Ashley Morris
Texas State Bar Number 24056008
Law Office of Karen J. Crawford
P. O. Box 14194
Austin, TX 78761
512-494-8100
ashley@karencrawfordlaw.com

Counsel for Petitioner

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

Avelino Amado VARA SANCHEZ Petitioner, v. Joshua JOHNSON, Acting Field Office Director of Enforcement and Removal Operations, Dallas Field Office, Immigration and Customs Enforcement; Todd LYONS, Acting Director U.S. Immigrations and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; Devery MOONEYHAM, Warden of Limestone County Detention Center, Respondents.	Case No. 6:25-cv-00503 **PETITIONER'S REPLY TO FEDERAL RESPONDENTS' RESPONSE**

I. Introduction

Petitioner will address the following arguments: 1) that Federal Respondents' argument misinterprets the statutory construction of Section 1225 and 1226 on detention and removal; 2) that jurisdiction over habeas is proper with this Court; 3) that Federal Respondents' arguments about lawful status are irrelevant and incorrect; and 4) that Federal Respondents' presumption in favor of detention for all violates the statute. See 8 U.S.C. §§1225, 1226. 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.

II. The Statute Does Not Support Federal Respondents' Interpretation that Petitioner was detained under Section 1225 instead of Section 1226.

The principal issue in this case is whether Petitioner has been lawfully detained under Section 1225(b)(2)(A), requiring mandatory detention. Federal Respondent's interpretation of the statute is not consistent with their own records or case law. The record establishes that Respondent's agents' own treatment of Petitioner, asserting, Warrant of Arrest, detaining Petitioner in Washington D.C. on September 21, 2025, about twenty years after his entry into the country in 2005 was consistent with treatment under Section 1226 not Section 1225. Respondent's own paperwork demonstrates the agents applied the established interpretation of the statute, and understood they were placing Petitioner in proceedings under Section 1226. *See* Petitioner's Exhibit 1. Federal Respondents have been applying Section 1226, not Section 1225 to similarly situated immigrants arrested well within the borders of the United States consistently from the statute's 1996 enactment until July 2025. Only now do the Federal Respondents'

response mischaracterizes the structure created by Congress, one where mandatory detention is exceptional, not the default, for individuals with established lives well within our borders.

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 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 relates 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 seeking admission into people who will either be 1) subject to expedited removal, or 2) 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 Section 1225 to those in close proximity to their arrival in the United States, in both time and location. Congress did not intend to treat a person, like Petitioner, present in the United

[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.").

States for 20 years, whose family and community depends on him, exactly the same as a person who recently arrived into the country.

Distinctly, 8 USC § 1226 relates to people already present in the United States who are not subject to the expedited removal scheme detailed in Section 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 Section 1226(c) "Detention of Criminal Aliens." Petitioner's arrest included an assertion of a warrant, and Respondents never assert that Petitioner is subject to mandatory detention under Section 1226(c). Petitioner was arrested in D.C. without any criminal history, neither was he arrested at the border. Petitioner was arrested about two decades after his entry.

The Supreme Court has only debated this statutory structure of 1225 and 1226, as applied to inadmissible petitioners, in post removal order cases. The Supreme Court read in both cases, that Section 1225 relates to people encountered at our nations' borders and ports of entry, and Section 1226 relates to people already present in the United States. *Clark v. Martinez*, 543 U.S. 371 (2005)(addressing immigrants entering on the Mariel boatlift and then paroled); *see also Jennings v. Rodriguez*, 583 U.S. 281 (2018) (consolidating class representatives who entered under Sections 1225(b), 1226(a), 1226(c), and 1231(a)). The Jennings Court discusses Section 1225: "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." *Jennings,* 583 U.S. at 287 (emphasis added). The Court proceeds to describe Section 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." *Jennings,* 583 U.S. 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 reinforces this understanding of the two statues 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 *Jennings* more broad interpretation of Section 1225 and its interplay with Section 1226 was dicta, because the Jennings Court only needed to address indefinite detention. Federal Respondents improperly rely on this dicta. The Court was asked in Jennings to consider whether the various detention statutes incorporate a six month limit on detention without a hearing based on a doctrine of constitutional avoidance. The Jennings Court was not faced with the question of which statutory authority applies at the beginning of detention for those crossing the border, whether placed in expedited removal or placed directly into removal proceedings. In that dicta the Jennings Court assumed that any time 1225 could be applied, mandatory detention would necessarily apply, but that was not necessary to the holding of the case. Although the Board of Immigration Appeals (BIA) has recently used the dicta as well, especially since *Loper Bright*, this Court should not defer to the Board of Immigration Appeals broader misinterpretation of Section 1225, especially when the question of Petitioner is not squarely addressed. *See Loper Bright Enterprises v. Raimondo Relentless, Inc.*, 603 U.S. 369 (2024); *see, e.g., Matter of Q. Li*,

29 I&N Dec. 66, 68 (BIA 2025*); see also Matter of Yajure- Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025).

The *Thuraissigiam* case is inapposite, since it relates to a person clearly subject to § 1225. *DHS v. Thuraissigiam*, 591 U.S. 103 (2020)(analyzing only the distinction between Section 1225(a)(1) and 1225(b)(1)). 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 pointed out 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." *Thuraissigiam*, 591 U.S. at 109 (citing 69 Fed. Reg. 48879 (2004)). Had the court thought the phrase "applicant for admission" in Section 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. The Form I-213 produced by Respondents Examining Officer J Johnson, on September 22, 2025, clearly states: "Disposition: Warrant of Arrest." *See* Petitioner's Exhibit 1. Federal Respondents new statutory construction would be a drastic change in the standing interpretation of the statute, and if this new interpretation were to be applied, all non-citizens in removal proceedings who were inadmissible would be detained possibly for years pending adjudication of their hearings, despite having established lives, families, authorized jobs, and integrated community relationships from

years in the U.S. This new statutory interpretation mistakenly treats all inadmissible people including Petitioner like someone who recently arrived at the border.

III. The Court Has Jurisdiction.

As asserted in the original petition, jurisdiction is proper under Section § 1225(b)(2), and none of the jurisdiction stripping statutes apply here. Petitioner invokes this jurisdiction contesting the lawfulness of his detention under both statutory and constitutional claims. *See* 28 USC § 2241. Whether mandatory detention applies to petitioner is a question of statutory interpretation. *See* 8 U.S.C. § 1225(b)(2)(A).

a. The Petitioner is Not Challenging DHS Authority 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. 3, 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 Respondent's 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' Focus on Petitioner's Lawful Status is Irrelevant.

The Federal Respondents state that Petitioner has "no claim to any lawful status." ECF No. 3, 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 and application for asylum remain pending. Respondents oddly state, "ordering release… produces no net gain to Petitioner, while mandating continued detention until at least the conclusion of removal proceedings furthers the government's interest in enforcing the immigration laws." Respondents contradict the interests DHS has already recognized in issuing Petitioner work authorization pending the adjudication of his application. Employers relied on this expressed government interest in hiring Petitioner, and allowing him to provide for his family, including two US citizen children, while the facts of his asylum claim are litigated. Respondents also ignore the government interest in enforcing *all* immigration laws, including asylum, withholding of removal and the Convention Against Torture, not just removal. But neither Petitioner nor Respondent's interest are determinative of the statutory interpretation of his eligibility for a bond hearing.

His pending claim to lawful status based on pending application(s) for relief is not relevant to the issue being litigated, bond eligibility. However, their statement about his lack of a claim to legal status is also incorrect. He properly filed an application for relief with USCIS, that being an asylum application. If he is released, he will be released with the same valid work authorization and a Social Security card, both already issued by Respondents. Although his asylum application has not been adjudicated, he does have an ongoing lawful *claim* to seek status, already acknowledged by Respondents' actions.

The Federal Respondents' Improperly Presume the Statute Favors Detention, and a Bond Hearing is an Exception.

Federal Respondents seem to improperly threaten re-detention. 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. 3, 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. 3, at 3. Federal Respondent's construe the statute presumptively favors detention without bond. However even the Jennings Court describes mandatory detention as a "carve[] out" or exception. Jennings, 583 U.S. at 282. The Petitioner has been detained for two months, separated from his wife and two minor children who depend on him. He has a pending application before USCIS for relief. His next preliminary hearing is scheduled for December 2, 2025, and then he will have to wait for the individual hearing, which is many 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 asylum application. Enforcement of our laws does not only mean detention and removal. Unlawful detention interferes with the due process of his removal proceedings wherein he needs his community support to prepare and present relevant facts. 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, but that does not minimize his constitutional right from protection from unlawful detention.

V. Conclusion

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

DATED this 9th day of November, 2025.

Respectfully Submitted,
/s/ Ashley Morris
Ashley Morris
Texas Bar No. 24056008
Law Office of Karen J. Crawford PLLC
P O Box 14194
Austin, TX 78761-4194
ashley@karencrawfordlaw.com
512-494-8100
Attorney for Petitioner

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 9th day of November, 2025.

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/s/ Ashley Morris
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ashley@karencrawfordlaw.com
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Attorney for Petitioner