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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Pedro Antonio MIRALRIO GONZALEZ

Petitioner,

v.

Sylvester ORTEGA, Acting Field Office
Director of Enforcement and Removal
Operations, San Antonio Field Office,
Immigration and Customs Enforcement; Kristi
NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY; Pamela BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; Bobby
THOMPSON, Warden of South Texas
Detention Complex,

Respondents.

Case No. 5:25-cv-01156-JKP

**PETITIONER'S REPLY TO
FEDERAL RESPONDENTS'
RESPONSE**

I. Introduction

Petitioner will not reply to every issue and argument made by the Federal Respondents in their Response. The absence of any rebuttal is not, however, a waiver or abandonment of any claim or argument made previously. For arguments not explicitly addressed herein, Petitioner rests on the arguments presented in his Petition for Writ of Habeas Corpus.

Petitioner will address: 1) that Federal Respondents' argument misconstrues the statute; 2) jurisdiction; 3) that Federal Respondents' arguments about lawful status are irrelevant and incorrect; and 4) that Federal Respondents' presumption in favor of detention is misplaced.

II. The Federal Respondents' Claim that Petitioner is Subject to Mandatory Detention is incorrect

We refer to our initial petition for our argument relating to the law regarding detention of people in removal proceedings.

The Federal Respondents' response is an oversimplification of the system created by Congress, and mischaracterizes the statute. There are two separate sections of the statute dealing with detention and removal, 8 USC §§ 1225 and 1226. Section 1225 relates to the initial encounter of people at our nation's borders or ports of entry, and is entitled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing."¹ The "catchall phrase" the Federal Respondents use to support their entire argument is entitled "Inspection." 8 USC § 1225(a). The section the Federal Respondents would use to mandatorily detain the Petitioner, 8 USC § 1225(b)(2), is entitled "Inspection of Other Aliens." Inspection is an action taken when the person is seeking to be admitted into the United States at a border or

¹ While the title of the statute is not binding, it does breathe light into the meaning of the statute. *See Merit Mang. Grp, LP v. FIT Consulting, Inc.*, 583 U.S. 366, 380 (2018); *Dubin v. United States*, 599 U.S. 110, 120-21 (2023) ("This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.").

port of entry. This is further supported by 8 USC § 1225(a)(3) which states “all aliens (...) who are applicants for admission *or otherwise seeking admission* or readmission *to* or transit through *the United States* shall be inspected by immigration officers.” (Emphasis added). This equates the term “applicant for admission” with the action of “seeking admission,” which is something done at the time of arrival to the United States. This section of the statute then divides those persons into people who will either be subject to expedited removal, or those who pass a credible fear hearing for asylum and are placed in removal proceedings. This expedited removal and detention scheme envisioned by Congress extends to people present in the United States for two years or less. 8 USC §1225(b)(1)(A)(iii)(II). This time limitation shows Congress’ intent to apply § 1225 to those in close proximity to their arrival in the United States, in both time and location.

A person, like Petitioner, present in the United States for over 15 years is not in the same procedural posture as a person who recently arrived.

On the other hand, 8 USC § 1226 relates to people already present in the United States who are not subject to the expedited removal scheme detailed in § 1225. Entitled “apprehension and detention of aliens,” it states, “on a warrant issued by the Attorney General, and alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” This section allows for release on bond or on recognizance, unless the person is subject to mandatory detention under § 1226(c).

The Supreme Court has reviewed this statutory structure and found that § 1225 relates to people encountered at our nations’ borders and ports of entry, and § 1226 relates to people already present in the United States. *Jennings v. Rodriguez*, 583 U.S. 281 (2018). The Court describes § 1225 as “that process of decision generally begins at the Nation’s borders and ports of entry, where the Government must determine whether an alien *seeking to enter the country* is

admissible.” *Id.*, at 287 (emphasis added). The Court continues by describing § 1226: “Even once inside the United States, aliens do not have an absolute right to remain here. (...) Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal.” *Id.*, at 288. The court summarizes this statutory scheme, stating

In sum, the U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§1226(a) and (c).

Id., at 289 (emphasis added). The Court notes this understanding yet again stating “§1225(b) applies primarily to aliens seeking entry into the United States (“applicants for admission” in the language of the statute)” and “§1226 applies to aliens already present in the United States.” *Id.*, at 297, 303.

The *Thuraissigiam* case is inapposite, since it relates to a person clearly subject to § 1225. *DHS v. Thuraissigiam*, 591 U.S. 103 (2020). Mr. Thuraissigiam entered the US without inspection and was detained “within 25 yards of the border” shortly after his entry. *Thuraissigiam*, 591 U.S. at 114. He sought asylum and was detained under the credible fear section of the statute at § 1225. He was clearly subject to § 1225, not § 1226. The Supreme Court made note of the fact that “when respondent entered the country, aliens were treated as applicants for admission if they were ‘encountered within 14 days of entry without inspection and within 100 air miles of any U. S. international land border.’ 69 Fed. Reg. 48879 (2004).” *Thuraissigiam*, 591 U.S. at 109. Had the court thought the “applicant for admission” language at § 1225 applied to all persons who entered without inspection, regardless of the date or location of their encounter, there would have been no need for this clarification.

We note that the Federal Respondents initially detained the Petitioner under the authority of 8 USC § 1226 (Immigration and Nationality Act § 236) and served Petitioner with a warrant

advising him that he was being arrested and detained under that authority. *See* Exhibit 1, attached.

III. The Court Has Jurisdiction

We will refer to our initial petition for our argument relating to the Court's jurisdiction over this petition.

a. The Petitioner is Not Challenging the Initial Decision to Commence Removal Proceedings

Federal Respondents claim the court does not have jurisdiction because Petitioner is "challeng(ing) the decision to detain him in the first place." ECF No. 8, at 8. This is not the case. The Petitioner is not challenging the decision to detain him in the first place, nor is he challenging the decision to commence removal proceedings. He is challenging the Federal Respondents' decision to detain him without possibility of bond, in contravention with the Constitution, statutes, and regulations.

b. The Petitioner is not Challenging Any Decision Regarding Admission

The Petitioner is not challenging whether he is appropriately categorized as an applicant for admission. He is challenging whether the Federal Respondents are correct that he is subject to mandatory detention. The Petition for Writ of Habeas Corpus in the District Court is the appropriate means to challenge that.

IV. The Federal Respondents' Argument Regarding Lawful Status is Irrelevant and Incorrect

The Federal Respondents state that Petitioner has "no claim to any lawful status." ECF No. 8, at 3. While this would be a factor the Immigration Judge would consider in deciding whether to

grant a bond and in what amount, it is irrelevant to the decision of whether he has a right to seek release from detention while his removal proceedings are pending.

We do not need to discuss whether he has a claim to lawful status since it is not relevant to the issue being litigated. However, their statement about his lack of a claim to legal status is also incorrect. USCIS granted him deferred action status, based on his application for a U visa. The Federal Respondents are correct in stating that his deferred action status can be revoked at any time. However, the government has not revoked that status. If he is released, he will be released with work authorization and a Social Security card, both already issued pursuant to that deferred action status. In addition, he has a pending application for cancellation of removal in the Immigration Court.

V. The Federal Respondents' Presumption in Favor of Detention is Misplaced

The Federal Respondents state “even if this Court were to order his release from custody, he would be subject to re-arrest as an alien present within the United States without having been admitted.” ECF No. 8, at 3. If the Court were to order his release, it would be because his detention under § 1225 was unlawful. If the Court were to order a bond hearing, then his release would be subject to the conditions of his bond. The idea that the government would simply keep arresting a person unlawfully is a cause for concern.

The Federal Respondents also states that “ordering his release produces no net gain.” ECF No. 8, at 3. The Petitioner has been detained for four months, separated from his wife and small children who depend on him. He has a pending application before the Immigration Judge, and another pending application before USCIS. His individual hearing is scheduled for January 2026, which is another two months in custody. If he or the government were to decide to appeal the Immigration Judge’s decision, he will be detained even longer.

His liberty interest alone is a net gain. His release from custody would allow him to be with his family while the Immigration Judge determines whether he can remain in the United States. The ability to fully litigate his application before the Immigration Court, participate freely in his defense with the support of his family, gather documents, and have access to experts and other witnesses is a net gain.

As for the government's interest in enforcing the immigration laws, enforcement includes adjudication of pending petitions, such as his cancellation of removal application before the Immigration Court and his U visa petition before USCIS. Enforcement of our laws does not only mean detention and removal. Unlawful detention interferes with the due process of his removal proceedings. Should the Petitioner's applications be ultimately denied, the Government would be authorized to detain and remove him at that point.

The Federal Respondents are correct that the Petitioner can seek humanitarian parole from ICE. He submitted a humanitarian parole request to ICE on September 10, 2025, and has not received any response.

VI. Conclusion

For the reasons noted in this reply and in the petition, Petitioner requests the relief noted in the Petition.

DATED this 3rd day of November, 2025.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that the defendants on this case are known filing users and service will be accomplished through the Notice of Electronic Filing (NEF).

DATED this 3rd day of November, 2025.

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