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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LUCAS MENDOZA CASTRO; and YESENIA MORALES CALIXTO,

Petitioner-Plaintiff,

v.

CHRISTOPHER J. LAROSE, et al.

Respondents-Defendants.

Case No.: 25-cv-2645-BAS-JLB

PETITIONER'S TRAVERSE SUPPORTING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner replies to Respondents' Return as follows:

A. Petitioner Yesenia Morales Calixto's Habeas Claim is Not Moot

Ms. Morales Calixto's case falls squarely within the "capable of repetition, yet evading review" exception to mootness. Under Spencer v. Kemna, 523 U.S. 1, 17 (1998), this exception requires: (1) the challenged action is too brief for full litigation, and (2) a reasonable expectation of recurrence. Both prongs are satisfied here. This standard has been applied in cases such as San Luis & Delta-Mendota Water Auth. v. U.S. Dep't of the Interior, 870 F. Supp. 2d 943, 959 (E.D. Cal. 2012), where the court recognized that some government actions are inherently too brief for judicial review but likely to recur.

The government's release of Ms. Morales Calixto was purely tactical, not substantive. She was released only after an immigration judge (IJ) granted a bond order under 8 U.S.C. § 1226(a), INA § 236(a), which the government immediately appealed to the Board of Immigration Appeals (BIA) to reverse. The government's reliance on the precedential decision of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)—which broadly interprets "applicant for admission" to mandate detention under § 1225(b)(2)—demonstrates its intent to redetain Ms. Morales Calixto if the Board rules in its favor. This creates a cycle where the government detains, courts order release, and the government appeals and threatens redetention – thus forcing the petitioner into repeated, short-lived litigation. The brevity of Ms. Morales Calixto's release would thus result from the government's procedural maneuvering, not a resolution of the underlying statutory and constitutional issues.

The government's appeal and policy create a "reasonable expectation" of redetention. The government is actively seeking to invalidate the IJ's bond order by continuing its appeal of Ms. Morales Calixto's bond order. Given there is no reason to believe the BIA will not rely on its recently issued precedent in *Yajure Hurtado* (which breaks from decades of caselaw), the government will redetain Ms. Morales Calixto under § 1225(b)(2). Indeed, the Respondents say in their return that, "If the BIA rules in the favor of DHS following this court's ruling, the agency will then be authorized to re-detain Mendoza Castro." (See Docket 9, p. 7, lines 11-12.) As such, the same will be true from Ms. Morales Calixto – once the Board reverses the IJ's bond order with respect to Ms. Morales Calixto, she will also be redetained by the Respondents.

The government's auto-stay regulation (8 C.F.R. § 1003.19(i)(2)) allows continued detention during appeals, even after bond orders. This was used in Dominguez-Lara v. Noem, No. 2:25-cv-01553-RFB-EJY, 2025 LX 421098 (D. Nev. Oct. 24, 2025), to detain petitioners beyond the 90-day limit, showing a systemic pattern of avoiding judicial review. The auto-stay is not the main issue here, the main issue is that Respondents claim both Ms. Morales Calixto and Mr. Mendoza Castro are mandatory detention subject to Section 1225(b)(2). That issue has not been resolved with respect to either Petitioner, including Ms. Morales Calixto who is subject to redetention at any time.

The fact that the BIA has not yet ruled on Ms. Morales Calixto's bond appeal does not mean the habeas is moot when it is all but a foregone conclusion which way the BIA will rule. In Matute v. Wofford, No. 1:25-cv-01206-KES-SKO (HC), 2025 LX 401248 (E.D. Cal. Oct. 24, 2025), the court held that consent to removal under duress did not bar review because the petitioner's intent to reopen proceedings preserved a live controversy. Similarly, here, the Ms. Morales Calixto's release is conditional and subject to reversal.

Finally, even if released, Ms. Morales Calixto still faces ongoing harm. First, conditional releases create protected liberty interests requiring procedural safeguards. See Qazi v. Albarran, No. 2:25-cv-02791-TLN-SCR, 2025 LX 409531 (E.D. Cal. Sep. 29, 2025). The government's refusal to recognize this interest violates Mathews v. Eldridge, 424 U.S. 319, 335 (1976), due process standards. In Sanchez v. Minga Wofford, Warden, Mesa Verde Immigrant Processing Ctr., No. 1:25-cv-01187-SKO (HC), 2025 LX 481997 (E.D. Cal. Oct. 17, 2025), the court cited inadequate medical care in detention as irreparable harm,

underscoring that release does not erase prior constitutional violations. The combination of the government's appeal and detention policy ensures the same injury will recur. As in Zadvydas v. Davis, 533 U.S. 678, 690 (2001), prolonged detention without review is a recurring constitutional violation.

In sum, Ms. Morales Calixto's case is not moot – there still exists the live controversy of the Respondents claiming she is mandatory detention subject to Section 1225(b)(2) and Petitioners claiming she is subject to 1226(a). The government's appeal and detention policy create a "capable of repetition" scenario where: (1) the detention/release cycle is too brief for full litigation, and (2) redetention is reasonably expected. For these reasons, Ms. Morales Calixto respectfully enforce due process under Mathews and reject mootness to prevent the government from evading review through procedural gamesmanship – without a determination by this Court Ms. Morales Calixto will be subject to redetention in the very near future (e.g., once the Board issues its decision on the bond appeal).

B. Petitioners' Habeas Claims Are Not Barred by 8 U.S.C. § 1252

Section 1252 does not apply to bar jurisdiction because this action does not request the judicial review of a removal order, nor does it concern the commencement of removal proceedings – this action squarely concerns Petitioners' unlawful detention.

The alleged misapplications of 8 U.S.C. § 1225 and § 1226 are Respondents' basis for the detention of Petitioners. The Respondents contend Petitioners are subject to Section 1225(b)(2)'s mandatory detention provisions because they are "seeking admission" into the U.S., although Petitioners have been in the U.S. for more than two decades. In this petition,

Petitioners do not make *any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders.* Therefore, the jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here. Nor do Petitioner make any *challenges to the method by which the government chooses to commence removal proceedings*.

As set forth in the petition, the Respondents commenced these proceedings under 8 U.S.C. § 1226. They then placed Petitioners in removal proceedings pursuant to 8 U.S.C. § 1229a and charged them with being present in the U.S. without having been admitted or paroled and therefore removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Here, Petitioners challenge the Respondents' denial of their release from immigration custody / imminent threat of redetention on the purported basis that Petitioners are subject to mandatory detention under section 1225(b)(2). Courts have repeatedly held that § 2241 permits direct review of detention legality, rejecting jurisdictional arguments. See, e.g., Tut v. Noem, No. 5:25-cv-02701-DOC-AGR, 2025 LX 415266 (C.D. Cal. Oct. 16, 2025); Carlos v. Noem, No. 2:25-cv-01900-RFB-EJY, 2025 LX 483830 (D. Nev. Oct. 24, 2025).

The government's contention that 8 U.S.C. § 1252(b)(9) bars jurisdiction of this Court is similarly unavailing. Petitioners are not seeking *"[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the U.S.*. Petitioners are challenging their unlawful detention / the imminent threat of unlawful redetention. Furthermore, Petitioners are also not seeking *judicial review of a final order of removal.* Petitioners' removal proceedings continue to be pending before the San

Diego Immigration Court. See the EOIR Online Case Information System corresponding to Petitioner's Agency Number, accessible at: https://acis.eoir.justice.gov/en/caseInformation.

C. Petitioners are not Subject to Mandatory Detention

Petitioners are not lawfully detained under § 1225(b)(2)(A) as alleged by the government because: 1) the text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioners are not subject to mandatory detention, 2) the legislative history further supports the application of § 1226(a) to Petitioners, and 3) the record and longstanding agency practice reflect that § 1226 governs Petitioners' detention.

1. The Text Of § 1226(a) and § 1225(b)(2) Demonstrate That Petitioners Are Not Subject To Mandatory Detention.

First, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioners. Section 1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the U.S.." 8 U.S.C. § 1226(a). This interpretation is supported by recent amendments to Section 1226 by Congress. The Laken Riley Act added language to § 1226 referencing noncitizens who have entered without inspection, those who are inadmissible because they are present without admission. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for presence without admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid documentation to enter the U.S.) 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 further clarified that § 1226(a) encompasses persons charged under § 1182(a)(6) or (a)(7).

In other words, if someone is only charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply – as is the case with Petitioners – then § 1226(a) governs that person's detention. *See Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025)[1], explaining these amendments explicitly provide that § 1226(a) encompasses people like Petitioners because the "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under § 1226(a)'s default rule for discretionary detention."); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under § 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar); see also *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct); see also *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) ("[C]ourt[s] 'must interpret the statute as a whole, giving effect to each word and making

[1] On September 30, 2025, the Court granted Plaintiffs' partial motion for summary judgment and denied Defendants' Motion to Dismiss.

every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.'" (citation omitted)).

In sum, § 1226's plain text demonstrates that § 1225(b)(2) does not apply to noncitizens in the U.S. are present within and residing within the U.S., but rather only to those at the border seeking admission. As the Supreme Court recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," Id. at 287. The Supreme Court went on to explain that Section 1226 is the "default rule" and "applies to aliens already present in the United States." *Id.* at 288, 301. By contrast, section 1225(b) "applies primarily to aliens seeking entry into the United States" and authorizes DHS to "detain an alien without a warrant at the border." *Id.* at 297, 302.

The Board's decision in *Matter of Yajure Hurtado* and the district court's decision in *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228 conflict with not only Supreme Court precedent in *Jennings*, but also Ninth Circuit precedent. An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the U.S." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in the U.S. without admission or parole is someone "deemed to have made an actual application for admission." *Id.* (emphasis omitted). Only those who take affirmative acts, like submitting an "application for admission," are those

who can be said to be "seeking admission" within § 1225(b)(2)(A). Otherwise, that language would serve no purpose, violating a key rule of statutory construction. *See Shulman v. Kaplan*, 58 F.4th 408, 410-11 (9th Cir. 2023).

The plain language of subsections (b)(1) and (b)(2) of § 1225 further support this interpretation. Paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under § 1182(a)(6)(C) or § 1182(a)(7)." See § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the U.S. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the U.S. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the U.S. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. Id. § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioners, who have already entered and are now residing in the U.S.

Further, subparagraph 1225(b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e. those who are "arriving on land." 8 U.S.C. § 1225(b)(2)(C). This language further underscores Congress's focus in § 1225 on those who are arriving to the U.S.—not those already residing here. Similarly, the title of § 1225 refers

to the "inspection" of "inadmissible arriving" noncitizens. *See Dubin v. U.S.*, 599 U.S. 110, 120–21 (2023)(relying on section title to help construe statute).

The fact that Section 1225 is premised on an application for admission occurring at or near the border shortly after arrival is further evident from the statute repeatedly referring to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the U.S.," id. § 1225(a)(3), (b)(1), (b)(2), (d); see also *King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

Neither *Matter of Yajure Hurtado* nor *Chavez v. Noem* address how being "an applicant for admission" is only part of the inquiry regarding being subject to mandatory detention under 1225(b)(2). Instead, the language "applicant for admission" in (b)(2)(A) is further qualified by only those "seeking admission"—in other words, those who are in the process of seeking admission to the United States (not someone already here). Thus, because the Petitioners are neither an "applicant for admission" nor in the process of "seeking admission" into the U.S., they are not subject to mandatory detention under § 1225(b)(2).

Lastly, to the extent that the statute is ambiguous, it must be read to provide a right to a bond hearing under § 1226(a) to comport with procedural due process, which requires such a hearing absent an explicit statement to the contrary. *See e.g. Zadvydas v. Davis*, 533 U.S. 678, 697 (2001) (requiring release for post-final order detention cases to meet constitutional concerns in light of textual ambiguity).

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2. The Legislative History Further Supports The Application Of § 1226(a) To Petitioner's Detention.

The legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also shows that § 1226(a) applies to Petitioners. Prior to IIRIRA, people like Petitioners were not subject to mandatory detention. See 8 U.S.C. § 1252(a)(1)(1994). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have so stated. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But instead Congress stated the new § 1226(a) merely "restates the current provisions in [INA] § 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 U.S.." H.R. Rep. No. 104- 469, pt. 1, at 229; see also H.R. Rep. No. 104-828, at 210 (same). Indeed, the legislative history states that "aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

3. The Record and Longstanding Agency Practice Reflect That § 1226 Governs Petitioner's Detention.

The Board has a long practice of considering people like the Petitioner as detained under §1226(a) further supports this reading of the statute. Even as recently as June 30,

2025, the Board held in *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025), that an immigration judge had jurisdiction under 8 U.S.C. § 1226(a) to conduct a bond redetermination hearing for a noncitizen who was charged with entering the U.S. without inspection or admission. For decades, and across administrations, the Board has acknowledged that § 1226(a) applies to individuals who are present without admission after entering the U.S. unlawfully, but who were later apprehended within the U.S. long after their entry. *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 806 (BIA 2020); *In Re: Hugo Leonel Lacan-Batz*, No. : AXXX XX3 200 - BOS, 2009 WL 1863766, at *1 (BIA June 19, 2009) (unpublished); *In Re: Jorge Luis Contreras-Linares*, No. : AXX XX6 969 - ELOY, 2003 WL 23508582, at *1 (BIA Dec. 18, 2003) (unpublished). Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. U.S.*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. U.S.*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

In sum, Section 1226 governs this case. Section 1225 and its mandatory detention provision applies only to individuals arriving to the U.S., while § 1226 applies to those who have previously entered without inspection and are now present and residing in the U.S.

D. Petitioners' Detention Violates the Due Process Clause and the APA

Petitioners have both been living within the U.S., accruing significant due process rights along the way, for over the past two decades. Noncitizens present within the United

States – as opposed to noncitizens present at a border and seeking admission – have constitutional rights. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001). Moreover, immigration detention cannot be punitive in nature, nor can it be arbitrary and capricious per the APA. Nothing in Respondents' evidence shows that Petitioners are any danger to the community or a flight risk – the latter is especially true given their U.S. citizen children and substantial community ties. As such, Petitioners' detention without a pre-deprivation bond hearing or any individualized assessment violates Petitioners' due process rights and the APA.

Dated: November 3, 2025,

By: /s/ Kirsten Zittlau
Kirsten Zittlau
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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2025, I caused the foregoing document to be electronically filed with the Clerk of the Court for the U.S. District Court for the Southern District of California by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Executed on: November 3, 2025

/s/ Kirsten Zittlau
Kirsten Zittlau