

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

EDDY MORAN RAYO,

Petitioner,

v.

Case No. 25-CV-2064

SAMUEL OLSON, Field Office Director of
Enforcement and Removal Operations, Chicago Field
Office, Immigration and Customs Enforcement; *et al.*,

Respondents.

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

Pursuant to 28 U.S.C. § 2243 and the Court's Rule 4 Screening Order (ECF 5), respondents Samuel Olson, Kristi Noem, Pamela Bondi and Todd Lyons (collectively the "Respondents"),¹ by and through undersigned counsel, hereby answer the Petition for Writ of Habeas Corpus (ECF 1) ("Petition") filed by the petitioner, Eddy Moran Rayo ("Petitioner").

INTRODUCTION

Petitioner is a Nicaraguan citizen who, though not admitted to the United States, has been present in the United States since 2021. In November, Department of Homeland Security ("DHS") officials arrested him based on his lack of immigration status, and he has been detained since then without conditional parole or bond, in accordance with 8 U.S.C. § 1225(b)(2), pending resolution of his removal proceedings. Petitioner seeks habeas relief under 28 U.S.C. § 2241, claiming that his detention violates the Immigration and Nationality Act ("INA") and the Fifth

¹ The United States Attorney's Office does not formally represent Petitioner's jail custodians; however, counsel for the custodians have authorized the undersigned to state they join in this answer and do not intend to submit a separate response to the habeas petition.

Amendment's Due Process Clause. Specifically, Petitioner contends that 8 U.S.C. § 1225(b)(2)—providing for mandatory detention—is inapplicable to foreign nationals² who enter the United States without inspection and reside in this country for a period of time. ECF 1 at ¶¶ 64–65. And although 8 U.S.C. § 1226(a), which generally entitles a foreign national to a bond hearing at the outset of their detention, would presumably apply instead, Petitioner asserts that it does not authorize his detention because he has not been afforded a hearing. *Id.* at ¶ 66.

Respondents' position is that, because Petitioner was never lawfully admitted into the United States, he meets the INA's 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) properly governs his detention.

This Court has already affirmed Respondents' interpretation of the INA's detention provisions in *Cirrus Rojas v. Olson*, No. 25-cv-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025), and *Espinoza Hernandez v. Olson*, No. 25-CV-1670-BHL, 2026 WL 161509, at *1 (E.D. Wis. Jan. 21, 2026), and Petitioner's other arguments do not counsel a different result here. Because Petitioner's detention does not exceed the government's broad authority and discretion in immigration matters or deprive Petitioner of due process, the Court should deny relief.

BACKGROUND

A. Procedural Posture

Petitioner, who acknowledges he is a citizen of Nicaragua, alleges that he has resided in the United States since September 12, 2021, when he was detained after entering without inspection. ECF 1 at ¶ 21. According to the Petition, he was released from custody on October

² For purposes of this response, the terms "foreign national" and "alien" (which is the INA's nomenclature) are used interchangeably.

15, 2021, and instructed to attend check-in appointments with United States Immigration and Customs Enforcement (“ICE”). *Id.* at ¶ 23. Before he was detained, Petitioner worked in construction and has young son born in the United States for whom Petitioner is the main source of financial support. *Id.* at ¶ 22.

On November 12, 2025, DHS officials arrested Petitioner in Whitewater, Wisconsin. *Id.* He was served with an arrest warrant and notice to appear, the latter of which charged him, *inter alia*, with being subject to removal under 8 U.S.C. § 1182(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.” ECF 1-4 at p. 5; ECF 1-5.

Petitioner is currently being held in the Dodge County Jail in Juneau, Wisconsin. ECF 1 at ¶¶ 1, 23. He intends to seek relief from removal by applying for asylum before the immigration court. *Id.* ¶¶ 3, 25. His most recent hearing in immigration court took place on January 12, 2026. *Id.* ¶ 25.

B. Statutory and Regulatory Framework

Foreign nationals who are “present in the United States without being admitted or paroled,” or “who arrive[] in the United States at any time or place other than as designated by the Attorney General” are deemed “inadmissible” and subject to removal from the country. 8 U.S.C. § 1182(a)(6)(A)(i). Immigration officers are authorized to arrest foreign nationals who are present in the country illegally and to detain such individuals during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960) (detailing 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”). This is true under the INA, in which Congress enacted various provisions authorizing the detention of foreign nationals subject to removal proceedings. *See, e.g.*, 8 U.S.C. §§ 1225(b)(2)(A), 1226(a)(1), 1231(a)(2)(A).

1. Applicants for Admission

Different detention provisions apply to different categories of foreign nationals. Most relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of “applicants for admission,” which is a term defined in the statute as “[a]n 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); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (“Under ... 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.’”).

To have been “admitted” to the United States 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). Thus, the provisions of 8 U.S.C. § 1225 apply to any foreign national who either (1) entered the country illegally without being inspected and authorized by an immigration officer, or (2) who arrives in the United States. *See Dep’t of Homeland Sec. 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’”).

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*, 583 U.S. at 287. 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).” *Id.*

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 § 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.”).³

2. Other Removable Foreign Nationals

The INA also provides procedures for the arrest, detention, and removal of foreign nationals who do not fall under the definition of an “applicant for admission” (*e.g.*, foreign nationals who commit crimes, overstay a visa, or otherwise violate the conditions of their lawful admission). *Cf. Jennings*, 583 U.S. at 288 (“Even once inside the United States, aliens do not have an absolute right to remain here.”). This occurs under 8 U.S.C. § 1226, which authorizes immigration officers to arrest and detain foreign nationals pending a removal decision. 8 U.S.C. § 1226(a). Unlike 8 U.S.C. § 1225, § 1226 expressly authorizes immigration officers to release foreign nationals on bond pending the adjudication of their removal proceedings. 8 U.S.C.

³ DHS may still, in the exercise of discretion, temporarily release an applicant for admission on parole “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).

§ 1226(a)(2)(A).⁴ DHS regulations provide for bonded release if the foreign national “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

To summarize, 8 U.S.C. § 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 8 U.S.C. § 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 § 1226(a) does.

STANDARD OF REVIEW

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 habeas petitioner bears the burden to show their detention is unlawful. *See 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

Respondents’ position is simple: until such time as a foreign national is admitted into the United States by an immigration officer, the INA treats him as an “applicant for admission” if

⁴ Under 8 U.S.C. § 1226(c), foreign nationals who have committed certain crimes, who have engaged in terrorism-related activities, or who present special foreign-policy considerations are ineligible for release on bond and must remain in custody.

found in the United States. That is what the plain text of the INA provides. 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 that 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). Thus, as an “applicant for admission,” Petitioner is rightfully detained under § 1225(b)(2)(A), pending his removal proceedings. Respondents’ interpretation is in harmony with the INA and the Due Process Clause.

A. Petitioner’s Detention Does Not Violate the INA.

The plain text of the INA supports Respondents’ position that Petitioner is subject to mandatory detention under § 1225(b)(2), which is further supported by the relevant legislative history. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) (present in the United States without admission or parole and/or arrived at any time or place other than a port of entry) and § 1182(a)(7)(A)(i) (lacking documentation).

The statutory text defines foreign nationals who have not been admitted to the United States, but who are present inside the United States, as “applicants for admission.” 8 U.S.C. § 1225(a)(1). 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 cannot show that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). This is exactly what Congress intended when it passed the Illegal Immigration Reform and Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-579 (“IIRIRA”), amending the INA.

1. *The Statutory Text*

The Court must begin with the text of the statute. *See Lackey v. Stinnie*, 604 U.S. 192, 199 (2025) (“When interpreting a statute, we begin with the text.”). Section 1225 defines any foreign national “present in the United States who has not been admitted or who arrives in the United States” to be an “applicant for admission.” 8 U.S.C. § 1225(a)(1). For a foreign national to be “admitted” into the United States, they must have lawfully entered the country “after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Here, Petitioner has not been admitted into the United States.

Because DHS has not initiated expedited removal proceedings, the applicable statutory provision is 8 U.S.C. § 1225(b)(2)(A). Under that provision, an applicant for admission “shall be detained” during removal proceedings if an immigration officer determines that the “alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” *Id.* Petitioner cannot demonstrate to an immigration officer that he is “clearly and beyond a doubt entitled to be admitted” because he is present in the United States without having been admitted or paroled, as evidenced by his asylum application, and is, therefore, inadmissible per 8 U.S.C. §§ 1182(a)(6) and (a)(7)(A)(i)(I), such that his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A).

2. *The Legislative History*

Given that the statutory text is clear, the Court need not consider legislative history, but that history only further supports Respondents’ 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 illegally entered the United States 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 v. Noem*, No. 25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (“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’”). 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 such a counterintuitive and unjust result is belied by the plain text of the statute and is not the policy enacted into law by Congress.

3. Petitioner’s Substantive Arguments

Petitioner raises several substantive arguments, none of which is persuasive. He first argues that 8 U.S.C. § 1225(b)(2)(A) does not apply to foreign nationals who previously entered and are now residing in the United States. (ECF 1 at ¶¶ 42–58, 63–65.) Only those “seeking admission,” Petitioner argues, are subject to § 1225(b). (*Id.* at ¶ 64.) Petitioner believes

Respondents' position is contrary to statutory text and framework, congressional intent, longstanding agency practice, and decisions of other federal courts on the issue. (*Id.* at ¶ 6.) But this Court has already affirmed Respondents' interpretation of the INA and, in the process, disposed of the same or substantially similar arguments. *See Cirrus Rojas*, 2025 WL 3033967, *5–10; *Espinoza Hernandez*, 2026 WL 161509, *2–5. Petitioner has not articulated any other reasons, either in the language of the statute or other decisions, demonstrating error in this Court's statutory analysis *Cirrus Rojas* and *Espinoza Hernandez*. And while the "strong majority of other courts have rejected the government's reading of these statutes," *Espinoza Hernandez*, 2026 WL 161509, *5, this Court is not alone in its judgment. In addition to Judge Griesbach in *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025), a number of other district courts have ruled that foreign nationals in Petitioner's position are properly subject to detention under 8 U.S.C. § 1225(b)(2).⁵ Respondents respectfully submit that this Court's careful analysis from *Cirrus Rojas* and *Espinoza Hernandez* applies here.

⁵ *See, e.g., Garibay-Robledo v. Noem*, -- F. Supp. 3d --, No. 1:25-CV-177-H, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026); *Singh v. Noem*, No. 2:25-CV-00157-SCM, 2026 WL 74558 (E.D. Ky. Jan. 9, 2026); *Cruz Rodriguez v. Olson*, -- F. Supp. 3d --, No. 1:25-CV-12961, 2026 WL 63613 (N.D. Ill. Jan. 8, 2026); *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026); *Naikpay v. Sukkar*, No. 2:25-CV-1167-KCD-DNF, 2026 WL 44820 (M.D. Fla. Jan. 7, 2026); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026); *Parra v. Sec'y, DHS*, No. 2:25-CV-1116-KCD-DNF, 2026 WL 21243 (M.D. Fla. Jan. 5, 2026); *Rodriguez v. Jeffreys*, No. 8:25CV714, 2025 WL 3754411 (D. Neb. Dec. 29, 2025); *Zuniga v. Lyons*, -- F. Supp. 3d --, No. 1:25-CV-221-H, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025); *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025); *Masis Lucero, v. Field Office Director of Enforcement and Removal Operations*, No. 1:25-CV-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025); *A.M. v. Joyce*, No. 2:25-CV-00615-LEW, 2025 WL 3706922 (D. Me. Dec. 22, 2025); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *Liang v. Almodovar*, No. 1:25-cv-09322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *P. B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Garcia v. U.S. Attn'y Gen.*, No. 2:25-CV-1053-KCD-DNF, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025); *Rodriguez v. Noem*, No. 9:25-CV-00320, -- F. Supp. 3d --, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025); *Oliveria v. Albarran*, No. 1:25-CV-01760 WBS AC, 2025 WL 3525923 (E.D. Cal. Dec. 9, 2025); *Ramirez Melgar v. Bondi*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025); *Chen v. Almodovar*, No. 1:25-cv-08350, 2025 WL

B. *Bautista* Has No Preclusive Effect Here.

Petitioner presses an additional argument not raised in *Cirrus Rojas* or *Espinoza Hernandez*; namely that he is a member of the class certified in *Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025), judgment entered sub nom. *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025),⁶ and therefore is not subject to detention under 8 U.S.C. § 1225(b)(2)(A) and must be afforded a bond hearing. ECF 1 at ¶¶ 59–62. In *Bautista*, a judge in the Central District of California 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.

I. Bautista has no preclusive effect outside the Central District of California and over custodians who are located outside that district.

The *Bautista* class sought a declaratory judgment that class members such as Petitioner were unlawfully detained under 8 U.S.C. § 1225(b)(2), rather than § 1226(a). This is core habeas relief that must be brought as a habeas claim alone.⁷ The Supreme Court has imposed two

3484855 (S.D.N.Y. Dec. 4, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025).

⁶ Petitioner cites two prior orders entered in the *Bautista* litigation, but the district court’s December 18, 2025, order amended, consolidated, and superseded its prior rulings. *See Bautista*, 2025 WL 3713987, at *1.

⁷ 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).

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. “[T]he petitioner’s *immediate* custodian—the warden of the prison or other facility in which the petitioner is confined—is the only proper respondent.” *Bridges v. Chambers*, 425 F.3d 1048, 1050 (7th Cir. 2005) “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 lacks 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. *See Relational, LLC v. Hodges*, 627 F.3d 668, 671 (7th Cir. 2010).

As such, the *Bautista* court’s declaratory judgment granting 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).⁸ Several other district courts have already held that the *Bautista* declaratory judgment is not binding and/or does not have preclusive effect. *See, e.g., Calderon Lopez v. Lyons*, No. 25-

⁸ Indeed, several other district courts have already held that the *Bautista* declaratory judgment is not binding and/or does not have preclusive effect. *See, e.g., Calderon Lopez v. Lyons*, No. 25-cv-00226, 2025 WL 3683918, *1 (N.D. Tex. Dec. 19, 2025); *Ore Falcon v. Wofford*, No. 1:26-CV-00181-WBS-EFB, 2026 WL 171927, at *2-3 (E.D. Cal. Jan. 22, 2026); *Alberto Rodriguez v. Jeffreys*, No. 8:25CV714, 2025 WL 3754411, at *7-11 (D. Neb. Dec. 29, 2025); *cf. Morales v. Noem*, No. 25-62598-CIV, 2026 WL 236307, at *8 (S.D. Fla. Jan. 29, 2026) (*Bautista* not preclusive because offensive collateral estoppel is not available against the government).

cv-00226, 2025 WL 3683918, *1 (N.D. Tex. Dec. 19, 2025); *Ore Falcon v. Wofford*, No. 1:26-CV-00181-WBS-EFB, 2026 WL 171927, at *2–3 (E.D. Cal. Jan. 22, 2026); *Alberto Rodriguez v. Jeffreys*, No. 8:25CV714, 2025 WL 3754411, at *7–11 (D. Neb. Dec. 29, 2025); *cf. Morales v. Noem*, No. 25-62598-CIV, 2026 WL 236307, at *8 (S.D. Fla. Jan. 29, 2026) (Bautista not preclusive because offensive collateral estoppel is not available against the government).

Here, like most *Bautista* class members, Petitioner is confined outside of the Central District of California by immediate custodians who are also outside that district and have not been named in the lawsuit. At the time of filing this habeas petition, Petitioner was detained at the Dodge County Jail in Juneau, Wisconsin, which is outside the Central District of California. Petitioner’s immediate custodian is Dale J. Schmidt, the Dodge County Sheriff, and he is not a party in the Central District of California case. Subjecting Petitioner’s custodian to the judgment of the Central District of California would be inconsistent with the immediate custodian rule. *Padilla*, 542 U.S. at 439-40; *see also Bridges*, 425 F.3d at 1050 (noting that if a petitioner could sue the prison warden’s supervisor—i.e., the Attorney General—then “every federal prisoner and detained alien could file his petition either in the District of Columbia federal district or in any other federal district in which ‘a substantial part of the events or omissions giving rise to the claim occurred.’”); *Doe v. Garland*, 109 F.4th 1188, 1196 (9th Cir. 2024) (holding immediate custodian and not supervisory ICE Field Office Director should be named in habeas petition).

2. *Affording Bautista preclusive effect contravenes other principles of preclusion.*

First, it is doubtful that issue preclusion is ever appropriate in the habeas context. In *Hierens v. Mizell*, 729 F.2d 449 (7th Cir. 1984), for instance, the Seventh Circuit held that “a decision in another case is not res judicata as to a habeas proceeding.” *Id.* at 456; *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.”); *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”).

Second, the circumstances of this case counsel against applying issue preclusion against the government. The Supreme Court has “long recognized that ‘the Government is not in a position identical to that of a private litigant,’ ... 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) (internal citations omitted). “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,” it is not so precluded in cases where the party seeking to offensively use preclusion was not a party to the initial litigation. *Id.* at 162–64. 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.” *Id.* at 160.

For similar reasons, the government should not be precluded from litigating the issue of the proper detention authority here, where the Petitioner was not a named party to the prior *Bautista* litigation, but instead a putative member of a fundamentally flawed nationwide class. Applying preclusion against the government under these circumstances raises the same concern as in *Mendoza*—it allows the *Bautista* court’s decision to freeze the law for all district courts

nationwide and stymies development of the law. Indeed, as the Court is aware, there are numerous inconsistent judgments on the issue of the proper detention authority from district courts around the country, suggesting that reliance on the adverse judgment in *Bautista* would be unfair. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330–31 (1979) (citing the existence of prior inconsistent judgments as indicium of unfairness of applying issue preclusion).

Third, *Bautista* is on appeal to the Ninth Circuit Court of Appeals, *Bautista, et al. v. United States Department of Homeland Security, et al.*, No. 25-7958 (9th Cir.), and this Court should not afford preclusive effect to that judgment or to any underlying legal issues when deciding whether to grant the Petition in this case. Courts generally should exercise significant caution before giving preclusive effect to declaratory judgments that are on appeal, as granting preclusive effect could lead to subsequent judgments “from which it may be impossible to obtain relief” even if the first judgment is reversed on appeal. 9 A.L.R.2d 984. Courts should strive to avoid this “evil result.” *Id.* (“both the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences”); *see also* 18A Wright & Miller, Fed. Prac. & Prod. §§ 4404 (“Awkward problems can result from the rule that preclusive effects attach to the first judgment” while that judgment is subject to an appeal) and 4433 (the rule that a decision is final for the purposes of preclusion while that decision is pending appeal creates “[s]ubstantial difficulties”). This problem can be “avoided . . . by delaying further proceedings in the second action pending conclusion of the appeal in the first action.” *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882–83 (9th Cir. 2007) (citing Wright & Miller § 4433).

In the circumstances here—and particularly given the constraints of 8 U.S.C. § 1252(f)(1)⁹—it would not be proper to impose *res judicata* effect on a class-wide basis while the declaratory judgment is pending appeal. Accordingly, to the extent this Court determines that *Bautista* could have preclusive effect here, Respondents respectfully submit that delaying its decision pending *Bautista's* appeal would be appropriate.

C. Petitioner's Detention Does Not Violate the Due Process Clause.

Beyond alleging that his continuing detention violates the INA and the *Bautista* declaratory judgment, Petitioner alleges that it violates his due process rights under the Fifth Amendment. ECF 1 at ¶¶ 68–76, 81–84. But 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”).

⁹ Section 1252(f)(1) places limits on injunctive relief: “Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.” 8 U.S.C. § 1252(f)(1).

Petitioner was detained on November 12, 2025, and placed in removal proceedings. ECF 1 at ¶¶ 15, 24. He remains in removal proceedings, represented by counsel, and intends to apply for asylum with the Immigration Court. *Id.* at ¶¶ 3, 25. His most recent immigration court hearing was January 12, 2026.¹⁰ *Id.* at ¶ 25. 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). Even though Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A), his detention "has a definite termination point: *the conclusion of removal proceedings.*" *Castaneda v. Perry*, 95 F.4th 750, 757 (4th Cir. 2024) (emphasis in original).

This Court aptly summarized this issue 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; *see also Espinoza Hernandez*, 2026 WL 161509, at *7.

In short, Petitioner is receiving the process to which he is due through his removal proceedings under 8 U.S.C. § 1229a(b)(4). Neither 8 U.S.C. § 1225(b)(2) nor the Due Process Clause affords Petitioner the ability to obtain release on bond. *Espinoza Hernandez*, 2026 WL 161509, at *7; *see also Cirrus Rojas*, 2025 WL 3033967, at *12–14. The United States has "a powerful interest in maintaining the detention in order to ensure that removal actually occurs."

¹⁰ Upon information and belief, a final merits hearing in Petitioner's removal proceedings is scheduled for February 23, 2026.

Parra v. Perryman, 172 F.3d 954, 958 (7th Cir. 1999). The Petition fails to show that the temporary 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[.]”).

CONCLUSION

For all these reasons, Respondents respectfully request that the Court deny Petitioner’s habeas petition, grant them judgment as a matter of law, and dismiss this case with prejudice.

Dated at Milwaukee, Wisconsin this 2nd day of February 2026.

Respectfully submitted,

BRAD D. SCHIMEL
United States Attorney

By: *s/ Luke Sinclair*

LUKE P. SINCLAIR
Assistant United States Attorney
Wisconsin Bar No. 1087786

s/ Stuart Gilgannon

STUART GILGANNON
Assistant United States Attorney
Wisconsin Bar No. 1066362

Office of the United States Attorney
Federal Building, Room 530
517 East Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 297-1745
Fax: (414) 297-4394
Email: luke.sinclair@usdoj.gov

Email: stuart.gilgannon@usdoj.gov
Attorneys for Respondents