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18 **UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF ARIZONA**

20 Samir Aghar,

21 Petitioner,

22 v.

23 Fred Figueroa, Warden, *et al.*,

24 Respondents.

Case No. 2:25-cv-03147-KML-CDB

**RETURN IN OPPOSITION TO
AMENDED PETITION FOR WRIT OF
HABEAS CORPUS [ECF No. 23]**

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INTRODUCTION

Respondents Fred Figueroa, Warden of Eloy Detention Center; John Cantu, Phoenix Field Office Director of U.S. Citizenship and Immigration Enforcement (“USCIS”); Pamela Bondi, Attorney General; Kristi Noem, Secretary of the Department of Homeland Security (“DHS”); and Robert F. Kennedy, Jr., Secretary of Health and Human Services, in their official capacities, hereby file a return in opposition to Petitioner Aghar’s Amended Petition for a Writ of Habeas Corpus (“Amended Petition”) filed on October 3, 2025.

The Amended Petition alleges that Petitioner’s detention in civil immigration custody is a violation of his Fifth Amendment Due Process rights because his detention may one day become prolonged and because he has not received a bond hearing before an immigration judge. The Amended Petition also alleges that “the decision to jail Mr. Aghar when he turned 18 was arbitrary and capricious.”¹ However, the Amended Petition fails to cure any of the jurisdictional deficiencies of the original Petition and instead creates a new one by presenting an Administrative Procedures Act (“APA”) claim improperly in habeas. Because Petitioner fails to establish that his detention is unlawful and raises an APA claim that does not sound in habeas, and is precluded in any event by Petitioner’s status as a class member in *Garcia Ramirez v. U.S. Immigr. & Customs Enf’t*, No. 1:18- cv-508 (D.D.C. 2021), the Amendment Petition should be dismissed in its entirety.

¹ Petitioner, throughout the Amended Petition, uses the term “jail” to refer to Petitioner’s lawful civil detention pursuant to 8 U.S.C. § 1225(b). Respondents maintain this term is a misnomer of civil immigration custody. *See Bell v. Wolfish*, 441 U.S. 520, 536-37 (1979) (the government may detain an individual “to ensure his presence at trial and may subject him to the restrictions and conditions of the detention facility so long as those conditions and restrictions do not amount to punishment, or otherwise violate the Constitution”).

RELEVANT FACTS

I. Factual Background

Petitioner Samir Aghar is a native and citizen of Afghanistan who was encountered with his younger brother by U.S. Border Patrol on October 28, 2023. Ortega Decl. ¶ 5, ECF No. 12-1. Petitioner was found inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and placed into removal proceedings. *Id.* Because Petitioner was underage at the time, he was placed in the care of the Department of Health and Human Services Office of Refugee Resettlement. *Id.* ¶ 7. On April 17, 2025, Immigration and Customs Enforcement (“ICE”) completed an Age-Out Review of Petitioner, determining the least restrictive placement was detention in Eloy, Arizona. *Id.* ¶ 11. The review also determined the Petitioner to be a danger to the community and a flight risk. *Id.* Petitioner, after he turned eighteen, was brought into ICE custody under 8 C.F.R. 235.3(b)(ii) (8 U.S.C. § 1225(b)) on April 21, 2025, for the duration of his removal proceedings. *Id.* ¶ 13. Petitioner’s next immigration court hearing is November 17, 2025. Amend. Pet. ¶ 18.

II. Procedural Background

On August 28, 2025, Petitioner filed a Petition for a Writ of Habeas Corpus, alleging that his detention in civil immigration custody was a violation of his Fifth Amendment Due Process rights. Original Pet. ¶¶ 20–31, ECF No. 1. On the same date, Petitioner filed a Motion for a Preliminary Injunction and a Temporary Restraining Order (“PI motion”), arguing he was likely to succeed on the merits of his claim that his present detention was unlawful and seeking immediate release. ECF No. 3. Pursuant to Court order, Respondents filed an opposition to the PI motion on September 8, 2025. ECF Nos. 5, 12. On September

11, 2025, Petitioner filed a Motion for Discovery and Extension of Time (“discovery motion”) seeking production of all documents relating to his claim that ICE failed to consider placing him with a sponsor and an extension of time to file a reply to the PI motion. ECF No. 13. On September 12, 2025, the Court granted the discovery motion, requiring Respondents to produce responsive documents by September 18, 2025. ECF No. 15. Respondents sought, and the Court granted, an extension of discovery production until September 25, 2025. ECF No. 19, 20. On September 24, 2025, Respondents sought an unopposed stay of discovery while the dispositive arguments presented in Respondents’ First Return were pending. ECF No. 21. On October 3, 2025, Petitioner filed the Amended Petition, adding Robert F. Kennedy, Jr. as a Respondent, detailing more factual background of Petitioner’s immigration court proceedings, and replacing his claim that Respondents did not conduct an age-out review with a claim that the age-out review Respondents conducted was arbitrary and capricious under the APA.

17 **III. Regulatory Background**

18 Petitioner is detained in ICE custody pursuant to 8 U.S.C. § 1225(b) as an applicant
19 for admission subject to mandatory detention. Ortega Decl. ¶ 13. The Immigration and
20 Nationality Act (“INA”) defines an “applicant for admission” as “[a]n alien present in the
21 United States who has not been admitted or who arrives in the United States (whether or
22 not at a designated point of arrival . . .).” 8 U.S.C. § 1225(a)(1); *see also Jennings v.*
23 *Rodriguez*, 583 U.S. 281, 287 (2018). The category of “arriving alien” includes a person
24 who is “an applicant for admission coming or attempting to come into the United States at
25 a port-of-entry.” 8 C.F.R. § 1001.1(q). *See also Matter of M-S-*, 27 I. & N. Dec. 509, 510
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1 (A.G. 2019). In general, “applicants for admission fall into one of two categories, those
2 covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings*, 583 U.S. at 287.

3 When the “examining” official “determines that an alien seeking admission is not
4 clearly and beyond a doubt entitled to be admitted,” then that noncitizen receives removal
5 proceedings under 8 U.S.C. § 1229a. 8 U.S.C. § 1225(b)(2)(A). In short, Section 1229a
6 proceedings are “full removal proceedings.” *Matter of M-S-*, 27 I. & N. Dec. at 510. In
7 some circumstances, an immigration official may determine that a noncitizen qualifies for
8 full removal proceedings under Section 1225(b)(2), and also for expedited removal
9 proceedings under Section 1225(b)(1). When that happens, “[t]he government has
10 discretion to place noncitizens in standard removal proceedings even if the expedited
11 removal statute could be applied to them.” *Flores v. Barr*, 934 F.3d 910, 916-17 (9th Cir.
12 2019) (citing *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 524 (BIA 2011)); *see also*
13 *Matter of M-S-*, 27 I. & N. at 510 (stating “DHS may place him in either”). Ultimately, it
14 is the manner in which an alien arrived and the timing and location of his arrest and
15 detention, rather than the type of removal proceedings in which he may be placed, that
16 determine his status as an arriving alien under Section 1225(b). *See Dep’t of Homeland*
17 *Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (An alien “who tries to enter the
18 country illegally is treated as an ‘applicant for admission.’”) (quoting 8 U.S.C.
19 § 1225(a)(1)); *id.* (“[A]nd an alien who is detained shortly after unlawful entry cannot be
20 said to have ‘effected an entry,’” and is in the same position as an alien seeking admission
21 at a port of entry) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

22 Petitioner’s claim that he is detained pursuant to Section 1226(a) and not Section
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1 1225(b), “because he is not now and was never in expedited removal proceedings described
2 in § 1225(b),” is incorrect. Amend. Pet. ¶ 22.c. As explained above, ICE retains discretion
3 as to whether to place an arriving alien into expedited removal proceedings or full removal
4 proceedings under Section 1229a. And in either circumstance, the alien’s detention is
5 mandatory through the course of those proceedings.
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7 STANDARD OF REVIEW

8 It is unchallenged that “[t]he district courts of the United States . . . are courts of
9 limited jurisdiction. They possess only that power authorized by Constitution and statute.”
10 *Exxon Mobil Corp. v. Allopach Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotation
11 omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary
12 Act of 1789 to the present day . . .” *Thuraissigiam*, 591 U.S. at 125 n.20. Title 28 U.S.C.
13 § 2241 provides district courts with jurisdiction to hear federal habeas petitions. Habeas
14 Corpus Rule 2(c) “provides that the petition must ‘specify all the grounds for relief
15 available to the petitioner’ and ‘state the facts supporting each ground.’” *Mayle v. Felix*,
16 545 U.S. 644, 655 (2005) (quoting Rules Governing Section 2254 Cases in the United
17 States District Court (“Habeas Rules”)); *see also James v. Borg*, 24 F.3d 20, 26 (9th Cir.
18 1994) (“Conclusory allegations which are not supported by a statement of specific facts do
19 not warrant habeas relief.”). Petitioner bears the burden to prove he is entitled to the
20 granting of the writ of habeas corpus by demonstrating that his custody violates the
21 Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v.*
22 *Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004); *Snook v. Wood*, 89 F.3d 605, 609 (9th
23 Cir. 1996). Where it “plainly appears from the face of the petition and any attached exhibits
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1 that the petitioner is not entitled to relief in the district court, the judge must dismiss the
2 petition.” *Trollope v. Vaughn*, No. CV1803902JLSJDE, 2018 WL 3913922, at *2 (C.D.
3 Cal. 2018) (citing Habeas Rules 1, 4). Similarly, “if the record refutes the applicant’s
4 factual allegations or otherwise precludes habeas relief, a district court is not required to
5 hold an evidentiary hearing.” *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007).
6

7 ARGUMENT

8 **I. Petitioner’s Claim That He Is Subject To Indefinite Detention Is Unripe.**

9 Petitioner claims he is subject to indefinite detention because there is no likelihood
10 that he can be returned to his home country of Afghanistan. However, Petitioner has not
11 been ordered removed yet and may not be; and if he is ordered removed, a country of
12 removal has not been determined; nor has any application for relief from removal been
13 adjudicated. Furthermore, Petitioner’s current detention authority, Section 1225(b), is
14 limited to the period necessary to complete his removal proceedings. *Jennings*, 583 U.S. at
15 302. If ordered removed, he becomes subject to a different detention statute, 8 U.S.C.
16 § 1231, under which his mandatory detention is constitutionally sound for a period of time
17 to effect his removal. *Zadvydas*, 533 U.S. at 683. Thus, this claim is far from ripe.
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19 A claim is unripe if it rests upon “contingent future events that may not occur as
20 anticipated, or indeed may not occur at all.” *Flaxman v. Ferguson*, No. 24-919, 2025 WL
21 2424420 (9th Cir. Aug. 22, 2025) (internal quotations omitted). Constitutional claims are
22 generally ripe only if a petitioner has standing. *Id.* Article III standing requires that a
23 plaintiff “must have (1) suffered an injury in fact (2) that is fairly traceable to the challenged
24 conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial
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1 decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). “To establish injury in fact, a
2 plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that
3 is ‘concrete and particularized’ and ‘actual or imminent, *not conjectural or hypothetical*.’”
4 *Id.* at 339 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (emphasis
5 added).
6

7 Further, Petitioner fails to show how his detention violates Due Process because
8 Section 1225(b) “mandate[s] detention of aliens throughout the completion of applicable
9 proceedings and not just until the moment those proceedings begin.” *Jennings*, 583 U.S. at
10 302. This conclusion conforms with the long-running understanding that the due process
11 rights of arriving aliens are limited. *See Shaughnessy v. United States ex rel. Mezei*, 345
12 U.S. 206, 212 (1953). The Supreme Court reaffirmed this in *Thuraissigiam*, where it held
13 that “an alien at the threshold of initial entry” has no procedural due process rights “other
14 than those afforded by statute.” 591 U.S. at 107.
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17 The Ninth Circuit has continued to apply this principal to arriving aliens placed into
18 removal proceedings under 8 U.S.C. § 1225(b). *See Mendoza-Linares v. Garland*, 51 F.4th
19 1146, 1167 (9th Cir. 2022) (“any rights [Petitioner] may have in regard to removal or
20 admission are purely statutory in nature and are not derived from, or protected by, the
21 Constitution’s Due Process Clause.”). Sections 1225(b)(1) and (b)(2) “provide for
22 detention for a specified period of time,” namely “throughout the completion of applicable
23 proceedings.” *Jennings*, 583 U.S. at 299, 302; *id.* at 300 (“neither provision can reasonably
24 be read to limit detention to six months.”). And, *if* Petitioner is eventually ordered removed,
25 his detention pending removal would be mandated by a different statute: 8
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1 U.S.C. § 1231(a)(2). *Kholesouvan v. Morones*, 386 F.3d 1298, 1300 (9th Cir. 2004)
2 (“[D]uring the 90-day removal period . . . aliens must be held in custody.”) (citing
3 *Zadvydas*, 533 U.S. at 683); *id.* at 1301 (“[T]he period of detention under § 1231(a)(2) also
4 passes constitutional scrutiny.”).

5
6 Thus, Petitioner’s claim of indefinite detention is entirely hypothetical. Petitioner is
7 currently in removal proceedings and has a pending application for relief from removal.
8 Ortega Decl. ¶¶ 17, 18, 20. Furthermore, DHS, aside from removing individuals to their
9 country of citizenship or residence, has the ability to remove individuals to third party
10 countries in circumstances when it is unable to remove individuals to their country of
11 citizenship or residence. *See* 8 U.S.C. § 1231(b)(1)(C)(iv); § 1231(b)(2)(E); *Dep’t of*
12 *Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Thus, it is uncertain whether Petitioner
13 will be ordered removed at all, much less to what country.
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16 Additionally, in his Amended Petition, Petitioner provides no evidence to show that
17 his *current* detention, pursuant to Section 1225(b), is indefinite or in violation of the
18 Constitution. Amend. Pet. ¶¶ 21–25. Even if Petitioner was arguing that his current
19 detention is a violation, Petitioner points to no authority that has found Section 1225(b)
20 detention under a year to be unconstitutionally prolonged. Petitioner merely speculates that,
21 because the United States and Afghanistan currently have no diplomatic ties, he will be
22 held indefinitely in immigration detention at some future time. *Id.* Ultimately, Petitioner’s
23 speculative future claim about indefinite detention, when he lacks a final order of removal
24 or the conclusion of his removal proceedings, is unripe for suit and should be dismissed.
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II. This Court Cannot Resolve Petitioner's APA Claim In This Habeas Proceeding.

Petitioner, on mere speculation, alleges that the Secretary's determination to detain Petitioner rather than place him with a sponsor was arbitrary and capricious. Amend. Pet. ¶¶ 26–30; *see id.* at 28 (“Respondent Noem had no evidence that Mr. Aghar posed any risk of flight or any danger to the community.”). Despite this claim being directly refuted in Paragraph 11 of the Ortega Declaration, this claim cannot be resolved by this Court because: (1) the APA claim is not properly brought in habeas, (2) the Court is foreclosed from reviewing the ultimate determination, and (3) the District Court of the District of Columbia retains exclusive jurisdiction over the claim.

A. Petitioner's APA claim is not properly brought in this habeas proceeding.

Even if Petitioner could show that the decision to detain him rather than place him with a sponsor was arbitrary and capricious, such a finding would not render his detention unlawful nor entitle him to immediate release. *Dalton v. Specter*, 511 U.S. 462, 472 (1994) (not every action by an executive agency in excess of its statutory authority is a Constitutional violation). Thus, habeas is not available to sustain this claim. *See Al Eyani v. Bondi, et al.*, Case No. 5:25-cv-00422 (C.D. Cal. May 20, 2025) (rejecting habeas claim where “the best the Court could do if [petitioner] was successful here is order that an immigration judge hear his case for release from custody.”).

Historically, “the writ of habeas corpus has served as a means of reviewing the legality of Executive detention” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). And the traditional “remedy for such detention is, of course, release.” *Munaf v. Geren*, 553 U.S.

674, 693 (2008). Claims for relief “outside the ‘core’ of habeas may not be pursued through habeas.” *Thuraissigiam*, 591 U.S. at 119 (citing *Skinner v. Switzer*, 562 U.S. 521, 525 (2011)); *see also Riseepan v. Wolf*, No. CV200468PHXSPLJFM, 2021 WL 705924 at *6 (D. Ariz. Jan. 15, 2021), *R&R adopted*, No. CV-20-00468-PHX-SPL, 2021 WL 689917 (D. Ariz. Feb. 23, 2021) (holding “an APA claim is at least arguably not properly brought in a habeas petition”) (internal citations omitted). Therefore, when a petitioner’s claim would not “‘necessarily spell speedier release,’” that claim does not lie at “‘the core of habeas corpus,’” and must be brought, if at all, under some other mechanism. *See Skinner*, 562 U.S. at 535 n.13 (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)).

Petitioner’s claim that Respondents determination to detain Petitioner pursuant to 8 U.S.C. § 1232(c)(2)(B) was arbitrary and capricious does not fall within the “core” of habeas. Although Petitioner asks this Court to set aside the determination and “order Mr. Aghar released,” Amend. Pet. ¶ 30, this is not the relief that would be gained from an APA claim of this nature. The APA grants courts the ability to *set aside* agency actions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A) (emphasis added). But the effect of this would not be immediate release, but rather a re-determination of placement in accordance with the requirements of 8 U.S.C. § 1232(c)(2)(B). *See Al Eyani*, Case No. 5:25-cv-00422 (“In other words, a favorable determination on this petition *may, in time*, lead to a change in Petitioner’s custody status.”) (court’s emphasis) (internal quotations and citation omitted).

Even if the Court found this claim available in habeas, Petitioner’s threadbare assertion that the age-out placement decision was arbitrary and capricious simply because

1 he believes he should have been placed with a sponsor is not a sufficient basis to obtain
2 habeas relief. *See Borg*, 24 F.3d at 26 (“Conclusory allegations which are not supported by
3 a statement of specific facts do not warrant habeas relief.”). Thus, because Petitioner’s
4 APA claim is not properly brought in habeas, and because it lacks sufficient supporting
5 facts to warrant habeas relief in any event, it should be dismissed.
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7 **B. The Court is foreclosed from reviewing the ultimate custody**
8 **determination because of 8 U.S.C. § 1252(a)(2)(B)(ii).**

9 Even if this Court does not dismiss Petitioner’s APA claim because it is improperly
10 brought in habeas, any challenge to the ultimate decision of the Secretary to place Petitioner
11 in immigration custody is unreviewable by the Court, and thus Petitioner’s claim fails.
12 When an unaccompanied minor turns 18 and is transferred to the custody of the Secretary
13 of Homeland Security, “the Secretary shall consider placement in the least restrictive
14 setting available after taking into account the alien’s danger to self, danger to the
15 community, and risk of flight.” 8 U.S.C. § 1232(c)(2)(B). As explained in the Ortega
16 Declaration at ¶ 11, sworn under penalty of perjury, the Secretary did just that. This should
17 be the end of the Court’s analysis regarding whether Petitioner received his statutory right
18 to individualized review.
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21 District courts lack jurisdiction to review “any other decision or action of the . . .
22 Secretary of Homeland Security the authority for which is specified under this subchapter
23 to be in the discretion of . . . the Secretary of Homeland Security.” 8 U.S.C.
24 § 1252(a)(2)(B)(ii). It is clear that the ultimate placement decision is within the Secretary’s
25 discretion, as long as the statutorily required process is followed. *See* 8 U.S.C.
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1 § 1232(c)(2)(B) (“Such aliens shall be *eligible* to participate in alternative to detention
2 programs . . . which *may* include placement of the alien with an individual or an
3 organizational sponsor, or in a supervised group home.”) (emphasis added); *see also Rodas*
4 *Godinez v. United States Immigr. & Customs Enf’t*, No. 2:20-CV-466 KWR/SMV, 2020
5 WL 3402059 (D.N.M. June 19, 2020) (“§ 1252(a)(2)(B)(ii) clearly bars this Court’s review
6 of Respondents’ discretionary decision to “consider placement in the least restrictive
7 setting.”).

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9
10 In *Garcia Ramirez v. U.S. Immigr. & Customs Enf’t*, which challenged DHS’s
11 purported failure to consider individuals for the least restrictive setting, the court clarified
12 that a challenge to an individual detention decision would be unreviewable. 338 F.Supp.3d
13 1, 39 (D.D.C. 2018) (“*Garcia Ramirez I*”) (“Plaintiffs do not dispute that the decisions of
14 whether and where to detain each of them are not reviewable by this Court. And Plaintiffs
15 explicitly disclaim any suggestion that they seek review of any aspect of DHS’s ultimate
16 choice of placements.”). This Court is thus unable to review the specific nuances of the
17 Secretary’s decision to place Petitioner in custody at Eloy Detention Center. Thus, the
18 Court should dismiss Petitioner’s APA claim.
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21 **C. Petitioner’s APA claim must be brought in the *Ramirez* court.**

22 Petitioner, in seeking APA relief related to his 8 U.S.C. § 1232(c)(2)(B) custody
23 determination, must raise his claim in the District Court for the District of Columbia
24 because he is a Rule 23(b)(2) class member of the *Garcia Ramirez v. U.S. Immigr. &*
25 *Customs Enf’t*, No. 1:18- cv-508 (D.D.C. 2021) litigation.
26

27 The *Garcia Ramirez* litigation concerned individuals who contended that ICE failed
28

1 to follow proper procedures under 8 U.S.C. § 1232(c)(2)(B) when determining the “least
2 restrictive placement” of individuals who turned 18 while in HHS-ORR custody. *Garcia*
3 *Ramirez* I, 338 F. Supp. at 11. The *Garcia Ramirez* court certified a Rule 23(b)(2) class as:

4 All former unaccompanied alien children who are detained or will be detained by
5 ICE after being transferred by ORR because they have turned 18 years of age and
6 as to whom ICE did not consider placement in the least restrictive setting available,
7 including alternatives to detention programs, as required by 8 U.S.C. §
8 1232(c)(2)(B).

9 *Id.* at 50. This is precisely the group to which Petitioner contends he belongs. Amend. Pet.

10 ¶¶ 26–30. After final judgment was entered, the *Garcia Ramirez* court issued a permanent
11 injunction requiring ICE to follow certain protocols and retained exclusive jurisdiction over
12 the injunction for five years (until September 21, 2026). *Garcia Ramirez v. U.S. Immigr.*
13 *& Customs Enf’t*, 568 F. Supp. 3d 10, 36 (D.D.C. 2021) (“*Garcia Ramirez* II”). Thus,
14 Petitioner is a member of a certified Rule 23(b)(2) class seeking injunctive and/or
15 declaratory relief for which there is no opt-out requirement. *Cooper v. Fed. Rsrv. Bank of*
16 *Richmond*, 467 U.S. 867, 874 (1984); *see also Crawford v. Honig*, 37 F.3d 485, 487 n.2
17 (9th Cir. 1994) (“[Rule 23(b)(2)] does not require notice or permit members to opt out”);
18 *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 207 (D.D.C. 2020) (holding “certification of a
19 23(b)(2) class precludes individual suits for the same injunctive or declaratory relief”)
20 (citing *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1538 (2018)).

21 As explained above, the Supreme Court noted that “the essence of habeas corpus is
22 an attack by a person in custody upon the legality of that custody.” *Thuraissigiam*, 591
23 U.S. at 117. In doing so, the Supreme Court found that there is no habeas jurisdiction “to
24 seek relief other than immediate or earlier release from confinement.” *Id.* Accordingly, the
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1 Supreme Court held that claims for relief that fall “outside the ‘core’ of habeas may not be
2 pursued through habeas.” *Id.* (citing *Skinner*, 562 U.S. at 525). When a Petitioner’s claim
3 would not “‘necessarily spell speedier release,’” that claim does not lie at “‘the core of
4 habeas corpus,’” and must be brought, if at all, under some other mechanism. *See Skinner*,
5 562 U.S. at 535 n.13 (quoting *Wilkinson*, 544 U.S. at 82).

7 Therefore, Petitioner’s claim regarding whether the Secretary properly followed the
8 process prescribed in Section 1232(c)(2)(B) is more properly brought in the *Garcia*
9 *Ramirez* litigation, notably not a habeas case. As explained above, the relief ultimately
10 sought—for the Secretary to consider Petitioner for placement with a sponsor according to
11 Section 1232(c)(2)(B)—is not properly brought in habeas because it would not result in
12 immediate release.
13

14 Further, permitting individual litigation regarding the injunctive relief awarded to
15 Petitioner as part of his membership in the mandatory class in *Ramirez* undermines the
16 purpose of the certified Rule 23(b)(2) class as it impacts the injunctive relief ordered to the
17 class as a whole. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360–61 (2011). The
18 permanent injunction provides class members such as Petitioner with a mechanism to
19 resolve allegations that ICE is not in compliance with the injunction. *Garcia Ramirez II*,
20 568 F. Supp. 3d at 36 (“Plaintiffs’ counsel shall . . . monitor[] Defendants’ compliance with
21 this Order or with 8 U.S.C. § 1232(c)(2)(B), including without limitation litigating any
22 disputes relating to this Order and Defendants’ compliance with this Order or with 8 U.S.C.
23 § 1232(c)(2)(B).”). Because Petitioner fails to raise a proper habeas claim of unlawful
24 detention, and otherwise raises a claim that is already the subject of a classwide permanent
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1 injunction with oversight and compliance mechanisms, the Court should dismiss the
2 claim.²

3 **III. Petitioner Does Not Have A Constitutional Right To A Bond Hearing.**

4
5 Petitioner's claim that his Due Process rights were violated because he has been
6 denied a bond hearing fails because Petitioner, who is detained pursuant to 8 U.S.C.
7 § 1225(b), has no constitutional right to a bond hearing. Because Petitioner is held in
8 mandatory detention pursuant to 8 U.S.C. § 1225(b) pending further removal proceedings,
9 Petitioner is not entitled to a bond hearing by statute. Section 1225(b) "mandate[s]
10 detention of applicants for admission until certain proceedings have concluded." *Jennings*,
11 583 U.S. at 297. Section 1225(b) does not afford Petitioner a right to a bond hearing by
12 this Court or before an immigration judge. *See Jennings*, 583 U.S. at 300 (holding that
13 because an individual detained under Section 1225(b) may be temporarily paroled under 8
14 U.S.C. § 1182(d)(5)(A), it is "implied that there are no other circumstances under which
15 aliens detained under § 1225(b) may be released."). Neither provision "imposes any limit
16 on the length of detention" or "says anything whatsoever about bond hearings." *Id.* The
17 Ninth Circuit has held, by extending the logic of *Jennings*, that individuals in mandatory
18 detention prior to removal are not statutorily entitled to a bond hearing. *Avilez v. Garland*,
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23 ² Should the Court find that it has jurisdiction over Petitioner's APA claim, it should still
24 dismiss it without prejudice as improperly raised in habeas and require Petitioner to file a
25 civil claim subject to the Federal Rules of Civil Procedure. *Trollope*, 2018 WL 3913922,
26 at *3 (declining to convert a non-cognizable habeas petition to a civil rights claim in part
27 because petitioner paid only the \$5 habeas fee and not the \$350 civil filing fee and \$50
28 administrative fee) (citing 28 U.S.C. § 1914); *see also Al Eyani v. Bondi, et al.*, Case No.
5:25-cv-00422 (C.D. Cal. May 20, 2025) (dismissing habeas petition in part because it was
seeking civil relief).

1 69 F.4th 525, 538 (9th Cir. 2023). The District of Arizona has also held that individuals
2 subject to Section 1225(b) detention are not entitled to a bond hearing. *See, e.g., Ibarra-*
3 *Perez v. Howard*, 468 F. Supp. 3d 1156, 1178 (D. Ariz. 2020).

4
5 None of the case law to which Petitioner cites in his Petition supports the notion that
6 Petitioner, held pursuant to Section 1225(b), has a right to receive a bond hearing. Amend.
7 Pet. ¶¶ 31–34. This is because Petitioner has operated under the incorrect assumption that
8 he is either held pursuant to Section 1226(a) or 1231. As explained above, Petitioner is held
9 pursuant to Section 1225(b) as an alien seeking admission subject to mandatory detention.
10 *See Ortega Decl.* ¶ 13. Petitioner has no order of removal, *see id.* ¶ 20, and thus cannot be
11 held under Section 1231. Ultimately, *Jennings* clearly refutes all of Petitioner’s arguments
12 that he must receive a bond hearing. 583 U.S. at 302 (“In sum, §§ 1225(b)(1) and (b)(2)
13 mandate detention of aliens throughout the completion of applicable proceedings....”).
14 Therefore, Petitioner’s claim that the denial of a bond hearing is a violation of his Due
15 Process rights should be dismissed.

16 **IV. There Is No Need For Discovery or an Evidentiary Hearing.**

17
18 Discovery or an evidentiary hearing on the Amended Petition is unnecessary and
19 should be denied. A district court has the discretion whether to hold such a hearing, and “if
20 the record refutes the applicant’s factual allegations or otherwise precludes habeas relief, a
21 district court is *not* required to hold an evidentiary hearing.” *Schriro*, 550 U.S. at 474
22 (emphasis added); *see also Gwen v. Mascher*, No. CV208327PCTJATJFM, 2022 WL
23 19977288 at *1 (D. Ariz. Feb. 4, 2022) (denying a request for an evidentiary hearing
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1 because Petitioner failed to identify specific factual issues that could be resolved by
2 discovery and to “proffer any evidence to be adduced” at the hearing).

3 Similarly, courts do not have to authorize all discovery requests presented to them,
4 but only those “where specific allegations before the court show reason to believe that the
5 petitioner may, if the facts are fully developed, be able to demonstrate that he is confined
6 illegally and is therefore entitled to relief.” *Harris v. Nelson*, 394 U.S. 286, 300 (1969)
7 (emphasis added). Ultimately, habeas proceeding are not “meant to be a fishing expedition
8 for habeas petitioners to ‘explore their case in search of its existence.’” *Rich v. Calderon*,
9 187 F.3d 1064, 1067 (9th Cir. 1999) (quoting *Calderon v. United States Dist. Ct.*
10 *(Nicolaus)*, 98 F.3d 1102, 1106 (9th Cir. 1996)).

13 Here, the record can properly resolve the Petition. Respondents maintain that
14 Petitioner has failed to establish that any of Respondents’ alleged acts have violated the
15 Fifth Amendment or APA. *See supra* §§ I–III. Like the petitioner in *Gwen*, Petitioner has
16 not established a sound argument about what discoverable evidence could be produced at
17 an evidentiary hearing, or how that evidence would help resolve his unsubstantiated claims.
18 2022 WL 19977288 at *1. Thus, there is no need for discovery or an evidentiary hearing
19 on this Amended Petition.

22 CONCLUSION

23 For the foregoing reasons, the Court should deny the Amended Petition.
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1 DATED this 14th day of October, 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document on October 14, 2025 on the Electronic Case Filing (ECF) System, which will send notification of such filing to all counsel of record.

Respectfully submitted,

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