UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANDRES DIAZ LOPEZ,

Petitioner/Plaintiff,

v.

Case No.: 3:25-cv-01313-JEP-SJH

GARRETT RIPA, Field Office Director of Enforcement and Removal Operations, Miami, Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; RONNIE WOODALL, Warden of Baker County Detention Center,

Respondents/Defendants.
_____/

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS (ECF 1)

The federal Respondents Garrett Ripa, Kristi Noem, Pamela Bondi (in their official capacities) and the Executive Office for Immigration Review, by and through the undersigned Assistant United States Attorney, hereby respond to Petitioner Andres Diaz Lopez's (hereafter "Petitioner") Petition for Writ of Habeas Corpus (ECF 1) as

required by the court's November 18, 2025 Order (ECF 5). Respondents hereby show cause as to why the petition should be denied.

The court lacks jurisdiction and Petitioner's detention under §1225 is lawful. Therefore, the Court should deny the writ and dismiss this action.

Background

The petition was filed October 30, 2025 and challenges Petitioner's detention under 8 U.S.C. § 1225(b)(2), essentially contending that he is entitled to a bond hearing because the proper basis of his detention is 8 U.S.C. § 1226(a). The petition asserts three counts including Violation of the Immigration and Nationality Act ("INA"), Violation of the Bond Regulations (under §1226), and Violation of Due Process under the Fifth Amendment. Each of these counts hinges on the argument that § 1226, not §1225, applies to Petitioner's detention. *See* ECF 1, ¶¶52, 55-56, and 60. Count II alleges the application of §1225(b)(2) "violates 8 C.F.R. §§236.1, 1236.1, and 1003.19" but the petition does not explain how or why that is the case. *Id.* at ¶56. Presumably, this argument is premised on the contention that individuals in §1226(a) detention are entitled to application of those regulations.

Petitioner is a citizen of Mexico and alleges he has been detained since September 30, 2025 (ECF 1 at ¶15). He is currently detained at Baker Correctional Institute and has been detained for 83 days and is not in expedited removal proceedings. On September 30, 2025, ICE ERO encountered Petitioner at a USCIS office in Orlando, Florida and he was taken into custody for processing. On November

6, 2025, Petitioner was issued a Notice to Appear charging him with violations of 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i) placing him in removal proceedings again. *See* Ex. A, Notice to Appear. On October 23, 2025, the immigration judge denied his bond based on lack of jurisdiction pursuant to *Matter of Yajure Hurtado*, 29 I&N 216 (BIA 2025). *See* Ex. B, Order. His next master calendar hearing is January 9, 2026. *See* Ex. C, Notice of Hearing.

Petitioner alleges he entered the United States as an H-2A Temporary Agricultural Worker with authorization to remain for a temporary period not to exceed July 10, 2017 (ECF ¶43). He further alleges that he left the United States with H2A status and re-entered in 2021 (*id.*). Respondents' records show that on January 14, 2021, while detained, Petitioner accepted voluntary departure, and it was granted with safeguards. On January 28, 2021, he departed the United States.

At an unknown date and time, Petitioner re-entered the U.S. without inspection. On April 30, 2022, he was arrested in Orange County, Florida for operating a vehicle without a valid driver's license. On September 12, 2022, Petitioner married his spouse, a U.S. citizen. On December 13, 2022, his spouse filed an I-130 Petition for Alien Relative on his behalf; it was approved on October 1, 2025. On May 10, 2024, ICE Enforcement and Removal Operations ("ERO") encountered Petitioner at the Orange County Jail because he had been arrested for Driving While License Suspended but he was not taken into custody at that time.

Legal Standard

Federal courts may grant writs of habeas corpus for a petitioner "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021); *Martin v. Beto*, 397 F.2d 741, 749 (5th Cir. 1968).

Discussion

As explained below, the court lacks jurisdiction and Petitioner's detention under §1225(b)(2) is lawful.

A. Habeas Return on Detention

In a habeas case, the respondent "shall make a return certifying the true cause of the detention." *Id.* ICE detained Petitioner under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2).

B. Jurisdiction

The merits argument of the petition focuses on the nuances of §1225 and §1226 but there is no need to get into those nuances because the court lacks subject-matter jurisdiction over Petitioner's claims. There are three reasons why.

1. Jurisdiction Stripping

Federal courts have limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only that power authorized by Constitution and statute." *Id.* (citations omitted). In immigration habeas cases related to removal

proceedings—as here—the Immigration and Nationality Act ("INA") divests this Court's jurisdiction to consider Petitioner's claims challenging his detention pending a removal determination. 8 U.S.C. § 1252(g). There is no jurisdiction to review "any cause or claim . . . arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). This provision bars habeas review in federal courts when the claim arises from "discrete acts of commencing proceedings, adjudicating cases, and executing removal orders." *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999) (cleaned up). These activities "represent the initiation or prosecution of various stages in the deportation process" that Congress had "good reason" to withhold from judicial review. *Id.*

When construing § 1252(g), one must limit the application "to just those three specific actions" listed. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In doing so, "courts must focus on the action being challenged." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1258 (11th Cir. 2020). At bottom, § 1252(g) bars review if the conduct "to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim." *Gupta*, 709 F.3d at 1065.

> The law is clear:
>
> Securing an alien while awaiting a removal determination constitutes an action taken to commence proceedings.

Id.; *see also Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("Because [the alien]

challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*."); *Johnson v. U.S. Attorney General*, 847 F. App'x 801, 802 (11th Cir. 2021). "By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process." *Alvarez*, 818 F.3d at 1203. So § 1252(g) strips the court's jurisdiction over habeas petitions challenging detention pending removal proceedings.

As the Eleventh Circuit made clear, what matters is whether the challenged conduct arose from decisions or actions to commence removal proceedings. *Gupta*, 709 F.3d at 1065 ("Each of these claims, then, challenges the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts."). The Eleventh expressly reaffirmed this in several other decisions (both published and unpublished):

> Because [plaintiff] challenges the methods that ICE used to detain him prior to his removal hearing, these claims are foreclosed by § 1252(g) and our decision in *Gupta*.

Alvarez, 818 F.3d at 1204; *see also Johnson*, 847 F. App'x at 802. The decisions and actions to detain Petitioner (under either § 1225 or § 1226) arise from the commencement of removal proceedings. The INA strips jurisdiction over that review. *Gupta*, 709 F.3d at 1065; 8 U.S.C. § 1252(g).

What's more, "the sole function of habeas corpus is to provide relief from

unlawful imprisonment or custody, and it cannot be used for any other purpose." *Cook v. Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979). So, the only relief a habeas petitioner may receive is release. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020). Put different, this case is only about whether ICE could detain Petitioner pending removal proceedings. *Gupta* and its progeny hold the court has no jurisdiction over such actions. The court also lacks jurisdiction on separate grounds.

2. Zipper Clause

The INA precludes review of "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" except judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the "zipper clause" and applies where a petitioner seeks "review of an order of removal [or] the decision to seek removal." *Canal A*, 964 F.3d at 1257; *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—which limits review—courts conclude petitioners must funnel all aspects of challenges to removal proceedings through the avenue set out in § 1252(a)(5). *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) ("The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).").

The zipper clause restrictions are broad but not unlimited. *Canal A*, 964 F.3d at

1257. Still, a claim arising from actions or proceedings brought to remove an alien clearly falls within the clause. *See Regents of Cal.*, 591 U.S. at 19.

Here, Petitioner challenges ICE's detention determination. This was an action arising from ICE's choice to carry out proceedings to remove him from the United States. The zipper clause is in full force; judicial review by this court is inappropriate and contrary to the INA. 8 U.S.C. § 1252(b)(9).

3. Conclusion

As explained, the Court lacks jurisdiction over this habeas action. Yet even if it disagrees, the petition should be denied because Petitioner's detention is still lawful.

C. Merits

1. Detention and Bond Hearing - §1225 v. §1226.

Petitioner alleges ICE's decision to detain him initially under § 1225 rather than § 1226 was inappropriate, deprived his due process, and withheld a bond hearing. These claims fail as a matter of law because he was lawfully detained under § 1225.

To interpret the relevant parts of the INA, courts first turn to the "plain meaning of the statute." *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017). If the statutory text is clear, the analysis ends. *Bostock v. Clayton County, Ga.*, 590 U.S. 644, 674 (2020).

The statutory scheme in § 1225(a) provides: "An alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a); *Thuraissigiam*, 591 U.S. at 140. Applicants for admission under this section fall into one of two categories. First, those

initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation fall under § 1225(b)(1). Second, everyone else not encompassed by § 1225(b)(1) fall under the § 1225(b)(2) catchall. *Jennings*, 583 U.S. at 287.

Under § 1225(b)(1), aliens are detained for the purpose of expedited removal. Under § 1225(b)(2), the "alien shall be detained for a proceeding under section 1229a"—i.e., full removal proceedings—after "the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Read plainly, these subsections "mandate detention of applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297.

Given its statutory obligation, ICE detained Petitioner under § 1225(b)(2). The parties do not dispute he entered the United States illegally and without any authorization. Petitioner's detention pending his removal proceedings is not unlawful; rather, it is statutorily required. 8 U.S.C. § 1225(b)(2)(A); *see Chaviano v. Bondi*, 2025 WL 1744349, at *6-8 (S.D. Fla. June 23, 2025).

Petitioner argues § 1225(b) applies only to people arriving at ports of entry or who recently entered the United States (ECF 1 at ¶¶40-41). But nothing in the statutory language supports this conclusion. Furthermore, Petitioner fails to address the aliens expressly contemplated by § 1225(a)(1)—defining applicants as a present alien "who has not been admitted or who arrives in the United States." Where the statutory text is otherwise clear, courts cannot add words or make up exceptions. *King*

v. Burwell, 576 U.S. 473, 486 (2015).

Sections 1225(a)(1) and (b)(2) are unambiguous. There are no geographic qualifiers; nor are any time limitations imposed. 8 U.S.C. § 1225(b)(2). Notably, Congress included such time limitations in other parts of the same statute. For instance, 8 U.S.C. § 1225(b)(1)(A)(iii)(II)—enacted contemporaneously with § 1225(b)(2)—applies a two-year continuous physical presence requirement. When Congress includes language in one part of a statue but omits it in another, it does so intentionally. *E.g.*, *Shotz v. City of Plantation, Fla.*, 344 F.3d 1161, 1168 (11th Cir. 2003). Under these principles, the Court cannot read an additional "place of detention" or "period of residence" requirement into § 1225(b)(2) when it simply isn't there. Short of legislating, the Court cannot impose limitations on § 1225(b)(2) that Congress did not include. *See Germain v. U.S. Att'y Gen.*, 9 F.4th 1319, 1325 (11th Cir. 2021).

As discussed, an alien's place of detention or period of residence is irrelevant under the plain language. What is relevant, however, is an alien's manner of entry. 8 U.S.C. § 1225(a)-(b). Congress members said as much when amending the INA. *See Sturgeon v. Frost*, 587 U.S. 28, 54 (2019) ("The legislative history (for those who consider it) confirms, with unusual clarity, all we have said so far."). The statutory scheme that § 1225 and § 1226 replaced was structured so aliens who entered the United States undetected retained certain benefits—such as the availability of bond—where those who presented themselves at the border did not:

> This subsection is intended to replace certain aspects of the current "entry doctrine," under which illegal aliens who have entered the United States

> without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted.

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). Recognizing that such a scheme incentivized evasion over presenting oneself at a port of entry, Congress set out to restructure the law to distinguish between deportability—applicable to admitted aliens—and inadmissibility—applicable to those present without admission. *Id.* at 226. So, aliens who enter surreptitiously "will not be considered to have been admitted." *Id.* Petitioner's reading seeks to retroactively nullify this legislative fix and once again restore incentives to circumvent rather than comply with the INA.

Petitioner contends his detention under § 1225 is improper and his detention should be under § 1226. But Petitioner did not meet his burden to establish detention under § 1226 should apply to him. Section 1226 is far broader than § 1225. Specifically, § 1226 applies to any "alien." 8 U.S.C. § 1226(a). An "alien" is "any person not a citizen or national of the United States." *Id.* § 1101(a)(3). Meanwhile, the phrase "applicant for admission" in § 1225(b)(2) has distinct meaning, and not every single alien entering without inspection falls under this provision. Rather, the facts and circumstances concerning Petitioner demonstrate he is an applicant for admission under § 1225(b)(2).

It is undisputed Petitioner has not been admitted to the United States. Put different, Petitioner must be an applicant for admission if he wanted to stay here. *Vargas Lopez*, 2025 WL 2780351, at *9 (Petitioner "wishes to stay in this country. This

makes [him] an 'applicant for admission,' consistent with the conclusion of the BIA in *Hurtado* and *Jennings*."). The alternative would be seeking an Order to somehow remain unlawfully in the United States. *Id.* (That petitioner "illegally remained in this country for years does not mean that he is suddenly not an 'applicant for admission' under § 1225(b)(2)."); *Hurtado*, 29 I&N at 221 ("If he is not admitted to the United States (as he admits) but he is not "seeking admission" (as he contends), then what is his legal status?"). Under the voluntary departure order, he is no longer entitled to remain in the United States.

To be clear, any alien intending to stay in the United States on any permanent basis must be admitted even if that is several years after arriving. In the context of immigration law, "admission" is not like sneaking into a second showing at the movie theater where entry is de facto admission. Rather, this is a legal term of art. *Matter of Lemus Losa*, 25 I. & N. Dec. 734, 743 n.6 (BIA 2012) (noting "seeks admission" used by Congress "as a term of art"). The terms "admission" or "admitted" here mean "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

Congress knows how to use a term of art. *E.g.*, *FAA v. Cooper*, 566 U.S. 284, 292 (2012) ("[I]t is a cardinal rule of statutory construction that, when Congress employs a term of art, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken." (cleaned up)). Petitioner may have been living in the United States illegally for years; but he

was never admitted—which is what makes his presence unlawful in the first instance. 8 U.S.C. § 1182(a)(6)(A)(i) (inadmissibility for presence "without being admitted"). The INA treats aliens as seeking admission even if they entered illegally and never formally applied. 8 U.S.C. § 1225(a)(1); *Lemus Losa*, 25 I. & N. Dec. at 743 n.6 (Unlawful entrants "deemed *constructive* applicants for admission by operation of" § 1225(a)(1).). Legislative word choices—especially terms of art—must have meaning. Congress chose to define "applicants for admission" as "[a]n alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1).

The recent enactment of the Laken Riley Act bolsters this conclusion. *See* Pub. L. No. 119-1, 139 Stat. 3 (2025). There, the categories of individuals subject to mandatory detention expanded to include those who entered the United States and were charged as inadmissible under § 1182(a)(6)(A)(i) or (a)(7) and have committed—or been charged or convicted of—certain specified crimes. *See* 8 U.S.C. § 1226(c)(1)(E). Were "applicant for admission" under § 1225 interpreted as narrow as Petitioner argues, then there would be no need to pass Laken Riley. Those aliens now covered by § 1226(c)(1)(E) would have already been subject to mandatory detention. Even if there are redundancies, those "are common in statutory drafting" and provide no "license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr*, 590 U.S. 222, 229 (2020) ("The Court has often recognized: Sometimes the better overall reading of the statute contains some redundancy." (cleaned up)).

Finally, the fact that longstanding practice may have differed is not dispositive.

The Constitution empowers the Judiciary to exercise judgment regarding the interpretation of laws independent from the political branches. U.S. Const. art. 3, § 2, cl. 1; *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). The question for this Court is not ICE's historical practice; instead, the inquiry is the correct statutory interpretation. As discussed, the best reading of the INA is what its words say—confirming ICE properly detained Petitioner under § 1225(b)(2) at the time of his Petition and now lawfully detains him as a condition of the voluntary removal order.

There are many recent decisions adverse to ICE's § 1225 position here, including decisions by courts in this district. *See e.g. Bravo v. Noem,* 2:25-cv-1046-SPC-DNF, 2025 WL 3496191 (M.D. Fla. Dec. 5, 2025); *Riquis v. Mordant*, 2:25-cv-1028-SPC-NPM, 2025 WL 3502525 (M.D. Fla. Dec. 5, 2025); *Erazo v. Hardin*, 2:25-cv-891-KCD-DNF, 2025 WL 3187136 (M.D. Fla. Nov. 14, 2025); *Carcamo v. Noem*, 2:25-cv-00922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 2025) (among others). Petitioner claims that court have "uniformly rejected" ICE's text-based argument (ECF 1 at ¶36) but that is not the case. *Vargas Lopez v. Trump* thoroughly addressed this issue and agreed with ICE's reasoning. No. 8:25CV526, 2025 WL 2780351, at *7-10 (D. Neb. Sept. 30, 2025). Other courts came to the same conclusion in support of the federal Respondents' position[1] and the BIA specifically explained this rationale in

[1] *See e.g. Oliveira v. Patterson,* 6:25-cv-01463-DCJ-DJA (ECF 17), 2025 WL 3095972, *7 (W.D. La. Nov. 4, 2025); *Pipa-Aquise v. Bondi*, 1:25-cv-01094-MSN-WBP, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025); Robledo *v. Noem*, 1:25-cv-0177-H (N.D. Tx. Oct. 24, 2025) (ECF 9); *Sandoval v. Acuna,* 6:25-cv-01467, 2025 WL 3048926, *7 (W.D. La. Oct. 31, 2025); *Kum v. Ross, et al.,* 6:25-cv-00451-DCJ-CBW, 2025 WL 3113646 (W.D. La. Oct. 22, 2025) *adopted by* 2025 WL 3113644 (W.D. La. Nov. 6, 2025) ; *Rojas v. Olson*, Case No. 25-cv-1437-bhl (ECF 20), 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Chavez*

Hurtado, 29 I&N Dec. 216.

2. Petitioner's period of detention is lawful.

Petitioner is in removal proceedings. The Supreme Court has held that §1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings [for removal] and not just until the moment those proceedings begin." *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Because § 1225(b)(2) is the proper basis for detention, there is no Fifth Amendment violation caused by detaining Petitioner or denying a bond hearing to Petitioner.

3. *Bautista* is not binding here and presents no basis for granting the petition.

The Court should deny the habeas petition in this case for the reasons noted above. On December 18, 2025, a district court in California entered partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92. That judgment is neither binding nor applicable here and presents no basis for granting the petition. The *Bautista* declaratory judgement is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction. Also, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. Finally, issue preclusion is inapplicable here, particularly as

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v. Noem, No. 25-CV-23250-CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025); *and Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, *2 (E.D. Mo. Nov. 10, 2025).

preclusion principles apply with less force both against the government and in habeas corpus proceedings.

The *Bautista* class sought a declaratory judgment that class members such as Petitioner were unlawfully detained under 8 U.S.C. § 1225(b)(2), rather than § 1226(a). This is core habeas relief that must be brought as a habeas claim alone. As the Supreme Court made clear just this year, "[r]egardless of whether [] detainees formally request release from confinement," if "their claims for relief necessarily imply the invalidity of their confinement[], their claims fall within the core of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (internal quotations omitted). The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. First, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also J.G.G.*, 604 U.S. at 672. Second, a habeas petitioner must name the petitioner's *immediate* custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the "corpus." *Padilla*, 542 U.S. at 435. Thus, a federal district court is wholly without authority to issue the writ in favor of a habeas petitioner who seeks habeas relief in a judicial district in which he is not confined, and the immediate custodian is not located. And a "judgment entered without personal jurisdiction over a defendant is void as to that defendant." *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 (D.C. Cir. 1987).

Given that a challenge to the legality of detention is a core habeas claim, class-

wide declaratory relief is inappropriate in the habeas context. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment action not appropriate to address "validity of a defense the State may, or may not, raise in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas proceeding"); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747 (1998); *Fusco*, 2019 WL 13112044, at *1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the "availability of a habeas remedy in another district ousted us of jurisdiction over an alien's effort to pose a constitutional attack . . . by means of a suit for declaratory judgment"); *Monk v. Sec. of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is 'in custody in violation of the Constitution . . . of the United States,' . . . . This specific determination must override the general terms of the declaratory judgment . . . statute.").

The *Bautista* court lacked jurisdiction to issue habeas relief to all class members who are confined outside the Central District of California by immediate custodians outside that District, and a court's judgment cannot be binding and preclusive against

a party over which it lacked jurisdiction. Indeed, another federal district court has already held that the *Bautista* declaratory judgment does not have preclusive effect. Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12.

The court should not give preclusive effect to a declaratory judgment that is on appeal. Even if the *Bautista* declaratory judgment could have preclusive effect outside the Central District of California, that judgment has been appealed to the Ninth Circuit, *Bautista, et al. v. United States Department of Homeland Security, et al.*, No. 25-7958 (9th Cir.), and this Court should not afford preclusive effect to that judgment or to any underlying legal issues in deciding whether to grant habeas relief in this case. Courts must exercise significant caution before giving preclusive effect to declaratory judgments that are on appeal. This is particularly true where other district courts have disagreed with the district court in *Bautista*. *See* n. 1, *supra*. Reflexively granting preclusive effect to such judgments could lead to subsequent judgment "from which it may be impossible to obtain relief" even if the first judgment is reversed on appeal. 9 A.L.R.2d 984. Courts should strive to avoid this "evil result[]." *Id.* Given the constraints of 8 U.S.C. § 1252(f)(1)—it would not be proper to impose res judicata effect on a class-wide basis while the declaratory judgment is pending on appeal.

Beyond the two most serious problems with giving effect to the *Bautista* declaratory judgment in this case, three more reasons counsel strongly against doing so. First, under 28 U.S.C. § 2202, "[f]urther necessary or proper relief based on a

declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." To the extent this Court considers whether to award "further" relief than what the *Bautista* court purported to grant to class members outside the Central District of California, such further relief is neither "necessary [n]or proper."

Second, the circumstances of this case also counsel against applying issue preclusion against the government because the Supreme Court has "long recognized that 'the Government is not in a position identical to that of a private litigant,' *INS v. Hibi*, 414 U.S. 5, 8 (1973) (per curiam), both because of the geographic breadth of government litigation and also, most importantly, because of the nature of the issues the government litigates." *United States v. Mendoza*, 464 U.S. 154, 159 (1984). Petitioner is a member of a fundamentally flawed nationwide class. In such a circumstance, applying preclusion against the government raises the same concern raised in *Mendoza*—it allows the *Bautista* court's decision to freeze the law for all district courts nationwide, and stymies development of the law.

Third, it is doubtful that issue preclusion is ever appropriate in the habeas context. For instance, in *Griffin v. Gomez*, the Ninth Circuit held that a prior "class action has no preclusive affect in habeas proceedings." *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998). The court later explained that res judicata and collateral estoppel do not apply to habeas proceedings. *See Clifton v. Attorney General*, 997 F.2d 660, 662 n.3 (9th Cir. 1993) (recognizing that because "conventional notions of finality of litigation

have no place" in habeas and the inapplicability of res judicate to habeas is "inherent in the very role and function of the writ).

In sum, *Bautista* provides no basis for granting the petition.

Conclusion

The court should deny the petition and dismiss this action because it lacks jurisdiction and because Petitioner's detention under §1225 is lawful.

Dated: December 22, 2025

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

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EXHIBIT A

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [redacted]
Event: [redacted]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted]

File No: [redacted] 804

In the Matter of:

Respondent: ANDRES DIAZ LOPEZ currently residing at:

See Continuation Page Made a Part Hereof [redacted]

(Number, street, city, state and ZIP code) (Area code and phone number)

☐ You are an arriving alien.

☒ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;

2. You are a native of MEXICO and a citizen of MEXICO;

3. You entered the United States at or near unknown place, on or about unknown date;

4. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act;

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

20706 FL-10, SANDERSON, FLORIDA 32087. BAKER CORRECTIONAL INSTITUTION
(Complete Address of Immigration Court, including Room Number, if any)

on December 10, 2025 (*Date*) at 8:30 am (*Time*) to show why you should not be removed from the United States based on the charge(s) set forth above.

S 8153 TORRES - SDDO
(Signature and Title of Issuing Officer)

Date: November 6, 2025

Jacksonville, FL
(City and State)

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Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at **www.uscis.gov/i-589**. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at **http://www.ice.gov/contact/ero**, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before _____

(Signature and Title of Immigration Officer)

_____

(Signature of Respondent)

Date _____

Certificate of Service

This Notice To Appear was served on the respondent by me on November 6, 2025 in the following manner and in compliance with section 239(a)(1) of the Act.

- [X] in person
- [ ] by certified mail, returned receipt # _____ requested
- [ ] by regular mail
- [ ] Attached is a credible fear worksheet.
- [X] Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Refused to Sign.

(Signature of Respondent if Personally Served)

CHRISTIAN RIVERAFIGUEROA - Deportation Officer

(Signature and Title of officer)

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Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at https://www.dhs.gov/system-records-notices-sorns. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at https://www.justice.gov/opcl/doj-systems-records. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:
Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date, however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

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EXHIBIT B

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ORLANDO IMMIGRATION COURT

Respondent Name:
DIAZ LOPEZ, ANDRES

To:
Caminero, Joel Alexis
5728 Major Blvd
Suite 750
Orlando, FL 32819

A-Number:
[redacted]
Riders:
In Custody Redetermination Proceedings

Date:
10/23/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

☑ Denied, because
Immigration Judges lack authority to hear bond requests or grant bond to aliens present in the United States without admission and in removal proceedings, based on the plain language of 8 U.S.C. 1225(b)(2)(A)). Matter of YAJURE HURTADO, 29 I&N Dec. 216, 228 (BIA 2025).

☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☐ released from custody under bond of $
- ☐ other:

☐ Other:

EXHIBIT C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Orlando IMMIGRATION COURT

LEAD FILE: [redacted]
IN REMOVAL PROCEEDINGS
DATE: Dec 10, 2025
EAD Clock:

TO:
DIAZ LOPEZ, ANDRES
20706 FL I-10
SANDERSON, FL 32087

RE: [redacted] DIAZ LOPEZ, ANDRES

Notice of Internet-Based Hearing

Your case has been scheduled for a **MASTER** hearing before the immigration court on:

Your hearing is not in person. You will access your hearing by using the web page below.
URL: https://eoir.webex.com/meet/IJ.Espinal

Date: **Jan 9, 2026**
Time: **10:30 A.M. ET**
Court Address: 20706 FL-10, SANDERSON, FL 32087

Representation: You may be represented in these proceedings, at no expense to the Government, by an attorney or other representative of your choice who is authorized and qualified to represent persons before an immigration court. If you are represented, your attorney or representative must also appear at your hearing and be ready to proceed with your case. Enclosed and online at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers is a list of free legal service providers who may be able to assist you.

Failure to Appear: If you fail to appear at your hearing and the Department of Homeland Security establishes by clear, unequivocal, and convincing evidence that written notice of your hearing was provided and that you are removable, you will be ordered removed from the United States. Exceptions to these rules are only for exceptional circumstances.

Change of Address: The court will send all correspondence, including hearing notices, to you based on the most recent contact information you have provided, and your immigration proceedings can go forward in your absence if you do not appear before the court. If your contact information is missing or is incorrect on the Notice to Appear, you must provide the immigration court with your updated contact information within five days of receipt of that notice so you do not miss important information. Each time your address, telephone number, or email address changes, you must inform the immigration court within five days. To update your contact information with the immigration court, you must complete a Form EOIR-33 either online at https://respondentaccess.eoir.justice.gov/en/ or by completing the enclosed paper form and mailing it to the immigration court listed above.

Internet-Based Hearings: If you are scheduled to have an internet-based hearing, you will appear by video or telephone. If you prefer to appear in person at the immigration court named above, you must file a motion for an in-person hearing with the immigration court at least fifteen days before the hearing date provided above. Additional information about internet-based hearings for each immigration court is available on EOIR's website at https://www.justice.gov/eoir/eoir-immigration-court-listing.

In-Person Hearings: If you are scheduled to have an in-person hearing, you will appear in person at the immigration court named above. If you prefer to appear remotely, you must file a motion for an internet-based hearing with the immigration court at least fifteen days before the hearing date provided above.

For information about your case, please call **1-800-898-7180** (toll-free) or **304-625-2050.**

The Certificate of Service on this document allows the immigration court to record delivery of this notice to you and to the Department of Homeland Security.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:MAIL[M] PERSONAL SERVICE[P] ELECTRONIC SERVICE[E]
TO: [M] Noncitizen | [M] Noncitizen c/o Custodial Officer |
[ ] Noncitizen ATT/REP | [E] DHS
DATE: 12/10/2025 BY: COURT STAFF KNIEVES
Attachments:[ ] EOIR-33 [ ] Appeal Packet [ ] Legal Services List [ ] Other NH

Use a smartphone's camera to scan the code on this page to read the notice online.

Usa la cámara de un teléfono inteligente para escanear el código de esta página y leer el aviso en línea.

Use a câmara do smartphone para digitalizar o código nesta página e ler o manual de instruções online.

使用智能手机摄像头扫描本页面的代码，即可在线阅读该通知。

ਨੋਟਿਸ ਨੂੰ ਔਨਲਾਈਨ ਪੜ੍ਹਨ ਲਈ ਇਸ ਪੰਨੇ 'ਤੇ ਕੋਡ ਨੂੰ ਸਕੈਨ ਕਰਨ ਲਈ ਸਮਾਰਟਫੋਨ ਦੇ ਕੈਮਰੇ ਦੀ ਵਰਤੋਂ ਕਰੋ।

অনলাইনে নোটিশ পড়ার জন্য এই পৃষ্ঠার কোডটি স্ক্যান করতে স্মার্টফোনের ক্যামেরা ব্যবহার করুন

सूचना अनलाइनमा पढ्न यस पृष्ठमा कोड स्क्यान गर्न स्मार्टफोनको क्यामेरा प्रयोग गर्नुहोस्।

Sèvi ak kamera yon telefòn entèlijan pou eskane kòd ki nan paj sa a pou li avi a sou entènèt.

استخدم كاميرا الهاتف الذكي لمسح الرمز الموجود في هذه الصفحة لقراءة الإشعار على الإنترنت

Чтобы прочитать уведомление онлайн, отсканируйте код на этой странице с помощью камеры вашего смартфона.

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