IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

OSCAR ALFREDO PENA EUSEBIO, *Petitioner,* *v.* MARY DE ANDA-YBARRA, Field Office Director, El Paso Field Office, Immigration and Customs Enforcement, in her official capacity; *et al.*, *Respondents.*	**Case No. 3:25-cv-00578-LS** REPLY TO THE RESPONDENTS' RESPONSE

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

As set forth in greater detail in his Petition for a Writ of Habeas Corpus (the "Petition"),[1] Petitioner OSCAR ALFREDO PENA EUSEBIO ("Petitioner") has lived in the United States for more than 20 years. He has no criminal history and has a family, including a wife and two children, who rely on him. Because Petitioner is detained unlawfully, the Court should order his immediate release, or in the alternative, require Respondents to provide him with a prompt bond hearing pursuant to 8 U.S.C. § 1226. As many courts have found, including in this District, Respondents' arguments in opposition are unpersuasive. At points, their purported opposition does not even address Petitioner's actual arguments.[2] Although Petitioner submits that the Response does not

[1] R. Doc. No. 1.

[2] As just one example, Respondents argue that the Petitioner is not entitled to habeas relief on the basis of the Ex Post Facto Clause. *See* R. Doc. No. 4, at 8–10. In his Petition, however, Petitioner never raised the Ex Post Facto Clause as a ground for habeas relief. *See* R. Doc. No. 1.

give cause to deny the Petition or otherwise undermine the authorities cited therein, Petitioner emphasizes three critical points in reply.

I. Petitioner Is Detained Pursuant to § 1226(a), Which Requires an Individualized Bond Hearing.

First, Respondents attempt to argue that Petitioner is "an applicant for admission" who is "seeking admission" and thus subject to the mandatory detention scheme under § 1225(b)(2)(A). Respondents repeat a novel interpretation, rejected by numerous federal courts, that § 1225 governs "applicants for admission" while § 1226 governs those "who have been admitted."[3] But as set forth in greater detail in the Petition, § 1226 applies to noncitizens inside the country, including those who entered without inspection, while § 1225 is limited to noncitizens seeking admission at a border or port of entry.[4]

Respondents' arguments to the contrary are unavailing. As the overwhelming majority of courts that have considered this issue have determined, Respondents' reading of the statute is contrary to the plain meaning of the text, basic principles of statutory interpretation, and well-established federal precedent. *See, e.g.*, *Armando Becerra Vargas v. Bondi*, SA-25-cv-1023, 2025 WL 3300446 (W.D. Tex. Nov. 12, 2025) (Bemporand, MJ.) (collecting cases and noting that "the majority of the district courts in the Fifth Circuit—and all the courts in this District—that have considered the issue" "have rejected Respondents' broad new interpretation of § 1252(b)(2)"), *report and recommendation adopted sub nom. Vargas v. Bondi*, SA-25-cv-1023, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025) (Biery, J.); *Covarrubias v. Vergara*, 5:25-cv-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025) (Kazen, J.) (same).

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[3] R. Doc. No. 4, at 2-4.
[4] R. Doc. No. 1, ¶¶ 32–64.

Specifically, Respondents attempt to argue that because Petitioner is an "applicant[] for admission" under § 1225(a)(1) by virtue of being present without being admitted or paroled, he is also "seeking admission" as required for that statute to apply. However, that argument has been squarely rejected. *See, e.g.*, *Covarrubias*, 2025 WL 2950097, at *4 (finding that a petitioner who "resided in the United States for over two decades" was an "applicant for admission" but was not "seeking admission because he was not currently and actively seeking to be admitted to the United States when he was apprehended.").[5] The *Covarrubias* court specifically noted that "[w]hen two different phrases are used in a statute, 'a variation in terms suggests a variation in meaning.'" *Id.* (quoting Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012)).

Furthermore, Respondents' interpretation of "seeking admission" is at odds with background constitutional principles. Respondents posit that, on Petitioner's reading, his "[e]vasion from detection" when he entered the United States would now "bestow him with the benefit of additional process."[6] However, it is well established "that once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). By providing additional process for

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[5] Petitioner also respectfully directs the Court's attention to the recent decision of the Seventh Circuit—whose rulings would otherwise control here but for Respondents' decision to detain Petitioner far from his family and home—in *Castanon-Nava v. U.S. Department of Homeland Security*, --- F.4th ---, No. 25-3050, 2025 WL 3552514 (7th Cir. Dec. 11, 2025). The Seventh Circuit concluded, based on the text and structure of §§ 1225 and 1226, that the DHS is not likely to succeed on the merits of its argument that § 1225(b)(2)(A) authorizes mandatory detention of noncitizens who have effected entry into the United States. *See id.* at *8–10. The Seventh Circuit stated that treating an applicant for admission as one who is "seeking admission" would violate a cardinal rule of statutory interpretation by rendering the phrase "seeking admission" superfluous. *See id.* at *9.

[6] R. Doc. No. 4, at 6.

noncitizens that have entered the country, the relevant statutory framework aligns with well-established constitutional principles that do the same.

In short, Respondents do not dispute that Petitioner entered the United States without inspection decades ago and has been present and resided in the United States for more than 20 years, nor do they not contest that Petitioner was arrested by DHS in or around Indiana, hundreds of miles from any border or port of entry. In other words, Petitioner was not "arriving" at a border nor "seeking admission" when he was arrested. Accordingly, Petitioner is being detained pursuant to § 1226, which requires an individualized bond hearing.

II. Petitioner's Continued Detention Without a Bond Hearing Violates Due Process.

Petitioner has also established that his continued detention without a bond hearing violates his right to procedural due process.[7] Respondents' argument that *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), forecloses a due process challenge to his detention has been rejected in the Western District of Texas. For example, the Court in *Vieira v. De Anda-Ybarra*, finding that a similarly situated petitioner's detention without a bond hearing violated his right to due process, noted several critical distinctions between cases like the instant matter and *Thuraissigiam*, including that:

> *Thuraissigiam* was seeking a second opportunity to apply for asylum through habeas, not his release like Petitioner . . . *Thuraissigiam* was subject to expedited removal proceedings, meanwhile Petitioner is in full removal proceedings and has no final order of removal, and . . . *Thuraissigiam* was apprehended 25 yards into U.S. territory on the threshold of initial entry, meanwhile Petitioner was paroled into the United States, previously released on bond, and has established years of presence in the United States.

25-cv-00432, 2025 WL 2937880, at *5 (W.D. Tex. Oct. 16, 2025) (Briones, J.). The Court thus applied the factors set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to find that continued

[7] R. Doc. No. 1, ¶¶ 65–75.

detention without a bond hearing violated the petitioner's Fifth Amendment Due Process rights. *Id.* at *7. Petitioner here set forth the relevant factors in his Petition,[8] and Respondents do not contest that application of the factors weighs in favor of Petitioner.

III. This Court Has Jurisdiction.

Third, there are no jurisdictional hurdles precluding this Court from granting the Petition. Respondents first argue that the jurisdiction-stripping provision of 8 U.S.C. § 1252(g) applies here.[9] This provision's scope is "narrow." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). It only strips federal court jurisdiction over claims arising from three circumstances: a decision or action (1) to commence removal proceedings, (2) to adjudicate cases, or (3) to execute removal orders. *See* 8 U.S.C. § 1252(g). Accordingly, § 1252(g) does not "cover[] all claims arising from deportation proceedings or impose[] a general jurisdictional limitation." *Regents of the Univ. of Cal.*, 591 U.S. at 19 (citation modified).

Section 1252(g) does not impose a jurisdictional limitation in this case because Petitioner's challenge does not arise from any of the narrow circumstances covered by that statute. Petitioner challenges only the decision to detain him during the pendency of those proceedings. *See Carrera-Valdez v. Perryman*, 211 F.3d 1046, 1047 (7th Cir. 2000) ("nothing in § 1252(g) precludes review of the decision to confine"); *Esquivel-Ipina v. LaRose*, No. 25-cv-2672, 2025 WL 2998361, at *3 (S.D. Cal. Oct. 24, 2025) (holding that § 1225(g) did not strip the court of jurisdiction to entertain habeas petitioner's challenge to his detention under § 1225(b)(2)(A)). Further, Section 1252(g) does not prohibit purely legal claims that do not challenge the Attorney General's discretionary authority. *See, e.g.*, *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (stating that § 1252(g)

[8] *Id.* ¶¶ 67–75.
[9] R. Doc. No. 4, at 6.

does not bar review of the "lawfulness" of a removal-related action because such claims are "collateral" to the discretionary decisions immunized by § 1252(g)).

Respondents contend that § 1252(g) applies here because "Petitioner is challenging the decision to detain him in the first place, which arises directly from the decision to commence and adjudicate removal proceedings against him."[10] Respondent's argument implicitly acknowledges, as it must, that the decision to detain Petitioner is distinct from any of the decisions listed in § 1252(g). In their view, a decision to detain a noncitizen "arises from" a decision to commence proceedings insofar as the issue of detention arises as a consequence of the decision to commence proceedings in the first place. That construction fails because it flies in the face of Supreme Court precedent. The Supreme Court has stated that the "arising from" language in § 1252(g) "refer[s] to just those three specific actions" listed therein. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)). Because, as Respondents themselves implicitly recognize, Petitioner's challenge does not concern one of the three decisions listed in § 1252(g), that statute does not strip the Court of jurisdiction over this matter.

In addition to § 1252(g), Respondents also claim that 8 U.S.C. §§ 1225(b)(4) and 1252(b)(9) combine to bar federal court review of Petitioner's detention at this stage.[11] In Respondents' view, Petitioner's challenge must be raised before an immigration judge in removal proceedings.[12] This argument lacks textual support. Section 1225(b)(4) provides that a challenge to a decision of an immigration officer, "if favorable to the admission of any alien," shall proceed before an immigration judge. *See* 8 U.S.C. § 1254(b). Because the decision to detain Petitioner

[10] *Id.*
[11] *Id.*
[12] *Id.*

without the opportunity for bond is plainly not favorable to the admission of Petitioner, § 1225(b)(4) is inapposite. *See Cardona-Lozano v. Noem*, No. 1:25-cv-1784, 2025 WL 3218244, at *1 n.2 (W.D. Tex. Nov. 14, 2025) (Pitman, J.) (stating that "the Court finds nothing in § 1225(b)(4) that bars its jurisdiction" over habeas petitioner's challenge to his detention under § 1225(b)(2)(A)).

Likewise, § 1252(b)(9) is inapplicable. That statute limits judicial review of questions of law and fact arising from a removal proceeding to judicial review of a final order of removal. *See* 8 U.S.C. § 1252(b)(9). But § 1252(b)(9)'s limitation does not apply "where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined." *Regents of the Univ. of Cal.*, 591 U.S. at 19 (citation modified). In challenging the legality of his detention without the opportunity for bond, Petitioner is "not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined." *See id.* Accordingly, § 1252(b)(9) does not bar Petitioner's challenge at this stage. *See Mahdawi v. Trump*, 136 F.4th 443, 452 (2d Cir. 2025) ("Consequently, even if his claims have a substantive overlap with challenges he may bring in his removal proceedings, his detention claims do not themselves challenge or arise from removal proceedings, and § 1252(b)(9)'s channeling function has no role to play." (citation modified)).

CONCLUSION

In conclusion, Petitioner respectfully urges the Court to reach the same conclusion as legion federal courts by likewise holding that Petitioner's continued detention with a bond hearing violates the Immigration and Nationality Act and his right to due process. Because he continues to be unlawfully detained, Petitioner respectfully requests that this Court grant his Petition for a Writ of Habeas Corpus.

DATED this 18th day of December, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that, on December 18, 2025, he caused the foregoing Reply to be filed using the CM/ECF system, which will send notification of such filing to all counsel of record.

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