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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11 BENIK MKRTEHYAN,
12 Petitioner,
13 v.
14 WARDEN OF CALIFORNIA CITY
15 DETENTION,
16 Respondents.

CASE NO. 1:25-CV-01666-JLT-SKO (HC)

**RESPONSE TO ORDER TO SHOW CAUSE;
RETURN TO PETITION FOR WRIT OF
HABEAS CORPUS; NO HEARING
REQUESTED**

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18 **I. INTRODUCTION**

19 This Court should deny the petition because Petitioner’s detention is lawful as he is being
20 detained pursuant to the mandatory detention statute, 8 U.S.C. § 1225(b). Because there is no regulatory,
21 statutory, or constitutional requirement that Petitioner be afforded a bond hearing, Petitioner’s claim that
22 he must be afforded a bond hearing before an immigration judge at which the government bears the
23 burden of proof should be denied.

24 **II. FACTUAL AND PROCEDURAL BACKGROUND**

25 Petitioner, a native and citizen of Armenia, illegally entered the United States on or about
26 10/28/2024 without documents for lawful entry. *See* Attachment 1. He was apprehended at the San
27 Ysidro port of entry and processed for expedited removal pursuant to INA § 212(a)(7)(A)(i)(I). *Id.*
28 Petitioner expressed a fear of returning to Armenia and was taken into DHS custody pending a credible

1 fear interview. *Id.* On 12/16/2024, Petitioner was issued a Notice to Appear (NTA) for further
 2 immigration proceedings on 12/26/2024 in front of an immigration judge (IJ). *See* Attachment 2. On
 3 March 10, 2025, Petitioner, through counsel, submitted pleadings to the Immigration Court where
 4 Petitioner conceded removability. *See* Attachment 3, ¶ 4. On August 5, 2025, Petitioner, through
 5 counsel, moved for a continuance of his hearing before an immigration judge. *See* Attachment 4.
 6 Petitioner’s next hearing is scheduled for 1/20/2026. *See* Attachment 5.¹

7 **III. STATUTORY BACKGROUND**

8 **A. “Applicants for Admission” Under 8 U.S.C. § 1225**

9 The Immigration and Nationality Act (“INA”) defines an “applicant for admission” as an “alien
 10 present in the United States who has not been admitted or who arrives in the United States (whether or
 11 not at a designated port of arrival . . .).” 8 U.S.C. § 1225(a)(1); *Thuraissigiam*, 591 U.S. at 140 (“an alien
 12 who tries to enter the country illegally is treated as an ‘applicant for admission’”) (citing 8 U.S.C. §
 13 1225(a)(1)); *Matter of Lemus*, 25 I & N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept
 14 of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly
 15 seeking permission to enter, but also those who are present in this country without having formally
 16 requested or received such permission[.]”). However long they have been in this country, an alien who is
 17 present in the United States but has not been admitted “is treated as ‘an applicant for admission.’”
 18 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

19 Under Section 212(a) of the INA, certain classes of aliens are inadmissible — and therefore
 20 ineligible to be admitted to the United States — including those “present in the United States without
 21 being admitted or paroled[.]” 8 U.S.C. § 1182(a)(6)(A)(i).

22 **B. Detention Under 8 U.S.C. § 1225**

23 Petitioner applied for admission at the border on 10/28/2024. Applicants for admission may be
 24 removed from the United States by expedited removal under § 1225(b)(1), or full removal proceedings

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 26 ¹ Respondents acknowledge the Court’s order to include a copy of Petitioner’s A-file and other relevant
 27 documentation. ECF 4. A-files contain myriad types of confidential information, including Personally Identifiable
 28 Information (PII) of unrelated parties/family members and law enforcement reports not relevant to the issues here. Respondents offer Attachments 1-5 as relevant to the determination of the issues here. Respondents request that if, after review of the pleadings, the Court still finds the submission of A-file documents to be necessary, that Respondents be given three additional court days to comply with the document production order.

1 before an immigration judge under 8 U.S.C. § 1229a, pursuant to § 1225(b)(2). All applicants for
2 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by §
3 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287 (“[R]ead most
4 naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain
5 proceedings have concluded.”). Petitioner applied for admission at the border, was determined to be
6 ineligible for entry, detained by Border Patrol, and processed for expedited removal proceedings.
7 Accordingly, Petitioner is an applicant for admission subject to mandatory detention pursuant to 8
8 U.S.C. § 1225(b)(1).

9 Under Section 1225(b)(2), an alien “who is an applicant for admission” is subject to mandatory
10 detention pending full removal proceedings “if the examining immigration officer determines that [the]
11 alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
12 1225(b)(2)(A) (requiring that such aliens “be detained for a proceeding under section 1229a of this
13 title”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (proceedings under section 1229a are “full
14 removal proceedings under section 240 of the INA”); *see also id.* (“[F]or aliens arriving in and seeking
15 admission into the United States who are placed directly in full removal proceedings, [] 8 U.S.C. §
16 1225(b)(2)(A)[] mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583
17 U.S. at 299); 8 C.F.R. § 235.3(b)(3) (an alien placed into § 1229a removal proceedings in lieu of
18 expedited removal proceedings under § 1225(b)(1) “shall be detained” pursuant to § 1225(b)(2)). DHS
19 has the sole discretionary authority to temporarily release on parole “any alien applying for admission to
20 the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public
21 benefit.” 8 U.S.C. § 1182(d)(5)(A); *see also Biden v. Texas*, 597 U.S. 785, 806 (2022).

22 A different statutory detention authority, 8 U.S.C. § 1226, applies to aliens who have been
23 lawfully admitted into the U.S. but are deportable and subject to removal proceedings. Section 1226(a)
24 provides for the arrest and detention of these aliens “pending a decision on whether the alien is to be
25 removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion,
26 detain an alien during his removal proceedings, release him on bond, or release him on conditional
27 parole.² By regulation, immigration officers can release an alien if he demonstrates that he “would not

28 ² Being “conditionally paroled under the authority of § 1226(a)” is distinct from being “paroled into the

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IV. ARGUMENT

A. Petitioner’s Argument Fails on Statutory Grounds

Petitioner is a noncitizen subject to removal, as he entered the country unlawfully on 10/28/2024, at which time he had not been admitted or paroled after inspection by an immigration officer. ECF 1. Further, Petitioner has already conceded removability. *See* Attachment 3. As a noncitizen subject to the mandatory detention framework of Section 1225(b), Petitioner is not entitled to custody redetermination hearings by immigration judges or hearings before detention or re-detention. *Jennings*, 583 U.S. at 297 (“neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings”); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. at 107 (finding that an alien apprehended near the border “has no entitlement to procedural rights other than those afforded by statute”). Further, as the Supreme Court described in *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022), unlike federal agencies, “[r]eviewing courts are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them.”

Just as Petitioner is not entitled to a custody redetermination by statute, his release is not otherwise authorized by statute. *Jennings*, 583 U.S. at 297 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded.”); *see also Matter of Q. Li*, 29 I & N. Dec. at 69 (“[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).”).

B. Petitioner’s Due Process Arguments Lack Merit

Petitioner’s status as an applicant for admission is likewise dispositive to his constitutional due process claims. In *Zadvydas v. Davis*, 533 U.S. 678, 718 (2001), the Supreme Court noted “[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.” An alien who has not effected a legal entry, *i.e.*, has not been admitted into the United States, is only entitled to “[w]hatever the procedure authorized by Congress is.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (quoting *United States ex rel.*

1 *Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *see also Thuraissigiam*, 591 U.S. at 140 (an alien
2 detained after unlawful entry “has only those rights regarding admission that Congress has provided by
3 statute”); *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015) (for “those . . . who have never technically
4 ‘entered’ the United States . . . procedural due process is simply whatever the procedure authorized by
5 Congress happens to be”) (cleaned up). This makes sense, since “an alien seeking initial admission to
6 the United States requests a privilege and has no constitutional rights regarding his application.”
7 *Barrera-Echavarria v. Rison*, 44 F.3d 1441, 1449 (9th Cir. 1995) (en banc).

8 “[A]pplicants for admission have virtually no constitutional rights regarding their applications.”
9 *Valencia v. Mukasey*, 548 F.3d 1261, 1263 (9th Cir. 2008) (citing *Landon v. Plasencia*, 459 U.S. 21, 33-
10 34 (1982)). “Whatever the procedure authorized by Congress is, it is due process as far as an alien
11 denied entry is concerned.” *Shaughnessy*, 338 U.S. at 544. Thus, where, as here, the petitioner has “not
12 ‘technically entered the United States,’ [the Court] examine[s] only whether the government violated the
13 statutory rights that Congress afforded such applicants.” *Grigoryan v. Barr*, 959 F.3d 1233, 1241 (9th
14 Cir. 2020) (citation omitted).

15 In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court rejected a facial challenge to
16 mandatory civil detention pending removal proceedings. The Court recognized that “[d]etention during
17 removal proceedings is a constitutionally permissible part of that process. *Demore*, 538 U.S. at 513 (“In
18 the exercise of its broad power over naturalization and immigration, Congress regularly makes rules as
19 to aliens that would be unacceptable if applied to citizens.”); *See also Zadvydas v. Davis*, 533 U.S. 678,
20 718 (2001) (Kennedy, J., dissenting) (“The liberty rights of the aliens before us here are subject to
21 limitations and conditions not applicable to citizens.”). Like the petitioner in *Demore*, Petitioner’s
22 detention is mandatory under 8 U.S.C. § 1225(b) because he entered the United States without entry
23 documents. As in *Demore*, both constitutionally and as a matter of law, Petitioner’s continued
24 mandatory civil detention is warranted.

25 In *Demore*, the Supreme Court found even prolonged mandatory detention during civil removal
26 proceedings did not violate the U.S. Constitution’s due process safeguards. 538 U.S. at 530-31. In
27 recognizing “mandatory” detention pending removal proceedings may be prolonged, the Supreme Court
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1 in *Demore* flatly rejected compelled detention hearing within a fixed time.³ *Id.* In other words, the U.S.
2 Constitution does not require the United States to release a non-citizen during the pendency of removal
3 proceedings when the non-citizen, as in this case, has entered the United States unlawfully, has entered
4 without permission or application, and thereafter demanded asylum or other excuse to remain. 8 U.S.C.
5 § 1225(b).

6 **V. CONCLUSION**

7 Based on the foregoing, the Court should find that Petitioner’s detention continues to be lawful
8 under 8 U.S.C. § 1225(b)(1) and deny the Petition for Writ of Habeas Corpus.

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10 Dated: January 2, 2026

ERIC GRANT
United States Attorney

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12 By: /s/ ZACHARY MALINSKI
13 ZACHARY MALINSKI
Assistant United States Attorney

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26 ³ In *Demore*, while the Supreme Court recognized that mandatory detention — such as under 8
27 U.S.C. § 1225(b) — normally lasts for a “limited period” of time, the Supreme Court also held that
28 mandatory detention could run for a much longer period while still being constitutional—for instance,
where, as in this case, the non-citizen himself took actions to continue and lengthen his removal
proceedings. 538 U.S. at 531.

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers; that on January 5, 2026, she served a copy of the **RESPONSE TO ORDER TO SHOW CAUSE; RETURN TO PETITION FOR WRIT OF HABEAS CORPUS and Exhibits 1-5** by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Sacramento, California.

Addresssee: BENIK MKRTEHYAN
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/s/ M. RAZO
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