UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Stephanie Carolina Kenny-Velasquez, Petitioner, v. Pamela Bondi, U.S. Attorney General; Kristi Noem, Secretary of the Department of Homeland Security; Todd Lyons, Acting Director of Immigration and Customs Enforcement; Marcos Charles, Acting Associate Director of Enforcement and Removal Operations; and Randy Tate, the Warden at the Montgomery Processing Center, Respondents.	§	Case Number: 4:25-cv-6060

REPLY TO RESPONDENTS' RESPONSE AND MOTION FOR DISMISSAL AND/OR SUMMARY JUDGMENT

INTRODUCTION

COMES NOW, Stephanie Carolina Kenny-Velasquez ("Petitioner"), by and through undersigned counsel, and hereby files this Reply to Respondents' Response and Motion for Dismissal and/or Summary Judgment. *See* ECF No. 10. In this reply, Petitioner submits that Respondents' arguments in favor of granting summary judgment or dismissal for Respondents and of denying Petitioner's writ of habeas corpus, are legally erroneous and without merit. As such, Petitioner moves this Court

to DENY Respondents' request for dismissal and/or summary judgment, and GRANT Petitioner's writ of habeas corpus.

REPLY ARGUMENTS

A. Petitioner did not need to exhaust her administrative remedies prior to the filing of this petition

Respondents first argue that Petitioner should have appealed the immigration judge's denial of her bond to the Board of Immigration Appeals ("BIA" or "Board"), and because she did not do so, she failed to exhaust her administrative remedies prior to the filing of the instant petition. *See* ECF No. 10, at 3. Petitioner submits, however, that she did not need to take such an action prior to filing this petition, for two reasons.

First, the BIA has no authority to entertain or rule on constitutional claims, such as the one Petitioner raised in her petition. *See Falek v. Gonzales*, 475 F.3d 285, 291 n.4 (5th Cir. 2007) (noting that "there is no dispute that the BIA has no power to adjudicate constitutional claims"). Accordingly, there would be no way for the BIA to adjudicate Petitioner's claim (in her favor) that her continued detention is unconstitutional under the due process clause of the Fifth Amendment. *See* ECF No. 1. An appeal to the Board would therefore have been a futile vehicle to remedy the violation of Petitioner's constitutional rights. *See Goonsuwan v. Ashcroft*, 252 F.3d 383, 389 (5th Cir. 2001) (stating that there is an exception to the exhaustion requirement "where resort to the agency would be futile because the challenge is one

that the agency has no power to resolve in the applicant's favor") (quoting *Sousa v. INS*, 228 F.3d 28, 32 (1st Cir. 2000)).

Second, appealing the denial of Petitioner's bond to the BIA would have also been futile, because of the Board's decision in *Matter of Yajure-Hurtado*, which held unequivocally that aliens, like Petitioner, who enter the United States without first being admitted are ineligible to seek a review of their custody determinations by an immigration judge ("IJ"). 29 I. & N. Dec. 216, 228 (BIA 2025). Given the recency of that decision, it seems quite clear that the BIA is not going to reconsider and reverse that decision. *See Cabanas v. Bondi*, 2025 WL 3171331, at *3 (S.D. Tex. Nov. 13, 2025) (stating that "[n]othing in the record suggests that the BIA would reconsider that reasoned decision [*Yajure-Hurtado*], given its recency). As such, seeking an appeal to the Board would be "patently futile." *See Fuller v. Rich*, 11 F.3d 61, 62 (stating that an exception to the exhaustion requirement exists "where the attempt to exhaust such remedies would itself by a patently futile course of action"). This writ is therefore Petitioner's only option to secure her release from unlawful and unconstitutional detention.

In sum, Respondents' argument that Petitioner had to file an appeal to the BIA to exhaust her administrative remedies prior to filing this petition with the Court is unavailing and erroneous as a matter of law. Accordingly, the Court should dismiss Respondents' exhaustion argument.

B. Respondent's interpretation of 8 U.S.C. § 1225 is clearly erroneous and against the plain language of the statutory text

Respondents next argue that Petitioner is properly subject to mandatory detention under § 1225(b)(2), given the plain language of that statute. *See* ECF No. 10, at 4. The statutory text, however, makes it clear that aliens, like Petitioner, who entered the United States unlawfully and were arrested years later within the interior of the United States, cannot be subject to mandatory detention under § 1225(b)(2), because they fall under the ambit of 8 U.S.C. § 1226(a).

Under 8 U.S.C. § 1225(a)(1), "[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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed…an applicant for admission." An "applicant for admission" faces two possible types of proceedings—an expedited removal proceeding or a proceeding under 8 U.S.C. § 1229a (a full removal proceeding), neither of which permit the applicant's release on bond. 8 C.F.R. § 235.1(f)(2). It is up to the sole discretion of the Department of Homeland Security ("DHS" or "Department") whether to place an alien who is an "applicant for admission" in an expedited or a full removal proceeding. *See Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 523-24 (BIA 2011) (stating that the DHS has prosecutorial discretion to place an alien in a full removal proceeding even if the alien is subject to expedited removal).

Expedited removal proceedings apply to an alien who: (1) is "arriving in the United States" (an arriving alien[1]); (2) is described in § 1225(b)(1)(A)(iii) (aliens not paroled or admitted and who have not been physically present in the United States for a continuous period of two years); or (3) is inadmissible under 8 U.S.C. § 1182 (a)(6)(C), (7). § 1225(b)(1)(A)(i); 8 C.F.R. § 235.3(b)(1). That type of alien "shall [be ordered] removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under [8 U.S.C. § 1158] or a fear of persecution." *Id*. If the alien is found to have a credible fear of persecution, the alien is then transferred to a full removal proceeding, under § 1229a, for a consideration of the alien's asylum application with an IJ. § 1225(b)(1)(B)(i). The alien, however, must remain detained for the duration of that proceeding. § 1225(b)(1)(B)(ii).

On the other hand, full removal proceedings apply to an alien who is an "applicant for admission" that is "seeking admission" to the United States, but who is "not clearly and beyond doubt entitled to be admitted." § 1225(b)(2)(A). For that type of alien, detention is mandated until the conclusion of the alien's removal

[1] An arriving alien is "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport." 8 C.F.R. § 1.2.

proceeding. *Id*. (stating that the alien "shall be detained for a proceeding under [§ 1229a]").

In this case, while Petitioner is an "applicant for admission," under § 1225(a)(1), because she is an alien present in the United States without being admitted, she cannot be subject to mandatory detention under § 1225(b)(2)(A), because she was not seeking an admission at a port-of-entry at the time of her latest apprehension, detention, and placement in her current removal proceedings.

As stated above, to be subject to mandatory detention under § 1225(b)(2)(A), an alien must be an "applicant for admission" and be "seeking admission" into the United States at the time of the alien's apprehension. An "applicant for admission" includes aliens who are present in the United States without being admitted. § 1225(a)(1). The term "seeking admission," however, is not explicitly defined in the INA; the term "admission" by itself is defined, in 8 U.S.C. § 1101(a)(13)(A), as the "lawful entry of an alien entry of the alien into the United States after inspection and authorization by an immigration officer."

Adopting the INA's explicit definition of what an "admission" is, to be "seeking admission" necessarily means to be pursuing or requesting permission to enter the United States at or near a port-of-entry. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997) (stating that if statutory language is clear and unambiguous, it must be giving its plain and ordinary meaning). Indeed, the entirety of § 1225(b)

clearly applies only to aliens who are apprehended at or near a U.S. port-of-entry. *See Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (stating that § 1225 only "applies to aliens seeking entry into the United States").

In this case, Petitioner was apprehended within the interior of the United States, on or about December 5, 2025, more than four years after her initial entry into the country. *See* ECF No. 1, at Exhibit 1. At no point before the apprehension was Petitioner requesting or pursuing admission to the United States at or near a U.S. port-of-entry, because she was already present in the country. Accordingly, it cannot be said that Petitioner was "seeking admission" to the United States. Section 1225(b)(2)(A) therefore cannot apply to her.

If Respondents' and the BIA's interpretation (in *Matter of Yajure Hurtado*) of § 1225(b)(2)(A) was correct, then every single alien who entered the United States without inspection and who were later apprehended years later, even if on a warrant issued by the DHS, would be subject to mandatory detention under § 1225(b)(2)(A) and would never be able to request a release on bond under § 1226(a). Such an outcome would render § 1226(a) mere surplusage, inoperative, and outright meaningless; that is certainly not what Congress intended, i.e., to nullify an entire provision of the Immigration and Nationality Act ("INA"). *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (stating that "the canon against surplusage is strongest when an interpretation would render superfluous another part of the same

statutory scheme"); *Mackey v. Lanier Collection Agency & Service, Inc.,* 486 U.S. 825, 837 (1988) (maintaining that the Court is "hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law").

Congress, by drafting §§ 1225 and 1226 the way that it did, clearly intended to create two distinct classes of aliens—(1) aliens who are subject to mandatory detention at the time they were apprehended at or near a U.S. port-of-entry, and (2) aliens who are already in the United States and can request their release from detention (unless the alien is subject to mandatory detention under § 1226(c)); they cannot all be lumped together into one class, as the BIA and Respondents would have it. *See Matter of M-S-*, 27 I. & N. Dec. at 516 (stating that §§ 1225 and 1226 "can be reconciled only if they apply to different classes of aliens"). Yet, that is exactly what the Respondents have done in this case by relying on the BIA's erroneous decision in *Yajure Hurtado*; they have grouped Petitioner (as an alien who was arrested within the interior of the United States) with all other "applicants for admission" who were also "seeking admission" at a U.S. port of entry (under § 1225(b)(2)(A)). Such an action is simply not reconcilable under the plain language of §§ 1225(b)(2)(A) and 1226(a). Respondents' reliance on *Matter of Yajure Hurtado* to support their contention that Petitioner is subject to mandatory detention under § 1225(b)(2)(A) is therefore misplaced. Indeed, the entire holding of *Yajure*

Hurtado—that all aliens who entered the United States without being admitted are subject to mandatory detention—is in direct conflict with the clear, plain, and unambiguous language of §§ 1225(b)(2)(A) and 1226(a).

In sum, Respondents' reading of § 1225 is not consistent with that statute's plain and unambiguous text. As such, Respondents argument that Petitioner is subject to mandatory detention is legally erroneous. Consequently, Respondents are not entitled to summary judgment as a matter of law. *See* Fed. R. Civ. P. 56 (stating that summary judgment is only appropriate when the "movant is entitled to judgment as a matter of law"). The Court should therefore DENY Respondents' motion for summary judgment and/or dismissal on that basis.

C. The *Cabanas* decision

Respondents primarily rely on the Southern District Court's decision in *Cabanas*, which held that aliens like Petitioner are subject to mandatory detention under § 1225(b)(2), for support of their position that Respondent in this case should be mandatorily detained. *See* ECF No. 10, at 5. But, just as the Respondents themselves state, a decision from another District Court Judge, even in the same District, is not binding on other Judges with the District. *Id*. at 2-3 (citing *Camreta v. Greene*, 563 U.S. 692, 701 n.7 (2011) (noting that "[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case")). Accordingly, "[u]ntil such

time as the Fifth Circuit takes up this issue and gives an authoritative construction, it remains incumbent upon district courts to each make their own, independent assessment." *See Cabanas*, 2025 WL 3171331, at *5. Petitioner thus moves the Court to exercise that independent judgment herein, and to GRANT Petitioner's writ of habeas corpus.

D. Other District Court decisions

As a final matter, Petitioner acknowledges that there are several cases that have sided with Respondents' interpretation of § 1225(b)(2) and have found that aliens like Petitioner are subject to mandatory detention under that statute. *See* ECF No. 10, at 5-6. At the same time, however, Petitioner has provided this Court with several cases that have supported her argument that she is not subject to mandatory detention under § 1225(b)(2).[2] *See* ECF No. 1, at 16-18. Given these conflicting cases, and the lack of Fifth Circuit binding precedent on the issue present before the

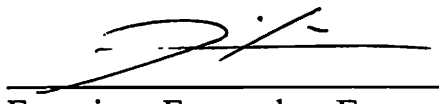
[2] Petitioner wishes to add the following cases to the list of ones that support her position in this case: *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25- cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025).

Court, Petitioner moves the Court to side with the majority of District Court decisions that have held that aliens like Petitioner, who enter the United States without being admitted and who are apprehended years later within the interior of the country, are not subject to mandatory detention under § 1225(b)(2) but fall under § 1226(a), thus making them eligible for release from custody on bond.

CONCLUSION

WHEREFORE, premises considered, Petitioner respectfully submits that she is not subject to mandatory detention under § 1225(b)(2), and that she warrants a favorable exercise of the Court's discretion in the grant of her petition for writ of habeas corpus. Accordingly, Petitioner prays for this Court to DENY Respondents' motion for summary judgment and/or dismissal, to GRANT her petition for writ of habeas corpus, and to ORDER Respondents to immediately release Petitioner from their custody.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing, **Reply to Respondents' Response and Motion for Dismissal and/or Summary Judgment**, was served on opposing counsel via the Court's online CM/ECF system, on December 23rd, 2025.

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