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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Elizabeth CARDOSO, Petitioner-Plaintiff, v. CHRISTOPHER J. LAROSE, et al. Respondents-Defendants.	Case No.: 25-cv-3043-BJC-VET **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 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.

In short, this action concerns the unlawful detention of the Petitioner without a bond hearing. The Supreme Court and Ninth Circuit have rejected Respondents' contention that § 1252(g) covers all claims arising from deportation proceedings or imposes a general

jurisdictional limitation. See Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020); see also Arce v. United States, 899 F.3d 796, 800 (9th Cir. 2018) ("[W]e have limited [§ 1252(g)]'s jurisdiction-stripping power to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders.")

B. Petitioner is not Subject to Mandatory Detention

As discussed in detail in the Petition, the Petitioner is not lawfully detained under Section 1225(b)(2) as alleged by Respondents. Since the filing of the Petition in this matter, the Central District of California has issued Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. November 20, 2025) echoing the numerous other district courts in stating that those noncitizens apprehended inside the U.S. – like the Petitioner – are subject to Section 1226(a), and not Section 1225(b). In Maldonado Bautista, the Court stated that the "Respondents endorse an interpretation of § 1225 that effectively removes § 1226 from existence." Id. at 15. "If the Court were to accept Respondents' position that all noncitizens already in the country (regardless of whether they were inspected and authorized by an immigration officer) were 'applicants for admission,' then there would be no possible set of noncitizens to which § 1226(a) would apply." Id.

Respondents' Return also does not address Jennings v. Rodriguez, 583 U.S. 281 (2018). 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 Petitioner is not seeking entry to the U.S. but rather has resided here for over twenty years – as such, Section 1226 applies.

The Respondents' Return also does not address Torres v. Barr, 976 F.3d 918 (9th Cir. 2020). 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, 924-927 (9th Cir. 2020) (en banc)(holding "the phrase 'at the time of application for admission'…refers to the particular point in time when a noncitizen submits an application to physically enter into the United States."). 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). Here, the Petitioner is neither at the border nor applying for admission to the U.S. as she entered without inspection and has lived here for over 20 years.

Nor do Respondents address the plain language of the statute saying that Section 1225(b)(2) only applies to those "seeking admission." For mandatory detention to apply, the plain text of § 1225(b)(2)(A) requires an individual to be 1) an "applicant for admission"; 2) "seeking admission"; and 3) determined by an examining immigration officer to be "not clearly and beyond a doubt entitled to be admitted." See Martinez v. Hyde, No. CV 25-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025) (affirming these "several conditions must be met" for a noncitizen to be subject to mandatory detention under § 1225(b)(2)(A)). The Petitioner was arrested at an ICE appointment in downtown San Diego over 20 years after entering the United States. As such, she is clearly not seeking admission to the United States.

Respondents rely on Chavez v. Noem, --- F. Supp. 3d ---, 2025 WL 2730228 at 5 (S.D. Cal. Sept. 24, 2025) ("Heeding the plain language of the statute also does not contradict or render superfluous § 1226" nor "the addition of § 1226(c) by the [Laken Riley] Act. . . ."). That decision, however, did not address the statutory requirement that for Section 1225(b)(2)(A) to apply, the noncitizen must be "seeking admission." See Ayala-Pinto v. Larose, 3:25-cv-02971, FN 1 (S.D. Cal.) Date Filed: Nov. 3, 2025 (Rejecting Respondents' reliance on Chavez and granting the petition).

In sum, Section 1226 governs here. Section 1225 and its mandatory detention provision applies only to individuals arriving to the U.S., while Section 1226 applies to those – like the Petitioner – who have previously entered without inspection and are now present and residing in the United States.

C. Petitioner Is a *Maldonado Bautista v. Noem* Class Member Entitled to a Bond Hearing

On November 20, 2025, the Central District in Maldonado Bautista v. Noem granted the court granted partial summary judgment in favor of the named petitioners, holding that individuals who entered without inspection but were not apprehended at the border are not properly detained under Section 1225(b)(2)(A). Maldonado Bautista v. Noem, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. November 20, 2025). Instead, the court concluded that such individuals fall under Section 1226 which provides for custody redetermination by an immigration judge. Id. On November 25, 2025, the Central District considered the motion for class certification. The class certified is defined as follows:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

The November 25, 2025 District Court order confirms that the court's prior November 20, 2025 order on partial summary judgment applies to the nationwide class. The court stated explicitly "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." Id. at 14.

Here, the Petitioner entered without inspection and was not apprehended upon arrival. Moreover, the Petitioner has no criminal record or removal order, has not taken a credible fear interview, and was arrested inside the United States after having lived here for over 20

years – as such, she is not subject to Section 1226(c), Section 1225(b)(1) or Section 1231. Because the Petitioner is a member of the Maldonado Bautista class, she respectfully requests that the Petition be immediately granted and that she be provided with a bond hearing before an immigration judge.

Dated: November 30, 2025,

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

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 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 30, 2025

/s/ Kirsten Zittlau
Kirsten Zittlau