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7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10
11 J.A.A.M.,

Petitioner-Plaintiff,

12
13 v.

14 John E. CANTÚ, Field Office Director U.S.
Immigration and Customs Enforcement and
15 Enforcement and Removal Operations for the
Phoenix Field Office

16 Fred FIGUEROA, Warden, Eloy Detention
17 Center;

18 Todd M. LYONS, Acting Director,
19 Immigration and Customs Enforcement, U.S.
Department of Homeland Security;

20 Kristi NOEM, in her Official Capacity,
21 Secretary, U.S. Department of Homeland
Security; and

22 Pamela BONDI, in her Official Capacity,
23 Attorney General of the United States;

24 Respondents-Defendants.

Case No. 25-CV-04278-JTT (CDB)

**PETITIONER'S REPLY TO
RESPONDENTS' ANSWER TO
PETITION FOR WRIT OF HABEAS
CORPUS**

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I. INTRODUCTION

The Petitioner, J.A.A.M. (“Mr. A.M.”),¹ through undersigned counsel, respectfully responds to Respondents’ Answer to Petition for Writ of Habeas Corpus (Dkt. 10) (“Answer”) pursuant to Judge John J. Tuchi’s November 18, 2025 Order (Dkt. No. 7) (“Order”).

Respondents were ordered to show cause as to why Petitioner’s Petition for Writ of Habeas Corpus (Dkt. No. 1) (“Petition”) should not be granted. (Order, pp. 1-3.) As this Court recognized in its Order, dozens of other district courts around the United States have very recently held that immigration petitioners in the circumstances similar to Mr. A.M. are “not subject to mandatory detention.” (Order, pp. 2:20-3:6.) As this Court also recognized, Mr. A.M. is at least entitled to bond hearing without application of *In re Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), and moreover has a central liberty interest in his release given he was re-detained without notice and a hearing. (*Id.*)

In their response, not only do Respondents fail to adequately address the bond issue, Respondents completely fail to address Mr. A.M.’s central arguments—that he was re-detained in violation of his right to procedural and substantive due process and the Administrative Procedures Act (“APA”). Therefore, any Opposition to those central arguments is waived by Respondents. As further discussed below, Respondents’ Answer fails to provide any persuasive reason as to why this Court should not grant Mr. A.M.’s Petition and order him to be immediately released from custody.

II. ARGUMENT

A. Respondents waived any opposition to Mr. A.M.’s procedural due process, substantive due process, and APA arguments by failing to address them.

In his moving papers, Mr. A.M.’s central arguments were that he was likely to succeed on the merits of his Petition because he was re-detained by the Department of Homeland Security without a prior hearing before a neutral adjudicator in violation of his rights to due process as

¹ The Petitioner is proceeding under a pseudonym and has filed a motion to proceed under a pseudonym with the Court, which was granted. The Petitioner has provided his identity, including his full name and alien number, to the Respondents’ counsel.

1 well as an abuse of discretion under the APA. (Petition, Sections IV.A.1-3.) The Court also
2 ordered Respondents to “respond to Petitioner’s claims regarding his liberty interest in his release
3 and his claimed entitlement to notice and a hearing before redetention.” (Order, p. 3.) Notably,
4 however, Respondents do not address these threshold arguments whatsoever. *See Answer.*

5 By failing to respond to Mr. A.M.’s arguments, or address the Court’s Order, Respondents
6 have waived any opposition to these arguments, and the Court may construe these arguments as
7 conceded. *Scott v. City of Phoenix*, 2011 WL 3159166, *10 (D.Ariz. Jul. 26, 2011) (“Scott does
8 not respond to this argument, and by failing to do so, Scott is deemed to have waived the issue.”);
9 *Cisneros v. Freedom Corporation*, No. EDCV 23-1019 JGB (KKx), 2024 WL 1600633, at *4
10 (C.D. Cal Feb 21, 2024) (“[A]rguments to which no response is supplied are deemed conceded.”);
11 *Caravan Canopy Intl, Inc. v. Home Depot U.S.A. Inc.*, No. SACV 19-1072 PSG (ADSx), 2021
12 WL 831028, at *3 (C.D. Cal. Feb. 25, 2021) (“Plaintiff does not address this argument, and
13 arguments to which no response is supplied are deemed conceded.”); *Stichting Pensioenfonds*
14 *ABP v. Countrywide Fin. Corp.*, 802 F. Supp. 2d 1125, 1132 n.5 (C.D. Cal. 2011) (“[F]ailure to
15 respond in an opposition brief to an argument put forward in an opening brief constitutes waiver
16 or abandonment in regard to the uncontested issue.”); *Jenkins v. Cnty. of Riverside*, 398 F.3d
17 1093, 1096 n.4 (9th Cir. 2005) (the plaintiff “abandoned her other . . . claims by not raising them
18 in opposition”); *Hartranft v. Encore Capital Grp., Inc.*, 543 F. Supp. 3d 893, 913 (S.D. Cal. 2021)
19 (“[W]here a non-moving party fails to address an argument raised by the moving party in the
20 opposition brief, the Court may consider any arguments unaddressed by the non-moving party as
21 waived.”).

22 Based on Respondents’ abandonment of these issues, and the authority cited in support of
23 Mr. A.M.’s claims, the Court should grant Mr. A.M.’s Petition as to these substantive portions
24 as unopposed and order the Respondents to immediately release Mr. A.M.

25 **B. Mr. A.M.’s is entitled to a bond hearing under 8 U.S.C. § 1226(a).**

26 The only substantive argument made by Respondents is in addressing Mr. A.M.’s
27 alternative argument that he is wrongfully subject to mandatory detention under 8 U.S.C. §
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1 1225(b) and, if not otherwise ordered released, he should be entitled to a bond hearing under §
2 1226(a). Courts have consistently held that individuals in the same posture as Mr. A.M., who is
3 not an “arriving alien” but instead an individual who has resided in the United States and
4 subsequently placed in removal proceedings, fall under Section 1226(a). *See Alejandro Garcia-*
5 *Rosales v. Kristi Noem*, No. CV-25-03391-PhX-ShD (DMF) (D. Ariz. Oct. 22, 2025).

6 Respondents claim, however, that Mr. A.M. is subject to mandatory detention under
7 Section 1225(b)(2) because he entered without inspection and is an “applicant for admission.”
8 (See Answer at Section II.) Although not addressed by Respondents, importantly this is the
9 position that the Board of Immigration Appeals (“BIA”) has taken in *In re Yajure Hurtado*, 29
10 I&N Dec. 216 (BIA 2025), but is inconsistent with decades of agency practice and merits no
11 deference under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 399-413 (2024). *See Singh*
12 *v. Bowen*, No. 5:25-cv-03034-CAS-PD, 2025 WL 3251437, at *5 (C.D. Cal Nov. 21, 2025)
13 (finding that the agency’s interpretation in *Yajure Hurtado* “carries little, if any, weight in
14 resolving questions of statutory interpretation.”). Respondents instead almost solely rely on the
15 Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281, 301 (2018), which generally
16 held that Sections 1225(b)(1) and (2) “mandate detention until a certain point and authorize
17 release prior to that point only under limited circumstances.” (Answer, p. 6.) But Section 1225(b)
18 “applies primarily to aliens seeking entry into the United States (“applicants for admission” in
19 the language of the statute).” *Jennings*, at 583 U.S. 297. Because Mr. A.M. was already in the
20 country when arrested and re-detained, Section 1225(b) clearly does not apply. *Id.*

21 As recognized just a few weeks ago, Respondents’ position has been repeatedly rejected
22 by the vast majority of district courts.

23 Dozens of district courts across the nation – with more each day – have rejected
24 DHS’s expansion of § 1225(b)(2)(A)’s mandatory detention to noncitizens already
25 residing here. Only two courts, as far as the Court is aware, have sided with the
26 government. This Court joins the overwhelming majority and holds that §
27 1225(b)(2) does not apply to noncitizens like Petitioner who were detained after
28 living in the United States for years.

1 *Ramon Estrada Elias v. Jason Knight, et al.* No. 1:25-CV-00594-BLW, 2025 WL
2 3228262, at *1 (D. Idaho Nov. 19, 2025).

3 Because Mr. A.M. was already in the country—for nearly six years—when he was
4 arrested and detained, Section 1226(a) clearly applies in this case. In another recent district court
5 decision, the court determined that the question had already been settled by the Supreme Court
6 in *Jennings*, which “explained that Section 1226(a) and (c) ‘authorizes the Government to detain
7 certain [noncitizens] already in the country pending the outcome of removal proceedings’ while
8 Section 1225(b)(1) and (b)(2), which, the Supreme Court explained, ‘applies primarily to
9 [noncitizens] seeking entry into the United States.’” *Ruiz Yarleque v. Noem*, No. 5:25-CV-02836-
10 MEMF-SP, 2025 WL 3043936, at *7 (C.D. Cal. Oct. 31, 2025) (quoting *Jennings*, 582 at 289,
11 297). The court, in rejecting the argument that the petitioner was included within Section 1225,
12 noted that “it is bound by the distinction established in *Jennings*.” *Id.* Under this distinction, Mr.
13 A.M.’s detention falls under § 1226(a) because he was already in the country pending the
14 outcome of removal proceedings at the time he was detained.

15 Respondents’ reliance on the recent decisions of *Molodogaziev*, *Andrade*, and *Ramos* are
16 distinguishable. (Answer, p. 7.) First, Judge Michael T. Liburdi has not issued a substantive
17 ruling in *Moldogaziev v. Cantu*, No. 25-cv-03265-MTL (JFM) (D. Ariz.) so Respondents’
18 reliance on this pending matter is unhelpful. Second, the Louisiana District Court’s decision in
19 *Andrade v. Patterson*, No. 6:25-CV-01695, 2025 WL 3252707, at *1 (W.D. La. Nov. 21, 2025)
20 is unhelpful in that the facts are markedly distinct from those present with Mr. A.M. Mr. A.M. is
21 an individual who has remained residing in the United States since 2019 as he attempts to seek
22 asylum whereas the petitioner in *Andrade* entered in May 2021, left, and “does not provide any
23 explanation for his whereabouts between May 10, 2021, and the present, aside from confirming
24 that he entered from Mexico and was taken into custody on September 12, 2025, in
25 Massachusetts.” *Id.* Finally, the California District Court’s unbinding decision in *Altamirano*
26 *Ramos v. Lyons*, --- F. Supp. 3d ---, No. 25-cv-09785-SVW, 2025 WL 319872 at *8 (C.D. Cal.
27 Nov. 12, 2025), which does not address asylum applicants such as Mr. A.M., merely adds to
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2 DATED: this 1st day of December, 2025

Respectfully submitted,

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4 /s/ Brenda K. Radmacher

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