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

12 J.A.A.M.,

Petitioner,

14 v.

15 John E. Cantu, et al.,

16 Respondents.

No. 25-cv-04278-JJT (CDB)

**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 is a citizen of Guatemala who entered the United States without inspection
24 and was apprehended by United States Customs and Border Protection in 2019. Exhibit 1,
25 Declaration of Steven Poli, ¶ 4. The Petitioner and his family were given an order of
26 recognizance. Exhibit 1, ¶ 5. On November 14, 2019, the immigration court in Los Angeles,
27 California ordered the Petitioner removed to Guatemala, during *in absentia* proceedings.
28 Exhibit 1, ¶ 6. On February 18, 2020, the immigration court in Los Angeles, California granted

1 the Petitioner’s Motion to Reopen. Exhibit 1, ¶ 7. On December 30, 2024, the Department of
2 Homeland Security agreed to dismiss the Petitioner and his family’s immigration case. Exhibit
3 1, ¶ 8. On November 5, 2025, the Petitioner was brought into DHS custody in Los Angeles,
4 California. Exhibit 1, ¶ 9.

5 On November 8, 2025, the Petitioner was transferred to Florence, Arizona. Exhibit 1, ¶
6 10. On November 11, 2025, the Petitioner was transferred to Eloy, Arizona. Exhibit 1, ¶ 11.
7 On November 18, 2025, a Notice to Appear (NTA) was filed with the Executive Office for
8 Immigration Review (EOIR). This NTA placed the Petitioner into removal proceedings under
9 sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act. Exhibit
10 1, ¶ 12.

11 LAW AND ARGUMENT

12 I. Statutory Framework.

13 A. Applicants for Admission.

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

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

20 8 U.S.C. § 1225(a)(1).¹ Section 1225(a)(1) was added to the INA as part of the Illegal
21 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-
22 208, § 302, 110 Stat. 3009-546. “The distinction between an alien who has effected an entry
23 into the United States and one who has never entered runs throughout immigration law.”
24 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

25 Before IIRIRA, “immigration law provided for two types of removal proceedings:
26 deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999)
27 (en banc). A deportation hearing was a proceeding against a noncitizen already physically

28 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).

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

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

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

25 Removal proceedings under § 1229a are commonly referred to as “full removal
26 proceedings” or “240 removal proceedings” due to the statutory section of the INA in which
27 they appear. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, an
28 employee of the Department of Justice. 8 U.S.C. § 1229a(a)(1), (b)(1). Noncitizens in § 1229a

1 proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8 U.S.C. § 1158
2 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C.
3 § 1255 (adjustment of status). These are adversarial proceedings in which the noncitizen has
4 the right to hire counsel, examine and present evidence, and cross-examine witnesses. 8 U.S.C.
5 § 1229a(b)(4). Either party may appeal the IJ decision to the BIA. 8 U.S.C. § 1229a(b)(4)(C);
6 *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order of removal, the noncitizen may
7 also seek judicial review at a U.S. Court of Appeals through a petition for review. 8 U.S.C. §
8 1252.

9 **C. Detention under the INA.**

10 The INA authorizes civil detention of noncitizens during removal proceedings and
11 “[d]etention is necessarily part of this deportation procedure.” *Carlson v. Landon*, 342 U.S.
12 524, 538 (1952); *see also* 8 U.S.C. § 1225(b), 1226(a), and 1231(a). “Where an alien falls
13 within this statutory scheme can affect whether his detention is mandatory or discretionary, as
14 well as the kind of review process available to him if he wishes to contest the necessity of his
15 detention.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

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

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

24 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
25 U.S. at 287. The Supreme Court recognized that 1225(b)(2) “applies to all applicants for
26 admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), a noncitizen “who is an
27 applicant for admission” shall be detained for a removal proceeding “if the examining
28 immigration officer determines that [the] alien seeking admission is not clearly and beyond a

1 doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Section 1225 does not provide for
2 noncitizens to be released on bond, but DHS has discretion to release any applicant for
3 admission on a “case-by-case basis for urgent humanitarian reasons or significant public
4 benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

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

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

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

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

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

1 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
2 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under
3 § 1225(b)(2), a noncitizen “who is an applicant for admission” shall be detained for a removal
4 proceeding “if the examining immigration officer determines that [the] alien seeking
5 admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A);
6 *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking
7 admission into the United States who are placed directly in full removal proceedings, section
8 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal
9 proceedings have concluded.’”) (quoting *Jennings*, 583 U.S. at 299).

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

26 The government again, as it has in previous cases, acknowledges Judge Lanza’s
27 conclusion in *Echevarria v. Bondi*, No. 2:25-cv-03252-DWL, 2025 WL 2821282 (D. Ariz.
28 Oct. 3, 2025), cited by this Court in its order dated November 18, 2025 (Doc. 7). The

1 government continues to respectfully disagree with *Echevarria*. While that court and a
2 majority of federal district courts disagree with the government’s position, a growing number
3 of federal district courts have agreed with the government, including one federal magistrate
4 report and recommendation in Arizona that is currently pending before Judge Liburdi.
5 *Moldogaziev v. Cantu*, No. 25-cv-03265-MTL (JFM) (Report and Recommendation) (D. Ariz.
6 Nov. 18, 2025). The most recent favorable decision that the government has located for this
7 brief was issued by Judge Joseph in the Western District of Louisiana, four days ago. *Andrade*
8 *v. Patterson*, No. 25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025). Another recent
9 decision from 13 days ago was issued by Judge Wilson in the Central District of California.
10 *Altamirano Ramos v. Lyons*, --- F. Supp. 3d ---, No. 25-cv-09785-SVW, 2025 WL 319872
11 (C.D. Cal. Nov. 12, 2025). The questions of when a noncitizen is or is not an “applicant” under
12 the INA may be difficult, the *Altamirano* court held, but they “not for the courts to answer.”
13 *Id.* at *7. “Instead, they are questions ‘for the political department of the government...’” *Id.*

14 The government thus respectfully urges this Court to reconsider its preliminary
15 conclusions about § 1225(b)(2). *See also, e.g., Ojalde v. Noem*, No. 1:25-CV-00168-JMD,
16 2025 WL 3131942, at *5 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump*, 2025 WL
17 2780351 (D. Neb. Sept. 30, 2025), *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. Sept. 24,
18 2025); *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025);
19 *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025); *Cortes Alonzo*
20 *v. Noem*, --- F. Supp. 3d ---, No. 25-cv-01519-WBS, 2025 WL 3208284 (E.D. Cal. Nov. 17,
21 2025); *Valencia v. Chestnut*, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Sandoval v. Acuna*,
22 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, 2025 WL 3033967 (E.D. Wisc.
23 Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264478 (N.D. Tex.
24 Oct. 24, 2025).

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

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CONCLUSION

This Court should deny the petition because § 1225 applies.

Respectfully submitted on November 25, 2025.

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