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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
PHOENIX DIVISION
IMMIGRATION CASE**

Bo Li .

Plaintiff,

v.

JOHN CANTU, ET AL

Defendants,

Civil No.: 2:25-cv-02989-SPL--CDB

**PLAINTIFF'S REPLY TO
RESPONDENT'S RESPONSE TO
MOTION FOR TEMPORARY
RESTRAINING ORDER**

**REPLY TO RESPONDENTS' RESPONSE TO MOTION FOR TRO AND
IMMEDIATE RELEASE FROM CUSTODY**

I. Respondents' arguments regarding jurisdiction, justiciability, and propriety of Petitioner's APA claim need not be resolved at this time

Respondent's response raises issues of jurisdiction and justiciability, but these issues do not appear to directly relate to the pending motion before this Court. In particular, Respondent's assert that any claims relating to respondents plans under their new policy to place Petitioner in expedited removal proceedings are not yet ripe or fall outside the scope of this Court's jurisdiction. ECF No. 11-1 at 5-12. These arguments would seem to relate only to count 4 (APA violation) of the habeas petition. ECF No. 1 at 21-22 (¶ 115-123). Whatever the strength of Respondents' arguments, Petitioner's motion seeking immediate release stems from his allegations that he remains unlawfully detained (Counts 1-3). He asks for an order that the Court order his immediate release and that he not be re-detained without lawful basis. ECF 8 at 14-15, 19. Petitioner's motion does not, as Respondents argue, ask the Court to enjoin or review "dismissal of his INA § 240 [] removal proceedings to pursue expedited removal proceedings under INA § 235[.]" ECF No. 11 at 5-6. Nor does Petitioner's motion ask the Court to review or enjoin "a decision to commence or adjudicate removal proceedings or execute removal orders," Id. at 6-10, or any policy under the APA. Id. at 11-12.

Thus, Petitioner sees no reason to address these arguments or need for the Court to reach these arguments in resolving Petitioner's motion. Instead, Petitioner respectfully ask the Court to address Respondents' arguments at a later date should it become necessary. Petitioner submits that the issue raised in his motion is, instead, solely the

question of the legality of his ongoing detention. It does not appear that Respondents have not raised jurisdictional or justiciability challenges related to this issue.

II. Petitioner's current detention is unlawful

a. Respondents unsupported assertion that detention is pursuant to § 1225(b)(2)

Respondents have provided some potentially useful clarifying information in their response relating to the legality of detention in this case. ECF 11 at 12. In particular, Respondents have identified 8 U.S.C § 1225(b)(2) as the basis for Petitioner's *current* ongoing detention. *Id* ("Section 1225 applies to "applicants for admission," such as Petitioner[.]"). This claim is not supported by any factual record or documents as far as Petitioner is aware. Rather, the claim is based on a bare citation to the 8 U.S.C. § 1225(a)(1) which contains a definition of "applicant for admission" which, read quickly and in a vacuum, might support Respondents position. However, a growing number of District Courts have uniformly (as far as counsel has ascertained) rejected this position (or granted relief on alternate due process grounds).¹

Respondents, unfortunately, do not clarify whether they believe that Petitioner's initial arrest in November of 2023 was also pursuant to § 1225(b)(2). Similarly, they fail to address, in any meaningful way, the clear factual record indicating that Petitioner's 2023 arrest and release was pursuant to § 1226(a). ECF 8 at 12, 15; 8-1 at Exhs. 1-3. Respondents only nod towards the existence of a factual record in this case is to dismiss the relevance of the records that Respondents created. ECF 11 at 2 ¶ 3-4 ("Regardless of what any piece of processing paper Petitioner received indicates, Petitioner is an arriving alien² as defined by the statute."). Respondents further fail to address how Petitioner's detention could shift from § 1226 to § 1225(b) upon rearrest almost two-years following

¹ *Romero v. Hyde*, 2025 U.S. Dist. LEXIS 160622, *1-2 (collecting cases from around the country).

² If Petitioner were an 'arriving alien' then his custody would be governed by 1225(b)(1) and not (b)(2).

1 initial custody determination. Perhaps this is because, though not clearly stated, that
2 Respondents believe that Petitioner was initially detained under 1225(b)(2).

3 But in that case what about all that pesky “processing paper” indicating that
4 Petitioner’s release was pursuant to § 1226? More importantly perhaps, if Respondent’s
5 position is that the initial 2023 arrest was pursuant to 1225(b)(2), then where is the
6 evidence that Petitioner was treated as an applicant for admission pursuant to
7 1225(b)(2)(A)? Further, where is the evidence that Petitioner was paroled from custody
8 pursuant to § 1182(d)(5) in 2023? After all, that is the *only* way a noncitizen “applicant
9 for admission” may be released once in 1225(b)(2) custody. *Jennings v. Rodriguez*, 583
10 U.S. 281, 300 (2018). Respondents also fail to otherwise address any of the binding
11 precedent, discussed in Petitioner’s motion, indicating that release on ORR could only be
12 pursuant to “conditional parole” under § 1226. ECF 8 at 15 (citing *Matter of Cabrera-*
13 *Fernandez*, 28 I.&N. Dec. 747, 749 (BIA 2023); *Ortega Cervantes v. Gonzales*, 501 F.3d
14 1111, 1115-16 (9th Cir. 2007)).

15 Finally, despite citing 1225(a)(1) to support their claim that Petitioner is validly
16 subject to 1225(b)(2) detention, respondents do not address the plain language of INA §
17 1225(b)(2) which requires not only that the noncitizen be an “applicant for admission”
18 but also that they be “seeking admission.” *See Rosado v. Figueroa*, 2025 U.S. Dist.
19 LEXIS 156344, *31 (“But Respondents’ selective reading of the statute—which ignores
20 its “seeking admission” language—violates the rule against surplusage and negates the
21 plain meaning of the text”); *Romero v. Hyde*, 2025 U.S. Dist. LEXIS 160622, *1-2 (same
22 and collecting cases). Respondents also fail to address why the Court should adopt their
23 interpretation where doing so would render aspects § 1225 and § 1226, mere surplusage,
24 including recent amendments adopted in the Laken Riley Act. *See Vazquez v. Bostock*,
25 2025 U.S. Dist. LEXIS 78395, *39-43 (adopting government position would render most
26 changes to recent changes to detention categories meaningless as all noncitizens present
27 without inspection would be subject to mandatory detention under 1225(b)(2)).

1 In sum, while Respondents have helpfully clarified their claimed basis for
2 Petitioner's current detention, they have not presented any factual evidence in support of
3 their claim. Further, they have not addressed how their interpretation can be reconciled
4 with binding legal precedent indicating that Petitioner could only have been detained, at
5 least initially under INA § 236 due to his manner of release. Finally, they have refused to
6 even engage in overcoming the shortcomings in their statutory arguments as has been
7 pointed out to them by numerous courts across the country.

8 Petitioner respectfully asks that, to the extent the Court finds it necessary to grant
9 Petitioner's requested relief, this Court find that Petitioner's initial detention was
10 pursuant to § 1226 and that his current detention can also only fall under § 1226.

11 **b. Petitioner's rearrest absent changed circumstances is unlawful regardless**
12 **of the claimed basis for rearrest.**

13 Respondents' argument that Petitioner "can cite no liberty or property interest to
14 which due process protections attach, particularly where Petitioner is subject to
15 mandatory detention under 8 U.S.C. § 1225(b)(2), should also be found unavailing.
16 Respondents seek to distinguish binding Supreme Court in *Morrissey* on the grounds that
17 different rules apply in immigration context. ECF No. 11 at 14. As other courts have
18 recognized in rejecting a similar argument, "[i]f a parolee serving out a sentence for a
19 violent crime, and subject to highly restrictive conditions of release, has a sufficiently
20 strong liberty interest [] to be entitled to a hearing prior to re-incarceration, then a non-
21 citizen freed from civil detention on bond likely has a similar entitlement." *See Guillermo*
22 *M. R. v. Kaiser*, 2025 U.S. Dist. LEXIS 138205, 2025, at *6 (N.D. Cal. July 17, 2025). "
23 *Ortega*, 415 F. Supp. 3d at 970 ("Given the civil context [of immigration detention],
24 [petitioner's] liberty interest is arguably greater than the interest of parolees in
25 *Morrissey*." Additionally, even assuming Respondents position is that Petitioner was not
26 entitled to release upon his first arrest because it was governed by 1225(b), Petitioner
27

1 now has a protected liberty interest following release and may not simply be rearrested
2 without hearing. *Garcia v. Andrews*, 2025 U.S. Dist. LEXIS 133521, *6-7.

3 Dated: 9/4/2025,

Respectfully,

4
5 /s/Ben Loveman

6 Ben Loveman

7 Attorney for the Plaintiff
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