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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Laiane Rodrigues da Silva

Petitioner,

v.

Fred Figueroa, Warden, Eloy Detention Center; John Cantu, Field Office Director, Phoenix Arizona Field Office, United States Immigration and Customs Enforcement; Todd Lyon, Acting Director, United States Immigration and Customs Enforcement; Kristi Noem, Secretary of Homeland Security; Pamela Bondi, United States Attorney General, *in their official capacities*,

Respondents.

Case No.: 25-CV-04015-JTT-MTM

REPLY TO GOVERNMENT'S REPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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I. INTRODUCTION

Petitioner respectfully submits this reply to the Government's Response (Doc. 11). The Government's theory that Ms. Rodrigues da Silva is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) fails both as a matter of statutory construction and constitutional law.

The plain text, structure, and legislative history of the Immigration and Nationality Act ("INA")—as well as recent controlling authority—confirm that individuals such as Petitioner, who entered the United States years ago and have been continuously present, are not "applicants for admission" under 8 U.S.C. § 1225(b)(2), but are instead subject to 8 U.S.C. § 1226(a), which permits a bond hearing before an Immigration Judge.

The Government's position has been repeatedly rejected by multiple federal courts, including within the District of Arizona and the District of Massachusetts. The continued detention of Petitioner without access to a bond hearing violates the Due Process Clause of the Fifth Amendment and the longstanding U.S. Supreme Court's interpretation of the INA in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Demore v. Kim*, 538 U.S. 510 (2003).

II. STATUTORY COUNTERARGUMENTS

A. 8 U.S.C. §1225(b)(2) Does Not Apply to Noncitizens with long residence or presence in the United States

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The Government misapplies 8 U.S.C. § 1225(b)(2), which by its plain terms applies only to arriving aliens or those seeking admission at a port of entry, not to individuals who entered without inspection years ago and are later arrested inside the United States.

By its text, 8 U.S.C. § 1225(b)(2)(A) applies only "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 statute thus requires (1) an inspection by an examining officer and (2) a finding made at the time the person is seeking admission. None of those predicates exist here. Petitioner was not inspected at a port of entry and was not "seeking admission" when apprehended years after entry.

As the Government concedes in its Response, Courts across jurisdictions have rejected its broad interpretation. *See Echevarria v. Bondi*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282, at 5-8 (D. Ariz. Oct. 3, 2025) (holding 1226(a), not 1225(b(2), governs long-term residents arrested in the interior); *Martinez v. Hyde*, 2025 WL 2084238 at 10-12 (D. Mass. July 24, 2025). As Judge Lanza explained, "even assuming a person is deemed an 'applicant for admission' by operation of §1225(a)(1), the statute still requires that the alien be 'seeking admission' at the time of inspection. An element impossible to satisfy decades after entry." *Echevarria*, at 7.

To hold otherwise would erase Congress's deliberate separation between 8 U.S.C. §§ 1225 and 1226—rendering 8 U.S.C. § 1226(a) meaningless for noncitizens who entered unlawfully but have established ties and long residence in the United States.

B. 8 U.S.C. § 1226(a) Governs Petitioner's Detention

Petitioner was not apprehended while "arriving" or during "inspection." She has resided in the U.S. since 2019 and was placed in INA § 240 removal proceedings under 8 U.S.C. § 1229a. By the Government's own exhibit, she was charged under INA § 212(a)(6)(A)(i) (entry without inspection) and INA § 212(a)(7)(A)(i)(I) (not in possession of a valid unexpired immigrant visa). Such individuals are within the ambit of 8 U.S.C. § 1226(a) detention authority, which allows for discretionary release on bond or parole pending completion of proceedings.

Under these circumstances, detention authority derives from § 1226(a), which provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." That provision allows for release on bond or conditional parole, and its implementing regulation, 8 C.F.R. § 236.1(c)(8), expressly authorizes release where the noncitizen "would not pose a danger to property or persons" and "is likely to appear for any future proceeding."

Appellate and district courts consistently recognize § 1226(a)—not § 1225(b)—as the governing authority for interior arrests. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196–97 (9th Cir. 2022) ("Section 1226 provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal."); *Echevarria*, 2025 WL 2821282, at *8–9*; *Martinez*, 2025 WL 2084238, at *12*. Interpreting § 1225(b) to apply to all noncitizens without admission would render § 1226 superfluous, a reading the Supreme Court rejects. *Nielsen*, 586 U.S. at 967–68.

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C. Legislative History Confirms the Limited Scope of 8 U.S.C. § 1225

Congress enacted 8 U.S.C. § 1225(a)(1) to close the procedural loophole that previously rewarded those who crossed unlawfully with more favorable "deportation" procedures. It was not designed to create a perpetual "applicant for admission" category that strips due process protections from long-term residents.

The Government's argument that 8 U.S.C. § 1225 authorizes mandatory, indefinite detention of anyone ever present without admission contradicts both the statutory text and *Zadvydas*, which prohibits reading immigration statutes to permit potentially endless detention without express congressional authorization.

III. CONSTITUTIONAL COUNTERARGUMENTS

A. Due Process Requires a Bond Hearing After Prolonged Detention

Even if this Court accepted the Government's expansive reading of § 1225(b)(2), the Constitution imposes an independent limit. The Fifth Amendment's Due Process Clause requires an individualized determination of flight risk and danger once detention becomes prolonged or arbitrary.

While *Zadvydas* addressed post-removal detention, its reasoning applies by analogy: the Government's interest in enforcing immigration laws does not outweigh a noncitizen's fundamental liberty interest in freedom from physical restraint. 533 U.S. at 690. Likewise, *Demore v. Kim*, 538 U.S. 510, 529 (2003), upheld only *brief* mandatory detention pending a "swift" removal process—typically under 90 days—not the months of confinement faced here.

The Ninth Circuit has held that prolonged detention without individualized findings violates due process. *Hernandez v. Sessions*, 872 F.3d 976, 991–93 (9th Cir. 2017). Subsequent courts have followed this constitutional floor. See *Padilla v. Immigration & Customs Enf't*, 953 F.3d 1134, 1147–48 (9th Cir. 2020) (affirming injunction requiring timely bond hearings for §1225(b) detainees), vacated on other grounds, 141 S. Ct. 1049 (2021); *Martinez*, 2025 WL 2084238, at *12–14.*

Thus, even assuming §1225(b) applies, the Constitution requires a bond hearing after a reasonable period of detention.

B. The Government's Reliance on Jennings v. Rodriguez is Misplaced

Jennings addressed only whether §1225(b) could be interpreted to contain an implied bond-hearing requirement—it did not decide whether the Constitution independently requires such hearings. 583 U.S. at 302–03. The Supreme Court explicitly remanded for constitutional analysis, acknowledging that due process questions remained open.

Post-*Jennings*, both the Ninth and First Circuits have confirmed that prolonged detention triggers a constitutional hearing requirement. See *Padilla*, 953 F.3d at 1148–49; *Brito v. Garland*, 22 F.4th 240, 250–52 (1st Cir. 2022). These holdings are consistent with the principle that "freedom from imprisonment lies at the heart of liberty" protected by the Fifth Amendment. *Padilla*, 953 F.3d at 1145; *Zadvydas*, 533 U.S. at 690.

IV. EQUITABLE AND POLICY CONSIDERATIONS

Petitioner has resided in the United States for over five years, maintains family and community ties, and has no history of violence. She is pursuing an asylum claim and poses

neither flight risk nor danger. Her transfer from Massachusetts to a detention facility in Arizona—thousands of miles from her attorney—has severely impeded her ability to communicate with counsel and prepare her defense.

Such transfers contravene ICE's 2025 detention-placement guidance, which advises housing detainees near counsel whenever practicable. While those internal guidelines do not create enforceable rights, they underscore that Petitioner's confinement undermines the procedural fairness due under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which requires balancing (1) the private interest in liberty, (2) the risk of erroneous deprivation, and (3) the government's burden. The barriers to counsel here heighten the risk of error and render continued detention constitutionally infirm.

Finally, under *Doe v. Garland*, 109 F.4th 1188, 1194–95 (9th Cir. 2024), habeas petitions challenging immigration detention fall within the "core of habeas" jurisdiction, confirming this Court's authority to grant relief under 28 U.S.C. § 2241.

At minimum, fairness and due process require that Petitioner receive a prompt, individualized bond hearing under §1226(a) to determine whether continued detention is necessary.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Grant the Petition for Writ of Habeas Corpus;

2. Order that Petitioner be afforded an immediate individualized bond hearing before an Immigration Judge under 8 U.S.C. § 1226(a); or, in the alternative,

3. Order Petitioner's release under reasonable supervision pending completion of removal proceedings.

Respectfully submitted this 9th day of November, 2025

/s/ *Karina J. Ordonez*
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Counsels for Petitioner

/s/ *Noel Elco Rascon*
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CERTIFICATE OF SERVICE

I certify that on the 9th day of November, 2025, I electronically transmitted this document to the Clerk's office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing.

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