IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

NORBERTO SALINAS GALLARDO, Petitioner, v. SAM OLSON, et al., Respondents.	Case No. CIV-25-1090-R

PETITIONER'S REPLY TO RESPONDENTS' OBJECTION TO THE REPORT AND RECOMMENDATION

I. PRELIMINARY STATEMENT

Petitioners respectfully agree and support the Report and Recommendation (R&R) entered on October 28, 2025. (Doc. 16).

This reply expressly reasserts and does not waive the arguments set forth in the Petition (Doc. 1), but will focus on the two particular points set forth in the Respondents' Objection to Report and Recommendation (Doc. 18): (1) the R&R correctly held that the court has jurisdiction over Petitioner's Habeas Petition because 8 U.S.C. § 1252(g) is inapplicable to a Habeas Petition; and (2) the R&R adequately found that §1226(a) should be the actual applicable statute and thus § 1225(b)(2)(A) is inapplicable to the case at hand.

II. ARGUMENTS

A. The Western District Court of Oklahoma Has Jurisdiction over Writs of Habeas Corpus

The Writ of Habeas Corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless government action.[1] There is a long-standing well established history in the American judicial system regarding their sole jurisdiction to adjudicate Writs of Habeas. The extensive history of Writs of Habeas Corpus, and the right of petitioners to the Writs of Habeas Corpus itself is rooted in the U.S. Constitution's Suspension Clause.[2] District Courts retaining jurisdiction over Writs of Habeas Corpus can be found in the Federal Habeas corpus statute, 28 U.S.C. § 2241, which states, in pertinent part:

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[1] Harris v. Nelson, 394 U.S. 286, 290-91 (1969); Boumediene v. Bush, 128 S. Ct. 2229, 2244, 2008 WL 2369628 at *12 (2008) ("The Framers viewed freedom from unlawful restraint as fundamental precept of liberty, and they understood the writ of habeas corpus as vital instrument to secure that freedom").

[2] U.S. Const. art. I § 9, cl. 2 states: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it.

(a) Writs of habeas Corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions…

Once 28 U.S.C. § 2241 was included in the Judiciary Act of 1789, the district courts were given jurisdiction to grant Writs of Habeas Corpus to people who are held in "custody" by the federal government in violation of the Constitution, laws, or treaties of the United States. Under this statute, federal courts have considered both *constitutional claims* and claims of *statutory interpretation.* Over the past several years, the Supreme Court has upheld the availability of Habeas Corpus in cases challenging detention.[3]

Here, Petitioner has filed a Petition for Writ of Habeas Corpus due to his unlawful detention in violation of the United States Constitution by the Respondents. The Western District Court unquestionably has jurisdiction to adjudicate Petitioner's Petition for Writ of Habeas Corpus. To obtain Habeas Corpus relief, Petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States."[4] Cases such as Petitioner's, which challenge immigration detention are properly brought directly through habeas.[5]

B. The Writ of Habeas Corpus is in Regards to the Present Unlawful Detention of Petitioner, Not an Adjudication of Immigration Proceedings

The Habeas Petition was filed because of the unlawful detention of Petitioner. (Doc. 1) The Habeas Petition's scope is for the District Court to adjudicate the unlawfulness of Petitioner's detainment. Thus, the Court cannot be limited, as argued by Respondents, by the provisions found

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[3] *See e.g. Zadvydas v. Davis*, 533 U.S. 678 (2001) (finding that habeas corpus may be used to bring statutory and constitutional challenges to post-removal order detention); *see e.g. Demore v. Kim*, 538 U.S. 510 (2003) (Court found that Habeas corpus may be used to bring a constitutional challenge to pre-removal order detention); *See e.g. Clark v. Martinez*, 543 U.S. 371 (2005) (Court held that its decision in Zadvydas v. Davis also applied to government detention of persons found to be inadmissible).

[4] See 28 U.S.C. § 2241(c)(3)

[5] See *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

in the Immigration Nationality Act because the court is not adjudicating immigration law. Respondents argue that under Section 1252(g), the courts lack jurisdiction to consider "any cause or claim by or on behalf of any alien arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."[6] Respondents push this court to adopt a broad interpretation of Section 1252(g) when the Supreme Court has found that Section 1252(g) is much more narrow, only applying to three discrete actions by the Attorney General: 1. Commence proceedings, 2. Adjudicate Cases, 3. Execute Removal orders.[7] Respondents erroneously choose to equate removal proceedings as synonymous with unlawful detention to incorrectly strip this Court of proper jurisdiction.

Here, within the Habeas Petition, Petitioner never requests the Court to adjudicate on the merits of removal proceedings. Petitioner does not argue for the court to adjudicate on the removal proceedings or on the merits of his immigration relief. Instead, Petitioner asks this Court to find that his detention is unlawful because Respondents unlawfully denied Petitioner of a Bond hearing. The court has jurisdiction over the petition as Petitioner is only challenging the way Respondents are conducting his detention – the lack of bond hearing. [8]

C. Petitioner is Not an "Applicant for Admission," and Thus He is Entitled to a Bond Hearing as Under § 1226(a)

Under INA § 1225(b)(2)(A):

[I]n 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, the alien shall be detained for a proceeding under section 1229a of this title.

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[6] 8 U.S.C. § 1252(g)

[7] See e.g. *Reno v. American – Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-85 (1999)).

[8] See Ferry v. Gonzales, 457 F.3d 1117, 1131 (10th Cir. 2006).(holding that § 1252(a)(5) does "not eliminate a district court's jurisdiction to review habeas petitions challenging an alien's detention" and affirming district court's finding that it had jurisdiction to review a habeas petition challenging "DHS's continued detention [of petitioner] without bond or without providing a bond hearing").

Here, the INA clearly distinguishes an alien is an applicant for admission as an alien seeking admission into the United States. Here, Petitioner is not seeking "admission" into the United States. The plain meaning of the phrase "seeking admission" requires that Petitioner must be actively seeking lawful entry into the United States. The use of the present participle in § 1225(b)(2)(A) implies action- something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Caballero,* 2025 WL 2977650, at *6 (citation modified).

Here, Petitioner has lived in the United States for over twenty three years. Petitioner is not currently seeking admission. Petitioner also was not arrested when attempting to cross the border or pass through a port of entry. (Doc. 1). Noncitizens who have been 'present' in the country, have been here for years, and are not seeking to obtain any form of citizenship, are not 'seeking' admission under § 1225(b)(2)(A)."

III. CONCLUSION

This Court should order Petitioner's immediate release, or in the alternative, adopt the *Report and Recommendation* to find that Respondents must provide him with a bond hearing.

Respectfully submitted,
/s/ Elissa Stiles
Elissa Stiles
Rivas & Associates
PO Box 470348, Tulsa, OK 74147
918-419-0166
estiles@rivasassociates.com
Attorney for Petitioner

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

I represent Petitioner, Norberto Salinas Gallardo, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petitioner's Reply to Respondents' Objection to Report and Recommendation are true and correct to the best of my knowledge.

Dated this 18th day of November, 2025.

Respectfully submitted,

/s/ Elissa Stiles
Elissa Stiles
Rivas & Associates
PO Box 470348, Tulsa, OK 74147
918-419-0166
estiles@rivasassociates.com
Attorney for Petitioner