UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

JAACKCIRELYS PEREZ GUERRA,

PETITIONER

v. CIVIL ACTION NO. 4:25-CV-00119-RGJ (*e-filed*)

JASON WOOSLEY, in his official capacity
as Grayson County Jailer; and
RUSSELL HOTT, in his Official Capacity as
Field Office Director, Chicago Field Office,
U.S. Immigration and Customs Enforcement

RESPONDENTS

RESPONSE TO ORDER TO SHOW CAUSE

Federal Respondent responds to the Court's Order to Show Cause why Petitioner's writ of habeas corpus should be dismissed.[1]

INTRODUCTION

This case does not concern 8 U.S.C. § 1226(a), but rather only deals with 8 U.S.C. § 1225(b). Unlike other cases presented before the Court where the petitioner was considered an applicant for admission "who had not been admitted or paroled," this case concerns a petitioner who is an arriving noncitizen[2], and thus within the category

[1] This response is filed on behalf of Federal Respondent, Russell Hott. 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.

[2] This response uses the term "noncitizen" as equivalent to the statutory term of "alien" within the Immigration and Nationality Act ("INA"), except where the term in cited in a quote.

of individuals contemplated by 1225(b). Petitioner is an arriving noncitizen who was paroled into the United States in or around July 2023. In June 2025, the parole program she entered under was terminated. She is currently detained by the U.S. Immigration and Customs Enforcement ("ICE") while the agency pursues administrative removal proceedings against her. Petitioner challenges the agency's decision to detain her under a statutory provision that does not entitle her to a bond hearing. Because Petitioner is an arriving noncitizen, she is lawfully detained under 8 U.S.C. § 1225(b)(2)(A).

BACKGROUND

Petitioner is a native and citizen of Venezuela. [Doc. 1, PageID. 4., ¶ 20.] Petitioner last entered the United States on or around July 10, 2023, at Fort Lauderdale, Florida and was issued a Venezuelan Humanitarian Parole ("VHP") into the United States by an immigration officer. [*See* Exhibit 1, Notice to Appear.] Petitioner is a derivative/rider on her father's affirmative[3] asylum application (I-589). [Doc. 1, PageID. 4., ¶ 21.]

On June 12, 2025, the Department of Homeland Security ("DHS") terminated the Cubans, Haitians, Nicaraguans, and Venezuelan ("CHNV") parole program, including those granted a VHP. [*See* Exhibit 1, Notice to Appear.] On June 13, 2025, DHS issued Petitioner a Notice of Termination of Parole. [Doc. 1-1, PageID. 22.] On July 8, 2025, Petitioner's parole expired. [*See* Exhibit 2, Admission (I-94) Record Number.]

[3] An affirmative asylum application means the application occurred when the applicant wasn't in removal proceedings.

On September 30, 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.[4] [*See* Exhibit 3, Warrant for Arrest.] ICE detained her under 8 U.S.C. § 1225(b)(2)(A) because she is an arriving noncitizen. On that same day, ICE officials also issued Petitioner a Notice to Appear in immigration court, stating that Petitioner was an arriving noncitizen, and initiated removal proceedings. [*See* Exhibit 1, Notice to Appear.]

Petitioner has been detained at Grayson County Detention Center since October 1, 2025. On October 17, 2025, Petitioner filed her petition for writ of habeas corpus. She has a master hearing scheduled on October 30, 2025. [Doc. 1, PageID. 6, ¶ 27.]

STANDARD OF REVIEW

A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241. 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)).

[4] The references to the Immigration and Nationality Act ("INA") in the Warrant for Arrest merely provide the basis for the immigration officer's authorization to arrest and detain. "An I-200 form must be signed by an authorized immigration officer who states that he or she has 'probable cause to believe' the named alien is removable." *N.S. v. Dixon*, 141 F.4th 279, 283 (D.C. Cir. 2025) (citing 8 C.F.R. § 236.1(a); *id.* § 287.5(e)(2) (listing categories of officers so authorized)). "It is directed 'To: Any immigration officer authorized [to serve an arrest warrant for immigration violations] pursuant to sections 236 and 287 of the Immigration and Nationality Act' and its implementing regulations." *Id.* "To execute an I-200 form, an immigration officer of a type listed in the regulation must have 'successfully completed basic immigration law enforcement training.'" *Id.* (citing 8 C.F.R. § 287.5(e)(3); *see also id.* § 287.5(c)(1) (same required before making an arrest under 8 U.S.C. § 1357(a)(2))); *see also* 8 C.F.R. § 236.1(b)(1)("At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest.")

ARGUMENT

I. Petitioner Should Be Required to Exhaust Her Administrative Remedies

Petitioner should be required to exhaust her administrative remedies. When Congress has not imposed a statutory administrative exhaustion requirement, "sound judicial discretion" governs whether exhaustion should be required. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013). "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (citations omitted).

Here, Petitioner must first allow the immigration court to review her case. Petitioner has a preliminary hearing scheduled for October 30, 2025, and should be required to present any issues with her case in immigration court. 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). Requiring Petitioner to exhaust that process before seeking review in federal court may reduce the number of similar cases filed in this Court. "Because of the expertise the Board of Immigration Appeals and the immigration courts more generally have in the statutory and administrative regimes governing the admission and removal of foreigners, many of the purposes for requiring exhaustion' may be served by permitting agency review in the first instance." *Abdoulaye Ba v. Dir. of Detroit Field Office*, No. 4:25-cv-02208, 2025 U.S. Dist. LEXIS

207739, at *6 (N.D. Ohio Oct. 22, 2025) (citations omitted).

As stated earlier, Petitioner is considered an arriving noncitizen, a category specifically contemplated by § 1225(b). Therefore, requiring her to present before the immigration court is appropriate and would "[protect] the authority of administrative agencies, [limit] interference in agency affairs, [develop] the factual record to make judicial review more efficient, and [resolve] issues to render judicial review unnecessary." *Abdoulaye Ba*, 2025 U.S. Dist. LEXIS 207739, at *6-7 (citing *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)). Accordingly, she should be required to present her case in immigration first and exhaust her administrative remedies.

II. Petitioner is Lawfully Detained Under 8 U.S.C. § 1225(b)(2)

Petitioner is considered an arriving noncitizen that was paroled into the United States and is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2). An "applicant for admission" is defined as a noncitizen "present in the United States who has not been admitted *or who arrives* in the United States (whether or not at a designated port of arrival...)" 8 U.S.C. § 1225(a)(1) (emphasis added). The regulations further state:

> Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked. However, an arriving alien who was paroled into the United States before April 1, 1997, or who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the

> United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act.

8 C.F.R. § 1.2.

Arriving noncitizens are governed by Section 1225(b), INA § 235. *Pierre v. Doll*, 350 F. Supp. 3d 327, 329 (M.D. Pa. 2018) ("8 U.S.C. § 1225(b) governs the detention of 'aliens arriving in the United States,' and mandates the detention of 'arriving aliens' who, like Petitioner, do not possess valid entry or travel documents when they arrive.")

A noncitizen, however, may be released from § 1225(b) custody in the form of parole determined by the Attorney General. *See id.* at 330; *Martinez v. U.S. Atty. Gen.*, 577 F. App'x 969, 972 (11th Cir. 2014) (citing INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)) ("The Attorney General may temporarily parole an alien into the United States for urgent humanitarian reasons or significant public benefit."). "Parole, however, is not regarded as an admission of the alien." *Martinez*, 577 F. App'x at 972 (11th Cir. 2014) (citing INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)). Instead, "[p]arole is an administrative practice whereby the government allows an arriving alien who has come to a port-of-entry without a valid entry document to be temporarily released from detention and to remain in the United States pending review of the his [sic] immigration status." *Ibragimov v. Gonzales*, 476 F.3d 125, 131–32 (2d Cir. 2007). "When a charging document is served on the alien, the charging document constitutes written notice of termination of parole." *Martinez*, 577 F. App'x at 972-973; *see also* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5. "When parole is terminated, the paroled alien is restored to the status that he or she had at the time of parole and

becomes subject to removal proceedings." *Id.* at 973.

"Any further inspection or hearing shall be conducted under section 235 [8 U.S.C. § 1225] or 240 [8 U.S.C. § 1229a] of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed." 8 C.F.R. § 212.5. Under section 1225(b)(1), a noncitizen is subject to expedited removal if she "(1) is inadmissible because [] she lacks a valid entry document; (2) has not been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility; and (3) is among those whom the Secretary of Homeland Security has designated" for expedited removal. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020) (citing 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii)(I)–(II)). "Applicants can avoid expedited removal by claiming asylum." *Thuraissigiam*, 591 U.S. at 109. "If the asylum officer finds an applicant's asserted fear to be credible, the applicant will receive 'full consideration' of his asylum claim in a standard removal hearing." *Thuraissigiam*, 591 U.S. at 110 (citing 8 C.F.R. § 208.30(f)); *see* 8 U.S.C. § 1225(b)(1)(B)(ii).

In other words, "section 1225(b)(1) aliens are detained for 'further consideration of the application for asylum,' and § 1225(b)(2) aliens are in turn detained for '[removal] proceeding[s].'" *Pierre*, 350 F. Supp. 3d at 330 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. §

1225(b)(2)(A). This provision "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.

"Once those proceedings end, detention under § 1225(b) must end as well. Until that point, however, nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Pierre*, 350 F. Supp. 3d at 330 (citing *Jennings*, 583 U.S. at 297).

Here, Petitioner arrived on July 10, 2023, in Fort Lauderdale, FL where she was paroled into the United States. At the time of her parole, she was considered an arriving noncitizen (a category of applicant for admission) because she came into the United States at a port-of-entry. *See* 8 C.F.R. § 1.2; 8 U.S.C. § 1225(a)(1). Petitioner has not and cannot refute that. Therefore, when her parole was terminated, she was still considered an arriving noncitizen. *Martinez*, 577 F. App'x at 972-973; *see also* INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5. Petitioner's parole was terminated upon DHS terminating the CHVN program, but her parole also expired. Additionally, Petitioner's parole was further terminated upon issuance of the charging document, the Notice to Appear. *Id.*

As an arriving noncitizen under 1225(b)(2)(A), she was placed in standard removal proceedings. Furthermore, an immigration officer found that she was not clearly and beyond a doubt entitled to be admitted and was inadmissible pursuant to INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I) ("not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other

valid entry document required by this chapter, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality ..."). Although she is a derivative on her father's affirmative asylum application, this does not prevent her from being detained during her removal proceedings. She is an arriving noncitizen and falls within the definition of mandatorily detained individuals contemplated by § 1225(b). Petitioner, herself, acknowledges that "§ 1225(b) applies to people arriving at U.S. ports of entry," i.e. the status Petitioner had at the time of her parole. [Doc. 1, PageID. 13, ¶ 48.]

As such, § 1226(a) does not apply to Petitioner. Petitioner's argument that Federal Respondent's interpretation of § 1225(b)(2) deviates from a longstanding practice of § 1226(a) and renders the amendments to § 1226 found in the Laken Riley Act redundant[5] are immaterial because as an arriving noncitizen, Petitioner is subject to 1225(b) under *both* Petitioner's and Federal Respondent's interpretation. Further, Petitioner argues that the legislative history behind 1226 demonstrates that it governs citizens who were paroled into the country at the border. [Doc. 1, PageID. 9, ¶ 36.] However, the definition of an arriving noncitizen contemplates parole and specifically states that "an arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked." 8

[5] 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 noncitizens 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). As such, the Laken Riley Act is not redundant.

C.F.R. § 1.2. "When 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). Accordingly, Petitioner is lawfully detained under § 1225(b)(2).

III. Petitioner Cannot Show That Her Detention Violates Due Process

Petitioner cannot show that her detention violates her due process. The Fifth Amendment's Due Process Clause requires that "[n]o person shall ... be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process contains both procedural components, which require the government to follow certain procedures before a deprivation, and substantive components, which "bar[ ] certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990) (internal quotation omitted); *Snider Int'l Corp. v. Town of Forest Heights*, 739 F.3d 140, 145 (4th Cir. 2014).

"An alien has a substantive due process right to be free from arbitrary or unreasonable confinement during removal proceedings." *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). Additionally, "arriving aliens detained pre-removal pursuant to § 1225(b) have a due process right to an individualized bond consideration *once it is determined* that the duration of their detention has become unreasonable." *Pierre*, 350 F. Supp. 3d at 332 (finding that Petitioner's prolonged two-year detention was unreasonable and required an individualized bond hearing, governed by the

procedures under 8 U.S.C. § 1226(a)) (emphasis added). Here, however, Petitioner cannot show that her detention has been arbitrary or unreasonable. Petitioner is an arriving noncitizen lawfully detained under § 1225(b)(2)(A), who has been in ICE custody since October 1, 2025. She has not shown and cannot show any indication of an "unreasonable delay" by ICE in pursuing or completing her removal, nor can she show an unduly prolonged detention. *Perez*, 188 F. Supp. 3d at 333; *Pierre*, 350 F. Supp. 3d at 332. As such, Petitioner's detention does not violate substantive due process.

In regard to procedural due process, Petitioner argues that the three *Mathews* factors weigh in his favor: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); [Doc. 1, PageID. 16, ¶ 51.] However, Petitioner's due process rights as an arriving noncitizen does not overcome the Government's interests in maintaining her detention. In general, the Supreme Court has recognized that "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003). Also, the detention, as applied here to Petitioner, is narrowly tailored to serve the Government's compelling interest in detaining her during her removal proceedings.

Further, "an alien's right to procedural due process is violated 'only if [1] the proceeding was 'so fundamentally unfair that the alien was prevented from reasonably

presenting his case," and [2] the alien proves that 'the alleged violation prejudiced his or her interests.'" *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) ("Where an alien is given a full and fair opportunity . . . to present testimony and other evidence in support of the application, he or she has been provided with due process.").

Here, Petitioner was placed in standard removal proceedings where she will have "the privilege of being represented ... by counsel of [her] choosing who is authorized to practice in such proceedings" and "a reasonable opportunity to examine the evidence against [her], to present evidence on [her] behalf, and to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(b)(4). Her master hearing with the immigration court is scheduled for October 30, 2025. Additionally, she was given notice of the charges against her, currently has access to counsel, and may have the opportunity to apply for other relief before the immigration court. As such, Petitioner has not identified a statutory procedure, which she is entitled, that ICE has denied her. Under these circumstances, Petitioner cannot show that her detention violates her procedural due process.

CONCLUSION

Because Petitioner is lawfully detained, Respondents respectfully request that the Court dismiss her petition for a writ of habeas corpus.

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.

/s/ Calesia Henson
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