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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

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| Baiarta Batuev,<br><br>Petitioner,<br><br>v.<br><br>Unknown Party, *et al.*,<br><br>Respondents. | No. CV-25-04545-PHX-JJT(ASB)<br><br>**ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS (DOC. 1) AND RESPONSE TO ORDER TO SHOW CAUSE (DOC. 3)** |

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 Baiarta Batuev is a national of Russia who entered the United States at a port of entry, where he encountered immigration officials and sought asylum. Petitioner was an arriving alien, and the only method of release available to him was 8 U.S.C. § 1182(d)(5) humanitarian parole, which was granted. His status as an arriving alien subject to mandatory detention does not change from 8 U.S.C. § 1225 to 8 U.S.C. § 1226 simply because he was granted humanitarian parole. Such parole is temporary and at the discretion of the Secretary of DHS. In this case, termination of parole and re-detention is governed by 8 CFR § 212.5(e)(1)(ii).

Petitioner argues that the current administration has changed the rules and courts don't agree with that change. But no change of any rules applies to Petitioner himself. His classification as an arriving alien under section 1225 applied just as much at the time he arrived in 2022 as it would if he arrived today. The discretionary nature of humanitarian parole (granting and terminating) applied just as much in 2022 as in 2025.

## I. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Baiarta Batuev is a national of Russia, who presented himself on February 1, 2022, to immigration officials at the San Ysidro Port of Entry seeking asylum. Declaration of Kenneth Livingston, Deportation Officer, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE), attached as Exhibit A, at ¶ 4-5. On February 1, 2022, the United States Customs and Border Protection (USCBP) determined, at the San Ysidro Port of Entry, that the Petitioner was inadmissible pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA). *Id.* at ¶ 6. On February 1, 2022, Petitioner was paroled into the United States. *Id.* at ¶ 7. Petitioner was given a Form I-94 with an "admit until" date of January 30, 2023 (one year admission).[1]

On September 9, 2025, the Petitioner was brought into ICE custody in Bethpage, NY. *Id.* at ¶ 8. On September 14, 2025, the Petitioner was transferred to Florence, AZ. *Id.* at ¶ 9. On September 20, 2025, the Petitioner was served with a Notice to Appear (NTA) placing the Petitioner in removal proceedings under section 212(a)(7)(A)(i)(I) of the INA. *Id.* at ¶ 10. On November 21, 2025, the immigration court in Florence, AZ denied the Petitioner's bond request because the immigration court is precluded from redetermining the custody status of an "arriving alien." In rendering its decision, the immigration court relied upon 8 C.F.R. 1003.19(h)(2)(i)(B) and *Matter of Oseiwusu*, 22 I&N Dec 19. (BIA 1998). *Id.* at ¶ 11.

Petitioner's removal hearing is scheduled for January 14, 2026. *Id.* at ¶ 12.

## II. SECTION 1226 DOES NOT APPLY TO THIS PETITIONER

[1] I-94 information is accessible online to Petitioner but not to the public.

Petitioner's claims and legal analysis in the Petition regarding § 1226 are not relevant to his actual situation. He is not a person who was "apprehended in the interior" (Doc 1 at ¶ 29). He is explicitly someone who presented to authorities at a port of entry and sought asylum, by his own admission (¶ 5). Being released on humanitarian parole and then overstaying the parole time-period, does not change the character of his circumstances—he is an arriving alien as defined by 8 C.F.R. § 1.2, and he is therefore subject to expedited removal and mandatory detention under 8 U.S.C. § 1225b)(1) and has been since he arrived at the port of entry.

Petitioner incorrectly contends in Claim I, that the mandatory detention provisions of 1225(b) no longer apply to him because DHS granted him humanitarian parole and issued him a form I-94. Doc. 1 at ¶¶ 111-119. Petitioner alleges that he was "paroled under… 1226" but does not explain how that can be the case when he was being detained pursuant to 1225(b)(1) at the time. *Id.* at ¶ 91. Later Petitioner contends that although he was originally detained under 1225(b)(1), "that was cancelled" when he was granted humanitarian parole. *Id.* at ¶ 132. Section 1225 does not provide for noncitizens to be released on bond, but DHS has discretion to release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

Petitioner concedes the parole was granted pursuant to 1182(d)(5)(A) which reads in part, "The Secretary… may…in his discretion parole… temporarily under such conditions as he may prescribe… any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or ***be returned to the custody from which he was paroled***." 8 U.S.C. § 1182(d)(5)(A)(emphasis added).

## III. THERE IS NO DUE PROCESS VIOLATION

In Claim II, Petitioner alleges a due process violation because the Defendants re-detained him without granting him any additional process. But this claim is based entirely

upon the presumption that his detention is governed by 1226, when the reality is that his detention is governed by 1225.

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).

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)."). Arriving noncitizens 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 mandatory detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Petitioner arrived in the United States claiming persecution and seeking asylum. He was given humanitarian parole for one year duration. With 4 days remaining in his one-year parole, he mailed an asylum application to USCIS. Doc. 1 at ¶ 11. He never sought an extension of his parole until after he was re-detained three months ago, in September 2025.

This is simply not a case where Petitioner had any constitutional rights to notice and a hearing prior to his detention. He is an arriving alien subject to expedited removal and mandatory detention under 8 U.S.C. 1225(b)(1). He was granted discretionary parole and when it expired, he was again subject to mandatory detention.

## IV. THE COURT LACKS JURISDICTION OVER THE APA CLAIM

Judicial review under the Administrative Procedure Act (APA) is not properly sought through a habeas petition. *See Flores-Miramontes v. INS.*, 212 F.3d 1133, 1140 (9th Cir. 2000) ("For purposes of immigration law, at least, "judicial review" refers to petitions for review of agency actions, which are governed by the Administrative Procedure Act,

while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement.").

There is no APA jurisdiction where habeas provides an adequate remedy. The APA permits review only of "[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Because Petitioner's APA claim is adequately remedied by challenging his detention in a habeas petition there is no APA jurisdiction. *Raspoutny v. Decker*, 708 F. Supp. 3d 371, 381 (S.D.N.Y. 2023).

## V. CONCLUSION

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

RESPECTFULLY SUBMITTED December 15, 2025.

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