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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARACELI PELICO CALEL,

Petitioner-Plaintiff,

v.

CHRISTOPHER J. LAROSE, et al.

Respondents-Defendants.

Case No.: 3:25-cv-02883-GPC-JLB

PETITIONER'S TRAVERSE SUPPORTING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner replies to Respondents' Return as follows:

A. Petitioner's Habeas Claims Are Not Barred by 8 U.S.C. § 1252

Section 1252 does not apply to bar jurisdiction because this action concerns Petitioner's unlawful detention. More specifically, the misapplications of 8 U.S.C. § 1225 and § 1226 are Respondents' basis for the detention of Petitioner. The Respondents contend Petitioner is subject to Section 1225(b)(2)'s mandatory detention provisions because she is "an applicant to admission" to the U.S., although Petitioner has been in the U.S. for nearly two decades.

In this petition, Petitioner does not make *any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders.* Petitioner does not dispute the commencement or any other aspect of her removal proceedings. Moreover, the Petitioner does not have a removal order. Nor does Petitioner make any *challenges to the method by which the government chooses to commence removal proceedings*. In short, Petitioner challenges nothing related to her removal proceedings – she challenges the Respondents' denial of her release from immigration custody on the purported basis that Petitioner is subject to mandatory detention under section 1225(b)(2). Therefore, the jurisdictional bar under 8 U.S.C. § 1252(g) does not apply here.

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.*. Again, the Petitioner is not challenging anything with respect to her removal proceedings – she is challenging her unlawful detention. As previously stated, the Petitioner cannot be seeking *judicial review of a final order of removal,* as she does not have a removal order. Petitioner' removal proceedings continue to be pending in immigration court. See the EOIR Online Case Information System corresponding to Petitioner's Agency Number, accessible at: https://acis.eoir.justice.gov/en/caseInformation.

Finally, the Petitioner is not challenging the decision to detain her in the first place – she is challenging under what detention authority she is being detained and the lack of being provided a bond hearing. Courts have repeatedly held that § 2241 permits direct review of

detention legality, rejecting jurisdictional arguments. See, e.g., Tut v. Noem, No. 5:25-cv-02701-DOC-AGR, 2025 LX 415266 (C.D. Cal. Oct. 16, 2025); Carlos v. Noem, No. 2:25-cv-01900-RFB-EJY, 2025 LX 483830 (D. Nev. Oct. 24, 2025).

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, 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). This interpretation is supported by recent amendments to Section 1226 by Congress. 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 – as is the case with Petitioner – 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 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]

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

'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)).

In sum, § 1226's plain text demonstrates that § 1225(b)(2) does not apply to noncitizens in the U.S. are present within and residing within the U.S., but rather only to 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 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 has already entered and is 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").

Neither *Matter of Yajure Hurtado* nor *Chavez v. Noem* address how being "an applicant for admission" is only part of the inquiry regarding 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 are neither an "applicant for admission" nor in the process of "seeking admission" into the U.S., they are 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 (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. 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 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).

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3. The Record and Longstanding Agency Practice Reflect That § 1226 Governs Petitioner's Detention.

The fact that the Board has a long practice of considering people like the Petitioner 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 R-A-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 Detention Violates the Due Process Clause and the APA

Petitioner has been living within the U.S., accruing significant due process rights along the way, for the past eighteen years. Noncitizens present within the United States – as opposed to noncitizens present at a border and seeking admission – have constitutional rights. "[T]he 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, 693 (2001). Moreover, immigration detention cannot be punitive in nature, nor can it be arbitrary and capricious per the APA. Nothing in Respondents' evidence shows that Petitioner are any danger to the community or a flight risk – the latter is especially true given her U.S. citizen children and substantial community ties. As such, Petitioner' detention without a pre-deprivation bond hearing or any individualized assessment violates Petitioner's due process rights and the APA.

Dated: November 7, 2025,

By: /s/ Kirsten Zittlau
Kirsten Zittlau
Attorney for Petitioner
Email: bg@lobg.net

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 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: November 7, 2025

/s/ Kirsten Zittlau
Kirsten Zittlau