UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-62690-ALTMAN

MERLIN YAMILETH
TURCIOS-PINEDA,

Petitioner,

v.

PAM BONDI, UNITED STATES
ATTORNEY GENERAL, *et al.*,

Respondents.

______________________________________/

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

Respondents, by and through the undersigned Assistant United States Attorney, submit the following response in opposition to the Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 [DE 1] ("Petition"). For the reasons set forth below, the Petition should be denied.[1]

INTRODUCTION

Proceeding, pro se, Petitioner commenced this action on December 29, 2025, by filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 in which she challenges the conditions of her confinement at Broward Transitional Center ("BTC") in Broward County, Florida. Specifically, she alleges she was not afforded the proper care while she was pregnant in the facility, [redacted] For the reasons explained more fully below, the Petition should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, Merlin Turcios Pineda, is a native and citizen of Honduras who illegally entered the United States at an unknown date and place. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien (I-213). On or about October 24, 2025, Petitioner was encountered by agents of Customs and Border Protection (CBP) following a vehicle stop conducted by the Florida Highway Patrol. *See* Exh. A, I-213. Petitioner stated that she did not possess documents that would allow her to enter or remain in the United States legally and was illegally present in the United States. *See* Exh. A, I-213. CBP arrested Petitioner. *See* Exh. A, I-213.

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[1] Respondents recognize that courts in this District have rejected similar arguments in granting habeas petitions. *See, e.g., Perez v. Parra*, Case No. 25cv24820 (S.D. Fla.). Nonetheless, Respondents maintain and preserve these arguments for the record in this case.

On the same date, CBP issued a Notice to Appear (NTA) initiating removal proceedings and charging Petitioner with inadmissibility under INA §§ 212(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General; and under 212(a)(7)(A)(i)(I) as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act (INA), and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 2ll(a) of the Act. *See* Exh. B, NTA. CBP turned Petitioner over to the custody of Immigration and Customs Enforcement (ICE) pending removal proceedings. *See* Exh. A, I-213. On October 28, 2025, Petitioner was detained at the Broward Transitional Center (BTC). *See* Exh. C, EARM Detention History.

On intake at BTC, Petitioner received a positive pregnancy test. *See* Exh. D, Medical Records 3, p. 107 of 125; *see also* Exh. D, Medical Records 3, pp. 109-110 of 125.[2] She was started on a prenatal diet, vitamins, and provided other accommodations such as a low bunk and an elevator pass. *Id.* An order for an obstetrician gynecologist (OB/GYN) consult was ordered. *See* Exh. D, Medical Records 3, p. 107 of 125; *see also* Exh. E. Medical Records 2, p. 13 of 65. On November 7, 2025, Petitioner saw an obstetrician. Exh. E, Medical Records 2, p. 13 of 65.; *See* Exh. D, Medical Records 3, p. 76 of 125. The notes indicate that Petitioner declined a recommended treatment plan and would be discharged from practice if she declined at a following

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[2]Exhibits D and E have not been filed with the court as they contain sensitive medical information pertaining to the Petitioner and would be a violation of the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. Section 1320(d) and 45 C.F.R. Parts 160 and 164. . There is a pending motion to file these exhibits under seal. Should the Court request it, the government will have copies of these exhibits delivered to chambers for review.

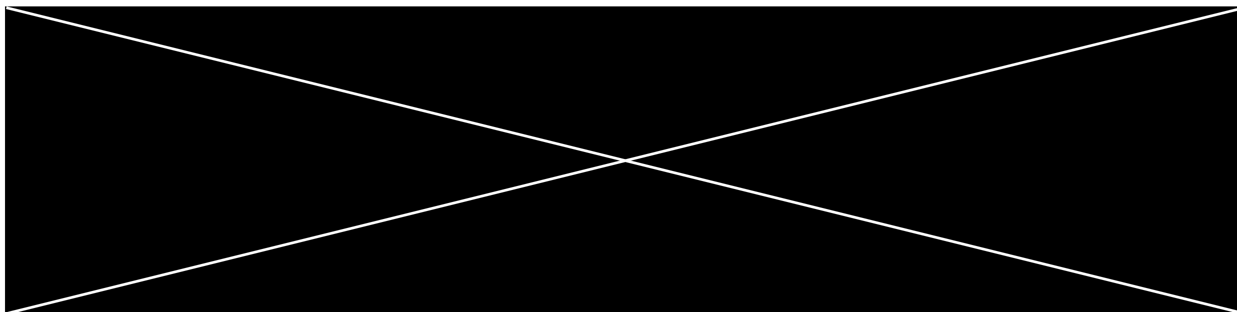
visit. *Id.* Medical Records 2, p. 13 of 65; *see also* Medical Records 3, p. 65 of 125. On November 12, 2025, Petitioner was seen at BTC for a follow up after her OB/GYN appointment. *See* Exh. D, Medical Records 3, p. 67 of 125.

On November 18, 2025, Petitioner appeared *pro se* for an initial master calendar hearing before an Immigration Judge. *See* Exh. F, Declaration. The Immigration Judge granted a continuance to allow Petitioner to seek legal representation. *See* Exh. F, Declaration.

On November 26, 2025, Petitioner refused a Mental Health Evaluation/ follow up session. *See* Exh. D, Medical Records 3, pp. 34-35 of 125. She was advised to allow labs by the GYN because they would not keep seeing her if she refused. *See* Exh. D, Medical Records 3, p. 40 of 125. She denied any vaginal bleeding or cramping. *Id.* On December 5, 2025, Petitioner refused an appointment to an OBGYN. *See* Exh. D, Medical Records 3, p. 31 of 125. She was educated on the importance of seeing a specialist but refused. *Id.* [redacted]

[redacted]. *See* Exh. D, Medical Records 3, p. 21 of 125.

On December 18, 2025, Petitioner appeared *pro se* for a master calendar hearing. *See* Exh. F, Declaration. Petitioner admitted the charges in the NTA and the Immigration Judge sustained the charges of removal. *See* Exh. F, Declaration. Petitioner filed an application for relief and declined an additional continuance to seek legal representation. *See* Exh. F, Declaration. Petitioner requested a bond hearing, advising the Immigration Judge that she was experiencing a high-risk pregnancy. *See* Exh. F, Declaration. The Immigration Judge advised Petitioner that she is subject to mandatory detention and that she could speak with ERO regarding parole. *See* Exh. F, Declaration. ERO has no record that Petitioner requested a parole. *See* Exh. F, Declaration.



At a hearing on January 14, 2026, the immigration judge entered an order finding Petitioner inadmissible as charged in the NTA, denying her applications for relief, and ordering her removed to Guatemala.[3] *See* Exh. H, Removal Order. Petitioner reserved her right to appeal the decision; the deadline to file an appeal with the Board of Immigration Appeals is February 13, 2026. *See* Exh. H, Removal Order. Petitioner remains detained at BTC. *See* Exh. F, Declaration. She is detained under INA §235(b)(2).

ARGUMENT

A. Improper Parties-Defendant Must Be Dismissed

As a preliminary matter, Petitioner has named improper parties to this suit. Petition, ¶¶ 18-23. A writ of habeas corpus should "be directed to the person having custody of the person detained." 28 U.S.C. § 2243. In cases involving physical confinement, Supreme Court precedent confirms that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004).

Petitioner is detained at BTC, a detention facility in Broward County, Florida. Her immediate custodian is the Acting Field Office Director, Carlos Nunez. Accordingly, the only proper respondent to this case is Mr. Nunez, in his official capacity. He should be substituted as

[3] The Immigration Judge found that Petitioner (a native and citizen of Honduras) is subject to the Asylum Cooperative Agreement (ACA) with Guatemala. Exh. G, Order of the Immigration Judge granting motion to pretermit. *See also* Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Relating to the Transfer of Nationals of Central American Countries to Guatemala, 90 Fed. Reg. 31,670 (July 15, 2025). Pursuant to the ACA, Petitioner may be removed to Guatemala. *Id.*

the sole respondent to this action and all other named respondents should be dismissed. See id. at 435 ("[I]n habeas challenges to present physical confinement—'core challenges'—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official."); *see also Masingene v. Martin*, 424 F. Supp. 3d 1298, 1300 (S.D. Fla. 2020) (Williams, J.) (citing *Padilla* for the proposition that the sole proper respondent to a habeas petition is the official who has custody over the petitioner).

B. Petitioner's Claims Are Not Cognizable Under 28 U.S.C. § 2241.

An individual may seek habeas relief under 28 U.S.C. § 2241 if s/he is "in custody" under federal authority "in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c). The "sole function of habeas corpus is to provide relief from unlawful imprisonment or custody, and it cannot be used for any other purpose." *Cook v. Hanberry*, 592 F.2d 248, 249 (5th Cir. 1979).[4]

There are two "main avenues to [seek] relief on complaints related to imprisonment": a petition for habeas corpus and a civil rights complaint. *Muhammad v. Close*, 540 U.S. 749, 750 (2004). The Supreme Court has explained that "[c]hallenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus"; however, relief which is sought based upon the "circumstances of confinement" is only proper through a civil action. *Muhammad*, 540 U.S. at 750; *Nelson v. Campbell*, 541 U.S. 637, 643 (2004) (claims challenging the conditions of confinement "fall outside th[e] core [of habeas corpus]" and may be brought in a civil rights action); *see also Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015) (a "§ 2241 petition is not the appropriate vehicle for raising an inadequate medical care claim, as such a claim

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[4] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all decisions of the Fifth Circuit Court of Appeals issued before the close of business on September 30, 1981.

challenges the conditions of confinement, not the fact or duration of that confinement"); *Hutcherson v. Riley*, 468 F.3d 750, 754 (11th Cir. 2006) ("The line of demarcation between a §1983 civil rights action and a § 2254 habeas claim is based on the effect of the claim on the inmate's conviction and/or sentence.").

Importantly, here, Petitioner does not—because she cannot—claim that she is wrongfully detained under the Immigration and Nationality Act or that her detention is unlawful. *See* Exh. A at 2 (admitted to being in the United States illegally). Instead, she alleges inadequate medical care and deliberate indifference to her health and welfare. Petition ¶¶ 28, 29, and 38. This is precisely the type of conditions of confinement claim that is not redressable in a § 2241 habeas petition as it neither attacks the fact nor the duration of her confinement. *See Gorrell v. Hastings*, 541 F. App'x 943, 945 (11th Cir. 2013) (ADA claims not appropriately raised in § 2241 habeas corpus petition); *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) (observing that even if a prisoner proves a violation, relief of an Eighth Amendment violation does not include release from confinement); *Vaz*, 634 F. App'x at 780-81 (§ 2241 habeas relief not available for inadequate medical care claim by detainee arising under the Fifth Amendment); *see also Chen v. Carlton*, No. 25-cv-21300, 2025 WL 1092379, at *2 (S.D. Fla. Apr. 11, 2025) (same). For this reason alone, the Petition should be denied.

C. Petitioner Is Receiving Constitutionally Appropriate Medical Care at BCT

The Eighth Amendment prohibits prison officials from exhibiting deliberate indifference to prisoners' serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Conditions of confinement violate the Eighth Amendment if (1) objectively speaking, the conduct by public officials is "sufficiently serious" to constitute a cruel or unusual deprivation; and (2) there must

be a subjective intent by the public officials involved to use the sufficiently serious deprivation to punish. *Taylor v. Adams*, 221 F.3d 1254, 1257 (11th Cir. 2000).[5]

To show an objectively serious deprivation in a medical context, it is necessary to demonstrate (1) an objectively serious medical need that, if left unattended, would pose a substantial risk of serious harm; and (2) the response was poor enough to constitute an unnecessary and wanton infliction of pain—not just negligence or even medical malpractice. *Id.* at 1258. To show the required subjective intent to punish, it is necessary to establish that the public official acted with deliberate indifference. *Id.* That is, "awareness of facts from which the inference could be drawn that a substantial risk of serious harm exists[] and . . . draw[ing of] the inference." *Id.*

Where a prisoner has received medical attention, courts are hesitant to find that an Eighth Amendment violation has occurred. *See Hamm v. Dekalb Cnty.*, 774 F.2d 1567, 1575 (11th Cir. 1985). An inadvertent failure to provide adequate medical care does not constitute "an unnecessary and wanton infliction of pain" or be "repugnant to the conscience of mankind." *Estelle*, 429 U.S. at 105-06; *see also Alfred v. Bryant*, 378 F. App'x 977, 979 (11th Cir. 2010) (quoting *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004)) ("A prison condition generally does not violate the Eighth Amendment unless it involves 'the wanton and unnecessary

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[5] Petitioner asserts an Eighth and Fifth Amendment claim to support his request for habeas relief. The Fifth Amendment Due Process Clause, not the Eighth Amendment, governs a federal detainee's inadequate medical care claim. *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001) ("[T]he Due Process Clause [of the Fifth Amendment] protects an alien subject to a final order of
deportation . . . ."). Further, the Due Process Clause of the Fifth Amendment governs federal action. *Rodriguez-Padron v. Immigration & Naturalization Serv.*, 13 F.3d 1455, 1458 n.7 (11th Cir. 1994). Nevertheless, the standard for a federal detainee's treatment under the Fifth Amendment is identical to that under the Eighth. *Daniel v. U.S. Marshall Serv.*, 188 F. App'x 954, 961-62 (11th Cir. 2006).

infliction of pain.'"). "[T]he Constitution doesn't require that the medical care provided to prisoners be perfect, the best obtainable, or even very good. Rather, medical treatment violates the Eighth Amendment only when it is so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1266 (11th Cir. 2020) (internal quotation marks and citations omitted and alterations accepted).

Based on Petitioner's medical record, Petitioner can make no showing that the medical care she has received at BTC rises to the level of shocking or repugnant to constitute deliberate indifference to a serious medical need. To the contrary, Petitioner was provided with all the necessary medical treatment required for the care of a pregnant woman. She had regular and ongoing access to medical professionals since the day she arrived at BTC. Her record shows between October 28, 2025, and December 18, 2025, she was seen, examined, or treated by specialists and medical staff on multiple occasions. *See* Exh. D, Medical Records; Exh. E, Medical Records. Petitioner's medical records show that she was provided with recommended treatment plans and follow-up appointments for which she declined.

Based on the foregoing multiple medical encounters, evaluations, testing, and medications orders, it is clear that Petitioner cannot show that she has received inadequate—let alone *constitutionally* deficient—medical care at BTC.

D. Even If Petitioner Could Show Deliberate Indifference to a Serious Medical Need, the Issue Is Moot.

"[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969). "Put another way, '[a] case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.'" *Fla. Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't of Health*

& Rehab. Servs., 225 F.3d 1208, 1216-17 (11th Cir. 2000) (quoting *Ethredge v. Hail*, 996 F.2d 1173, 1175 (11th Cir.1993)).

Here, Petitioner is no longer pregnant, and has refused to undergo future treatment, including but not limited to mental health treatment. Therefore, the issue is moot.

E. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted.

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

a. The Plain Language of § 1225(b)(2) Mandates Detention of Applicants for Admission.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms." Jimenez v. Quarterman, 555 U.S. 113, 118 (2009). Section 1225(a) deems all aliens who either "arrive[] in the United States" or who are "present in the United States [and] who ha[ve] not been admitted" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the Immigration and Nationality Act ("INA") means lawful entry after inspection by immigration authorities, and not mere physical entry. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.

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

Petitioner falls squarely within the statutory definition. He was "present in the United States," and there is no dispute that he has "not been admitted." 8 U.S.C. § 1225(a); see Exh. A, 2013 I-213; Exh. B, Form I-200. Moreover, Petitioner cannot establish—and has not even alleged that he can establish—that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, § 1225(b)(2) mandates Petitioner "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

b. Applicants for Admission under § 1225(b)(2) are seeking to be legally admitted into the United States.

As explained above, Petitioner is an "applicant[] for admission" under § 1225(b)(2) and is, therefore, seeking to be legally admitted into the United States. The statute itself makes clear that an alien who is an "applicant for admission" *is* necessarily "seeking admission." Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to withdraw their application for admission and depart from the United States voluntarily, is "seeking admission," i.e., seeking legal authority to remain in the United States.

1. The "seeking admission" clause does not negate or otherwise limit the statutorily defined term "applicant for admission".

Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission"—no additional affirmative step is necessary. In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to pursue voluntary withdrawal of their application for admission.

For example, § 1225(a) provides that "[a]ll aliens ... who are applicants for admission *or otherwise* seeking admission or readmission ... shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "[o]therwise' means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of § 1225(b)(2)(A).[6] No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws"). Accordingly, § 1225(b)

[6] As § 1225 shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. 8 U.S.C. § 1225(a)(3). For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1103(A)(13)(C).

unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

2. Any perceived redundancy in the statute cannot serve as a basis to avoid the clear language of the statute.

As explained above, an "applicant for admission" is "seeking admission" under § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that "is not a license to rewrite" § 1225 "contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020); *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance" especially when "the arguably redundant words that the drafters employed … are functional synonyms" (alterations accepted and emphasis in original)).

"The canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). "Redundancies are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton*, 590 U.S. at 239. "[R]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* Thus, as the Supreme Court explained in *Barton*, "[s]ometimes the better overall reading of a statute contains some redundancy." *Id.*

Moreover, "the surplusage cannon … must be applied with statutory context in mind" and should not be employed to undermine congressional intent. *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017). As explained in greater detail below, in 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), with the goal of ensuring that aliens who enter the United States

unlawfully do not receive greater privileges and benefits than aliens who lawfully present themselves for inspection at a port of entry. The canon against surplusage should not be employed to re-write the statute in contravention of this statutory context.

3. Applicants for admission are seeking admission when they seek to lawfully remain in the United States.

Even if this Court finds that "seeking admission" requires some separate affirmative conduct by the alien, an applicant for admission who attempts to avoid removal from the United States, rather than trying to voluntarily withdraw their applicant for admission for admission and depart the United States, is "seeking admission."

Section 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, regardless of how long the alien has been in the United States. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, § 1225(b)(2) is not concerned with the alien's pre-inspection conduct. Rather, the statute's use of present tense language ("seeking" and "determines") shows that its focus is a specific point in time—when "the examining immigration officer" is making a "determin[ation]" regarding the alien's admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is "seeking" admission into the United States, and it is a continuing application. *See* The American Heritage Dictionary of the English Language (defining "seek" and "seeking" as "to endeavor to obtain"). If it were otherwise, the applicant would not attempt to show that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by § 1225(a)(4), which authorizes an alien to withdraw their application for admission and voluntarily "depart immediately from the United States." 8 U.S.C. § 1225(a)(4). An applicant who is placed in § 240 removal proceedings, who forgoes that statutory option and instead endeavors to prove admissibility,—proceedings in which the alien has the "burden of establishing that [he] is clearly and beyond a doubt entitled to be

admitted," *id.* § 1229a(c)(2)(A)—is endeavoring to obtain admission to the United States in the same way someone who is encountered just after crossing the border is attempting to obtain admission to the United States. Nevertheless, the Respondents' position remains: mere presence in the United States, after entering without being admitted, renders an alien an "applicant for admission" who is subject to mandatory detention.

F. The *Bautista* Class Action Does Not Entitle Petitioner to Relief

Petitioner argues that she is a member of the *Bautista* class and is therefore entitled to a bond redetermination hearing (ECF No. 1 at ¶¶ 29, 58-61). On December 18, 2025, the United States immediately filed an appeal of the *Bautista* order to the United States Court of Appeals for the Ninth Circuit. *See Lazaro Maldonado Bautista et al v. Ernesto SantaCruz Jr et al*, 5:25-cv-01873-BFM (2025) (granting plaintiffs' class certification motion for only the nationwide bond eligible class as to grant individualized bond hearings).

In many circumstances, a declaratory judgment will have preclusive effect as between the parties in future litigation. *See* Restatement (Second) of Judgments § 33. But the treatises recommend caution in imposing res judicata based on a declaratory judgment that remains subject to appeal. *See* 9 A.L.R.2d 984 ("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"). Not applying res judicata will result in delay of applying the final judgment. But by applying res judicata during the pendency of an appeal, the "evil result[]" is that if the first judgment is ultimately reversed, it could meanwhile lead to another judgment "from which it may be impossible to obtain relief notwithstanding such reversal." *Id.*; *see also* Federal Practice & Procedure § 4044 ("Awkward problems can result from the rule that preclusive

effects attach to the first judgment" while that judgment is subject to an appeal). In the circumstances here, and particularly given § 1252(f)(1), it would not be proper to impose res judicata effect on a class-wide basis while the declaratory judgment is pending on appeal. *See* 9 A.L.R.2d 984 (the "only one safe way of avoiding conflicting judgments on the same cause . . . [is for] the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered")." It would not be proper to impose res judicata effect on a *Bautista* class-wide basis while the declaratory judgment is pending on appeal. Thus, the new order issuing a declaratory judgment to the *Bautista* class does not have preclusive effect due to the United States' appeal.

G. Petitioner Failed to Exhaust Her Administrative Remedies.

The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.).

Here, Petitioner has not availed herself of the administrative remedies available to her. On January 14, 2026, an immigration judge ("IJ") entered an order finding Petitioner inadmissible as charged in the NTA, denying her applications for relief, and ordering her removed to Guatemala. *See* Exh. H, Removal Order. By regulation, the Board of Immigration Appeals ("BIA") has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38,

1236.1(d)(3). Petitioner has a deadline of February 13, 2026, to file an appeal of that decision with the BIA but has yet to file that appeal. *See* Exh. H, Removal Order. Therefore, she has failed to exhaust all the administrative remedies available to her and this petition should be denied.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Dated: January 21, 2026.

Respectfully submitted,

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UNITED STATES ATTORNEY

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