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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 ORDER TO SHOW CAUSE**

Respondents Kristi Noem,[1] United States Department of Homeland Security, Todd Lyons,[2] United States Immigration and Customs Enforcement (ICE), John Cantu,[3] Luis Rosa, Jr.,[4] Sirce Owen,[5] and Executive Office for Immigration Review respond as follows to the Court's Order to Show Cause. Doc. 17.

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[1] Secretary, United States Department of Homeland Security.

[2] Acting Director, United States Immigration and Customs Enforcement.

[3] Field Office Director for ICE Enforcement and Removal Operations, Phoenix.

[4] Warden, Central Arizona Florence Correctional Complex.

[5] Acting Director, Executive Office for Immigration Review.

MEMORANDUM OF POINTS AND AUTHORITIES

The government maintains the position taken in its Response to Application for Temporary Restraining Order (Doc. 15), that 8 U.S.C. § 1225(b)(2) applies to Petitioner, thus requiring his mandatory detention without a bond hearing. The substance of that argument is thus repeated here. The government has revised its arguments to reflect a second federal district court that has agreed with the government's argument on this point, thus joining Judge Bencivengo's decision in *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). *See Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Buescher, J.) (holding that § 1225(b)(2) applied to noncitizen who had been present in the United States for 12 years).

Petitioner's stance sweeps aside Congressional intent to avoid the absurd result of noncitizens attempting to enter the United States lawfully being placed in a worse position than noncitizens doing so unlawfully. Section 1225(a)(1) expressly defines that an "alien present in the United States who as not been admitted… shall be deemed for purposes of this Act an applicant for admission." 8 U.S.C. § 1225(a)(1). Since Petitioner concedes that he is present in the United States, and has not been admitted, he is an applicant for admission. As such, the statutory provision governing "applicants for admission," 8 U.S.C. § 1225(b)(2), applies and Petitioner is subject to mandatory detention.

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, which is three days from this filing. Exhibit 1, ¶¶ 18-19.

STANDARD OF REVIEW

Petitioner bears the burden of demonstrating that his detention is unlawful. *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411, at *4 (D. Minn. Aug. 15, 2025). In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Judicial review of immigration matters, including of detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("the power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*,

426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.")

LAW AND ARGUMENT

As of today's date, it remains true that no appellate court has agreed with the lower court decisions Petitioner relies upon in his petition. As the Court is aware, the Board of Immigration Appeals (BIA) has ruled in favor of the government's statutory interpretation here. *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (B.I.A. 2025). Just as the federal district courts did in Nebraska and Southern California, this Court should conclude that § 1225(b)(2) applies to Petitioner and deny his request for habeas relief. *Chavez*, 2025 WL 2730228; *Vargas Lopez*, 2025 WL 2780351.

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).[6] 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 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.

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[6] 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).

1 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced "certain aspects of the current
2 'entry doctrine,'" under which illegal noncitizens who entered the United States without
3 inspection gained equities and privileges in immigration proceedings unavailable to
4 noncitizens who presented themselves for inspection at a port of entry). The provision "places
5 some physically-but-not-lawfully present noncitizens into a fictive legal status for purposes of
6 removal proceedings." *Torres*, 976 F.3d at 928.

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

8 IIRIRA established distinct types of removal proceedings. Pub. L. 104-208, 110 Stat.
9 3009, 3009-546 (1996). Removal proceedings under § 1225 are known as "expedited removal
10 proceedings." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109– 113 (2020)
11 (citing provisions). Only two categories of noncitizens are eligible for expedited removal,
12 rather than full removal proceedings, (1) "arriving aliens" and (2) noncitizens who "ha[ve] not
13 been admitted or paroled into the United States" and have not been "physically present in the
14 United States" for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). "Arriving aliens" are defined
15 by regulation as "an applicant for admission coming or attempting to come into the United
16 States at a port-of-entry …" 8 C.F.R. § 1.2.

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

24 The noncitizen has no right to appeal to an IJ, the BIA, or any other court. *Id.* §
25 235.3(b)(2)(ii); 8 U.S.C. § 1252(a)(2)(A)(i). Unlike section 240 proceedings, which often take
26 place over the course of several months, the expedited removal process is "conducted on a
27 very compressed schedule and can result in deportation in hours or days." *Coal. for Humane*
28 *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

1 detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C. § 1225(B)(1)(B)(iii)(IV).

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

11 **ii. Detention under Section 1226**

12 Section 1226 provides that "an alien may be arrested and detained pending a decision
13 on whether the noncitizen is to be removed. 8 U.S.C. § 1226(a). Under § 1226(a), the
14 government may detain a noncitizen during his removal proceedings, release him on bond, or
15 release him on conditional parole.[7] By regulation, immigration officers can release a
16 noncitizen if the noncitizen demonstrates that he "would not pose a danger to property or
17 persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A
18 noncitizen can also request custody redetermination (i.e., a bond hearing) by an IJ at any time
19 before a final in this country but "has not been admitted," is treated as "an applicant for
20 admission." § 1225(a)(1). *Jennings*, 583 U.S. at 286–87.

21 **II. <u>The Government's Position</u>**

22 The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove
23 inadmissible and deportable noncitizens and to ensure that noncitizens who are removable are
24 in fact removed from the United States. "[D]etention necessarily serves the purpose of
25 preventing deportable [] aliens from fleeing prior to or during their removal proceedings, thus
26 increasing the chance that if ordered removed, the aliens will be successfully removed."

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28 [7] 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-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007).

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. *Yajure-Hurtado*, 29 I. & N. Dec. at 220. 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 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)."[8] *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

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

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."). As Judge Bencivengo concluded when considering the identical argument, the LRA's new language "simply removed the Attorney General's detention discretion for aliens charged with specific—but not all—crimes." *Chavez*, 2025 WL 2730228 at *5. Petitioner's argument implies that Congress intended in passing the LRA to afford more legal protections to noncitizens who entered the country unlawfully. The statutes read as a whole fail to support that argument.

III. The Court's Adoption of *Echevarria* Would be in Error.

The government acknowledges this Court's comments in its Order to Show Cause indicating its favorable view of Judge Lanza's conclusion in *Echevarria v. Bondi*, 2:25-cv-03252-DWL-ESW, (D. Ariz. Oct. 3, 2025). Doc. 14. In *Echevarria*, the Court determined that the phrase "alien seeking admission" in 8 U.S.C. § 1225(b)(2)(A) implies a present-tense nature to the desire for admission, such that an alien who is already present in the United States cannot be "seeking admission":

> The word "seeking" is the present participle of the verb "seek." It thus has a temporal element—Petitioner must have been in the process of seeking admission at the time of the inspection.
>
> It is hard to see how Petitioner could be deemed to have been "seeking" admission at the time of the encounter on July 2, 2025. By that point, Petitioner had already been present in the United States for 24 years, having

> arrived and entered in 2001. Moreover, under Respondents' interpretation of § 1225(a)(1), Petitioner became an "applicant for admission" in 2001, upon his arrival and entry. Implicit in Respondents' position, then, is that Petitioner somehow existed in a perpetual state of "seeking" admission during the 24-year period between when he first became an "applicant for admission" in 2001, by virtue of his entry into the country, and when he was encountered and inspected by an immigration officer in 2025.

Id. (internal citations omitted).

The Court's *Echevarria* analysis, respectfully, fails to consider other pieces of statutory context. The phrase "applicants for admission" carves out a subset of those who are "seeking admission." For example, elsewhere in section 1225, the statute says that "[a]ll aliens who are applicants for admission *or otherwise seeking admission* or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). In other words, 8 U.S.C. § 1225(a)(3) shows that a noncitizen may be "seeking admission" either by being an "applicant for admission," or in some different way. As discussed earlier, the phrase "applicant for admission" unambiguously includes noncitizens who have already entered the United States. "In all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning." *See Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (referring to *Ratzlaf* v. *United States*, 510 U. S. 135, 143 (1994)). "We therefore avoid interpretations that would "attribute different meanings to the same phrase." (quoting *Reno* v. *Bossier Parish School Bd.*, 528 U. S. 320, 329 (2000)). The statutory text thus does not support the *Echevarria* court's holding.

CONCLUSION

For the reasons stated, Respondents respectfully request the Court to deny Petitioner's request for relief.

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Respectfully submitted on October 14, 2025.

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