District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PAOLA AMPARO GUZMAN ALFARO, Petitioner, v. CAMMILLA WAMSLEY,[1] *et al.*, Respondents.	Case No. 2:25-cv-01706-TMC FEDERAL RESPONDENTS'[2] RETURN MEMORANDUM Noted for Consideration: October 3, 2025

I. INTRODUCTION

This Court should deny Petitioner Paola Amparo Guzman Alfaro's habeas petition. Dkt. No. 1. Petitioner contends that her mandatory detention and ineligibility for bond under 8 U.S.C § 1225(b)(2) is unlawful because the proper statutory detention for her detention arises under 8 U.S.C. § 1226(a). She is wrong. U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner pursuant to 8 U.S.C. § 1225(b)(2) and she is subject to mandatory detention.[3]

[1] Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Cammilla Wamsley for Drew Bostock.

[2] Respondent Bruce Scott is not a federal official or employee and is not represented by the U.S. Attorney's Office.

[3] The application of Section 1225(b) to certain persons in removal proceedings at the Tacoma Immigration Court is pending in a class action before a court in this District. *Rodriguez Vasquez v. Bostock*, No. 3:25-cv-05240-TMC.

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The plain language of the Immigration and Nationality Act ("INA") mandates that Petitioner – who is present in the United States without having been admitted – is correctly considered an "applicant for admission" and therefore subject to detention under 8 U.S.C. § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded."). The best reading of the statute is that Congress insured that all noncitizens would be inspected by immigration authorities by treating noncitizens who are present in the United States without having been inspected and admitted as applicants for admission. Noncitizens who are present without having been inspected and admitted have the benefit of full removal proceedings and are not subject to expedited removal. But they are subject to detention during their removal proceedings.

Accordingly, Federal Respondents respectfully request that the Court deny the habeas petition.

II. BACKGROUND

A. Legal Background

1. Applicants for Admission

"The phrase 'applicant for admission' is a term of art denoting a particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

> (1) Aliens treated as applicants for admission. – An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival ...) shall be deemed for the purposes of this Act an applicant for admission.

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8 U.S.C. § 1225(a)(1).[4] Section 1225(a)(1) was added to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Before IIRIRA, "immigration law provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). A deportation hearing was a proceeding against a noncitizen already physically present in the United States, whereas an exclusion hearing was against a noncitizen outside of the United States seeking admission. *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Whether an applicant was eligible for "admission" was determined only in exclusion proceedings, and exclusion proceedings were limited to "entering" noncitizens – those noncitizens "coming ... into the United States, from a foreign port or place or from an outlying possession." *Plasencia*, 459 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). "[N]on-citizens who had entered without inspection could take advantage of greater procedural and substantive rights afforded in deportation proceedings, while noncitizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Prior to IIRIRA, noncitizens who attempted to lawfully enter the United States were in a worse position than noncitizens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA "replaced

[4] Admission is the "lawful entry of an alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13).

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deportation and exclusion proceedings with a general removal proceeding." *Hing Sum*, 602 F.3d at 1100.

IIRIRA added Section 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that Section 1225(a)(1) replaced "certain aspects of the current 'entry doctrine,'" under which noncitizens who entered the United States without inspection gained equities and privileges in immigration proceedings unavailable to aliens who presented themselves for inspection at a port of entry). The provision "places some physically-but not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings." *Torres*, 976 F.3d at 928.

2. Detention Under 8 U.S.C. § 1225

Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020) ("[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country."). Section 1225 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in the United States who [have] not been admitted" or noncitizens "who arrive[ ] in the United States," whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287.

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a. Section 1225(b)(1)

Section 1225(b)(1) applies to "arriving aliens" and "certain other" noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Section 1225(b)(1) allows for the expedited removal of any noncitizen "described in" Section 1225(b)(1)(A)(iii)(II), as designated by the Attorney General or Secretary of Homeland Security – that is, any noncitizen not "admitted or paroled into the United States" and "physically present" fewer than two years – who is inadmissible under Section 1182(a)(7) at the time of "inspection." *See* 8 U.S.C. § 1182(a)(7) (categorizing as inadmissible noncitizens without valid entry documents). Whether that happens at a port of entry or after illegal entry is not relevant; what matters is whether, when an officer inspects a noncitizen for admission under Section 1225(a)(3), that noncitizen lacks entry documents and so is subject to Section 1182(a)(7). The Attorney General's or Secretary's authority to "designate" classes of noncitizens as subject to expedited removal is subject to his or her "sole and unreviewable discretion." 8 U.S.C. § 1225(b)(1)(A)(iii); *see also American Immigration Lawyers Ass'n v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (upholding the expedited removal statute).

The Secretary (and earlier, the Attorney General) has designated categories of noncitizens for expedited removal under Section 1225(b)(1)(A)(iii) on five occasions; most recently, restoring the expedited removal scope to "the fullest extent authorized by Congress." *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025). The notice thus enables DHS "to place in expedited removal, with limited exceptions, aliens determined to be inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown, to the satisfaction of an immigration officer, that they have been physically present in the United States continuously for

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the two-year period immediately preceding the date of the determination of inadmissibility," who were not otherwise covered by prior designations. *Id.*, at 8139-40.

Expedited removal proceedings under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to apply for asylum[5] or expresses a fear of persecution, torture, or return to the noncitizen's country. *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the asylum officer or immigration judge does not find a credible fear, the noncitizen is "removed from the United States without further hearing or review." 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2); 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. § 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

Expedited removal under § 1225(b)(1) is a distinct statutory procedure from removal under Section 1229a. Section 1229a governs full removal proceedings initiated by a notice to appear and conducted before an immigration judge, during which the noncitizen may apply for relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower, statutorily defined circumstances – typically to individuals apprehended at or near the border who lack valid entry documents or commit fraud upon entry – and allows for their removal without a hearing before an immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to pursue expedited removal under Section 1225(b)(1) or removal under Section 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 524 (BIA 2011).

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[5] Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except if the noncitizen can demonstrate "extraordinary circumstances" that justify moving that deadline. *Id.* § 1558(a)(2)(D).

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b. Section 1225(b)(2)

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under Section 1225(b)(2), a noncitizen "who is an applicant for admission" is subject to mandatory detention pending full removal proceedings "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). While Section 1225 does not provide for noncitizens to be released on bond, DHS has the sole discretionary authority to release any applicant for admission on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

3. Detention Under 8 U.S.C. § 1226(a)

Section 1226(a) provides for the arrest and detention of noncitizens "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under Section 1226(a), DHS may, in its discretion, detain a noncitizen during his removal proceedings, release him on bond, or release him on conditional parole.[6] By regulation, immigration officers can release a noncitizen if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). A noncitizen can also request a custody redetermination (i.e., a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

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[6] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)).

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B. Factual Background

The main facts in this case are not in dispute. ICE arrested Petitioner, a Mexican citizen, on July 17, 2025, in Anchorage, Alaska. Delgado Decl., ¶¶ 4, 9; Lambert Decl., Ex. A, Form I-213; Ex. B, Warrant for Arrest; Ex. C, Notice of Custody Determination; Pet., ¶¶ 15; 41. ICE served Petitioner with a Notice to Appear that charges her with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as a noncitizen "present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General." Delgado Decl., ¶ 10; Lambert Decl., Ex. D, Notice to Appear; Pet., ¶ 42. Shortly thereafter, Petitioner was transferred to the Northwest ICE Processing Center, where she remains detained pending her immigration proceedings. Delgado Decl., ¶ 11. Petitioner does not claim to have been admitted or paroled into the United States or that she has lawful status.

The Tacoma Immigration Court has jurisdiction over Petitioner's proceedings. The Immigration Judge ("IJ") held a bond hearing on August 4, 2025. Delgado Decl., ¶ 14; Pet., ¶ 46. The IJ found that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner is subject to mandatory detention pursuant to Section 1225(b)(2)(A). Delgado Decl., ¶ 14; Pet., ¶ 46; Lambert Decl., Ex. E, Order of the IJ. In the alternative, the IJ found that if there had been jurisdiction the court would set bond at $17,000. Ex. E. On August 27, 2025, Petitioner appealed this decision to the Board of Immigration Appeals ("BIA"). Delgado Decl., ¶ 14; Pet., ¶ 47. The IJ issued a bond memorandum for the purposes of the appeal on September 15, 2025. Lambert Decl., Ex. F, Order of the IJ. The appeal remains pending.

On September 4, 2025, Petitioner filed the instant habeas litigation. She raises two claims. First, she claims that the application of Section 1225(b)(2) to her unlawfully mandates her continued detention and violates the INA. Pet., ¶¶ 53-55. Second, Petitioner asserts that her mandatory detention violates her right to due process. Pet., ¶¶ 56-59. As described below,

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Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2) and is subject to mandatory detention.

III. ARGUMENT

The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed from the United States. "[D]etention necessarily serves the purpose of preventing deportable [] aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if ordered removed, the aliens will be successfully removed." *Demore v. Kim*, 538 U.S. 510, 528 (2003). The Supreme Court has long held that deportation proceedings "would be in vain if those accused could not be held in custody pending the inquiry" of their immigration status. *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). Congress intended for all applicants for admission to be detained during the course of their removal proceedings. *See Jennings*, 583 U.S. at 299 (interpreting the "plain meaning" of sections 1225(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings).

A. Under the statutory text, noncitizens present in the United States without having been admitted are applicants for admission.

The plain language of the statute is clear: Petitioner is subject to detention under Section 1225(b)(2) because she is an applicant for admission. *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). Section 1225(b)(2)(A) requires mandatory 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). The INA specifies that "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this Act an applicant for admission." 8 U.S.C. § 1225(a)(1). Petitioner does not dispute that she is a noncitizen who is present in the United

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States who has not been admitted. Thus, Petitioner is an "applicant for admission" and thus subject to mandatory detention under Section 1225(b)(2).

Petitioner's argument that the phrase "seeking admission" limits the scope of Section 1225(b)(2)(A) is unpersuasive. Pet., ¶ 38. She incorrectly argues that Section "1225(b)(2) does not apply to people like [her], who have already entered and were residing in the United States at the time they were apprehended." Pet., ¶ 39. Courts "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history and purpose'." *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The BIA has long recognized that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012).

Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in Section 1225(b)(2)(A) must be read in the context of "applicant for admission" in Section 1225(a)(1). Applicants for admission include arriving noncitizens and noncitizens present without admission. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus*, 25 I. & N. at 743. Congress made clear that all noncitizens "who are applicants for admission or otherwise seeking admission" are to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive – a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *See United States v. Woods*, 571 U.S. 31, 45 (2013).

Petitioner's limiting interpretation reads "applicant for admission" out of Section 1225(b)(2)(A). "[O]ne of the most basic interpretive canons" instructs that a "statute should be

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construed so that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009). "Applicant" is defined as "[s]omeone who requests something; a petitioner, such as a person who applies for letters of administration." Black's Law Dictionary (12th ed. 2024). Applying the definition of "applicant" to "applicant for admission," an applicant for admission is a noncitizen "requesting" admission, defined by statute as "the lawful entry of the alien into the United States after inspection." 8 U.S.C. § 1101(a)(13)(A). "Seeking admission" does not have a different meaning from applicant for admission ("requesting admission"); the terms are synonymous.

Petitioner incorrectly asserts that Section 1226(c)(1)(E) demonstrates that noncitizens being charged as inadmissible are subject to detention pursuant to Section 1226. Pet, ¶ 36. Section 1226(c) applies to "detention of criminal aliens," which does not apply to Petitioner. Her citation to Section 1226(c)(E)(i) (including aliens who are inadmissible under certain provisions of 8 U.S.C. § 1182) ignores that those inadmissible noncitizens must also be "charged with," "arrested for," "convicted of," or admitted to having committed certain criminal acts. 8 U.S.C. § 1226(c)(1)(E)(ii). Thus, this has no relevance to her detention.

Also, the fact that 8 U.S.C. § 1226(c) mandates detention of a subset of the category of aliens that are also subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is not a basis on which to determine that Section 1225(b)(2)(A) is null and void. *See Barton v. Barr*, 590 U.S. 222, 239 (2020) (holding that because "redundancies are common in statutory drafting – sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication," – "[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text").

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B. Under *Loper Bright*, the statute controls, not prior agency practices.

Any argument that prior agency practice applying Section 1226(a) to applicants for admission is unavailing because under *Loper Bright*, the plain language of the statute and not prior practice controls. *Yajure-Hurtado*, 29 I. & N. Dec. at 225-26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Loper Bright Enterprises*, 603 U.S. at 380. Therefore, longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enterprises*, 603 U.S. at 432–33 (quoting *Skidmore v. Swift Co.*, 323 U.S. 134, 140 (1944) (cleaned up)).

Petitioner points to 62 Fed. Reg. at 10323 to assert that the Immigration and Naturalization Service's ("INS") rule applied Section 1226 to "individuals who had entered without inspection." Pet., ¶¶ 28, 29. But the INS provided no analysis of its reasoning. In contrast, the BIA's recent precedent decision in *Matter of Yajure-Hurtado* includes thorough reasoning. 29 I. & N. Dec. at 221-22. In *Yajure*, the BIA analyzed the statutory text and legislative history. *Id.*, at 223-25. It highlighted congressional intent that noncitizens present without inspection be considered "seeking admission." *Id.*, at 224. The BIA concluded that rewarding noncitizens who entered unlawfully with bond hearings while subjecting those presenting themselves at the border to mandatory detention would be an "incongruous result" unsupported by the plain language "or any reasonable interpretation of the INA." *Id.*, at 228.

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To be sure, "when the best reading of the statute is that it delegates discretionary authority to an agency," the Court must "independently interpret the statute and effectuate the will of Congress." *Loper Bright Enterprises*, 603 U.S. at 395. But "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up). Prior practice does not support a position other than Petitioner's detention is mandated by Section 1225(b)(2).

IV. CONCLUSION

Congress intended for noncitizens present without inspection, including Petitioner, to be treated as applicants for admission. Thus, Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2) and subject to mandatory detention. Because Petitioner's detention is mandatory and she has not been detained for a prolonged period, no due process issues arise because she has not been afforded a custody redetermination hearing. For the foregoing reasons, Federal Respondents respectfully request that this Court deny the habeas petition.

DATED this 26th day of September, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,655 words, in compliance with the Local Civil Rules.