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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

WENJUAN WANG PETITIONER v. Fred Figueroa, in his official capacity as Warden of Eloy Detention Center; John E. Cantú, in his official capacity as the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Phoenix Field Office Kristi Noem, in her official capacity as Secretary of DHS; RESPONDENTS	Case No: 22:25-cv-03301-MTL PETITIONER'S REPLY IN SUPPORT OF HABEAS CORPUS PETITION

I. INTRODUCTION

Petitioner respectfully submits this reply to Respondent's answer to Habeas Corpus Petition. Respondents fail to provide any lawful statutory basis for continued detention. Respondents' brief rests on a factual mischaracterization and a legally unsustainable expansion of DHS's detention authority.

Petitioner is an "arriving alien" who was lawfully paroled into the United States. As the Immigration Judge correctly found, jurisdiction over her pending Form I-485 adjustment of status application lies exclusively with USCIS. Because the IJ terminated her removal

proceedings, there is no valid removal case to support detention under 8 U.S.C. §1225(b)(2). Respondents' attempt to stretch that provision beyond its statutory limits violates due process rights and must be enjoined by this Court.

II. RESPONDENTS' FACTUAL MISTATMENTS

Respondent's opposition is predicated on the erroneous assertion that Petitioner "entered unlawfully" and "presently lack any legal status." , Doc 14 at 1, Line 18-19. This is a fundamental misstatement of fact that distorts the entire legal analysis.

A. Lawful Parole is Not Unlawful Entry

Petitioner was inspected and lawfully paroled into the United States on February 3, 2023, pursuant to 8 U.S.C. §1182(d)(5), under an approved advance parole document. The Board has made clear that parole under advance parole is not equivalent to unlawful entry. *Matter of Arrabally & Yerrabelly*, 25 I&N Dec. 771, 778 (BIA 2012). Accordingly, Petitioner cannot be deemed to have "entered unlawfully".

Her parolee status confirms she is an "arriving alien." As *Matter of Silitonga*, 25 I&N Dec. 89, 92 (BIA 2009), and *Matter of Yauri*, 25 I&N Dec. 103, 107 (BIA 2009), make clear, USCIS retains exclusive jurisdiction over adjustment applications filed by arriving aliens.

B. The Procedural Posture Confirms Jurisdiction with USCIS

As the record shows, Petitioner's U.S. Citizen husband filed a bona fide Form I-130 petition on her behalf, and she concurrently filed a Form I-485. USCIS accepted and issued receipt notices for both petitions, thereby accepting jurisdiction. The IJ recognized the jurisdictional shift, correctly finding that "the acceptance by USCIS of the respondent's I-485 and I-830 [Sic I-130] cause this court to lose jurisdiction over this matter." Once proceedings were terminated, DHS lost any statutory basis to continue detention.

III. RESPONDENTS' LEGAL ERRORS

Respondent's legal arguments rely on a selective and incorrect reading of the law, creating an illusion of authority where none exist.

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A. Mandatory Detention Under §1225(b)(2) No Longer Applies

The detention authority provided by 8 U.S.C. §1225(b)(2)(A) applies only to an "arriving alien" who is undergoing inspection and who is in removal proceedings. That authority is not limitless, instead, it is a statutorily defined and procedurally bounded authority tied to a specific administrative process. *Demore v. Kim*, 538 U.S. 510, 528 (2003) (upholding detention only "for brief period necessary" to complete removal proceedings).

Section 1225(b)(2) is not a free-floating grant of custody power. It confers detention authority only while removal proceedings are pending. Once an Immigration Judge terminates proceedings, as occurred here, there is no statutory predicate for continued custody under §1225(b)(2). DHS cannot detain Petitioner on the basis of proceedings that no longer exist.

B. Misuse of Jennings v. Rodriguez and Prohibition Against Indefinite Detention

Respondent's reliance on *Jennings v. Rodriguez,* 583 U.S. 281 (2018), is misplaced. Jennings merely upheld detention during the pendency of proceedings. It did not, however, authorize indefinite detention where no statutory removal proceeding exists. To the contrary, *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001), holds that a government's authority to detain an alien is "limited to a period that is reasonably necessary to secure removal." By continuing to detain Petitioner after her removal proceeding were terminated, Respondents are attempting to create an extra-statutory and indefinite detention scheme, which is precisely what the Supreme Court has warned against.

C. Misapplication of 8 C.F.R. §1003.6

Respondents contend that their appeal to the Board of Immigration Appeals (BIA) suspends the IJ's termination order, and thus they can continue to detain Petitioner. This is a deliberate misapplication of the regulation.

1) The Inapplicability of 8 C.F.R. §1003.6(a)

Respondents' reliance on 8 C.F.R. §1003.6(a) is legally untenable. That subsection states that an "order of deportation, exclusion, or removal shall not be executed" while an appeal is pending. The IJ in this case issued no such order. The IJ's order was a termination of proceedings, which did not require execution. There is nothing for §1003.6(a) to suspend. The

termination of the Notice to Appear (NTA) is a procedural finding that ends the legal case, thereby removing the DHS' legal basis for detention. This provision simply does not apply.

2) The Absence of Authority under 8 C.F.R. §1003.6(c)

Respondents' attempt to preserve detention authority from a declaration suggesting that 8 C.F.R. §1003.6(c) applies is equally flawed. This subsection governs specific custody appeals where DHS seeks an automatic stay of a bond order. It provides a highly circumscribed framework, requiring that DHS:

- File a custody appeal within 10 business days.
- Submit a certification from a designated senior official

Neither of these conditions has been met here. DHS did not file a custody appeal. Furthermore, the IJ did not issue a bond order; the IJ terminated proceedings entirely. A termination order is not a custody decision subject to an automatic stay under this provision. The fact that this regulation specifies a limited, time-bound procedure for DHS to stay a bond order proves that DHS does not possess a general, automatic authority to continue detention while appealing any decision. The very existence of this specific provision highlights the absence of such authority in this case.

By relying on the wrong regulatory framework, Respondents confirm that their continued detention of Petitioner lacks a lawful statutory basis.

D. Jurisdiction Properly Lies with USCIS

The IJ's decision to terminate proceedings was not an act of discretion. It was a correct application of controlling BIA precedent. Under 8 C.F.R. § 245.2(a)(1)(ii), USCIS retains exclusive jurisdiction over the adjustment applications of "arriving aliens." The BIA has consistently held that it is appropriate for an IJ to terminate removal proceedings when an "arriving alien" has a pending Form I-485 that is jurisdictionally ripe with USCIS. *See Matter of Yauri*, 25 I&N Dec. 103, 107 (BIA 2009); *Matter of Silitonga*, 25 I&N Dec. 89, 92 (BIA 2009). DHS's insistence on detention while simultaneously appealing a termination order is an attempt to circumvent this established jurisdictional framework and cling to a detention authority that has been legally extinguished.

IV. PETITONER DEMONSTRATES IRREPARABLE HARM

1 Respondents minimize Petitioner's harm. The records show ongoing, irreparable inju-
2 ries.
3 **A. Medical Harm**
4 Petitioner suffers from hypothyroidism, anemia, hyperlipidemia, and xerosis cutis, none
5 of which she suffered prior to her detention. While ICE has prescribed basic pills, this cursory
6 treatment is medically inadequate and her conditions are worsening. Inadequate or delayed
7 medical care in unlawful detention constitutes irreparable harm. *Basank v. Decker*, 449 F. Supp.
8 3d 205, 214 (S.D.N.Y. 2020).
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10 **B. Family Separation**
11 Unlawful detention has separated Petitioner from her U.S. Citizen husband, inflicting
12 emotional and practical hardship. The Ninth Circuit has long recognized that the separation of a
13 family unit inflicts irreparable harm. *Hernandez vs. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).
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15 **C. Constitutional Harm**
16 Continued detention without statutory authority is itself irreparable constitutional harm.
17 *Hernandez*, 872 F.3d at 994–95.
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19 **V. BALANCE OF EQUITIES AND PUBLIC INTEREST**
20 The balance of equities weighs overwhelmingly in Petitioner's favor. Respondents assert
21 only generalized enforcement interest. However, there is no public interest in the unlawful deten-
22 tion of an individual. *Nken v. Holder,* 556 U.S. 418, 436 (2009). The public interest is served
23 when the DHS adheres to the rule of law and respects the liberty interests of individuals within
24 its borders. Grant relief would enforce the jurisdictional lines between government agencies and
25 prevent constitutional violation of indefinite detention.
26 Further, DHS's failure to timely perfect an appeal to BIA underscores that its detention
27 for Petitioner lacks any lawful basis.
28
VI. CONCLUSION
Respondents' continued detention of Petitioner is not authorized by statute, is causing

and will continue to cause irreparable harm, and serves no legitimate government interest. This Court should therefore grant the requested relief.

WHEREOF, Petitioner respectfully requests that the Court:

1. GRANT the Emergency Motion for a Temporary Restraining Order to prevent further detention and to enjoin any attempt to remove Petitioner while her habeas petition is adjudicated.
2. ISSUE a writ of habeas corpus, finding that Petitioner's detention is unlawful and ordering her immediate release.
3. AFFIRM that jurisdiction over her adjustment of status application rests exclusively with USCIS.

Respectfully submitted.

Dated: September 22, 2025

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Attorney for Petitioner