UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ARMANDO PEREZ CRUZ,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:25-CV-05936
	§	
KRISTI NOEM, *et al.*,	§	
	§	
Respondents.	§	

THE FEDERAL RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respectfully submitted,

NICHOLAS J. GANJEI
UNITED STATES ATTORNEY

Shawn D. Ren, Attorney-in-Charge
Assistant United States Attorney
Southern District No. 3892202
Texas Bar No. 24132873
1000 Louisiana, Suite 2300
Houston, Texas 77002
Tel: (713) 567-9569
Fax: (713) 718-3300
E-mail: shawn.ren@usdoj.gov

TABLE OF CONTENTS

Table of Contents ii

Table of Authorities iv

I. Introduction and Summary of the Argument 1

II. Background 2

III. Legal Standard on Summary Judgment 2

IV. Applicable Law 3

A. Mandatory Detention Under 8 U.S.C. § 1225 4

B. Discretionary Detention Under 8 U.S.C. § 1226 5

C. BIA Review 5

V. Argument 6

A. Count I: Mandatory vs. Discretionary Detention Under the INA 6

1. The Plain Text 7

a. The two terms are synonymous. 8

b. The term "or otherwise" confirms the ordinary meaning. 9

c. The notion that someone already inside the country can no longer be "seeking admission" is contradicted by the INA's definition of "admission." 10

d. Multiple federal appellate courts have implicitly rejected a distinction between the terms. 11

e. Congress could have used the term "arriving alien" in Section 1225(b)(2)(A) but chose differently. 11

f. Section 1226 is the more general detention statute. 12

2. The Evolution of the Text 12

3. The Laken Riley Act Does Not Change This Result 14

4. The Government's Position Has Considerable National Support.....15

B. Count II: Relief Pursuant to *Bautista* Class Action 17

1. Under black-letter principles of habeas jurisdiction, the *Bautista* court lacked jurisdiction outside the Central District of California and its declaratory judgment cannot be binding and is void with respect to custodians who are located outside that District.....18

2. The *Bautista* judgment is on appeal and should not be given preclusive effect.....20

3. Issue preclusion cannot be applied against the Government, including in the habeas context.....21

C. Count III: Bond Regulations 23

D. Due Process 24

VI. Conclusion 26

Certificate of Service 27

TABLE OF AUTHORITIES

Cases **Page(s)**

Barton v. Barr, 590 U.S. 222, 140 S.Ct. 1442, 206 L.Ed.2d 682 (2020) 14, 15

Boudreaux v. Swift Transp. Co., 402 F.3d 536 (5th Cir. 2005) 3

Burnham v. Superior Ct. of California, Cnty. of Marin, 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990) 19

Cabanas v. Bondi, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) 1, 11, 13, 15

Calderon v. Ashmus, 523 U.S. 740, 118 S.Ct. 1694, 140 L.Ed.2d 970 (1998) 18, 19

Candido v. Bondi, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) 8, 16

Carlson v. Landon, 342 U.S. 524, 72 S.Ct. 525, 96 L.Ed. 547 (1952) 3, 24

Chavez v. Noem, -- F.Supp.3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) 17

Chen v. Almodovar, No. 1:25-CV-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) 10, 14, 15, 16

Coleman v. United States, 912 F.3d 824 (5th Cir. 2019) 21

Combs v. Nick Garin Trucking, 825 F.2d 437 (D.C. Cir. 1987) 18

Connecticut Nat. Bank v. Germain, 503 U.S. 249, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992) 13

Cruz v. Noem, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) 16

Demore v. Kim, 538 U.S. 510, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) 4, 25, 26

Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020) .. 7

Doe v. Garland, 109 F.4th 1188 (9th Cir. 2024) 20, 23

Duarte v. Mayorkas, 27 F.4th 1044 (5th Cir. 2022) 23, 24

Flores v. Berkebile, No. 3:07-CV-00778, 2008 WL 623385 (N.D. Tex. Mar. 5, 2008) 22

Fusco v. Grondolsky, No. 17-1062, 2019 WL 13112044 (1st Cir. June 18, 2019) 19

Garibay-Robledo v. Noem, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) 1, 8, 16, 23

Griffin v. Gomez, 139 F.3d 905 (9th Cir. 1998) 22

Hardwick v. Doolittle, 558 F.2d 292 (5th Cir. 1977) 22

Hughes v. Canadian Nat'l Ry. Co., 105 F.4th 1060 (8th Cir. 2024) 12

In re Guerra, 24 I. & N. Dec. 37 (BIA 2006) 5

Jennings v. Rodriguez, 583 U.S. 281, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018) 4, 7, 11, 23

Jimenez v. Thompson, 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) 26

Jimenez-Rodriguez v. Garland, 996 F.3d 190 (4th Cir. 2021) 11, 17

Jones v. Joslin, No. 2:07-CV-00067, 2007 WL 2021777 (S.D. Tex. July 9, 2007) 22

Langley v. Prince, 926 F.3d 145 (5th Cir. 2019) 21

Little v. Liquid Air Corp., 37 F.3d 1069 (5th Cir. 1994) 3

LoBue v. Christopher, 82 F.3d 1081 (D.C. Cir. 1996) 19

Lopez v. Lyons, No. 1:25-CV-00226, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025) 19

Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) 3

Matter of GFS Indus., L.L.C., 99 F.4th 223 (5th Cir. 2024) 12

Matter of Lemus-Losa, 25 I. & N. Dec. 734 (BIA 2012) 10

Matter of Westmoreland Coal Co., 968 F.3d 526 (5th Cir. 2020) 21

Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025) 6, 16

Naranjo v. Uhls, No. 4:25-CV-05756, 2025 WL 3771447 (S.D. Tex. Dec. 31, 2025) 13, 14

Nola Spice Designs, LLC v. Haydel Enters., Inc., 783 F.3d 527 (5th Cir. 2015) 3

Olalde v. Noem, No. 1:25-CV-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) ..... passim

Ramos v. Lyons, No. 2:25-CV-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) 16

Rehbein v. Clarke, 94 F.3d 478 (8th Cir. 1996) 22

Restaurant Law Center v. U.S. Dep't of Labor, 120 F.4th 163 (5th Cir. 2024) 7

Rojas v. Olson, No. 25-CV-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) 8, 15, 17

Rumsfeld v. Padilla, 542 U.S. 426 (2004) 1, 18, 20

Sanders v. United States, 373 U.S. 1, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963) 22

Sandoval v. Acuna, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) 1, 7, 16

Stanley v. Cal. Supreme Court, 21 F.3d 359 (9th Cir. 1994) 18

Succar v. Ashcroft, 394 F.3d 8 (1st Cir. 2005) 11, 17

Sun Towers, Inc. v. Heckler, 725 F.2d 315 (5th Cir. 1984) 21

Topal v. Bondi, No. 1:25-CV-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) 1, 17

Torres v. Barr, 976 F.3d 918 (9th Cir. 2020) 13

Trump v. J.G.G., 604 U.S. 670, 145 S.Ct. 1003, 221 L.Ed.2d 529 (2025) 18

Ugarte-Arenas v. Olson, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) 14, 16

United States v. Age, 136 F.4th 193 (5th Cir. 2025) 21

United States v. Menasche, 348 U.S. 528, 75 S.Ct. 513, 99 L.Ed. 615 (1955) 12

United States v. Mendoza, 464 U.S. 154, 104 S.Ct. 568, 78 L.Ed.2d 379 (1984) 21

United States v. Woods, 571 U.S. 31, 134 S.Ct. 557, 187 L.Ed.2d 472 (2013) 9

Valencia v. Chestnut, -- F.Supp.3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) 16

Vargas Lopez v. Trump, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) 17

Villarreal v. R.J. Reynolds Tobacco Co., 839 F.3d 958 (11th Cir. 2016) 9

Walker v. Johnston, 312 U.S. 275, 61 S.Ct. 574, 85 L.Ed. 830 (1941) 3

Wong Wing v. United States, 163 U.S. 228, 16 S.Ct. 977, 41 L.Ed. 140 (1896) 3, 24

Zadvydas v. Davis, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) 25

Zi v. Gillis, No. 5:19-CV-00150, 2020 WL 7390488 (S.D. Miss. Oct. 6, 2020) 26

Statutes

8 U.S.C. § 1101(a)(13)(A) 10

8 U.S.C. § 1225 ..... 1, 4

8 U.S.C. § 1225(a)(1) 4, 7, 8

8 U.S.C. § 1225(a)(2) 11, 12, 26

8 U.S.C. § 1225(a)(3) 9

8 U.S.C. § 1225(b)(1) 11

8 U.S.C. § 1225(b)(2)(A) ..... passim

8 U.S.C. § 1225(c) 11

8 U.S.C. § 1225(d)(2) 11

8 U.S.C. § 1226 5

8 U.S.C. § 1226(a) 5, 12

8 U.S.C. § 1226(c)(1)(E) 14

28 U.S.C. § 2202 22

28 U.S.C. § 2241 3

28 U.S.C. § 2241(a) 19

28 U.S.C. § 2242 1

Pub. L. No. 119-1 14

Rules

Fed. R. Civ. P. 56(a) 2

Fed. R. Civ. P. 56(c) 3

Federal Rule of Civil Procedure 56 1

Regulations

8 C.F.R. § 235.3(b)(1)(ii) 6

8 C.F.R. § 236.1(c)(8) 5

8 C.F.R. § 236.1(d)(1) 5

8 C.F.R. § 1003.1(a)(1) 5, 6

8 C.F.R. § 1003.1(d)(1) 5

8 C.F.R. § 1003.1(d)(7) 6

8 C.F.R. § 1003.19 24

8 C.F.R. § 1003.19(a) 24

8 C.F.R. § 1236.1(d)(1) 5

62 Fed. Reg. 10312 23

Other Authorities

9 A.L.R.2d 984 20

18A Fed. Prac. & Proc. § 4433 21

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Respondents Kristi Noem, U.S. Department of Homeland Security, Todd Lyons, Executive Office for Immigration Review, Pamela Bondi, and Carlo Jiminez (hereinafter, the "Federal Respondents")[1] hereby request that the Court deny the petition for writ of habeas corpus and grant summary judgment in the Government's favor, in accordance with Federal Rule of Civil Procedure 56.

This case asks whether an alien present in the United States who has never been admitted is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). This challenge to the mandatory detention framework must fail on the merits as a plain reading of 8 U.S.C. § 1225 instructs that Petitioner is subject to mandatory detention. As an alien who has not been admitted into the United States, Petitioner is an "applicant for admission" and therefore "shall be detained" during the pendency of his removal proceedings. 8 U.S.C. § 1225(b)(2)(A). This Court should deny Petitioner's habeas petition, as it and multiple other district courts in the Fifth Circuit alone have done. *See, e.g.*, *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Topal v. Bondi*, No. 1:25-CV-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.).

---

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also id.* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the Federal Respondents, not the named warden in this case, who makes the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code. Therefore, while the named warden is the proper party in form, the Government responds herein as the real party in interest.

II. BACKGROUND

As Petitioner Armando Perez Cruz himself concedes, he is a native and citizen of Mexico who entered the United States without inspection in 2000. Dkt. No. 1 ¶¶ 1, 56. He alleges that he was taken into ICE custody on September 24, 2025. *Id.* ¶ 60. He has been served with a Notice to Appear ("NTA") charging him with removability pursuant to Immigration and Nationality Act ("INA") section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. See Dkt. No. 1-1. In the NTA, the examining immigration official determined that Petitioner was not entitled to admission, explained the basis for charging Petitioner with being subject to removal, and ordered Petitioner to appear in immigration court. *Id.*

Petitioner brings this habeas claim asserting that his detention is unlawful because he falls under the INA's discretionary detention provision. The parties previously filed a status report indicating that Petitioner had filed a bond reconsideration request with the immigration court, and absent a grant, the Federal Respondents would respond by January 16, 2026. Counsel for Petitioner has advised the undersigned that the request has been denied, so the Federal Respondents now ask the Court to grant summary judgment in favor of the Government and deny the habeas petition.

III. LEGAL STANDARD ON SUMMARY JUDGMENT

Generally, summary judgment is proper when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). If the moving party meets is burden of demonstrating the absence of a genuine factual

dispute, the non-movant must then come forward with specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). The non-movant must "go beyond the pleadings and by [the nonmovant's] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Nola Spice Designs, LLC v. Haydel Enters., Inc.*, 783 F.3d 527, 536 (5th Cir. 2015). The non-movant's burden "will not be satisfied by 'some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence.'" *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (per curiam)).

IV. APPLICABLE LAW

In a petition for a writ of habeas corpus, the petitioner is challenging the legality of the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g.*, *Walker v. Johnston*, 312 U.S. 275, 286, 61 S.Ct. 574, 85 L.Ed. 830 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as "[d]etention is necessary a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538, 72 S.Ct. 525, 96 L.Ed. 547 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235, 16 S.Ct. 977, 41 L.Ed. 140 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As Supreme Court has stated in no unmistakable terms, "Detention

during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003).

With this backdrop in mind, the Federal Respondents proceed to the statutory text on mandatory versus discretionary detention.

A. MANDATORY DETENTION UNDER 8 U.S.C. § 1225

Section 1225 defines "applicants for admission" as "alien[s] present in the United States who ha[ve] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i).

In contrast to Section 1225(b)(1) which deals with arriving aliens, Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" *shall* be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

B. DISCRETIONARY DETENTION UNDER 8 U.S.C. § 1226

Section 1226 is the more general detention statute, and it provides that an alien may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers has discretion to release an alien who demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an IJ at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

C. BIA REVIEW

The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR"). *See* 8 C.F.R. § 1003.1(d)(1). BIA members possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it," including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The

BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

On September 5, 2025, the BIA issued a unanimous precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In that decision, the BIA held that IJs lack authority to hear a respondent's request for bond where the respondent is an applicant for admission as such aliens are subject to mandatory detention under Section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and the regulation at 8 C.F.R. § 235.3(b)(1)(ii). *Hurtado*, 29 I. & N. Dec. at 229.

V. ARGUMENT

Petitioner brings four claims for relief. First, he brings the primary argument: that detention without a bond hearing violates the text of the INA, under which the discretionary detention provision, not mandatory, is applicable to him. Second, Petitioner makes a claim that this Court is bound by the California class action in *Bautista*. Third, he alleges that his detention violates the federal bond regulations. And fourth, he argues that detention without a bond hearing violates due process. The Government addresses each argument in turn.

A. COUNT I: MANDATORY VS. DISCRETIONARY DETENTION UNDER THE INA

Petitioner's central statutory argument must fail because he has not been unlawfully deprived of a bond hearing. This contention must be denied because the plain text of the

INA provides that he falls under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A) as an alien present in the United States who has not being admitted.

1. The Plain Text

"As usual, we start with the statutory text." *Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163, 177 (5th Cir. 2024). As the INA unmistakably instructs, "[a]n alien present in the United States who has not been admitted . . . shall be deemed . . . an applicant for admission." 8 U.S.C. § 1225(a)(1). The Supreme Court has repeatedly affirmed this point: that aliens present in the country who have not been admitted are considered applicants for admission. *See Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020) (same). In turn, Section 1225 of the INA provides that "in the case of an alien who is an applicant for admission," if that alien "is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained" for removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Petitioner cannot contest that he is "an alien present in the United States who has not been admitted[.]" 8 U.S.C. § 1225(a)(1). As a straightforward statutory matter, as an alien "present in the United States who has not been admitted," he is by definition "an applicant for admission." 8 U.S.C. § 1225(a)(1); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *3 (W.D. La. Oct. 31, 2025) ("[U]nder the plain text of § 1225(a)(1), any alien physically present in the United States who has not been admitted is an 'applicant for admission,' regardless of how long they have been in the country or whether they intended to apply or enter properly."). Thus, he is subject to mandatory detention. *See id.* § 1225(b)(2)(A) (instructing that "the alien *shall* be

detained" in the case of "an alien seeking admission" who "is not clearly and beyond a doubt entitled to be admitted" (emphasis added)).

The only way to escape this clear text, which some courts have incorrectly endorsed, is the notion that despite being applicants for admission, such aliens are not "seeking admission." *See* 8 U.S.C. § 1225(a)(1) ("[I]n the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* . . . "). For many reasons, this reasoning is misguided.

a. The two terms are synonymous.

The text states that "in the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* . . . " These two phrases are uttered in the same breath and nothing textual nor contextual indicates that "seeking admission" is somehow a distinct concept. *See, e.g.*, *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.) ("Insofar as the term 'applicant for admission' is more passive than 'seeking admission,' this is inherent in the nature of agent nouns and their corresponding gerunds."); *Olalde v. Noem*, No. 1:25-CV-00168, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (rejecting this "hair-splitting parsing of the statute's text [which] contradicts the ordinary meaning" and "makes no sense"); *Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (rejecting this purported distinction as "pack[ing] a lot of meaning into what appears to be an alternate phrasing"); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) ("'[A]pplicant' and 'seeker' are, indeed, accepted synonyms." (citing multiple dictionaries)).

Even as a colloquial matter, this distinction "makes no sense." *Olalde*, 2025 WL 3131942 at *3. Indeed, it would be bafflingly illogical to construe a statute to begin a sentence by defining the subject ("in the case of an alien who is an applicant for admission") only to switch to a new subject ("an alien seeking admission") right after having defined the subject.[2] From an ordinary language perspective, there is no distinction.

b. The term "or otherwise" confirms the ordinary meaning.

The terms are confirmed to be linked, as the same section of the INA refers to all aliens "who are applicants for admission *or otherwise seeking admission*." 8 U.S.C. § 1225(a)(3) (emphasis added). The "or otherwise" signifies two points. First, it highlights that the INA considers "applicants for admission" to be a *subset* of "seeking admission." *See, e.g.*, *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963–64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"). This language informs that at most, not all aliens "seeking admission" are necessarily "applicants for admission," but all "applicants for admission" are necessarily "seeking admission."[3] And as Petitioner cannot contest, he is an applicant for admission. And second, the word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45, 134 S.Ct. 557, 187 L.Ed.2d 472 (2013). For both these reasons, "seeking admission" cannot be a distinct concept.

---

[2] If a statute read, "In the case of a fisherman, if the person fishing does not properly bait their hook . . . ," surely one would not think that the provision discussed two distinct groups of people.

[3] The everyday meaning of the statutory terms also supports this reading. One may "seek" something without "applying" for it—for example, one who is "seeking" happiness is not "applying" for it. But one applying for something is necessarily seeking it.

c. The notion that someone already inside the country can no longer be "seeking admission" is contradicted by the INA's definition of "admission."

There is perhaps some intuitive appeal to the argument that "seeking admission" is inapplicable to an alien already in the United States; as the argument might go, how could someone be seeking admission into the country if they are already in the country? But to someone well-versed in the INA, this argument crumbles upon a sincere inquiry.

The INA does not speak colloquially—certainly not in this context, as confirmed by the INA's statutory definition of "admission" which is defined *not* as "entry" (which Petitioner needs that word to mean), but rather as "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) (emphasis added). Admission, then, does not mean entry; it means *lawful* entry. *Id.* An alien is an applicant for admission notwithstanding any time he has been present in the United States if that alien has never lawfully gained entry into the country; he is still "seeking admission" because he has not attained what "admission" means: "lawful entry."[4] *See, e.g.*, *Olalde*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (making this same observation when ruling for the Government); *Chen v. Almodovar*, No. 1:25-CV-8350, 2025 WL 3484855, at *5 (S.D.N.Y. Dec. 4, 2025) (same); *see also Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws[.]").

[4] This distinction should be intuitive. By way of a common analogy, a person might have physically entered a movie theater after sneaking past security, but that of course does not mean he has been admitted into the theater.

d. Multiple federal appellate courts have implicitly rejected a distinction between the terms.

Albeit not addressing this precise issue, two federal appellate courts have implicitly rejected this strained effort to separate the terms, treating them as synonymous. *See Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) ("Because [Petitioner] was never lawfully admitted, he qualifies as someone 'seeking admission[].'"); *Succar v. Ashcroft*, 394 F.3d 8, 13 (1st Cir. 2005) (treating, based on statute, "aliens who are present in the United States, but who have not been inspected and admitted," as "aliens who are seeking admission").

e. Congress could have used the term "arriving alien" in Section 1225(b)(2)(A) but chose differently.

Finally, Congress used the phrase "arriving alien" at various points throughout Section 1225, but not Section 1225(b)(2)(A).[5] *See, e.g.*, 8 U.S.C. §§ 1225(a)(2) (b)(1), (c), (d)(2). The two terms indeed stand in direct contrast, as Section 1225(b) applies to two distinct groups of "applicants for admission": Section (b)(1) applies to "arriving" or recently arrived aliens who must be detained pending expedited removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287. And in contrast to Section 1225(b)(1), Section 1225(b)(2) focuses *not* on arrival or entry but rather on *admission*. This group of aliens already in the country is precisely who the provision is geared toward, as the only other option—an "arriving" alien—falls under a different provision altogether. As put by this Court, Section 1225(b)(2)(A) "simply cannot be said to be limited to aliens arriving at the border." *Cabanas*, 2025 WL 3171331 at *5.

[5] And as explained *infra* Part V.C.2, this choice was deliberate.

f. Section 1226 is the more general detention statute.

It is well-taken that Section 1226 is the more general detention statute. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024); *see Matter of GFS Indus., L.L.C.*, 99 F.4th 223 (5th Cir. 2024) (explaining that to the extent one could read tension among two statutory provisions, the more specific provision should govern over the general). Here, Section 1226(a) is the general provision, applicable to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is much more specific, applying particularly to aliens who are "applicants for admission"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). Here, the specific rule for aliens who have not been admitted is that this subset of aliens must be detained. The Court should be loath to eviscerate the specific text of Section 1225(b)(2)(A) in favor of the more general text of Section 1226(a). *See, e.g.*, *United States v. Menasche*, 348 U.S. 528, 538–39, 75 S.Ct. 513, 99 L.Ed. 615 (1955) ("It is our duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section[.]"). Because Petitioner falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

2. The Evolution of the Text

"When the words of a statute are unambiguous," the text of the statute is the first and last interpretive canon, and "courts must presume that a legislature says in a statute what it

means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992); *see Naranjo v. Uhls*, No. 4:25-CV-05756, 2025 WL 3771447, at *2 (S.D. Tex. Dec. 31, 2025) ("[C]anons of statutory construction (like the presumption against superfluity) apply only where the text is ambiguous . . . but where, as here [in the case of whether Section 1225(b)(2)(A) is applicable], the statutory text is unambiguous, canons of construction don't support departure from that text.").

All the same, the evolution of Section 1225(b)(2) over time confirms the Government's position, as the focus on admission was deliberate. As the BIA analyzed in-depth in *Hurtado*, and as explained by the Ninth Circuit, Congress passed IIRIRA "to replace certain aspects of the [then-]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." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (quoting H.R. Rep. 104-469, pt. 1, at 225). And through this shift (including in Section 1225(b)(2)(A)), IIRIRA corrected "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully." *Id.* This consideration belies the necessary implication of Petitioner's argument: that because he initially snuck onto U.S. soil illegally, he is entitled to more privileges than a person who presented themselves at the border.

Moreover, despite that prior presidential administrations had taken a more permissive approach and afforded bond hearings to aliens like Petitioner, such mistake or leniency is neither here nor there when assessing the most faithful reading of the plain text. *See, e.g.*, *Cabanas*, 2025 WL 3171331 at *6 ("[W]hether [this position] is in line with the priorities of

prior Administrations[] simply isn't the remit of an Article III court."); *Chen*, 2025 WL 3484855 at *7 ("A failure by the Executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly-enacted law."); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *4 (E.D. Wis. Dec. 8, 2025) ("The fact that previous administrations did not seek to administer or enforce the laws Congress had enacted, however, does not change the meaning of those statutes.").

3. The Laken Riley Act Does Not Change This Result

The 2025 passage of the Laken Riley Act ("LRA"), Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025), required mandatory detention for a subset of illegal aliens. *See* 8 U.S.C. § 1226(c)(1)(E). One argument some courts have found persuasive is that the Government's interpretation of Section 1225(b)(2)(A) here would render the LRA superfluous because that subset of aliens would have already been subject to mandator detention under the current interpretation of Section 1225(b)(2). But as considered and rejected by many other courts, including the BIA in *Hurtado*, any perceived redundancy in the LRA is not a basis to ignore the unmistakable text of Section 1225(b)(2).[6]

As the Supreme Court explained in *Barton v. Barr*, 590 U.S. 222, 239, 140 S.Ct. 1442, 206 L.Ed.2d 682 (2020), "redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." And "[r]edundancy in one portion of a statute is not a license to rewrite or

[6] It is important to bear in mind that this argument proceeds by way of an interpretive canon, which does not come into play when, as here, the text is unambiguous. *Naranjo*, 2025 WL 3771447 at *2.

eviscerate another portion of the statute contrary to its text." *Id.* Of particular note: while this principle is generally true, in *Barton* the Supreme Court was indeed interpreting the *very same statute*—the INA. Nothing in the LRA purported to alter or amend § 1225(b)(2)'s mandatory detention requirement. *See, e.g.*, *Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) ("Indeed, nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case."); *Cabanas*, 2025 WL 3171331 at *6 (recognizing that the Laken Riley Act *did* have effect when enacted, forcing the Government "to exercise the full extent of executive authority" which, at that point, it had thus far declined to do; but "[i]t doesn't follow that the Laken Riley Act undercuts the more fulsome, executive authority that Congress provided to exist independently under the text of § 1225(b)(2)(A)"); *Chen*, 2025 WL 3484855 at *6 (noting that the LRA was a response to Congress's "perception that the Executive Branch had failed to enforce the detention options that were *already available* to it" (emphasis added)).

4. <u>The Government's Position Has Considerable National Support</u>

The analysis above is compelling that aliens like Petitioner already present in the United States are applicants for admission and thus subject to mandatory detention under § 1225(b)(1). To be sure, many courts have held otherwise.[7] However, the Government

[7] As Judge Devine noted, however, many of the courts that have ruled against the Government "appear to defer substantially to each other." *Olalde*, 2025 WL 3131942, at *1. what Judge Devine was getting at is the reality that many of the judges who have ruled on this issue have not actually critically looked into the issue, and instead have opted to defer to the majority. Of course, this deference then snowballs, as subsequent courts are in turn even more inclined to defer as the ratio grows more lopsided. On this point, the Federal Respondents urge the Court that "[w]hat governs this case is the text of the statute, not what other district courts have concluded." *Id.* This Court made a similar point in its opinion, reminding that "it remains incumbent upon district courts to each make their own, independent assessment." *Cabanas*, 2025 WL 3171331 at *5.

(continue)

would point firstly to the BIA's decision in *Hurtado*, which thoughtfully and meticulously considered and rejected a myriad of counterarguments. *See* 29 I. & N. Dec. at 221–27 (discussing and rejecting no fewer than six distinct legal counterarguments). *Hurtado* is a unanimous, published decision from the BIA and binding on immigration courts. The BIA utilized its immigration expertise and gave a lengthy, comprehensive account as to why the Federal Respondents' position in this case is not only correct, but comfortably so. *See, e.g.*, *Sandoval*, 2025 WL 3048926 at *6 ("[T]he BIA is a court that possesses subject matter expertise on immigration matters . . . when considering the BIA's thorough analysis of the plain statutory text and legislative history of the INA, this Court finds *Hurtado* persuasive."). This Court should thus accord great weight to the persuasiveness of *Hurtado*.

Not only so, many other federal courts have also sided with the Government's interpretation, and the list continues to grow. *See, e.g.*, *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.); *Chen v. Almodovar*, No. 1:25-CV-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Ramos v. Lyons*, No. 2:25-CV-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.); *Valencia v. Chestnut*, -- F.Supp.3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.); *Olalde v. Noem*, No. 1:25-CV-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Devine, J.); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr.,

J.); *Topal v. Bondi*, No. 1:25-CV-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Buescher, J.); *Chavez v. Noem*, -- F.Supp.3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.).[8] And as earlier mentioned, multiple federal appellate courts have implicitly adopted the Government's position on this issue. *See Jiminez-Rodriguez*, 996 F.3d at 194 n.2 ("Because [Petitioner] was never lawfully admitted, he qualifies as someone 'seeking admission[].'"); *Succar*, 394 F.3d at 13 (treating, based on statute, "aliens who are present in the United States, but who have not been inspected and admitted," as "aliens who are seeking admission").

The Government would urge the Court to stand firm on its own prior, and these courts', well-reasoned and textually faithful analysis.

B. COUNT II: RELIEF PURSUANT TO *BAUTISTA* CLASS ACTION

Next, Petitioner attempts argue that he is a class member of the declaratory judgment issued in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92. Petitioner invokes *Bautista* as a matter of collateral estoppel, arguing that the Government is "bound by the [*Bautista*] Court's declaratory judgment[.]" *See* Dkt. No. 1 ¶ 77. But *Bautista* is neither binding nor applicable here and presents no basis for granting the present petition. First, 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. Second, the Court should not give preclusive effect to the declaratory judgment because it is

[8] This list of favorable authorities is not and does not purport to be exhaustive.

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, i.e., collateral estoppel, is inapplicable here as it is well-settled that offensive collateral estoppel not only does not apply against the Federal Government generally, but it also specifically does not apply in the habeas context.

1. Under black-letter principles of habeas jurisdiction, the *Bautista* court lacked jurisdiction outside the Central District of California and its declaratory judgment cannot be binding and is void with respect to custodians who are located outside that District.

The Supreme Court has imposed two fundamental, unmistakable 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, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004); *see also Trump v. J.G.G.*, 604 U.S. 670, 672, 145 S.Ct. 1003, 221 L.Ed.2d 529 (2025). 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. "Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction" needed to issue relief. *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994); *Padilla*, 542 U.S. at 444. 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. *Padilla*, 542 U.S. at 442–43. 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, 118

S.Ct. 1694, 140 L.Ed.2d 970 (1998) (finding declaratory judgment class action was 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; *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").

Here, the vast majority of *Bautista* class members are confined outside of the Central District of California by immediate custodians who are also outside the Central District of California and have not been named in the lawsuit. Therefore, 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. *Burnham v. Superior Ct. of California, Cnty. of Marin*, 495 U.S. 604, 608–09, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990). Indeed, another federal district court has already held that the *Bautista* declaratory judgment does not have preclusive effect for the same reasons stated herein. *See Lopez v. Lyons*, No. 1:25-CV-00226, 2025 WL 3683918, at *14 (N.D. Tex. Dec. 19, 2025).

In sum, the *Bautista* court's declaratory judgment purporting to grant relief that at its core sounds in habeas is a legal nullity outside that District. At the time of filing this habeas petition, Petitioner was detained in Texas, which is outside that judicial district. That ends the matter. But not only so, Petitioner's immediate custodian was also not a party in the Central District of California; subjecting the immediate custodian to the judgment of the Central District of California would violate the immediate custodian rule. *Padilla*, 542 U.S. at 439–40; *see also Doe v. Garland*, 109 F.4th 1188, 1196 (9th Cir. 2024) (holding immediate custodian and not supervisory ICE Field Office Director should be named in habeas petition).

2. The *Bautista* judgment is on appeal and should not be given preclusive effect.

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. 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 result. *Id.* ("both the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences"); *see also* 18A Fed. Prac. & Prod. § 4404 (observing that "[a]wkward problems can result from the rule that preclusive effects attach to the first judgment" while that

judgment is subject to an appeal); 18A Fed. Prac. & Proc. § 4433 (the rule that a decision is final for the purposes of preclusion while that decision is pending appeal creates "[s]ubstantial difficulties").

3. Issue preclusion cannot be applied against the Government, including in the habeas context.

When it comes to issue preclusion, this argument is dead on arrival here as it is well-settled that offensive collateral estoppel, i.e., issue preclusion,[9] does not apply against the Federal Government. As a general matter, "nonmutual offensive collateral estoppel simply does not apply against the government[.]" *United States v. Mendoza*, 464 U.S. 154, 162, 104 S.Ct. 568, 78 L.Ed.2d 379 (1984). As put in *Mendoza*, this limitation exists because:

> The conduct of government litigation in the courts of the United States is sufficiently different from the conduct of private civil litigation in those courts so that what might otherwise be economy interests underlying a broad application of collateral estoppel are outweighed by the constraints which peculiarly affect the government.

Id. at 162–63. The Fifth Circuit has repeatedly reaffirmed *Mendoza*. *See, e.g.*, *United States v. Age*, 136 F.4th 193, 225 (5th Cir. 2025) (finding "it is well established that nonmutual offensive collateral estoppel is not to be extended to the United States" (internal quotations marks omitted)); *Sun Towers, Inc. v. Heckler*, 725 F.2d 315 (5th Cir. 1984) ("[N]onmutual offensive collateral estoppel cannot be used against the government."); *Coleman v. United States*, 912 F.3d 824, 834 n.10 (5th Cir. 2019) (reiterating that nonmutual offensive collateral estoppel does not apply against the government). Thus, Petitioner's preclusion argument has no basis in law.

---

[9] "Collateral estoppel" and "issue preclusion" are synonymous. *E.g.*, *Langley v. Prince*, 926 F.3d 145, 163 (5th Cir. 2019); *Matter of Westmoreland Coal Co.*, 968 F.3d 526, 532 (5th Cir. 2020).

Second, building off the previous point and specific to the habeas context, neither collateral estoppel nor res judicata apply at all in habeas cases. *See, e.g.*, *Hardwick v. Doolittle*, 558 F.2d 292, 295 (5th Cir. 1977) ("[T]he doctrines of res judicata and collateral estoppel are not applicable in habeas proceedings.); *see also Sanders v. United States*, 373 U.S. 1, 8, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963) (The inapplicability of res judicata to habeas, then, is inherent in the very role and function of the writ."); *Rehbein v. Clarke*, 94 F.3d 478, 481 (8th Cir. 1996) ("As the United States Supreme Court has often noted, ordinary principles of res judicata and collateral estoppel do not strictly apply in the federal habeas context."); *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (holding that a prior class action "has no preclusive effect in habeas proceedings"). In recognition of this rule, district courts in the Fifth Circuit have repeatedly declined to apply either preclusion doctrine against the Government in a habeas action. *See, e.g.*, *Jones v. Joslin*, No. 2:07-CV-00067, 2007 WL 2021777, at *6 (S.D. Tex. July 9, 2007) (declining to apply collateral estoppel in a habeas action); *Flores v. Berkebile*, No. 3:07-CV-00778, 2008 WL 623385, at *9 (N.D. Tex. Mar. 5, 2008) (same).

Finally, even setting aside *arguendo* the palpable lack of jurisdiction and the fatalities with attempting to use offensive issue preclusion, 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 were to consider whether to award "further" relief, i.e., injunctive relief, beyond 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." Indeed, the Ninth Circuit—which of course has appellate jurisdiction over the Central District of California—

has rejected waiving the district of confinement rule on prudential considerations given the clear congressional mandate limiting habeas jurisdiction to the district of confinement as provided by statute. *Doe*, 109 F.4th at 1199. Thus, the Court should in any event decline to extend injunctive relief.

In sum, the *Bautista* declaratory judgment cannot have preclusive effect and cannot be used offensively in this case.

C. COUNT III: BOND REGULATIONS

Petitioner next relies on language found in the Federal Register from 1997, which provides that "*[d]espite being applicants for admission*, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination." *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (emphasis added). As an initial matter, this statement flies squarely in defiance of the text of the INA. *Compare id. with Jennings v. Rodriguez*, 583 U.S. 281, 297, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018) (explaining that Section 1225(b) "*mandate[s] detention of applicants for admission* until certain proceedings have concluded" (emphasis added)). A valid statute always prevails over a conflicting regulation or policy statements made in connection to such a regulation. *See, e.g.*, *Duarte v. Mayorkas*, 27 F.4th 1044, 1060 n.13 (5th Cir. 2022). Not only so, but this statement in fact highlights why the Government's position is correct. As put by Judge Hendrix in the Northern District of Texas, "[t]he clear implication of [this language] is that . . . the government [previously] declined to exercise the full extent of its authority under the INA." *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482, *4 (N.D. Tex. Sept. 15, 2025). Similarly, this Court explained that this argument is "foreclosed by" finding that Section

1225(b)(2)(A) is applicable, since "[t]o the extent that this or similar regulations contradict the plain text of 8 USC § 1225(b)(2)(A), the statute governs because 'a valid statute always prevails over a conflicting regulation.'" *Acuna v. Warden*, 4:25-CV-05359, Dkt. No. 8 at 2 (S.D. Tex. Dec. 7, 2025) (quoting *Duarte*, 27 F.4th at 1060 n.13).

He also alleges violations of "8 C.F.R. §§ 236.1, 1236.1 and 1003.19." *See* Dkt. No. 1 ¶ 82. But this contention is functionally duplicative of his central INA statutory claim, as these bond regulation are only applicable if he is subject to discretionary detention, as opposed to mandatory detention. *See* 8 C.F.R. § 1003.19(a) (discussing "[c]ustody and bond determinations made by the service pursuant to 8 CFR part 1236," which "may be reviewed by an Immigration Judge pursuant to 8 CFR part 1236"). Thus, the statutory dispute remains the core issue.

D. DUE PROCESS

Finally, Petitioner's argument that detention without a bond hearing is itself unlawful can be summarily rejected. It is well-settled that detention during the pendency of removal proceedings presents no constitutional infirmities, such as due process concerns. This argument is addressed by the Federal Respondents' earlier discussion, *see supra* Part IV, as to the propriety of detention during removal proceedings. *See, e.g.*, *Carlson*, 342 U.S. at 538 ("Detention is necessary a part of th[e] deportation procedure."); *Wong Wing*, 163 U.S. at 235 ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As Supreme Court has stated in no unmistakable terms, "Detention

during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003).

Tellingly, Petitioner cites one case in this count: *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). *See* Dkt. No. 1 ¶¶ 85–86. His misplaced reliance on *Zadvydas* only highlights the de-merits of his argument, as *Zadvydas* and its six-month presumption apply only to aliens in "post-removal-period detention," i.e., it addresses the impropriety of indefinite post-removal order detention. 533 U.S. at 701. Indeed, the Supreme Court in *Demore* plainly contrasted *Zadvydas* post-removal-order detention with detention during removal proceedings, finding the latter permissible in light of the "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings[.]" 538 U.S. at 526. The Supreme Court explicitly distinguished the two types of detentions, rejecting the extension of *Zadvydas* to detention during removal proceedings and explaining at length why the two were fundamentally different. *See id.* at 527–31.

If this is Petitioner's argument, it amounts to a claim that mandatory detention under 8 U.S.C. § 1225(b)(2)(A)—and thus that provision itself—violates the Due Process Clause of the Constitution.[10] As this Court recently explained when considering and rejecting this very argument, while post-removal period detention under *Zadvydas* "require[es] a constitutional

[10] The mandatory detention provision provides for just that: mandatory detention. *See* 8 U.S.C. § 1225(b)(2)(A). If Petitioner's argument is that his detention without bond under that statute is a violation of due process, he is necessarily making the claim that the mandatory detention statute itself is unconstitutional; after all, the statute does not merely permit detention, the statute requires it. Petitioner has failed to identify, and undersigned counsel is unaware, of a single case holding that 8 U.S.C. § 1225(b)(2)(A) is unconstitutional (as opposed to merely inapplicable in certain contexts, as a statutory matter).

constraint on unbounded detention," detention pending a determination of removability "is a constitutional part of [the removal] process." *Jimenez v. Thompson*, 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) (quoting *Demore*, 538 U.S. at 531). This Court observed that the Supreme Court in *Zadvydas* explicitly distinguished post-removal-period detention from detention during removal proceedings, finding the latter permissible. *Id.*; *see also Zi v. Gillis*, No. 5:19-CV-00150, 2020 WL 7390488, at *2 (S.D. Miss. Oct. 6, 2020) ("*Zadvydas* does not apply to Petitioner as he is currently detained pending removal proceedings."). By Petitioner's line of argument, 8 U.S.C. § 1225(b)(2)(A) would have to itself be unconstitutional on its face.[11] There is no support for such an argument.

VI. CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that the Court deny the habeas petition and enter judgment in favor of the Government.

Dated: January 16, 2026

Respectfully submitted,

NICHOLAS J. GANJEI
UNITED STATES ATTORNEY

By: */s/ Shawn D. Ren*
Shawn D. Ren, Attorney-in-Charge
Assistant United States Attorney
Southern District No. 3892202
Texas Bar No. 24132873
1000 Louisiana, Suite 2300
Houston, Texas 77002
Tel: (713) 567-9569
Fax: (713) 718-3300
E-mail: shawn.ren@usdoj.gov

[11] *See supra* note 10.

CERTIFICATE OF SERVICE

I certify that on January 16, 2026, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

/s/ Shawn D. Ren
Shawn D. Ren
Assistant United States Attorney