Stephanie Alcala, Esq. SBN: 290284
Stephanie Alcala Law Offices, APC.
2209 Highland Ave.
National City, CA 91950
P: (619) 773-7333
Attorney for Petitioner

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SERGIO JAVIER BUITRAGO SARMIENTO PETITIONER, AND MARKWAYNE MULLIN, in his official capacity as Secretary of Homeland Security, et al., RESPONDENT	Case No.: 26-cv-03726-AGS-BJW REPLY TO RESPONSE TO PETITION

I. Introduction

Petitioner is not an applicant for admission as per the Respondent's own Notice to Appear. They cannot claim arriving alien and simultaneously indicate he is an alien present in the interior of the U.S without admission or parole. The position of the Respondent is contradictory.

II. Facts and Procedural History

Petitioner, a native and citizen of Colombia, was encountered by Border Patrol near San Ysidro, California on May 11, 2026, determined inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), placed into expedited removal under § 1225(b)(1), and taken into DHS custody.

An asylum officer issued a negative credible-fear determination, which was referred for Immigration Judge review.

On June 11, 2026, an Immigration Judge vacated the negative credible-fear determination.

On June 15, 2026, DHS issued a Notice to Appear initiating § 1229a removal proceedings, stating the credible-fear order under § 235(b)(1) was vacated, and noting the case would proceed before the Immigration Court. Petitioner appeared at a master calendar hearing on June 26, 2026, and was noticed for a continued master calendar on July 16, 2026.

Petitioner remains detained at the Otay Mesa Detention Center and has now been in ICE custody for approximately 2 months.

III. Standard of Review

Habeas review under 28 U.S.C. § 2241 extends to unlawful executive detention and constitutional claims, including challenges to the legality and reasonableness of immigration custody. Demore v. Kim, 538 US 510 (2003)(Holding that § 1226(e) does not bar habeas review of constitutional challenges to the mandatory detention statutory framework, distinguishing challenges to the statutory framework from challenges to discretionary decisions, and upholding the constitutionality of mandatory pre-removal detention for the limited period of removal proceedings). Whether a statute strips jurisdiction is a legal question reviewed de novo INS v. St. Cyr, 533 US 289 (2001) (Holding that habeas jurisdiction under § 2241 was not repealed by AEDPA or IIRIRA, that Congress must articulate specific and unambiguous directives to repeal habeas jurisdiction, and that in the immigration context "judicial review" and "habeas corpus" have historically distinct meanings (superseded by statute on other grounds as stated in Nasrallah v. Barr, 590 U.S. 573 (2020)). Due process challenges to the reasonableness of civil immigration detention present mixed questions of law and fact reviewed de novo on the legal standards.

IV. Argument

Respondents' opposition misstates the Court's habeas jurisdiction, overreads 8 U.S.C. § 1225(b), and misconstrues Jennings and Thuraissigiam to foreclose as-applied constitutional relief. The Court should reject Respondents' jurisdictional bar under 8 U.S.C. § 1252(g), hold that Petitioner's custody is reviewable under 28 U.S.C. § 2241, and grant immediate release or, at minimum, order a prompt, individualized bond hearing at which the government bears the burden of proving danger or flight risk by clear and convincing evidence.

A. Section 1252(g) Does Not Bar Habeas Jurisdiction Over Petitioner's Unlawful Detention and Constitutional Claims.

Respondents invoke 8 U.S.C. § 1252(g) to argue that any detention challenge "arises from" the decision to commence proceedings. That provision is narrowly drawn and, by its terms, restricts jurisdiction only over claims arising from the discrete decisions to commence proceedings, adjudicate cases, or execute removal orders—not over collateral detention challenges or constitutional claims contesting the legality and duration of custody Garcia v. Warden., Slip Copy (C.D. CA 2029), Garcia v. Noem., 803 F.Supp.3d 1064 (S.D. CA 2025), Zaitsev v. Warden., Slip Copy (C.D. CA 2026) . Petitioner contests the current legality of his civil confinement and seeks release or an individualized bond hearing—relief that does not interfere with DHS's charging decision or the Immigration Court's adjudication of removability. Habeas courts routinely distinguish such detention challenges from § 1252(g)-barred claims because they do not ask the Court to halt, undo, or review the initiation or adjudication of removal proceedings. The Court therefore retains habeas jurisdiction.

B. Detention Under § 1225(b) Is Not Mandatory in Petitioner's Current Posture, and at Minimum Requires a Prompt Bond Hearing or Parole Consideration.

Respondents assert § 1225(b)(1)(B)(ii) mandates detention through the end of Petitioner's § 1229a proceedings. That contention fails for two independent reasons.

First, Petitioner's posture changed when the IJ vacated the negative credible-fear determination and DHS issued an NTA initiating full § 1229a proceedings. The NTA expressly reflects that the § 235(b)(1) order "was vacated" pursuant to 8 C.F.R. §§ 208.30 and 235.3(b)(5)(iv). Once transferred to full proceedings, detention authority is not irrevocably fixed by § 1225(b)(1); DHS retains parole authority and, as a matter of constitutional avoidance, courts require individualized custody determinations when detention becomes unreasonable. Respondents' reliance on Matter of M-S- does not preclude federal courts from ordering individualized hearings or release as a constitutional remedy

Habeas review under 28 U.S.C. § 2241 extends to unlawful executive detention and constitutional claims, including challenges to the legality and reasonableness of immigration custody

Second, even if § 1225(b) applies formally, it does not eliminate DHS's statutory parole authority, and prolonged, categorical detention without an individualized finding of necessity violates due process. The Court should order either immediate release on appropriate conditions or, alternatively, an individualized bond hearing at which the government bears the burden of proving flight risk or danger by clear and convincing evidence, and the IJ considers non-punitive alternatives to detention

C. Jennings and Thuraissigiam Do Not Foreclose As-Applied Due Process Relief or Habeas Review of Prolonged Civil Detention.

Jennings addressed statutory interpretation and rejected reading bond-hearing requirements into § 1225(b) as a matter of construction; it did not decide whether prolonged, unreasoned detention violates the Fifth Amendment as applied. Thuraissigiam concerned limitations on using habeas to obtain additional process in expedited removal proceedings and did not involve a challenge to the lawfulness of ongoing civil detention in transfer-to-§ 1229a posture or the constitutionality of prolonged confinement without individualized findings Zadvydas v. Davis, 533 U.S. 678, 687–88 (2001) (basic habeas statute authorizes courts to determine whether detention violates federal law; habeas used to "relieve detention by executive authorities without judicial trial").

Neither case bars courts from granting habeas relief for unconstitutional detention or ordering a bond hearing as a remedy. Constitutional avoidance remains pertinent: where a statute admits of applications that would raise serious due process concerns, courts construe and apply it to require individualized review or release rather than tolerate indeterminate confinement without process

D. Petitioner's Prolonged Civil Detention Without an Individualized Determination Violates Due Process; Immediate Release or a Prompt Bond Hearing Is Required.

Courts evaluating prolonged civil detention apply factors including length of detention to date and prospectively, foreseeability of proceedings' completion, responsibility for delay, conditions of confinement, and the necessity of custody given flight risk or danger. Applied here, the factors warrant relief.

a. **Length and foreseeability**. Petitioner has been detained since May 11, 2026, and his case remains at the master-calendar phase, with the next hearing scheduled for July 16, 2026. Even at two months, detention without any individualized assessment and with no

fixed endpoint risks becoming unreasonably prolonged, particularly given the structural backlog and the absence of any individualized danger or flight findings

b. **Responsibility for delay.** The record shows no delays attributable to Petitioner, and the case proceeded from credible-fear vacatur to NTA filing and an initial master in ordinary course. This factor favors relief or is at least neutral.

c. **Conditions of confinement.** Petitioner is held at the Otay Mesa Detention Center, a secure jail-like facility, under civil authority. Carceral conditions weigh against lengthy civil confinement without individualized necessity [Boumediene v. Bush, 553 U.S. 723, 739, 779 (2008) (habeas as the mechanism to test legality of executive detention; Suspension Clause requires a meaningful opportunity to challenge detention and a court with power to order release).

d. **Likelihood and timing of removal**. DHS has initiated § 1229a proceedings in which Petitioner may seek asylum, withholding, or CAT protection, and no removal order exists. Where removal is not imminent and proceedings are ongoing, continued detention requires a current, individualized justification.

e. **Individualized necessity**. Respondents identify no bond determination or individualized assessment demonstrating that Petitioner poses a flight risk or danger that cannot be mitigated by conditions. Categorical detention without such a finding violates due process when continued beyond a brief administrative period INS v. St. Cyr, 533 U.S. 289, 301 (2001).

On this record, the Court should order immediate release on appropriate conditions. Alternatively, the Court should require a prompt bond hearing before a neutral decisionmaker

at which DHS bears the burden of proving by clear and convincing evidence that detention is necessary to prevent flight or danger, the decisionmaker considers the least restrictive alternatives, and a contemporaneous, reasoned decision issues.

V. Conclusion

For the foregoing reasons, the Court should grant the Petition, order Petitioner's immediate release on reasonable conditions, or, in the alternative, order a prompt individualized bond hearing with the government bearing the burden by clear and convincing evidence and consideration of less restrictive alternatives, and grant any further relief the Court deems just and proper.

Respectfully Submitted,

/s/ Stephanie Alcala

Stephanie M. Alcala, Esq.

Attorney for the Petitioner