UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

LEONILA ZARCO LOPEZ PETITIONER

v. NO. 3:25-CV-654-DJH

SAMUEL OLSON,
et al. RESPONDENTS

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITIONER'S HABEAS PETITION

Federal Respondents file this supplement to their response to the Court's show cause order [Doc. 7] opposing Petitioner's writ of habeas corpus.[1] Respondents incorporate by reference, the facts set forth in their response to the order to show cause.

ARGUMENT

This Court Lacks Subject Matter Jurisdiction: 8 U.S.C. § 1252(g) strips federal courts of subject matter jurisdiction over claims "arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien . . . ." 8 U.S.C. § 1252(g); *see also Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at *8-9 (6th Cir. Aug. 13, 2025) (explaining that § 1252(g) applies to habeas claims and does not violate the Suspension Clause). Here, Petitioner is challenging ICE's decision to detain her, under 8 U.S.C. § 1225(b)(2), at the commencement of his removal proceedings, under U.S.C. § 1229a. The decision to detain, through arresting her on

[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.

August 14, 2025, arose from the commencement of his removal proceedings, through the August 14, 2025 issuance of the NTA. [Doc. 8-1, PageID#48-51]; *see Alvarez v. ICE*, 818 F.3d 1194, 1203-04 (11th Cir. 2016) (citing *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013)); *Hodgson v. United States*, 2014 U.S. Dist. LEXIS 115435, at *13-20 (W.D. Tex. Aug. 19, 2014). While section 1252(g) does not cover "all claims" arising from decisions to commence proceedings, adjudicate cases, or execute removal orders, it continues to bar review of narrow matters "arising from" those decisions. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907 (2020). Here, Petitioner's detention arose from ICE's decision to commence removal proceedings. The detention is "connected directly and immediately" with the commencement of his proceedings. *See Tsering v. USCIS*, 403 F. App'x 339, 343 (10th Cir. 2010) (quotation omitted). Consequently, the decision to detain is outside the Court's jurisdiction to review. *But see Ozturk v. Hyde*, 136 F.4th 382, 397 (2d Cir. 2025).

Petitioner is Lawfully Detained Under 8 U.S.C. § 1225(b)(2): The Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) controls this determination. As the Court explained, "the Government must determine whether an alien seeking to enter the country is admissible." *Id.* An alien (such as Petitioner) "who arrives in the United States, or is present in this country but has not been admitted, is treated as an applicant for admission." [2] *Id.* (cleaned up). Therefore, Petitioner must "be inspected by

[2] "Admission" is further defined 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). Read in tandem with the statute's plain terms, it is clear that all unadmitted noncitizens are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. While this may seem

immigration officers" to ensure that he may be admitted into the country consistent with U.S. immigration law. 8 U.S.C. § 1225(a)(3). Moreover, as an "applicant for admission," Petitioner may be required to state under oath his "purposes and intentions . . . in seeking admission." 8 U.S.C. § 1225(a)(5).[3]

As an applicant for admission, he must "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S at 287. Section 1225(b)(1), also known as Expedited Removal Proceedings, addresses both the detention and removal of "aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.* (cleaned up). They "are normally ordered removed without further hearing or review . . . [unless the alien] indicates either an intention to apply for asylum . . . or a fear of persecution, then that alien is referred for an asylum interview." *Id.*

Section 1225(b)(2), however, "is broader . . . [and] serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Jennings*, 583 U.S. at 287. As an alien mandatorily

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counterintuitive, "[w]hen a statute includes an explicit definition, [courts] must follow that definition." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up).

[3] As this statute requires "applicants for admission" to testify as to their "purposes and intentions . . . in seeking admission," it follows that an "applicant for admission" and a person "seeking admission" are one and the same. *See Matter of Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). To interpret otherwise would conflate two entirely distinct procedural postures—one who applies for admission and one who does not apply for admission. The law does not, and cannot rationally, impose an obligation to justify motives for an act that was never taken. Doing so would be akin to asking a person to state their reasons for entering a contract they never signed. As such, the Court should avoid this "patently absurd" interpretation which draws a distinction between the terms. *See Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892)) (explaining that courts may invoke the absurdity canon only when statutory language leads to "patently absurd" results").

detained under Section 1225(b)(2), [**Exhibit 1**, August 6, 2025 Decision and Order of the Immigration Judge] Petitioner was subject to the 8 U.S.C. § 1229a removal statute and referred "for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted into the country." *See Jennings*, 583 U.S. at 288 (cleaned up).[4] In so doing, ICE properly followed the *Jennings* decision explaining the two detention schemes for applicants for admission.

The Laken Riley Act is Not Superfluous: Unlike Section 1225(b)(1), which is a removal and detention statute, Section 1226 is solely a detention statute. And Section (c)(1) pertains to the mandatory detention of certain aliens who generally have had interactions with the criminal justice system, and importantly here, does not *solely* apply to those who have not been admitted to the United States. *See* 8 U.S.C. § 1226(c). To this end, lawful permanent residents who have been admitted to the United States may be subject to mandatory detention. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(A)(i); *Azumah v. USCIS*, 107 F.4th 272, 273 (4th Cir. 2024). It also reaches those who were admitted erroneously and are deportable for being inadmissible at the time of admission. *See* 8 U.S.C. §§ 1227(a)(1)(A); 1182(a)(6)(C)(i). Because the Laken Riley Act is not redundant, that argument is meritless.[5]

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[4] Notably, the *Jennings* Court ignored the "seeking admission" portion of § 1225(b)(2)(A) instead interpreting the relevant portion of this provision to be whether an official determined they were not clearly and beyond a doubt entitled to be admitted."

[5] Even if the Laken Riley Act is redundant, that doesn't mean that Petitioner is detained under § 1226: "[r]edundancies 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." *Barton v. Barr*, 590 U.S. 222, 239 (2020).

The title of 8 U.S.C. § 1225 does not determine whether Petitioner is an applicant for admission and subject to detention under § 1225(b)(2). 8 U.S.C. § 1225 is titled: "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Other courts have held that because of the title of § 1225, it can only apply to "arriving aliens," not those already present in the country. *Barrera v. Tindall*, 2025 U.S. Dist. LEXIS 184356, at *8 (W.D. Ky. Sept. 19, 2025). That argument is wrong, first, because an "arriving alien" is a defined term in 8 C.F.R. § 1.2 that applies to a noncitizen based on their method of arriving in the United States and whether she has documents permitting entry, not based on her location after entry. Second, the title of the statue does not encompass all aspects of the statute. For example, § 1225 defines "applicant for admission," but that is not in the title. Further, "arriving alien" is in the title in the context of a noncitizen who is in expedited removal. Petitioner is not subject to expedited removal, and he is not an inadmissible arriving alien. But that does not mean the statute does not apply to her.

Petitioner's warrant for arrest does not indicate she is detained under 8 U.S.C. § 1226. The warrant for arrest cites § 1226—and 8 U.S.C. § 1357—in the context of identifying officers who can execute the warrant. The warrant does not state that anyone detained under a warrant is detained under § 1226. Indeed, § 1357(a) describes the powers immigration officers and employees possess, including arrest without a warrant, § 1357(a)(2).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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