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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARIO BISTRAIN VAZQUEZ, Petitioner-Plaintiff, v. CHRISTOPHER J. LAROSE, et al. Respondents-Defendants.	Case No.: 3:25-cv-02715-TWR-DEB **PETITIONER'S TRAVERSE SUPPORTING PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner replies to Respondents' Return as follows:

A. Petitioner's Habeas Claim is Not Barred by 8 U.S.C. § 1252

Simply put, § 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 Petitioner's unlawful detention.

The alleged misapplications of 8 U.S.C. § 1225 and § 1226 are Respondents' basis for the detention of Petitioner. The Respondents contend Petitioner is properly detained under § 1225 because he is "seeking admission" into the U.S., even though Petitioner has been in the U.S. for more than a decade. The Respondents further contend the term 'seeking admission'

in § 1225(b)(2)(A) does *not* refer to a noncitizen attempting to physically access the U.S.; it instead refers to a noncitizen seeking a lawful means of entering the U.S. (e.g. receiving a visa). Dkt. 10 at 8. In this petition, Petitioner is not making *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 does 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 years ago and issued a warrant of arrest under that section. They then placed Petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a and charged him with being present in the U.S. without admission and therefore removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). See, Dkt. 1, Parag. 3. Here, Petitioner challenges the Respondents' denial of his release from immigration custody on the purported basis that Petitioner is subject to mandatory detention under section 1225(b)(2).

The government's contention that 8 U.S.C. § 1252(b)(9) bars jurisdiction of this Court is similarly unavailing. Petitioner is 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.* Petitioner is challenging his unlawful detention and the unlawful continuation thereof. Furthermore, Petitioner is also not seeking *judicial review of a final order of removal.* Petitioner's 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.

B. Petitioner is not Subject to Mandatory Detention

Petitioner is 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 Petitioner is not subject to mandatory detention, 2) the legislative history further supports the application of § 1226(a) to Petitioner's detention, and 3) the record and longstanding agency practice reflect that § 1226 governs Petitioner's detention.

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

First, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. 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). Section 1226 confirms this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens, such as Petitioner, who are inadmissible pursuant to § 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens from being released— including certain categories of inadmissible ones—and subjects them instead to mandatory detention. *See, e.g.,* § 1226(c)(1)(A), (C).

Recent amendments to § 1226 reinforce that the section encompasses noncitizens like Petitioner who DHS alleges to be present without admission. 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, 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 Petitioner 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

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

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

Respondents' reliance on *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) – in which the Court in denying the TRO agreed with the Board in *Matter of Hurtado* finding that the Laken Riley Act's language was not superfluous (Dkt # 8 at 10) – is contrary to not only the plain language of the text (as discussed above) but also with the vast majority of courts that have addressed the issue. *See Maldonado v. Olson*, No. 25-cv-3142, _ F.Supp.3d_,_, 2025 WL 2374411, *12 (D. Minn. Aug. 15, 2025) ("[C]ourts 'do not lightly' find that Congress adopted 'two separate clauses in the same law to perform the same work.' The Court will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)."); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427, at *5 (N.D. Iowa Sept. 23, 2025) ("[u]nder the Government's expansive interpretation of § 1225, the amendment would have no purpose. Section 1225(b)(2) would already provide for mandatory detention of every unadmitted alien, regardless of whether the alien falls within one of the new classes of non-bondable aliens established by the Laken Riley Act.") *Accord Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *7 (E.D. Cal. Sept. 23, 2025); *Valencia Zapata v. Kaiser*, No. 25- CV-07492-RFL, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26,

2025); see also *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *6 (E.D. Mich. Sept. 9, 2025) (finding "it difficult to square a noncitizen's continued presence with the term 'seeking admission,' when that noncitizen never attempted to obtain lawful status); see also *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427, at *5 (N.D. Iowa Sept. 23, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025, at *4 (E.D. Cal. Sept. 23, 2025).

In sum, § 1226's plain text demonstrates that § 1225(b)(2) does not apply to noncitizens in the U.S. who have not been "admitted." Rather, Section 1226(a) covers those who are present within and residing within the U.S., not 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 squarely 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 Petitioner, 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").

Most significantly, neither *Matter of Yajure Hurtado* nor *Chavez v. Noem* address how being "an applicant for admission" is only part of the inquiry with respect to 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 Petitioner in neither an "applicant for admission" nor in the process of

"seeking admission" into the U.S., he is 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, 121 S. Ct. 2491, 2503, 150 L. Ed. 2d 653 (2001) (requiring release for post-final order detention cases to meet constitutional concerns in light of textual ambiguity).

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 Petitioner. In passing the Act, Congress was focused on the perceived problem of recent arrivals to the U.S. who did not have documents to remain. See H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Prior to IIRIRA, people like Petitioner 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 specifically 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 RA-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.

C. Petitioner's Arrest Without Due Process Was Unlawful

Parolees (and conditional parolees) like Petitioner have significant liberty interests. As such, Petitioner's re-arrest and re-detention without any individualized determination of a change in circumstances violates his due process rights.

Here, Petitioner was released on August 15, 2014 pursuant to conditional parole, 8 U.S.C. 1226(a)(2)(B), after "demonstrat[ing] to the satisfaction of the officer that such release would not pose a danger to property or persons" and that he was "likely to appear for any future proceeding."8 C.F.R § 1236.1(c)(8).3 "Release [therefore] reflects a determination by Respondents that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

As a parolee, Petitioner has significant liberty interests. That liberty interest exists even if the person was subsequently detained and conditionally released and even when an initial decision to detain or release the individual is discretionary. *Morrissey v. Brewer*, 408 U.S. 471, 481-82 (1972). "[S]ubject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring

attachments of normal life." *Id.* at 482. The parolee relies "on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Due Process clause of the Constitution, Congress's statutes and implementing regulations as well as precedential decisions narrow DHS's authority to unilaterally revoke any noncitizen's immigration bond or conditional parole and re-arrest the noncitizen at any time, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). The BIA has stated that "where a previous bond determination has been made by an immigration judge, ***no change should be made by [the DHS] absent a change of circumstance***," a position also adopted by the Ninth Circuit. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981)(emphasis added); *see also Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021)("Thus, absent changed circumstances … ICE cannot re-detain Panosyan.")

Here, an immigration official determined in 2014 that Petitioner was not a danger to the community or a flight risk and granted him parole through the pendency of his removal proceedings (which are still pending). Petitioner had not in any way violated the terms of the parole. Nor has there been any showing of a change in circumstances justifying any revocation of the parole and his detention. As such, Petitioner's arrest and detention violates not only BIA, Ninth Circuit and Supreme Court precedent, it violates his due process rights.

Dated: October 22, 2025, LAW OFFICES OF BASHIR GHAZIALAM, PC

By: /s/ Bashir Ghazialam
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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 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: October 22, 2025

/s/ Bashir Ghazialam
Bashir Ghazialam