

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

Jose Tomas MARTINEZ-EL VIR,

Petitioner,

v.

Sam OLSON, Field Office Director of
Enforcement and Removal Operations, Chicago
Field Office, Immigration and Customs
Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; Jeff TINDALL,
Warden of Oldham County Detention Center,

Respondents.

Case No. 3:25-CV-589-CHB

**PETITIONER'S REPLY IN SUPPORT OF HIS PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

The Government's own evidence, Form I-286, Notice of Custody Determination, cites to 8 U.S.C. § 1226 as the detention authority under which Mr. Martinez-Elvir is being detained. This form advised Mr. Martinez-Elvir that he was entitled to a custody determination by an immigration judge. Even without such evidence, because Mr. Martinez-Elvir was already present within the United States when he was apprehended by the Department of Homeland Security, his detention falls squarely under § 1226, not § 1225. Although Mr. Martinez-Elvir may be considered an "applicant for admission" as someone present without being admitted or paroled, § 1225 also requires that the noncitizen be "seeking admission." As a court in this District and numerous other federal courts have found, the term "seeking admission" applies to noncitizens at the border, not someone like Mr. Martinez-Elvir who has been present in the United States for over 10 years. Because Mr. Martinez-Elvir was properly granted bond by the immigration judge, this Court should order his release.

ARGUMENT

I. Petitioner is not subject to mandatory detention under § 1225.

Federal courts, including the Supreme Court, have long held that detention under 8 U.S.C. § 1225 applies to those at the border while 8 U.S.C. § 1226 applies to those already present in the United States. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court held that § 1225 authorizes the Government "to detain certain aliens seeking admission into the country," while § 1226 "authorizes the Government to detain certain aliens already in the country." *Id.* at 289; *see* § 1225 ("Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing") (emphasis added). *Jennings* controls here

and forecloses the Government's position. *See also Lopez Benitez*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) at *8 (“the line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens ‘seeking admission into the country,’ whereas section 1226 governs detention of non-citizens ‘already in the country.’”) (cleaned up) (citing *Jennings*, 583 U.S. at 288-89); *Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (“The idea that a different detention scheme would apply to non-citizens ‘already in the country,’ as compared to those ‘seeking admission into the country,’ is consonant with the core logic of our immigration system”) (cleaned up) (citing *Jennings*, 583 U.S. at 289).

The Department of Homeland Security (DHS) charged Mr. Martinez-Elvir as being “*present* in the United States without being admitted or paroled.” *See* ECF Doc. 13-1, Exh. 1, Notice to Appear (emphasis added). The Government does not dispute the fact that Mr. Martinez-Elvir has been present and has resided in the United States since 2013. *See* ECF Doc. 13 at 2. Nor does the Government contest that Mr. Martinez-Elvir was arrested by DHS outside his home in Chicago, Illinois, hundreds of miles from any border or port of entry. The Government acknowledges that pursuant to the enactment of IIRIRA, legacy Immigration and Naturalization Service (now known as DHS) explicitly stated that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination.*” *See* ECF Doc. 13 at 7-8 (emphasis added); *see also* ECF Doc. 1 at 8-9; Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

In the face of this settled law, the Government proffers a novel interpretation of § 1225 as applying *within* the United States, which it has used in recent months in cases like *Matter of Yahure Hurtado*, 25 I&N Dec. 216 (BIA 2025), notwithstanding precedent like *Jennings*. See, e.g., ECF Doc. 13 at 9. That reading violates the law as well as the canon of constitutional avoidance. See *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (“It is a cardinal principle of statutory interpretation” that a federal court should favor an interpretation that is consistent with the Constitution). The Supreme Court has held that “certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to *all ‘persons’ within* the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693 (emphasis added). The problem with the Government’s interpretation of § 1225 as applying within “our geographic borders,” *id.*, is that § 1225 purports to mandate detention without regard for Due Process rights. See *Zadvydas*, 533 U.S. at 693 (gathering cases holding that the Due Process Clause applies to “all persons” within America). The Government’s novel interpretation should therefore be rejected. *Id.*, at 689.

The Government’s reliance on *Matter of Lemus* to argue that a noncitizen present in the United States without inspection is deemed to be “seeking admission” within the meaning of § 1225 because he is an “applicant for admission” in an “unconventional sense” is misplaced. See ECF Doc. 13 at 8. In *Matter of Lemus*, the Board of Immigration Appeals (Board) noted that the respondent, who had entered without inspection, was “obviously physically present in the United States.” 25 I&N Dec. 734, 735 (BIA 2012). The Board further emphasized that “perhaps the

most important characteristic shared by all [noncitizens] who have ‘entered without inspection’ is that they are, by definition, physically present inside the United States.” *Id.* at 741. Therefore, *Matter of Lemus* does not support the Government’s argument that those who entered without inspection or entered without being admitted or paroled are deemed to not be present in the United States and therefore perpetually “seeking admission.”

On the contrary, the statutes discussed in *Lemus* were 8 U.S.C. § 1182(a)(9)(B) and 8 U.S.C. § 1182(a)(9)(C), which contain the phrase “seeks admission” and “seeking admission,” respectively. Those statutes make clear that noncitizens who seek admission or who are seeking admission have departed the United States and are attempting to return. *See* 8 U.S.C. § 1182(a)(9)(B)(i)(I) (applying to those who were unlawfully present in the United States for more than 180 days but less than a year, departed and again “seeks admission” within 3 years of the date of departure); 8 U.S.C. § 1182(a)(9)(B)(i)(II) (applying to those who were unlawfully present for one year or more, who again “seeks admission” within 10 years of the date of departure or removal); 8 U.S.C. § 1182(a)(9)(C)(ii) (applying to those “seeking admission” more than 10 years after the date of the noncitizen’s last departure from the United States). Congress’s use of “seeking admission” in the context of those who have departed the United States in these other provisions of the INA reinforces Mr. Martinez-Elvir’s position that those “seeking admission” under § 1225 are those who are at the border, not those who are already present in the United States. Although Mr. Martinez-Elvir may be an “applicant for admission” under 8 U.S.C. § 1225(a)(1), he is not “seeking admission” as required under § 1225(b)(2)(A) to be subject to mandatory detention. Because Mr. Martinez-Elvir is inside the United States, he is detained under § 1226 and was eligible for bond as granted by the immigration judge.

Dozens of District Courts across the United States, including the Western District of Kentucky, and from a majority of the geographic Circuits, have swiftly and overwhelming rejected the Government’s novel interpretation of § 1225 as incompatible with the statutory text, the Constitution, and controlling precedent. *See, e.g., Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025) (holding that the title of § 1225 which references “arriving” noncitizens, Supreme Court precedent in *Jennings* that § 1226 is the default rule and applies to noncitizens already present in the United States, and the recent amendments to § 1226 in the Laken Riley Act, all support petitioner’s argument that he is detained under § 1226); *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025) (following *Beltran Barrera*); *Lopez Benitez*, 2025 WL 2371588 at *5–8 (analyzing “the plain text of the statute” and holding that it applied at the borders of America, not within); *Samb v. Joyce*, 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025) (following *Lopez*); *Doe v. Moniz*, 2025 WL 2576819 at *4-5 (D. Mass. Sept. 5, 2025) (“Respondents’ argument that Section 1225’s detention provisions apply is a nonstarter[.]”); *Romero v. Hyde*, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) (“the interpretation [of § 1225] being advanced by the Government, which would require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing within the United States, is contrary to the plain text of the statute”) (gathering 13 cases from District Courts in Washington, Massachusetts, Arizona, New York, Minnesota, California, Nebraska, and Maine); *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *2 (D. Md. Aug. 24, 2025) (“The Government appears willfully blind to the operation of 8 U.S.C. § 1226(a)”); *Kostak v. Trump*, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) (“Respondents’ interpretation of Section 1225 would render Section 1226 unnecessary”); *Lopez-Campos v. Raycraft*, 2025 WL

2496379, at *5 (E.D. Mich. Aug. 29, 2025) (“The plain language of the statutes, the overall structure, the intent of Congress, and over 30 years of agency action make clear that Section 1226(a) is the appropriate statutory framework for determining bond for noncitizens who are already in the country[.]”); *Anicasio v. Kramer*, 2025 WL 2374224, at *2 (D. Neb. Aug. 14, 2025) (“Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of ‘aliens already in the country.’”); *Mosqueda v. Noem*, 2025 WL 2591530, at *4-5 (C.D. Cal. Sept. 8, 2025) (“The Court agrees with petitioners that the plain text of section 1226(a) applies to them . . . The Court disagrees with respondents’ contention that Congress intended to create a conflict between juxtaposing sections of the same statute.”); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) (collecting 15 cases).

In *Beltran Barrera v. Tindall*, a court in this District noted that Respondents “completely ignore or even read out the term ‘seeking’ from ‘seeking admission.’” 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025). The court noted that “‘seeking’ implies action and that those who have been present in the country for years are not actively ‘seeking admission.’” *Id.* (cleaned up). In addition, the Government’s contention that “admission” can only mean a *lawful* entry is also inconsistent with its position that those present without inspection are “seeking admission.” *See* ECF Doc. 13 at 11. If admission can only mean a lawful entry, then those who already entered into the United States unlawfully cannot be said to be seeking a lawful entry. *See Beltran Barrera v. Tindall*, 2025 WL 2690565, at *4; *see also Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *7 (“There is nothing in the record to suggest that he ever attempted to gain lawful entry (e.g. lawful status in this country) until he was apprehended and detained. Therefore, the Court finds that 1225(b)(2)(A) applies when people are being inspected, which usually occurs at

the border, when they are seeking lawful entry into this country. Lopez-Campos was driving his vehicle within the United States, twenty-six years after arriving. There is no logical interpretation that would find that Lopez-Campos was actively “seeking admission” after having resided here, albeit unlawfully, for twenty-six years.”). Because Mr. Martinez-Elvir is not “seeking admission” he is not subject to mandatory detention under § 1225 and the immigration judge properly granted him bond.

II. The Government’s evidence supports that Petitioner is detained under § 1226, not § 1225.

The Government’s own evidence filed in this case cites to 8 U.S.C. § 1226 as the detention authority under which Mr. Martinez-Elvir is detained. *See* ECF Doc. 13-1, Exh. 3, Form I-286, Notice of Custody Determination. This Notice of Custody Determination not only cites to 8 U.S.C. § 1226, it also advises Mr. Martinez-Elvir that he may request a review of his custody determination by an immigration judge. *See id.* Despite acknowledging its evidence to the contrary and based on conclusory statements, the Government maintains that Mr. Martinez-Elvir is detained under 8 U.S.C. § 1225, which does not allow for review by an immigration judge. *See* ECF Doc. 13 at 2. This Court should take the Form I-286 citing to detention authority under § 1226 “at face value.” *See Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6 (E.D. Mich. Sept. 9, 2025). The Government should be estopped from contradicting itself and this Court should order Mr. Martinez-Elvir’s release because an immigration judge has already reviewed his custody determination and granted him bond. *See* ECF Doc. 1 at 1-2, 6-7.

CONCLUSION

Because Mr. Martinez-Elvir is detained under § 1226, the immigration judge had the authority to grant him bond under § 1226(a). Because he is being unlawfully detained, he respectfully requests that this Court grant his petition for writ of habeas corpus and order his release.

DATED this 25th of September, 2025.

Respectfully submitted,

/s/ Lisa Chun

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