UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

ROBSON ROCHA DE FARIA Petitioner, v. **MARY DE-ANDA-YBARRA**, et. al. Respondents.	)	Case No. 3:25-CV-00464-DCG

I. PETITIONER'S REPLY TO RESPONSE TO PETITIONER'S WRIT OF HABEAS CORPUS

1. Petitioner, Robson Rocha de Faria (hereinafter referred to as "Robson," "Mr. Rocha de Faria," or "Petitioner") respectfully replies to Respondents' Response to Petitioner's Writ of Habeas Corpus ("Respondents' Response") filed on October 27, 2025. Doc. 6.

II. SUMMARY OF RESPONSE TO HABEAS

2. Respondents state that Petitioner is subject to mandatory detention without a bond hearing under U.S.C. § 1225(b)(2). They also claim that this Court lacks jurisdiction to hear Petitioner's habeas petition because sections 1252(g) and 1252(b)(9) allegedly deprive the federal court of jurisdiction. *See* Doc. 6 at *3-5.
3. Furthermore, Respondents claim that Section 1225(b) is not unconstitutional as applied to Petitioner, because the statute does not entitle him to a bond hearing. *See* Doc 6 at *3-6.
4. In sum, Respondents' position is that they are entitled to detain Petitioner indefinitely, without giving him an opportunity for a bond hearing, and that these circumstances do not qualify as a violation of constitutional protections.

5. For the reasons presented in the Habeas Petition and the arguments hereinafter, Respondents' claims should not prevail. Their position is not only legally incorrect, based on several inaccuracies, misinterpretations of the law, and purported ignorance of federal law and legal precedent, but it is also dangerous and undermines constitutional protections that have been in place since the country's founding.

III. LEGAL ANALYSIS

i. Petitioner is not lawfully detained as an applicant for admission, and Respondents' interpretation of the statute does not have any legal basis

6. Petitioner entered the country on August 12, 2023. *See* Ex. A of Doc. 1. He was apprehended by Customs and Border Patrol ("CBP") and placed in removal proceedings. *See* Ex. B of Doc. 1. He was then released upon recognizance by CBP and moved to Massachusetts.

7. Despite Petitioner's presence in the United States, which includes a prior detention and release, Respondents argue that Petitioner is an "applicant for admission" and subject to mandatory detention without access to a bond hearing.

8. Respondents claim that Petitioner is detained under § 1225(b)(1), based on the fact that he was apprehended when he entered the country on August 12, 2023. Although it is true that Petitioner could have been placed in expedited removal proceedings when he entered the country, and therefore would be subject to § 1225(b)(1) if his detention occurred during his initial entry. However, this is not what happened here.

9. The Petitioner was placed in full removal proceedings, and released upon recognizance into the United States. If an applicant for admission is not placed in expedited removal proceedings under INA § 235 or is later placed in removal proceedings under INA § 240, detention is no longer mandatory. In these cases,

noncitizens are sometimes released from custody and allowed to remain in the United States for the duration of their proceedings. 8 U.S.C. § 1226 (a). If an individual who is already in the United States is later detained for immigration purposes, that detention would be under INA § 236, not INA § 235.

10. As explained in Petitioner's brief, this was the unanimous interpretation until a sudden change from DHS and DOJ, which stripped away the rights for bond hearings for millions of noncitizens.[1]

11. In order to support this position, Respondents argue that their interpretation is based on the "statutory text." *See* Doc 6 at *4. The proposed interpretation, however, is contrary to the plain text of the law.

12. As explained by the Massachusetts District Court in *Aguiriano Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025), § 1225(b)(2)(A) applies only when three distinct conditions are met: (1) an examining immigration officer determines that the person is an "applicant for admission"; (2) the person is "seeking admission"; and (3) the officer concludes that the individual is "not clearly and beyond a doubt entitled to be admitted." *Id. (*quoting *Diaz Martinez,* 2025 WL 2084238, at 3), because "examination" refers to the specific legal process applicable at ports of entry. 8 C.F.R. § 235.1.

13. The proposed interpretation of the law by the Respondents also proposes that the terms "applicant for admission" and "seeking admission" are synonymous, when they are

[1] The existence of the memorandum was first reported by the Washington Post on July 14, 2025. Maria Sacchetti & Carol D. Leonnig, ICE declares millions of undocumented immigrants ineligible for bond hearings … The memorandum itself was subsequently leaked by legal advocacy groups. … The admitted novelty of the Government's legal argument may shed some light on why the Petitioner and Court had such a difficult time recognizing it at first blush.] DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that [section 1225] of the Immigration and Nationality Act (INA), rather than [section 1226], is the applicable immigration detention authority for all applicants for admission

not. In *Garcia Cortes v Noem,* the Court held that "seeking admission" implies present-tense action, and without it, Section 1225(b)(2)(A) could not apply. *Garcia Cortes v. Noem*, No. 1:25-cv-02677, (D. S.D. 2025) (slip op.). An "applicant for admission" refers to a noncitizen who is present in or arriving at the United States and is undergoing inspection by an immigration officer to determine whether they are clearly entitled to enter. *See* 8 U.S.C. § 1225(a)(3), (b)(2)(A); 8 C.F.R. § 235.1. In contrast, the phrase "seeking admission" is broader and describes the act or intent of requesting entry, which may occur even while the individual is outside the United States, such as by applying for a visa at a consulate or preparing to present at a port of entry. *See Matter of Lemus-Losa, 25 I. & N. Dec. 734, 741 (BIA 2012)*. As the court explained in *Diaz Martinez*, Congress's decision to refer to "aliens … who are applicants for admission or otherwise seeking admission," 8 U.S.C. § 1225(a)(3), shows that the two categories are not coterminous. *Diaz Martinez v. Hyde*, No. 25-cv-10924-BEM, 2025 WL 2084238. Reading them as synonymous would erase this textual distinction and expand § 1225(b)(2)(A) far beyond its intended scope, encompassing individuals who have long resided in the United States and are not presently seeking to enter, such as the Petitioner here.

14. Thus, Respondents' selective reading of the statute – which disregards its "seeking admission" language – violates the rule against surplusage and undermines the plain meaning of the text. *See United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("'[E]very clause and word of a statute' should have meaning."), quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883); *United States v. Abbas*, 100 F.4th 267, 283 (1st Cir. 2024) ("'We begin, as always, with the text of the statute' and

read it 'according to its plain meaning at the time of enactment,'" quoting *United States v. Winczuk*, 67 F.4th 11, 16 (1st Cir. 2023), cert. denied, 145 S. Ct. 319 (2024).

15. The first case is from the Board of Immigration Appeals ("BIA"), a part of the Executive Office for Immigration Review ("EOIR"), which operates under the Department of Justice ("DOJ") authority. The DOJ recently adopted the novel position of DHS that mandatory detention applies to all noncitizens who did not enter the country through lawful means.[2] One of the measures of the current administration has been to reduce the number of judges at the BIA from 28 to 15, ensuring that most of the judges currently serving on the board were appointed by the administration, either during this term or in the prior one.[3][4]

16. Respondents also indicate that Congress intended to mandate detention for all applicants for admission, "not just those who presented for inspection at a designated port of entry." This interpretation ignores the statute's history, the legislative history, the overall structure of the statute, and the applicability of the statute for over 30 years, including by Respondents. *See* Doc. 1.

17. Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), the predecessor to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States. *See* 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability ... any [noncitizen] ... may, upon warrant of the Attorney General, be arrested and taken into custody.");

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[2] The interpretation was adopted on July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), Todd M. Lyons, issued a memorandum explaining that the agency had "revised its legal position" in "coordination with the DOJ." *See Martinez v. Hyde*, No. CV 25-11613-. BEM, 2025 WL 2084238.

[3] *Reducing the Size of the Board of Immigration Appeals*, 90 Fed. Reg. 15,525 (Apr. 14, 2025).

[4] Adriel Orozco, *While Federal Firings Focus on Immigration Processing, Funding for Immigration Enforcement Expands*, AM. IMMIGRATION COUNCIL (Mar. 6, 2025), https://www.americanimmigrationcouncil.org/blog/federal-firings-immigration-processing-enforcement-expands/

Hose v. INS, 180 F.3d 992, 994 (9th Cir. 1999) (noting that a "deportation hearing" was the "usual means" of proceeding against a noncitizen physically present in the United States). Like § 1226(a), the predecessor statute authorized discretionary release on bond. See 8 U.S.C. § 1252(a)(1) (1994). When Congress enacted IIRIRA, it expressly stated that § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229; see also H.R. Rep. No. 104-828, at 210. Because noncitizens in Petitioner's position were entitled to discretionary detention under the predecessor statute, and Congress confirmed that IIRIRA did not narrow that authority, § 1226 should likewise be interpreted to allow discretionary release on bond for similarly situated noncitizens.

18. Respondents' proposed interpretation conflicts with the general structure of the statute. If Respondents' interpretation were deemed correct, it would render significant portions of 8 U.S.C. § 1226 meaningless, violating one of the most basic canons governing the interpretation of federal statutes, which provides that a statute "should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant …" *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotations omitted); *Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023). "This principle ... applies to interpreting any two provisions in the U.S. Code, even when Congress enacted the provisions at different times." *Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010).

19. Under Respondents' proposed interpretation, which is based on a recent change in DHS's policies, § 1226(c)(1)(E)'s mandated detention for inadmissible noncitizens who are implicated in an enumerated crime, including those "present in the United States without being admitted or paroled," would be meaningless and superfluous because "all noncitizens who have not been admitted" would already be governed by § 1225's mandatory detention authority. *See Shulman*, 58 F.4th at 410-11. *See also Corley v. United States,* 556 U.S. 303, 314 n.5 (2009) (explaining that seemingly conflicting statutes read in isolation can be reconciled if read in their broader context, which includes observing the "antisuperflousness" canon).

20. Notably, several of the exceptions in § 1226(c) that would be rendered superfluous under the IJ's interpretation of §§ 1225 and 1226 were only recently enacted by Congress in the Laken Riley Act ("LRA"). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. INS*, 514 U.S. 386, 397 (1995) (citation omitted). Enacted in January 2025, the LRA amended multiple INA provisions, including §§ 1226 and 1225. See LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pertinent here, the LRA added a new category of noncitizens to § 1226(c)'s mandatory detention authority—those deemed inadmissible, including for being "present in the United States without being admitted or paroled," who have been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); LRA, Pub. L. No. 119-1. By specifically excepting these criminally implicated inadmissible noncitizens from § 1226(a)'s default discretionary detention framework, Congress necessarily left all other inadmissible noncitizens—those without the

specified criminal involvement—subject to § 1226(a). See *Jennings*, 583 U.S. at 289; *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

ii. This Court has jurisdiction over this matter

21. Respondents also argue that not only should Petitioner be detained indefinitely without an opportunity for a bond hearing before the Immigration Court, but that he should not be able to file a habeas petition in federal court, stating that this Court lacks jurisdiction to hear the case. This is not correct.

22. First, Respondents argue that Section 1252(g) deprives courts of jurisdiction to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). *See* Doc 6 at *7-8. Respondents' claim does not have any basis, since the habeas petition is not related to the commencement of proceedings against Petitioner, but rather to his **unlawful detention.** Respondents could have begun proceedings against Petitioner – as they did in the past – without detaining him unlawfully. Section 1252(g) does not deprive the court of jurisdiction to hear this habeas petition.

23. Second, Respondents argue that Section 1252(b)(9) requires exhaustion of remedies in order for Petitioner to question his unlawful detention in federal court. That claim is incorrect, as § 1252(b)(9) applies to questions regarding the revision of due process in the removal proceedings, or of the removal order itself, but it is not related to revision of noncitizen's detention. This matter was already decided by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 830 (2018). In *Jennings,* the Supreme Court analyzed the same arguments raised by Respondents, concluding:

> This provision does not deprive us of jurisdiction. We are required in this case to decide "questions of law," specifically, whether, contrary to the decision of the Court of Appeals, certain statutory provisions require detention without a bond hearing. We assume for the sake of argument that the actions taken with respect to all the aliens in the certified class constitute "action[s] taken . . . to remove [them] from the United States."[3] On that assumption, the applicability of §1252(b)(9) turns on whether the legal questions that we must decide "aris[e] from" the actions taken to remove these aliens. It may be argued that this is so in the sense that if those actions had never been taken, the aliens would not be in custody at all. **But this expansive interpretation of §1252(b)(9) would lead to staggering results.** Suppose, for example, that a detained alien wishes to assert a claim under *Bivens* v. *Six Unknown Fed. Narcotics Agents*,403 U. S. 388 (1971), based on allegedly inhumane conditions of confinement. See, *e.g., Ziglar* v. *Abbasi*, 582 U. S. ___, ___–___ (2017) (slip op., at 23–29). Or suppose that a detained alien brings a state-law claim for assault against a guard or fellow detainee. Or suppose that an alien is injured when a truck hits the bus transporting aliens to a detention facility, and the alien sues the driver or owner of the truck. The "questions of law and fact" in all those cases could be said to "aris[e] from" actions taken to remove the aliens in the sense that the aliens' injuries would never have occurred if they had not been placed in detention. **But cramming judicial review of those questions into the review of final removal orders would be absurd.** (emphasis added.)
> *Jennings v. Rodriguez*, 583 U.S. 830 (2018).

24. In addition, federal regulation separates removal proceedings from custody proceedings. 8 C.F.R. § 1003.19(d). Respondents' proposed interpretation creates a presumption that an individual can only be in removal proceedings if he is in custody, which is simply not true. **The removal proceedings are a separate matter from the custody determination**, and there is nothing in the statute that prevents federal courts from exercising jurisdiction regarding claims of unlawful detention – even if allegedly related to immigration matters.

25. Finally, Respondents chose to ignore the fact that the Board of Immigration Appeals ("BIA") has recently issued a decision regarding this matter, stating that aliens present in the United States without admission are deemed "applicants for admission," and therefore, the Immigration Court does not have jurisdiction to hear "bond requests or

grant bond to aliens who are present in the United States without admission." *See Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

26. Based on Respondents' interpretation of the law in *Matter of Yajure-Hurtado* and of sections 1225(g) and 1252(b)(9), if a person entered the country without admission (regardless of how long he has been in the country, his immigration history, and whether the government violated constitutional protections to detain that person), the government is entitled to detain that person for as long as they see fit, transfer them wherever they want, and that person is not entitled to seek a bond motion before the immigration court, nor seek relief before the federal court.

27. Therefore, if Petitioner were to follow Respondents' suggestion to challenge the category of applicant for admission in which he was placed with the Immigration Court and later with the BIA, Petitioner would have to wait several months just to receive a denial, since this matter was already decided by the BIA. Only then, once the BIA issued a decision, which could take several months, Petitioner should be able to request a federal court to analyze whether his due process rights were violated, and whether the government had the right to detain him without even providing him with a bond hearing. This argument, once again, is not only incorrect but extremely dangerous.

iii. Petitioner's detention is unconstitutional

28. Finally, Respondents argue that Petitioner's detention is constitutional and does not violate the Fifth Amendment due process clause. To support that assertion, Respondents state that Petitioner is "only entitled to the protections set forth by statute and that 'due process clause provides nothing more.'" *See* Doc. 6 at *8-10.

29. Respondents cite several Supreme Court cases that actually support Petitioner's claim, as these cases all conclude that noncitizens only have limited rights at their *initial entry.* Most of these cases were already presented by Petitioner in his initial brief. However, Respondents cited *Thuraissigiam* extensively in their Response. *See Department of Homeland Security v. Thuraissigiam,* 591 U.S. 199, 220 (2020).

30. In *Thuraissigiam*, the Supreme Court reinforced the limited protections for individuals seeking initial entry to the United States, but it creates a **clear distinction** between noncitizens who are trying to enter the country from those who have already entered the country and established ties to the U.S. *DHS v. Thuraissigiam*, 591 U.S. 104, 114 (2020). The Supreme Court concludes that "an alien who is detained shortly after unlawful entry cannot be said to have 'effected an entry'... For due process purposes, he stands on the threshold of initial entry, and his constitutional rights are limited accordingly." *Id* at 114. However, for individuals already in the United States, the Court in *Thuraissigiam* reaffirmed *Landon v. Plasencia, 459 U.S. 21, 32 (1982)* and *Zadvydas*, stating that "while aliens who have established connections in this country have due process rights in deportation proceedings, the same is not true for an alien at the threshold of initial entry" *Id.* at 113.

31. The present case is not about a Petitioner who was apprehended "on the threshold of entry," but rather about someone who has been living in the United States since August of 2023. "Once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *See Zadvydas v. Davis,* 533 U.S. 693 (2001).

32. Respondents' proposed interpretation of the law violates the Due Process Clause because it effectively denies its application to all noncitizens who are present in the United States if the government claims that they have entered the country unlawfully. As stated, the Supreme Court has recognized on several occasions that the due process clause applies to all individuals present in the United States, and the only exception it has made is for individuals who were apprehended "on the threshold of initial entry." *See Department of Homeland Security v. Thuraissigiam,* 591. This is simply not Petitioner's situation.
33. To deny Petitioner's constitutional rights as defended here by Respondents would mean undermining the constitutional protections that are applicable to every person inside the country.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to consider this reply to the response filed by Respondents, and reaffirms the requests made by Petitioner's Writ of Habeas Corpus.

Respectfully submitted,

/s/ Vinicius Damasceno

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Dated: November 6, 2025

CERTIFICATE OF SERVICE

I, Vinicius Damasceno, hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF), and paper copies will be sent to those indicated as non-registered participants.

Dated: November 6, 2025

/s/ Vinicius Damasceno
Vinicius Damasceno, Esq.