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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Alejandro Garcia-Rosales, Petitioner, v. Kristi Noem, et al., Respondents.	No. 2:25-cv-03391-SHD-DMF **RESPONSE TO APPLICATION FOR TEMPORARY RESTRAINING ORDER**

Petitioner in this action argues that he is not an "applicant for admission" who must therefore be detained by the government pending his removal. The statutory analysis of the Immigration and Nationality Act ("INA") reveals that any noncitizens present in the United States without being admitted are indeed "applicants for admission" and are therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded.") Petitioner is properly subject to mandatory detention during his removal proceedings. The Court should therefore deny the Application for Temporary Restraining Order.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual Background.

Petitioner Alejandro Guillermo Garcia-Rosales is a native and citizen of Mexico, born in 2003. Exhibit 1, Declaration of Nellie Martinez, ¶ 4. During a traffic stop on June 26, 2025, the Pinal County Sheriff's Office pulled a vehicle over for suspended registration, believed that Petitioner as one of the passengers lacked immigration status, and called Immigration and Customs Enforcement (ICE). Exhibit 1, ¶ 5. ICE questioned Petitioner, who stated to ICE that he was a Mexican citizen who had entered the United States at the age of three. Exhibit 1, ¶ 5. ICE took him into custody. Exhibit 1, ¶ 6. During ICE's review of Petitioner's history, ICE found that Petitioner filed for Consideration of Deferred Action for Childhood Arrivals (DACA). Exhibit 1, ¶ 7; *see also* Doc. 1, Petition at 7, ¶ 19.

ICE placed Petitioner into removal proceedings on July 9, 2025, citing Section 212(a)(6)(A)(i) of the INA. Exhibit 1, ¶ 9. On July 11, 2025, an Immigration Judge (IJ) issued a $10,000 release bond with Alternatives to Detention at ICE's discretion. Exhibit 1, ¶ 10. ICE appealed the bond issuance on July 21, 2025. Exhibit 1, ¶ 11. The Immigration Court scheduled Petitioner's removal hearing for September 8, 2025. Exhibit 1, ¶ 12. On July 23, 2025, the IJ issued another order that Petitioner be released from custody upon posting a bond of $10,000, while reserving appeal for both sides. Exhibit 1, ¶ 13. On August 17, 2025, Petitioner filed a motion with the IJ to lift the automatic stay. Exhibit 1, ¶ 14. On August 19, 2025, Petitioner filed an application for immigration relief. Exhibit 1, ¶ 15. On August 25, 2025, Petitioner filed a motion to continue his removal hearing, and then amended that motion on August 26, 2025. Exhibit 1, ¶¶ 16-17. The Immigration Court granted the motion to continue, and rescheduled Petitioner's removal hearing to October 17, 2025. Exhibit 1, ¶¶ 18-19.

LAW AND ARGUMENT

Citing numerous district court rulings, Petitioner argues that the government lacks a legal basis to apply 8 U.S.C. § 1225 to him. No appellate court has as of yet agreed with these recent, lower court decisions. Petitioner also concedes that the Board of Immigration Appeals (BIA) has recently agreed with the government, in *Matter of Yajure Hurtado*, 29 I & N Dec.

216 (B.I.A. 2025). Petitioner is correct that the BIA's interpretation is not due any deference, but the government does not rely on such deference here. As a matter of statutory analysis, ICE possesses the legal authority to deem noncitizens as applicants for admission subject to section 1225 mandatory detention.

I. Statutory Framework

A. Applicants for Admission

"The phrase 'applicant for admission' is a term of art denoting a particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

> (1) Aliens treated as applicants for admission.— 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 ...) shall be deemed for the purposes of this Act an applicant for admission.

8 U.S.C. § 1225(a)(1).[1] Section 1225(a)(1) was added to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Before IIRIRA, "immigration law 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). A deportation hearing was a proceeding against a noncitizen already physically present in the United States, whereas an exclusion hearing was against a noncitizen outside of the United States seeking admission. *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Whether an applicant was eligible for "admission" was determined only in exclusion proceedings, and exclusion proceedings were limited to "entering" noncitizens — those noncitizens "coming ... into the United States, from a foreign port or place or from an outlying possession." *Plasencia*, 459 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). "[N]on-citizens who had entered without inspection could take advantage of greater procedural and

[1] Admission is the "lawful entry of an alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13).

substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Prior to IIRIRA, noncitizens who attempted to lawfully enter the United States were in a worse position than noncitizens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA "replaced deportation and exclusion proceedings with a general removal proceeding." *Hing Sum*, 602 F.3d at 1100.

IIRIRA added Section 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced "certain aspects of the current 'entry doctrine,'" under which illegal noncitizens who entered the United States without inspection gained equities and privileges in immigration proceedings unavailable to noncitizens who presented themselves for inspection at a port of entry). The provision "places some physically-but not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings." *Torres*, 976 F.3d at 928.

B. Expedited Removal Under 8 U.S.C. § 1225

IIRIRA established distinct types of removal proceedings. Pub. L. 104-208, 110 Stat. 3009, 3009-546 (1996). Removal proceedings under § 1225 are known as "expedited removal proceedings." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109– 113 (2020) (citing provisions). Only two categories of noncitizens are eligible for expedited removal, rather than full removal proceedings, (1) "arriving aliens" and (2) noncitizens who "ha[ve] not been admitted or paroled into the United States" and have not been "physically present in the United States" for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). "Arriving aliens" are defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry …" 8 C.F.R. § 1.2.

Expedited removal proceedings are conducted by an immigration officer, not an IJ.

The immigration officer asks the applicant for admission questions to determine (a) "identity, alienage, and inadmissibility," and (b) whether the noncitizen intends to apply for asylum. 8 C.F.R. § 235.3(b)(2)(i), (b)(4). Noncitizens are not entitled to counsel and no recording or transcript is made. *Id.* § 235.3(b)(2)(i). If the noncitizen is inadmissible and does not intend to apply for asylum, the immigration officer, after supervisory review, issues a Notice and Order of Expedited Removal. *Id.* § 235.3(b)(2)(i).

The noncitizen has no right to appeal to an IJ, the BIA, or any other court. *Id.* § 235.3(b)(2)(ii); 8 U.S.C. § 1252(a)(2)(A)(i). Unlike section 240 proceedings, which often take place over the course of several months, the expedited removal process is "conducted on a very compressed schedule and can result in deportation in hours or days." *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *4 (D.D.C. Aug. 1, 2025).

C. Removal Proceedings under 8 U.S.C. § 1229(a)

Removal proceedings under § 1229a are commonly referred to as "full removal proceedings" or "240 removal proceedings" due to the statutory section of the INA in which they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, an employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Noncitizens in 1229a proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C. § 1255 (adjustment of status). These are adversarial proceedings in which the noncitizen has the right to hire counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the IJ decision to the BIA. 8 U.S.C. § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order of removal, the noncitizen may also seek judicial review at a U.S. court of appeals through a petition for review. 8 U.S.C. § 1252.

D. Detention under the INA

The INA authorizes civil detention of noncitizens during removal proceedings and "[d]etention is necessarily part of this deportation procedure." *Carlson v. Landon*, 342 U.S.

524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

i. Detention under Section 1225

The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and (2); *see also Jennings*, 583 U.S. at 287 (Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)."). As explained above, arriving noncitizens and noncitizens present less than two years are subject to expedited removal. 8 U.S.C. § 1225(b)(1). If a noncitizen "indicates an intention to apply for asylum," the noncitizen proceeds through the credible fear process and is subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C. § 1225(B)(1)(B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. The Supreme Court recognized that 1225(b)(2) "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), a noncitizen "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). While section 1225 does not provide for noncitizens to be released on bond, DHS has the sole discretionary to release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

ii. Detention under Section 1226

Section 1226 provides that "an alien may be arrested and detained pending a decision on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.[2] By regulation, immigration officers can release a

[2] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-*

noncitizen if the noncitizen demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A noncitizen can also request custody redetermination (i.e., a bond hearing) by an IJ at any time before a final in this country but "has not been admitted," is treated as "an applicant for admission." § 1225(a)(1). *Jennings*, 583 U.S. at 286–87.

II. The Government's Position

The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed from the United States. "[D]etention necessarily serves the purpose of preventing deportable [] aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if ordered removed, the aliens will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528 (2003). The Supreme Court has long held that deportation proceedings "would be in vain if those accused could not be held in custody pending the inquiry" of their immigration status. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Congress intended for all applicants for admission to be detained during the course of their removal proceedings. *See Jennings*, 583 U.S. at 299 (interpreting the "plain meaning" of sections 1225(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings).

The plain language of the statute is clear: Petitioner is subject to detention under § 1225(b)(2) because he is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). The INA specifies that "an alien present in the United States who has not been admitted" "shall be deemed . . . an applicant for admission." 8 U.S.C. § 1225(a). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287.

As the Supreme Court indicated in *Jennings*, "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have

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Cervantes v. Gonzales, 501 F.3d 1111, 1116 (9th Cir. 2007). 5 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.

concluded." *Jennings*, 583 U.S. at 297. Section 1225(b)(1) covers which applicants for admission, including arriving noncitizens or noncitizens who have not been admitted and have been present for less than two years, and directs that both of those classes of applicants for admission are subject to expedited removal. 8 U.S.C. § 1225(b)(1). Section 1225(b)(2) "serves as a catchall provision that applies to all applicants not covered by 1225(b)(1) (with specific exceptions not relevant here)."[3] *Jennings*, 583 U.S. at 287. *Jennings* recognized that 1225(b)(2) mandates detention. *Id.* at 297; *see also Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) ("[A]n applicant for admission . . . 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."). Petitioner, present in the United States without being admitted, is an applicant for admission. *See Yajure*, 29 I. & N. Dec. at 221. Under the plain language of the statute, Petitioner is subject to detention under § 1225(b)(2). *Yajure*, 21 I. & N. Dec. at 220–21.

Petitioner points to the recent passage of the Laken Riley Act, Pub. L. No. 119-1, 17 January 29, 2025, 139 Stat 3, 139 Stat. 3 (2025)("LRA") to argue that persons charged as inadmissible under section 1182(a)(6) or (a)(7) are governed by section 1226(a) as intended by Congress. Doc. 2 at 7. Nothing in the LRA changes the analysis. The LRA reflects a "congressional effort to be doubly sure" that such unlawful noncitizens are detained. *Barton*, 590 U.S. at 239. The LRA does not change what Congress intended in IIRIRA. *See Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998) ("These later-enacted laws, however, are beside the point. They do not declare the meaning of earlier law. ... or a change in the meaning of an earlier statute."). Nothing in the LRA requires that the noncitizen who falls under § 1225(b)(2) be treated as a noncitizen detained under § 1226(a). *Yajure-Hurtado*, 29 I. & N. Dec. at 221–22.

[3] The two exceptions are crewmen and stowaways. See 8 U.S.C. §§ 1225(a)(2), 1281, and 1282(b).

III. Analysis of the *Winter* Factors.

A. Standard of Review

Petitioner seeks a temporary restraining order (TRO). Doc. 2. The standard for analyzing a motion for a TRO is the same as for a preliminary injunction. *Babaria v. Blinken*, 87 F.4th 963, 976 (9th Cir. 2023) (describing the two standards as "substantially identical").

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain relief, the moving party must demonstrate (1) that he is likely to succeed on the merits of its claims; (2) that he is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in his favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has articulated, "[a] stay is not a matter of right, even if irreparable injury might otherwise result" but is instead an exercise of judicial discretion that depends on the particular circumstances of the case. *Nken v. Holder,* 556 U.S. 418, 433 (2009) (quoting *Virginian R. Co. v. United States,* 272 U.S. 658, 672 (1926)).

Further, Petitioner agrees with Respondents here that when the government is a party, the balance of equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Weighing the public interest "primarily addresses impact on non-parties rather than parties." *Pacito v. Trump*, 768 F. Supp. 3d 1199, 1237 (W.D. Wash. 2025) (quoting *CTIA – The Wireless Ass'n v. City of Berkeley, Cal.*, 928 F.3d 832, 852 (9th Cir. 2019)).

B. Petitioner Cannot Meet the Four *Winter* Factors.

Addressing the first *Winter* factor, Petitioner cannot show that he is likely to succeed on the merits for the reasons fully articulated in this brief, above. As to the second factor, because the government is affording Petitioner due process before the immigration court on his available arguments, he cannot show irreparable injury here. As to the third and fourth factors, the Court here must balance the public's interest in enforcing the United States'

immigration laws on one hand, compared to what Petitioner views as the public interest. Petitioner primarily argues this merged factor weighs in his favor because the government is engaging in "an unlawful practice," and is "violat[ing] the requirements of federal law . . ." Doc. 2 at 14. But this is a premise that assumes a legal conclusion without actually proving it. The government has acted within its legal authority as established in this brief.

CONCLUSION

For the reasons stated, Respondents urge the Court to deny the Application.

Respectfully submitted on September 24, 2025.

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