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Case No. 2:25-cv-03396-MTL--CDB

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Maria Aide Vargas-Murillo

Petitioner-Plaintiff,

v.

Pam Bondi, in her Official Capacity, Attorney General of the United States; et al.

Respondents-Defendants.

Case No. 2:25-cv-03396-MTL--CDB

A-[redacted]

REPLY TO RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Respondents unlawfully detain Petitioner under a mistaken assertion that INA § 235(b)(2) requires mandatory detention of individuals who entered without inspection. Because DHS has improperly invoked § 235(b)(2), Petitioner has been deprived of the opportunity for an individualized bond hearing and remains in unlawful detention in violation of the INA, the APA, and the Constitution.

Petitioner meets the standard for a temporary restraining order. She is likely to succeed on the merits because her detention falls under § 1226(a), which authorizes bond hearings for long-term residents residing in the interior. She faces immediate and irreparable harm from continued unlawful detention, and both the equities and the public interest weigh decisively in her favor. Habeas relief is appropriate when a person "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Ms. Vargas seeks habeas relief because her detention violates the INA, the APA, and her Fifth Amendment right to due process.

The INA provides two distinct detention frameworks. Section 1225 governs "applicants for admission" encountered at or near the border, and mandates detention of individuals "seeking admission" until their admissibility is determined. 8 U.S.C. § 1225(b)(2)(A). Individuals detained under this section are not entitled to bond hearings. See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). Section 1226, by

contrast, governs the arrest and detention of individuals already present in the United States. It establishes a discretionary framework authorizing release on bond or conditional parole, except in narrow categories of mandatory detention defined in § 1226(c). See 8 U.S.C. § 1226(a)(1)–(2). Under binding regulations, noncitizens detained under § 1226(a) are entitled to individualized bond hearings before an immigration judge. *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

Ms. Vargas has resided in the United States for more than two decades. She is not an "arriving alien" at the threshold of admission, but rather a long-term resident in the interior whose detention is governed by § 1226. By misclassifying her under § 1225(b)(2), Respondents have denied her the basic protections Congress required and the Constitution guarantees.

II. DISCUSSION

A. Section §1226, not §1225 governs Ms. Vargas's Detention

Respondents' argument that Ms. Vargas is subject to mandatory detention under § 1225(b)(2) cannot withstand scrutiny in light of recent federal decisions that have carefully examined the statutory scheme. In two recent cases from the Western District of Kentucky, courts rejected DHS's attempt to apply § 1225(b)(2) to long-term residents apprehended in the interior of the United States. In *Barrera v. Tindall*, No. 3:25-cv-541-RGJ (W.D. Ky. Sept. 19, 2025) (Exhibit A), the court explained

that it was a "tortured reading" of the statute to treat a noncitizen who had lived in the United States for twenty years as if he were an "arriving alien" still "seeking admission." The court concluded that the text, structure, and context of the INA demonstrate that § 1226, not § 1225, governs detention in such circumstances.

Likewise, in *Singh v. Lewis*, No. 4:25-cv-96-RGJ (W.D. Ky. Sept. 25, 2025) (Exhibit B), the court adopted the same reasoning, again holding that § 1226 applied where the petitioner had been present in the United States for over a decade. Incorporating by reference its *Barrera* analysis, the court noted that it was "difficult to find that an individual is 'seeking admission' when that noncitizen never attempted to do so," and therefore § 1225 was inapplicable. The facts here are no different. Ms. Vargas entered the United States in 2004 and has now resided here for more than twenty years. She is not at the threshold of entry, but instead is a long-term resident of the interior. Under the reasoning of *Barrera* and *Singh*, her detention falls squarely under § 1226.

B. Petitioner has demonstrated a likelihood of success on the merits because she falls under 1226, not 1225.

Respondents argue that Ms. Vargas cannot show a likelihood of success. That argument is foreclosed by the growing consensus of federal courts rejecting DHS's novel interpretation of § 1225(b)(2). In *Barrera v. Tindall*, No. 3:25-cv-541-RGJ (W.D. Ky. Sept. 19, 2025), and *Singh v. Lewis*, No. 4:25-cv-96-RGJ (W.D. Ky. Sept.

25, 2025), the courts held that § 1226, not § 1225, governs the detention of long-term residents apprehended in the interior. Both courts emphasized that it is "difficult to find that an individual is 'seeking admission' when that noncitizen never attempted to do so." *Singh*. Ms. Vargas has resided in the United States since 2004, over twenty years. She is not an "arriving alien," and under the statutory scheme, her detention properly falls under § 1226.

This conclusion aligns with decades of agency practice, congressional amendments through the Laken Riley Act, and other district court rulings. See, e.g., *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025). Respondents' reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is misplaced, as federal courts are not bound by BIA precedent and have repeatedly declined to adopt that interpretation. Ms. Vargas therefore has a strong likelihood of success on the merits.

C. <u>The plain text of 1225 does not require Petitioner's Detention because she is not a new arrival, she is a long term resident.</u>

Respondents rely on the plain text of § 1225 to claim mandatory detention. But courts interpreting that text have reached the opposite conclusion. As *Barrera* explained, the title and context of § 1225 "Inspection by immigration officers; expedited removal of inadmissible arriving aliens"—show it governs inspections and arrivals, not long-term residents. Similarly, *Singh* rejected DHS's effort to read

"seeking admission" so broadly that it covered individuals who had lived in the country for over a decade. Statutory interpretation requires giving meaning to every word; "seeking" implies action. Long-settled residents like Ms. Vargas are not actively "seeking admission."

As the Supreme Court explained in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), § 1225(b) mandates detention of "applicants for admission," while § 1226(a) establishes a discretionary system that allows arrest, detention, or release of noncitizens already present in the United States. 583 U.S. 281, 288–89, 297–98 (2018).

D. Petitioner's detention does violate Due Process.

The government next insists that detention under § 1225 raises no due process concerns. But both *Barrera* and *Singh* rejected this assertion, applying the *Mathews v. Eldridge*, 424 U.S. 319 (1976) balancing test. Under *Mathews*, the analysis is straightforward.

First, Petitioner's private interest is profound. "[F]reedom from imprisonment from government custody, detention, or other forms of physical restraint lies at the heart of the very liberty that [the Due Process Clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has lived in Arizona for over two decades, supports her family, and has strong community ties.

Second, the risk of erroneous deprivation is substantial. The Immigration Judge initially heard testimony and reviewed evidence regarding Petitioner's eligibility for bond. Yet under the automatic stay, DHS may unilaterally nullify that decision, "usurping" the IJ's role and rendering the bond hearing "an empty gesture." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 671 (D.N.J. 2003). Courts have consistently recognized that such a scheme creates an intolerable risk of error.

Third, the government's interests do not outweigh Petitioner's liberty. The United States certainly has an interest in ensuring appearance at hearings and protecting the community. But where an IJ has already determined after an adversarial hearing that the noncitizen is not dangerous or a flight risk, those interests are fully protected. As the Minnesota court put it, "existing statutory and regulatory safeguards adequately serve the governmental interest in promoting public safety." *Günaydin v. Trump*, 2025 WL 1459154, at 10 (D. Minn. May 21, 2025)

Thus, all three *Mathews* factors weigh heavily in Petitioner's favor.

E. <u>Petitioner faces irreparable harm from unlawful detention.</u>

Respondents' unlawful civil detention inflicts irreparable injury. "One of the most elemental of liberty interests is to be free from detention," and "freedom from imprisonment from government custody, detention, or other forms of physical restraint lies at the heart of the liberty that the Due Process Clause protects." *Hamdi*

v. Rumsfeld, 542 U.S. 507, 529 (2004); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Ms. Vargas has lived in the United States since 2004, maintains deep family and community ties, and remains confined without access to the individualized bond process Congress provided in § 1226(a). Each additional day of confinement separates her from her family, disrupts employment and caregiving, and compounds the constitutional harm in a way money damages cannot remedy.

Recent district court decisions addressing this precise statutory issue confirm that prolonged, categorical detention without a bond hearing constitutes irreparable harm and warrants immediate relief. See, e.g., *Barrera v. Tindall*, (finding detention unlawful where DHS misapplied § 1225 and ordering release on bond terms set by the IJ); and *Singh v. Lewis*. Courts in this Circuit have likewise recognized that when DHS forecloses bond eligibility by misclassifying long-term residents under § 1225(b)(2), the resulting ongoing loss of liberty is irreparable and merits injunctive relief. The harm here is immediate, continuing, and not reparable by later review; Ms. Vargas is therefore entitled to relief now.

F. The Equities and Public Interest Favor Petitioner Because Her Liberty and Family Stability Outweigh the Government's Minimal Burden

The balance of equities tips sharply in Petitioner's favor. On one side is Petitioner's fundamental liberty interest in freedom from prolonged civil detention

without a bond hearing, as well as the stability and wellbeing of her family who depend on her daily presence and support. On the other side, the government has only a minimal interest in continuing to detain a longtime resident without providing the individualized custody review that Congress authorized in § 1226(a). Federal courts have repeatedly recognized that when liberty interests are at stake, the equities strongly favor release. See, e.g., *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

The public interest also favors granting relief. Upholding constitutional protections and preventing unlawful detention reinforce public confidence in the integrity of the immigration system. Far from undermining enforcement, requiring bond hearings promotes a fair and orderly process while ensuring that detention is limited to those who genuinely pose a danger or flight risk. The government routinely conducts such hearings, so requiring one here imposes no undue burden. By contrast, denying Petitioner this relief prolongs a deprivation of liberty that cannot be undone.

Dated: October 1st, 2025

Respectfully submitted,

/s/ Siovhan Ayala
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