IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISEVILLE DIVISION

LEONILA ZARCO LOPEZ, Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	Case No. 3:25-CV-654-DJH

PETITIONER'S REPLY IN SUPPORT OF HER PETITION FOR WRIT OF HABEAS CORPUS

Petitioner has lived in the United States for nearly a decade and was walking to her job when she was arrested and detained by the Department of Homeland Security. Because she was already present within the United States at the time of her arrest, her detention falls squarely under 8 U.S.C. § 1226, not § 1225. Respondents' arguments to the contrary rely on an incorrect reading of 8 U.S.C. § 1225 and § 1226. Although Petitioner may be considered an "applicant for admission" as someone present without being admitted or paroled, § 1225 also requires that the noncitizen be "seeking admission." As courts in this District and numerous other federal courts have found, the term "seeking admission" applies to noncitizens at the border, not someone like Petitioner who has been present in the United States for over 9 years. Even Respondents' arrest warrant and Notice of Custody Determination cite to 8 U.S.C. § 1226 as the detention authority under which Petitioner is being detained. Because Petitioner is detained unlawfully, the Court should order her immediate release or, in the alternative, require Respondents to provide her with a prompt bond hearing pursuant to 8 U.S.C. § 1226.

ARGUMENT

I. Petitioner is not subject to mandatory detention.

Federal courts, including the Supreme Court, have long held that detention under 8 U.S.C. § 1225 applies to those at the border while Section 1226 applies to those already present in the United States. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court held that Section 1225 authorizes the Government "to detain certain [noncitizens] seeking admission into the country," while Section 1226 "authorizes the Government to detain certain [noncitizens] already in the country." *Id.*, 583 U.S. at 289. *Jennings* therefore forecloses Respondents' position. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) at *8 ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'") (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system ") (cleaned up) (citing *Jennings*, 583 U.S. at 289).

Respondents do not dispute the facts of Petitioner's entry. They do not dispute that Petitioner entered the United States without inspection on or about July 2016. *See* Dkt. 7, 2. Nor do Respondents dispute the fact that Petitioner has been present and has resided in the United States for over 9 years. Respondents also do not contest that Petitioner was arrested by the Department of Homeland Security (DHS) in Chicago, Illinois, hundreds of miles from any border or port of entry. In fact, DHS charged Petitioner as being "*present* in the United States without being admitted or paroled." *See* Dkt. 1, Ex. C, Notice to Appear (emphasis added). In other words,

Petitioner was not "arriving" at a border when she was arrested. But for recent illegal and counterfactual policy choices, these facts render Petitioner eligible for release on bond. Indeed, legacy Immigration and Naturalization Service (now DHS) explicitly stated 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.*" 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (emphasis added).

In the face of this settled law, Respondents repeat the novel interpretation, rejected by numerous federal courts, that Section 1225 governs "applicants for admission" while Section 1226 governs those "in and admitted to the United States." Dkt. 7, 5-6. But that is not the dividing line. As argued in her habeas petition, Dkt.1, 7-8, Section 1226 applies to noncitizens inside the country, including those who entered without inspection, while Section 1225 is limited to arriving noncitizens seeking admission at a border or port of entry. Respondents' reading is contrary to the plain language of the INA and nullifies various provisions of Section 1226—including amendments made earlier this year—that allow individuals who entered the United States outside of a port of entry to be considered for release on bond. *See id.* at 9-12. Respondents' reading is also impermissible in that it ignores congressional intent and decades of agency practice. *See id.* at 12-13. The result is that the reading that Respondents advance violates the INA.

Although Petitioner may be considered an "applicant for admission" under Section 1225(a)(1) because she is present without being admitted or paroled, she is not "seeking admission" as required to be subject to mandatory detention under Section 1225(b)(2). Respondents attempt to circumvent the "seeking admission" requirement by claiming that it is "synonymous" with "applicant for admission." Dkt. 7, 6. This position, however, "completely ignore[s] or even read[s] out the term 'seeking' from 'seeking admission.'" *Beltran Barrera v. Tindall,* 2025 WL 2690565,

at *4 (W.D. Ky. Sept. 19, 2025). The court in *Beltran Barrera* noted that "'seeking' implies action and that those who have been present in the country for years are not actively 'seeking admission.'" *Id.* (cleaned up). If, as Respondents contend, *see* Dkt. 7, 5, admission can only mean a lawful entry, then those who already entered the United States unlawfully cannot be said to be seeking a lawful entry. *See id.; see also Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *7 (E.D. Mich. Aug. 29, 2025) ("There is nothing in the record to suggest that he ever attempted to gain lawful entry (e.g. lawful status in this country) until he was apprehended and detained. Therefore, the Court finds that 1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country. ... There is no logical interpretation that would find that [Petitioner] was actively "seeking admission" after having resided here, albeit unlawfully, for twenty-six years.").

Respondents' reliance on *Matter of Lemus* is misplaced. The statutes discussed in *Lemus* were 8 U.S.C. § 1182(a)(9)(B) and 8 U.S.C. § 1182(a)(9)(C), which contain the phrase "seeks admission" and "seeking admission," respectively. 25 I&N Dec. 734, 742-745 (BIA 2012). Those statutes make clear that noncitizens who seek admission or who are seeking admission have departed the United States and are attempting to return. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(I) (applying to those who were unlawfully present in the United States for more than 180 days but less than a year, departed and again "seeks admission" within 3 years of the date of departure); 8 U.S.C. § 1182(a)(9)(B)(i)(II) (applying to those who were unlawfully present for one year or more, who again "seeks admission" within 10 years of the date of departure or removal); 8 U.S.C. § 1182(a)(9)(C)(ii) (applying to those "seeking admission" more than 10 years after the date of the noncitizen's last departure from the United States). Congress's use of "seeking admission" in the context of those who have departed the United States in these other provisions of the INA

reinforces Respondent's position that those "seeking admission" under Section 1225 are those who are at the border, not those who are already present in the United States. Because Petitioner entered without inspection and lived in the country for over 9 years before being apprehended far from any border or port of entry, she was not "seeking admission" and is not subject to mandatory detention under Section 1225. Instead, as someone arrested inside the United States, Petitioner is detained under Section 1226 and is eligible for release on bond.

Indeed, dozens of courts across the country, including courts in this District and from a majority of the geographic Circuits, have overwhelmingly rejected the government's novel interpretation of Section 1225 as incompatible with the statutory text, statutory framework, congressional intent, longstanding agency practice, the Constitution, and controlling precedent. *See, e.g., Beltran Barrera,* 2025 WL 2690565 (holding that the title of § 1225 which references "arriving" noncitizens, Supreme Court precedent in *Jennings* that § 1226 is the default rule and applies to noncitizens already present in the United States, and the recent amendments to § 1226 in the Laken Riley Act, all support petitioner's argument that he is detained under § 1226); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025) (following *Beltran Barrera); Lopez Benitez*, 2025 WL 2371588 at *5–8 (analyzing "the plain text of the statute" and holding that it applied at the borders of America, not within); *Samb v. Joyce*, 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025) (following *Lopez*); *Doe v. Moniz*, 2025 WL 2576819 at *4-5 (D. Mass. Sept. 5, 2025) ("Respondents' argument that Section 1225's detention provisions apply is a nonstarter[.]"); *Romero v. Hyde*, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) ("the interpretation [of § 1225] being advanced by the Government, which would require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing within the United States, is contrary to the plain text of the statute") (gathering 13 cases from District Courts in Washington,

Massachusetts, Arizona, New York, Minnesota, California, Nebraska, and Maine); *Leal-Hernandez v. Noem,* No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *2 (D. Md. Aug. 24, 2025) ("The Government appears willfully blind to the operation of 8 U.S.C. § 1226(a)"); *Kostak v. Trump*, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) ("Respondents' interpretation of Section 1225 would render Section 1226 unnecessary"); *Lopez-Campos*, 2025 WL 2496379, at *5 ("The plain language of the statutes, the overall structure, the intent of Congress, and over 30 years of agency action make clear that Section 1226(a) is the appropriate statutory framework for determining bond for noncitizens who are already in the country[.]"); *Anicasio v. Kramer*, 2025 WL 2374224, at *2 (D. Neb. Aug. 14, 2025) ("Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of 'aliens already in the country.'"); *Mosqueda v. Noem*, 2025 WL 2591530, at *4-5 (C.D. Cal. Sept. 8, 2025) ("The Court agrees with petitioners that the plain text of section 1226(a) applies to them . . . The Court disagrees with respondents' contention that Congress intended to create a conflict between juxtaposing sections of the same statute."); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) (collecting 15 cases).

Respondents attempt to justify their position by pointing to the few court decisions that seemingly support their novel interpretation of Section 1225. Dkt. 7, 5. However, these cases are inapposite. In *Pena v. Hyde*, No. 25-cv-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025), the court assumed without analysis that Section 1225 applied, sidestepping any analysis into the proper interpretation of that statute and Section 1226. *Id.*, at *1 (finding that "[t]he authority of ICE to detain [noncitizens] who are present in the country unlawfully derives from 8 U.S.C. § 1225" without acknowledging the application of Section 1226). In *Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), also cited by Respondents, the Court denied relief based, in

part, on a finding that the Petitioner failed to "meet his burden to show that he was detained under § 1226(a)." *Id.* at *2, 6 (finding that "mistakes in the Petition, including the failure of Vargas Lopez to attach certain referenced exhibits, prevent Vargas Lopez from meeting his burden to show he is entitled to habeas relief."). That is not the case here. Petitioner has submitted evidence, including documents issued by Respondents, demonstrating that she was arrested within the United States and detained pursuant to Section 1226. As such, the cases cited by Respondents are either factually distinguishable or fail to meaningfully consider the statutory text, statutory framework, congressional intent, and longstanding agency practice that dozens of federal courts around the country have considered in rejecting Respondents' position.

II. Respondents' own documents support that Petitioner is detained under Section 1226, not Section 1225.

Respondent's own documentation cites to Section 1226 as the detention authority under which Petitioner is detained. *See* Dkt. 1, Ex. A, Form I-200, Warrant for Arrest of Alien; Ex. B, form I-286, Notice of Custody Determination. Not only do both the Warrant and Notice specifically cite to Section 1226, but the Notice also advises Petitioner that she may request a review of her custody determination by an immigration judge. *See* Dkt. 1, Ex. A; Ex. B. Despite acknowledging that these notices citing Section 1226 are the ones ICE chose to use, Respondents maintain that Petitioner is detained under Section 1225(b)(2). *See* Dkt. 7, 2. This Court should discount Respondents' conclusory statements and instead take Form I-200 and Form I-286 citing to detention authority under Section 1226 "at face value." *See Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6. As courts, including in this District, have recognized, post-hoc justifications purporting to change the basis for an individual's detention deserve no credit. *Beltran Barrera*, 2025 WL 2690565, at *4; *Singh v. Lewis*, 2025 WL 2699219, at *5; *Lopez-Campos*, 2025 WL 2496379, at *7.

III. Petitioner has shown that her unlawful detention without bond violates her right to Due Process.

Respondents offer no meaningful response to Petitioner's Due Process claim. Contrary to Respondents' conclusory statements, Petitioner has established that she is not subject to mandatory detention under Section 1225(b)(2) but instead may only be detained under Section 1226's discretionary framework. Dkt. 1, 14-15. As such, at minimum, she is entitled to—and has been unlawfully denied—a bond hearing where an immigration judge considers her individualized facts and circumstances to determine whether she is a danger to the community or a flight risk. Therefore, Petitioner's current detention runs contrary to the INA, and detention that is contrary to statutory authority violates the due process clause, which applies to "*all 'persons' within* the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (emphasis added). Further, whatever interest Respondents have in detaining Petitioner cannot outweigh the public interest in the faithful application of the constitution and laws that Congress drafted.

IV. This Court has jurisdiction.

Respondents provide a cursory mention of the jurisdictional bars at 8 U.S.C. §§ 1252(g), 1252(b)(9), 1252(a)(5), and 1252(A)(2)(B)(ii). Dkt. 7, 4. They argue that Petitioner challenges ICE's decision to detain her during removal proceedings. Petitioner does not seek such review. Instead, she challenges Respondents' claimed authority to detain her without bond pursuant to an unlawful interpretation of the statute. As such, none of the jurisdictional provisions Respondents cite apply.

The Supreme Court has made clear that Section 1252(g)'s application is narrow: "That provision limits review of cases 'arising from' decisions 'to commence proceedings, adjudicate cases, or execute removal orders,'" and the Court has "rejected as 'implausible'" any claim that it

covers "all claims arising from deportation proceedings." *DHS v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (quoting *Reno v. American-Arab Anti–Discrimination Comm. (AADC)*, 525 U.S. 471, 482 (1999)). Here, Respondents do not meaningfully argue that Petitioner's challenge of Respondent's claimed authority to detain her under Section 1225(b)(2) "arises from" any of these decisions, nor does it. In fact, Section 1252(g) does not prohibit purely legal claims that do not challenge the Attorney General's discretionary authority. *United States v. Hovespian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc); *Bowrin v. INS*, 194 F.3d 483, 488 (4th Cir. 1999) (Section 1252 "does not apply" to Government's interpretations of law); *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (Section 1252(g) does not bar review of the "lawfulness" of a removal-related action because such claims are "collateral" to the discretionary decisions immunized by Section 1252(g)).

Section 1252(b)(9) is also of no help to Respondents. It bars review of claims "arising from" actions or proceedings brought to remove a noncitizen. However, courts have cautioned that the phrase "arising from" is not "infinitely elastic" and does not reach "claims that are independent of, or wholly collateral to, the removal process," or that bear "only a remote or attenuated connection to the removal of a[] [noncitizen]." *Aguilar v. ICE*, 510 F.3d 1, 10-11 (1st Cir. 2007). In fact, the Supreme Court has cautioned against an overbroad application, noting that it "does not present a jurisdictional bar" where those bringing suit "are not asking for review of an order of removal," "the decision to detain them in the first place or to seek removal," or "the process by which their removability will be determined." *Jennings,* 583 U.S. at 294-95; *see also Regents*, 591 U.S. at 19. Here, Petitioner does none of these. Furthermore, courts have routinely entertained individual petitions for writ of habeas corpus as a means to challenge unlawful detention notwithstanding the language of Section 1252(b)(9). *See, e.g.*, *Mahdawi v. Trump*, 136 F.4th 443, 452 (2d Cir. 2025)

(rejecting claim that § 1252(b)(9) barred detention challenge because "[c]onstruing an independent constitutional challenge to detention as necessarily implying a challenge to removal would lead to what *Jennings* called an 'absurd' result."); *accord Kong*, 62 F.4th at 614.

Section 1252(a)(5), meanwhile, applies to "judicial review of an order of removal." Petitioner does not challenge an order of removal.

Finally, Section 1252(a)(2)(B)(ii), which limits judicial review of certain discretionary decisions made by immigration authorities, is inapplicable for several reasons. First, Section 1252(a)(2)(B)(ii) does not bar judicial review of constitutional claims or questions of law, which can still be reviewed under 8 U.S.C. § 1252(a)(2)(D). *See Wong v. United States*, 373 F.3d 952, 963 (9th Cir. 2004) (recognizing that "decisions that violate the Constitution cannot be 'discretionary,' so claims of constitutional violations are not barred by § 1252(a)(2)(B).") (citation omitted). Furthermore, individuals detained under Section 1226(a) are entitled to a bond hearing; it is not a discretionary decision. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(d); *Lopez-Campos*, 2025 WL 2496379 at *9-10 (explaining that discretion to detain under Section 1226(a) "requires a bond hearing to make an individualized custody determination" and that "without first evaluating [Petitioner's] risk of flight or dangerousness, his detention is a violation of his due process rights."); *accord Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1244 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025).

Taken together, the broad interpretation of Section 1252 that Respondents seek would have "staggering results," including rendering claims like Petitioner's "effectively unreviewable" because custody determinations cannot be challenged in an appeal of a removal order. *Jennings*, 583 U.S. at 293. The legislative history for the 2005 REAL ID Act confirms Section 1252's

inapplicability to detention-related habeas challenges. It states twice that "it should also be noted that section 106 [8 U.S.C. §1252] will not preclude habeas review over challenges to detention that are independent of challenges to removal orders. Instead, the bill would eliminate habeas review only over challenges to removal orders." H.R. Cong. Rep. No. 109-72, at 175 (May 3, 2005); *id.* at 176 (same); *see* 8 U.S.C. §1252 (credits). Cognizant of these concerns, dozens of courts around the country have found jurisdiction to consider the exact issues raised here. *See* Dkt. 12, p. 15-16; *see also Leal-Hernandez*, 2025 WL 2430025, at *6 (rejecting government's jurisdictional arguments in habeas challenging whether Petitioner was properly subject to mandatory detention under 8 U.S.C. § 1225(b)(2)). This Court should do the same.

V. Petitioner has exhausted administrative remedies.

Respondents' argument that Petitioner should be required to exhaust her administrative remedies ignores the facts of this case and the legal landscape.

DHS has taken the position that a noncitizen like Petitioner, who entered without inspection, is subject to mandatory detention under Section 1225, as affirmed by the BIA in a published decision holding that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies she could exhaust before seeking habeas relief. *See Singh v. Lewis*, 2025 WL 2699219, at *3 ("[t]he United States has made clear their position on Section 1225, and it is being applied at all levels within the DHS. Therefore, it is unlikely that any administrative review would lead to the United States changing its position and precluding judicial review"); *Lopez-Campos*, 2025 WL 2496379, at *4 ("Because exhaustion would be futile and unable to provide

Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion and will address the merits of the habeas petition.").

Respondents' claim that *Matter of Yajure Hurtado* "may not be the last word in that matter" is unavailing as, without an order from this Court, the immigration judge remains bound by *Matter of Yajure Hurtado* as long as it is in place. *See* Dkt. 7, 4; EOIR Policy Manual, Intro. Ch. 1.4(b)(4) (U.S. Dep't of Justice), https://www.justice.gov/eoir/eoir-policy-manual/introduction/chapter1-4 (last visited Oct. 16, 2025). Nevertheless, despite its futility, Petitioner exhausted administrative remedies, having filed a Motion for a Bond Redetermination Hearing and a Motion for Reconsideration, both of which were denied by the immigration judge for lack of jurisdiction because of Respondents' unlawful policy. Dkt. 1, 6; Exs. E-H. Therefore, this Court should waive any exhaustion requirement in this case.

CONCLUSION

Petitioner's continued detention without bond violates the INA and her right to due process. Because she is being unlawfully detained, Petitioner respectfully requests that this Court grant her petition for writ of habeas corpus and order her immediate release or, in the alternative, require Respondents to provide a prompt bond hearing pursuant to Section 1226

DATED this 16 of October, 2025

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