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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Bessy Ceren Cordova, Petitioner, v. David Rivas, et al., Respondents.	No. CV-25-04264-GMS (MTM) **RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 § U.S.C. 2241**

Respondents, through undersigned counsel, responds to the Petition for Writ of Habeas Corpus pursuant to this Court's Order to Show Cause issued on November 21, 2025. Doc. 4. Petitioner Bessy Ceren Cordova is a citizen and national of El Salvador, who illegally entered the United States in 2013 near the Hidalgo, Texas Port-of-Entry. She is currently in removal proceedings and charged with inadmissibility as an alien present without admission or parole under Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i).

Respondents are aware of the Order issued in this District, *Echevarria v. Bondi*, CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), but maintain the position that Petitioner is an "applicant for admission" who must therefore be detained

pending removal proceedings in accordance with several other district courts around the country. The plain language of the 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 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."). Respondents thus respectfully request this Court deny the habeas petition.

I. FACTUAL AND PROCEDURAL BACKGROUND.

Petitioner Bessy Ceren Cordova (Petitioner) is a native and citizen of El Salvador. *See* Declaration of Fernando Valenzuela, Assistant Field Director, attached as Exhibit A, at ¶ 6. Petitioner entered the U.S. on January 22, 2013, without inspection near the Hidalgo, Texas Port of Entry, as an 11-year-old minor unaccompanied by a parent. She entered with her aunt and two older cousins. *Id.* at ¶ 7. She stated that she crossed into the United States illegally by using an inflatable raft to cross the Rio Grande River near the Hidalgo Port of Entry. *Id.* It was determined that she entered the United States at a place not designated as a Port-of-Entry by the Attorney General or the Secretary of Homeland Security, and thus, was not admitted, inspected, or paroled into the U.S. by an immigration official. *Id.* When questioned, Petitioner admitted to being a citizen of El Salvador illegally present in the United Sates. *Id.* at ¶ 8. She was placed under arrest for her illegal entry into the U.S. and was transported to the Falfurrias Border Patrol Station for further processing. *Id.*

On January 29, 2013, Petitioner was placed into removal proceedings, charged with inadmissibility under INA § 212(a)(6)(A)(i) (alien present without admission or parole), via the filing of a Warrant/Notice to Appear (NTA). *Id.* at ¶ 9. Petitioner's removal case was administratively closed on April 10, 2014. *Id.* at ¶ 10. On July 12, 2019, Petitioner filed an I-589 Application for Asylum and for Withholding of Removal with the U.S. Citizenship and Immigration Services (USCIS) when she was a minor.[1] *Id.* at ¶ 11.

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[1] Because Petitioner entered as an unaccompanied alien child and filed her application while she was still a juvenile, USCIS continues to have initial jurisdiction over her asylum

Petitioner was encountered by Homeland Security Investigations (HSI) in Tampa, Florida, during a vehicle stop, on October 22, 2025. *Id.* at ¶ 12. She was booked into ICE custody on the same date. *Id.* She has been detained since November 3, 2025, under INA § 235(b)(2)(A) (applicant for admission to be detained for a section 240 proceeding). *Id.* On October 23, 2025, ICE- Office of the Principal Legal Advisor in Maimi, Florida, filed a motion to recalendar Petitioner's removal proceedings, which was granted the same day. *Id.* at ¶ 13. Petitioner's removal proceedings are currently docketed with the Miami Immigration Court in Miami Florida. *Id.* at ¶ 14. That court only handles cases involving aliens who are not detained. *Id.* A motion to change venue to the Imperial (California) Immigration Court, which handles both detained and non-detained cases, was mailed to the Miami Immigration Court for filing on November 25, 2025. *Id.* A decision on the motion is pending. *Id.* Petitioner's next scheduled removal hearing before the Miami Immigration Court is May 26, 2028. *Id.* at ¶ 15. Assuming that the Miami Immigration Court grants the motion for change of venue, Petitioner's next scheduled removal hearing is likely be set to occur within a matter of days or weeks. *Id.*

This Court issued an Order to Show Cause on November 21, 2025, directing Respondents to show cause why the Petition should not be granted by December 1, 2025. Doc. 4 at 3..

II. 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

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application (Form I-589) notwithstanding that she is in removal proceedings and currently detained. DHS counsel contacted USCIS on November 24, 2025, in order to request an expedited adjudication of her I-589 application, based on her current detention. If her I-589 application is denied by USCIS, she may request review of that decision in her removal proceedings.

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 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,

[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).

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).

III. THE GOVERNMENT'S POSITION.

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

1 arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one
2 of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)."
3 *Jennings*, 583 U.S. at 287.

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

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

24 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
25 § 1225(b) and stated that "[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [ ] mandate
26 detention of applicants for admission until certain proceedings have concluded." 583 U.S.
27 at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2) "impose[] any limit on
28 the length of detention" and "neither § 1225(b)(1) nor § 1225(b)(2) say[] anything

1 whatsoever about bond hearings." *Id.* The Court added that the sole means of release for
2 noncitizens detained pursuant to §§ 1225(b)(1) or (b)(2) prior to removal from the United
3 States is temporary parole at the discretion of the Attorney General under 8 U.S.C.
4 § 1182(d)(5). *Id.* at 300. The Court observed that because noncitizens held under § 1225(b)
5 may be paroled for "urgent humanitarian reasons or significant public benefit," "[t]hat
6 express exception to detention implies that there are no *other* circumstances under which
7 aliens detained under § 1225(b) may be released." *Id.* (citations and internal quotation
8 omitted) (emphasis in the original). Courts thus may not validly draw additional procedural
9 limitations "out of thin air." *Id.* at 312. The Supreme Court concluded: "In sum,
10 §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of
11 applicable proceedings." *Id.* at. 302. As such, Petitioner is subject to mandatory detention
12 under 8 U.S.C. § 1225(b)(2).

13 The government acknowledges *Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-PHX-
14 DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), issued in this District, explicitly rejected
15 its legal position that aliens who enter without admission, inspection or parole and are
16 charged as removable under 8 U.S.C. § 1182(a)(6)(A)(i) are applicants for admission under
17 8 U.S.C. § 1225(a)(1), who are therefore subject to mandatory detention under 8 U.S.C.
18 1225(b)(2)(A), regardless of how long ago they entered. The government also
19 acknowledges similar federal district court decisions that have rejected Respondent's legal
20 position, including a Massachusetts federal district court decision which is now on appeal
21 to the First Circuit. *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. Jul.
22 24, 2025), *appeal pending*, No. 25-1902 (1st Cir.).

23 There are, however, several district courts that have joined the government's position
24 on whether § 1225 applies to persons in Petitioner's position rather than § 1226, and that
25 number continues to increase. *See, e.g.*, *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228
26 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D.
27 Neb. Sept. 30, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *1 (E.D. Wis.
28 Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La.

Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 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)); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025); *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").

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

IV. THE *BAUTISTA* CLASS ACTION

The Central District Court for the United States District of California in *Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal.) (Nov. 25, 2025), recently granted class certification to the following groups of noncitizens:

"All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." Doc. 82 at 2.

The court also granted partial summary judgment for the plaintiffs in that case, but did not issue a class-wide declaratory judgment or a class-wide injunction. The court scheduled a January 9, 2026, joint status report deadline and a January 16, 2026, status conference. Unless the *Bautista* court issues a class-wide declaratory judgment or injunction, the *Bautista* court's opinion and partial grant of summary judgment does not constitute a judgment. *See, e.g.*, Fed. R. Civ. P. 54(b). As such, there is no preclusive effect with respect

to other cases at this time. Rather, there is currently no declaratory relief with respect to other cases filed by individuals who are now *Bautista* class members raising claims concerning the proper interpretation of the mandatory detention provisions.

V. CONCLUSION.

For the foregoing reasons, Respondents respectfully request this Court deny Petitioner's Writ of Habeas Corpus.

Respectfully submitted on December 1, 2025.

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