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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ABDOUL KARIM BALDE, *Petitioner*, **ROSE THOMPSON**, et al, *Respondents*.	Case No. 5:25-cv-01859-FB **Petitioner's Reply to Respondents' Response to Petition for Writ of Habeas Corpus**

INTRODUCTION

The Petitioner provides the following Reply to the Respondents' Response filed with this Court on January 6, 2026. Petitioner again asserts that his present detention in the Karnes County Immigration Processing Center 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, among other claims discussed in his initial Petition, incorporated herein by reference. **ECF 1**. In reply to the Respondents' assertion in their Response, there are no non-habeas corpus related claims presented in the present action. Furthermore, though the EOIR ordered Petitioner's removal on December 4, 2025, he filed a Notice of Appeal on December 19, 2025, and as such his proceedings are still pending and the order issued on December 4, 2025 is not a final order of removal. ***See* Exh. C, p. 5 - Payment Receipt for BIA Appeal.**

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* non-citizens found in the U.S. who have not been inspected and admitted are subject to mandatory detention under § 1225 defies the plain language of the Immigration and Nationality Act, the intent of Congress, years of judicial precedent, and years of practical application by the agencies involved.

The Respondents contend that the Petitioner is subject to § 1225(b)(1)(A)(iii)(II) because he is an applicant for admission who was initially intercepted at or near the port of entry. **ECF 4, p. 2**. As mentioned in Petitioner's opening Petition, this interpretation has been widely rejected by the Courts who have considered it, for multiple reasons. Though Respondent was initially

apprehended near the border in November of 2023, 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 12, 2023. *See* **ECF 1, Attachment #1, p. 4**. Furthermore, Respondents' assertion that § 1225(b)(1)(A(iii)(II) fails on the plain application of Petitioner's facts to the statutory provision in question. Respondents state in their Response that the Petitioner was issued an NTA and placed into removal proceedings after his apprehension. **ECF 4 p. 2-3**. As such, the government cannot contend that the Petitioner is in "expedited" proceedings as would be necessary under §1225(b)(1), and also in "full" removal proceedings under § 1229a. In addition, § 1225(b)(1)(A)(iii) can only apply to non-citizens who are inadmissible under 8 U.S.C. 1182(a)(6)(C) or 8 U.S.C. 1182(a)(7). *See* §1225(b)(1). However, as indicated on the Petitioner's Notice to Appear, he was only charged with inadmissibility under 8 U.S.C. 1182(a)(6)(A)(i) as being an alien who is present without having been inspected or admitted. *See* **ECF 1, Attachment #1, p. 1**. As such, Petitioner cannot be detained pursuant to §1225(b)(1)(A)(iii) because the government's own initial allegation of the Petitioner's inadmissibility does not fit the plain language of the implicated statutory provision.

The 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. **ECF 4 at p. 4-5.** However, neither of the cited cases directly supports the Respondents' assertion. In fact, *Gambino-Ruiz* actually undercuts Respondents' argument. In that case, the Ninth Circuit considered again § 1225 as it relates to non-citizens 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." *Id.; see also id. at 925*("[T]his phrase refers to the moment of applying for entry at the border."). *Gambino Ruiz*, at p. 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 U.S. and persons who had been present for longer periods of time in the U.S., like Petitioner who was detained more than a year and a half after his entry and release by 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 4 p. 5-6**. Indeed, the section of the 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 at p. 6**. 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 U.S. 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 LRA's amendments is that Congress was already aware of §1225 and did not consider the mandatory detention to apply to non-citizens already present in the U.S., thus leading to the specific new provisions in § 1226(c)(1)(E) that pertain to non-citizens who are present in the U.S. 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. **ECF 4 p. 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 non-citizens detained after being present in the U.S. and § 1225 applies to non-citizens detained upon entry to the U.S. who are at that time found to be seeking admission.

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

Respondents begin by asserting that § 1252(g) deprives this Court of jurisdiction. 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 any of the Respondents' argument 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." **ECF 4 p 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." **ECF 4 p. 4**. 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.

Respondents also rely 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 U.S. 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 non-citizen has never entered the United States or has already been present within the U.S. "While aliens 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 two years in the U.S. 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 residence in this country after his release pursuant to 8 U.S.C. 1226.

The Respondents are correct in their assertion that Petitioner is not technically raising a constitutional claim related to *prolonged* detention. **ECF 4 p. 9**. Rather, he is raising the claim that his detention without any opportunity for release violates his due process rights and violates the clear reading of the Immigration and Nationality Act.

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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Dated this 6th day of January, 2026.