Vinicius Damasceno, Esq.
Celedon Law
277 Main Street, Suite 305
Marlborough, MA 01752
Tel: (508) 573-3170

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

NADIA CRISTINA DA ROCHA ROSADO	)	
	)	
Petitioner,	)	
v.	)	**No. 2:25-cv-02157-DLR-CDB**
	)	
	)	
FRED FIGUEROA, et. al.	)	
	)	
Respondents.	)	
	)	

PETITIONER'S REPLY TO ANSWER TO HABEAS PETITION

1. Petitioner, Nadia Cristina da Rocha Rosado (hereinafter referred to as "Nadia," "Ms. Rosado," or "Petitioner") respectfully replies to the Answer to Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Answer to Petition") filed by Respondents on July 17, 2025. Doc. 11.

SUMMARY OF ANSWER TO PETITION

2. Respondents state that Petitioner is an inadmissible arriving alien, subject to mandatory detention under 8 U.S.C. § 1225(b)(2)A). Doc. 11 at *1. Respondents acknowledge that Petitioner entered the United States on October 10, 2018, and that her current detention occurred on April 30, 2025 – approximately six and a half years later. *Id.* at *2.
3. Respondents assert Petitioner's detention throughout the remainder of her proceedings is lawful. They recognize that noncitizens in pre-final-removal-order civil immigration

detention generally fall into one of two categories: 8 U.S.C. § 1225 (noncitizens seeking an initial entry) and 8 U.S.C. § 1226. Respondents recognize that there are significant due process differences between the two categories. Doc. 11 at *3.

4. In support of their claim, Respondents cite various cases, most of which have one thing in common: they specify the limited rights of noncitizens in their ***initial entry***. Respondents' claims have no support in the relevant statutory language, in the relevant jurisprudence, nor in the facts of this case. Therefore, for the reasons presented in the Habeas Petition and the arguments hereinafter, Respondents' claims should not prevail.

PETITIONER IS ELIGIBLE FOR A BOND HEARING, AND NOT SUBJECT TO MANDATORY DETENTION

5. Respondents claim that Petitioner is an arriving alien subject to mandatory detention throughout the remainder of her proceedings ***without possibility of a bond hearing*** is not supported by the facts of this case, nor by statutory language or relevant case law.
6. First, Respondents have not provided any documentation consistent with their claim. They merely provided a copy of the Notice to Appear ("NTA") that was issued when Petitioner entered the U.S. on October 10, 2018. They claim that because Petitioner was classified as "arriving alien" on her entry, her current detention is under 8 U.S.C. § 1225, not under U.S.C. § 1226. Doc. 11.
7. The NTA, however, does not reflect the current detention of Petitioner, since her Notice of Custody Determination, issued on April 30, 2025, clearly cites §236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, as the reason for her detention, while pending a final administrative determination. *See* Ex. A.

8. The regulation is clear that custody and bond determinations shall be separate and apart from "and shall form no part of, any deportation or removal hearing or proceeding." 8 CFR § 1003.19 (d); *also Matter of Chirinos*, 16 I&N Dec. 276 (BIA 1977). At a bond hearing, the judge is to analyze the custody status of the noncitizen, or redetermine the appropriate amount for bond, without any relation to the removal proceedings.
9. Therefore, the classification of the noncitizen when placed in removal proceedings is irrelevant. What presently matters is the circumstances surrounding the detention of the noncitizen(s). In the particular case, it is clear that Petitioner was not detained as an arriving alien, but as a noncitizen who has been in the United States for over six years.
10. While Respondents used the Supreme Court finding in *Jennings v. Rodriguez* to justify a non-existent time-limit on the length of detention, they have completely ignored the clear distinction made by the Supreme Court between noncitizens who are detained while entering the country and noncitizens who are already present in the United States. *Jennings v. Rodriguez*, 804 F. 3d 106 (2018). The majority opinion recognizes that **"§ 1226 applies to aliens already present in the United States. . . ." and that "§ 1226(a) authorizes the Attorney General to arrest and detain an alien 'pending a decision on whether the alien is to be removed from the United States.'"** *Id.* at * (citing § 1226(a)). As long as the detained alien is not covered by § 1226(c), the Attorney General "may release" the alien on "bond . . . or conditional parole." 8 U.S.C. § 1226(a). Furthermore, federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention. *See* 8 CFR §§ 236.1(d)(1), 1236.1(d)(1).

11. Similarly, all of the other Supreme Court cases raised by Respondents support the same distinction, as they indicate that aliens have less protections in their ***initial entry***. In pages 4 and 5 of the Answer to Petition, Respondents cite five cases that actually support Petitioner's claim:

    a. In *Nishimura Ekiu*, the Court clarifies that arriving aliens are only individuals who have never been to the U.S., holding that **"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**." *See Nishimura Ekiu v. United States,* 142 U.S. 651 (1892) (emphasis added).

    b. In *Landon*, the Court held that an alien seeking **initial admission** to the United States requests a privilege and is therefore afforded fewer constitutional rights. *See Landon v. Plasencia,* 459 U.S. 21, 32 (1982) (emphasis added).

    c. In *Shaugnessy v. United States ex rel. Mezei,* the Court again ratifies that the different protections are for those "on the threshold of initial entry". *See Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

    d. In *Thuraissigiam*, the Court again reinforces the limited protections for individuals seeking **initial entry to the United States**. *See Department of Homeland Security v. Thuraissigiam,* 591 U.S. 199, 220 (2020) (emphasis added).

    e. In *United States v. Flores-Montano,* the Supreme Court reiterated that the power over immigration is "at its zenith at the **international border.**" *See*

United States v. Flores-Montano, 541 U.S. 149, 152–53 (2004) (emphasis added).

12. Additional cases in the Answer to the Petition also refer to "initial entry." *See Leng May Ma v. Barber,* 357 U.S. 185, 187 (1958*); also Shaughnessy v. United States ex rel. Mezei,* 345 U.S. 206 (1953). Therefore, there is no question that the Supreme Court has long recognized a distinction between those who are arrested at the border trying to enter the country, and those arrested while in the country.

13. Petitioner's detention occurred on April 30, 2025, more than six years after her entry, while she was at her house in Massachusetts. Thus, there is nothing presented by Respondents to support a finding that Petitioner is subject to mandatory detention and that she is not entitled to a bond hearing.

PETITIONER'S ARREST VIOLATED HER FOURTH AMENDMENT RIGHTS

14. Respondents correctly state that under 8 U.S.C. § 1357(a)(2), ICE officers may conduct warrantless arrests if there is "reason to believe" that the potential arrestee (1) "is in the United States in violation of [an immigration] law or regulation" and (2) "**is likely to escape before a warrant can be obtained for his arrest**." *Nava v. Dep't of Homeland Sec.*, 435 F.Supp.3d 880, 885 (N.D. Ill. 2020) (emphasis added).

15. However, they fail to point out that mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be obtained. *Id.*

16. Furthermore, Courts have consistently held that "reason to believe" as written in § 1357 "must be read in light of constitutional standards, so that 'reason to believe' must

be considered the equivalent of probable cause." *Au Yi Lau v. United States Immigration & Nat. Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971); *see, e.g., Tejeda–Mata v. Immigration & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir.1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *United States v. Cantu,* 519 F.2d 494, 496 (7th Cir.1975) ("The words [in § 1357] of the statute 'reason to believe' are properly taken to signify probable cause."); *see also United States v. Quintana,* 623 F.3d 1237, 1239 (8th Cir.2010) ("Because the Fourth Amendment applies to arrests of illegal aliens, the term 'reason to believe' in § 1357(a)(2) means constitutionally required probable cause.").

17. Petitioner's arrest, which led to her subsequent detention, was unlawful and in violation of her rights under the Fourth Amendment. The allegations in the above paragraphs are re-alleged and incorporated herein. The ICE officers who arrested Petitioner abused their power by claiming that Petitioner was obstructing their activity simply because she asked to see the judicial warrant prior to allowing them to enter her home. Petitioner was not the object of the warrant, and the officers abused the authority given by the warrant by arresting Petitioner upon their entry into her home.

18. The prohibition set by the Fourth Amendment and reinforced by the Supreme Court in *Payton v. New York* establishes that the police, including Immigration and Customs Enforcement, are prohibited from entering a suspect's home without a warrant. *Payton v. New York*, 445 U.S. 573, 589-90, 596 (1980).

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to consider this reply to the response filed by Respondents, and reaffirms the requests made by Petitioner's Reply to Answer to Habeas Petition.

Respectfully submitted,

/s/ Vinicius Damasceno

Vinicius Damasceno, Esq.
Counsel for Petitioner
Bar No. 706468
Celedon Law PC
277 Main Street, Ste 305
Marlborough, MA 01752
508-573-3170
vinicius@celedonlaw.com

Dated: July 24, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner Nadia Cristina da Rocha Rosado, and I submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petitioner's Reply to Answer to Habeas Petition are true and correct to the best of my knowledge.

Dated this 24th day of July 2025.

/s/ Vinicius Damasceno
Vinicius Damasceno, Esq.

CERTIFICATE OF SERVICE

I, Vinicius Damasceno, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF), and paper copies will be sent to those indicated as non-registered participants.

Dated: July 24, 2025

/s/ Vinicius Damasceno
Vinicius Damasceno, Esq.