

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-04187-SBP

OLIVER GRIJALVA ESQUIVEL,

Petitioner,

v.

JUAN BALTASAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,

ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity,

TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity, and

PAMELA JO BONDI, Attorney General of the United States, in her official capacity,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

In accordance with the Court's Order to Show Cause (ECF No. 4), Respondents hereby respond to that Order and to the Petition for Writ of Habeas Corpus filed by Petitioner Oliver Grijalva Esquivel. The Petition should be denied for the reasons set forth below.

INTRODUCTION

As explained further below, Petitioner is a citizen of Guatemala who entered the United States unlawfully, has been placed in removal proceedings, and is being held in detention by U.S. Immigration and Customs Enforcement (ICE). He challenges his detention based on two class actions where he claims he is a class member. First, he relies on a declaratory judgment issued in a certified class action pending in the Central District of California. He alleges that he is a member of that class, and he argues that the court in that class action has issued declaratory

relief that means that he is entitled to a bond hearing, and this Court should thus order that he be granted a bond hearing. Second, he relies on a certified class action pending in the District of Colorado. While that court has not yet issued a judgment, he argues that the holdings in that case should lead this Court to determine that his detention without bond is unlawful.

This Court should reject Petitioner's arguments. First, to the extent he believes that he is a class member in those other class action proceedings and is directly entitled to relief in either case, he would need to seek relief in those proceedings. Given the complex circumstances of Petitioner's immigration history, those courts should determine his class membership and whether he is entitled to relief.

Second, to the extent Petitioner is arguing that this Court must grant him relief based on the orders in those cases, he must first show that this Court should accord preclusive effect to those orders. This Court should not do so. Several reasons counsel against granting preclusive effect to the declaratory judgment granted in the Central District of California. And there is no basis to accord preclusive effect to the rulings in the District of Colorado case, as that court has not even entered judgment yet.

Petitioner only briefly alludes in his petition to the merits of the underlying issue—whether he is properly subject to mandatory detention under the Immigration and Nationality Act. If this Court addresses that issue, it should find that Petitioner's detention is statutorily mandated. As explained below, he meets the INA's definition of an "applicant for admission," and as a result the INA makes him subject to mandatory detention.

Finally, Petitioner has not shown that he has been denied an opportunity to seek release on bond before an immigration judge (IJ). He did seek such consideration, and the IJ determined that to the extent it had jurisdiction to grant him release on bond, it declined to do so.

BACKGROUND

A. Petitioner's immigration history

Petitioner is a citizen of Guatemala who illegally entered the United States and has never been admitted to the United States. His immigration history, which is complex, is described in detail in the attached declaration. Ex. 1 (Declaration of Gary Zolock) at 4-5.

On July 10, 2016, U.S. Customs and Border Protection ("CBP") agents encountered Petitioner at or near Hidalgo, Texas, shortly after he illegally crossed the border into the United States from Mexico. *Id.* at ¶ 6. He was detained as an unaccompanied child, then released and reunified with his mother on August 12, 2016. *Id.* at ¶ 8. CBP initiated removal proceedings against him under 8 U.S.C. § 1229a. *Id.* at ¶ 7. But on March 20, 2023, the removal proceedings were dismissed without prejudice. *Id.* at ¶ 12.

On December 2, 2023, CBP agents encountered Petitioner in the United States near Campo, California. *Id.* at ¶ 13. CBP agents interviewed him, and he admitted that he was to be paid \$5,000.00 to pick up two aliens who had illegally crossed the border, and that he was then to transport them to Los Angeles. *Id.* CBP agents arrested Petitioner. *Id.* On December 4, 2023, a complaint was filed in the U.S. District Court for the Southern District of California, charging Petitioner with transportation of illegal aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(ii). *Id.* at ¶ 14. An indictment with similar charges followed. *Id.* at ¶ 15. On March 14, 2024, a superseding information was filed in the Southern District of California, charging Petitioner with one count of serving as an accessory after the fact to improper entry by an alien in violation of 18 U.S.C. § 3. *Id.* at ¶ 16. Petitioner entered a guilty plea to the information and was sentenced to 90 days of time served. He was then released from custody on the criminal case and returned to the custody of CBP. *Id.*

On March 15, 2024, CBP placed Petitioner in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) and detained him on that ground. *Id.* at ¶ 17. When Petitioner claimed fear of persecution if returned to Guatemala, CBP referred him to U.S. Citizenship and Immigration Services. *Id.* On April 24, 2024, USCIS issued him a notice to appear pursuant to 8 C.F.R. § 208.30(f), which moved him into ordinary (non-expedited) removal proceedings under 8 U.S.C. § 1229a. *Id.* at ¶ 21. On May 21, 2024, ICE transferred him to its Denver Contract Detention Facility. *Id.* at ¶ 23.

On August 22, 2024, Petitioner appeared before an IJ and requested an order of removal. *Id.* at ¶ 24. The IJ ordered Petitioner removed from the United States to Guatemala. *Id.* ICE then began the process of executing the order of removal. *Id.* at ¶ 26. But on September 10, 2024, Petitioner filed a motion to reopen. *Id.* at ¶ 27. The IJ granted the order. *Id.* at ¶ 29. On December 16, 2024, a psychologist concluded that Petitioner was not competent to represent himself in removal proceedings. *Id.* at ¶ 31. On February 13, 2025, Petitioner, through a representative, moved to terminate his removal proceedings, and on February 26, 2025, the IJ granted the motion to terminate. *Id.* at ¶¶ 32-35. DHS then filed a motion to reconsider the termination of removal proceedings, and the IJ granted that motion. *Id.* at ¶¶ 36-37.

On April 1, 2025, Petitioner filed a motion for a custody redetermination hearing before an immigration judge under 8 U.S.C. § 1226(a). *Id.* at ¶ 38. He submitted evidence in support of his request for release on bond. *Id.* On April 14, 2025, the IJ conducted a custody redetermination hearing. *Id.* at ¶ 39. Petitioner argued, among other things, that he was not a danger or flight risk. *Id.* The IJ issued a written decision. *See* Ex. 2 (Order of the Immigration Judge) at 1-2. The IJ ruled that even if Petitioner is no longer subject to detention under 8 U.S.C. § 1225(b)(1), he is still properly detained under 8 U.S.C. § 1225(b)(2). *Id.* The IJ further found

that if the IJ did have jurisdiction to address Petitioner’s custody, Petitioner had failed to establish that he is not a danger to the community. *Id.* Petitioner did not appeal the IJ’s decision. Ex. 1 at ¶ 39.

On September 17, 2025, the IJ issued a written decision ordering Petitioner removed to Guatemala. *Id.* at ¶ 42. The IJ denied asylum and withholding of removal. *Id.* On October 7, 2025, Petitioner filed an appeal of the IJ’s decision with the Board of Immigration Appeals (“BIA”). *Id.* Accordingly, the order of removal is not administratively final. *Id.* at ¶ 43. At this time, before his order of removal has become final, Petitioner is detained under 8 U.S.C. § 1225(b). *Id.* at ¶ 46.

B. The Petition

In his Petition, Petitioner states that he “brings this habeas petition to seek enforcement of his rights in two certified classes.” ECF No. 1 at 2. He raises two claims challenging his detention without the opportunity to seek release on bond.

In his First Claim, he contends that he is a member of a class that was certified by a district court in the Central District of California. *See Maldonado Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal.) (“*Bautista*”). Petitioner states that the *Bautista* court granted declaratory relief determining that ICE violates the INA by “applying the mandatory detention statute at § 1225(b)(2) to class members.” ECF No. 1 at 13 ¶ 28. He seeks “the same declaratory relief” that was extended to the class in that case. *Id.* at 13 ¶ 29.

In his Second Claim, Petitioner contends that he is a member of a class that was certified by a district court in the District of Colorado in *Mendoza Gutierrez v. Baltazar*, No. 25-cv-02720-RMR (D. Colo.) (“*Gutierrez*”). He does not claim that the *Gutierrez* court has entered declaratory relief for the class. Instead, he contends that he is a member of the class in that case,

and that as a result he “is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).” ECF No. 1 at 14 ¶ 32. He argues that “[p]ursuant to the holdings in *Mendoza Gutierrez*, Respondents likely violate the INA in applying the mandatory detention statute at § 1225(b)(2) to Colorado class members including Petitioner.” *Id.* at 14 ¶ 33.

As relief, Petitioner seeks a declaration from this Court that he is a class member in both the *Bautista* and *Gutierrez* cases. *Id.* at 15. He also requests that this Court order that he be provided a bond hearing under 8 U.S.C. § 1226(a) within seven days, or that he be released. *Id.* at 10 ¶¶ 14-15.

C. The habeas proceeding

Petitioner filed the Petition for Writ of Habeas Corpus on December 29, 2025. ECF No. 1. On December 30, 2025, the Court ordered Petitioner to, among other things, “serve Respondents with a copy of the Petition and accompanying papers, along with a copy of this Order, by e-mail and by overnight mail. . . .” ECF No. 5. The Court order Respondents not to remove or transfer Petitioner from the district during the case and further ordered that “Within five calendar days of service, Respondents are ORDERED TO RESPOND to the Petition and are ORDERED TO SHOW CAUSE as to why the Petition should not be granted.” *Id.* Respondents received service of the Petition, accompanying papers, and court order by email on December 31, 2025, and by overnight mail on January 2, 2026.

ARGUMENT

Relying on orders in the *Bautista* and *Gutierrez* cases, Petitioner asks this Court to direct Respondents to grant him a bond hearing. He has not shown that he is entitled to such relief.

I. To the extent Petitioner seeks to enforce rulings in the *Bautista* and *Gutierrez* cases based on his claimed class membership, he must seek relief in those cases, not here.

Petitioner asserts that he is a class member in the *Bautista* and *Gutierrez* cases, and that

this Court should enforce those courts' orders that he believes apply to him as a class member. But to obtain such relief, he would need to seek relief in those court proceedings.

Even the preliminary determination of whether Petitioner is a class member in those cases is complex and should be made by those courts in the first instance. For example, Petitioner claims that he is a member of the *Bautista* "Bond Eligible Class." ECF No. 1 at 6 ¶ 5. That class is defined as:

Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

See Ex. 3 ("Amended Order Consolidating the Court's Orders on Motion for Partial Summary Judgment, Class Certification, and Application for Reconsideration or Clarification," ECF No. 93 at 3, *Maldonado Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal.)). That Bond Eligible Class is defined, as relevant here, to include noncitizens only if they "were not . . . apprehended upon arrival." *Id.* at 3. It is thus not clear that the class includes Petitioner, as he was apprehended by CBP shortly after he illegally crossed the border into the United States. *See Ex. 1* at ¶ 6.

It is also not clear that Petitioner is a member of the class in the *Gutierrez* case. While the court in that case certified a class that includes various individuals who are detained under 8 U.S.C. § 1225(b)(2), that class then excludes any "person whose most recent arrest occurred at the border while they were arriving in the United States." *See Ex. 4* ("Order," ECF No. 47 at 3-4, *Mendoza Gutierrez v. Baltazar*, No. 25-cv-02720-RMR (D. Colo.)). Petitioner thus may fall outside that class, as he was apprehended by CBP at or near Hidalgo, Texas, shortly after he illegally crossed the border. *Ex. 1* at ¶ 6.

Any determinations about whether Petitioner is a class member in the *Bautista* or

Gutierrez classes should be made in the first instance in those cases. And if he is determined to be a class member, any direct relief Petitioner would be entitled to as a class member must be sought in those cases, not in this one.

II. This Court should not grant preclusive effect to the *Bautista* declaratory judgment.

Petitioner argues that this Court should rule for him by giving preclusive effect to the declaratory judgment issued as part of a partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, which has been appealed to the Ninth Circuit. This Court should not grant preclusive effect to that decision, for multiple reasons.

First, applying collateral estoppel here is unwarranted because the *Bautista* court lacked jurisdiction to determine the legality of Petitioner's detention. A requirement for a prior ruling to have preclusive effect is that it is a judgment "entered by a court of competent jurisdiction." *N. Nat. Gas Co. v. Grounds*, 931 F.2d 678, 683 (10th Cir. 1991); see Restatement (Second) of Judgments § 1 (1982) ("A court has authority to render judgment in an action when the court has jurisdiction of the subject matter); § 11 (requiring the court to have authority to adjudicate the controversy); § 27 (requiring the issue to have been "determined by a valid and final judgment").

The *Bautista* court's jurisdiction did not extend to Petitioner, for a few reasons.

The *Bautista* court's authority to issue a judgment was limited by principles of habeas jurisdiction. That court addressed whether the class members were unlawfully detained under 8 U.S.C. § 1225(b)(2), rather than § 1226(a). A challenge to the legality of detention can only be brought in habeas. "Regardless 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). Under habeas

jurisdictional principles, “jurisdiction lies in only one district: the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); see *J.G.G.*, 604 U.S. at 672. And a habeas petitioner must name the petitioner’s immediate custodian—*i.e.*, the custodian who has custody over the petitioner. *Padilla*, 542 U.S. at 435. A district court thus lacks authority to provide habeas relief to a petitioner who is confined outside the judicial district and where the immediate custodian is not located. *Padilla*, 542 U.S. at 442-43. Therefore, the *Bautista* court lacked jurisdiction to determine the legality of detention for class members like Petitioner who are confined outside the Central District of California.

The *Bautista* court also lacked jurisdiction to use the mechanism it did—granting a declaratory judgment in a class action to determine a preliminary issue that class members then rely on to seek relief in individual habeas actions. In *Calderon v. Ashmus*, 523 U.S. 740 (1998), the Supreme Court held that a district court lacked authority to grant such declaratory relief. *Id.* at 647. The Court highlighted the “need . . . to prevent federal-court litigants from seeking by declaratory judgment to litigate a single issue in a dispute that must await another lawsuit for complete resolution,” and it emphasized that “the disruptive effects of an action such as this are peculiarly great when the underlying claim must be adjudicated in a federal habeas proceeding. *Id.* at 747; see *id.* at 749 (concluding that the action was “not a justiciable case”). The *Calderon* decision accords with the Supreme Court’s general recognition that collateral estoppel rules do not apply with the same force in habeas cases. See *Sanders v. United States*, 373 U.S. 1, 8 (1963) (noting the “inapplicability of res judicata to habeas” because “[c]onventional notions of finality of litigation have no place where life or liberty is at stake”). In sum, the *Bautista* court lacked authority to issue a valid judgment that conclusively determined the legality of Petitioner’s detention in this case.

Second, applying preclusive effect to the *Bautista* decision here would run afoul of the principle that offensive collateral estoppel (where the plaintiff seeks to rely on collateral estoppel) is disfavored when applied against the federal government given its unique position as a litigant. In general, courts have “discretion to determine when [offensive collateral estoppel] should be applied.” *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329–31 (1979). 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), because of the breadth of government litigation and the nature of the issues the government litigates. *United States v. Mendoza*, 464 U.S. 154, 159 (1984). Due to those differences, the application of collateral estoppel to the federal government is disfavored. In *Mendoza*, the Court explained, “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. Based on this concern, the Court rejected the application of nonmutual collateral estoppel against the government, explaining that it “would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue. Allowing only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before this Court grants certiorari.” *Id.* at 160. This same principle weighs against granting the *Bautista* court’s judgment preclusive effect in this case. If the *Bautista* ruling compelled all district courts nationwide to follow that decision, it would thwart the development of important questions of public law across circuits.

Third, the existence of prior inconsistent judgments weighs against applying issue

preclusion. *Parklane Hosiery*, 439 U.S. at 330–31 (citing the existence of prior inconsistent judgments as an indicator of unfairness of applying issue preclusion). District courts around the country have interpreted 8 U.S.C. § 1225(b)(2) differently from the *Bautista* court. *See, e.g., Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (citing cases).¹ As one court recently explained, these varying rulings are one of many strong reasons why the *Bautista* judgment should not be given immediate preclusive effect as to all other district courts addressing the same issue. *See Order, Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12, at 11 & 28.

Fourth, the pendency of an appeal to the Ninth Circuit of the district court’s *Bautista* decision further supports not according that decision preclusive force at this time. In general, when no appeal is taken from a district court’s judgment, the judgment may have preclusive effect. *See In re Scrivner*, 535 F.3d 1258, 1266 (10th Cir. 2008) (“If no appeal is taken, as was the case here, the apposite doctrine is that of issue preclusion.”). It is true that the mere “pendency of an appeal does not *prevent* application of the collateral estoppel doctrine.” *Ruyle v. Cont’l Oil Co.*, 44 F.3d 837, 846 (10th Cir. 1994) (emphasis added). But courts have recognized that applying preclusive force to a judgment that has been appealed can cause difficulty. After all, “a judgment that has been vacated, reversed, or set aside on appeal is thereby deprived of all conclusive effect, both as *res judicata* and as collateral estoppel.” *United States v. Lacey*, 982 F.2d 410, 412 (10th Cir. 1992); *In re Hedged-Invs. Assocs., Inc.*, 48 F.3d 470, 472–73 (10th Cir.

¹ *Accord Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2–3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

1995) (recognizing that a district court ruling would be subject to reversal if it had granted preclusive effect to a judgment later overturned on appeal). Because granting preclusive effect to earlier judgments could lead to a judgment “from which it may be impossible to obtain relief” if the first judgment is reversed on appeal, courts should strive to avoid this “evil result[.]” 9 A.L.R.2d 984; *accord* C. Wright, 18A Fed. Prac. & Prod. § 4404 (“Awkward problems can result from the rule that preclusive effects attach to the first judgment” if that judgment is on appeal); *id.* § 4433 (noting the need to avoid the “grotesque result of perpetuating a judgment that rests on nothing more than a subsequently reversed judgment”).

Accordingly, “strong reasons must be found to justify proceeding with the second action pending appeal from the first judgment.” *Id.* § 4433. When a prior judgment has been appealed, the second court need not apply collateral estoppel immediately but instead may hold the “disposition in abeyance until the pending appeal [is] resolved.” *See Ruyle*, 44 F.3d at 846 (citing *Heinold Hog Mkt., Inc. v. McCoy*, 817 F.2d 81 (10th Cir. 1987)). Here, if this Court is inclined—despite the other factors identified above—to grant collateral estoppel effect to the *Bautista* decision, it should hold its decision in abeyance until the Ninth Circuit rules.

Based on all these factors, this Court should decline to accord the *Bautista* decision preclusive effect here as to Petitioner.

II. This Court should not grant preclusive effect to any rulings in *Gutierrez*.

This Court also should not grant preclusive effect to any rulings of the district court in *Mendoza Gutierrez v. Baltazar*, No. 25-cv-02720-RMR (D. Colo.). The court in the *Gutierrez* case has not yet decided whether to enter declaratory relief for the class, let alone whether to enter final judgment. Accordingly, there is not yet a final judgment to which this Court should accord preclusive effect. *See N. Nat. Gas Co. v. Grounds*, 931 F.2d 678, 683 (10th Cir. 1991);

see Restatement (Second) of Judgments § 1 (1982).

To the extent Petitioner is simply suggesting that this Court should defer to the preliminary rulings of that court on the merits of the detention issue, Respondents contend that this Court should not simply defer to those rulings. While this Court can certainly take such rulings into account, it should make its own determination as to the law.²

IV. To the extent this Court considers the merits, it should determine that Petitioner in this case is properly subject to mandatory detention under the INA.

As noted above, Petitioner's habeas petition only glancingly addresses the merits of his detention. To the extent the Court addresses that issue, it should conclude that Petitioner is properly subject to mandatory detention under the INA.

A. The text of § 1225, as analyzed by the Supreme Court in *Jennings*, shows that Petitioner is subject to detention under 8 U.S.C. § 1225(b)(2).

ICE is detaining Petitioner under a provision of the INA, 8 U.S.C. § 1225, that requires detention of "applicants for admission." Section 1225(a)(1) provides that an "alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an applicant for admission." Section 1225(b)(2)(A) then requires detention of an "applicant for admission" if an "examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." ICE is detaining Petitioner under §

² No federal court of appeals has yet ruled on this issue. Some lower-level courts have disagreed with Respondents' interpretation of § 1225. Others have agreed with it, including within this circuit. *See, e.g., Montoya v. Holt, et al.*, No. CIV-25-01231, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at *2-3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

1225(b)(2) because he meets the statutory test: he entered the United States without ever being admitted and is thus deemed an “applicant for admission.”

Respondents’ determination that Petitioner is an “applicant for admission” within the scope of § 1225 is supported by the text of that provision and by the Supreme Court’s interpretation of it in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

First, Congress has provided that an “alien present in the United States who has not been admitted . . . shall be *deemed* . . . an applicant for admission.” 8 U.S.C. § 1225(a)(1) (emphasis added). Congress did not provide that such an alien had to meet any other criterion or submit any application to be deemed an “applicant for admission.” In *Jennings*, the Court recognized that this term is a term of art: any alien who “‘is present’ in this country but ‘has not been admitted,’ is *treated as* ‘an applicant for admission’” under § 1225. 583 U.S. at 287 (emphasis added).³

Second, the *status* of being an “applicant for admission” means that a noncitizen is “seeking admission” under § 1225(b)(2)(A). The language Congress used in § 1225 confirms that it deemed, as a matter of law, *anyone* falling within the category of “applicant for admission” to be “seeking admission” by virtue of that status. *See* 8 U.S.C. § 1225(a)(3) (“All aliens . . . who are applicants for admission *or otherwise seeking admission* . . . shall be inspected by immigration officers.” (emphasis added)); *id.* § 1225(a)(5) (“An applicant for admission may be required to state . . . the purposes and intentions of the applicant *in seeking admission*” (emphasis added)). As one district court within the Tenth Circuit has explained:

Section 1225(a)(1) “deem[s]” “an alien present in the United States who

³ The INA defines “admission” to mean “lawful entry” after “inspection and authorization by an immigration officer”—such as may occur at a port of entry. *Id.* § 1101(a)(13)(A) (defining “admission” and “admitted” as “the lawful entry of the alien into the United States *after inspection and authorization* by an immigration officer.”) (emphasis added).

has not been admitted . . . an applicant for admission.” The statute doesn’t describe what the alien is doing. It imposes a status by operation of law. Section 1225(a)(3) then says “[a]ll aliens . . . who are applicants for admission or otherwise seeking admission” shall be inspected. The word “otherwise” establishes that “aliens . . . seeking admission” is the category to which “applicants for admission” belong. If “applicants for admission” are subject to inspection because they fall within the broader class of those “seeking admission,” then the statute necessarily treats “seeking admission” as a condition that attaches to anyone deemed an “applicant for admission.”

And because § 1225(a)(1) imposes that label on every “alien present in the United States who has not been admitted,” the condition of “seeking admission” is likewise imposed. “Seeking” does not describe what the alien is voluntarily doing or the alien’s mindset. The alien is “seeking admission” in the same way the alien is “an applicant for admission”—by congressional decree.

Montoya v. Holt, et al., No. CIV-25-01231, 2025 WL 3733302, at *9 (W.D. Okla. Dec. 26, 2025) (emphasis added).

Third, all “applicants for admission” are governed by the detention provisions set forth in § 1225(b). Congress identified certain narrow subcategories of “applicants for admission” in § 1225(b)(1), and then, in § 1225(b)(2), provided a “*catchall* provision that applies to all ‘applicants for admission’ not covered” by 1225(b)(1) and established rules for their detention. 583 U.S. at 287 (emphasis added). And § 1225(b)(2)—unlike § 1226(a)—does not provide for a bond hearing. *Jennings v. Rodriguez*, 583 U.S. at 287–88.

Fourth, where the detention of applicants for admission is governed by § 1225, then § 1226(a) does not apply. Section 1226(a) governs the rules for detention of individuals not covered by § 1225. *See id.* at 288–89. For example, the detention of individuals who *were* admitted (such as on a visa) and then were placed in removal proceedings would not be covered by § 1225 but could be covered by § 1226(a).

Under these principles, section 1225(b)(2)—and not § 1226(a)—applies to Petitioner. It

applies to “applicants for admission,” which includes noncitizens, like him, who entered without inspection. Even though he was present in the country when detained, he has never been “admitted”—*i.e.*, he has not made a “lawful entry . . . after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). The Supreme Court’s explanation in *Jennings* of the scope of § 1225 shows that a noncitizen in Petitioner’s position is treated as an “applicant for admission.” And § 1225(b)(2)(A) mandates detention for a noncitizen “who is an applicant for admission” if he is “not clearly and beyond a doubt entitled to be admitted.” In short, the text of the statute supports detention of Petitioner without bond under § 1225.

B. The legislative history supports Respondents’ interpretation.

Before Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), § 1225 provided for the inspection of noncitizens only when they were arriving at a port of entry. *See* 8 U.S.C. § 1225(a) (1990) (discussing inspection of all noncitizens “arriving at ports of the United States”). It required that noncitizens arriving at a port of entry be placed in exclusion proceedings. *Id.* § 1225(c). By contrast, noncitizens “in the United States” who “entered without inspection” were deemed deportable under 8 U.S.C. § 1251(a)(1)(B) (1994), and placed in deportation proceedings, where they could request release on bond. *Id.* § 1252(a)(1) (1994).

In short, under the pre-IIRIRA regime, whether a noncitizen was placed in exclusion proceedings or deportation proceedings depended on whether they had “entered” the country. But this focus on “entry” “resulted in an anomaly”—“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.” *Hing Sum v. Holder*, 602

F.3d 1092, 1100 (9th Cir. 2010).

In the IIRIRA, Congress addressed this anomaly “by substituting ‘admission’ for ‘entry’ and by replacing deportation and exclusion proceedings with a general ‘removal’ proceeding.” *Id.* Congress thus expanded § 1225 to address not only those who presented themselves at a port of entry, but to include *all* applicants for admission—*i.e.*, noncitizens present in the United States who had not been admitted, as well as those just arriving. The revisions to § 1225 “ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country,” would be on “equal footing in removal proceedings” as applicants for admission. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (citing 8 U.S.C. § 1225(a)(1)).

This history supports reading § 1225 to mean that any noncitizen who enters without inspection is subject to mandatory detention, just like noncitizens who arrive at a port of entry. As the Supreme Court has recognized, a statutory interpretation that would allow applicants for admission to avoid mandatory detention simply by evading immigration officers when they enter the country would enshrine in our law “a perverse incentive to enter at an unlawful rather than a lawful location.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

IV. Petitioner has not shown that he was denied consideration for release on bond.

Even if Petitioner were correct that his detention is governed by 8 U.S.C. § 1226(a) and that he should therefore be permitted to seek release on bond before an immigration judge, he has not shown that he has in fact been denied such an opportunity. On April 1, 2025, he filed a motion for a custody redetermination hearing under 8 U.S.C. § 1226(a), and submitted evidence in support of his request. Ex. 1 at ¶ 38. On April 14, 2025, the IJ conducted a custody redetermination hearing. *Id.* at ¶ 39. Petitioner argued, among other things, that he was not a danger or flight risk. *Id.* The IJ ruled that if the IJ did have jurisdiction over Petitioner’s

custody, Petitioner had failed to establish that he is not a danger to the community. Ex. 2. The IJ thus effectively conducted a custody redetermination hearing under 8 U.S.C. § 1226(a), and denied release on bond.

If Petitioner is claiming that he might not be able to seek release on bond in the future, such a challenge is not ripe. “A claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” *Texas v. United States*, 523 U.S. 296, 300 (1998) (quotation omitted). Petitioner has not sought a bond hearing after the entry of partial final judgment in *Bautista*. It is not clear whether an IJ would conduct a bond hearing on the basis of *Bautista*. At least one local IJ has reportedly stated that she will. *See De la Cruz Escalante v. Guadian*, 25-cv-4020-CYC, ECF No. 6 (Notice of Voluntary Dismissal filed December 29, 2026, in habeas case brought to enforce alleged rights as member of *Bautista* class because, following entry of partial final judgment in that case, “the IJ in Petitioner’s case has recently held that she does have jurisdiction to consider bond.”). Because Petitioner does not claim to have recently requested a bond hearing, any argument that he is wrongfully being denied a bond hearing is not ripe.

Finally, if the Court were to grant Petitioner’s request for a writ of habeas corpus, the appropriate relief would be to order Petitioner to receive a bond hearing (as he says he would be entitled to under 8 U.S.C. § 1226(a)), not immediate release. After all, section 1226(a) does not require release—it provides DHS the *discretion* to grant a noncitizen release on bond. *See* 8 U.S.C. § 1226(a)(2) (providing that the government “may release the arrested alien”).

CONCLUSION

The Court should deny the Petition, for several reasons. To the extent Petitioner requests relief based on his claim that he is a member of the certified classes in *Bautista* and *Gutierrez*,

any such relief must be sought in those cases. To the extent Petitioner seeks relief in this case based on *Bautista* and *Gutierrez*, he has not shown that this Court should give preclusive effect to the decisions in those cases. Petitioner also has not shown on the merits that he is not properly detained under 8 U.S.C. § 1225(b)(2), which requires his detention. And Petitioner has not shown that he has been denied consideration for release on bond.

Date: January 7, 2026

Respectfully submitted,

PETER MCNEILLY
United States Attorney

s/ Kevin Traskos
Kevin Traskos
Assistant United States Attorney
United States Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0100
E-mail: kevin.traskos@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that on January 7, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

s/ Kevin Traskos
Kevin Traskos
Assistant United States Attorney
Counsel for Respondents