

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

Jessica Fernandes Moraes)	
)	Case No. 2:25-cv-00583-JAW
Petitioner,)	
)	
v.)	PETITIONER’S REPLY TO
)	RESPONDENT’S OPPOSITION
)	TO WRIT OF HABEAS CORPUS
Kevin Joyce , Cumberland County Sheriff,)	
David Wesling , Acting Director of Boston Field)	
Office, U.S. Immigration and Customs Enforcement))	
Todd Lyons , Acting Director, U.S.)	
Immigration and Customs Enforcement;)	
Kristi Noem , Secretary of the)	
U.S. Department of Homeland Security;)	
Pamela Bondi , U.S. Attorney General)	
)	
Respondents.)	
)	

INTRODUCTION

The Respondent’s contention that Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2) flies in the face of decades of practice and precedent to the contrary. Judges across the country, and within this District, have repeatedly concluded that individuals in Petitioner’s situation are only subject to detention under U.S.C. §1226. *See, e.g., Aguilar Guerra v. Joyce*, No 2:25-cv-00534-SDN, 2025 WL 2986316 (D. Me. Oct. 23, 2025); *Chanaguano v. Scott*, No. 1:25-cv-00500-JAW, 2025 WL 2806416 (D. Me. Oct. 2, 2025); *Chang Barrios v. Shepley*, 1:25-cv-00406-JAW, 2025 WL 2772579 (Sept. 29, 2025); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-cv-00479-SDN, 2025 WL 2688160 (D. Me. Sept. 19, 2025); *Tamay v. Scott*, No. 2:25-cv-00438-JAW, 2025 WL 2507011 (D. Me. Sept. 2, 2025).

In *Tamay v. Scott*, this Honorable Court granted a temporary restraining order, finding Petitioner likely to succeed on the merits of his Petition. No. 2:25-CV-00438-JAW, 2025 WL 2507011, at *1 (D. Me. Sept. 2, 2025) (Woodcock).

ARGUMENT

I. Section 1226 Applies as a Matter of Statutory Construction

a. Plain Language of the Statute

Two statutory provisions govern the detention of non-citizens present in the United States pending the outcome of their removal proceedings. Broadly speaking, 8 U.S.C. § 1225 governs detention of non-citizens arriving in the United States, while 8 U.S.C. § 1226 governs detention of non-citizens already physically present here.

8 U.S.C. § 1225(b)(2) states in relevant part that “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 for a proceeding under” U.S.C. § 1229a. (emphasis added). 8 U.S.C. § 1225(a)(1) defines an “applicant for admission” as “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .).” 8 U.S.C. § 1226(a) states that “On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.”, and that after such arrest, they can be continued in detention or released on a bond or a conditional parole, *id.*, § 1226(a)(1), (2).¹

There is no statutory definition of “seeking admission” but court decisions have held that it requires “some kind of affirmative action taken to obtain authorized entry” *Vasquez v. Feeley*,

¹ As stated above, Petitioner was arrested and detained on a warrant, and so it is clear that she is detained under § 1226(a) and thus eligible for a bond hearing or conditional parole.

No. CV 25-1542-RFB-EJY, 2025 WL 2676082, at * 23 (D. Nev. Sept. 17, 2025), see also *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025), *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 at *7 (S.D.N.Y. Aug. 13, 2025). The court in *Lopez Benitez* explained their reasoning for why it would be incongruous to assume all persons “applicants for admission” are also “seeking admission” through analogy: “someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking admission’ to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as “seeking admission” (or “seeking” “lawful entry”) at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there” *Id.* at *7.

Further, “conflating the phrases “applicants for admission” and “seeking admission” as synonymous would render the phrase “seeking admission” redundant, and... [o]ne of the most basic interpretative canons instructs that a ‘statute should be construed so that effect is given to all its provisions.’ *Vazquez v. Feeley, supra*, 2025 WL 2676082, at *13, citing *Corley v. United States*, 556 U.S. 303, 314 (2009).

This distinction between being an applicant for admission and seeking admission has also been recognized by the Board of Immigration Appeals, see *Matter of Y-N-P-*, 26 I&N Dec. 10 (BIA 2012), holding that a noncitizen who was present without admission was not “applying for admission” to the United States (in the context of an application for a waiver of inadmissibility under 8 U.S.C. § 1182(h)), *id.* at 12-13, and that “being an ‘applicant for admission’ under section 235(a)(1) is distinguishable from ‘applying ... for admission to the United States’.

Thus, to be subject to mandatory detention under § 1225(b)(2), the non-citizen must be (1) an “applicant for admission,” (2) “seeking admission,” and (3) not “clearly and beyond a doubt entitled to be admitted.” So even though a non-citizen who enters the country without inspection or without admission may satisfy the first condition (i.e., being an “applicant for admission”), they do not necessarily satisfy the second condition (i.e., “seeking admission”).² Accordingly, 8 U.S.C. § 1225(b)(2)(A) only applies to applicants for admission who are also “seeking admission”. If all applicants for admission were to be automatically considered as seeking admission, then the “seeking admission” qualifier in § 1225(b)(2) would be redundant.

The statute has clear language limiting “applicants for admission” to only those who are also actively “seeking admission”.

b. The Context and Legislative History of the Statute

The statutory context and legislative history also undermine Respondents’ arguments.

Prior to the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat., the INA at sections 236 and 242 (8 U.S.C. §§ 1225(b) (1994 ed.), 1252(a) (1994), respectively) provided that persons who were detained at a port of entry were placed into “exclusion” proceedings and were not eligible for release on a bond, while other noncitizens who entered without inspection and were apprehended in the interior of the country were placed into “deportation” proceedings and were eligible for bond.

² “Admission” is defined in the INA as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 USC § 1101(a)(13)(A). Seeking admission thus means seeking to enter lawfully after inspection and authorization by an immigration officer. See *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (stating that 8 USC § 1225(b) applies to “aliens seeking admission into the country”).

IIRIRA collapsed both exclusion and deportation proceedings into one single form of proceeding known as removal proceedings, and in 8 U.S.C. § 1226(a), simply “restate[d]” the detention authority previously found at § 1252(a) “to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.”. *See* H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.). Congress separately maintained the existing mandatory detention scheme for noncitizens arriving in the U.S. without a clear right to admission and expanded the scope of that detention scheme to include certain recently arrived noncitizens.

In distinguishing between noncitizens arriving versus noncitizens residing in the U.S., Congress reflected its understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving. *See* H.R. Rep. No. 104-469, p. 1, at 163-66 (recognizing the “constitutional liberty interest[s]” of noncitizens present in the U.S., versus the assumed minimal due process rights of arriving noncitizens). *See, Vazquez v. Feeley, supra*, 2025 WL 2676082, at *4.³

The Conference Report, H.R. Conf. Rep. No. 104-828 at 208, 209 (1996), also states that the newly enacted “section 236(c) [1226(c)] provides that the Attorney General must detain an alien who is inadmissible under section 212(a)(2) or deportable under new section 237(a)(2).”⁴ *Id.* at 211. If all inadmissible non-citizens were already subject to mandatory detention under §

³ In *Yajure-Hurtado*, 29 I. & N. Dec. at 225–26, the BIA incorrectly cites the House Judiciary Committee report for the proposition that under IIRIRA, “aliens present in the United States without inspection will be considered ‘seeking admission.’” (citing H.R. Rep. No. 104-469, pt. 1, at 225). However, the report says no such thing. The phrase “seeking admission” is used on the page in question only to note that the bill would state that “a returning lawful permanent resident shall not be regarded as seeking admission unless the alien has relinquished lawful permanent resident status.” H.R. Rep. No. 104-469, pt. 1, at 225. At no point does it state that unadmitted noncitizens are perpetually regarded as “seeking admission.”

⁴ The INA’s criminal grounds of inadmissibility and deportability, respectively.

1225(c), then there would have been no need to enact § 1226(c). The Conference Report also stated that the newly enacted “section 236(a) restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States.” *Id.* at 210.

Thus, the legislative history shows that it was never the intent of Congress to make all unadmitted non-citizens subject to mandatory detention under § 1225(b)(2)(A), and that instead, it was the express intent of Congress in enacting § 1226(a) to authorize the detention of people like Petitioner who are apprehended while physically present in the interior of the US (and who are not subject to expedited removal proceedings, *see* § 1225(b)(1)) and preserve their eligibility for release on a bond while their removal proceedings continue.

Recent statutory amendments also undermine Respondent’s argument.

Under § 1226(a), non-citizens already in the U.S. can be detained during the pendency of their Immigration Court removal proceedings. A bond hearing would then be provided, unless the alien was subject to detention under § 1226(c), usually as a result of committing an offense covered by 8 U.S.C. §§ 1182(a)(2) or 1227(a)(2) (setting forth the criminal grounds of inadmissibility or removability). This subsection 1226(c) was then amended by the passage of the Laken Riley Act of 2025, Pub. L. No. 119-1, 139 Stat. 3 (2025), which added subparagraph E to § 1226(c), requiring mandatory detention of non-citizens who 1) were present in the U.S. either without inspection or for lacking valid documentation to enter the U.S. and 2) who are charged with, convicted of, or admits to committing the essential elements of “any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person,”.

There would have been no need for Congress to add this language if such non-citizens were already subject to mandatory detention under § 1225(b). The passage of this amendment to § 1226(c) is strong evidence that Congress does not intend and did not intend § 1225(b)(2) to require detention without bond of all unadmitted non-citizens, such as Petitioner.

In instances where a new reading of a statute that has existed for years results in an agency gaining “unheralded power... [the courts] typically greet its announcement with a measure of skepticism.” *Util. Air Regul. Grp. V. EPA*, 573 U.S. 302, 324 (2014). In applying this skepticism, courts have used the principle that “[w]hen Congress adopts a new law against the backdrop of a ‘longstanding administrative construction,’” it is “generally presume[d] the new provision should be understood to work in harmony with what has come before.” *Vazquez v. Feeley*, *supra*, 2025 WL 2676082, at *16, citing *Monsalvo Velazquez v. Bondi*, 145 S.Ct. 1232, 1242 (2025). The reading of § 1225(b) must therefore be consistent with Congress’ intent in passing the Laken Riley amendments to § 1226(c), and cannot be merely a “redundancy”.

Similarly, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the Board of Immigration Appeals held that §1225(b)(2)(A) mandates the detention of noncitizens apprehended “while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings.” *id.* at 69. There would have been no reason to insert the qualifier “while arriving in the United States” if §1225(b)(2)(A) applied to all noncitizens who are present without admission.

Respondents’ own regulations are also consistent with Petitioner’s reading of the statute, and inconsistent with their recent version of it.

8 C.F.R. § 1236.1(d)(1) gives immigration judges the general authority to grant bond to noncitizens in removal proceedings “except as otherwise provided in this chapter”. 8 C.F.R. 1003.19(h)(2)(i)(A) then provides the exceptions - five categories of noncitizens who may not

receive bond: (1) respondents in exclusion proceedings, § 1003.19(h)(2)(i)(A); (2) “arriving aliens” in removal proceedings, § 1003.19(h)(2)(i)(B); (3) noncitizens described in section 237(a)(4) of the INA, § 1003.19(h)(2)(i)(C); (4) noncitizens subject to mandatory detention under section 236(c)(1) of the INA, § 1003.19(h)(2)(i)(D); and (5) noncitizens in deportation proceedings under former section 242(a)(2) of the INA, § 1003.19(h)(2)(i)(E). According to Respondents’ own regulations, then, noncitizens who are present without admission are thus eligible for bond unless they fall under one of the five aforementioned categories.

This regulation was adopted by the then-Attorney General following the passage of the IIRIRA in 1996 with the specific intent of allowing immigration judges to grant bond to all inadmissible noncitizens except for those deemed “arriving aliens”. The initial proposed rule provided that all “[i]nadmissible aliens in removal proceedings” would be ineligible for bond. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments on the proposed rule, however, the Attorney General deleted the proposed provision and replaced it with one that would apply only to “[a]rriving aliens”, *id.*, 62 Fed. Reg. 10312, 10361 (March 6, 1997). The Attorney General explained that “[t]he effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not.” *Id.* at 10323. The Attorney General’s response by modifying the proposed rule to only deny bond to “arriving aliens” is further evidence that 8 U.S.C. § 1226(a) is the proper section under which, Petitioner is currently detained, and thus eligible for bond.

c. Relevant case law supports Petitioner’s position

Case law also supports Petitioner’s claim and flatly contradicts Respondents’ argument, that all non-citizens present in the US who have not been admitted and inspected are all subject to

mandatory detention without bond under 8 U.S.C. § 1225(b)(2) pending the conclusion of their removal proceedings.

Petitioner's detention is governed by 8 U.S.C. § 1226 under the plain language of the INA. Section 1226 permits the government "to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). After the arrest, the government then "may continue to detain the arrested" noncitizen during removal proceedings or "may release" the noncitizen on bond or conditional parole. *Id.*, § 1226(a)(1)-(2). A noncitizen whom the government decides to detain under this discretionary provision may seek review of that decision via a bond (i.e., custody redetermination) hearing before an immigration judge. *See* 8 C.F.R. § 236.1(d)(1); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 26 (1st Cir. 2021). At that hearing, the immigration judge must release the noncitizen unless the government establishes either "by clear and convincing evidence that [he] poses a danger to the community" or "by a preponderance of the evidence that [he] poses a flight risk." *Hernandez-Lara*, 10 F.4th at 41.

The exceptions under §1226 prove the rule. Section 1226(c) carves out categories of noncitizens who may not be released during removal proceedings. *See Reid v. Donelan*, 17 F.4th 1, 4 (1st Cir. 2021) (quoting *Jennings*, 583 U.S. at 289). But §1226(c) does not mention §1225(b)(2)(A) an exception to its discretionary detention authority; given that there is an express exception, it is implied that there are no other circumstances under which a noncitizen detained under §1226 is subject to mandatory detention. *Guerrero Orellana v. Moniz*, ___ F. Supp. ___, 2025 WL 2809996, at *6 (D. Mass. 2025)(Citing *Jennings*, 583 U.S. at 300 and others).

Recent legislation, too, confirms the understanding that Petitioner falls under §1226. The Laken Riley Act -- Pub. L. No. 199-1, § 2(1)(C), 139 Stat. 3, 3 (2025) (codified at 8 U.S.C. §

1226(c)(1)(E) – created a new category of noncitizen subject to mandatory detention under §1226(c). This category has two elements – first that the noncitizen is inadmissible under one of several sections, including 8 U.S.C. 1182(a)(6)(A)(i) (present without having been admitted or paroled) and second that they have committed or been accused of committing certain crimes. *Id.* If the statute already rendered all unlawful entrants as mandatory detainees as Respondents suggest, there would be no need to create this new mandatory section. “When Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect.” *United States v. Quality Stores, Inc.*, 572 U.S. 141, 148 (2014) (quoting *Stone v. INS*, 514 U.S. 386, 397 (1995)); see also *Guerrero Orellana*, 2025 WL 2809996, at *7; *Sampaio* 2025 WL 2607924 at *8.

The plain terms of 1225(b)(2)(A) do not apply here. That section requires detention “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.” 8 U.S.C. § 1225(b)(2)(A). For it to apply, several conditions must be met – “an ‘examining immigration officer’ must determine that the individual is: (1) an ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be admitted.’” *Guerrero Orellana* at 6, citing *Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238, at *2 (D. Mass. 2025) and *Lopez Benitez*, — F. Supp. 3d at —2025 WL 2371588, at *6 (S.D.N.Y. 2025). Even if Petitioner is an “applicant for admission” because she’s present in the United States but has not been admitted, she is not *seeking* admission and was not doing so at the time of her arrest. See *id.*, *collecting cases*.

The recent Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is the only source available that equates “applicants for admission” to those

“seeking admission” and without this vital connection, the Respondents’ contention fails. But in reality, these are distinct legal situations and one does not satisfy the other.

The government’s arguments to the contrary should not persuade this court. The argument that § 1225 is the “specific” provision that should be employed over the general one at § 1226 is completely without support. They apply in different situations and 1226 generally applies to noncitizens encountered within the United States, as opposed to in the act of arriving. There can be no contention that Petitioner here was in the act of arriving to the United States. The government’s citation to *Florida v. United States*, 660 F. Supp. 3d 1239 (N.D. Fla. Mar. 8 2023) does not support their argument as to Petitioner. *See* Resp. Br. at 10. As a fellow District Court already noted, that case “centered around noncitizens who were apprehended at the Southwest border. Not noncitizens who are present without admission and already residing in the United States” such as Petitioner. *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at *3 (W.D. Ky. Sept. 19, 2025).

II. Petitioner Should Be Released Forthwith

Petitioner has been held in detention since November 17, 2025, knowing that any request for a bond hearing before the Immigration Court would be denied given the BIA’s precedent decision in *Hurtado*. While the burden of proof showing deprivation of rights leading to unlawful detention is on the petitioner, *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009), Petitioner has met that burden. Release is appropriate because the only basis proffered by the government for her detention (§1225) does not apply to her. *See Andrade v. Moniz*, 1:24-CV-12455-FDS at *10 (D. Mass 2025).

Alternatively, this court may order the Immigration Court to conduct a bond hearing in short order in which it considers her eligibility for bond under §1226(a). The First Circuit routinely orders this remedy in cases where it has concluded that a noncitizen detained under Section 1226(a)

was denied bond because the Immigration Court failed to apply the correct legal standards. *See, e.g., Hernandez-Lara*, 10 F.4th at 46 (permitting the government to hold a new bond hearing and stipulating the burden of proof to be applied at that hearing); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021).

CONCLUSION

The government unlawfully detained Petitioner and continues to unlawfully hold Petitioner without access to a bond hearing in violation of the statute and decades of consistent interpretation of that statute. This Court should find her detention unlawful and order her immediate release.

Respectfully Submitted
Jessica Fernandes Moraes,
Petitioner,
By and through:
s/ Annelise M. Jatoba de Araujo

Annelise M. Jatoba de Araujo
Annelise Araujo Law, LLC
260 Franklin Street, Suite 520
Boston, MA 02110
T: 617-716-6400
C: 419-494-3051
F: 617-716-6403
Pro Hac Vice Counsel for Petitioner