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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

Silvia Elizabeth Colman-Randas,

Petitioner,

v.

John E. Cantu, Immigration and Customs Enforcement Phoenix Field Office Director, et al.,

Respondents.

No. CV-25-03594-PHX-MTL(ASB)

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

## I. INTRODUCTION.

Respondents, John Cantu, Arizona Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"), Todd Lyons, Acting Director of ICE, Kristi Noem, Secretary of the Department of Homeland Security, and David R. Rivas, Warden, San Luis Detention Center, by and through counsel, hereby respond to the Petition for Writ of Habeas Corpus. Doc. 1. Petitioner 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 noncitizen present in the United States without being admitted is 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 her removal proceedings, which are currently being reviewed by the Ninth Circuit of Appeals. The Court should deny the habeas petition.

## II. FACTUAL AND PROCEDURAL BACKGROUND.

Petitioner is a native and citizen of Guatemala and was born on [redacted]. *See* Exhibit A, Declaration of Deportation Officer Fernando Valenzuela ¶ 7. On December 29, 2018, Petitioner was apprehended by a Border Patrol agent after effecting an illegal entry into the United States near San Ysidro, California on the same date. *Id.* ¶ 8. On December 28, 2019, Petitioner was issued a Notice to Appear in removal proceedings pursuant to section 240 of the INA. *Id.* ¶ 9. On December 31, 2018, Petitioner was issued an order of release on recognize (Form I-220A) as part of ICE-ERO's Alternatives to Detention Program (ATD).[1] *Id.* ¶ 10.

On April 16, 2019, Petitioner was issued a superseding Notice to Appear in removal proceedings pursuant to section 240 of the INA. Exhibit A ¶ 11. On May 2, 2019, Petitioner had a master calendar hearing before an immigration judge (IJ). *Id.* ¶ 12. On June 6, 2019, Petitioner filed a form I-589 application for asylum, withholding of removal and protection under the Convention Against Torture (CAT) with the IJ. *Id.* ¶ 13. On July 19, 2019, the IJ denied Petitioner's application for asylum, withholding of removal and protection under CAT and ordered that Petitioner be removed to Guatemala. *Id.* ¶ 14. On August 6, 2019, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA"). *Id.* ¶ 15. On March 17, 2023, the BIA denied Petitioner's appeal. *Id.* ¶ 12.

On April 17, 2023, Petitioner filed a petition for review of the BIA's decision with the Ninth Circuit Court of Appeals (Case No. 23-676). Exhibit A ¶ 13. On September 15, 2023, the petition for review was dismissed because Petitioner failed to file an opening brief. *Id.*

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[1] Although Petitioner was released on an order of recognize, it is ICE's position that this was done in error and that Petitioner should have been subject to mandatory detention as an applicant for admission under 8 U.S.C. § 1225(b)(2)(A), for the reasons argued in full below.

¶ 14. On October 6, 2023, the mandate was issued by the Ninth Circuit. *Id.* ¶ 15. On May 15, 2025, Petitioner reported to ICE-ERO as part of the ATD program. *Id.* ¶ 16. At that time, it was determined that Petitioner was subject to an administratively final order of removal and that her petition for review had been dismissed by the Ninth Circuit on September 15, 2023. *Id.* ¶ 21. Accordingly, Petitioner was detained on May 15, 2025, pursuant to her administratively final removal order, in order for ICE-ERO to effectuate removal. *Id.* ¶ 22.

On June 16, 2025, through new counsel, Petitioner filed a motion to recall the mandate and re-instate her Ninth Circuit appeal. Exhibit A ¶ 23. On July 10, 2025, the Ninth Circuit granted Petitioner's motion to recall the mandate and reinstated petitioner's appeal. *Id.* ¶ 24. In its July 10, 2025, order reinstating Petitioner's appeal, the Ninth Circuit also ordered a stay of Petitioner's removal pending her appeal before the Ninth Circuit until the mandate issues. *Id.* ¶ 25. The execution of Petitioner's final removal order is currently stayed pending the resolution of her petition for review before the Ninth Circuit. *Id.* ¶ 26.

Since entering ICE custody on May 15, 2025, Petitioner has been examined by medical personnel employed by ICE Health Services Corps (IHSC) on several occasions. Exhibit A ¶ 27. During visits with medical providers, Petitioner has variously complained of musculoskeletal pain and limited range of motion, intermittent abdominal pain, athlete's foot, toothache, and blurred vision. Petitioner has been administered prescription and over the counter medications to address her pain and athlete's foot complaints. *Id.* On June 5, 2025, an X-ray of Petitioner's right knee was taken. *Id.* On September 1, 2025, an IHSC provider referred Petitioner for an appointment with a dentist to address her dental concerns. *Id.* On September 30, 2025, IHSC referred Petitioner to a radiology provider for an MRI of her right knee and an ultrasound of her left upper abdomen. The Petitioner's diagnostic imaging appointment is scheduled for October 9, 2025. *Id.* On October 1, 2025, Petitioner was notified that eyeglasses with prescription lenses had been ordered for her from a vendor and that it was anticipated that the glasses would be shipped to the facility within two weeks. *Id.*

## III. THE HABEAS PETITION SHOULD BE DENIED.

Petitioner's habeas petition should be denied because she is subject to mandatory detention as an inadmissible alien under 8 U.S.C. § 1225(b)(2).[2]

### 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).[3] 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

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[2] Although the BIA has entered a final removal order, because the Ninth Circuit Court of Appeals has issued a stay of removal pending the Court's review of that final order, the statutory removal period has not yet begun under 8 U.S.C. § 1231(a)(1)(B), and therefore Petitioner's detention does not yet fall under Section 1231. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008).

[3] 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).

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. 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. By regulation, immigration officers can release a 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.

**E. 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.'") (citing *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 noncitizens 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 [noncitizens] throughout the completion of applicable proceedings." *Id.* at. 302.

Respondents maintain that because Petitioner is and always has been subject to mandatory detention under section 1225(b)(2)(A), any issuance of an order of release on recognizance was in error. In any event, the release order would have lapsed when she became subject to a final order when the Ninth Circuit originally dismissed her petition for review. Therefore, Respondents did not, nor where they required to, revoke the order of release. Rather, Petitioner was taken into custody pursuant to a valid, final and executable (at the time) removal order. However, when the Ninth Circuit reinstated the appeal and issued a stay pending Petitioner's appeal, Respondents determined she was an inadmissible applicant for admission subject to mandatory detention under 1225(b)(2)(A) for the reasons argued. For these reasons, the Court should deny the habeas petition.

**F. Petitioner brings improper habeas claims.**

An individual may seek habeas relief under 28 U.S.C. § 2241 if she 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 addressed 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. *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."). Here, Petitioner's APA attack on any policy regarding the expansion of expedited removals fall outside the scope of relief provided for in a habeas petition particularly where it fails to challenge the legality or duration of Petitioner's confinement. *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). Thus, Petitioner is unlikely to succeed on the merits of her APA claims because they are not properly raised under § 2241.

Finally, conditions of confinement claims, such as Petitioner's claims to be receiving inadequate healthcare are generally not cognizable in a habeas petition. A writ of habeas corpus is the proper avenue for prisoners to challenge the fact or duration of their confinement. *See Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (a writ of habeas corpus

is the sole available federal remedy when a prisoner challenges "the fact or duration of his confinement"). However, challenges to conditions of confinement are generally brought pursuant to a civil rights statute, such as § 1983 or *Bivens*. *See Nelson v. Campbell*, 541 U.S. 637, 643 (2004) ("[C]onstitutional claims that merely challenge the conditions of a prisoner's confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core and may be brought pursuant to § 1983 in the first instance."); *Muhammad v. Close*, 540 U.S. 749, 750 (2004) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus ...; requests for relief turning on circumstances of confinement may be presented in a § 1983 action."). "A civil rights action ... is the proper method of challenging 'conditions of confinement.'" *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser*, 411 U.S. at 498-99). Accordingly, Petitioner's claims regarding inadequate access to healthcare are not cognizable within the instant habeas petition. Nor are these supported by any factual basis where ICE can establish that it is providing Petitioner with adequate healthcare. Exhibit A ¶ 27. For these reasons too, the habeas petition should be denied.

RESPECTFULLY SUBMITTED November 5, 2025.

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