

1 Nera Shefer, Esq.
2 Shefer Law Firm, P.A.
3 Florida Bar# 0814121
4 Admitted pro hac vice
5 800 SE 4th. Ave #803
6 Hallandale Beach, Florida 33009
7 Telephone: (786) 295-9077
8 Attorney for Respondent
9 *Pro Hac Vice Application Pending*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Victor Hugo Padron Carreron,
Petitioner,

v.

Kristi Noem, Secretary of the United States
Department of Homeland Security, in her official
capacity; **Todd Lyons**, Acting Director of U.S.
Immigration and Customs Enforcement, in his official
capacity; **John Cantu**, Field Office Director for ICE's
Enforcement and Removal Operation's ("ERO")
Phoenix, Arizona, in his official capacity;
Sirce Owen, Acting Director of EOIR, in her official
capacity; **Fred Figueroa**, Warden, Eloy Detention
Center,

Respondents.

Case No. CV-25-04204-PHX-DWL

A. No. 

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE
TO AMENDED HABEAS
PETITION**

INTRODUCTION

Petitioner rejects Respondents' claim that Congress intended the mandatory detention of every noncitizen until the end of their removal proceedings. The statutes cannot be read in isolation; they must be harmonized with § 1226's bond authority and § 1182(d)(5)'s parole provisions, each of which show that Congress intended for noncitizens to be allowed release in appropriate cases. And, as the Supreme Court made clear in *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), and in *Demore v. Kim*, 538 U.S. 510, 517 (2003), civil immigration detention is constitutionally limited in scope and purpose.

The government's reading would convert a targeted detention scheme into blanket, indefinite incarceration—something Congress never enacted, and the Constitution does not permit. Moreover,

1 the Ninth Circuit has clearly and consistently held that 8 U.S.C. § 1226(a) is the “default” detention
2 statute for aliens in removal proceedings. *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022).
3 *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp.
4 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).
5 *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).
6

7 Respondents are clearly promoting the Department of Homeland Security’s (DHS) newly
8 adopted and erroneous position¹ that all noncitizens who enter without inspection are “applicants
9 for admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under §
10 1225(b)(2), without regard for the length of time they have lived in the United States.² Here,
11 Petitioner has been living in the United States for 25 years and has been granted deferred action
12 through the Deferred Action for Childhood Arrivals (“DACA”) program, which is valid through
13 October 15, 2026.³ He is not an “applicant for admission” just arriving at the border but a long-term
14 resident, properly detained under § 1226(a) which authorizes bond hearings.
15

16 The length of time that a petitioner has been living in the United States is a constitutionally
17 relevant consideration, because “once an alien enters the country, the legal circumstance changes, for
18 the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether
19 their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678,
20 693 (2001). It is therefore reasonable to read these statutes “against [that] backdrop.” *See Hewitt v.*
21 *United States*, 605 U.S. —, 145 S. Ct. 2165, 2173 (2025).
22
23
24
25

26
27 ¹ See, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed with the
Habeas Petition.

28 ² Respondents also ignore 8 U.S.C. § 1225(b)(1)(A)(iii)(II), which limits inspection of applicants for admission to those
who have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been *physically*
present in the United States continuously for the 2-year period immediately prior to the date of the determination of
inadmissibility under this subparagraph.” (emphasis added)

1 **I. PETITIONER IS NOT AN ARRIVING ALIEN.**

2 **A. Caselaw Holds That An Alien Present In The U.S. For 25 Years Is Not**
3 **An “Arriving Alien”.**

4 Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C. § 1226(a) is the “default”
5 provision for aliens already present in the United States. In *Jennings v. Rodriguez*, 583 U.S. 281, 297
6 (2018), the Supreme Court reversed a Ninth Circuit holding that there was a statutory right to periodic
7 bond hearings. It held that “U. S. immigration law authorizes the Government to detain certain aliens
8 seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also held that “§ 1226 applies
9 to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens
10 by permitting—but not requiring—the Attorney General to issue warrants for their arrest and
11 detention pending removal proceedings.” *Jennings*, 583 U.S. at 303 (emphasis added). In *Zadvydas*
12 *v. Davis*, 533 U.S. 678 (2001), the Supreme Court stated that “[w]hile removal proceedings are in
13 progress, *most aliens may be released on bond or paroled*. 8 U. S. C. §§ 1226(a) (1994 ed., Supp.
14 V).” *Id.* at 683 (emphasis added).

15 The Ninth Circuit has held that § 1226(a) is the “default” detention statute for aliens in
16 removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the default detention statute for
17 noncitizens in removal proceedings and applies to noncitizens “[e]xcept as provided in [Subsection
18 C].” 8 U.S.C. § 1226(a).” *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord*,
19 *Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091,
20 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-*
21 *Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

22 Respondents acknowledge this Court’s decision in *Echevarria v. Bondi, et al.*, No. 2:25-cv-
23 03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), filed with the Habeas Petition as
24
25
26
27
28

1 Exhibit 14. However at least nine additional cases in the Arizona District Court have recently found
2 against the government's position:

- 3 1) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.*, Case No. 25-cv-
4 04015-PHX (D. Ariz. 11-18-25)("dozens of other district courts have concluded
5 individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not
6 subject to mandatory detention"), gathering cases, filed herewith as Exhibit 16;
- 7 2) Order granting habeas in *Perez Rodriguez v. Noem, et al.*, Case No. 25-cv-03921-PHX
8 (D. Ariz. 11/13/2025)("the vast majority of courts concluded individuals like
9 Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to
10 mandatory detention"), gathering cases, filed herewith as Exhibit 17;
- 11 3) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.*, Case No. 25-cv-03917-
12 PHX (D. Ariz. 11-6-25)("dozens of other district courts have concluded individuals
13 like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to
14 mandatory detention"), gathering cases, filed herewith as Exhibit 18;
- 15 4) Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML
16 (D. Ariz. 11-6-25)("in accord with numerous other courts addressing the same issue—
17 'Respondents' narrow focus on the language of § 1225(a)(1) fails to take account of
18 the entirety of the statutory scheme..." citing to *Echevarria v. Bondi, et al.*, CV-25-
19 03252-PHX-DWL (ESW), 2025 WL 2821282, at *9 (D. Ariz. October 3, 2025)), filed
20 with the Habeas Petition as Exhibit 8;
- 21 5) Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD-
22 DMF at page 2 (D. Ariz. Oct. 22, 2025)("while Respondents point to two district court
23 opinions adopting their interpretation of § 1225(b)(2)(A), myriad other district courts
24 have reached the same conclusion as *Echevarria* and held individuals like Petitioner
25 are not subject to mandatory detention under 1225(b)(2)(A)"), filed with the Habeas
26 Petition as Exhibit 10;
- 27 6) Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-03672
28 (D. Arizona Oct. 17, 2025)("individuals like Petitioner are not "arriving aliens"
subject to mandatory detention but, rather, are subject to the general removal statute,
8 U.S.C. § 1226(a)"), filed with the Habeas Petition as Exhibit 11;
- 7) Order granting habeas petition entered in *Hector Lopez-Melo v. Bondi, et al.*, Case
No. Case 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025)("petitioner, who had been
present in the United States for years, was not an applicant for admission
under 1225(b)(2)(A) or subject to mandatory detention"), filed with the Habeas
Petition as Exhibit 12;
- 8) Order granting habeas petition in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-SPL
(D. Arizona 10/07/2025)("Respondents maintain he is subject to mandatory detention
under 1225(b)(2). Again, Respondents are mistaken."), filed with the Habeas Petition
as Exhibit 13;

1
2 9) Magistrate’s Report and Recommendation in *Rocha Rosado v. Figueroa*, No. CV-25-
3 02157-PHX-DLR 2025 WL 2349133 at *10 (D. Ariz. Aug. 13, 2025)(Magistrate’s
4 Report and Recommendation Adopted at 2025 WL 2349133)([t]he text of § 1226, the
5 canons of statutory interpretation, this section’s legislative history, and longstanding
6 agency practice indicate that Rosado is subject to § 1226(a)’s ‘default’ rule for
7 discretionary detention rather than § 1225’s mandatory detention requirement, and that
8 the IJ erred by finding they did not have jurisdiction to consider Rosado’s detention.”
9 *report and recommendation adopted sub nom.* 2025 WL 2349133 (D. Ariz. Aug. 13,
10 2025), filed with the Habeas Petition as Exhibit 15.

11 Respondents cite to five publicly available cases from other states which they say support their
12 position.³ In *Chavez v. Noem*, --F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), the
13 court denied a temporary restraining order on the grounds that the petitioners had “not demonstrated
14 serious questions about the application of Section 1225 to aliens present in the United States.” *Chavez*
15 *v. Noem*, 2025 WL 2730228 at *4. However, the court spent less than 2 pages analyzing the statutory
16 language and caselaw before concluding that “Petitioners have not shown either a likelihood of
17 success or serious questions going to the merits [therefore] we do not address the remaining *Winter*
18 factors.” *Chavez v. Noem*, 2025 WL 2730228 at *5.

19 In *Vargas Lopez v. Trump*, --F. Supp. 3d--, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the court
20 – after expressing great frustration regarding the errors in Vargas Lopez’s petition - held that Vargas
21 Lopez failed to meet his burden to show that he falls under § 1226(a), so “his Petition fails *regardless*
22 *of the parties’ arguments about the scope of § 1225(b) and § 1226(a).*” *Vargas Lopez v. Trump*,
23 2025 WL 2780351 at *7 (emphasis added).

24 *Mejia Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830 (E.D. Mo. Nov. 10, 2025) was concerned
25 with whether the habeas petition had been properly filed in that court’s jurisdiction and never
26 determined the application of § 1225(b) to the petitioner. *Pipa-Aquise v. Bondi*, No. 25-1094, 2025
27

28

³ Although Respondents cite to a report and recommendation issued on 11/18/2025 pending in *Moldogaziev v. Cantu*,
No. 25-cv-03265-MTL (JFM) (Report and Recommendation) (D. Ariz. Nov. 18, 2025), that document is sealed, and
therefore Petitioner is unable to access it.

1 WL 2490657 (E.D. Va. Aug. 5, 2025) *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass.
2 July 28, 2025) was less than two pages long and contained no significant analysis.

3 Thus, none of these cases are particularly instructive, nor are they binding precedent on this Court.

4 **B. Statutory Interpretation Supports Petitioner’s Interpretation.**

5 As the Honorable Brian E. Murphy stated in *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025
6 WL 2084238 (D. Mass. July 24, 2025), “for section 1225(b)(2)(A) to apply, several conditions must
7 be met—in particular, an “examining immigration officer” must determine that the individual is: (1)
8 an “applicant for admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt
9 entitled to be admitted.”
10

11 Here, there is no evidence that these three elements were met. As shown on the Petitioner’s
12 Notice to Appear, DHS itself identified him as an “alien *present in the United States* who has not
13 been admitted or paroled” – despite “arriving alien being an option. See, Notice to Appear filed with
14 Habeas Petition as Exhibit 4. Thus, DHS itself determined he was not detained under the “default”
15 provision of § 1226.
16

17 Respondents are clearly promoting the Department of Homeland Security’s (DHS) newly
18 adopted and erroneous position that all noncitizens who enter without inspection are “applicants for
19 admission” under § 1225(a) and therefore subject to mandatory detention under § 1225(b)(2), without
20 regard for the length of time they have lived in the United States. Respondents also ignore 8 U.S.C.
21 § 1225(b)(1)(A)(iii)(II), which limits inspection of applicants for admission to those who have “not
22 affirmatively shown, to the satisfaction of an immigration officer, that the alien has been *physically*
23 *present in the United States continuously for the 2-year period immediately prior* to the date of the
24 determination of inadmissibility under this subparagraph.” (emphasis added).
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For all the foregoing reasons, Petitioner Victor Hugo Padron-Carreron respectfully requests the Court grant his petition for writ of habeas corpus and require Respondents to immediately release him from his unlawful detention at Florence Correctional Center in Florence, Arizona or, in the alternative, schedule him for a bond hearing within seven (7) days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

DATED this 21th Day of November, 2025

By: /s/ Nera Shefer
Nera Shefer, Esq.
Shefer Law Firm, P.A.
800 SE 4th. Ave #803
Hallandale Beach, Florida 33009
Florida Bar# 0814121

LIST OF NEW EXHIBITS

Exhibit 16	Order granting habeas in <i>Rodrigues da Silva v. Figueroa, et al.</i>, Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)
Exhibit 17	Order granting habeas in <i>Perez Rodriguez v. Noem, et al.</i>, Case No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)
Exhibit 18	Order granting habeas in <i>Gonzalez Rodriguez v. Bondi, et al.</i>, Case No. 25-cv-03917-PHX (D. Ariz. 11-6-25)