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

12 F.B.,

13 Petitioner,

14 v.

15 Kristi Noem, et al.

16 Respondents.

No. CV-25-04271-JJT (JZB)

**RESPONSE IN OPPOSITION TO
MOTION FOR TEMPORARY
RESTRAINING ORDER**

AND

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

21 Respondents, through undersigned counsel, responds to the Petition for Writ of
22 Habeas Corpus and Petitioner's Motion for Temporary Restraining Order (TRO). Docs. 1-
23 2. Petitioner F.B. is a Russian national currently in custody pending adjudication of her
24 asylum claim, which has not yet finalized pending Respondents' recent appeal to the Board
25 of Immigration Appeals on October 2, 2025. Bond was denied on May 30, 2025. While
26 Respondents are aware of the Order issued in this District, *Echevarria v. Bondi*, CV-25-
27 03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), the Government
28 respectfully takes the position that Petitioner is an "applicant for admission" who must

1 therefore be detained pending removal proceedings. The plain language of the Immigration
2 and Nationality Act (INA) establishes that any noncitizen present in the United States
3 without being admitted is indeed an “applicant for admission” and therefore subject to
4 mandatory detention under 8 U.S.C. § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281,
5 297 (2018) (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of
6 applicants of admission until certain proceedings have concluded.”). Respondents thus
7 respectfully request this Court deny the TRO Motion and habeas petition.

8 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

9 F.B. (Petitioner) is a native and citizen of Russia born on September 2, 1993, in
10 Cherkessk, Russia. *See* Declaration of Anthony Torrero, Deportation Officer, attached as
11 Exhibit B, at ¶ 4. On October 25, 2023, Petitioner applied for entry into the United States
12 coming from Mexico via the San Ysidro Port of Entry Pedestrian entrance with a CBP One
13 appointment. *Id.* at ¶ 5. Petitioner was accompanied by her family. *Id.* Petitioner did not
14 have documents to enter the United States lawfully at that time and Customs and Border
15 Protection (CBP) determined that Petitioner was inadmissible to the United States under
16 Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA) and served
17 Petitioner with a Notice to Appear (NTA). *Id.*

18 On December 8, 2023, the NTA was filed with the Executive Office for Immigration
19 Review, Van Nuys Immigration Court, placing the Petitioner in removal proceedings. *Id.*
20 at ¶ 6. On February 14, 2024, at a master calendar hearing, the venue of the removal
21 proceedings was changed to Santa Ana as the Petitioner had moved to Irvine, CA. *Id.* at ¶
22 7. At a master calendar hearing on September 23, 2024, in Santa Ana Immigration Court,
23 Petitioner’s removal proceeding was set to an individual hearing for November 7, 2024.
24 *Id.* at ¶ 8. On October 16, 2024, Petitioner reported in person to the ICE/ERO office in
25 Santa Ana, California. *Id.* at ¶ 9. On that date ERO arrested Petitioner and placed her in
26 ICE custody at the Otay Mesa Detention Center. *Id.* On October 21, 2025, venue for the
27 removal proceedings was changed to the Otay Mesa Immigration Court. On March 13,
28

1 2025, an Immigration Judge (IJ) granted Petitioner asylum.¹ *Id.* at ¶ 10.

2 On April 9, 2025, DHS filed an appeal of the IJ decision with the Board of
3 Immigration Appeals (BIA). *Id.* at ¶ 12. On May 30, 2025, an IJ denied Petitioner's request
4 for a bond redetermination, finding that the Petitioner is an arriving alien and detained
5 under Section 235 of the INA. *Id.* at ¶ 13. On September 10, 2025, the BIA remanded the
6 removal proceedings back to the IJ for further proceedings and for entry of a new decision.
7 *Id.* at ¶ 14. On October 20, 2025, the IJ again granted the Petitioner asylum. *Id.* On
8 November 14, 2025, DHS filed an appeal of the IJ's decision with the BIA. The appeal
9 remains pending at the BIA. *Id.* at ¶ 18.

10 The Court ordered Respondents to respond to the TRO request no later than
11 Tuesday, November 25, 2025. Doc. 6 at 2. Respondents were also served with the Petition
12 on November 18, 2025, Doc. 1, and combines both responses here.

13 **II. STATUTORY FRAMEWORK.**

14 **A. Applicants for Admission.**

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

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

21 8 U.S.C. § 1225(a)(1).² Section 1225(a)(1) was added to the INA as part of the Illegal
22 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-
23 208, § 302, 110 Stat. 3009-546. "The distinction between an alien who has effected an
24 entry into the United States and one who has never entered runs throughout immigration
25 law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

26 ¹ Note that under 8 U.S.C. § 1225(b)(1)(B)(ii), "If the officer determines at the time of the
27 interview that an alien has a credible fear of persecution (within the meaning of clause
(v)), the alien shall be detained for further consideration of the application for asylum."

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

15 Prior to IIRIRA, noncitizens who attempted to lawfully enter the United States
16 were in a worse position than noncitizens who crossed the border unlawfully. *See Hing Sum*,
17 602 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA
18 “replaced deportation and exclusion proceedings with a general removal proceeding.” *Hing*
19 *Sum*, 602 F.3d at 1100. IIRIRA added Section 1225(a)(1) to “ensure[] that all immigrants
20 who have not been lawfully admitted, regardless of their physical presence in the country,
21 are placed on equal footing in removal proceedings under the INA.” *Torres*, 976 F.3d at
22 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced “certain
23 aspects of the current ‘entry doctrine,’” under which noncitizens who entered the United
24 States without inspection gained equities and privileges in immigration proceedings
25 unavailable to noncitizens who presented themselves for inspection at a port of entry). The
26 provision “places some physically-but-not-lawfully present aliens into a fictive legal status
27 for purposes of removal proceedings.” *Torres*, 976 F.3d at 928.

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

1 Removal proceedings under § 1229a are commonly referred to as “full removal
2 proceedings” or “240 removal proceedings” due to the statutory section of the INA in which
3 they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, an
4 employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Noncitizens in
5 § 1229a proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8
6 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent
7 residents); 8 U.S.C. § 1255 (adjustment of status). These are adversarial proceedings in
8 which the noncitizen has the right to hire counsel, examine and present evidence, and cross-
9 examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the IJ decision to the
10 BIA. 8 U.S.C. § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order
11 of removal, the noncitizen may also seek judicial review at a U.S. Court of Appeals through
12 a petition for review. 8 U.S.C. § 1252.

13 **C. Detention under the INA.**

14 The INA authorizes civil detention of noncitizens during removal proceedings and
15 “[d]etention is necessarily part of this deportation procedure.” *Carlson v. Landon*, 342 U.S.
16 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). “Where an alien falls
17 within this statutory scheme can affect whether his detention is mandatory or discretionary,
18 as well as the kind of review process available to him if he wishes to contest the necessity
19 of his detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

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

21 The INA mandates the detention of applicants for admission. 8 U.S.C. § 1225(b)(1)
22 and (b)(2); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (Applicants for admission
23 “fall into one of two categories, those covered by § 1225(b)(1) and those covered by §
24 1225(b)(2).”). As explained above, arriving noncitizens and noncitizens present less than
25 two years are subject to expedited removal. 8 U.S.C. § 1225(b)(1). If a noncitizen “indicates
26 an intention to apply for asylum,” the noncitizen proceeds through the credible fear process
27 and is subject to mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C.
28 § 1225(B)(1)(B)(iii)(IV).

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

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

11 Section 1226 provides that “an alien may be arrested and detained pending a decision
12 on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under §
13 1226(a), the government may detain a noncitizen during his removal proceedings, release
14 him on bond, or release him on conditional parole. By regulation, immigration officers can
15 release a noncitizen if the noncitizen demonstrates that he “would not pose a danger to
16 property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. §
17 236.1(c)(8).

18 **III. THE GOVERNMENT’S POSITION.**

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

24 Section 1225(b)(1) applies to arriving noncitizens and “certain other” noncitizens
25 “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid
26 document.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These noncitizens are generally subject
27 to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the noncitizen
28 “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers

1 will refer the noncitizen for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). A noncitizen
2 “with a credible fear of persecution” is “detained for further consideration of the application
3 for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the noncitizen does not indicate an intent to apply
4 for asylum, express a fear of persecution, or is “found not to have such a fear,” they are
5 detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

6 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
7 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
8 Under § 1225(b)(2), a noncitizen “who is an applicant for admission” shall be detained for
9 a removal proceeding “if the examining immigration officer determines that [the] alien
10 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C.
11 § 1225(b)(2)(A); see *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving
12 in and seeking admission into the United States who are placed directly in full removal
13 proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
14 detention ‘until removal proceedings have concluded.’”) (quoting *Jennings*, 583 U.S. at
15 299).

16 In *Jennings*, the Supreme Court evaluated the proper interpretation of 8 U.S.C.
17 § 1225(b) and stated that “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate
18 detention of applicants for admission until certain proceedings have concluded.” 583 U.S.
19 at 297. The Court noted that neither § 1225(b)(1) nor § 1225(b)(2) “impose[] any limit on
20 the length of detention” and “neither § 1225(b)(1) nor § 1225(b)(2) say[] anything
21 whatsoever about bond hearings.” *Id.* The Court added that the sole means of release for
22 noncitizens detained pursuant to §§ 1225(b)(1) or (b)(2) prior to removal from the United
23 States is temporary parole at the discretion of the Attorney General under 8 U.S.C.
24 § 1182(d)(5). *Id.* at 300. The Court observed that because noncitizens held under § 1225(b)
25 may be paroled for “urgent humanitarian reasons or significant public benefit,” “[t]hat
26 express exception to detention implies that there are no *other* circumstances under which
27 aliens detained under § 1225(b) may be released.” *Id.* (citations and internal quotation
28 omitted) (emphasis in the original). Courts thus may not validly draw additional procedural

1 limitations “out of thin air.” *Id.* at 312. The Supreme Court concluded: “In sum,
2 §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of
3 applicable proceedings.” *Id.* at 302. As such, Petitioner is subject to mandatory detention
4 under 8 U.S.C. § 1225(b)(2).

5 The government acknowledges *Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-PHX-
6 DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), issued in this District, explicitly rejected
7 its legal position that aliens who enter without admission, inspection or parole and are
8 charged as removable under 8 U.S.C. § 1182(a)(6)(A)(i) are applicants for admission under
9 8 U.S.C. § 1225(a)(1), who are therefore subject to mandatory detention under 8 U.S.C.
10 1225(b)(2)(A), regardless of how long ago they entered. The government also
11 acknowledges similar federal district court decisions that have rejected Respondent’s legal
12 position, including a Massachusetts federal district court decision which is now on appeal
13 to the First Circuit. *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. Jul.
14 24, 2025), *appeal pending*, No. 25-1902 (1st Cir.).

15 There are, however, several federal courts that have joined what the government
16 acknowledges is a minority position on whether § 1225 applies to persons in Petitioner’s
17 position rather than § 1226. *Mejia Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830, at *6
18 (E.D. Mo. Nov. 10, 2025) (finding alien properly detained under § 1225(b)(2) because he
19 was present in United States without having been admitted, and thus an applicant for
20 admission under § 1225(a)); *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351,
21 at *9 (D. Neb. Sept. 30, 2025) (same); *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL
22 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (same); *Pipa-Aquise v. Bondi*, No. 25-1094,
23 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (same); *Pena v. Hyde*, No. 25-11983,
24 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding detention under § 1225(b)(2)
25 of alien “present in the country but [who] has not yet been lawfully granted admission”);
26 *Valencia v. Chestnut*, 2025 WL 3205133 (E.D. Cal. 2025); *Alonzo v. Noem*, 2025 WL
27 3208284 (E.D. Cal. 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. 2025); *Rojas*
28 *v. Olson*, 2025 WL 3033967 (E.D. Wisc. 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-

1 177-H, Doc. 9 (N.D. Tex. Oct. 24, 2025).

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

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

9 **IV. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.**

10 The substantive standard for issuing a temporary restraining order is identical to the
11 standard for issuing a preliminary injunction. *See Stuhlberg Int'l Sales Co. v. John D.*
12 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable
13 discretion and is "an extraordinary remedy that may only be awarded upon a clear showing
14 that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
15 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24.

16 Preliminary injunctions are intended to preserve the relative positions of the parties
17 until a trial on the merits can be held, "preventing the irreparable loss of a right or
18 judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.
19 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A
20 court should not grant a preliminary injunction unless the applicant shows: (1) a strong
21 likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable
22 injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4)
23 the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm,
24 a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.*
25 at 22. Where the government is a party, courts merge the analysis of the final two *Winter*
26 factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*,
27 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).
28 Alternatively, a plaintiff can show that there are "serious questions going to the merits'

1 and the ‘balance of hardships tips sharply towards’ [plaintiff], as long as the second and
2 third *Winter* factors are [also] satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d
3 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-
4 35 (9th Cir. 2011)). “[P]laintiffs seeking a preliminary injunction face a difficult task in
5 proving that they are entitled to this ‘extraordinary remedy.’ *Earth Island Inst. v. Carlton*,
6 626 F.3d 462, 469 (9th Cir. 2010). Petitioner’s carries a “heavy” burden. *Id.*

7 A “preliminary injunction is an extraordinary and drastic remedy.” *Munaf v. Geren*,
8 553 U.S. 674, 689-90 (2008). A district court should enter a preliminary injunction only
9 “upon a clear showing that the [movant] is entitled to such relief.” *Winter v. Natural*
10 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). As the Supreme Court has
11 articulated, “[a] stay is not a matter of right, even if irreparable injury might otherwise
12 result” but is instead an exercise of judicial discretion that depends on the particular
13 circumstances of the case. *Nken*, 556 U.S. at 433 (quoting *Virginian R. Co. v. United States*,
14 272 U.S. 658, 672 (1926)).

15 **A. Petitioner Cannot Establish a Likelihood of Success on the Merits.**

16 For all the reasons argued above, it is the government’s position based on the above
17 legal positions that Petitioner cannot establish a likelihood of success on the merits of her
18 habeas petition, and is thus, not entitled to injunctive relief. For these reasons, the Court
19 should deny Petitioner’s request for injunctive relief.

20 **B. Petitioner Cannot Establish Irreparable Harm.**

21 To show harm, a movant must allege that concrete, imminent harm is likely with
22 particularized facts. *Winter*, 555 U.S. at 22. It is the government’s position that Petitioner
23 has provided no particularized facts establishing concrete, imminent harm, that she is
24 entitled to a bond hearing, or release.

25 **C. The Public Interest and Balance of the Equities Favors the Government.**

26 Where the Government is the opposing party, the balance of equities and public
27 interest factors merge. *Nken*, 556 U.S. at 435. Where the Government is the opposing party,
28 courts “cannot simply assume that ordinarily, the balance of hardships will weigh heavily

1 in the applicant's favor." *Id.* at 436 (citation and internal quotation marks omitted). Here,
2 the public interest weighs in favor of denying the motion for a preliminary injunction.
3 "Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v.*
4 *Exec. Office of Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). The public interest
5 lies in the Executive's ability to enforce U.S. immigration laws.

6 **V. CONCLUSION.**

7 For the foregoing reasons, Respondents respectfully request this Court deny
8 Petitioner's Writ of Habeas Corpus and Motion for Temporary Restraining Order.

9 Respectfully submitted on November 25, 2025.

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