UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION

ISIDRO CALLEJA SEBASTIAN, Petitioner, v. SAM OLSON, et al., Respondents.	Case No. 2:25-167

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

ARGUMENT

I. 8 U.S.C. § 1225 Governs Arriving Aliens While 8 U.S.C. § 1226 is the Default Rule for Aliens Already Present in the United States

Respondents argue that Mr. Calleja Sebastian is lawfully detained under 8 U.S.C. § 1225 based solely on subsection (a)(1), which states "[a]n alien present in the United States who has not been admitted [...] shall be deemed for purposes of this chapter an applicant for admission." However, Respondents ignore the purposes of the chapter, which is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Subsection (a) itself is titled "Inspection." The word "arriving" "indicates that the statute governs 'arriving' noncitizens, not those present already. *Barrera v. Tindall*, No. 3:25-cv-541-RCG, 2025 WL 2690565, at *6 (W.D. Ky. Sept. 19, 2025). This is further supported by the fact that the statute focuses "on inspections for noncitizens when they arrive via 'crewman' or as 'stowaways.'" *Id.*; 8 U.S.C. § 1225(b)(2)-(3). It is clear that Section 1225 "is limited to noncitizens arriving at a border or port and are presently 'seeking admission' into the United States." *Id.*

The Supreme Court adopted this interpretation in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). "In sum, U.S. immigration law authorizes the Government to detain certain aliens *seeking admission into the country* under §§1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country pending the outcome of removal proceedings* under §§1226(a) and (c)." 583 U.S. at 289 (emphasis added). The distinction is clear, despite Respondents' insistence on isolating one phrase of Section 1225, and, inexplicably, citing *U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence but look to the provisions of the whole law, and to its object and policy"). ECF 3, page ID# 43. The

Jennings Court found that 8 U.S.C. § 1226 creates a default rule for aliens already present in the United States. *Id.* at 288.

This Court should not defer to the agency's interpretation just because the statute may be ambiguous. *Loper Bright Enter. v. Raimando*, 603 U.S. 369, 412-413 (2024). That is especially true where, as here, the agency is reversing course on nearly 30 years of interpretation and ignoring Supreme Court precedent on the issue. Mr. Callejas Sebastian is detained as an alien already in the country pending the outcome of removal proceedings under 8 U.S.C. § 1226.

II. Petitioner is Not an "Applicant for Admission"

Respondents contend that Mr. Calleja Sebastian is an applicant for admission, defining the term broadly to include any alien present in the United States without having been admitted. ECF 3, Page ID# 37. Respondents argue that, regardless of when a noncitizen entered the country, "[s]imply by being in the United States without having been admitted, an alien is *actively* seeking admission into the United States." ECF 3, Page ID# 39 (emphasis added). However, the agency cannot create a legal fiction and twist the words of the statute to make it come true because it benefits their current position.

8 U.S.C. § 1101(13)(A) defines the term "admission" to mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." It logically follows that an admission occurs when an alien presents him- or herself to an immigration officer for inspection and requests permission to enter the country. This is exactly the opposite of an alien who entered without inspection.

Mr. Calleja Sebastion has never sought admission to the United States and is not currently seeking admission into the United States. Respondents refer to Black's Law Dictionary's definition of "applicant," as "[s]omeone who requests something…" but fail to

identify what Mr. Calleja Sebastian ever requested. ECF 3, Page ID# 43. According to the government's, a noncitizen can be "actively seeking admission" for decades without ever taking any action or making any request. This interpretation is nonsensical.

Respondents argue that if Mr. Calleja Sebastian is not an applicant for admission, his status is a "legal conundrum," asking "If he is not admitted to the United States [...] but he is not 'seeking admission' [...] then what is his legal status?" ECF 3, Page ID# 40, quoting *Matter of Yajure Hurtado*, 29 I&N Dec. at 221 (BIA 2025). The answer is obvious – he is present in the United States without having been admitted or paroled.

The Department of Homeland Security (DHS)'s Form I-862 answers this "legal conundrum" for us by listing three different classifications for a noncitizen placed in removal proceedings: (1) arriving alien; (2) alien present in the United States who has not been admitted or paroled; and (3) admitted to the United States, but removable. *See* ECF 1-2, the Notice to Appear. DHS's own regulations define "arriving alien" as "an *applicant for admission* coming or attempting to come into the United States at a port-of-entry [...]" 8 C.F.R. §1.2 (emphasis added). Therefore, it is clear that DHS itself treats "arriving aliens" (also known as applicants for admission) differently than aliens present without having been admitted or paroled. To say otherwise, Respondents contradict their own regulation and render obsolete the classifications on Form I-862 used to initiate removal proceedings against noncitizens. On Mr. Calleja Sebastian's Notice to Appear, DHS classified him as "an alien present in the United States who has not been admitted or paroled." ECF 1-2. It necessarily follows that he is not an applicant for admission. There is no conundrum.

III. Neither Asylum Nor Withholding of Removal Is An Admission

Respondents claim that "Petitioner is currently seeking lawful immigration status" and

therefore is an applicant for admission. ECF 3, Page ID# 40. This conclusory statement demonstrates Respondents' lack of understanding of the term "admission." As a defense from removal, Mr. Calleja Sebastian filed an application for asylum and withholding of removal. However, neither asylum nor withholding of removal is considered an "admission." Asylum is granted to a noncitizen present in the United States who demonstrates that they meet the definition of "refugee." 8 U.S.C. § 1158 (a)(1), (b)(1)(B)(i). This is distinct from being "admitted as a refugee," where a noncitizen *outside* of the United States *applies for admission,* and is later *admitted*, to the United States at a port of entry as a refugee. *See Matter of V-X-*, 26 I&N Dec. 147, 150 (BIA 2013). Because asylum applicants are already *present in the United States*, they are not applying for or granted admission. Thus, noncitizens present in the United States who apply for asylum are not applicants for admission.

Withholding of removal is a form of relief to a noncitizen who is ordered removed but who cannot be removed to a country where their "life or freedom would be threatened" because of their race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1231(b)(3)(A).

To say that Mr. Calleja Sebastian has been "actively seeking admission" for twenty years is a legal fiction. He has now filed an application for asylum and withholding of removal, neither of which is an admission to the United States. As such, Mr. Callejas Sebastian is not an "applicant for admission."

IV. Congress Grants Noncitizens Varying Rights Based on Their Length of Time and Equities in the United States

Respondents argue that noncitizens who enter the United States unlawfully are treated the same as those arriving at the border, regardless of when they entered the country. ECF 3, Page ID# 42. But this is simply not true, as Congress does in fact grant varying rights to noncitizens

based on when they entered the United States. The Immigration and Nationality Act repeatedly distinguishes the rights and remedies available to noncitizens based on the length of their presence and the equities they have established in the United States.

For instance, Legal Permanent Residents who have been in the Unites States for seven years or more may seek and be granted cancellation of removal; but those present for less than seven years are ineligible. 8 U.S.C. § 1229b(a). Non-Legal Permanent Residents (i.e., noncitizens with no status, including those who entered the United States unlawfully like Mr. Calleja Sebastian) who have continually resided in the United States for ten years or more and have a U.S. Citizen or Legal Permanent Resident spouse, parent, or child may seek and be granted cancellation of removal. 8 U.S.C. § 1229b(b). Those residing in the country for less than ten years and without qualifying relatives are ineligible. *Id.* Congress clearly intended to differentiate the rights and remedies available to noncitizens based on the length of their presence and the equities they have developed in the United States.

Similarly, 8 U.S.C. §1225(b)(1)(a)(3)(II) distinguishes the rights and remedies available to noncitizens who enter unlawfully depending on how long they have been present. Those who have not been present in the United States for two years are subject to the expedited removal process, which affords significantly less due process. *Id. See also* 8 C.F.R. § 235.3(b)(ii). Those who have been present for two years or more are placed in removal proceedings before an immigration judge and granted additional rights as articulated in 8 U.S.C. § 1229a. Respondents agree that noncitizens subject to expedited removal have fewer rights than those in removal proceedings before an immigration judge. *See* ECF 3, Page ID# 34.

Given the foregoing, it is not an "absurd result" that a noncitizen who has resided in the United States for more than 20 years with a family, home, and business is entitled to release on

bond, while someone who more recently arrived and applied for admission is subject to detention. *See* ECF 3. Page ID# 42. Respondents assert that noncitizens who entered unlawfully – no matter how long ago – are not entitled to more process than those stopped at the border. *See id.* But the Supreme Court has made clear that there is a difference. "[O]nce an alien enters the country, the legal circumstances change, for the Due Process Clause applies to 'all persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, at 693 (2001).

Due process is guaranteed when any person is facing the deprivation of life, liberty, or property. U.S. Const. amend. V. "Liberty" is a broad term.

> Without a doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized … as essential to the orderly pursuit of happiness by free men.

Bd. of Regents v. Roth, 408 U.S. 564, 572 (1972), *citing Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Due process not only protects Mr. Calleja Sebastian's liberty to be free from physical restraint, but also the equities he has developed in the more than 20 years he has resided in the United States – the home he has established, the work he does, and the family he has created.

The Fifth Amendment requires due process *before* a person is deprived of life, liberty, or property; by continuing to detain him pending removal proceedings, Respondents have deprived Mr. Calleja Sebastian of his liberties before the completion of his process. Contrast this scenario with that of an arriving alien who is applying for admission – they are *arriving* and therefore have not established presence or equities in the United States. It logically follows that the law would treat these situations differently, which is precisely what the agency did for nearly 30

years by granting release on bond to eligible noncitizens who entered without inspection.

V. Respondents' Novel Interpretation Renders Obsolete an Entire Act of Congress

Respondents argue that statutes often have superfluous language because drafters often repeat themselves. ECF 3, Page ID# 44, fn 8. However, the issue here is not one of a few extra words or flawed writing style. The Laken Riley Act added two provisions to the mandatory detention provisions of 8 U.S.C. § 1226, providing that:

> The Attorney General shall take into custody any alien who –
> [...]
> (E)(i) is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title; and
> (ii) is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of [certain crimes].

8 U.S.C. 1182(a) provides that aliens are inadmissible if:

(6)(A) they are present in the United States without being admitted or paroled;

(6)(C) by fraud or misrepresentation they "seek[] to procure (or [have] sought to procure or has procured) a visa, other documentation, *or admission into the United States*" (emphasis added); and

(7) they are not in possession of a valid entry document *at the time of application for admission*.

Of note here is that Congress clearly differentiates aliens present without being admitted or paroled from applicants for admission. The Laken Riley Act became law on January 29, 2025, which is a very recent demonstration of Congress's statutory intent.

The Laken Riley Act provides that such noncitizens are subject to mandatory detention if they are charged with, convicted, or have admitted committing certain crimes. But if all aliens "present in the United States without being admitted or paroled" are applicants for admission

subject to mandatory detention under 8 U.S.C. § 1225, as Respondents argue, why would Congress need a separate statute providing that aliens present without being admitted or paroled are subject to mandatory detention if they are charged with certain crimes?

The canon against surplusage must apply to Respondents' interpretation; to say otherwise would render an entire Act of Congress obsolete. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 297 (1995). "If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless [...]" *Barrera v. Tindall*, No. 3:25-cv-541-RCG, 2025 WL 2690565, at *7 (W.D. Ky. Sept. 19, 2025), quoting *Lopez-Campos v. Raycraft*, 2025 WL 2496379 at * 8 (E.D. Mich. Aug. 29, 2025) and *Maldonado v. Olsen*, 2025 WL 2374411, at * 12 (D. Minn. Aug. 15, 2025).

CONCLUSION

Mr. Calleja Sebastian is detained under 8 U.S.C. § 1226 as an alien already in the country pending the outcome of removal proceedings. He is not an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225. The government's novel interpretation contradicts nearly 30 years of precedent and practice, and renders obsolete an act of Congress enacted less than a year ago. Mr. Calleja Sebastian was ordered released on bond before Respondents changed their interpretation of a well-settled statutory framework, but they continue to detain him nonetheless. For the foregoing reasons, and those stated in his petition, this Court should grant a writ of habeas corpus and order his immediate release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sarah Larcade, hereby certify that on November 14, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system, which sent notice of filing to all parties receiving electronic notice.

s/ *Sarah C. Larcade*

Attorney for Petitioner