

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ANGEL POLIVIO GUANOQUIZ DAMIAN

PETITIONER

VS.

CIVIL ACTION NO. 5:25-cv-00162-DCB-RPM

RAFAEL VERGARA¹

RESPONDENT

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

Respondent Raphael Vergara, by and through the United States Attorney for the Southern District of Mississippi and the undersigned Assistant United States Attorney for said District, hereby submits the Response in Opposition to Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241.

INTRODUCTION

The instant petition seeks relief on the narrow and specific grounds that a purported class action lawsuit and order from the Central District of California warrants Petitioner Angel Polivio Guanoquiz Damian's release, or a bond hearing, in the Southern District of Mississippi. The Court should deny this habeas petition. The December 18, 2025, partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025)

¹ Per the Order entered December 18, 2025, all named respondents except Rafael Vergara have been terminated. *See* Order (ECF No. 2).

is neither binding nor applicable here and presents no basis for granting the petition. First, the *Bautista* declaratory judgment is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction. Second, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. Third, issue preclusion is inapplicable here, particularly as preclusion principles apply with less force both against the government and in habeas corpus proceedings. And finally, the Court need not await a ruling staying or vacating the *Bautista* declaratory judgment before declining to give it preclusive effect.

BACKGROUND

Petitioner Angel Polivio Guanoquiz Damian is a native and citizen of Ecuador. See Pet. (ECF No. 1) at ¶ 19. Damian alleges he unlawfully entered the United States at an unknown location around 2001. *Id.* Damian was arrested by immigration authorities in October 2025. See Oct. 9, 2025 Encounter, attached as Exh. “A.” Damian has been ordered removed. See Order of Removal, attached as Exh. “B.” Damian has reserved his right to appeal his removal. *Id.*

In his petition, Damian alleges he is a member of a “Bond Denial Class” in *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-BFM (C.D. Cal.). As an alleged member of this class, Damian alleges he is being detained “in violation of the declaratory judgment”

issued in *Bautista*. See Pet. (ECF No. 1) at ¶ 10.

ARGUMENT

I. 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*, 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 . . . statutes.”).

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, at least two other federal district court has already held that the *Bautista* declaratory judgment does not have preclusive effect. *Rodriguez v. Jeffreys, et. al.*, 2025 WL 3754411 (D. Neb. Dec. 29, 2025); *Lopez v. Lyons*, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025).

In sum, the *Bautista* court’s declaratory judgment purporting to grant relief that at its core sounds in habeas is a legal nullity outside that District. At the time of filing this habeas petition, Petitioner was detained at ICE detention facility in Mississippi, which is outside the Central District of California. That ends the matter. But if more were needed, Petitioner’s immediate custodian is Warden Rafael Vergara of the Adams County Correctional Center, who also is not in the Central District of California. Subjecting the immediate custodian to the judgment of the Central District of California would be

inconsistent with the immediate custodian rule. *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); *see also* Order (ECF No. 2), entered Dec. 18, 2025 in this case (“[T]he proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” (quoting *Rumsfeld*)).

II. 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. *Judgment as Res Judicata Pending Appeal*, 9 A.L.R.2d 984, § 2 (2025). 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* *Sequence of Actions and Judgments*, 18 Fed. Prac. & Prod. § 4404 (3d ed.) (“Awkward problems can result from the rule that preclusive effects attach to the first judgment” while that judgment is subject to an appeal); *Finality*, 18A Fed. Prac. & Proc. § 4433 (3d ed.) (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 Judgment as Res Judicata Pending Appeal*, 9 A.L.R.2d 984, § 2 (2025) (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”).

III. Giving 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 two 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, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, 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 effect 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 judicata 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 judicata 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.

IV. The Court need not await a ruling staying or vacating the *Bautista* declaratory judgment before declining to give it preclusive effect.

Assessing whether the *Bautista* declaratory judgment required granting an individual class member's habeas petition, the U.S. District Court for the Northern District of Texas persuasively explained why the *Bautista* declaratory judgment need not be followed by other U.S. district courts, even before a court of appeal stays or vacates that order:

A dispute in this posture is unusual, but not unheard of. As Justice Story remarked, the traditional comity between courts "does not prevent an inquiry into the jurisdiction of the court in which the original judgment was given." *Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8, 16, 27 S.Ct. 236, 51 L.Ed. 345 (1907) (quoting Joseph Story, Commentaries on the Constitution of the United States § 1313 (1833)). It is "a subject [that] may be inquired into every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings." *Williamson v. Berry*, 49 U.S. (8 How.) 495, 540, 12 L.Ed. 1170 (1850); *Old Wayne*, 204 U.S. at 16–17, 27 S.Ct. 236 (same). Indeed, traditional habeas proceedings normally could only challenge "the power and authority of the court" or other detaining authority "to act." *Brown v. Davenport*, 596 U.S. 118, 129, 142 S.Ct. 1510, 212 L.Ed.2d 463 (2022) (quotation omitted). While the conclusions of another court, when enforced onto a peer court, are generally "unassailable collaterally," an exception has always existed for "lack of jurisdiction." *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78, 60 S.Ct. 44, 84 L.Ed. 85 (1939); *Ex parte Watkins*, 28 U.S. (3 Pet.) 193, 202–03, 7 L.Ed. 650 (1830) (Marshall, C.J.) (same).

When the issuing court lacks jurisdiction, "its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought ... in opposition to them; they constitute no justification, and all persons concerned in executing such judgments ... are considered in law as trespassers." *Williamson*, 49 U.S. at 541 (quoting *Elliott v. Piersol*, 26 U.S. (1 Pet.) 328, 329, 7 L.Ed. 164 (1828)); *Watkins*, 28 U.S. at 203 ("An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity[.]"). Thus, this Court must consider the Central District's authority to issue the November 20, November 25, and December 18, 2025 orders.

For several independent reasons, the Court concludes that it is not bound by the Central District's purported relief. In light of longstanding jurisprudence and precedent, the three orders—including the December 18 vacatur order—are advisory opinions. In addition, given Supreme Court precedent and the plain language of the Immigration and Nationality Act, the Central District lacked authorization or jurisdiction to extend declaratory and vacatur relief to a nationwide class of similarly situated detainees. Finally, the two necessary implications of the Central District's purported relief—reconstitution of all bond-hearing injunction claims in the Central District or the mandatory application of the Central District's reasoning in all district courts nationwide—would require this Court to violate Supreme Court precedent.

...

The Court issues this Order with some reluctance. The business of another court is generally beyond this Court's concern. But the petitioner seeks relief based on the Central District's orders, leaving this Court no choice but to address their binding effect. Here, a fellow district judge purports to bind all pending and future cases involving the mandatory-detention issue to her reasoning in an advisory opinion, disrupting this Court's extensive immigration docket and the dockets of fellow courts across the Nation. But the Central District's orders are not binding because the Central District lacked authorization to issue them. The orders are unauthorized because they are advisory and because they violate the INA's limits on judicial review. Additionally, they would require this Court to act in defiance of Supreme Court precedent. Thus, the Court rejects the petitioner's assertion that it is bound by the Central District's orders and must grant relief as a result.

Lyons, 2025 WL 3683918, at *6 & 14 (N.D. Tex. Dec. 19, 2025).

Thus, because the *Bautista* declaratory judgment is void for the reasons discussed above, this Court is not required to wait for a court of appeals to stay or vacate that judgment before this Court declines to give it preclusive effect.

Regardless, even if the Court does not treat the *Bautista* judgment as void *now*, the blatant jurisdictional flaws and other points noted above counsel strongly in favor of the Court declining to give it preclusive effect.

V. To the extent Damian asserts substantive arguments concerning his detention under § 1225, his petition should still be denied and dismissed

In paragraph 30 of the Petition, as well as a reference stated in his prayer for relief for “alternative[.]” relief under § 1226, Damian appears to assert the same substantive arguments regarding his detention under 8 U.S.C. § 1225 in support of a mistaken claim he is entitled to a bond hearing under 8 U.S.C. § 1226. Many other petitions have been filed in this district raising these arguments. *See, e.g., Quintanilla v. Bondi*, No. 5:25-cv-00115-DCB-BWR (S.D. Miss); *Martinez v. Acuna*, No. 5:25-cv-00124-DCB-RPM; *Chay v. Vergara*, No. 5:25-cv-00136-DCB-RPM; *Thiam v. Vergara*, No. 5:25-cv-00140-DCB-BWR; *Hernandez v. Noem*, No. 5:25-cv-145-DCB-RPM.

Though Damian’s petition appears to rely only his alleged members as part of a class in *Bautista*, to the extent Damian raises his own substantive arguments as have other petitions, the Respondent submits those claims are without merit as well.

a. Legal Framework

The Immigration and Nationality Act (“INA”), as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Before 1996, the INA required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings.² In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry.

Among other things, that law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer.” 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

² 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.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025); 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 v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010).

managed to evade detection and enter the country without permission. IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025). IIRIRA effected these changes through several provisions codified in Section 1225 of Title 8:

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

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

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

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited “Section 240” proceedings—and mandated that

applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

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

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

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

8 U.S.C. § 1225(b)(2)(A) (emphasis added).³ See 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

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

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically).

³ 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).

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).⁴ Moreover, § 1226(c) specifies a class of aliens who cannot be released and shall be detained in custody during the pendency of removal proceedings (i.e. the determination of whether the alien is to be removed from the United States), encompassing aliens who have committed certain criminal acts or acts of terror.⁵

In this case, there is no dispute that Damian is an “applicant for admission” under Section 1225(a). That provision specifically provides that any “alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an

⁴ Conditional parole under Section 1226(a) is broader than parole under Section 1182(d)(5)(A).

⁵ The Laken Riley Act amended §1226 to add subsection (c). However, the Laken Riley Act’s addition of § 1226(c) does not invalidate §1225(b)’s mandatory detention requirement merely because it could appear redundant. As the Supreme Court has acknowledged, “redundancies are common in statutory drafting ... redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute...” *Barton v. Barr*, 590 U.S. 222, 229 (2020).

applicant for admission.” § 1225(a)(1). Because Damian entered the country without inspection, however, he was never “admitted” and thus unambiguously remains an “applicant for admission.” Nor does Damian contest that he was never admitted into the United States.

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

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

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

Damian's proceedings are currently pending. He has reserved his right to appeal his order of removal. Damian does not have a final administrative order and his petition should be dismissed for lack of administrative exhaustion.

c. Damian is properly detained under 8 U.S.C. §1225(b)(2) and is not entitled to release.

i. Statute mandates detention pending removal proceedings for those seeking admission into the United States

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

As noted above, the statute expressly provides “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). The first relevant term is “applicant for admission,” which is statutorily defined. *See* 8 U.S.C. § 1225(a)(1). The statute deems any alien (a person who is not a citizen or national of the United States, 8 U.S.C. § 1101(a)(3)) “present in the United States who has not been admitted” to be an “applicant for admission.” 8 U.S.C. § 1225(a)(1).

Thus, under its plain terms, all unadmitted foreign nationals in the United States are “applicants for admission,” regardless of their proximity to the border, the length of time they have been present here, or whether they ever had the subjective intent to properly apply for admission. *See id.* While this may seem like a counterintuitive way to define an “applicant for admission,” “[w]hen a statute includes an explicit definition, [courts] must follow that definition, even if it varies from a term’s ordinary meaning.” *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 160 (2018) (cleaned up). Thus, under the plain text of the statute, Damian is unambiguously an “applicant for admission” because he is a foreign national, he was not admitted, and he was present in the United States when he was apprehended by ICE.

The next relevant portion of the statute is whether an examining immigration officer determined that Petitioner was “seeking admission.” *See* 8 U.S.C. § 1225(b)(2)(A). The INA defines “admission” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A)⁶. Therefore, the inquiry is whether an immigration officer determined that Petitioner was

⁶ § 1101(a)(13) also contains subsection (B), which addresses humanitarian parole and specifies that these parolees will not be considered admitted, and subsection (C), which addresses categories of certain aliens present in the United States are nonetheless regarded as “seeking an admission” and includes an alien “attempting to enter at a time and place other than as designated by immigration officers OR *has not been admitted to the United States after inspection and authorization by an immigration officer.*” *See* § 8 U.S.C. 1101(a)(13)(C)(vi) (emphasis added). This subsection further reiterates a clear statutory intent that aliens present in the United States without inspection and admission are considered to be “seeking admission.”

seeking a “lawful entry.” *See id.* A foreign national’s past unlawful physical entry has no bearing on this analysis. *See id.* This element of “lawful entry” is important here for two reasons. First, a foreign national cannot legally be admitted into the United States without a lawful entry. *See* 8 U.S.C. §§ 1101(a)(13), 1225(a)(3); *see also Sanchez v. Mayorkas*, 593 U.S. 409, 411–12 (2021)(recognizing that “admission” means “lawful entry”). Second, a foreign national cannot *remain* in the United States without a lawful entry because a foreign national is removable if he or she did not enter lawfully. *See* 8 U.S.C. §§ 1182(a)(6), 1227(a)(1)(A). Indeed, the charges of removal against Petitioner are based on his unlawful entry. *See* Exh. “A.” So, unless Petitioner obtains a lawful admission in the future, he will be subject to removal in perpetuity. *See* 8 U.S.C. §§ 1101(a)(13), 1182(a)(6), and 1227(a)(1)(A).

The INA provides two examples of foreign nationals who have not yet been admitted but are not “seeking admission.” The first is someone who withdraws his or her application for admission and “depart[s] immediately from the United States.” 8 U.S.C. § 1225(a)(4); *see also Matushkina v. Nielsen* 877 F.3d 289, 291 (7th Cir. 2017) (providing a relevant example of this phenomenon). The second is someone who agrees to voluntarily depart “in lieu of being subject to proceedings under § 1229a . . . or prior to the completion of such proceedings.” 8 U.S.C. § 1229c(a)(1). This means even in removal proceedings, a foreign national can concede removability and accept removal, in which case he will no longer be “seeking admission.” 8 U.S.C. § 1229a(d). Foreign nationals present in the

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

Damian is still “seeking admission” to the United States. Damian has not agreed to immediately depart, and he is seeking to remain in this country, which requires an “admission” (i.e. a “lawful entry” as discussed above). To consider Damian as not subject mandatory detention as an alien “seeking admission” would reward him for violating the law, provide him, with better treatment than a foreign national who lawfully presented themselves for inspection at a port of entry, and encourage others to enter unlawfully - defying the intent reflected in the plain text of the statute. *See* 8 U.S.C. § 1225; *see also Thuraissigiam*, 591 U.S. at 140 (avoiding interpretation that might create a “perverse incentive to enter at an unlawful rather than a lawful location”).

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

In sum, the plain text of § 1225(b)(2) unambiguously applies to Damian. “Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion.” *Caminetti v. United States*, 242 U.S. 470, 485 (1917). This principle applies even where a petitioner contends that the plain application of the statute would lead to a harsh result. *See, e.g., Jay v. Boyd*, 351 U.S. 345, 357 (1956) (courts “must adopt the plain meaning of a statute, however severe the consequences”). Therefore, no further exercise in statutory interpretation is necessary or permissible in this case and the court should conclude that Petitioner’s detention under § 1225(b)(2) is lawful.

ii. Detention has historically been the norm, not the exception, for those who enter the country without inspection and lack documents sufficient for admission.

As explained above, Congress provided that mandatory detention pending removal proceedings is the norm—not the exception—for those who enter the country

without inspection and who lack documents sufficient for admission or entry. *See* 8 U.S.C. § 1225(b)(2). And for good reason: detention pending removal proceedings is the historical norm and, in this context, reflects the reality that aliens have avoided inspection by sneaking into the United States. *See Demore v. Kim*, 538 U.S. 510, 523 (2003) (citing *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)). When Congress enacted 8 U.S.C. § 1225(b) as part of the immigration reforms of 1996, it determined that treating all unadmitted aliens similarly in terms of detention and removal eliminated unintended consequences and perverse incentives that pervaded the prior system, under which undocumented aliens who entered without inspection received more procedural protections—including the ability to seek release on bond—than those who presented themselves for inspection at ports of entry. In essence, the pre-1996 law favored those that entered the U.S. illegally and clandestinely, which Congress sought to end. Through mandatory detention of applicants for admission, Congress further ensured that the Executive Branch can give effect to the provisions for removal of aliens. *See Demore*, 538 U.S. at 531.

Many district courts that have applied the plain language of § 1225(b)(2) have found in favor of mandatory detention: *Coronado v. Sec’y, DHS*, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *Garcia v. U.S. Attn’y Gen.*, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025); *Ugarte-Arenas v. Olson*, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Melgar v. Bondi*, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Candido v. Bondi*, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025); *Chen v. Almodovar*, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Topal v. Bondi*, 2025 WL

3486894 (W.D. La. Dec. 3, 2025); *Cruz v. Noem*, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *Valencia v. Chestnut, et. al.*, 2025 WL 3205133 (E.D. Calif. Nov. 17, 2025) (“The statutory language may cover a pro-active engagement with the process of becoming a lawful entrant, *but courts both in this circuit and elsewhere have recognized that the term also functions as a legal designation —describing an individual’s legal status for purposes of the statutory removal scheme* -- rather than a description of present conduct.”) (emphasis added); *Alonzo v. Noem, et. al.*, 2025 WL 3208284 (E.D. Calif. November 17, 2025); *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Kum v. Ross, et al*, No. 25-cv-451, ECF 15, (W.D. La. Nov. 6, 2025) (adopting report and recommendation, ECF 14, Oct. 22, 2025), correctly applied the definition of “applicant for admission” to a petitioner who was present in the United States without having been admitted or paroled under § 1225(a)(1); *Oliveria v. Patterson, et. al.*, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (denying habeas relief to inadmissible alien present in the country without admission or parole for 9 years because the alien is an “applicant for admission” subject to mandatory detention under §1225(b)(2)); *Barrios Sandoval v. Acuna, et. al.*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Lopez v. Trump, et. al.*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (denying habeas relief to inadmissible alien in the country for 12 years based on § 1225(b)(2)) (petition “an alien within the ‘catchall’ scope of § 1225(b)(2) subject to detention without possibility of release on bond through a proceeding on removal under § 1229a.”). *Chavez v. Noem, et. al.*, 2025 WL 2730228 (S.D. Calif. September 24, 2025) (denying injunctive relief to inadmissible

alien based on § 1225(b)(2)); *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (denying habeas relief for inadmissible alien in the country for 20 years based on § 1225(b)) (“Because petitioner remains an applicant for admission, his detention is authorized so long as he is ‘not clearly and beyond doubt entitled to be admitted’ to the United States. 8 U.S.C. § 1225(b)(2)(A)).

Congress directed that aliens like Damian shall 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. 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*, 583 U.S. at 286 (“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.”).

Likewise, Damian is detained for the limited purpose of removal proceedings. His detention is not punitive or for other reasons than to address his removability from the United States. His detention under § 1225(b)(2) is also not indefinite, as it will end upon the conclusion of his removal proceedings. His proceedings are ongoing. A period of detention for the purpose of removal proceedings or to effectuate removal does not violate the constitution. The *Jennings* Court, while examining a constitutional challenge, refused to put a six-month deadline on a 1225(b)(2) detention. *Jennings*, 583 U.S. at 302. Damian’s continued detention during the pendency of his removal proceedings is proper.

CONCLUSION

For the reasons set forth above, Damian’s petition should be denied and dismissed.

Dated: January 12, 2026

Respectfully submitted,

J.E. BAXTER KRUGER
UNITED STATES ATTORNEY

By: /s/ GREGG MAYER
Gregg Mayer (MSB #102232)
Assistant United States Attorney
Office of the United States Attorney
SOUTHERN DISTRICT OF MISSISSIPPI
501 East Court Street, Suite 4.430
Telephone: 601.965.4480
Facsimile: 601.965.4032
E-mail: gregg.mayer@usdoj.gov

CERTIFICATE OF SERVICE

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

January 12, 2026

GREGG MAYER
Assistant United States Attorney