TIMOTHY COURCHAINE
United States Attorney
District of Arizona
THEO NICKERSON
Assistant United State Attorney
Connecticut State Bar No. 429356
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Facsimile: (602) 514-7760
E-Mail: Theo.Nickerson2@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Erick Danilo Aldana Sanabria, et al. Petitioners, v. Luis Rosa, Jr., et al., Respondents.	No. CV-25-04439-PHX-JJT (ASB) **RESPONSE TO ORDER TO SHOW CAUSE AND TO THE PETITION FOR WRIT OF HABEAS CORPUS**

Respondents Luis Rosa, Jr., Warden, Central Arizona Florence Correction Center ("CAFCC"); Justin Smith, Assistant Field Office Director, Florence Service Processing Center ("FSPC"), Unknown Party, Phoenix Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"); Todd M. Lyons, Acting Director of ICE; Kristi Noem, Secretary of Homeland Security ("DHS"), by and through undersigned counsel, hereby respond to the Court's Order to Show Cause (Doc. 7) and hence to the Petition for Writ of Habeas Corpus (Doc. 1).

I. INTRODUCTION.

Before 1996, the federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA") specifically to stop

conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry.

As relevant here, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any alien "who is an applicant for admission" and defines that term to encompass any "alien present in the United States who has not been admitted" following inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes no exception for how far into the country the alien traveled or how long the alien managed to evade detection. Unless the Secretary exercises the narrow and discretionary parole authority, mandatory detention is the statutory rule for aliens who have never been lawfully admitted. Petitioners are all an "applicant for admission" under Section 1225(a). That provision specifically provides that any "alien present in the United States who has not been admitted … shall be deemed for purposes of this chapter an applicant for admission." § 1225(a)(1). Because Petitioner entered the country without inspection, however, he was never "admitted" and thus unambiguously remains an "applicant for admission" who is subject to mandatory detention.

II. STATUTORY FRAMEWORK.

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Unlawfully Present in the United States.

The Immigration and Nationality Act ("INA"), as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and

whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA's prior framework distinguishing between aliens based on physical "entry" had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection ... were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y Gen. of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

B. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully Present in the United States and Mandated Detention of all "Applicants for Admission."

Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in

the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "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) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed … an applicant for admission":

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added). "All aliens … who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited "Section 240" proceedings—and mandated that

applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called "expedited removal proceedings," *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens—those who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum … or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

> Subject to subparagraphs (B) and (C), 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 [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added).[1] *See* 8 C.F.R. § 235.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section

[1] Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewmen, (3) stowaways, or (4) aliens who "arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States." 8 U.S.C. § 1225(b)(2)(B)-(C).

1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as admission of the alien." *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole … been served," the "alien shall … be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." *See* 8 U.S.C. § 1182(d)(5)(A).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas, or are later determined to have been improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).[2]

That "default rule," however, does not apply to certain criminal aliens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must

[2] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

detain these aliens "when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.*

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are "charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

III. FACTUAL BACKGROUND.

Petitioner Erick Aldana Sanabria, a native and citizen of Guatemala, entered the United States without admission, inspection, or parole on May 2, 2021, near Eagle Pass, Texas. Doc. 1 ¶ 25. On September 2, 2025, Petitioner Sanabria was detained by ICE and issued a Notice to Appear in removal proceedings charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without admission, inspection or parole. *Id.* ¶ 31. On October 29, 2025, Petitioner had a bond hearing before an immigration judge. *Id.* ¶ 30. The immigration judge found that she lacked jurisdiction to grant bond under *Matter of Yajure Hurtado*, a precedential Board of Immigration Appeals ("BIA") decision which held that aliens, like Petitioner, who enter without admission, inspection or parole are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Id.*; *see Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Notably, however, the immigration judge made an alternative finding that if she did not lack jurisdiction, she would grant bond in the amount of $7,500. *Id.*

Petitioner Eduardo Reyes Macias is a native and citizen of Mexico, who entered the United States without admission, inspection or parole in 2006. Doc. 1 ¶ 32. ICE detained Petitioner Macias on October 20, 2025. *Id.* ¶ 33. Initially, he was detained at the Northwest ICE Processing Center in Tacoma, Washington, before being transferred to CAFCC. *Id.*

Petitioner Lorenzo Comacho Rodriguez is a native and citizen of Mexico who entered the United States without being admitted, inspected or paroled, in 2004. Doc. 1 ¶ 35. ICE detained Petitioner Rodriguez on October 22, 2025, in Tacoma, Washington and later transferred him to CAFCC. *Id.* ¶ 40.

IV. ARGUMENT

A. Under the plain text of § 1225, Petitioners must be detained pending the outcome of removal proceedings.

The Court should reject Petitioners' argument that § 1226(a) governs their detention instead of § 1225. When there is "an irreconcilable conflict in two legal provisions," then "the specific governs over the general." *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1015 (9th Cir. 2017). Section 1226(a) applies to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). In contrast, § 1225 is narrower. *See* 8 U.S.C. § 1225. It applies only to "applicants for admission"; that is, as relevant here, aliens present in the United States who have not be admitted. *Id.*; *see also Fla. v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023), *appeal dismissed,* No. 23-11528, 2023 WL 5212561 (11th Cir. July 11, 2023). Because Petitioner falls within that category, the specific detention authority under § 1225 governs over the general authority found at § 1226(a).

Under 8 U.S.C. § 1225(a), an "applicant for admission" is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings*, 583 U.S. at 287. Section 1225(b)(2)—the provision relevant here—is the "broader" of the two. *Id.* It "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here)." *Id.* And section 1225(b)(2) mandates detention. *Id.* at 297; *see also* 8 U.S.C. § 1225(b)(2); *Matter of Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) ("[A]n applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).").

Section 1225(b) therefore applies because Petitioner is present in the United States without being admitted.

The BIA has long recognized that "many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012). Statutory language "is known by the company it keeps." *Marquez-Reyes v. Garland*, 36 F.4th 1195, 1202 (9th Cir. 2022) (quoting *McDonnell v. United States*, 579 U.S. 550, 569 (2016)). The phrase "seeking admission" in § 1225(b)(2)(A) must be read in the context of the definition of "applicant for admission" in § 1225(a)(1). Applicants for admission are both those individuals present without admission and those who arrive in the United States. *See* 8 U.S.C. § 1225(a)(1). Both are understood to be "seeking admission" under §1225(a)(1). *See Lemus-Losa*, 25 I. & N. Dec. at 743. Congress made that clear in § 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive–a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013).

One of the most basic interpretative canons instructs that a "statute should be construed so that effect is given to all its provisions." *See Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up). The court's decision in *Florida v. United States* is instructive here. The district court held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either section 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court held that such discretion "would render mandatory detention under § 1225(b) meaningless. Indeed, the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit." *Id.* The court pointed to *Demore v. Kim*, 538 U.S. 510, 518 (2003), in which the Supreme Court explained that "wholesale failure" by the federal government motivated the 1996 amendments to the INA. *Florida*, 660

F. Supp. 3d at 1275. The court also relied on, *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019), in which the Attorney General explained "section [1225] (under which detention is mandatory) and section [1226(a)] (under which detention is permissive) can be reconciled only if they apply to different classes of aliens." *Florida*, 660 F. Supp. 3d at 1275. Petitioners, present in the United States without being admitted, are applicant for admission and therefore subject to mandatory detention without bond under 8 U.S.C. § 1225(b).

B. Congress did not intend to treat individuals who unlawfully enter the United States better than those who appear at a port of entry.

When the plain text of a statute is clear, "that meaning is controlling" and courts "need not examine legislative history." *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011). But to the extent legislative history is relevant here, nothing "refutes the plain language" of § 1225. *Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726, 730 (9th Cir. 2011). Congress passed IIRIRA to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Torres*, 976 F.3d at 928. The Court should reject the Petitioner's interpretation because it would put aliens who "crossed the border unlawfully" in a better position than those "who present themselves for inspection at a port of entry." *Id.* Aliens who presented at port of entry would be subject to mandatory detention under § 1225, but those who crossed illegally would be eligible for a bond under § 1226(a).

The Board of Immigration Appeals recognized this issue in *Matter of Yajure Hurtado*. In its decision, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I. & N. Dec. at 220. The BIA concluded that aliens "who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an 'admission.'" *Id.* at 228. To hold otherwise would lead to an "incongruous result" that rewards aliens who

unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original). The BIA's decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C. § 1225(b)(2), but also with the Supreme Court's 2018 decision in *Jennings* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303 (explaining that "the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." 27 I. & N. Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission and placed into expedited removal proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. *Id.* at 518-19. In *Matter of Li*, the BIA held that an alien who illegally crossed into the United States and was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29 I. & N. Dec. at 71. This ongoing evolution of the law makes clear that all applicants for admission are subject to mandatory detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida*, 660 F. Supp. 3d at 1275 (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever

the agency saw fit"). *Florida's* conclusion "that § 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . this conclusion flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

C. The Government's Position.

The government acknowledges that this Court has explicitly rejected its legal position that aliens who enter without admission, inspection or parole and are charged as removable under 8 U.S.C. § 1182(a)(6)(A)(i) are applicants for admission under 8 U.S.C. § 1225(a)(1), who are therefore subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A), regardless of how long ago they entered. *Echevarria v. Bondi*, et al., No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025). The government also acknowledges a Massachusetts federal district court decision which is now on appeal to the First Circuit rejecting its legal position. *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. Jul. 24, 2025), appeal pending, No. 25-1902 (1st Cir.).

Respondents nonetheless apprise the Court of at least some federal courts that have joined what the government acknowledges is a minority position on whether § 1225 applies to persons in Petitioner's position rather than § 1226. *Vargas Lopez v. Trump*, --- F. Supp. 3d ---, 2025 WL 2780351, at *9 (D. Neb. Sept. 30, 2025) (finding alien properly detained under § 1225(b)(2) because he was present in United States without having been admitted, and thus an applicant for admission under § 1225(a)); *Chavez v. Noem*,--- F. Supp. 3d ---, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025) (same); *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) (same); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (upholding detention under § 1225(b)(2) of alien "present in the country but [who] has not yet been lawfully granted admission").

Accordingly, the government maintains and preserves its legal position that Petitioner is properly subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See also Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-*

Robledo v. Noem, 1:25-cv-00177 (N.D. Tex. 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

D. *Rodriguez v. Bostock* and *Bautista v. Noem* do not preclude the Government's legal position.

i. *Rodriguez v. Bostock.*

In *Rodriguez v. Bostock*, the District Court for the District of Washington addressed a class action lawsuit specifically challenging the Tacoma Immigration Court's policy of finding noncitizens who have entered the country without being admitted, inspected or paroled, subject to mandatory detention under 8 U.S.C. § 1225(b)(2), despite the fact that they may have lived in the United States for several years. The lawsuit also challenged the prolonged delays that the named plaintiff and other noncitizens face when appealing an immigration judge's decision denying release on bond to the BIA.

On May 2, 2025, the *Rodriguez* Court granted class certification to a Bond Denial Class comprised of all individuals detained at the Northwest ICE Processing Center and a Bond Appeal Class of all detained noncitizens who have or will have a pending bond appeal before the BIA. On September 30, 2025, the Court granted the Bond Denial Class's motion for summary judgment and held that class members are detained under 8 U.S.C. § 1226(a) and are therefore entitled to consideration for release on bond. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *2 (W.D. Wash. Sept. 30, 2025). This case is now on appeal to the Ninth Circuit. *See Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir.).

Petitioners are not part of the *Rodriguez* class because they are no longer in proceedings before the Tacoma Immigration Court or detained at the Northwest ICE Processing Center as required to be a class member. If, however, the Court were to find that Petitioners were *Rodriguez* class members, the habeas petition should be dismissed to the extent their claims are bound up and already being considered in the *Rodriguez* litigation. Indeed, as part of district courts' discretion to administer their dockets, courts have

dismissed, without prejudice, suits brought by individuals whose claims are duplicative of class claims in other litigation. *See, e.g., Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case, discussing prior stay of Fifth Amendment challenge pending completion of pending class action); *Herrera v. Birkholz*, No. 22-cv-07784-RSWL-JDE, 2022 WL 18396018, at *4-6 (C.D. Cal. Dec. 1, 2022), *report and recommendation adopted*, 2023 WL 319917 (C.D. Cal. Jan. 18, 2023) (dismissing habeas case brought by federal prisoner related to COVID-19 measures reasoning that petitioner's claims were based, in part, on a duplicative class action and were "not properly before the court.").

Further, multiple courts of appeals have upheld dismissals of cases where parallel class actions raise the same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979) (holding that a district court may dismiss "those portions of [the] complaint which duplicate the [class action's] allegations and prayer for relief"); *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that individual suits for injunctive and declaratory relief cannot be brought where a class action with the same claims exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class action has been certified, "[s]eparate individual suits may not be maintained for equitable relief"); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) ("If a class member cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified").

ii. *Bautista v. Santacruz.*

In *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *1 (C.D. Cal. Nov. 25, 2025), the Court certified a class in a case which raised the issue of whether aliens who enter the United States without admission, inspection or parole are "applicants for admission" as defined by 8 U.S.C. § 1225(a)(1) and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) or whether they are detained under 8 U.S.C. § 1226(a). The Court also granted partial summary judgment in favor of Plaintiffs in *Bautista*. *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *1 (C.D. Cal. Nov. 20, 2025).

Critically, however, neither of the Court's orders in *Bautisa* entered any declaratory judgment as to the certified class or otherwise provided for class-wide relief. *See Bautista*, 2025 WL 3289861, at *1 (granting motion for partial summary judgment but expressly not ordering any relief); *see also Bautista*, 2025 WL 3288403, at *1 (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 a status conference). 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 Bautista*, 2025 WL 3289861, at *1. 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. *Bautista*, 2025 WL 3288403, at *1.

Absent an entry of final judgment on the entire case, or a certification of partial final judgment under Rule 54(b), there is no declaratory judgment. The partial summary judgment ruling does not operate as a "judgment" because it is not an appealable order and "does 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 class-wide judgment, let alone any final judgment that could have preclusive effect as to class members.

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). *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 (9th Cir. 2005). And preclusive effect cannot be obtained without sufficient 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").

In short, the Court in *Bautista* expressly declined to enter a class-wide judgment. As such, there is currently no declaratory relief, let alone relief with preclusive effect on *Bautista* class members' claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision. *Bautista* therefore does not preclude the government's position in this matter.

V. CONCLUSION.

To sum up, Respondents respectfully request the Court deny the Petition for Writ of Habeas Corpus because the Petitioners are properly subject to mandatory detention under section 1225(b)(2)(A). If this Court finds that either class action litigation in *Bautista* or *Rodriguez* forecloses this legal position, the Court should dismiss the petition to allow Petitioners to pursue their rights under these class action lawsuits.

If the Court grants the Petition, the Court should order that Petitioners be given a bond hearing, rather than immediate release. With respect to Petitioner Sanabria, the Court should order ICE to give effect to the immigration judge's alternative bond order setting a bond amount of $7500, rather than requiring a new bond hearing.

Respectfully submitted this 6th day of December, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/ Theo Nickerson
THEO NICKERSON
Assistant United States Attorney
Attorneys for Respondents