UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FERNANDO GARCIA TOBON, Petitioner, v. GRANT DICKEY, *et al.*, Respondents.	§ § § § § § § § §	Civil Action No. 4:25-CV-06145

THE FEDERAL RESPONDENTS' RESPONSE TO THE HABEAS PETITION AND ORDER TO SHOW CAUSE

The Federal Respondents file this Response to the habeas petition (ECF No. 1) and the Court's show cause order with respect to the propriety of Petitioner's detention (ECF No. 6).

Petitioner brings this habeas petition contending that his detention is unlawful because he is entitled to a bond hearing under 8 U.S.C. § 1226(a). The Government maintains that his detention is lawful because, as Petitioner acknowledges in his pleadings, he entered the United States without inspection. *See* ECF No. 1 ¶ 33. He has never been admitted into the United States, and as an alien present in the United States who has not been admitted, he is deemed an applicant for admission under 8 U.S.C. § 1225(a) and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). As such, detention is not only permitted, it is the only legally permissible course of action.

As the Court observed, and as the Government agrees, the Court's previous resolution as to the applicability of 8 U.S.C. § 1225(b)(2)(A) in these circumstances should dispose of all

contentions in the petition. *See* ECF No. 6 at 2. Similarly, the Government also agrees with the Court's "preliminary view that the referenced class-certification order in *Maldonado Bautista* doesn't control disposition of this case as it far exceeds the jurisdiction of the district court issuing that order." *Id.* The Federal Respondents herein briefly address each of the four claims brought by Petitioner.

I. ARGUMENT

Petitioner styles this challenge to the Government's interpretation and application of 8 U.S.C. § 1225(b)(2)(A) as four distinct causes of action. The four counts in his habeas petition allege: (1) that detention without opportunity for bond is itself a violation of due process; (2) that detention without opportunity for bond runs afoul of the applicable INA provision providing for discretionary detention, i.e., a bond hearing; (3) an APA violation based on the same Count Two statutory claim; and (4) that the Government is bound here by *Bautista*, are violating the judgment in *Bautista*, and thus he is entitled to relief from this Court in this case.

A. DUE PROCESS

First, Petitioner argues that his detention "without any constitutionally adequate opportunity to demonstrate that he is not a danger to the community nor a flight risk" violates Fifth Amendment due process. This Court has repeatedly considered and rejected this very argument in this very context. *See*, *e.g.*, *Sanchez v. Smith*, No. 4:25-CV-05384, 2025 WL 3687914, at *2–3 (S.D. Tex. Dec. 19, 2025); *Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025). For good reason, as the Supreme Court has stated in no unmistakable terms, "Detention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531, 123 S.Ct. 1708, 155

L.Ed.2d 724 (2003); see also *Carlson v. Landon*, 342 U.S. 524, 238, 72 S.Ct. 525, 96 L.Ed. 547 (1952) ("Detention is necessary a part of th[e] deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235, 16 S.Ct. 977, 41 L.Ed. 140 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.").

Zadvydas and its six-month only addressed the impropriety of indefinite post-removal order detention. 533 U.S. at 701. Indeed, the Supreme Court in *Demore* rejected the application of *Zadvydas* to removal proceedings, reiterating its "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings[.]" 538 U.S. at 526. It explicitly distinguished this type of detention—that is, detention during removal proceedings—with post-removal-order detention, which is governed by *Zadvydas*. In so doing, the Supreme Court held that *Zadvydas* does not extend to detention during removal proceedings and explained why. *See id.* at 527–31.

Petitioner's argument amounts to a claim that mandatory detention under 8 U.S.C. § 1225(b)(2)(A)—and thus that provision itself—violates the Due Process Clause of the Constitution.[1] But under this reasoning, even if Petitioner received a bond hearing pursuant to the discretionary detention provision but was denied bond, his due process rights would be violated if the very act of detention itself is unlawful. As this Court has already held, there is no support for such an argument.

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[1] The mandatory detention provision provides for just that: mandatory detention. *See* 8 U.S.C. § 1225(b)(2)(A). If Petitioner's argument is that his detention under that statute is a violation of due process, he is necessarily making the claim that the mandatory detention statute itself is unconstitutional. Petitioner has failed to identify, and undersigned counsel is unaware, of a single case holding that 8 U.S.C. § 1225(b)(2)(A) is unconstitutional (as opposed to merely inapplicable in certain contexts).

B. STATUTORY CHALLENGE

While Petitioner presents Count Two as an additional "due process violation" claim, his second theory as to how there is a due process violation is tied to the actual statutory dispute. On the statutory dispute, this Court and many others have explained in great detail why 8 U.S.C. § 1225(b)(2)(A) is the applicable statute for aliens like Petitioner who are present in the United States but have not been admitted. *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *see also*, *e.g.*, *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.); *Chen v. Almodovar*, No. 1:25-CV-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Ramos v. Lyons*, No. 2:25-CV-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.); *Valencia v. Chestnut*, -- F.Supp.3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.); *Olalde v. Noem*, No. 1:25-CV-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Devine, J.); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr., J.); *Topal v. Bondi*, No. 1:25-CV-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Buescher, J.); *Chavez v. Noem*, -- F.Supp.3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.). Not only so, but multiple federal appellate courts have implicitly endorsed the Government's interpretation of the statute. *See*, *e.g.*, *Jimenez-Rodriguez*

v. Garland, 996 F.3d 190, 194 n.2 (4th Cir. 2021) ("Because [Petitioner] was never lawfully admitted, he qualifies as someone 'seeking admission[].'"); *Succar v. Ashcroft*, 394 F.3d 8, 13 (1st Cir. 2005) (treating, based on statute, "aliens who are present in the United States, but who have not been inspected and admitted," as "aliens who are seeking admission").

The Federal Respondents would re-urge the same reasoning endorsed by the above decisions, including this Court's analysis in *Cabanas*, as well as the Government's previous briefing on this issue.

C. APA CLAIM

Next, Petitioner alleges that his detention violates the APA because the Government has "unlawfully withheld and unreasonably delayed agency action as required by law," since 8 U.S.C. § 1226(a) affords him a bond hearing. This claim is an improper vehicle through which to vindicate his substantive legal claims when he is already in the proper vehicle: a petition for a writ of habeas corpus. The APA itself instructs that claims under the APA are available only when "there is no other adequate remedy in a court." 5 U.S.C. § 704. It is well-taken that "28 U.S.C. § 2241 provides a district court with jurisdiction over petitions for habeas corpus where a petitioner is 'in custody in violation of the Constitution or law or treaties of the United States.'" *Vazquez Barrera v. Wolf*, 455 F.Supp.3d 330, 336 (S.D. Tex. 2020) (Ellison, J.) (citing 28 U.S.C. § 2241(c)(3); *INS v. St. Cyr*, 533 U.S. 289, 305, 121 S.Ct. 2271, 150 L.Ed.2d 347 (2001)). To the extent Petitioner's detention is unlawful, whether it be by way of statute, regulation, the Constitution, or otherwise, he can already challenge the legality of his detention via his habeas petition. Thus, his APA claim is functionally duplicative and cannot maintain as there is already an "adequate remedy." 5 U.S.C. § 704.

Very recently, the Supreme Court directly addressed this point where it was faced with a habeas corpus proceeding which also purported to bring the same claims via the APA. The Supreme Court made clear that if a detainee's "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, 145 S.Ct. 1003, 221 L.Ed.2d 529 (2025). Justice Kavanaugh further explained in his concurrence why the APA is inapplicable: "habeas corpus, not the APA, is the proper vehicle" given that the APA is only available where no other adequate remedy is available. *Id.* at 674.

In sum, each of Petitioner's arguments here as to why his detention is unlawful—that is, his challenges under the applicable federal detention statutes—can already be considered in habeas, which makes the APA an improper vehicle. The APA claim must be dismissed.[2]

D. THE *BAUTISTA* JUDGMENT

Finally, the class action ruling in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, is neither binding nor applicable here and presents no basis for granting the present petition. First, the *Bautista* declaratory judgement is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction. Second, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. Finally, issue preclusion, i.e., collateral estoppel, is inapplicable here as it is well-settled that offensive

[2] To be sure, even if the APA were a proper vehicle here, the claim would still fail as a matter of law as it is premised on a violation of the federal detention statutes, which Petitioner cannot show.

collateral estoppel not only does not apply against the Federal Government generally, but it also specifically does not apply in the habeas context.

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

The Supreme Court has imposed two fundamental, unmistakable limits on federal court jurisdiction over core habeas claims. First, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004); *see also 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, 118 S.Ct. 1694, 140 L.Ed.2d 970 (1998) (finding declaratory judgment class action was not appropriate to address "validity of a defense the State may, or may not, raise in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas

proceeding"); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747; *Fusco*, 2019 WL 13112044, at *1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the "availability of a habeas remedy in another district ousted us of jurisdiction over an alien's effort to pose a constitutional attack . . . by means of a suit for declaratory judgment").

Here, the vast majority of *Bautista* class members are confined outside of the Central District of California by immediate custodians who are also outside the Central District of California and have not been named in the lawsuit. Therefore, the *Bautista* court lacked jurisdiction to issue habeas relief to all class members who are confined outside the Central District of California by immediate custodians outside that District, and a court's judgment cannot be binding and preclusive against a party over which it lacked jurisdiction. *Burnham v. Superior Ct. of California, Cnty. of Marin*, 495 U.S. 604, 608–09, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990). Indeed, as noted by this Court, another federal district court has already held that the *Bautista* declaratory judgment does not have preclusive effect. *See Lopez v. Lyons*, No. 1:25-CV-00226, 2025 WL 3683918, at *14 (N.D. Tex. Dec. 19, 2025).

In sum, the *Bautista* court's declaratory judgment purporting to grant relief that at its core sounds in habeas is a legal nullity outside that District. At the time of filing this habeas petition, Petitioner was detained in Texas, which is outside that judicial district. That ends the

matter. But not only so, Petitioner's immediate custodian was also not a party in the Central District of California; subjecting the immediate custodian to the judgment of the Central District of California would violate the immediate custodian rule. *Padilla*, 542 U.S. at 439–40; *see also Doe v. Garland*, 109 F.4th 1188, 1196 (9th Cir. 2024) (holding immediate custodian and not supervisory ICE Field Office Director should be named in habeas petition).

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

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

Courts must exercise significant caution before giving preclusive effect to declaratory judgments that are on appeal. Reflexively granting preclusive effect to such judgments could lead to subsequent judgment "from which it may be impossible to obtain relief" even if the first judgment is reversed on appeal. 9 A.L.R.2d 984. Courts should strive to avoid this result. *Id.* ("both the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences"); *see also* 18A Fed. Prac. & Prod. § 4404 (observing that "[a]wkward problems can result from the rule that preclusive effects attach to the first judgment" while that judgment is subject to an appeal); 18A Fed. Prac. & Proc. § 4433 (the rule that a decision is final for the purposes of preclusion while that decision is pending appeal creates "[s]ubstantial difficulties").

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

When it comes to issue preclusion, this argument is dead on arrival here as it is well-settled that offensive collateral estoppel, i.e., issue preclusion,[3] does not apply against the Federal Government. As a general matter, "nonmutual offensive collateral estoppel simply does not apply against the government[.]" *United States v. Mendoza*, 464 U.S. 154, 162, 104 S.Ct. 568, 78 L.Ed.2d 379 (1984). As put in *Mendoza*, this limitation exists because:

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

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

Second, building off the previous point and specific to the habeas context, neither collateral estoppel nor res judicata apply at all in habeas cases. *See*, *e.g.*, *Hardwick v. Doolittle*, 558 F.2d 292, 295 (5th Cir. 1977) ("[T]he doctrines of res judicata and collateral estoppel are

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

not applicable in habeas proceedings.); *see also Sanders v. United States*, 373 U.S. 1, 8, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963) (The inapplicability of res judicata to habeas, then, is inherent in the very role and function of the writ."); *Rehbein v. Clarke*, 94 F.3d 478, 481 (8th Cir. 1996) ("As the United States Supreme Court has often noted, ordinary principles of res judicata and collateral estoppel do not strictly apply in the federal habeas context."); *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (holding that a prior class action "has no preclusive effect in habeas proceedings"). In recognition of this rule, district courts in the Fifth Circuit have repeatedly declined to apply either preclusion doctrine against the Government in a habeas action. *See*, *e.g.*, *Jones v. Joslin*, No. 2:07-CV-00067, 2007 WL 2021777, at *6 (S.D. Tex. July 9, 2007) (declining to apply collateral estoppel in a habeas action); *Flores v. Berkebile*, No. 3:07-CV-00778, 2008 WL 623385, at *9 (N.D. Tex. Mar. 5, 2008) (same).

Finally, even setting aside *arguendo* the palpable lack of jurisdiction and the fatalities with attempting to use offensive issue preclusion, under 28 U.S.C. § 2202, "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." To the extent this Court were to consider whether to award "further" relief, i.e., injunctive relief, beyond what the Bautista court purported to grant to class members outside the Central District of California, such further relief is neither "necessary [n]or proper." Indeed, the Ninth Circuit—which of course has appellate jurisdiction over the Central District of California—has rejected waiving the district of confinement rule on prudential considerations given the clear congressional mandate limiting habeas jurisdiction to the district of confinement as

provided by statute. *Doe*, 109 F.4th at 1199. Thus, the Court should in any event decline to extend injunctive relief.

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

II. CONCLUSION

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

Dated: December 31, 2025

Respectfully submitted,

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CERTIFICATE OF SERVCE

I certify that on December 31, 2025, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

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