

1 CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
2 PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
3 MICHAEL A. KEOUGH (NYRN 5199666)
Assistant United States Attorney

4 1301 Clay Street, Suite 340S
5 Oakland, California 94612-5217
6 Telephone: (510) 637-3721
7 Facsimile: (510) 637-3724
8 michael.keough@usdoj.gov

9 *Attorneys for Respondents*

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 CAROLINA ORTIZ CALDERON,) Case No. 3:25-cv-06695-AMO
14 Petitioner,)
15 v.) **RETURN**
16 POLLY KAISER, *et al.*,)
Respondents.)

17
18 Respondents provide the following abbreviated return to the Petition for Writ of Habeas Corpus
19 (Dkt. 2).

20 **I. Merits of The Petition.**

21 The legal issues presented in this Petition concern the statutory authority for U.S. Immigration
22 and Customs Enforcement’s (“ICE”) detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or
23 1226(a), whether Petitioner is entitled to a bond hearing, and whether that bond hearing must be held
24 before Petitioner is detained. While reserving all rights, including the right to appeal, Respondents
25 respectfully submit this abbreviated response in lieu of formal return to preserve the legal issues and to
26 conserve judicial and party resources.

27 Consistent with the Respondents’ arguments in opposition to Petitioner’s motion for a
28 preliminary injunction, which Respondents incorporate here, the government’s position is that Petitioner

1 is subject to mandatory detention under § 1225(b)(2) because she is an applicant for admission who is
2 present in the United States without being admitted or paroled. *See Matter of Yajure Hurtado*, 29 I. & N.
3 Dec. 216, 228 (BIA 2025). Respondents acknowledge that this Court reached the opposite conclusion in
4 its order granting Petitioner’s motion for preliminary injunction (Dkt. No. 23). Respondents also
5 acknowledge that this Court adopted similar reasoning in granting a preliminary injunction in *Leiva*
6 *Flores v. Albarran*, No. 25-cv-09302-AMO, 2025 WL 3228306, at *2 (N.D. Cal. Nov. 19, 2025). The
7 majority of the district courts addressing this issue, including “[e]very court in this district to have
8 considered these questions,” have similarly rejected Respondents’ position. *See, e.g., Bautista Pico v.*
9 *Noem*, No. 25-cv-08002-JST, 2025 WL 3295382, at *2 (N.D. Cal. Nov. 26, 2025), *appeal docketed*, No.
10 26-459 (9th Cir. Jan. 22, 2026); *Otero on behalf of Caicedo-Ruiz v. Kaiser*, No. 25-cv-06536-NC, 2025
11 WL 3301056 (N.D. Cal. Nov. 26, 2025).¹

12 Respondents bring to this Court’s attention the decisions of several district courts, including
13 courts within the Ninth Circuit, that have reached a contrary conclusion, finding that the petitioners had
14 not established a likelihood of success on the merits of their claim that their detention was governed by
15 § 1226(a) rather than § 1225(b)(2). *See Altamirano Ramos v. Lyons*, No. 25-cv-09785, 2025 WL
16 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (acknowledging that the court had previously rejected the
17 government’s interpretation of § 1225(b)(2), but “after additional research and analysis, the court has
18 concluded that Petitioner is subject to mandatory detention under § 1225(b)(2)(a), and that Petitioner is
19 not eligible for a bond hearing under 8 U.S.C. § 1226(a)”; *Sixtos Chavez v. Noem*, No. 25-cv-02325,
20 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed*, No. 25-7077 (9th Cir. Nov. 7, 2025);
21 *Valencia v. Chestnut*, No. 25-cv-01550, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *see also Weng v.*
22 *Genalo*, No. 25-cv-09595, 2026 WL 194248, at *7 (S.D.N.Y. Jan. 25, 2026) (denying petition and
23

24 ¹ The government also acknowledges that two district courts within the Ninth Circuit have
25 recently vacated or stayed the Department of Homeland Security’s July 8, 2025 “Interim Guidance
26 Regarding Detention Authority for Applicants for Admission,” which takes the position that all
27 applicants for admission within the meaning of 8 U.S.C. 1225(a) are subject to mandatory detention
28 under 8 U.S.C. 1225(b), as contrary to law under the Administrative Procedures Act. *See Maldonado*
Bautista v. Noem, No. 25-cv-01873, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025) (vacating the
guidance); *Garro Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 3691938-PCP (N.D. Cal. Dec. 19, 2025)
(staying the guidance within ICE’s San Francisco area of responsibility, pending final resolution of the
APA claim). The government has appealed both orders to the Ninth Circuit. *See Maldonado Bautista v.*
DHS, No. 25-7958 (9th Cir.), *Pinchi*, No. 25-cv-05632, ECF No. 98.

1 finding that the petitioner was lawfully detained pursuant to § 1225(b)(2)).

2 No appellate court has yet addressed these questions, although appeals are pending in several
3 Circuits, including the Ninth Circuit. Briefing will be completed in *Rodriguez Vasquez v. Bostock, et*
4 *al.*, No. 25-6842 (9th Cir.), on February 2, 2026. *See Rodriguez Vasquez*, ECF 5. The case raises
5 similar issues regarding the petitioner's detention is governed by 8 U.S.C. § 1226(a) or 8 U.S.C.
6 § 1225(b), and will be considered on an expedited schedule with oral argument set for March 4, 2026.
7 *See id.* ECF 18. Respondents respectfully request leave to provide additional briefing regarding the
8 impact of any decision in *Rodriguez Vasquez* once it is issued. *See Valencia Zapata v. Kaiser, et al.*,
9 No. 25-cv-7492-RFL, ECF No. 30 (N.D Cal. Jan. 15, 2026) (“[T]he Ninth’s Circuit’s decision in
10 *Rodriguez Vasquez* may provide clarity regarding the difficult legal questions raised in Petitioners’
11 habeas petitions.”).

12 Until this appeal is resolved, however, Respondents acknowledge that the reasoning in this
13 Court’s earlier decision in this case and in *Leiva Flores v. Albarran* would control the result here if the
14 Court adheres to that decision, as the facts are not materially distinguishable for purposes of the Court’s
15 decision on the legal issue of which statutory provision authorizes Petitioner’s detention. Thus, while
16 Respondents do not consent to issuance of the writ and reserve all rights, including the right to appeal,
17 Respondents hereby rely upon, and incorporate by reference, the legal arguments it presented in
18 opposition to Petitioner’s motion for preliminary injunction, *see* Dkt. No. 16, as well as the legal
19 arguments the government presented to the Ninth Circuit in *Rodriguez Vasquez*, and respectfully
20 submits that the Court can decide the issue without further briefing. However, should the Court prefer
21 to receive a formal return in this matter, Respondents will file such a brief upon the Court’s request.

22 **II. Requested Relief.**

23 Respondents respectfully submit that any ruling on this habeas petition must allow for re-
24 detention upon a final administrative removal order. Petitioner’s habeas petition asks this Court
25 categorically to enjoin her re-detention without a pre-detention hearing before a neutral arbiter. *See*
26 *generally* Dkt. 2. But any indefinite injunction would interfere with Respondents’ ability to execute a
27 valid order of removal and would both exceed the Court’s jurisdiction and contravene the Supreme
28 Court’s unambiguous holding in *Zadvydas v. Davis* that mandatory detention without a bond hearing

1 during the removal period is constitutionally permitted.

2 Petitioner's immigration proceedings will continue even after the Court rules on her habeas
3 petition. At some point, Petitioner may be subject to a final order of removal. Assuming Petitioner
4 becomes subject to a final order of removal, her detention is mandatory under the INA. *See* 8 U.S.C.
5 § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien. Under no
6 circumstance during the removal period shall the Attorney General release an alien who has been found
7 inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section
8 1227(a)(2) or 1227(a)(4)(B) of this title"). The Supreme Court has upheld the constitutionality of both
9 the mandatory 90-day detention during the removal period and the presumptively reasonable six-month
10 discretionary detention period following the removal period, both without the requirements of any bond
11 hearing. *See Zadvydas*, 533 U.S. at 701. Thus, if Petitioner becomes subject to a future final order of
12 removal, her detention will be both constitutionally permissible and statutorily required. Any ruling by
13 this Court, therefore, must allow for the detention of Petitioner to execute a final removal order. *See*
14 *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070-JSC, 2025 WL 2998169, at *4 (N.D. Cal. Oct. 24, 2025)
15 (denying motion for preliminary injunction in petition seeking pre-detention hearing after petitioner's
16 detention authority shifted to § 1231(a)(2)).

17 DATED: January 29, 2026

Respectfully submitted,

18 CRAIG H. MISSAKIAN
United States Attorney

19 /s/ Michael A. Keough
20 MICHAEL A. KEOUGH
Assistant United States Attorney
21 Counsel for Federal Respondents
22
23
24
25
26
27
28