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7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
9 SAN ANTONIO DIVISION

10 Jency Lizbeth BAQUEDANO
LAGOS

11 Petitioner,

12 v.

13 Miguel VERGARA, Acting Field
14 Office Director of Enforcement
and Removal Operations, San
15 Antonio Field Office,
Immigration and Customs
16 Enforcement; Todd LYONS,
Acting Director U.S.
17 Immigrations and Customs
Enforcement; Kristi NOEM,
18 Secretary, U.S. Department of
Homeland Security; U.S.
19 DEPARTMENT OF
20 HOMELAND SECURITY;
Pamela BONDI, U.S. Attorney
21 General; Waymon BARRY,
Warden of Karnes County
22 Correctional Center,

23 Respondents.
24

Case No. 5:25-cv-1411

**PETITIONER'S REPLY TO
FEDERAL RESPONDENTS'
RESPONSE**

1 **I. Introduction**

2 Petitioner will address the following arguments: 1) that Federal Respondents' argument
3 misinterprets the statutory construction of Section 1225 and 1226 on detention and removal; 2)
4 that jurisdiction over habeas is proper with this Court; 3) that Federal Respondents' arguments
5 about lawful status are irrelevant; and 4) that Federal Respondents' presumption in favor of
6 detention for all violates the statute. See 8 U.S.C. §§1225, 1226. Petitioner will not reply to every
7 issue and argument made by the Federal Respondents in their Response. The absence of any
8 rebuttal is not, however, a waiver or abandonment of any claim or argument made previously.
9 For arguments not explicitly addressed herein, Petitioner rests on the arguments presented in her
10 Petition for Writ of Habeas Corpus.

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12 **II. The Statute Does Not Support Federal Respondents' Interpretation that**
13 **Petitioner was detained under Section 1225 instead of Section 1226.**

14 The principal issue in this case is whether Petitioner has been lawfully detained under
15 Section 1225(b)(2)(A), requiring mandatory detention. Federal Respondent's interpretation of
16 the statute is not consistent with their own records or case law. The record establishes that
17 Respondent's agents' own treatment of Petitioner, asserting, detaining Petitioner in San Antonio,
18 Texas on July 29, 2025, almost two years after her entry into the country in September 2023 as a
19 minor, was consistent with treatment under Section 1226 not Section 1225. Respondent's own
20 paperwork demonstrates the agents applied the established interpretation of the statute, and
21 understood they were placing Petitioner in proceedings under Section 1226. *See* Petitioner's
22 Exhibit 1 ("You have been arrested and placed in removal proceedings. In accordance with
23 section 236 of the Immigration and Nationality Act.... You are being released on your own
24 recognizance... Date: Jan 30, 2025"). Federal Respondents have been applying Section 1226, not

1 Section 1225 to similarly situated immigrants arrested well within the borders of the United
2 States consistently from the statute's 1996 enactment until July 2025. Only now do the Federal
3 Respondents' response mischaracterizes the structure created by Congress, one where mandatory
4 detention is exceptional, not the default, for individuals with established lives well within our
5 borders.

6 There are two separate sections of the statute dealing with detention and removal, 8 USC §§
7 1225 and 1226. Section 1225 relates to the initial encounter of people at our nation's borders or
8 ports of entry, and is entitled "Inspection by immigration officers; expedited removal of
9 inadmissible arriving aliens; referral for hearing."¹ The "catchall phrase" the Federal
10 Respondents use to support their entire argument is entitled "Inspection." 8 USC § 1225(a). The
11 section the Federal Respondents would use to mandatorily detain the Petitioner, 8 USC §
12 1225(b)(2), is entitled "Inspection of Other Aliens." Inspection is an action taken when the
13 person is seeking to be admitted into the United States at a border or port of entry. This is further
14 supported by 8 USC § 1225(a)(3) which states "all aliens (...) who are applicants for admission
15 *or otherwise seeking admission* or readmission *to* or transit through *the United States* shall be
16 inspected by immigration officers." (Emphasis added). This relates the term "applicant for
17 admission" with the action of "seeking admission," which is something done at the time of
18 arrival to the United States. This section of the statute then divides those persons seeking
19 admission into people who will either be 1) subject to expedited removal, or 2) those who pass a
20 credible fear hearing for asylum and are placed in removal proceedings. This expedited removal
21 and detention scheme envisioned by Congress extends to people present in the United States for

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23 ¹ While the title of the statute is not binding, it does breathe light into the meaning of the statute. *See Merit Mang. Grp. LP v. FIT Consulting, Inc.*, 583 U.S. 366, 380 (2018); *Dubin v. United States*, 599 U.S. 110, 120-21 (2023) ("This Court has long considered that the title of a statute and the heading of a section are tools available for the resolution of a doubt about the meaning of a statute.").

1 two years or less. 8 USC §1225(b)(1)(A)(iii)(II). This time limitation shows Congress' intent to
2 apply Section 1225 to those in close proximity to their arrival in the United States, in both time
3 and location. Congress did not intend to treat a person, like Petitioner, present in the United
4 States for years, whose family and community depends on her, exactly the same as a person who
5 recently arrived into the country at the border.

6 Distinctly, 8 USC § 1226 relates to people already present in the United States who are not
7 subject to the expedited removal scheme detailed in Section 1225. Entitled "Apprehension and
8 detention of aliens," it states, "on a warrant issued by the Attorney General, and alien may be
9 arrested and detained pending a decision on whether the alien is to be removed from the United
10 States." This section allows for release on bond or on recognizance, unless the person is subject
11 to mandatory detention under Section 1226(c) "Detention of Criminal Aliens." Section 1226(a0
12 states that "an alien may be arrested and detained pending a decision on whether the alien is to be
13 removed from the United States," and, with some exceptions, that the Attorney General "may
14 release the alien" on bond or conditional parole. 8 U.S.C §1226(a). Petitioner's arrest with no
15 criminal history, does not fall into that exception from eligibility for bond or conditional parole.
16 Respondents never assert that Petitioner is subject to mandatory detention under Section 1226(c).
17 Petitioner was arrested in San Antonio, Texas, presenting at her regularly scheduled ICE check-
18 ins, without any criminal history, neither was she arrested at the border as an adult, but rather as
19 an unaccompanied minor. Her detention at the border two years prior was governed by the
20 TVPRA, and the Flores Settlement. William Wilberforce Trafficking Victims Protection
21 Reauthorization Act of 2008 (TVPRA), codified at 8 U.S.C. §1232); *Flores v. Sessions*, No.
22 2:85-CV-85-4544, 2018 WL 3058288 (C.D. Cal. June 21, 2018) (Settlement Agreement). *See*
23 Petitioner's Exhibit, 2.

1 The Supreme Court has only debated this statutory structure of 1225 and 1226, as applied to
2 inadmissible petitioners, in post removal order cases. The Supreme Court read in both cases, that
3 Section 1225 relates to people encountered at our nations' borders and ports of entry, and Section
4 1226 relates to people already present in the United States. *Clark v. Martinez*, 543 U.S. 371
5 (2005)(addressing immigrants entering on the Mariel boatlift and then paroled); *see also*
6 *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (consolidating class representatives who entered
7 under Sections 1225(b), 1226(a), 1226(c), and 1231(a)). The Jennings Court discusses Section
8 1225: "that process of decision generally begins at the Nation's borders and ports of entry, where
9 the Government must determine whether an alien *seeking to enter the country* is admissible."
10 *Jennings*, 583 U.S. at 287 (emphasis added). The Court proceeds to describe Section 1226:
11 "Even once inside the United States, aliens do not have an absolute right to remain here. ...
12 Section 1226 generally governs the process of arresting and detaining that group of aliens
13 pending their removal." *Jennings*, 583 U.S. at 288. The Court summarizes this statutory scheme,
14 stating:

15 In sum, the U. S. immigration law authorizes the Government to detain certain aliens
16 seeking admission into the country under §§1225(b)(1) and (b)(2). It also authorizes the
17 Government to detain certain aliens *already in the country* pending the outcome of
18 removal proceedings under §§1226(a) and (c).

19 *Id.* at 289 (emphasis added); *see also Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL
20 2886346, at *2 (S.D. Tex. Oct. 7, 2025)(applying the established interpretation of applying 1226
21 not 1225 to respondents already present in the country); *Zumba v. Bondi*, No. 25-
22 CV-14626, 2025 WL 2753496, at *9 (D.N.J. Sept. 26, 2025). The Court in *Jennings* reinforces
23 this understanding of the two statues yet again stating "§1225(b) applies primarily to aliens
24 seeking entry into the United States ('applicants for admission' in the language of the statute)"

1 and “§1226 applies to aliens already present in the United States.” *Jennings*, 583 U.S. at 297,
2 303.

3 Respondents argue that “seeking admission in § 1225(b)(2) does not preclude the
4 application of § 1225 to Petitioner because the terms “applicant for admission” and “seeking
5 admission” are “the same phrase.” ECF. Doc. 5, at 7. Courts disagree. *Lopez Benitez v. Francis*,
6 No. 25-CIV-5937(DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025); *Garibay-Robledo*
7 *v. Noem*, Civil Action No. 1:25-177-H (N.D. Tex.)(denying TRO); *see TRW Inc. v. Andrews*, 534
8 U.S. 19, 31 (2001)(rule of statutory construction to look at the statute as a whole and avoid
9 making a word “superfluous, void or insignificant”). The regulations recognize the distinction.
10 “Despite being applicants for admission, aliens who are present without having been admitted or
11 paroled ... will be eligible for bond and bond redetermination.” 62 Fed. Reg. 10312, 10323(Mar.
12 6, 1997); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (explaining that section 1226(a)
13 simply “restates” the detention authority previously found at section 1252(a)). Recently in 2025,
14 Laken Riley Act, imposed a new ground of mandatory detention under 1226(c) to apply only to
15 noncitizens who have not been admitted. Laken Riley Act, Pub.L. No. 119-1, 139 Stat. 3(2025).
16 If Federal Respondent’s interpretation of Section 1225 were correct, that new provision of the
17 Laken Riley Act just for those who entered without admission, would have been superfluous.
18 Respondents shrug their shoulders at Congress, ignoring this as a common redundancy. ECF.
19 Doc. 5, at 9. However this answer is unsatisfactory and not supported by the case law they cite.
20 *See Martinez v. Mukasey*, 519 F.3d 532, 541-42 (5th Cir. 2008) (discussing the 212(h) “waiver of
21 inadmissibility” that can in practice be available to both respondents in removal proceedings
22 sections 1227 and 1226, who have been admitted and those who have not, but the waiver
23 language excludes eligibility to those who have “previously been admitted to the United States as
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1 an alien lawfully admitted for permanent residence...”). That Fifth Circuit case does not address
2 bond eligibility at all, but rather only addresses whether the waiver language is available to both
3 those LPRs who were admitted at the border and those who adjusted status to LPRs. *Martinez*,
4 519 F.3d at 543. The Fifth Circuit analysis, which also applied Chevron deference, is not helpful
5 in analyzing the relationship of Sections 1225 and 1226.

6 The BIA’s application of the *Jennings* more broad interpretation of Section 1225 and its
7 interplay with Section 1226 was a misapplication of dicta, because the *Jennings* Court only
8 needed to address indefinite detention. *Matter of Q Li*, 29 I&N Dec. 66, 68 (BIA 2025); *Matter*
9 *of Yahure Hurtado*, 29 I&N Dec. 216, 218-19 (BIA 2025)(citing *Jennings*, 583 U.S. at 287, 299
10 language calling 1225(b)(2)(A) a “catchall provision”). Federal Respondents improperly rely on
11 this dicta. The Court was asked in *Jennings* to consider whether the various detention statutes
12 incorporate a six month limit on detention, without a hearing, based on a doctrine of
13 constitutional avoidance. The *Jennings* Court was not faced with the question of which statutory
14 authority applies at the beginning of detention for those crossing the border, whether placed in
15 expedited removal or placed directly into removal proceedings. In that dicta the *Jennings* Court
16 assumed that any time 1225 could be applied, mandatory detention would necessarily apply, but
17 that was not necessary to the holding of the case. Although the Board of Immigration Appeals
18 (BIA) has recently used the dicta as well, especially since *Loper Bright*, this Court should not
19 defer to the Board of Immigration Appeals broader misinterpretation of Section 1225, especially
20 when the question of Petitioner is not squarely addressed. *See Loper Bright Enterprises v.*
21 *Raimondo Relentless, Inc.*, 603 U.S. 369 (2024); *see, e.g., Q. Li*, 29 I&N Dec. at 68; *see also*
22 *e.g., Yajure*, 29 I&N Dec. at 218.

1 The *Thuraissigiam* case that the Federal Respondents rely on to rebut Petitioner’s due
2 process argument, is inapposite, since it relates to a person clearly subject to § 1225. *DHS v.*
3 *Thuraissigiam*, 591 U.S. 103 (2020)(analyzing only the distinction between Section 1225(a)(1)
4 and 1225(b)(1)). Mr. Thuraissigiam entered the US without inspection and was detained “within
5 25 yards of the border” shortly after his entry. *Thuraissigiam*, 591 U.S. at 114. He sought asylum
6 and was detained under the credible fear section of the statute at § 1225. He was clearly subject
7 to § 1225, not § 1226. The Supreme Court pointed out that “when respondent entered the
8 country, aliens were treated as applicants for admission if they were ‘encountered within 14 days
9 of entry without inspection and within 100 air miles of any U. S. international land border.”
10 *Thuraissigiam*, 591 U.S. at 109 (citing 69 Fed. Reg. 48879 (2004)). Had the court thought the
11 phrase “applicant for admission” in Section 1225 applied to all persons who entered without
12 inspection, regardless of the date or location of their encounter, there would have been no need
13 for this clarification.

14 We note that the Federal Respondents initially detained the Petitioner under the authority of 8
15 USC § 1226 (Immigration and Nationality Act § 236), and her paperwork produced by
16 Respondents, the Order of Release on Recognizance and Verification of Release, admits that.
17 See Petitioner’s Exhibits, 1-2. Federal Respondents new statutory construction would be a drastic
18 change in the standing interpretation of the statute, and if this new interpretation were to be
19 applied, all non-citizens in removal proceedings who were inadmissible would be detained
20 possibly for years pending adjudication of their hearings, despite having established lives,
21 families, authorized jobs, and integrated community relationships from years in the U.S. This
22 new statutory interpretation mistakenly treats all inadmissible people including Petitioner like
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1 someone who recently arrived at the border, even though nothing has changed since to her family
2 in 2023. *See* Petitioner’s Exhibits, 1-2.

3
4 **III. The Court Has Jurisdiction.**

5 As asserted in the original petition, jurisdiction is proper under Section § 1225(b)(2), and
6 none of the jurisdiction stripping statutes apply here. Petitioner invokes this jurisdiction
7 contesting the lawfulness of her detention under both statutory and constitutional claims. *See* 28
8 USC § 2241. Whether mandatory detention applies to Petitioner is a question of statutory
9 interpretation. *See* 8 U.S.C. § 1225(b)(2)(A).

10 **a. The Petitioner is Not Challenging DHS Authority to Commence Removal**
11 **Proceedings.**

12 Federal Respondents claim the court does not have jurisdiction because Petitioner is
13 “challeng(ing) the decision to detain him in the first place.” ECF No. 5, at 11. This is not the
14 case. The Petitioner is not challenging the decision to detain her in the first place, nor is she
15 challenging the decision to commence removal proceedings. She is challenging the Federal
16 Respondents’ decision to detain her without possibility of bond, in contravention with the
17 Constitution, statutes, and regulations.

18 **b. The Petitioner is Not Challenging Respondent’s Decision Regarding**
19 **Admission.**

20 The Petitioner is not challenging whether she is appropriately categorized as an applicant for
21 admission. She is challenging whether the Federal Respondents are correct that she is subject to
22 mandatory detention. The Petition for Writ of Habeas Corpus in the District Court is the
23 appropriate means to challenge that.

1 **IV. The Federal Respondents' Focus on Petitioner's Lawful Status is Irrelevant.**

2 The Federal Respondents state that Petitioner has "no claim to any lawful status." ECF No. 5,
3 at 3. While this would be a factor the Immigration Judge would consider in deciding whether to
4 grant a bond and in what amount, it is irrelevant to the decision of whether she has a right to seek
5 release from detention while her removal proceedings and application for asylum remain
6 pending. Respondents oddly state, "ordering release... produces no net gain to Petitioner, while
7 mandating continued detention until at least the conclusion of removal proceedings furthers the
8 government's interest in enforcing the immigration laws." Respondents contradict the interests
9 DHS has already recognized in releasing Petitioner to her family. Even the public high school
10 relied on this expressed government interest educating and supporting Petitioner, all as her
11 relationships with her community including US citizen cousins and niece children continued to
12 grow. All these relationships continued to strengthen, meanwhile her asylum claim may be
13 litigated. Respondents also ignore the government interest in enforcing *all* immigration laws,
14 including asylum, withholding of removal and the Convention Against Torture, not just removal.
15 But neither Petitioner nor Respondent's interest are determinative of the statutory interpretation
16 of her eligibility for a bond hearing.

17 Her pending claim to lawful status based on pending application(s) for relief is not relevant
18 to the issue being litigated, bond eligibility. However, their statement about her lack of a claim to
19 legal status is also incorrect. She properly asserted her eligibility for relief with EOIR, that being
20 asylum. If she is released, she will be eligible to apply for work authorization and a Social
21 Security card. Although her asylum application has not been adjudicated, she does have an
22 ongoing lawful *claim* to seek status, already acknowledged by Respondents' actions.

1 **The Federal Respondents' Improperly Presume the Statute Favors Detention, and a**
2 **Bond Hearing is an Exception.**

3 Federal Respondents seem to improperly presume the statute favors detention without bond.
4 If the Court were to order her release, it would be because the detention under § 1225 was
5 unlawful. If the Court were to order a bond hearing, then her release would be subject to the
6 conditions of her bond. The Federal Respondents state that “ordering release in this circumstance
7 produces no net gain to Petitioner.” ECF No. 5, at 3. However even the Jennings Court describes
8 mandatory detention as a “carve[] out” or exception. *Jennings*, 583 U.S. at 282. The Petitioner
9 has been detained for three months, separated from her family and ongoing high school
10 education. She has a pending application for relief. Her next hearing is scheduled for December
11 2025, and then she will have to wait for the adjudication, which necessarily means more time in
12 custody. If she or the government were to decide to appeal the Immigration Judge’s decision, she
13 will be detained even longer.

14 Her liberty interest alone is a net gain. Her release from custody would allow her to be with
15 her family, attend the high school classes she has already registered for, all while the
16 Immigration Judge determines whether she can remain in the United States. The ability to fully
17 litigate her application before the Immigration Court, participate freely in her defense with the
18 support of her family, gather documents, and have access to experts and other witnesses is a net
19 gain.

20 As for the government’s interest in enforcing the immigration laws, enforcement includes
21 adjudication of pending petitions, such as her asylum application. Enforcement of our laws does
22 not only mean detention and removal. Unlawful detention interferes with the due process of her
23 removal proceedings wherein she needs her community support to prepare and present relevant
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1 facts. Should the Petitioner's applications be ultimately denied, the Government would be
2 authorized to detain and remove her at that point.

3 The Federal Respondents are correct that the Petitioner can seek humanitarian parole from
4 ICE, but that does not minimize her constitutional right from protection from unlawful detention.

5
6 **V. Conclusion**

7 For the reasons in this reply and in the petition, Petitioner requests the relief requested in the
8 Petition.

9
10 DATED this 16th day of November, 2025.

11 Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that the defendants on this case are known filing users and service will be accomplished through the Notice of Electronic Filing (NEF).

DATED this 16th day of November, 2025.

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