IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03983-DDD-NRN

FRANKLIN HERNANDEZ HERNANDEZ,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
ROBERT HAGAN, in his official capacity as ICE Field Officer Director;[1]
JOHNNY CHOATE, in his official capacity as the warden of the Aurora Immigration Detention Facility;
PAMELA BONDI, in her official capacity as the United States Attorney General;
The Executive Office for Immigration Review;
United States Immigration, and Customs Enforcement; and
The Board of Immigration Appeals,[2]

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE [ECF No. 5]

Pursuant to the Court's December 22, 2025, Order, ECF No. 5, Respondents hereby respond to Petitioner Franklin Hernandez Hernandez's Petition for Writ of Habeas Corpus, ECF No. 1 (filed December 11, 2025) (the "Petition"). Pursuant to 28 U.S.C. § 2241, Petitioner,

---

[1] Per Federal Rule of Civil Procedure 25(d), Robert Hagan is substituted for Arthur Wilson, in his official capacity.

[2] Respondents dispute that the named non-individual entities are proper respondents in this habeas proceeding. A writ of habeas corpus is properly directed to the custodian of the petitioner. *See* 28 U.S.C. §§ 2242-43 (habeas petitions must allege "the name of the person who has custody over him," and the writ or order to show cause "shall be directed to the person having custody of the person detained"); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004); *Compean-Guevara v. Solis*, 939 F. Supp. 551, 551 n.1, 553 (W. D. Tex. 1996) (noting the Board of Immigration Appeals "is not a proper respondent in this habeas corpus proceeding because it does not have custody of the petitioner" and dismissing it as a respondent).

through counsel, asserts violations of the Immigration and Nationality Act ("INA") and procedural due process, alleging that Respondents have unlawfully detained him under 8 U.S.C. § 1225(b)(2). *See* ECF No. 1 ¶¶ 27-33. He claims he is not subject to § 1225(b)(2)(A) but is instead subject to 8 U.S.C. § 1226(a). *See id.* ¶¶ 31-32.

As discussed below, the Petition should be denied because Petitioner is an applicant for admission within the scope of § 1225(b)(2). The Court should therefore deny Petitioner's requests for relief because he is subject to § 1225(b)(2)(A).

INTRODUCTION

This case involves a question of statutory interpretation. The Department of Homeland Security ("DHS") is detaining Petitioner under a statutory provision of the INA, 8 U.S.C. § 1225(b)(2)(A), that applies to noncitizens[3] who, like Petitioner, are treated as "applicants for admission" because they entered the country without inspection and have never been admitted. Section 1225(b)(2)(A) requires detention of an "applicant for admission" if an "examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted."

Petitioner claims he is not subject to § 1225(b)(2)(A) but is instead subject to 8 U.S.C. § 1226(a), a provision that also authorizes detention of certain noncitizens while removal proceedings are pending. The practical difference between the two sections is that Congress has provided that noncitizens detained under § 1225(b)(2)(A) are ordinarily not eligible for bond hearings, while those detained under § 1226(a) are. Based on the premise that his detention is

[3] The INA uses the term "alien," defined as "any person not a citizen or national of the United States." *See* 8 U.S.C. § 1101(a)(3).

governed by § 1226(a), Petitioner asks the Court to issue a writ of habeas corpus declaring that § 1226(a) governs his detention and ordering that he be provided with a bond hearing within five days.

The Court should conclude that Petitioner is an applicant for admission within the scope of § 1225(b)(2) based on the text of the statute and the Supreme Court's interpretation of it in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents recognize that numerous nonprecedential decisions have reasoned otherwise. But as explained below, a close reading of the Supreme Court's explanation in *Jennings* of the scope of § 1225 supports Respondents' view, and the reasoning of many lower court decisions does not square with the Supreme Court's interpretation. The Court should therefore deny Petitioner's requests for relief because he is subject to § 1225(b)(2)(A).

Petitioner additionally argues that he is a member of a class recently certified in *Maldonado Bautista v. Noem, et al.*, No. 25-cv-01873-SSS-BFM, – F.R.D. –, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). Petitioner argues that the district court in *Bautista* granted declaratory relief to that class. On December 18, 2025, the *Bautista* court entered partial final judgment on behalf of the class. *See* Order, *Maldonado Bautista v. Noem, et al.*, No. 25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025) (ECF No. 92) at 7-12. This Court should not grant preclusive effect to that decision (which is now on appeal), for multiple reasons.

FACTUAL BACKGROUND

Petitioner's entry into the United States.

Petitioner is a native and citizen of Guatemala. Ex. A, Declaration of John Mansur, ¶ 4.

Petitioner was never admitted or paroled into the United States. *Id.* ¶ 6. Thus, he is being treated as an applicant for admission.

Petitioner's immigration history and detention pursuant to 8 U.S.C. § 1225(b)(2).

On June 1, 2025, Petitioner was arrested in Weld County, Colorado for Vehicular Eluding in violation of C.R.S. § 18-9-116.5, Obstructing a Peace Officer in violation of C.R.S. § 18-8-104(1)(a), and Reckless Driving in violation of C.R.S. § 42-4-1401. *Id.* ¶ 7.

On June 3, 2025, ICE officers encountered Petitioner once he was released from state custody. *Id.* ¶ 8. Upon interviewing Petitioner and reviewing relevant immigration databases, ICE officials determined that Petitioner did not possess documentation authorizing his entry into or presence in the United States. *Id.* ICE officials concluded Petitioner is subject to removal and arrested and detained him pending resolution of removal proceedings. *Id.* Petitioner is detained pursuant to 8 U.S.C. § 1225(b). *Id.* ¶ 9.

On June 3, 2025, ICE issued a Notice to Appear (NTA), initiating removal proceedings under 8 U.S.C. § 1229a, before the Executive Office for Immigration Review (EOIR). *Id.* ¶ 10. The NTA charged Petitioner with being deportable from the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) (alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated). *Id.*

On June 16, 2025, Petitioner and his attorney appeared before an Immigration Judge (IJ) at the Aurora Immigration Court for his initial hearing in removal proceedings. Petitioner requested additional time to prepare his case. *Id.* ¶ 11. The IJ granted his request. *Id.*

On July 18, 2025, Petitioner appeared before the IJ for a master calendar hearing and requested additional time to prepare his case. *Id.* ¶ 12. The IJ granted his request. *Id.*

On July 22, 2025, DHS ICE filed a Form I-261, Additional Charges of Inadmissibility/Deportability and charged Petitioner as also being deportable pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) (immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document). *Id.* ¶ 13.

Also, on July 22, 2025, Petitioner appeared before the IJ for a custody redetermination hearing. *Id.* ¶ 14. The IJ granted release under $10,000.00 bond. *Id.* ICE invoked an automatic stay of the bond, authorized by 8 C.F.R. § 1003.19(i)(2). *Id.*

On August 1, 2025, Petitioner appeared before the IJ for a master calendar hearing and requested additional time to prepare his case. *Id.* ¶ 15. The IJ granted his request. *Id.*

On August 4, 2025, ICE filed a notice of appeal of the IJ's bond order with the Board of Immigration Appeals (BIA). *Id.* ¶ 16. That appeal triggered an extended stay of Petitioner's bond. *Id.*

On August 15, 2025, Petitioner appeared before the IJ for a master calendar hearing and requested additional time to prepare his case. *Id.* ¶ 17. The IJ granted his request. *Id.*

On August 19, 2025, the BIA issued a briefing schedule for the bond appeal and set a filing deadline for September 9, 2025. *Id.* ¶ 18.

On August 29, 2025, Petitioner appeared before the IJ for a master calendar hearing and requested additional time to prepare his case. *Id.* ¶ 19. The IJ granted his request. *Id.*

On September 11, 2025, Petitioner filed an application for relief from removal with the immigration court. *Id.* ¶ 20.

On September 12, 2025, Petitioner appeared before the IJ for a master calendar hearing and requested additional time to prepare his case. *Id.* ¶ 21. The IJ granted his request. *Id.*

On September 16, 2025, EOIR scheduled Petitioner's case for a contested hearing on the NTA on September 30, 2025. *Id.* ¶ 22.

On September 23, 2025, the BIA sustained ICE's appeal and vacated the IJ's bond order. *Id.* ¶ 23.

On September 30, 2025, Petitioner appeared before the IJ for a contested hearing on the NTA. *Id.* ¶ 24. The IJ continued the hearing for Petitioner to file written pleadings. *Id.*

On October 6, 2025, Petitioner's U.S.-citizen wife filed a Form I-130, Petition for Alien Relative with USCIS on Petitioner's behalf. *Id.* ¶ 25. A Form I-130 establishes the qualifying relationship between the U.S. citizen petitioner and their alien relative. *Id.* An approved Form I-130 is a prerequisite to the alien relative applying for adjustment of status to that of a lawful permanent resident in the United States. *Id.* Petitioner does not have an application for adjustment of status pending before USCIS. *Id.* Should USCIS approve the Form I-130, Petitioner cannot adjust status in the United States because he entered the United States without being admitted or paroled after inspection. *Id.* Petitioner will need to seek a waiver of his unlawful presence, which will involve his departure from the United States to pursue consular processing abroad. *Id.* Petitioner's Form I-130 remains pending before USCIS. *Id.*

On October 9, 2025, Petitioner filed written pleadings wherein he admitted the allegations and conceded the charge of removal in the NTA. *Id.* ¶ 26.

On October 13, 2025, Petitioner filed a motion to terminate removal proceedings. *Id.* ¶ 27.

On October 14, 2025, Petitioner and his attorney appeared before the IJ for a master calendar hearing. *Id.* ¶ 28. The IJ sustained the removal charge in the NTA. *Id.*

EOIR scheduled Petitioner's case for an individual hearing on November 17, 2025. *Id.* ¶ 29.

On October 28, 2025, the IJ denied Petitioner's motion to terminate removal proceedings. *Id.* ¶ 30.

On November 14, 2025, Petitioner filed a motion to continue the individual hearing. Petitioner also filed a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. *Id.* ¶ 31.

At the hearing on November 17, 2025, the IJ granted Petitioner's motion to continue. *Id.* ¶ 32.

Petitioner's removal proceedings remain pending before the immigration court and his case is scheduled for an individual hearing on December 31, 2025. *Id.* ¶ 33. Petitioner remains detained at the Denver Contract Detention Facility in Aurora, Colorado, pending resolution of removal proceedings. *Id.* ¶ 34.

Petitioner's habeas petition.

Petitioner, through counsel, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 on December 11, 2025. ECF No. 1. In the Petition, Petitioner asserts two claims for relief. *See* ECF No. 1 ¶¶ 27-33. First, he alleges a violation of his procedural due process rights because of Respondents' alleged failure to provide Petitioner a bond hearing. *Id.* ¶¶ 27-29. Second, he alleges that Respondents have violated the INA by subjecting him to detention under § 1225(b)(2)(A), rather than under § 1226(a). *Id.* ¶¶ 30-33. As relief, Petitioner requests, *inter*

alia, that the Court declare that his detention without a possibility of bond is unlawful and order Petitioner's immediate release on the bond he was previously granted. *Id.* at 10.

On December 22, 2025, this Court directed Respondents to show cause why the Petition should not be granted. ECF No. 5. The Court further ordered that Respondents shall not remove Petitioner from the District of Colorado or the United States unless or until this Court or the Court of Appeals for the Tenth Circuit vacates the order. *Id.*

LEGAL BACKGROUND

In the INA, Congress established rules governing when certain noncitizens may be detained or removed. As relevant here, § 1225 governs the processes for the detention and removal of noncitizens who are "applicants for admission." *See* 8 U.S.C. § 1225(a)(1). The Supreme Court analyzed the scope of § 1225 in *Jennings*. At issue in that case was whether certain noncitizens are entitled to periodic bond hearings during prolonged detention. Because in that case, as in this one, "[t]he primary issue [wa]s the proper interpretation of §§ 1225(b), 1226(a), and 1226(c)," 583 U.S. at 289, the Supreme Court's explanation in *Jennings* of § 1225's scope should guide the Court's analysis here. Five key points from *Jennings* are set forth below:

1) **Section 1225 applies to "applicants for admission," a term that includes noncitizens who are unlawfully present and never admitted.**

Section 1225 provides, in relevant part, that "[a]n alien present in the United States who has not been admitted … shall be *deemed* for purposes of this chapter [to be] an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). The *Jennings* Court confirmed that § 1225 applies to "applicants for admission," and that this term applies to *both* (a) an "arriving alien," as well as (b) an individual who is *present* in the United States but has not been "admitted" through

a lawful entry at a port of entry.[4]

The Court in *Jennings* recognized that the statute uses the term "applicant for admission" as a term of art. "Under … 8 U.S.C. § 1225, an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is *treated as* 'an applicant for admission.'" 583 U.S. at 287 (emphasis added). In other words, noncitizens who are present in the country and were never lawfully admitted are "treated as"—in the words of § 1225(a)(1), they are "deemed" to be—"applicants for admission."

2) "Applicants for admission" are not limited to noncitizens who have submitted an immigration application.

The *Jennings* Court's discussion of "applicant for admission" as a term of art made clear that the term "applicant for admission" is not limited to noncitizens who have submitted an immigration application. Rather, there are two criteria to be an applicant for admission: "an alien who [1] 'is present' in this country but [2] 'has not been admitted' is *treated as* 'an applicant for admission.'" *Id.* at 287 (emphasis added, marks added).

The Court commented later in its opinion that "[i]n sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)." *Id.* at 289. But the reference to "aliens seeking admission" did not add a new "seeking admission" criterion for § 1225. Rather, this reference reflected the Court's prior explanation that noncitizens who fall within §§ 1225(b)(1) and (b)(2) are, as a matter of law, "treated as" "applicants for admission." *Id.* at 287.

---

[4] The INA defines "admission" to mean "lawful entry" after "inspection and authorization by an immigration officer"—such as may occur at a port of entry. *Id.* § 1101(a)(13)(A) (defining "admission" and "admitted" as "the lawful entry of the alien into the United States *after inspection and authorization* by an immigration officer" (emphasis added)).

Indeed, § 1225 elsewhere recognizes that the *status* of being an applicant for admission is one way that a noncitizen may be "seeking admission." It states, "All aliens … who are applicants for admission *or otherwise seeking admission* … shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). Section 1225 thus confirms that a noncitizen can seek admission simply by meeting the definition of an applicant for admission *or* can "otherwise" seek admission by directly applying for admission.

3) Section 1225(b) applies to all applicants for admission, not just arriving aliens or those who unlawfully entered the country recently.

The *Jennings* Court's discussion of § 1225's scope indicates that "applicants for admission" does not somehow *exclude* those who entered without inspection years ago. The Court explained that § 1225(b)(1) applies to two subcategories of applicants for admission. One subcategory applies to those arriving noncitizens who have been "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." 583 U.S. at 287 (citing § 1225(b)(1)(a)(i)). Another subcategory applies to certain noncitizens who are: (1) designated by the Attorney General in her discretion; (2) unlawfully present without being admitted; and (3) recent arrivals. That is, it applies to those who have "not been admitted or paroled into the United States, and … ha[ve] 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 under this subparagraph." *See Jennings*, 583 U.S. at 287; § 1225(b)(1)(A)(iii). Noncitizens in those two subcategories are subject to "expedited removal." *Jennings*, 583 U.S. at 287 ("Aliens covered by § 1225(b)(1) are normally ordered removed 'without further hearing or review' pursuant to an expedited removal process." (quoting 8 U.S.C. § 1225(b)(1)(A)(i)).

The Court then explained that *all* applicants for admission who fall outside those narrow two subcategories are covered by the *second* subsection of § 1225(b)—§ 1225(b)(2). It described § 1225(b)(2) as a "*catchall* provision that applies to *all* applicants for admission not covered by § 1225(b)(1)." *Id.* at 287 (emphases added).

Thus, a noncitizen who meets the general definition of "applicant for admission" (such as an individual who is unlawfully present and has not been admitted) but does not fall within the two § 1225(b)(1) subcategories described above is still an "applicant for admission" who falls under the "catchall" provision of § 1225(b)(2).

4) In § 1225, Congress did not grant applicants for admission a right to a bond hearing.

The Court in *Jennings* recognized that § 1225 does not provide for a bond hearing. It explained that Congress provided that aliens covered by § 1225(b)(2) generally "shall be detained" during their removal proceedings, with narrow exceptions. 583 U.S. at 287-88 (quoting 8 U.S.C. § 1225(b)(2)(A)). Under § 1225(b)(2)(A), all other applicants for admission whom an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings under 8 U.S.C. § 1229a.

5) Section 1226, in contrast, provides for detention, and bond hearings, for other categories of noncitizens subject to removal.

The *Jennings* Court recognized that a different statutory provision—§ 1226(a)— governs the detention of other noncitizens, including those who had been "admitted." As the Court explained,

> Even once inside the United States, aliens do not have an absolute right to remain here. For example, an alien present in the country may still be removed if he or she falls 'within one or more … classes of deportable aliens.' § 1227(a). That includes

> aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission. See §§ 1227(a)(1), (2).

583 U.S. at 288. Thus, § 1226(a) extends to those who were admitted.

The Court did *not* suggest that § 1226(a) governs the detention of noncitizens who are covered by § 1225(b)(2). Rather, the Court appeared to recognize that these two provisions—§ 1225(b)(2) and § 1226(a)—authorize detention for *different* sets of individuals: the detention of noncitizens covered by § 1225 is authorized by § 1225, and *other* individuals in the country not covered by § 1225 may be detained under § 1226:

> U.S. immigration law authorizes the Government to detain certain aliens seeking admission into 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).

583 U.S. at 289. In distinguishing between these detention authorities, the *Jennings* Court did *not* suggest that noncitizens who are properly covered by § 1225 (where Congress has not authorized bond) should instead governed by the detention authority set forth in § 1226(a)—the provision where Congress *has* expressly authorized bond.

ARGUMENT

As explained above, § 1225(b)(2) applies to "applicants for admission," which include noncitizens who entered without inspection and have been present in the country for more than two years. Here, Petitioner is present in the country but has not been "admitted"—*i.e.*, he has not made a "lawful entry … after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A); *see* ECF No. 1 ¶ 1; Ex. A ¶¶ 4-6. The Supreme Court's explanation in *Jennings* of the scope of § 1225 shows that a noncitizen in Petitioner's position is treated as an "applicant for admission." Moreover, § 1225(b)(2)(A) mandates detention for a noncitizen "who

is an applicant for admission" if he is "not clearly and beyond a doubt entitled to be admitted." In short, the text of the statute supports detention without bond under § 1225.

Petitioner argues that § 1225(b)(2)(A) does not apply to him, contending that Respondent's interpretation of § 1225 and § 1226 is contrary to the text of those provisions. *See* ECF No. 1 ¶¶ 3-5. Consequently, he argues his detention without a bond hearing violates due process. *Id.* ¶¶ 28-29. Additionally, he asserts that he is a member of a nationwide class certified in *Maldonado Bautista*, where the court recently entered declaratory judgment. *Id.* ¶ 6.

For the reasons set forth below, the Court should reject these arguments.

I. There is no violation of the INA because Petitioner is subject to § 1225(b)(2)(A).

"When interpreting the language of a statute, the starting point is always the language of the statute itself." *McGraw v. Barnhart*, 450 F.3d 493, 498 (10th Cir. 2006) (*quoting United States v. Quarrell*, 310 F.3d 664, 669 (10th Cir. 2002)). As the *Jennings* Court explained, by its terms § 1225 applies to "applicants for admission," a term of art encompassing *both* those just arriving in the United States *and* those who entered without inspection.

For example, § 1225(b)(1)(A)(i) is not limited to noncitizens "arriving in the United States" who are rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Instead, § 1225(b)(1)(A)(i) also applies, through its reference to § 1225(b)(1)(A)(iii), to some noncitizens who have *already* been residing in the United States and are inadmissible for the same reasons—that is, applicants for admission who have "not been admitted or paroled" and have not "affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this

subparagraph." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

In *Jennings*, the Supreme Court expressly recognized that § 1225(b)(2), which refers to a "broader" category of noncitizens than those described in § 1225(b)(1), applies to all "applicants for admission" who do not fall within § 1225(b)(1). The Court stated that § 1225(b)(2) is a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)." 583 U.S. at 287 (emphasis added). Accordingly, § 1225(b)(2) applies *both* to applicants for admission just arriving at the border who do not fall within Section 1225(b)(1)(A)(i) *and* to applicants for admission who have been physically present in the United States but are not covered by § 1225(b)(1)(A)(iii)(II).

II. Petitioner has been afforded due process as required under § 1225(b)(2)(A).

Petitioner alleges that his detention without a bond hearing violates his due process rights under the Fifth Amendment. ECF No. 1 ¶¶ 28-29. This argument fails because Petitioner is subject to detention under 8 U.S.C. § 1225(b)(2)(A), as discussed, and he has received the due process set forth by statute.

To show that he has been denied due process, Petitioner must show that he has been deprived of a statutory right. The Supreme Court has "often reiterated" the "important rule" that for "foreigners who have never been … admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020). There, the Court explained that an alien who was an "applicant for admission" had "only those rights regarding admission that Congress has provided by statute," and "the Due Process Clause provides nothing more." *Id.* at 140.

Second, Petitioner has not shown any prejudice. He has not shown that he is being denied procedures in his immigration proceedings, where he can challenge the determination that § 1225(b)(2)(A) applies. He thus has not shown a procedural due process violation. *See Duran-Hernandez v. Ashcroft*, 348 F.3d 1158, 1163 (10th Cir. 2003) (where a noncitizen failed to show "that additional procedural safeguards would have changed" the immigration court's decision, this "failure to prove prejudice leads us to reject [his] due process claim"). As another Court in this District has explained in analyzing a due-process challenge to immigration detention, "so long as the government reasonably affords noncitizen detainees in ongoing immigration proceedings administrative process to challenge the *merits* determinations that are keeping them in custody, continued custody is permissible." *Bonilla Espinoza v. Ceja*, Civil Action No. 25-cv-01120-GPG (D. Colo. May 21, 2025), ECF No. 11 at 13.

Third, in *Demore v. Kim*, 538 U.S. 510, 513 (2003), the Supreme Court explained that noncitizens who were convicted of certain crimes may be detained during the entire course of their removal proceedings. In that case, like this one, Congress mandated detention pending removal proceedings. *See id.*; 8 U.S.C. § 1226(c). The Court reasoned that the "definite termination point" of the detention at the end of removal proceedings assuaged any constitutional concern about the length of detention. *See Demore*, 538 U.S. at 512.

The same is true here. Petitioner is detained in immigration while his immigration case is adjudicated by the Executive Office for Immigration Review. *See* Ex. A ¶¶ 10-33. Congress's decision to detain him pending removal is a "constitutionally permissible part of th[is] process." *See Demore*, 538 U.S. at 531.

III. No nationwide declaratory relief entitles Petitioner to a bond hearing or release.

Petitioner claims that he falls within the nationwide class certified in *Bautista*, No. 5:25-CV-1873 (C.D. Cal.). ECF No. 1 ¶ 6. On December 18, 2025, that court issued declaratory judgment as part of a grant of partial final judgment. *See* No. 25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025) (ECF No. 92). That decision is now on appeal. Even assuming *arguendo* that Petitioner is included in the *Bautista* class, this Court should not grant preclusive effect to the District Court's decision, for four reasons.

First, for a prior judgment to have preclusive effect, it must be "entered by a court of competent jurisdiction." *N. Nat. Gas Co. v. Grounds*, 931 F.2d 678, 683 (10th Cir. 1991); *see* Restatement (Second) of Judgments § 1 (1982). Here, the *Bautista* court lacked jurisdiction to determine the legality of Petitioner's detention. That court addressed whether class members were unlawfully detained under 8 U.S.C. § 1225(b)(2), and such a challenge to the legality of detention can only be brought in habeas. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). Under habeas principles, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld*, 542 U.S. at 443. And a habeas petitioner must name his immediate custodian. *Id.* at 435. The *Bautista* court thus lacked jurisdiction to determine the legality of the detention of class members like Petitioner confined outside the Central District of California. That court also lacked jurisdiction to grant a declaratory judgment in a class action to determine a preliminary issue that class members then rely on to seek relief in individual habeas actions. *See Calderon v. Ashmus*, 523 U.S. 740, 747 (1998).

Second, while courts have "discretion to determine when [offensive collateral estoppel] should be applied," *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329-31 (1979), offensive

collateral estoppel is disfavored when applied against the federal government, *see United States v. Mendoza*, 464 U.S. 154, 159 (1984) (recognizing that the federal government's unique position weighs against "a broad application of collateral estoppel").

Third, the existence of prior inconsistent judgments weighs against applying issue preclusion. *Parklane Hosiery*, 439 U.S. at 330-31. District courts have interpreted 8 U.S.C. § 1225(b)(2) differently from the *Bautista* court. *See, e.g.*, *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (citing cases). These varying rulings support not giving the *Bautista* judgment preclusive effect. *See* Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12, at 11 & 28.

Fourth, the pendency of an appeal to the Ninth Circuit of the district court's *Bautista* decision supports not giving that decision preclusive force at this time. While the mere "pendency of an appeal does not prevent application of the collateral estoppel doctrine," *Ruyle v. Cont'l Oil Co.*, 44 F.3d 837, 846 (10th Cir. 1994), applying preclusive force to a judgment that has been appealed can cause difficulty because a judgment that is reversed "is thereby deprived of all conclusive effect," *United States v. Lacey*, 982 F.2d 410, 412 (10th Cir. 1992). Courts thus should strive to avoid this "evil result[]." 9 A.L.R.2d 984. When a prior judgment has been appealed, the second court may hold the "disposition in abeyance until the pending appeal [is] resolved." *Ruyle*, 44 F.3d at 846. Indeed, "strong reasons must be found to justify proceeding with the second action pending appeal from the first judgment." C. Wright, 18A Federal Practice & Procedure § 4433. Here, if this Court is inclined to grant collateral estoppel effect to the *Bautista* decision, it should hold its decision in abeyance until the Ninth Circuit rules.

Based on these factors, this Court should decline to accord the *Bautista* decision preclusive effect as to Petitioner. Rather, this Court should address the proper scope of § 1225(b)(2) based on the analysis above.

CONCLUSION

For the reasons discussed above, the Court should deny the Petition.

DATED: December 30, 2025

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Katherine A. Ross
Katherine A. Ross
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Phone: (303) 454-0286
Email: katherine.ross@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Katherine A. Ross
U.S. Attorney's Office