UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

ANDRY JOSUE BARRIOS-ZAVARCE,

Petitioner,

v.

WARDEN, FOLKSTON ICE PROCESSING CENTER, et al.,

Respondent

Case No. 5:25-cv-00224

28 U.S.C. § 2241

PETITIONER'S REPLY

Petitioner, by and through the undersigned counsel, respectfully submits this reply in response to Respondents' Response (ECF 5).

I. INTRODUCTION

Respondent, through its response and declaration, contend that Petitioner is arriving and thus ineligible for a custody redetermination hearing, and arguing that it does not have preclusive effect. Respondent recognizes this case is similar to "one of many" pending in this court and that if this court follows its own rationale in *Villa,* then petitioner is not arriving and statutorily

eligible for a custody redetermination hearing. As outlined below, this court should follow its reasoning in *Villa,* and in the alternative, find that petitioner is a member of a nationwide class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). This response will demonstrate that the certification of a class action under Federal Rule of Civil Procedure 23(b)(2), which seeks and obtains only **declaratory** relief, does not extinguish an individual's fundamental right to petition for a writ of habeas corpus and seek immediate release from unlawful detention.

II. LEGAL FRAMEWORK FOR HABEAS CORPUS AND CLASS ACTIONS

The resolution of this matter requires an understanding of the distinct purposes and functions of habeas corpus and class action litigation. The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its constitutional protection, enshrined in the Suspension Clause, underscores its role as the essential remedy for challenging the legality of executive detention. *See Boumediene v. Bush*, 553 U.S. 723, 783 (2008). The writ's purpose is to provide a swift and focused judicial inquiry into the lawfulness of an individual's confinement, with the ultimate remedy being immediate release if the detention is found to be unlawful. It is, at its core, an individual remedy.

In contrast, the class action, governed by Federal Rule of Civil Procedure 23, is a procedural device designed for efficiency in resolving claims where "questions of law or fact [are] common to the class." A class certified under Rule 23(b)(2) is appropriate where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." The key to a (b)(2) class is the "indivisible nature of the injunctive or declaratory remedy warranted."

Habeas law has long differentiated between the "core" function of the writ and ancillary judicial remedies. The traditional, or 'core,' habeas remedy is both narrow and profound: a judicial order securing an individual's immediate release from unlawful custody. In contrast, other forms of relief, such as the class-wide declaratory judgment issued in *Maldonado Bautista*, address the legality of a government *policy* on a systemic level. While such declarations are significant, they are legally distinct from the coercive, individual-specific order of release that remains the exclusive and constitutionally protected province of the Habeas Writ.

This procedural framework is further constrained by statutory limitations such as 8 U.S.C. § 1252(f)(1), which prohibits lower federal courts from granting class-wide **injunctive** relief that would "enjoin or restrain the operation" of certain provisions of the Immigration and Nationality Act. However, courts have consistently interpreted this as a *remedial* bar, not a *jurisdictional* one, which does not preclude class certification for other forms of relief, such as a ***declaratory judgment***. This distinction is critical, as the declaratory relief granted in *Maldonado Bautista* establishes the illegality of a government policy (to detain noncitizens apprehended in the interior of the country without bond) but does not, by itself, compel the release of any specific individual.

This individual habeas petition seeks the quintessential core remedy of the Habeas Writ: immediate release from unlawful custody. Even the alternative relief sought—a judicial order for a bond hearing—is a traditional remedy in habeas cases challenging the legality of executive detention. It is not the sort of systemic, managerial injunction barred in *Gillespie*. As the Supreme Court's decision in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022) makes clear, the statutory scheme of 8 U.S.C. § 1252(f)(1) deliberately severs broad, class-wide declaratory

relief from coercive individual remedies. The *Maldonado Bautista* declaratory order establishes the legal right; this individual habeas petition is the proper and necessary vehicle to enforce it.

Federal courts have affirmed that § 1252(f)(1) does not bar habeas class actions because it lacks a clear statement repealing the court's habeas jurisdiction. *Hamama v. Adducci*, 912 F.3d 869, 879 (6th Cir. 2018), further distinguishes habeas from injunctive relief, noting that "there is nothing barring a class from seeking a traditional writ of habeas corpus (which is distinct from injunctive relief)." The Supreme Court has also stated that the Suspension Clause protects only the "Privilege of the Writ of Habeas Corpus," not requests for injunctive relief. *Jennings v. Rodriguez*, 583 U.S. 281, 309 (2018).

The ruling in *Aleman Gonzalez* explains why the *Maldonado Bautista* class action, which granted only declaratory relief, cannot provide the petitioner with a complete remedy. Because *Aleman Gonzalez* bars class-wide *injunctive* relief, the *Maldonado Bautista* court could only *declare* that the government's detention policy is unlawful; it could not *order* the release of any class member. This creates a "right without a remedy" at the class level. The individual habeas petition is the necessary next step to enforce the right declared in the class action and secure the Petitioner's release. The existence of the class action makes the need for individual habeas petitions more acute, not redundant.

III. THE NATURE OF THE *MALDONADO BAUTISTA* DECISION AND ITS BINDING EFFECT

Respondents' argument for dismissal hinges on a mischaracterization of the *Maldonado Bautista* decision and its legal effect. While the government correctly notes that the court granted only partial summary judgment and has not yet entered a final, appealable judgment under Federal Rule of Civil Procedure 54(b), this argument conflates finality for purposes of appeal with the binding nature of a declaratory order on the parties to the litigation.

The court in *Maldonado Bautista* was unequivocal in its order: it certified a nationwide class and explicitly extended "the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." This declaratory relief established that class members are detained under the discretionary framework of 8 U.S.C. § 1226(a), not the mandatory detention provision of 8 U.S.C. § 1225(b)(2) as the government would have them detained under. A declaratory judgment, by its nature, has the "force and effect of a final judgment" as to the rights it declares. *See* 28 U.S.C. § 2201(a). It is not, as Respondents suggest, a mere "advisory opinion."

Crucially, however, a declaratory judgment is not self-executing. It declares a legal right but does not, in itself, provide a coercive remedy like an injunction or a writ of habeas corpus ordering release. The government's own conduct proves this distinction. As attested in related proceedings, Respondents have instructed immigration judges across the country not to apply the *Maldonado Bautista* ruling to class members, arguing that the relief was "only declaratory." This position, while frustrating, is a tacit admission that the class action has not provided a complete or effective remedy for individuals who remain in custody. The decision establishes that Petitioner's detention is unlawful, but it does not provide the key to unlock his cell. That is the exclusive province of the writ of habeas corpus.

IV. PETITIONER'S INDIVIDUAL HABEAS ACTION IS NOT PRECLUDED BY MEMBERSHIP IN THE *MALDONADO* CLASS

The government's motion to dismiss improperly equates the procedural vehicle of a class action with the substantive, individual remedy of habeas corpus. The two are fundamentally distinct in purpose, scope, and the relief they afford. Habeas corpus is a constitutionally protected, individual right to a swift judicial determination of the legality of one's physical confinement, with the ultimate remedy being release from custody. A class action, conversely, is a procedural device designed to efficiently adjudicate common legal or factual questions

affecting a group. Respondents' assertion that the certification of a Rule 23(b)(2) class "precludes individual suits for the same injunctive or declaratory relief" is inapplicable here for two primary reasons. First, this habeas petition does not seek the "same" relief as the class action. The *Maldonado Bautista* class sought and obtained a declaration of rights; this Petitioner seeks release from unlawful detention, a coercive remedy the class action could not provide, particularly in light of the remedial limitations of 8 U.S.C. § 1252(f)(1).

Second, the doctrine of claim preclusion does not bar a subsequent action when the plaintiff/petitioner was unable to seek a particular remedy in the first action due to limitations on the court's authority. As courts have recognized, preclusion is meant to prevent a second bite at the apple, not to deny the first. Because the *Maldonado Bautista* court could not grant individual habeas relief to all class members, that action cannot preclude a subsequent, individual petition that specifically seeks that remedy. A declaratory judgment is intended to serve as a predicate for further relief, not a bar to it. To hold otherwise would create an untenable legal paradox: a class action that declares a detention policy unlawful would simultaneously extinguish the only effective remedy—the writ of habeas corpus—for the individuals suffering under that very policy.

V. LEGAL AND POLICY ARGUMENTS AGAINST DISMISSAL BASED ON CLASS CERTIFICATION

The government's motion to dismiss presents a dangerous proposition: that a procedural device, Rule 23, can be used to effectively suspend the Writ of Habeas for an entire class of individuals. Respondents assert that Petitioner's individual lawsuit for injunctive or declaratory relief is barred because he is a member of the *Maldonado* class, a certified Rule 23(b)(2) class action seeking similar equitable relief. This argument misinterprets the law and ignores the fundamental purpose of habeas corpus. While Respondents cite cases holding that class

members may be barred from pursuing separate equitable actions, those cases are inapposite. In cases like *Gillespie v. Crawford,* 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc), the existing class action provided a viable pathway for class members to obtain the relief they sought. Here, the opposite is true. The government's refusal to give effect to the *Maldonado Bautista* declaratory judgment means the class action provides no actual relief, leaving the individual habeas petition as the only effective remedy.

To accept the government's position would be to create a legal absurdity. A petitioner would be deemed a member of a class whose detention has been declared unlawful, yet would be barred from seeking the only remedy—release—that can vindicate that declared right. This has happened in the form of a custody redetermination hearing on December 2, 2025, and the Immigration Judge denied bond, citing lack of jurisdiction (ECF 1-4). This creates a right without a remedy, a concept abhorrent to our legal system, particularly where fundamental liberty interests are at stake. The purpose of a class action is to promote judicial efficiency and consistent outcomes, not to erect a procedural wall that prevents individuals from challenging their unlawful confinement.

Petitioner's action is a petition for a writ of habeas corpus, a distinct and fundamental remedy challenging the legality of his individual detention, not merely a suit for general injunctive or declaratory relief. The Supreme Court has consistently recognized the unique and paramount nature of habeas corpus, which provides a specific and expedited avenue for individuals to challenge their confinement. For instance, in *Trump v. J.G.G.,* the Court underscored that challenges to removal under statutes that largely preclude judicial review must be brought in habeas, emphasizing its role in vindicating due process rights (*Trump v. J.G.G.*, 604 U.S. 670, 672 (U.S. 2025). This highlights that habeas is not merely another form of

injunctive relief but a constitutionally enshrined mechanism for reviewing the lawfulness of physical restraint.

While Rule 23(b)(2) class actions are designed for situations where "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole" (Fed. R. Civ. P. 23(b)(2)), the key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted. This means the **relief must apply uniformly to all class members**, addressing a systemic issue "in one stroke." *O.A. v. Trump*, 404 F.Supp.3d 109, 157 (D.D.C. 2019). However, Petitioner's habeas claim, seeking immediate release or an individualized bond hearing, is inherently personal and fact-specific. It focuses on the particular circumstances of his prolonged detention, his lack of criminal history, his family ties, and his due process right to a bond hearing. Such individualized relief cannot be adequately addressed by a broad class-wide injunction that applies generally to a class, as it requires a specific determination regarding Petitioner's unique situation.

Indeed, courts have expressed significant concern that certifying a class in a habeas action could harm unnamed class members by precluding future individual claims under principles of res judicata and collateral estoppel, especially if the class action does not fully litigate all potential individual grounds for relief. Courts are reluctant to certify habeas class actions, precisely because of the individualized nature of the claims and the potential for prejudice, underscores that individual habeas petitions are distinct and not necessarily subsumed by broader class litigation. Furthermore, the Supreme Court has clarified that challenges to an unlawful, nationwide detention policy may coexist under both APA and habeas review, indicating that these remedies are not mutually exclusive and serve different purposes. *J.G.G. v. Trump*, 772 F.Supp.3d 18, 31 (D.D.C. 2025). Petitioner's claim is centered on his fundamental

liberty interest and the due process requirements for his continued detention, which is a core function of habeas corpus. The government's reliance on *United States v. Sanchez-Gomez,* 584 U.S. 381, 387 (2018) and *Gillespie v. Crawford,* 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc) is therefore misplaced. None of the decisions Respondents cite involves a petition for a writ of habeas corpus. Those cases generally address the preclusive effect of class actions on ***similar*** injunctive or declaratory relief, not on the distinct and individualized remedy of habeas corpus (which includes individual release from detention).

In fact, *Sanchez-Gomez* **addresses the opposite factual scenario**. The Supreme Court's entire decision in *Sanchez-Gomez* is predicated on the fact that the defendants were individual litigants who had not availed themselves of Rule 23's procedural mechanism. The current situation is the exact opposite: the Petitioner *is* a member of a formally certified class in *Maldonado Bautista*. The government is therefore attempting to use the *presence* of a class action to bar an individual suit, a question on which *Sanchez-Gomez* is silent. The legal issue in *Sanchez-Gomez* is Article III jurisdiction and the doctrine of mootness—that is, when a court loses its power to hear a case because there is no longer a live controversy. It provides no rules or analysis regarding the distinct legal doctrine of preclusion, which is what the government's motion to dismiss actually relies upon.

The government's motion to dismiss misquotes *Sanchez-Gomez* for the general principle that class members are "bound by the judgment" to argue that this petition is barred. While the statement is correct as a general matter, its context in *Sanchez-Gomez* is entirely different. The Supreme Court used this principle to explain *why* formal certification is so crucial for avoiding mootness: the fact that all class members will be bound is what gives the class its independent legal status. The Court was explaining the rationale for limiting the *Gerstein* exception to formal

class actions, not establishing a rule that bars individual class members from seeking remedies—like the fundamental writ of habeas corpus—that are unavailable on a class-wide basis. A declaratory judgment, even if class-wide, does not moot or preclude individual habeas petitions, especially when it is not being implemented in practice and thus fails to provide an adequate remedy for ongoing detention.

Gillespie is likewise inapposite as it barred individual suits for "equitable relief" like injunctions that sought to manage prison conditions—relief that would directly conflict with the systemic orders in the *Ruiz* class action. The court was concerned with preventing "inconsistent adjudications" that would interfere with the "orderly administration" of the class decree. A petition for a writ of habeas corpus, however, seeks a unique and fundamental remedy: immediate release from unlawful custody. It is not an attempt to manage a government system but to secure individual liberty. *Gillespie* itself recognized that not all individual claims are barred, as it explicitly permitted individual suits for damages to proceed. The ruling in *Gillespie* was premised on the fact that the *Ruiz* class action provided a viable, ongoing mechanism for relief, complete with a Special Master and active court oversight. Class members could meaningfully pursue their claims through class counsel or intervention (and that suit dealt with conditions of incarceration not whether the petitioners should be detained in the first place). In the present context, the *Maldonado Bautista* class action, while granting a significant declaratory judgment, has not proven to be an effective vehicle for securing the release of detained individuals.

Habeas corpus is an inherently individualized remedy, constitutionally protected by the Suspension Clause. The right to habeas corpus is a personal right to challenge the lawfulness of one's detention. Courts have broad discretion to fashion appropriate remedies in habeas matters

"as law and justice require." This responsibility is particularly significant when reviewing "detention by executive authorities without judicial trial." The ongoing detention constitutes a continuing injury sufficient to maintain a case or controversy under Article III.

The Supreme Court has long held that habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). Outside of statutory eligibility, there are no limitations to a detainee seeking habeas corpus relief for unlawful detention.

The individualized nature of Petitioner's due process challenge to his prolonged detention, seeking a bond hearing or release, distinguishes it from the class-wide injunctive relief typically sought in a Rule 23(b)(2) action. Petitioner has resided in the U.S. for a long time, has no disqualifying criminal history and absent the government's unlawful policy to classify him under § 1225(b), would not be detained. These specific facts are central to his habeas claim for immediate release or a bond hearing, demonstrating that his case requires an individualized assessment of his flight risk and danger to the community, which should have been done by ICE prior to his arrest, or alternatively, a bond hearing by a judge. The fundamental liberty interest at stake in a habeas petition often necessitates an immediate, individualized determination that cannot await the uncertain outcome or scope of a broader class action. Therefore, Petitioner's membership in the *Maldonado* class does not preclude his individual habeas action.

Moreover, dismissing this petition would create a perverse policy incentive. It would allow the government to consent to or acquiesce in class-wide declaratory judgments, knowing it can then weaponize the class certification to shield itself from individual habeas petitions that seek to enforce the very rights declared in the class action. This would render declaratory judgments in this context meaningless and undermine the judiciary's role as a crucial check on unlawful executive detention. The Court's duty to adjudicate the legality of an individual's detention under the habeas statutes is a core constitutional function that cannot be displaced by a procedural rule, especially when that rule is being invoked to perpetuate an ongoing violation of the law.

This Court would not be the first to reject the government's arguments. A growing consensus of federal courts has concluded that the proper remedy for a detention initiated under the wrong statute is immediate release, not remand for a bond hearing that cannot cure the initial constitutional violation. Just this week, the U.S. District Court for the District of Rhode Island, in *Armando De Macedo Mendes v. Hyde*, confronted this exact scenario. C.A. No. 25-cv-627-JJM-AEM, 2025 WL 3274606 (D.R.I. Dec. 5, 2025). The court in *Macedo Mendes* explicitly found that the petitioner was a member of the *Bautista* class but proceeded to grant his individual habeas petition, ordering his immediate release pending a bond hearing because the government had offered no evidence that he posed a flight risk or a danger to the community.

This approach is consistent with numerous other recent decisions. Courts have repeatedly held that "a bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here" because the "detention was unlawful from its inception." As one court aptly stated, a "post-deprivation review is wholly inadequate to remedy that unlawful detention." The government's practice of detaining individuals without

any initial, individualized assessment of dangerousness or flight risk "offends the ordered system of liberty that is the pillar of the Fifth Amendment." These precedents confirm that where detention is unlawful ab initio, the only just and constitutionally adequate remedy is to grant the writ and order the petitioner's release.

VI. THE FUTILITY OF EXHAUSTION AND THE NEED FOR IMMEDIATE RELIEF

Respondents' suggestion that Petitioner must first exhaust administrative remedies by seeking a bond hearing is meritless. The doctrine of exhaustion is a prudential one, not a jurisdictional mandate in habeas (as detailed in the Complaint, ECF Dkt. 1). It is waived where its application would be unjust or ineffective. Courts recognize several exceptions to the exhaustion requirement, including when: (1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) the petitioner has raised a substantial constitutional question. All four exceptions apply here.

First, any attempt at administrative exhaustion would be futile. The government's own actions confirm this. As has been established in related proceedings, Respondents have instructed immigration judges not to apply the *Maldonado Bautista* decision, reasoning that its relief is merely declaratory. Requiring Petitioner to request a bond hearing before an adjudicator who has been directed to deny it is the very definition of a futile act. Indeed, undersigned counsel's colleagues across the country report the vast majority of immigration judges continue to deny bond relief under *Matter of Yajure Hurtado* absent an individual writ of habeas order involving a particular noncitizen. Second, Petitioner suffers irreparable harm each day that he remains unlawfully detained. His continued confinement is a direct violation of his due process rights, an injury that cannot be remedied by a future hearing or release. Third, this petition raises

a substantial constitutional question regarding the Fifth Amendment's Due Process Clause, which administrative bodies are not empowered to resolve.

Finally, a post-deprivation bond hearing is not an adequate remedy for a detention that was unlawful from its inception. As another court in this district recently held, "a bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here. [Petitioner's] detention was unlawful from its inception because ICE detained her under the wrong statute and without any notice or opportunity to be heard." *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025). The constitutional injury has already occurred, and a belated administrative hearing cannot undo it; only immediate release can provide a meaningful remedy.

VII. THE COURT HAS JURISDICTION TO HEAR PETITIONER'S CLAIM

Under 28 U.S.C. § 2241(c), habeas relief may be extended to a prisoner only when he "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). A federal court has jurisdiction over such a petition if the petitioner is "in custody" and the custody is allegedly "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *Maleng v. Cook*, 490 U.S. 488, 490 (1989).

Petitioner was detained within the Southern District when he filed the Petition, and he asserts that his continued detention violates due process. Therefore, the Court has jurisdiction over his claims. *Trump v. J. G. G.*, 604 U.S. 670, 3 672 (2025) (per curiam) (noting jurisdiction for "core habeas petitions" lies in the district of confinement).

Moreover, Respondents' arguments about the effect of 8 U.S.C. § 1252(g) are irrelevant to petitioner's claim. Respondents' cite to *Gupta v. McGahey*, 709 F. 3d 1062 (11th Cir. 2013) and

to *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194 (11th Cir. 2016) for the proposition that § 1252(g) bars review of ICE's decision to take a noncitizen into custody and detain them in the first instance. Petitioner is not challenging Respondents' ability to take him into custody. He is challenging under what authority he is being held. In other words, petitioner concedes that ICE can detain him, but what is relevant to his claim is whether that detention comes with a right to a bond hearing per § 1226 or not. Petitioner contends that he does have a right to a bond hearing and the denial of that right per *Matter of Yajure Hurtado* is what gives rise to his claim.

In an event, this Court previously heard these arguments from Respondent's and found them unpersuasive. Relying on *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th Cir. 2021) and *Madu v. U.S. Attny. Gen.*, 479 F.3d 1362 (11th Cir. 2006), the Court in *Vill v. Normand*, 2025 WL 3095969 (S.D. Georgia 2025) held, "jurisdiction is appropriate over a claim that instead challenges the legal bases of a detention decision."

Thus, this Court has jurisdiction to hear Mr. Lopez Garcia's petitioner for relief and his claim is not barred by statute.

VIII. PLAINTIFF IS DETAINED UNDER § 1226(a) NOT UNDER § 1225(b)(2)

The deprivation of Petitioner's liberty springs from new and novel interpretations of the Immigration and Nationality Act ("INA") that have come to the fore over the past few months. Despite the language of the statute, Congressional intent in enacting Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), agency regulations, and longstanding agency practice, on July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement ("ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-

applications-for-admission (last accessed August 4, 2025). DHS has determined that section 1225 of the Immigration and Nationality Act (INA), rather than section 1226, is the applicable immigration detention authority for all applicants for admission.

As a result, DHS began to consider *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, subject to mandatory detention under § 1225(b) and ineligible for release on bond. Thus, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [§ 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under [§ 1226(c)]." *Id.*

On September 5, 2025, the BIA decided that their new "plain language" reading of the statute confirmed DHS's position in its July 8th memo that all of those who entered the United States without inspection were applicants for admission, and, so, their detention was mandatory under § 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

However, this Court need not and should not give deference to the BIA's novel and erroneous interpretation of the INA's detention statutes. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (observing that while "agencies have special competence in resolving statutory ambiguities," "[c]ourts do"); *see also Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (explaining that the "weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control"). As explained by the District Court in *Salcedo Aceros v. Kaiser, et al.*, the BIA's "current position is inconsistent with its earlier pronouncements" which took the opposite position,

and under *Loper*, "the Court has no obligation to defer to the BIA's view, particularly when that view has not 'remained consistent over time.'" 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (quoting *Loper*, 603 U.S. at 386; citing *Skidmore*, 323 U.S. at 140).

Thus, this Court can and should reject the BIA's interpretation of the INA in *Matter of Yajure Hurtado* as the BIA's interpretation is inconsistent with the text of § 1226 and § 1225, Congress's intent in enacting the IIRIRA in 1996, agency regulations, and long-standing agency practice.

a. Legislative History, EOIR Regulations, and DHS Practice

The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c) as most recently amended earlier this year by the Laken Riley Act ("LRA"), Pub. L. No.119-1, 139 Stat. 3 (2025). The legislative history of IIRIRA also supports a limited construction of § 1225 and the conclusion that § 1226(a) applies to Ms. Lopez Garcia.

In passing IIRIRA, Congress was focused on the perceived problem of recent arrivals to the United States who do not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important, as prior to IIRIRA, people like petitioner were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportability proceedings, which applied to all persons within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more

clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely "restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] *who is not lawfully in the United States*." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

Following enactment of the IIRIRA, the Executive Office of Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Specifically, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323.

In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior to the enactment of IIRIRA, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)). Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in

part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue). Thus, the legislative history, agency regulations enacted at the time of IIRIRA's passage, and long-standing agency practice demonstrate that § 1226(a) detention was meant to apply and did in fact, apply to people who were present in the interior of the United States after entering the country without inspection both prior to IIRIRA and in the past thirty years after its enactment.

b. The Statute

The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. §1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. §1226(a). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 11226.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. §1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. §1225(b)(1) and for other *recent arrivals* seeking admission referred to under 8 U.S.C. §1225(b)(2). Finally, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

The plain text of § 1226 demonstrates that it, not § 1225(b), applies to petitioner's detention. Section 1226(a), "provides the general process for arresting and detaining [noncitizens] who are present in the United States and eligible for removal." *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citation omitted). As the Supreme Court has remarked, § 1226(a), "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'"

Jennings v. Rodriguez, 583 U.S. 281, 288 (2018) (quoting 8 U.S.C. § 1226(a)). Section 1226(c) carves out a statutory category of noncitizens for whom detention is mandatory, consisting of individuals who have committed certain "enumerated . . . criminal offenses [or] terrorist activities." 8 U.S.C. § 1226(c). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens. *See* 8 U.S.C. § 1226(c)(1)(A), (D), (E). This is in stark contrast with mandatory detention provision under 8 U.S.C. § 1225(b)(2), which "supplement[s] § [1226's] detention scheme." *Diaz,* 53 F.4th at 1197. Section 1225(b) "applies primarily to [noncitizens] seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297; *see* 8 U.S.C. § 1225(b) (entitled "Inspection of applicants for admission").

Thus, the plain text of § 1226(a) applies to noncitizens like petitioner. The fact that § 1226(a) is the default rule for arrest and detention and that section (c) carves out exceptions for inadmissible noncitizens further demonstrates that the discretionary bond procedures apply to noncitizens like petitioner who are present without being admitted or paroled and have not been implicated in any crimes set forth in subsection (c). The Supreme Court has held that when Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

The recent enactment of Laken Riley Act ("LRA") further supports this finding. The Act added language to § 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, noncitizens charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or 8 U.S.C. §

1182(a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) *and* who have been arrested, charged with, or convicted of new certain crimes (not previously covered by INA § 1226(c)) are now subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress reaffirmed that § 1226(a) covers noncitizens who are not subject to section (c) but are charged as removable under § 1182(a)(6)(A) or 1182(a)(7). *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir. 2001) ("[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect.").

If § 1226(a) did not apply to petitioner—like the BIA contends—vast portions of the § 1226 would be rendered meaningless. This is because the BIA contends that noncitizens like petitioner who entered without inspection are really "applicants for admission" and therefore subject to mandatory detention under § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). Courts have made it clear that statutes must be interpreted as a whole, "giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (quoting *Rodriguez v. Sony Computer Ent. Am., LLC*, 801 F.3d 1045, 1051 (9th Cir. 2015)).

It is noteworthy that "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction," courts "generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (internal quotation marks omitted). Here, the BIA's sudden reversal, particularly after Congress just recently amended § 1226 to include the LRA provisions—further

undermines the argument that the detention authority for noncitizens like petitioner lies under § 1225(b) instead of § 1226(a).

Furthermore, § 1225(b)(A) concerns a completely different category of noncitizens. In *Jennings*, the Supreme Court discussed § 1225 as part of a process that "generally begins at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." 583 U.S. at 287. As for § 1226, *Jennings* described it as governing "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including noncitizens "who were inadmissible at the time of entry." *Id.* at 288. The Court then summarized the distinction as follows: "In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ [1225](b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country pending the outcome of removal proceedings* under §§ [1226](a) and (c)." *Id.* at 289 (emphasis added); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (a noncitizen "who *tries to enter* the country illegally is treated as an applicant for admission . . . and a [noncitizen] who is detained *shortly after unlawful entry* cannot be said to have effected an entry") (emphasis added) (cleaned up).

The BIA's newfound position misconstrues the phrase "applicant for admission" to suggest that every person, other than those who have been admitted, are subject to mandatory detention. Section 1225(a)(1) defines an "applicant for admission" as a person who is "present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). According to the BIA, § 1225(b)(1) generally applies to arriving aliens and § 1225(b)(2) serves as a broader catchall provision for all applicants for admission not covered by § 1225(b)(1). *See*

Matter of Yajure Hurtado at 218. In other words, that every noncitizen who entered without parole or inspection is an "applicant for admission" per § 1225(a)(1) and is therefore subject to mandatory detention. However, § 1225(b)(2)(A) states in full that:

> 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. Id.* (emphasis added).

Thus, for § 1225(b)(2)(A) to apply, several conditions must be met—in particular, an "examining immigration officer" must determine that the individual is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." The BIA's position conveniently overlooks these conditions and treats "applicants for admission" the same as those "seeking admission." The phrase "seeking admission" is undefined in the statute but necessarily implies some sort of present-tense action. *See Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020) ("The 'use of the present progressive, like use of the present participle, denotes an ongoing process.'" (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12 (9th Cir. 2020))). Indeed, only those who take affirmative acts, like submitting an "application for admission," or presenting themselves at a port of entry asking to enter the country, are those that can be said to be "seeking admission" within § 1225(b)(2)(A).

By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like petitioner who have already entered and are now residing in the United States. *See Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (holding that an individual submits an "application for admission" only at "the moment in time when the

immigrant actually applies for admission into the United States.")[1] Accordingly, § 1225(b)(2)'s reference to "applicants for admission" must be read in their context and a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 11226, 1240 (9th Cir. 2022) (citation omitted); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an act's "broader structure . . . to determine [the statute's] meaning").

The Board's recent decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) reinforces this position. The Board held that a noncitizen who was apprehended "approximately 5.4 miles away from a designated port of entry and 100 yards north of the border" was detained under § 1225(b) and not § 1226(a). *Id.* at 67. In other words, the noncitizen was apprehended upon arrival. The Board then explained that such persons are properly treated as "arriv[ing] in the United States," given that they are "detained shortly after unlawful entry," and "'[are] apprehended' just inside' the southern border, and not at a point of entry, on the same day [they] crossed into the United States.'" *Id.* at 68 (quoting *Matter of M-D-C-V-*, 28 I. &. N. Dec. 18, 23 (BIA 2020)). Notably, the Board's decision supports the argument that § 1226(a) "applies to [noncitizens] already present in the United States," while § 1225(b) "applies primarily to [noncitizens] seeking entry into the United States and authorizes DHS to detain a[] [noncitizen] without a warrant at the border." *Id.* at 70 (internal quotation marks omitted).

The broader statutory structure of immigration detention authority also demonstrates the inapplicability of § 1225(b) to petitinoner's case. *See King*, 576 U.S. at 492 (explaining that an act's "broader structure" can be a useful tool "to determine [a statute's] meaning."); *see also Biden*

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[1] In *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." *Id.* (emphasis omitted).

v. Texas, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of INA provision). This is particularly true where "a provision . . . may seem ambiguous in isolation." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). In such situations, the statute's meaning "is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *Id.*

The broader text of § 1225 reinforces this understanding of the two sections' structure and application. § 1225 concerns "expedited removal of inadmissible *arriving* [noncitizens]." 8 U.S.C. § 1225 (emphasis added). Paragraph (b)(1) encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible" for having misrepresented information to an inspecting officer or for lacking documents to enter the United States. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but whom (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A).

By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like petitioner who have already entered and are now residing in the United States. Otherwise, the language "seeking admission" in § 1225(b)(2) would serve no purpose, as the statute specifies that it is addressing a person who is both an "applicant for admission" and who is determined to be "seeking admission." *Id.*

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e., "the case of [a noncitizen] . . . who is arriving on land." 8 U.S.C. § 1225(b)(2)(C). This language further underscores Congress's temporal requirements in § 1225

and focus on those who are arriving into the United States. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens. *See, e.g., Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (relying on section title to help construe statute).

Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), and sets out procedures for "inspection[s]" of people "arriving in the United States," *Id.* § 1225(a)(3), (b)(1), (b)(2), (d). Thus, the text of the § 1226 and § 1225 when construed in isolation and together within the broader statutory scheme demonstrate definitively that petitioner can only be detained under § 1226(a).

In sum, the respondent's erroneous interpretation of the INA's detention statutes cannot be squared with the legislative history of IIRIRA, the LRA amendments, EOIR regulations enacted soon after IIRIRA's passage, DHS and the BIA's own positions on the INA's detention authorities for the past thirty years, and the language of § 1226 and § 1225 of the INA.

The vast majority of courts who have confronted this issue, including this one, have found the BIA's interpretation to contradict the plain text of § 1225. *See, e.g., Ayala Amaya v. Bondi et. al.*, No. 25-16428 (D.N.J. 2025) and, most recently, *Lazaro Maldonado Bautista et al v. Ernesto SantaLopez Garcia Jr et al*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. 2025); *Soto v. Soto, et al.*, No. 25–cv–16200, 2025 WL 2976572, at *5 (D.N.J. Oct. 22, 2025); *Belsai D.S. v. Bondi*, No. 25–cv–03682, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Quispe v. Crawford*, No. 25–cv–01471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Savane v. Francis*, No. 25–cv–06666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Zumba v. Bondi*, No. 25–cv–14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Salazar v. Dedos*, No. 25–cv–00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lepe v. Andrews*, No. 25–cv–01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Roman v. Noem*, No. 25–cv–

01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. 25–cv–04048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 25–cv–00096, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Barrera v. Tindall*, No. 25–cv–00541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, No. 25–cv–01408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Vazquez v. Feeley*, No. 2:25–cv–01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Garcia Cortes v. Noem*, No. 25–cv–02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Lopez Santos v. Noem*, No. 25–cv–01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Perez v. Kramer*, No. 25–cv–03179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*, No. 25–cv–12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Hinestroza v. Kaiser*, No. 25–cv–07559, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25–cv–00326, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *J.O.E. v. Bondi*, No. 25–cv–03051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 25–cv–02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Lopez-Campos v. Raycroft*, No. 25– cv–12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Lopez Benitez*, 2025 WL 2371588.

IX. CONCLUSION AND PRAYER FOR RELIEF

Therefore, Petitioner respectfully requests that this Court grant the Petition for a Writ of Habeas Corpus, ordering Petitioner's immediate release from custody.

Dated: December 29, 2025

Respectfully submitted,

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