No. 25-20496

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Victor Buenrostro-Mendez

Petitioner – Appellee,

v.

Pamela Bondi, U.S. Attorney General; Kristi Noem, Secretary, U.S. Department of Homeland Security; Todd M. Lyons, Acting Director, United States Immigration and Customs Enforcement; Matthew W. Baker, Acting ICE Houston Field Office Director, United States Immigration and Customs Enforcement; John Linscott, ICE Director, Houston Contract Detention Facility, United States Immigration and Customs Enforcement; Martin Frink, Warden, Houston Contract Detention Facility, CoreCivic,
Respondents-Appellants,

consolidated with

_____

No. 25-40701

_____

Jose Padron Covarrubias
Petitioner-Appellee,
v.

Miguel Vergara, ICE Field Office Director, San Antonio ICE Detention and Removal; Kristi Noem, Secretary, U.S. Department of Homeland Security; Orlando Perez, Warden, Laredo Processing Center, Corrections Corporation of America; Susan Aikman, In her official capacity, as Assistant Chief Counsel Office of Chief Counsel, U.S. Immigration and Customs Enforcement,
Respondents-Appellants.

REPLY IN SUPPORT OF MOTION OF RESPONDENTS-APPELLANTS' TO RECCONSIDER DENIAL OF MOTION TO AND EXPEDITE APPEALS

ARGUMENT

Petitioners concede the importance of this issue in this case and that hundreds of cases are currently pending in federal district courts raising the exact question of statutory interpretation at issue in this appeal, including dozens of cases pending or decided by district courts in this circuit. Nonetheless, Petitioners insist that these consolidated appeals must proceed on a normal pace even though they admittedly present an "*exceptionally* important" issue. Dkt. 43 at 1 (emphasis added). This Court should reject that contradictory position and grant the motion to reconsider.

1. Petitioners argue that Respondents have "offer[ed] no new arguments or evidence to support reconsideration." Dkt. 43 at 3. That is incorrect. Respondents submitted six declarations from the U.S. Attorneys within the Fifth Circuit, explaining the deleterious effects caused by the wave of habeas petitions raising the precise issue underlying these consolidated appeals. *See* Dkt. 42-2–42-7. Petitioners object that those U.S. Attorney declarations do not provide any "relevant new evidence" because they do not provide the exact number of new habeas petitions addressing the statutory issue in these consolidated appeals. Dkt. 43 at 5. But Petitioners cannot seriously contest the substantial number of new habeas petitions focused on that statutory question; indeed, they tout the hundreds of district court

decisions that have been decided adversely to the Government, *id.* at 3-4 & n.2—not to mention the hundreds more that have been filed and remain pending. And while Petitioners try to downplay the 48 new habeas petitions addressing the statutory issues being filed in the Northern District of Texas since July, that figure represents over 50% of the total habeas petitions filed in that district during that period. Dkt. 42-6 ¶3. Petitioners characterize this as a "problem entirely of [the Government's] own making," Dkt. 43 at 4, but the Government cannot simply ignore a statutory command.

The Court should reject Petitioners' request to disregard the declarations from U.S. Attorneys across this Circuit explaining the deleterious impact of this ongoing wave of habeas petitions on their operations and resources and the resulting need for expeditious resolution of these consolidated appeals.

2. Petitioners insist that "the law is scarcely unclear" on the statutory issue because many courts have ruled against the Government. But district courts in this Circuit are coming to different conclusions on this issue, with several courts now ruling in favor of the Government. *See Topal v. Bondi*, No. 1:25-CV-01612 SEC P, 2025 WL 3486894, at *2 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *7 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Maceda Jimenez v.*

Thompson, No. 4:25-CV-05026, 2025 WL 3265493, at *2 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, at *7 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.); *Garibay-Robledo v. Noem*, 1:25-cv-00177-H (N.D. Tex. Oct. 24, 2025) (Hendrix, J.); *but see Tinoco Pineda v. Noem*, No. SA-25-CA-01518-XR, 2025 WL 3471418, at *5 (W.D. Tex. Dec. 2, 2025) (Rodriguez, J.); *Espinoza Andres v. Noem*, No. CV H-25-5128, 2025 WL 3458893, at *5 (S.D. Tex. Dec. 2, 2025) (Hittner, J.); *Galdamez Martinez v. Noem*, No. SA-25-CV-01373-JKP, 2025 WL 3471575, at *5 (W.D. Tex. Nov. 26, 2025) (Pulliam, J.).

This division among the district court underscores the need for clarity from this Circuit on an expedited basis. Indeed, while the motion to expedite the appeal in this case was pending, Judge Eskridge in the Southern District of Texas highlighted the different results from different judges within the district, along with pointing to more pending cases before other judges and noted the motion before this court for expedited consideration. *Maceda Jimenez v. Thompson*, 2025 WL 3265493, at *2 (citing *Buenrostro-Mendez v. Bondi*, 25-20496, Dkt. 10). This "exceptionally important" issue requires more than a "routine" schedule. *Cf.* Dkt. 43 at 1, 4.

Contrary to Petitioners' argument, Respondents' proposed schedule is not antithetical to "robust briefing." Dkt. 43 at 1. The proposed briefing

schedule provides for Petitioners to file their answering brief is the same: 30 days. Dkt. 42-1 at 3. Any changes in the briefing schedule only affect the time in which Respondents have to file their briefs.

3. Finally, Petitioners suggest that Respondents are already bound by a nationwide declaratory judgment in *Maldonado Bautista v. Santacruz*, No. 5:25-CV- 01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). That is false. There is no "binding declaratory judgment" in *Maldonado Baustista*, as the Government has explained in that litigation. *See* Exhibit A. The district court expressly *withheld* entry of final judgment and *did not* enter final declaratory relief as to the nationwide class. *See id.* at 2-3. Nothing in *Bautista* effects these consolidated appeals.

CONCLUSION

The Court should reconsider its order and grant Respondents-Appellants' motion to expedite briefing and oral argument in these appeals.

Dated: December 10, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025 I electronically filed the foregoing with the Clerk of the Court through the Court's ECF system and that it will be served electronically upon registered participants identified on the Notice of Electronic Filing.

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because:

The brief contains 808 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface and typestyle requirements of Fed. R. App. P. 32(g)(1) because:

The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Georgia fourteen-point.

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Ex. A

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

Lazaro MALDONADO BAUTISTA, *et al.*,

Plaintiffs-Petitioners,

v.

Krist NOEM, Secretary, Dept. of Homeland Security, *et al.*,[1]

Defendants-Respondents.

No. 5:25-cv-01873-SSS-BFM

RESPONDENTS' RESPONSE TO PETITIONERS' EX PARTE APPLICATION FOR RECONSIDERATION AND CLARIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES

[1] The undersigned does not represent Fereti Semaia, Warden, Adelanto ICE Processing Center, as Adelanto is a private facility and Warden Semaia is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply with equal force to Warden Semaia, who was detaining the Petitioners at the request of the United States.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In this already procedurally complex case, Plaintiffs-Petitioners' ("Petitioners") motion to clarify muddies the waters further. The complicated procedural posture Petitioners seek to clarify is a result of their litigation strategy. In order to circumvent statutory bars prohibiting classwide injunctive relief, Petitioners have disingenuously claimed they seek only declaratory relief; relief this Court has already found "may be persuasive, [but] is not ultimately coercive." Order Granting Petitioners' Motion to Certify a Class at 12, Dkt. 82 ("Class Cert. Ruling") (quoting *Steffel v. Thompson*, 415 U.S. 452, 471 (1974)) (alteration added). Now, however, they cry foul that the government has failed to abide by court orders mandating all class members receive bond hearings when no such orders exist. Moreover, any order in this litigation mandating the government take any particular action—including what they describe as classwide vacatur—would operate as an injunction or otherwise "restrain" the operation of the INA; that is not the relief Petitioners sought, nor is it relief this Court can provide the class members. *See* 8 U.S.C. § 1252(f)(1). And the claims Petitioners are seeking to vindicate are core habeas claims regarding the legality of their detention—as such, they cannot be recast as APA or declaratory judgment claims and this Court's authority does not extend beyond the territorial boundaries of this judicial district and Petitioners' immediate custodians. Thus, just as with the class actions on this very issue brought in Tacoma, Denver, and Boston, a nationwide remedy is precluded.

Respondents-Defendants ("Respondents") submit this response to Petitioners' ex parte application for reconsideration and clarification ("Application for Recon.") of the Court's November 20, 2025 Order granting Petitioners' partial Motion for Summary Judgment, Dkt. 81 ("Partial MSJ Ruling"), and the November 25, 2025 Order granting Petitioners' Motion to Certify a Class, Dkt. 82. *See* Dkt. 87. Respondents object to Petitioners' manufactured urgency and use of procedure to force a final judgment when the Court has, so far, expressly declined to enter one. Rather, the Court, in its discretion

managing its own docket, set a status conference for January 16, 2026 to resolve the outstanding issues in this case like the remaining claims in the complaint, entry of relief, and final judgment. Importantly, a final declaratory judgment will not simplify the complex issues presented here and across the country, but will cause substantial confusion as well as overlapping and inconsistent legal obligations. Instead, clarification will and must come from the appellate courts, including an expedited appeal in the Ninth Circuit that will be fully briefed on February 2, 2026. *See Rodriguez Vazquez v. Bostock*, No. 25-6842, Order Granting Expedited Briefing, Dkt 5.1 (9th Cir., Nov. 7, 2025).

STANDARD

Under the Federal Rules of Civil Procedure, a court may grant a motion to correct or clarify an order where there is "a mistake arising from oversight or omission . . . ." Fed. R. Civ. P. 60(a). "A judge may use Rule 60(a) 'to make an order reflect the actual intentions of the court, plus necessary implications.'" *In re Jee*, 799 F.2d 532, 535 (9th Cir. 1986) (citing *Jones & Guerrero Co. v. Sealift Pacific*, 650 F.2d 1072, 1074 (9th Cir.1981).) The inquiry is focused on what the court originally intended to do. *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033 (9th Cir. 1990).

ARGUMENT

I. The Court Has Not Yet Entered Final Judgment

The Court need not clarify or reconsider its orders because the Court's course of action is clear. The Court's orders did not yet enter final declaratory relief as to the nationwide class. *See* Partial MSJ Ruling at 17 (granting motion for partial summary judgment but expressly not ordering any relief); *compare* Class Cert. Ruling at 15 (granting motion for class certification but ordering only that class be certified, Petitioners be appointed class representatives, Petitioners' counsel be appointed class counsel, ordering a joint status report and setting status conference), *with* Proposed Order, Dkt. 42.1 (proposing specific declaratory relief that the Court did not enter). The Court also expressly declined to enter final judgment as to the claims at issue in the motion for partial summary judgment under Federal Rule of Civil Procedure 54(b). *See* Partial MSJ Ruling

at 17. Rather, the Court set a January 9, 2026, joint status report deadline and January 16, 2026, status conference indicating that the Court intends to address the question of final relief at a later date. Class Cert. Ruling at 15.

There is no such thing as a preliminary declaratory judgment, and a final judgment per Rule 54(b) or 58 is necessary for a declaratory judgment to have effect. A "judgment" is "a decree or order from which an appeal lies." Fed R. Civ. P. 54(a). Every judgment "must be set out in a separate document" with a few exceptions not relevant here. Fed. R. Civ. P. 58. Absent an entry of final judgment on the entire case set out in a separate document, or a certification of partial final judgment under Rule 54(b), there is no declaratory judgment with preclusive effect upon the parties. Neither the partial summary judgment ruling nor the class certification ruling operate as a "judgment" because they are not appealable orders and "do[] not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(a), (b). Thus, there is no classwide judgment, let alone any final judgment that could have preclusive effect as to class members.

Finality is key. To be proper, a declaratory judgment must have preclusive effect: "Without preclusive effect, a declaratory judgment is little more than an advisory opinion." *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023); *see also Wells v. Johnson*, 150 F.4th 289, 301 (4th Cir. 2025) (stating that the only reason a proper declaratory judgment does not violate Article III's requirements is because it has preclusive effect between the parties). And preclusive effect cannot be obtained without finality. *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015) (citing Restatement (Second) of Judgments § 27, p. 250 (1980), for the general rule that an issue must be determined by a "valid and final judgment" for preclusion to apply); *Luben Indus., Inc. v. United States*, 707 F.2d 1037, 1040 (9th Cir. 1983) (affirming district court decision not to apply preclusive effect to an interlocutory decision that "could not have been the subject of an appeal at the time"); Restatement (Second) of Judgments § 28, p. 273 (1980) Restatement (Second) of

Judgments § 27, p. 250 (1980) (issue preclusion does not apply when the "party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action"; *id.* at cmt. a ("[T]he availability of review for the correction of errors has become critical to the application of preclusion doctrine.").[2]

Petitioners contend that the Court's orders already have "the force and effect of a final judgment or decree." Application for Recon. at 5, Dkt. 87 (citing 28 U.S.C. § 2201(a)). This is a misunderstanding of the interplay between the Declaratory Judgment Act and the Rules of Civil Procedure. 28 U.S.C. § 2201(a)'s finality language only means that with regard to finality, declaratory judgment is like any other judgment. *See, e.g., Peterson v. Lindner,* 765 F.2d 698, 703 (7th Cir.1985) ("We have found no support, however, for plaintiffs' proposition that section 2201 was intended to make declaratory judgments somehow more final, or final at an earlier stage, than other sorts of judgments."). The section's text does not create a self-executing final judgment beyond the Rules of Civil Procedure. Indeed, Fed. R. Civ. P. 57 unambiguously mandates that the "rules [of Civil Procedure] govern the procedure for obtaining a declaratory judgment under 28 U.S.C. § 2201." And Petitioners fail to cite to any case interpreting 28 U.S.C. § 2201(a) in such a way that renders the Court's opinion final.

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[2] Even with respect to a final declaratory judgment that remains subject to appeal or is pending appellate review, courts should be cautious in applying preclusive effect. In many circumstances, a declaratory judgment will have preclusive effect as between the parties in future litigation. *See* Restatement (Second) of Judgments § 33. But the treatises caution against imposing res judicata based on a declaratory judgment that remains subject to appeal. *See* 9 A.L.R.2d 984 ("[B]oth the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences"). In applying res judicata during the pendency of an appeal, the "evil result[] . . . is said to be that 'though the judgment is erroneous, and for that reason is reversed, yet before the reversal it may be used as evidence, and thereby lead to another judgment, from which it may be impossible to obtain relief notwithstanding such reversal." *Id.*; *see* Federal Practice & Procedure § 4404 ("Awkward problems can result from the rule that preclusive effects attach to the first judgment" while that judgment is subject to an appeal). In the circumstances here, and particularly given Section 1252(f)(1), it would not be proper to impose res judicata effect on a classwide basis while the declaratory judgment is pending on appeal. *See* 9 A.L.R.2d 984 (The "only one safe way of avoiding conflicting judgments on the same cause of action or issue . . . [is for] the final decision on the merits of the second suit [] be delayed until the decision on appeal has been rendered."). Instead, as Respondents have stressed, guidance must stem from a precedential ruling from an appellate court.

Petitioners cite to the Court's language in its class certification order that it was extending "the same declaratory relief" to the class. Application for Recon. at 2. But a court cannot grant declaratory relief prior to the entry of a final judgment, i.e., a declaratory judgment. *See Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975) ("At the conclusion of a successful [lawsuit], a district court can generally protect that [*sic*] interests of a [] plaintiff by entering a declaratory judgment . . . But, prior to final judgment there is no established declaratory remedy comparable to a preliminary injunction."). A pre-final judgment declaration is, by its nature, *not* a declaratory judgment "[b]ecause a preliminary declaration—unlike a final declaration—does not specifically bind anyone, it is more akin to an advisory opinion, which the Court is precluded from issuing by history and the implicit policies embodied in Article III." *Vazquez Perez v. Decker*, No. 18-CV-10683 (AJN), 2019 WL 4784950, at *10 (S.D.N.Y. Sept. 30, 2019). And in any event, this Court—whether intentionally or not—did not actually enter any judgment in its opinion granting partial summary judgment. *Compare* Partial MSJ Ruling at 17, *with* Proposed Order, Dkt. 42.1.

The Court expressly declined to enter final judgment under Rule 54(b) and did not enter such judgment in the order granting class certification. Nor is there a final judgment as set out in Rule 58. Accordingly, there is currently no declaratory relief, let alone relief with preclusive effect on *Maldonado Bautista* class members' claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision. Absent finality in this case, the parties must continue to litigate the issue of detention authority in other venues.

II. Petitioners' Request Lays Bare the Inherently Flawed Nature of the Class

Petitioners contend that this Court's orders "require[]" the Government "provide class members with bond hearings." Application for Recon. at 4. Petitioners seek clarification to "ensure the government's compliance" and to require the government to "provide class member with bond hearings." *Id.* at 1, 4. But, Petitioners' request proves that "[t]he 'case or controversy' actually at stake is the class members' claims in their

individual habeas proceedings." *Calderon v. Ashmus*, 523 U.S. 740, 748 (1998). And declaratory judgment in this action "would not resolve the entire case or controversy as to any one of them, but would merely determine a collateral legal issue governing certain aspects of their pending or future suits." *Id.*[3] In *Calderon*, the Supreme Court squarely held that a declaratory judgment action is not appropriate to address the "validity of a defense the State may, or may not, raise in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas proceeding." *Id.* Thus, an action to obtain a declaration to reject the Secretary's defense in a habeas proceeding—that detention is lawful under Section 1225(b)(2)—is foreclosed by *Calderon* because it must be resolved in a habeas action.

Petitioners request for what is ultimately habeas relief underscores the fundamental flaws underlying the certified class. Petitioners ask for orders ensuring all class members receive custody redeterminations; that is habeas relief. And habeas jurisdiction is governed by two fundamental rules: (1) the habeas petition must be filed within the district of confinement; and (2) the petition must name the petitioner's immediate custodian. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005-06 (2025). The certified class in this case is incompatible with these limits on habeas jurisdiction. First, this Court's certification of a *nationwide* class cannot be reconciled with the rule that a habeas petitioner file in the district of *actual confinement*. This district is an improper venue for nearly all of the class members. *See, e.g.*, *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) ("An action for declaratory judgment cannot be substituted for habeas corpus so as to give jurisdiction to a district other than that in which the applicant is confined or restrained.") (quoting *Kaminer v. Clark*, 177 F.2d 51, 52 (D.C. Cir. 1949)). Second, the certified class is incompatible with the related requirement that a habeas petitioner name his or her

[3] *Calderon* also demonstrates that the declaratory relief sought in this case is not in fact "corresponding" to injunctive relief nor is it "final" relief because it is merely a "collateral legal issue" that will be raised in class members' individual habeas petitions.

immediate custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the "corpus." *Padilla*, 542 U.S. at 435. The certified class violates this rule, too, as the immediate custodians for all the class members across the nation plainly have not been named. Indeed, in the other class actions addressing this issue, the courts have limited the class to those held within their districts. *See Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 3251143, at *7 (D. Colo., Nov. 21, 2025) (conditionally certifying class limited to Colorado); *Guerrero Orellano v. Moniz*, --- F.Supp.3d ----, 2025 WL 3033769, at *14 (D. Mass. Oct. 30, 2025) (certifying class only within Massachusetts); *Rodriguez Vasquez v. Bostock*, 349 F.R.D. 333, 365 (W.D. Wash., May 2, 2025) (certifying class of detainees within *one single* detention facility in Washington).

Moreover, Petitioners' contention that the Court's orders "require[]" the Government to "provide class members with bond hearings," Application for Recon. at 4, is contrary to this Court's finding that classwide declaratory relief "is not ultimately coercive." Class Cert. Ruling at 12. Any other holding would transform non-coercive declaratory relief into coercive injunctive relief. Congress foreclosed such classwide injunctive relief. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022); 8 U.S.C. § 1252(f)(1); *see also Biden v. Texas*, 597 U.S. 785, 797 (2022) (Section 1252(f)(1) "generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions."). Nor can Petitioners' circumvent these bars by claiming they seek only declaratory relief that compels bond hearings because regardless of how it is styled, one must look past an order's label to its function, i.e. whether or not it directs an actor's conduct. *See*, *e.g.*, *Abbott v. Perez*, 585 U.S. 579, 595 (2018) ("[W]e have not allowed district courts to shield their orders from appellate review by avoiding the label injunction") (cleaned up); *see also Injunction*, Black's Law Dictionary (12th ed. 2024) (An injunction is "[a] court order commanding or preventing an action").

Given § 1252(f)(1)'s limitations on classwide relief, any relief the Court might properly order falls far short of being appropriate relief to the proposed class as a whole—

as Petitioners' present application demonstrates. Challenges to detention are core habeas claims, and declaratory relief is not appropriate in such habeas cases. *Calderon*, 523 U.S. at 747 (declaratory judgment action not appropriate to address "validity of a defense the State may, or may not, raise in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas proceeding"); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). No further orders can be entered to force government compliance that would not run afoul of 8 U.S.C. § 1252(f)(1).

III. Petitioners' Request to Enter Overly-Broad Relief is Premature

Petitioners also seek clarification that the Court's orders vacated Respondents' policies under the APA. *See* Application for Recon. at 5. They contend that the Court should vacate not only the July 8, 2025 Interim Guidance they challenged in their Amended Complaint but also the Board of Immigration Appeals' decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), a request never made in their Amended Complaint.[4] *Id.*; *see also* Am. Compl., Dkt. 15. Nor did Petitioners reference *Matter of Yajure Hurtado* in their Motion for Partial Summary Judgment. *See* Partial Mot. Summ. J.; *see also* Proposed Order at 1-2, Dkt. 42.1. The Court should decline to enter such relief at this time for three reasons.

First, the vacatur and declaratory relief Petitioners seek in their motion to clarify is different from and far broader than the scope of relief they sought in their Amended Complaint. In their Amended Complaint and the Proposed Order accompanying their Partial Motion for Summary Judgment, Petitioners sought declaratory relief that the class "are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2)" and vacatur of "the Department of Homeland Security policy described in the July 8, 2025, 'Interim Guidance Regarding Detention Authority for Applicants for

[4] *Matter of Yajure Hurtado* was decided on September 5, 2025, while Petitioners' Motion for Summary Judgment was pending. Petitioners had ample opportunity to amend their complaint and seek relief specifically related to *Matter of Yajure Hurtado*.

Admission' under the [APA] as not in accordance with law." *See* Partial Mot. Summ. J., Proposed Order at 1-2, Dkt. 42.1. However, in the attached order to this *ex parte* application, Petitioners ask for much more; they ask the Court to declare the interim guidance and BIA precedent unlawful and to vacate not only the guidance but BIA precedent—precedent absent from their Amended Complaint and Motion for Summary Judgment. *See* Application for Recon., Proposed Order at 1-2, Dkt. 87-1. This revamped declaratory and vacatur relief extends to the lawfulness of a BIA decision not once mentioned in the Amended Complaint and not challenged in the Motion for Summary Judgment.

It is fundamentally improper to enter relief against a party who has not had a full opportunity to contest such relief. At minimum, the Court should require fully noticed-motion briefing before considering classwide relief that was not proposed in the prior partial Motion for Summary Judgment or Amended Complaint (vacatur of the BIA decision, and any new declaratory judgments).

Second, and relatedly, it is unclear if the Court has resolved whether vacatur relief under the APA is appropriate regarding the class as a whole. *See generally* Class Cert. Ruling. Recall that Respondents have not had an opportunity to respond to the Amended Complaint before Petitioners forced summary judgment. *See* Dkt. 66 (extending Respondent's deadline to respond to amended complaint). While the parties briefed the appropriateness of vacatur relief to meet Rule 23(b)(2)'s requirement, the Court's Order only addressed the appropriateness of *declaratory* relief regarding the class as a whole. *See id.* at 12-14. The Court should hesitate to hastily grant vacatur relief now for two reasons.

One, because Petitioners rushed to obtain summary judgment before Respondents responded to the Amended Complaint, Respondents have a defense not yet presented or ruled on; specifically, that Petitioners have failed to state an APA claim as to themselves and the class. APA review is only appropriate under 5 U.S.C. § 704 if "there is no other adequate remedy in a court." Habeas is an adequate alternative remedy—because

Petitioners and class members challenge their detention—and it therefore displaces APA review. *See*, *e.g.*, *O'Banion v. Matevousian,* 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that "habeas actions" provide an "adequate remedy" displacing APA review under Section 704); *see also Monk v. Sec. of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is 'in custody in violation of the Constitution . . . of the United States,' . . . . This specific determination must override the general terms of the declaratory judgment and federal question statutes.") (internal citation omitted). The Court must determine whether Petitioners can state APA claims before it grants relief under the APA.

Two, the Court has not yet ruled on whether vacatur runs afoul of 8 U.S.C. § 1252(f)(1)'s prohibition on restraining the government's operation of the covered statutes. As the Supreme Court has explained, § 1252(f)(1)'s reference to "the operation of the relevant statutes"—which includes section 1225(b)(2)—"is best understood to refer to the Government's efforts to enforce or implement" those statutes. *Aleman Gonzalez*, 596 U.S. at 550 (quotation omitted). Thus, § 1252(f)(1) generally prohibits courts other than the Supreme Court from "order[ing] federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Id*. It does not matter that Petitioners seek vacatur rather than an injunction. Like an injunction, vacatur restricts official action by prohibiting officials from relying on the agency action under review. In their Application for Reconsideration, Petitioners appear to claim that vacatur would restrain the Government from applying section 1225(b)(2) to class members.[5] Application for Recon. at 5-6. Thus, they acknowledge that vacatur operates to restrain the government and would be barred by section 1252(f)(1). The Court

[5] Additionally, Petitioners' actions demonstrate they believe vacatur is necessary to ensure relief to all class members. But if true, then the class does not meet Rule 23(b)(2)'s requirements because declaratory relief *alone* must be appropriate regarding the class as a whole. If additional relief—here, vacatur—must be entered on the class's behalf, then declaratory relief was not appropriate regarding the class as a whole and class certification is erroneous.

should decline the request to hurriedly enter vacatur relief without the full benefit of briefing on the issue.

Third, accepting Petitioners' hurried schedule is contrary to the Court's own directives establishing an orderly resolution of all other pending issues in the case, entering relief, and issuing a final judgment. *See* Class Cert. Ruling at 15. This Court has already set deadlines to move this case forward. *See id.* (setting January 9, 2026 JSR deadline and January 16, 2026 status conference). That Petitioners think the Court should issue immediate resolution neglects this Court's discretion to resolve this case on its own timeline. *See, e.g., M.M. v. Lafayette Sch. Dist.*, 681 F.3d 1082, 1091 (9th Cir. 2012) ("It is well established that a district court has broad discretion to control its own docket[.]"). And it is well within the Court's power to decline to enter final judgment on a statutory interpretation issue that is currently pending and expedited at the Ninth Circuit Court of Appeals. *See Rodriguez Vazquez v. Bostock*, No. 25-6842, Order Granting Expedited Briefing, Dkt 5.1 (9th Cir., Nov. 7, 2025).

CONCLUSION

For the above reasons, the Court should deny Petitioners' ex parte application for reconsideration and clarification.

Dated: December 10, 2025

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants certifies that this brief contains 4022 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 10, 2025

/s/ Malcolm McDermond
MALCOLM McDERMOND

CERTIFICATE OF SERVICE

I certify that on December 10, 2025, I electronically filed the foregoing Defendants' Response to Petitioners' *Ex Parte* Application for Reconsideration and Clarification with the Clerk of Court by using the CM/ECF system, which will provide electronic notice pursuant to L.R. 5-3.2.1 to the following attorneys of record:

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