

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LUIS ANTONIO VALENCIANO VELA,

Petitioner,

v.

Case No. 25-cv-2004

DALE J. SCHMIDT,

Respondent.

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

In accordance with the Court's order dated December 22, 2025 (ECF 5), the United States, appearing as an interested party and through its undersigned counsel, hereby answers the Petition for Writ of Habeas Corpus (ECF 1) ("Petition") filed by the petitioner, Luis Antonio Valenciano Vela ("Petitioner").¹

INTRODUCTION

Petitioner is a foreign national² who entered the United States on an unknown date or location. *See* Declaration of Robert Podgorni, ¶ 7. On November 14, 2025, the Department of Homeland Security ("DHS") arrested Petitioner and charged him with

¹ The Office of the United States Attorney for the Eastern District of Wisconsin does not represent Petitioner's jail custodians, including Respondent Dale J. Schmidt, who are employees of the State of Wisconsin. However, counsel for the jail custodians have authorized the undersigned to state they join in this answer and do not intend to submit a separate response.

² The term "foreign national" is used in this answer, although the equivalent statutory term of "alien" is used in the Immigration and Nationality Act. ("INA").

entering the United States without inspection. (ECF 1 at ¶ 2). He is now detained at the Dodge County Jail in Juneau, Wisconsin during the administrative removal process. Podgorni Dec. ¶9.

In accordance with the provisions of 8 U.S.C. § 1225(b)(2), Petitioner has not been released on conditional parole or bond since being placed into administrative removal proceedings. Petitioner now seeks habeas relief from detention, alleging that 8 U.S.C. § 1225(b)(2)—providing for mandatory detention—is inapplicable to foreign nationals who enter the United States without inspection and reside in this country for a period. (*Id.* at ¶ 9.) Instead, Petitioner alleges that 8 U.S.C. § 1226(a), which generally entitles a foreign national to a bond hearing at the outset of their detention, is applicable. (*Id.*)

The Government's position is that, because he was never lawfully admitted into the United States, Petitioner meets the Immigration and Nationality Act's ("INA") unambiguous definition of an "applicant for admission," 8 U.S.C. § 1225(a)(1), and therefore his detention is mandatory under 8 U.S.C. § 1225(b)(2)(A). Because Petitioner is an applicant for admission—and because such treatment effectuates Congress's policy choices in amending the INA in 1996—§ 1225(b)(2)(A), not § 1226(a), governs his detention. Therefore, Petitioner's detention pending resolution of his immigration proceedings is mandatory and does not violate his due process rights. For these reasons, the United States respectfully asks that the Court deny the Petition and dismiss this action with prejudice.

BACKGROUND

I. Factual and Procedural Background

Petitioner is a citizen of Mexico who entered the United States without inspection on an unknown date.³ According to the petition, on November 14, 2025, local law enforcement stopped Petitioner for speeding and charged him with driving while intoxicated and operating a vehicle without a license. (ECF 1, ¶ 67.) On November 15, 2025, DHS lodged an immigration detainer with the Brown County Jail, where Petitioner was being held, and arrested him on November 19, 2025, pursuant to a Form I-200 Warrant for Arrest of Alien. Podgorni Dec. ¶ 8. DHS then took him into custody and placed him in removal proceedings pursuant to 8 U.S.C. § 1229a, charging him with being inadmissible under 8 U.S.C. § 1882(a)(6)(A)(i). Podgorni Dec. ¶¶ 9-10. He was held without bond and on December 17, 2025, an Immigration Judge denied Petitioner's request for a bond redetermination. Podgorni Dec. ¶ 11.

Petitioner is next scheduled to appear before the immigration judge on January 8, 2026, for a master calendar hearing and the filing of any applications for immigration relief. Podgorni Dec. ¶ 12. Petitioner filed his petition for writ of habeas corpus on December 19, 2025. (ECF 1.)

II. Legal Background

All foreign nationals seeking admission into the United States must be inspected

³ Petitioner claimed to U.S. Citizenship and Immigration Services (USCIS) in a Form I-601A, Application for Provisional Unlawful Presence Waiver that he last entered the United States in September 2007, somewhere along the Texas border with Mexico. Podgorni Dec. ¶ 7.

by immigration officials. 8 U.S.C. § 1225(a)(3). Foreign nationals who are “present in the United States without being admitted or paroled” are deemed “inadmissible” and subject to removal from the country. 8 U.S.C. § 1182(a)(6)(A)(i). Immigration officials are authorized to arrest foreign nationals who are in the country illegally and detain them during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960) (noting the “impressive historical evidence of acceptance of the validity of statutes providing for administrative deportation arrest from almost the beginning of the Nation”); *see also Denmore v. Kim*, 538 U.S. 510, 523 (2003) (explaining that detention during removal proceedings “is a constitutionally valid aspect of the process”).

Congress has enacted a statutory framework for the civil detention of foreign nationals during the administrative removal process under the INA. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The INA establishes rules governing when certain foreign nationals may be detained or removed, with different detention provisions applying to different categories of foreign nationals. *See id.*

a. Applicants for Admission

Title 8 U.S.C. § 1225 governs the detention and removal of applicants for admission. This section defines an “applicant for admission” as any “alien present in the United States who has not been admitted or who arrives in the United States.” 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines “admission” and “admitted” as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” *Id.* at § 1101(a)(13)(A). To have been “admitted” to the United States therefore requires that the foreign national must have lawfully entered the country “after

inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). An applicant for admission under 8 U.S.C. § 1225 is therefore a foreign national who is unlawfully present in the country or one who is arriving. See *Dep’t of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (a foreign national “who tries to enter the country illegally is treated as an ‘applicant for admission’”). As explained in 8 U.S.C. § 1225(a)(3), all applicants for admission are subject to inspection by immigration officers to determine if they are admissible.

The Supreme Court has explained that “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(1) applies to aliens who are “determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation,” while section 1225(b)(2) “is broader” and “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Ibid.*

Applicants for admission who fall under 8 U.S.C. § 1225(b)(1) are subject to expedited removal proceedings and “shall be detained” until removed (or until the end of asylum or credible-fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV). With respect to applicants for admission subject to 8 U.S.C. § 1225(b)(2)’s catchall provision, if an immigration officer determines that they are “not clearly and beyond a doubt entitled to be admitted” then they “shall be detained” during removal proceedings. 8 U.S.C. § 1225(b)(2)(A). None of the provisions of 8 U.S.C. § 1225 provide a bond process whereby applicants for admission may be released pending resolution of their removal proceedings, so detention is mandatory. See *Jennings*, 583 U.S. at 302 (“In sum,

§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”).

b. Other Removable Foreign Nationals

The INA also provides procedures for the arrest, detention, and removal of foreign nationals who do not meet the criteria of an applicant for admission. Section 1226 is not limited to applicants for admission, but instead, broadly applies to foreign nationals who have been admitted but are now pending removal decisions. *See* 8 U.S.C. § 1226.

Section 1226 also provides procedures for the detention of these individuals. *Id.* However, immigration officials are expressly authorized to release them on bond pending the adjudication of their removal proceedings. 8 U.S.C. § 1226(a)(2)(A). DHS regulations provide for the bonded release of foreign nationals falling under this provision if they “would not pose a danger to property or persons” and are “likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). In sum, Section 1225(b) governs the detention of “applicants for admission” – which Congress has defined to include any foreign national “present in the United States who has not been admitted” – while Section 1226(a) governs the detention of foreign nationals who have been previously admitted but are subject to removal proceedings. Section 1225(b) does not provide for release on bond during the removal process, while Section 1226(a) does.

LEGAL STANDARD

A petition for a writ of habeas corpus challenges the legality or constitutionality of the Government’s restraint or imprisonment of the petitioner. 28 U.S.C. § 2241.

A petitioner bears the burden to demonstrate that his detention is unlawful. *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

When reviewing a habeas petition, the court may consider affidavits and documentary evidence, such as records from any underlying proceeding. *Amponsah v. Beth*, No. 18-cv-199, 2018 WL 2944546, at *2 (E.D. Wis. June 12, 2018) (citing 28 U.S.C. §§ 2246, 2247). The court is not required to hold an evidentiary hearing when the petition and answer present only issues of law. *Toe v. Schmidt*, No. 24-cv-13, 2024 WL 493289, at *2 (E.D. Wis. Jan. 18, 2024) (citing 28 U.S.C. § 2243).

ARGUMENT

The plain text of the INA states that a foreign national in the United States is an “applicant for admission” until an immigration officer admits them into the United States. 8 U.S.C. § 1225(a)(1). Section 1225 is the statutory provision that governs the processes for arresting, detaining, and removing applicants for admission. And the statute says that an “applicant for admission ... shall be detained” pending removal proceedings “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

Nowhere in his Petition does Petitioner allege he has ever been lawfully admitted into the United States. Indeed, Petitioner acknowledges that he lacks any legal status in the United States. And he is obviously present in the United States, as he was arrested by immigration officers in Milwaukee, Wisconsin and remains detained. Thus, Petitioner is

an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

Petitioner nevertheless asserts that 8 U.S.C. § 1225 applies only to people arriving at U.S. borders and ports of entry. If this is correct, an undocumented immigrant who evades detection upon arrival in the United States and travels into the interior of the country is no longer an “applicant for admission” subject to mandatory detention. But the statute defines that term to include any foreign national “present in the United States who has not been admitted or who arrives in the United States,” with no temporal or geographic limitations. 8 U.S.C. § 1225(a)(1) (emphasis added). While judges in this district have split on their interpretations of the applicability of Sections 1225 and 1226 to unadmitted foreign nationals present in the United States, *see infra*, only one interpretation of the INA is supported by the statutory text and the legislative history.

I. No Violation of the INA

a. The Statutory Text

Both the plain text of the INA and its legislative history supports the Government’s interpretation of the mandatory detention statute. The statutory text defines foreign nationals who have not been admitted to the United States, but who are physically present inside the United States, as “applicants for admission,” 8 U.S.C. § 1225(a)(1), regardless of extraneous factors such as proximity to the border, length of time present, or subjective intent to apply for admission. And it mandates that applicants for admission “shall be detained” pending removal proceedings (without the potential for release on bond) if an

immigration officer determines that the applicant “is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

For a foreign national to be “admitted” into the United States, he or she must have lawfully entered the country “after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Here, it is undisputed that Petitioner has never been inspected or authorized by an immigration officer and, therefore, has not been “admitted” into the United States. As a result, Petitioner’s presence in the United States as an unadmitted foreign national makes him an “applicant for admission” subject to Section 1225. Moreover, Petitioner undoubtedly wishes to remain in the United States, as he has filed an application for asylum and withholding of removal, so he is necessarily “seeking admission” within the meaning of 8 U.S.C. § 1225(b)(2)(A). The immigration court will hold a hearing on Petitioner’s application, at which Petitioner will presumably argue that he should be granted lawful admission status in the United States. Under any definition of the phrase, Petitioner is “an alien seeking admission” to the United States and subject to § 1225(b)(2)(A).

Petitioner points to prior agency practice of applying § 1226(a) to foreign nationals like himself but that argument is unpersuasive. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the plain language of the statute and *not* prior practice controls. *cf. Yajure-Hurtado*, 29 I. & N. Dec. at 225–26. *Loper Bright* recognized that agencies often change precedents and “correct [their] own mistakes.” 603 U.S. at 411 (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). This is precisely

what DHS did when it modified its detention policy to conform to the plain language and intent of § 1225(b)(2)(A).

b. Legislative History

Given that the statutory text is clear, the Court need not consider legislative history, but that history only further supports the Government's position. *See Mohamad v. Palestinian Authority*, 566 U.S. 449, 459 (2012) ("Indeed, although we need not rely on legislative history given the text's clarity, we note that the history only supports our interpretation..."). Congress enacted both 8 U.S.C. § 1225(b)(2) and 8 U.S.C. § 1226(a) as part of the IIRIRA in 1996. Before passage of that Act, the INA only provided for inspection of foreign nationals when they arrived at ports of entry. *See* former 8 U.S.C. § 1225(a) (1994). If, after inspection, immigration officers at a port of entry determined the foreign national was inadmissible, they would be placed into "exclusion" proceedings and were subject to mandatory detention. *See* former 8 U.S.C. § 1182(d)(5) (1994). By contrast, under this former statutory regime, foreign nationals who entered the United States illegally and were later discovered were placed into "deportation" proceedings and were eligible to request release on bond. *See* former 8 U.S.C. § 1252(a)(1) (1994).

This structure led to an incongruous result: foreign nationals who had lawfully appeared at a port of entry for inspection but were deemed inadmissible were ineligible for release on bond, while those who surreptitiously entered the country without inspection were entitled to request release on bond. *See Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 2025 WL 2674169, at *6–8 (BIA Sept. 5, 2025) (discussing statutory history); *see also Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010) ("This so-called 'entry doctrine'

resulted in an anomaly. Under this regime, non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings.”); *Chavez*, 2025 WL 2730228, at *4 (“Prior to IIRIRA, an ‘anomaly’ existed ‘whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who had crossed the border unlawfully.”) (quoting *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

Congress found this unintended and undesirable result to be unacceptable. It chose to amend the INA through the IIRIRA to replace the previous term “entry” with the term “admission” and to replace the former “exclusion” and “deportation” proceedings with more general “removal” proceedings. See *Martinez v. Att’y Gen. of the U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012). The House Report on the IIRIRA explained Congress’s logic as follows:

This subsection is intended to replace certain aspects of the current “entry doctrine,” under which 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 at a port of entry. Hence, the pivotal factor in determining an alien’s status will be whether or not the alien has been lawfully admitted.

H.R. Rep. No. 104-469(I), 1996 WL 168995, at 225 (Leg. Hist. Mar. 4, 1996).

In essence, Petitioner’s attempt to graft geographic and/or temporal limitations onto the definition of “applicants for admission” provided in 8 U.S.C. § 1225(a)(1) seeks to override Congress’s deliberate legislative choice in passing the IIRIRA and restore the

former immigration regime that Congress determined was unacceptable. *Cf. Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (explaining that Congress’s addition of 8 U.S.C. § 1225(a)(1) “ensures that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA—in the position of an ‘applicant for admission’”). As shown in this case, Petitioner’s interpretation would afford foreign nationals who illegally enter the country and evade detection by immigration officers greater procedural protections than those available to foreign nationals who lawfully present themselves for inspection at a port of entry. Yet the plain text of the statute and its legislative history fails to support this inharmonious result.

c. This Court’s Recent Decisions

This Court recently addressed a substantively identical case in *Cirrus Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025), *appeal filed*, Nov. 25, 2025, which should be followed here. Like this case, the petitioner in *Cirrus Rojas* was “an unregistered alien and citizen of Mexico who has lived in the United States without authorization for [a number] of years.” *Id.* at *1. The petitioner in *Cirrus Rojas* was arrested pursuant to an administrative arrest warrant this past summer, placed into removal proceedings, and ordered released on bond by an immigration judge. DHS appealed the release order, triggering the automatic stay of 8 C.F.R. § 1003.19(i)(2). *Id.* The petitioner in *Cirrus Rojas* then filed a habeas petition, arguing that his detention pending his removal proceedings was governed by 8 U.S.C. § 1226 rather than 8 U.S.C. § 1225 and, thus, the immigration judge’s bond order was proper under 8 U.S.C. § 1226(a)(2). *Id.* at *7.

This Court conducted a thorough analysis of the text of 8 U.S.C. § 1225 and 8 U.S.C. § 1226, walking through the various provisions of the respective statutes. *Id.* at *5–10. While the Court acknowledged that “the statutory language and interplay between [Section 1225 and Section 1226] could certainly be more clear,” it concluded “[b]ased on the text” that the respondents’ position was correct and held that 8 U.S.C. § 1225(b)(2)(A) applies to unadmitted foreign nationals found inside the United States and mandates their detention throughout the pendency of removal proceedings. *Id.* at *8. After carefully reviewing the language of 8 U.S.C. § 1225(a)(1) and considering the INA as a whole, this Court determined that it could “not find a statutory basis to exclude [the petitioner] from the definition of ‘applicant for admission’ in Section 1225(a)(1).” *Id.* See also *Ugarte-Arenas v. Olson*, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (following *Cirrus Rojas* and ruling that petitioner was “applicant for admission” under Section 1225 where petitioner had lived in United States without authorization for several years).

Finally, this Court rejected the argument that the historical practice of federal immigration agencies permitting unadmitted foreign nationals living in the United States to seek release on bond under 8 U.S.C. § 1226(a)(2) should override the plain text of 8 U.S.C. § 1225. See *Cirrus Rojas*, 2025 WL 3033967, at *9. As this Court noted, “[p]rior administrations’ generous interpretations of these laws, while relevant to understanding that text, do not and cannot rewrite it.” *Id.* The Supreme Court has recently explained that while “the longstanding practice of the government – like any other interpretive aid – can inform a court’s determination of what the law is... the interpretation of the meaning of

statutes, as applied to justiciable controversies, [i]s exclusively a judicial function.” *Loper Bright*, 603 U.S. at 386–87 (internal punctuation and citations omitted).⁴

Respondents acknowledge that several federal district courts have addressed this same issue recently and reached the opposite conclusion – that 8 U.S.C. § 1226 rather than 8 U.S.C. § 1225 governs the detention of unadmitted foreign nationals living in the United States. This Court recently so held in *Ramirez Valverde v. Olson*, 2025 WL 3022700 (E.D. Wis. Oct. 29, 2025) (Conway, J.), *appeal filed*, Dec. 22, 2025, *Rivas-Alonso v. Olson*, 2025 WL 3240928 (E.D. Wis. Nov. 20, 2025) (Adelman, J.), and *Lopez De La Cruz v. Schmidt*, Case No. 25-cv-1562, at Doc. 18 (E.D. Wis. Nov. 19, 2025) (Adelman, J.) Respectfully, the United States submits that this line of decisions is unpersuasive for the reasons explained by this Court in *Cirrus Rojas and Ugarte Arenas*.⁵

⁴ Cases from other districts supporting the Government’s position include *Cheema v. Swearingen*, Case No. 25-cv-609, Doc. 17 (S.D. Ind. December 16, 2025); *Oliveira v. Patterson*, No. 25-cv-01463, (W.L.A. Nov. 4, 2025); *Sandoval v. Acuna*, No. 25-cv-01467, (W.L.A. Oct. 31, 2025); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351 at *4–9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025).

⁵ On December 11, 2025, a Seventh Circuit Court of Appeals motions panel issued *Castanon-Nava v. U.S. Dep’t of Homeland Security*, No. 25-3050, ---F.4th---, 2025 WL 3552514 (7th Cir. 2025). In that decision, the panel considered whether Section 1225(b)(2) “covers any noncitizen who is unlawfully already in the United States as well as those who present themselves at its border.” *Id.* at *8. The panel tentatively concluded that the Government is “not likely to succeed on the merits” of its interpretation of 8 U.S.C. § 1225(b)(2)(A). *Id.* at *8-10. However, that decision is not binding precedent: “Decisions by motions panels are summary in character, made often on a scanty record, and not entitled to the weight of a decision made after plenary submission.” *Johnson v. Burken*, 930 F.2d 1202, 1205 (7th Cir. 1991). Indeed, *Castanon-Nava* repeatedly emphasized the tentative nature of its conclusions. 2025 WL 3552514, at *8-10. For the reasons set forth in this response and in the Respondent’s Opposition to the Emergency Motion for Release Pending Appeal in *Rojas v. Olson*, Appeal No. 25-3217, at Doc. 13 (7th Cir. Dec. 19, 2025), the Seventh Circuit’s tentative conclusions should not be found persuasive.

II. No Due Process Violation

Beyond alleging that his detention pending removal violates the INA, Petitioner asserts that his detention violates his due process rights under the Fifth Amendment to the United States Constitution. (ECF 1, ¶¶ 97-100). As noted above, Congress has specifically authorized immigration officers to arrest and detain foreign nationals for purposes of removing them from the country, and such procedures have consistently withstood due process challenges. *See, e.g., Jennings*, 583 U.S. at 323 (“This Court has never held that detention during removal proceedings is unconstitutional. To the contrary, this Court has repeatedly recognized the constitutionality of that practice.”) (Thomas, J., concurring in part and concurring in the judgment) (citations omitted); *see also Denmore*, 538 U.S. at 523 (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process.”); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (explaining that deportation proceedings “would be vain if those accused could not be held in custody pending the inquiry into their true character”).

Petitioner remains in removal proceedings, which continue to progress. Petitioner’s next immigration hearing is set for January 8, 2026. Given this procedural posture, Petitioner’s detention has neither been prolonged, nor indefinite, and he cannot demonstrate that there exists “no reasonable likelihood of his removal in the foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678, 702 (2001). As the Court summarized in *Cirrus Rojas*:

Given the caselaw and the well-defined procedures governing (and limiting) Cirrus Rojas's detention, the Court rejects his due process challenge. Consistent with *Zadvydas* and *Denmore*, Cirrus Rojas has a recognizable liberty interest in connection with his pre-removal detention. But as *Denmore* held, and *Parra* explains, that liberty interest is limited. Cirrus Rojas is an alien who was found in the United States without authorization and is subject to removal proceedings. Consistent with federal law, he is being provided with the opportunity to oppose removal and using that opportunity to pursue an asylum claim. As explained in *Parra*, Cirrus Rojas's liberty interest is limited, and he has the key to his release in his own pocket; he can choose to accept removal to his homeland under Section 1229a.

Cirrus Rojas, 2025 WL 3033967, at *12 (citing *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999)).

Petitioner has not submitted any evidence that he is being detained for any purpose beyond the resolution of his removal proceedings. Petitioner is receiving the process to which he is due through his removal proceedings under 8 U.S.C. § 1229a(b)(4). The United States has "a powerful interest in maintaining the detention in order to ensure that removal actually occurs." *Parra*, 172 F.3d at 958. The Petition fails to show that the deprivation of Petitioner's liberty – as an unadmitted foreign national with no status in the United States – while he awaits the conclusion of his removal proceedings violates due process. *Denmore*, 538 U.S. at 531 (no due process violation in detaining foreign national pending removal proceedings); *Parra*, 172 F.3d at 958 ("The private interest here is not liberty in the abstract, but liberty *in the United States* by someone no longer entitled to remain in this country but eligible to live at liberty in his native land[.]"). The Court

should deny any relief sought pursuant to an argument that Petitioner's right to due process has been violated.

III. *Bautista* has no preclusive effect.

Petitioner further appears to seek habeas corpus relief based on the court's entry of a partial final judgment in *Bautista v. Noem*, -- F.Supp.3d --, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025). See ECF 1, ¶¶9-11. In *Bautista*, the district court declared the Government's interpretation of § 1225(b)(2) unlawful on a class-wide basis and entered partial summary judgment in favor of the class members. See 2025 WL 3713987 at *12. Yet even if Petitioner is a member of this nationwide class, as he suggests, the *Bautista* ruling is neither binding nor applicable to a habeas case pending in the Eastern District of Wisconsin.

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.⁶ 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.

⁶ 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).

"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).

As such, the *Bautista* court's declaratory judgment purporting to grant relief that at its core sounds in habeas has no effect outside that district and 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).⁷ Here, like most *Bautista* class members, Petitioner is 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. At the time of filing this habeas petition, Petitioner was detained at Dodge County Detention Center in Waupun, Wisconsin, which is outside this judicial district. Petitioner's immediate custodian is Mr. Dale J. Schmidt, Sheriff of Dodge County, Wisconsin, and that individual is not a party in the Central District of California case; hence, subjecting Petitioner's custodian to the judgment of the Central District of California would be

⁷ 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, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025), ECF No. 12.

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).

Even if the *Bautista* declaratory judgment could have preclusive effect outside the Central District of California, the Department of Justice has appealed that judgment to the Ninth Circuit Court of Appeals. *See Bautista, et al. v. United States Department of Homeland Security, et al.*, No. 25-7958 (9th Cir.). Under these circumstances—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. 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 (emphasis added), it is not so precluded in cases such as this one 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).

It is also doubtful that issue preclusion is ever appropriate in the habeas context. In *Hierens v. Mizell*, 729 F.2d 449 (7th Cir. 1984), for example, the court held that “a decision in another case is not res judicata as to a habeas proceeding.” *Id.* at 456. See also *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (holding that a prior “class action has no preclusive affect in habeas proceedings.”); *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 judicata and collateral estoppel are not applicable in habeas proceedings.”). This 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.

IV. No Judicial Estoppel

In addition to his more substantive arguments, Petitioner challenges Respondents’ ability to assert that Petitioner is subject to mandatory detention under § 1225(b)(2)(A). ECF 1 at ¶¶ 7, 47-48. Citing (without analysis) to the Supreme Court’s decision in *New Hampshire v. Maine*, 532 U.S. 742 (2001), Petitioner argues that Respondents should be judicially estopped from arguing that he is subject to mandatory detention because in *Jennings* the Government took a contrary position, namely “that individuals who have already entered the United States and are not apprehended within 100 miles of the boarder or within 14 days of entry are subject to discretionary detention under 8 U.S.C. §

1226(a), not mandatory detention under § 1225(b).” ECF 1 at ¶ 50.⁸ But even a cursory review shows that judicial estoppel is not appropriate. Because the Supreme Court has never applied judicial estoppel against the Federal Government, and because *Jennings* did not hold that foreign nationals in Petitioner’s position are subject to § 1226(a) detention, this Court should decline to apply the doctrine here.

In the *New Hampshire* case, which involved a boundary dispute between the states of New Hampshire and Maine, the Supreme Court held that “where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position,” the Court stated, “he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.” *Id.* at 749. The Court noted that judicial estoppel’s application is discretionary and articulated three factors for courts to consider when deciding whether to apply judicial estoppel: (1) whether the party against whom judicial estoppel would be applied is taking a position “clearly inconsistent” with its earlier position; (2) whether that party “succeeded in persuading a court to accept [the] earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create ‘the perception that either the first or the second court was misled’;” and (3) whether that party “would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.” *Id.* at 750–51.

⁸ The oral argument transcript Petitioner references is available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/15-1204_k536.pdf (last visited November 13, 2025).

The Supreme Court found these factors favored application of judicial estoppel. *Id.* at 751. First, New Hampshire's claim that the river boundary runs along the Maine shore was clearly inconsistent with its positions in the 1970s litigation, which located the boundary at either the middle of the main channel of navigation or the geographic middle of the river. *Id.* Second, New Hampshire's previous position prevailed when the Supreme Court accepted the consent decree fixing the boundary in the middle of the river's navigable channel. *Id.* at 752. And finally, New Hampshire benefited from that interpretation and now sought to change the interpretation to gain additional advantage at Maine's expense. *Id.* at 752, 755. The Supreme Court held that New Hampshire was barred from asserting, contrary to its position in the 1970s litigation, that the Piscataqua River boundary runs along the Maine shore and dismissed the action. *Id.* at 749.

Critically, the *New Hampshire* case did not apply judicial estoppel to prevent the federal government from taking a litigation position. Petitioner does not cite to any case in which the Supreme Court has done so, and indeed the Supreme Court does not appear to have ever done so. Petitioner also does not articulate why judicial estoppel should be applied in this case, which is particularly important given that estoppel is generally limited when it comes to the Federal Government. Because of the geographic breadth of Government litigation and the nature of the issues the Government litigates, the Federal Government is in a different position than a private litigant. See *United States v. Mendoza*, 464 U.S. 154, 159 (1984); see also *Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 60 (1984) (the federal government "may not be estopped on the same terms as any other litigant."). As this Court has likewise observed, equitable estoppel does not

apply against the Federal Government. *Cirrus Rojas*, 2025 WL 3033967, at *9. And the Supreme Court has expressly declined to extend the doctrine of nonmutual offensive collateral estoppel to the federal government. *Mendoza*, 464 U.S. at 162–63.

Applying judicial estoppel in this case would implicate one of the very problems the *Mendoza* court cited in rejecting application of nonmutual offensive collateral estoppel against the government: it “would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue.” *Mendoza*, 464 U.S. at 160. As the Petition suggests, the central issue in this case continues to be litigated across the country, and permitting Petitioner to invoke judicial estoppel to prevent Respondents from making their argument here—one which this Court has already affirmed—would thwart the development of this important legal question.

With that said, the Seventh Circuit has entertained judicial estoppel arguments against the Federal Government without specifically addressing whether judicial estoppel properly applies. *See, e.g., United States v. Santana-Cabrera*, No. 22-2056, 2023 WL 2674363, at *2 (7th Cir. Mar. 29, 2023) (declining to apply judicial estoppel because federal government had not prevailed on pertinent issue in previous litigation); *United States v. Trudeau*, 812 F.3d 578, 584 (7th Cir. 2016) (same); *Levinson v. United States*, 969 F.2d 260, 264–65 (7th Cir. 1992) (declining to apply judicial estoppel because government’s positions were not inconsistent).

Assuming for argument’s sake that judicial estoppel does apply to the Federal Government, the Court should not apply it in this case. To the extent the Solicitor General’s statement during *Jennings* oral argument is inconsistent with Respondents’

position in this case, the facts at issue are not the same and the government did not succeed in persuading the Supreme Court to adopt any position in *Jennings* that is contrary to its decision in this case. See *Urbania v. Cent. States, Se. & Sw. Areas Pension Fund*, 421 F.3d 580, 589 (7th Cir. 2005) (judicial estoppel requires that “(1) the latter position must be clearly inconsistent with the earlier position; (2) the facts at issue must be the same in both cases; and (3) the party to be estopped must have prevailed upon the first court to adopt the position.”).

The issue in *Jennings* was not whether the foreign nationals were subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) or discretionary detention under 8 U.S.C. § 1226(a). Rather, the issue was whether the Ninth Circuit was correct to infer from the text of §§ 1225(b), 1226(a), or 1226(c) a requirement for periodic bond hearings beginning at six months of detention, and that detention beyond the initial six-month period is permitted only if the government proves by clear and convincing evidence that further detention is justified. *Jennings*, 583 U.S. at 291–92. Writing for the majority, Justice Alito found nothing in the statutory text of those provisions from which to infer such a requirement. *Id.* at 297–306.

The *Jennings* holding applies to both mandatory and discretionary detention provisions alike, without regard to whether a foreign national residing in the United States without legal status is detained under § 1226(a) or § 1225(b)(2)(A). Thus, for purposes of judicial estoppel, it cannot be said that the Government prevailed in *Jennings* by persuading the Supreme Court to adopt any position on whether § 1225 or § 1226 applied to an alien similarly situated to Petitioner, such that taking a different position in

this case would amount to “seek[ing] to prevail, twice, on opposite theories.” See *Levinson v. United States*, 969 F.2d 260, 264 (7th Cir. 1992) (explaining judicial estoppel’s purpose to protect courts from being manipulated by “chameleonic litigants”).

Indeed, if judicial estoppel was appropriate here, one would think *Jennings* undermined Respondents’ position in this case. But it does not—rather, Respondents’ position is in harmony with *Jennings*. Writing for the majority, Justice Alito stated that “[u]nder ... 8 U.S.C. § 1225, an alien who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has not been admitted,’ is treated as ‘an applicant for admission.’” *Jennings*, 583 U.S. at 287. And then he noted that, “[r]ead most naturally, §§ 1225(b)(1) and (b)(2) [] mandate detention for applicants for admission until certain proceedings have concluded.” *Id.* at 297 (cleaned up). This is Respondents’ argument in a nutshell. See *Teledyne Indus., Inc. v. N.L.R.B.*, 911 F.2d 1214, 1218 (6th Cir. 1990) (observing that parties are permitted by the federal rules to plead inconsistent claims, so “judicial estoppel does not bar a party from contradicting itself, but from contradicting a court’s determination that was based on that party’s position.”).

As to the third *New Hampshire* factor, Petitioner does not articulate how Respondents themselves will derive an unfair advantage or impose an unfair detriment on Petitioner. *New Hampshire*, 532 U.S. at 751. In that case, the Supreme Court highlighted that New Hampshire had “convinced this Court to accept one interpretation..., and having benefited from that interpretation, New Hampshire now urges an inconsistent interpretation to gain an additional advantage at Maine’s expense.” *New Hampshire*, 532 U.S. at 755. The Seventh Circuit’s opinion in *Levinson* similarly indicates judicial estoppel

requires some modicum of ill intent. There, the Seventh Circuit stated that judicial estoppel “prevents a party that has taken one position in litigating a particular set of facts from later reversing its position when it is to its advantage to do so.” *Levinson*, 969 F.2d at 264. But there is no evidence of taking opposite litigation positions for purposes of disadvantaging Petitioner.

Respondents’ position in this case, to the extent it is inconsistent with what the Solicitor General said in 2016, results from a policy shift with respect to statutory interpretation and DHS enforcement priorities. Petitioner himself acknowledges this, noting that Respondents announced a “new policy” interpreting the INA to mandate detention under 8 U.C.S. § 1225(b)(2)(A) for all foreign nationals who entered without inspection. ECF 1 at ¶¶ 3, 51-55; *see also Cirrus Rojas*, 2025 WL 3033967, at *1-2 (describing “change from longstanding immigration practice...based upon recent (non-public) interim guidance”).

This is critical because the *New Hampshire* decision was careful to qualify its application of judicial estoppel by noting New Hampshire’s inconsistent position did not result from a policy shift, and it would not compromise a governmental interest in enforcing the law. *New Hampshire*, 532 U.S. at 755-56. Such is the case here. If DHS’s policy shift resulted in an interpretation at odds with the law, that would be one thing. *See New Hampshire*, 532 U.S. at 750 (judicial estoppel is “intended to prevent improper use of judicial machinery”). But as argued above, and held by this Court in *Cirrus Rojas*, Respondents’ current interpretation is in harmony with the INA. Thus, applying the

doctrine of judicial estoppel to this case would compromise the government's ability to enforce immigration laws in a manner consistent with the INA.

For these reasons, the Court should decline to exercise its discretion to judicially estop Respondents from arguing that Petitioner is an "applicant for admission" and, as such, is subject to mandatory detention under § 1225(b)(2)(A).

V. DHS's actions were not *Ultra Vires*.

Petitioner also asserts (without development) that DHS exceeded its statutory authority in arresting and detaining Petitioner pending his administrative deportation proceedings. See ECF 1, ¶¶ 30, 34, 102. This contention lacks merit, as the mandatory detention provisions of the INA fully authorized the agency's actions in this case.

Ultra vires claims are generally confined to "extreme agency error where the agency has stepped so plainly beyond the bounds of its statutory authority, or acted so clearly in defiance of it, as to warrant the immediate intervention of an equity court." *Fed. Express Corporation v. United States Department of Commerce*, 39 F.4th 756, 764 (D.C. Cir. 2022). Judicial review of *ultra vires* claims is limited to "where (i) there is no express statutory preclusion of all judicial review; (ii) 'there is no alternative procedure for review of the statutory claim; and (iii) the agency plainly acts in excess of its delegated powers and contrary to a specific prohibition in the statute that is clear and mandatory.'" *Id.*

Here, as explained above, Petitioner fails to show that DHS plainly exceeded its statutory authority in arresting and detaining Petitioner, as he is an "applicant for admission" under § 8 U.S.C. § 1225(a)(1), and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Because Petitioner meets the unambiguous statutory

definition of an “applicant for admission” –and because such treatment effectuates Congress’s policy choices in amending the INA in 1996–DHS acted well within its statutory authority in applying the mandatory detention provisions to Petitioner. *Cf. Cirrus Rojas*, 2025 WL 3033967 at *10-11 (ruling that the regulation permitting an automatic stay of Cirrus Rojas’ release pending a DHS appeal was not ultra vires).

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Court deny Petitioner’s habeas petition, grant him judgment as a matter of law, and dismiss this case with prejudice.

Dated at Milwaukee, Wisconsin this 29th day of December 2025.

Respectfully submitted,

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