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**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

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1 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

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

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

19 This motion is made following the conference of counsel pursuant to L.R. 7-
20 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

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/s/ Aaron Korthuis

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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

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

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

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

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

3 STATEMENT OF FACTS

4 I. Legal Framework

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

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

19
20 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).

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

6 The difference between these two statutes reflects immigration law’s
7 longstanding distinction in the detention structure for noncitizens arrested *after*
8 entering the country and those arrested when *attempting to enter* the country. Prior
9 to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of
10 1996 (IIRIRA), the statutory authority for custody determinations was found at 8
11 U.S.C. § 1252(a). That statute provided for a noncitizen’s detention during
12 “deportation” proceedings, as well as authority to release them on bond. *See* 8
13 U.S.C. § 1252(a) (1994). Those “deportation” proceedings governed the detention
14 of anyone in the United States, regardless of manner of entry. *Id.*; *see also* *SUF*
15 ¶ 6. IIRIRA maintained the same basic detention authority and access to release on
16 bond in the provisions now codified at 8 U.S.C. § 1226(a). *See* *SUF* ¶¶ 2, 5. As
17 Congress explained, the new § 1226(a) merely “restate[d] the current provisions in
18 [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest,
19 detain, and release on bond a[] [noncitizen] who is not lawfully in the United
20

1 States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-
2 828, at 210 (1996) (Conf. Rep.) (same).

3 Separately, through IIRIRA, Congress enacted new detention and removal
4 authorities for people who are apprehended upon arriving in the United States. *See*
5 8 U.S.C. § 1225(b)(1)–(2). These individuals can be placed in special expedited
6 removal proceedings (where DHS officers issue administrative removal orders
7 without any hearings), or regular removal proceedings (before IJs). Either way,
8 such people are subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii),
9 (iii)(IV), (b)(2)(A).

10 In implementing IIRIRA’s detention authority, the former Immigration and
11 Naturalization Service clarified that—just as before IIRIRA—people who entered
12 the United States without inspection and were not apprehended while “arriving” in
13 the country would continue to be detained under the same detention authority they
14 always had been: § 1226(a) (previously § 1252(a)). *See* Inspection and Expedited
15 Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“[I]nadmissible
16 [noncitizens], except for arriving [noncitizens], have available to them bond
17 redetermination hearings before an immigration judge This procedure
18 maintains the status quo.”).²

20 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

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

8 Since the unpublished BIA decision and DHS’s change in position, IJs in the
9 Adelanto Immigration Court have adopted this unprecedented interpretation of the
10 INA’s detention scheme. *Id.* ¶ 13. By contrast, a visiting IJ—who conducts
11 hearings at the Adelanto Immigration Court by video conference—has continued
12 to order proposed class members released on bond. *Id.* ¶ 14. But, as it has done in
13 other cases across the country, DHS has kept those noncitizens in custody. *Id.*
14 ¶¶ 14–15. The agency typically does so by filing a notice of appeal to the BIA and
15 invoking an automatic stay of the IJ’s bond order, relying on its new position that
16 the individuals are statutorily ineligible for bond, *id.* ¶ 15; *see also* 8 C.F.R.
17 § 1003.19(i). The result is that Plaintiffs and class members are subject to
18 mandatory detention with no ability to post bond, to be reunited with their families,
19 or to return to their jobs and communities.

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

3 **III. Plaintiffs' Cases**

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

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

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

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

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

3 Plaintiff Luiz Alberto De Aquino De Aquino has lived in the Los Angeles
4 area since 2022. *Id.* ¶ 48.a. He has no criminal record or previous immigration
5 contact and has worked at the same apparel company since 2022. *Id.* ¶¶ 48.b–48.d.
6 Mr. De Aquino was arrested as part of a worksite enforcement action on June 6,
7 2025. *Id.* ¶ 42.

8 ICE initiated removal proceedings against all four Named Plaintiffs,
9 charging them with, *inter alia*, being present without admission, i.e., entering the
10 country without inspection. *Id.* ¶¶ 21, 29, 37, 44. ICE denied all four Named
11 Plaintiffs release on bond, and an Adelanto IJ subsequently concluded they were
12 not eligible for release on bond and were subject to mandatory detention under
13 § 1225(b)(2)(A). *Id.* ¶¶ 22–24, 30–32, 38–40.

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

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

6 ARGUMENT

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

16 Defendants' policy violates the INA. As the Supreme Court has explained,
17 § 1225 is concerned "primarily [with those] seeking entry," *Jennings*, 583 U.S. at
18 297, i.e., cases "at the Nation's borders and ports of entry, where the Government
19 must determine whether a[] [noncitizen] seeking to enter the country is
20 admissible," *id.* at 287. In contrast, § 1226(a) applies to those who, like Plaintiffs,

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

5 Plaintiffs seek partial summary judgment as to Counts I, II, and III (insofar
6 as the agency action here is “not in accordance with law”) of the class complaint
7 because Defendants’ policy violates § 1226(a) and its implementing regulations.
8 These counts present pure questions of law that can be resolved on summary
9 judgment. *See Swoger v. Rare Coin Wholesalers*, 803 F.3d 1045, 1048 (9th Cir.
10 2015).

11 **I. Defendants’ Policy Is Unlawful.**

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

14 Contrary to Defendants’ policy, *see* SUF ¶¶ 8–9, 12–13, application of
15 § 1226(a) does not turn on whether someone has been previously admitted.
16 Instead, the plain text of 8 U.S.C. § 1226(a)—which affords access to bond—
17 includes people who are inadmissible, like Plaintiffs and class members.³ Here,
18

19 ³ Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply
20 to people like lawful permanent 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).

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

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

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

4 Recent amendments to § 1226 reinforce this point by explicitly including
5 people who are inadmissible for being present without admission, i.e., for having
6 entered without inspection. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3
7 (2025). Pursuant to these amendments, people charged as inadmissible under
8 § 1182(a)(6)(A)(i) (the inadmissibility ground for entry without inspection) or
9 (a)(7) (the inadmissibility ground for lacking valid documentation to enter the
10 United States) *and* who have been arrested, charged with, or convicted of certain
11 crimes are subject to § 1226(c)’s mandatory detention provisions. *See* 8 U.S.C.
12 § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress
13 expressly reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6)(A)
14 or (a)(7). “[W]hen Congress creates ‘specific exceptions’ to a statute’s
15 applicability, it ‘proves’ that absent those exceptions, the statute generally applies.”
16 *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (quoting *Shady Grove*, 559 U.S. at
17 400); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *6
18 (D. Mass. July 7, 2025) (similar); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM,
19 --- F. Supp. 3d ----, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) (similar).

1 Several canons of interpretation reinforce this understanding. First, the
2 canon against rendering text superfluous or meaningless applies here. *See, e.g.,*
3 *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023). Notwithstanding the
4 plain text noted above, DHS and the IJs now believe that anyone present in the
5 United States without being admitted is subject to mandatory detention under
6 § 1225(b)(2)(A). This interpretation “would render significant portions of Section
7 1226(c) meaningless.” *Rodriguez Vazquez*, 2025 WL 1193850, at *13. As the
8 *Rodriguez Vazquez* court explained, this is so because if “Section 1225 . . . and its
9 mandatory detention provisions apply to all noncitizens who have not been
10 admitted, then it would render superfluous provisions of Section 1226 that apply to
11 certain categories of inadmissible noncitizens.” *Id.* at *14 (citation modified).

12 Second, “[w]hen Congress acts to amend a statute, [courts] presume it
13 intends its amendment to have real and substantial effect.” *Gieg v. Howarth*, 244
14 F.3d 775, 776 (9th Cir. 2001) (citation omitted). That presumption applies here,
15 given the LRA’s recent amendments to § 1226. *See Rodriguez Vazquez*, 2025 WL
16 1193850, at *14 (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). Indeed, as
17 noted above, and as the *Rodriguez Vazquez* court explained, these amendments
18 explicitly provide that § 1226(a) covers people like Plaintiffs. This is because the
19 “specific exceptions [in the LRA] for inadmissible noncitizens who are arrested,
20 charged with, or convicted of the enumerated crimes logically leaves those

1 inadmissible noncitizens not criminally implicated under Section 1226(a)’s default
2 rule for discretionary detention.” *Id.* (citation modified).⁴

3 Finally, “[w]hen Congress adopts a new law against the backdrop of a
4 longstanding administrative construction,” courts “generally presume[] the new
5 provision should be understood to work in harmony with what has come before.”
6 *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified).
7 This canon also supports Plaintiffs’ understanding of the statute, because
8 “Congress adopted the new amendments to Section 1226(c) against the backdrop
9 of decades of post-IIRIRA agency practice applying discretionary detention under
10 Section 1226(a) to inadmissible noncitizens such as [Plaintiffs].” *Rodriguez*
11 *Vazquez*, 2025 WL 1193850, at *15; *see also infra* pp. 22–23.

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

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

19 ⁴ The *Diaz Martinez* court made a similar point, explaining that “if, as the
20 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).

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

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

1 The text of § 1225 reinforces this understanding of the two sections’
2 structure and reflects a limited temporal scope. To begin, § 1225 concerns the
3 “inspection” and the “expedited removal of inadmissible arriving [noncitizens].”
4 8 U.S.C. § 1225. For example, paragraph (b)(1) encompasses only the “inspection”
5 of certain “arriving” noncitizens and other recent entrants the Attorney General
6 designates, and only those who are “inadmissible” for having misrepresented
7 information to an inspecting officer or for lacking documents to enter the United
8 States. *Id.* § 1225(b)(1).

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

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

1 8 U.S.C. § 1225; H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No.
2 104-828, at 209. Until recently, Defendants took the same position, explaining that
3 “[t]o ‘seek admission’ . . . entails affirmative actions to gain authorized entry.”
4 Reply Br. for Fed. Appellees at 14–15, *Crane v. Johnson*, No. 14-10049 (5th Cir.
5 Sept. 29, 2014), Dkt. 78-1 (Att. A); *accord* Tr. of Oral Argument at 44:23–
6 45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) (“[Solicitor General]: . . .
7 DHS’s long-standing interpretation has been that 1226(a) applies to those who
8 have crossed the border between ports of entry and are shortly thereafter
9 apprehended.”).

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

1 By contrast, Defendants’ construction renders “seeking admission”
2 redundant of “applicant for admission.” Under their new policy, inadmissibility
3 alone—i.e., being an applicant for admission—triggers mandatory detention under
4 § 1225(b)(2). But as the government itself previously explained, “[n]othing in
5 [§ 1225’s] structure suggests that Congress regarded [noncitizens] ‘seeking
6 admission’ and ‘applicants for admission’ as equivalent, interchangeable terms. If
7 that were the case, the statutory reference to [noncitizens] ‘seeking admission’
8 would be redundant; Congress could simply have stated that all ‘applicants for
9 admission’ ‘shall be detained for’ removal proceedings, without any reference to
10 [noncitizens] ‘seeking admission.’” Att. A at 16.

11 The statute’s temporal focus on those who are arriving is evident in other
12 respects too. Subparagraph (b)(2)(C) addresses the “[t]reatment of [noncitizens]
13 *arriving* from contiguous territory,” i.e., “the case of [a noncitizen] . . . who *is*
14 *arriving* on land.” 8 U.S.C. § 1225(b)(2)(C) (emphases added). This language
15 further underscores Congress’s focus on those at ports of entry or who have just
16 entered the United States, and not on those now residing here. Similarly, as noted,
17 § 1225’s title refers to the “inspection” of “inadmissible *arriving*” noncitizens.
18 Finally, the entire statute is premised on the idea that an inspection occurs near the
19 border and shortly after arrival, as the statute repeatedly refers to “examining
20 immigration officer[s],” *id.* § 1225(b)(2)(A), (b)(4), and sets out procedures for

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

3 A recent BIA decision further supports reading § 1225(b) as applying only
4 to arriving individuals and very recent entrants. In *Matter of Q. Li*, the BIA held
5 that a noncitizen who was apprehended “approximately 5.4 miles away from a
6 designated port of entry and 100 yards north of the border” was detained under
7 § 1225(b) and not § 1226(a). 29 I. & N. Dec. 66, 66–67 (BIA 2025). The Board
8 explained that such persons are properly treated as “arriving in the United States,”
9 given that they are “detained shortly after unlawful entry,” and “‘are apprehended’
10 just inside ‘the southern border, and not at a point of entry, on the same day they
11 crossed into the United States.’” *Id.* at 68 (citation modified) (quoting *Matter of M-*
12 *D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020)). The BIA’s analysis closely tracked
13 the arguments Plaintiffs have made here: that § 1226(a) “applies to [noncitizens]
14 already present in the United States,” while § 1225(b) “applies primarily to
15 [noncitizens] seeking entry into the United States.” *Id.* at 70.

16 **C. The legislative history further supports Plaintiffs’ argument.**

17 IIRIRA’s legislative history also supports the conclusion that § 1226(a)
18 applies to Plaintiffs. As noted, in passing the Act, Congress was focused on the
19 perceived problem of recent arrivals to the United States who did not have
20 documents to remain. See H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R.

1 Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting
2 all people present in the United States after an unlawful entry to mandatory
3 detention pending removal proceedings.

4 This is important, as prior to IIRIRA, people like Plaintiffs were not subject
5 to mandatory detention. *See* 8 U.S.C. § 1252(a) (1994) (authorizing Attorney
6 General to arrest noncitizens for deportability proceedings, which applied to all
7 persons within the United States). Had Congress intended to make such a
8 monumental shift in immigration law (potentially subjecting millions of people to
9 mandatory detention), it would have explained so or spoken more clearly. *See*
10 *Whitman v. Am. Trucking Ass’n*s, 531 U.S. 457, 468 (2001) (finding “implausible
11 that Congress would give to the [agency] through these modest words [such]
12 power”). But in fact, Congress explained precisely the opposite, noting that the
13 new § 1226(a) merely “restates the current provisions in section 242(a)(1)
14 regarding the authority of the Attorney General to arrest, detain, and release on
15 bond a[] [noncitizen] *who is not lawfully in the United States.*” H.R. Rep. No. 104-
16 469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210
17 (same). “Because noncitizens like [Plaintiffs] were entitled to discretionary
18 detention under Section 1226(a)’s predecessor statute and Congress declared its
19 scope unchanged by IIRIRA, this background supports [Plaintiffs’] position that
20

1 [they] too [are] subject to discretionary detention.” *Rodriguez Vazquez*, 2025 WL
2 1193850, at *15.

3 **D. Defendants’ policies violate longstanding EOIR regulations.**

4 Finally, Defendants’ policies violate EOIR’s longstanding regulations
5 considering people like Plaintiffs as detained under § 1226(a) and eligible for
6 bond. Immediately following the passage of IIRIRA, in the decades since, and *still*
7 *today*, EOIR’s regulations have recognized that Plaintiffs are subject to detention
8 under § 1226(a). Indeed, when EOIR promulgated regulations implementing the
9 custody provisions of IIRIRA, it explained that “[d]espite being applicants for
10 admission, [noncitizens] who are present without having been admitted or paroled
11 (formerly referred to as [noncitizens] who entered without inspection) will be
12 eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323; *see also id.*
13 (“[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to
14 them bond redetermination hearings before an immigration judge, while arriving
15 [noncitizens] do not.”); *see also supra* pp. 4–5 (describing EOIR’s long history of
16 providing bond hearings to people in Plaintiffs’ situation).

17 The relevant regulations have not been amended in the decades since.
18 Specifically, the regulation governing IJs’ bond jurisdiction—8 C.F.R.
19 § 1003.19(h)(2)—does not limit an IJ’s jurisdiction over all inadmissible
20 noncitizens, and instead limits jurisdiction to inadmissible noncitizens subject to §

1 1226(c) and certain other classes of noncitizens, like arriving noncitizens. That is
2 how the regulation was drafted when originally promulgated, and that is how it
3 remains today. *Compare* Procedures for the Detention and Release of Criminal
4 Aliens, 63 Fed. Reg. 27441, 27448 (May 19, 1998), with 8 C.F.R. § 1003.19(h)(2).

5 The agency’s regulatory “guidance and the agency’s subsequent years of
6 unchanged practice is persuasive.” *Rodriguez Vazquez*, 2025 WL 1193850, at *15.
7 In fact, such a longstanding and consistent interpretation “is powerful evidence that
8 interpreting the Act in [this] way is natural and reasonable.” *Abramski v. United*
9 *States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica*
10 *Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on “over 60
11 years” of government’s interpretation and practice to reject its new proposed
12 interpretation of the law at issue); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324
13 (2014) (“When an agency claims to discover in a long-extant statute an unheralded
14 power . . . [the courts] typically greet its announcement with a measure of
15 skepticism.”).

16 * * *

17 In sum, the statute, the applicable tools of statutory construction, the
18 regulations, and the long history of agency practice all demonstrate that Plaintiffs
19 are detained under § 1226(a) and its implementing regulations, and not
20 § 1225(b)(2)(A). Accordingly, declaratory relief on behalf of the Named Plaintiffs

1 and the classes is appropriate, as it “will clarify and settle the legal relations at
2 issue” and “afford relief from the uncertainty and controversy giving rise to the
3 proceedings.” *Nat. Res. Def. Council, Inc. v. EPA*, 966 F.2d 1292, 1299 (9th Cir.
4 1992). Such relief will also “delineate[] important rights and responsibilities” and
5 will serve as “a message not only to the parties but also to the public and has
6 significant educational and lasting importance.” *Id.* (citation omitted). In addition,
7 the Court should vacate both DHS’s policy and the Adelanto Court’s policy under
8 the APA and grant the Named Plaintiffs’ petitions for habeas corpus to provide that
9 they may not be detained based on § 1225(b)(2)(A).

10 **II. Prudential Exhaustion Is Not Required.**

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

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

20 *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

1 efficacious” or “irreparable injury will result.” *Laing v. Ashcroft*, 370 F.3d 994,
2 1000 (9th Cir. 2004) (citation omitted). Here, the *Puga* factors do not require
3 exhaustion, and even if they did, exceptions apply.

4 First, there is no need for agency expertise here. “The Framers . . .
5 envisioned that the final ‘interpretation of the laws’ would be ‘the proper and
6 peculiar province of the courts.’” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369,
7 385 (2024) (citation omitted). Thus, “[w]hen the meaning of a statute [is] at issue,
8 the judicial role [is] to ‘interpret the act of Congress, in order to ascertain the rights
9 of the parties.’” *Id.* (citation omitted); *see also Rodriguez Vazquez*, 2025 WL
10 1193850, at *8 (similar).

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

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

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

7 Even if prudential exhaustion were warranted, exceptions apply. Despite the
8 profound liberty interest at stake, agency data shows that, on average, the BIA
9 takes over six months to issue custody appeal decisions. *See Rodriguez Vazquez*,
10 2025 WL 1193850, at *9 (“EOIR data show[s] an average processing time of 204
11 days for bond appeals in 2024.”). This contrasts sharply with the federal pre-trial
12 detention system, where the statute “provide[s] for immediate appellate review of
13 the detention decision.” *United States v. Salerno*, 481 U.S. 739, 752 (1987).

14 The BIA’s delays underscore the irreparable injury that would result from
15 requiring exhaustion. Plaintiffs “suffer[] potentially irreparable harm every day
16 that [they] remain[] in custody without a hearing, which could ultimately result in
17 [their] release from detention.” *Rodriguez Vazquez*, 2025 WL 1193850, at *16
18 (citation omitted). Indeed, “because of delays inherent in the administrative
19 process, BIA review would result in the very harm that the bond hearing was
20

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

3 That Plaintiffs’ detention constitutes such a harm should come as no
4 surprise, as “civil commitment for any purpose constitutes a significant deprivation
5 of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418,
6 425 (1979). “Freedom from imprisonment—from government custody, detention,
7 or other forms of physical restraint—lies at the heart of the liberty that [the Due
8 Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). While the
9 Named Plaintiffs and class members present statutory and regulatory claims in this
10 motion, due process caselaw underscores their significant interest in receiving a
11 timely opportunity to test the legality of detention before a “neutral and detached
12 magistrate.” *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975); *see also Zadvydas*, 533
13 U.S. at 690 (government must demonstrate that a person’s “detention . . . bears a
14 reasonable relation” to a valid government purpose (citation modified)). Indeed,
15 after this Court ordered bond hearings for Named Plaintiffs, Adelanto IJs found
16 that each Plaintiff did not present a danger or flight risk justifying continued
17 detention and ordered their release on bond. SUF ¶ 49. But for this Court’s
18 intervention, all would continue to suffer prolonged detention, separated from their
19 homes, loved ones, and communities.

1 Detention inflicts substantial harm by separating family members, including
2 U.S. citizen family members. *See* SUF ¶¶ 25.d, 33.d, 41.d, 48.e (describing
3 Plaintiffs’ deep family ties to the United States). Such “separation from family
4 members” is an important irreparable harm factor. *Leiva-Perez v. Holder*, 640 F.3d
5 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g.,*
6 *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (similar).
7 In addition, detention renders class members unable to care for their families, and
8 in particular, their U.S.-citizen children. *See* SUF ¶¶ 33.i, 41.e, 41.h. Such
9 “economic burdens imposed on detainees and their families as a result of detention,
10 and the collateral harms to children of detainees” are well-recognized forms of
11 irreparable harm. *Hernandez*, 872 F.3d at 995; *see also Gonzalez Rosario v. U.S.*
12 *Citizenship & Immigr. Servs.*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2018)
13 (similar). For all these reasons, the Court should waive any prudential exhaustion
14 requirement.

15 **III. The Court Should Issue Final Judgment Pursuant to Rule 54(b).**

16 Plaintiffs respectfully request that the Court enter final judgment as to
17 Counts I and II of the complaint, and Count III insofar as the agency action here is
18 “not in accordance with law.” Dkt. 1 ¶¶ 62–72. Under Federal Rule of Civil
19 Procedure 54(b), “[w]hen an action presents more than one claim for relief . . . , the
20 court may direct entry of a final judgment as to one or more, but fewer than all,

1 claims or parties only if the court expressly determines that there is no just reason
2 for delay.” “[I]n deciding whether there are no just reasons to delay the appeal of
3 individual final judgments in setting such as this, a district court must take into
4 account judicial administrative interests as well as the equities involved.” *Curtiss-*
5 *Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 8 (1980). Where the claims at issue are
6 “separable from the others remaining to be adjudicated,” and where “no appellate
7 court would have to decide the same issues more than once,” issuing separate final
8 judgments is appropriate. *Id.*

9 Judicial efficiency and fairness support entering final judgment here. Indeed,
10 if Plaintiffs prevail on the statutory and regulatory claims, there will be no need for
11 the Court to address the Due Process claim or the APA claims that rely on the
12 agency record (i.e., the arbitrary and capricious claim and the notice and comment
13 claim). In addition, the equities present—prolonged detention, separated family,
14 and departure from longstanding practice—all favor expeditious resolution of the
15 central statutory question in this case. *See, e.g., Refugee & Immigr. Ctr. for Educ.*
16 *& Legal Servs. v. Noem*, No. CV 25-306 (RDM), --- F. Supp. 3d ---, 2025 WL
17 1825431, at *56 (D.D.C. July 2, 2025) (granting final judgment pursuant to Rule
18 54(b) as to subset of claims and certifying appeal, except as to certain APA
19 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.

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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.

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