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

16 Victor Hugo Padron Carreron,

17 Petitioner,

18 v.

19 Kristi Noem, et al.,

20 Respondents.

No. CV-25-04204-PHX-DWL (MTM)

**RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS UNDER
28 § U.S.C. 2241**

21 Respondents, by and through counsel, respond to the Court's Order to Show Cause
22 (Doc. 5), and hence to the Petition for a Writ of Habeas Corpus. Doc. 1. Petitioner Victor
23 Hugo Padron Carreron is a national of Mexico who entered the United States unlawfully.
24 While Respondents are aware of this Court's order issued in *Echevarria v. Bondi*, CV-25-
25 03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), the Government
26 respectfully takes the position that Petitioner is an "applicant for admission" who must
27 therefore be detained pending removal proceedings. The plain language of the
28 Immigration and Nationality Act (INA) establishes that any noncitizen 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

1 U.S. 281, 297 (2018) (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate
2 detention of applicants of admission until certain proceedings have concluded.”).

3 **I. FACTUAL BACKGROUND.**

4 Victor Huego Padron Carreron (Petitioner) is a native and citizen of Mexico, born
5 on  in Guanajato, Mexico. *See* Declaration of Kenneth Livingston,
6 Deportation Officer, attached as Exhibit A, at ¶ 4. On June 20, 2025, the Florida Highway
7 Patrol Encountered the Petitioner. *Id.* at ¶ 5. Petitioner was subsequently cited for driving
8 without a license. *Id.* A further investigation revealed he was unlawfully present in the
9 United States, and Department of Homeland Security (DHS) subsequently took him into
10 custody. *Id.* On July 18, 2025, Petitioner was transferred to Florence, Arizona. *Id.* at ¶ 6.
11 On June 20, 2025, Petitioner was served with a Notice to Appear (NTA). *Id.* at ¶ 7. The
12 NTA placed the Petitioner in removal proceedings under section 212(a)(6)(A)(i) of the
13 Immigration and Nationality Act (INA). *Id.* On July 16, 2025, DHS added an additional
14 charge of removability under section 212(a)(7)(A)(i)(I) of the INA. *Id.* at ¶ 8. On August
15 15, 2025, the immigration judge (IJ) in Florence, Arizona denied the Petitioner’s bond
16 request because the Petitioner did not establish jurisdiction.¹ *Id.* at ¶ 9. On September 24,
17 2025, the IJ set the petitioner’s removal hearing for November 12, 2025, which was
18 rescheduled to December 2, 2025. *Id.* at ¶¶ 10-12.

19 Petitioner requests release from custody, and an alternative remedy would be to
20 “schedule him for a bond hearing within seven (7) days under 8 U.S.C. § 1226.” Doc. 2
21 at 1. This Court issued an Order to Show Cause on November 13, 2025, directing
22

23 ¹ The IJ noted, after full consideration of the evidence presented, that Petitioner “did not
24 establish that the Immigration Court or an Immigration Judge would have jurisdiction to
25 redetermine the conditions of his custody or release him on bond or parole under INA
26 236(a), and that he is not an “applicant for admission” under INA 235(a)(1) and/or that he
27 is not subject to mandatory detention under INA 235(b)(1) or 235(b)(2).” He also “did not
28 establish that he is not properly included in the class of persons subject to mandatory
detention as a person who is or was considered an “applicant for admission” and/or that
DHS is substantially unlikely to prevail in showing that Respondent is properly included
in the mandatory detention category as an “applicant for admission” under INA 235, for
having entered the United States without inspection and/or without having been lawfully
admitted by an immigration officer at a Port of Entry or other place designated by law, and
therefore not eligible or entitled to be considered for a bond under INA 236(a). *See also*
Matter of Joseph, 22 I&N Dec. 799 (BIA 1999).” *See* Exhibit I, attached to Petition.

1 Respondents to show cause why the petition should not be granted regarding Petitioner's
2 alternative request for a bond hearing. Doc. 5.

3 **II. STATUTORY FRAMEWORK.**

4 **A. Applicants for Admission.**

5 "The phrase 'applicant for admission' is a term of art denoting a particular legal status."
6 *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

7 (1) Aliens treated as applicants for admission.— An alien present in the
8 United States who has not been admitted or who arrives in the United States
9 (whether or not at a designated port of arrival ...) shall be deemed for the
10 purposes of this Act an applicant for admission.

11 8 U.S.C. § 1225(a)(1).² Section 1225(a)(1) was added to the INA as part of the Illegal
12 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-
13 208, § 302, 110 Stat. 3009-546. "The distinction between an alien who has effected an
14 entry into the United States and one who has never entered runs throughout immigration
15 law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

16 Before IIRIRA, "immigration law provided for two types of removal proceedings:
17 deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir.
18 1999) (en banc). A deportation hearing was a proceeding against a noncitizen already
19 physically present in the United States, whereas an exclusion hearing was against a
20 noncitizen outside of the United States seeking admission. *Id.* Whether an applicant was
21 eligible for "admission" was determined only in exclusion proceedings, and exclusion
22 proceedings were limited to "entering" noncitizens — those noncitizens "coming . . . into
23 the United States, from a foreign port or place or from an outlying possession." *Landon v.*
24 *Plasencia*, 459 U.S. 21, 24 n.3 (1982) (quoting 8 U.S.C. § 1101(a)(13) (1982)). "[N]on-
25 citizens who had entered without inspection could take advantage of greater procedural and
26 substantive rights afforded in deportation proceedings, while non-citizens who presented
27 themselves at a port of entry for inspection were subjected to more summary exclusion

28 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).

1 proceedings.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also*
2 *Plasencia*, 459 U.S. at 25-26.

3 Prior to IIRIRA, noncitizens who attempted to lawfully enter the United States
4 were in a worse position than noncitizens who crossed the border unlawfully. *See Hing Sum*,
5 602 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA
6 “replaced deportation and exclusion proceedings with a general removal proceeding.” *Hing*
7 *Sum*, 602 F.3d at 1100. IIRIRA added Section 1225(a)(1) to “ensure[] that all immigrants
8 who have not been lawfully admitted, regardless of their physical presence in the country,
9 are placed on equal footing in removal proceedings under the INA.” *Torres*, 976 F.3d at
10 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced “certain
11 aspects of the current ‘entry doctrine,’” under which noncitizens who entered the United
12 States without inspection gained equities and privileges in immigration proceedings
13 unavailable to noncitizens who presented themselves for inspection at a port of entry). The
14 provision “places some physically-but-not-lawfully present aliens into a fictive legal status
15 for purposes of removal proceedings.” *Torres*, 976 F.3d at 928.

16 **B. Removal Proceedings under 8 U.S.C. § 1229(a).**

17 Removal proceedings under § 1229a are commonly referred to as “full removal
18 proceedings” or “240 removal proceedings” due to the statutory section of the INA in which
19 they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, an
20 employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Noncitizens in
21 § 1229a proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8
22 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent
23 residents); 8 U.S.C. § 1255 (adjustment of status). These are adversarial proceedings in
24 which the noncitizen has the right to hire counsel, examine and present evidence, and cross-
25 examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the IJ decision to the
26 BIA. 8 U.S.C. § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order
27 of removal, the noncitizen may also seek judicial review at a U.S. Court of Appeals through
28 a petition for review. 8 U.S.C. § 1252.

1 **C. Detention under the INA.**

2 The INA authorizes civil detention of noncitizens during removal proceedings and
3 “[d]etention is necessarily part of this deportation procedure.” *Carlson v. Landon*, 342 U.S.
4 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). “Where an alien falls
5 within this statutory scheme can affect whether his detention is mandatory or discretionary,
6 as well as the kind of review process available to him if he wishes to contest the necessity
7 of his detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

8 **1. Detention under 8 U.S.C. § 1225.**

9 The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1)
10 and (b)(2); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (Applicants for admission
11 “fall into one of two categories, those covered by § 1225(b)(1) and those covered by §
12 1225(b)(2).”). As explained above, arriving noncitizens and noncitizens present less than
13 two years are subject to expedited removal. 8 U.S.C. § 1225(b)(1). If a noncitizen “indicates
14 an intention to apply for asylum,” the noncitizen proceeds through the credible fear process
15 and is subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C.
16 § 1225(B)(1)(B)(iii)(IV).

17 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
18 U.S. at 287. The Supreme Court recognized that 1225(b)(2) “applies to all applicants for
19 admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), a noncitizen “who is an
20 applicant for admission” shall be detained for a removal proceeding “if the examining
21 immigration officer determines that [the] alien seeking admission is not clearly and beyond
22 a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Section 1225 does not provide
23 for noncitizens to be released on bond, but DHS has discretion to release any applicant for
24 admission on a “case-by-case basis for urgent humanitarian reasons or significant public
25 benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

26 **2. Detention under 8 U.S.C. § 1226.**

27 Section 1226 provides that “an alien may be arrested and detained pending a decision
28 on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under §

1 1226(a), the government may detain a noncitizen during his removal proceedings, release
2 him on bond, or release him on conditional parole. By regulation, immigration officers can
3 release a noncitizen if the noncitizen demonstrates that he “would not pose a danger to
4 property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. §
5 236.1(c)(8).

6 **III. THE GOVERNMENT’S POSITION.**

7 Section 1225 applies to “applicants for admission,” such as Petitioner, who are
8 defined as “alien[s] present in the United States who [have] not been admitted” or “who
9 arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one
10 of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).”
11 *Jennings*, 583 U.S. at 287.

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

22 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
23 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
24 Under § 1225(b)(2), a noncitizen “who is an applicant for admission” shall be detained for
25 a removal proceeding “if the examining immigration officer determines that [the] alien
26 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C.
27 § 1225(b)(2)(A); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving
28 in and seeking admission into the United States who are placed directly in full removal

1 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
2 detention ‘until removal proceedings have concluded.’”) (quoting *Jennings*, 583 U.S. at
3 299).

4 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
5 § 1225(b) and stated that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate
6 detention of applicants for admission until certain proceedings have concluded.” 583 U.S.
7 at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on
8 the length of detention” and “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything
9 whatsoever about bond hearings.” *Id.* The Court added that the sole means of release for
10 noncitizens detained pursuant to §§ 1225(b)(1) or (b)(2) prior to removal from the United
11 States is temporary parole at the discretion of the Attorney General under 8 U.S.C.
12 § 1182(d)(5). *Id.* at 300. The Court observed that because noncitizens held under § 1225(b)
13 may be paroled for “urgent humanitarian reasons or significant public benefit,” “[t]hat
14 express exception to detention implies that there are no *other* circumstances under which
15 aliens detained under § 1225(b) may be released.” *Id.* (citations and internal quotation
16 omitted) (emphasis in the original). Courts thus may not validly draw additional procedural
17 limitations “out of thin air.” *Id.* at 312. The Supreme Court concluded: “In sum,
18 §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of
19 applicable proceedings.” *Id.* at 302. As such, Petitioner is subject to mandatory detention
20 under 8 U.S.C. § 1225(b)(2).

21 The government acknowledges this Court’s Order issued in *Echevarria v. Bondi, et*
22 *al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), explicitly
23 rejected its legal position that aliens who enter without admission, inspection or parole and
24 are charged as removable under 8 U.S.C. § 1182(a)(6)(A)(i) are applicants for admission
25 under 8 U.S.C. § 1225(a)(1), who are therefore subject to mandatory detention under 8
26 U.S.C. 1225(b)(2)(A), regardless of how long ago they entered. The government also
27 acknowledges similar federal district court decisions that have rejected Respondent’s legal
28 position, including a Massachusetts federal district court decision which is now on appeal

1 to the First Circuit. *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. Jul.
2 24, 2025), *appeal pending*, No. 25-1902 (1st Cir.).

3 There are, however, at least five federal courts that have joined what the government
4 acknowledges is a minority position on whether § 1225 applies to persons in Petitioner's
5 position rather than § 1226. *Mejia Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830, at *6
6 (E.D. Mo. Nov. 10, 2025) (finding alien properly detained under § 1225(b)(2) because he
7 was present in United States without having been admitted, and thus an applicant for
8 admission under § 1225(a)); *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351,
9 at *9 (D. Neb. Sept. 30, 2025) (same); *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL
10 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (same); *Pipa-Aquise v. Bondi*, No. 25-1094,
11 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (same); *Pena v. Hyde*, No. 25-11983,
12 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding detention under § 1225(b)(2)
13 of alien "present in the country but [who] has not yet been lawfully granted admission").

14 One of the most recent developments is federal magistrate decision issued in this
15 District on November 18, 2025, that is currently pending before the Honorable Michael T.
16 Liburdi, adopting the governments' position and recommending dismissal. *See*
17 *Moldogaziev v. Cantu*, No. 25-cv-03265-MTL (JFM) (Report and Recommendation) (D.
18 Ariz. Nov. 18, 2025) at Doc. 18.

19 Accordingly, the government maintains and preserves the legal position that
20 Petitioner is properly detained under 8 U.S.C. § 1225(b)(2).

21 **IV. CONCLUSION.**

22 For the foregoing reasons, Respondents respectfully request that this Court deny the
23 Petition for a Writ of Habeas Corpus.

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Respectfully submitted on November 20, 2025.

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