

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Orlin Yovani VASQUEZ CHINCHILLA

Petitioner,

v.

Mary DE ANDA-YBARRA, Acting Field
Office Director of Enforcement and Removal
Operations, El Paso Field Office, Immigration
and Customs Enforcement; Et al.,

Respondents.

Case No. 3:25-cv-548-DB

**PETITIONER’S REPLY TO
FEDERAL RESPONDENT’S
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 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 her Petition for Writ of Habeas Corpus.

I. 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, detaining Petitioner in Massachusetts on September 17, 2025, almost four years after his entry into the country in November 2021 as a minor, 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, not charging him as an arriving alien. *See* Respondent's Exhibit, A. ECF Doc. No. 3-1. 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' misinterpret 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

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.").

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

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.” Section 1226(a) states that “an alien may be arrested and detained pending a decision on whether the alien is to be

removed from the United States,” and, with some exceptions, that the Attorney General “may release the alien” on bond or conditional parole. 8 U.S.C §1226(a). Petitioner’s arrest with no criminal history, does not fall into that exception from eligibility for bond or conditional parole. Respondents never assert that Petitioner is subject to mandatory detention under Section 1226(c). Petitioner was arrested in Chelsea, Massachusetts sitting at a bus stop, without any criminal history or accusation, neither was he arrested at the border as an adult, but rather as an unaccompanied child. Petitioner is now nineteen years old.²

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

² His detention at the border four years prior was governed by the TVPRA, and the Flores Settlement. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), codified at 8 U.S.C. §1232); *Flores v. Sessions*, No. 2:85-CV-85-4544, 2018 WL 3058288 (C.D. Cal. June 21, 2018) (Settlement Agreement). *See* Petitioner’s Exhibit, 1. Petitioner then timely filed his asylum application with USCIS before he turned 18, giving USCIS exclusive initial jurisdiction over his claim. *See* 89 FR 46742 (May 29, 2024); 8 CFR § 1001.1(hh) (authorizing termination of removal proceedings in cases such as these).

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); *see also Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *2 (S.D. Tex. Oct. 7, 2025)(applying the established interpretation of applying 1226 not 1225 to respondents already present in the country); *Zumba v. Bondi*, No. 25-CV-14626, 2025 WL 2753496, at *9 (D.N.J. Sept. 26, 2025). The Court in *Jennings* reinforces this understanding of the two statutes 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.” *Jennings*, 583 U.S. at 297, 303.

Respondents argue that “seeking admission in § 1225(b)(2) does not preclude the application of § 1225 to Petitioner because the terms “applicant for admission” and “seeking admission” are “the same phrase.” ECF. Doc. 3, at 7. Courts consistently disagree. *Lopez Benitez v. Francis*, No. 25-CIV-5937(DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025); *Garibay-Robledo v. Noem*, Civil Action No. 1:25-177-H (N.D. Tex.)(denying TRO); *see TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001)(rule of statutory construction to look at the statute as a whole and avoid making a word “superfluous, void or insignificant”). The regulations recognize the distinction. “Despite being applicants for admission, aliens who are present without having been admitted or paroled ... will be eligible for bond and bond redetermination.” 62 Fed. Reg. 10312, 10323(Mar. 6, 1997); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (explaining that section 1226(a) simply “restates” the detention authority previously found at section

1252(a)). Recently in 2025, Laken Riley Act, imposed a new ground of mandatory detention under 1226(c) to apply only to noncitizens who have not been admitted. Laken Riley Act, Pub.L. No. 119-1, 139 Stat. 3(2025). If Federal Respondent's interpretation of Section 1225 were correct, that new provision of the Laken Riley Act just for those who entered without admission, would have been superfluous. Respondents shrug their shoulders at Congress, ignoring this as a common redundancy. *See* ECF. Doc. 3, at 6. However this answer is unsatisfactory and not supported by the case law they cite. *See Martinez v. Mukasey*, 519 F.3d 532, 541-42 (5th Cir. 2008) (discussing the 212(h) "waiver of inadmissibility" that can in practice be available to both respondents in removal proceedings sections 1227 and 1226, who have been admitted and those who have not, but the waiver language excludes eligibility to those who have "previously been admitted to the United States as an alien lawfully admitted for permanent residence..."). That Fifth Circuit case does not address bond eligibility at all, but rather only addresses whether the waiver language is available to both those LPRs who were admitted at the border and those who adjusted status to LPRs. *Martinez*, 519 F.3d at 543. It can not be read to dismiss the relevancy of other statutes in interpreting congressional intent.

The BIA's application of the *Jennings* more broad interpretation of Section 1225 and its interplay with Section 1226 was a misapplication of dicta, because the *Jennings* Court only needed to address indefinite detention. *Matter of Q Li*, 29 I&N Dec. 66, 68 (BIA 2025); *Matter of Yahure Hurtado*, 29 I&N Dec. 216, 218-19 (BIA 2025)(citing *Jennings*, 583 U.S. at 287, 299 language calling 1225(b)(2)(A) a "catchall provision"). 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. The BIA dismisses context to use the *Jennings* Court description of section 1225 to assume that any time Section 1225 could be applied, mandatory detention would necessarily apply, but that if even a valid reading of *Jennings*, would not be necessary to the holding of the case. Although the Board of Immigration Appeals (BIA) purports to rely on *Jennings*, 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., Q. Li*, 29 I&N Dec. at 68; *see also e.g., Yajure*, 29 I&N Dec. at 218.

The *Thuraissigiam* case that the Federal Respondents rely on to rebut Petitioner's due process argument, 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 his paperwork not charging him as an arriving alien, admits that. *See* ECF Doc. 3-1. 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, even though nothing has changed since his release to his family in 2021 to warrant detention. *See* Petitioner’s Exhibit, 1.

II. 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 her 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 7. This is not the case. The Petitioner is not challenging the decision to detain her 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, while he pursues his application for relief.

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.

III. 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 releasing Petitioner to his family and issuing him a work authorization card and social security number. Even his employer relied on this expressed government interest in supporting Petitioner, all as his relationships with his community including US citizens continued to grow. All these relationships continued to strengthen, meanwhile his asylum claim may be 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 asserted his eligibility for relief and filed an asylum application. If he is released, he will be eligible to continue with the same issued work authorization and Social Security card. 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 presume the statute favors detention without bond. If the Court were to order his release, it would be because the 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 Federal Respondents state that Petitioner "has no claim to any lawful status in the United States that would permit him to reside lawfully in the United States upon release." ECF No. 3, at 3. Federal Respondents conclude that "mandating continued detention until at least the conclusion of removal proceedings furthers the government's interest in enforcing the immigration laws." However even the *Jennings* Court describes mandatory detention as a "carve[] out" or exception, not the default or norm. *Jennings*, 583 U.S. at 282. The Petitioner has been detained for over two months, separated from his family and job and lawyer. He has a pending application for relief. His next preliminary hearing is scheduled for December

16, 2025, and then he will have to wait indefinitely for USCIS, who has jurisdiction of his asylum application filed as a minor to adjudicate the application. 8 U.S.C. § 1158(b)(3)(C); *see also Matter of M-A-C-O*, 27 I&N Dec. 477 (BIA 2018). Then he will have to wait for the final hearing on the merits of his case with EOIR, which necessarily means more time 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 closer to counsel, with his family, continue the commitments he made to his employer, all while the Immigration Judge determines whether he can remain in the United States. The ability to fully litigate his application(s) before the Immigration Court, participate freely in his defense from deportation 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.

IV. Conclusion

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

DATED this 23rd day of November, 2025.

Respectfully Submitted,
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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 23rd day of November, 2025.

Respectfully Submitted,
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