UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

LEONILA ZARCO LOPEZ — PETITIONER

v. — NO. 3:25-CV-654-DJH

SAMUEL OLSON, in his Official Capacity as Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her Official Capacity as Secretary, U.S. Department of Homeland Security;
PAMELA BONDI, in her Official Capacity as Attorney General;
TODD M. LYONS, in his Official Capacity as Acting Director of U.S. Immigration and Customs Enforcement;
JASON WOOSLEY, in his Official Capacity as Grayson County Jailer; — RESPONDENTS

RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

Federal Respondents respond to the Court's Order to Show Cause why Petitioner's writ of habeas corpus should be dismissed:[1]

INTRODUCTION

Petitioner bears the burden to show that her detention is unlawful. *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)). Because Petitioner has not been admitted to the United States, she is lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

[1] This response is filed on behalf of Federal Respondents Samuel Olson, Kristi Noem, Pamela Bondi, and Todd Lyons. 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition names Jason Woosley, the Grayson County Jailer, as a respondent.

RELEVANT FACTUAL BACKGROUND[2]

- Petitioner, a native and citizen of Mexico, entered the United States on or about July 2016 without inspection. [Doc. 1, PageID. 6, ¶ 23; Doc. 1-4, PageID. 28] She was not admitted or paroled into the United States. [Doc. 1-4, PageID. 28.]. On May 20, 2025, ICE officials issued a warrant for arrest for Petitioner determining that there was probable cause to believe that she was removable from the United States, that was served on May 21, 2025. [Doc. 1-2, PageID. 24.] ICE officials also issued a Notice of Custody Determination indicating that pending a final administrative determination, Petitioner would be detained. [Doc. 1-3, PageID. 26.]
- Although the forms ICE used for the warrant and notice cited 8 U.S.C. § 1226 (Immigration and Nationality Act "INA" § 236), ICE detained her under 8 U.S.C. § 1225(b)(2)(A) because she has been present in the United States without admission or parole. [Doc. 1-9, PageID. 66-67.]
- On May 21, 2025, ICE officials also issued Petitioner a Notice to Appear in immigration court stating that she had not been admitted or paroled after inspection by an Immigration Officer. [Doc. 1-4, PageID. 28.] As a noncitizen without admission or parole, Petitioner is considered an "applicant for admission" in 8 U.S.C. § 1229 removal proceedings and is therefore detained pursuant to 8 U.S.C. § 1225(b)(2)(A). [Doc. 1-9, PageID. 66-67.]

[2] Federal Respondents submit this response in accordance with the Show Cause Order based on the information it could gather and under the strict time constraint. However, Federal Respondents respectfully request that to clarify, expound, or further address issues in this brief, that they be provided supplemental briefing upon conclusion of the hearing.

- On July 30, 2025, Petitioner's counsel filed a Motion for Bond Redetermination. [Doc. 1-6, PageID. 48-57.] On August 6, 2025, the immigration judge conducted the hearing, and ICE argued that Petitioner was not eligible for bond because she had been detained under 8 U.S.C. § 1225(b)(2)(A), which does not allow detainees to be released on bond. [Doc. 1, PageID. 7, ¶ 27.]
- The immigration judge agreed and denied Petitioner bond for lack of jurisdiction. [*See* Doc. 1-7, PageID. 59.] After Petitioner filed a motion to reconsider, the immigration judge denied again citing lack of jurisdiction. [Doc. 1-8, PageID. 62.] On August 27, 2025, Petitioner appealed the immigration judge's bond decision to the Board of Immigration Appeals (BIA). [Doc. 1, PageID. 7, ¶ 27.]
- The immigration judge issued a memorandum further explaining its reasoning. [Doc. 1-9, PageID. 65-67.] The immigration judge explained that it lacked jurisdiction on the ground that Petitioner is an applicant for admission because the Petitioner entered the United States illegally without inspection. [*Id.*]
- The immigration judge also noted that on September 5, 2025, after the Court's decision regarding Petitioner, the case of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) was issued and the BIA held that immigration judges lacked authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission. [*Id.*]
- Petitioner is detained at Grayson County Detention Center. [Doc. 1, PageID. 2, ¶ 1.] Petitioner has applied for asylum, withholding of removal and relief under the

Convention Against Torture (CAT). [*Id.* at ¶ 3] On October 8, 2025, Petitioner filed her petition seeking a writ of habeas corpus. [Doc. 1, PageID. 1.]

LEGAL RESPONSE

- Pursuant to 8 U.S.C. §§ 1252(g), 1252(b)(9) and 1252(a)(5), and 1252(a)(2)(B)(ii), this Court lacks jurisdiction to hear Petitioner's claim because she is challenging ICE's decision to detain her under 8 U.S.C. § 1225(b)(2) during her removal proceedings.
- The Court should require Petitioner to exhaust her administrative remedies. Congress has provided an administrative hearing and appeal process for noncitizens in removal proceedings that include evidentiary hearings, motion practice, and appeals. *See* 8 U.S.C. § 1229a; 8 C.F.R. § 236.1(d)(3). The BIA's decision from last month, *Matter of Yajure Hurtado*, 29 I& N Dec. 216 (BIA 2025), may not be the last word in that matter as it may still be reviewed en banc or by the Attorney General. *See* 8 C.F.R. § 1003.1(a)(5); 8 U.S.C. § 1103(g)(2); 8 C.F.R. § 1003.1(h)(1).
- Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2) because she meets every element in the text of the statute and, even if the text were ambiguous, the structure and history of the statute support Respondents' interpretation.
- The statute, 8 U.S.C. § 1225(b)(2)(A), reads: "in the case of [a noncitizen] who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title."

- First, Petitioner is an "applicant for admission" because she is a noncitizen, she was not admitted, and she was present in the United States when she was apprehended by ICE. [Doc. 1-4, PageID. 28.]; 8 U.S.C. § 1225(a)(1).
- Second, an examining immigration officer determined that Petitioner was "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines "admission" as "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).
- Finally, Petitioner must "be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Petitioner is not in expedited removal and has been placed in full removal proceedings under § 1229a.
- Additionally, at least three courts determined that noncitizens in Petitioner's circumstances were applicants for admission and thus subject to mandatory detention despite being present in the U.S. *See Chavez v. Noem*, 2025 WL 2730228, at *4–5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).
- 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). "Read most naturally, §§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants of admission until certain proceedings have concluded." *Id.* at 297.

- Section 1225(b)(2) "serves as a catchall provision that applies to all applicants not covered by 1225(b)(1) (with specific exceptions not relevant here)."[3] *Jennings*, 583 U.S. at 287. Section 1226 generally governs the process of arresting and detaining noncitizens under 1227 pending their removal. *Jennings* 583 U.S. at 288. 8 U.S.C. § 1227(a) applies to noncitizens "*in and admitted* to the United States."
- The BIA recognized that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). "Seeking admission" does not have a different meaning from applicant for admission ("requesting admission"); the terms within § 1225(b)(2)(A) are thus synonymous. Additionally, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to eliminate "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).
- The Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025) ("LRA") simply reflects a "congressional effort to be doubly sure" of whom the mandatory detention scheme applies pending removal proceedings and is not redundant. *Barton v. Barr*, 590 U.S. 222, 239 (2020). And the LRA does *not* change what Congress intended in the IIRIRA.

[3] The two exceptions are crewmen and stowaways. *See* 8 U.S.C. §§ 1225(a)(2), 1281, and 1282(b). Neither is relevant to this case.

- Any argument that prior agency practice applying § 1226(a) is dispositive fails because under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the plain language of a statute that compels a particular interpretation or application controls.
- Petitioner has not and cannot show that her detention is arbitrary or unreasonable and therefore, her detention does not violate substantive due process. *Perez v. Aviles*, 188 F. Supp. 3d 328, 332 (S.D.N.Y. 2016)(citing *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring).
- The *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) factors do not weigh in Petitioners favor as her due process rights as a noncitizen who has not been admitted to the United States do not overcome the Government's interests in maintaining her detention through her removal proceedings. She also has not identified a statutory procedure, which she is entitled, that ICE has denied her. Thus, Petitioner cannot show that her detention violates procedural due process. *See Mendez-Garcia v. Lynch*, 840 F.3d 655, 665 (9th Cir. 2016) (citations omitted); *see also Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926-27 (9th Cir. 2007).

CONCLUSION

As such, Petitioner is lawfully detained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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