UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Jonny Alfredo Lliguicota Mayancela Petitioner, v. **Superintendent** of Karnes County Immigration Processing Center **Miguel Vergara**, Field Office Director, ICE San Antonio Field Office **Todd Lyons**, Acting Director U.S. Immigration and Customs Enforcement **Kristi Noem**, Secretary of the U.S. Department of Homeland Security; Respondents.	Case No. 5:25-cv-1038 **PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO WRIT OF HABEAS CORPUS**

INTRODUCTION

The Respondent's contention that Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2) flies in the face of decades of practice and precedent to the contrary. Judges in the Western District of Texas have repeatedly found that individuals in Petitioner's situation are only subject to detention under to 8 U.S.C. § 1226. *See* c.f. *Hernandez-Fernandez v. Lyons et al*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Gonzalez Martinez v. Noem et al*, No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda Ybarra et al*, No. EP-25-CV-00432-DB, 2025 WL 2937880, (W.D. Tex. Oct. 16, 2025); *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588, at *3 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, --- F. Supp. 3d ----, 2025 WL 2691828, at *5 (W.D. Tex. Sept. 22, 2025).

STATEMENT OF FACTS

It is undisputed that Petitioner is a native and citizen of Ecuador who is seeking asylum. Resp. Br. at 2. It is also undisputed that he is detained in ICE custody within the district of this Court. *Id.* On June 7, 2025, Petitioner was taken into ICE custody during a trafficker encounter in Maine. Id. at 2-3. On July 17, 2025, an Immigration Judge ("IJ") in the Pearsall Immigration Court refused to consider his request for release, finding that Jonny was "an applicant for admission" because he had been arrested and detained without a warrant while arriving in the United States, was subsequently placed in removal proceedings and "is detained under section 235(b) of the Immigration and nationality Act" [8 U.S.C. § 1225(b)].

ARGUMENT

I. Section 1226 Applies as a Matter of Statutory Construction

a. The authority to arrest Petitioner should have required a warrant

Petitioner had to be arrested on a warrant as a matter of law. Absent a warrant here, there is a legitimate question as to the legality of the arrest. The authority of DHS to take a noncitizen into custody without a warrant is limited. There are only two circumstances when an administrative warrant is not required for an immigration officer to arrest an alien for a suspected immigration violation: first, when the noncitizen, in the presence or view of the immigration officer, is entering or attempting to enter the United States unlawfully; or second when the immigration officer has "reason to believe" that the alien is in the United States unlawfully *and* is likely to escape before

a warrant can be obtained. 8 U.S.C. §1357(a)(2). Neither of these circumstances have been described here.

Petitioner has resided in the United States for approximately four years and was commuting for work when the van overheated at the time of his arrest; it is therefore clear that he was not "entering or attempting to enter" the United Staes.

But the second authority to arrest without a warrant seems equally unlikely to apply. Petitioner has been living with his mother in Massachusetts after he fled persecution in Ecuador. He timely sought asylum based on the abuse he suffered in Ecuador and was awaiting an interview before the Boston Asylum Office. If ICE had any "reason to believe" that he was unlawfully present, it would need to be based on his lack of driver's license or that he had stopped on the road due to his van breaking down. If, instead, the "reason to believe" was based on the place of Petitioner's breakdown, it would be absurd to suggest that he was going to "escape before a warrant can be obtained" per §1357(a)(2).

b. Petitioner's detention is pursuant to 8 U.S.C. §1226 and he is therefore eligible for release on bond

Petitioner's detention is governed by 8 U.S.C. § 1226 under the plain language of the INA. Section 1226 permits the government "to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). After the arrest, the government then "may continue to detain the arrested" noncitizen during removal proceedings or "may release" the noncitizen on bond or conditional parole. *Id.*, § 1226(a)(1)-(2). A noncitizen whom the government decides to detain under this discretionary provision may seek

review of that decision via a bond (i.e., custody redetermination) hearing before an immigration judge. *See* 8 C.F.R. § 236.1(d)(1); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021).

The exceptions under §1226 prove the rule. Section 1226(c) carves out categories of noncitizens who may not be released during removal proceedings. *See Jennings*, 583 U.S. at 289. But §1226(c) does not mention §1225(b)(2)(A) an exception to its discretionary detention authority; given that there is an express exception, it is implied that there are no other circumstances under which a noncitizen detained under §1226 is subject to mandatory detention. *Guerrero Orellana v. Moniz*, ___ F. Supp. ____, 2025 WL 2809996, at *6 (D. Mass. 2025)(Citing Jennings, 583 U.S. at 300 and others).

Recent legislation, too, confirms the understanding that Petitioner falls under §1226. The Laken Riley Act -- Pub. L. No. 199-1, § 2(1)(C), 139 Stat. 3, 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E) – created a new category of noncitizen subject to mandatory detention under §1226(c). This category has two elements – first that the noncitizen is inadmissible under one of several sections, including 8 U.S.C. 1182(a)(6)(A)(i) (present without having been admitted or paroled) and second that they have committed or been accused of committing certain crimes. *Id.* If the statute already rendered all unlawful entrants as mandatory detainees as Respondents suggest, there would be no need to create this new mandatory section. "When Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *United States v. Quality Stores, Inc.*, 572 U.S. 141, 148 (2014) (quoting *Stone v. INS*, 514 U.S. 386, 397 (1995)); *see also Guerrero Orellana,* 2025 WL 2809996, at *7; *Sampaio* 2025 WL 2607924 at *8.

The plain terms of 1225(b)(2)(A) do not apply here. That section requires detention "in the case of an alien who is an applicant for admission, if the examining immigration officer determines

that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). For it to apply, several conditions must be met – "an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Guerrero Orellana* at 6, citing *Martinez v. Hyde*, —— F. Supp. 3d ——, 2025 WL 2084238, at *2 (D. Mass. 2025) and *Lopez Benitez*, —— F. Supp. 3d at ——2025 WL 2371588, at *6 (S.D.N.Y. 2025). Even if Petitioner is an "applicant for admission" because he's present in the United States but has not been admitted, he is not *seeking* admission and was not doing so at the time of his arrest. *See id, collecting cases.*

The government's argument repeatedly equates "applicants for admission" to those "seeking admission" and without this vital connection, their entire argument fails. Courts across the country have held that this interpretation is either incorrect or likely incorrect. *See Buenrostro-Mendez*, No. 25-CV-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct 7, 2025) (noting that "almost every district court to consider this issue" has rejected the Government's new interpretation); *S.D.B.B. v. Johnson*, No. 25-cv-882, 2025 WL 2845170, at *5 (M.D.N.C. Oct. 7, 2025) (noting that at least seventeen courts have found that § 1225 "either does not or likely does not broadly apply to aliens already present within the United States"); *Lopez-Campos v. Raycraft*, --- F. Supp. 3d ----, 2025 WL 2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions).

But in reality, these are distinct legal situations, and one does not satisfy the other. References to *Jennings* to that effect are misleading. *See* Resp. Br. at 8. Its brief selectively quotes that case to again try to "applicants for admission" to one "seeking admission." *Id.* But while the Supreme Court did not directly address the interplay between §1225 and §1226 in that case, the descriptions of the provisions support Petitioner's argument:

> The Court explained that § 1225 is part of the immigration process "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible," and that the statute "authorizes the Government to detain certain aliens seeking admission into the country." By contrast, the Court noted that § 1226 "authorizes the Government to detain certain aliens already in the country."

Guerrero Orellana,_2025 WL 2809996, at *7, *citing Jennings v. Rodriguez*, 583 U.S. 281, 289, 583 (2018)(internal citation omitted).

The government's arguments to the contrary should not persuade this court. The argument that § 1225 is the "specific" provision that should be employed over the general one at § 1226 is completely without support. They apply in different situations and § 1226 generally applies to noncitizens encountered within the United States, as opposed to in the act of arriving. There can be no contention that Petitioner here was in the act of arriving to the United States.

Nor does *Thuraissigiam* apply to the question of whether the statute should be interpreted to consider those long-present in the United States as applicants for admission. *See* Resp. Br. at 9. In *Thuraissigiam*, the Supreme Court rejected a noncitizen's due process claim, explaining that people detained at or near the border are treated as "applicants for admission" and are afforded "only those rights regarding admission that Congress has provided by statute." 591 U.S. at 140, 140 S.Ct. 1959. Although *Thuraissigiam* certainly limited the scope of due process claims available to "applicants for admission," the decision's sweeping statements must be read in context. *See id.*

While the Respondents acknowledge that this Court has already rejected its past reliance on Thurassigiam, *see Lopez Arevalo v. Ripa*, No. 25-CV-337 -KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025), the Respondents do not meaningfully address the distinguishable facts here. *See* Resp. Br. at 9. To the extent that the case addressed "applicants for admission" it was addressing those "detained *shortly* after unlawful entry" (emphasis added). *Thuraissigiam,* 591 U.S. at 140.

First, Thuraissigiam challenged the denial of his asylum claim, whereas Petitioner here is challenging his detention in immigration custody. *See id.* The Supreme Court centered its analysis on the scope of habeas relief, which permits challenges to unlawful detention, but cannot provide another "opportunity to remain lawfully in the United States." *Id.* at 117–20, 140 S.Ct. 1959. Its holding does not support the government's bald suggestion that this Court should be swayed by current executive policy goals.

A second key point of distinction is that Thuraissigiam was stopped by Border Patrol "within twenty-five yards of the border," immediately detained, and never released. *Thuraissigiam*, 591 U.S. at 114, 140 S.Ct. 1959. Petitioner here was first apprehended in 2021, released to ORR custody and subsequently re-detained approximately four years later. During his release, he was living with his mother in Massachusetts, where he continued his education, graduating from high school just weeks before his detention. The Respondent's contention that Thuraissigiam extends to all applicants for admission fails as the heart of Thuraissigiam was the notion that "an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause" than those set by Congress. 591 U.S. at 107, 140 S.Ct. 1959 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660, 12 S.Ct. 336, 35 L.Ed. 1146 (1892)). "Th[is] distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas*, 533 U.S. at 693, 121 S.Ct. 2491. And the distinction is one of place—not status: "[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." *Martinez v. Hyde*, — F. Supp. 3d ——, ——, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187, 78 S.Ct. 1072, 2 L.Ed.2d 1246 (1958)).

Thus, for the reasons set forth, Thuraissigiam does not prohibit Petitioner from pursuing his due process claim.

II. There is no jurisdictional bar under 1252(g)

To the extent that Respondents argue that this Honorable Court lacks jurisdiction to review this petition, this could not be more incorrect and contrary to precedent and law. Respondents allege that "...the decision to detain him in the first place...arises directly from the decision to commence and/or adjudicate removal proceedings against him (Resp. Br. At 8). The Supreme Court has explained that section 1252(g)'s application is "narrow". See *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) ("AADC"); See also *Jennings v. Rodriguez*, 583 U.S. at 294 ("We did not interpret this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General . . . . [but] [i]nstead . . . read the language to refer to just those three specific actions themselves."). Therefore, "[t]here are . . . many other decisions or actions that may be part of the deportation process" that do not fall under section 1252(g). *Id.* at 482; *see Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 14 (2020) ("We have previously rejected as 'implausible' the Government's suggestion that § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'") (quoting *AADC*, 525 U.S. at 482).

This honorable Court as recent as October 2025 rejected this same exact argument stating:

> § 1252(g) applies only "to protect from judicial intervention the Attorney General's long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders." Duarte v. Mayorkas, 27 F.4th 1044, 1055 (5th Cir. 2022) (quoting Alvidres-Reyes v. Reno, 180 F.3d 199, 201 (5th Cir. 1999)). The statute "does not bar courts from reviewing an alien detention order, because such an order, 'while intimately related to efforts to deport, is not itself a

> decision to 'execute removal orders' and thus does not implicate [§] 1252(g).' "Cardoso v. Reno, 216 F.3d 512, 516–17 (5th Cir. 2000) (citation omitted); accord Kong v. United States, 62 F.4th 608, 617–18 (1st Cir. 2023) (collecting cases)."

Hernandez Fernandez v. Lyons et al, 5:25-CV-00773-JKP, 2025 (W.D. Tex Oct. 21, 2025).

Respondent is not challenging the government's decision to execute a removal order or to commence removal proceedings. His challenge is to the mandatory detention the government has imposed on him departing from the plain language of the statute, decades of practice and legislative history.

III. Petitioner Should Be Released Forthwith

Petitioner has been held in detention for nearly five months, after having his bond request hearing before the Immigration Court denied given the BIA's precedent decision in *Hurtado*. Respondents argue that the only relief available to Petitioner is release from custody, but if this Court were to release him, he would just be arrested again.

Alternatively, this court may order the Immigration Court to conduct a bond hearing in short order in which it considers his eligibility for bond under §1226(a). This Court has routinely ordered this remedy in cases where it has concluded that a noncitizen detained under Section 1226(a) was denied bond because the Immigration Court failed to apply the correct legal standards. *See* c.f. *Hernandez-Fernandez v. Lyons et al*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Gonzalez Martinez v. Noem et al*, No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda Ybarra et al*, No. EP-25-CV-00432-DB, 2025 WL 2937880, (W.D. Tex. Oct. 16, 2025); *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 WL 2792588,

at *3 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, --- F. Supp. 3d ----, 2025 WL 2691828, at *5 (W.D. Tex. Sept. 22, 2025).

Conclusion

The government unlawfully detained Petitioner when it arrested him without a warrant where no exigent circumstances existed. It continues to unlawfully hold Petitioner without access to a bond hearing in violation of the statute and decades of consistent interpretation of that statute. This Court should under his detention unlawful and order his release.

Respectfully Submitted
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By and through:

s/ Annelise M. Jatoba de Araujo

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