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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

M-V-G-P,

Case No. 6:26-cv-00098-IM

Petitioner,

v.

**RESPONDENTS' RETURN TO
PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C.
§ 2241**

LAURA HERMOSILLO, et al.,

Respondents.

Respondents, through counsel, submit this return to the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. This return is supported by the Declaration of Jason Weiss (“Weiss Decl.”) and attached exhibits.

BACKGROUND

Petitioner is a native and citizen of Guatemala who was first encountered by immigration officers on March 16, 2023 while Petitioner was entering the United States illegally. Weiss Decl. at ¶ 4–5. Four days later, on March 20, 2023, Petitioner was served a Notice to Appear (NTA), charging Petitioner with inadmissibility under section 8 U.S.C. § 1182(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Weiss Decl. at ¶ 5; Ex. A (NTA).

The next day, on March 21, 2023, Petitioner was released on an Order of Recognizance (“OREC”). Weiss Decl. at ¶ 6; Ex. B (OREC). One of the conditions of Petitioner’s release, which Petitioner signed, was that Petitioner “must not violate any local, State or Federal laws or ordinances.” Weiss Decl. at ¶ 6; Ex. B at 1. Another condition states that Petitioner must “not commit any crimes while on this Order of Release on Recognizance.” Weiss Decl. at ¶ 6; Ex. B at 3. The OREC document warns that “[a]ny violation of these conditions may result in you being taken into ICE custody and you being criminally prosecuted.” Weiss Decl. at ¶ 6; Ex. B at 3.

On May 3, 2025, Petitioner was arrested by the Woodburn Police Department

for Criminal Mistreatment I, a Felony, in violation of ORS § 163.205. Weiss Decl. at ¶ 7. The charging document alleges that Petitioner caused physical injury to the victim. Ex. F.

On January 16, 2026, Petitioner reported to the ICE office in Eugene, Oregon. Weiss Decl. at ¶ 8; Ex. D (Form I-213). Petitioner confirmed to ICE that Petitioner had a pending criminal case for Criminal Mistreatment and that Petitioner's child had been taken from Petitioner's custody by the State of Oregon. Weiss Decl. at ¶ 8; Ex. D. ICE notified Petitioner that Petitioner had violated conditions of release, cancelled Petitioner's OREC release, and took Petitioner into custody. Weiss Decl. at ¶ 8; Ex. D. Shortly thereafter, Petitioner filed this Petition for a Writ of Habeas Corpus and this Court issued an order prohibiting ICE from moving Petitioner out of the state of Oregon. Because ICE has no long-term detention facilities in Oregon, ICE was forced to release Petitioner. Weiss Decl. at ¶ 11.

LEGAL STANDARD

"The district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]" *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day[.]" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). To warrant a grant of habeas corpus, a petitioner must demonstrate that his custody violates the Constitution, laws, or

treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

ARGUMENT

I. Petitioner is not in expedited removal proceedings.

Counts One and Three of the Petition arise from Petitioner's mistaken belief that their removal proceedings under 8 U.S.C. § 1229a have been dismissed and that Petitioner has been placed in expedited removal proceedings under 8 U.S.C. § 1225. Pet. ¶¶ 50–59, 68–72. That is not the case. Weiss Decl. at ¶ 13. Petitioner's removal proceedings under 8 U.S.C. § 1229a are still active in immigration court, and ICE currently has no intention of placing Petitioner in expedited removal proceedings. *Id.* As such, the Court should not grant the Writ with respect to Counts One or Three of the Petition.

II. Petitioner's Detention is Justified under 8 U.S.C. § 1225.

To obtain habeas relief, Petitioner must prove that their custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. Petitioner's detention is lawful under 8 U.S.C. § 1225, which provides in pertinent part:

[I]n 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 section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A). 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 (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)....

8 U.S.C. § 1225(a)(1). Thus, the plain text of Section 1225 provides that applicants for admission, which, by definition, includes all aliens such as Petitioner who

entered the United States without admission, “shall be detained.”

The history of Section 1225 supports this straight-forward reading. Prior to the passage of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), the INA “provided for two types of removal proceedings: deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). Aliens who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Matter of Hurtado*, 29 I&N Weiss Decl. 216, 223 (BIA 2025); see 8 U.S.C. §§ 1225(a)-(b) (1995), 1226(a) (1995). In contrast, aliens who evaded inspection and physically entered the United States would be placed in deportation proceedings and thus “were entitled to request release on bond.” *Matter of Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)); *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010). Thus, the INA’s prior framework had the

‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,’ *including the right to request release on bond*, while aliens who had ‘actually presented themselves to authorities for inspection’ ... were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); see *Hing Sum*, 602 F.3d at 1100 (similar).

Congress implemented the “applicants for admissions” scheme of Section 1225 in 1996 to remedy this unintended consequence and ensure that aliens who cross the border between ports of entry, without inspection, are not given better treatment than those who bother to come to the port of entry and subject

themselves to inspection. *See Hurtado*, 29 I. & N. Dec. at 223–24; H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“[Congress] intended to replace certain aspects of the current ‘entry doctrine,’ under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection”). As the Board of Immigration Appeals recently noted, to apply Section 1225(b)(2)(A) only to aliens who arrive at the port of entry would contravene Congress’s purpose by “rewarding” aliens who enter without inspection with a bond hearing while punishing those who present themselves for inspection with mandatory detention. *Matter of Hurtado*, 29 I. & N. Dec. at 228.

Petitioner is likely to argue that the phrase “seeking admission” in § 1225(b)(2)(A) narrows the scope of the mandatory detention requirement to those who are actively or formally seeking to be admitted to the United States at the time of arrest, excluding aliens who have already entered without inspection and are residing in the United States. To be sure, courts, including courts in this district, have held such. *See, e.g., A.B.D., v. Wamsley*, No. 6:25-CV-02014-AA, 2026 WL 178306, at *8 (D. Or. Jan. 22, 2026); *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1315 (W.D. Wash. 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).¹

¹ In *Maldonado Bautista*, the district court in the Central District of California reached a similar conclusion in extending declaratory relief to a certified class that includes, among other things, aliens who entered without inspection and were not apprehended upon arrival. 2025 WL 3713987, at *11, 32. Because Petitioner *was* apprehended upon arrival, Petitioner is not a class member. And in any event, the

But, respectfully, this conclusion not only cuts against the plain language of the statute and Congress's express purpose in enacting it, but also ignores other provisions in Section 1225 that make clear Congress intended all applicants for admission to be treated as "seeking admission." For example, § 1225(a)(4) provides that "[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States." By referencing the "purposes and intentions of the applicant [for admission] in seeking admission," this provision assumes that applicants for admission are, either in fact in fact or as a matter of law, "seeking admission." Similarly, § 1225(a)(3) requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected. Again, this language assumes all applicants for admission are seeking admission by requiring inspection not only of applicants for admission, but also of aliens who are "otherwise"—that is, in a different way—seeking admission. *See Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or

Maldonado Bautista decision is not binding on this Court because the *Maldonado Bautista* court lacks jurisdiction over a habeas proceeding located outside of that district. *See Alberto Rodriguez v. Jeffreys*, No. 8:25-cv-714, 2025 WL 3754411, at *6-10 (D. Neb. Weiss Decl. 29, 2025) (finding that the Central District of California had no jurisdiction over petitioner's habeas petition because petitioner "has never been detained in" that district).

otherwise” means “the first action is a subset of the second action”); *Kleber v.*

CareFusion Corp., 914 F.3d 480, 482-83 (7th Cir. 2019); OTHERWISE, Black’s Law Dictionary (12th ed. 2024). In sum, the surrounding provisions in Section 1225 treat the proposition that applicants for admission are seeking admission as obvious. Section 1225(b)(2)(A) should be read in light of that treatment.

Relatedly, the Board of Immigration Appeals has explained that “seeking admission” is “a term of art” that includes not only aliens who “entered the United States with visas or other entry documents before their presence became lawful,” but also aliens who “entered unlawfully or [were] paroled into the United States but were deemed constructive applicants for admission by operation of section 235(a)(1) of the Act.” *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012) (emphases omitted). As a result, “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Id.* at 743 (emphasis in original). For example, an alien who previously unlawfully entered the United States and is never admitted, departs, and subsequently submits a literal application for admission to the United States—*e.g.*, applies for a visa—is deemed to be “*again* seek[ing] admission” to the United States. *Id.* at 743–44 & n.6 (emphasis added) (quoting and discussing 8 U.S.C. § 1182(a)(9)(B)(i)(I)-(II)). Mere presence without admission *is* seeking admission “by operation of law.” *Id.*

Petitioner may also argue that the following language from the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018) undermines Respondents' interpretation of § 1225(b)(2)(A):

In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Id. at 289. But nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority for *every* “alien[] already in the country,” and the passage’s use of the word “certain” conveys the opposite. Indeed, elsewhere in the decision, *Jennings* equates “aliens seeking entry” with “applicants for admission” and recognized that Section 1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1).” *Id.* at 287, 297 (“As noted, § 1225(b) applies primarily to aliens seeking entry into the United States (‘applicants for admission’ in the language of the statute).”)

More broadly, the Court in *Jennings* was considering a separate question entirely. *Jennings* reviewed a Ninth Circuit decision that applied the constitutional avoidance principle to “impos[e] an implicit 6-month time limit on an alien’s detention” under Sections 1225(b) and 1226. *Jennings*, 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* at 292, 296–306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to Section 1225(b) or Section 1226. As such, nothing in *Jennings* should be read to narrow the scope of § 1225(b)(2)(A).

Finally, Petitioner may argue that Respondents’ reading of § 1225(b)(2)(A)

renders parts of § 1226(c) superfluous. *See, e.g., Rodriguez*, 802 F. Supp. at 1325. But § 1226(c)'s mandatory detention provisions, including as amended by the Laken Riley Act, govern a significant swath of aliens who are *not* covered by Section 1225(b)(2) at all—for example, admitted aliens. And even if there is some overlap, the Supreme Court has on multiple recent occasions explained that while surplusage is disfavored, it is not dispositive, especially “[i]n a wide-ranging scheme” where “some provisions will inevitably cover some of the same conduct.” *Fischer v. United States*, 603 U.S. 480, 496 (2024); *see also Barton v. Barr*, 590 U.S. 222, 239 (2020) (“redundancies are common in statutory drafting” and are “not a license to rewrite or eviscerate another portion of the statute contrary to its text”). One would be hard-pressed to find a statute more complex and “wide-ranging” than the INA. And the importance of Congress’s belt-and-suspenders approach is evident in the very context in which this case arises: in case courts carve out exceptions to the mandatory detention statutes, Congress is well within its power to make sure at least the aliens who commit the most egregious crimes do not slip through the cracks and receive the windfall benefit of a bond hearing.

In sum, the plain text, purpose, history, and surrounding provisions all make clear that all aliens deemed “applicants for admission” under Section 1225 must be detained while in removal proceedings. This includes aliens, such as Petitioner, who entered without inspection and, at the time of re-arrest, resided in the interior of the United States.

Here, Petitioner does not appear to contest that they entered the United

States without admission and are therefore an applicant for admission. Petitioner also does not appear to contest that they are in active immigration proceedings. Because the statute provides that applicants for admission must be detained while in removal proceedings, Petitioner's detention is lawful under §1225(b)(2)(A).

III. In the alternative, Petitioner is subject to detention under 8 U.S.C. § 1226(a) for violating the terms of release by being arrested for a felony.

Even if the Court disagrees that Section 1225 is the governing detention authority here, Petitioner's detention is also lawful under Section 1226(a).

By regulation, an alien previously released may have their release revoked "at any time...in which event the alien may be taken into physical custody and detained." 8 C.F.R. § 236.1(c)(9). Although this authority is at the discretion of DHS, an alien detained under §1226(a) can request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination hearing, the immigration judge, as an initial matter, determines whether the noncitizen is detained pursuant to 8 U.S.C. § 1226(a) and therefore eligible for custody redetermination. If the immigration judge makes such a finding, the immigration judge may continue detention or release the noncitizen on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Factors immigration judges consider in bond hearings under § 1226(a) include "danger to others," "threat[s] to the national security," and "flight risk." *Matter of Guerra*, 24 I. & N. Dec. 37, 37 (BIA 2006).

Here, DHS was well within its discretion to re-arrest Petitioner because

Petitioner violated the conditions of their release by committing a crime. After being initially released by ICE, Petitioner was arrested for felony Criminal Mistreatment I in violation of ORS § 162.205. Weiss Decl. at ¶7. The charging document alleges that Petitioner caused physical injury to the victim, a dependent person, and Petitioner admitted to DHS that Petitioner's child has been taken from Petitioner's custody by the State of Oregon. Weiss Decl. at ¶ 8, Ex. F. This felony arrest for a crime involving danger to a dependent person violated Petitioner's conditions of release and is evidence that Petitioner is a danger to others. It also shows that even the most basic conditions of release—to commit no crimes—is not enough to ensure Petitioner will not endanger others on release. Petitioner's open criminal case also increases the risk that Petitioner will flee; being arrested for a felony with a dependent victim is not likely to help Petitioner's immigration case, and will greatly increase Petitioner's incentive to abscond. It also shows that Petitioner's claim that their circumstances have not changed since their initial release is not true. *See* Pet. ¶ 65.

In sum, Petitioner's detention is lawful under Section 1226(a), in the alternative, because Petitioner violated their release by being arrested for a felony involving injury to a dependent victim.

IV. If the court finds that Petitioner is subject to detention under Section 1226, the proper course of action is to order a bond hearing with the immigration judge.

If the court finds that the detention authority is § 1226(a) and granting habeas is appropriate, the proper course of action in this case is not to order release. Rather, the proper course is to order an in-custody bond hearing before an

immigration judge in a detained immigration court upon the request of Petitioner to the immigration court. Not only do immigration judges have the specialized knowledge and experience to make bond determinations specifically under the INA, but the administrative system also contains robust due process protections, including avenues to appeal a bond determination. 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Ordering release would circumvent the system that was designed to address these concerns and turn this Court into a de facto immigration bond venue. Given the notice Petitioner received in the OREC form and the process provided to aliens in bond hearings, *see supra*, there is little doubt this course of action would satisfy Due Process. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”).²

In sum, an immigration court bond hearing, not release, is the appropriate course of action if the Court finds Section 1226(a) is the proper detention authority.

CONCLUSION

Because Petitioner has not been placed in expedited removal proceedings, the Court should not grant the Writ of Habeas Corpus with respect to Claims One and Three of the Petition. The remaining claims also do not merit granting the Writ

² Although there is binding BIA precedent holding that immigration judges do not have jurisdiction to grant bond to aliens in Petitioner’s position, *Matter of Hurtado*, 29 I. & N. Dec. at 228; *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), it is reasonable to believe that immigration judges would obey a district court’s order in a habeas case requiring them to take jurisdiction in that specific case and hold a bond hearing.

because Petitioner's detention is authorized by either 8 U.S.C. § 1225(b)(2)(A) due to Petitioner's status as an applicant for admission, or, alternatively, § 1226(a) due to Petitioner violating the terms of their release when they were arrested for Criminal Mistreatment I. If the Court finds that detention is under § 1226(a) and intends to grant habeas relief, the proper course of action is to order the immigration court to take jurisdiction and conduct a bond hearing under § 1226(a).

DATED this 28th day of January 2026.

Respectfully Submitted,

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