UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

LUIS CONTRERAS ORELLANA — PETITIONER

v. — CIVIL ACTION NO. 4:25-cv-00112-RGJ (*e-filed*)

KRISTI NOEM, Secretary, U.S. Department of Homeland Security; TODD M. LYONS, Acting Director of Immigration and Customs Enforcement; JEREMY BACON, Field Office Director of Enforcement and Removal Operations; SAMUEL J. OLSON, Field Office Director of Enforcement and Removal Operations; TOM WATT, Sheriff of Grayson County, Kentucky, in their official capacities — RESPONDENTS

RESPONDENTS' POST-HEARING BRIEF

Pursuant to the Court's order and the parties' representations at the hearing on this matter (Doc. 14), the Respondents respectfully direct the Court to the following points in response to the Petitioner's arguments in their last filing (Doc. 11) and the hearing in this matter.

I. 8 U.S.C. § 1225(b)(2) is not limited in application to arriving aliens.

Petitioner argues that "the plain text of § 1225(b)(2) applies only to arriving aliens" (Doc. 11, PageID.76-77, 81, 84.). But the term "arriving" only appears in 8 U.S.C. § 1225(b)(1), not § 1225(b)(2), the provision applicable to Petitioner. 8 U.S.C. § 1225(b)(1) is titled "Inspection of Aliens Arriving in the United States and Certain Other Aliens Who Have Not Been Admitted or Paroled", while 8 U.S.C. § 1225(b)(2) is titled "Inspection of Other Aliens". As the Supreme Court noted, "applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). "Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud,

misrepresentation, or lack of valid documentation" and "certain other aliens designated by the Attorney General in his discretion." *Id.* "Section 1225(b)(2) is broader. It serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)."[1] *Id.*

Petitioner quotes *Jennings* as saying "§ 1225(b) applies primarily to aliens seeking entry into the United States." (Doc. 11, PageID.81), citing *Jennings*, 583 U.S. at 297. Petitioner argues that "[t]he word "primarily" is dispositive, but the opposite is true: use of the word "primarily" necessarily means that § 1225(b) applies to aliens seeking entry as well as to other aliens.

II. By statute, Petitioner is seeking admission.

Petitioner accuses Respondents of ignoring or reading out the term "seeking" from "seeking admission" in discussing who is an arriving alien. (Doc. 11, PageID.77.). But the term "seeking" is immaterial to whether or not Petitioner is an arriving alien. The Supreme Court has established that aliens "seeking admission" are applicants for admission: "As noted, § 1225(b) applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*. 583 U.S. at 297. Likewise, the Supreme Court has noted that aliens present in the United States who have not been admitted, as a class, are applicants for admission, as are, separately, arriving aliens: "'[A]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival ...)' is deemed 'an applicant for admission.'" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020), quoting 8 U.S.C. § 1225(a)(1). *See also Jimenez-Rodriguez v. Garland*, 996 F.3d

[1] Those two exceptions are crewmen and stowaways; Petitioner is neither. 8 U.S.C. §§ 1225(a)(2), 1281, 1282(b).

190, 194, n.2 (4th Cir. 2021): "Because Jimenez-Rodriguez was never lawfully admitted, he qualifies as someone 'seeking admission'".

Two categories of aliens found in the interior are not aliens "seeking admission." Aliens who withdraw their application for admission in order to "depart immediately from the United States" are not aliens "seeking admission". 8 U.S.C. § 1225(a)(4); *Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017). Aliens agreeing to voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings" are not aliens "seeking admission". 8 U.S.C. § 1229c(a)(1). But aliens like Petitioner who are present in the United States, have not been lawfully admitted, and do not agree to immediately depart are aliens seeking lawful entry, and they must be referred for removal proceedings under § 1229a. 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Petitioner is seeking asylum and withholding of removal. (Doc. 1, PageID.13-14, ¶ 46.). Petitioner has not allowed removal proceedings to play out, through conceding removability or otherwise; Petitioner instead seeks admission through removal proceedings. Petitioner has not been admitted and is an applicant for admission, and applicants for admission are subject to mandatory detention. 8 U.S.C. §§ 1225(a)(1), (b)(2)(A).

Prior parole has no bearing on Petitioner's present status as an applicant for admission. 8 U.S.C. § 1182(d)(5)(A) establishes that "parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." "'Parole' into the United States allows an individual physically to enter the country, but it is not equivalent to legal entry into the United

States." *Morales-Ramirez v. Reno*, 209 F.3d 977, 978 (7th Cir. 2000). "Aliens paroled into the United States are considered 'arriving aliens' and applicants for admission." *Montes v. Dep't of Homeland Sec.*, No. 25-CV-372-WMC, 2025 WL 1638439, at *2 (W.D. Wis. June 9, 2025), citing 8 U.S.C. § 1225(a)(1) and 8 C.F.R. § 1.2.

III. Canons of statutory construction run contrary to Petitioner's proffered interpretation of 8 U.S.C. §§ 1225 and 1226.

Petitioner asks the Court to avoid applying the text of 8 U.S.C. § 1225(b)(2), but Petitioner is an applicant for admission as defined by statute, and as noted in *Jennings v. Rodriguez*, 8 U.S.C. § 1225(b)(2) is a catchall that applies to applicants for admission. "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. United States*, 242 U.S. 470, 485 (1917). Courts "must adopt the plain meaning of a statute, however severe the consequences." *Jay v. Boyd*, 351 U.S. 345, 357–58 (1956), citing *Galvan v. Press*, 347 U.S. 522, 528 (1954) (and noting that "suspension of deportation is not given to deportable aliens as a right, but by congressional direction, it is dispensed according to the unfettered discretion of the Attorney General."). The operative terms in 8 U.S.C. § 1225(b)(2) are defined by statute, but if the Court resorts to rules of interpretation, those too favor the Respondents' interpretation.

Petitioner cites *Duncan v. Walker*, 533 U.S. 167, 174 (2001) for the proposition that courts are "reluctant to treat statutory terms as surplusage". (Doc. 11, PageID.78.). Petitioner omits the preceding text, commanding that it is courts' "duty 'to give effect, if possible, to every clause and word of a statute.'" *Id.*, quoting *United States v. Menasche*, 348 U.S. 528, 538–539 (1955). This is a "cardinal principle of statutory construction". *Id.*, quoting *Williams v. Taylor*, 529 U.S. 362, 404 (2000). Petitioner's proffered interpretation would deny effect to the term "admission" in 8

U.S.C. § 1225(b)(2); the term "admission" is defined at 8 U.S.C. § 1101(a)(13) to "mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." In turn, Petitioner's proffered interpretation of 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1101(a)(13) would deny effect to the term "lawful", as a necessary and absolute qualifier for the term "admission". Petitioner has not effected a lawful entry into the United States, despite a pending application for asylum and withholding. The Court should apply *Duncan*, and give effect to every clause word of 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1101(a)(13), including "admission", and the "lawful entry" that is a necessary component of "admission".

IV. The Laken Riley Act does not negate or conflict with the text of §§ 1225 and 1226, nor create a redundancy that alters the meaning of the statutory text.

Petitioner asserts that the Laken Riley Act, Pub. L. No. 119-1, demonstrates a congressional intent consistent with Petitioner's proffered interpretation of 8 U.S.C. §§ 1225 and 1226, and would be redundant if § 1225 were interpreted to mandate detention for any "applicant for admission" who is "not clearly and beyond a doubt entitled to be admitted". (Doc. 11, PageID.78-80.). "But redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication. The [Supreme] Court has often recognized: "Sometimes the better overall reading of the statute contains some redundancy." *Barton v. Barr*, 590 U.S. 222, 239 (2020), quoting *Rimini Street, Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019), and citing *Wisconsin Central Ltd. v. United States*, 585 U.S. 281-282 (2018), *Marx v. General Revenue Corp.*, 568 U.S. 371, 385 (2013), and *Lamie v. United States Trustee*, 540 U.S. 526, 536 (2004). A "redundant statutory reference" should not cause a court to "entirely rewrite" a statutory provision. *Id.* "Redundancy in one portion of a

statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text". *Id.*

The Laken Riley Act was written into law after an inadmissible alien "was paroled into this country through a shocking abuse of that power." 171 Cong. Rec. H278 (daily ed. Jan 22, 2025) (statement of Rep. McClintock). The Act was passed because of concern that the executive branch had "ignore[d] its fundamental duty under the Constitution to defend its citizens." 171 Cong. Rec. at H269 (statement of Rep. Roy). As the Supreme Court phrased it in addressing different legislation, "Congress . . . simply intended to remove any doubt" in passing the Laken Riley Act, – though in this instance, with regard to the applicability of mandatory detention pending removal proceedings. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 226 (2008). One legislator specifically noted that "every illegal alien is currently required to be detained by current law throughout the pendency of their asylum claims," and yet the executive branch at that time was not giving effect to that statutory mandate. 171 Cong. Rec. at H278 (statement of Rep. McClintock). The Laken Riley Act is a "congressional effort to be doubly sure" that such aliens are detained as the law required. *Barton*, 590 U.S. at 239.

Petitioner is incorrect in suggesting that the Laken Riley Act changed what Congress intended in the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"). (Doc. 11, PageID.78-80.). The Supreme Court has spoken to this proposition: "These later-enacted laws, however, are beside the point. They do not declare the meaning of earlier law. . . . or a change in the meaning of an earlier statute." *Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998). In addition, "'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'" *S. Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 355 (1998), quoting

United States v. Philadelphia Nat'l Bank, 374 U.S. 321, 348–349 (1963).

V. Respondents do not argue that "§§ 1225(b) and 1226(a) completely overlap".

Without citation, Petitioner attributes to Respondents a claim that "§§ 1225(b) and 1226(a) completely overlap", and this "would render § 1226(a) superfluous." (Doc. 11, PageID.78.). This is not Respondents' position. There are several classes of aliens who could be subject to discretionary detention under 8 U.S.C. § 1226, but not mandatory detention under 8 U.S.C. § 1225(b)(2). These could include visa overstays; aliens found to have procured a visa by fraud or misrepresentation; and aliens found to have secured advance parole through fraud or misrepresentation. Petitioner's assertion of superfluidity is misplaced. (Doc. 11, PageID.78.).

VI. Prior agency practice should not alter judicial interpretation of clear statutory language.

Petitioner argues that prior agency practice should inform this Court's interpretation of 8 U.S.C. §§ 1225 and 1226, but that is not the case. The Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), commands that where the plain language of the statute compels an interpretation, prior practice does not alter that result. § 1225(b)(2)(A) by its own text and terms applies to Petitioner, as the terms "admission" and "applicant for admission" are clearly and unambiguously defined by 8 U.S.C. §§ 1101(a)(13) and 1225(a)(1).

VII. Conclusion

Petitioner's custody is lawful because by the terms of the applicable statutes, Petitioner is an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2025, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel for the Petitioner.

/s/ Jason Snyder
Jason Snyder
Assistant United States Attorney