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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

BAIARTA BATUEV,

Petitioner,

-against-

UNKNOWN PARTY, *ET AL.*,

Respondents.

2:25-cv-04545-JJT-ASB

REPLY TO ANSWER TO PETITION FOR A WRIT OF HABEAS CORPUS

Agency Case No. [redacted]

Judge John J. Tuchi

Mag. Judge Alison S. Bachus

REPLY TO GOVERNMENT'S RESPONSE TO ORDER TO SHOW CAUSE

I. Supreme Court Specifically Outlines This Court's Jurisdiction in *Hamdi v. Rumsfeld* and *Zadvydas v. Davis*.

This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the Administrative Procedure Act, 5 U.S.C. §555 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). Section 2241 of Title 28 confers the federal courts with the power to issue writs of habeas corpus to persons "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241. This includes challenges by non-citizens in immigration-related matters. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *see also A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025).

II. The Court Should Dismiss The Petitioner's APA Claim Without Prejudice

The Petitioner does not object to the dismissal (without prejudice) of his APA claim found in Count III of his petition. *See* ECF # 1, pages 38-39, ¶¶ 134-139. *See also Riseepan v. Wolf*, CV-20-0468-PHV-SPL (JFM), 2021 WL 705924, *6-7 (D. Ariz. Jan. 15, 2021) (APA claims are not properly brought in a petition for a writ of habeas corpus.).

III. Petitioner's Detention is Under §1226, not §1225 as the Government Asserts; Courts have Overwhelmingly Drawn a Distinction between an Applicant for Admission and an Entrant Without Inspection Living in the U.S. for a Number of Years.

The government's response to the Court's OSC argues Petitioner is properly detained under §1225. In *Sanchez v. Alvarez*, the court similarly concluded that §1226, not §1225, applies to a long-term resident detained after a traffic stop, even though the individual had originally entered without inspection. *Id.* Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title."

The plain language of these provisions indicates that both § 1225 and § 1226 govern the detention of noncitizens pending removal proceedings. The difference is that § 1225 provides for mandatory detention and § 1226 allows for the release of the noncitizen on conditional parole or bond. Petitioner's detention should be deemed governed by § 1226(a), not § 1225(b)(2)(A).

"A statute should be construed so that effect is given to all its provisions." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (citation omitted); *see Corley v. United States*, 556 U.S. 303, 314 (2009); *see also Kentucky v. Biden*, 23 F.4th 585, 603 (6th Cir. 2022) (noting that courts "must give effect to the clear meaning of statutes as written"). "When interpreting a statute, the inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *See In re Vill. Apothecary, Inc.*, 45 F.4th 940, 947 (6th Cir.

2022). But "the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." *King v. Burwell*, 576 U.S. 473, 486 (2015) (cleaned up). And "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Servs, Inc.*, 566 U.S. 93, 101 (2012). The Court must also "use every tool at [its] disposal to determine the best reading of the statute." *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2266 (2024).

Section 1225(b)(2)(A) provides for the detention "of an alien who is *an applicant for admission*, if the examining immigration officer determines that *an alien seeking admission* is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The INA defines an "applicant for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States." *See Id.* § 1225(a)(1).

The INA further defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *See Id.* § 1101(a)(13). The word "entry" is not defined in the INA, s*ee generally Id.* § 1101, but the dictionary definition of "entry" is "the right or privilege of entering" or "the act of entering." *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/entry (last visited Nov. 18, 2025). "Entry" has long been understood to mean "a crossing into the territorial limits of the United States." *Hing Sum v. Holder*, 602 F.3d 1092, 1100–01 (9th Cir. 2010) (quoting *Pierre*, 14 I. & N. Dec. 467, 468 (BIA 1973)). Further, while the phrase "seeking admission" is also undefined in the statute, the ordinary meaning of "seeking" is "ask[ing] for," *Merriam-Webster*

Dictionary, https://www.merriam-webster.com/dictionary/seeking (last visited Nov. 18, 2025), and the word "seeking" "necessarily implies some sort of present-tense action." *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025).

The government contends that any noncitizen who has not been lawfully admitted, even if they are already present and residing in the United States, is "an alien seeking admission" subject to mandatory detention under § 1225. Cite. But that reading of § 1225 would render the qualifier "seeking admission" in the statute unnecessary. "It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001), Given Congress's decision to use different terms in § 1225—i.e., "applicant for admission" and "alien seeking admission"—courts should presume that Congress intended these phrases to mean different things. *See Pulsifer v. United States*, 144 S. Ct. 718, 735 (2024) ("In a given statute, . . . different terms usually have different meanings.").

Here, Petitioner is not seeking to lawfully cross the territorial limits of the United States because he already entered the United States almost four (4) years ago, in February 2022. (*See* Pet., ECF # 1, PageID.3.)

"[S]ection 1226(a) is less specific," than §1225. *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025). The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *See* 8 U.S.C. § 1226(a). Looking at both § 1225 and § 1226, even if the statutory

text appears unambiguous when viewed in isolation, "courts are to interpret the words of a statute in context." *Hibbs*, 542 U.S. at 101; *see Yates v. United States*, 574 U.S. 528, 537 (2015) ("The plainness or ambiguity of statutory language is determined not only by reference to the language itself, but as well by the specific context in which that language is used, and the broader context of the statute as a whole."

The Supreme Court explained that § 1225 is part of the "process of decision [that] generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The Court held, "[s]ection 1226 generally governs the process of arresting and detaining . . . aliens [already living within the United States] pending their removal." *Id.* at 288. *Jennings* represents the Supreme Court differentiating between noncitizens initially arriving to the United States governed by § 1225, and noncitizens already present in the country governed by § 1226. *See Id.* at 288–89.

Perhaps most persuasively, courts cannot ignore congressional intent when conducting statutory analysis. Congress recently passed the Laken Riley Act, which amended § 1226 to prescribe a subset of noncitizens who are exempt from the discretionary bond analysis. Specifically, the Act added a subsection that explicitly mandates detention for noncitizens who are inadmissible under subsections (6)(A), (6)(C), and (7) of section 212(a) of the INA, *and* who have been arrested for, charged with, or convicted of certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E). The government's interpretation of §§ 1225 and 1226, would render § 1226(c)(1)(E) superfluous.

IV. Petitioner's Due Process Rights are Abrogated by his Ongoing Detention without a Bond Hearing or Administrative Bond Assigned.

This Court and other judges in this district have recently found detainees' due process rights were abrogated, in a number of nearly identical habeas corpus actions filed by immigration detainees. *See e.g.*, *Aldana Sanabria v. Rosa*, No. CV-25-04439-PHX-JJT (ASB), 2025 WL 3561632, at *1-2 (D. Ariz. Dec. 11, 2025) ("Respondents' view clearly represents the minority position – in the weeks since the district court considered the issue in *Echevarria*, dozens of other courts have reached the same conclusion."); *citing to Echevarria v. Bondi*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Vargas-Murillo v. Bondi*, No. CV-25-03396-PHX-MTL (CDB), 2025 WL 3280904, *3 (D. Ariz. Nov. 25, 2025) (same); and *Plascencia v. Bondi*, No. CV-25-04140-PHX-DWL, 2025 WL 3250914, *2 (D. Ariz. Nov. 21, 2025) (same); *see also Quinapanta v. Bondi*, 2025 WL 3157867, *6 (W.D. Wisc. Nov. 12, 2025) ("[M]ore than 45 district courts have now rejected similar arguments… and ordered bond hearings…").

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the very liberty that [the Due Process Clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citation omitted). The Fifth Amendment's Due Process Clause extends to all persons, regardless of status. *See A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367 (2025). Petitioner is entitled to its protections. *See Id.*; *see also Chavez-Acosta v. Garland*, No. 22-3045, 2023 WL 246837, at *3 (6th Cir. Jan. 18. 2023).

Petitioner's detention is governed by § 1226(a). Section 1226(a) clearly sets forth a discretionary framework for detention or release of an alien subject to that provision. The statute allows the Attorney General to continue to detain the arrested alien, or release the alien on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General," or "conditional parole." *See* 8 U.S.C. § 1226(a)(1)–(2). This discretionary framework requires a bond hearing to make an individualized custody determination. *See Hernandez v. Sessions III*, 872 F.3d 976, 990-96 (9th Cir. 2017). The government has declined to do so affirmatively, and seeking a determination in front of the IJ would be futile. The denial of bond, or of an IJ's authority to issue a reasonable bond, is a deprivation of Petitioner's Due Process.

The Ninth Circuit has held that the balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), regarding the adequacy of process, may be applied in immigration detention. *See e.g.*, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022) ("Ultimately, *Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context."). Under *Mathews*, the Court must consider these three factors: "(1) the private interest that will be affected by official action; (2) the risk of erroneous deprivation of that interest; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *See Rodriguez Diaz*, 53 F. 4th at 1207 (citing *Mathews*, 424 U.S. at 334-35).

The first *Mathews* factor supports Petitioner. Petitioner has a significant private interest in avoiding detention, as one of the "most elemental of liberty interests" is to be

free from detention. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). The Court may also consider Petitioner's conditions of confinement, that is, "whether a detainee is held in conditions indistinguishable from criminal incarceration." *See Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025) (*citing Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)).

Here, Petitioner, through counsel, represents that he is married and has one minor child (and another expected in the next two months), who is a United States citizen. He is "experiencing [many of] the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin*, 784 F. Supp. 3d at 1187.

Likewise, the second *Mathews* factor weighs in Petitioner's favor. There is a high risk of erroneously depriving Petitioner of his freedom should he not receive an individualized bond hearing at which the immigration judge can assess whether Petitioner poses a flight risk or a danger to the community. That won't/hasn't happened.

Finally, under the third *Mathews* factor, the Court recognizes that the Government "does, indeed, have a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community." *See Sampiao v. Hyde*, No. 1:25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sep. 9, 2025). However, Respondents have not shown that they have a significant interest in Petitioner's continued detention. Continuing to enforce Petitioner's detention would likely impose more costs upon the Government, as it would have to continue funding and overseeing Petitioner's detention. *See Id.*

V. Conclusion

This Court has jurisdiction to hear the Petitioner's claim, per Supreme Court precedent, interpreting the Constitution to include jurisdiction to hear a Habeas petition in this circumstance. The Futility Doctrine renders exhaustion of remedies unnecessary; *Matter of Yajure Hurtado* applies squarely to Petitioner's facts, leaving an immigration with no choice but to find it has no jurisdiction to consider bond. There are no facts in dispute: The Petitioner is a married father of a two-year-old autistic U.S. citizen. The Petitioner and his wife are expecting the birth of their second U.S. citizen child in the next two months. ECF # 1, page 2, ¶ 1. Petitioner and his wife entered the U.S. almost four (4) years ago. ECF # 1, page 2, ¶ 2. The Petitioner has no criminal record. These are strong facts for bond, and for cancellation of removal under INA §240A(b).

The government relies on the same argument many federal courts have rejected; people who entered illegally a number of years ago are not arriving aliens, and are not subject to §1225 apply for bond. Instead, §1226 applies and requires a bond hearing. Depriving the Petitioner of a bond issued by ICE affirmative (has not been done), or a bond hearing (there is no jurisdiction under controlling Board precedent, so no utility in filing a motion) is an abrogation of his Fifth Amendment Due Process Rights.

The Petitioner requests an order releasing him from custody, or for this Court to conduct a bond hearing, or order an immigration judge to conduct the same.

Dated: December 19, 2025

Respectfully Submitted,

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