

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

Heriberto Salgado Flores (A ))
)
 Petitioner,)
)
 v.)
)
 Kristi NOEM, Secretary of Homeland Security;)
 Samuel OLSON, Interim Chicago Field Office)
 Director, U.S. Immigration and Customs)
 Enforcement;)
 U.S. DEPARTMENT OF HOMELAND)
 SECURITY;)
 Pamela BONDI, U.S. Attorney General;)
 EXECUTIVE OFFICE FOR IMMIGRATION)
 REVIEW; and)
 Jacob WELSH, Sheriff and Warden, Chase County,)
 Kansas Detention Center,)
)
 Respondents.)

Civil Action No. 25-cv-03244-JWL

**PETITIONER’S TRAVERSE IN
REPLY TO RESPONDENTS’
RESPONSE TO § 2241 HABEAS
PETITION AND ORDER TO
SHOW CAUSE**

INTRODUCTION

When Petitioner Henry Salgado Flores (“Mr. Salgado” or “Petitioner”) filed the instant case, more than 180 federal courts had already rejected the Respondents’ interpretation of the laws at issue here, *see* Pet., Doc. 1, at ¶ 35, granting habeas petitions in almost every known case on point. That number has now ballooned to at least 310 federal district courts granting habeas petitions in this context.

Recognizing the need for nationwide relief, the District Court for the Central District of California issued a declaratory judgment which it extended to a nationwide class that includes Mr. Salgado, declaring that Mr. Salgado and all class members are detained under 8 U.S.C. § 1226, contrary to Respondents’ arguments, and that they are entitled to bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at

*11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners in the form of a declaratory judgment); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.R.D.---, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, and incorporating and extending the declaratory judgment to the nationwide class). Nevertheless, Respondents continue to detain Mr. Salgado and insist that he is detained under § 1225(b)(2). For this reason, Mr. Salgado's habeas petition should be granted forthwith.

At the heart of the matter is that the federal Respondents have suddenly altered their interpretation of laws that have existed for almost 30 years in order to deprive the majority of noncitizens of an immigration bond hearing – even if they have been living in the U.S. for decades and have no criminal history. Respondents now claim that a statute that applies to noncitizens detained after being inspected at the border (8 U.S.C. § 1225(b)(2)) should also apply to noncitizens like Mr. Salgado who have been here for weeks, months or years and who are arrested in the interior of the country, Resp., Doc. 5, pp. 5-10, when in actuality, they are detained under 8 U.S.C. § 1226. To that end, Respondents allege that Mr. Salgado is an “applicant for admission” as defined in § 1225(a), and that, as a result, he is detained under § 1225(b)(2). Resp., Doc. 5, p. 2.

Mr. Salgado denies Respondents' allegation that he is an applicant for admission. But even assuming, *arguendo*, that he were an applicant for admission, § 1225(b)(2) would not apply because he is not “seeking admission,” nor has he been inspected by an immigration officer who determined that he was “not clearly and beyond doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

Respondents' new interpretation of these laws is contrary to the statute and U.S. Supreme

Court precedent, and if accepted, would render 8 U.S.C. § 1226 completely obsolete. Respondents' position is precisely what the *Maldonado Bautista* court found to be invalid.

Mr. Salgado, who has lived in the United States for over 30 years and has no criminal convictions, seeks enforcement of his rights under the law, and as a member of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*. Since September 21, 2025, Mr. Salgado has been detained in the custody of Respondent Department of Homeland Security ("DHS") in Kansas. Respondents are refusing to comply with the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista*, flouting the decision of a federal judge based on the incorrect claim that a declaratory judgment is not binding on the parties.

Respondents' exhaustion argument fails because there is no administrative remedy available: *Matter of Yajure Hurtado* categorically strips immigration judges ("IJ") of jurisdiction to hear bond requests for individuals like Mr. Salgado. 29 I. & N. Dec. 216 (BIA 2025). Thus, Respondents' exhaustion theory depends on an administrative path that does not exist. Even if there were an administrative remedy available, requiring Mr. Salgado to pursue an appeal before the Board of Immigration Appeals ("BIA" or "Board") would result in undue prejudice, as the Board's significant and unreasonable delays often prolong the appeals process for months or even years.

Respondents offer no legitimate basis for detaining Mr. Salgado as though he were an applicant for admission at a port of entry. Their opposition relies on the same misclassification that dozens of federal courts have rejected, and it ignores the sweeping constitutional consequences of denying an entire population access to any form of custody review. As Mr. Salgado is detained under the wrong statute, has been denied the bond hearing that § 1226(a) and the Due Process Clause guarantee, and faces ongoing unlawful confinement that only this Court can remedy, the

petition for habeas corpus must be granted.

ARGUMENT

I. The Court Should Grant the Petition for Writ of Habeas Corpus Forthwith, as the Legal Issues Have Already Been Resolved in Petitioner’s Favor in *Maldonado Bautista*.

The November 20, 2025 Order Granting Partial Summary Judgment in *Maldonado Bautista v. Santacruz* is in the form of a declaratory judgment, declaring that those who entered the U.S. without inspection and who were not apprehended upon arrival are subject to detention under INA § 1226, not § 1225(b), and thus cannot be denied consideration for release on bond. *Maldonado Bautista*, --- F. Supp. 3d ----, 2025 WL 3289861, at *11. On November 25, 2025, the same court found the petitioners had satisfied Rule 23(b)(2), certified a nationwide “Bond Eligible Class,” and extended the November 20 declaratory judgment to the certified class. *Maldonado Bautista*, --- F.R.D. ----, 2025 WL 3288403, at *9. The certified Bond Eligible Class is defined as follows:

All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista, 2025 WL 3288403, at *9.

Mr. Salgado is a member of the Bond Eligible Class, as he (1) entered the United States without inspection in 1992; (2) was not apprehended upon arrival, but instead was apprehended approximately 33 years after entry; and (3) has no criminal convictions, is not now arriving in the United States, and has no removal orders and thus is not subject to detention under §§ 1226(c), 1225(b)(1), or § 1231.

The federal government Respondents here – who are also Respondents in *Maldonado Bautista* – are bound by the *Maldonado Bautista* declaratory judgment. Nonetheless, they have

refused to comply and continue to detain Mr. Salgado unlawfully, denying him the bond consideration to which he is plainly entitled as a Bond Eligible Class member. In fact, on December 8, 2025, Petitioner again requested bond in light of the *Maldonado Bautista* decision, but was again denied by the IJ (**Exhibit C**) who wrote, in part:

The Court lacks jurisdiction to consider the Respondent for bond as he remains an applicant for admission under INA section 235(b)(2)(A). The court in *Bautista v. Noem*...granted class certification and partial summary judgment for the plaintiffs in that case, but did not issue a class-wide declaratory judgment... Until and unless the *Bautista* court issues a class-wide declaratory judgment or injunction, the *Bautista* court's opinion and partial grant of summary judgment does not constitute a judgment... [and] they do not have preclusive effect with respect to other cases....

In their Supplemental Response filed on December 8, 2025, Respondents admit that Mr. Salgado is a class member. However, they also make the perplexing argument that “there is no class-wide judgment.” Supp. Resp., Doc. 6, p. 2. This is despite Respondents initially recognizing in their November 26 Response that the *Maldonado Bautista* court clearly extended the declaratory judgment to the nationwide class: “Referencing its prior order on the petitioners’ Motion for Partial Summary Judgment, **the court further extended ‘the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.’**” Resp., Doc. 5, p. 15 (quoting *Maldonado Bautista* November 25 Class Certification Order, slip op. at 14) (emphasis ours).

Respondents further contend the declaratory judgment in *Maldonado Bautista* is not a final judgment with preclusive effect. Their position is unsupported. The *Maldonado Bautista* decision is final as to both its certification of a nationwide class and issuance of a declaratory judgement. Pursuant to the Declaratory Judgment Act, **a declaratory judgment has the full “force and effect of a final judgment,” even where “further relief is or could be sought” in the case.** 28 U.S.C. § 2201(a) (emphasis added). Even without a Rule 54(b) certification, the *Maldonado Bautista* court's resolution of the claims on which it granted declaratory relief remains binding on

the parties absent a stay or other revision. *See, e.g. Ramos v. Town of Vernon*, 208 F.3d 203 (2d Cir. 2000) (unpublished table decision) (recognizing declaratory judgment as a “final ruling on the merits,” even though the declaratory judgment was not certified under Rule 54(b)).

To support their argument, Respondents cite to a case requiring a final judgement to trigger issue preclusion in “a subsequent action between the parties, whether on the same or a different claim.” *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015). But issue preclusion in a subsequent action is a distinct inquiry from whether the *Maldonado Bautista* court has now bound the parties before it. *Cf. Goodheart Clothing Co. v. Laura Goodman Enters., Inc.*, 962 F.2d 268, 274 (2d Cir. 1992) (distinguishing issue preclusion between litigation in two courts from “the somewhat more flexible law-of-the-case doctrine under which courts ‘generally adhere to [their] own earlier decision on a given issue in the same litigation’”) (citation omitted); *see also* 28 U.S.C. § 2201(a).

Nor can the question of finality for the purposes of issue preclusion, were that even relevant here, be resolved simply. *See, e.g., Twin City Pipe Trades Serv. Ass'n, Inc. v. Wenner Quality Servs., Inc.*, 869 F.3d 672, 677 (8th Cir. 2017) (“Issue preclusion, however, has been applied ‘to matters resolved by preliminary rulings or to determinations of liability that have not yet been completed by an award of damages or other relief.’”) (citation omitted); *Lummus Co. v. Commonwealth Oil Ref. Co.*, 297 F.2d 80, 89 (2d Cir. 1961) (discussing factors to determine “[w]hether a judgment, not ‘final’ in the sense of 28 U.S.C. § 1291, ought nevertheless be considered ‘final’ in the sense of precluding further litigation of the same issue”); *N. Nat. Gas Co. v. L.D. Drilling, Inc.*, 405 F. Supp. 3d 981, 1007 (D. Kan. 2019) (“[W]hile courts often speak of final judgment as an ingredient of estoppel, the element may be satisfied by a decision short of a judgment which nonetheless establishes that further evidence or argument will not alter the

result.”).

In short, the *Maldonado Bautista* court’s decision as to Rule 54 does not dictate whether the declaratory judgment is binding on the parties immediately. Declaratory judgments have “the same effect as an injunction in fixing the parties’ legal entitlements.” *Badger Cath., Inc. v. Walsh*, 620 F.3d 775, 782 (7th Cir. 2010) (citing *Steffel v. Thompson*, 415 U.S. 452, 466-71 (1974)).

DHS and the Executive Office for Immigration Review (“EOIR”) are thus obligated to apply the law of the case to all class members immediately. It is a “basic proposition that all orders and judgments of courts must be complied with promptly,” *Maness v. Meyers*, 419 U.S. 449, 458 (1975), and thus, in “suits against government officials and departments, [courts] assume that they will comply with declaratory judgments.” *United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1031 (9th Cir. 2023); *see also Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) (“[T]he discretionary relief of declaratory judgment is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as injunction or mandamus, since it must be presumed that federal officers will adhere to the law as declared by the court.”) (citing *Samuels v. Mackell*, 401 U.S. 66, 73 (1971)) *abrogated on other grounds by Schieber v. United States*, 77 F.4th 806 (D.C. Cir. 2023); *Medtronic, Inc. v. Mirowski Fam. Ventures, LLC*, 571 U.S. 191, 200 (2014) (describing the object of a declaratory judgment as “an immediate and definitive determination of the legal rights of the parties”) (citation omitted).

Because Respondents refuse to honor the *Maldonado Bautista* decision and continue to detain Mr. Salgado without a bond hearing, it is necessary for this Court to intervene.

II. Even Absent the *Maldonado Bautista* Decision, Respondents’ Arguments Against Relief in this Case are Contrary to Applicable Law.

a. Petitioner Is Not Required to Exhaust Administrative Remedies Because Exhaustion Would Be Futile, Is Not Statutorily Required, and Would Cause Undue Prejudice.

Respondents incorrectly argue that Mr. Salgado's claim is barred because he has not exhausted administrative remedies and has not shown that appealing to the agency would be futile. While there is no statutory exhaustion requirement in § 2241, courts often require petitioners to exhaust their administrative remedies prior to seeking a writ. *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986) (per curiam). However, exhaustion may be excused where appeal to the administrative body would be futile because it has predetermined the issue. *Houghton v. Shafer*, 392 U.S. 639, 640 (1968); *Goodwin v. State of Okl.*, 923 F.2d 156, 157 (10th Cir. 1991); *Baquera v. Longshore*, 948 F. Supp. 2d 1258, 1259–60 (D. Colo. 2013) (holding that the petitioner's failure to appeal the IJ's bond denial to the BIA did not preclude habeas relief, as the BIA had already determined that non-citizens with his type of conviction were subject to mandatory detention).

Here, the very agency to which Respondents say Mr. Salgado must appeal has itself stripped IJs' jurisdiction to conduct bond reviews for individuals in his position via *Matter of Yajure Hurtado*. Similarly, DHS's July 8, 2025 policy guidance announced that it was issued "in coordination with the Department of Justice," of which EOIR is a component agency. ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission.¹ The government cannot demand exhaustion while simultaneously eliminating the remedy it says Petitioner must pursue.

Respondents misapply the prudential exhaustion factors outlined in *Woodford v. Ngo*, 548 U.S. 81 (2006). To begin with, the notion that the agency could correct its own mistake only highlights the futility of exhaustion here: *Yajure Hurtado* categorically predetermines the outcome.

¹ Available at: <https://perma.cc/4Q6X-GAZC>.

Forcing Petitioner to undertake this hollow exercise would merely extend an unlawful detention in violation of the Constitution. Such a requirement would create an administrative loop in which the very remedy Respondents propose is defeated by the agency's own unlawful conduct. Second, there is no factual record to develop where the issue presented is a purely legal one: whether § 1225(b)(2)(A) or § 1226(a) governs Petitioner's detention. Resolving that question requires no factual development, and the BIA has no authority to reconsider *Yajure Hurtado* in the course of Mr. Salgado's bond appeal if he were to file one. Finally, insisting that Petitioner "use 'all steps that an agency holds out'" fails because there are, in fact, no steps to take. Resp., Doc. 5, p. 3. Respondents have foreclosed every administrative path. As a result, an appeal to the BIA offers no meaningful prospect of relief, and requiring administrative review "would be to demand a futile act." *Houghton v. Shafer*, 392 U.S. 639, 640 (1968).

Respondents go on to rely on excerpts taken out of their broader context from cases whose facts and holdings bear little relevance to Mr. Salgado's claim. The cases they cite involve Bureau of Prisons claims where an administrative remedy truly was available. Several of the cases Respondents cite involve disputes over sentencing credits – fact-specific issues that courts routinely conclude are better resolved by the agency. These cases have no bearing on Mr. Salgado's petition.

In the alternative, courts may waive exhaustion where using the administrative remedy would cause undue prejudice, including when there is "an unreasonable or indefinite timeframe for administrative action." *Gibson v. Berryhill*, 411 U.S. 564, 575, n. 14 (1973); *Coit Independence Joint Venture v. FSLIC*, 489 U.S. 561, 587 (1989).

Even assuming there was a remedy at the agency level, requiring that Mr. Salgado seek review before the BIA would cause undue prejudice, as such appeals can take months or even

years. Despite the profound liberty interest at stake, agency data shows that, on average, the BIA takes over six months to issue custody appeal decisions. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025) (“EOIR data show[s] an average processing time of 204 days for bond appeals in 2024.”). According to the same data, “200 bond appeal cases ‘took a year or longer to resolve.’” *Id.* This stands in sharp contrast to the federal pre-trial detention system, where the statute “provide[s] for immediate appellate review of the detention decision.” *United States v. Salerno*, 481 U.S. 739, 752 (1987).

The BIA’s delays underscore the undue prejudice that would result from requiring exhaustion. Mr. Salgado has already suffered harm for each day he remains in custody and separated from his wife and child. Indeed, “because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process.” *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (citation modified). But for this Court’s intervention, Mr. Salgado will continue to suffer prolonged detention, separated from his loved ones and community. For all these reasons, the Court should waive any exhaustion requirement.

b. Petitioner’s Detention Is Governed by § 1226(a), Not § 1225(b)(2).

Respondents’ new interpretation of the civil immigration detention statutes, as reflected in their Response, in the July 8, 2025 ICE Memo, and in *Matter of Yajure Hurtado* - the BIA’s precedential decision, contravenes the language and statutory framework of the INA. The Supreme Court left no ambiguity in *Jennings v. Rodriguez*: individuals “already in the country” and detained “pending the outcome of removal proceedings” fall squarely under 8 U.S.C. § 1226(a). 583 U.S. 281, 289 (2018). Mr. Salgado fits precisely within that category, making § 1226(a)’s bond authority directly applicable.

In contrast, 8 U.S.C. § 1225(b)(2)’s mandatory detention scheme applies “at the Nation’s

borders and ports of entry,” primarily to noncitizens “seeking to enter the country.” *Id.* at 287. As noted previously, courts across the country have uniformly rejected Respondents’ radical reinterpretation of the statute. *See* Pet., Doc. 1, pp. 8-9 (listing a sample of the cases).

i. § 1226(a) Clearly Applies to Petitioner, and to Hold Otherwise Would Render that Section Obsolete.

Mr. Salgado entered the United States without inspection or apprehension more than three decades ago. He did not present himself to an immigration officer for inspection at that time. He encountered Immigration and Customs Enforcement (“ICE”) for the first time when ICE detained him in September 2025 in Chicago, Illinois. He is now in removal proceedings in the Kansas City Immigration Court, where the IJ will ultimately render a decision either allowing him to remain in the U.S. or ordering him to leave.

Section 1226(a) provides that, for a noncitizen “arrested and detained pending a decision on whether [he] is to be removed,” the immigration courts may “continue to detain the arrested alien” or “may release the alien on – a bond...or conditional parole.” §§ 1226(a)(1)-(a)(2); *see also Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (“Section 1226(a) sets out the default rule: . . . [and] ‘[e]xcept as provided in [1226](c),’ the Attorney General ‘may release’ an alien detained under § 1226(a) ‘on . . . bond’ ‘or conditional parole.’”) (citations omitted). During a bond hearing pursuant to § 1226(a), the scope of inquiry is limited to whether the noncitizen is a danger to the community or a flight risk. *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006).

Exceptions to this “default rule” are laid out in § 1226(c), which provides certain criminal grounds that would subject a noncitizen to mandatory custody without bond. The text of § 1226(c) also explicitly applies to individuals charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E) – which was added to the statute by Congress in 2025 via the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) – lays

out exceptions to bond eligibility for those who are inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or 1182(a)(7), and who have engaged in certain delineated criminal activity. 8 U.S.C. § 1226(c)(1)(E). Relevantly, the Notice to Appear filed with the immigration court against Mr. Salgado alleges that he is either inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for being present without being admitted or paroled, and alternatively under 8 U.S.C. § 1182(a)(7)(A)(i)(I) for lacking proper entry documents.

By referencing individuals charged with inadmissibility under the same sections of the INA as Mr. Salgado, § 1226(c)(1)(E) makes clear that, by default, such inadmissible individuals who do not meet the criminal exceptions listed there are afforded a bond hearing under § 1226(a). See *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 257 59 (W.D. Wash. 2025) (stating the same) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Respondents’ attempt to argue otherwise “effectively removes § 1226 from existence.” *Maldonado Bautista*, 2025 WL 3289861, at *10.

ii. Attempting to Subject Petitioner to Detention under § 1225(b)(2) Is Contrary to the Plain Language of § 1225(b)(2) and Violates the Canon against Surplusage.

Under 8 U.S.C. § 1225(b)(2), “in the case 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, the alien shall be detained for a proceeding under section 1229a of this title.” (emphasis added).

After conducting an analysis of the relevant definitions provided in the INA, the court in *Maldonado Bautista* determined that Mr. Salgado and others similarly situated are not “applicants for admission” because that term “do[es] not include noncitizens already in the United States like Petitioners” who “were not determined inadmissible by an ‘examining immigration officer.’” 2025 WL 3289861, at *8-*9. Moreover, “admission” is defined in the INA as “the lawful entry of the

alien into the United States after inspection and authorization by an immigration officer,” 8 U.S.C. § 1101(a)(13)(A) – something that neither Mr. Salgado nor his parents attempted to do when entering the U.S. 33 years ago.

Even assuming, *arguendo*, that Mr. Salgado would qualify as an “applicant for admission,” § 1225(b)(2) does not apply to him because there are certain conditions precedent in the statute that are not satisfied here. Specifically, he is not at a port of entry “seeking admission,” nor has he been examined by an immigration officer who determined he is “not clearly and beyond a doubt entitled to be admitted.” This is language that contemplates the contemporaneous examination of someone trying to physically enter the country – not someone who has already been present in the United States for years. Had Congress meant for § 1225(b)(2) to apply to all noncitizens present without admission as Respondents suggest, they would not have added these additional criteria to that subsection.

Ignoring these additional requirements in § 1225(b)(2) would violate the canon against surplusage, yet that is precisely what Respondents are asking this Court to do in claiming that all noncitizens who are present without admission are somehow continuously seeking admission. Resp., Doc. 5, p. 12. “Seeking admission” is a distinct legal term referring to someone presenting themselves for inspection for lawful entry. *See* 8 U.S.C. § 1101(a)(13)(A) (definition of admission). There is nothing in the record to suggest Mr. Salgado presented himself for inspection and lawful entry when he entered this country. Yet Respondents ask this Court to write the phrase out of existence (along with § 1226) and conflate it with “applicant for admission.”

Respondents’ arguments also ignore simple construction of the English language. “Seeking admission” is a temporally limited phrase pointing to an affirmative act by the noncitizen – such as requesting entry at a port of entry – made at a specific instant in time. It is not an ongoing act

that Mr. Salgado could have been doing for the last 33 years.

Respondents hang their hat on the contention that the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 aimed at placing all noncitizens who were not lawfully admitted on equal footing in removal proceedings. Resp., Doc. 5, p. 6 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc)). But that goal had no relation to the detention statutes at bar here; it was about enabling Congress to merge two types of removal proceedings – those previously called “exclusion proceedings” with those previously called “deportation proceedings” – into one type of proceeding called “removal proceedings.” *See Torres*, 976 F.3d at 927-28.

By passing IIRIRA, Congress decidedly did *not* intend for those present in the U.S. without admission or inspection to suddenly be subjected to detention without the right to a bond hearing. Indeed, following the enactment of the IIRIRA, EOIR drafted new implementing regulations in which they explained that, in general, people who entered the country without inspection were not considered detained under § 1225 and were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”).

Thus, for decades, it has been Respondent EOIR’s practice to afford § 1226(a) custody hearings to those individuals who entered without inspection and were placed in standard removal proceedings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or

other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at the former § 1252(a)).

c. Petitioner’s Mandatory, Indefinite Civil Detention Grossly Violates Due Process.

While not addressed in Respondents’ response, Mr. Salgado’s detention without a bond hearing under 1226(a) to determine whether he is a flight risk or danger to others violates his right to due process. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Due process case law underscores Mr. Salgado’s significant interest in receiving a timely opportunity to test the legality of detention before a “neutral and detached magistrate.” *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975); *see also Zadvydas*, 533 U.S. at 690 (government must demonstrate that a person’s “detention . . . bears a reasonable relation” to a valid government purpose (citation modified)).

CONCLUSION

For all these reasons, Respondents’ opposition fails to provide any lawful justification for continuing to treat Petitioner as an applicant for admission detained under § 1225(b)(2). The statutory text, decades of uniform practice, persuasive federal court authority, and the Constitution all confirm that his detention must be governed by § 1226(a) and accompanied by a meaningful bond hearing. Because exhaustion of administrative remedies is impossible and would be futile and due process is being flagrantly violated, this Court is the only forum capable of providing relief. Petitioner therefore respectfully requests that the Court declare that his detention is governed by 8 U.S.C. § 1226(a), and either order his immediate release or, at a minimum, order that a § 1226(a) bond hearing be held before an immigration judge within seven days.

Respectfully submitted this 9th day of December 2025,

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CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2025, the foregoing document was electronically filed by using the CM/ECF System, which will send notification of such filing to the following ECF registrant:

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