UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Yulexys Fernandez-Hernandez,

Petitioner,

-v-

Todd M. Lyons, Acting Director of US ICE, *et al.*,

Respondents.

Case No: 5:25-CV-01803-XR

Petitioner's Reply

PETITIONER'S BRIEF IN SUPPORT OF RELIEF

Petitioner submits this Reply to the Response dated December 29, 2025. Respondents claim Petitioner is detained pursuant to 8 U.S.C. Section 1225(b)(1), which allows expedited removal of certain "arriving" noncitizens and of certain noncitizens who have not "been physically present in the United States continuously for the 2-year period immediately prior to the date" they were determined inadmissible "under" Section 1225(b)(1). 8 U.S.C. § 1225(b)(1)(A)(iii)(II). ECF No. 4 at 2. The facts of this case show that this detention authority does not apply to Petitioner.

Following Petitioner's arrival in the United States, she was released by Respondents and placed into full removal proceedings, not expedited removal proceedings. ECF No. 4 at 1. After being released she complied with all requirements imposed by Respondents. ECF No. 1 at 4. Nevertheless, she was detained again on October 23, 2025 because Respondents changed their interpretation of the relevant statutes in a way that would render every person who has entered the United States without inspection subject to permanent, mandatory detention. *See* ECF No. 4

at 1. This construction of the statute is inconsistent with the precedent of the Supreme Court, numerous decisions of the Western District of Texas, as well as more than twenty years of agency precedent from the Board of Immigration Appeals. *See generally Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018); *Perez-Puerta v. Johnson*, Order, No. SA-25-CV-01476-OLG at 1-2; *Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418 (W.D. Tex. Dec. 2, 2025); and *Mendoza Euceda v. Noem*, Order, No. SA-25-CV-1234-OLG (W.D. Tex. Nov. 17, 2025).

Petitioner's detention is unlawful because she is detained without a warrant or any kind of legal process. The purported detention authority further deprives her of the right to seek bond from an immigration judge. This violates Petitioner's due process rights under the Fifth Amendment. Petitioner asks the Court to order her immediate release because it is the most appropriate remedy in this circumstance.

A bond hearing would place the burden on Petitioner to remedy her own unlawful detention. Additionally, without safeguards, Respondents could simply deny Petitioner bond, appeal any bond grant, and even request an automatic stay of an order granting bond pursuant to 8 CFR 1003.19(i)(2). Respondents do not request a bond hearing as an alternative and rely solely on their mandatory detention argument. Indeed, hundreds of federal judges have rejected these arguments in courts all over the United States. Requiring Petitioner to undergo a bond hearing would exacerbate the continuing injury of her detention.

Should the Court order a bond hearing, Petitioner requests that appropriate safeguards be provided. Respondents have not demonstrated that Petitioner is a flight risk or contested the fact that she has attended all required hearings. Respondents should bear the burden of demonstrating

that her continued detention is justified only if she is a danger to the community, and provide this hearing within 48 hours else release Petitioner.

I. Statement of the Facts

Petitioner entered the United States without authorization seeking asylum on February 21, 2022. ECF No. 4-1 at 1. She was apprehended upon entry, processed, placed into removal proceedings, and released from custody to pursue removal proceedings on the non-detained docket..." ECF No. 4 at 2. Petitioner was recently detained without cause on October 23, 2025. This detention occurred during a routine check-in with US Immigration and Customs Enforcement (ICE). No reason was provided for her detention. Respondents have not provided a warrant or any evidence of a legal process supporting her detention in their Response.

II. Argument

Petitioner is being unlawfully detained by Respondents and deprived of the ability to seek bond. Binding precedent of the Board of Immigration Appeals prevents any immigration judge from ordering her release at this time. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That precedent asserts that any individual who has unlawfully entered the United States is permanently ineligible for bond, even if they were previously released under a different detention authority. This is a significant departure from prior interpretations of the law. There is no jurisdictional bar to the Court considering this case, and more than 220 federal judges have decided against Respondents on substantially similar factual grounds.[1] Petitioner is not obligated to exhaust all administrative remedies in these circumstances, especially because appeal to the Board of Immigration Appeals is futile.

[1] Politico: More than 220 judges have now rejected the Trump admin's mass detention policy (available at https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861).

A. Petitioner's Detention Is an Unlawful Application of 8 U.S.C. § 1225

Respondents contend that Petitioner is detained pursuant to 8 U.S.C. § 1225. This attempt to extend "mandatory detention" pursuant to 8 U.S.C. § 1225 to vast numbers of noncitizens is novel and unsupported by the law. In a recent similar case in the Western District of Texas, the court observed how "[i]n recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025). Respondents continue to assert the same arguments notwithstanding the fact that they have been rejected by more than 220 federal judges.

Respondents do not assert any particular reason for Petitioner's detention more than three years after she entered the United States at a time when she was not applying for admission. The only difference between her release in 2022 and now is that the present administration has changed its stance on who should be subject to mandatory detention under the Immigration and Nationality Act. The detention authority cited by Respondents does not mandate Petitioner's detention. 8 U.S.C. § 1225(b)(1)(A)(iii)(II) states that:

> "An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph."

This provision of 8 U.S.C. § 1225 cannot serve as the basis for Petitioner's detention. Indeed, it clearly exempts those who have been "present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." *Id.* Respondents do not dispute the fact that Petitioner has been continuously present in the United States for more than three years. Nor has any determination of inadmissibility has been made about Petitioner under

either section 212(a)(6)(C) (8 U.S.C 1182(a)(6)(C)) or section 212(a)(7) (8 U.S.C 1182(a)(7)) of the Immigration and Nationality Act, the only two sections referenced by 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Petitioner is simply not included in the group described by this clause. *Id.*

B. Respondents do not cite to any other authority mandating Petitioner's detention

Respondents argue that Petitioner was previously an applicant for admission to the United States and as such she is permanently subject to mandatory detention. ECF No. 4 at 1-2. However, Respondents have already conceded that she is not subject to detention under 8 U.S.C. § 1225(b)(2)(A), writing that:

> *"[a]s an application for admission, intercepted at or near the port of entry shortly after unlawfully entering, he is properly described under § 1225(b)(1)(A)(iii)(II), and not under the "catchall" provision. Compare 8 U.S.C. § 1225(b)(1)(A)(iii)(II) with § 1225(b)(2)(A)."*

Id. at 2. Nevertheless, Respondents' arguments are in part premised on detention authorities pursuant to 8 U.S.C. § 1225(b)(2)(A). There are "three conditions" to mandatory detention under 8 U.S.C. § 1225(b)(2)(A): (1) the alien is an "applicant for admission"; (2) the alien is "seeking admission"; and (3) an "examining immigration officer determines" the alien "is not clearly and beyond a doubt entitled to be admitted." *Pereira-Verdi v. Lyons*, No. SA-25-CV-1187-XR at 7 (W.D. Tex. Oct. 10, 2025) (*citing* 8 U.S.C. § 1225(b)(2)(A)). Here, Petitioner was not "seeking admission" at the time of her detention. Nor have Respondents demonstrated that an examining officer determined that Petitioner was "not clearly and beyond a doubt entitled to be admitted". *Id.* Because Respondents have not demonstrated that these conditions apply to Petitioner, her detention would be unlawful even under 8 U.S.C. § 1225(b)(2)(A).

Recent amendments to the Immigration and Nationality Act also demonstrate that Congress does not interpret the statute to mandate detention in this way. The Laken Riley Act amendments which were passed in January of 2025 would be superfluous under such a reading. In a substantially similar case, a court found that:

> *"accepting Respondents' one-size-fits-all application of § 1225(b)(2) to all aliens, with no distinctions, would violate fundamental canons of statutory construction. Importantly, it would render § 1226 utterly superfluous. The recent Laken Riley Act amendments to § 1226(c), the legislative history of the IIRIRA, and longstanding practice supports this holding."*

Maldonado v. Olson, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025). Longstanding canons of statutory interpretation presume that Congress does not enact superfluous provisions and that statutes should not be interpreted in a manner that would render other statutes void, insignificant, or inoperative. *See, e.g., Bilski v. Kappos*, 561 U.S. 593, 607–08, 130 S.Ct. 3218, 177 L.Ed.2d 792 (2010) and *Corley v. United States*, 556 U.S. 303, 314, 129 S.Ct. 1558, 173 L.Ed.2d 443 (2009) (cleaned up).

Respondents' interpretation of 8 U.S.C. § 1225(b)(2) would render the addition of Subsection (c)(1)(E) to § 1226 superfluous. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025); *see also Maldonado* at 12. As the court in *Maldonado* opined, "If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless." *Id.* The Court should find that Respondents have failed to support their detention of Petitioner under any law or regulation.

C. Petitioner's detention under 8 U.S.C. § 1225 is unconstitutional because it violates her due process rights

Should the Court find that Petitioner is properly detained pursuant to 1225, Petitioner argues that this detention authority is unconstitutional under the Fifth Amendment. Challenges to the extent of DHS' detention authority are permissible and do not relate to any discretionary determinations. *Jennings v. Rodriguez*, 583 U.S. 281, 296 (2018).

Petitioner is a civil detainee who has never been charged with or convicted of any crime. As an immigrant, she is entitled to the same due process protections afforded to civil detainees. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000). Petitioner has a

"constitutionally protected interest in avoiding physical restraint". *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). She may not be detained as a means of punishment for noncriminal purposes. *See Bell v. Wolfish*, 441 U.S. 520, 535 (1979). Due process protections apply even if a statute explicitly authorizes detention. *See Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 338 (S.D. Tex. 2020) (finding that plaintiffs who were at high risk of serious illness or death due to the COVID-19 Pandemic were detained for a purpose that did "not reasonably relate to a legitimate governmental purpose.").

Respondents' asserted detention authority is unlawful because it ignores the statutory scheme carefully set out by Congress and would eviscerate the due process rights of potentially millions of immigrants like Petitioner. As noted above, Congress created a statutory scheme that clearly distinguishes between expedited removals at border and general removals which occur outside of that context. The expedited removal scheme necessarily trades some due process protections for expedited processing. Such tradeoffs are not appropriate for individuals like Petitioner who were already processed under 8 U.S.C. § 1226.

The Supreme Court analyzed the interplay between both sections in *Jennings v. Rodriguez*. Section 1225 provides that "an alien who arrived in the United States or is present in this country but has not been admitted, is treated as an applicant for admission." *Jennings*, 583 U.S. at 287 (*citing* 8 U.S.C. § 1225(a)(1) (internal quotations omitted)). The Court there observed that the decision of who may enter this country "generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible. *Id.* at 287. The *Jennings* Court noted that § 1225(b), the provision at issue in the instant habeas petition, "applies primarily to aliens seeking entry into the United States." *Id.* at 297. Then the Court noted, § 1226 "applies to aliens already present in the United States." *Id.* at 303. "Section 1226(a) creates a default rule for those aliens by

permitting – but not requiring – the Attorney General to issue warrants for their arrest and detention pending removal proceedings. Section 1226(a) also permits the Attorney General to release those aliens on bond, 'except as provided in subsection (c) of this section.'" *Id.* at 303. Subsection (c) of Section 1226 pertains to aliens who fall into categories involving criminal offenses or terrorist activities. "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." Id. at 306 (*citing* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

Respondents' position destroys the balance created by Congress and outlined by the Supreme Court in *Jennings*. The Court should find that this overreach is unconstitutional, violates Petitioner's Fifth Amendment rights, and order her release.

D. Exhaustion before the BIA is futile in Petitioner's case

Petitioner is not required to exhaust administrative remedies here and such a requirement would be futile because Respondents have already clearly determined that they will not grant Petitioner bond. There is no statutory exhaustion requirement in 28 U.S.C. § 2241. Courts have routinely reviewed the detention of immigrants pursuant to different statutes in habeas proceedings. *See, e.g.*, *Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008). Furthermore, exhaustion is inappropriate here because appeal to the Board of Immigration Appeals is futile and inadequate.

Requesting bond and appealing to the BIA are futile because the agency has already issued a precedential decision holding that immigration judges unequivocally have no jurisdiction to entertain granting bond in these exact circumstances. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA described its holding in this case as:

> Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *Id.*

The requirement that Petitioner must exhaust all available appeals is subject to exceptions. The Fifth Circuit has held that "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (*citing Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam).

As of today, the BIA has issued at least two precedential decisions stating that Petitioner's exact circumstances deprive an immigration judge of jurisdiction to consider bond. There is no reason to believe that the BIA would not apply its own recent precedent decisions to Petitioner's case. That assertion is unsupported and cannot surmount Petitioner's clear due process interest in being released from detention. Respondents bear the burden of proving that Petitioner's detention is lawful and they have not met that burden. In light of the above, Petitioner asks the Court to find that an appeal to the BIA is not required and futile.

E. There are no jurisdictional bars to the relief sought

There are no jurisdictional bars to relief in this case whether under 8 U.S.C. §§ 1252(a)(5), (b)(9), (g), or 8 U.S.C. § 1226(e). Section 1252(a)(5) narrowly "specifies that the only means of obtaining judicial review of a final order of removal, deportation, or exclusion is by filing a petition with a federal court of appeals." *Duarte v. Mayorkas*, 27 F.4th 1044, 1051 (5th Cir. 2022). Here, there is no final order of removal which Petitioner seeks review before this Court.

Section 1252(b)(9) limits judicial review of "questions of law and fact…arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter". 8 U.S.C. § 1252(b)(9). This provision is a jurisdictional channeling provision intended to prevent review of issues prior to the end of administrative proceedings. *See Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *7 (D. Minn. Aug. 15, 2025) (*citing Aguilar v. U.S. Immigr. & Customs Enf't*, 510

F.3d 1, 11 (1st Cir. 2007)). Petitioner is not challenging the initiation of removal proceedings or any action that occurred during those proceedings. She is challenging the constitutionality of her detention.

Section 1252(g) strips jurisdiction over "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 against any alien under this chapter." 8 U.S.C. § 1252(g). Here, Petitioner does not seek this review, and Congress did not intend to sweep in additional claims that were not explicitly included here. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *4 (W.D. Tex. Sept. 22, 2025) (*citing Jennings v. Rodriguez*, 583 U.S. 281 at 924 (2018). Additionally, this provision carves out habeas petitions; the jurisdictional bar is "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241". 8 U.S.C. § 1252(g).

Section 1226(e) does not apply to Petitioner's claim because she "challenges to the statutory framework that permits the alien's detention without bail." *Jennings*, 583 U.S. at 295, 138 S.Ct. 830 (cleaned up) (quoting *Demore v. Kim*, 538 U.S. 510, 516, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003)); *see also Zadvydas v. Davis*, 533 U.S. 678, 688, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Petitioner is not challenging an individualized bond hearing determination but rather her indefinite detention without the opportunity to have such a hearing. In other similar cases before the Western District, Respondents' jurisdictional arguments have been found unavailing. *See Lopez-Arevelo* at *5.

III. Conclusion

Because Respondents have unlawfully detained her, the only means that Petitioner has for being released is through an order of this Court. Therefore, Petitioner respectfully asks this Court to grant her Petition and issue a writ of habeas corpus ordering her release.

Respectfully submitted,

/s/ Joseph Krebs Muller

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