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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

JULIETH MAYERLY DURAN ROMERO,

Petitioner,

v.

CHRISTOPHER J. LAROSE, et al.

Respondents.

Case No. 25-cv-3567-AGS-VET

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Petitioner requests the Court to order that she be afforded a bond hearing. However, Petitioner illegally reentered the United States on November 8, 2025, after returning to Colombia while in active removal proceedings[1], and her detention is mandated by 8 U.S.C. § 1225(b)(2)(A) until the conclusion of her removal proceedings. Accordingly, the Court should deny Petitioner's request for relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Columbia. Petitioner previously unlawfully entered the United States on or about January 21, 2023, near the San Ysidro Port of Entry, and was apprehended by Border Patrol. Exhibit 2 (January 2023 Form I-213). On January 21, 2023, Petitioner was served with a Notice to Appear charging her with inadmissibility under INA 212(a)(6)(A)(i). Exhibit 3 (Notice to Appear). The filing of the Notice to Appear with the immigration court initiated removal proceedings against Petitioner under 8 U.S.C. § 1229a. Subsequently, Petitioner was released from custody under conditional parole and subject to the Alternative to Detention Program (ATD). *Id.* Petitioner departed the United States for Columbia on or about February 28, 2025, while her 2023 removal proceedings were still active. Exhibit 4 (Arrival Departure Information System Record). Petitioner's departure terminated her previously provided parole. *See* 8 C.F.R. § 212.5(e)(1)(i) (parole automatically terminates without written notice upon an alien's departure from the United States).

On November 8, 2025, Petitioner again unlawfully entered the United States on January 8, 2025, and was apprehended by Border Patrol approximately 2 miles west of the San Ysidro Port of Entry. Exhibit 1. Because Petitioner's 2023 removal proceedings were and are still active, Petitioner was not processed for expedited removal. As an applicant for admission who unlawfully entered the United States, so was detained mandatorily under 8 U.S.C. § 1225(b)(2)(A).

[1] A factual distinction conveniently omitted from the Petition.

Petitioner remains mandatorily detained at the Otay Mesa Detention Center under 8 U.S.C. § 1225(b)(2)(A).

III. STATUTORY BACKGROUND

Section 235 of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1225, applies to an "applicant for admission," defined as an "alien present in the United States who has not been admitted" or "who arrives in the United States." 8 U.S.C. § 1225(a)(1). "[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid document." *Id.* (citing 8 U.S.C. § 1225(b)(1)(A)(i)). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if "the alien indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). "If the officer determines at the time of the interview that [the] alien has a credible fear of persecution . . . , the alien *shall be detained* for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii) (emphasis added). If the alien does not indicate an intent to apply for asylum, does not express a fear of persecution, or is "found not to have such a fear," they "shall be detained . . . until removed" from the United States. 8 U.S.C. §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed

directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

IV. ARGUMENT

Petitioner's habeas petition should be denied because 28 U.S.C. § 1252(g) bars judicial review over her claim, and because she is lawfully detained under the INA and the Constitution.

A. Petitioner's Claim is Barred Under 8 U.S.C. § 1252(g).

Respondents contend that judicial review over Petitioner's claim is barred by 28 U.S.C. § 1252(g), which states that "[n]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders."

Here, Petitioner's claims of unlawful detention necessarily arise from the Department of Homeland Security's[2] decision to commence removal proceedings against him because that decision unavoidably triggers mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.*, *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment claim because the plaintiff's detention arose from the decision to commence removal proceedings, and in turn, the "statute mandating detention during removal proceedings of a person charged as an 'arriving alien.'").

[2] "In 2002, Congress transferred the Attorney General's immigration enforcement responsibilities to the Secretary of Homeland Security." *Ibarra-Perez v. United States*, 154 F.4th 989, 995 n.2 (9th Cir. 2025).

As explained by another district court, removal proceedings are commenced when, as occurred here, "the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08–2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008); *see also* Exhibit 6 (Notice to Appear). The government "may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Herrera-Correra*, 2008 WL 11336833, at *3. "Thus, an alien's detention throughout this process arises from the [government's] decision to commence proceedings" and review of claims arising from such detention is barred under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *see also Wang*, 2010 WL 11463156, at *6.

Because this habeas petition brings a claim "arising from the decision or action by the [government] to commence proceedings," review of Petitioner's claim is barred under 8 U.S.C § 1252(g). Thus, the Court must dismiss the petition.

B. Petitioner is Lawfully Detained Under the INA and the Constitution.

Even if the Court assumed jurisdiction to review Petitioner's claim, the Court must deny his habeas petition because Petitioner's detention is statutorily mandated under 8 U.S.C. § 1225(b)(2)(A).

1. Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2).

Petitioner's claim fails because she is subject to mandatory detention under 8 U.S.C. § 1225(b)(1). Under 8 U.S.C. § 1225(a)(1), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." As explained above, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Even if Petitioner was previously released on conditional parole in 2023, and that parole was still valid as of February 28, 2025, it terminated by operation of law when Petitioner departed the United States. *See* 8 C.F.R. § 212.5(e)(1)(i) (parole automatically terminates without written notice upon an alien's departure from the United States); Exh. 4.

Section 1225(b)(2)(A) requires mandatory detention 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[.]'" *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Petitioner contends that she is entitled to a bond hearing. But the Supreme Court has rejected such contention, explaining: "Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded. . . . Nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Jennings*, 583 U.S. at 297. Except for temporary parole granted at the discretion of the Attorney General "for urgent humanitarian reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5), "there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Id.* at 300 (emphasis in original).

As Petitioner's removal proceedings are pending, and she has not been granted temporary parole, section 1225(b)(2) mandates her detention until the proceedings have concluded. *Jennings*, 583 U.S. at 297 ("Once those proceedings end, detention under § 1225(b) must end as well."). Because Petitioner is lawfully detained under section 1225(b)(2) and the statute does not entitle her to a bond hearing at this time, her petition must be denied. *See, e.g., Zelaya-Gonzalez v. Matuszewski*, No. 23-CV-151 JLS-KSC, 2023 WL 3103811, at *3 (S.D. Cal. April 25, 2023) (applying *Jennings* to find that the petitioner had no right to release or a bond hearing).

2. Petitioner's detention does not violate due process.

Petitioner also argues that her mandatory detention under the INA violates the due process clause of the Fifth Amendment to the U.S. Constitution. The Court should reject this argument.

In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. § 1225(b). The Supreme Court stated that, "[r]ead most naturally, [8 U.S.C.]

§§ 1225(b)(1) and (b)(2) . . . mandate detention of applicants for admission until certain proceedings have concluded." *Id.* at 297. In other words, neither 8 U.S.C. § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings." *Id.* The Supreme Court added that the sole means of release for noncitizens detained pursuant to 8 U.S.C. §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300 ("That express exception to detention implies that there are no *other* circumstances under which aliens detained under [8 U.S.C.] § 1225(b) may be released.") (emphasis in original). "In sum, [8 U.S.C.] §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings[.]" *Id.* at 302.

In *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 207–09 (1953), a noncitizen in exclusion proceedings filed a habeas petition claiming that his prolonged detention without a hearing violated his constitutional rights. The Supreme Court rejected the petition, concluding that the noncitizen's continued detention did not deprive him of any due process rights, stating: "[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'" *Id.* at 212 (citation omitted).

In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020), the Supreme Court once again addressed the due process rights of individuals like Petitioner—inadmissible arriving noncitizens seeking initial entry into the United States. The Supreme Court stated that such individuals have no due process rights "other than those afforded by statute." *Id.* at 107; *see also id.* at 140 ("[A]n alien in respondent's position has only those rights regarding admission that Congress has provided by statute."). The Supreme Court noted that its determination was supported by "more than a century of precedent." *Id.* at 138 (citing *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537,

544 (1950); *Mezei*, 345 U.S. at 212; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). Because the only process due Petitioner is that afforded under section 1225(b), the Court must reject her claim that her detention violates the Fifth Amendment's Due Process Clause and deny her requested relief. *See Thuraissigiam*, 591 U.S. at 138–40; *Mendoza-Linares*, 51 F.4th at 1167; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'") (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)); *Zelaya-Gonzalez*, 2023 WL 3103811, at *4 ("Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing.").

Petitioner was detained after illegally entering the United States. Thus, Petitioner is rightly considered an applicant for admission, and her mandatory detention does not violate due process. *See Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025).

V. CONCLUSION

For the reasons stated herein, Respondents respectfully request that the Court dismiss this petition for lack of jurisdiction or deny it on the merits.

Dated: December 30, 2025

Respectfully submitted,

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