IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY AT LOUISVILLE

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

PETITIONER'S REPLY TO RESPONDENTS' SUPPLEMENTAL BRIEF

Respondents' arguments in opposition fail. This Court has jurisdiction because Petitioner challenges the legality of her detention without bond, not removal proceedings. Respondents' arguments on the merits rely on an incorrect reading of 8 U.S.C. § 1225 and § 1226.

ARGUMENT

I. This Court has jurisdiction.

Respondents attempt to invoke 8 U.S.C. § 1252(g)'s reach by conflating the decision to initiate removal proceedings with challenges to the legality of a noncitizen's detention. Dkt. 15, 1-2. However, Petitioner does not challenge Respondents' decision to commence removal proceedings against her. Instead, Petitioner brings a purely legal challenge to Respondents' authority to detain her under Section 1225(b)(2). Courts have consistently recognized that challenges to the legality of a noncitizens detention are independent of removal-based claims and not barred by Section 1252(g). *See, e.g., Carrera-Valdez v. Perryman*, 211 F.3d 1046, 1047 (7th Cir. 2000) ("nothing in § 1252(g) precludes review of the decision to confine."); *Hamama v. Adducci*, 912 F.3d 869 (6th Cir. 2018) (acknowledging that "the district court had jurisdiction over

the detention-based claims and that this jurisdiction is an independent consideration that is not tied to whether the district court has jurisdiction over the removal-based claims.").[1]

The cases Respondents cite to do not help their position. First, Respondents cite FTCA and *Bivens* cases that are inapposite to a habeas claim. *See Alvarez v. ICE*, 818 F.3d 1194 (11th Cir. 2016) (*Bivens*); *Hodgson v. United States*, 2014 U.S. Dist. LEXIS 115435 (W.D. Tex. Aug. 19, 2014) (FTCA). Many cases arising in those different contexts acknowledge that habeas relief would be available notwithstanding any limits on judicial review of *Bivens* or FTCA claims. *See Sissoko v. Mukasey*, 509 F.3d 947, 949 (9th Cir. 2007) ("[A] habeas petition ... could have been successful in remedying [Petitioner's] allegedly false arrest."); *see also Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1069 (N.D. Ill. 2007). Further, Respondents cite habeas cases that did not seek relief from unlawful detention. *See Karki v. Jones*, No. 25-3440 (6th Cir. Aug. 13, 2025) (habeas challenge to execution of removal order); *Tsering v. ICE*, 403 F. App'x 339 (10th Cir. 2010) (habeas challenge to ICE travel documents request). These cases are inapplicable here. There is no removal order in this case. Petitioner does not challenge the execution of a removal order. Nor does she challenge a request by ICE for travel documents.

Instead, just as in *Ozturk v. Hyde*, also cited by Respondents, Dkt. 15, p. 2, Petitioner challenges her unlawful detention, which is a claim collateral to the removal process and not barred by Section 1252(g). *See Ozturk v. Hyde*, 136 F.4th 382, 397-98 (2d Cir. 2025) (finding that challenges to unlawful detention do not arise from the government's decision to commence proceedings, adjudicate cases, or execute removal orders because they "may be resolved without affecting pending [removal] proceedings.") (citation omitted).

[1] In *Hamama*, the Sixth Circuit ultimately concluded that the detention-related claims were also barred from review; but that was because 8 U.S.C. § 1252(f)(1) bars claims seeking class-wide, non-habeas, injunctive relief, something Petitioner does not seek. *Hamama*, 912 F.3d at 877.

Finally, Respondents get the facts wrong. Their Supplemental Brief states: "The decision to detain, through arresting her on August 14, 2025, arose from the commencement of his removal proceedings, through the August 14, 2025 issuance of the NTA." Dkt. 15 1-2. But the dates they claim for Petitioner's arrest and Notice to Appear contradict their own statements. Dkt. 7, 2. Instead, as reflected in the arrest warrant issued by Respondents, Petitioner was arrested on May 20, 2025. Dkt. 1, Ex. A. Meanwhile, Respondents did not issue Petitioner a Notice to Appear until the following day, on May 21, 2025. Dkt. 1, Ex. C. As such, any argument that the decision to detain Petitioner "arose from" the commencement of removal proceedings is not only legally incorrect, but also counterfactual.

II. Respondents' Arguments on the Merits Fail.

Respondents offer no meaningful response to the distinction between detention under 8 U.S.C. § 1225 and § 1226, which place Petitioner squarely into Section 1226's discretionary detention framework.

First, they misread *Jennings*, which clearly indicates that Section 1225 applies to noncitizens seeking admission at a border or port of entry while Section 1226 applies to noncitizens "already in the country." *See Jennings v. Rodriguez*, 583 U.S. 281, 287, 289 (2018). Respondents completely ignore *Jennings*' discussion of Section 1226 and instead offer incomplete and selective quotes from its discussion of Section 1225, which the Court explained applies "at the Nation's borders and ports of entry." Dkt. 15, 2-4; *Jennings*, 583 U.S. at 287. Further, contrary to Respondents' argument, *Jennings* does not ignore the "seeking admission" portion of Section 1225(b)(2). Dkt. 15, 4 n.4. In fact, the Court explained that "U.S. immigration law authorizes the Government to detain certain [noncitizens] *seeking admission* into the country under §§1225(b)(1) and (b)(2)." *Jennings*, 583 U.S. at 289 (emphasis added).

Further, Respondents' argument regarding the Laken Riley Act is inconsistent and contradictory. In their discussion of Section 1225, Respondents claim that "an applicant for admission ... *must* 'fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." Dkt. 15, 3 (citing *Jennings*, 583 U.S. at 287) (emphasis added). Yet, just two paragraphs later, they admit that applicants for admission can fall into Section 1226, arguing that Section 1226(c) "does not *solely* apply to those who have not been admitted to the United States." Dkt. 15, 4 (emphasis in original). Therefore, not only do Respondents' fail to address the redundancy that would result if the groups of inadmissible noncitizens covered by Section 1226(c) were already meant to be subject to mandatory detention under Section 1225(b)(2), but they confirm that Section 1226 applies to noncitizens present in the country "who were inadmissible at the time of entry." *Jennings*, 583 U.S. at 288.

Next, Respondents argue that Section 1225's title is not enough to limit its application to arriving noncitizens and attempt to characterize *Beltran Barrera*'s holding as being based solely on the statute's title. Dkt. 15, 5. However, a "title is especially valuable [where] it reinforces what the text's nouns and verbs independently suggest." *Yates v. United States*, 574 U.S. 528, 552 (Alito, J. concurring in judgment). Here, Section 1225's use of "arriving" in its title is but one of many factors which all point to its application being limited to noncitizens seeking admission at a border or port of entry. The court in *Beltran Barrera*, for example, did not grant habeas solely based on Section 1225's title, but considered it in addition to the text of the statute itself, the statutory scheme as set out in *Jennings*, the Laken Riley Act, the "seeking admission" requirement, and the decisions of courts across the country which have rejected Respondents' same theory. *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *4-5 (W.D. Ky. Sept. 19, 2025). Further, Respondents misread the plain language of 8 C.F.R. § 1.2 which, in relevant

part, explicitly defines an "arriving [noncitizen]" as "an applicant for admission coming or attempting to come into the United States *at a port-of-entry*..." (emphasis added).

Finally, Respondents argue that the warrant issued to Petitioner, despite its direct citation to Section 1226, does not indicate she was detained under Section 1226. However, the warrant is specifically addressed "To: Any immigration officer authorized pursuant to sections [1226] and [1357] ... to serve warrants of arrest for immigration violations" Dkt. 1, Ex. 1. This language clearly establishes that Form I-200's intended use is for arrests under Section 1226. Meanwhile, 8 U.S.C. § 1357's language about warrantless arrests is irrelevant here because Petitioner was issued a warrant and Respondents do not allege nor demonstrate that the requirements for a warrantless arrest were met—nor were they.

Respondents use of Form I-200 was no accident: Respondents also issued Petitioner Form I-286, Notice of Custody Determination, which unambiguously states that Petitioner was detained "[p]ursuant to the authority contained in section [1226] of the Immigration and Nationality Act..." Dkt. 1, Ex. B. Therefore, as discussed, this court should give no credit to such post-hoc justifications and instead take the Forms I-200 and I-286 at face value. *See* Dkt. 11, 7; *Campos Leon v. Forestal*, 1:25-cv-1774, 2025 WL 2694763, at *3 (S.D. Ind. Sept. 22, 2025) (finding it "impossible to understand how Mr. Campos Leon is not [a noncitizen] arrested and detained pursuant to a warrant and therefore subject to §1226(a)'s bond provisions" when he was, as a matter of fact, arrested and detained pursuant to a warrant).

Conclusion

This Court should grant the petition for writ of habeas corpus and order Petitioner's immediate release.

Dated: October 29, 2025

Respectfully submitted,

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