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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (Las Vegas)

LUCIO ALEXANDER BERNAL MUNIZ

Petitioner,

v.

MARKWAYNE MULLIN, ET AL.,

Respondents.

Case No.: 2:26-cv-02020

Petitioner's Reply in Support of Petition for Writ of Habeas Corpus (ECF No. 1) and Motion for Temporary Restraining Order (ECF No. 3)

Lucio Alexander Bernal Muniz ("Petitioner"), through his attorneys, Melissa Corral and Alissa Cooley Yonesawa, hereby submits his Reply in Support of his Petition for Writ of Habeas Corpus (ECF No. 1) ("Petition") and his Motion for Temporary Restraining Order (ECF No. 3) ("TRO"). Because Federal Respondents (hereinafter "Respondents") filed a consolidated response to both the Verified Petition and the Motion for TRO (ECF No. 8), Petitioner files this as a reply to both.

I. INTRODUCTION

Respondents' main argument is that all applicants for admission are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See* ECF No. 8 at 7-12. As such, as they

argue, their interpretation of 8 U.S.C. § 1225(b)(2) applies to Petitioner's detention. However, Respondents' argument that Petitioner is subject to detention until the end of his removal proceedings fails because Petitioner's detention is not controlled by 8 U.S.C. § 1225(b)(2) but instead by 8 U.S.C. § 1226(a), as shown by the very own arrest warrant Respondents produced into the record. *See* ECF No. 8-1 at 12.

Respondents also forego and concede entire arguments, as they do not respond to Petitioner's TRO and exhaustion arguments nor Petitioner's Temporary Protected Status ("TPS") stance from the Verified Petition, other than the argument that § 1225(b)(2) controls Petitioner's detention. LR 7-2(d) (holding that failing to file point and authorities as a response to a motion for temporary restraining order constitutes consent to granting of the motion). Additionally, they misstate facts that are unsupported by evidence such as the fact Petitioner arrived in the United States on November 13, 2024 and was "briefly detained by border agents before being issued a Notice to Appear" ("NTA"). *See* ECF No. 8 at 1. As such, because Petitioner's continued detention is unlawful, his Motion for a TRO and Verified Petition should be granted, and he should be ordered released immediately.

II. LEGAL ARGUMENT

As Respondents double down on their interpretation of 8 U.S.C. § 1225(b)(2), it misses the mark. Here, the issue is a misreading of Petitioner's factual circumstances along with the misapplication of the law. Further, in their insistence on their obscure interpretation on 8 U.S.C. § 1225(b)(2), Respondents point to dissimilar caselaw and forego all other arguments.

A. Respondents Misapply the Entirety of 8 U.S.C. § 1225.

First, 8 U.S.C. § 1225(b)(2), let alone the entirety of § 1225, does not apply to Petitioner. Respondents are seeking to impose mandatory detention where it is not applicable

and unlawful. In summary, Respondent's argue that applicants for admission include any noncitizen who arrives in the United States, **and/or** is present in the United States without an inspection and/or admission for any period of time. *See* ECF 8 at 8–9. Based on these characteristics alone, Respondents argue that it logically follows that these individuals are "arriving." *Id.* at 9. Respondents assert that "the unambiguous language [of the statute] resolves Petitioner's case," but they forget an important distinction. *Id.*

Section 1225(b)(2) is part of a larger statutory framework that governs only expedited removal proceedings. *See* 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible aliens; referral for hearing"). This is clarified in the Federal Regulations, which fill in the details of ambiguous Congressional language, *see Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 844 (1984) (*abrogated on other grounds by Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)), and explain to whom this statutory framework applies — "arriving aliens" and only those who entered without inspection and are unable to demonstrate **two (2) years of presence** in the United States from the date of their inadmissibility determination. 8 C.F.R. § 235.3(b)(1) (emphasis added).

Along with this misinterpretation of the statute and supporting Federal Regulations, Respondents' argument is also illogical because it takes the teeth out of other detention provisions under the statute, namely 8 U.S.C. § 1226(c), which was recently amended to include the Laken Riley Act ("LRA").[1] Respondents argue that those present in the U.S. without

[1] The Laken Riley Act requires the mandatory detention of inadmissible individuals with certain criminal histories. *See* Press Release, U.S. Department of Homeland Security, (January 29, 2025), https://www.dhs.gov/news/2025/01/29/president-trump-signs-laken-riley-act-law; *see also* 8 U.S.C. § 1226(c)(1)(E).

inspection and/or admission,[2] who they argue are also applicants for admission, are inadmissible simply because of their presence without admission. 8 U.S.C. §§ 1182(a)(6)(A)(i); 1182(a)(7)(A)(i). But, if these inadmissible individuals have been subject to mandatory detention since 1996, when 8 U.S.C. § 1225(b)(2) was already enacted, Congress need not have passed the LRA. *Lopez-Campos v. Raycraft*, 175 4th 713, 753–754 (6th Cir. May 11, 2026). In fact, all persons charged with inadmissibility would be subject to mandatory detention regardless of arrests, charges, or convictions for the offenses enumerated in the LRA. *Id.*

Here, Petitioner does not meet the definition of an "arriving alien."[3] At the time of his detention, Petitioner held TPS. *See* ECF No. 1-1 at 61, 67. Additionally, the last time Petitioner entered the U.S. was on November 13, 2014. *See* ECF No. 8-1 at 7. During that entry, Customs and Border Patrol ("CBP") allowed his entry under a previous grant of advance parole. *Id.* That entry is considered a valid admission. *See* U.S. Citizenship & Immigration Servs., *USCIS Policy Manual*, vol. 7, pt. B, ch. 2, § A.5 (2026), https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-2. ICE apprehended Petitioner within the interior of the U.S. over twelve (12) years since his last admission, after release from city jail. *See* ECF No. 8-1 at 12. As such, he is not an "arriving alien."

In addition to "arriving aliens," 8 C.F.R. § 235.3(b)(1)(ii) provides another group to whom expedited removal applies. This definition states that individuals who arrive in the

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[2] Commonly referred as "entry without inspection" ("EWI") by immigration legal professionals.
[3] The definition of an "arriving alien" is provided in 8 C.F.R. § 1.2 as:

> [A]n 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.

United States, attempt to enter, or have entered without being admitted or paroled *and* have not established, to the satisfaction of an immigration official, that they have been physically present in the United States for two (2) years after their inadmissibility determination, are subject to expedited removal. *Id.* Petitioner also does not meet this definition.

Here, Petitioner is not arriving or attempting to enter the United States. *See generally* ECF No. 8-1 at 2–10. He was admitted to the United States in November 2014 after returning to the country on advance parole. *See* ECF No. 8-1 at 7. Additionally, Petitioner can demonstrate over twelve (12) years of physical presence in the United States, vastly exceeding the two (2) year requirement. *See* ECF No. 1-1 at 59 (demonstrating Petitioner's employment authorization document history in the United States since the early 2000s).

Therefore, given that § 1225 and expedited removal only apply to certain persons outlined in 8 C.F.R. § 235.3(b), and Petitioner meets neither of those categories of persons, 8 U.S.C. § 1225 does not apply to him, and 8 U.S.C. § 1225(b)(2) does not govern his detention.

Within 8 U.S.C. § 1226, there are §§ 1226(a) and (c). Section 1226(a) governs discretionary detention, and 1226(c) governs mandatory detention. In this case, Petitioner has no crimes that subject him to mandatory detention under § 1226(c). *See* ECF No. 8-1 at 3–6. Therefore, because Petitioner has no disqualifying crimes and ICE issued an arrest warrant Respondents submitted, *see* ECF 8-1 at 12, this demonstrates Petitioner is detained pursuant to 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2). Respondents' own response supports this argument. As noted on pages five (5)–six (6) of Respondents' response, the issuance of a warrant indicates that a detention is governed by 8 U.S.C. § 1226. *See* ECF No. 8 at 5–6.

Respondents' only acknowledgment of Petitioner's erroneous arriving noncitizen argument is that Petitioner had "notice and opportunity to contest the charge of being an

arriving [noncitizen], as well as the other charges in order to escape the mandatory detention requirements, but did not do so." *See* ECF 8 at 8. Not only does Respondents' argument fail, but it also shows a gross misunderstanding of the realities of immigration court as a *pro se* litigant. First, the arriving [noncitizen] allegation is a *designation* DHS sets and not a *charge* in the NTA. *See* ECF 8-1 at 7. Contesting removal charges would do nothing to alter the designation. Second, after such designation is alleged, the immigration judges, under a false misunderstanding of 8 C.F.R 1003.19(h)(1)(i)(B), do not take any testimony or evidence from petitioners to contest such designation during a bond proceeding; they simply deny the request for bond for lack of jurisdiction. *See* ECF 1-1 at 50 (demonstrating the Immigration Judge conducted limited bond proceedings due to finding she had no jurisdiction to hear Petitioner's bond request). Lastly, Respondents' argument is made as a blanket assumption, without any supporting citation to legal authority or even record evidence. Petitioner was unrepresented during his bond proceedings and remains unrepresented in his removal proceedings. To assume he had the ability to challenge DHS's designation is naïve and reckless, at best.

B. Respondents' Reliance on *Matter of Q. Li* is Unwarranted and Pursuant to *Loper Bright* this Court Does Not Owe Deference to the Board of Immigration of Appeals.

Respondents' response relies heavily on *Matter of Q.Li.*[4] ECF 8 at 7–8, 12. On page eight (8), Respondents quote *Matter of Q. Li*, stating that "[a]n applicant for admission who is arrested and detained ***without a warrant*** while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under [8 U.S.C. § 1225(b)] and is ineligible for any subsequent release on bond under [8 U.S.C. § 1226(a)]." ECF

[4] 29 I.&N. Dec. 66 (BIA 2025).

8 at 8 (quoting *Matter of Q. Li*, 29 I.&N. Dec. at 66) (emphasis added). Respondents argue that "Petitioner is subject to mandatory detention because he was paroled over the international border and issued and NTA, revoking [his] parole properly pursuant to 8 C.F.R. § 212.5(3)(2)(i)." *See* ECF 8 at 7.

In Petitioner's case, *Matter of Q Li* does not apply, as Petitioner is both legally and factually distinct from the respondent in *Matter of Q Li*. In *Matter of Q Li*, the respondent was apprehended within 100 yards of the U.S. border, miles away from a port of entry. 29 I.&N. Dec. at 67. The respondent there was detained immediately, released the following day on parole, and instructed to regularly report to the Department. *Id.* During a routine check-in, the respondent was detained again pursuant to information provided by Interpol. *Id.* Only then was the respondent in *Matter of Q Li* provided with a an NTA, the charging document that kicks off removal proceedings. *Id.*; 8 C.F.R. § 244.1.

First, ICE here arrested Petitioner in Las Vegas, Nevada after his release from city jail on or about April 14, 2026. *See* ECF 8-1 at 4, 12. ICE did not arrest Petitioner anywhere close to an international border as Respondents allude to in their response. *See* ECF 8 at 7. It was only after the April 2026 arrest that ICE issued Petitioner's NTA and initiated removal proceedings for the first time in Petitioner's life. *Id.* at 7.

Second, the last time Petitioner entered the U.S. was on November 13, 2014. *See* ECF 8-1 at 7. While Respondents state he entered on November 13, 2024, *see* ECF 8 at 1, 3, Respondents present no evidence as to this fact.[5] Petitioner's last date of entry is clearly noted

[5] While at first the undersigned believed this to be simply Respondents' typographical error, Respondents argue this entrance date on two separate parts of their response and as such Petitioner requests that evidence be presented of such arrival date.

on the NTA ICE issued and Respondents submitted. *See* ECF 8-1 at 7; *see also* Exhibit A (Stamped I-512L, Authorization for Parole of an Alien in to the United States). As such, unlike the Respondent in *Matter of Q. Li*, Petitioner's arrest happened over twelve (12) years after his lawful admission.

Lastly, during his last entry to the U.S., Petitioner was not detained nor issued an NTA. *See* ECF 8-1 at 7. Petitioner arrived in Los Angeles, California, and CBP inspected and admitted him with his previously approved advance parole document. *See* Exhibit A (Stamped I-512L, Authorization for Parole of an Alien in to the United States). His circumstances are factually distinct from those in *Matter of Q. Li*.

Therefore, Respondents' reliance on *Matter of Q. Li* is unwarranted. Additionally, this Court owes no deference *Matter of Q. Li* as it conflicts with the language of 8 U.S.C. § 1225(b). *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024) (the Supreme Court emphasized that under the Administrative Procedure Act ("APA"), "courts decide legal questions by applying their own judgment."

C. Respondents Point to and Lean on A Dissimilar and Nonbinding Case Outside this Circuit.

Respondents point to *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, 2026 U.S. App. LEXIS 3899, at * (5th Cir. Feb. 6, 2026) as instructive and analogous. It is not. Preliminarily, *Buenrostro-Mendez* is not binding, as it is issued by the Fifth Circuit. *Id.*

Of note, the petitioners in *Buenrostro-Mendez* "concede[d] they are applicants for admission as defined in section 235(a)(1) of the INA and neither disputed they would be subject to mandatory detention if section 235(b)(2)(A) applied to them…." *Id.* * 4. Here, this case is

distinguishable from *Buenrostro-Mendez* because Petitioners have never conceded this point. Their refusal to concede this point is the exact reasons they filed this instant action.

The analysis in *Buenrostro-Mendez* relies on that "applicants for admission are '[noncitizens] present in the U.S. who ha[ve] not been admitted' by lawful means." *Id.* * 5. For the Fifth Circuit, presence [in the U.S.] without admission deems petitioners to be applicants for admission. *Id.* * 11. Additionally, it holds that applicants for admission are *seeking admission* pending the resolution of removal proceedings. *Id.* * 13-14. However, as discussed *supra* and as this Court has previously held, Petitioners are not applicants for admission, and the entirety of 8 U.S.C. § 1225 does not apply to them in any respect. Petitioner was not in removal proceedings at the time of his apprehension. *See* ECF No. 8-1 at 2–10.

Therefore, the overlap between 8 U.S.C. §§ 1225 and 1226 that Respondents believe exists in *Buenrostro-Mendez*[6] is not present in Petitioner's case. Only § 1226(a) applies as he also does not have any convictions that subject him to mandatory detention under § 1226(c). Therefore, *Buenrostro-Mendez* remains factually distinct and not binding, instructive, or analogous to Petitioner's case.

Additionally, Respondents point *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 U.S. Dist. LEXIS 192557 *1 (D. Neb. 2025)[7] as instructive and analogous. It is not. Preliminarily, *Vargas Lopez* is not binding, as it is unpublished and issued by the U.S. District Court for the District of Nebraska. No. 8:25CV526, 2025 U.S. Dist. LEXIS 192557 *1 (D. Neb. 2025).

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[6] *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, 2026 U.S. App. LEXIS 3899, at * 20-21 (5th Cir. Feb. 6, 2026)

[7] This case appears in Lexis as *Lopez v. Trump*, No. 8:25CV526, 2025 U.S. Dist. LEXIS 192557 *1 (D. Neb. 2025). For consistency with the record, Petitioner will refer to this case as *Vargas Lopez*.

Vargas Lopez holds that a noncitizen can be detained pursuant to both authorities of 8 U.S.C. §§ 1225(b)(2) and 1226; both statutes can apply, and the language is not mutually exclusive. *Id.* at *18, *23–24. This result on its own is illogical based on the discussion *supra*, and Petitioner's case is factually distinct from *Vargas Lopez*. *Vargas Lopez* is neither instructive nor analogous.

The analysis in *Vargas Lopez* relies on the overlap between individuals who are "applicant[s] for admission" and those already physically present in the United States after entering without inspection by an immigration officer. *Id.* As discussed *supra*, Petitioner is not an applicant for admission, and the entirety of 8 U.S.C. § 1225 does not apply to him in any respect. Only § 1226(a) applies.

The petitioner in *Vargas Lopez* entered without inspection and remained in the United States without immigration status. *Vargas Lopez*, 802 F. Supp. 3d at 4. This is distinguished from Petitioner, who has maintained valid TPS since the early 2000s and was lawfully admitted to the United States on advance parole on November 13, 2014. *See* ECF No. 1-1 at 61, 67; *see also* Exhibit A, (Stamped I-512L, Authorization for Parole of an Alien in to the United States). The court also notes in *Vargas Lopez* that no arrest warrant was produced for the petitioner in that case. *Vargas Lopez*, 802 F. Supp. 3d at 16–17. Here, Respondents filed Petitioner's arrest warrant into this record, solidifying that he is detained pursuant to 8 U.S.C. § 1226. *See* ECF No. 8-1 at 12. Therefore, *Vargas Lopez* remains factually distinct and not binding, instructive, or analogous to Petitioner's case.[8]

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[8] The government's reasoning has been rejected in the Second, Sixth, and Eleventh Circuits. These courts have all held that § 1225(b) applies only to noncitizens who are seeking to enter the United States. *Da Cunha v. Freden*, 175 F.4th 61 (2nd Cir. Apr. 6, 2026); *Alvarez v. Warden, Fed. Det. Ctr. Mia.*, 175 F. 4th 1258 (11th Cir. May 6, 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. May 11, 2026).

D. Respondents Have Not Addressed All Requirements for a Temporary Restraining Order, Therefore, They Have Foregone All Other Arguments.

Although Respondents state they responded to both Petitioner's Verified Petition for a Writ of Habeas Corpus and Motion for a TRO, Respondents do not address all arguments in the Petition and, therefore, concede them. Respondents only address which statute governs Petitioner's detention; they do not address the availability of agency relief, the fact that Petitioner's removal proceedings have been terminated, nor the Administrative Procedures Act. Respondents also do not address the four (4) requirements for a TRO. *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021); *Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473, 481 (9th Cir. 2023) (*citing All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

At best, Respondents argue that Petitioner's detention will not offend due process because his removal proceedings are not over yet, "resolution is forthcoming." *See* ECF No. 8 at 15. Petitioner construes this argument as he is not likely to succeed on the merits. However, Respondents fail to address the potential irreparable harm to Petitioner or even the burden on them if Petitioner is released. Without addressing any of the other three (3) requirements for a TRO, Respondents forego this issue and Petitioner's motion for a TRO should be granted. Additionally, this Court should order his immediate release because Petitioner continues to have active TPS, his last entry to the U.S. occurred more than twelve (12) years ago, and during his recent arrest he was wrongly designated as an arriving noncitizen. As such, his continued detention is unlawful.

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II. CONCLUSION

For the foregoing reasons, Petitioner requests that this Court expeditiously grant the Petition, and if there is any necessary delay to draft such a decision, to order Petitioner's release from immigration detention within seven days.

DATED this 21st July, 2026.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing Petitioner's Reply in Support of Motion for TRO and Petition for Writ of Habeas with the Clerk of the Court for the United States District Court for the District of Nevada using the CM/ECF system.

DATED this 21st day of July 2026.

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