UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

SANTOS ALEJANDRO PEREZ MATUL **PETITIONER**

VS. **CIVIL ACTION NO. 5:25-cv-150-DCB-RPM**

RAFEAL VERGARA, Warden, Adams County Correctional Center **RESPONDENT**

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Respondent Rafael Vergara, Warden for the Adams County Correctional Center, located in Natchez, Mississippi, appearing in his official capacity and represented herein by the United States Attorney for the Southern District of Mississippi and the undersigned Assistant United States Attorney for said District, hereby submits its Response in Opposition to Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241. The Petition is due to be dismissed because Santos Alejandro Perez Matul ("Matul" or "Petitioner") was provided a bond hearing and has failed to exhaust administrative remedies. Further, Matul is deemed "an applicant for admission," requiring mandatory detention for the duration of his removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Finally, *Bautista v. Santacruz*, ___ F. Supp.3d __, 2025 WL 3289861 (C.D.Cal. Nov. 20, 2025), is not binding authority on this Court

I. BACKGROUND

Petitioner is a native and citizen of Guatemala who entered the United States in 2011 without inspection. *See* Petition, ECF No. 1 at ¶ 1. On July 21, 2022, the Horry County South Carolina police department arrested Petitioner for public disorderly conduct and littering. *See* Exhibit 1,

Encounter Details and Narrative at 3. In conjunction with this arrest, the United States Department of Homeland Security ("DHS") issued Petitioner a Form I-862, Notice to Appear ("NTA), charging Matul as removable under § 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"). [1] *See* Exhibit 2, *Department of Homeland Security, Notice to Appear*. The Horry County South Carolina Sheriff's Office encountered Matul pursuant to the 287(g) program and released him on an Order of Recognizance ("OREC") because of a minor child's medical condition. *See* Exhibit 1, *Encounter Narrative* at 2.

On January 26, 2025, the South Carolina Highway Patrol arrested Matul for driving without a license, driving under the influence, and child endangerment. *See* Exhibit 1, *Encounter Narrative* at 2. Matul was also arrested on an outstanding warrant for criminal sexual conduct with a minor. *Id.* The Horry County Sheriff's office again encountered Matul pursuant to the 287(g) program, and he was interviewed in person by a Designated Immigration Officer. *Id.* During this encounter, Petitioner admitted he was not a citizen or national of the United States and was illegally present in the United States without proper documents. *Id.* Matul posted bond on the state charges and shortly thereafter Immigration and Customs Enforcement ("ICE") took him into custody.

On March 28, 2025, Petitioner appeared at a master calendar hearing before an Immigration Judge ("IJ") and admitted all the factual allegations contained in the NTA through counsel. *See* Exhibit 3 at 4, Oct. 1, 2025, Decision of IJ. The IJ found Petitioner removable as charged. *Id.* On April 24, 2025, Petitioner, through counsel, filed a Form 42-B, *Application for Cancellation of Removal*, because he had a child in the United States with severe medical problems. *Id.*

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[1] INA § 212(a)(6)(A)(i) refers to 8 U.S.C. §1182(a)(6)(A)(i) and generally provides that an alien who arrives in the United States at any time or place other than as designated by the Attorney General or is present in the United States without admission or parole, is inadmissible.

On June 16, 2025, Petitioner, through counsel, filed a Motion for Bond Hearing. *See* Exhibit 4, *Counsel for Respondent's Motion for Bond Hearing*. After consideration of all the evidence and conducting a hearing, the IJ denied Petitioners redetermination request. *See* Exhibit 5, *In Custody Redetermination Proceedings*, (June 26, 2025) (Petitioner did not meet his burden in demonstrating that he is not a danger to the community). Petitioner did not appeal the denial of bond or his redetermination request.

On August 4, 2025, DHS filed Form I-261, *Additional Charges of Inadmissibility/ Deportability*, adding that Petitioner is subject to removal from the United States pursuant to INA § 212(a)(7)(A)(i)(i) for failure to possess proper documentation at the time of application for admission to the United States. *See* Exhibit 6, DHS Form I-261. On August 14, 2025, the Immigration Court conducted a merit hearing. Exhibit 3 a 4. The conclusion of the hearing was continued to September 19, 2025, due to Petitioner's pending criminal charges in South Carolina. *Id.* On August 29, 2025, Matul was transferred from Folkston Processing Center in Georgia to the Adams County facility in Natchez, Mississippi. Due to this transfer, the second part of the merit hearing was not conducted. *Id.*

On October 1, 2025, the IJ granted Matul's application to cancel his removal based on his child's medical condition. *See* Exhibit 3. DHS timely appealed this decision to the Board of Immigration Appeals ("BIA"). *See* ECF No. 1 at ¶ 1; *see also* Exhibit 7, BIA Receipt of Appeal. This administrative appeal is pending, there is no final order, and Matul's detention status has not changed.

Matul filed his habeas petition on December 11, 2025, asserting he was entitled to a bond hearing, among other relief, notwithstanding that he had a bond hearing in June 2025. ECF No. 1. Importantly, Matul did not appeal the IJ's June decision denying bond. Further, based on a

plain reading of the applicable statutes, Matul is deemed an "applicant for admission," 8 U.S.C. § 1225(a)(1), and detention is mandatory for the duration of his removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

Matul improperly seeks habeas relief to claim entitlement to a bond hearing during the pendency of the administrative appeal. ECF No. 1 at ¶ 37. Not only has Matul failed to request a bond by motion or otherwise during the pending appeal, but he also fails to recognize that even if INA §1226(a)(2)(A) applied to this matter, which Respondent denies, the Attorney General has *discretion* to release an alien not subject to mandatory detention. Nonetheless, detention is mandatory under 8 U.S.C. § 1225(b)(2)(A), and Matul has already been afforded and denied bond.

For these reasons, Matul's petition should be denied and dismissed.

II. STATUTORY BACKGROUND

The Immigration and Nationality Act ("INA"), as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal. Before 1996, the INA required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings.

In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless

of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." *See* 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025). IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:

Section 1225(a): Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed … an applicant for admission":

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added). "All aliens … who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer[]." *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited "Section 240" proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2). Section 1225(b)(1) provides for so-called "expedited removal proceedings," *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of aliens—those who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum … or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2)

"mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

While Section 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as admission of the alien." *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole ... been served," the "alien shall ... be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2). Moreover, § 1226(c) specifies a class of aliens who cannot be released and shall be detained in custody during the pendency of removal proceedings (i.e. the determination of whether the alien is to be removed from the United States), encompassing aliens who have committed certain criminal acts or acts of terror.

In this case, Matul is an "applicant for admission" under Section 1225(a). That provision specifically provides that any "alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission." § 1225(a)(1). Because Matul entered the country without inspection, he was never "admitted" and thus unambiguously remains an "applicant for admission." This same reasoning applies throughout the removal process – even on appeal. Indeed, here Matul is attempting to remain in the United States premised on his son's medical condition. In other words, Matul is applying for admission.

III. ARGUMENT

A. Court should deny petition for failing to exhaust administrative remedies

The Court should dismiss the petition because Matul has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same); *accord Lee v. Gonzales*, 410 F.3d 778, 786 (5th Cir. 2005) ("[A] petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists.").

The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, protect the authority of administrative agencies, and otherwise conserve judicial resources by limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Gutierrez Cupido v. Barr*, 2019 WL 4861018, *1 (S.D.N.Y. Oct. 2, 2019).

Matul's proceedings are currently pending before the Board of Immigration Appeals ("BIA") and the administrative appellate process should be allowed to play out. *See* Exhibit 7. In the instant

case, DHS has appealed the IJ's decision granting Matul's 42B Application for Cancellation of Removal. *Id.* Thus, Matul will have an opportunity to respond to DHS's brief on appeal to the BIA, and the BIA will issue a final administrative order on removal. Matul, however, has not placed a request for bond and release before the Immigration Court during the pending administrative appeal. Matul, represented by counsel, participated in a bond hearing in June 2025. Matul chose not to appeal the IJ's denial of bond and Matul's request for a change in custody.

Simply put, Matul did not appeal a denial of bond and does not have a final administrative order on removal. Matul's petition should be dismissed for lack of administrative exhaustion.

B. Matul is properly detained under 8 U.S.C. 1225(b)(2)

The applicable detention statute, 8 U.S.C. § 1225(b)(2)(A), is simple and unambiguous. When engaging in statutory interpretation, "[w]e begin, as always, with the text." *Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017). "If the statutory language is plain, we must enforce it according to it term." *King v. Burwell*, 576 U.S. 473, 486 (2015); *see also Restaurant Law Center v. U.S. Dep't of Labor*, 120 F. 4th 163, 177 (5th Cir. 2024) ("As usual, we start with the statutory text.")

The statute expressly provides "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A).

1. Matul is an "applicant for admission"

The first relevant term is "applicant for admission," which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any alien (a person who is not a citizen or national of the United States, 8 U.S.C. § 1101(a)(3)) "present in the United States who has not been admitted" to

be an "applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, under its plain terms, all unadmitted foreign nationals in the United States are "applicants for admission," regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. *See id.* Thus, under the plain text of the statute, Matul is unambiguously an "applicant for admission" because he is a foreign national, he was not admitted, and he was present in the United States when he was apprehended by Immigration and Customs Enforcement ("ICE"). Furthermore, Matul's filing of his 42B application premised on the medical condition of his child, undermines any denials about seeking admission.

2. Matul has not "lawfully entered" the United States

The next relevant portion of the statute is whether an examining immigration officer determined that Petitioner was "seeking admission." *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines "admission" 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). Therefore, the inquiry is whether an immigration officer determined that Petitioner was seeking a "lawful entry." *See id.* This element of "lawful entry" is important here for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021) (recognizing that "admission" means "lawful entry"). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he or she did not enter lawfully. *See* 8 U.S.C. §§ 1182(a)(6), 1227(a)(1)(A). Indeed, the charges of removal against Petitioner are based on his unlawful entry.[2]

[2] The INA provides two examples of foreign nationals who have not yet been admitted but are not "seeking admission": 1) someone who withdraws his/her application for admission and "depart[s] immediately from the United States," 8 U.S.C. § 1225(a)(4); and 2) someone who agrees to

Foreign nationals present in the United States for more than two years who have not been lawfully admitted and who do not agree to immediately depart are seeking admission and must be referred for removal proceedings under § 1229a. *See* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A). Notably, this is *not* the same as an expedited removal under § 1225(b)(1). Instead, under the clear provisions of §1225(b)(2), removal proceedings must proceed as outlined under § 1229a. Accordingly, Matul is still "seeking admission" under § 1225(b)(2) because he has not agreed to depart, and he has not yet conceded his removability or allowed his removal proceedings to play out – he wants to be admitted via his removal proceedings. *See Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 108–09 (2020) (discussing how "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival)" is deemed "an applicant for admission").

3. *Matul is subject to mandatory detention*

Finally, the text provides that Matul "***shall be detained*** for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). As explained above, Matul has been placed in full removal proceedings where he will receive the benefits of the procedures in immigration court (motions, hearings, testimony, evidence, and appeals) provided in § 1229a. Therefore, he also meets this textual element within § 1225(b)(2)(A) because he is in § 1229a removal proceedings and is thus subject to mandatory detention during the pendency of these proceedings.

Finally, to consider Matul as not subject to mandatory detention as an alien "seeking admission" would reward him for violating the law, provide him, with better treatment than a

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voluntarily depart "in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings." 8 U.S.C. § 1229c(a)(1).

foreign national who lawfully presented themselves for inspection at a port of entry, and encourage others to enter unlawfully - defying the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Thuraissigiam*, 591 U.S. at 140 (avoiding interpretation that might create a "perverse incentive to enter at an unlawful rather than a lawful location).

C. The Bautista declaratory judgment has no preclusive effect outside the Central District of California and over custodians who are located outside that District

In several paragraphs of his petition, Matul alleges he is a member of a "Bond Denial Class" in *Bautista*; and further, that his detention violated the declaratory judgment of the *Bautista* Court. ECF No. 1 at ¶¶ 29-31.

The partial final judgment in *Bautista* is neither binding nor applicable here and presents no basis for granting the 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 on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal

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 at ICE detention facility in Mississippi, which is outside the Central District of California. That ends the matter. But if more were needed, Petitioner's immediate custodian is Warden Rafael Vergara of the Adams County Correctional Center, who also is not in the Central District of California. Subjecting the immediate custodian to the judgment of the Central District of California would be inconsistent with the immediate custodian rule. *See Rumsfeld v. Padilla*, 542 U.S. 426, 439-40 (2004); *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); *see* also ECF No. 2, Dec. 18, 2025, Order ("[T]he proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." (quoting *Rumsfeld*).

IV. CONCLUSION

For the reasons explained above, Petitioner's petition for writ of habeas corpus should be dismissed for failure to exhaust administrative remedies. To the extent Matul seeks declaratory and injunctive relief, same should be denied and Petitioner's detention should remain undisturbed for the duration of his removal proceedings. Finally, as an inadmissible alien seeking admission, he is subject to mandatory detention for the duration of his removal proceedings pursuant to 8 U.S.C. § 1225(b)(2).

Dated: January 12, 2026

Respectfully submitted,

J.E. BAXTER KRUGER
UNITED STATES ATTORNEY

By: *S/Deidre Lamppin Colson*
Deidre Lamppin Colson (MSB #10125
Assistant United States Attorney

CERTIFICATE OF SERVICE

I, Deidre Lamppin Colson Assistant U.S. Attorney, hereby certify that, on this day, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notice to all counsel of record.

January 12, 2026

s/Deidre Lamppin Colson
Deidre Lamppin Colson
Assistant United States Attorney