UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ANTONIO AGUIRRE VILLA A# [redacted] Petitioner, vs. TONY NORMAND, *in his official capacity as Warden of Folkston Detention center*, and TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*, and GEORGE STERLING, *Field Office Director ICE Atlanta Field Office* KRISTI NOEM, *Secretary of Homeland Security*, and PAMELA BONDI, *Attorney General* Respondents.	)	CASE NO.: 5:25-cv-89-LGW-BWC

PETITIONER'S RESPONSE TO ORDER AND REPORT AND RECOMMENDATION

COMES NOW Petitioner, Antonio Aguirre Villa, and respectfully submits this response to the Court's Order and Report and Recommendation ECF 46.

Objection to Denial of Declaratory Judgment as Duplicative

While the Court has correctly found that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and has granted habeas relief, it would be error to deny declaratory judgment as "duplicative" in these circumstances. The government's recent and ongoing policy shift—reclassifying long-term residents apprehended in the interior as "applicants for admission" subject to § 1225(b)(2)—creates a substantial risk that Petitioner, or similarly situated individuals, will again be subjected to unlawful detention under the same misinterpretation in the future. This risk is not hypothetical: ICE has demonstrated a pattern of rapidly re-detaining noncitizens under shifting statutory rationales, and the agency has not disavowed its new interpretation. Without a

declaratory judgment, there is nothing to prevent ICE from re-arresting Petitioner under § 1225(b)(2) or from continuing to apply the same unlawful rationale to others, thereby evading effective judicial review each time by mooting the case through release or transfer before a court can enter a binding declaration.

Moreover, even though the Court has determined that Petitioner is currently detained under § 1226 rather than § 1225, declaratory judgment remains necessary and is not duplicative. The government's position has shifted repeatedly throughout this litigation, and there is a real and ongoing risk that, after Petitioner's release, ICE may again seek to re-detain him under § 1225(b)(2) based on the same erroneous statutory interpretation. This is precisely the type of "capable of repetition, yet evading review" scenario that warrants declaratory relief, as recognized by the Supreme Court in *Preiser v. Newkirk*, 422 U.S. 395, 401–03 (1975): declaratory relief is not moot where there is a reasonable expectation that the same controversy will recur and evade review. The government's voluntary cessation of the challenged conduct (i.e., release of Petitioner or change in detention rationale) does not render the controversy moot unless it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." Here, the record demonstrates that ICE's policy (including the July 2025 memo) remains in effect, *Matter of Yajure Hurtado* also remains in effect and there is no binding assurance that Petitioner will not again be detained under § 1225(b)(2) or that the government will not reapply the same misinterpretation in the future.

Declaratory judgment is therefore not merely duplicative of habeas relief. While the habeas relief governs the current detention, the declaratory judgement is essential to prevent **recurrence**, to clarify Petitioner's rights, and to provide prospective guidance to both the parties and the agency. Numerous courts have recognized that declaratory relief is proper in these circumstances,

even where habeas relief has already been granted, precisely because it addresses the ongoing risk of repeated unlawful detention and ensures that the government cannot evade judicial review by changing course only after litigation is filed.

Accordingly, Petitioner respectfully objects to the recommendation to deny declaratory judgment as duplicative. The risk of recurrence and the government's pattern of conduct make declaratory relief both necessary and proper to fully resolve the controversy and to prevent future violations of Petitioner's statutory and constitutional rights—even after release or a change in the government's stated detention authority.

Respectfully submitted this 6th day of November, 2025.

/s/ Karen Weinstock

Karen Weinstock
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com
Attorney for Petitioner
Admitted Pro Hac Vice

/s/ Rachel Effron Sharma

Rachel Effron Sharma, Local Counsel
DreamPath Law, LLC
5425 Peachtree Parkway NW
Norcross, GA 30092
rachel@dreampathlaw.com
Tel: (470) 273-3444
Local Counsel

CERTIFICATE OF SERVICE

I certify that on 6th day of November, 2025, I electronically filed the foregoing **RESPONSE TO ORDER AND REPORT AND RECOMMENDATION** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

Karen Weinstock
Weinstock Immigration Lawyers, P.C.
1827 Independence Square
Atlanta, GA 30338
Phone: (770) 913-0800
Fax: (770) 913-0888
kweinstock@visa-pros.com
Attorney for Petitioner
Admitted Pro Hac Vice