

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Eduviges MARTINEZ HERNANDEZ,

Petitioner,

v.

Kevin RAYCRAFT, Acting Field Office
Director of Enforcement and Removal
Operations, Detroit 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; Dennis
SULLIVAN, Executive Director of Corrections
Center of Northwest Ohio.

Respondents.

Case No.: 3:25-CV-2591

JUDGE DAVID A. RUIZ
MAGISTRATE JONATHAN D.
GREENBURG

**TRAVERSE/REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS
CORPUS**

Petitioner Eduviges Martinez Hernandez (“Petitioner” or “Ms. Martinez Hernandez”), by and through undersigned counsel, respectfully submits this reply to the Respondents’ response submitted on January 12, 2026. Petitioner has been unlawfully detained by Respondents since August 20, 2025, in violation of her Substantive Due Process Rights under the Fifth Amendment, the Immigration and Nationality Act, the bond regulations, and the *Bautista* Declaratory Judgment.

SUMMARY OF THE FACTS

Petitioner is a 60-year-old woman who entered the United States without inspection in 1998. On August 20, 2025, she was arrested by Customs and Border Patrol after accidentally driving to a Detroit border checkpoint. She has since been detained at the Corrections Center of

Northwest Ohio. Both the Department of Homeland Security (DHS) and the Cleveland Immigration Court have denied her bond. (Pet. ECF No. 1-3, PageID #47; Resp. ECF No. 9-1, PageID #138-141) Her appeal of the bond denial to the Board of Immigration Appeals (Board or BIA) remains pending. (Pet. ECF No. 1-4, PageID #49-53)

Petitioner is in removal proceedings pursuant to 8 U.S.C. § 1229a and has been charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an individual who entered the United States without inspection, and under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant who was not in possession of a valid entry document at the time of application for admission. She has conceded removability under 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner is seeking Cancellation of Removal for Non-Permanent Residents under 8 U.S.C. § 1229b(b) (Cancellation of Removal) with a merits hearing scheduled for March 11, 2026. Notice of Internet-Based Hearing (Jan. 14, 2026) (hereinafter NOH) (attached as Ex. A).

Petitioner is neither a flight risk nor a danger to the community. (Pet. ECF No. 1-2, Page ID #19-46) She has lived in the United States for over 27 years, has no criminal or prior immigration violations, and is the sole caregiver of two children - one a U.S. citizen and the other a recipient of Deferred Action for Childhood Arrivals. (*Id.*)

ARGUMENT

Respondents raise four arguments. First, they claim that this Court lacks jurisdiction under 8 U.S.C. § 1252(g) and § 1259(b)(9) to review this petition, contrary to well-settled law that courts can review challenges to immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Second, Respondents argue that Petitioner failed to exhaust administrative remedies, disregarding her pending appeal. Moreover, the Board of Immigration Appeals (Board or BIA) has issued a precedential decision holding that individuals who entered without inspection, like Petitioner, are

not eligible for bond. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Thus, any further administrative review is unavailable and exhaustion is futile. Third, Respondents contend that Petitioner is detained under 8 U.S.C. § 1225(b)(2), disregarding the overwhelming persuasive authority to the contrary. Finally, Respondents claim that the *Bautista* declaratory judgment is inapplicable in this case. Petitioner will address each of these arguments in turn.

A. This Court has Jurisdiction to Review Petitioner’s Writ of Habeas Petition.

Respondents argue that Petitioner’s habeas petition should be dismissed for lack of jurisdiction under 8 U.S.C. § 1252(g) and § 1259(b)(9). Petitioner contends neither statutory provision supports dismissal in this case.

1. 8 U.S.C. § 1252(g) does not bar review of Petitioner’s claims.

Respondents argue that Petitioner’s habeas petition should be dismissed for lack of jurisdiction. In support, they first cite 8 U.S.C. § 1252(g), which states the following:

(g) Exclusive jurisdiction. Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, [] no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter. 8 U.S.C. § 1252(g) (emphasis added).

Respondents argue that the phrase *commence proceedings* in the above statute “includes the decision to detain an alien pending such removal proceedings,” thus barring district courts from having jurisdiction over habeas petitions (*See* Resp. ECF No. 9, Page ID # 118-19).

The Respondents’ expansive reading of the phrase *commence proceedings* in § 1252(g) has been rejected by the Supreme Court. *Reno v. Am. Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Supreme Court held that § 1252(g) only applies to three specific actions that an Attorney General may take: 1) the *decision or action* to 2) *commence proceedings* or 3) *execute*

removal orders. According to the Court, these three actions do not “cover[] the universe of deportation claims” because “[i]t is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings.” *Id.* “In other words, even if the detention “aris[es] from” deportation proceedings in the sense that the detention is logically connected to those proceedings, the decision to detain or take custody of a noncitizen is distinct from the decision to initiate removal proceedings.” *Coronado v. Sec’y, DHS*, No. 1:25-cv-00831-DRC, at *15–16 (S.D. Ohio Dec. 15, 2025).

In addition to the existence of Supreme Court precedent to the contrary, Respondents have not provided any decisions within the Sixth Circuit to support the argument that this Court lacks jurisdiction over this habeas petition pursuant to § 1252(g). Furthermore, the two circuit court cases cited by Respondents from the Eleventh and Third Circuits are unpersuasive. In the Eleventh Circuit case, the petitioner was challenging the methods that ICE used to detain him prior to his removal hearing, not the statutory basis for the detention, and for that reason the court concluded that jurisdiction was barred under §1252(g). *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016). In the Third Circuit decision, the court held that it lacked jurisdiction pursuant to § 1252(g) because the petitioner was already the subject of a final removal order and the government’s detention was part of executing that order. *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292 (3d Cir. 2020). That is not the case here, as Petitioner is not subject to a final order of removal. There is therefore no precedent for, and this Court is not barred from reviewing this case due to, a lack of jurisdiction under 8 U.S.C. § 1252(g).

2. 8 U.S.C. § 1252(b)(9) does not bar review of Petitioner’s claims.

Respondent’s second jurisdictional argument is that this Court is barred from reviewing this case pursuant to 8 U.S.C. §1252(b)(9):

(b) Requirements for review of orders of removal. (9) Consolidation of questions for judicial review. Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from* any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, [] or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact. 8 U.S.C. § 1252(b)(9) (emphasis added).

Under §1252(b)(9), Respondents argue, Petitioner’s habeas claim “is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order.” (*See* Resp. ECF No. 9, Page ID # 119).

As with Respondents’ first jurisdictional argument, this second one fails because there is simply no legal precedent for such an expanded definition of one phrase in the statute, in this case, *arising from*. Indeed, the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) expressly rejected this expanded argument. The Court held that “the applicability of § 1252(b)(9) turns on whether the legal questions that we must decide ‘aris[e] from’ the actions taken to remove these aliens . . . ‘arising from’ could sweep in every action connected to immigration proceedings.” *Id.* at 293. Respondents cite to the concurring opinion in *Jennings* from Justice Thomas in support of their jurisdictional argument, but the majority expressly rejected that opinion, saying: “We do not follow this logic. The question is not whether detention is an action taken to remove an alien but whether the legal questions in this case arise from such an action. And for the reasons explained above, those legal questions are too remote from the actions taken to fall within the scope of § 1252(b)(9).” *Jennings*, 583 U.S. at 295 n.3 (emphasis original).

In conclusion, Respondents have not provided any legal basis for the proposition that this court lacks jurisdiction to consider Petitioner’s case. Their arguments pursuant to 8 U.S.C. Sections 1252 (g) and (b)(9) are tenuous at best. Indeed they have not cited to a single case, Sixth Circuit

or otherwise, stating that a federal court does not have jurisdiction to review a habeas petition of a noncitizen detained for immigration purposes. For all these reasons, the court should find that it has jurisdiction over this matter.

B. Petitioner has Exhausted Administrative Remedies; and Administrative Exhaustion is Futile in this Case.

The Respondents argue that the Court should dismiss this petition for writ of habeas corpus because Petitioner has failed to exhaust her administrative remedies. While not citing to any statute or rule mandating exhaustion in this case, Respondents point to the general requirement that an individual must normally exhaust administrative remedies before seeking federal court intervention. Courts have held that such a requirement “serves numerous purposes, including protecting the authority of administrative agencies, limiting interference in agency affairs, and promoting judicial efficiency by resolving potential issues and developing the factual record.” *Beharry v. Ashcroft*, 329 F.3d 56 (2d Cir. 2003).

As there is no statutory requirement, whether to require exhaustion in this case is therefore within this Court’s “sound judicial discretion” although such a requirement “must comply with statutory schemes and Congressional intent.” *See Shearson v. Holder*, 725 F.3d 588, 593–94 (6th Cir. 2013) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)). To date, the United States Court of Appeals for the Sixth Circuit has not yet decided whether courts should impose an administrative exhaustion requirement in the context of a noncitizen’s habeas petition regarding unlawful detention. *See Hernandez Torrealba v. U.S. Dep’t of Homeland Sec.*, No. 1:25-cv-1621, 2025 WL 2444114, at *18 (N.D. Ohio Aug. 25, 2025).

In the absence of a precedential determination regarding administrative exhaustion, many courts within the Sixth Circuit have adopted the Ninth Circuit’s three-factor test for determining

whether prudential exhaustion should be required. Under the Ninth Circuit's test, courts may require prudential exhaustion when:

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

Hernandez Torrealba, No. 1:25-cv-1621 at *17 (citing *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007); *see also United States v. California Care Corp.*, 709 F.2d 1241, 1248 (9th Cir. 1983).

Based on this three-factor test, the argument that prudential exhaustion should be required in this case must fail. As to the first factor, the central question in this case is whether 8 U.S.C. § 1225 or 8 U.S.C. § 1226 applies to Petitioner. This is a legal question of statutory interpretation which does not require agency consideration to generate a proper record. Further, this Court is not bound by, and is not required to give deference to, any agency interpretation of a statute. *See Loper Bright Enters v. Raimondo*, 144 S. Ct. 2244, 2273 (2024).

Second, although the Respondents did not specifically address it, Petitioner contends that the Government's misapplication of § 1225(b) to unlawfully detain her and deny her bond violates her due process rights. The Sixth Circuit has noted that due process challenges, such as the one raised by Petitioner, which are not premised on "correctable procedural errors," generally do not require exhaustion because the Board cannot review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006).

Third, it is highly unlikely that "administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." This is because the Government has clearly set forth its belief that § 1225(b)(1)(A) applies to all noncitizens who have

resided within the United States prior to their arrest and detention. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 (BIA 2025). It is unlikely that any administrative review by the Board of that denial would lead the Government to change its position and thereby obviate the need for judicial review of Petitioner's habeas petition.

Even if the Court determines it applicable, the requirement of prudential exhaustion can be waived. *See Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *14 (E.D. Mich. Aug. 29, 2025). A court may choose to rule upon the merits of the issues presented when the "legal question is 'fit' for resolution and delay means hardship." *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000). A court may also waive exhaustion if the "pursuit of administrative remedies would be a futile gesture." *Shearson v. Holder*, 725 F.3d 588, 593–94 (6th Cir. 2013).

In this case, requiring Petitioner to pursue any further administrative remedies would certainly be futile and result in additional hardship for Petitioner, who has been detained since August 20, 2025. Despite her equities, the immigration judge denied Petitioner's bond motion based solely on a finding that the court lacked jurisdiction over custody matters on account of the Board's decision in *Matter of Yajure Hurtado* and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) (Pet. ECF Doc.1-3; Resp. ECF Doc. 9-1). Petitioner timely appealed that decision to the Board on November 19, 2025 (*See* ECF Doc.1-4, BIA Bond Appeal), in vain however, as the Board is bound by their own precedent. As such, and despite her attempts to exhaust all of her administrative remedies, Petitioner will remain in detention indefinitely. As other district courts have held: "It is unmistakable that . . . depriving [Petitioner] of his liberty while awaiting a BIA appeal decision certainly equates to hardship. And any delay results in the very harm [Petitioner] is trying to avoid

... – detention.” *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *15 (E.D. Mich. Aug. 29, 2025).

Finally, and although the relevance is unclear, Respondents point out that Petitioner has filed an application for Cancellation of Removal with the immigration court and that her hearing on that matter “may moot out the case sub judice.” (Resp. ECF No. 9 at Page ID # 122). While custody and removal are wholly separate proceedings within the immigration court, and are separate matters before this Court, it should be noted that Petitioner’s application for Cancellation of Removal remains pending and that her next hearing is not until March 11, 2026. NOH (attached as Ex. A) This case is therefore not moot.

C. Petitioner is not Lawfully Detained Pursuant to 8 U.S.C. § 1225.

The issue before this Court is which statute governs Petitioner’s current detention: 8 U.S.C. § 1225(b)(2) or § 1226(a). Respondents assert that Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2). In making this argument, Respondents fail to address the overwhelming majority of district court cases – including within the Sixth Circuit and Northern District of Ohio – holding that noncitizens, such as Petitioner, who have been apprehended inside the United States rather than at the border, may be lawfully detained only under § 1226(a). This is of importance as only noncitizens detained under § 1226(a) are entitled to bond hearings. *Macias v. Raycraft*, No. 4:25-cv-2642, at *3 (N.D. Ohio Dec. 9, 2025); *Morales Chavez v. Director*, No. 4:25-cv-02061, at *5 (N.D. Ohio Nov. 14, 2025) (§1225(b)(2) “mandates detention”).

Section 1225(b)(2) applies to “applicant[s] for admission” who are “seeking admission.” *Morales Chavez*, No. 4:25-cv-02061 at *5. An “applicant for admission” is a “[noncitizen] present in the United State who has not been admitted or who arrives in the United States (whether or not designated at a port of arrival...)...” 8 USC § 1225(a)(1). “Admission” is defined as “the lawful entry of [a noncitizen] into the United States after inspection and authorization by an immigration

officer.” 8 U.S.C. § 1101(a)(13)(A). Section 1226, on the other hand, applies to “certain [noncitizens] *already in the country* pending the outcome of removal proceedings.” *Macias*, No. 4:25-cv-2642, at *1 (emphasis and brackets in original) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see also Morales*, No. 4:25-cv-02061, at *5, 10 (finding § 1225(b) applies to applicants seeking admission whereas § 1226(a) applies to immigrants present in the country) (quotation marks and alterations omitted) (citing *Jennings*, 583 U.S. 281 at 288).

Here, both parties do not dispute that Petitioner entered the United States without admission or parole. (Pet. ECF No. 1, PageID # 2, ¶ 2); Resp. ECF No. 9, PageID # 123) Specifically, the Petitioner entered the United States in 1998 without being admitted or paroled. (Pet. ECF No.1, PageID#10, ¶ 43) Because Petitioner was apprehended inside the United States and was not seeking admission at the time of apprehension, she contends that she does not fall under § 1225(b)(2) and that her detention is governed by § 1226. Respondents’ position, on the other hand, is that any noncitizen who has not been admitted or paroled into the United States is subject to detention under § 1225(b)(2) and is therefore ineligible for bond. (Resp. ECF No. 9, PageID # 123-124, 127) This was the same position the government took in *Morales*. *See* No. 4:25-cv-02061, at *6-7. The *Morales* court, however, held that the “[u]pon review of the text, structure, and history of the statute, the Court cannot agree with the government’s interpretation of § 1226(b)(2).” *Id.* at *7.

In reaching this conclusion, the *Morales* Court found that:

§ 1226(a) provides a general rule, while § 1225(b)(2) provides a carveout to that rule. Section 1226(a) applies broadly to immigrants arrested and detained pending removal determinations. Meanwhile, § 1225(b)(2) carves out from § 1226(a) those immigrants who are (1) either present in the United States without having lawfully entered after inspection and authorization by an immigration officer or arriving in the United States and (2) seeking lawful entry via inspection and authorization by an immigration officer.

On this reading, § 1225(b)(2) does not apply to [petitioner]. While he is present in the United States without admission, and thus an “applicant for admission,” he is not

seeking to lawfully enter. Indeed, it would strain the words of the statute to say that one who has been in the United States since 2001 is seeking to enter it. *See, e.g., Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025) (“those like [petitioner], who have been here for years upon years and never proceeded to obtained any form of citizenship . . . are not ‘seeking’ admission”); *Barrera v. Tindall*, No. 3:25-cv-541, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (“Noncitizens who are present in the country for years, like [petitioner] who has been here 20 years, are not actively ‘seeking admission.’”). Rather, as an immigrant arrested and detained while “already in the country[.]” *Jennings*, 583 U.S. at 289, [petitioner] falls more aptly within § 1226(a)’s default rule. *See, e.g., Lopez-Campos*, 2025 WL 2496379, at *8 (“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border.”).

Morales, No. 4:25-cv-02061, at *8 (citations to the record omitted). Like the petitioner in *Morales*, and the cases cited to therein, Petitioner has been in the United States for a lengthy period and is not “seeking admission,” to the United States, even if deemed an applicant for admission. Respondents’ interpretation of § 1225(b) erroneously conflates “applicant for admission” with “seeking admission,” a position that has been rejected in the Northern District of Ohio. *Id.* at * 9 (the government’s interpretation would render the term “seeking admission” entirely superfluous of “applicant for admission.”)

Respondents cite to *Jennings* to argue that Respondent is properly detained under § 1225(b)(2) and that “applicants for admission” are necessarily “seeking admission.” (Resp. ECF No. 9, PageID # 128) The *Morales* court rejected this view, holding that *Jennings* “supports the Court’s reading that § 1225(b)(2) applies to immigrants seeking to lawfully enter the United States, while § 1226(a) provides a default rule applicable to immigrants detained in the United States, regardless of whether they were originally admitted.” *Morales*, No. 4:25-cv-02061, at *10-11. The *Morales* court further noted that the government’s reliance on a “single, isolated sentence” misconstrues *Jennings* when “reading [the case] as a whole.” *Id.* at *11. Read in context, the Supreme Court in *Jennings* “understood § 1225 to operate at the ‘Nation’s borders and ports of

entry’ and involve the ‘inspection of immigrants by immigration officers.’” *Id.* (citing *Jennings*, 583 U.S. at 287) (brackets omitted); *see also Jennings*, 583 U.S. at 289 (“U.S. immigration law authorizes the Government to detain certain aliens seeking admission in the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).”). As the *Morales* court and other courts in the Sixth Circuit have recognized, the language in *Jennings* “does not indicate broad application to all unadmitted immigrants in the United States. Rather ...this language indicates that § 1225(b)(2) applies to those arriving in the country.” *Id.* (citing *Contreras-Cervantes v. Raycraft*, No. 2:25-cv-13073, 2025 WL 2952796, at *7 (E.D. Mich. Oct. 17, 2025)).

The Respondent also cites to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) to support its position. However, this Court is not bound by the Board’s interpretation and “must use its independent judgment.” *Morales Chavez v. Director*, 4:25-cv-02061-SL (N.D. Ohio Oct. 20, 2025) (Magistrate’s Report and Recommendation) (citing *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 412-13 (2024)). In using its independent judgment, this Court should find that Petitioner’s detention is governed by § 1226(a) and not § 1225(b)(2) as she is a noncitizen who has entered the United States without having been admitted or paroled and is not seeking admission. Indeed, this was the government’s position until just last year. *See generally Macias*, No. 4:25-cv-02642, at *2-3 (“For roughly the past thirty years, the Department of Homeland Security (“DHS”) has taken the position that despite being applicants for admission, noncitizens who are present without having been admitted or paroled...will be eligible for bond and bond redetermination.”) (internal brackets omitted). Moreover, Respondents offer no explanation as to why this Court should reject *Morales* and the consistent holding of districts within the Sixth Circuit and instead adopt the government’s new interpretation of § 1226(a) and § 1225(b)(2).

Petitioner acknowledges one outlier decision from the Southern District of Ohio, *Coronado v. Sec’y, DHS*, No. 1:25-cv-00831-DRC, at *15–16 (S.D. Ohio Dec. 15, 2025), which held that a noncitizen who entered unlawfully, resided in the United States for years, and was apprehended in the interior was detained under § 1225(b)(2) rather than § 1226(a). The *Coronado* court expressly recognized that its ruling departed from the “overwhelming majority” of nearly 700 cases and conceded it was “swimming against the tide.” *Id.* at *15–16. Numerous district courts—including the Northern District of Ohio—have considered this issue and determined that noncitizens in Petitioner’s position are detained under § 1226(a) not § 1225(b). Petitioner respectfully contends that *Coronado* erred by treating “applicant for admission” as synonymous with “seeking admission,” a reading that ignores statutory context, improperly extends § 1225 beyond the border, and renders “seeking admission” superfluous. See *Morales*, No. 4:25-cv-02061-SL, at *8-9 (“[i]f Congress meant for all ‘applicants for admission’ to be understood as ‘seeking admission’ it would not have used both terms in the same sentence) (citations omitted). Finally, *Coronado*’s conclusion that § 1226(a) applies only to lawful entrants and § 1225(b)(2) applies to all applicants for admission—including those who entered unlawfully—was likewise rejected in *Morales*, which correctly held that § 1226(a) “makes no distinction between admitted and unadmitted immigrants” and that such a reading would improperly render § 1226(c)(1)(A), (D), and (E) superfluous. See *Morales*, 4:25-cv-02061-SL, at *10.

This Court should join the overwhelming majority of district courts that have considered and rejected the government’s position, including those in the Sixth Circuit and the Northern District of Ohio. See *Morales*, No. 4:25-cv-02061-SL: at *14 (“almost every—if not every—district court within the Sixth Circuit to consider [this issue] has rejected the government’s interpretation”). As the *Morales* court correctly held, noncitizens, like Petitioner, “who have spent years in the United States

before being detained are subject to 8 U.S.C. § 1226(a)'s discretionary bond provision—not 8 U.S.C. § 1225(b)'s mandatory detention provision.” *Id.* This Court should find the same.

D. Respondents Failed to Address Petitioner's Due Process Claim under the Fifth Amendment.

The Respondents did not specifically address Petitioner's due process claim. Petitioner continues to contend that the government's misapplication of § 1225(b) to unlawfully detain her and continue to deny her bond violates her due process rights. *See generally Morales*, No. 4:25-cv-02061-SL at *16; (citing *Casio-Mejia*, 2025 WL 2976737, at *9; *Garcia v. Raycraft*, No. 1:25-cv-1281, 2025 WL 3122800, at *7 (W.D. Mich. Nov. 7, 2025); *Godinez-Lopez v. Ladwig*, No. 2:25-cv-2962, 2025 WL 3047889, at *6 (W.D. Tenn. Oct. 31, 2025)).

E. Petitioner is a Member of the *Maldonado Bautista* Class and is Entitled to a Bond Hearing.

On December 18, 2025, after filing this petition, a court in the Central District of California issued a final judgment that a nationwide class of members were unlawfully detained under § 1225(b)(2) rather than § 1226(a). *Maldonado Bautista v. Santacruz*, No. 5:25-CV1873 (C.D. Cal. Dec. 18, 2025). Under the declaratory judgment, those that fall within the class are entitled to an individualized bond hearing. The *Maldonado Bautista* class, is defined as follows:

All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time the Department of Homeland Security makes an initial custody determination.

Id. Petitioner falls within the *Maldonado Bautista* class. Petitioner entered the United States without inspection in 1998 and was not apprehended upon her arrival. She is also not subject to the detention provisions under §§ 1226(c), 1225(b)(1), or 1231. Based on the initial November 25, 2025 ruling, and the December 18, 2025 ruling, Petitioner filed two motions requesting that the Cleveland Immigration Court hold a bond hearing for Petitioner pursuant to her class membership

in *Bautista*. See Respondent's Motion for Custody Redetermination Based on Changed Circumstances (Nov. 28, 2025) (attached as Ex. B); Respondent's Motion for Custody Redetermination Based on Changed Circumstances (Dec. 20, 2025) (attached as Ex. C) The Immigration Court denied both motions, finding it had no jurisdiction to holding a bond hearing. Custody Order of the Immigration Judge (Dec. 2, 2025); Custody Order of the Immigration Judge (Jan. 2, 2026) (attached as Ex. D) Indeed, immigration judges have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead immigration judges remain bound to follow *Matter of Yajure Hurtado*. EOIR Email (Jan. 13, 2026) (attached as Ex. E) Such instructions have stripped immigration judges of the ability to exercise judicial independence.

Respondents do not dispute – indeed, they concede – that Petitioner is a member of the *Bautista* class. (Resp. ECF No. 9, PageID # 132-133 ("nationwide class of members, such as Petitioner"). Instead, they contend that *Bautista* has no bearing on this case. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Declaratory judgments like the one in *Maldonado Bautista* have "the same effect as an injunction in fixing the parties' legal entitlements." *Florida ex rel. Bondi v. U.S. Dep't of Health & Hum. Servs.*, 780 F. Supp. 2d 1307, 1316 (N.D. Fla. 2011). A court in the Northern District of Ohio has held that "[Government] Defendants are bound by the decision in *Bautista*...which the California district court extended to all class members." *Macias*, 4:25-cv-02642-DAP at * 3-5; cf. *Coronado*, 1:25-cv-00831-DRC at *30-31 (holding that any challenges to the government's compliance with the *Bautista* order should be brought before the *Bautista* court). Under *Bautista*, those in the class are entitled to an individualized bond hearing under § 1226(a).

F. The Appropriate Remedy in this Case is Immediate Release.

In her petition, Petitioner requested immediate release, or alternatively, for Respondents to provide Petitioner with a bond hearing pursuant to § 1226(a) within 7 days. Petitioner continues to seek such relief. However, Petitioner respectfully contends that the best remedy in this case is immediate release.

Respondents did not argue in their reply that Petitioner was alternatively subject to detention under § 1226. Indeed, Respondents only allege that Petitioner is detained under § 1225(b)(2). If this Court determines that § 1226(a) controls Petitioner's detention, then Respondents have provided no lawful basis for Petitioner's detention and Petitioner must be released. *See Gimenez Rivero v. Sheriff*, 6:26-cv-66-RBD-NWH at *11 (M.D. Fla Jan. 26, 2026).

Moreover, Petitioner respectfully contends that she will not receive a fair bond hearing in immigration court. This claim is not made lightly. However, changes in recent months call into question her ability to receive a fair hearing in immigration court. As of September 26, 2025, the Government has terminated 128 immigration judges.¹ A former immigration judge has noted that this administration “does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives.”² As part of these policy objectives is a call for mass detention and deportation. Indeed, one district court recognized that “immigration judges are under pressure to continue to deny bond such that “the grant of a hearing is no remedy at all.” *See id.* (quoting *Marco M. v. Bondi*, No. 25-cv-4816 (D. Minn. Jan. 25, 2026); *see also Omar Garcia v. Hyde*, 25-cv-585-JJM-PAS at *25 (D.

¹ *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26, 2025), <https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-responds>

² Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), <https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>; *see also* Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court: SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), <https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/>.

R.I. Dec. 3, 2025) (“The Court is mindful that, in recent months, IJs [immigration judges] have faced enormous pressure from the Executive Branch to dismiss cases quickly and rule in certain ways. However, due process is not satisfied by rubberstamp denials of bond.”) (internal quotation and citation omitted).

This Court has broad authority when it comes to habeas relief. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute “does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted.”). Here, the immigration judge denied Petitioner bond solely based on lack of jurisdiction. (See Pet. ECF Doc. 1-3, Order of the Immigration Judge). Given that Petitioner has no criminal history, her lengthy residence in the United States, her family ties, and her eligibility for immigration relief, this Court should find that immediate release is the appropriate remedy in this case. (See ECF Doc. 1-2, Petitioner’s Bond Memo). See generally *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (ordering immediate release is appropriate given the government’s repeated use of unlawful detention policies across the country and that a bond hearing would cause unnecessary delay).

If this Court finds that a § 1226(a) bond hearing is the appropriate remedy, Petitioner requests that the Court mandate certain safeguards. First, Respondents should be ordered to hold a hearing within 7 days or else release Petitioner. Second, this Court should order that the Government bears the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk. See generally *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025) (“many courts in recent days [are] ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner’s continued detention by clear and convincing evidence.”) Third, this Court should further retain jurisdiction to review the immigration judge bond decision to ensure compliance with the Court’s order and due process.

CONCLUSION

Based on the foregoing, Petitioner respectfully reiterates her request that the Court grant her Petition for Writ of Habeas Corpus and order her immediate release from detention.

Respectfully submitted,

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