatory detention. [ECF No. 6 at 1-2]. Petitioner acknowledges that he is subject to mandatory detention, but is he is making a challenge to the statutory framework as applied to his specific facts. Thus, Mr. Gomez is arguing that his detention violates his constitutional right to procedural due process, and his rights under the Fourth Amendment as applied to him.

In *Buenrostro-Mendez,* the Fifth Circuit panel did not reach the due process question, as it only analyzed its holding to the statutory interpretation of 8 U.S.C. § 1225(b)(2)(A) as applied to non-citizens who enter illegally and are found anywhere in the United States. *See generally*

Buenrostro-Mendez, 2026 WL 323330, at *1–10. Moreover, the Fifth Circuit remanded the case to the district court, "for further proceedings consistent with this opinion." *Id.* at *10. In *Mendez v. Bondi*, the U.S. Southern District Court of Texas did not reach the Petitioner's due process claims. No. 25-cv-3726, 2025 WL 2886346, at *3 n.4 (S.D. Tex. Oct. 7, 2025). Presumptively they will do so now. Moreover, in *Buenrostro-Mendez* during oral arguments before the Fifth Circuit, counsel for the Government stated: "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. (Assessed on 02/16/2026). Thus, *Mendez v. Bondi* is factually and legally distinguishable from this Case.

II. The Petition Should be Granted Because Petitioner's Executive Detention is Unlawful.

Respondents' Response offers no legal justification for any moment of Petitioner's detention that began on August 14, 2025. Respondents detained and interrogated the Petitioner and seized him without any reasonable suspicion; conducted a warrantless arrest without any probable cause; and continue his detention without affording him the notice or an opportunity to be heard before an individualized determination of his custody was made, including targeting him for his race and ethnicity when his was pulled over for a speeding infraction and his detention was prolonged to investigate his immigration status. The Court should grant the writ and issue appropriate remedial relief on all Counts.

A. Respondents deprived Petitioner of his liberty in violation of his due process rights.

Respondents deprived Petitioners of his core liberty in violation of his due process as applied to his unique facts. The Court should grant the writ, because Respondents deprived

Petitioner of notice and a meaningful opportunity to be heard prior to his detention under the Due Process Clause of the U.S. Constitution. Respondents' only legal authority to deprive an individual of liberty is delegated by Congress through the Immigration and Nationality Act ("INA"). This statutory custody authority must be read against the backdrop of the U.S. Constitution. *United States v. Witkovich*, 353 U.S. 194, 202 (1957) (affirming "cardinal principle" that statutes must be read in accordance with Constitution); *United States v. Butler*, 297 U.S. 1, 62 (1936) ("The Constitution is the supreme law of the land . . . All legislation must confirm to the principles it lays down."); *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (limiting statutory custody authority for post-removal order detention because it must be "read in light of the Constitution's demands"). "No person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend V.

It is well-established that the Due Process Clause of the Fifth Amendment applies to "all 'persons' within the United States," irrespective of their immigration status. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas*, 533 U.S. at 693. Due process requires that government action be rational and non-arbitrary. *See*, i.e., *Spuler v. Pickar*, 958 F.2d 103, 107 (5th Cir. 1992) (stating that due process requires only that public officials exercise professional judgment, in a non-arbitrary and non-capricious manner, when depriving an individual of a protected [liberty] interest).

Due process also requires notice and "the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, at 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Following their warrantless arrest, Respondents continued to detain Petitioners without giving him a meaningful opportunity to be heard before making an individualized custody determination. After a warrantless arrest, 8 U.S.C. § 1357(a)(2) requires

that the individual arrested "be taken without unnecessary delay" for further consideration of "their right to enter or remain in the United States." Under 8 U.S.C. § 1226(a), immigration officers may choose to either extend detention or to release an individual from custody; this decision is based on an individualized determination of their danger and flight risk. See 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690.

The regulations require an individualized opportunity to be heard on whether detention is warranted. The regulation at 8 C.F.R. § 287.3(d) requires that, within 48 hours of a warrantless immigration arrest, an immigration agent makes an individualized custody determination as to whether the noncitizen should remain in custody or be released. Likewise, the regulation at 8 C.F.R. § 236.1(c)(8) requires an opportunity for the noncitizen to be heard on flight risk and dangerousness.

Where the government seeks to deprive an individual of a protected interest, the Supreme Court has directed that courts balance three factors to determine what process is due: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews*, 424 U.S. at 335. In applying this balancing test, it is clear that Respondents provided inadequate process when they deprived Petitioner of notice and a right to be heard before receiving an individualized custody determination. The three-factor test established in *Mathews* is the controlling framework for determining what process is due for Mr. Gomez.

B. Respondents' custody of Petitioner has been unlawful from the moment of his stop and arrest.

From the moment of his initial stop, every moment of Petitioner's subsequent custody was unlawful. The questions the Court must resolve in Petitioner's habeas corpus proceedings are (1) whether Respondents' exercise of executive detention was unlawful and (2) if it was, what remedies is the Petitioner due. To state it another way, if Petitioners' arrest and subsequent detention based on that arrest was unlawful, does habeas provide a remedy for their unlawful executive detention? The answer is yes, because his unlawful detention and arrest are the only basis on which Respondents asserted their custody authority to detain Mr. Gomez; no subsequent determination of continuing custody was ever made. When Respondents arrested and detained Petitioner, they were required to have a lawful basis to do so. This Court squarely has equitable authority to determine whether such a lawful basis existed and, if not, to grant appropriate remedies. See *Carafas v. LaVallee*, the habeas statute is "shaped to guarantee the most fundamental of all rights, [in order] to provide an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person"). 391 U.S. 234, 238 (1968).

C. Respondents conducted a detention and seizure of Petitioners without Reasonable suspicion.

As noted, the U.S. Constitution could not speak more clearly: "No person shall be . . . deprived of life, liberty, or property, without due process of law". U.S. Const. amend. V. Under federal regulations, before even briefly detaining an individual for questioning, an immigration officer must have "a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is [a

noncitizen] illegally in the United States." 8 C.F.R. § 287.8(b)(2). Race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975). [] "Mexican ancestry" alone did not constitute reasonable suspicion to support stops by Border Patrol agents, even near the border, because "[l]arge numbers of native-born and naturalized citizens have the physical characteristics identified with Mexican ancestry." *United States v. Brignoni-Ponce*, *supra,* at *885-87; citing* Justice Sotomayor, dissent, *Noem v. Perdomo*, 222 L.Ed.2d 1213, 1223 (2025).

In this case, Petitioner's detention has been unlawful because the Respondents never revoked his humanitarian parole or supervised release prior to his arrest. Petitioner was targeted and detained based on Respondents mandate to arrest 3,000 immigrants a day as his initial stop for speeding was prolonged on the basis of his race and ethnicity when his case was administratively closed. This was done at the direction of Respondent ICE.

"A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Illinois v. Caballes*, 543 U.S. 405, 407, (2005). In *Noem v. Perdomo*, Justice Kavanaugh stated that reasonable suspicion under the totality of the circumstances allows immigration officers to briefly stop an individual and inquire about immigration status so long as race and ethnicity is not the sole factor for the stop. 222 L.Ed.2d 1213, 1216 (U.S. 2025). However, if the individual who was stopped is lawfully in the United States, as Mr. Gomez is, then that individual will be free to go after the brief encounter. *Id.* This did not happen.

The INA and the regulations that mirror the Fourth Amendment, prohibits the Respondents from targeting persons on the sole basis of their race and ethnicity or because they look "Mexican." See *Hernandez v. Texas*, 347 U.S. 475, 476 (1954) (identifying Mexicans as a suspect class and

reversing criminal conviction of defendant of Mexican descent). Such racially motivated detentions and deportations are unconstitutional.

On August 14, 2025, Mr. Gomez was pulled over for speeding and despite that he had a valid issued Texas Driver's License his initial traffic stop was prolonged on the basis of his race and ethnicity as he was detained and arrested without reasonable suspicion or probable cause and without a warrant. In fact, the administrative warrant was created after his arrest. ICE then decided to revoke his parole and or order of supervision but without warning or cause and without a meaningful opportunity to be heard in violation of his constitutional right to due process and Respondents' own regulations. ICE is bound not only by statute and due process, but also by its national policy adopted pursuant to settlement agreement in *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.).

Due process also requires notice and "the opportunity to be heard 'at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Under federal regulations, before even briefly detaining an individual for questioning, an immigration officer must have "a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is [a noncitizen] illegally in the United States." 8 C.F.R. § 287.8(b)(2). Race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *Brignoni-Ponce*, 422 U.S. at 886-87.

Respondents detention of Petitioner further violates the then binding nationwide policy on immigration detentions. In deciding to detain a person for civil immigration enforcement purposes, Respondent ICE had to comply with the settlement agreement in *Castañon Nava et al. v. Dep't of*

Homeland Sec., No. 18-cv-3757 (N.D. Ill.) (hereafter, "Nava Broadcast Policy"). Pursuant to an October 7, 2025, order, ICE reissued the Nava Broadcast Policy to all ICE officers nationwide on October 22, 2025, with the instruction that it remain in effect through February 2, 2026. At the time of Mr. Gomez's arrest, the Nava Broadcast Policy was in full effect.

Under this policy, ICE must consider a delineated list of factors before making an arrest, including documenting the facts and circumstances surrounding that warrantless arrest in the narrative section of the person's I-213 as soon as practicable; and the documentation must include in part: (a) that the individual was arrested without a warrant; (b) the location of the arrest and whether this location was a place of business, residence, vehicle, or a public area; (c) officer's ability to determine the individual's identity; (d) knowledge of the individual's prior escapes or evasions of immigration authorities; and more. Settlement Agreement, *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.), available at:

at https://perma.cc/54EX-YGM7 (assessed on Jan. 24, 2026).

Respondents warrantless arrest of Petitioner without probable cause of an immigration violation is a violation of their statutory and regulatory authority. Under the INA, an immigration officer may conduct a warrantless arrest only if that officer has "reason to believe" that an individual is in the United States in violation of the immigration laws and is "likely to escape before a warrant can be obtained for [their] arrest." 8 U.S.C. § 1357(a)(2). A "reason to believe" is equivalent to "the constitutional requirement of probable cause." *Au Yi Lau v. United States Immigration & Naturalization Serv.*, 144 U.S. App. D.C. 147, 445 F.2d 217, 222 (1971) (stating that both aliens and citizens enjoy Fourth Amendment protection).[6] *Id.* at 223. 8 C.F.R. §

[6] See also, *United States v. Quintanilla-Chavez*, No. SA-25-CR-388-XR, 2025 U.S. Dist. LEXIS

287.8(c)(2)(i) specifies that before making a warrantless arrest, an immigration officer must have probable cause "to believe that the person to be arrested has committed an offense against the United States or is [a noncitizen] illegally in the United States."

Here, Respondents had no justification for Petitioner's warrantless arrests. The record thus shows that Respondents conducted a warrantless arrest of Petitioner despite having *no* reasonable suspicion – let alone probable cause – that he was unlawfully in the United States. A warrantless immigration arrest "must be based on consent or probable cause" that the person is in fact a noncitizen. *Brignoni-Ponce*, 422 U.S. at 881–82; *id.* at 884 (explaining that the "broad congressional power over immigration ... cannot diminish the Fourth Amendment rights of citizens who may be mistaken for [noncitizens]").

Here, the facts support the conclusion that Petitioner's warrantless arrest, is tied to Respondents widespread sweeps aiming to meet quotas, that was unlawfully based solely on the apparent race and ethnicity of the Petitioner. ICE must consider "the totality of circumstances," including "the ICE Officer's ability to determine the individual's identity, knowledge of that individual's prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances that weigh in favor or against a reasonable belief that the subject is likely to abscond." See the Nava Broadcast Policy Settlement Agreement, attached as exhibit E. In conducting Petitioner's arrest, the record shows that Respondents had *no* evidence weighing toward flight risk. On the contrary, the circumstances heavily weighed against a risk of flight: Petitioner's case was administratively closed on October 1, 2015. [ECF No. 1-2 at 8-9].

210411, at *31-32 (W.D. Tex. Oct. 20, 2025)(stating that when immigration officer makes a warrantless arrest under 8 U.S.C. § 1357(a)(2); the "reason to believe" is equivalent to "the constitutional requirement of probable cause").

Respondent ICE did not move to re-calendar his case until September 23, 2025, after he was detained and arrested. See attached motion at exhibit D.

Petitioner's warrantless arrest without consideration of the factors required by the *Nava* Broadcast Policy is again a violation of the *Accardi* doctrine and the APA. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68, 74 S. Ct. 499, 503-04 (1954); 5 U.S.C. § 706(2)(A).

D. Respondents have continued to detain Petitioner based solely on information derived from their unlawful detention and arrest.

Petitioner's custody under 8 U.S.C. §§ 1225(b)(1)(A)(ii), 1225(b)(2)(A) as applied to him is not lawful. Even if they were, however, the Court should still grant the writ because Respondents' assertion of Petitioner's immigration status is based solely on information derived from evidence that was the fruit of their unlawful detention and arrest.

Respondents relied on information that was solely the fruit of Petitioner's unlawful arrest to obtain his information and subsequent immigration records and to seek to justify his continued custody. Because Petitioner's arrest and detention were blatantly unlawful from the start, the only appropriate remedy to deter Respondents from similar transgressions is to order his release. *See United States v. Quintanilla-Chavez*, *supra*, at *49 (stating that in a criminal case where immigration officers used excessive force against a defendant, a *Bivens*[8] action will not allow the recovery of damages, thus; the only remedy of the Court was to suppress the evidence and to dismiss the indictment as an adequate deterrent for the officers' conduct).

"Under [the exclusionary] rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure", nor

[8] Citing to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999 (1971).

may "the fruits of the illegally seized evidence" be considered. *United States v. Calandra*, 414 U.S. 338, 347 (1974). The exclusionary rule is intended "to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures.

In *De La Paz v. Coy,* the Fifth Circuit acknowledged that the exclusionary rule in civil immigration proceedings is normally not applicable, however; "evidence seized under egregious circumstances may be suppressed in an immigration arrest. 3d 367 at 376 (5th Cir. 2015), *citing*, *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984) (clarifying that its decision did not deal "with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness"). " An alien who succeeds in a suppression motion may achieve a substantial victory in the termination of the removal proceedings." *De La Paz v. Coy*, at 376 (5th Cir. 2015). In this case, that is not an adequate remedy because it will force Petitioner to give up his asylum claim then he would be re-arrested, detained, and deported by Respondents without the ability to challenge his unlawful detention.

Mr. Gomez seeks relief that an immigration court cannot meaningfully provide alongside his administrative proceedings. Further, Mr. Gomez's seeks release from unlawful and prolonged detention that cannot be adequately litigated in a petition for review because by the time a final order is entered, Mr. Gomez will have either be ordered deported or released if granted asylum allowing his prolonged detention to be unreviewable as it cannot be remedied later. *See Jennings v. Rodriguez*, 583 U.S. at 293.

The Ninth Circuit has explicitly applied the exclusionary rule in civil proceedings where, as here, "evidence is obtained by deliberate violations of the fourth amendment, or by conduct a reasonable officer should know is in violation of the Constitution", *Adamson*, 745 F.2d at 545,

including where an "egregious" violation of the Fourth Amendment occurs in an immigration arrest based on the subject's race, *Gonzalez-Rivera v. I.N.S.*, 22 F.3d 1441, 1452 (9th Cir. 1994). Because Respondents' stop and arrest of Petitioner was an egregious violation of his Fourth Amendment rights, the exclusionary rule prevents Respondents from using any evidence obtained solely from that arrest in any subsequent custody determination.

In the present case, Respondents seek to justify *a posteriori* an unlawful stop, warrantless arrest notice or for any reason. Instead Respondent ICE unlawfully racially profiled him, detained him, without reasonable suspicion; unlawfully arrested him without a warrant and without probable cause or reason to believe he had committed an immigration violation, and that he would flee before a warrant could be obtained; and denied him notice and a meaningful opportunity to be heard before making a custody determination, in violation of his constitutional right to due process and Respondents' own regulations.

III. The Court Has Jurisdiction To Hear Petitioner's APA Claim.

Respondent's' filing fee argument is also misplaced. The habeas writ extends to all Persons who are "in custody in violation of the Constitution or laws or treaties of the United States[.]" 28 U.S.C. § 2241(c)(3). The Fourth Amendment and Fifth Amendment are part of the Constitution…of the United States." The APA, the INA, and the associated regulations are part of the "laws…of the United States." The Accardi Doctrine arises under the "laws…of the United States." Petitioners' claims are properly brought in habeas, and they have paid the necessary fee. Moreover, the case that the Respondents cite is not on point. In *Ndudzi v. Castro,* the Petitioner filed a Habeas to seek release but also challenged the conditions of the confinement on the basis of the COVID-19. No. SA-20-CV-0492-JKP, 2020 U.S. Dist. LEXIS 107254, at *10 (W.D. Tex. June 18, 2020)(holding in part that conditions of confinement are not properly brought in a

Habeas Petition). Here, the Petitioner seeks no such claim and only asks for release, and nothing more.

Furthermore, Petitioner does not claim that this Court has jurisdiction under the APA to make parole determinations, nor does his request that this Court grant him parole. Rather, the APA allows this Court to review Respondent ICE's arbitrary detention of Mr. Gomez in violation of his statutory and constitutional rights. Mr. Gomez invokes the APA to "set aside" Respondents unconstitutional and impermissible detention, which violates his substantive and procedural due process, the INA, and his regulatory rights, as well as his Fourth Amendment.

The APA "entitles a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action" to judicial review. See 5 U.S.C. § 702. The APA empowers a District Court to compel agency action "unlawfully withheld or unreasonably delayed." See 5 U.S.C. § 706. The APA also empowers a district court to hold unlawful and set aside agency action deemed to be not in accordance with law or contrary to constitutional rights. *Id.* Despite 8 U.S.C. § 1226(e), this Court has jurisdiction to review challenges to unconstitutionally impermissible agency action. See *R.I.L-R v. Johnson*, (rejecting the Department of Homeland Security's argument that 8 U.S.C. § 1226(e) precludes judicial review under the APA over challenges to detention resulting from unlawful agency policy), 80 F. Supp. 3d 164, 176 (D.D.C. 2015); *Nat'l Venture Capital Ass'n v. Duke*, 2017 U.S. Dist. LEXIS 197738, at *13 (D. D.C. Dec. 1, 2017) (stating: "There is difference between a challenge to `DHS's exercise of discretion' and one to an 'overarching agency policy' as outside the bounds of its statutory authority."). *See also*, *Velasquez-Hernandez v. Immigration and Customs Enforcement*, 500 F.Supp.3d 1132, 1140 (S.D. Cal. 2020) (allowing an APA claim against ICE as to the practice of courthouse arrests when . . . "the statute (implicitly) and the common law (explicitly) do not permit such arrests[]"). *Velazquez-Hernandez,*

*supra, at 1140.*But see *Gutierrez-Soto v. Sessions,* wherein the court found that it could not review Petitioners' racial animus claims under the APA for the revocation of parole of asylum seekers. 317 F. Supp. 3d 917, 926-927. The Court made this finding because it found that the revocation of paroles "could be reasonably understood to result from a justification independent of unconstitutional grounds," namely, the government's interest in locating asylum seekers when their cases are denied. *Id.* at 926-927.

This case is distinguishable, because the Respondents have failed to justify or even adequately respond to Petitioner's detention on his APA claims that implicate his constitutional and statutory rights. Thus, Sections 1226(e) and 1252(B)(ii) does not strip the Court of jurisdiction to hear this APA claim.

Here, the detention and arrest of Mr. Gomez are final agency actions. The detention and arrest of Mr. Gomez is final. There remains no further agency decision-making, no pending process in which the Respondents can review or appeal their decisions. There is no other adequate remedy at law for the Petitioner. The immigration court cannot order Respondents to release him even if his case was terminated.

It is only through this instant petition that Petitioner may ask for a remedy to address the legality of his detention, arrest, and his continued detention. The Petitioner respectfully requests that this Court finds his arrest constitutes final agency actions that were unlawful because they were conducted contrary his constitutional rights in violation of 5 U.S.C. § 706(2)(b), and they exceeded Respondents' statutory authority under 8 U.S.C. § 1357(a)(2) in violation of 5 U.S.C. § 706(2)(c).

CONCLUSION

Respondents' actions violate the INA, his statutory rights, and the Fourth Amendment. This Court should therefore grant his *habeas corpus* petition as the only adequate remedy.

Dated: February 17, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above-entitled Petitioner's Reply was filed electronically with the Clerk of the Court on this **17th day of February, 2026,** using the CM/ECF system, which office will, in turn, send notification to the following:

- United States Attorney's Office for the Western District of Texas, San Antonio Division: AUSA, Attorney for Respondents (Business address is United States Attorney's Office, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216). **By serving the AUSA it is notifying the following Respondents:**

Miguel Vergara, ICE Field Office Director,
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Kristi Noem, Secretary of the Department of Homeland Security
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Pamela Bondi, Acting Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue NW
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I further certify that on the 17th day of February 2026, I sent by registered U.S. Mail with tracking a copy of this reply to:

Bobby Thomson, Warden of the South Texas Detention Facility
566 Veterans Drive
Pearsall, TX 78061

/S/ Eduardo Beckett
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