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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, *et al*.,

Defendants-Respondents.

Case No.: 2:25-cv-02136

PLAINTIFFS-PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs-Petitioners ("Plaintiffs"), through counsel, pursuant to FRCP 56, move this Court for an order granting partial summary judgment. This motion is based on this notice, the memorandum of points and authorities filed herein, Plaintiffs' supporting evidence, the statement of uncontroverted facts and conclusions of law, the pleadings previously filed in this action, and any oral argument permitted at the hearing on this motion.

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**Admitted pro hac vice*

Dated this 13th day of February 2026.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Department of Homeland Security ("DHS") and the Department of Justice ("DOJ") are systemically misclassifying people arrested inside the United States. These people are generally subject to discretionary detention under 8 U.S.C. § 1226(a), which allows for release on bond and conditions during the pendency of immigration proceedings. However, DHS and DOJ are now misclassifying these people as being subject to mandatory detention under 8 U.S.C. § 1225(b)(2), which applies to noncitizens seeking admission at the border and does not allow for release on bond. This abrupt change in policy was first announced by ICE in July 2025 in a leaked memo that Respondents-Defendants ("Defendants") have since confirmed is the official formal policy of DHS and DOJ, and that has since been enshrined in a precedential decision of the Board of Immigration Appeals ("BIA"), which is binding on all Immigration Courts and DHS officers. *Matter of Yajure Hurtado*, 29 I. &. N. Dec. 216 (B.I.A. 2025).

Plaintiffs' class action challenges 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). This case seeks not only individual writs of habeas corpus for the named Plaintiffs but also declaratory relief on behalf of a regional class of noncitizens detained in Nevada and unlawfully deprived of the opportunity for bond due to DHS' July memo and the BIA's precedential decision in *Matter of Yajure Hurtado* and vacatur of the policies. More specifically, this case concerns the detention authority for a class of people who are arrested inside the United States and are alleged to have initially entered without inspection, often years or even decades before. The class does not include people who were apprehended upon

arrival at the border and detained continuously thereafter.[1] The class also does not include people who are being arrested due to revocation of humanitarian parole, people who are subject to mandatory detention due to criminal history, people who are subject to post-final order detention, nor people in expedited removal. *See* ECF No. 71 ("Class Cert. Order") at 41. The class therefore represents the core of the group of people who for decades were subject to 8 U.S.C. § 1226(a), and the government now claims are subject to 8 U.S.C. § 1225(b)(2). ECF No. 39 ("Resp. to Pet. and Class Compl.") at 8.

The government policies misclassifying the certified class are contrary to decades of settled law and practice, and they are unlawfully premised solely upon how the person initially entered the country. In its preliminary injunction decision, as well as 60 other cases that came before it on the same issue, this Court ruled on statutory grounds that the government is misclassifying these bond-eligible detainees. *See* ECF No. 35 ("Prelim. Inj. Order"); Class Cert. Order at 2 n.1 (collecting cases). The Court's rulings were grounded in the text and canons of statutory interpretation, legislative history, and long history of consistent agency practice of providing individuals in this situation with a bond hearing. Prelim. Inj. Order at 2–3. And they were consistent with a near-consensus in the federal courts, as reflected in hundreds of other decisions across the country, rejecting the government's misclassification of these detainees. *See* Class Cert. Order at 2 n.2 (noting "more than 300 federal judges in over 1,600 cases have rejected the government's new detention policy); *Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), --- F.

[1] Plaintiff takes no position on what detention authorities may apply to these individuals in this litigation. Instead, the class definition is intended to encompass the core group for whom relief can clearly be ordered on a collective basis in this case.

Supp. 3d ----, 2025 WL 3295903, at *4, apps. 13–14 (S.D.N.Y. Nov. 26, 2025) (cataloging 362 decisions).[2]

Plaintiffs now request this Court apply its prior related rulings to the certified class and reaffirm class members' right to be considered for release on bond, which has been the practice for decades and the law according to the INA's plain text and implementing regulations. There are no disputed issues of fact, and the pure legal issues are readily resolved on summary judgment. Specifically, Plaintiffs request that the Court grant class-wide partial summary judgment on Counts I, II, and III as they relate to claims that Defendants' policies violate the INA and its regulations, declare class members' right to be considered for release on bond, vacate DHS's and BIA's new policies under the Administrative Procedure Act (APA) as contrary to law, and grant the Named Plaintiffs' habeas petitions.

II. PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Immigration Detention's Legal Framework

The Immigration and Nationality Act (INA) provides for the detention of certain noncitizens, including—as relevant to this case—under 8 U.S.C. § 1226(a) and § 1225(b)(2)(A). *Escobar Salgado v. Mattos,* No. 2:25-cv-01872, 2025 WL 3205356, at *2-3 (D. Nev. Nov. 17, 2025); Resp. to Pet. and Class Compl. at 3-6. A noncitizen subject to § 1226(a) can be released by ICE on bond or conditional parole, *see* 8 U.S.C. § 1226(a)(2), 8 C.F.R. § 236.1(c)(8), and if release is denied, can seek a custody redetermination—better known as a bond hearing— before an immigration judge ("IJ"). *Escobar Salgado*, 2025 WL 3205356, at *2 (D. Nev. Nov. 17, 2025);

[2] *See also* Kyle Cheney, *Even Trump's Own Appointees Are Ruling Against ICE's Mass Detention Strategy*, Politico (Feb. 12, 2026), https://www.politico.com/news/2026/02/12/donald-trump-judges-mandatory-detention-rulings-00778256 (describing how 373 judges have rejected the government's reinterpretation of the detention statutes).

Resp. to Pet. and Class Compl. at 7; *see also* 8 C.F.R. § 1236.1(d). By contrast, noncitizens subject to § 1225(b)(2) are subject to mandatory detention and receive no bond hearing. *Escobar Salgado*, 2025 WL 3205356, at *3; Resp. to Pet. and Class Compl. at 6; *see also* 8 U.S.C. § 1225(b)(2)(A). They may only be released on humanitarian parole at the arresting agency's (i.e., ICE's) discretion. *Escobar Salgado*, 2025 WL 3205356, at *3*; Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018); 8 U.S.C. § 1182(d)(5)(A).

B. Defendants' New Mandatory Policy

Prior to July 2025, DHS, ICE, and the Las Vegas Immigration Court considered anyone who entered the United States without inspection to be detained under 8 U.S.C. § 1226(a) unless that person was subject to the expedited removal provisions of 8 U.S.C. § 1225(b)(1) or the detention provisions of § 1226(c) or § 1231. ECF No. 18-1 ("Kagan Decl.") ¶¶ 31-33; Resp. to Pet. and Class Compl. at 7. This interpretation has been consistent during the nearly thirty years that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) has been in effect, *Escobar Salgado*, 2025 WL 3205356, at *3; Resp. to Pet. and Class Compl. at 7, and aligns with statements published by the DOJ making clear that noncitizens arrested inside the United States have access to bond hearings pursuant to § 1226(a), and that mandatory detention pursuant to § 1225(b)(2) applies only to noncitizens detained while arriving at or near the border. *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) ("[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge . . . . This procedure maintains the status quo."); *see also id.* at 10313 ("Several sections of the statute, such as sections 212(a)(9), 240B, and 241 of the Act, refer to arriving aliens, even though this term is not defined in statute. After carefully considering these references, the Department felt that the statute seemed to differentiate

more clearly between aliens at ports-of-entry and those encountered elsewhere in the United States.")

On July 8, 2025, DHS, "in coordination with the Department of Justice," reversed course when it directed its personnel nationwide to classify bond-eligible detainees under § 1226(a) as bond ineligible § 1225(b)(2) detainees if they originally entered the country without inspection. ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission, AILA Doc. No. 25071607 (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission, [https://perma.cc/5GKM-JYGX] (attached herein as Exhibit 1); Class Cert. Order at 3; Resp. to Pet. and Class Compl. at 8. The policy outlined in the July 8 memo is the official formal policy of DHS and DOJ. Class Cert. Order at 8; ECF No. 60, ("Hr'g. Tr.") at 7:23-24. This reversal triggered a tidal wave of litigation, as numerous detainees were stripped of their right to consideration for bond and were condemned to months or years of incarceration—even if they did not present any conceivable danger or risk of flight. Class Cert. Order at 2.

On September 5, 2025, the BIA issued a precedential decision, *Matter of Yajure Hurtado*, which makes the policy legally binding on all IJs. *Id*. at 3. The BIA held that any noncitizen who is present in the United States without having been inspected and admitted is subject to detention under § 1225(b)(2). *Id; see also id*. at 228. As a result, class members are routinely and systematically misclassified and detained without any consideration for bond. *See* Kagan Decl. ¶¶ 32-36 (IJs in Las Vegas Immigration Court now universally follow this interpretation of the INA's detention scheme); *see also* Class Cert. Order at 29 (noting at least 177 noncitizens in the proposed class as of December 12, 2025, and the likelihood of ongoing arrests leading to future class members).

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C. Named Plaintiffs' Cases

Plaintiffs Victor Kalid Jacobo-Ramirez and Edgar Michel Guevara-Alcantar are both longtime residents of the United States who were subjected to mandatory detention under Defendants' new policies. Kagan Decl. ¶¶ 8, 18, 20, 24; Class Cert. Order at 9; Resp. to Pet. and Class Compl. at 8-9. Both Plaintiffs entered the United States without inspection as minors many years ago and have since built their lives here with their U.S. citizen children and loved ones. Kagan Decl. at ¶¶ 8, 9, 13, 20, 28; Class Cert. Order at 9; ECF No. 22 ("Opp. to Prelim. Inj.") at 2-4, 20-22. Neither of them has criminal records disqualifying them from consideration for bond or had any prior contact with immigration authorities. Kagan Decl. at ¶¶ 10, 11, 14, 26; Prelim. Inj. Order at 6-7; Opp. to Prelim. Inj. at 2-4. Their experiences are representative of the class. *See* Class Cert. Order at 34.

III. LEGAL STANDARD

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a); *Range Rd. Music, Inc. v. E. Coast Foods, Inc.*, 668 F.3d 1148, 1152 (9th Cir. 2012). The moving party bears the initial burden of establishing there is no genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). To defeat a motion for summary judgment, the responding party must present admissible evidence sufficient to establish any of the elements that are essential to the moving party's case and for which that party will bear the burden of proof at trial. *See id.*; *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989). The Court may grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show the movant is entitled to summary judgment and if the responding party fails to properly address the moving party's assertion of fact as required by Rule 56(c). *See* Fed. R. Civ. P. 56(e).

The responding party cannot point to mere allegations or denials contained in the pleadings. It is not enough for the non-moving party to produce a mere "scintilla" of evidence. *Anderson*, 477 U.S. at 252. Instead, the responding party must set forth, by affidavit or other admissible evidence, specific facts demonstrating the existence of an actual issue for trial. *Celotex Corp.*, 477 U.S. at 324.

IV. ARGUMENT

Despite the weight of authority, Defendants maintain that all noncitizens apprehended inside the United States after having entered without inspection are classified as an "applicant for admission," 8 U.S.C. § 1225(a)(1), and are thus subject to mandatory detention under § 1225(b)(2). Resp. to Pet. and Class Compl. at 8. Because this unlawful policy has been adopted as an official policy, Class Cert. Order at 3, and embodied in a BIA decision binding on all Immigration Courts, Defendants maintain they must apply it to all members of the class and deny them bond hearings on that basis.

Defendants' policy, cemented in *Matter of Yajure Hurtado*, violates the INA and its regulations, and is contrary to law in violation of the APA. *See* Prelim. Inj. Order at 11 (finding Plaintiffs' likelihood of success on the merits "because (1) § 1226(a), not § 1225(b)(2), applies to them, and therefore their detention without the opportunity for release on bond violates the INA and its implementing regulations"); Class Cert. Order at 24–28 (rejecting Defendants' arguments against APA review). As further described below, the plain language of the statutory provisions, legislative history, and decades of agency practice compels the conclusion that the Class Members' detention is governed by § 1226(a), not § 1225(b)(2)(A). This is reaffirmed by the associated regulations. *See* 62 Fed. Reg. at 10323; 8 C.F.R. §§ 235.1(d)(1), 1003.19(a). Further, Defendants' disregard of the plain language limiting the scope of § 1225(b)(2)(A) to noncitizens who are—

unlike Class Members—"seeking admission," runs afoul of multiple canons of statutory construction and longstanding agency practice.

Accordingly, Plaintiffs seek partial summary judgment on Counts I, II, and III insofar as they relate to claims that Defendants' policies violate the INA and its regulations, a declaration that class members' have a right to be considered for release on bond, vacatur of DHS's and BIA's new policies under the Administrative Procedure Act (APA) as contrary to law, and the granting of Named Plaintiffs' habeas petitions.

A. Defendants' New Policy Violates the INA.

i. Plain Language of the Relevant Statutes Establishes that the Class Members' Detention is Governed by 8 U.S.C. § 1226, not § 1225(b)(2)(A).

In summary, "[i]t is a 'fundamental canon of statutory construction that, 'unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.'" *Sandifer v. United States Steel Corp*., 571 U.S. 220, 227 (2014); *Escobar Salgado*, 2025 WL 3205356, at *11. Further, the statutory text "must be read in their context and with a view to their place in the overall statutory scheme." *City & Cnty. of San Francisco v. EPA*, 604 U.S. 334, 350 (2025); *see also Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989). The plain language of 8 U.S.C. § 1226 and § 1225(b)(2)(A), when read together, makes clear that individuals like class members—apprehended inside the United States and placed into removal proceedings—are detained under § 1226, not § 1225(b)(2)(A). Prelim. Inj. Order at 12.[3]

[3] This Court has already exhaustively analyzed the relevant statutes and concluded that the plaintiffs and class members are subject to § 1226, not § 1225(b)(2)(A). Prelim. Inj. Order at 12; Class Cert. Order at 2–3 & n.1. Plaintiffs will not endeavor to restate the Court's entire analysis, and the Court can and should grant summary judgment for all the reasons stated in its prior Order. *See generally* Prelim. Inj. Order, incorporating by reference its reasoning and holding regarding Defendants' new interpretation of § 1225(b)(2) from *Escobar Salgado v. Mattos*, No. 2:25-CV-01872-RFB-EJY, 2025 WL 3205356 at *10-26 (D. Nev. Nov. 17, 2025); Class Cert. Order at 2 n.1 (collecting this Court's decisions granting individualized relief).

1. The text of § 1226 and canons of statutory construction demonstrate that Plaintiffs are entitled to bond hearings.

Section 1226(a) authorizes arrest and detention of a noncitizen pending a decision on removability and provides the general right to seek release on bond. 8 U.S.C. § 1226(a). That is precisely the Class Members' posture: individuals who have been apprehended in the United States and are detained "pending a decision" in their removal proceedings. *Id*.; Prelim. Inj. Order at 12.

Section 1226(a) applies by its terms unless a specific statutory carveout applies. Nothing in § 1226(a) excludes people who entered without inspection. Congress created only one exception to § 1226(a) in § 1226(c), which mandates detention for defined criminal and terrorism-related categories. 8 U.S.C. § 1226(c); *see Nielsen v. Preap*, 586 U.S. 392, 398 (2018). Notably, Congress did not cross-reference § 1225(b)(2)(A) as an exception to § 1226(a)'s default regime. Under the canon of construction *expressio unius est exclusio alterius*—when one is mentioned, the other is excluded—Section 1226's limited "express exception" compelling mandatory detention under § 1226(c) implies that there are no other circumstances under which' a noncitizen detained under § 1226 is subject to mandatory detention. *See Escobar Salgado*, 2025 WL 3205356, at *13 ("[a] plain reading of the exceptions under § 1226(c), and the fact that such 'exceptions' to the availability of being released on bond exist, supports a finding that § 1226(a) applies to all noncitizens who like Plaintiffs and class members, are charged as being 'present in the United States without being admitted or paroled' under §1182(a)(6)(A) but who have ***not*** been implicated in any of the enumerated crimes set forth in § 1226(c)"). Because § 1226(c) is the only express exception and does not encompass the class members, it is clear that § 1226(a)'s general detention authority applies to the class. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co*., 559 U.S. 393, 400 (2010) (considering the "fact that Congress has created specific exceptions" to the rule proves that the rule otherwise applies generally).

Additionally, courts presume that Congress intends its amendments to have "real and substantial effect," *United States v. Quality Stores, Inc.*, 572 U.S. 141, 148 (2014), and Defendants' contrary reading would eviscerate the exceptions of § 1226(c), and in particular Laken Riley Act's amendments, of meaningful effects, *see Escobar Salgado*, 2025 WL 3205356, at *16 (citing *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) ("a court must interpret the statute 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.") (citation and quotation marks omitted), and thus § 1225 and §1226 should be read in harmony, as applying to different classes of noncitizens, which "*must* prevail over a reading that would create an unnecessary conflict or redundancy between the two provisions." *Escobar Salgado*, 2025 WL 3205356, at *17. With that understanding, sections 1225(b)(2)(A) and 1226 should be construed in a manner that avoids rendering the language in the latter section to be meaningless.

2. Defendants' Sweeping Interpretation of "Applicant for Admission" in § 1225(b)(2) Runs Afoul of Multiple Canons of Statutory Interpretation.

When read side by side 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.

"By its plain text, § 1225(b)(2) applies where several conditions are met: (1) an 'examining immigration officer' in the context of 'inspection' (2) determines that an individual is an 'applicant for admission' who is (3) 'seeking admission.'" *Id.* at *14. A person apprehended inside the United States is not undergoing an "examination," which "is a specific legal process one undergoes while trying to enter the country." *Id*. And, as this Court noted, § 1225(a)(3) ("Inspection") provides that all aliens who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States must be inspected by immigration officers, indicating that

"inspection" by an examining immigration officer referenced in § 1225(b)(2)(A) occurs at the time an alien first applies for or otherwise seeks admission to the United States—not during an encounter with ICE officers conducting removal operations far from any port of entry, long after the noncitizen encountered by ICE first entered the country. *Id*.

Further, § 1225(b)(2)(A) qualifies that an applicant for admission shall be subject to mandatory detention "if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted. § 1225(b)(2)(A) (emphasis added). Where the INA defines "admission" as "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), noncitizens apprehended while residing in the United States do not fall into the scope of § 1225(b)(2)(A), which applies to those "seeking admission."

The class members cannot be subject to § 1225(b)(2)(A), because they were not "seeking admission" at the time of their arrest, nor were they being "examined." To the contrary, class members are noncitizens who, after entering the United States without inspection, are already inside the United States and often have resided in the country for months, years, and even decades. Even assuming they were "applicants for admission" at the time of their arrest, they were not seeking "lawful entry" into the United States at a port of entry subject to inspection and authorization by an immigration officer—instead, they were already in the United States and intending to remain. Prelim. Inj. Order at 5-6; *see also Jennings*, 583 U.S. at 288-89 (§ 1226 applies to noncitizens "inside the United States," "present in the country," and "already in the country").

Defendants' contrary reading of "seeking admission" as synonymous with "applicant for admission" impermissibly expands the scope of the statute beyond the ordinary meaning of its text and violates multiple canons of statutory construction. *Escobar Salgado*, 2025 WL 3205356, at *15. For example, courts presume that different terms in a given statute "usually have different

meanings," thus supporting that "applicant for admission" and "seeking admission" encompass different scopes of individuals. *Pulsifer v. United States*, 601 U.S. 124, 149 (2024). The use of the phrase "or otherwise" in § 1225(a)(3) which requires "inspection" of all noncitizens "who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States," similarly supports the words being given separate meanings, as "or" is used to refer to something that is different from something already mentioned. *Escobar Salgado*, 2025 WL 3205356, at *15 (citing *United States v. Woods*, 571 U.S. 31, 45 (2013)). Furthermore, where § 1225(b)(2)(A) requires that a noncitizen be both an "applicant for admission" and "seeking admission," Defendants' treatment of those terms as interchangeable nullifies the meaning of "seeking admission" in § 1225(b)(2)(A), running afoul of the cardinal rules of statutory construction. *Id*.

ii. Applying § 1226 to the Class Aligns with Longstanding Regulations and Agency Practice.

While courts must exercise "independent judgment in deciding whether an agency has acted within its statutory authority," agency interpretations "issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Immediately after Congress enacted the IIRIRA, the Department of Justice issued implementing regulations explaining that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Conversely, the regulations provided that "[a]rriving aliens placed in removal proceedings under section 240 of the [INA] shall be detained in accordance with [§ 1225(b)]," 8 C.F.R. § 235.3(c), with "arriving aliens" defined, in relevant part, as "an applicant for admission coming or attempted to come into the United States at a port-of-entry," *id*. § 1.2; *see also id*. § 1003.19(h)(2) (no jurisdiction for IJs to redetermine conditions of

custody of "[a]rriving aliens in removal proceedings"). Several courts, including this Court, have emphasized this distinction, and how in the decades since, implementing agencies consistently applied § 1226, not § 1225(b)(2)(A), to noncitizens who entered without inspection and were later arrested inside the United States. *Escobar Salgado*, 2025 WL 3205356, at *3-4; *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1333 (W.D. Wash. 2025); *Guerrero Orellana v. Moniz,* 802 F. Supp. 3d 297, 311 (D. Mass. 2025). The relevant agencies' regulatory guidance and subsequent years of unchanged practice is "persuasive evidence that Plaintiffs and those similarly situated continue to be subject to discretionary detention under § 1226(a)" and that Defendants' policy exceeds the government's statutory authority under the INA. *Escobar Salgado*, 2025 WL 3205356, at *20; *see also Rodriguez*, 802 F. Supp. 3d at 1333 ("the previous longstanding practice of allowing bond hearings for noncitizens such as the Bond Denial Class members has some persuasive value, because it began contemporaneously with the statute's enactment and endured for many years"); *Guerrero Orellana,* 802 F. Supp. 3d at 311 ("[w]hile not conclusive, the government's longstanding position that noncitizens who entered without inspection and were later apprehended within the country were subject to detention under § 1226 rather than § 1225(b)(2)(A) supports the Court's interpretation of the scope of the government's statutory authority").

iii. The Legislative History Demonstrates Defendants' Interpretation of the Detention Provisions is Wrong.

IIRIRA's legislative history also supports the conclusion that § 1226(a) applies to Plaintiffs. As noted, in passing the Act, Congress was focused on the perceived problem of recent arrivals to the United States who did 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 pending removal proceedings.

This is important, as prior to IIRIRA, people like Plaintiffs were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a) (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 (2001) (finding "implausible that Congress would give to the [agency] through these modest words [such] power"). But in fact, 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). Because noncitizens like Plaintiffs were entitled to discretionary detention under Section 1226(a)'s predecessor statute and Congress declared its scope unchanged by IIRIRA, specifically "that mandatory detention under § 1225(b)(2) was contemplated and intended to apply to 'arriving' not [sic] citizens, not those already present in the country", this background supports "interpreting the INA as subjecting noncitizens like [Plaintiffs], who are already present and residing in the U.S., to discretionary detention with its associated procedural protections under § 1226(a), rather than mandatory detention under § 1225(b)." *Escobar Salgado*, 2025 WL 3205356, at *3-4.

Moreover, in passing IIRIRA, Congress was acutely concerned about the strain on detention capacity that § 1226(c)'s new detention mandate would impose by requiring the detention of an estimated 45,000 noncitizens subject to removal on criminal grounds each year. *See* H.R. Rep. No. 104-469, pt. 1, at 118, 120, 123. To address the problem, Congress authorized an option to defer implementation of § 1226(c) for two years while the agency built up its detention capacity—an option the government promptly invoked. IIRIRA § 303(b), 110 Stat. 3009-586 to

3009-587; Doris Meissner, Comm'r, INS to Henry J. Hyde, Chairman, Comm. on the Judiciary, U.S. House of Representatives, Letter Invoking IIRIRA Transitional Period Custody Rules (Oct. 3, 1997), https://perma.cc/HFF9-MY3N (attached herein as Exhibit 2). It is implausible that the same Congress that showed such solicitude regarding § 1226(c)'s detention mandate simultaneously enacted the largest expansion of mandatory detention in U.S. history by imposing a new detention rule for *millions* of people in the United States under § 1225(b)(2)—without a whisper in the statutory text or congressional record.[4] Surely, "if Congress had such an intent, Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it at some point." *Chisom v. Roemer*, 501 U.S. 380, 396 (1991); *see also Whitman*, 531 U.S. at 468 ("Congress . . . does not, one might say, hide elephants in mouseholes.").

Taken together, the plain language of the statute, canons of statutory construction, longstanding agency regulations and practice, and the legislative history of the IIRIRA establish that the class members are detained, if at all, under § 1226, not § 1225(b)(2)(A).

Accordingly, partial summary judgment should be granted.

B. This Court has authority to grant APA vacatur, and such relief is necessary.

The APA directs courts to "hold unlawful and set aside agency actions, findings, and conclusions found to be [] (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law . . .". 5 U.S.C. § 706(2); Class Cert. Order at 28. This Court has already rejected Defendants' application of § 1225(b)(2)(A) to Named Plaintiffs and the class as contrary to law and held that Plaintiffs state a claim under § 706 of the APA. Class Cert. Order at 28. As

[4] The estimated population of noncitizens in the United States who entered without inspection was about two million in 1996 and is around six million today. *See* H.R. Rep. No. 104-469, pt. 1, at 111 (estimating that such individuals made up about half of the four million "illegal alien[s]" then living in the United States); Jill Wilson, et al., Cong. Rsch. Serv., R47848, Nonimmigrant Overstays: Overview and Policy Issues, at 1 n.6 (2023).

such, vacatur of DHS's policy described in the July 8, 2025 memo and *Matter of Yajure Hurtado* are warranted.

Defendants' refusal to comply with declaratory judgments issued by courts across the country on behalf of individuals and class members subject to Defendants' unlawful policies demonstrates that vacatur is not only warranted but necessary. *See, e.g.*, *Moura v. Moniz*, No. 1:25-CV-14011-IT, 2026 WL 177862, at *2 (D. Mass. Jan. 22, 2026) (describing respondents' failure to comply with declaratory judgments in *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025), and *Guerrero Orellana*, 2025 WL 3687757; *Rodriguez Vazquez v. Hermosillo*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ---, 2026 WL 102461, at *10 (W.D. Wash. Jan. 14, 2026) (granting further relief, including notice to class members and class counsel, under 28 U.S.C. § 2202 based on government's lack of compliance with declaratory judgment).

Defendants maintain that IJs continue to be bound by the agency interpretation of the statute, rather than declaratory judgments issued by federal district courts regarding the proper authority governing their detention. Chief Immigration Judge Teresa L. Riley's instruction to IJs to ignore the Court's judgment in *Maldonado Bautista* affirms that Defendants believe they may disregard judgments issued by courts.[5] As a result, thousands of people throughout the country remain unlawfully subjected to mandatory detention under § 1225(b)(2)(A), denied of any opportunity to be released to return to their homes and families. In addition, Defendants' failure to abide by declaratory judgments requires federal district courts around the country to continue to expend significant resources adjudicating habeas petitions and motions for temporary restraining

[5] *See Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, AILA Doc. No. 26011404 (January 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista (attached herein as Exhibit 3); Class Cert. Order at 4 n.7.

orders challenging Defendants' actions, a consequence this Court has already experienced and will continue to do so if vacatur is not ordered.

"When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 831 (2024) (Kavanaugh, J., concurring) (quoting *Harmon v. Thornburgh*, 878 F.2d 484, 495, n. 21 (D.C. Cir. 1989)). The law is clear that when a court vacates an agency action, the vacatur applies to all individuals affected by the agency action, and "not only those formally before the court." *See D.A.M. v. Barr*, 486 F. Supp. 3d 404, 415 (D.D.C. 2020*); see also O.A. v. Trump*, 404 F. Supp. 3d 109, 154-55 (D.D.C. 2019) (stating that defendants' contention that vacatur remedy should be limited to plaintiffs in the action is "at odds with settled precedent"). Vacatur of *Matter of Yajure Hurtado* would not only provide necessary relief to the class members within the District of Nevada, but to all noncitizens subject to mandatory detention under the unlawful detention policy, regardless of whether they are parties to this action.

C. The Court Should Issue Final Judgment Pursuant to Rule 54(b).

Plaintiffs respectfully request that the Court enter final judgment as to Counts I and II of the complaint and Count III insofar as the agency action here is "not in accordance with law." ECF No. 1 ("Pet. for a Writ of Habeas Corpus and Class Comp.") at 17-20. Under Federal Rule of Civil Procedure 54(b), "[w]hen an action presents more than one claim for relief . . . , the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." "[I]n deciding whether there are no just reasons to delay the appeal of individual final judgments in a setting such as this, a district court must take into account judicial administrative interests as well as the equities involved." *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). Where

the claims at issue are "separable from the others remaining to be adjudicated," and where "no appellate court would have to decide the same issues more than once," issuing separate final judgments is appropriate. *Id.*

Judicial efficiency and fairness support entering final judgment here. Indeed, if Plaintiffs prevail on the statutory and regulatory claims, there will be no need for the Court to address the Due Process claim or the APA claims that rely on the agency record (i.e., the arbitrary and capricious claim claim). In addition, the equities present—prolonged detention, separated family, and departure from longstanding practice—all favor expeditious resolution of the central statutory question in this case. *See, e.g.*, *Rodriguez v. Bostock*, 802 F. Supp. 3d at 1333; *Guerrero Orellana*, No. 25-CV-12664-PBS, --- F. Supp. 3d ----, 2025 WL 3687757 (D. Mass. Dec. 19, 2025; *Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM, 2025 WL 3713987 at *32 (C.D. Cal. Dec. 18, 2025), judgment entered sub nom. *Maldonado Bautista v. Noem*, 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025)*; see also Refugee & Immigr. Ctr. for Educ. & Legal Servs. v. Noem*, No. CV 25-306 (RDM), --- F. Supp. 3d ---, 2025 WL 1825431, at *56 (D.D.C. July 2, 2025) (granting final judgment pursuant to Rule 54(b) as to subset of claims and certifying appeal, except as to certain APA claims).

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (a) grant classwide partial summary judgment on Count I and II of the complaint, and Count III insofar as the agency action here is "not in accordance with law"; (b) enter declaratory relief that class members are entitled to bond hearings upon request; and (c) enter its ruling as a partial judgment under Rule 54(b).

Dated: February 13, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PLAINTIFFS-PETITIONERS' MOTION FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on February 13, 2026. 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

/s/ Suzanne Lara
ACLU of Nevada Employee