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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Marvin Omar Melendez Hernandez

Petitioner,

v.

Luis Rocha, et al.,

Respondents.

No. CV-25-04280-PHX-SHD (ASB)

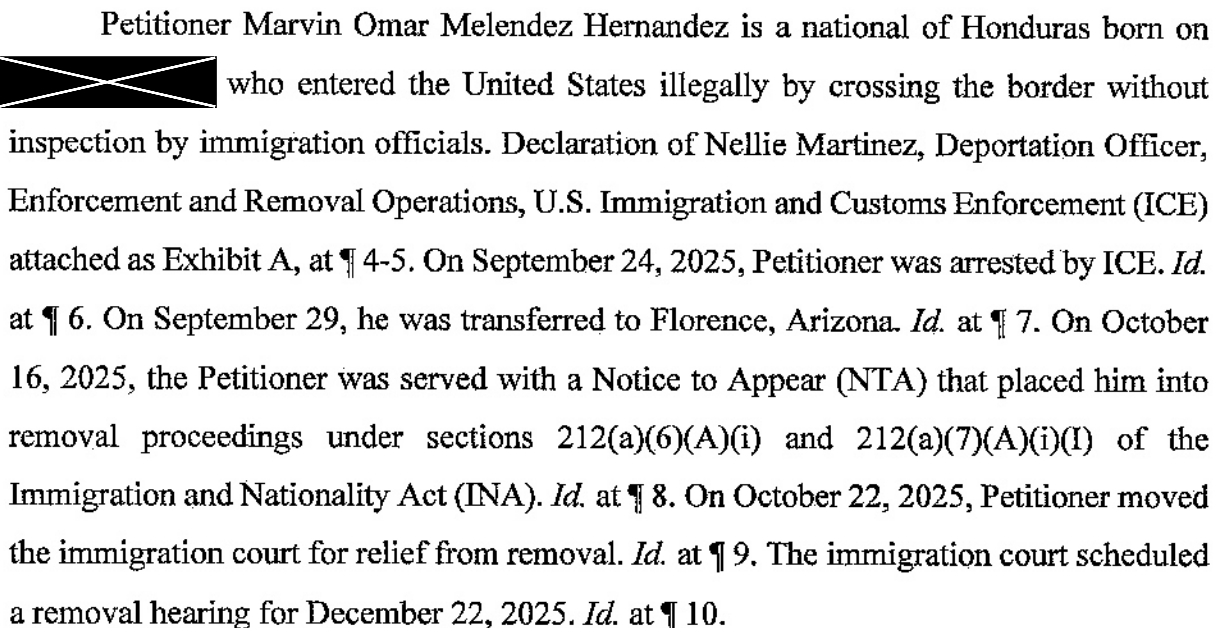
RESPONSE TO ORDER TO SHOW CAUSE (DOC. 4)

Respondents, by and through counsel, respond to the Court's Order to Show Cause (Doc. 4), and hence to the Petition for a Writ of Habeas Corpus (Doc. 1). Petitioner Marvin Omar Melendez Hernandez is a national of Honduras who entered the United States illegally by crossing the border without inspection by immigration officials. He was determined to be inadmissible when United States Immigration and Customs Enforcement ("ICE") encountered him for the first time on September 24, 2025. ICE kept him in custody pending his removal proceedings, because Petitioner was subject to mandatory detention. In the habeas petition, Petitioner seeks an order directing Respondents to immediately release him from immigration detention or to provide him with a bond hearing.

The Government's position is that Petitioner is an "applicant for admission" who must therefore be detained pending removal proceedings. The plain language of the

Immigration and Nationality Act ("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.").

I. FACTUAL AND PROCEDURAL BACKGROUND



Petitioner Marvin Omar Melendez Hernandez is a national of Honduras born on [redacted] who entered the United States illegally by crossing the border without inspection by immigration officials. Declaration of Nellie Martinez, Deportation Officer, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE) attached as Exhibit A, at ¶ 4-5. On September 24, 2025, Petitioner was arrested by ICE. *Id.* at ¶ 6. On September 29, he was transferred to Florence, Arizona. *Id.* at ¶ 7. On October 16, 2025, the Petitioner was served with a Notice to Appear (NTA) that placed him into removal proceedings under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA). *Id.* at ¶ 8. On October 22, 2025, Petitioner moved the immigration court for relief from removal. *Id.* at ¶ 9. The immigration court scheduled a removal hearing for December 22, 2025. *Id.* at ¶ 10.

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 purposes of this Act an applicant for admission.

8 U.S.C. § 1225(a)(1).[1] 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-

[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).

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, 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

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

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

12 Section 1226 provides that "an alien may be arrested and detained pending a decision
13 on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under §
14 1226(a), the government may detain a noncitizen during his removal proceedings, release him
15 on bond, or release him on conditional parole. By regulation, immigration officers can release
16 a noncitizen if the noncitizen demonstrates that he "would not pose a danger to property or
17 persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 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 to
27 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 for
4 asylum, express a fear of persecution, or is "found not to have such a fear," they are detained
5 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.* Under
8 § 1225(b)(2), a noncitizen "who is an applicant for admission" shall be detained for a removal
9 proceeding "if the examining immigration officer determines that [the] alien seeking
10 admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A);
11 *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking
12 admission into the United States who are placed directly in full removal proceedings, section
13 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal
14 proceedings have concluded.'") (quoting *Jennings*, 583 U.S. at 299).

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

completion of applicable proceedings." *Id.* at. 302. As such, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

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

There are, however, a growing number of federal courts that have joined what the government acknowledges is a minority position on whether § 1225 applies to persons in Petitioner's position rather than § 1226. *Mejia Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830, at *6 (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)); *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (same); *Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (same); *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (same); *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"). *See, also*, *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *1 (E.D. Wis. 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); *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-

1 09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-
2 01519, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025). Accordingly, the government
3 maintains and preserves the legal position that Petitioner is properly detained under 8 U.S.C.
4 § 1225(b)(2).

5 **IV. THE *BAUTISTA* CLASS ACTION**

6 The court in *Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal.), granted class
7 certification and partial summary judgment for the plaintiffs in that case, but did not issue
8 a class-wide declaratory judgment. The court also did not issue a class-wide injunction,
9 which would not be permitted by law. Rather, the court set a January 9, 2026 joint status
10 report deadline and January 16, 2026 status conference. Until and unless the *Bautista* court
11 issues a class-wide declaratory judgment or injunction, the *Bautista* court's opinion and
12 partial grant of summary judgment does not constitute a judgment. *See, e.g.*, Fed. R. Civ.
13 P. 54(b) (second sentence). As such, they do not have preclusive effect with respect to
14 other cases. Rather, there is currently no declaratory relief with respect to other cases filed
15 by people who are now *Bautista* class members raising claims concerning the proper
16 interpretation of the mandatory detention provisions.

17 **V. CONCLUSION**

18 For the foregoing reasons, Respondents respectfully request that this Court deny the
19 Petition for a Writ of Habeas Corpus (Doc. 1).

20 RESPECTFULLY SUBMITTED December 1, 2025.

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