Niels W. Frenzen (CA SBN# 139064)
Jean E. Reisz (CA SBN# 242957)
USC Gould School of Law
Immigration Clinic
699 Exposition Blvd.
Los Angeles, CA 90089-0071
Telephone: (213) 740-8922
nfrenzen@law.usc.edu
jreisz@law.usc.edu

Listing of counsel continued on following page

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Lazaro MALDONADO BAUTISTA, et al., on behalf of themselves and others similarly situated,

Plaintiffs-Petitioners,

v.

Kristi NOEM, Secretary, Department of Homeland Security; et al.

Defendants-Respondents.

Case No. 5:25-cv-01873-SSS-BFM

NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Hearing
Date: October 17, 2025
Time: 2:00 p.m.
Courtroom: 2
Judge: Sunshine S. Sykes

Matt Adams*
Leila Kang*
Glenda M. Aldana Madrid*
Aaron Korthuis*
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Ave. Ste. 400
Seattle, WA 98104
(206) 957-8611
matt@nwirp.org
leila@nwirp.org
glenda@nwirp.org
aaron@nwirp.org

Eva L. Bitran (CA SBN # 302081)
AMERICANCIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA
1313 W. 8th Street
Los Angeles, CA 90017
(909) 380-7505
ebitran@aclusocal.org

My Khanh Ngo (CA SBN# 317817)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
(415) 343-0770
m.tan@aclu.org
mngo@aclu.org

Judy Rabinovitz*
Noor Zafar*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2660
jrabinovitz@aclu.org
nzafar@aclu.org

Counsel for Plaintiffs-Petitioners

*Admitted pro hac vice

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

To all Parties and their attorneys of record: Please take notice that at 2:00pm on October 17, 2025, over a Zoom conference, Plaintiffs-Petitioners Lazaro Maldonado Bautista, Ana Franco Galdamez, Ananias Pascual, and Luiz Alberto De Aquino De Aquino (Named Plaintiffs or Plaintiffs) will and hereby do move this Court to grant partial summary judgment that (1) declares unlawful Defendants-Respondents' policies of denying release on bond and bond hearings to Plaintiffs and class members under the Immigration and Nationality Act and its implementing regulations, and (2) vacates those policies under the Administrative Procedure Act as contrary to law. In addition, Named Plaintiffs ask that the Court grant their individual petitions for writs of habeas corpus.

This motion is made pursuant to Rule 56(a) of the Federal Rules of Civil Procedure and in conjunction with the concurrently filed motion for class certification. The motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Point and Authorities, Plaintiffs' Statement of Uncontroverted Facts, and Plaintiffs' supporting evidence, including declarations and exhibits, as well as any additional papers, evidence, and argument that Plaintiffs may file or submit in support.

This motion is made following the conference of counsel pursuant to L.R. 7-3. The conference took place on August 4, 2025 by video conference. Present at

the conference were Plaintiffs' attorneys Matt Adams, Leila Kang, Aaron Korthuis, My Khanh Ngo, and Niels Frenzen and Defendants' attorneys Marie Feyche and Michael Stone. The conference lasted approximately ten minutes. The parties discussed Plaintiffs' motions for class certification and motion for summary judgment and were unable to reach a resolution to eliminate the necessity of a hearing on this motion. *See* Decl. of Matt Adams ¶¶ 12–15.

DATED: August 11, 2025

/s/ Matt Adams
Matt Adams*

/s/ Aaron Korthuis
Aaron Korthuis*

Leila Kang*
Glenda M. Aldana Madrid*
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Ave. Ste. 400
Seattle, WA 98104
(206) 957-8611
matt@nwirp.org
aaron@nwirp.org
leila@nwirp.org
glenda@nwirp.org

Niels W. Frenzen (CA SBN# 139064)
Jean E. Reisz (CA SBN# 242957)
USC Gould School of Law
Immigration Clinic
699 Exposition Blvd.
Los Angeles, CA 90089-0071
Telephone: (213) 740-8922
nfrenzen@law.usc.edu

My Khanh Ngo (CA SBN# 317817)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
(415) 343-0770
mngo@aclu.org

Judy Rabinovitz*
Noor Zafar*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2660
jrabinovitz@aclu.org
nzafar@aclu.org

Eva L. Bitran (CA SBN # 302081)
AMERICANCIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA
1313 W. 8th Street
Los Angeles, CA 90017
(909) 380-7505
ebitran@aclusocal.org

jreisz@law.usc.edu

Counsel for Plaintiffs-Petitioners

*Admitted pro hac vice

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Session Laws

Legislative History

Agency Decisions

Other Authorities

INTRODUCTION

Plaintiffs-Petitioners (Plaintiffs) are noncitizens who entered the United States without inspection and who have since lived in this country for years. For more than half a century, when immigration authorities arrested and detained people like Plaintiffs, they considered them for release on bond. If release was denied, they also provided people in Plaintiffs' shoes a bond hearing before an immigration judge (IJ) to determine if they present a flight risk or danger or, if not, should be released. But Defendants have now upended this decades-old legal interpretation. They now declare, based on new directives from the past few months, that regardless of how long a person has lived here, and regardless of their ties to this country, individuals like Plaintiffs are subject to mandatory detention under the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2)(A), and may not be released on bond.

Defendants' radical new policy defies both the plain text of the statute providing for release on bond, 8 U.S.C. § 1226, and the structure of the INA's detention scheme. As the Supreme Court explained in *Jennings v. Rodriguez*, § 1226(a) governs the detention of those, like Plaintiffs, who are "already in the country" and are detained "pending the outcome of removal proceedings." 583 U.S. 281, 289 (2018). That statute provides that such people are eligible for bond. In contrast, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's

borders and ports of entry" to noncitizens "seeking to enter the country." *Id.* at 287. That understanding is reinforced by canons of statutory construction, the legislative history, the implementing regulations, and Defendants' long history of providing individuals like Plaintiffs with bond hearings. Defendants' new policy is thus based not on the law, but instead on their well-publicized efforts to detain as many people as possible, regardless of whether detention is justified based on an individual's facts.

The harms that Named Plaintiffs and class members face are profound. All were residing in the United States when they were apprehended. Many have lived here for years or decades, built families and communities here, and work to support their loved ones here. Their detention provides no meaningful opportunity to seek release, regardless of whether they pose any danger or flight risk. Such detention is not only unlawful but also punitive, as it is used to force them to abandon their statutory and constitutional rights to contest their removal.

This motion presents pure legal issues that are readily resolved on summary judgment. As such, Plaintiffs ask the Court to reaffirm their right to be considered for release on bond, just as they have been for decades and as the INA's plain text and implementing regulations require. Because Defendants' new policies are unlawful, the Court should grant this motion, declare class members' right to be considered for release on bond, vacate DHS's and the Adelanto Immigration

Court's new policies under the Administrative Procedure Act (APA), and grant the Named Plaintiffs' habeas petitions.

STATEMENT OF FACTS

I. Legal Framework

This case concerns the detention authority for people who entered the United States without inspection, were not apprehended upon arrival, and are not subject to one of the INA's special detention provisions.[1] For decades, people in this situation—who have been residing in the United States, often for years—were entitled to consideration for release on bond, and if not released by DHS, bond hearings before an IJ. Statement of Uncontroverted Facts (SUF) ¶¶ 4–6.

As relevant here, two provisions of the INA govern the detention of noncitizens: 8 U.S.C. § 1226(a) and § 1225(b). The distinction between the two is critical. Noncitizens subject to § 1226(a) are arrested "[o]n a warrant," and once detained, the statute allows ICE to release a person on bond or conditional parole, *see* 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 236.1(c)(8). If release is denied, the person can seek a custody redetermination—better known as a bond hearing—before an IJ. *See* 8 C.F.R. § 1236.1(d). At that hearing, the noncitizen may present evidence to show they are not a flight risk or danger to the community. *See generally Matter*

[1] These special provisions include the detention authority for people in expedited removal, *see* 8 U.S.C. § 1225(b)(1), and those with final removal orders that have not been executed, *see id.* § 1231(a)(6).

of Guerra, 24 I. & N. Dec. 37, 40 (BIA 2006). By contrast, people detained under § 1225(b) are subject to mandatory detention and receive no bond hearing. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A). They may only be released under humanitarian parole at the arresting agency's (i.e., ICE's) discretion. *See Jennings*, 583 U.S. at 288; 8 U.S.C. § 1182(d)(5).

The difference between these two statutes reflects immigration law's longstanding distinction in the detention structure for noncitizens arrested *after* entering the country and those arrested when *attempting to enter* the country. Prior to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for custody determinations was found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen's detention during "deportation" proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a) (1994). Those "deportation" proceedings governed the detention of anyone in the United States, regardless of manner of entry. *Id.*; *see also* SUF ¶ 6. IIRIRA maintained the same basic detention authority and access to release on bond in the provisions now codified at 8 U.S.C. § 1226(a). *See* SUF ¶¶ 2, 5. As Congress explained, the new § 1226(a) merely "restate[d] the current provisions in [8 U.S.C. § 1252(a)] 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 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Separately, through IIRIRA, Congress enacted new detention and removal authorities for people who are apprehended upon arriving in the United States. *See* 8 U.S.C. § 1225(b)(1)–(2). These individuals can be placed in special expedited removal proceedings (where DHS officers issue administrative removal orders without any hearings), or regular removal proceedings (before IJs). Either way, such people are subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A).

In implementing IIRIRA's detention authority, the former Immigration and Naturalization Service clarified that—just as before IIRIRA—people who entered the United States without inspection and were not apprehended while "arriving" in the country would continue to be detained under the same detention authority they always had been: § 1226(a) (previously § 1252(a)). *See* Inspection and Expedited Removal of Aliens, 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.").[2]

[2] The exception is for those separately subject to the expanded expedited removal scheme under § 1225(b)(1)(A)(iii)(II).

II. Defendants' New Mandatory Detention Policy

Consistent with these principles, during the nearly thirty years since IIRIRA was enacted, DHS and the Executive Office for Immigration Review (EOIR) have applied § 1226(a) to the detention of people who were apprehended within the United States after having entered without inspection and have provided them access to release on bond. *See* SUF ¶¶ 4–5. Notwithstanding this long history, Defendants have now switched course, concluding that § 1225(b)(2)(A) imposes mandatory detention on all persons who entered the United States without inspection, regardless of how long they have resided here. SUF ¶¶ 7–9.

This shift began to emerge in certain parts of the country in 2022. At that time, IJs in Tacoma, Washington, adopted the practice of denying bond to all entrants without inspection. *See Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *1 (W.D. Wash. Apr. 24, 2025). On May 22, 2025, the BIA issued an unpublished decision affirming one such Tacoma IJ decision and finding that a noncitizen who had been living in the United States for over ten years was subject to mandatory detention under § 1225(b)(2)(A). SUF ¶ 12.

Then, on July 8, 2025, ICE issued a memo entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," announcing that "[e]ffective immediately, it is the position of DHS" that anyone who entered the

country without inspection, i.e., anyone "who has not been admitted" is "subject to detention under [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by [8 U.S.C. § 1182(d)(5)] parole." *Id.* ¶¶ 7–8. Such noncitizens are "also ineligible for a custody redetermination hearing . . . before an [IJ] and may not be released for the duration of their removal proceedings absent a parole by DHS." *Id.* ¶ 9. Notably, DHS issued the memo "in coordination with the Department of Justice," the parent agency of EOIR (the immigration court system). *Id.* ¶ 10.

Since the unpublished BIA decision and DHS's change in position, IJs in the Adelanto Immigration Court have adopted this unprecedented interpretation of the INA's detention scheme. *Id.* ¶ 13. By contrast, a visiting IJ—who conducts hearings at the Adelanto Immigration Court by video conference—has continued to order proposed class members released on bond. *Id.* ¶ 14. But, as it has done in other cases across the country, DHS has kept those noncitizens in custody. *Id.* ¶¶ 14–15. The agency typically does so by filing a notice of appeal to the BIA and invoking an automatic stay of the IJ's bond order, relying on its new position that the individuals are statutorily ineligible for bond, *id.* ¶ 15; *see also* 8 C.F.R. § 1003.19(i). The result is that Plaintiffs and class members are subject to mandatory detention with no ability to post bond, to be reunited with their families, or to return to their jobs and communities.

In short, the agencies' abrupt policy shift has resulted in the categorical denial of bond for individuals like Plaintiffs. SUF ¶ 15.

III. Plaintiffs' Cases

Plaintiffs were all subject to mandatory detention because of Defendants' new policy, and their experiences are representative of the class.

Plaintiff Lazaro Maldonado has lived for over four years in the Los Angeles area, where he has several U.S. citizen family members. *Id.* ¶¶ 25.a, 25.c. He has no criminal record or previous immigration contact and has worked at the same company for the past four years. *Id.* ¶¶ 25.b, 25.e. Mr. Maldonado was arrested as part of a worksite enforcement action on June 6, 2025. *Id.* ¶ 18.

Plaintiff Ana Franco Galdamez has lived in the United States for over twenty years. *Id.* ¶ 33.a. She has two U.S. citizen daughters who rely on her for financial support and who are about to begin college. *Id.* ¶ 33.d. She has no criminal history or previous immigration contact. *Id.* ¶¶ 33.b–33.c. Ms. Franco was arrested by DHS on June 19, 2025. *Id.* ¶ 26.

Plaintiff Ananias Pascual has resided in the United States for over twenty years. *Id.* ¶ 41.a. He and his wife have four U.S. citizen children, who range in age from ten months to ten years old. *Id.* ¶ 41.d. The youngest was recently hospitalized. *Id.* ¶ 41.e. Mr. Pascual has no criminal history, has no prior contact with immigration authorities, and has worked for the same company for nearly ten

years. *Id.* ¶¶ 41.b–41.c, 41.g. Mr. Pascual was arrested as part of a worksite enforcement action on June 6, 2025. *Id.* ¶ 34.

Plaintiff Luiz Alberto De Aquino De Aquino has lived in the Los Angeles area since 2022. *Id.* ¶ 48.a. He has no criminal record or previous immigration contact and has worked at the same apparel company since 2022. *Id.* ¶¶ 48.b–48.d. Mr. De Aquino was arrested as part of a worksite enforcement action on June 6, 2025. *Id.* ¶ 42.

ICE initiated removal proceedings against all four Named Plaintiffs, charging them with, *inter alia*, being present without admission, i.e., entering the country without inspection. *Id*. ¶¶ 21, 29, 37, 44. ICE denied all four Named Plaintiffs release on bond, and an Adelanto IJ subsequently concluded they were not eligible for release on bond and were subject to mandatory detention under § 1225(b)(2)(A). *Id*. ¶¶ 22–24, 30–32, 38–40.

On July 23, 2025, Named Plaintiffs filed the instant habeas action, challenging their no-bond detention under § 1225(b)(2)(A). Dkt. 1. They moved for a temporary restraining order requiring prompt bond hearings the same day. Dkt. 5. On July 28, 2025, this Court granted Plaintiffs' motion and ordered Defendants to provide them with bond hearings before an IJ within seven days. Dkt. 14. At those bond hearings, the IJs found that Plaintiffs posed no flight risk or danger and granted them release on bond. SUF ¶ 49.

On July 28, 2025, Plaintiffs filed an amended class complaint challenging DHS's no-bond policy and the parallel policy of the Adelanto Immigration Court. Dkt. 15. Concurrent with this motion, Plaintiffs have moved for certification of two classes: a nationwide class challenging DHS's policy, and a regional class for those with cases venued at the Adelanto Immigration Court.

ARGUMENT

This Court must grant summary judgment where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Range Rd. Music, Inc. v. E. Coast Foods, Inc.*, 668 F.3d 1148, 1152 (9th Cir. 2012). Here, the material facts are not in dispute. As a matter of policy, Defendants assert that all noncitizens whom they arrest and detain after having entered without inspection are subject to mandatory detention under § 1225(b)(2), including those who have already entered the country and have been residing in the United States for months, years, or even decades. According to Defendants, such persons are ineligible for release on bond.

Defendants' policy violates the INA. As the Supreme Court has explained, § 1225 is concerned "primarily [with those] seeking entry," *Jennings*, 583 U.S. at 297, i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *id.* at 287. In contrast, § 1226(a) applies to those who, like Plaintiffs,

are "already in the country" and are detained "pending the outcome of removal proceedings." *Id*. at 289. The INA's plain text, canons of statutory construction, the statutes' legislative history, the implementing regulations, and decades of agency practice all support this conclusion.

Plaintiffs seek partial summary judgment as to Counts I, II, and III (insofar as the agency action here is "not in accordance with law") of the class complaint because Defendants' policy violates § 1226(a) and its implementing regulations. These counts present pure questions of law that can be resolved on summary judgment. *See Swoger v. Rare Coin Wholesalers*, 803 F.3d 1045, 1048 (9th Cir. 2015).

I. Defendants' Policy Is Unlawful.

A. The text of § 1226(a) and canons of statutory construction demonstrate that Plaintiffs are entitled to bond hearings.

Contrary to Defendants' policy, *see* SUF ¶¶ 8–9, 12–13, application of § 1226(a) does not turn on whether someone has been previously admitted. Instead, the plain text of 8 U.S.C. § 1226(a)—which affords access to bond—includes people who are inadmissible, like Plaintiffs and class members.[3] Here,

[3] Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanents residents and those who were admitted with temporary visas, even if they no longer have lawful status. By contrast, grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g.*, *Barton v. Barr*, 590 U.S. 222, 234 (2020).

DHS alleges in removal proceedings that Plaintiffs are inadmissible because they entered the country without inspection and thus are present without admission. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Section 1226(a)—the INA's default detention authority—applies to a person who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." *Id.* § 1226(a). As the statute later expressly provides, this language includes both (1) people who, like Plaintiffs, entered without inspection, were never formally admitted to the country, and thus are charged as "inadmissible" under the INA, as well as (2) people who were originally admitted to the country and thus are charged as "deportable" under the INA. *See id.* § 1229a(a)(3) (providing that removal proceedings "determin[e] whether a [noncitizen] may be admitted to the United States or, if the [noncitizen] has been so admitted, removed from the United States").

The statute's structure makes this even more clear. Subsection 1226(a) provides the general right to seek release on bond. Subsection 1226(c) then carves out discrete categories of noncitizens from being released (primarily those convicted of certain crimes) and subjects them to mandatory detention instead. *See, e.g.*, *id.* § 1226(c)(1)(A), (D). These carve-outs include noncitizens who are inadmissible for entering without inspection *and* who meet certain other crime-related criteria. *See id.* § 1226(c)(1)(E). Because § 1226(c)'s exception expressly applies to people who entered without inspection (like Plaintiffs) and who meet

certain other criteria, it reinforces the default rule that § 1226(a)'s general detention authority otherwise must generally apply to Plaintiffs. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

Recent amendments to § 1226 reinforce this point by explicitly including people who are inadmissible for being present without admission, i.e., for having entered without inspection. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A)(i) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) *and* who have been arrested, charged with, or convicted of certain crimes are 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 expressly reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6)(A) or (a)(7). "[W]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (quoting *Shady Grove*, 559 U.S. at 400); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6 (D. Mass. July 7, 2025) (similar); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) (similar).

Several canons of interpretation reinforce this understanding. First, the canon against rendering text superfluous or meaningless applies here. *See, e.g.*, *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023). Notwithstanding the plain text noted above, DHS and the IJs now believe that anyone present in the United States without being admitted is subject to mandatory detention under § 1225(b)(2)(A). This interpretation "would render significant portions of Section 1226(c) meaningless." *Rodriguez Vazquez*, 2025 WL 1193850, at *13. As the *Rodriguez Vazquez* court explained, this is so because if "Section 1225 . . . and its mandatory detention provisions apply to all noncitizens who have not been admitted, then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens." *Id.* at *14 (citation modified).

Second, "[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect." *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir. 2001) (citation omitted). That presumption applies here, given the LRA's recent amendments to § 1226. *See Rodriguez Vazquez*, 2025 WL 1193850, at *14 (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). Indeed, as noted above, and as the *Rodriguez Vazquez* court explained, these amendments explicitly provide that § 1226(a) covers people like Plaintiffs. This is because the "specific exceptions [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those

inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention." *Id.* (citation modified).[4]

Finally, "[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) (citation modified). This canon also supports Plaintiffs' understanding of the statute, because "Congress adopted the new amendments to Section 1226(c) against the backdrop of decades of post-IIRIRA agency practice applying discretionary detention under Section 1226(a) to inadmissible noncitizens such as [Plaintiffs]." *Rodriguez Vazquez*, 2025 WL 1193850, at *15; *see also infra* pp. 22–23.

B. The statutory structure and the textual limitations of § 1225(b)(2) further demonstrate that § 1226(a), not § 1225(b)(2), applies to Plaintiffs.

The overall statutory structure strongly supports the long-accepted interpretation that § 1226(a) applies to Plaintiffs. "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp.*

[4] The *Diaz Martinez* court made a similar point, explaining that "if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; *see also Gomes*, 2025 WL 1869299, at *7 (similar).

v. Cartier, Inc., 486 U.S. 281, 291 (1988) (citations omitted); *see also Biden v. Texas*, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of INA provision).

The Supreme Court has long described the structure of § 1226 and § 1225 to distinguish between two basic groups of noncitizens. Section 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings," and affords access to bond. *Jennings*, 583 U.S. at 289. By contrast, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Id.* at 287. Indeed, in contrast to § 1226(a), the whole purpose of § 1225 is to define how DHS should inspect, process, and detain various classes of people arriving at the border or who have just entered the country. *See id.* at 297 ("[Section] 1225(b) applies primarily to [noncitizens] seeking entry into the United States . . . ."); *see also Rodriguez Vazquez*, 2025 WL 1193850, at *14 (similar); *Diaz Martinez*, 2025 WL 2084238, at *8 (similar); H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (explaining that the purpose of the new provisions in § 1225 was to address the perceived problem of noncitizens arriving in the United States); H.R. Rep. No. 104-828, at 209 (same).

The text of § 1225 reinforces this understanding of the two sections' structure and reflects a limited temporal scope. To begin, § 1225 concerns the "inspection" and the "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225. For example, 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. *Id.* § 1225(b)(1).

Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States, but whom (b)(1) does not cover. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," again reflecting that the statute is part of a processing scheme for noncitizens entering the United States. The paragraph further specifies that it applies only to "applicants for admission" (who are defined at § 1225(a)(1)) who are "*seeking admission*" and whom (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A) (emphasis added).

This language is important in limiting the temporal scope of the statute. By stating that (b)(2) applies only to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like class members, who have already entered and are now residing in the United States, and who did not take affirmative steps to obtain admission when they arrived. *See generally*

8 U.S.C. § 1225; H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Until recently, Defendants took the same position, explaining that "[t]o 'seek admission' . . . entails affirmative actions to gain authorized entry." Reply Br. for Fed. Appellees at 14–15, *Crane v. Johnson*, No. 14-10049 (5th Cir. Sept. 29, 2014), Dkt. 78-1 (Att. A); *accord* Tr. of Oral Argument at 44:23–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ("[Solicitor General]: . . . DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

"This active construction of the phrase 'seeking admission'" accords with the plain language in § 1225(b)(2)(A) by requiring both that a person be an "applicant for admission" and "also [be] *doing* something" following their arrival to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at *6–7; *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803, at *7 (S.D.N.Y. Aug. 8, 2025) (concluding that this is the "plain, ordinary meaning" of "seeking admission"). As one judge recently analogized, "someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there." *Lopez Benitez*, 2025 WL 2267803, at *7.

By contrast, Defendants' construction renders "seeking admission" redundant of "applicant for admission." Under their new policy, inadmissibility alone—i.e., being an applicant for admission—triggers mandatory detention under § 1225(b)(2). But as the government itself previously explained, "[n]othing in [§ 1225's] structure suggests that Congress regarded [noncitizens] 'seeking admission' and 'applicants for admission' as equivalent, interchangeable terms. If that were the case, the statutory reference to [noncitizens] 'seeking admission' would be redundant; Congress could simply have stated that all 'applicants for admission' 'shall be detained for' removal proceedings, without any reference to [noncitizens] 'seeking admission.'" Att. A at 16.

The statute's temporal focus on those who are arriving is evident in other respects too. 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) (emphases added). This language further underscores Congress's focus on those at ports of entry or who have just entered the United States, and not on those now residing here. Similarly, as noted, § 1225's title refers to the "inspection" of "inadmissible *arriving*" noncitizens. 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]," *id.* § 1225(b)(2)(A), (b)(4), and sets out procedures for

"[i]nspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d).

A recent BIA decision further supports reading § 1225(b) as applying only to arriving individuals and very recent entrants. In *Matter of Q. Li*, the BIA 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). 29 I. & N. Dec. 66, 66–67 (BIA 2025). The Board explained that such persons are properly treated as "arriving 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 (citation modified) (quoting *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020)). The BIA's analysis closely tracked the arguments Plaintiffs have made here: 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." *Id.* at 70.

C. The legislative history further supports Plaintiffs' argument.

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, this background supports [Plaintiffs'] position that

[they] too [are] subject to discretionary detention." *Rodriguez Vazquez*, 2025 WL 1193850, at *15.

D. Defendants' policies violate longstanding EOIR regulations.

Finally, Defendants' policies violate EOIR's longstanding regulations considering people like Plaintiffs as detained under § 1226(a) and eligible for bond. Immediately following the passage of IIRIRA, in the decades since, and *still today*, EOIR's regulations have recognized that Plaintiffs are subject to detention under § 1226(a). Indeed, when EOIR promulgated regulations implementing the custody provisions of IIRIRA, it 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; *see also id.* ("[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving [noncitizens] do not."); *see also supra* pp. 4–5 (describing EOIR's long history of providing bond hearings to people in Plaintiffs' situation).

The relevant regulations have not been amended in the decades since. Specifically, the regulation governing IJs' bond jurisdiction—8 C.F.R. § 1003.19(h)(2)—does not limit an IJ's jurisdiction over all inadmissible noncitizens, and instead limits jurisdiction to inadmissible noncitizens subject to §

1226(c) and certain other classes of noncitizens, like arriving noncitizens. That is how the regulation was drafted when originally promulgated, and that is how it remains today. *Compare* Procedures for the Detention and Release of Criminal Aliens, 63 Fed. Reg. 27441, 27448 (May 19, 1998), *with* 8 C.F.R. § 1003.19(h)(2).

The agency's regulatory "guidance and the agency's subsequent years of unchanged practice is persuasive." *Rodriguez Vazquez*, 2025 WL 1193850, at *15. In fact, 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's interpretation and practice to reject its new proposed interpretation of the law at issue); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) ("When an agency claims to discover in a long-extant statute an unheralded power . . . [the courts] typically greet its announcement with a measure of skepticism.").

* * *

In sum, the statute, the applicable tools of statutory construction, the regulations, and the long history of agency practice all demonstrate that Plaintiffs are detained under § 1226(a) and its implementing regulations, and not § 1225(b)(2)(A). Accordingly, declaratory relief on behalf of the Named Plaintiffs

and the classes is appropriate, as it "will clarify and settle the legal relations at issue" and "afford relief from the uncertainty and controversy giving rise to the proceedings." *Nat. Res. Def. Council, Inc. v. EPA*, 966 F.2d 1292, 1299 (9th Cir. 1992). Such relief will also "delineate[] important rights and responsibilities" and will serve as "a message not only to the parties but also to the public and has significant educational and lasting importance." *Id.* (citation omitted). In addition, the Court should vacate both DHS's policy and the Adelanto Court's policy under the APA and grant the Named Plaintiffs' petitions for habeas corpus to provide that they may not be detained based on § 1225(b)(2)(A).

II. Prudential Exhaustion Is Not Required.

While a court may require exhaustion as a prudential matter for individual habeas claims, such exhaustion is not necessary here. Prudential exhaustion is appropriate where:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)). In addition, even if exhaustion is warranted, "there are a number of exceptions to the general rule requiring exhaustion" including where "administrative remedies are inadequate or not

efficacious" or "irreparable injury will result." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Here, the *Puga* factors do not require exhaustion, and even if they did, exceptions apply.

First, there is no need for agency expertise here. "The Framers . . . envisioned that the final 'interpretation of the laws' would be 'the proper and peculiar province of the courts.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (citation omitted). Thus, "[w]hen the meaning of a statute [is] at issue, the judicial role [is] to 'interpret the act of Congress, in order to ascertain the rights of the parties.'" *Id*. (citation omitted); *see also Rodriguez Vazquez*, 2025 WL 1193850, at *8 (similar).

Second, addressing this motion on the merits will not encourage others to bypass the administrative appeal scheme. Plaintiffs have brought a class action in this case, challenging DHS's policy on a nationwide basis and challenging the Adelanto Immigration Court's similar practice via a regional class. As a result, once the Court issues final judgment in this case, "the issue here will not arise again." *Rivera v. Holder*, 307 F.R.D. 539, 551 (W.D. Wash. 2015); *see also Rodriguez Vazquez*, 2025 WL 1193850, at *8 (similar).

Finally, administrative review is either futile or unlikely to produce relief for Plaintiffs. In the *Rodriguez Vazquez* litigation—where EOIR is a defendant—the agency has defended the IJs' and DHS's interpretation. *See, e.g.*, Defs.' Mot. to

Dismiss at 27–30, *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240 (W.D. Wash. June 6, 2025), Dkt. 49. EOIR has done the same here. Dkt. 8 at 11–15. Similarly, DHS's policy guidance announced that it was issued "in coordination with the Department of Justice," SUF ¶ 10, of which EOIR is a component agency. That position is also reflected in a recent unpublished BIA decision. *Id.* ¶ 12. Thus, a BIA appeal is not a meaningful avenue for relief.

Even if prudential exhaustion were warranted, exceptions apply. Despite the profound liberty interest at stake, agency data shows that, on average, the BIA takes over six months to issue custody appeal decisions. *See Rodriguez Vazquez*, 2025 WL 1193850, at *9 ("EOIR data show[s] an average processing time of 204 days for bond appeals in 2024."). This contrasts sharply with the federal pre-trial detention system, where the statute "provide[s] for immediate appellate review of the detention decision." *United States v. Salerno*, 481 U.S. 739, 752 (1987).

The BIA's delays underscore the irreparable injury that would result from requiring exhaustion. Plaintiffs "suffer[] potentially irreparable harm every day that [they] remain[] in custody without a hearing, which could ultimately result in [their] release from detention." *Rodriguez Vazquez*, 2025 WL 1193850, at *16 (citation omitted). Indeed, "because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was

designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (citation modified).

That Plaintiffs' detention constitutes such a harm should come as no surprise, as "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). While the Named Plaintiffs and class members present statutory and regulatory claims in this motion, due process caselaw underscores their significant interest in receiving a timely opportunity to test the legality of detention before a "neutral and detached magistrate." *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975); *see also Zadvydas*, 533 U.S. at 690 (government must demonstrate that a person's "detention . . . bears a reasonable relation" to a valid government purpose (citation modified)). Indeed, after this Court ordered bond hearings for Named Plaintiffs, Adelanto IJs found that each Plaintiff did not present a danger or flight risk justifying continued detention and ordered their release on bond. SUF ¶ 49. But for this Court's intervention, all would continue to suffer prolonged detention, separated from their homes, loved ones, and communities.

Detention inflicts substantial harm by separating family members, including U.S. citizen family members. *See* SUF ¶¶ 25.d, 33.d, 41.d, 48.e (describing Plaintiffs' deep family ties to the United States). Such "separation from family members" is an important irreparable harm factor. *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (similar). In addition, detention renders class members unable to care for their families, and in particular, their U.S.-citizen children. *See* SUF ¶¶ 33.i, 41.e, 41.h. Such "economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees" are well-recognized forms of irreparable harm. *Hernandez*, 872 F.3d at 995; *see also Gonzalez Rosario v. U.S. Citizenship & Immigr. Servs.*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2018) (similar). For all these reasons, the Court should waive any prudential exhaustion requirement.

III. 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." Dkt. 1 ¶¶ 62–72. 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 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 and the notice and comment 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., 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).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant partial summary judgment, grant declaratory relief on behalf of the classes, vacate Defendants' policies, grant writs of habeas corpus as to the Named Plaintiffs, and certify this matter for appeal.

Respectfully submitted this 11th day of August, 2025.

/s/ Matt Adams
Matt Adams*

/s/ Aaron Korthuis
Aaron Korthuis*

Leila Kang*
Glenda M. Aldana Madrid*
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Ave. Ste. 400
Seattle, WA 98104
(206) 957-8611
matt@nwirp.org
aaron@nwirp.org
leila@nwirp.org
glenda@nwirp.org

Niels W. Frenzen (CA SBN# 139064)
Jean E. Reisz (CA SBN# 242957)
USC Gould School of Law
Immigration Clinic
699 Exposition Blvd.
Los Angeles, CA 90089-0071
Telephone: (213) 740-8922
nfrenzen@law.usc.edu
jreisz@law.usc.edu

My Khanh Ngo (CA SBN# 317817)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
(415) 343-0770
mngo@aclu.org

Judy Rabinovitz*
Noor Zafar*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2660
jrabinovitz@aclu.org
nzafar@aclu.org

Eva L. Bitran (CA SBN # 302081)
AMERICANCIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA
1313 W. 8th Street
Los Angeles, CA 90017
(909) 380-7505
ebitran@aclusocal.org

Counsel for Plaintiffs-Petitioners

*Admitted pro hac vice

CERTIFICATE OF COMPLIANCE

I, Aaron Korthuis, certify that this brief contains 6,865 words and complies with the word limit of L.R. 11-6.1.

DATED: August 11, 2025

/s/ Aaron Korthuis
Aaron Korthuis
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Ave. Ste. 400
Seattle, WA 98104
(206) 957-8611
aaron@nwirp.org