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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ROSALINDA AYRA LEANDRO, Petitioner, v. SERGIO ALBARRAN, *et al.*, Respondents.	Case No. 3:25-cv-10042-JD **RETURN**

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

I. Factual Background

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

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

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

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

II. Merits of The Petition.

The legal issues presented in this Petition concern the statutory authority for ICE's 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. 13). Respondents also acknowledge that this Court adopted similar reasoning in granting a preliminary injunction in *Hinestroza v. Albarran*, No. 25-CV-07559-JD, 2025 WL 3090767, at *1 (N.D. Cal. Nov. 5, 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 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 deemed to be "applicants for admission" under 8 U.S.C. § 1225(a)(1) are "seeking admission" and so are subject to detention under § 1225(b)(2)(A). *Id.* at *1-10. The panel's reasoning generally aligned with Respondents' arguments made on this issue, specifically in holding that: "the government's interpretation does not render portions of § 1226

[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, Dkt. No. 98.

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]

As for the Ninth Circuit, there is currently an appeal pending on this issue. Briefing was completed in *Rodriguez Vasquez v. Bostock*, on February 3, 2026. *See Rodriguez Vasquez v. Bostock, et al.*, No. 25-6842, Dkt. Nos. 5, 51 (9th Cir.). The case raises similar issues regarding whether the petitioner's detention is governed by 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b), and will be considered on an expedited schedule with oral argument set for March 4, 2026. *See id.* Dkt. No. 18. Respondents respectfully request leave to provide additional briefing regarding the impact of any decision in *Rodriguez Vasquez* once it is issued. *See Valencia Zapata v. Kaiser, et al.*, No. 25-cv-7492-RFL, Dkt. 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 *Hinestroza v. Albarran* 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 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 submits 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.

[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)).

III. Requested Relief.

Respondents respectfully submit that any ruling on this habeas petition must allow for re-detention upon a final administrative removal order. Petitioner's habeas petition asks this Court categorically to enjoin her re-detention without a pre-detention hearing before a neutral arbiter. *See generally* Dkt. No. 1. But 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* 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)).

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Respectfully submitted,

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