UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

M.C.H.L.,	
Petitioner,	
vs.	CASE NO.: 4:25-CV-00329-WMR
DARREN PIERCE, *in his official capacity as Sheriff of Whitfield County Jail*; and LADEON FRANCIS, *ICE Atlanta Field Office Director*; and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; and KRISTI NOEM, *Secretary of Homeland Security*) And PAMELA BONDI, *U.S. Attorney General.*	
Respondents.	

PETITIONER'S RESPONSE TO

THE COURT'S DECEMBER 11 ORDER (ECF Dkt. 19)

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. (ECF Dkt. 19.) The short answer to this question is no. On this point, Petitioner agrees with Federal Respondents, however there is disagreement on the other legal points.

ARGUMENT

I. A PENDING ASYLUM APPLICATION IS NOT AN ACT OF "SEEKING ADMISSION"

(a) Asylum Is a Defensive Protection From Removal, Not a Pathway to Lawful Admission.

Definition of "Admission": According to 8 U.S.C. § 1101(a)(13), "admission" refers to the ***lawful entry*** of an alien into the United States ***after inspection*** and authorization by an immigration officer. This definition is crucial because it sets the standard for what constitutes being "admitted" into the U.S.

The term "seeking admission" is not explicitly defined in the Immigration and Nationality Act (INA). However, it is generally interpreted to mean **an attempt to obtain lawful entry into the U.S.** The federal respondents argue that "seeking admission" should be understood in its ordinary sense, meaning actively pursuing lawful entry. However, that argument has now been rejected by more than 300 district court decisions from around the U.S.

The federal respondents are correct in that an asylum application does not count as "seeking admission" because asylum does not equate to lawful entry or admission. They emphasize that asylum is a form of protection rather than a status that confers admission. Asylum is a form of protection granted to individuals who have fled persecution or have a well-founded fear of

persecution based on race, religion, nationality, membership in a particular social group, or political opinion. It is governed by 8 U.S.C. § 1158 and is distinct from the process of admission.

A grant of asylum provides protection from removal and allows the asylee to remain in the United States. However, it does not confer the same legal status as being "admitted" into the U.S. Asylum does not involve the formal entry process described in the definition of admission. Courts have consistently recognized that asylum is a separate legal process from admission. It serves a humanitarian purpose, providing refuge to those in need, rather than facilitating formal entry into the U.S.

While asylees can apply for lawful permanent resident status (a green card) after one year, this is a separate process. The initial grant of asylum does not automatically confer permanent residency or the status of having been "admitted." The asylum process is designed to offer protection to vulnerable individuals fleeing persecution. It is not intended to serve as a mechanism for formal entry or admission into the U.S., which involves different legal and procedural requirements.

In *Matter of V-X-*, 26 I. & N. Dec. 147 (BIA 2013), the Board of Immigration Appeals clarified that despite holding asylum status, an individual is not considered "in and admitted to the United States" under

section 237(a) of the INA. This distinction underscores that asylum is not equivalent to admission.

Federal courts have consistently recognized this distinction. The Eleventh Circuit has analyzed the denial of an asylum application as being so intertwined with removal that it can constitute a "final order of removal" for jurisdictional purposes, underscoring that asylum is adjudicated within the context of removal, not admission. See *Nreka v. United States Attorney General*, 408 F.3d 1361, 1368 (11th Cir. 2005).

(b) Respondents Fatally Concede That Petitioner Is Not "Seeking Admission."

Furthermore, 8 U.S.C. § 1225(b)(1)(A)(ii) mandates that if an immigration officer determines an arriving alien is inadmissible and "indicates either an intention to apply for asylum... or a fear of persecution," the officer "shall refer the alien for an interview by an asylum officer." This statutory language demonstrates that applying for asylum is a process initiated by aliens who are *not yet admitted* and are, in fact, deemed inadmissible under certain grounds (such as not having a visa to enter). The asylum process is a screening mechanism for such individuals, not a pathway to "admission" itself. "[A]lthough the grant of asylum conferred a lawful status upon the alien, it did not entail an 'admission.'" (*Bare v. Barr*, 975 F.3d 952, 974 (9th Cir. 2020).

Respondents' central claim that any unadmitted noncitizen is perpetually "seeking admission" until removed or granted status conflates a procedural designation with a substantive, **temporal** act. The Ninth Circuit in *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), held that the phrase "application for admission" refers to a discrete event—an actual attempt to physically enter the United States—not an indefinite status that persists after entry. While 8 U.S.C. § 1225(a)(1) "deems" Petitioner an "applicant for admission" for the purpose of placing her in removal proceedings, this legal fiction does not transform her into someone actively "seeking admission" for the purpose of mandatory detention under § 1225(b). "Seeking" is an active, present-tense verb that logically applies to the process of inspection at the border, not to a long-term resident defending against removal in the interior.

Torres v. Barr clarified that while 8 U.S.C. § 1225(a)(1) "deems" a noncitizen present without admission to be an "applicant for admission," this is a **procedural mechanism** or **legal fiction** to allow the government to place them into removal proceedings if they are apprehended by authorities within 2 years of their entry. It does not substantively transform their status for all purposes, such as mandatory detention. Therefore, being ***deemed*** an "applicant for admission" does not automatically mean one is "seeking admission" for the purposes of mandatory detention under § 1225(b)(2)(A). The governing law requires a fact-specific inquiry into whether a noncitizen is

actively seeking lawful entry **at a point of inspection (governed by section 1225), which is a border or a port of entry** (and does not apply to interior apprehensions). This is a process entirely distinct from defensively seeking protection from removal through an asylum application.

Respondents' entire case for mandatory detention under 8 U.S.C. § 1225(b)(2)(A) rests on the erroneous premise that Petitioner, by virtue of her presence without inspection and her pending asylum application, is an alien "seeking admission." This interpretation collapses distinct statutory terms, ignores decades of agency practice, and is directly contradicted by Respondents' own concessions before this Court. A proper textual analysis demonstrates that applying for asylum is not an act of "seeking admission," and therefore § 1225(b)(2)(A) does not govern Petitioner's detention.

II. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION BECAUSE A PROPER READING OF THE INA SHOWS § 1225(b) DOES NOT APPLY TO HER

(a) Canons of Statutory Construction Compel a Narrow Reading of "Seeking Admission."

First, the phrase "seeking admission" in § 1225(b)(2)(A) must be given independent meaning. The statute applies to "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."

8 U.S.C. § 1225(b)(2)(A) (emphasis added). An examining officer is only present at an inspection point (border). The term "applicant for admission" is defined broadly under § 1225(a)(1) as any alien "present in the United States who has not been admitted." If Congress intended for every "applicant for admission" to be subject to this provision, the additional phrase "seeking admission" would be entirely superfluous. It is a cardinal principle of statutory construction that courts must, if possible, give effect to every clause and word of a statute. See *Duncan v. Walker*, 533 U.S. 167, 174 (2001). The phrase "seeking admission" must therefore be read to modify and narrow the broad category of "applicants for admission." It does not simply restate it.

Second, the plain meaning of "seeking admission" denotes a present, affirmative action to gain lawful entry into the United States. "Seeking" is an active verb, implying a current effort "to go in search of" or "to ask for" something. In the context of the INA, this logically refers to the process of presenting oneself for inspection at a border or port of entry. This interpretation is reinforced by the statutory definition of "admission" itself, which is "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)(A). An individual like Petitioner, who entered years ago and now resides in the interior, is not currently engaged in the act of seeking inspection and authorization for lawful entry.

Third, an application for asylum is fundamentally different from "seeking admission." Asylum is a defensive form of humanitarian protection against removal. 8 U.S.C. § 1158. A noncitizen applies for asylum to avoid being returned to a country where they fear persecution; they are not affirmatively "seeking lawful entry." Respondents explicitly concede this dispositive point in their own brief, stating that "as a matter of immigration law, the grant of asylum is not the same thing as a lawful admission" and that Petitioner "is not 'seeking admission' to the United States because she is seeking only asylum, not legal permanent residency." This is a fatal flaw in their argument. They ask the Court to detain Petitioner under a statute that applies only to those "seeking admission," while simultaneously admitting that she is not, in fact, seeking admission.

(b) The Government's Current Position Contradicts Decades of Its Own Agency Practice.

Finally, the government's historical interpretation of the statute supports this reading. Following the passage of IIRIRA, the Immigration and Naturalization Service (INS) issued regulations clarifying that, "[d]espite being applicants for admission, 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" under § 1226(a). 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). This shows that for decades, the

agency understood that interior arrestees, even though procedurally deemed "applicants for admission" under § 1225(a)(1), were not substantively considered to be "seeking admission" for the purposes of mandatory detention under § 1225(b). Their detention was properly governed by the discretionary framework of § 1226(a). Respondents' claim that the word "despite" in the 1997 regulation suggests the agency knew it was deviating from the statute is a strained interpretation. The more logical reading is that the agency was correctly applying the statute's distinct parts, recognizing that not all "applicants for admission" are "seeking admission" and thus subject to mandatory detention.

(c) The Statutory Framework Distinguishes Between the Border Inspection Regime of § 1225 and the Interior Apprehension Regime of § 1226.

As outlined in the Complaint (ECF 1), 8 U.S.C. § 1225 is titled "Inspection and Detention of Applicants for Admission." This section applies to aliens **at the border or ports of entry**. An "applicant for admission" is defined broadly under 8 U.S.C. § 1225(a)(1) as an alien "present in the United States who has not been admitted or who arrives in the United States." An "arriving alien" is defined by regulation 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.

The statutory scheme of 8 U.S.C. § 1225(b) itself distinguishes between an alien who has been "admitted" and one who is an "applicant for admission"

or seeking asylum. For instance, an alien "who has not been admitted or who arrives in the United States" is deemed an "applicant for admission" for purposes of this chapter (8 U.S.C. § 1225(a)(1)). **This provision explicitly covers individuals who have not yet been admitted but are undergoing inspection.**

Had Respondents detained Petitioner at the border at the time of her entry and had not released her on an Order of Release on Recognizance (OREC), she would have been mandatorily detained under 8 U.S.C. § 1225 (b)(2) several years ago. However, since she was released on an OREC, her release constitutes a Section 236 parole (permission to enter the country based on humanitarian grounds, but does not constitute an "admission").

III. THE GOVERNMENT IS BARRED BY COLLATERAL ESTOPPEL FROM RE-CHARACTERIZING PETITIONER'S DETENTION STATUS

Beyond the textual and structural flaws in Respondents' arguments, the doctrine of collateral estoppel provides a separate, independent basis for rejecting their position. The government, having previously determined that Petitioner's detention was governed by the discretionary framework of 8 U.S.C. § 1226(a) and released her on an OREC, is now precluded from re-characterizing her status to justify mandatory detention under 8 U.S.C. § 1225(b). Collateral estoppel, or issue preclusion, bars the re-litigation of an issue that has already been decided. In the administrative context, it prevents

an agency from taking a position inconsistent with its own prior determination on the same issue involving the same party. Here, that is precisely what Respondents are attempting to do.

When DHS initially encountered Petitioner, it had to make a determination regarding its authority to detain her. It had two statutory paths: mandatory detention under § 1225(b) as an "applicant for admission," or discretionary custody under § 1226(a) as a noncitizen apprehended in the interior. The government's choice to release Petitioner on an OREC was a conclusive administrative action that necessarily resolved this question.

An OREC is a form of release on recognizance authorized *only* under the discretionary framework of 8 U.S.C. § 1226(a). There is no statutory authority to grant an OREC or a bond to a noncitizen detained under § 1225(b). The sole, limited release mechanism available for § 1225(b) detainees is humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). These are legally distinct forms of release with different criteria and consequences.

By granting Petitioner an OREC—a § 1226(a) tool—the government made a binding administrative finding that § 1226(a) was the governing statute for her custody. This was not a clerical error; it was the application of decades of consistent agency practice. Now, based on the same set of historical facts, Respondents seek to reverse course and claim that Petitioner

was *always* subject to § 1225(b). This is an impermissible attempt to get a second bite at the apple.

Having made its decision and acted under the authority of § 1226(a) and having induced Petitioner's reliance on that determination for years during which she fully complied with all OREC conditions, the government is now estopped from asserting a contradictory position. The change in the agency's internal policy does not give it license to retroactively undo its prior, binding actions to Petitioner's severe detriment. Accordingly, Respondents are precluded from arguing that § 1225(b) governs Petitioner's detention.

IV. THE OVERWHELMING WEIGHT OF JUDICIAL AUTHORITY REJECTS THE GOVERNMENT'S NOVEL INTERPRETATION

An overwhelming consensus of federal district courts has rejected Respondents' statutory interpretation. Courts in this District and across the country have consistently held that § 1225 applies at the border and § 1226 applies to interior arrestees like Petitioner. See, e.g., *Miguel Hernandez v. Udzinski*, No. 2:25-CV-373-RWS (N.D. Ga. Nov. 24, 2025) (holding § 1225 does not apply to noncitizens already living in the U.S.); *J.A.M. v. Streeval*, No. 4:25-cv-342, 2025 WL 3050094, at 5 (M.D. Ga. Nov. 1, 2025) ("[U]nder no reasonable interpretation is 'alien seeking admission' synonymous with 'any alien present in the United States who has not been admitted.'"); *Rojano Gonzalez v.*

Sterling, No. 1:25-CV-6080-MHC, 2025 WL 3145764, at 6 (N.D. Ga. Nov. 3, 2025) (holding that long-term residents are not "seeking" admission).

Petitioner M.C.H.L.'s fact pattern is nearly identical to *Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, (S.D. NY, Nov. 26, 2025) where Petitioner was previously released on bond, applied for asylum and rearrested recently by the government under § 1225(b) and held without bond. The Court granted his writ of habeas returning him to his previous bond conditions ("Mr. Barco shall remain free of detention or any other restraint under the immigration laws of the United States to which he was not subject upon his release on bond in 2022"). See also numerous cases cited by that court in Appendix A to its decision.

In another similar cases, see *De Jesus Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 WL 3280219 (N.D. IN., Nov 25, 2025), where the Court granted outright release to undersigned counsel's client and ordered his release immediately from custody under the same conditions that existed before his detention (bond). See also *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787 (N.D. IL., Oct. 24, 2025) – where the Petitioner entered on foot, got caught at the border upon entry and released on his own recognizance to apply for asylum. The Court granted the writ of habeas and ordered the government to either: (1) provide Petitioner with a bond hearing before an immigration judge, at which the Government shall bear the burden of justifying his

continued detention by clear and convincing evidence of dangerous or risk of flight; or (2) release Petitioner from custody, under reasonable conditions of supervision. *Id*; *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. October 21, 2025) (Petitioner previously released on OREC granted bond hearing before an Immigration Judge, at which the Government shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk; or (2) release from custody, under reasonable conditions of supervision). There are many more authorities ordering immediate release or shifting the burden to the government when Petitioner has been previously granted release on OREC or bond and complied with the conditions of release.

Moreover, DHS is barred by collateral estoppel from asserting that Petitioner was detained pursuant to Section 1225(b) when it had previously explicitly released her under Section 1226 when it granted her the Order of Release on Recognizance in conjunction with her asylum application and did not impose any additional conditions upon her release. Petitioner complied with that order for the past few years.

CONCLUSION AND REQUEST FOR RELIEF

Therefore, the federal Respondents' argument that an asylum application is not "seeking admission" because it does not confer lawful admission or permanent legal status is correct in its conclusion that asylum is

not admission, but it fails to acknowledge that the statutory scheme of § 1225(b) *already* contemplates asylum applications from individuals who are not admitted but are considered "applicants for admission" for the purpose of inspection and referral. The process of applying for asylum is a distinct legal pathway for individuals who have not been admitted, and its outcome (a grant of asylum) confers a lawful status that is separate from the legal concept of "admission."

Wherefore, we are asking the Court to order Petitioner's immediate release from detention pursuant to the terms of the OREC unlawfully revoked, or alternatively, a bond hearing within 3 days before an Immigration Judge at which the Government shall bear the burden of justifying, by clear and convincing evidence of dangerousness or flight risk, in line with similar cases.

Respectfully Submitted,

This 15th day of December, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rules 5.1 and 7.1(D), that the filing(s) filed herewith have been prepared using Century Schoolbook, 13 point font.

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2025, this Document was served, via electronic delivery to Respondents' counsel via CM/ECF system which will forward copies to Counsel of Record.

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