

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

NELSON ROSALES FORONDA )  
(A ) )  
*Petitioner* )

Case No. 6:25-cv-00576-ADA-DTG

v. )

KRISTI NOEM, in her official capacity as )  
U.S. Secretary of Homeland Security; )  
PAMELA JO BONDI, in her official capacity )  
as Attorney General of the United States; )  
TODD LYONS, Acting Director, U.S. )  
Immigration and Customs Enforcement (ICE) )  
BRET BRADFORD, Field Office Director, )  
ICE Houston Field Office; WARDEN, )  
LIMESTONE COUNTY DETENTION )  
CENTER, in his/her official capacity. )  
*Respondents.* )

**REPLY IN SUPPORT OF PETITION FOR  
WRIT OF HABEAS CORPUS PURSUANT  
TO 28 U.S.C. § 2241**

INTRODUCTION

For decades it has been universally understood that individuals like Mr. Rosales who have entered the United States, even unlawfully, are not subject to mandatory detention pending completion of their removal proceedings absent certain criminal history. Yet on July 8, 2025, the government abruptly reversed the statutory interpretation it embraced for decades, choosing to interpret the Immigration and Nationality Act (INA) to mandate the detention of anyone who entered without inspection, regardless of how long they have resided in this country. Mr. Rosales remains detained pursuant to this novel interpretation that the Department of Homeland Security (DHS) happened upon almost thirty years after the statute at issue was enacted. Mr. Rosales filed a petition for a writ of habeas corpus on December 11, 2025, seeking release or, alternatively, the bond hearing he is promised under § 1226(a) and its implementing regulations, and challenging

his mandatory detention under 8 U.S.C. § 1225(b)(2) as an individual who is “seeking admission” into the United States. No reasonable person could describe Mr. Rosales as “seeking admission” to a country he has lived in for over twenty-three years. Accordingly, the Court should join the overwhelming majority of district courts that have rejected Respondents’ effort to subvert the legislative process and rewrite the INA by adopting a new “interpretation” of a thirty-year old statute. Further, the Court should hold, beyond the clear and continuing statutory violation, that due process prohibits Mr. Rosales’s arbitrary detention absent any showing that his continued detention is necessary to serve a compelling governmental interest.

### ARGUMENT

#### **I. This Court Has Jurisdiction to Review Mr. Rosales’s Petition.**

Neither § 1252(g) nor § 1225(b)(4) strip this court of jurisdiction to hear Mr. Rosales’s claims. Section 1252(g) bars courts from hearing “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g). Consistent with the plain statutory language, the Supreme Court has adopted a “narrow reading” of 1252(g), holding that “the provision applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination*, 525 U.S. 471, 482, 487 (1999) (emphasis in original). Mr. Rosales challenges none of those discrete decisions or actions. He does not challenge the Government’s right to place him in removal proceedings. He does not claim that Respondents may not adjudicate his case. And he has no removal order to execute. Mr. Rosales merely challenges the Government’s authority and decision to subject him to mandatory detention pending those removal proceedings. *See Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (holding that § 1252(g) does not bar claims that challenge “detention while the administrative process lasts.”).

Respondents argue that the bar applies “[w]here an alien challenges ICE’s decision to detain him,” claiming that the “decision to detain [Mr. Rosales] in the first place . . . arises directly from the decision to commence and/or adjudicate removal proceedings.” Resp. 5-6. This argument fails for at least two reasons. First, accepting Respondents’ argument that ICE’s “decision to detain” is unreviewable under § 1252(g) would bar all habeas challenges to unlawful immigration detention. Yet Respondents themselves acknowledge that Mr. Rosales could challenge the decision to keep him detained if his detention becomes unreasonably prolonged. *See* Resp. 7-8. Respondents offer no reason to distinguish that claim, which they concede may be heard, from Mr. Rosales’s, which similarly challenges the lawfulness of his detention. Second, while Respondents cite *Jennings v. Rodriguez*, that decision forecloses their argument that challenges to detention “arise from” the decision to commence proceedings and are therefore barred. Resp. 5-6 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018)). Like Mr. Rosales, the petitioners in *Jennings* argued that under the INA’s statutory scheme they were entitled to a bond hearing. *Jennings* held that § 1252(g) did not apply, reaffirming that it “did not interpret th[e statutory] language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, [it] read the language to refer to *just those three specific actions themselves*.” 583 U.S. 281, 294 (2018) (citing *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 482-483) (emphasis added). Accordingly, this Court should reject Respondents’ argument, which extends § 1252(g) beyond the limits set by the Supreme Court and its plain language to bar any and all claims challenging the lawfulness of immigration detention.

Respondents' argument that § 1225(b)(4) strips this Court of jurisdiction fares no better.<sup>1</sup> Section 1225(b)(4) is not a jurisdictional bar. It states simply that any immigration officer may challenge the "decision of the examining immigration officer, if favorable to the admission of any alien." 8 U.S.C. § 1225(b)(4). In the event of such a challenge, the alien whose admission is challenged is referred to an immigration judge for removal proceedings under § 1229a. *Id.* It does nothing to limit this Court's authority to decide whether Mr. Rosales's continued detention without a bond hearing pending those removal proceedings is lawful. Further, the statute only applies if an examining immigration officer makes a determination favorable to Mr. Rosales. No such determination was made here. Finally, § 1225(b)(4) only applies to noncitizens subject to detention under § 1225(b). Thus, Respondents' jurisdictional argument puts the cart before the horse, requiring the Court to first agree with their arguments on the merits—that Mr. Rosales is subject to detention under § 1225(b)(2)—before deciding the threshold jurisdictional question. For the reasons explained below, Mr. Rosales is not subject to detention under § 1225(b)(2) and therefore § 1225(b)(4) has no bearing on this case.

## II. Mr. Rosales is Not Subject to Detention Under § 1225(b)(2).

This Court should hold, consistent with the overwhelming weight of authority in this District and beyond, that Mr. Rosales is not subject to mandatory detention under § 1225(b)(2). *See, e.g., Tinoco Pineda v. Noem*, No. 25-A-01518, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025);

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<sup>1</sup> Previous courts, confused by Respondents' invocation of § 1225(b)(4), have assumed that Respondents meant to raise 1252(b)(4) and/or 1252(b)(9). *See, e.g., Ortega Munoz v. Noem*, No. 1:25-cv-1753 (W.D. Tex. Nov. 7, 2025). These courts have pointed out this mistake (if it is one) in multiple opinions, giving Respondents ample opportunity to correct its briefing in this case. They have not done so, and the Court should take them at their word that they are invoking § 1225(b)(4). If the Court is inclined to consider separately whether § 1225(b)(9) or § 1252(b)(4) bars review, Mr. Rosales respectfully requests the opportunity to provide supplemental briefing addressing those two statutes.

*Granados v. Noem*, No. 25-CA-01464, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025); *Galdamez Martinez v. Noem*, No. 25-CV-01373, 2025 WL 3471575 (W.D. Tex. Nov. 26, 2025); *Aguilar v. Bondi*, No. g:25-cv-1453, 2025 WL 3471417, at \*5 (W.D. Tex. Nov. 26, 2025); *Cardona-Lozano v. Noem*, No. 1:25-cv-1784, 2025 WL 3218244, at \*5 (W.D. Tex. Nov. 14, 2025); *Ortega Munoz v. Noem*, No. 1:25-cv-1753 (W.D. Tex. Nov. 7, 2025); *see also Espinoza Andres v. Noem*, No. H-25-5128, 2025 WL 3458893 (S.D. Tex. Dec. 2, 2025). Section 1225(b)(2) states, “in the case of an alien who is an applicant for admission, if the examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for” removal proceedings. 8 U.S.C. § 1225(b)(2). While Mr. Rosales concedes he is an “applicant for admission” as defined at § 1225(a), he cannot be described as “seeking admission” into a country he has lived in, worked in, paid taxes to, and raised a family in for almost a quarter of a century.

Respondents invite the Court to ignore § 1225(b)(2)’s plain language limiting its scope to noncitizens who are “seeking admission.” None of their arguments have merit. First, Respondents argue that the statute applies to all “applicants for admission” as defined by § 1225(a), not merely those who are “seeking admission.” *See* Resp. 4 (omitting “seeking admission” as an element for mandatory detention under § 1225(b)(2)). Wholly ignoring this statutory language, Respondents claim, without citation, that Congress intended for all noncitizens who are inadmissible under § 1182 “to be detained on a mandatory basis under § 1225(b)” while noncitizens who are deportable/removable under § 1227 “are to be detained under § 1226(a).” Resp. 2. This argument is refuted by the plain text of § 1226. For noncitizens subject to detention under § 1226, § 1226(a) sets forth the default rule, allowing noncitizens to seek release on bond pending their removal proceedings. Section 1226(c) carves out from this default rule certain classes of criminal noncitizens who Congress declared ineligible for release on bond. That section applies to

noncitizens who are inadmissible under § 1182 *and* those who are deportable under § 1227. *See* 8 U.S.C. § 1226(c)(1). There would be no need to carve out classes of inadmissible and deportable noncitizens from the default rule set forth at § 1226(a) if the default rule itself did not apply to both inadmissible and deportable noncitizens. Further, under Respondents' unsupported interpretation of the statute, §§ 1226(c)(1)(B) and (C) mandating detention for certain classes of deportable noncitizens become wholly redundant if all deportable noncitizens are already subject to mandatory detention under § 1225(b)(2).

Respondents next argue that the § 1225(b)(2) applies to “**an applicant for admission**” . . . who *DHS determines* is “an alien **seeking admission**.” Resp. 3 (emphasis in original). *See also id.* (arguing that § 1225(b)(2) applies because “DHS has determined through the issuance of an NTA [that Mr. Rosales] is an alien *seeking admission*.” Resp. 3 (emphasis in original). *See also id.* (claiming that § 1225(b)(2) applies to “**an applicant for admission**” . . . who *DHS determines* is “an alien **seeking admission**”) (emphasis in original). While the statute applies to noncitizens seeking admission who an examining officer determines are not “clearly and beyond a doubt entitled to be admitted,” the statute does not confer upon DHS the discretion to unilaterally define that statutory term and decide which noncitizens are “seeking admission.” The INA states that with respect to a noncitizen, “‘admission’ and ‘admitted’ mean . . . the lawful entry of [such] person into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Mr. Rosales is not seeking “admission” as Congress has defined that term as “he was not seeking entry, much less ‘lawful entry . . . after inspection’ and authorization.” *Aguilar v. Bondi*, No. 5:25-cv-1453, 2025 WL 3471417, at \*5 (W.D. Tex. Nov. 26, 2025) (quoting 8 U.S.C. § 1101(a)(13)(A)); *see also Martinez v. Mukasey*, 519 F.3d 532, 544 (5th Cir. 2008) (“Under th[e] statutory definition, ‘admission’ is the lawful *entry* of an alien after inspection, something quite

different, obviously, from post-entry adjustment of status.”) (emphasis in original). The Court should reject Respondents effort to effectively read the term “seeking admission” out of the statute by conferring upon DHS the discretion to define whom that term refers to.

Finally, as Mr. Rosales highlighted in his Petition, Respondents’ new interpretation of the statute renders the amendments to the INA in the Laken Riley Act superfluous. Respondents do not even dispute this, arguing instead that sometimes “drafters *do* repeat themselves and *do* include words that add nothing of substance.” Resp. 5 (quoting ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012), 176–77) (emphasis added by Respondents). Yet Respondents broadening of § 1225(b)(2) does not render a few words in the Laken Riley Act repetitive or unnecessary. Under their reading of § 1225(b)(2), all of the Act’s amendments to § 1226(c) become redundant. *See Marx v. Gen’l Revenue Corp.*, 568 U.S. 371, (2013) (“[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.”); *see also, e.g., Cardona-Lozano v. Noem*, 2025 WL 3218244, at \*5. Section 1225(b)(2) had been on the books for almost three decades when Congress passed the Laken Riley Act. In that time, neither the courts nor the Government had ever interpreted § 1225(b)(2) to mandate the detention of *all* noncitizens who entered the United States without inspection. It was against that backdrop that Congress passed the Laken Riley Act. When it did, Congress did not feel compelled to clarify the interpretation of § 1225(b)(2) that had been universally accepted since its inception in 1997. Instead, it mandated detention for certain classes of inadmissible noncitizens—individuals that would already have been subject to mandatory detention under Respondents’ reading on § 1225(b)(2). If Congress believed the courts and the Government were misapplying § 1225(b)(2) it had three decades to correct the error. It did not. And the Court should reject Respondents’ attempt to subvert the

legislative process and amend a thirty-year-old statute through a new “interpretation” that renders subsequent acts of Congress null and void.

**III. Mr. Rosales’s Detention Without a Bond Hearing Violates Due Process.**

Mr. Rosales’s continued detention, particularly without a meaningful opportunity to have a neutral arbiter decide whether that detention is necessary to ensure his appearance at removal proceedings or protect the community, violates his right to due process. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“Government detention violates th[e Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and ‘narrow’ nonpunitive ‘circumstances’ where a special justification . . . outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’”) (internal citations omitted).

Respondents decline to substantively engage with the substantive and procedural due process claims raised in Mr. Rosales’s petition. Instead, Respondents sole argument is that Mr. Rosales “is not entitled to more process than what Congress provided him by statute.” Resp. 7. This argument rests on a misinterpretation of *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 118-19 (2020). Resp. 7-8. *Thurassigiam*. merely affirmed what the Supreme Court has held for years—that for noncitizens on “the threshold of initial entry,” “whatever the procedure authorized by Congress is, it is due process as far as a[ noncitizen] denied entry is concerned.” *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *Thuraissigiam*, 591 U.S. at 138-39.

Yet Mr. Rosales is not at “the threshold of entry.” He has not been “denied entry” nor was he apprehended twenty-five yards from the border while in the process of entering the United States like the petitioner in *Thuraissigiam*. 591 U.S. at 139. He entered the United States over twenty-three years ago and has resided more than a thousand miles from the border ever since. As the Supreme Court has stressed, once Mr. Rosales “enter[s] the country, [his] legal circumstances

change[], 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*, 533 U.S. at 693; *see also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (distinguishing noncitizens arriving at our shores from those “who have never been naturalized, nor acquired any domicil or residence within the United States) (emphasis added). Thus, even if the Court were to accept Respondents’ erroneous argument that Mr. Rosales is subject to § 1225(b)(2), that statutory distinction is not determinative of the process he is due under the Constitution. Because he entered the United States over two decades ago, his proceedings must “conform to traditional standards of fairness encompassed in due process of law.” *Mezei*, 345 U.S. at 212. Respondents cite no case even suggesting that the general constitutional principle limiting the due process rights of those denied entry should be extended to those like Mr. Rosales who have “passed through our gates,” his detention must comport with due process. For the reasons set forth in his Petition, it does not.

Dated: December 17, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing Reply in Support of Petition for Writ of Habeas Corpus using the Court's CM/ECF system, which will serve all counsel of record in this matter.

/s/Kevin Hirst  
KEVIN HIRST