TIMOTHY COURCHAINE
United States Attorney
District of Arizona
THEO NICKERSON
Assistant United States Attorney
Connecticut State Bar No. 429356
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, AZ 85004-4449
Telephone: (602) 514-7500
Fax: (602) 514-7693
Theo.Nickerson2@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Nadia Cristina da Rocha Rosado,

Petitioner,

v.

Fred Figueroa, et al.,

Respondents.

No. CV-25-02157-PHX-DLR (CDB)

ANSWER TO PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

Respondents, Fred Figueroa, Warden, Eloy Detention Center, John Cantu, Arizona Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"), Todd M. Lyons, Director, ICE, Kristi Noem, Secretary of the Department of Homeland Security, and Pamela J. Bondi, Attorney General of the United States, by and through counsel, hereby answer the Petition for Writ of Habeas Corpus (Doc. 1). Petitioner is an inadmissible arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2)A). Because she is not entitled to a bond hearing before an immigration judge (IJ) under the statute or pertinent regulations, her request for bond was properly denied by the IJ. Her immigration proceedings in Milford, Massachusetts have now been transferred to the immigration court where she is detained in Eloy, Arizona. For all these reasons, Petitioner's habeas and her request for release from immigration custody should be denied. This Response is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND.

Petitioner Nadia Cristina da Rocha Rosado ("Petitioner") is a native and citizen of Brazil born on July 22, 1986, in Brazil. *See* Exhibit A, Declaration of Deputy Field Office Director (DFOD) with Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO)) ¶ 4. On October 9, 2018, Petitioner and her daughter applied for entry into the United States at the Bridge of the Americas Port of Entry, El Paso, Texas. *Id.* ¶ 5. Petitioner and her daughter were transported to the Ysleta Port of Entry in El Paso, Texas for processing. *Id.* After processing, Petitioner and her daughter were found to be inadmissible under Immigration and Nationality Act ("INA") § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I)—that is an inadmissible alien not in possession of a valid entry document. *Id.*

On October 10, 2018, Petitioner was served with a Notice to Appear in removal proceedings pursuant to INA § 240A, 8 U.S.C. § 1229a. Exhibit A ¶ 6; *see also* Exhibit B, Notice to Appear. On October 15, 2018, ICE released the Petitioner from custody and ordered Petitioner to report to the Boston Field Office in Burlington, Massachusetts on October 24, 2018. Exhibit A ¶ 7. On April 24, 2018, the Petitioner was placed into removal proceedings in Boston, Massachusetts. *Id.* ¶ 8. In removal proceedings, Ms. Rosado filed her I-589 Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture, on November 10, 2022. Doc. 1 ¶ 3.

On April 30, 2025, immigration officers identified Petitioner in her residence after the Milford Police Department executed an arrest warrant for Petitioner's son. Exhibit A ¶ 9. During the course of executing the warrant for Petitioner's son, immigration officers determined that Petitioner was an inadmissible alien without lawful status in the United States. *Id.* She was taken into ICE custody. *Id.*

On May 5, 2025, Petitioner was transferred to ICE custody at the Eloy Detention Center in Eloy, Arizona. Exhibit A ¶ 10. On May 16, 2025 Petitioner filed a request for a custody redetermination before an IJ. *Id.* ¶ 11. On May 22, 2025, at the conclusion of the custody

redetermination hearing, Petitioner was denied bond in accordance with 8 C.F.R § 1003.19(h)(2)(i)(B). *Id.* ¶ 12. On June 18, 2025, the Petitioner filed an appeal with the Board of Immigration Appeals (BIA) challenging the denial of her custody redetermination request. This appeal is still pending before the BIA. *Id.* ¶ 13. On July 9, 2025, Petitioner's immigration case was transferred to the immigration court in Eloy, Arizona. *Id.* ¶ 14. Petitioner is waiting for a court date to be set with the immigration court in Eloy. *Id.*

ARGUMENT

I. Petitioner is an arriving alien subject to mandatory detention which comports with her due process rights under the Fifth Amendment.

An arriving alien is:

> an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

8 C.F.R. § 1.2.

Here, Petitioner is an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and that detention throughout the remainder of her proceedings is lawful. Petitioner is currently in removal proceedings but does not have a final removal order issued against her. Noncitizens in pre-final-removal-order civil immigration detention generally fall within two categories: 8 U.S.C. § 1225, which consists of noncitizens seeking an initial entry, and 8 U.S.C. § 1226, which consists of noncitizens who entered the United States. Petitioner falls under 8 U.S.C. § 1225 because she was found to be an inadmissible arriving alien, even though, for discretionary reasons, she was released from custody. The difference between the noncitizens in these two categories is significant for due process purposes. *See Thuraissigiam*, 591 U.S. at 106–07, 138–40; *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the "unique constitutional status of arriving aliens with no ties to the United States").

The Supreme Court considered whether 8 U.S.C. § 1225(b) imposes a time-limit on the length of detention and whether such noncitizens detained under this statutory authority have a statutory right to a bond hearing. *See Jennings*, 583 U.S. at 296-303. The Supreme Court held that "nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on the length of detention" nor "says anything whatsoever about bond hearings." *Id.* at 842. The sole means of release for noncitizens detained pursuant to 8 U.S.C. § 1225(b) is temporary parole at the discretion of DHS under 8 U.S.C. § 1182(d)(5). *Id.* at 844.

Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords to "arriving aliens" like Petitioner, is critical because, for "more than a century" now, the Supreme Court has held that the rights of such noncitizens are confined exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu*, 142 U.S. at 660 (holding that with regard to "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon*, 459 U.S. at 32 ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (rejecting noncitizens' habeas petitions premised on their claim that their detention without a bond hearing violated their Fifth Amendment Due Process rights because "an alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'").

The Supreme Court's holding on this topic was reinforced most recently in *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment Due Process Clause challenge. 591 U.S. 106–07. Therein, the Supreme Court "reiterated th[e] important rule," *id.* at 138, that a noncitizen seeking initial entry to the United States

"has no entitlement" to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *Id.* at 107 ("Congress is entitled to set the conditions for an alien's lawful entry into this country and [] as a result [] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause."); *id.* (holding that a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"); *id.* at 140 (A noncitizen seeking initial entry to the United States "has only those rights regarding admission that Congress has provided by statute" and "the Due Process Clause provides nothing more[.]").

More broadly, the Supreme Court has long recognized that the political branches' broad power over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court's "general reaffirmations" of the political branches' exclusive authority to admit or exclude aliens "have been legion"). Control of the Nation's borders is vested in the political branches because that authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952). Preserving the political branches' authority to control the border serves "the obvious necessity that the Nation speak with one voice" on such matters. *Zadvydas v. Davis*, 533 U.S. 678, 711 (2001).

In addition to the sovereign, largely unreviewable prerogative of Congress and the Executive to admit or exclude aliens, *see Knauff*, 338 U.S. at 543 (1950), the Supreme Court also has recognized that aliens seeking admission to the United States do not have the same constitutional protections as individuals who have entered the United States. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an

entry, irrespective of its legality. In the latter instance, the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Mezei*, 345 U.S. at 212). Accordingly, Congress may authorize the detention of aliens at the border, even for prolonged periods of time, and such detention does not deprive aliens "of any statutory or constitutional right." *See Mezei*, 345 U.S. at 212 (upholding detention of lawful permanent resident returning from trip abroad detained for over a year and a half).

Here, as an arriving alien, Petitioner has no due process protections beyond those afforded by statute. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-71 (1990) (Aliens "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *Landon*, 459 U.S. at 32 ("[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application."); *Mezei*, 345 U.S. at 212 ("[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'"); *Thuraissigiam*, 591 U.S. at 131. Here, Petitioner received all of the protections allowed by the relevant statutes. Finally, because Petitioner was mandatorily detained under 8 U.S.C. § 1225(b), the IJ properly found that he lacked jurisdiction to issue bond under 8 C.F.R. 1003.19(h)(2)(i)(B).

II. Petitioner's arrest by immigration officials did not violate her Fourth Amendment rights.

Petitioner cites to *United States v. Brignoni–Ponce*, 422 U.S. 873 (1975), for the standard of proof an immigration officer must apply to stop and detain an individual to investigate their immigration status. Id. at 880-82. She points out that just as in the criminal context, an immigration officer must have "reasonable suspicion" to justify stopping an individual during a roving patrol to question them about their citizenship. *Id.* at 881-82. This was not a roving patrol stop, however. In this case, ICE officers were notified about an arrest being made at Petitioner's home of an undocumented immigrant, Petitioner's son. Exhibit A ¶ 9. The Milford Police had a valid warrant for Petitioner's son who was in the

United States without status. *Id.* This provided them with reasonable suspicion that Petitioner, his mother, may also be in the United States without lawful status, and she identified herself as being in the United States without lawful status. *Id.* Her arrest and detention under these circumstances does not violate the Fourth Amendment.

Indeed, the legality of an arrest of an alien based upon a civil immigration violation is well-established. *See Abel v. United States*, 362 U.S. 217, 230 (1960)("Statutes authorizing administrative arrest to achieve detention pending deportation have the sanction of time."). The statute authorizing the warrantless arrest of an alien by an ICE officer does not expressly require probable cause but authorizes the arrest if the officer "has reason to believe" that the alien is in the United States in violation of a law governing admission or removal of aliens and is likely to escape before a warrant is issued. 8 U.S.C. § 1357(a)(2). That standard was met here.

Respectfully submitted this 17th day of July, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/Theo Nickerson
THEO NICKERSON
Assistant United States Attorney
Attorneys for Respondents