TIMOTHY COURCHAINE
United States Attorney
District of Arizona
NEIL SINGH
Assistant United States Attorney
Arizona State Bar No. 021327
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
neil.singh@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Maria Alvarado Rodriguez,

Petitioner,

v.

Unknown Party, et al.,

Respondents.

No. 25-cv-04180-JJT (JFM)

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

In this habeas action involving a noncitizen who has been detained pursuant to 8 U.S.C. § 1225(b)(2)(A), the Immigration Judge (IJ) has already made a bond determination in the alternative that if a future court, such as this Court, finds that § 1226(a) applies, rather than § 1225(b)(2)(A), she would set bond at $1500. As such, the straightforward issue for this Court is whether § 1225(b)(2)(A) or § 1226(a) applies. If it is the latter, the government agrees that Petitioner must be released in compliance with the IJ's alternative bond determination setting a $1500 bond. The Court having already previewed its conclusion that § 1226(a) applies, the government nonetheless presents its argument below for why § 1225 applies, noting that one court in the District of Arizona has recently disagreed with the majority view, in addition to what are now five district courts around the United States who also disagree. The government respectfully urges this Court to reconsider its interpretation of the statute and find that § 1225(b)(2)(A) governs Petitioner's detention.

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner is a citizen of Peru who entered the United States without inspection in 2022. Exhibit 1, Declaration of Jayson McElhaney, ¶ 3. United States Border Patrol agents apprehended Petitioner near San Luis, Arizona, placed her in the alternatives to detention program, and released her on parole. Exhibit 1, ¶ 4. On September 24, 2025, Petitioner reported for a scheduled check-in with Immigration and Customs Enforcement ("ICE") in San Jose, California, at which time ICE Enforcement and Removal Operation ("ERO") apprehended her. Exhibit 1, ¶ 5. ICE-ERO transferred Petitioner to a staging facility in Florence, Arizona, on September 25, 2025, and to Eloy, Arizona, the next day. Exhibit 1, ¶¶ 6-7.

On September 29, 2025, ICE-ERO placed Petitioner in removal proceedings under the Immigration and Nationality Act ("INA") § 240, 8 U.S.C. § 1229a, upon issuing a Form I-862 Notice to Appear (NTA), alleging that she is removable for having entered without inspection or parole under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i)), and for being present in the United States without a valid immigrant document under INA § 212(a)(7)(A)(i), 8 U.S.C. § 1182(a)(7)(A)(i). Exhibit 1, ¶ 8. An IJ sustained the charges of removability on October 6, 2025. Exhibit 1, ¶ 9. On October 20, 2025, Petitioner, through counsel, requested a custody redetermination hearing before the IJ. Exhibit 1, ¶ 10.

On October 24, 2025, the IJ found that Petitioner lacked jurisdiction to issue a bond. Exhibit 1, ¶ 11; Exhibit 2, IJ Order. The IJ also found that, in the alternative, if the Immigration Court was later determined to have jurisdiction, that the IJ would grant bond in the amount of $1,500 or any other alternatives to detention as designated by the Department of Homeland Security. Exhibit 1, ¶ 11; Exhibit 2, IJ Order. Petitioner reserved appeal. Exhibit 1, ¶ 11; Exhibit 2, IJ Order.

On November 4, 2025, the Eloy Immigration Court scheduled Petitioner's individual merits hearing for November 24, 2025, to adjudicate any applications for relief from removal that Petitioner is pursuing. Exhibit 1, ¶ 12. Petitioner currently remains in federal custody under authority of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Exhibit 1, ¶ 13.

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).[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 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.

[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).

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. Petitioner Has Received a Bond Determination.

The government maintains its position that Petitioner is subject to mandatory detention under § 1225(b)(2). In the event this Court disagrees with the IJ that § 1225 governs her detention, the IJ's alternative finding of a bond determination in the amount of $1500 would come into effect. As such, the government submits that the only relief this Court has jurisdiction to issue is an order implementing the IJ's bond determination. Thus, the Court should first rule on the government's argument below that mandatory detention under § 1225 is appropriate for Petitioner. If the Court disagrees, the government will proceed with implementing the IJ's bond determination.

III. The Government's Position on Mandatory Detention.

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 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 dated November 13, 2025 (Doc. 6), and respectfully disagrees with it. There are now at least five federal district courts that have agreed with the government's position on mandatory detention, in addition to a federal magistrate decision within this district that is currently

pending before Judge Liburdi. *Moldogaziev v. Cantu*, No. 25-cv-03265-MTL (JFM) (Report and Recommendation) (D. Ariz. Nov. 18, 2025).

In the Eastern District of California, Judge Shubb recently concluded that a noncitizen who has lived in the United States for 26 years was properly subject to § 1225. *Cortes Alonzo v. Noem*, --- F. Supp. 3d ---, No. 25-cv-01519-WBS, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025). In the Eastern District of Missouri, Judge Divine reached the same conclusion. *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 petitioners in *Cortes Alonzo* and *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). *Cortes Alonzo* now joins a total of five 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 § 1225 applies. In the event the Court disagrees and finds that § 1226 applies, the government shall proceed with implementing the IJ's bond determination.

Respectfully submitted on November 19, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/Neil Singh
NEIL SINGH
Assistant United States Attorney
Attorneys for Respondents