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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Valeria MENDOZA SANTIAGO

Petitioner,

v.

Laura HERMOSILLO, *et. al.*,

Respondents.

Case No. 3:26-cv-00132-ACP

FEDERAL RESPONDENTS' RETURN MEMORANDUM

COME NOW, Federal Respondents, who file their Return Memorandum to Petitioner's Petition Under the Administrative Procedure Act and Petition for Writ of Habeas Corpus as follows:

I. INTRODUCTION

This Court should deny Petitioner Valeria Mendoza Santiago's Petition for a Writ of Habeas Corpus. Dkt. 1. It is undisputed the Petitioner is a non-citizen who unlawfully

entered the United States and is inadmissible. Likewise, Petitioner does not contest her removability from the United States. Instead, Petitioner challenges the lawfulness of her detention while she awaits removal to her home country of Mexico. The Petition is now moot because Petitioner was released from custody on March 21, 2026, following the Court's Order granting a Temporary Restraining Order ("TRO") at Dkt. 7.

To the extent any of her claims survive, Petitioner fails to demonstrate that her detention by U.S. Immigration and Customs Enforcement ("ICE") violated any statute or regulation. And, notwithstanding Mendoza-Santiago's arguments to the contrary, federal agency *guidance* creates no substantive rights that would make her detention unlawful—the guidance at issue is not statute or regulation. Furthermore, ICE *was* in compliance with its guidance. ICE had no knowledge that Ms. Mendoza-Santiago was estimated to be 8 weeks and 6 days pregnant at the time of her arrest and did not learn of her pregnancy until after she was detained. Furthermore, Petitioner's detention was required by law. Petitioner makes no allegation her detention was otherwise unlawful. Accordingly, as supported by the Declaration of ICE Officer, Bradley Hayes, the Government hereby submits this Return Memorandum to the Petition in this case. The Government does not believe that an evidentiary hearing is necessary.

II. FACTS

Petitioner is a native and citizen of Mexico. *See Decl. of Bradley A. Hayes*, Ex. A. Prior to 2026, she was encountered in the United States illegally *four times* and returned to Mexico immediately following each encounter. *Id.* In 2021, Petitioner was found concealed

in the trunk of a vehicle in an attempt to evade Customs and Border Patrol officers. *Id.* At some point prior to January 2026, Petitioner again entered the United States without inspection or parole at or near San Ysidro, California. *Id.* She does not contest her removability from the United States, but files this *writ* contesting her brief detention.

Petitioner's illegal presence in Alaska came to the attention of HSI Anchorage in January 2026. *Id.* Record checks showed that Petitioner was, again, illegally present in the United States with no active or pending applications. *Id.* On March 20, 2026, immigration officers located and approached Petitioner wearing clearly identifiable police markings and identified themselves as Immigration and Customs Enforcement agents. *Id.* Petitioner was positively identified and taken into custody without incident. *Id.* Petitioner was then transported to the ICE Anchorage office for processing. *Id.* At the time of her arrest, ICE did not know she was pregnant, but later learned Petitioner claimed she was pregnant during processing. *Id.*

On the same day, Petitioner was issued a Notice to Appear ("NTA") charging her as inadmissible to the United States. *Id.* Preparations were begun to transfer Petitioner to the Northwest ICE Processing Center ("NWIPC") for further proceedings in immigration court. *Id.* In the midst of her transfer, this present action was filed and a TRO was issued, without a response from the government, prohibiting Petitioner's transfer out of the state of Alaska. *Id.* Petitioner was released immediately following issuance of the TRO on Saturday, March 21, 2026. *Id.*

As a result of the TRO, Petitioner was issued a superseding NTA. *Id.* Petitioner is presently charged under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) in that Petitioner is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.*, 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner is scheduled to appear in immigration court in Anchorage, Alaska on August 26, 2026. *Id.*

III. PETITIONER’S FIRST CLAIM FOR RELIEF UNDER THE ADMINISTRATIVE PROCEDURE ACT MUST FAIL.

Petitioner first argues her detention pending removal is barred by the Administrative Procedure Act (“APA”) 5 U.S.C. § 706(2)(A), (D). This claim fails for multiple independently sufficient reasons: (1) The Court has no subject matter jurisdiction to hear the claim as there are other statutory remedies—making this claim barred under the APA; (2) The Court also lacks subject matter jurisdiction because ICE Directive 11032.4 is not a final agency action reviewable under the APA; (3) ICE Directive 11032.4 grants no substantive or procedural rights; and (4) ICE did not violate ICE Directive 11032.4 and therefore cannot be arbitrary, capricious, or contrary to law.

First, as a threshold matter, the APA does not itself grant jurisdiction. 5 U.S.C. § 702; *Califano v. Sanders*, 430 U.S. 99, 105 (1977) (“[A]n Act of Congress...persuades us that the better view is that the APA is not to be interpreted as an implied grant of subject-matter jurisdiction to review agency actions.”). Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C. § 704 (“Agency action made reviewable by

statute and final agency action *for which there is no other adequate remedy in a court* are subject to judicial review.”) (emphasis added); *Pacito v. Trump*, 169 F.4th 895, 924 (9th Cir. 2026) (APA prevents plaintiffs from “exploiting the APA’s waiver to evade limitations on suit contained in other statutes”). Simply put, “federal courts lack jurisdiction over APA challenges whenever Congress has provided another ‘adequate remedy.’” *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs’ claims necessarily implied the invalidity of the Plaintiffs’ confinement and removal under the “Alien Enemies Act” and so had to be brought as habeas corpus claims in the jurisdiction of their confinement). As Justice Kavanaugh stated in his concurring opinion, “[e]specially given the history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 674; *cf. O’Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that “habeas actions” provide an “adequate remedy” displacing APA review under Section 704); and *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018) (“Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in a habeas corpus petition, the Court does not have jurisdiction to decide his APA

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claim.”).

Second, to be reviewable under the APA, an action must be a “final agency action,” which is to say that it is the “consummation of the agency’s decisionmaking process.” *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of executing a removal order is not within that category because it is only an intermediary step in the process. *See Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025)(detention pending removal is not final agency action).

Third, assuming *arguendo* the Court finds jurisdiction, the claim must still fail. Petitioner’s entire argument rests upon ICE Directive 11032.4—an agency *guidance memorandum* conferring no substantive rights—which discusses the circumstances upon which ICE considers detaining pregnant women. The Directive states: “Generally, ICE should not detain, arrest, or take into custody for an administrative violation of the immigration laws individuals known to be pregnant, postpartum, or nursing unless release is prohibited by law or exceptional circumstances exist.” ICE Directive 11032.4, ¶ 2. The Directive encourages ICE agents to “...carefully weigh the decision...” to detain. *Id.* Throughout, the Directive contemplates “the decision” to arrest, indicating ICE has discretion. The Directive further provides:

No Private Right. This Directive provides only internal ICE policy guidance, which may be modified, rescinded, or suspended at any time without notice. *It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.* Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

ICE Directive 11032.4 ¶ 9 (emphasis added).

Directive 11032.4, by its plain language, does not confer any substantive or procedural rights that are enforceable by law. Even assuming it did confer rights, Petitioner has made no showing to establish the absence of exceptional circumstances or that ICE knew Petitioner was pregnant at the time of her arrest. In fact, Petitioner was not known to be pregnant until after her arrest and she was released before her pregnancy was established. Ex. A. But, to the extent any of her claim survives, she cannot rely upon ICE Directive 11032.4 for relief. “The Directive does not prohibit detention of pregnant aliens. Instead, the Directive provides for certain considerations when determining whether to keep a pregnant individual in custody.” *M.O.G.R. v. Warden*, 2025 WL 3460936, 4 (M.D. Ga. December 2, 2025). Petitioner’s argument concerning ICE Directive 11032.4 requires the Court to render the word *generally* meaningless. The Court should decline to do so.

Fourth, beyond conjecture, Petitioner has made no showing that ICE knew she was pregnant at the time of her arrest, or that ICE failed to make certain considerations thereafter. In addition, Petitioner’s detention was required by law. In those circumstances, where a detainee is found to be pregnant *after* arrest, Directive 11032.4 paragraph 2.1 controls:

There may also be times when ICE identifies pregnant, postpartum, or nursing individuals who are already detained in ICE custody. When that occurs, ICE personnel, through the appropriate chain of command, must immediately notify the FOO, or designee, and the appropriate medical staff (e.g., Field Medical Coordinator (FMC) or Health Services Administrator (HSA)) *to determine if continued detention is appropriate.*

ICE Directive 11032.4 ¶ 2.1 (emphasis added).

In fact, ICE did follow paragraph 2.1 of the Directive because, by the time ICE learned of Petitioner's claim of pregnancy, Petitioner was already in custody. Ex. A. By notifying medical staff, inquiring regarding the care available at the facilities for pregnant detainees, and taking steps to determine whether continued detention was appropriate, ICE followed the Directive. Petitioner was ultimately released after the Court's issuance of a TRO within 24 hours of her arrest.

Even if paragraph 2.1 did not exist, ICE still followed the Directive because ICE interprets Petitioner's detention as required by law pursuant to *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). Petitioner was subject to mandatory detention under section 235(b)(2) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) ("aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings"); *Buenrostro-Mendez v. Bondi*, 166 F.4th at 502-09 ("provisions of § 1225 confirm that applicants for admission are indeed necessarily 'seeking admission'" and subject to mandatory detention). This issue is currently pending before the Ninth Circuit in *Rodriguez Vazquez v. Bostock*, No. 25-6842 (9th Cir.) which is fully briefed and was argued before the 9th Circuit Court of Appeals on March 4, 2026.

Petitioner argues *Accardi*, but fails to demonstrate any merit to her claims brought under the APA and *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954). An *Accardi* claim requires an actual injury and the alleged regulations at issue must involve substantive, not procedural rights. *Id.* For the reasons articulated *supra*, there is no ongoing injury—it has been mooted.

Assuming the claim is not moot, *Accardi* still does not apply because, *Accardi* concerned the Attorney General’s action in attempting to have the Board of Immigration Appeals sidestep *regulations* requiring the board “to exercise its own discretion...” *Accardi*, 347 U.S. at 268. Here, ICE Directive 11032.4, is *guidance*—e.g. discretion—to immigration officials, not a *regulation*. It was provided for the benefit of guiding and informing ground level decision makers. Section 701(a)(2) of the APA precludes judicial review where agency action is committed to agency discretion by law. Thus, *Accardi* is inapplicable to this case because there is no injury and even assuming there was, it was a matter for which discretion was conferred upon government officials.

Petitioner’s reliance upon *Morton* is also misplaced as it is dicta and unclear to whether *procedures* refers to guidance or regulations. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

Petitioner also cites an out of circuit case from another district court, purporting to apply the *Accardi* doctrine, but that decision itself, misinterprets and misapplies *Accardi*. See *Maria Concepcion Banegas Santos v. Bondi et. al*, 26-cv-63-wmc (W.D. Wis. Feb. 19, 2026) [Dkt. 1 at 46-50]. For instance, in support of concluding ICE Directive 11032.4

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prohibits ICE from detaining the petitioner, the court cites to *Zelaya Diaz v. Rosen*, 986 F.3d 687 (7th Cir. 2021). Yet, the Seventh Circuit, in *Zelaya Diaz*, specifically opined that “[t]he *Accardi* doctrine generally *does not* apply to an agency’s internal memoranda, at least those that are neither designed to protect individual rights nor intended to have the force of law.” *Zelaya Diaz*, 986 F.3d at 690 (emphasis added). The *Santos* order also states that *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) supports its decision. Yet, again, however, *Montilla* concerned an immigration judge’s obligation to comply with “INS regulations designed to safeguard an alien’s right to counsel.” *Montilla*, 926 F.3d at 164 (emphasis added). The case did not turn upon the question of whether internal guidance was complied with as is the issue in this case.

In the case at bar, ICE Directive 11032.4 is undisputably not a regulation. Moreover, it creates no substantive right, nor is it designed to safeguard one. *supra* at 9. It is meant to provide guidance to immigration officials and nothing more. It places no limitations on the lawful enforcement of immigration laws. ICE Directive 11032.4 ¶ 9 (“Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.”). It does not prohibit the detention of pregnant or nursing women and therefore, could not have created or otherwise protected a right. *supra* at 7 (citing *M.O.G.R. v. Warden*, 2025 WL 3460936, 4 (M.D. Ga. December 2, 2025)). Underscoring there is no right to be free from detention while pregnant or nursing, there is no corresponding right in the criminal context that prevents pregnant women from serving jail time while pregnant or being subjected to pretrial detention. See e.g. *United States v. Otto*, No. 4:24-CR-00176-

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DCN-2, 2024 WL 5008764, at *4 (D. Idaho Dec. 6, 2024). The order purporting to find otherwise from the Western District of Wisconsin is thus not well founded and should be unpersuasive to this Court.

In sum, ICE Directive 11032.4 offers *guidance* to ICE officers, yet Petitioner continues to ask this Court to substitute its own judgment to the case at bar even though she has long since been released from detention. This Court should decline to substitute its own independent judgment and interpret ICE Directive 11032.4 in lieu of the personnel on the ground.

IV. PETITIONER'S SECOND CLAIM FOR A WRIT OF HABEAS CORPUS IS MOOT

The Court should deny Petitioner's habeas petition as moot. Petitioner is no longer confined, nor are her movements restricted in any way.

An individual may seek habeas relief under 28 U.S.C. § 2241 if she is “in custody” under federal authority “in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *see also, Dep't of Homeland Security v. Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically “provide[s] a means of contesting the lawfulness of restraint and securing release.”).

The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude

the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the petitioner’s claim would “necessarily lead to immediate or speedier release.”).

In the immigration context, for a habeas petition to continue to present a live controversy after a petitioner’s release there must be some remaining “collateral consequence” that may be redressed by success on the petition. *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007), *citing Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (“some ‘collateral consequence’ of the conviction—must exist if the suit is to be maintained.”). When habeas relief will not redress any collateral consequences, there is no live controversy once the petitioner is released from custody. *Abdala*, 488 F.3d at 1064. A petitioner’s release from detention under an order of supervision “moot[ed] his challenge to the legality of his extended detention.” *Riley v. INS*, 310 F.3d 1253, 1256–57 (10th Cir.2002); *see also Sayyah v. Farquharson*, 382 F.3d 20, 22 n. 1 (1st Cir. 2004) (holding that a “claim[of] indefinite detention...was mooted by [a petitioner’s] subsequent release”).

Here, a favorable ruling for Petitioner would change nothing. She is currently out of custody and her movements are unrestricted. *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition since it cannot be fairly read as

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attacking ‘the legality or duration of confinement.’”) (quoting *Pinson*, 69 F.4th at 1065). There is no “extant controversy for the district court to act upon” and the case is moot. *Abdala*, 488 F.3d at 1065.

**V. PETITIONER’S THIRD CLAIM REGARDING
VIOLATION OF DUE PROCESS IS INSUFFICIENT**

Petitioner’s Due Process claims must fail as she has received all process to which she is due. “Detention during removal proceedings is a constitutionally permissible part” of the removal process. *Demore v. Kim*, 538 U.S. 510, 531 (2003); *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“Congress has the authority to detain aliens suspected of entering the country illegally pending their deportation hearings.”).

The instant case is very similar to *M.O.G.R v. Warden*, 2025 WL 3460936 (M.D. Ga. December 2, 2025). There the petitioner was detained pending removal in spite of her unverified claim of pregnancy. *Id.* at 4. During the course of her detention, a pregnancy test was performed and the results were positive. *Id.* at 1. ICE refused to release the petitioner and she filed a habeas petition claiming violation of her Fifth Amendment rights and ICE Directive 11032.4. *Id.* at 3.

The district court denied the petition, holding that Directive 11032.4:

does not prohibit detention of pregnant aliens. Instead, the Directive provides for certain considerations when determining whether to keep a pregnant individual in custody. The Court is unconvinced that the present record supports a finding that the Directive has been violated to the extent that it rises to the level of a constitutional violation. The records show that Petitioner is registered as pregnant with the facility, that she received special accommodations for her pregnancy (such as a bottom bed and extra pillow), that she is receiving prenatal vitamins, that she was given instructions on

nutritional guidelines, and that she was scheduled to visit an OBGYN. Pet. Ex. D at 6. Thus, Petitioner's claims based on ICE Directive 11032.4 are unsupported by the record.

Id. at 4.

Here, Petitioner has been released after an extremely brief detention. Petitioner has not alleged that she was subject to any mistreatment during her detention, nor has she alleged that she will be mistreated in any future detention. Her Fifth Amendment claims must therefore fail.

VI. PETITIONER'S FOURTH CLAIM IS MERELY AN ATTEMPT TO RESTATE HER ABOVE CLAIMS

Petitioner's fourth claim merely restates the habeas challenge of the second claim independent of her APA challenge in claim one. As discussed above, both the habeas and APA challenges are moot and lack jurisdiction. Petitioner is not in custody and has no restrictions on her movements. Defendants thus adopt their arguments made in response to claims one through three.

VII. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request this Court deny the Petition and dismiss the case.

RESPECTFULLY SUBMITTED this April 8, 2026, in Anchorage, Alaska.

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/s/ Bryan Wilson
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United States of America

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2026,
a true and correct copy of the foregoing
was served electronically on the following:

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