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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Jender Enrique Reyes Gonzalez,

Petitioner,

v.

Kristi Noem, *et al.*

Respondents.

No. 25-cv-04169-SHD-ESW

ANSWER TO PETITION FOR WRIT OF HABEAUS CORPUS

The facts of this case are unique from the other § 1225 decisions cited by this Court in the following respect: an Immigration Judge has already made a bond determination on him as an alternative, in the event that a federal court determines he is not subject to mandatory detention. That IJ found that Petitioner, who has a criminal arrest record for assault, "is a flight risk" and that no bond amount would ensure his appearance. As such, the legal analysis of whether § 1225 or § 1226 applies to his detention is not germane to the outcome. Because Petitioner has received a bond determination, and because federal district courts lack jurisdiction over bond determinations, this habeas action should be properly dismissed.

The government supports this Answer with the declaration of an immigration official (Exhibit 1) and the IJ's order (Exhibit 2).

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner is a citizen of Honduras whose entry into the United States occurred on a date known only by him. Exhibit 1, Declaration of Kenneth Livingston, ¶ 4. Petitioner alleges that he entered the United States "in or around 2004." Doc. 1, ¶ 32. In 2013, local law enforcement in Baltimore arrested him for assault second degree, but this charge was later dismissed. Exhibit 1, ¶ 6. United States Immigration and Customs Enforcement (ICE) detained Petitioner on October 18, 2025, after conducting a records check on his pickup truck. Exhibit 1, ¶ 7. The Department of Homeland Security (DHS) transferred him to Florence, Arizona on October 23, 2025. Exhibit 1, ¶ 8.

On October 24, 2025, an Immigration Judge (IJ) made a specific finding that Petitioner is a flight risk. Exhibit 1, ¶ 9.[1] Specifically, the IJ concluded that Petitioner was subject to mandatory detention, but made an explicit finding that "in the event it is found that [Petitioner] is not subject to mandatory detention," Petitioner "is a flight risk, and no amount of bond will ensure that he will appear for future hearings or that he will comply with the directives of immigration officials." Exhibit 1, ¶ 9; Exhibit 2, IJ Order.

LAW AND ARGUMENT

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).[2] Section 1225(a)(1) was added to the INA as part of the Illegal

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[1] Petitioner does not mention this fact in his petition, which was filed on November 7, 2025. Doc. 1.

[2] 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).

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.* 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." *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, 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 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 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). 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.

C. 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).

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 v. Rodriguez*, 583 U.S. 281, 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). Section 1225 does not provide for noncitizens 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 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).

II. <u>Petitioner Received a Bond Determination Even Though He is Subject to Mandatory Detention.</u>

The government maintains its position that Petitioner is subject to mandatory detention under § 1225(b)(2). Nonetheless, Petitioner has already received the only relief he could receive if this Court were to agree with his argument that § 1226 applies instead. Since an IJ has already made a bond determination that he represents a flight risk, this action is moot and the Court lacks Article III jurisdiction. For a habeas petition to present a live controversy, "there must be some remaining 'collateral consequence' that may be redressed by success on the petition." *Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007).

In his petition, Petitioner neglects to even address the IJ's order, which the IJ had

issued 14 days prior to Petitioner filing this action. He does not, in any event, challenge the IJ's conclusion on any factual or legal basis. His petition merely seeks an order from this Court requiring the government, *inter alia*, "to schedule a bond hearing before an Immigration Judge within 15 days." Doc. 1 at 15.[3] Since an IJ has already considered Petitioner's custody status and whether a bond should issue, there is no order this Court can issue that would redress his claimed injury.

Moreover, even if Petitioner had attempted to challenge the IJ's bond determination—which he very clearly has not—federal district courts lack jurisdiction to do so. 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.").

III. <u>The Government's Position on Mandatory Detention.</u>

Although the IJ's order in this case renders the analysis of § 1225 versus § 1226 unnecessary, the government explains its position on why § 1225 applies here. 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 noncitizens and "certain other" noncitizens "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 noncitizens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the noncitizen "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers

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[3] Petitioner does not seek an order of release from custody and nor could he. His injunctive claims seek an order enjoining the government from transferring him outside of Arizona, a legal declaration that he is neither an "arriving alien" nor an "applicant for admission," a legal declaration that the government is violating due process, and a legal declaration that he is subject to § 1226(a). Doc. 1 at 15.

will refer the noncitizen for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). A noncitizen "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the noncitizen 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), 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); *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 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 noncitizens 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).

The government acknowledges Judge Lanza's conclusion in *Echevarria v. Bondi*, No. 2:25-cv-03252-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), cited by this Court in its Order to Show Cause, and respectfully disagrees with it. There are now four federal district courts that have agreed with the government's position on mandatory detention, one of which issued its ruling only three days ago.

In the Eastern District of Missouri, Judge Divine concluded one week ago that a noncitizen who had entered the United States without valid documents, even though his entry was 40 years ago, was subject to § 1225. *Ojalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *5 (E.D. Mo. Nov. 10, 2025). The *Ojalde* court acknowledged that an "overwhelming majority of district courts" have agreed with Petitioner's position here that his detention should be governed by § 1226. The court observed, however, that "the overwhelming majority of district courts sometimes get the law very wrong." *Ojalde*, 2025 WL 3131942, at *5 (E.D. Mo. Nov. 10, 2025).

Petitioner here, like the petitioner in *Ojalde*, is an applicant for admission under subsection (a)(1) of § 1225, which defines that status as any noncitizen "present in the United States who has not been admitted or who arrives in the United States…" 8 U.S.C. § 1225(a)(1). *Ojalde* is one of four total district courts around the country that have read the plain language of § 1225 to reach a contrary conclusion to *Echevarria*. *See Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (finding alien properly detained under § 1225(b)(2) because he was present in United States without having been admitted, and thus an applicant for admission under § 1225(a)); *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (same); *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (same); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding detention under § 1225(b)(2) of alien "present in the country but [who] has not yet been lawfully granted admission").

CONCLUSION

This Court should deny the petition because Petitioner has already received a bond determination. Additionally, while the government respectfully disagrees with the Court's conclusion on mandatory detention, the analysis of which detention statute governs here does not change that outcome.

Respectfully submitted on November 17, 2025.

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