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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELVIS JOSE PIMENTEL ORTEGA.,

Petitioner,

v.

WARDEN of the GOLDEN STATE ANNEX
DETENTION FACILITY, et al.,

Respondents.

CASE NO. 1:25-CV-01856-DAD-CSK (HC)

**RESPONDENTS' MOTION TO DISMISS AND
RESPONSE TO PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner is a citizen and national of Venezuela who was apprehended entering the United States from Mexico illegally on December 20, 2023. Exh. 1 (Petitioner's December 2023 I-213) at 2. Petitioner was given a Notice to Appear under INA § 212(a)(6)(a)(i) and released due to a lack of space. *Id.* On December 11, 2024, Petitioner filed an application for asylum. Exh. 2 (Petitioner's November 2025 I-213) at 3. While on release, Petitioner incurred 19 violations of the Alternative to Detention (ATD) program, including a failed home visit. Exh. 2 (11/25 I-213) at 2; Exh. 3 (ATD Violation Log) at 1. He was also arrested for Obstructing a Peace Officer on May 18, 2024. Exh. 2 (11/25 I-213) at 2; Exh. 3 (RAP Sheet) at 4. Because of these violations, petitioner was taken back into custody pursuant to 8 U.S.C. § 1225(b)(2)(A) on November 26, 2025. Exh. 2 (11/25 I-213) at 2.

Because of Petitioner's unlawful entry on December 20, 2023, he is an "applicant for admission" who is subject to mandatory detention by the Department of Homeland Security (DHS) under 8 U.S.C. § 1225(b)(2)(A). *See generally Cortes Alonzo v. Noem et al.*, 1:25-cv-01519-WBS-SCR at Dkt. 14

1 (E.D. Cal. Nov. 17, 2025).

2 Petitioner's prior release in the discretion of DHS does not have the effect of having converted
3 Petitioner's presence in the United States into an "admission." "[A]n alien who 'arrives in the United
4 States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for
5 admission.'" *Jennings v. Rodriguez*, 583 U.S. 281 (2018). As an applicant for admission, Petitioner is
6 subject to mandatory detention and thus ineligible for a bond hearing. 8 U.S.C. § 1225(b)(2). Therefore,
7 Petitioner's petition for writ of habeas corpus should be denied.

8 Furthermore, Petitioner has been detained a very short period of time. Though the Petition
9 spends paragraphs discussing the constitutional impact of detention over 6 months, ECF No. 1 at 8-9,
10 Petitioner has been detained only since November 26, 2025. This detention of 37 days is hardly
11 prolonged, and is in any case driven by Petitioner's failure to comply with the terms of his supervision
12 and his new law violation, facts which give rise to changed circumstances both as to Petitioner's risk of
13 flight and danger.

14 The instant case concerns many of the same issues as the pending Ninth Circuit appeal in
15 *Rodriguez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025), Ninth Circuit docket no. 25-6842.
16 Because the issues in *Rodriguez* are likely to be dispositive of the issues in this case, Respondents ask
17 that any further briefing deadlines be held in abeyance until the resolution of the *Rodriguez* case.

18 For the foregoing reasons, the government respectfully requests that the Court dismiss the
19 Petition. At this time, there appear to be no factual issues in dispute and so Respondents do not believe a
20 hearing is necessary, but reserve the right to request a hearing in their Reply.

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22 Dated: January 2, 2026

ERIC GRANT
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24 By: /s/ ROBERT L. VENEMAN-HUGHES
25 ROBERT L. VENEMAN-HUGHES
26 Assistant United States Attorney
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