District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Paola Amparo GUZMAN ALFARO

Petitioner,

v.

Cammilla WAMSLEY, et. al.

Respondents.

Case No.2:25-cv-01706-TMC

PLAINTIFF'S REPLY TO FEDERAL RESPONDENT'S RETURN MEMORANDUM

Noted for consideration:
October 3, 2025

I. INTRODUCTION

This case turns on a straightforward question of statutory interpretation: whether Congress intended 8 U.S.C. § 1225(b)(2)(A) to require mandatory, no-bond detention of noncitizens throughout the entirety of their removal proceedings, or instead to govern only the threshold determination of admissibility at inspection[1]. Yesterday, this very Court found that the latter reading controls, applying it to a class of plaintiffs which includes Plaintiff in this action. *See* Order from *Rodriguez Vasquez v. Bostock*, No. 3:25-

[1] The application of Section 1225(b) to certain persons in removal proceedings at the Tacoma Immigration Court has recently been pending in a class action before a court in this District. *Rodriguez Vasquez v. Bostock*, No. 3:25-cv-05240-TMC.

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cv-05240-TMC, attached as Exhibit A. The government presses the former reading, relying on selective quotation, agency departure from longstanding practice, and dicta from *Jennings v. Rodriguez*. But the statute's text, structure, history, and constitutional backdrop compel the latter. Section 1225(b)(2)(A) mandates detention "for a proceeding under section 240," not "throughout" or "pending completion of" such proceedings, and once DHS initiates removal proceedings, detention authority shifts to § 1226, which expressly provides a bond framework. Defendants' interpretation not only disregards Congress's drafting choices but also nullifies decades of consistent agency practice and raises serious constitutional concerns. This Court should reject Defendants' erroneous reading, uphold the order issued in *Rodriguez Vasquez v. Bostock*, and reaffirm that bond authority remains available under § 1226.

II. ARGUMENT

The question before this Court is not whether detention may occur, but under which provision Congress authorized it. The government's reading of § 1225(b)(2)(A) stretches the statute beyond its terms, erases the role of § 1226, and departs from decades of settled practice. The argument that follows demonstrates why the statutory text, structure, and constitutional principles all confirm that bond authority remains available once removal proceedings are initiated.

A. Even if noncitizens present in the United States without having been admitted were to be considered applicants for admission, they would still be amenable for bond under 8 U.S.C. § 1226(c).

The defendants selectively quote 8 U.S.C. § 1225(b)(2)(A), asserting that it mandates detention of "an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond

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a doubt entitled to be admitted[.]" That quotation omits the critical concluding clause. The statute in full provides: "In the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained for a proceeding under section 240.*" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The complete text shows that detention is directed toward initiating proceedings under § 240; it does not impose mandatory detention for the entire duration of those proceedings.

The choice of the preposition "for" is significant. "For" denotes purpose, not duration. Had Congress intended to require detention throughout the pendency of removal proceedings, it would have used "during" rather than "for." The government's reading ignores this grammatical distinction and stretches the statute beyond its plain terms. Moreover, when Congress intends detention to last until proceedings conclude, it says so explicitly. Section 1226(c) requires detention of certain criminal aliens "when the alien is released" and provides no bond authority, while § 1225(b)(1)(B)(iii)(IV) mandates detention of certain applicants for admission "pending a final determination" of credible fear. Congress deliberately omitted such language from § 1225(b)(2)(A).

This omission is decisive. As the Supreme Court has explained, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983). In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Court characterized §§ 1225(b)(1) and (b)(2) as "mandatory detention" provisions, but it did not hold that detention under § 1225(b)(2)(A) extends through the entire duration of removal proceedings. The Court's discussion underscores that the provision must be read according to its text, which directs

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detention "for a proceeding under section 240," not "throughout" or "pending final completion of" that proceeding.

Had Congress intended § 1225(b)(2)(A) to impose mandatory detention through the conclusion of § 240 proceedings, it would have said so, just as it did in §§ 1225(b)(1) and 1226(c). Its failure to include that command demonstrates that the defendants' interpretation finds no support in the statutory language, the structure of the INA, or the case law interpreting it.

Defendant's attempt to dismiss § 1226(c)(1)(E) as irrelevant cannot withstand scrutiny. Section 1226(c)(1)(E) expressly references "aliens inadmissible under" specified provisions of 8 U.S.C. § 1182. Congress would not have cross-referenced inadmissibility grounds if detention authority under § 1226 were categorically unavailable to those charged as inadmissible. The government points to subsection (ii), which requires a connection to criminal conduct, but that only confirms Congress's design: certain inadmissible noncitizens are to be detained under § 1226(c), not § 1225(b)(2)(A). If § 1225(b)(2)(A) were meant to provide the sole detention authority for inadmissible aliens, Congress's inclusion of inadmissibility language in § 1226(c) would be surplusage. The better reading is that Congress deliberately overlapped the two provisions, ensuring that some inadmissible aliens are detained under § 1226 rather than § 1225.

Nor does *Barton v. Barr*, 590 U.S. 222 (2020), rescue the government's position. While *Barton* acknowledges that redundancies sometimes occur in statutory drafting, it does not permit courts to ignore statutory text. The inclusion of inadmissibility within § 1226(c) is not an accidental redundancy—it is a deliberate textual choice showing that detention of certain inadmissible aliens is governed by § 1226. To read § 1225(b)(2)(A) as occupying the entire field of detention authority for inadmissible aliens would "rewrite or

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eviscerate" § 1226(c) by rendering Congress's cross-reference meaningless, precisely what *Barton* warned against.

Further, the statutory structure confirms this reading. Section 1225 addresses the initial inspection and processing of applicants for admission, while § 1226 governs detention once the noncitizen is placed in removal proceedings under § 240. Once DHS charges an individual and issues a Notice to Appear, detention authority shifts to § 1226. The government's position—that § 1225(b)(2)(A) mandates detention without bond throughout § 240 proceedings—collapses these distinct frameworks and nullifies the bond scheme Congress carefully embedded in § 1226.

Even if the statute were ambiguous, constitutional avoidance requires rejecting the government's interpretation. Reading § 1225(b)(2)(A) to mandate indefinite detention without bond for the duration of § 240 proceedings would raise grave constitutional concerns. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Court recognized that prolonged immigration detention without a hearing presents "serious constitutional problem[s]." Interpreting § 1225(b)(2)(A) to strip all bond authority, even after months or years of detention during contested proceedings, would extend detention far beyond the narrow circumstances the Constitution tolerates. To avoid that result, the statute must be harmonized with § 1226, which provides for custody determinations and release on bond in appropriate cases.

In short, the government's reading not only distorts grammar and statutory design but also invites constitutional infirmity. This Court should reject it.

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B. Defendants Misread *Loper Bright*: Courts Must Enforce Congress's Text, Not Elevate *Yajure's* Departure from Decades of Agency Practice As Prior Agency Practice Supports the Proper Interpretation of the Statute Despite Yajure's Departure

Defendants misread *Loper Bright* and overstate its effect. It is true that *Loper Bright* rejected Chevron deference, but it did not strip all persuasive weight from longstanding agency practice. Instead, the Court reaffirmed *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944), which holds that agency interpretations may be entitled to respect depending on their consistency and practical experience. *Loper Bright* makes clear that courts must "exercise independent judgment," but that judgment can and should account for the way agencies have implemented statutes, especially where such practice reflects real-world expertise and decades of settled application. 603 U.S. at 432–33.

The government's reliance on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 223 (BIA 2024), is unpersuasive for precisely that reason. Yajure itself departed from longstanding practice under which the INS and DHS had for decades treated certain individuals present without inspection as subject to detention under § 1226(a). *See* Detention and Parole of Inadmissible Aliens; Interim Rule, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[s]ection 236 of the Act, as amended, will apply to all cases after proceedings have been initiated before the Immigration Court," including those "who entered without inspection"). Far from being an unexplained policy choice, that interpretation reflected Congress's decision in IIRIRA to create distinct detention frameworks: § 1225(b) governing threshold inspection and expedited removal, and § 1226 governing custody during § 240 removal proceedings. The government's attempt to erase that distinction by labeling all EWI aliens "applicants for admission" disregards not only the statutory structure but also decades of consistent agency practice.

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Moreover, defendants misapply *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* addressed the availability of bond hearings as a matter of constitutional avoidance; it did not hold that § 1225(b)(2)(A) requires detention for the entire duration of § 240 proceedings. The Court's statement that §§ 1225(b)(1) and (b)(2) "mandate detention" was dicta, describing the government's reading of "shall" but expressly reserving questions about prolonged detention and bond. *Id.* at 297–98. Defendant's claim that *Jennings* forecloses petitioner's interpretation overreaches the holding.

Finally, even under *Loper Bright*, the government cannot ignore Congress's drafting choices. Where Congress intended mandatory detention through the pendency of proceedings, it said so expressly—e.g., § 1226(c) ("when the alien is released") and § 1225(b)(1)(B)(iii)(IV) ("pending a final determination"). Section 1225(b)(2)(A), by contrast, requires detention only "for a proceeding under section 240." The omission of broader language is controlling. *Russello v. United States*, 464 U.S. 16, 23 (1983). The government's reliance on Yajure to rewrite the statute not only conflicts with its text but also raises the very constitutional concerns *Jennings* identified. Under *Loper Bright*, it is this Court's role to give effect to Congress's words, not to ratify an agency's departure from them.

III. CONCLUSION

Both for the reasons set forth above, and to comply with the order issued yesterday in *Rodriguez Vasquez v. Bostock*, this Court should reject the government's attempt to transform § 1225(b)(2)(A) into a mandate for prolonged detention without bond. The statutory text directs detention for the initiation of proceedings, not throughout their duration. Once DHS files a Notice to Appear, custody is governed by § 1226, which

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preserves the authority for bond determinations. Defendants' contrary reading ignores Congress's drafting choices, nullifies overlapping provisions, and raises grave constitutional concerns. This Court should give effect to the statute as written and reaffirm that bond authority under § 1226 applies. To that effect it is respectfully requested that this court grant the habeas petition and order Ms. Guzman to be released on the bond as set by the Immigration Judge in his original order of August 4, 2025.

DATED this 1st day of October 2025.

Respectfully submitted,

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I certify that this memorandum contains 1897 words, in compliance with the Local Civil Rules.