**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF WISCONSIN**

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| DIEGO UGARTE ARENAS,<br><br>Petitioner,<br><br>v.<br><br>SAM OLSON, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, in his official capacity; et al,<br><br>Respondents. | Case No. 25-CV-1721 |

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE FOR WRIT OF HABEAS CORPUS

## INTRODUCTION

Petitioner, Diego Alejandro Ugarte Arenas, by and through undersigned counsel, hereby submits this Reply to the Government's Response to Mr. Ugarte's Petition for Writ of Habeas Corpus. The government does not dispute the Court's jurisdiction to hear this petition.

The issue before this Court is a narrow question of statutory interpretation. Until this summer, Courts assumed that distinct sections of law governed the custody of individuals in removal proceedings versus *expedited* removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (outlining this distinction). 8 U.S. Code section 1226 governs custody for people in the United States while they are in removal proceedings and allowing for bond under certain circumstances. In contrast, 8 US Code section 1225 requires the detention of those individuals subject to expedited removal proceedings—a narrower class of recent arrivals to the United States.

The government does not contest the above premise generally. However, they argue that certain language in 1225 creates a broader detention authority. They combine language in section 1225(a)(1) and 1225(b)(2) for the proposition that all individuals who entered the United States without inspection, no matter when, are ineligible for bond while in removal proceedings. (*Id.*)

Ultimately, the government's sudden reach for a stunningly broad detention authority must be rejected. The superficial appeal of its simple linguistic argument fades upon a closer reading of both section 1225 and 1226. The language in 1225 is qualified, and the bond provisions outlined in section 1226 apply to some individuals who entered the United States without inspection. And finally, while the government states that its interpretation is consistent with legislative intent (Doc. 10 at p. 8) it offers merely a policy rationalization instead of historical evidence.

1. **The broader context of the statute shows that the language in section 1225 applies only to those individuals in the expedited proceedings described therein.**

First, Mr. Ugarte agrees with the government that this Court owes no deference to the Agency's interpretations of the law. (*See* Doc. 10 at p. 12). But the plain text matters. And the government's interpretation ignores its broader context. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.").

This Court analyzed that context closely in *Valverde v. Olson*, 25-CV-1502 (E.D. Wis. Oct. 29, 2025). It concluded that the precise language in section 1225 indicated that its detention provision was limited to individuals in expedited removal proceedings. *Valverde*, Slip Opinion at 5-6. Specifically, this Court reasoned that the phrase "seeking admission" more aptly describes an individual who is attempting entry into the United States "at the time of arrest," rather than an individual who has been living and working in the United States for years. (*Id.*) The fine parsing of the phrases "applicant seeking admission" versus "applicant for admission" makes sense because section 1226 already governs the custody of individuals in full removal proceedings.

Indeed, the government does not, in its response, dispute petitioner's argument that its reading renders portions of section 1226 superfluous. As Mr. Ugarte argued in paragraphs 51-52 in his petition, 8 U.S.C. § 1226(c)(1)(E) specifically requires the custody of individuals who were convicted of certain crimes after entering without inspection. And this Court should not be persuaded by the reasoning on this point in *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025).

This Court in *Cirrus Rojas* reasoned that the amendments to section 1226 that passed as part of the Laken Riley Act earlier this year "ha[ve] little bearing on the meaning of legislation

passed in 1996." (*Id.* at 9.) But the canon against surplusage is more than a tool for divining legislative intent. *See Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) ("We are governed by laws, not by the intentions of legislators.") (J. Scalia, concurring).

Furthermore, as a Court in California recently reasoned, the text of section 1225, triggering mandatory detention also anticipates "an examining officer or a requisite determination of inadmissibility." *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al. 5:25-cv-0187* (C.D. Cal. Nov. 25, 2025). These are aspects of the expedited removal process outlined in other subsections of section 1225. The government has not suggested that there was such a "determination" or "officer."

**2. The Government's legislative history is unpersuasive.**

The government, in its response, argues that the legislative history of The Illegal Immigration Reform and Responsibility Act (IIRIRA) was to mandate custody of all individuals who entered the United States unlawfully. (Doc. 10 at 8-9). In doing so, rather than citing any legislative materials directly, it directs us to the Ninth Circuit Court of Appeals' decision *Torres v. Barr*, 976 F.3d 918, 928 (2020) and the Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (2025).

But none of the legislative materials are nearly specific enough to support the government's claim that IIRIRA created a sweeping detention regime for all individuals who entered the United States without inspection. The Court in *Torres* cited vague language regarding "equities and privileges," but nothing about mass detention of tens (hundreds?) of thousands of migrants. 976 F.3d at 928 (citing H.R. Rep. 104-469, pt. 1, at 225.).

And indeed, citing the same House Judiciary Report, the Board acknowledges language suggesting that the Attorney General would maintain the same authority after IIRIRA to "release

on bond an alien who is not lawfully present in the United States." *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 224 (BIA 2025) (citing H.R. Rep. 104-469, pt. 1, at 226).

Ultimately, if there is legislative history documentation suggesting that Congress intended to implement a rule requiring the mandatory custody of all individuals present in the United States in the 1990s, counsel has not seen it.

**3. It is not clear that Mr. Ugarte's due process rights are protected by detained removal proceedings.**

The government has argued that Mr. Ugarte's due process rights are adequately protected by the removal proceedings from a detention center. (Doc. 10 pp. 13-14.) But it is less clear today than at the time of filing that Mr. Ugarte will be able to continue pursuing an asylum claim. Only days ago, the Trump administration announced a "pause" on all asylum applications. *See* Hamed Aleaziz & Edward Wong, *Trump Pauses All Asylum Applications and Halts Visas for Afghans*, NY Times, (Nov. 28, 2025) available at: https://www.nytimes.com/2025/11/28 /us/politics/trump-affirmative-asylum.html. But counsel acknowledges that supplemental pleadings are the appropriate vehicle if this "pause" impacts his individual case.

Ultimately, this Court should grant Mr. Ugarte's petition on the existing filings, and order either his release or a bond hearing. It should follow the reasoning in *Valverde*, rather than *Cirrus Rojas* because the reading is consistent with the statutory scheme as a whole.

DATED this 3rd day of December 2025

Respectfully submitted,

//Ben Crouse//
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