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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF ALASKA

6 Valeria MENDOZA SANTIAGO

7 Petitioner,

8 v.

9 Laura HERMOSILLO, *et. al.*,

10 Respondents.

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

11 **PETITIONER'S TRAVERSE TO FEDERAL RESPONDENTS' RETURN**  
12 **MEMORANDUM**

13 Respondents' Return fails on every issue it raises. First, this case is not moot  
14 because Petitioner was released only after this Court intervened, Respondents still  
15 defend the detention as lawful, and they do not say whether they will detain her again.  
16 *FBI v. Fikre*, 601 U.S. 234, 240–45 (2024) (Government failed to moot case where it  
17 ended challenged conduct without showing it would not recur). Second, the APA claim  
18 remains because habeas does not displace it here, and the detention decision is a final  
19 agency action with immediate liberty consequences. *R.I.L.-R v. Johnson*, 80 F. Supp. 3d  
20 164, 185–86 (D.D.C. 2015) (permitting APA and habeas claims to proceed together in  
21 immigration detention challenge) Third, Directive 11032.4 is not legally empty  
22 guidance. Its text, notwithstanding the “private right/action” disclaimer, is mandatory  
23 in nature and affects the liberty interest of the Petitioner and, under *United States ex*  
*rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954), ICE must follow it. Fourth,  
Respondents have shown neither compliance with that Directive nor that detention was  
categorically required by law, particularly where parole authority remains available

1 under 8 U.S.C. § 1182(d)(5)(A), as *Lopez v. Ladwig*, No. 6:25-cv-01884, at 15–18  
2 (W.D. La. Jan. 2, 2026), recognizes. Finally, Petitioner’s due process claim survives  
3 because this case concerns the arbitrary detention of a pregnant woman without the  
4 process that Respondents’ own policy requires. *M.O.G.R. v. Warden, Stewart Detention*  
5 *Center*, No. 4:25-cv-356-CDL-AGH (M.D. Ga. Dec. 2, 2025) (Applied Directive 11032.4  
6 to find whether a due process violation was present)

### 7 I. FACTS

- 8 1. On March 20, 2026, ICE officers arrested Petitioner in Alaska and transported  
9 her to the ICE Anchorage office for processing. Dkt. 16 at 3; Dkt. 16-1 at 2.
- 10 2. Respondents learned during processing that Petitioner was pregnant. Dkt. 16 at  
11 3, 7; Dkt. 16-1 at 2.
- 12 3. That same day, ICE issued Petitioner a Notice to Appear and began preparations  
13 to transfer her to the Northwest ICE Processing Center for further proceedings.  
14 Dkt. 16 at 3; Dkt. 16-1 at 3.
- 15 4. Respondents contacted Hiland Mountain Correctional Center (Hiland) and the  
16 Northwest Immigration Processing Center (NWIPC) regarding whether those  
17 facilities could house a pregnant detainee and provide appropriate care. Dkt. 16-1  
18 at 3.
- 19 5. While ICE was transferring Petitioner, this action was filed and the Court entered  
20 a Temporary Restraining Order prohibiting Petitioner’s transfer. Dkt. 16 at 3;  
21 Dkt. 16-1 at 3.
- 22 6. Because of that order, Petitioner was released later that day on March 21, 2026.  
23 Dkt. 16 at 3; Dkt. 16-1 at 3.
7. After release, ICE issued a superseding Notice to Appear listing Anchorage as the  
hearing location. Dkt. 16 at 4; Dkt. 16-1 at 3.
8. Respondents do not state in their return or in SDDO Hayes’ statement that they  
will not re-detain Petitioner or if, in doing so, they will apply Directive 11032.4.  
Dkt. 16; Dkt. 16-1.

## II. PETITIONER'S CLAIM FOR A WRIT OF HABEAS CORPUS IS NOT MOOT

Respondents' mootness argument fails because it treats release after this Court's intervention as though it automatically extinguished the controversy. It did not.

Mootness exists only where the challenged detention injury is fully over and success on the petition can no longer provide any effectual relief. *Abdala v. I.N.S.*, 488 F.3d 1061, 1064–65 (9th Cir. 2007). Importantly, *Abdala* did not hold that release from custody automatically moots a habeas challenge. It held that the petition there became moot because the challenged detention had been overtaken by deportation and no further effectual relief remained available. *Id.* at 1064–65.

Here, by contrast, Petitioner remains in active removal proceedings, Respondents continue to defend the legality of the detention as lawful and required, and Respondents have not stated whether they will not seek to re-detain Petitioner if the Temporary Restraining Order is lifted or otherwise ceases to apply. Dkt. 16.-1. Relief — stopping re-detention without strict compliance with Directive 11032.4 — is still extant in these proceedings and supports the habeas action.

Even excluding *Abdala*, Respondents cannot moot this case through temporary release of Petitioner unless they show that the challenged conduct — detention — cannot reasonably be expected to recur. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189–90 (2000) (a defendant's voluntary cessation does not moot a case unless recurrence cannot reasonably be expected). The Supreme Court recently reaffirmed that the same rule applies to the Government and that the burden is "formidable." *Fikre*, 601 U.S. at 240–45 ("A case does not automatically become moot when a defendant suspends its challenged conduct and then carries on litigating for some specified period.").

Further, Respondents here say only that Petitioner is not presently detained. Dkt. 16 at 11–13. Conspicuously, neither SDDO Hayes's declaration nor Respondents' return states whether Respondents will abstain from detaining Petitioner again, nor whether they will comply with Directive 11032.4 if they do so. *See* Dkt. 16 at 11–13; Dkt. 16-1 at

1 1–4. That omission is dispositive. A defendant cannot establish mootness by remaining  
2 silent as to its own future conduct. *Fikre*, 601 U.S. at 244–45. *See also Picrin-Peron v.*  
3 *Rison*, 930 F.2d 773 (9th Cir. 1991) (Finding habeas moot after legacy INS presented a  
4 sworn statement stating that petitioner would not be re-detained).

5 Recent immigration re-detention cases apply that principle directly. In *Yi Zheng*  
6 *v. Marin*, No. 5:26-cv-00519-ODW (MAAx), Order Granting Preliminary Injunction at  
7 3–5 (C.D. Cal. Feb. 24, 2026), the court held that release did not moot the case where  
8 respondents failed even to address whether they would re-detain the petitioner and  
9 where the requested relief included protection against renewed detention, not merely  
10 release. In *Cesar Edwin Caraballo v. Semaia*, No. 5:25-cv-03176-SPG-AJR, Order  
11 Granting Motion for Preliminary Injunction at 7–8 (C.D. Cal. Jan. 2026), the court  
12 likewise held that release after a temporary restraining order and bond hearing did not  
13 moot the case because the petitioner still faced a real and immediate threat of re-  
14 detention absent further relief. In *Sikeo v. Albarran*, No. 1:25-cv-01505-KES-HBK,  
15 Order Granting Motion for Preliminary Injunction at 8–10 (E.D. Cal. Nov. 2025), the  
16 court distinguished between a narrow completed regulatory claim, which release  
17 mooted, and a due process claim seeking protection against future re-detention, which  
18 remained live because re-detention was likely in the reasonably foreseeable future.

19 Here, ICE released Petitioner only after the Court entered the TRO, not because it  
20 exercised its discretion to do so. Dkt. 16 at 3; Dkt. 16-1 at 3. There is no assurance from  
21 Respondents that they will not detain Petitioner again. Such an assurance would  
22 effectively moot the habeas petition, but Respondents have made no such assurance.

23 Respondents also imply that the superseding Notice to Appear (NTA) listing  
Anchorage as the location of proceedings somehow resolves the detention issue. Dft. 16  
at 4. It does not. In immigration practice, detention does not turn on the nominal venue  
of removal proceedings. *See* 8 U.S.C. § 1240; 8 C.F.R. § 1003.19. A noncitizen may be  
detained or released regardless of where hearings are calendared. Further, the location

1 listed on the NTA is in no way determinative as to whether ICE may later seek to take  
2 the person back into custody during those proceedings. *Id.*

3 Now, if Respondents do not intend to re-detain Petitioner, as they seem to imply,  
4 this habeas action is moot. But Respondents have chosen to make mootness a central  
5 defense while avoiding the one factual point that would permit the Court to assess that  
6 defense directly, namely, whether Respondents are still contemplating renewed  
7 detention. Therefore, the Court should require sworn declarations from the appropriate  
8 Respondents addressing whether they intend to seek, authorize, or support Petitioner's  
9 re-detention if the Temporary Restraining Order is lifted or otherwise ceases to apply. If  
10 Respondents provide a clear and binding assurance that they will not do so, then this  
11 matter may be laid to rest. Habeas procedure permits the Court to resolve that issue  
12 through affidavits rather than an evidentiary hearing. *See* 28 U.S.C. § 2246; Rule 7 of  
the Alaska Rules Governing Section 2254 Cases. Petitioner would respectfully ask the  
Court to proceed in such a way.

13 For these reasons, Respondents have not shown that the detention controversy is  
14 over. Effective relief remains available in the form of stopping re-detention without  
15 compliance with Respondents' Directive. Therefore the habeas claim is not moot.

16 **III. PETITIONER'S FIRST CLAIM FOR RELIEF UNDER THE  
ADMINISTRATIVE PROCEDURE ACT DOES NOT FAIL FOR THE REASONS  
RESPONDENTS ADVANCE**

17 **A. Respondents' First Argument Fails Because the Mere Availability of  
Habeas Does Not Automatically Bar APA Review**

18 Respondents first argue that the Administrative Procedure Act is unavailable  
19 because habeas provides an "adequate remedy in a court." Dkt. 16 at 4–6. That is not  
20 the meaning of the cases Respondents present, nor do those correspond to the factual  
21 scenario here. Respondents overread *Trump v. J. G. G.*, 604 U.S. 670 (2025). The *J.G.G.*  
22 court did not hold that habeas always supplants the APA whenever a detention  
23 challenge is pleaded. It held that habeas was the exclusive vehicle there because the  
governing statute, the Alien Enemies Act, restricts judicial review such that the claims

1 “must be brought in habeas.” That statutory channeling rule is absent here. Because no  
2 statute makes habeas Petitioner’s sole avenue of relief, *J. G. G.* does not bar Petitioner’s  
3 separate APA challenge to the legality of Respondents’ detention decision and their  
4 failure to follow Directive 11032.4. Nor does the other case cited, *Pacito v. Trump*, 169  
5 F.4th 895 (9th Cir. 2026), serve as a bar for concurrent APA-Habeas actions. That case  
6 addressed whether the APA could be used to bypass an *exclusive* remedial scheme — the  
7 Tucker Act and the Court of Federal Claims — for claims sounding in contract. *Pacito*,  
8 169 F.4th at 924–25. This case presents no such substitution problem, as habeas is not  
an “exclusive” remedy set for by statute like in *Pacito* or *J.G.G.*

9 Here, habeas and the APA operate in parallel, not as substitutes. Habeas  
10 addresses unlawful custody. The APA challenges the arbitrariness of the detention  
11 decision because of Respondents’ failure to follow the governing custody framework.  
12 *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 185–86 (D.D.C. 2015) (APA and habeas may  
13 coexist in an immigration detention challenge); *Valez-Chavez v. McHenry*, 549 F. Supp.  
14 3d 300, 305–06 (S.D.N.Y. 2021) (rejecting the argument that habeas displaced APA  
15 review). Therefore the habeas action here does not displace the APA as Respondents  
16 argue. That conclusion follows with even greater force here because Respondents  
17 continue to defend the detention as lawful and required, while refusing to disclaim or  
eliminate the APA jurisdiction and vice versa.

#### 18 **B. The Detention Decision Challenged Here Constitute Final Agency** 19 **Action**

20 Respondents next argue that no reviewable final agency action exists because  
21 detention pending removal is merely an intermediate step in the removal process. Dkt.  
22 16 at 6. That is not the governing test. Finality turns on a practical inquiry: whether the  
23 challenged action marks the consummation of the agency’s decision-making process and  
gives rise to legal or practical consequences. *Bennett v. Spear*, 520 U.S. 154, 177–78  
(1997) (final agency action must mark the consummation of the agency’s decision-

1 making process and determine rights or legal consequences); *see also Sackett v. EPA*,  
2 566 U.S. 120, 126–27 (2012) (finality turns on whether the agency has taken a  
3 definitive position with direct legal consequences); *U.S. Army Corps of Eng’rs v.*  
4 *Hawkes Co.*, 578 U.S. 590, 597–99 (2016) (applying *Bennett* and holding agency action  
5 final where it marked the consummation of the agency’s process and legal consequences  
6 flowed from it); *Or. Nat. Desert Ass’n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir.  
7 2006) (“The core question is whether the agency has completed its decision making  
8 process, and whether the result of that process is one that will directly affect the  
9 parties.”).

10 Here, ICE did not merely consider detention in the abstract. SDDO Hayes made  
11 the decision to detain the Petitioner and enforced it. Dkt. 16 at 3, 6–8; Dkt. 16-1 at 2–3.  
12 His decision is final as to his agency. While it may be reviewed before the Executive  
13 Office for Immigration Review (EOIR) in section 1226 bond proceedings, that decision  
14 belongs to a separate agency and department all together. Further, if Respondents’  
15 argument that section 1225 calls for “mandatory detention” is to be abided, then the  
16 decision to detain is effectively “unreviewable.” Therefore, detention was 1) the  
17 completion of the decision-making process with 2) immediate legal and consequences  
18 for Petitioner: loss of liberty. Respondents’ decision to detain Petitioner is a final agency  
19 action.

20 Respondents’ reliance on *Gamez Lira* does not change that result. There, the  
21 district court stated, without meaningful analysis, that it did “not understand a  
22 detention to fall within” the category of reviewable final agency action. *Gamez Lira v.*  
23 *Noem*, No. 1:25-cv-00855-WJ-KK, 2025 WL 2581710, at \*4 (D.N.M. Sept. 5, 2025).  
That passing statement is neither binding nor persuasive here. Courts within this Circuit  
have taken the opposite view, namely that arrest or detention marked the completion of  
the agency’s process and had direct liberty consequences. In *A.B.D. v. Wamsley*, the  
District of Oregon held that arrest and detention decisions were final because no further  
agency decision-making remained and the decisions had a direct and immediate effect

1 on the petitioners. *A.B.D. v. Wamsley*, No. 6:25-cv-02014-AA, 2026 WL 178306, at \*13  
2 (D. Or. Jan. 22, 2026). In *Zambrano-Vazquez v. Noem*, the Western District of  
3 Washington noted the Government’s reliance on *Gamez Lira* but pointed to Ninth  
4 Circuit district court decisions recognizing final agency action in closely related  
5 immigration detention contexts. *Zambrano-Vazquez v. Noem*, No. C26-122-RSM,  
6 Order at 7–8 (W.D. Wash. Mar. 9, 2026). Therefore, this Court should follow *Bennett*,  
7 *Sackett*, and *Hawkes*, and find that the decision to detain — which Respondents have  
not rebuked — was final for purposes of APA review.

8 **C. Directive 11032.4 Has Legal Significance and Operates as a Policy ICE  
Must Follow**

9 Respondents next argue that Directive 11032.4 creates no enforceable  
10 substantive or procedural rights and therefore provides no basis for relief. Dkt. 16 at 6–  
11 10. That argument is too broad. The relevant question here is whether ICE may treat  
12 Directive 11032.4 as a nullity after adopting it to govern detention decisions involving  
13 pregnant detainees. Under *Accardi*, agencies must follow the rules and procedures they  
14 adopt to govern the exercise of their own discretion. *United States ex rel. Accardi v.*  
15 *Shaughnessy*, 347 U.S. 260, 266–68 (1954). That principle applies where individual  
16 interests are affected and extends to an agency’s own internal operating procedures.  
17 *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Church of Scientology of Cal. v. United*  
18 *States*, 920 F.2d 1481, 1487 (9th Cir. 1990). Thus, the question is not whether the  
19 Directive itself creates a free-standing private cause of action, but whether it  
meaningfully governs ICE’s exercise of detention discretion once it becomes aware that  
a person is pregnant.

20 The Directive’s text shows that it does govern exactly that, its disclaimer  
21 notwithstanding. Courts examining whether an internal policy binds the agency begin  
22 with the text of the policy itself and whether it was designed to bind agency conduct.  
23 *Farrell v. Dep’t of the Interior*, 314 F.3d 584, 591–92 (Fed. Cir. 2002) (“The primary  
consideration in determining the agency’s intent is whether the text of the agency

1 statement indicates that it was designed to be binding on the agency.”) Here, Directive  
2 11032.4 states that ICE “should not detain, arrest, or take into custody for an  
3 administrative violation of the immigration laws individuals known to be pregnant,  
4 postpartum, or nursing unless release is prohibited by law or exceptional circumstances  
5 exist.” Dkt. 16 at 6–7. And when ICE identifies a pregnant individual who is already  
6 detained, paragraph 2.1 provides that ICE personnel “must immediately notify” the  
7 appropriate supervisory and medical officials “to determine if continued detention is  
8 appropriate.” Dkt. 16 at 7–8. This language clearly “mandates” steps to be taken; it is  
9 mandatory procedural language.

10 Nor can Respondents avoid that conclusion by pointing to Directive 11032.4’s  
11 boilerplate disclaimer. Although the Directive states that it provides only internal  
12 guidance and creates no private right, that reservation is not dispositive. In a closely  
13 analogous case dealing with parole, the court rejected the argument that similar  
14 disclaimer language barred *Accardi* review because the relevant question is whether the  
15 directive functions as a binding, rights-protective policy governing official conduct.  
16 *Damus v. Nielsen*, No. 18-cv-578, slip op. at 28–29 (D.D.C. July 2, 2018) (disclaimer  
17 language in ICE parole directive did not bar *Accardi*). That is especially true here  
18 because the language in Directive 11032.4 establishes a presumption against detention  
19 for a defined medically vulnerable class, identifies limited exceptions, and requires  
20 specific notification and review steps once pregnancy is known. Petitioner is not  
21 asserting that the Directive itself creates a free-standing cause of action. She is asserting  
22 that, once ICE adopted this rights-protective framework, it could not arbitrarily  
23 disregard it while continuing to detain her.

24 The case Respondents cite in support of their proposition that there are no  
25 procedural rights here does not compel a contrary result. In *M.O.G.R. v. Warden,*  
26 *Stewart Detention Center*, No. 4:25-cv-356-CDL-AGH (M.D. Ga. Dec. 2, 2025), the  
27 court treated the Directive as part and parcel of the governing analysis for determining  
28 detention. Petitioner does not claim that detention of pregnant women is wholly barred,

1 as Respondents imply. Dkt. 16 at 7. Rather, Petitioner avers that detaining her is against  
2 the law because Respondents did not follow the steps set forth in Directive 11032.4.  
3 Therefore, *M.O.G.R* supports Petitioner's argument that the Directive is binding on  
4 Respondents and lends support both to her APA and habeas claims.

5 Petitioner also directs the Court to *Lopez v. Ladwig*, No. 6:25-cv-01884 (W.D.  
6 La. Jan. 2, 2026), which squarely rejects Respondents' position that detention under 8  
7 U.S.C. § 1225(b)(2), as informed by *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA  
8 2025) and *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026), renders  
9 Directive 11032.4 inapplicable. In *Lopez*, the court accepted that section 1225(b)(2)  
10 governed detention, but it did not accept the further argument that release was  
11 therefore "prohibited by law" within the meaning of the Directive. Instead, the court  
12 recognized that the governing regulations expressly contemplate parole for persons  
13 detained under § 1225(b), including pregnant detainees, through 8 U.S.C. §  
14 1182(d)(5)(A) and 8 C.F.R. §§ 235.3(c)(1) and 212.5(b). The court therefore held that  
15 Respondents had not shown how continued detention complied with *Accardi*, because  
16 Directive 11032.4 remained binding on the agency unless and until changed, and  
17 Respondents had not established either that parole was legally unavailable or that  
18 exceptional circumstances justified continued detention. On that basis, the court  
19 ordered Respondents to show cause why parole was impermissible or what exceptional  
20 circumstances justified continued detention under the Directive. *Lopez v. Ladwig*, No.  
21 6:25-cv-01884, at 15–18 (W.D. La. Jan. 2, 2026). Thus, *Lopez* is directly useful here:  
22 even while accepting Respondents' § 1225 detention theory, it still held that Directive  
23 11032.4 remained binding under *Accardi* and required a parole-based justification for  
continued detention.

21 Petitioner's other authorities reinforce that conclusion. In *Alcaraz v. I.N.S.*, 384  
22 F.3d 1150 (9th Cir. 2004), the Ninth Circuit did not dismiss internal agency memoranda  
23 as legally irrelevant merely because they were not formal regulations; instead, it  
remanded for the agency to determine whether those memoranda obligated it to act. *Id.*

1 at 1161–63. Similarly, in *Banegas Santos v. Bondi*, No. 26-cv-63-wmc, slip op. at 3–4  
2 (W.D. Wis. Feb. 19, 2026), the court held that where the government could identify no  
3 exceptional circumstance or legal prohibition on release, failure to comply with  
4 Directive 11032.4 supported relief under *Accardi*. In all, *M.O.G.R.*, *Lopez*, and *Banegas*  
5 Santos follow a finding that Directive 1103 is binding on the Respondents for *Accardi*  
6 purposes.

7 Finally, Respondents’ own conduct in this case calls for the same conclusion. If  
8 Directive 11032.4 were truly as insignificant as Respondents now suggest, there would  
9 have been no reason for ICE to attempt compliance with the Directive once Respondents  
10 became aware of Petitioner’s pregnancy. But that is not what happened. SDDO Hayes  
11 states that, after ICE learned that Petitioner is pregnant, he contacted Hiland Mountain  
12 Correctional Center and the NWIPC regarding whether those facilities could house a  
13 pregnant detainee and provide appropriate care. Dkt. 16-1 at 3. Respondents’ own  
14 actions show that they understood Directive 11032.4 to govern what had to happen once  
15 Petitioner informed Respondents of her pregnancy, and that Respondents should follow  
16 the Directive. Therefore, at minimum, Directive 11032.4 has legal significance as the  
17 operative policy framework ICE adopted for detention decisions involving pregnant  
18 detainees, and its boilerplate disclaimer cannot overcome the fact that, under the proper  
19 legal test and guiding case law, it is binding upon them and actionable under *Accardi*.

20 **D. Respondents’ “Compliance” and “Required by Law” Arguments Do**  
21 **Not Defeat Petitioner’s Claim**

22 Respondents next argue both that ICE complied with Directive 11032.4 and that  
23 Petitioner’s detention was “required by law” under 8 U.S.C. § 1225(b)(2). Dkt. 16 at 7–  
9. Neither supports dismissal. As to compliance, Respondents’ own evidence does not  
show full compliance with the Directive’s operative requirements. For starters, the  
Directive requires that the ICE Field Office Director (FOD) or his designee — not below  
the Assistant Field Office Director (AFOD) level — be notified in order to determine  
whether continued detention under the Directive’s parameters is appropriate. Dkt. 1 at

1 29-30. SDDO Hayes' declaration does not show that such notification was undertaken,  
2 nor that he is the designee in this case. Dkt. 16-1. The Directive, in numeral 2.1, also  
3 informs that the Field Medical Coordinator or Health Services Administrator be notified  
4 of the pregnancy in order to determine whether continued detention is appropriate. Dkt.  
5 1 at 29-30. SDDO Hayes' declaration noted that he made queries with Hiland and the  
6 NWIPC as to whether accommodations for pregnant or nursing women were available.  
7 Dkt. 16.1. This is not what the Directive mandates at numerals 2.1 and 5.2, which is  
8 coordination with the FMC/HAS and the FOD or its designee on the propriety of  
9 continued detention. Dkt. 1 at 29-30 and 34-35. Lastly the Directive, at numeral 5.1,  
10 mandates that a decision to detain a pregnant person should only be made where it is  
11 prohibited by law or exceptional circumstances exist. Dkt. 1 at 34-35. These steps are  
12 absent from the record.

13 Directive 11032.4 indicates that ICE is prohibited from exercising its discretion  
14 to release pregnant individuals when they are 1) under section 1225(b) "expedited  
15 removal proceedings<sup>1</sup>," 2) involve criminal aliens who may not be released on bond as  
16 per section 1226(C), or 3) criminal and terrorist non-citizens within the 90-day post  
17 removal period under section 1231. Dkt. 1 at 35 (Directive 110032.4, Footnote 2  
18 discussing limits to release when discretion to release is prohibited by law.)  
19 Respondents clearly did not make that determination here because Petitioner does not  
20 fall under any of those three categories, and the declaration by SDDO Hayes is empty of  
21 such a determination. Dkt. 16-1. Nor did Respondents make a determination as to  
22 whether an exceptional circumstance was present, as those only include instances where  
23 the individual poses national security concerns or poses an imminent risk of death,  
violence, or physical harm to any other individual. *Id.* The record is devoid of any

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<sup>1</sup> Expedited Removal Proceedings fall under 8 U.S.C. § 1225(b)(1)

1 determination on these points. In short, Respondents did not comply with the  
2 prescribed steps of Directive 11032.4.

3 Respondents' argument that Petitioner's detention is "required by law" is wrong.  
4 One, the Directive itself defines when detention is "mandated by law," and Petitioner  
5 does not fall within any of those categories. As noted, the Directive identifies three  
6 circumstances in which detention is mandatory and ICE lacks discretion to release an  
7 individual. Dkt. 1 at 35. One of those circumstances is when the noncitizen is subject to  
8 "expedited removal proceedings," which are governed by 8 U.S.C. § 1225(b)(1). But  
9 Respondents contend that Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A)<sup>2</sup>, not  
10 section 1225(b)(1). Section 1225(b)(2) applies to individuals who are "applying for  
11 admission" but who are not placed in expedited removal proceedings under section  
12 1225(b)(1). Because the Directive makes this exception applicable specifically to  
13 individuals in "expedited removal proceedings," and Respondents themselves placed  
14 Petitioner outside of those proceedings, instead placing her in proceedings under  
15 section 1225(b)(2)(A), their "required by law" argument fails.

16 Two, Respondents rely on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A.  
17 2025), and *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), to argue that  
18 Petitioner was subject to mandatory detention under section 1225(b)(2). Dkt. 16 at 8–9.  
19 But those authorities concern the availability of *bond* in custody review, not the decision  
20 as to whether to detain a person in the first place. Those authorities do not involve the  
21 initial decision to detain, nor do they eliminate DHS's separate parole authority under 8  
22 U.S.C. § 1182(d)(5)(A). The latter permits parole of an applicant for admission "for  
23 urgent humanitarian reasons or significant public benefit." *See Matter of Yajure-*  
*Hurtado*, 29 I&N Dec. at 223–24; *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018); 8  
U.S.C. § 1182(d)(5)(A).

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<sup>2</sup> This section involves individuals who are not subject to expedited removal under 1225(b)(1) but to removal proceedings under 8 U.S.C. §1229(a)

1 Thus, even assuming arguendo that Petitioner were properly treated as subject to  
2 section 1225, detention was not “mandatory” in the absolute sense that Respondents  
3 suggest; rather, they must look to and apply the Directive within section 1182(d)(5)(A)’s  
4 parole (release) mechanism, as the Directive indicates in numeral 5.1, and, to that  
5 effect, contact the Office of the Principal Legal Advisor (OPLA) as to “any available legal  
6 release mechanisms.” Dkt. 1 at 34. A noted previously, this exact path was followed by  
7 the Court in *Lopez v. Ladwig*, No. 6:25-cv-01884 (W.D. La. Jan. 2, 2026). Importantly,  
8 in *Lopez*, the court treated the Directive as a binding policy and recognized the  
9 government had not shown compliance with it within the § 1225/§ 1182(d)(5)(A) parole  
10 scheme. Here, the record shows that Respondents did not consider—and have not  
11 considered—parole, as *Lopez* indicated. Dkt. 16-1.

12 Accordingly, whether viewed through Respondents’ asserted compliance or  
13 through their “required by law” theory, the same defect remains: Respondents have not  
14 shown that they actually followed the custody framework that Directive 11032.4  
15 requires in determining whether Petitioner here should continue to be detained or  
16 whether she will be detained in the future.

#### 17 **E. Respondents’ *Accardi* Arguments Fail**

18 Respondents’ final set of arguments attempt to place Directive 11032.4 beyond  
19 judicial scrutiny altogether. They fail. Respondents’ no-injury argument rises or falls  
20 with mootness, and mootness fails for the reasons set out above. *Supra* at 4-6.  
21 Petitioner was released only after this Court’s intervention. Respondents continue to  
22 defend the detention as lawful and required. Neither the Return nor SDDO Hayes’s  
23 declaration clarifies whether Respondents will seek to detain Petitioner again. Dkt 16  
and 16.-1. The controversy therefore remains live.

24 Respondents are also wrong to suggest that *Accardi* is limited to formal  
25 regulations or disappears whenever an agency labels its rules as guidance. The relevant  
26 question is whether the agency adopted rules, procedures, or internal policies to govern  
27 the exercise of its discretion and then failed to follow them. *United States ex rel. Accardi*

1 *v. Shaughnessy*, 347 U.S. 260, 266–68 (1954); *Alcaraz v. INS*, 384 F.3d 1150, 1162–63  
2 (9th Cir. 2004); *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1487  
3 (9th Cir. 1990). *Morton*—to the chagrin of Respondents—reinforces the related  
4 principle that an agency may not rely on internal standards affecting the public while  
5 disregarding its own procedural obligations. *Morton v. Ruiz*, 415 U.S. 199, 235–36  
6 (1974). That is the problem here. Directive 11032.4 is not a housekeeping  
7 memorandum or abstract suggestion. It governs detention decisions affecting liberty for  
8 a defined class of individuals, provides that such individuals generally are not to be  
9 detained unless release is prohibited by law or exceptional circumstances exist, requires  
10 approval by senior officials for detention decisions, and mandates notification,  
11 consultation, and recurring review once pregnancy is known. Dkt. 16 at 6–8; ICE  
12 Directive 11032.4 §§ 5.1, 5.2, 5.4.

13 Nor is Directive 11032.4 insulated from review because it leaves room for  
14 discretion. Section 701(a)(2) is narrow and applies only where there is no meaningful  
15 standard for review. *Jajati v. U.S. Customs & Border Prot.*, 108 F.4th 1127, 1135–36  
16 (9th Cir. 2024) (meaningful standards defeated § 701(a)(2)); *see also Pinnacle Armor,*  
17 *Inc. v. United States*, 648 F.3d 708, 719 (9th Cir. 2011) (same). Even where the agency  
18 has broad discretion, review remains available when regulations or agency practice  
19 supply a meaningful standard and when the claim is that the agency failed to follow its  
20 own rules. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d 1059, 1068–69 (9th Cir. 2015)  
21 (regulations supplied a meaningful standard); *Trout Unlimited v. Pirzadeh*, 1 F.4th 738,  
22 754–55 (9th Cir. 2021) (regulations can constrain discretion). Directive 11032.4  
23 supplies a meaningful standard here. It identifies the relevant class, states the governing  
rule, specifies exceptions, and requires notification and review once pregnancy is  
known. Actions that involve the application of Directive 11032.4 are therefore  
reviewable, even if they include the application of discretion.

1                   **IV. PETITIONER'S THIRD CLAIM REGARDING VIOLATION OF DUE**  
2                   **PROCESS IS SUFFICIENT**

3                   Respondents next argue that Petitioner's due process claim fails because  
4                   detention during removal proceedings is constitutionally permissible and because  
5                   Petitioner has not alleged mistreatment. Dkt. 16 at 13–14. Petitioner does not dispute  
6                   that immigration detention may be permissible in general. *See Demore v. Kim*, 538 U.S.  
7                   510, 531 (2003); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993). But that does not  
8                   answer the Fifth Amendment question here. Due process still limits civil immigration  
9                   detention and forbids arbitrary deprivations of liberty. *Zadvydas v. Davis*, 533 U.S.  
10                  678, 690, 699–701 (2001). Petitioner's claim is narrower: Respondents continued to  
11                  detain a pregnant woman, treated that detention as lawful and required, and still refuse  
12                  to state whether they will seek to detain her again, while not following the process the  
13                  agency established for such circumstances.

14                  At the same time, the present record does not require the Court to hold that  
15                  Petitioner has already established a completed Fifth Amendment violation as a matter of  
16                  law. On *M.O.G.R.*, Respondents are correct that in that it rejected a constitutional claim  
17                  arising from Directive 11032.4. But it did so on a different record, where the court found  
18                  insufficient evidence that any alleged directive violation rose to the level of a due process  
19                  violation. Dkt. 16 at 13–14. That does not dispose of the claim here. On the record here,  
20                  the due process significance lies in the arbitrariness of detention and the unresolved  
21                  threat of renewed detention without adequate process, namely proper application of  
22                  Directive 11032.4. That is enough to preserve the Fifth Amendment claim in the instant  
23                  case and support consideration of prospective relief against renewed detention without  
24                  adequate process. For those reasons, Respondents have not shown that Petitioner's due  
25                  process claim fails as a matter of law.

26                   **V. PETITIONER'S FOURTH CLAIM IS WITHDRAWN**

27                  Respondents contend that the Fourth Claim duplicates Petitioner's habeas claim.  
28                  Petitioner agrees. The Fourth Claim is withdrawn as an independent count. The point

1 remains only that, even if APA review were unavailable or uncertain, habeas still lies to  
2 challenge detention maintained contrary to governing law, agency procedure, and  
3 constitutional limits.

#### 4 **VI. CONCLUSION**

5 Petitioner respectfully requests that the Court reject Respondents' Return and  
6 find that Respondents have not met their burden to establish mootness or otherwise  
7 defeat Petitioner's remaining claims. Petitioner further requests that the Court require  
8 Respondents to state under oath whether they intend to seek, authorize, or support  
9 Petitioner's re-detention if the Temporary Restraining Order is lifted or otherwise  
10 ceases to apply. If Respondents contemplate re-detention, Petitioner requests that the  
11 Court order Respondents to apply Directive 11032.4 in full. Petitioner also requests  
12 such other and further relief as the Court deems just and proper.

13 **RESPECTFULLY SUBMITTED** on this 20<sup>th</sup> day of April, 2026, by:

14 /s/ Nicolás A. Olano

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#### 18 **CERTIFICATE OF SERVICE**

19 I certify that on April 20, 2026, I electronically filed the foregoing with the Clerk of  
20 Court using the CM/ECF system, which will send notification to counsel of record.

21 /s/ Nicolás A. Olano