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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Hector Lopez-Melo,  
  
Petitioner,  
  
v.  
  
Pamela Bondi, et al.,  
  
Respondents.

No. CV-25-03394-PHX-DJH (JZB)  
  
**ORDER**

Petitioner filed a Petition for Writ of Habeas Corpus under § 2241 and Complaint for Injunctive and Declaratory Relief, a supplement to his Petition, and a Motion for Temporary Restraining Order and Preliminary Injunction challenging his immigration detention.<sup>1</sup> (Docs. 1-2, 10.)<sup>2</sup> The Court ordered expedited briefing on the motion for injunctive relief. Because the motion for injunctive relief is fully briefed, the Court notifies the parties that it intends to consolidate the request for preliminary injunction with the merits in this action under Rule 65(a)(2) of the Federal Rules of Civil Procedure.

**I. Background**

Petitioner is a citizen of Mexico who entered the United States in 2012. (Doc. 8 at 6.) He was detained by the U.S. Border Patrol on January 23, 2012, and, on January 26,

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<sup>1</sup> Petitioner paid the filing fee for a habeas corpus action.  
<sup>2</sup> After briefing on the motion was completed, Petitioner filed an “Amended Petition,” which added the additional assertion that Respondents’ actions were barred by *res judicata*. This is not an appropriate Amended Petition because it did not set forth the facts or claims in the original petition. “[T]he general rule is that an amended [petition] supercedes the original [petition] and renders it without legal effect[.]” *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012).

1 2012, was issued a Notice to Appear (NTA). (Doc. 8, Ex. A ¶¶ 3-4.) The NTA charged  
2 him with removability under 8 U.S.C. § 1182(a)(6)(A)(i), “for having entered without  
3 inspection or parole[.]” (Doc. 8, Ex. A ¶ 4.) He remained in civil detention until February  
4 16, 2012, when an Immigration Judge ordered him released on a \$3,000 bond. (Doc. 1  
5 ¶ 18.) Petitioner’s removal proceedings were administratively closed by stipulation on  
6 December 15, 2013, reopened on March 4, 2020, and administratively closed again by  
7 stipulation on November 17, 2021. (Doc. 8, Ex. A ¶¶ 9-13.)

8 On June 4, 2025, Petitioner was apprehended by Homeland and Security  
9 Investigations. (Doc. 8, Ex. A ¶ 14.) Petitioner requested a custody redetermination before  
10 an Immigration Judge (“IJ”). The IJ denied the request on the basis that he lacked  
11 jurisdiction to grant Petitioner bond because the Department of Homeland Security (DHS)  
12 classified him as being detained under § 1225(b)(2)(A) and therefore subject to mandatory  
13 detention.

14 A July 8, 2025, policy guidance memorandum issued by Acting ICE Director Todd  
15 Lyons announced that DHS had revisited the government’s legal position on detention and  
16 release authorities. Under this “revisited” legal position, noncitizens present without  
17 admission are now subject to mandatory detention under 8 U.S.C. § 1225(b), rather than  
18 discretionary detention under 8 U.S.C. § 1226(a), because, under 8 U.S.C. § 1225(a)(1),  
19 they are deemed applicants for admission.

20 Petitioner filed this Petition challenging his detention on due process grounds and  
21 as a violation of the relevant statutes. Petitioner further asserts his continued detention  
22 violates the Administrative Procedures Act, the Suspension Clause, and constitutes a state-  
23 created danger. (Doc. 1.) Petitioner requests release from custody or an order directing  
24 Respondents to provide him a bond hearing.

## 25 **II. Analysis**

26 Because the motion for injunctive relief is fully briefed, the Court notifies the parties  
27 that it intends to consolidate the request for preliminary injunction with the merits in this  
28 action under Rule 65(a)(2) of the Federal Rules of Civil Procedure.

1 Respondents argue Petitioner is subject to mandatory detention under 8 U.S.C. §  
2 1225(b)(2)(A) because he is an “applicant for admission” because he is “present in the  
3 United States without being admitted.” (Doc. 8 at 10-11.) But Respondents’ own evidence  
4 defeats their argument. Respondents themselves establish Petitioner was placed in removal  
5 proceedings under 8 U.S.C. § 1182(a)(6)(A)(i) as “[a]n alien present in the United States  
6 without being admitted or paroled,” and not as “an arriving alien” and applicant for  
7 admission under 8 U.S.C. § 1225(b). (Doc. 8, Ex. A ¶¶ 3-4.) They also establish Petitioner  
8 was granted bond on February 15, 2012, which would not have occurred if he was in  
9 removal proceedings under § 1226 rather than § 1225(b)(2)(A). (*Id.* ¶¶ 5-6.) Respondents  
10 provide no allegation or evidence that Petitioner’s bond was cancelled or revoked. Indeed,  
11 Respondents fail to address these nuanced statutory distinctions. Nor do Respondents  
12 advance any authority under which they are entitled to unilaterally re-detain Petitioner and  
13 reclassify his removal proceedings as arising under § 1225 from § 1226. For this reason  
14 alone, Petitioner is entitled to relief.

15 Further, another court in this district recently granted a § 2241 petition on the basis  
16 that the petitioner, who had been present in the United States for years, was not an applicant  
17 for admission under 1225(b)(2)(A) or subject to mandatory detention. *Francisco*  
18 *Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at  
19 \*9 (D. Ariz. October 3, 2025). Therein, Judge Lanza specifically noted that “[g]iven that  
20 an immigrant submits an ‘application for admission’ at a distinct point in time, stretching  
21 the phrase ‘at the time of application for admission’ to refer to a period of years would push  
22 the statutory text beyond its breaking point.” *Id.* at \*6. Judge Lanza concluded that—in  
23 accord with numerous other courts addressing the same issue—“Respondents’ narrow  
24 focus on the language of § 1225(a)(1) fails to take account of the entirety of the statutory  
25 scheme[.]” and recent Supreme Court guidance. *Id.* at \*9. This Court finds *Echevarria*  
26 persuasive and agrees with its conclusion that individuals like Petitioner are subject to  
27 detention under § 1226 and not § 1225(b)(2)(A).

28 For all these reasons, the Petition is granted, and Petitioner must be released under


1 the previously ordered bond.<sup>3</sup>

2 Accordingly,

3 **IT IS THEREFORE ORDERED:**

- 4 1. Under Federal Rule of Civil Procedure 65(a), the decision on Petitioner's  
5 Motion for Temporary Restraining Order and Preliminary Injunction (Doc.  
6 2) is consolidated with the merits.
- 7 2. Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) is **granted** as to his  
8 First Claim for Relief. The Petition is otherwise denied without prejudice as  
9 moot.
- 10 3. Respondents must immediately release Petitioner from custody under the  
11 same conditions that existed before his detention.
- 12 4. Respondents must provide a Notice of Compliance within three days of  
13 releasing Petitioner.
- 14 5. The Clerk shall enter judgment in Petitioner's favor and close this case.

15  
16 Dated this 9th day of October, 2025.

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20 Honorable Diane J. Humetewa  
21 United States District Judge  
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28 <sup>3</sup> Because the Court grants relief under Petitioner's First Claim for Relief, it will deny the remainder of the Petition as moot.