

**UNITED STATES DISTRICT
COURT DISTRICT OF VERMONT**

ENAYETULLAH WALIZADA,

Petitioner,

-against-

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; PATRICIA HYDE, IN HER OFFICIAL CAPACITY AS ACTING BOSTON FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; DAVID W. JOHNSTON IN HIS OFFICIAL CAPACITY AS VERMONT SUB-OFFICE DIRECTOR OF IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS; TODD M. LYONS, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; PETE R. FLORES, IN HIS OFFICIAL CAPACITY AS ACTING COMMISSIONER FOR U.S. CUSTOMS AND BORDER PROTECTIONS; KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; MARCO RUBIO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; AND PAMELA BONDI, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL; GREG HALE, SUPERINTENDENT, NORTHWEST STATE CORRECTIONAL FACILITY – SAINT ALBANS,

Respondents.

Case No:

2:25-cv-00768-cr

**PETITIONER’S REPLY TO RESPONDENTS’ OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS AND TEMPORARY RESTRAINING ORDER**

INTRODUCTION

Respondents’ opposition to Mr. Walizada’s habeas petition relies on an erroneous and overbroad interpretation of 8 U.S.C. § 1225(b), misclassifying Mr. Walizada as an “arriving alien” subject to mandatory detention solely because his parole has expired. This position is legally insufficient and directly contradicted by *Matter of Hurtado*, 27 I&N Dec. 15 (BIA 2017), which

confirms that individuals who file timely asylum applications while on parole are governed by the discretionary detention framework of 8 U.S.C. § 1226(a), not mandatory detention under § 1225(b). Respondents' arguments further ignore the constitutional limits on prolonged civil detention, as articulated in *Zadvydas v. Davis*, and improperly invoke *Thuraissigiam*, a case addressing expedited removal, not interior detention of parolees with pending affirmative asylum claims. Because Mr. Walizada has been continuously present in the United States since August 2021 and is pursuing lawful relief; the government's attempt to detain him indefinitely without bond or meaningful review violates both statutory protections and Mr. Walizada's constitutional rights. Accordingly, this Court retains jurisdiction and should reject Respondents' opposition in full.

I. Inadmissibility Alone Does Not Justify Indefinite Detention, Especially Where the Petitioner Is Physically Present and Seeking Asylum

While Respondent contends that Petitioner is inadmissible due to the absence of valid entry documents, this argument is irrelevant to the central question before this Court—whether Petitioner's continued detention is unconstitutional. A finding of inadmissibility does not authorize the government to detain an individual indefinitely, particularly where such detention lacks meaningful procedural safeguards.

Moreover, Petitioner was already physically present in the United States at the time of his apprehension and has a pending affirmative asylum application before the United States Citizenship and Immigration Services (USCIS) Asylum Office. The existence of a pending asylum application underscores that Petitioner is not merely seeking entry, but is actively engaged in lawful immigration proceedings that warrant protection from arbitrary or prolonged detention.

The Supreme Court has made clear in *Zadvydas v. Davis*, 533 U.S. 678 (2001), that indefinite detention of noncitizens raises serious constitutional concerns. The government's power to detain must be balanced against due process protections under the Fifth Amendment. Where removal is not reasonably foreseeable, or where an individual is pursuing bona fide legal relief such as asylum, continued detention becomes punitive rather than regulatory and is therefore unconstitutional.

II. Petitioner's Detention Is Not Authorized Under 8 U.S.C. § 1225(b), Which Respondents Misapply by Ignoring the Statute's Limited Reach and Inapplicability to Affirmative Asylum Applicants

Respondents argue that because Mr. Walizada's parole has expired, he is now an "arriving alien" subject to mandatory detention under INA §§ 235(b). However, this interpretation is not supported by the INA or relevant case law when applied to individuals like Mr. Walizada, who have been residing within the United States and have not presented themselves at a port of entry for admission. In such circumstances, treating a parolee as an "arriving alien" after parole expiration is an overextension of DHS's authority that leads to unlawful consequences, including prolonged detention without access to an immigration judge for bond.

After Mr. Walizada was paroled into the United States under "OAW" program in August 2021, he filed a timely affirmative asylum application before his parole expired (November 2022). Although his parole later lapsed while his asylum application remained pending, this does not render him subject to mandatory detention.

In *Hurtado*, the Board of Immigration Appeals held that a noncitizen who is paroled into the U.S. and files an asylum application before the expiration of that parole is not subject to mandatory detention under § 235(b)(1) or (b)(2). Instead, once parole expires, detention is

governed by INA § 236(a), which provides the Department of Homeland Security (DHS) with discretionary authority to detain or release the individual on bond or conditional parole. *Matter of Hurtado*, 27 I&N Dec. at 17.

Therefore, Respondent's reliance on § 235(b) to justify mandatory detention is misplaced. Mr. Walizada's case is factually and legally indistinguishable from *Hurtado*: he entered on parole, filed a timely asylum application, and now remains in the U.S. with a pending case. Under § 236(a), DHS retains full discretionary authority to release Mr. Walizada on bond or parole pending resolution of his removal proceedings.

Furthermore, Respondent's reliance on 8 U.S.C. § 1225(b)(2) as a basis for mandatory detention rests on conflating the statutory label "applicant for admission" with the factual and procedural concept of "seeking admission." But the well-settled rule, endorsed by circuit courts and immigration authorities, is that § 1225(b)(2) applies only to those noncitizens who take affirmative steps to present themselves for admission (for example, at a port of entry). *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. en banc), makes clear that the label of "applicant for admission" does not necessarily import the procedural posture of "seeking admission." Likewise, the Board of Immigration Appeals has distinguished between the statutory classification and the factual showing of seeking admission. *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 744 (BIA 2012).

In Mr. Walizada's case, the facts simply do not support Respondent's theory. He has been continuously present in the U.S. since August 2021, and at no point did he present at a port of entry or otherwise engage in an affirmative process to seek admission when apprehended. His detention arose from his interior apprehension in Derby Line, Vermont, after which he was issued a Notice to Appear. Meanwhile, he has a pending affirmative asylum application before the USCIS Asylum

Office, further substantiating that he is not seeking initial admission but pursuing relief from removal from within.

The Ninth Circuit's decision in *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007), reinforces that individuals apprehended in the interior are governed by § 1226(a), not § 1225(b). Applying § 1225(b)(2) here would improperly collapse procedural posture into legal status and expand mandatory detention beyond its intended scope. The Supreme Court's treatment in *Jennings v. Rodriguez*, 583 U.S. 244 (2018), further underscores that detention statutes should be construed to avoid constitutional doubts and that procedural safeguards for noncitizens already in the country should be preserved. Although *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), reinstated certain uses of mandatory detention for those in expedited removal proceedings, it does not displace the fundamental distinction between noncitizens seeking admission and those already present and pursuing relief.

In support of this principle, the recent decision in *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304 CAS (BFM) (C.D. Cal. Sept. 8, 2025) is instructive. In that case, the district court granted a temporary restraining order requiring that petitioners in custody be released or provided bond hearings under § 1226(a), rejecting the government's attempt to treat individuals arrested within the U.S. as "applicants for admission" subject to mandatory detention. *Zaragoza Mosqueda* affirms that interior detainees, even when charged with inadmissibility, cannot be deprived of individualized bond proceedings under § 1226(a) merely by labeling them as § 1225(b)(2) "applicants." See *Zaragoza Mosqueda* (Order granting TRO).

Because Mr. Walizada did not affirmatively seek admission at the time of his apprehension, his detention cannot be sustained under § 1225(b)(2). Instead, his custody must be governed by

§ 1226(a), which mandates individualized determinations and protects due process more robustly than the mandatory detention regime. The Court should therefore find that Respondent's detention is unlawful under § 1225(b)(2) and order that Petitioner be afforded a bond hearing under § 1226(a).

Additionally, Respondents acknowledge that Mr. Walizada was not placed into expedited removal proceedings under § 1225(b)(1). See Respondents' Opposition 5, 2. Nor would he have been an appropriate candidate for such proceedings, given his immigration posture. Section 1225(b) is primarily applicable to individuals subject to expedited removal and to those who must establish a credible fear of persecution in order to avoid removal. However, that framework is inapplicable to Mr. Walizada. As conceded by Respondents, Mr. Walizada has a pending affirmative asylum application filed in November 2022 with the San Francisco Asylum Office, well before the events giving rise to his current detention. As such, he was not required to make a verbal request for asylum to CBP officers or undergo a credible fear interview at the border.

Accordingly, reliance on § 1225(b) to justify indefinite detention in this case is misplaced. To detain him under a statutory scheme designed for initial screening and expedited removal despite the fact that he has already availed himself of the lawful asylum process raises serious constitutional concerns under the Due Process Clause, particularly given the protracted nature of his detention and the lack of individualized determination regarding flight risk or danger to the community.

Accordingly, the detention of Mr. Walizada who is an affirmative asylum applicant contravenes both the letter and spirit of agency policy. There is no evidence in the record justifying his departure from this norm.

Therefore, Respondents' legal argument is not only unsupported by the statute's plain language and purpose, but it also fails to account for the constitutional protections afforded to asylum applicants with pending cases in the United States.

Respondents rely on *Department of Homeland Security v. Thuraissigiam*, 591 U.S., 140 S. Ct. 1959 (2020), to argue that individuals like "Petitioner who arrived at or near a port of entry but were later paroled into the United States are, for due process purposes, to be treated as if they were stopped at the border." This reliance is misplaced. *Thuraissigiam* addressed the limited scope of habeas review in the context of expedited removal proceedings under 8 U.S.C. § 1225(b)(1), and its holding is narrowly confined to that statutory and procedural framework.

In *Thuraissigiam*, the petitioner was apprehended shortly after crossing the southern border unlawfully and was placed directly into expedited removal proceedings. The Supreme Court held that because Thuraissigiam was seeking entry into the United States—rather than release from custody—the Suspension Clause and Due Process Clause did not entitle him to full habeas review of his asylum denial. Critically, the Court emphasized that Thuraissigiam was not challenging his physical detention but was instead using habeas corpus to obtain additional procedural protections in the asylum process, a new opportunity to apply for relief.

By contrast, Mr. Walizada is not in expedited removal proceedings and is not seeking entry into the United States. He has been physically present in the country since 2021, has been paroled into the interior, and is pursuing a pending affirmative asylum application. He is not using habeas corpus to demand a right to enter the country or to relitigate an asylum claim. Rather, he seeks release from prolonged and potentially indefinite detention—a core purpose of the writ of habeas

corpus protected by both statute and the Constitution. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing that the writ of habeas corpus is available to challenge the lawfulness of detention itself).

Furthermore, the Supreme Court in *Thuraissigiam* explicitly distinguished its holding from cases involving physical custody or prolonged detention, noting that “[w]hat *Thuraissigiam* seeks is not release from custody but an order directing the government to allow him to enter the United States.” 140 S. Ct. at 1969 (emphasis added). That reasoning does not apply here, where Mr. Walizada is not seeking entry but is already present and detained, and challenges the legality of that detention under long-established habeas principles.

Accordingly, *Thuraissigiam* is both legally and factually distinguishable. It does not foreclose habeas relief for individuals like Mr. Walizada who are not in expedited removal proceedings, are not seeking entry, and who seek release from unlawful, prolonged detention. Any analogy to *Thuraissigiam* in this case is inapposite and should be rejected.

Mr. Walizada’s case is distinguishable from those of individuals seeking initial entry at a port of entry. His continuous residence inside the U.S. for years and his pending asylum claim are strong indicators that he is not meaningfully situated at the “threshold of entry” to justify the arriving alien designation for purposes of his detention. Courts have recognized that the government may not indefinitely suspend the protections of the INA by clinging to a legal fiction, especially where the individual is already part of the U.S. community. Moreover, classifying Mr. Walizada as an “arriving alien” deprives him of the opportunity to seek release from custody through an individualized bond hearing under INA § 236(a), because arriving aliens are categorically excluded from such hearings under 8 C.F.R. § 1003.19(h)(2)(i)(B). As a result, Mr.

Walizada has been subjected detention with no neutral decision-maker assessing whether continued custody is necessary. This raises serious constitutional concerns under the Due Process Clause of the Fifth Amendment.

The Supreme Court has repeatedly held that civil detention, especially prolonged and potentially indefinite detention, must be accompanied by adequate procedural safeguards. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court held that the government may not detain noncitizens indefinitely without strong justification. In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), although the Court upheld certain aspects of mandatory detention statutes, it left open the door to constitutional challenges based on due process, especially when detention becomes prolonged and access to bond is denied.

Mr. Walizada's continued detention based solely on an expired parole grant, despite his ongoing presence in the interior of the United States and pending asylum application, is precisely the kind of indefinite civil detention that due process forbids. Even assuming *arguendo* that DHS had authority to initially classify him as an arriving alien upon parole, that status does not persist in perpetuity. It is an unreasonable interpretation of the statute and an unconstitutional basis for prolonged detention.

For these reasons, Mr. Walizada respectfully requests that this Court find his continued detention as an "arriving alien" unlawful, and order his immediate release or, in the alternative, order that he be provided with an individualized bond hearing before an immigration judge pursuant to INA § 236(a).

III. This Court Retains Subject-Matter Jurisdiction Because Mr. Walizada Raises a Constitutional Challenge to His Detention, Not a Procedural Challenge to Asylum Adjudication

Respondents erroneously contend that Petitioner is challenging the procedure by which his asylum claim is adjudicated and, therefore, that this Court lacks subject-matter jurisdiction. However, Mr. Walizada does not contest the adjudicatory process itself, but rather raises a constitutional challenge to the statutes as interpreted and applied to his unique circumstances. Specifically, the government improperly asserts that Mr. Walizada's detention is governed by 8 U.S.C. § 1225(b) and is therefore mandatory throughout the pendency of his asylum proceedings, including any appeal. As previously discussed, his detention is properly governed by § 1226(a), which permits discretionary release.

Mr. Walizada asserts violations of his constitutional rights under the Due Process Clause and the Fourth Amendment's protection against unreasonable seizure. His claims challenge the government's misapplication of federal law in a manner that gives rise to constitutional harm. Accordingly, this Court retains subject-matter jurisdiction pursuant to Article III, which empowers federal courts to hear cases arising under the Constitution and laws of the United States. *See* *Marbury v. Madison*, 5 U.S. 137, 178 (1803); U.S. Const. art. III.

Subject-matter jurisdiction is proper here because Mr. Walizada raises constitutional claims arising from the government's misapplication of federal detention statutes. The Second Circuit has consistently recognized that constitutional challenges remain reviewable notwithstanding jurisdictional limitations on discretionary or procedural matters. *See* *Ragbir v. Homan*, 923 F.3d 53 (2d Cir. 2019); *Sol v. INS*, 274 F.3d 648 (2d Cir. 2001); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015). Although certain aspects of *Lora* were abrogated by *Jennings v. Rodriguez*, the court in *Ragbir* affirmed that constitutional claims remain within the district court's jurisdiction under 8 U.S.C. § 1252(a)(2)(D).

Additionally, whether Mr. Walizada is “in custody” for habeas purposes has been addressed by this Circuit. In *Simmonds v. INS*, the court held that habeas review is appropriate where detention imposes a present hardship and the constitutional claim is ripe for adjudication. 326 F.3d 351, 360 (2d Cir. 2003). Article III requires a live case or controversy, and Mr. Walizada’s ongoing detention satisfies both ripeness and non-mootness requirements. His claim implicates tangible due process concerns stemming from prolonged detention without individualized judicial review.

Having established subject-matter jurisdiction, ripeness, and the existence of a live controversy, this Court is fully empowered to consider Mr. Walizada’s request for relief. He does not challenge the discretionary aspects of asylum adjudication, nor the procedures implementing § 1225(b)(1). Instead, he challenges the constitutionality of his continued detention—without individualized judicial review—under circumstances where the government lacks a rational basis to justify such detention.

Mr. Walizada seeks review under the Fourth and Fifth Amendments and invokes this Court’s inherent authority to grant bail in the absence of express statutory authority. *See Wright v. Henkel*, 190 U.S. 40, 63 (1903). As recognized in *Anadji v. Keisler*, courts must assess the legality of continued detention based on specific facts once the presumptively reasonable period has expired, consistent with *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Contrary to the government’s assertions, § 1252(a)(2)(A)(i) bars judicial review only of individual determinations under expedited removal orders pursuant to § 1225(b)(1), which are inapplicable here, as Mr. Walizada has not been ordered removed. Moreover, § 1252(a)(2)(D) expressly preserves judicial review of constitutional claims and questions of law. Accordingly, Mr. Walizada’s habeas petition is squarely within this Court’s jurisdiction.

CONCLUSION

For the foregoing reasons, Mr. Walizada respectfully submits that his continued detention violates both statutory and constitutional protections. He is currently held under the discretionary authority of 8 U.S.C. §1226(a), and not subject to the mandatory detention provisions of 8 U.S.C. §1225(b), which are plainly inapplicable under the present procedural circumstances. His detention without a lawful basis or a meaningful opportunity to be heard constitutes an unreasonable seizure in violation of the Fourth Amendment and a deprivation of liberty without due process under the Fifth Amendment. Moreover, this Court has clear subject matter jurisdiction to consider his habeas petition and the authority to grant the relief sought. Accordingly, Mr. Walizada respectfully requests that this Court declare his detention unlawful and order his immediate release.

Dated: September 30, 2025

Respectfully submitted,

/S/ Nathan Virag

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