

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

Luis Contreras Orellana

Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of
Homeland Security; Department of
Homeland Security, in her official capacity;

Todd M. LYONS, Acting Director of
Immigration and Customs Enforcement;
Immigration and Customs Enforcement, in
his official capacity;

Jeremy BACON, Field Office Director of
Enforcement and Removal Operations,
Louisville Field Office, Immigration and
Customs Enforcement, in his official
capacity;

Samuel J. OLSON, Field Office Director of
Enforcement and Removal Operations,
Chicago Field Office, Immigration and
Customs Enforcement, in his official
capacity;

Tom WATT, Sheriff of Grayson County,
Kentucky, custodian of detainees of the
Grayson County Detention Center,

Respondents.

Civil Action No. 4:25-cv-112-RGJ

**PETITIONER'S REPLY TO THE
GOVERNMENT'S RESPONSE TO THE
COURT'S ORDER TO SHOW CAUSE**

INTRODUCTION

Petitioner, through counsel, submits this reply to Respondent's response to this Court's Order to Show Cause. From the outset, the government begins by ignoring relevant facts. *See* Doc. 10, PageID 2. Firstly, all charges that led to Petitioner's arrest were dismissed, but an ICE hold was nonetheless placed on Petitioner. Secondly, Petitioner did not "illegally enter the United States, without being inspected, admitted, or paroled." *Id.* at PageID 1-2. Rather, Petitioner initially entered the United States in 2013, and was inspected by immigration officers. Petitioner was then *paroled from custody* pursuant to 8 U.S.C. § 1226, which, as discussed below, is **distinctly different** from a grant of parole under section 8 U.S.C. § 1182(d)(5)(a). *See Matter of Cabrera-Ferandez*, 28 I.&N. Dec. 747 (BIA 2023).¹ Petitioner's removal proceedings were then dismissed in 2022. *See* ECF 1-2, Exhibit A. Petitioner was detained again by Immigration and Customs Enforcement on or about March 29, 2024, and *once again* released pursuant to 8 U.S.C. § 1226 on a bond of \$6,000. *See* ECF 1-3, Exhibit B. Petitioner was detained by Respondents for a third time on August 26, 2025 pursuant to an ICE hold placed on Petitioner by the Daviess County Jail. Now, for the first time, Respondents claim Petitioner is detained pursuant to 8 U.S.C. 1225. *See* Doc. 10.

LEGAL ARGUMENT

The government's response fundamentally misapplies the statutory framework governing immigration detention and misconstrues *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) to

¹ Petitioner's 2013 removal proceedings that were dismissed on May 18, 2022 are not part of the Electronic Case Portal (ECAS) system and counsel does not presently have access to the Notice to Appear and other documents that are part of that case. However, it does not appear Petitioner was ever issued an I-94 humanitarian parole document, but rather, was paroled from custody under § 1226. If Petitioner was issued humanitarian parole under 8 U.S.C. § 1182(d)(5)(a) as the government claims, the Notice to Appear (NTA) issued to Petitioner in 2024 would reflect that she had been paroled into the United States. It does not. *See* ECF 1-3, Exhibit B.

authorize indefinite mandatory detention of individuals who have resided in the United States for extended periods. The Government's interpretation would render § 1226(a)'s bond provisions meaningless for a vast category of noncitizens and conflicts with the plain text, structure, and purpose of the Immigration and Nationality Act (INA). Undeterred, the government insists that, despite the fact that Petitioner has been in the United States for over thirteen years and was indeed previously released on March 29, 2024 on a bond pursuant to I.N.A. 236, 8 U.S.C. § 1226, that Petitioner is now detained under § 1225(b)(2)(A). *See* Doc. 10. This argument fails as a matter of the plain reading of the Immigration and Nationality Act (INA), basic principles of statutory construction, congressional intent, and longstanding agency precedent.

I. THE PLAIN TEXT OF § 1225(B)(2) APPLIES ONLY TO ARRIVING ALIENS, NOT TO PETITIONER

A. Section 1225(b)(2) Must Be Read in Context with the Entire Statutory Scheme

Respondents rely heavily on the definition of “applicant for admission” in § 1225(a)(1) while ignoring the critical contextual limitations within § 1225(b)(2) itself. Section 1225(b)(2)(A) applies to “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.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Respondents contend that Petitioner is an “applicant for admission” and thus properly detained under Section 1225, because “Orellana is present in the United States. Orellana has not been admitted. Orellana is an applicant for admission, by the terms of 8 U.S.C. § 1225(a)(1).” *See* Doc. 10 PageID 2. Respondents further allege that Orellana is an applicant for admission because she “never effected lawful entry into the United States.” *Id.* As the Court recently noted “the United States contends, the term seeking admission in § 1225(b)(2)(A) does not refer to a noncitizen

attempting to physically access the United States; instead it refers to a noncitizen seeking a lawful means of entering the United States (e.g., receiving a visa.)” *Beltran Barrera*, 3:25-cv-00541-RGJ at 5 (internal quotation marks omitted). This interpretation is inconsistent with the plain reading of §1225(b)(1) which states “if an immigration officer determines that an alien ... who **is arriving in the United States** ... is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum.” 8 U.S.C. § 1225(b)(1)(A)(i) (emphasis added). As this Court again recently noted “Respondents ‘completely ignore’ or even read out, the term ‘seeking’ from the ‘seeking’ from ‘seeking admission.’” *Beltran Barrera*, 3:25-cv-00541-RGJ at 8 (quoting *Lopez- Campos* 2025 WL 2496379 at *6.). Indeed, if they did not read out the term “seeking” from “seeking admission” Respondents would have no choice but to admit that an “applicant for admission” is “seeking admission” to the United States, which “implies action.” *Id.* at 8 (emphasis added).

B. Congress Enacted § 1226(a) Specifically for Noncitizens Who Are Already in the United States

8 U.S.C. § 1225(b)’s mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Congress did not intend to subject all people present in the United States after an unlawful entry to mandatory detention if arrested. Prior to the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), which codified both 8 U.S.C. § 1225 and 8 U.S.C. § 1226, aliens present without admission were not necessarily subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability

proceedings, which applied to all persons within the United States). In articulating the impact of IIRIRA, Congress noted that the new § 1226(a) merely “restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added). *See also* H.R. Rep. No. 104-828, at 210 (same). The Government's argument that §§ 1225(b) and 1226(a) completely overlap would render § 1226(a) superfluous. Congress explicitly provided in § 1226(a) that “an alien **may be arrested and detained pending a decision on whether the alien is to be removed** from the United States” and that such detention is discretionary—“the Attorney General may release the alien on ... bond.” 8 U.S.C. § 1226(a) (emphasis added). If Congress intended § 1225(b)(2) to apply to all individuals who entered without inspection regardless of how long they have been in the country, there would be no reason to enact § 1226(a) with its bond provisions. The Government's interpretation violates the fundamental canon against surplus language. *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (“We are ‘reluctant to treat statutory terms as surplusage’ in any setting.”).

If further evidence of Congress' intent is needed, the Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* LAKEN RILEY ACT, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress

reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanent residents, who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020) (“specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.”) (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Indeed “if congress had intended for section § 1255 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently adopted an amendment to Section § 1226 that prescribes a subset of noncitizens be exempt from the discretionary bond framework.” *Lopez-Campos v. Raycraft*, 2025 WL 2496379 at *8 (quoting *Maldonado v. Olsen*, 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025)).

The government argues that Respondents’ novel interpretation of § 1225 does not render the Laken Riley Act superfluous, but offers no rational support for this position. *See* Doc. 10 at PageID 7-10. Rather, the government quotes *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), one of only two cases dealing with this issue where the federal court has sided with Respondents. The *Chavez* court held that 1226(c) “simply removed the Attorney General’s detention discretion for aliens charged with specific...crimes. The Attorney General may still exercise her detention discretion under § 1226(a) for any other aliens falling under that subsection who are not charged with specific crimes carved out by § 1226(c)” *Id.* at *5. This completely ignores the plain language of § 1226(c)(1)(E)(i), which explicitly and unambiguously references 8 U.S.C. § 1182(a)(6)(A) “an alien present in the United States

without being admitted or paroled...” Simply put, if, as the government contends, all noncitizens present in the United States without admission or parole are already subject to mandatory detention under § 1225 as “applicants for admission”, there would be no need for Congress to explicitly carve out a subsection of noncitizens present in the United States without admission or parole in the mandatory detention provisions of § 1226(c). Indeed, the Court in *Rodriguez v. Bostock* noted “a plain reading of this [§ 1226(c)] exception implies that the default discretionary bond procedures in section 1226(a) apply to a noncitizen who, like Rodriguez, is present without being admitted or paroled, but *has not been* implicated in any crimes as set forth in section 1226(c).” 779 F. Supp. 3d 1239, 1256.

II. II. RESPONDENTS HAVE LONG CONSIDERED THOSE LIKE PETITIONER DETAINED UNDER § 1226(A)

Respondents’ longstanding practice of considering people like Petitioner as detained under § 1226(a) further supports reading the statute to apply to them. Typically, DHS issues a person Form I-286, Notice of Custody Determination, or Form I-200, Warrant for Arrest of Alien, stating that the person is detained under § 1226(a) (§ 236 of the INA). As these arrest documents demonstrate, DHS has long acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the country’s borders long after their entry. Such a longstanding and consistent interpretation “is powerful evidence that interpreting the Act in [this] way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *See also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government interpretation and practice to reject its new proposed interpretation of the law at issue). As discussed above, Respondents *twice* released Petitioner under the provisions of § 1226, once when she was

paroled from custody upon arrival in the United States in 2013, and later when she was released on a \$6,000 bond in 2024.

EOIR regulations have long recognized that Petitioner is subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19—the regulatory basis for the immigration court’s jurisdiction—provides otherwise. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implemented § 1226 decades ago. At that time, EOIR explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323.

III. RESPONDENTS MISSAPPLY *JENNINGS V. RODRIGUEZ*

A. *Jennings* Does Not Support Mandatory Detention of Long-Term Residents Under § 1225(b)(2)

Respondents quote *Jennings*' statement that § 1225(b)(2) is a "catchall provision" applying to "all applicants for admission not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287. But Respondents omit the critical qualifier: *Jennings* explicitly stated that "§ 1225(b) applies primarily to aliens seeking entry into the United States." *Id.* at 297 (emphasis added).

The word "primarily" is dispositive. It means § 1225(b) applies *mainly* or *chiefly* to arriving aliens, not to every person who ever entered without inspection. The Supreme Court distinguished between the statutory provisions precisely because they serve different purposes: §

1225(b) governs the admission process, while § 1226 governs detention of aliens already in the country pending removal proceedings.

B. The Government's Cited Cases Misread *Jennings* and Ignore Contrary Authority

The government cites two cases in support of their novel interpretation of the statutory framework governing the detention of noncitizens: *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) and *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). For the reasons discussed *supra*, these cases misread *Jennings* and the plain reading of § 1225. The *overwhelming majority* of federal courts have correctly held that § 1225(b)(2) does not apply to noncitizens, like Petitioner, who were apprehended after residing in the United States. *See, e.g., Singh v. Lewis*, 4:25-cv-00096-RGJ (this Court's own prior decision recognizing this distinction); *see also Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Yajure Hurtado*); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (same); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight* No. 2:25-CV-01366-RFB-DJA,

2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Choglo Chafra v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2531027 (D. Me. Sept. 2, 2025); *Alves da Silva v. U.S. Immigrations and Customs Enforcement*, No. 25-CV-284-LM-TSM, 2025 WL 2778083, (D.N.H. Sept. 29, 2025). Most recently, a federal judge granted a preliminary injunction in a class action brought on behalf of multiple plaintiffs who were denied bond under the same theory the government advances here. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). In doing so, the Court enjoined the respondents from continuing to deny the plaintiff's bond under the theory that they are detained under § 1225.

The Government's interpretation would mean that ICE could unilaterally convert any § 1226(a) detention—with bond eligibility—into mandatory § 1225(b)(2) detention simply by asserting jurisdiction under the latter provision. This would give ICE unlimited discretion to deny bond hearings to an entire class of noncitizens, contrary to congressional intent.

IV. THE STATUTORY CONTEXT CONFIRMS THAT PETITIONER IS DETAINED UNDER § 1226(a)

A. Petitioner Received a Notice to Appear Under 8 U.S.C. § 1229(a)

The procedural posture confirms that Petitioner is subject to § 1226(a), not § 1225(b)(2). Petitioner received a Notice to Appear (NTA) initiating removal proceedings under § 1229a—the process Congress established for aliens already in the United States. 8 U.S.C. § 1229(a). Section 1225(b)(1) aliens are subject to expedited removal without receiving an NTA or full removal proceedings. Section 1225(b)(2) aliens receive abbreviated procedures before an immigration officer. In contrast, § 1229a proceedings with full NTAs are the hallmark of § 1226 detention.

The Government cannot have it both ways—using § 1229a procedures while claiming § 1225(b)(2) detention authority in a sort of “schrödinger's cat” for purposes immigration detention and removal proceedings.

B. ICE's Initial Detention Documents Invoked § 1226

The Government's own documents undermine its current position. ICE initially detained Petitioner under § 1226 authority and only later attempted to recharacterize the detention under § 1225(b)(2). Conspicuously missing from the government's response is any explanation as to why Respondents released Petitioner from custody pursuant to § 1226 in 2013, and again pursuant to § 1226 on a bond of \$6,000 in 2024, but now claim Petitioner is detained under § 1225. This tactical shift demonstrates that the Government is manipulating the statutory framework to deny Petitioner her right to a bond hearing. This Court should “not credit this post-hoc justification in the face of clear evidence that [Petitioner] was detained pursuant to Section 1226.” *Beltran Barrera*, 3:25-cv-00541-RGJ at 8 (citing *Cf Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, U.S. 1, 22, 24 (2020)) (stating that “[t]he basic rule here is clear: [a]n agency must defend its actions based on the reasons it gave when it acted.”).

CONCLUSION

The Government's strained interpretation of § 1225(b)(2) conflicts with statutory text, structure, precedent, and constitutional principles. Section 1225(b)(2) applies to aliens seeking admission at or near the time of arrival—not to individuals like Petitioner who have resided in the United States for extended periods and are subject to removal proceedings under § 1229a.

Petitioner is detained under § 1226(a) and is entitled to a bond hearing. The Court should grant the petition and order Petitioner released, or conduct its own bond hearing under § 1226.

Respectfully submitted,

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Dated: October 7, 2025

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

/s/ Evangeline Dhawan-Maloney
Evangeline Dhawan-Maloney
Attorneys for Petitioner

Dated: October 7, 2025