CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
WILLIAM SKEWES-COX (DCBN 1780431)
Special Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7066
FAX: (415) 436-7000
william.skewes-cox@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

LESBIA JESENIA LEIVA FLORES,

Petitioner,

v.

SERGIO ALBARRAN, *et al.*,

Respondents.

Case No. 3:25-cv-09302-AMO

RETURN TO HABEAS PETITION

Respondents provide the following abbreviated return to the Petition for Writ of Habeas Corpus (Dkt. No. 1).

I. Merits of The Petition.

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

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

is subject to mandatory detention under § 1225(b)(2) because she is an applicant for admission who is present in the United States without being admitted or paroled. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025). Respondents acknowledge that this Court reached the opposite conclusion in its order granting Petitioner's motion for preliminary injunction (Dkt. No. 14). Respondents also acknowledge that this Court adopted similar reasoning in granting a preliminary injunction in *Ortiz Calderon v. Kaiser*, No. 3:25-cv-06695-AMO, 2025 WL 2430609 (N.D. Cal. Aug. 22, 2025). The majority of the district courts addressing this issue, including "[e]very court in this district to have considered these questions," have similarly rejected Respondents' position. *See, e.g., Bautista Pico v. Noem*, No. 25-cv-08002-JST, 2025 WL 3295382, at *2 (N.D. Cal. Nov. 26, 2025), *appeal docketed*, No. 26-459 (9th Cir. Jan. 22, 2026); *Otero on behalf of Caicedo-Ruiz v. Kaiser*, No. 25-cv-06536-NC, 2025 WL 3301056 (N.D. Cal. Nov. 26, 2025).[1]

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

[1] The government also acknowledges that two district courts within the Ninth Circuit have recently vacated or stayed the Department of Homeland Security's July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission," which takes the position that all applicants for admission within the meaning of 8 U.S.C. 1225(a) are subject to mandatory detention 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.

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

The Fifth Circuit recently addressed the same issue of statutory interpretation presented here and issued a published decision agreeing with Respondents' interpretation of 8 U.S.C. § 1225(b)(2). *See Buenrostro-Mendez v. Bondi*, ---F.4th---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). The Fifth Circuit held that aliens, like Petitioner, who are "applicants for admission" under 8 U.S.C. § 1225(a)(1) are necessarily also "seeking admission" and so are subject to detention under § 1225(b)(2)(A). *Id.* at *1-10. The Fifth Circuit's reasoning generally aligns with Respondents' arguments on this issue, such as in concluding that: "the government's interpretation does not render portions of § 1226 superfluous" because § 1226 "undeniably does work independent from § 1225(b)(2)(A)," *id.* at *7; "[t]he everyday meaning of the statute's terms confirms that being an 'applicant for admission' is not a condition independent from 'seeking admission'", *id.*, at *4; "the government's interpretation better honors [the] predominant goal in the enactment of IIRIRA", *id.* at *9; and "[r]egardless of the government's past practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls", *id.* at *8.[2]

The Ninth Circuit currently has before it a pending appeal on this issue. *See Rodriguez Vasquez v. Bostock, et al.*, No. 25-6842 (9th Cir.). Briefing of the parties is now complete and the case is set for oral argument in March 2026. In the event the Ninth Circuit issues a decision in *Rodriguez Vasquez* while the instant case remains pending, Respondents respectfully request leave to provide additional briefing regarding the impact of any such decision. *See Valencia Zapata v. Kaiser, et al.*, No. 25-cv-7492-RFL, ECF No. 30 (N.D Cal. Jan. 15, 2026) ("[T]he Ninth's Circuit's decision in *Rodriguez Vasquez* may provide clarity regarding the difficult legal questions raised in Petitioners' habeas petitions.").

Until this appeal is resolved, however, Respondents acknowledge that the reasoning in this Court's earlier decision in this case and in *Ortiz Calderon v. Kaiser* would control the result here if the Court adheres to that decision, as the facts are not materially distinguishable for purposes of the Court's decision on the legal issue of which statutory provision authorizes Petitioner's detention. Thus, while

[2] The government recognizes that the Seventh Circuit, on a motion for a stay pending appeal, recently interpreted § 1225(b)(2) in a different manner. *See Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1061-62 (7th Cir. 2025) (Defendants not likely to succeed on the merits of their argument that petitioners are subject to mandatory detention under § 1225(b)(2)(A)).

Respondents do not consent to issuance of the writ and reserve all rights, including the right to appeal, Respondents hereby rely upon, and incorporate by reference, the legal arguments it presented in opposition to Petitioner's motion for preliminary injunction, *see* Dkt. No. 10, as well as the legal arguments the government presented to the Ninth Circuit in *Rodriguez Vasquez*, and respectfully submit that the Court can decide the issue without further briefing. However, should the Court prefer to receive a formal return in this matter, Respondents will file such a brief upon the Court's request.

II. Requested Relief.

Petitioner requests that, to preserve this Court's jurisdiction, the Court enjoin Respondents from transferring Petitioner outside this District and from deporting Petitioner pending these proceedings. Dkt. No. 1 at 2, 12. Respondents oppose this relief.

No order from the Court preventing transfer is necessary to preserve this Court's jurisdiction. It is well-established that "when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004). And even if Petitioner is transferred outside the District, the District Court will retain jurisdiction over the habeas petition. *See Ex Parte Endo,* 323 U.S. 283, 307 (1944). Any potential claims regarding possible future transfer between detention facilities within the District or to detention facilities outside the District are mere speculation. Thus, there is no basis for the Court to prohibit Petitioner's transfer.

Respondents respectfully submit that any ruling on this habeas petition must allow for re-detention upon a final administrative removal order. Any indefinite injunction would interfere with Respondents' ability to execute a valid order of removal and would both exceed the Court's jurisdiction and contravene the Supreme Court's unambiguous holding in *Zadvydas v. Davis,* 533 U.S. 678, 682 (2001), that mandatory detention without a bond hearing during the removal period is constitutionally permitted. Petitioner's immigration proceedings will continue even after the Court rules on her habeas petition. At some point, Petitioner may be subject to a final order of removal. Assuming Petitioner becomes subject to a final order of removal, her detention is mandatory under the INA. *See* 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien. Under no

circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title"). The Supreme Court has upheld the constitutionality of both the mandatory 90-day detention during the removal period and the presumptively reasonable six-month discretionary detention period following the removal period, both without the requirements of any bond hearing. *See Zadvydas*, 533 U.S. at 701. Thus, if Petitioner becomes subject to a future final order of removal, her detention will be both constitutionally permissible and statutorily required. Any ruling by this Court, therefore, must allow for the detention of Petitioner to execute a final removal order. *See Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070-JSC, 2025 WL 2998169, at *4 (N.D. Cal. Oct. 24, 2025) (denying motion for preliminary injunction in petition seeking pre-detention hearing after petitioner's detention authority shifted to § 1231(a)(2)).

The Court also lacks jurisdiction to enjoin respondents from removing Petitioner from the United States. Under 8 U.S.C. 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." This jurisdictional bar applies to section 2241 of title 28 and any other habeas provision. *Id.* Thus, as the Ninth Circuit has itself affirmed, rulings on habeas relief should not include a prohibition on the removal of Petitioner. *See Rauda v. Jennings*, 55 F.4th 773, 776-79 (9th Cir. 2022) (holding that the district court lacked jurisdiction in habeas to issue TRO enjoining an alien's removal pursuant to his final order of removal).

The Court also lacks jurisdiction to enjoin removal under 8 U.S.C. § 1252(b)(9). *See Khalil v. President, United States,* No. 25-2162, 2026 WL 111933, at *8 (3d Cir. Jan. 15, 2026). That subsection provides: "Judicial review of all questions of law and fact... arising from any action taken or proceeding brought to remove an alien from the United States ... shall be available only in judicial review of a final order [of removal]." *Id.* Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Accordingly, the only proper way for Petitioner to enjoin her removal is before the appropriate federal court of appeals in the

form of a petition for review of a final removal order. Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e).

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see also Viloria v. Lynch*, 808 F.3d 764, 767 (9th Cir. 2015) ("It is well established that this court's jurisdiction over removal proceedings is limited to review of final orders of removal.").[3] Habeas, then, is not the proper vehicle to enjoin removal.

DATED: February 13, 2026

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ William Skewes-Cox
WILLIAM SKEWES-COX
Special Assistant United States Attorney
Counsel for Federal Respondents

---

[3] The Ninth Circuit has held that, "By its terms, [§ 1252(b)(9)] does not apply to federal habeas corpus petitions that do not involve final orders of removal." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006). However, that decision predates and conflicts with *Jennings v. Rodriguez*, which noted that § 1252(b)(9) strips jurisdiction to "challeng[es] [to] the decision to detain [aliens] in the first place or to seek removal," challenges to "any part of the process by which... removability will be determined," and requests to "review... an order of removal." 583 U.S. 281, 294. Moreover, *Nadarajah* itself did not enjoin removal.