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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Vladislav Iylmaz, Petitioner, v. John Cantu, *et al.*, Respondent	No. CV-25-03331-PHX-DJH-ESW **ANSWER TO PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Respondents, John Cantu, Phoenix Field Office Director Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); Todd Lyons, Acting Director of Immigration Customs Enforcement ("ICE") U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security ("DHS"); U.S. Department of Homeland Security; and Pamela Bondi, Attorney General of the United States, (Respondents), through undersigned counsel, answer the Petition for Writ of Habeas Corpus (Doc. 1).

Petitioner is currently in removal proceedings under INA § 240, 8 U.S.C. § 1229a, as an inadmissible arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Further, multiple provisions of 8 U.S.C. § 1252 strip federal courts of

jurisdiction over Petitioner's challenges to the commencement of removal proceedings any claims arising from removal proceedings. For these reasons, Petitioner's habeas should be denied. This Response is supported by the following Memorandum of Points and Authorities and attached declaration.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

Vladislav Iylmaz ("Petitioner") is a native and citizen of Russia, born on [redacted] in Kursk, Russia. *See* Declaration of Sergio Cabrera, Deportation Officer, attached as Exhibit 1 at ¶ 4. On October 21, 2022, the United States Customs and Border Protection, (CBP) encountered the Petitioner in a vehicle at the San Ysidro, California, Port of Entry. *Id.* at ¶ 5. The Petitioner presented his passport and was found to be inadmissible pursuant to section 212(a)(7)(A)(i)(I) of Immigration and Nationality Act ("INA") and placed into removal proceedings. *Id.*

On October 21, 2022, the Petitioner was personally served with a Notice to Appear and placed into removal proceedings in Aurora, Colorado. *Id.* at ¶ 6. On February 28, 2023, the Petitioner filed an application for immigration relief. *Id.* at ¶ 7. On November 28, 2023, the immigration Court in Denver, Colorado granted the Petitioner's request to change venue to New York, New York. *Id.* at ¶ 8.

On August 27, 2025, CBP encountered the Petitioner in Blythe, California. *Id.* at ¶ 9. CBP determined the Petitioner was in the United States illegally and without the proper documents to remain in the United States. *Id.* On August 29, 2025, the Petitioner was transferred to Eloy, Arizona. *Id.* at ¶ 10. On September 8, 2025, the Petitioner filed a Bond Redetermination Request with the Executive Office for Immigration Review (EOIR). *Id.* at ¶ 11. On September 11, 2025, the immigration court in Eloy, Arizona denied the Petitioner's request for a bond because the court lacked jurisdiction. *Id.* at ¶ 12. The Petitioner's next court date, the Master Hearing, is October 15, 2025. *Id.* at ¶ 13.

II. PETITIONER IS AN ARRIVING ALIEN SUBJECT TO MANDATORY DETENTION WHICH COMPORTS WITH HIS DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT.

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.

Here, Petitioner was encountered at a port-of-entry and was placed in removal proceedings. Therefore, he is an arriving alien subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and detention throughout the remainder of those proceedings are lawful. Noncitizens in pre-final-removal-order civil immigration detention generally fall within two categories: 8 U.S.C. § 1225, which consists of noncitizens seeking an initial entry, and 8 U.S.C. § 1226, which consists of noncitizens who entered the United States. Petitioner falls under 8 U.S.C. § 1225 because he was found to be an inadmissible arriving alien. The difference between the noncitizens in these two categories is significant for due process purposes. *See Thuraissigiam*, 591 U.S. at 106–07, 138–40; *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the "unique constitutional status of arriving aliens with no ties to the United States").

Respondents are aware of a prior ruling in this District rejecting these arguments, *see e.g., Francisco Cerritos Echevarria v. Pam Bondi, et al.*, 2:25-cv-03252-DWL-ESW, (D. Ariz. October 3, 2025), but Respondents respectfully maintain that Petitioner has not been deprived of due process, and falls within the definition of an "arriving alien" warranting mandatory detention as the removal process unfolds. This case is also distinguishable from *Francisco Cerritos Echevarria* in that CBP encountered the Petitioner at the San Ysidro, California, Port of Entry on October 21, 2022, clearly as an arriving alien. Ex. A at ¶ 5. He did not possess valid legal documents to enter the United States. *Id.* After processing, the Petitioner was found to be inadmissible pursuant section 212(a)(7)(A)(i)(I) of Immigration and Nationality Act (INA) and processed for removal. *Id.* On October 21, 2022, the Petitioner was personally served with a Notice to Appear and placed into removal proceedings in Aurora, Colorado. *Id.* at ¶ 6. On August 27, 2025, about

three years later, Petitioner was encountered at a CBP checkpoint in Blythe, Arizona (as opposed to Echevarria, who was arrested outside his home 24-years) and CBP subsequently determined the Petitioner did not have proper documents to legally remain in the United States. *Id.* at ¶ 9. These facts demonstrate that he is an arriving alien.

The Supreme Court considered whether 8 U.S.C. § 1225(b) imposes a time-limit on the length of detention and whether such noncitizens detained under this statutory authority have a statutory right to a bond hearing. *See Jennings*, 583 U.S. at 296-303. The Supreme Court held that "nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on the length of detention" nor "says anything whatsoever about bond hearings." *Id.* at 842. The sole means of release for noncitizens detained pursuant to 8 U.S.C. § 1225(b) is temporary parole at the discretion of DHS under 8 U.S.C. § 1182(d)(5). *Id.* at 844.

Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords to "arriving aliens" like Petitioner, is critical because, for "more than a century" now, the Supreme Court has held that the rights of such noncitizens are confined exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu*, 142 U.S. at 660 (holding that with regard to "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon*, 459 U.S. at 32 ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (rejecting noncitizens' habeas petitions premised on their claim that their detention without a bond hearing violated their Fifth Amendment Due Process rights because "an alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'").

The Supreme Court's holding on this topic was reinforced most recently in *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment Due Process Clause challenge. 591 U.S. 106–07. Therein, the Supreme Court "reiterated th[e] important rule," *id.* at 138, that a noncitizen seeking initial entry to the United States "has no entitlement" to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *Id.* at 107 ("Congress is entitled to set the conditions for an alien's lawful entry into this country and [] as a result [] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause."); *id.* (holding that a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"); *id.* at 140 (A noncitizen seeking initial entry to the United States "has only those rights regarding admission that Congress has provided by statute" and "the Due Process Clause provides nothing more[.]").

More broadly, the Supreme Court has long recognized that the political branches' broad power over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court's "general reaffirmations" of the political branches' exclusive authority to admit or exclude aliens "have been legion"). Control of the Nation's borders is vested in the political branches because that authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952). Preserving the political branches' authority to control the border serves "the obvious necessity that the Nation speak with one voice" on such matters. *Zadvydas v. Davis*, 533 U.S. 678, 711 (2001).

In addition to the sovereign, largely unreviewable prerogative of Congress and the Executive to admit or exclude aliens, *see Knauff,* 338 U.S. at 543 (1950), the Supreme Court also has recognized that aliens seeking admission to the United States do not have the same constitutional protections as individuals who have entered the United States. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance, the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Mezei*, 345 U.S. at 212). Accordingly, Congress may authorize the detention of aliens at the border, even for prolonged periods of time, and such detention does not deprive aliens "of any statutory or constitutional right." *See Mezei*, 345 U.S. at 212 (upholding detention of lawful permanent resident returning from trip abroad detained for over a year and a half).

Here, as an arriving alien, Petitioner has no due process protections beyond those afforded by statute. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-71 (1990) (Aliens "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *Landon*, 459 U.S. at 32 ("[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application."); *Mezei*, 345 U.S. at 212 ("[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'"); *Thuraissigiam*, 591 U.S. at 131. Petitioner received all the protections allowed by the relevant statutes. Finally, because Petitioner was detained under 8 U.S.C. § 1225(b), the IJ properly found that he lacked jurisdiction to issue bond.

Petitioner argues that the fact he was given a Notice to Appear and released, after he was detained at a port-of-entry and found to be in the country illegally, changes the nature of his detention from a clear 1225 detention when detained at the border, to a 1226 re-detention because he was not encountered at the border when re-detained. Doc 1 at 22-

23. Petitioner cites *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111 (9th Cir. 2007) but there is a crucial distinction between that case and this one. In *Ortega-Cervantes*, the Court explicitly found that the alien was "not an 'arriving alien' within the meaning of the regulations because he was apprehended inside the United States after crossing the border illegally." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1116. The Ninth Circuit therefore held "that Ortega–Cervantes was conditionally paroled under the authority of § 1226(a) rather than paroled into the United States under the authority of § 1182(d)(5)(A)." *Id.* Petitioner's argument that this is a 1226 case is otherwise unsupported by caselaw.

III. THIS COURT LACKS SUBJECT MATTER JURISDICTION UNDER 8 U.S.C. § 1252(G)

Courts lack subject matter jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear 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."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction").

Specifically, 8 U.S.C. § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney General may take: [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Here, Petitioner's claims necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over

which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

Here, this Court lacks subject matter jurisdiction to hear any challenge to the governments' decision to change the venue of the immigration proceedings from New York to Arizona, and also the governments' decision to hold the Master Hearing in October 2025, instead of the January 2027 date set by the New York IJ. Petitioner does not actually request any relief in connection with these government decisions.

IV. PETITIONER BRINGS IMPROPER HABEAS CLAIMS.

An individual may seek habeas relief under 28 U.S.C. § 2241 if he is "in custody" under federal authority "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). But habeas relief is available to challenge ***only*** the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. at 117 (The writ of habeas corpus historically "provide[s] a means of contesting the lawfulness of restraint and securing release."). The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas jurisdiction: "[O]ur review of the history and purpose of habeas leads us to conclude the relevant question is whether, based on the allegations in the petition, release is legally required irrespective of the relief requested." *Pinson*, 69 F.4th at 1072; *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the petitioner's claim would "necessarily lead to immediate or speedier release.").

Notably, seeking judicial review under the Administrative Procedure Act (APA) is not properly sought through a habeas petition. Doc. 4 at 15-17. *See Flores-Miramontes v. INS.*, 212 F.3d 1133, 1140 (9th Cir. 2000) ("For purposes of immigration law, at least, "judicial review" refers to petitions for review of agency actions, which are governed by the Administrative Procedure Act, while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement."); see also *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) ("Like in *Pinson*, the Court lacks jurisdiction over Petitioner's § 2241 habeas petition since it cannot

be fairly read as attacking 'the legality or duration of confinement.'") (quoting *Pinson*, 69 F.4th at 1065).

Here, without identifying a policy, Petitioner claims that "Respondents have a policy and practice of applying § 1225(b)(2) to Petitioner." Doc. 4 at 16, ¶ 72. In other words, Petitioner is ultimately challenging his detention authority under § 1225(b)(2), which is appropriately challenged in a habeas petition, not through an additional attack under the APA. To the extent Petitioner is challenging the "auto-stay" provision of 8 C.F.R. § 1003.19(i)(2), his confinement is statutorily authorized by 8 U.S.C. § 1225(b)(2), which requires detention throughout the entire removal proceedings.

Ultimately, challenges to 8 U.S.C. § 1225(b) are limited to the United States District Court for the District of Columbia ("D.D.C."). 8 U.S.C. § 1252(e)(3)(A). The DC Circuit has held that challenges to implementation and policies related to § 1225(b) must be brought in the D.D.C. *See Make The Rd. New York v. Wolf*, 962 F.3d 612, 625 (D.C. Cir. 2020). The Ninth Circuit recognized that the limitation of challenges to policies under 1225(b) must be filed in the D.D.C. *See Singh v. Barr*, 982 F.3d 778, 783 (9th Cir. 2020). Thus, Petitioner's APA claims fail.

V. CONCLUSION

In light of the above, Respondents respectfully request the Court deny Petitioner's Petition for Writ of Habeas Corpus.

RESPECTFULLY SUBMITTED October 9, 2025.

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