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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DIANA M. RIVERA ZUMBA, *Petitioner*, v. PAM BONDI, Attorney General of the United States of America, *et al.*, *Respondents*.	HON. KATHARINE S. HAYDEN Civil Action No. 25-14626 (KSH)

RESPONDENTS' BRIEF IN FURTHER SUPPORT OF ANSWER TO HABEAS PETITION

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PRELIMINARY STATEMENT

On August 28, 2025, the Court issued an Opinion and Order finding that it has jurisdiction over Petitioner's habeas petition and directed Respondents to submit a brief concerning the lawfulness of Petitioner's detention under Immigration and Naturalization Act ("INA") § 235(b)(2), 8 U.S.C. § 1225(b)(2). Respondents incorporate by reference the facts and arguments submitted in their answer to the Petition, ECF No. 17, and submit this brief to provide additional arguments concerning Petitioner's detention. In short, Petitioner contends that her mandatory detention and ineligibility for bond under 8 U.S.C. § 1225(b)(2) is unlawful because the proper statutory authority for her detention arises under INA § 236(a), 8 U.S.C. § 1226(a), not § 1225(b)(2). Petitioner is incorrect. The plain text of § 1225 demonstrates that Petitioner—who is present in the United States without being admitted—is correctly considered an "applicant for admission" and therefore subject to detention under § 1225(b)(2). The Court should dismiss Petitioner's petition and deny her request for release.

BACKGROUND

I. Detention under 8 U.S.C. § 1225

Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings, unless they indicate an intention to apply for asylum or other forms of relief. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (ii). If the alien does not indicate an intent to apply for asylum, does not express a fear of prosecution, or does not "have such a fear" after inquiry by an officer, she is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2)—which ICE argues applies to Petitioner here—is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Still, the Department of Homeland Security ("DHS") has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

II. Detention under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention on a warrant "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal

proceedings, release him on bond, or release him on conditional parole.[1] By regulation, immigration officers can release an alien if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention or release the alien on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

ARGUMENT

The Court should reject Plaintiff's argument that § 1226(a) governs her detention instead of § 1225. *See* ECF No. 18. Section 1225 applies to "applicants for admission"; that is, as relevant here, aliens present in the United States who have

[1] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (BIA 2023).

not been admitted. *See id.* Because Petitioner falls within the category of applicants for admission, ICE has lawfully detained her under § 235(b)(2).

Petitioner's detention is lawful under the plain text of § 1225(b)(2). Here, ICE issued a Notice to Appear ("NTA") charging Petitioner with being "an alien present in the United States who has not been admitted or paroled" in violation of INA § 212(a)(6)(A)(i). *See* ECF 17-1, Sinchi Decl. ¶ 3; ECF No. 17-2, NTA at 1. *See also* ECF No. 18 at 7 ("[Petitioner] is a noncitizen who entered the United States without inspection or parole in September 2006 and was never detained by [DHS]"). Accordingly, Petitioner is an "applicant for admission" as defined by 8 U.S.C. § 1225(a), and her detention is mandatory. *See Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an "applicant for admission" subject to mandatory detention under § 1225(b)); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who "is present in the country but has not yet been lawfully granted admission").

Petitioner offers several reasons why § 235(b) does not apply to her, but the Court should reject them. First, Petitioner argues that she does not meet the definition of an "applicant for admission." Second, she argues that legislative history and prior agency practice support her position. Third, she argues that no BIA decision requires her detention. *See* ECF No. 18 at 8-9. Petitioner's arguments track those accepted by almost all district courts to have considered this issue. *See* ECF No. 17

at 17 n.7 (collecting cases). ICE respectfully disagrees with those decisions and with Petitioner's arguments here. We address each argument in turn.

Petitioner argues first that § 235(b) applies only to arriving aliens at the border. ECF No. 18 at 14 (quoting *Jennings*, 583 U.S. at 288). The main problem with Petitioner's reading is that it ignores half of the definition of "applicant for admission." An applicant for admission means two things: (1) an arriving alien; or (2) an alien present without being admitted. *See* 8 U.S.C. § 1225(a)(1). An arriving alien is someone "coming or attempting to come into the United States at a port of entry. 8 C.F.R. § 1.2 (defining "arriving alien"). So, the term arriving alien covers the situation that Petitioner describes because it concerns border-entry-related issues. That is, it occurs when the noncitizen is apprehended right at the border or soon thereafter. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (finding § 235(a) applied to noncitizens who are "taken into custody the instant [they] attempted to enter the country (as would have been the case had he arrived at a lawful port of entry)" and those who "succeeded in making it [a short distance] into U. S. territory before [being] caught"). These are the people for whom 235(b)(1)'s expedited removal procedures would apply. The second type of person—an alien present without being admitted—must mean something else. It is that "broader" group of people, those to whom 235(b)(2)'s "catchall provision" would apply, that Petitioner falls under as a noncitizen present in the United States without being admitted. *Jennings*, 583 U.S. at 287 (noting § 1225(b)(2) is a "broader," "catchall provision" that "applies to all applicants for admission not covered by § 1225(b)(1)"). Were Petitioner's reading of §

235 correct, it would violate "one of the most basic interpretative canons" that a "statute should be construed so that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up)).

To avoid reading "an alien present without being admitted" out of the definition of "applicant for admission," Petitioner argues that § 235(b)(2) applies only in a narrow situation not applicable here. That is, she argues, it applies only to aliens who are "seeking admission." ECF No. 18 at 15-16. In that sense, Petitioner argues, an alien is "seeking admission" only when they are taking an affirmative step to gain admission; for example, submitting an application to an immigration officer. *Id.* But the BIA does not interpret the phrase "seeking admission" that way:

> Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . In other words, many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be "seeking admission" under the immigration laws.

Matter of Lemus, 25 I. & N. 734, 743 (BIA 2012), available at https://www.justice.gov/sites/default/files/eoir. As such, the phrase "seeking admission" in § 1225(b)(2)(A) should be read to include an "applicant for admission"; therefore, aliens who are "applicants for admission" are also aliens who are "seeking admission." That is why, in section 235(a)(3), § 1225(a)(3), Congress stated that immigration officers must inspect all aliens "who are applicants for admission or

otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3).[2]

Those phrases play out in a commonsense way in § 235(b)(2). It begins with a limiting or qualifying clause (i.e., it says the subsection applies only to "any applicant for admission," which means only to those who are physically present). This limiting clause avoids the conclusion that the subsection would apply to those abroad; say, in an embassy. Having made clear § 235(b)(2) applies only to those present here, it continues with the second clause, which says that detention is mandatory if the immigration officer determines the "alien seeking admission" is not entitled to it. *See Adamowicz v. I.R.S.*, 552 F. Supp. 2d 355, 367–68 (S.D.N.Y. 2008) ("'[A] limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.' This approach is successful not merely as a matter of grammar, but also as a matter of internal logic: the set of information defined in the first clause is specific and in no need of further restriction, whereas the set of information defined in the second clause more appropriately lends itself to such restriction."). Accordingly, because Petitioner is an applicant for admission in that she is present without being admitted, she is subject to § 235(b)(2).

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[2] That is not to say the words "seeking admission" and "applicant for admission" are identical. The former is broader than the latter. An applicant for admission must be physically in the United States; a noncitizen can "seek admission" in the United States or outside of it, such as in an embassy before a consular officer. *See Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) (although ruling against ICE, noting that the terms have slightly different breadth).

This reading comports with the legislative history, which cuts against Petitioner's second argument. Congress did not intend to treat individuals who unlawfully enter the country better than those who appear at a port of entry. When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). It "intended to replace certain aspects of the [then] current 'entry doctrine,' under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225). The Court should reject the Plaintiff's interpretation because it would put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Aliens who presented at a port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

Respondents' reading of § 235(b)(2) also works hand in hand with § 236(a)'s discretionary detention authority. The two sections are not duplicative; instead, §

236(a) applies to any noncitizen who is present in the country but not an applicant for admission. In other words, it applies to any noncitizen who was admitted, but then something happened that made them deportable under INA § 127(a), 8 U.S.C. § 1227(a) (listing classes of deportable aliens as "any alien . . . in and admitted to the United States" who fall under any of several classes of deportable alien). Some examples include noncitizens who violate their nonimmigrant statue—e.g., a tourist, student visa holder, H-1B specialty occupations, and so on. *Id.* § 1227(a)(1)(c). These are noncitizens who were admitted into the country (so they are not applicants for admission) but then engage in a deportable act such as overstaying their tourist visa, failing to comply with their student visa requirements, or losing their job that granted them H-1B status. Without § 1226(a), there would be no statutory authority for ICE to detain such noncitizens.

The Laken Riley Act ("LRA") does not change the analysis. *See* ECF No. 18 at 13 (discussing LRA). The LRA, as Petitioner notes, added § 1226(c)(1)(E) to the statute, which requires mandatory detention for various types of "inadmissible" aliens. ECF No. 18 at 13. This, Petitioner argues, proves that § 1226 must apply to "inadmissible" aliens because there is no other reason for the LRA to clarify that certain types of inadmissible aliens must be detained. Respondents disagree. The LRA added the mandatory detention requirements for "inadmissible" aliens to shore up what Congress believed was an enforcement gap. The LRA arose, according to Congress, after an inadmissible alien "was paroled into this country through a shocking abuse of that power." 171 Cong. Rec. H278 (daily ed. Jan 22, 2025)

(statement of Rep. McClintock). Congress passed the law out of concern that the executive branch "ignore[d] its fundamental duty under the Constitution to defend its citizens." *Id.* at H269 (statement of Rep. Roy). One member of congress noted this redundancy, stating that "every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims." *Id.* at H278 (statement of Rep. McClintock). The LRA thus reflects a "congressional effort to be doubly sure" that such unlawful aliens are detained. *See Barton v. Barr*, 590 U.S. 222, 239 (2020) ("[R]edundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication. The Court has often recognized: "'Sometimes the better overall reading of the statute contains some redundancy.'").

Accordingly, Petitioner's detention is lawful under § 235(b)(2).

CONCLUSION

For the foregoing reasons, the Court should deny the Petition for lack of jurisdiction and deny the request for temporary restraints as moot.

Respectfully submitted,

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