UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Eladio RODRIGUEZ MUNIZ Petitioner, v. Kristi NOEM, Secretary, U.S. Department of Homeland Security, *et al*, Respondents.	Case No. 3:25-CV-671-DB **PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner provides the following Reply to Respondents' Response filed with this Court on December 18, 2025. Petitioner again asserts that his present detention in the Camp East Montana Detention Facility is unlawful and requests that this Court take actions appropriate to protect his right to Due Process pursuant to the Fifth Amendment of the U.S. Constitution and his statutory rights, incorporated herein by reference. *See* ECF 1. In reply to Respondents' assertion in their Response, there are no non-habeas corpus related claims presented in the present action.

I. Jurisdiction

The jurisdictional arguments raised by the Respondents do not withstand scrutiny. Respondents' assertions that several jurisdictional provisions strip this court of its authority to adjudicate Petitioner's habeas corpus petition are without merit.

Respondents begin by asserting that § 1252(g) deprives this Court of jurisdiction. *See* ECF 5, at 7. Section 1252(g) "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 Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). It "does not bar courts from reviewing an alien detention order, because such an order, while

intimately related to efforts to deport, is not itself a decision to execute removal orders and thus does not implicate [S]ection 1252(g)." *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *3 (W.D. Tex. Oct. 2, 2025) (cleaned up) (quoting *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000)). In the present case, Petitioner "does not challenge a decision to commence removal proceedings, adjudicate a case against him, or execute a removal order…[H]e challenges the decision to detain him." *Guevara v. Swearingen*, No. 25 C 12549, 2025 WL 3158151, at *2 (N.D. Ill. Nov. 12, 2025).

Furthermore, the Supreme Court foreclosed all of Respondents' arguments relating to §1242(b)(9) in the Court's discussion of the provision in *Jennings*, finding that the "arising from" language in the provision should be construed narrowly, stating that "an expansive interpretation of "arising from" would make "claims of prolonged detention effectively unreviewable." *Jennings v. Rodriguez, 583 U.S. 281, 293* (2018). Respondents also argue that Section 1225(b)(4) requires that Petitioner's challenge "be raised before an immigration judge in removal proceedings." *See* ECF 5, at 7. That provision states:

> The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 1229a of this title. 8 U.S.C. § 1225(b)(4).

Respondents argue that Petitioner is currently an "applicant for admission." *See* ECF 5, at 1. As such, there has not been a "decision . . . favorable to the admission" of Petitioner. *See* §1225(b)(4). Thus, Section 1225(b)(4) should not be found to apply to Petitioner's case to limit the jurisdiction of this Court in the present habeas corpus proceedings.

II. Merits

A. Petitioner's Detention under § 1225(b)(1) Violates the Immigration and Nationality Act

Petitioner continues to assert that his detention is unconstitutional and violates the statutory scheme of the Immigration and Nationality Act (INA). For the reasons discussed *infra*, Petitioner contends that the Respondents' arguments in favor of the colossal expansion of the use of mandatory detention pursuant to 8 U.S.C. § 1225(b) should not be found persuasive to this Court. The Respondents' position that all noncitizens found in the United States who have not been inspected and admitted are subject to mandatory detention under § 1225 defies the plain language of the INA, the intent of Congress, years of judicial precedent, and longstanding agency practice.

The Respondents contend that the Petitioner is subject to § 1225(b)(1) because he is an applicant for admission who was initially intercepted at or near the port of entry, and thus, his detention is statutorily required. *See* ECF 5, at 3. As mentioned in Petitioner's habeas petition, this interpretation has been widely rejected by the Courts who have considered it, for multiple reasons.

Section 1225(b)(1)(A)(iii) can only apply to someone "who has not affirmatively shown" that they "ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under" Section 1225(b)(1)(A). Section 1225(b)(1)(A) only applies when "an immigration officer determines that" someone is "inadmissible under" 8 U.S.C. Section 1182(a)(6)(C) or 1182(a)(7).

Though Petitioner was initially apprehended near the border in November 2021, he was subsequently released under the provisions of 8 U.S.C. § 1226(a) through the issuance of an I-220A, not under § 1225(b)(1), on November 17, 2021. *See* ECF 1, Attachment #1. Petitioner was then issued an NTA with a single charge of inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) and placed into full removal proceedings. Respondents cannot retroactively transform what was clearly action taken under § 1226 into detention under § 1225(b)(1). *See Acea-Martinez v. Noem et al.*, 5:25-cv-01390-XR (filed Oct. 28, 2025).

In spite of Respondents' recent attempt to alter Petitioner's charges almost four years after his entry, Petitioner cannot be detained pursuant to § 1225(b)(1) because the government's own initial allegation of the Petitioner's inadmissibility does not fit the plain language of the implicated statutory provision. In addition, at the time of his most recent detention by Respondents and the issuance of the Notice and Order of Expedited Removal, Petitioner had been present in the United States for more than two years and as such, falls even further from the requirements of detention pursuant to § 1225(b)(1)(A)(iii)(II).

Additionally, Respondents contend that Congress intended to mandate detention of all applicants for admission, and they cite to holdings in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), and *U.S. v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir 2024) for their contention. *See* ECF 5, at 4-5. However, neither of the cited cases directly supports Respondents' assertion.

In fact, *Gambino-Ruiz* actually undercuts Respondents' argument. In that case, the Ninth Circuit considered again § 1225 as it relates to noncitizens subject to expedited removal and deals almost exclusively with the application of the statutory scheme under § 1225(b)(1)(A)(iii). Indeed, the Court in *Gambino-Ruiz* spends a considerable amount of text discussing the temporal component related to when an "application for admission" takes place. In discussing the *Torres* holding, the Court stated, "Concluding that an "applicant for admission" is not an unbounded class, we said that "inadmissibility must be measured at the point in time that an immigrant actually submits an application for entry into the United States." *See Gambino Ruiz*, 91 F.4th at 981; *see also Torres*, 976 F.3d at 925 ("[T]his phrase refers to the moment of applying for entry at the border."). *Gambino Ruiz*, 91 F.4th at 989. The Court continues this analysis further, "In sum, we conclude that *Torres* stands for the propositions that "an immigrant submits an 'application for admission' at a distinct point in time" and "stretching the phrase 'at the time of application for

admission' to refer to a period of years would push the statutory text beyond its breaking point." *Id.* at 926. "We can easily distinguish between Gambino-Ruiz, who was properly designated because he was detained near the border shortly after he crossed it, and Torres, who was placed in removal proceedings some thirteen years after she lawfully entered CNMI." *Id.* at 990.

Although the Petitioner does not believe that *Gambino-Ruiz* is directly relevant to his case, the Respondents did bring to light that the Ninth Circuit made an important distinction in that case regarding the application of § 1225 to persons who had recently entered the United States and persons who had been present for years in the United States, like Petitioner who was detained almost four years after his entry and release by the Department of Homeland Security (DHS), indicating the importance of the temporal component of § 1225.

Respondents are further incorrect in their contention that their interpretation of § 1225 does not render the amendments related to the Laken Riley Act as superfluous. *Laken Riley Act*, PL 119-1 (2025). *See* ECF 5, at 6. Indeed, the section of Respondents' Response on this topic seems to support Petitioner's argument rather than undercut it. In support of their position, the Respondents quote Justice Antonin Scalia who wrote that, "Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach." ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012), 176–77 (emphasis added). *Id.*

However, in the present situation, Congress recently added an entire section to the mandatory detention provision of 8 U.S.C. § 1226(c), which distinctly references persons who are present in the United States without having been inspected or admitted. *See* 8 U.S.C. 1226(c)(1)(E). Given the paucity of amendments to the INA over the recent years and the seeming

difficulty of moving new legislative amendments through Congress, it strains belief to conclude that the Laken Riley Act was the result of "words that add nothing of substance" and was included in the INA out of a drafter's "flawed sense of style" or "belt-and-suspenders approach," as posited by the Respondents. Rather, the logical reading of the Laken Riley Act's amendments is that Congress was already aware of § 1225 and did not consider the mandatory detention to apply to noncitizens already present in the United States, thus leading to the specific new provisions in § 1226(c)(1)(E) that pertain to noncitizens who are present in the United States without inspection and admission.

The Respondents go on to cite *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025), particularly noting that, "where these provisions impact one another, they cannot be read in a vacuum" *Yajure Hurtado* at 227. *See* ECF 5, at 6. The Petitioner could not agree more, but would contend that the impact of the two provisions on each other indicates that § 1226 applies to noncitizens detained after being present in the United States and § 1225 applies to noncitizens detained upon entry to the United States who are at that time found to be seeking admission.

B. Petitioner's Detention Violates his Due Process Protections

Noncitizens are entitled to due process protections under the Fifth Amendment, regardless of their immigration status. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993); Zadvydas, 533 U.S. at 693. To determine whether civil detention violates a noncitizen's Fifth Amendment due process rights, courts apply the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Respondents contend that, as applied to Petitioner, his re-detention under § 1225(b)(1) comports with due process. *See* ECF 5, at 7-9. In reaching this conclusion, Respondents rely heavily on *Department of Homeland Security v. Thuraissigiam,* 591 U.S. 103, 140 S.Ct. 1959

(2020). *Thuraissigiam* cannot provide meaningful authority for this Court to consider, given that *Thuraissigiam* concerns an "arriving alien" who had never physically entered the United States. The Supreme Court has long found that the requisite amount of "process" necessary to comport with the Due Process clause can differ depending on whether the noncitizen is seeking entry at a border or port of entry or the noncitizen has already been present within the United States. "While [noncitizens] who have established connections in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for an alien's lawful entry into this country and that, as a result, an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause." *Thuraissigiam* at 1963-1964. Clearly, the Petitioner, in his more than four years in the United States, has established connections and is not at "the threshold of initial entry." The reasoning in *Thuraissigiam* is not relevant to the present case precisely because there is no question that Petitioner should be afforded the full protections of the Due Process clause given his lengthy residence in the United States after his release pursuant to 8 U.S.C. § 1226.

Detention, even civil immigration confinement, infringes on a fundamental protected liberty interest. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004). Petitioner is currently detained in conditions that are indistinguishable from criminal incarceration. Respondents' current procedures create a substantial risk of erroneous deprivation of Petitioner's liberty interest in remaining free from detention. When Respondents detained Petitioner in 2021, they found that he was not a threat to national security and released him pending his immigration hearing. Since then, Petitioner's criminal history has remained clean, and he has proved he is not a flight risk by attending his immigration court hearings. Still, on August 14, 2025, Respondents arrested Petitioner at the courthouse without any new or additional information suggesting he is a threat to

public safety or a flight risk. Even more, Respondents exceeded its statutory authority when they designated Petitioner for expedited removal after being physically present in the United States for more than two years prior to any "determination of inadmissibility" under Section 1225(b)(1).

Once placed in expedited removal, a low-level DHS officer can order the removal of an individual who has been living in the United States with virtually no administrative process—just completion of cursory paperwork. The procedure used by Respondents did not give Petitioner an opportunity to challenge the legal basis for his detention or its necessity. *See Make the Road New York v. Noem*, --- F. Supp. 3d ---, ---, 2025 WL 2494908, at *17 (D.D.C. 2025) ("In short, the expedited removal process hardly affords individuals any opportunity, let alone a 'meaningful' one, to demonstrate that they have been present in the United States for two years.").

Additionally, there are reasonable alternatives available for Respondent to pursue. Section 1226(a) applies to noncitizens facing charges of inadmissibility, including noncitizens like Petitioner, who entered without inspection and were later detained while residing inside the country. As such, proper application of the INA's detention scheme allows for the possibility of detaining Petitioner under Section 1226(a) but first requires a bond hearing to make an individualized determination of his risk of flight or dangerousness. Any government interest in public safety or ensuring that Petitioner attends future hearings would be satisfied through the aforementioned bond hearing.

Notably, Respondents outline the constitutional protections "built into" removal proceedings, including the serving of the charging document and the opportunity to be heard by an immigration judge. *See* ECF 5, at 8. Respondents further allege that "relief applications are heard more expeditiously on the detained docket than the non-detained docket." *See* ECF 5, at 9. Here, Petitioner has been in immigration detention for over four months, and it has been over a

month that he passed his credible fear interview. To date, DHS has neither served Petitioner with an NTA nor filed the NTA with immigration court. Petitioner currently has no pending hearings before immigration court and cannot file any relief applications until his case is docketed in court.

III. Conclusion

For the reasons stated above, in conjunction with his original Petition for Habeas Corpus, Petitioner again pleads for relief as outlined in his Petition.

Respectfully submitted,

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