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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Orvin David Melendez Canales,  
13 Petitioner,  
14 v.  
15 Luis Rocha, et al.,  
16 Respondents.

No. 25-cv-04248-SHD-DMF

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

17 In this habeas action involving a noncitizen who has been detained pursuant to  
18 8 U.S.C. § 1225(b)(2)(A), the Court has indicated its intention to hold that the government  
19 may not subject him to mandatory detention, because 8 U.S.C. § 1226(a) applies instead. The  
20 government respectfully urges this Court to reconsider its interpretation of the statutes and find  
21 that § 1225(b)(2)(A) governs Petitioner's detention.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 Petitioner alleges that he is a citizen of Honduras, currently age 37, who entered the  
24 United States in 2012. Doc. 1, ¶¶ 41-43. The Department of Homeland Security arrested  
25 Petitioner on September 24, 2025, and charged him with entry into the United States without  
26 inspection. Doc. 1, ¶ 45. An Immigration Judge (IJ) denied a bond hearing for Petitioner, citing  
27 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Doc. 1, ¶ 48.  
28

1 LAW AND ARGUMENT

2 I. Statutory Framework.

3 A. Applicants for Admission.

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

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

10 8 U.S.C. § 1225(a)(1).<sup>1</sup> Section 1225(a)(1) was added to the INA as part of the Illegal  
11 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-  
12 208, § 302, 110 Stat. 3009-546. “The distinction between an alien who has effected an entry  
13 into the United States and one who has never entered runs throughout immigration law.”  
14 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

15 Before IIRIRA, “immigration law provided for two types of removal proceedings:  
16 deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999)  
17 (en banc). A deportation hearing was a proceeding against a noncitizen already physically  
18 present in the United States, whereas an exclusion hearing was against a noncitizen outside of  
19 the United States seeking admission. *Id.* Whether an applicant was eligible for “admission”  
20 was determined only in exclusion proceedings, and exclusion proceedings were limited to  
21 “entering” noncitizens — those noncitizens “coming . . . into the United States, from a foreign  
22 port or place or from an outlying possession.” *Landon v. Plasencia*, 459 U.S. 21, 24 n.3 (1982)  
23 (quoting 8 U.S.C. § 1101(a)(13) (1982)). “[N]on-citizens who had entered without inspection  
24 could take advantage of greater procedural and substantive rights afforded in deportation  
25 proceedings, while non-citizens who presented themselves at a port of entry for inspection  
26 were subjected to more summary exclusion proceedings.” *Hing Sum v. Holder*, 602 F.3d 1092,  
27 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26.

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

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

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

27 **C. Detention under the INA.**

28 The INA authorizes civil detention of noncitizens during removal proceedings and

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

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

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

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

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

24 Section 1226 provides that “an alien may be arrested and detained pending a decision  
25 on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under §  
26 1226(a), the government may detain a noncitizen during his removal proceedings, release him  
27 on bond, or release him on conditional parole. By regulation, immigration officers can release  
28 a noncitizen if the noncitizen demonstrates that he “would not pose a danger to property or

1 persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

2 **II. The Government’s Position on Mandatory Detention.**

3 The government maintains its position that Petitioner is subject to mandatory  
4 detention under § 1225(b)(2). Section 1225 applies to “applicants for admission,” such as  
5 Petitioner, who are defined as “alien[s] present in the United States who [have] not been  
6 admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for  
7 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered  
8 by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

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

19 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583  
20 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under  
21 § 1225(b)(2), a noncitizen “who is an applicant for admission” shall be detained for a removal  
22 proceeding “if the examining immigration officer determines that [the] alien seeking  
23 admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A);  
24 *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking  
25 admission into the United States who are placed directly in full removal proceedings, section  
26 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal  
27 proceedings have concluded.’”) (quoting *Jennings*, 583 U.S. at 299).

28 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.

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

16 The government again, as it has in previous cases, acknowledges Judge Lanza’s  
17 conclusion in *Echevarria v. Bondi*, No. 2:25-cv-03252-DWL, 2025 WL 2821282 (D. Ariz.  
18 Oct. 3, 2025), cited by this Court in its order dated November 21, 2025 (Doc. 4). The  
19 government continues to respectfully disagree with *Echevarria*. While that court and a  
20 majority of federal district courts disagree with the government’s position, a growing number  
21 of federal district courts have agreed with the government. The most recent favorable decision  
22 was issued by Judge Joseph in the Western District of Louisiana. *Andrade v. Patterson*, No.  
23 25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025); *see also Altamirano Ramos v.*  
24 *Lyons*, --- F. Supp. 3d ---, No. 25-cv-09785-SVW, 2025 WL 319872 (C.D. Cal. Nov. 12,  
25 2025). The questions of when a noncitizen is or is not an “applicant” under the INA may be  
26 difficult, the *Altamirano* court held, but they are “not for the courts to answer.” *Id.* at \*7.  
27 “Instead, they are questions ‘for the political department of the government...’”. *Id.*

28 The government thus respectfully urges this Court to reconsider its preliminary

1 conclusions about § 1225(b)(2) and find that it governs Petitioner’s mandatory detention. *See*  
2 *also, e.g., Ojalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at \*5 (E.D. Mo.  
3 Nov. 10, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), *Chavez*  
4 *v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pipa-Aquise v. Bondi*, No. 25-1094,  
5 2025 WL 2490657, at \*1 (E.D. Va. Aug. 5, 2025); *Pena v. Hyde*, No. 25-11983, 2025 WL  
6 2108913, at \*2 (D. Mass. July 28, 2025); *Cortes Alonzo v. Noem*, --- F. Supp. 3d ---, No. 25-  
7 cv-01519-WBS, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); *Valencia v. Chestnut*, 2025  
8 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La.  
9 Oct. 31, 2025); *Rojas v. Olson*, 2025 WL 3033967 (E.D. Wisc. Oct. 30, 2025); *Garibay-*  
10 *Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025).

11 Petitioner here is an applicant for admission under subsection (a)(1) of § 1225, which  
12 defines that status as any noncitizen “present in the United States who has not been admitted  
13 or who arrives in the United States...” 8 U.S.C. § 1225(a)(1).

14 **CONCLUSION**

15 This Court should deny the petition because § 1225 applies.

16 Respectfully submitted on December 1, 2025.

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