UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

MARTIN RAUL DIAZ APARICIO,	:	
Petitioner	:	
	:	**3:25-cv-2413**
v.	:	**(Judge Saporito)**
	:	
CRAIG LOWE, Warden	:	
Respondent	:	**Filed Electronically**

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

I. Introduction

This is a habeas action filed by Petitioner Dashan Diaz Aparicio, an undocumented alien, who is currently in separate removal proceedings before the Executive Office of Immigration Review Immigration Court and challenges his temporary detention while he appeals his removal order.

Numerous provisions of 8 U.S.C. §1252 deprive this Court of jurisdiction to review Petitioner's claims and preclude this Court from granting the relief he seeks, release. Congress has unambiguously stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including detention pending removal proceedings. Congress further directed that any challenges arising from any removal-related activity—including detention pending removal proceedings—must be brought before the appropriate court of appeals, not a district court. Also, this Court cannot provide any relief that would restrain the operation of Sections 1225(b)(2) or 1226(a). However, that is exactly what the Petitioner is

requesting here. As such, this Court should dismiss Petitioner's habeas Petition on jurisdictional grounds.

Even if these jurisdictional hurdles could be overcome, Petitioner has failed to exhaust his administrative remedies. He has skipped the administrative process by not asking for a bond hearing from an immigration judge and rather, asks this Court to hold bond hearing, which completely ignores the whole immigration bond process.

Alternatively, if this Court exercises its jurisdiction and ignores Petitioner's failure to exhaust his administrative remedies, his habeas Petition should still be denied as Petitioner is challenging a lawfully enacted regulation (8 C.F.R. § 1003.19(i)(2)) authorizing his detention through an automatic stay, but critically, that automatic stay merely implements detention Congress authorized under 8 U.S.C. § 1225(b)(2). Therefore, to grant his habeas Petition, Petitioner asks this Court to set aside a lawfully enacted regulation and statute, finding both unconstitutionally applied, as alleged violations of the Due Process Clause of the United States Constitution. But as discussed below, the Supreme Court has long recognized Congress's broad power and immunity from judicial control to expel aliens from the country and to detain them while doing so. *See e.g., Shaughnessy v. United States*, 345 U.S. 206, 210 (1953); *Carlson v. Landon*, 342 U.S. 524, 538 (1952). The United States' temporary detention of Petitioner in no way exceeds this

broad authority and does not deprive Petitioner of Due Process. *See Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."). Because Petitioner's temporary detention is lawful, his habeas Petition should be denied.

Finally, Petitioner claims that he is a *Bautista* case class member and *Baustista* has a preclusive effect. (Doc. 1 (Pet.) at ¶¶1-10.) It would not be proper to impose *res judicata* effect on a class-wide basis while the declaratory judgment in the *Bautista* case is pending on appeal.

II. Statutory Framework

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Unlawfully Present in the United States.

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.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what

type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearing and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

Thus, the INA's prior framework distinguishing between aliens based on physical "entry" had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection … were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v . Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("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").

B. IIRIRA Eliminated the Preferential Treatment of Aliens Unlawfully Present in the United States and Mandated Detention of all "Applicants for Admission."

Congress discarded that regime through enactment of IIRIRA, Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). 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." 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. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum v. Holder*, 602 F.3d at 1100 (similar). IIRIRA also

eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

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).[1] *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

[1] Subsection (b)(2) does not apply to (1) aliens subject to expedited removal, (2) crewmen, (3) stowaways, or (4) aliens who "arriv[e] on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States." 8 U.S.C. § 1225(b)(2)(B)-(C).

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).[2]

That "default rule," however, does not apply to certain criminal aliens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain

[2] Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The Executive must detain these aliens "when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense." *Id.*

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are "charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

C. DHS Concluded That Section 1225(b)(2) Requires Detention of All Applicants for Admission.

For many years after IIRIRA, immigration judges treated aliens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6.

On July 8, 2025, DHS revisited its legal position on detention and release authorities and issued interim guidance that brought the Executive's practices in line with the statute's plain text. Specifically, DHS concluded that all aliens who enter the country without being admitted or who otherwise arrive in the United States without proper documentation are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) parole. As a result, the only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under the INA § 236(a) [8 U.S.C. § 1226(a)] are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1127].

The Board of Immigration Appeals soon adopted this interpretation in *Hurtado*. The Board concluded that Section 1225(b)(2)'s mandatory detention regime applies to *all* aliens who entered the United States without inspection and admission:

> Aliens … who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United State for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission."

29 I. & N. Dec. at 228; see also id. at 225 ("Immigration Judges lack authority to hear bond requests or to grant bond to aliens … who are present in the United States without admission").

III. Factual and Procedural Background

Petitioner is a native and citizen of Venezuela who entered the United States at or near Eagle Pass, Texas on or about December 20, 2023. Exhibit 1, Notice to Appear.

The Notice to Appear charges the Petitioner as inadmissible pursuant to 8 U.S.C. §1182(a)(6)(A)(i) because he entered the country without being admitted or paroled. *Id.*

In April of 2024, Petitioner applied for asylum, which application is still pending. (Doc. 1 (Pet.) at ¶¶32-33.)

Petitioner has an upcoming master's hearing on December 22, 2025. Exhibit 2, EOIR Automated Case Information for Diaz Aparicio.

On November 21, 2025, Petitioner was detained. (Doc. 1 (Pet.) at ¶34.)

Petitioner challenged his temporary detention pursuant to the automatic stay by filing a habeas action on December 15, 2025. Doc. 1. On December 16, 2025, this Court directed Respondent to file a response to the habeas Petition by December 23, 2025. Doc. 6. This response is timely filed to the habeas Petition.

IV. Argument

A. Standard of Review.

In a petition for a writ of habeas corpus, the Petitioner is challenging the legality of his restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on

the Petitioner to show the confinement is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). Specifically, here, Petitioner challenges his temporary civil immigration detention pending his removal proceeding.

Judicial review of immigration matters, including of detention issues, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489-492 (1999); *Miller v. Albright*, 523 U.S. 420, 434 n.11 (1998); *Fiallo v. Bell*, 430 U.S. 787, 792 (1977); *Reno v. Flores*, 507 U.S. 292, 305 (1993); *Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("the power over aliens is of a political character and therefore subject only to narrow judicial review"). The Supreme Court has thus "underscore[d] the limited scope of inquiry into immigration legislation," and "has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo*, 430 U.S. at 792 (internal quotation omitted); *Matthews v. Diaz*, 426 U.S. 67, 79-82 (1976); *Galvan v. Press*, 347 U.S. 522, 531 (1954).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute

exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (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."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.")

Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2) and must therefore make a strong showing to demonstrate that his continued detention violates the Constitution or laws of the United States. *See United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953) ("This Court does and should accord a strong presumption of constitutionality to Acts of Congress. This is not a mere polite gesture. It is a deference due to deliberate judgment by constitutional majorities of the two Houses of Congress that an Act is within their delegated power or is necessary and proper to execution of that power"); *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 402 F. Supp. 251, 254 (E.D. Pa. 1975) ("[D]efendants here carry a heavy burden, for a strong presumption of validity attaches to an Act of Congress.").

Petitioner's habeas Petition should be denied because: (1) this Court lacks jurisdiction to intervene in his removal proceedings, (2) he has failed to exhaust

administrative remedies, (3) he is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2), (4) his detention does not offend due process, and (5) the *Bautista* court's decision does not constitute a final declaratory judgment and it does not have any binding effect here.

B. The District Court Lacks Jurisdiction to Intervene in Removal Proceedings.

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction to address his claims. *See Erie Ins. Exch. by Stephenson v. Erie Indem. Co.*, 68 F.4th 815, 818 (3d Cir. 2023), *cert. denied*, 144 S. Ct. 1007 (2024); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). He cannot meet this burden because his claims are jurisdictionally barred under 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a).

First, Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and

1651 of such title."[3] Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) also bars district courts from hearing challenges to the *method* by which the Secretary of DHS chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings").

Petitioner's claims stem from his detention during removal proceedings. That detention arises from the decision to commence such proceedings. *See, e.g.*, *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings[.]"); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL

[3] Congress initially passed Section 1252(g) in the IIRIRA, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended Section 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311.

11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

As other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). As such, judicial review of the claim that Petitioner is entitled to bond is barred by Section 1252(g). This Court should dismiss the Petition for lack of jurisdiction.

Second, under Section 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-*

Discrimination Comm., 525 U.S. 471, 483 (1999). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, Section 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

> Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir.

2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[Section] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders,

including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the government's decision and action to detain, which arises from DHS's decision to commence removal proceedings against an arriving alien and is thus an "action taken . . . to remove [them] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, this Court lacks jurisdiction over this action.

The reasoning in *Jennings* outlines why Petitioner's claims are unreviewable here. While holding that it was unnecessary to comprehensively address the scope of Section 1252(b)(9), the Supreme Court in *Jennings* also provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioner *does* challenge

the government's decision to detain him in the first place. Though Petitioner may attempt to frame this challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain him pending his removal proceedings in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, the fact that Petitioner is challenging the basis upon which he is detained is enough to trigger Section 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9).

Third, § 1252(a)(2)(B)(ii) provides that "no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B).

Thus, even if there were any remaining ambiguity as to whether a foreign national could challenge the decision to detain him during removal proceedings, Congress added this additional jurisdictional bar to clarify that courts may not entertain a challenge to a discretionary decision under the INA.

Other district courts have found that the immigration court lacked jurisdiction under § 1225. *See Chavez v. Noem*, --- F.Supp.3d ---, 2025 WL 2730228 (S.D. Cal.

Sept. 24, 2025) (denying application for temporary restraining order and preliminary injunction because Petitioner could not demonstrate a likelihood of success on the merits due to lack of jurisdiction under § 1225); *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas petition and finding it was unnecessary to reach the automatic stay provision because petitioner was lawfully detained under § 1225). Therefore, this Court should dismiss the habeas Petition for lack of jurisdiction.

C. Additionally, Petitioner Failed to Exhaust Administrative Remedies.

While the government does not dispute that the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), controls as to the applicability of § 1225(b)(2)—and by extension the availability of a bond hearing—the existence of this decision should not nullify the entire administrative process, nor should it allow an alien in Petitioner's position the ability to skip this process entirely and proceed directly to the district court for immediate review.

The regulatory process Congress created affords Petitioner the opportunity to redress his concerns administratively. Following it would provide the court of appeals a complete record should he ultimately seek review. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) ("exhaustion promotes efficiency, including by encouraging parties to resolve their disputes without litigation"); *Laguna Espinoza v. Director of Detroit Field Office*, Civ. No. 25-2107, 2025 WL 2878173, at *3 (N.D.

Cal. Oct. 9, 2025) (dismissing habeas petition challenging detention under § 1225(b) for failure to exhaust). Petitioner's failure to exhaust should cause this Court to dismiss the habeas Petition in favor of the administrative process.

Exhaustion is particularly appropriate because agency expertise is required as to the applicability of § 1225(b) as opposed to § 1226(a). "[T]he BIA is the subject-matter expert in immigration bond decisions." *Aden v. Nielsen*, Civ. No. 18-1441, 2019 WL 5802013, at *2 (W.D. Wash. Nov. 7, 2019). The BIA is well-positioned to assess how agency practice affects the interplay between 8 U.S.C. §§ 1225 and 1226. *See Delgado v. Sessions*, Civ. No. 17-1031, 2017 WL 4776340, at *2 (W.D. Wash. Sept. 15, 2017) (noting a denial of bond to an immigration detainee was "a question well suited for agency expertise"); *Matter of M-S-*, 27 I&N Dec. 509, 515-18 (2019) (addressing interplay of §§ 1225(b)(1) and 1226).

Waiving exhaustion would also "encourage other detainees to bypass the BIA and directly appeal their no-bond determinations from the IJ to federal district court." *Aden*, 2019 WL 5802013, at *2. Individuals, like Petitioner, would have little incentive to seek relief before the BIA if this Court permits review here. And allowing a skip-the-BIA-and-go-straight-to-federal-court strategy would needlessly increase the burden on district courts. Indeed, exhaustion promotes judicial efficiency by reserving the courts' resources for matters that cannot be resolved administratively. *MacKay v. U.S. Veterans Admin.*, Civ. No. 03-6089, 2004 WL

1774620, at *4, n. 8 (E.D. Pa. Aug. 5, 2004), *aff'd*, 115 F. App'x 601 (3d Cir. 2004); *Biear v. Att'y Gen. United States,* 905 F.3d 151, 156 (3d Cir. 2018) ("Generally, the law requires exhaustion of administrative remedies before a plaintiff may seek relief in district court."); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 418 (2023) (noting "exhaustion promotes efficiency").

Because Petitioner has not exhausted his administrative remedies, this matter should be dismissed or stayed.

D. Alternatively, if This Court Decides to Exercise Jurisdiction Here, Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted.

Under the plain language of Section 1225(b)(2), DHS is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text.").

i. The Plain Language of Section 1225(b)(2) Mandates Detention of Applicants for Admission.

Section 1225(a) defines "applicant for admission" to encompass an alien who either "arrives in the United States" or who is "present in the United States who has

not been admitted." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.

In turn, Section 1225(b)(2) provides that "an alien who is an applicant for admission" "shall be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1125(b)(2)(A) (emphasis added). The statute's use of the term "shall" makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception for the duration of the alien's presence in the country or where in the country he is located. Therefore, the statute's plain text mandates that DHS detain all "applicants for admission" who do not fall within one of its exceptions.

Petitioner falls squarely within the statutory definition. He was "present in the United States," and there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a); *see* Doc. 1 at 1, ¶2. Moreover, Petitioner cannot—and did not—establish that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C.

§ 1225(b)(2)(A). Therefore, Petitioner "shall be detained for a proceeding under [8 U.S.C. § 1229a]."

ii. Section 1225(b)(2)'s Reference to Aliens "Seeking Admission" Does Not Narrow Its Scope.

It is undisputed that Petitioner is an "applicant for admission" under Section 1225(b)(2). The statute itself makes clear that an alien who is an "applicant for admission" *is* necessarily "seeking admission." Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is "seeking admission" under any interpretation of that phrase particularly since he could only remain in the United States by gaining admission.

1. Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining 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). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission"—no additional affirmative step is necessary. In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to pursue voluntary withdrawal or voluntary departure.

Section 1225(a) provides that "[a]ll aliens … who are applicants for admission *or otherwise* seeking admission or readmission … shall be inspected." 8 U.S.C.

§ 1225(a)(3) (emphasis added). The word "[o]therwise' means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Att'y Gen. of United States v. Wynn*, 104 F.4th 348, 354 (D.C. Cir. 2024) (same); *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"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 482-83 (7th Cir. 2019). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of Section 1252(b)(2)(A). No separate affirmative act is necessary. *See 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").

This reading is consistent with the everyday meaning of the statutory terms. 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. *Compare* Webster's New World College Dictionary 69 (4th ed.) ("apply" means "To make a formal request (*to* someone *for* something)"), *with id.* at 1299 ("seek" means "to request, ask for"). For example, a person who is

"applying" for admission to a college or club is "seeking" admission to the college or club. *See* The American Heritage Dictionary of the English Language 63 (1980) ("American Heritage Dictionary") ("apply" means "[t]o request or *seek* employment, acceptance, or *admission*") (emphasis added). Likewise, an alien who is "applying" for admission to the United States (*i.e.*, an "applicant for admission") is "seeking admission" to the United States. And that's true even when the alien has been physically present in the country for many years, as that alien can "still be an applicant for *lawful* entry, seeking legal 'admission.'" *Mejia Olalde*, 2025 WL 3131942, at *3. As the geographic and temporal limits in the neighboring provision, Section 1225(b)(1), demonstrate, "[i]f Congress meant to say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Id.* at *4.

None of this is to say, however, that "seeking admission" has no meaning beyond "applicant for admission." As Section 1225(a)(3) shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," — not the exclusive way. For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be "seeking admission." *See* 8 U.S.C. § 1103(A)(13)(C). But for purposes of Section 1225(b)(2) and its regulation of "applicants for admission," the statute unambiguously provides that an alien who is an "applicant for admission" is

"seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

To be sure, the Government previously operated under a narrower understanding of Section 1225(b)(2)(A), such that aliens present in the United States who had entered without admission were instead detained under Section 1226(a). But past practice does not justify disregard of clear statutory language. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 329 (2015). Indeed, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that it deemed incompatible with statutory text. *See Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court therefore must always interpret the statute "as written," *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019), and here the statute as written requires detention of *any* applicant for admission, regardless of whether the applicant is taking affirmative steps toward admission. A "nontextual" practice cannot upend that plain statutory meaning. *Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the Government's prior understanding as "nontextual" and unsupported by any "thorough, reasoned analysis").

2. An "applicant for admission" covers a subset of aliens "seeking admission." The phrase "in the case of an alien who is an applicant for admission," offset at the beginning of Section 1225(b)(2)(A), therefore modifies and narrows the

scope of the remaining language—"if the examining immigration officer determines that an alien seeking admission is not . . . entitled to be admitted, the alien shall be detained." The structure of the provision indicates that any such redundancy simply serves to make the provision more readable. This is not a case where the additional language serves to limit the provision's scope.

And in any event, "[t]he canon against surplusage is not an absolute rule." *Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019). "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." *Barton v. Barr*, 590 U.S. 222, 223 (2020). Thus, "[t]he Court has often recognized that sometimes the better overall reading of a statute contains some redundancy." *Id.* For that reason, "the surplusage cannon … must be applied with statutory context in mind," *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017), and "redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton*, 590 U.S. at 223.

That is the case here. Under a straightforward reading of the statute, being an "applicant for admission" is "seeking admission." Although that reading may lead to some redundancy in Section 1225(b)(2)(A), that is "not a license to rewrite" Section 1225 "contrary to its text." *Barton*, 590 U.S. at 223; *see Heyman v. Cooper*,

31 F.4th 1315, 1322 (11th Cir. 2022) ("The principle [that drafter do repeat themselves carries extra weight where … the arguably redundant words that the drafters employed … are functional synonyms"). And that is especially true, where that re-writing would be so clearly contrary to Congress's objective in passing the law.

3. Even if "seeking admission" required some separate affirmative conduct by the alien, an applicant for admission who attempts to avoid removal from the United States, rather than trying to voluntarily depart, is by any definition "seeking admission."

Section 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, even for years. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, Section 1225(b)(2) is not concerned with the alien's pre-inspection conduct. Rather, the statute's use of present tense language ("seeking" and "determines") shows that its focus is a specific point in time—when "the examining immigration officer" is making a "determin[ation]" regarding the alien's admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is "seeking"—*i.e.*, presently "endeavor[ing] to obtain," American Heritage Dictionary, *supra*, at 1174—admission into the United States; if it were otherwise, the applicant would not attempt to show that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). That inference

is confirmed by Section 1225(a)(4), which authorizes an alien to voluntarily "depart immediately from the United States." An applicant who forgoes that statutory option and instead endeavors to prove admissibility and opts for Section 240 removal proceedings—proceedings in which the alien has the "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted," *id.* § 1229a(c)(2)(A)—is plainly "endeavor[ing] to obtain" admission to the United States. American Heritage Dictionary, *supra*, at 1174.

Other statutory provisions discussed *supra* provide even further support. Congress made clear that any "alien present in the United States who has not been admitted" is "deemed . . . an applicant for admission." 8 U.S.C. § 1225(a)(1). And the statute's use of "otherwise" when referring to aliens "who are applicants for admission or *otherwise* seeking admission," *Id.* § 1225(a)(3), makes clear that all applicants for admission are seeking admission. Accordingly, an alien's presence in the United States without lawful admission is *itself* an act of seeking admission, whether that alien is present in southern Texas or western Nebraska.

Here, Petitioner is seeking admission as his removal proceeding is continuing and pending. *See* Ex. 2, EOIR Automated Case Information for Diaz Aparicio.

A contrary view would make mandatory detention turn on the fortuity happenstance of when an alien attempts to prove admissibility. *See United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not "presume lightly" that statute's

application will turn on "arbitrary" issue of timing). Aliens subject to Section 1225(b)(2) must prove admissibility at one of two stages—first, at the time of inspection, 8 U.S.C. § 1225(b)(2)(A); and second, during Section 240 removal proceedings if the alien cannot show admissibility "clearly and beyond a doubt" at the time of inspection, *id.* § 1229a(c)(2)(A) (alien has "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted"). The required showing is the same. Because attempting to show admissibility is the sort of act that demonstrates an alien is "seeking admission," detention is required only of aliens who attempt to show admissibility at the time of inspection, but not of those who wait until removal proceedings are commenced. There is "no reason why Congress would desire" the applicability of something so significant as mandatory detention "to depend on the timing" of when an alien attempts to show admissibility, *Wilson*, 503 U.S. at 334—particularly given how susceptible that rule is to manipulation by the alien.

Although the Third Circuit has not yet ruled on whether an alien like Petitioner may be detained under § 1225(b)(2), district courts in Pennsylvania and New Jersey (and elsewhere) have generally ruled contrary to the government's reading of the statute. *See Patel v. McShanel*, 2025 WL 3241212 (E.D. Pa. 2025); *Nidaye v. Jamison*, 2025 WL 3229307 (E.D. Pa. 2025); *Kashranov v. Jamison*, 2025 WL 3188399 (E.D. Pa. 2025); *Cantu-Cortes v. O'Neill*, 2025 WL 3171639, at *1-2 (E.D.

Pa. 2025). However, these courts effectively read into the statute a limitation that is simply not there—that § 1225(b)(2) only applies to applicants for admission who are actively seeking to enter the United States, typically near the border. *See, e.g., Kashranov*, 2025 WL 3188399, at *6; *see also Bethancourt Soto v. Louis Soto,* Civ. No. 25-16200, 2025 WL 2976572 (D. N.J. Oct. 22, 2025).

The statute itself does not contain any such limitation. *See* 8 U.S.C. § 1225(a) (defining applicant for admission as either "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . .") (emphasis added). Further, Congress defined *all* aliens who are present in the United States without being admitted as "applicant[s] for admission," regardless of when they entered. *See* 8 U.S.C. § 1225(a)(1). When an immigration officer encounters and examines an applicant for admission who seeks to remain in the United States, and that alien (like Petitioner) desires to remain in the United States, he is necessarily "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A). Otherwise, the alien must "withdraw the application for admission and depart immediately from the United States." 8 U.S.C. § 1225(a)(4). An alien continues to be "seeking admission" while in immigration removal proceedings to determine whether he can "be admitted to the United States." *See* 8 U.S.C. § 1229a(3); *In Re Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (recognizing that "many 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"). In other words, an "applicant for admission" is necessarily "seeking admission." *See Rojas v. Olson*, Civ. No. 25-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025); *but see Bethancourt Soto v. Soto*, Civ. No. 25-16200, 2025 WL 2976572, at *6 (D. N.J. Oct. 22, 2025).

iii. Section 1226(c) is Not Superflouous.

There is no colorable argument that the Government's interpretation of Section 1225(b)(2)(A) renders Section 1226(a)'s discretionary detention authority superfluous. Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings but provides that the Executive also "may release the alien" on bond or conditional parole. 8 U.S.C. § 1226(a). Section 1226(a) provides the detention authority for the significant group of aliens who are *not* "applicants for admission" subject to Section 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). For example, the detention of any of the millions of aliens who have overstayed their visas will be governed by Section 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

As described above, Section 1226(c) is the exception to Section 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien" who

is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions "when the alien is released" from another entity's custody. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Like Section 1226(a), subsection (c) applies to significant groups of aliens *not* encompassed by Section 1225(b)(2), such as visa overstayers or aliens who are lawfully present but have committed certain crimes.

Section 1226(c)(1) requires the Executive to detain aliens who *have been admitted* to the United States and are now "deportable." *See* 8 U.S.C. § 1226(c)(1)(B)-(C). By contrast, Section 1225(b)(2) has no application to admitted aliens. Next, Section 1226(c)(1) requires detention of aliens who are "inadmissible" on certain grounds, *see* 8 U.S.C. § 1226(c)(1)(A), (D), (E). Those provisions, too, sweep more broadly than Section 1225(b)(2), because they cover aliens who are inadmissible but were erroneously admitted. *See* 8 U.S.C. § 1227(a), (a)(1)(A) (providing for the removal of "[a]ny alien … in *and admitted to* the United States," including "[a]ny alien who at the time of entry or adjustment of status was within one or more of the classes of aliens *inadmissible* by the law existing at the time…." (emphasis added)). In this respect, Section 1226(c)(1) applies to admitted aliens, who are not covered by Section 1225(b)(2).

Finally, as noted above, Section 1225(b)(2)(A) does "not apply to an alien … who is a crewman," "a stowaway," or "is arriving on land … from a foreign territory contiguous to the United States." 8 U.S.C. 1225(b)(2)(B)-(C). Section 1226(c)

would apply to those aliens, too, if they were inadmissible or deportable on one of the specified grounds.

Nor does the Government's reading render superfluous Congress's recent amendment of Section 1226(c) through the Laken Riley Act. That law requires mandatory detention of criminal aliens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). As with the other grounds of "inadmissibility" listed in Section 1226(c), both (a)(6)(C) and (a)(7) apply to inadmissible aliens who were admitted in error, as well as those never admitted. That means there is no surplusage, as Section 1225(b)(2) has no application to aliens who were admitted in error.

To be sure, the Laken Riley Act's application to aliens who are inadmissible under §1182(a)(6)(A)—for being "present … without being admitted or paroled"—overlaps with Section 1225(b)(2)(A). Both statutes mandate detention of "applicants for admission" who fall within the specified grounds of inadmissibility. But again, "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton*, 590 U.S. at 223. And "even assuming there were surplusage, that cannot trump the plain meaning of [Section] 1225(b)(2)." *Mejia Olalde*, 2025 WL 3131942, at *4. That is particularly true here, where this portion of the Laken Riley Act overlaps with Section 1225(b)(2)(A), which recognizes that applicants for admission who are

"seeking admission" must be detained under Section 1225(b)(2)(A). *See Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute").

Besides, Sections 1225(b)(2) and 1226(c) use different language that reflects the distinct obligations each section imposes. Section 1226(c), which applies "when [a criminal] alien is released" from another entity's custody, specifies that the "Attorney General shall take into custody" the alien. That provision therefore directs the Executive to take affirmative steps to apprehend covered aliens when they are released from state or federal custody. *Id.*; *see Nielson v. Preap*, 586 U.S. 392, 414 (2019) (explaining that "the duty to arrest is triggered[] upon release from criminal custody"). Section 1225(b)(2), by contrast, applies "if an examining officer determines" that the alien "is not clearly and beyond a doubt entitled to be admitted," and directs that the alien "shall be detained." That distinct language does not itself impose an obligation on the Executive to apprehend such an alien; it applies once an examining officer has encountered an applicant for admission. *Id.* Each provision thus has independent application—one states that the Executive "shall take into custody" certain aliens in specified circumstances, insisting that the Executive prioritize certain criminal aliens for apprehension; the other states that an alien "shall be detained" once encountered by immigration officials. Because "Section 1226(c)

regulates not only *what* the Attorney General must do (take aliens into custody), but also *when* the Attorney General must do so," while Section 1225 "does not specify a timeline," the Government's reading of Section 1225 "does not render the Laken Riley Act superfluous." *Mejia Olalde*, 2025 WL 3131942, at *4.

Moreover, Section 1226(c) does additional independent work, despite any overlap, by narrowing the circumstances under which aliens may be *released* from mandatory detention. Recall that, for aliens subject to mandatory detention under Section 1225(b)(2), IIRIRA allows the Executive to "temporarily" parole them "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(b)(5). Section 1226(c)(1) takes that option off the table for aliens who have also committed the offenses or engaged in the conduct specified in Section 1226(c)(1)(A)-(E). As to those aliens, Section 1226(c) *prohibits* their parole and authorizes their release only if "necessary to provide protection to" a witness or similar person "and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding." 8 U.S.C. § 1226(c)(4). So even as to aliens who are already subject to mandatory detention under Section 1225(b)(2), Section 1226(c) is not superfluous: It significantly narrows the Executive's parole power with respect to those aliens.

In fact, Congress's desire to further limit the parole power with respect to criminal aliens was one of the principal reasons that it enacted the Laken Riley Act. The Act was adopted in the wake of a heinous murder committed by an inadmissible alien who was "paroled into this country through a shocking abuse of that power," 171 Cong. Rec. at H278 (daily ed. Jan. 22, 2025) (Rep. McClintock), and an abdication of the Executive's "fundamental duty under the Constitution to defend its citizens," 171 Cong. Rec. at H269 (Rep. Roy). The Act thus reflects a "congressional effort to be double sure," *Barton*, 590 U.S. at 239, that unadmitted criminal aliens are not paroled into the country through an abuse of the Secretary's exceptionally narrow parole authority. It does not suggest congressional uncertainty about Section 1225(b)(2)(A)'s detention mandate, but rather congressional desire to shut down a parole loophole that allowed the Government to circumvent that mandate.

iv. The Supreme Court's Decision in *Jennings* Does Not Undermine the Government's Interpretation.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under Sections 1225(b) and 1226. 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of

aliens subject to Section 1225(b) or Section 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of Section 1225(b) that "Section 1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1)." *Id.* at 287.

Some lower courts have rejected the Government's interpretation based on language in *Jennings* where the Court described the detention authorities in Section 1225(b) and Section 1226, and in that context summarized Section 1226 as applying to aliens "already in the country":

> In sum, 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; *see also id.* at 288 (characterizing Section 1226 as applying to aliens "once inside the United States"). The Government's interpretation is consistent with that language: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of aliens who are were admitted into the United States (and so are "in the country") but are now removable. Indeed, in context, the best reading of that language in *Jennings* is that the discussion refers to aliens who are "in and admitted to the United States." 8 U.S.C. § 1227(a). The opinion's reference to aliens "present in the country" specifically cites Section 1227(a), which covers only admitted aliens. *See* 583 U.S. at 288. Moreover, nothing in the quoted

language from *Jennings* suggests that Section 1226 is the *sole* detention authority that applies to "aliens already in the country." Indeed, the passage's use of the word "certain" conveys the opposite. At a minimum, the quoted language is ambiguous and such uncertain language is insufficient to displace the statute's plain text and the manifest congressional purpose. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023) (explaining that "the language of an opinion is not always to be parsed as though we were dealing with language of a statute," and instead "must be read with a careful eye to context" (citation omitted)). That is especially so as no part of the holding in *Jennings* required it to decide the precise scope of Sections 1225(b) and 1226.

As such, Petitioner remains an applicant for admission as he has not clearly and beyond doubt established that he is entitled to be admitted to the United States. Consequently, he is subject to mandatory detention under § 1225(b)(2) and ineligible for a bond hearing before an immigration judge.

E. Petitioner's Temporary Detention Does Not Offend Due Process.

As mentioned above, Congress broadly crafted "applicants for admission" to include undocumented aliens present within the United States like Petitioner. *See* 8 U.S.C. § 1225(a)(1). And Congress directed aliens like the Petitioner to be detained during their removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of

applicants for admission until certain proceedings have concluded."). In so doing, Congress made a legislative judgment to detain undocumented aliens during removal proceedings, as they—by definition—have crossed borders and traveled in violation of United States law. And as explained above, that is the prerogative of the legislative branch serving the interest of the Government and the United States.

The Supreme Court has recognized this profound interest. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."). And with this power to remove aliens, the Supreme Court has recognized the United States' longtime Constitutional ability to detain those in removal proceedings. *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (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."); *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."); *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) ("Congress has authorized immigration officials to detain some classes of aliens during the course of certain immigration proceedings. Detention during those proceedings gives

immigration officials time to determine an alien's status without running the risk of the alien's either absconding or engaging in criminal activity before a final decision can be made.").

In another immigration context (aliens already ordered removed awaiting their removal), the Supreme Court has explained that detaining these aliens less than six months is presumed constitutional. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). But even this presumptive constitutional limit has been subsequently distinguished as perhaps unnecessarily restrictive in other contexts. For example, in *Demore*, the Supreme Court explained Congress was justified in detaining aliens during the entire course of their removal proceedings who were convicted of certain crimes. 538 U.S. at 513. In that case, similar to undocumented aliens like Petitioner, Congress provided for the detention of certain convicted aliens during their removal in 8 U.S.C. § 1226(c). *See id.* The Court emphasized the constitutionality of the "definite termination point" of the detention, which was the length of the removal proceedings. *Id.* at 512 ("In contrast, because the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings,* the detention necessarily serves the purpose of preventing the aliens from fleeing prior to or during such proceedings. Second, while the period of detention at issue in *Zadvydas* was "indefinite" and "potentially permanent," *id.,* at 690–691, 121 S.Ct. 2491, the record shows that § 1226(c) detention not only has a

definite termination point, but lasts, in the majority of cases, for less than the 90 days the Court considered presumptively valid in *Zadvydas*.").[4] In light of Congress's interest in dealing with illegal immigration by keeping specified aliens in detention pending the removal period, the Supreme Court dispensed of any Due Process concerns without engaging in the "*Mathews v. Eldridge* test" *See id. generally*.

Following this precedent, the United States District Court for the District of Massachusetts (case mentioned above) dismissed a habeas action, finding that it was not a violation of due process to detain an undocumented alien during the course of his removal proceedings. *See Webert Alvarenga Pena, Petitioner, v. Patricia Hyde, et al., Respondents.*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) (highlighting the petitioner had been detained for 17 days leading up to the court's decision, far less than other detention times found constitutional in other cases).

Likewise, Petitioner's temporary detention pending his removal proceedings does not violate Due Process. He has been detained for one month and has not sought a bond hearing from an immigration judge.

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[4] In 2018 the Court again highlighted the significance of a "definite termination point" for detention of certain aliens pending removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018).

Nevertheless, this matter has now been determined by the BIA. In *Hurtado*, the BIA affirmed "the Immigration Judge's determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." 29 I. & N. Dec. 216, 220 (BIA 2025).

Indeed, Petitioner's arguments that the automatic stay violates Due Process weakens because Section 1225 calls for mandatory detention. Moreover, Respondent has an enormous interest in its use of detention, particularly in the context of immigration proceedings, and Congress and the Supreme Court have historically agreed. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.").

Further, Petitioner's ample available process in his current removal proceedings demonstrate no lack of procedural due process—nor any deprivation of liberty "sufficiently outrageous" required to establish a substantive due process claim. *See generally Reed v. Goertz*, 598 U.S. 230, 236 (2023); *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 628 (8th Cir. 2001), *as corrected* (Mar. 27, 2001), *as corrected* (May 1, 2001). Congress simply made the decision to detain him pending removal which is a "constitutionally permissible part of that process." *See Demore v. Kim*, 538 U.S. 510, 531 (2003).

The United States is aware of prior district court rulings in which the court held that the automatic stay provision violates due process. *See Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5 (D. Minn. June 17, 2025), *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *9-14 (D. Minn Aug. 15, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:24-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025). In light of *Hurtado* and the BIA's finding that the immigration court does not have the authority over a bond request because aliens present in the United States without admission are applicants for admission and subject to detention during their removal proceedings in accordance with Section 1225(b)(2)(A), the automatic stay provision is irrelevant. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025). Moreover, the United States Court of Appeals for the Third Circuit has not yet addressed this question.

Moreover, Respondent has an enormous interest in its use of detention, particularly in the context of immigration proceedings, and Congress and Supreme Court have historically agreed. *Demore v. Kim*, 538 U.S. 510, 531 (2003) (holding "[d]etention during removal proceedings is a constitutionally permissible part of that process."). As such, DHS's invocation of the automatic stay requiring Petitioner's temporary detention pending his removal proceedings, in furtherance of a statute

requiring Petitioner's mandatory detention, is immaterial and cannot violate Due Process.

F. *Maldonado Bautista v. Santacruz* does not have any binding effect here.

Petitioner improperly claims that he is a *Bautista* case class member and *Baustista* has a preclusive effect. (Doc. 1 (Pet.) at ¶¶1-10.) The *Bautista* court's declaratory judgment has no binding effect here.

1. Under black-letter principles of habeas jurisdiction, the *Bautista* declaratory judgement has no preclusive effect outside the Central District of California and over custodians who are located outside that District.

The *Bautista* class sought a declaratory judgment that class members such as Petitioner were unlawfully detained under 8 U.S.C. § 1225(b)(2), rather than § 1226(a). This is core habeas relief that must be brought as a habeas claim alone. As the Supreme Court made clear just this year, "[r]egardless of whether [] detainees formally request release from confinement," if "their claims for relief necessarily imply the invalidity of their confinement[], their claims fall within the core of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (internal quotations omitted).

The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. First, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also*

J.G.G., 604 U.S. at 672. Second, a habeas petitioner must name the petitioner's immediate custodian—i.e., the custodian who has actual custody over the petitioner and can produce the "corpus." *Padilla*, 542 U.S. at 435. "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, 747 (1998) (declaratory judgment action not appropriate to address "validity of a defense the State may, or may not, raise in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas proceeding"); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement

requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747 (1998); *Fusco*, 2019 WL 13112044, at *1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the "availability of a habeas remedy in another district ousted us of jurisdiction over an alien's effort to pose a constitutional attack . . . by means of a suit for declaratory judgment"); *Monk v. Sec. of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is 'in custody in violation of the Constitution . . . of the United States,' . . . . This specific determination must override the general terms of the declaratory judgment . . . statute.").

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 Court of Cali.*, 495 U.S. 604, 608 (1990). Indeed, another federal district court has already held that the

Bautista declaratory judgment does not have preclusive effect. Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12.

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 is detained in the Commonwealth of Pennsylvania, which is outside the Central District of California. That ends the matter. But if more were needed, Petitioner's immediate custodian is Craig Lowe, and that individual was not a party 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. *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 Court should not give preclusive effect to a declaratory judgment that is on appeal

Even if the *Bautista* declaratory judgment could have preclusive effect outside the Central District of California, that judgment has been appealed to the Ninth Circuit, *Bautista, et al. v. United States Department of Homeland Security*, et al., No. 25-7958 (9th Cir.), and this Court should not afford preclusive effect to that judgment or to any underlying legal issues in deciding whether to grant habeas relief in this case.

Courts must exercise significant caution before giving preclusive effect to declaratory judgments that are on appeal. Reflexively granting preclusive effect to such judgments could lead to subsequent judgment "from which it may be impossible to obtain relief" even if the first judgment is reversed on appeal. 9 A.L.R.2d 984. Courts should strive to avoid this "evil result[]." *Id.* ("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 ("Awkward 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").

This problem can be "avoided . . . by delaying further proceedings in the second action pending conclusion of the appeal in the first action." *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882–83 (9th Cir. 2007) (citing Wright & Miller § 4433). In the circumstances here—and particularly given the constraints of 8 U.S.C. § 1252(f)(1)—it would not be proper to impose res judicata effect on a class-wide basis while the declaratory judgment is pending on appeal. *See* 9 A.L.R.2d 984 (the "only one safe way of avoiding conflicting judgments on the same cause . . . [is for]

the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered").

3. According preclusive effect to the Bautista declaratory judgment contravenes other principles of preclusion

Beyond the two most serious problems with giving effect to the *Bautista* declaratory judgment in this case, three more reasons counsel strongly against doing so.

First, under 28 U.S.C. § 2202, "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." To the extent this Court considers whether to award "further" relief than what the *Bautista* court purported to grant to class members outside the Central District of California, such further relief is neither "necessary [n]or proper." 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.

Second, the circumstances of this case also counsel against applying issue preclusion against the government. The Supreme Court has "long recognized that 'the Government is not in a position identical to that of a private litigant,' *INS v.*

Hibi, 414 U.S. 5, 8 (1973) (per curiam), both because of the geographic breadth of government litigation and also, most importantly, because of the nature of the issues the government litigates." *United States v. Mendoza*, 464 U.S. 154, 159 (1984). "Government litigation frequently involves legal questions of substantial public importance." *Id.* Thus, although the Supreme Court has held the federal government "may be estopped . . . from relitigating a question" when "the parties to the lawsuits are the same," *id.* at 163, 164, it is not so precluded in cases where the party seeking to offensively use preclusion was not a party to the initial litigation, *see id.* at 162. This is because allowing "nonmutual collateral estoppel against the government . . . . would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue." *United States v. Mendoza*, 464 U.S. 154, 160 (1984).

For similar reasons, the government should not be precluded from litigating the issue of the proper detention authority here, where the Petitioner was not a named party to the prior *Bautista* litigation, but instead merely a member of a fundamentally flawed nationwide class. In such a circumstance, applying preclusion against the government raises the same concern raised in *Mendoza*—it allows the *Bautista* court's decision to freeze the law for all district courts nationwide, and stymies development of the law. This is particularly so because the *Bautista* court could never grant complete habeas relief to all class members as a result of § 1252(f)(1)—

instead, the *Bautista* class action was merely a vehicle for seeking to use the judgment in individual habeas matters such as this one. At minimum, the court should exercise its discretion to decline to employ offensive issue preclusion, as it does in cases where a non-party seeks to invoke preclusion against a private party. *See Syverson v. Int'l Bus. Machines Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979)).

The court should also decline to give the *Bautista* declaratory judgment preclusive effect given the existence of several inconsistent judgments from district courts around the country, suggesting that reliance on the adverse judgment in *Bautista* would be unfair. *See Parklane Hosiery*, 439 U.S. at 330–31 (citing the existence of prior inconsistent judgments as indicium of unfairness of applying issue preclusion); *see, e.g.*, *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

Third, it is doubtful that issue preclusion is ever appropriate in the habeas context. For instance, in *Griffin v. Gomez*, the Ninth Circuit held that a prior "class action has no preclusive affect in habeas proceedings." *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998). The court later explained that res judicata and collateral estoppel do not apply to habeas proceedings. *See Clifton v. Attorney General*, 997 F.2d 660, 662 n.3 (9th Cir. 1993) (recognizing that because "conventional notions of finality of litigation have no place" in habeas and the inapplicability of res judicate to habeas is "inherent in the very role and function of the writ.") (quoting Sanders v. United States, 373 U.S. 1, 8 (1963)); *see also Hardwick v. Doolittle*, 558 F.2d 292, 295 (5th Cir. 1977) ("The doctrines of res judicate and collateral estoppel are not applicable in habeas proceedings."); *Hierens v. Mizell*, 729 F.2d 449, 456 (7th Cir. 1984) ("a decision in another case is not res judicata as to a habeas proceeding.").

In sum, the *Bautista* declaratory judgment has no preclusive effect on this case.

VI. Conclusion

Because this Court lacks jurisdiction over Diaz Aparicio's habeas Petition, it should dismiss it. Alternatively, because Diaz Aparicio's temporary detention is lawful, Respondent respectfully requests that this Court deny his habeas Petition.

Respectfully submitted,

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Date: December 23, 2025

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

MARTIN RAUL DIAZ APARICIO,	:	
Petitioner	:	
	:	**3:25-cv-2413**
v.	:	**(Judge Saporito)**
	:	
CRAIG LOWE, Warden	:	
Respondent	:	**Filed Electronically**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on December 23, 2025, she served a copy of the attached

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

by electronic service pursuant to Local Rule 5.7 and Standing Order 05-6, & 12.2 to the following individual(s):

Karen L. Hoffmann, Esquire
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/s/Maureen Yeager
Maureen Yeager
Paralegal Specialist