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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Maria Guadalupe Hernandez Santiago, Petitioner, v. Pamela Bondi, et al., Respondents.	No. 2:25-cv-04584-JTT--JZV **RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Respondents Pamela Bondi, Attorney General of the United States; John Cantu, Phoenix Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"); Kristi Noem, Secretary of Homeland Security ("DHS"); Fred Figueroa, Warden, Eloy Detention Center; and Todd Lyons, Acting Director of ICE ("Respondents"), by and through undersigned counsel, hereby respond in opposition 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 rule for aliens who have never been lawfully admitted.

The Petition asserts four causes of action challenging Petitioner's detention: 1) that her detention under 8 U.S.C. § 1225(b)(2)(A) violates the law; 2) that Respondents' application of 8 U.S.C. § 1225(b)(2)(A) to Petitioner violates the Administrative Procedures Act; and 3) that Petitioner's detention violates the Suspension Clause; and 4) that Petitioner's detention is a state-created danger that violates her Fifth Amendment due process rights. The Petition should be stayed or denied for the reasons set forth below.

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 hearing 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." 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 is a citizen of Mexico. Ex. 1, Declaration of David Sandoval at ¶ 4. In 2006, Petitioner was granted a voluntary return to Mexico. Ex. 1 at ¶ 5. In 2018, Petitioner was encountered by ICE at the Maricopa County Jail following her arrest for forgery. Ex. 1 at ¶ 5. She was released from ICE custody shortly thereafter and was subsequently convicted of criminal possession of a forgery device. Ex. 1 at ¶¶ 7, 8. On November 5, 2025, Petitioner was arrested by ICE and issued a Notice to Appear charging her with being inadmissible as an alien present in the United States without having been admitted or paroled and for not possessing a valid visa at the time of her application for admission. Ex. 1 at ¶¶ 9, 11. Petitioner's removal hearing was set for December 15, 2025. Ex. 1 at ¶ 13.

IV. ARGUMENT

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

The Court should reject Petitioner's argument that § 1226(a) governs her 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 § 1225(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. Petitioner, present in the United States without being admitted, is an applicant for admission and is 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 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 . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

C. The Court should not follow the decision in *Echevarria*.

Respondents are aware of this Court's prior decision rejecting Respondents' position, *see Echevarria v. Bondi*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), but respectfully maintain that Petitioner falls within the definition of an "arriving alien" warranting mandatory detention as the removal process unfolds. Respondents also respectfully maintain that an alien is an "applicant for admission" until an immigration

official has inspected that person and determined that he or she is admissible into the United States.[3]

In *Echevarria*, this Court determined that the phrase "alien seeking admission" in 8 U.S.C. § 1225(b)(2)(A) implies a present-tense nature to the desire for admission, such that an alien who is already present in the United States cannot be "seeking admission":

> The word "seeking" is the present participle of the verb "seek." It thus has a temporal element—Petitioner must have been in the process of seeking admission at the time of the inspection.
>
> It is hard to see how Petitioner could be deemed to have been "seeking" admission at the time of the encounter on July 2, 2025. By that point, Petitioner had already been present in the United States for 24 years, having arrived and entered in 2001. Moreover, under Respondents' interpretation of § 1225(a)(1), Petitioner became an "applicant for admission" in 2001, upon his arrival and entry. Implicit in Respondents' position, then, is that Petitioner somehow existed in a perpetual state of "seeking" admission during the 24-year period between when he first became an "applicant for admission" in 2001, by virtue of his entry into the country, and when he was encountered and inspected by an immigration officer in 2025.

Echevarria, 2025 WL 2821282, at *6 (internal citations omitted).

However, this analysis fails to consider other pieces of statutory context. Respondents respectfully argue that the phrase "applicants for admission" carves out a subset of those who are "seeking admission." For example, elsewhere in section 1225, the statute says that "[a]ll aliens who are applicants for admission *or otherwise seeking admission* or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). In other words, 8 U.S.C. § 1225(a)(3) shows that an alien may be "seeking admission" either by being an "applicant for admission," or in some different way. As discussed earlier, the phrase "applicant for admission" unambiguously includes aliens who have already entered the United States. "In all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning." *See Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (referring to *Ratzlaf*

[3] Respondents notify the Court of the Government's affirmative appeal in *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir. Oct. 29, 2025), which addresses this issue. The Government's opening brief in that case is due on December 21, 2025.

v. *United States*, 510 U.S. 135, 143 (1994)). "We therefore avoid interpretations that would 'attribute different meanings to the same phrase.'" *Id.* (quoting *Reno* v. *Bossier Par. Sch. Bd.*, 528 U. S. 320, 329 (2000)). Thus, the *Echevarria* decision is not supported by the text of the statute, and Respondents respectfully request the Court reach a different result in this case.

Furthermore, Respondents direct the Court's attention to a decision issued on September 30, 2025, in the United States District Court for the District of Nebraska: *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In that case, the court denied a similar habeas petition brought by an alien who entered the United States in 2013, and held that the petitioner was properly detained under § 1225(b)(2) as an alien within the "catchall" scope of § 1225(b)(2) subject to detention without possibility of release on bond through § 1229a removal proceedings. 2025 WL 2780351, at *6-9. The court noted that illegally remaining in the country for years did not mean the petitioner, who "wish[ed] to stay in this country," was suddenly not an "applicant for admission." *Id.* at *9. Additionally, "even if Vargas Lopez might fall within the scope of § 1226(a), he certainly fits within the language of § 1225(b)(2) as well." *Id.*

The *Vargas Lopez* decision also noted the "overlapping relationship between § 1225(b) and § 1226(a) is not only consistent with the plain language of the two provisions but consistent with the interpretation of the two provisions under *Jennings*." *Id.* The court determined that § 1226 does not contain language limiting its application "to aliens already present in the United States." *Id.* (comparing *Jennings*' statements that United States immigration law "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)[,]" and that "§ 1226 applies to aliens already present in the United States[,]" 583 U.S. at 289 (first quote) and 303 (second quote), *with* 8 U.S.C. § 1226(a) (containing no reference to aliens "present" or "already present" in the United States) and 8 U.S.C. § 1226(c) (containing no reference to "criminal aliens" "present" or "already present" in the United States). The court determined that "references to 'aliens' in § 1226 must be read to mean 'alien[s] present in the United States who ha[ve] not been admitted' within the meaning of § 1225(a)(1) and within at least

the 'catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) in § 1225(b)(2)." 2025 WL2780351, at * 9 (citing *Jennings*, 583 U.S. at 287).

The Southern District of California also denied a temporary restraining order sought by an alien who was detained under § 1225(b)(2) despite having been surreptitiously present in the United States for years. *See Chavez v. Noem*, --F. Supp. 3d --, No. 3:25-cv-02325-CAB, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed sub nom. Sixtos Chavez v. Noem*, No. 25-7077 (9th Cir. Nov. 7, 2025). The court noted, among other arguments, that "Section 1225(a)(1) expressly defines that '[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this Act *an applicant for admission.*'" *Id.* at *4 (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). The court reasoned that, "Petitioners do not contest that they are 'alien[s] present in the United States who ha[ve]not been admitted.' By the plain language of § 1225(a)(1), then, Petitioners are 'applicants for admission' and thus subject to the mandatory detention provisions of 'applicants for admission' under § 1225(b)(2)." *Id.* (cleaned up). *See also Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967 (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 (E.D. Cal. Nov. 17, 2025); *Valencia v. Chestnut*, -- F. Supp. 3d --, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Hernandez Cruz v. Noem*, No. 8:25-cv-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025).

D. Impact of *Maldonado Bautista*.

In the Order to Show Cause (Doc. 6), the Court directed Respondents to address whether Petitioner is a member of the class certified in *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) (the "Class Certification Ruling"), and if so, whether they are obligated to provide

him a bond hearing based on the orders entered in that case or whether an additional order from this Court is required to entitle Petitioner to a bond hearing. Doc. 6 at 1-2.

1. Class-wide relief has not been ordered.

On November 20, 2025, Judge Sunshine Sykes of the United States District Court for the Central District of California granted partial summary judgment in favor of the four individual petitioners in the *Maldonado Bautista* case finding that the "Interim Guidance Regarding Detention Authority for Applicants for Admission" instituted by the Department of Homeland Security on July 8, 2025, was unlawful, but declining to enter final judgment. *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) (the "Partial MSJ Ruling") ("Consistent with the discussion above, Petitioners' Motion for Partial Summary Judgment is GRANTED. The Court further DENIES Petitioners' Request to enter final judgment." (internal citations to docket omitted) (emphasis removed)).

In the Class Certification Ruling that followed, Judge Sykes certified a class entitled "Bond Eligible Class" which is defined as "[a]ll 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." 2025 WL 3288403, at *9. Respondents aver that Petitioner is a member of Bond Eligible Class certified in *Maldonado Bautista*.

Neither the Partial MSJ Ruling nor the Class Certification Ruling entered declaratory judgment as to the nationwide class or otherwise provided for class-wide relief. *See* 2025 WL 3289861, at * 11 (granting motion for partial summary judgment but expressly not ordering any relief) and 2025 WL 3288403, at *9-10 (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). In the Partial MSJ Ruling, the court also expressly declined to enter final judgment as to the claims at issue in the motion under Federal Rule of Civil Procedure 54(b).

2025 WL 3289861, at * 11. Rather, in the Class Certification Order, 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. 2025 WL 3288403, at *10.

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"); Restatement (Second) of Judgments § 28, p. 273 (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.").

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 MSJ 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. In short, there is currently no declaratory relief, let alone relief with preclusive effect on the *Maldonado Bautista* class members' claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention

provision. As such, Respondents are not obligated to provide Respondent with a bond hearing based on the orders issued in *Maldonado Bautista*. If this Court orders Respondents to provide Petitioner with a bond hearing before an immigration judge, they will do so.

2. This action should be dismissed or stayed pending an order granting class-wide relief in *Maldonado Bautista*.

Because the class certified in *Maldonado Bautista* was certified pursuant to Fed. R. Civ. P. 23(b)(2), it is a non-opt out class. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011) (stating that Rule 23 "provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even oblige the [d]istrict [c]ourt to afford them notice of the action"); *Sanderson v. Whoop, Inc.*, No. 3:23-CV-05477-CRB, 2025 WL 744036, at *15 (N.D. Cal. Mar. 7, 2025) (noting that "23(b)(2) class members have no opportunity to opt out"). Members of a class certified under Fed. R. Civ. P. 23(b)(2) may not bring individual suits challenging the same issues that are the subject of the class action. *See, e.g.*, *Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979) (holding that district court did not error by dismissing portions of inmate complaint that duplicated pending non-opt out class action's allegations and prayer for relief); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (affirming district court's dismissal of individual suits by Texas prisoners seeking injunctive relief and declaratory judgment regarding conditions of confinement that were the subject of ongoing non-opt out class litigation); *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991) ("Individual suits for injunctive and equitable relief from alleged unconstitutional prison conditions cannot be brought where there is an existing class action."); *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"); *Stewart v. Asuncion*, No. CV 16-5872 JFW (AJW), 2016 WL 8735720, at *2 (C.D. Cal. Oct. 26, 2016) (same) (collecting cases).

Since Petitioner will be entitled to and bound by the relief ultimately granted by the court in *Maldonado Bautista*, this parallel action—which is entirely duplicative of the claims asserted in and the relief requested in *Maldonado Bautista*—this Court should decline to

consider the Petition for two reasons. First, a court may "decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district." *Pacesetter Sys. v. Medtronic*, 678 F.2d 93, 95 (9th Cir. 1982) (citing *Church of Scientology of Cal. v. United States Dep't of the Army*, 611 F.2d 738, 749 (9th Cir. 1979)). "Normally sound judicial administration would indicate that when two identical actions are filed in courts of concurrent jurisdiction, the court which first acquired jurisdiction should try the lawsuit and no purpose would be served by proceeding with a second action." *Id.* Although the first-in-time rule is permissive, not mandatory, it "should not be disregarded lightly." *Id.* (quoting *Church of Scientology*, 678 F.2d at 750). Here, principles of comity and efficiency strongly suggest that the Court should dismiss the Petition or stay this action pending further proceedings in *Maldonado Bautista* given that Petitioner is a class member. Second, 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."). To do otherwise would undermine what Fed. R. Civ. P. 23 was intended to ensure: consistency of treatment for similarly situated individuals and could threaten the certification of the *Maldonado Bautista* class by creating differences among the class members. Petitioner should seek relief within the class action. *See Gillespie*, 858 F.2d at 1165 ("Individual members of the class . . . may assert any equitable or declaratory claims they have, but they must do so by urging further action through the class representative and attorney, including contempt proceedings, or by intervention in the class action.").

E. Petitioner lacks standing to bring an Administrative Procedures Act ("APA") claim.

Count Two alleges that Respondents have violated the APA by "revers[ing]" a "settled interpretation" that 8 U.S.C. § 1226(a) applied to aliens apprehended in the interior of the United States long after their illegal entry into the country "without explanation or notice-and-comment". Doc. 1 at 29. Petitioner does not have standing to bring this APA claim. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge her detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)); *see also Flores-Miramontes v. INS*, 212 F.3d 1133, 1140 (9th Cir. 2000) ("For purposes of immigration law, at least, 'judicial review' refers to petitions for review of agency actions, which are governed by the Administrative Procedure Act, while habeas corpus refers to habeas petitions brought directly in district court to challenge illegal confinement.").

Second, even if Petitioner's APA claim was cognizable in habeas, it would fail because the asserted longstanding agency practice carries little, if any, weight under *Loper Bright*. The weight given to agency interpretations "must always 'depend upon their

thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 432-33 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (cleaned up)). And here, the agency provided no analysis to support its reasoning. *See* 62 Fed. Reg. at 10323; *see also Maldonado v. Bostock*, No. 2:23-cv-00760-LK-BAT, 2023 WL 5804021, at *3, 4 (W.D. Wash. Aug. 8, 2023) (noting that DHS provided "no authority" to support its reading of the statute). To be sure, "when the best reading of the statute is that it delegates discretionary authority to an agency," the court must "independently interpret the statute and effectuate the will of Congress." *Loper Bright*, 603 U.S. at 395 (cleaned up). But "read most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297 (cleaned up). Petitioner's APA attack on DHS's interpretation of the INA to include individuals apprehended in the interior long after arrival as inadmissible aliens is beyond the scope of relief provided for in a habeas petition particularly to the extent that it fails to directly challenge the legality or duration of Petitioner's confinement.

F. The Suspension Clause does not create a cause of action.

In Count Three, Petitioner asserts a cause of action under the Suspension Clause. Petitioner's claim is not clear, but the writ of habeas corpus has not been suspended. Petitioner has filed a petition for writ of habeas corpus, but the Court should deny the petition because Petitioner's detention is mandatory under 8 U.S.C. § 1225(b)(2)(A).

G. The state created danger exception is not a cause of action and is inapplicable.

Count Four asserts a cause of action for a due process violation premised upon the state created danger doctrine. Doc. 1 at 30. Petitioner alleges that Respondents have placed her in danger by "misclassifying her under § 1225(b)(2) and denying her the bond procedures guaranteed under § 1226(a)." Doc. 1 at 32. The state created danger doctrine is not a cause of action but is instead an exception to the general rule that the "Fourteenth Amendment generally does not confer any affirmative right to governmental aid." *Estate of Sokai v. Abdelaziz*, 137 F.4th 969, 981 (9th Cir. 2025). The state created danger exception has two

elements "both of which relate to the defendant-officer's conduct,": (1) "the plaintiff must establish that the officer's affirmative conduct exposed the plaintiff to a foreseeable danger that [he] would not otherwise have faced," and (2) "the plaintiff must show that the officer acted with deliberate indifference to a known or obvious danger." *Estate of Soakai*, 137 F.4th at 982 (internal quotation marks and citation omitted, alterations normalized, emphasis in original). *See also Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1064-65 (9th Cir. 2006) (requiring a showing of deliberate indifference to support a state-created danger claim). Here, Petitioner has not asserted any facts sufficient to state a claim against any of the Respondents sufficient to demonstrate deliberate indifference.

V. CONCLUSION

In light of the above, Respondents respectfully request the Court deny Petitioner's Petition for Writ of Habeas Corpus or stay it pending the issuance of class-wide relief in *Maldonado Bautista*. If the Court grants the Petition, the Court should order that Petitioner be given a bond hearing by the Immigration Court, not direct Petitioner's immediate release from immigration detention.

Respectfully submitted this 15th day of December, 2025.

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