

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

M.C.H.L.,

Petitioner,

v.

DAVE ROBERSON, in his official
capacity as Sheriff of Floyd County
Detention Center, *et al.*,

Respondents.

Civil Action No.
4:25-CV-00329-WMR

**THE FEDERAL RESPONDENTS'
RESPONSE TO THE COURT'S DECEMBER 11 ORDER**

On December 11, this Court ordered the parties to address whether Petitioner's pending asylum application affects the analysis of whether she is "seeking admission" under 8 U.S.C. § 1225. (Doc. 19.) The federal Respondents offer the following brief in answer to the Court's question. The short answer is that an asylum application does not count as "seeking admission" as a matter of immigration law, so the pending application is not a basis for distinguishing Petitioner's case.

Statutory Background

As this Court is aware, Immigration and Customs Enforcement has recently relied on 8 U.S.C. § 1225(b)(2)(A) to detain without bond aliens who are

present in the United States without legal status. ICE has argued that the text of the statute applies to such aliens because they are, by definition, “applicants for admission” under § 1225(a), which “deem[s]” an alien “present in the United States who has not been admitted” to be an applicant for admission. The word “admission” is a term of art, specially defined by statute to mean the “lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). Someone who evades immigration authorities and enters the country illegally is therefore not “admitted.”

ICE’s position has been repeatedly rejected, including by this Court in a recent ruling, on the basis that 8 U.S.C. § 1225(b)(2)(A) applies only to those applicants for admission who are also “seeking admission.” *See Order, Ortiz De Leon v. Pierce*, No. 4:25-cv-00315-WMR (N.D. Ga. Dec. 9, 2025) (Doc. 33) (granting a writ of habeas corpus on this basis). Thus, those aliens who entered the country illegally, but who are making no effort to legalize their status, are not within the scope of the statute under the above reading.

But what about those aliens who are here without legal status but who *are* attempting to legalize their status? Aren’t they “seeking admission” and, thus, aren’t they within the scope of the statute? Respondents conclude that the answer must be “yes, the statute applies to them.”

This answer follows from the plain meaning of the words. The term “seeking admission” is not defined in the Immigration and Nationality Act, at least not as a couplet. (As mentioned above, the term “admission” is defined to mean lawful entry.) So the words must be given their natural meaning as referring simply to someone who is attempting to obtain lawful entry. The Court followed this exact reasoning in its recent order, stating:

Since the phrase “an alien seeking admission” is not defined within the statute, the Court must construe it based on its ordinary meaning. The word “seek” is a verb defined as “to go in search of” something. *See Seek*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/seek> (defining seek as “to go in search of” “look for” among other similar definitions). This is an active verb that indicates a person is actively pursuing, striving, requesting, or searching for something or someone. Therefore, Congress’s plain language indicates this section should apply to an alien who is attempting to gain lawful admission into the United States.

Order at 10, *Ortiz De Leon v. Pierce*.

Respondents further note that the above definition cannot be limited to those who seek admission while located outside the United States or at the border. That follows from the full text of § 1225(b)(2)(A), which states, “Subject to subparagraphs (B) and (C), *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” (Emphasis added.) That is, the text first clarifies that it is concerned with aliens who are “applicants for admission,” a term that explicitly includes

those who are present in the United States without admission per § 1225(a).

Therefore, the statute specifically contemplates that there will be aliens who are present in the United States illegally but who are nonetheless “seeking admission.” Those aliens, the statute says, “shall be detained.” *Id.* § 1225(b)(2)(A).

Application to Petitioner

As the Court noted, Petition has a pending application for asylum.

However, as a matter of immigration law, the grant of asylum is not the same thing as a lawful admission into the United States. *See Matter of V-X-*, 26 I. & N. Dec. 147, 150 (BIA 2013) (“[D]espite his asylum status, the respondent is not “in and admitted to the United States” within the meaning of section 237(a).).

Asylum operates more as a protection from removal and not as a lawful admission. *Id.* at 151 (“[A] grant of asylum is simply not akin to a grant of lawful permanent resident status.”). Applicants who are granted asylum must then separately seek legal permanent resident status before they are “admitted” into the United States within the meaning of the immigration laws.

It follows from the above that Petitioner is not “seeking admission” to the United States because she is seeking only asylum, not legal permanent residency (or some other status that might count as “admission”).

Conclusion

The question that the Court posed in its order is based on an incorrect premise. The Court wrote, “[G]iven that the Petitioner has a pending request for asylum from the United States *which would, if granted, grant her legal status within the United States*, why then should M.C.H.L. be entitled to a bond hearing?” (Doc. 16 at 2 (emphasis added).) But a granted asylum application does not, in fact, grant full legal status to the applicant. Therefore, her asylum application is not a meaningful basis for distinguishing her case from others.

Respectfully submitted,

THEODORE S. HERTZBERG
United States Attorney

s/ Anthony C. DeCinque

ANTHONY C. DECINQUE
Assistant United States Attorney

Darcy F. Coty
Assistant U.S. Attorney

Georgia Bar No. 130906
Anthony.DeCinque@usdoj.gov
600 U.S. Courthouse
75 Ted Turner Drive, S.W.
Atlanta, GA 30303
Ph: (404) 581-6000 Fx: (404) 581-6181

Counsel for the Respondents

CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rule 7.1(D), that the above memorandum was prepared in 13-point, Book Antiqua font. Also, the Court granted ten additional pages for this pleading. (Doc. 23.)

s/ Anthony C. DeCinque

ANTHONY C. DECINQUE

Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that the above document was filed using the Court's CM/ECF system, which will provide notice to all counsel of record.

This 15th day of December, 2025.

s/ Anthony C. DeCinque
ANTHONY C. DECINQUE