Nicolette Glazer Esq. (CSBN 209713)
nicolette@glazerandglazer.com
LAW OFFICES OF LARRY R GLAZER
2121 Avenue of the Stars #800
Century City, California 90067
T:310-407-5353
F:310-388-3833
(pro hac vice application filed concurrently)

ATTORNEYS FOR PETITIONER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Silvia Elizabeth Colman-Randas Petitioner VS John Cantu, et al., Defendants-Respondents	Case No.: 25-cv-03594-MTL Judge: Hon. Liburdi **REPLY TO RESPONSE TO PETITION FOR A WRIT OF HABEAS CORPUS (TRAVERSE)**

Petitioner Silvia Colman-Randas, by and through her attorney of record, Nicolette Glazer Esq., respectfully submits this reply to Respondents' Response to her Petition for a Writ of Habeas Corpus as follows:

First, the historical facts are not in dispute: Petitioner is a national and citizen of Guatemala who was apprehended by Border Patrol on 29 December 2018 after she had already effected an entry. She was placed in section 240 removal proceedings and was released pursuant to section 1226(a) on an order of recognizance (Form I-220A) as part of ICE-ERO's Alternatives to Detention Program (ATD). Petitioner filed a timely Petition for Review with the Ninth Circuit and the execution of the removal order is stayed by the Ninth Circuit pending adjudication of her case. Petitioner was detained on 15 May 2025 during her regularly scheduled ICE check-in appointment with no notice of revocation of her order of

release or violation of a conditions of release, without an opportunity to respond, and/or be heard by a neutral adjudicator prior to deprivation of her liberty. In sum, CBP released Petitioner on an Order of Recognizance seven years ago and thereafter filed a Notice to Appear, thus commencing removal proceedings against her under 8 U.S.C. § 1229a. For over seven years, Petitioner abided by the conditions in the Order of Recognizance and resided in the United States. After Petitioner filed this Petition for habeas corpus and requested release or a bond hearing, the government now claims for the first time that *Petitioner was released and placed in a section 240 proceeding in error* and that ICE is now detaining her under 8 U.S.C. § 1225(b)(2), making her ineligible for release or bond.

Second, Respondents largely ignored the claims pleaded in the Petition and oppose relief solely on the grounds that (1) Petitioner is an "applicant for admission" who must be detained under sectionn1225, (2) seeking judicial review under the Administrative Procedure Act (APA) is not properly sought through a habeas petition, and (3) claims to be receiving inadequate healthcare are generally not cognizable in a habeas petition. (ECF #14).

The Court should deem that Respondents have conceded Petitioner's constitutional claims and her claim that her detention is unlawful because Respondents re-detained her without complying with the statutory and regulatory requirements for revocation of Orders of Supervision. Because punitive and/or unlawful detention is addressed adequately through a writ of habeas corpus, the Court should issue a writ directing Respondent to immediately release Petitioner..

1. Respondents' claim of "error" is disingenuous.

Respondents assert in conclusory fashion that "*Although Petitioner was released on an order of recognize (sic), it is ICE's position that this was done in error and that Petitioner should have been subject to mandatory detention as an applicant for admission under 8 U.S.C. § 1225(b)(2)(A), for the reasons argued in full below.*"(ECF # 14 at FN1). Assistant Field Director Valenzuela make no claim of error in the processing and release of

Petitioner. (ECF # 14-1) And for a good reason. Respondents would have the Court believe that the Border Patrol officer who processed Ms. Colman-Randas for section 240 removal and released her on an order of own recognizance made some outrageous but excusable legal and/or factual mistake. The Border Patrol Officer's decision to conditionally parole Petitioner under Section 1226(a) was entirely consistent with its longstanding practice of conditionally paroling noncitizens arrested without a warrant near the border. *See* Transcript of Oral Argument, at 44:24-45:2, *Biden v. Texas,* 597 U.S. 785 (2022) (No. 21-954) (Solicitor General representing that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended."); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (BIA 2023) ("The respondents were . . . released on their own recognizance pursuant to DHS' conditional parole authority under . . . 8 U.S.C. § 1226(a)(2)(B)[.]"); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the [government] used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (same).

The real basis for the Respondents' *post hoc* rationalization is quite different. On 8 July 2025 DHS issued a "secret" policy guidance memorandum in which DHS announced that DHS in "coordination" with DOJ "has revisited its legal position on detention and release authorities." (Exhibit R-2 at 10.) Under this "revisited" legal position, "[e]ffective immediately, it is the position of DHS that" any "alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival," should be deemed an "applicant for admission" and thus subject to mandatory

detention under 8 U.S.C. § 1225(b). (*Id.*) "For custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated." (*Id.*)[1]

2. Petitioner is not an "Applicant For Admission" and thus not subject to mandatory detention under § 1225(b)(2)(A)

As the Response emphasizes the merits of Respondents' arguments implicate the construction of two statutory provisions. The first -- 8 U.S.C. § 1225(b)(2)(A) -- provides that, absent exceptions that are inapplicable here, "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, the alien shall be detained for a [removal] proceeding." Ms. Colman-Randas was never detained nor processed under section 1225(b). *See* Exhibit R-1 showing that the 1225(b) boxes are not checked.

The second relevant provision is 8 U.S.C. § 1226(a), which provides in pertinent part that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General . . . may continue to detain the arrested alien; and . . . may release the alien on . . . bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or . . . conditional parole." *Id.* In other words, § 1226(a) contemplates that a noncitizen who is arrested and detained pending a removal decision is "generally" entitled to a bond hearing. *Nielsen v. Preap* is 586 U.S. 392,

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[1] The DOJ, in turn, implemented this 'coordinated' change in position in a published administrative decision, *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), in which the BIA held that the IJ in that case "lack[ed] jurisdiction to consider the respondent's request for release on bond" because the Respondent should be "treated as an applicant for admission" and was "detained under . . . 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for release on bond." *Id.* at 66-68 (cleaned up).

395-98 (2019) ("Aliens who are arrested because they are believed to be deportable may generally apply for release on bond or parole while the question of their removal is being decided. These aliens may secure their release by proving to the satisfaction of a Department of Homeland Security officer or an immigration judge that they would not endanger others and would not flee if released from custody. . . . 8 U.S.C. § 1226(a) generally permits an alien to seek release in this way . . . ."). This is the "default rule." *Jennings v. Rodriguez,* 583 U.S. 281, 288 (2018) ("Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal. . . . Section 1226(a) sets out the default rule . . . ."); *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1196-97 (9th Cir. 2022) ("The provision at issue in this case, 8 U.S.C. § 1226, provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal. . . . Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final. . . . Additional provisions supplement § 1226's detention scheme. Section 1225(b) applies to an 'applicant for admission' . . . .") (citations omitted). Thus, while Section 1225(b) "authorizes the Government to detain certain aliens seeking admission into the country," section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings* at 289.

Respondents cited no cases agreeing with their position that § 1225(b)(2)(A) applies to noncitizens in Petitioner's situation. Cf. *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1202 (9th Cir. 2022) (observing that § 1226(a) and its implementing regulations "provide extensive procedural protections that are unavailable under other detention provisions").

Moreover, the government's longstanding interpretation which guided Petitioner's release in the first place — that § 1226(a) applies to noncitizens like the Petitioner who entered without inspection but were apprehended inland — is consistent with the statutory text, structure, and history. For decades, DHS applied § 1226(a) to such individuals,

acknowledging they are not "arriving aliens" at ports of entry. *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007). This is "powerful evidence" of a "natural and reasonable" reading of the statute. *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relied on over sixty years of government and interpretation to reject the government's new interpretation of the law).

Here, Respondents attempt to ignore the inclusion of the phrase "seeking admission" in § 1225(a)(1) which implies affirmative action toward admission, such as presenting at a port, not passive presence after unlawful entry. *See Thuraissigiam*, 591 U.S. at 138 (distinguishing "applicants" as those inspected or paroled). Congress used "arriving alien" narrowly elsewhere in § 1225, supporting the conclusion that § 1225(b)(2)(A) does not apply broadly to those apprehended inland. *See* 8 C.F.R. § 1001.1(q) (defining "arriving alien" as one at a port or recently entered).

The recent shift, prompted by a July 2025 DHS guidance, lacks compelling justification and appears driven by policy rather than textually compelled. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395–96 (2024) (courts owe no deference to agency interpretations). This abrupt change also implicates due process, as the petitioner had a protected liberty interest in the bond hearing under the prior regime. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (prolonged detention raises due process concerns); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 269 (1990) (long-term residents have due process rights); *see also Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 171364, at *15–16 (C.D. Cal. July 28, 2025) ("respondents fail to articulate any valid justification, legal or otherwise, for the application of § 1225 to Petitioners as applicants for admission." (cleaned up)); *Barrera v. Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565, at *1, *4–7 (W.D. Ky. Sept. 19, 2025) ("If Congress had intended for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have

recently adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from the discretionary bond framework." (cleaned up and collecting cases)); *Hasan v. Crawford*, __ F. Supp. 3d __, 2025 WL 2682255, at *6–10, *13 (E.D. Va. Sept. 19, 2025) (ordering immediate release under § 1226, and rejecting argument that § 1225(b)(2) applied to someone like the petitioner who had been in the United States for several months, had not committed any crimes, and attended all required meetings with ICE officials). These cases, while not binding, persuasively rejected the government's argument, based on statutory history and due-process concerns.

3. The APA claims as pleaded in the Complaint are not "improper habeas claims"

Respondents rely on *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023) and *Flores-Miramontes v. INS.*, 212 F.3d 1133, 1140 (9th Cir. 2000) for their position that the APA count is outside of the Court's habeas corpus jurisdiction. (ECF # 14 at 11-13). Petitioner acknowledges that *Pinson* holds that "release from confinement is the only available remedy for claims at the writ's core" and that "the relevant question is whether, based on the allegations in the petition, release is legally required irrespective of the relief requested." *Id.* at 1070, 1072. This is precisely what Petitioner seeks: release from detention that is violative of constitutional and statutory commands. Petitioner submits that Respondents' expansive reading of *Pinson* is foreclosed by *Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) where the 9th Circuit held that a nearly identical request for release from immigration detention fell squarely within Pinson's "core of habeas." *Id.* at 1194 ("Doe relies primarily on *Pinson* and *Nettles* for the proposition that, because he did not challenge the underlying legal basis for his detention, but rather sought a process remedy in the form of a bond hearing, it follows that his petition falls within the 'core of habeas' as defined in *Pinson* . . . . We are unpersuaded that either of those cases support such a conclusion.").

4. Denial of Medical Care falls within Habeas Corpus.

In *Preiser v. Rodriguez*, 411 U.S. 475 (1973) the Supreme Court held that when a prisoner is put "under additional and unconstitutional restraints during his lawful custody" habeas corpus may be available to remove the restraints "making the custody illegal." *Id.* at 499. This is because habeas may be "available to challenge such prison conditions." *Id.* The Court also clarified that if a prisoner challenges both the conditions of their confinement and the fact or length of the confinement, the "latter claim . . . is cognizable only in federal habeas corpus." *Id.* n.14. Here, Petitioner is challenging both the legality of the confinement and the conditions of her confinement. *See Johnson v. Avery*, 393 U.S. 483 (1969) (The Court held that habeas corpus could be used to challenge unconstitutional conditions of confinement when prison regulations conflict with "federal constitutional or statutory rights."); *Wilwording v. Swenson*, 404 U.S. 249 (1971) (concluding state prisoners have a cognizable claim in habeas corpus to challenge their living conditions and disciplinary measures in prison); *In re Bonner*, 151 U.S. 242, 259 (1894) ("[The writ of habeas corpus] was intended as a protection of the citizen from encroachment upon his liberty from *any* source") (emphasis added).

Under 28 U.S.C. § 2243, a court shall forthwith issue a writ or order the Respondent to show cause why a writ should not issue, "unless it appears from the application that the applicant or person detained is not entitled" to a writ of habeas corpus.

Date: 11/10/2025

Submitted by

s/ Nicolette Glazer Esq.

Nicolette Glazer Esq.
LAW OFFICES OF LARRY R GLAZER
1875 Century Park East #700
Century City, CA 90067

ATTORNEY FOR PETITIONER