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

DIEGO ARMANDO CALCURIAN MOROS,

Petitioner,

v.

WARDEN, *in their official capacity* as Warden of the ERO El Paso Camp East Montana Detention Facility;

MARY DE ANDA-YBARRA, *in her official capacity* as Field Office Director of the ICE El Paso Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security;

TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and

PAMELA JO BONDI, *in her official capacity* as Attorney General of the United States;

Respondents.

Case No. 3:25-cv-00622-LS

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

I. INTRODUCTION

Respondents' opposition rests on the same arguments recently rejected by this Court in *Vieira v. De Anda-Ybarra*, EP-25-CV-00432-DB (W.D. Tex. Oct. 16, 2025). There, the Court held

that: (1) district courts retain habeas jurisdiction over challenges to immigration detention notwithstanding 8 U.S.C. §§ 1252(g) and 1252(b)(9); and (2) mandatory detention under 8 U.S.C. § 1225(b), as applied to a noncitizen detained after entry and during full removal proceedings, violates the Fifth Amendment's Due Process Clause absent an individualized bond hearing. *Id.* at 16.

The Government's response here mirrors the arguments rejected in *Vieira*. For the same reasons articulated in that detailed and well-reasoned decision, this Court should grant the Petition and order a prompt bond hearing or immediate release.

II. ARGUMENT

A. This Court Has Jurisdiction Over Petitioner's Habeas Claims

Respondents assert that jurisdiction is barred by §§ 1252(g) and 1252(b)(9). That argument fails under binding Supreme Court and Fifth Circuit precedent and was expressly rejected in *Vieira*.

As the *Vieira* Court explained, § 1252(g) is narrowly confined to three discrete prosecutorial decisions: whether to commence proceedings, adjudicate cases, or execute removal orders. See *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018); *Reno v. AADC*, 525 U.S. 471, 482–83 (1999); *see also Mendoza v. Warden, Diley Immigration Processing Center, et al*, No. 5:25-cv-1649, at *4 (W.D. Tex. Dec. 12, 2025). Detention pending removal proceedings is not one of those actions.

Respondents erroneously assert that this Court lacks jurisdiction because Petitioner's challenge to detention arises directly from the decision to commence and/or adjudicate removal proceedings against him. ECF No. 3 at 7. Here, as in *Vieira* and *Mendoza*, Petitioner does not challenge DHS's authority to commence removal proceedings against him. He challenges only his

continued detention without a bond hearing. Courts—including the Fifth Circuit—have consistently held that such claims fall outside § 1252(g)'s jurisdictional bar. *See Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000).

Respondents' attempt to funnel this case into § 1252(b)(9) suffers from the same defect identified in *Vieira* and *Jennings*. Under Section 1252(b)(9), "[j]udicial review all questions of law and fact, including the interpretation and application of constitutional and statutory provisions, arising from any action or proceeding brought to remove an alien from the United States under this subchapter [including §§1225] shall be available only in judicial review of a final order under this section." In *Jennings*, the Supreme Court rejected Respondents' argument because an expansive reading of § 1252(b)(9) would lead to "staggering results," effectively foreclosing district-court review of detention claims that do not seek review of a final removal order. *Jennings*, 583 U.S. at 293.

Like in *Jennings*, Petitioner is not asking for a review of an order or removal, challenging the decision to detain him in the first place or to seek removal, and not challenging any part of the process by which his removability will be addressed. *Id.* He challenges the constitutionality of his detention without an individualized bond hearing. Such claims are classic habeas claims and fall squarely outside § 1252(b)(9).

B. Mandatory Detention Under § 1225(b), As Applied, Violates Due Process

Respondents' heavy reliance on *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), is misplaced—precisely as the Court held in *Vieira*. *Thuraissigiam* addressed an alien apprehended at the threshold of entry, subjected to expedited removal, and seeking additional asylum procedures, not release from detention. The Supreme Court expressly limited its holding to that context and did not decide whether § 1225(b) detention is constitutional as applied to noncitizens

detained after entry and during full removal proceedings.

As the *Vieira* court correctly recognized, those distinctions are dispositive because (1) *Thuraissigiam* was subject to expedited removal proceedings, meanwhile Petitioner here is in full removal proceedings, with no final order of removal, (2) Petitioner challenges detention during proceedings, not the validity of removal itself, and (3) Petitioner was released previously, establishing substantial ties and expectations of liberty. Under long-standing precedent, once a noncitizen has entered the United States—even unlawfully—he is a "person" protected by the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Following *Vieira*, this Court should apply the *Mathews v. Eldridge* balancing test and conclude that § 1225(b) is unconstitutional as applied to Petitioner. Freedom from detention lies at the core of the liberty protected by the Due Process Clause. Petitioner—who lived in the United States for a significant period and was previously released—has a substantial liberty interest in remaining free pending adjudication of his case. The Government's generalized interest in ensuring appearance and public safety does not justify categorical detention, particularly where Petitioner has previously demonstrated compliance and no evidence suggests changed circumstances. Further, Respondents have released Petitioner on his own recognizance once before, and there are no facts in the record to suggest there have been material changes to Petitioner's actions in appearing for any immigration related matters, nor that he has since acquired a criminal record to jeopardize the safety to other while released. As *Vieira* noted, any legitimate concerns can be addressed at a bond hearing.

Automatic detention under § 1225(b), without any opportunity for neutral review, creates an unacceptably high risk of erroneous deprivation. A bond hearing before an immigration judge is a minimal safeguard with substantial value. Accordingly, as in *Vieira*, § 1225(b) cannot

constitutionally be applied to detain Petitioner without an individualized custody determination

C. Petitioner is Detained under 8 U.S.C. § 1226(a) and not §1125(b)(1)

Respondents' argument that Petitioner is detained under § 8 U.S.C. 1125(b)(1) is misplaced. The INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) as well as other recent arrivals deemed to be "seeking admission" under § 1225(b)(2).

The mandatory detention provision at 8 U.S.C. 1125(b) does not apply to noncitizens like Petitioner, who were encountered after entry into the United States and released after a quasi-judicial determination by an immigration official on an ICE Form I-220A that Petitioner falls under the discretionary arrest provision of § 1226(a) as an uninspected entrant. Respondents' own issuance of an I-220A placing Petitioner in custody under 8 U.S.C. § 1226(a) reflects a discretionary, fact-based determination that Petitioner was not subject to mandatory detention under § 1225(b). ECF 1 at 29.

The unlawful application of § 1225(b) to Petitioner violates the INA and forecloses the EOIR's ability to consider Petitioner's released on bond.

III. CONCLUSION

Respondents ask this Court to adopt an interpretation of the INA and the Constitution that this very district has already rejected. The reasoning and holding of *Vieira v. De Anda-Ybarra* apply with equal force here. For those reasons, the Court should grant the Petition for Writ of Habeas Corpus ordering Respondents to release him from custody or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) or the Due Process Clause within seven days; and grant him any further relief this Court deems just and proper.

Respectfully Submitted,

/s/Anthony Lozano
ANTHONY LOZANO
Texas Bar No. 24113596
Roy Petty & Associates, PLLC
P.O. Box 561063
Dallas, TX 75356
Tel. 214-905-1420
Fax 214-905-2010
alozano@roypetty.com
Attorney for the Petitioner