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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 ROSALINDA AYRA LEANDRO,) Case No. 3:25-cv-10042-JD
12)
13 Petitioner,)
14 v.) **RETURN**
15)
16 SERGIO ALBARRAN, *et al.*,)
Respondents.)

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

19 **I. Factual Background**

20 On May 30, 2023, Petitioner Rosalinda Ayra Leandro, a native and citizen of Peru, entered the
21 United States without inspection, admission, or parole. Dkt. No. 11-2 at 2, 15. On the same day, U.S.
22 Department of Homeland Security (“DHS”) Customs and Border Protections (“CBP”) officers
23 encountered and apprehended her. Dkt. No. 1 at ¶ 55. CBP issued a Notice to Appear, charging
24 Petitioner with removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act
25 (“INA”) [8 U.S.C. § 1182(a)(6)(A)(i)], as an alien present without admission or parole, and released
26 Petitioner pending removal proceedings. Dkt. Nos. 1 at ¶ 55; 11-2 at 2. On November 20, 2025, DHS
27 counsel filed a motion in immigration court to pretermitt Petitioner’s protection applications. Dkt. No.
28

1 11-2 at 4. On that same day, Immigration and Customs Enforcement (“ICE”) detained Petitioner
2 pursuant to 8 U.S.C. § 1225(b)(2). Dkt. No. 1 at ¶ 10.

3 On November 20, 2025, ICE Enforcement and Removal Operations (“ERO”) released Petitioner
4 after the Honorable P. Casey Pitts, United States District Judge, issued a temporary restraining order
5 requiring her release. Dkt. Nos. 3, 6. Following additional briefing, this Court, on December 4, 2025,
6 granted a preliminary injunction requiring Petitioner’s continued release pending these proceedings.
7 Dkt. No. 13.

8 On January 5, 2026, the immigration judge granted DHS’s motion to pretermitt Petitioner’s
9 protection application and ordered her removed to Honduras, or Peru in the alternative. *See* Decl. of
10 Michael J. Starrett (“Starrett Decl.”), Exs. 1, 2. Petitioner appealed this decision and the appeal is
11 currently still pending before the Board of Immigration Appeals. *Id* at Ex. 3. Petitioner is still in removal
12 proceedings under 8 U.S.C. § 1229a. *See* 8 C.F.R. § 1241.1.

13 **II. Merits of The Petition.**

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

19 Consistent with the Respondents’ arguments in opposition to Petitioner’s motion for a
20 preliminary injunction, which Respondents incorporate here, the government’s position is that Petitioner
21 is subject to mandatory detention under § 1225(b)(2) because she is an applicant for admission who is
22 present in the United States without being admitted or paroled. *See Matter of Yajure Hurtado*, 29 I. & N.
23 Dec. 216, 228 (BIA 2025). Respondents acknowledge that this Court reached the opposite conclusion in
24 its order granting Petitioner’s motion for preliminary injunction (Dkt. No. 13). Respondents also
25 acknowledge that this Court adopted similar reasoning in granting a preliminary injunction in
26 *Hinestroza v. Albarran*, No. 25-CV-07559-JD, 2025 WL 3090767, at *1 (N.D. Cal. Nov. 5, 2025). The
27 majority of the district courts addressing this issue, including “[e]very court in this district to have
28 considered these questions,” have similarly rejected Respondents’ position. *See, e.g., Bautista Pico v.*

1 *Noem*, No. 25-cv-08002-JST, 2025 WL 3295382, at *2 (N.D. Cal. Nov. 26, 2025), *appeal docketed*, No.
2 26-459 (9th Cir. Jan. 22, 2026); *Otero on behalf of Caicedo-Ruiz v. Kaiser*, No. 25-cv-06536-NC, 2025
3 WL 3301056 (N.D. Cal. Nov. 26, 2025).¹

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

16 The Fifth Circuit recently addressed the same issue of statutory interpretation presented here and
17 issued a published decision agreeing with Respondents’ interpretation of 8 U.S.C. § 1225(b)(2). *See*
18 *Buenrostro-Mendez v. Bondi*, ---F.4th---, 2026 WL 323330 (5th Cir. Feb. 6, 2026). The Fifth Circuit
19 held that aliens, like Petitioner, who are deemed to be “applicants for admission” under 8 U.S.C.
20 § 1225(a)(1) are “seeking admission” and so are subject to detention under § 1225(b)(2)(A). *Id.* at *1-
21 10. The panel’s reasoning generally aligned with Respondents’ arguments made on this issue,
22 specifically in holding that: “the government’s interpretation does not render portions of § 1226
23

24 ¹ The government also acknowledges that two district courts within the Ninth Circuit have
25 recently vacated or stayed the Department of Homeland Security’s July 8, 2025 “Interim Guidance
26 Regarding Detention Authority for Applicants for Admission,” which takes the position that all
27 applicants for admission within the meaning of 8 U.S.C. 1225(a) are subject to mandatory detention
28 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, Dkt. No. 98.

1 superfluous” because § 1226 “undeniably does work independent from § 1225(b)(2)(A),” *id.* at *7;
2 “[t]he everyday meaning of the statute’s terms confirms that being an ‘applicant for admission’ is not a
3 condition independent from ‘seeking admission’”, *id.* at *4; “the government’s interpretation better
4 honors [the] predominant goal in the enactment of IIRIRA”, *id.* at *9; and “[r]egardless of the
5 government’s past practice and regardless of Congress’s silence on § 1225(b)(2)(A), the text controls”,
6 *id.* at *8.²

7 As for the Ninth Circuit, there is currently an appeal pending on this issue. Briefing was
8 completed in *Rodriguez Vasquez v. Bostock*, on February 3, 2026. *See Rodriguez Vasquez v. Bostock, et*
9 *al.*, No. 25-6842, Dkt. Nos. 5, 51 (9th Cir.). The case raises similar issues regarding whether the
10 petitioner’s detention is governed by 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b), and will be considered
11 on an expedited schedule with oral argument set for March 4, 2026. *See id.* Dkt. No. 18. Respondents
12 respectfully request leave to provide additional briefing regarding the impact of any decision in
13 *Rodriguez Vasquez* once it is issued. *See Valencia Zapata v. Kaiser, et al.*, No. 25-cv-7492-RFL, Dkt.
14 No. 30 (N.D. Cal. Jan. 15, 2026) (“[T]he Ninth’s Circuit’s decision in *Rodriguez Vasquez* may provide
15 clarity regarding the difficult legal questions raised in Petitioners’ habeas petitions.”).

16 Until this appeal is resolved, however, Respondents acknowledge that the reasoning in this
17 Court’s earlier decision in this case and in *Hinestroza v. Albarran* would control the result here if the
18 Court adheres to that decision, as the facts are not materially distinguishable for purposes of the Court’s
19 decision on the legal issue of which statutory provision authorizes Petitioner’s detention. Thus, while
20 Respondents do not consent to issuance of the writ and reserve all rights, including the right to appeal,
21 Respondents hereby rely upon, and incorporate by reference, the legal arguments it presented in
22 opposition to Petitioner’s motion for preliminary injunction, *see* Dkt. No. 10, as well as the legal
23 arguments the government presented to the Ninth Circuit in *Rodriguez Vasquez*, and respectfully
24 submits that the Court can decide the issue without further briefing. However, should the Court prefer to
25 receive a formal return in this matter, Respondents will file such a brief upon the Court’s request.

27 ² The government recognizes that the Seventh Circuit, on a motion for a stay pending appeal,
28 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)).

1 **III. Requested Relief.**

2 Respondents respectfully submit that any ruling on this habeas petition must allow for re-
3 detention upon a final administrative removal order. Petitioner's habeas petition asks this Court
4 categorically to enjoin her re-detention without a pre-detention hearing before a neutral arbiter. *See*
5 *generally* Dkt. No. 1. But any indefinite injunction would interfere with Respondents' ability to execute
6 a valid order of removal and would both exceed the Court's jurisdiction and contravene the Supreme
7 Court's unambiguous holding in *Zadvydas v. Davis* that mandatory detention without a bond hearing
8 during the removal period is constitutionally permitted.

9 Petitioner's immigration proceedings will continue even after the Court rules on her habeas
10 petition. At some point, Petitioner may be subject to a final order of removal. Assuming Petitioner
11 becomes subject to a final order of removal, her detention is mandatory under the INA. *See* 8 U.S.C.
12 § 1231(a)(2)(A) ("During the removal period, the Attorney General shall detain the alien. Under no
13 circumstance during the removal period shall the Attorney General release an alien who has been found
14 inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section
15 1227(a)(2) or 1227(a)(4)(B) of this title"). The Supreme Court has upheld the constitutionality of both
16 the mandatory 90-day detention during the removal period and the presumptively reasonable six-month
17 discretionary detention period following the removal period, both without the requirements of any bond
18 hearing. *See Zadvydas*, 533 U.S. at 701. Thus, if Petitioner becomes subject to a future final order of
19 removal, her detention will be both constitutionally permissible and statutorily required. Any ruling by
20 this Court, therefore, must allow for the detention of Petitioner to execute a final removal order. *See*
21 *Aguilar Garcia v. Kaiser*, No. 3:25-cv-05070-JSC, 2025 WL 2998169, at *4 (N.D. Cal. Oct. 24, 2025)
22 (denying motion for preliminary injunction in petition seeking pre-detention hearing after petitioner's
23 detention authority shifted to § 1231(a)(2)).

24 DATED: February 19, 2026

Respectfully submitted,

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27 /s/ Michael J. Starrett
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