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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

VICTOR KALID JACOBO RAMIREZ; EDGAR MICHEL GUEVARA ALCANTAR; on behalf of themselves and others similarly situated, et al.,

Plaintiffs-Petitioners,

vs.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA J BONDI, Attorney General of the United States, in her official capacity; TODD LYONS, Acting Director for U.S. Immigration and Customs Enforcement, in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; JASON KNIGHT, Acting Field Office Director, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity; LAS VEGAS IMMIGRATION COURT; JOHN MATTOS, Warden, Nevada Southern Detention Facility, in his official capacity,

Defendants-Respondents.

Case No.: 2:25-cv-02136

REPLY TO DEFENDANTS-RESPONDENTS' RESPONSE TO PLAINTIFFS-PETITIONERS' PETITION FOR A WRIT OF HABEAS CORPUS AND CLASS ACTION COMPLAINT

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I. INTRODUCTION

Plaintiffs-Petitioners ("Plaintiffs") bring a putative class action challenging Defendants' new policies and practices of unlawfully subjecting them to mandatory immigration detention under 8 U.S.C. § 1225(b)(2)(A), even though they are eligible for bond under 8 U.S.C. § 1226(a). In particular, this case seeks not only individual writs of habeas corpus for the named Plaintiffs but also declaratory relief and vacatur on behalf of a regional class of noncitizens detained in Nevada and unlawfully deprived of the opportunity for bond due to the Department of Homeland Security's ("DHS") July memo and the Board of Immigration Appeals' ("BIA") precedential decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See* ECF No. 1 ¶¶ 66–90.

As a preliminary matter, Defendants-Respondents' ("Defendants") response does not comport with this Court's order, *see* ECF No. 24 ("Respondents have until 11/25/2025 to file an *answer* or *motion to dismiss* in response to the […] Petition and Class Action Complaint") (emphasis added), or Fed. R. Civ. P. 12. Defendants filed instead a "Response to Verified Petition for a Writ of Habeas Corpus and Class Action Complaint." ECF No. 39 ("Resp."). This document is not styled as a motion to dismiss nor an answer, and the only request made by Defendants to the Court is to deny the Petition. *See* Resp. 32:6; Resp. Exhibit A at 25:22. Notwithstanding Defendants' failure to address the class complaint, this reply addresses all matters in full.

Defendants' response doubles down on their unlawful policies, without acknowledging the weight of decisions against them. This Court has already rejected the government's new interpretation of the detention statutes as contrary to law in 35 cases, based on "the text and canons of statutory interpretation, legislative history, and long history of consistent agency practice." *Escobar Salgado v. Mattos*, No. 2:25-CV-01872-RFB-EJY, __ F. Supp. 3d __, 2025 WL 3205356, at *22 (D. Nev. Nov. 17, 2025); *Quinonez Orosco v. Lyons* No. 2:25-cv-02240-RFB-EJY, __ F. Supp. 3d __, 2025 WL 3539275, at *1-2, *1 n.1 (D. Nev. Dec. 10, 2025) (collecting cases); *see also* ECF No. 35 ("PI Order") (granting preliminary injunction to named Plaintiffs). Similarly, this Court has found that ongoing mandatory detention of similarly situated noncitizens, who were arrested within the United States and have no disqualifying criminal history, violates both their

procedural and substantive due process rights. *Escobar Salgado*, 2025 WL 3205356 at *22; PI Order 13–18.

This Court is hardly alone. As of late November, by one district court's count, judges in 350 district court decisions had rejected the government's position and granted relief to individuals subject to Defendants' new policies, compared to the 12 decisions that sided with the government. *See Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), __ F. Supp. 3d __, 2025 WL 3295903, at *4, apps. 13–14 (S.D.N.Y. Nov. 26, 2025).[1] And most recently, the Seventh Circuit—the first Court of Appeals to address this issue—has squarely rejected the government's position that § 1225(b)(2)(A) covers any noncitizen who entered the country without inspection. *See Castañon-Nava v. DHS*, No. 25-3050, __ F. 4th __, 2025 WL 3552514 at *8–9 (7th Cir. Dec. 11, 2025).

Defendants repackage arguments that this Court has already rejected and raise a grab-bag of procedural arguments that are similarly foreclosed by precedent. The Court should reject Defendants' arguments so that Plaintiffs can expeditiously proceed to partial summary judgment on claims predicated on violations of the INA and applicable regulations in Counts One, Two, and Three once the Court resolves the pending motion for class certification.[2]

II. ARGUMENT

A. This Court Has Jurisdiction.

Defendants repeat jurisdictional challenges that this Court has already rejected and should not be considered. First, Defendants again claim there is no jurisdiction because 8 U.S.C. §§ 1252(b)(9) and 1252(g), in conjunction with § 1252(a)(5), bar review of any claim "arising from" removal proceedings. Resp. 22–26. But "the relevant jurisdiction stripping provisions of the INA,

[1] A separate analysis found that more than 220 judges in over 700 decisions across at least 35 states had rejected the government's position. *See* Kyle Cheney, *More Than 220 Judges Have Now Rejected the Trump Admin's Mass Detention Policy*, Politico (Nov. 28, 2025, 7:00 AM EST), https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861.

[2] Plaintiffs believe that moving on their contrary to the INA and regulations counts is most expeditious and will conserve the Court's and parties' resources because those claims present pure legal issues that can be readily resolved on summary judgment, especially without production of an administrative record.

8 U.S.C. § 1252, do not apply." *Escobar Salgado*, 2025 WL 3205356, at *8; *see also* PI Order 8–9 (incorporating by reference *Escobar Salgado*'s reasoning). Section 1252(g) "applies only to three discretion actions that the Attorney General may take: her decision or action to *commence* proceedings, *adjudicate* cases, or *execute* removal orders," which does not foreclose challenges to detention, nor challenges "premised on a lack of legal authority." *Escobar Salgado*, 2025 WL 3205356, at *9 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (internal quotations omitted), and *Ibarra-Perez v. United States*, 154 F.4th 989, 998 (9th Cir. 2025)). And the Supreme Court has already "expressly rejected . . . the government's broad reading of 'arising from' under § 1252(b)(9)" and held it did not bar a "challenge to the lawfulness of . . . detention without the opportunity for release on bond." *Id*. (citing *Jennings v. Rodriguez*, 583 U.S. 281, 291–92 (2018)). Moreover, because "Petitioners do not challenge any order of removal, § 1252(a)(5) does not strip this Court of jurisdiction over their challenge to the lawfulness of their detention while their removability is adjudicated." *Id*. at *10.

Second, Defendants incorporate by reference briefing that argues the Court should dismiss the Petition because Plaintiffs have not exhausted their administrative remedies. Resp. 31–32. But again, the Court already rejected this argument for prudential exhaustion because it would be futile, given the BIA's clear position in *Matter of Yajure Hurtado*, and based on the weight of the *Puga* factors and irreparable harm from unlawful detention pending the BIA's decision. PI Order 9–11.

B. Plaintiffs Are Subject to Section 1226(a), not Section 1225(b)(2).

As described above, this Court has repeatedly held that petitioners similarly situated to the named Plaintiffs and putative class members—noncitizens who have not been inspected or admitted into the United States and were detained by DHS within the United States—are subject to discretionary detention under 8 U.S.C. § 1226(a), and not mandatory detention under 8 U.S.C. § 1225(b). *Supra* pp. 1-2. Defendants raise no justification to revisit that conclusion.

First, Defendants cite a handful of decisions agreeing with the government's position (while ignoring the hundreds on the other side of the ledger). Resp. 2. But as this Court already explained, "[i]n each of those cases, the district courts did not meaningfully contend with the

statutory text in accordance with canons of statutory construction, nor the legislative history, and longstanding agency practice." *Escobar Salgado*, 2025 WL 3205356, at *22 n.13 ("The Court is not persuaded by the minority of district courts that have adopted the government's new reading of 8 U.S.C. § 1225(b)(2)."); *see also* PI Order 12:18-19 ("Further, some rely on the government's inaccurate portrayal of the legislative history of IRRIRA.").

Second, "when read in context, and harmoniously with § 1226 . . . the plain meaning conveyed by the text of § 1225(b) is that it applies within a specific context: at or near the border, to noncitizens 'arriving' in the U.S.—not those already present within its borders." *Escobar Salgado*, 2025 WL 3205356, at *13. "Respondents' reading of 'applicants for admission' ignores the fact that that term is further limited in § 1225(b)(2) by the active construction of the phrase 'seeking admission' which entails some type of affirmative action taken to obtain entry." *Id*. at *15. "[T]he reading asserted by [Defendants] and the BIA in *Hurtado* depends on discounting the phrase 'seeking admission' as mere redundancy of the phrase 'applicants for admission," but "the use of the two different phrases by Congress is not a redundancy, but rather, conveys a meaningful difference." *Id*. at *15-16 (collecting cases). Moreover, "[j]ust as [Defendants'] reading would render the phrase 'seeking admission' in § 1225(b)(2) redundant, accepting [Defendants'] reading would also render exceptions of § 1226 under Paragraph (c) that apply to certain categories of inadmissible noncitizens superfluous or meaningless." *Id*. at *16.

The Seventh Circuit reached a similar conclusion. Citing *Jennings*, it reiterated that "U.S. immigration law authorizes the Government to detain certain aliens *seeking admission* into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Castañon-Nava*, 2025 WL 3552514, at *9 (citation omitted) (emphasis added).[3] The court noted

[3] Defendants' attempt to twist *Jennings* to support their position thus fails. This Court relied on the same language to explain how "the Supreme Court in *Jennings* interpreted §§ 1225 and 1226 in a manner that harmonizes them, rather than puts them in conflict with one another," and how "this interpretation comports with the plain meaning of the statutory provisions." *Escobar Salgado*, 2025 WL 3205356, at *17.

that "Defendants' construction would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous, violating one of the cardinal rules of statutory construction." *Id.* Importantly, it underscored that while Congress explicitly defined "applicant for admission," under 8 U.S.C. § 1101(a)(13), it did *not* provide in that definition that such applicants are necessarily "seeking admission." *Id.* ("[I]t is Congress's prerogative to define a term however it wishes, and it has chosen to limit the definition of an 'applicant for admission' to 'an alien present in the United States who has not been admitted or who arrives in the United States.' 8 U.S.C. § 1225(a)(1). It could easily have included noncitizens who are 'seeking admission' within the definition but elected not to do so.").

This plain reading is reinforced by the INA's definition of "admission" as "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). A person present in the country after having entered unlawfully is simply not "seeking"—in the sense of "asking for" or "trying acquire or gain"[4]—a lawful entry. Defendants cannot account for the ordinary meaning of "seeking" admission.

Defendants attempt to avoid this reality by pointing to § 1225(a)(3)'s use of the phrase "or otherwise" to argue that all applicants for admission are seeking admission. Resp. 11:10-23. But Defendants overlook that the ordinary use of the term "or" is "almost always disjunctive, that is, the words it connects are to be given separate meanings," and "otherwise" means "something or anything else." *J.G.O. v. Francis*, 25-cv-7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (internal quotation marks omitted). "Taken together, 'or otherwise' is used to refer to something that is different from something already mentioned." *Id.* (internal quotations omitted) (quoting Merriam Webster's Collegiate Dictionary (10th ed. 2001)). In other words, "seeking admission" in § 1225(b)(2)(A) refers to "something that is different from" the previously mentioned term "applicant for admission." *See id.*; *see also Castañon-Nava*, 2025 WL 3552514, at *9 (rejecting Defendants' reliance on § 1225(a)(3) as having only "superficial appeal").

[4] *Seeking*, *Merriam-Webster.com*, https://www.merriam webster.com/dictionary/Seeking (last visited Dec. 16, 2025).

Defendants also ignore the rest of § 1225(a)(3) and fail to explain why "applicants for admission" are a subset of those "seeking admission" when the provision also refers to people who are "otherwise seeking . . . readmission to or transit through the United States . . . ." 8 U.S.C. § 1225(a)(3); *see Make The Rd. New York v. Wolf*, 962 F.3d 612, 625 (D.C. Cir. 2020) ("a basic rule of statutory construction is to '[r]ead on'"). Applicants for admission are undisputedly not subsets of *those* actions. Thus, at most, the actions that follow the phrase "or otherwise" *might* describe certain applicants for admission where they engage in one of those actions, but they do not somehow encompass *all* applicants for admission.

Third, Defendants again suggest that Plaintiffs are somehow "seeking admission" if they decline to voluntarily depart the United States and apply for immigration relief to stay in the country. But as Plaintiffs have already explained, this argument is foreclosed by the Supreme Court's decision in *Sanchez v. Mayorkas*, 593 U.S. 409 (2021), and even Defendants' own policy guidance, both of which make a distinction between lawful status and "admission" as defined in the INA. *See* ECF No. 38 at 5–7; *see Sanchez*, 593 U.S. at 415 ("Lawful status and admission . . . are distinct concepts in immigration law: Establishing one does not necessarily establish the other."); *id*. at 416 (explaining that Temporary Protected Status, like asylum or other forms of relief, only grant "lawful status" in the country—and *not* an "admission"). The reasoning of *Sanchez* makes clear that, contrary to Defendants' suggestion, a noncitizen inside the country applying for a U visa, or other forms of immigration relief like cancellation of removal and TPS, is "seeking lawful status"—and not "seeking admission"—because those forms of relief confer only "lawful status" in the United States. *See, e.g.*, *id*.; *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, __ F. Supp. 3d __, 2025 WL 2809996, at *7 (D. Mass. Oct. 3, 2025).

Fourth, Defendants' position cannot be squared with the structure of § 1226. As this Court explained, "Section § 1226(c) . . . 'carves out a statutory category of aliens who may *not* be released under § 1226(a).'" *Escobar Salgado*, 2025 WL 3205356, at *13 (citing *Jennings*, 583 U.S. at 289). Congress recently reaffirmed in the Laken Riley Act ("LRA") that class members—people who entered the country without inspection (or "EWIs")—are eligible for bond under § 1226(a) because

the Act specifically excludes a subset of EWIs from bond based on their criminal history. *See* 8 U.S.C. § 1226(a) (rendering noncitizens eligible for bond "[e]xcept as provided in subsection (c)"); *see also id*. § 1226(c)(E) (excluding certain EWIs from bond). If § 1226(a) did *not* generally provide bond to EWIs—as Defendants maintain—it would have been unnecessary for Congress in the LRA to specifically exclude certain EWIs from bond in the first place. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co*., 559 U.S. 393, 400 (2010); *Escobar Salgado*, 2025 WL 3205356, at *13 ("There would be no need for Congress to create exceptions for individuals like Petitioners if they were subject to mandatory detention without review under § 1225(b)(2).").[5]

Defendants have no real response to this argument. They assert that § 1226(c)(E), which targets only people who are *inadmissible* under 8 U.S.C. § 1182, can apply to "noncitizens who were admitted in error . . . ." Resp. 16:8-9. That is both beside the point and wrong. People admitted into the United States, even in error, are exclusively subject to the grounds of *deportability* at 8 U.S.C. § 1227. *See Matter of V-X*, 26 I. & N. Dec. 147, 150 (BIA 2013); 8 U.S.C. § 1227(a)(1).

Lastly, Defendants attempt to distort the legislative history and intent behind IRRIRA's amendments. But as this Court and many others have found, "nothing in the legislative history indicates Congress intended to alter the detention regime for noncitizens pending the outcome of those proceedings-to the contrary, Congress clarified the IIRIRA amendments did *not* alter the ability of noncitizens who are present in the country illegally to secure release on bond under § 1226(a)." *Escobar Salgado*, 2025 WL 3205356, at *19 (alteration in original); *see also Guerrero Orellana*, 2025 WL 2809996, at *9. Indeed, Congress explicitly amended § 1226(a) to omit any

[5] Defendants' claim that the LRA amendment "does independent work" by restricting the use of parole, Resp. 16:18-28, is therefore off base. Had Congress sought to restrict parole eligibility, it would have enacted exceptions to the parole statute, § 1182(d)(5)—not amended § 1226(c), which is "an exception" to § 1226(a). *See Nielsen v. Preap*, 586 U.S. 392, 397, 410 (2019). This is also inconsistent with the legislative history, which reflects that both proponents and opponents understood the LRA to be subjecting a *new* group of people who had been in the country for decades to mandatory detention. 119 Cong. Rec. H56 (daily ed. Jan. 7, 2025) (statement of Rep. Collins) ("*Right now*, ICE is *unable to detain* and deport illegal criminals who commit these minor-level crimes, but the Laken Riley Act will fix this.") (emphasis added); *id*. at H58 (statement of Rep. Jayapal) ("people who have been in this country for decades" would "*now* be subject to mandatory detention under this bill.") (emphasis added).

reference to the grounds of deportability at § 1227—thus ensuring that inadmissible noncitizens who entered without inspection would be eligible for bond. *See* 8 U.S.C. § 1226(a) (authorizing detention "pending a decision on whether the [noncitizen] *is to be removed*" (emphasis added)).[6] Congress further made clear that the new version of § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond [a noncitizen] who is not lawfully in the United States." *Escobar Salgado*, 2025 WL 3205356, at *18 (citing H.R. Rep. No. 104-469, pt. 1, at 229).

In the face of this evidence, Defendants argue that Congress's changes to the removal process somehow silently upended the relevant detention rules in IRRIRA to subject an entirely new group of people to mandatory detention. But as this Court explained, Congress consistently distinguished between noncitizens "arriving" from those already residing in the U.S. *See Escobar Salgado*, 2025 WL 3205356, at *19 ("Congress reflected its understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already present and residing in the U.S. compared to the minimal rights of noncitizens seeking to enter or recently arriving in the country." (citing H.R. Rep. No. 104-469, p. 1 at 163-66)).

This is confirmed by the broader context. In particular, Congress in IIRIRA expressly expanded crime-based mandatory detention by enacting § 1226(c) while giving the Government two years to modestly expand its detention capacity to 9,000 beds to accommodate the agency's new detention needs. *See id*. at 123–24; Margaret H. Taylor, *The 1996 Immigration Act: Detention and Related Issues*, 74 Interpreter Releases 209, 216–17 (1997). Defendants' suggestion that Congress simultaneously mandated the detention of an *additional two million or more noncitizens* without mention, both is implausible and cannot be squared with the legislative record.

Congress had good reason to maintain the pre-IIRIRA scheme affording bond to noncitizens who enter without inspection. "The difference in treatment between a noncitizen at the border and one already in the United States fits within the broader context of our immigration

[6] The pre-IIRIRA scheme permitted noncitizens who entered unlawfully and were subject to the grounds of deportability access to bond. 8 U.S.C. § 1252(a)(1) (1994).

law." *Castañon-Nava*, 2025 WL 3552514, at *9. Detention implicates a fundamental liberty interest, and "once [a noncitizen] enters the country, the legal circumstances change, for the Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Congress presumably did not intend to radically alter detention statutes in a manner that would raise serious constitutional concerns. *See Clark v. Martinez*, 543 U.S. 371, 381 (2005).

For all the reasons above, the Court should reject Defendants' attempt to mangle the detention statutes because § 1226(a) applies.

C. Detention Without a Bond Hearing Violates Due Process.[7]

Defendants do not meaningfully engage with this Court's reasoning why, regardless of what detention statute applies, due process requires the opportunity to seek release on bond before an arbitrary decisionmaker. Instead, Defendants attempt to frame this claim as a challenge to "temporary detention" by noncitizens at the threshold of entry, but that is not the nature of Plaintiffs' claim, which is about the mandatory nature of the detention itself.

As this Court already explained, "[s]ubstantive due process protects individuals from government action that interferes with fundamental rights," and "thus protects noncitizens from arbitrary confinement by the government, which violates a noncitizen's substantive due process rights except in certain 'special and narrow nonpunitive circumstances where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Escobar Salgado*, 2025 WL 3205356, at *23 (citing *Zadvydas*, 533 U.S. at 690). The Supreme Court has repeatedly affirmed due process protections for noncitizen detainees. *See, e.g.*, *Trump v. J. G. G.,* 604 U.S. 670, 673 (2025) (affirmed even in the context of war-time proclamations), *see also A. A. R. P. v. Trump*, 605 U.S. 91, 94–95 (2025). Cases cited by Defendants do not support mandatory detention for Plaintiffs because they explicitly addressed differently situated

[7] As noted above, after the Court resolves the pending motion for class certification, Plaintiffs intend to move for partial summary judgment on their claims that Defendants' policies violate the INA and its regulations. The Court thus need not at this time address the due process or APA claims to the extent they incorporate arguments beyond the statutory and regulatory violations.

individuals. *Escobar Salgado*, 2025 WL 3205356, at *23–24 (distinguishing *Demore v. Kim*, 538 U.S. 510 (2003) and *DHS v. Thuraissigiam*, 591 U.S. 103 (2020)); *see also Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214 (1953) (distinguishing between people who have entered the country and those arriving at the border); *Carlson v. Landon*, 342 U.S. 524, 542 (1952) (addressing *nonmandatory* detention of alleged members of the Communist Party); *Jennings*, 583 U.S. at 297 (noncitizens seeking entry into the United States). As this Court noted, cases like *Thuraissigiam* only underscore "the distinction that [noncitizens] 'who have established connections in this country,' like [Plaintiffs], have greater due process rights than 'a[noncitizen] at the threshold of initial entry.'" *Escobar Salgado*, 2025 WL 3205356, at *24 (citing *Thuraissigiam*, 591 U.S. at 107).

Defendants' reliance on *Demore* to argue that the *Mathews* test does not apply is likewise misplaced for the same reasons its substantive due process analysis is inapplicable. Resp. 21:7-22. Citing the Ninth Circuit's continued application of *Mathews*, this Court has already undertaken a *Mathews* balancing test to order relief for the named Plaintiffs. PI Order 15–18 (citing *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1203–07 (9th Cir. 2022) (collecting cases)). Nothing has changed the calculus: 1) Plaintiffs' private interest in freedom from detention is substantial; 2) the risk of erroneous deprivation is extraordinarily high given DHS officers' sole, unguided, and unreviewable discretion to detain Plaintiffs without any individualized showing of why their detention is warranted, nor any process for Plaintiffs to challenge the exercise of that discretion; and 3) the lack of government interest in the unjustified deprivation of a person's liberty. *Id*.

D. Plaintiffs State Claims Under the APA.

Defendants raise four objections to Plaintiffs' Count Three under the Administrative Procedures Act (APA)—that the Defendants' new mandatory detention policies are contrary to law and arbitrary and capricious, but none of them stick. First, Defendants claim that the claim is barred by jurisdiction-stripping provisions of the INA, but as explained above, this Court has already rejected the applicability of those provisions. *Supra,* pp. 2-3. *Jennings* does not hold otherwise. Second, Defendants assert that the APA does not itself grant jurisdiction, however,

Plaintiffs are not relying on the APA for jurisdiction but rather as a cause of action. Plaintiffs' complaint cites other sources of jurisdiction including 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 2241 (federal habeas). ECF No. 1 ¶ 15.

Third, at this stage of the litigation, Plaintiffs have more than stated a claim under the APA. The Court has already held that the named Plaintiffs are erroneously subject to mandatory detention under § 1225(b)(2), and therefore Defendants have acted contrary to the INA and its regulations. PI Order 11. Even assuming that Defendants had the authority to change its position—after over three decades of applying § 1226(a) to individuals like Plaintiffs—the APA requires DHS and BIA to avoid arbitrary and capricious action. *See, e.g., Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020) (recission of DACA program was arbitrary and capricious for failing to consider important aspects of the problem, like serious reliance interests, and weighing such interests against competing policy concerns); *Judulang v. Holder*, 565 U.S. 42, 52–53 (2011) (BIA policy regarding discretionary relief "flunked" the test for reasoned decision-making by relying on arbitrary and irrelevant factor); *Grace v. Barr*, 965 F.3d 883, 897–903 (D.C. Cir. 2020) (changes to standards in asylum proceedings were arbitrary and capricious for conflicting with other standards and departing from past practice without adequate explanation).

But that is what Defendants have done here: departed from decades of prior practice and understanding without a reasoned explanation or adequately explaining how they took into account important aspects of the problem, including: the serious reliance interests of noncitizens in remaining free from detention while defending themselves against removal; the toll of that mandatory detention on families, employers, and communities at large; the impact this would have by forcing individuals to give up meritorious claims and self-deport; and, the serious constitutional issues that such a large-scale mandatory detention program has. *See, e.g.*, *Regents*, 591 U.S. at 30–33; *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Council of Parent Att'ys & Advocs., Inc. v. DeVos*, 365 F. Supp. 3d 28, 47–55 (D.D.C. 2019) (no "reasoned explanation" for departure and failed to consider relevant factors). The agency

also impermissibly considered factors that Congress did not intend, including the desire to encourage self-deportation despite their rights to pursue relief where eligible.

Lastly, Defendants claim that the challenged agency actions are "committed to agency discretion by law" and therefore not reviewable. Resp. 29:18-26 (citing 5 U.S.C. § 701(a)(2)). But "[t]he APA establishes a basic presumption of judicial review for one suffering legal wrong because of agency action," and "the exception in § 701(a)(2) [is therefore read] quite narrowly." *Regents*, 591 U.S. at 16–17 (cleaned up). The § 701(a)(2) exception to judicial review applies only in the "rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Dep't of Commerce v. New York*, 588 U.S. 752, 772 (2019). The burden on the government to rebut the presumption of reviewability is "heavy," *Ramirez v. ICE*, 338 F. Supp. 3d 1, 37 (D.D.C. 2018), and it can only do so when there is "no law to apply" because "courts have no legal norms pursuant to which to evaluate the challenged action." *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d. 634, 642–43 (D.C. Cir. 2020). But here, there are plainly "judicially manageable standards" to determine: (1) whether Plaintiffs are subject to § 1225(b)(2)(A) or § 1226(a), (2) whether the detention violates the Constitution, and (3) whether the agency action is arbitrary and capricious. *See id*. at 643 ("judicially manageable standards" to review agency action "may be found" in a wide range of sources: "formal and informal policy statements and regulations as well as in statutes."). Besides the DHS 2025 Interim Guidance Memorandum, even Defendants point to *Yajure Hurtado*, both which the Court may use to evaluate Defendants' justifications for its abrupt change in position after decades of applying bond hearings to Plaintiffs and the putative class. *See Robbins v. Reagan*, 780 F.2d 37, 45 (D.C. Cir. 1985) ("[T]he agency itself can often provide a basis for judicial review through the promulgation of regulations or announcement of policies.").

In sum, Defendants cannot shield their programmatic agency actions from review.

III. CONCLUSION

The Court should proceed expeditiously to partial summary judgment after adjudicating the pending motion for class certification.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **REPLY TO DEFENDANTS-RESPONDENTS' RESPONSE TO PLAINTIFFS-PETITIONERS' PETITION FOR A WRIT OF HABEAS CORPUS AND CLASS ACTION COMPLAINT** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on December 16, 2025. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

☒ CM/ECF
☐ Electronic mail; or
☐ US Mail or Carrier Service

Suzanne Lara
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