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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Jorge Abrego Zarate, Petitioner, v. Kristi Noem, et al., Respondents.	No. CV-25-03564-PHX-KML (MTM) **RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Respondents Fred Figueroa, Warden, Eloy Detention Center; John Cantu, Field Office Director at U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), Phoenix Field Office; Todd M. Lyons, Acting Director of ICE; Kristi Noem, Secretary of Homeland Security (DHS), and Pamela J. Bondi, Attorney General of the United States, through undersigned counsel, respond to the Petition for Writ of Habeas Corpus, as directed under this Court's Order to Show Cause dated October 20, 2025. Doc. 7.

Petitioner Jorge Abrego Zarate, detained after his fourth entry into the United States, is an "applicant for admission" who must therefore be detained pending removal proceedings. The plain language of the Immigration and Nationality Act (INA) establishes that any alien present in the United States without being admitted is indeed an "applicant

for admission" and 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."). Accordingly, pursuant to the INA, Petitioner is properly subject to mandatory detention during the pendency of his removal proceedings. For these reasons, Petitioner's request for habeas relief should be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND.

Petitioner Jorge Abrego Zarate is a native and citizen of Mexico. *See* Declaration of Kenneth E. Livingston, Deportation Officer, attached as Exhibit A, at ¶ 3. On May 6, 2004, he entered the United States at or near Rodeo, New Mexico, without being admitted or paroled by an Immigration Officer. *Id.* at ¶ 4. U.S. Border Patrol (USBP) arrested him and transported him to the Lordsburg Border Patrol Station, in Lordsburg, New Mexico. *Id.* USBP granted him a Voluntary Return (VR) and witnessed his departure to Mexico. *Id.* USBP granted Petitioner a VR to Mexico on three subsequent occasions, including May 9, 2004, May 11, 2004, and May 12, 2004, and witnessed his departure to Mexico. *Id.* at ¶ 5. Petitioner reentered the United States on an unknown date, at an unknown location, without being admitted or paroled by an Immigration Officer. *Id.* at ¶ 6.

On September 15, 2024, the Town of Wallkill Police Department, in Middletown, New York, arrested Petitioner for the offenses of assault with intent to cause injury, driving while intoxicated, operator leaves the scene of property damage, refusal to take breath test, failure to obey traffic control device, and a speeding violation. *Id.* at ¶ 7. On April 2, 2025, Petitioner was found guilty of driving while intoxicated, sentenced to three years' probation, and his license was revoked. *Id.* at ¶ 8. On April 23, 2025, Petitioner filed an Application for Asylum and for Withholding of Removal, Form I-589, with U.S. Citizenship and Immigration Services (USCIS). *Id.* at ¶ 9. On July 16, 2025, ICE arrested Petitioner in Middletown, and transported him to the Newburg Sub-Office, in Newburg, New York, for processing. *Id.* at ¶ 10. That same day, ICE issued Petitioner a Notice to Appear (NTA) charging him with violating Section 212(a)(6)(A)(i) of the Immigration and

Nationality Act (INA), as an alien present in the United States without being admitted or paroled or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* at ¶ 11.

On July 23, 2025, Petitioner arrived at the Central Arizona Florence Correctional Complex, in Florence, Arizona. *Id.* at ¶¶ 13-15. On August 19, 2025, an Immigration Judge (IJ) held a custody redetermination hearing and denied Petitioner's request for a change in custody status because he failed to establish that the Immigration Court had jurisdiction, deeming him an "applicant for admission" under INA § 235. *Id.* at ¶ 16. Petitioner's next immigration hearing is scheduled for November 21, 2025, in Florence. *Id.* at ¶ 17.

Petitioner filed this Petition for Writ of Habeas Corpus on September 29, 2025. Doc. 1. His Motion for a Temporary Restraining Order was denied as duplicative. Doc. 3. On October 20, 2025, the Court directed the Respondents to show cause why the Petition should not be granted and to specifically address whether, if this Court were to grant Petitioner a bond hearing, the Immigration Court would find it lacked the jurisdiction to do so in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). Doc. 7 at 2-3; *see* Section IV at 8 below. Petitioner claims that his detention under 8 U.S.C. § 1225(b)(2)(A) violates his substantive and procedural due process rights under the Fifth Amendment. Respondents deny all claims, including his request for "immediate release." Doc. 1 at 15.

II. STANDARD OF REVIEW.

The burden is on the petitioner to show that his confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically, here, Petitioner challenges his temporary civil immigration detention pending completion of his removal proceedings. Judicial review of immigration matters, including of detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *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).

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.").

III. THE HABEAS PETITION SHOULD BE DENIED.

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 an alien already physically present in the United States, whereas an exclusion hearing was against an alien

[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).

outside of the United States seeking admission. *Id.*. Whether an applicant was eligible for "admission" was determined only in exclusion proceedings, and exclusion proceedings were limited to "entering" aliens — those aliens "coming . . . into the United States, from a foreign port or place or from an outlying possession." *Landon v. Plasencia*, 459 U.S. 21, 24 n.3 (1982) (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, aliens who attempted to lawfully enter the United States were in a worse position than aliens 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 aliens who entered the United States without inspection gained equities and privileges in immigration proceedings unavailable to aliens who presented themselves for inspection at a port of entry). The provision "places some physically-but-not-lawfully present aliens into a fictive legal status for purposes of removal proceedings." *Torres*, 976 F.3d at 928.

B. 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). Aliens 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 alien 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 alien may also seek judicial review at a U.S. Court of Appeals through a petition for review. 8 U.S.C. § 1252.

C. Detention under the INA.

The INA authorizes civil detention of aliens 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).

1. Detention under 8 U.S.C. § 1225.

The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and (b)(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 aliens and aliens present less than two years are subject to expedited removal. 8 U.S.C. § 1225(b)(1). If an alien "indicates an intention to apply for asylum," the alien 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), an alien "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). Section 1225 does not provide

for aliens to be released on bond, but DHS has discretion 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).

2. Detention under 8 U.S.C. § 1226.

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

D. Petitioner Is Subject to Mandatory Detention Under 8 U.S.C. § 1225(B)(2).

Section 1225 applies to "applicants for admission," such as Petitioner, who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). 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.

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid document." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," they are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583

U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "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); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (quoting *Jennings*, 583 U.S. at 299).

In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C. § 1225(b) and stated that "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [ ] mandate detention of applicants for admission until certain proceedings have concluded." 583 U.S. at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on the length of detention" and "neither § 1225(b)(1) nor § 1225(b)(2) say[] anything whatsoever about bond hearings." *Id.* The Court added that the sole means of release for aliens detained pursuant to §§ 1225(b)(1) or (b)(2) prior to removal from the United States is temporary parole at the discretion of the Attorney General under 8 U.S.C. § 1182(d)(5). *Id.* at 300. The Court observed that because aliens held under § 1225(b) may be paroled for "urgent humanitarian reasons or significant public benefit," "[t]hat express exception to detention implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Id.* (citations and internal quotation omitted) (emphasis in the original). Courts thus may not validly draw additional procedural limitations "out of thin air." *Id.* at 312. The Supreme Court concluded: "In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings." *Id.* at. 302. As such, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

IV. THE IMMIGRATION COURT WOULD ABIDE BY THIS COURT'S ORDER.

This Court has directed Respondents to address "whether a decision by this Court rejecting the reasoning of *Matter of Yajure Hurtado* . . . would apply in petitioner's future

immigration proceedings. In particular, respondents must state whether ordering a bond hearing would result in an immigration judge merely invoking *Matter of Yajure Hurtado* or similar reasoning when denying release." Doc. 7 at 2-3.

The BIA issued a precedential decision on September 5, 2025, in which it determined that aliens who are present in the United States without admission are applicants for admission as defined under 8 U.S.C. § 1225(b)(2)(A) and must be detained for the duration of their removal proceedings no matter how long they have resided in the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 228. The BIA's precedential decisions "serve as precedents in all proceedings involving the same issue or issues" within the immigration courts. *See* 8 C.F.R. § 1003.1(g)(1) (BIA decisions are "binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States."); *see also id.* § 1003.1(d)(1) ("In addition, the Board, through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.").

Without waiving any arguments raised in this Response, if this Court were to reject Respondents' position and the BIA's reasoning in *Matter of Yajure Hurtado*, and issue an order requiring Respondents to provide this specific Petitioner with a bond hearing in Immigration Court, the Immigration Judge would comply with this Court's order. In other words, the IJ would not "merely invoke[e] *Matter of Yajure Hurtado* or similar reasoning when denying release[,]" Doc. 7, but rather, comply with a specific court order directing a that a bond hearing be held for this Petitioner.

V. Several District Court Decisions Have Endorsed Respondents' Position.

Respondents are aware of a prior ruling in this District rejecting their arguments, *see Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 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. Respondents also respectfully

maintain that an alien is an "applicant for admission" until an immigration official has inspected that person and determined that he or she is admissible into the United States.

In *Echevarria*, District Judge Dominic Lanza 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.

Echevarria, 2025 WL 2821282, at *6 (internal citations omitted).

However, this analysis fails to consider other pieces of statutory context. Respondents respectfully argue that 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 an alien 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 aliens 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.'" *Id.* (quoting *Reno* v. *Bossier Parish School Bd.*, 528 U. S. 320, 329 (2000)). Thus, the *Echevarria* court's holding is not supported by the text of the statute, and Respondents respectfully request this Court reach a different result.

Furthermore, Respondents direct the Court's attention to a decision issued on September 30, 2025, in the United States District Court for the District of Nebraska: *Vargas Lopez v. Trump, et al.*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In that case, the court denied a similar habeas petition brought by an alien who entered the United States in 2013 and was detained under without bond and held that the petitioner was properly detained under § 1225(b)(2) as an alien within the "catchall" scope of § 1225(b)(2) subject to detention without possibility of release on bond through § 1229a removal proceedings. 2025 WL 2780351, at *6-9. The court noted that illegally remaining in the country for years did not mean the petitioner, who "wish[ed] to stay in this country," was suddenly not an "applicant for admission." *Id.* at *9. Additionally, "even if Vargas Lopez might fall within the scope of § 1226(a), he certainly fits within the language of § 1225(b)(2) as well." *Id.*

The *Vargas Lopez* decision also noted the "overlapping relationship between § 1225(b) and § 1226(a) is not only consistent with the plain language of the two provisions but consistent with the interpretation of the two provisions under *Jennings*." *Id.* The court determined that § 1226 does not contain language limiting its application "to aliens already present in the United States." *Id.* (comparing *Jennings*' statements that United States immigration law "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)[,]" and that "§ 1226 applies to aliens already present in the United States[,]" 583 U.S. at 289 (first quote) and 303 (second quote), *with* 8 U.S.C. § 1226(a) (containing no reference to aliens "present" or "already present" in the United States) and 8 U.S.C. § 1226(c) (containing no reference to "criminal aliens" "present" or "already present" in the United States). The court determined that "references to 'aliens' in § 1226 must be read to mean 'alien[s] present in

the United States who ha[ve] not been admitted' within the meaning of § 1225(a)(1) and within at least the 'catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) in § 1225(b)(2)." 2025 WL2780351, at * 9 (citing *Jennings*, 583 U.S. at 287).

The Southern District of California also denied a temporary restraining order sought by an alien who was detained under § 1225(b)(2) despite having been surreptitiously present in the United States for years. *See Chavez v. Noem*, --F. Supp. 3d --, No. 3:25-cv-02325-CAB, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). The court noted, among other arguments, that "Section 1225(a)(1) expressly defines that '[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this Act *an applicant for admission.*' *Id.* § 1225(a)(1)." *Id.* at *4 (emphasis in original). The court reasoned that, "Petitioners do not contest that they are 'alien[s] present in the United States who ha[ve]not been admitted.' By the plain language of § 1225(a)(1), then, Petitioners are 'applicants for admission' and thus subject to the mandatory detention provisions of 'applicants for admission' under § 1225(b)(2)." *Id.* Respondents respectfully request this Court find *Lopez v. Trump* and *Chavez v. Noem* persuasive as they are consistent with the plain language of the INA.

VI. CONCLUSION.

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

Respectfully submitted on October 27, 2025.

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