UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-00119- ECT-SGE

VICTOR NAVARRO GOVEA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Victor Navarro Govea filed this petition for a writ of habeas corpus because he wants an immigration court to conduct a bond hearing in connection with his detention by the U.S. Immigration and Customs Enforcement ("ICE"). Respondents Pamela Bondi, Kristi Noem, the Department of Homeland Security ("DHS"), Todd M. Lyons, ICE, Daren K. Margolin, the Executive Office for Immigration Review ("EOIR"), and David Easterwood (collectively "the Federal Respondents") submit this response to the petition. The Court should deny Petitioner's request for habeas relief because his detention is mandatory under 8 U.S.C. § 1225—he is not eligible for a bond hearing.

BACKGROUND

The Federal Respondents draw the following background from the petition and the Declaration of Deportation Officer James L. Van Der Vaart, ("VanDerVaart Decl.").

Petitioner claims to be a citizen of Mexico who entered the United States without inspection. Pet. Parties. ¶ 1; Pet. Facts. ¶ 1. He alleges that he entered the United States in

2004, then left the United States in 2008 and re-entered without inspection in 2009. Pet. Facts ¶ 1.

On January 7, 2026, ICE officers encountered Navarro during routine enforcement duties. During the interview, officers determined that Navarro was not without a doubt entitled to admission and arrested him. VanDerVaart Decl. ¶ 7. Because Petitioner is "an alien present in the United States who has not been admitted or paroled," VanDerVaart Decl. ¶ 4, Ex. A, and because no immigration officer has determined that he is "clearly and beyond a doubt entitled to be admitted," Petitioner is subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(2).

On October 17, 2024, Petitioner filed applications for employment authorization and for temporary immigration benefits as a qualifying family member of U-1 recipient. USCIS accepted the forms and assigned Alien Registration Number (A)[redacted] Pet. Facts ¶ 4; VanDerVaart Decl. ¶ 4. On November 29, 2025, USCIS approved employment authorization and issued a U-Visa Bona Fide eligibility notice. Pet. Facts ¶¶ 4-5; VanDerVaart Decl. ¶ 5.

Petitioner filed this habeas petition on January 8, 2026. Dkt. 1. The Court entered a briefing schedule, and the Federal Respondents now submit their response.

ARGUMENT

The parties' disagreement in this case comes down to whether Petitioner is detained under § 1225 or § 1226 of Title 8 of the U.S. Code. ICE says it's § 1225, which governs the detention of noncitizens who are "applicants for admission." 8 U.S.C. § 1225(a)(3). Congress says so as well, expressly directing that noncitizens like Petitioner who get into the United States without being inspected "shall be deemed for purposes of this chapter an applicant for admission" and then detained pursuant to § 1225(b)(1) or § 1225(b)(2). *Id.* § 1225(a)(1). Based on a straightforward reading of these statutes, Petitioner is subject to mandatory detention under § 1225(b)(2).

I. Mandatory Detention under § 1225

Petitioner thinks he is subject to detention under § 1226 rather than under § 1225. The Court is familiar with this issue by now and has already ruled on the government's arguments for holding that detention under these circumstances is appropriately characterized as mandatory detention pursuant to § 1225. *See, e.g., Fernando F.P.D. v. Brott*, No. 25-cv-4455 (ECT/ECW), 2025 WL 3675151 (D. Minn. Dec. 17, 2025). Although the Eighth Circuit is poised to weigh-in soon, *see Avila v. Bondi*, No. 25-3248 (8th Cir. docketed Nov. 10, 2025), the Federal Respondents acknowledge that this case presents similar legal and factual issues to prior habeas petitions.

Rather than belabor these proceedings further by re-arguing points that the Court has already considered and rejected, the Federal Respondents will: (1) offer additional authority that the Court may not have previously considered; and (2) summarize the legal basis for the government's interpretation. The Federal Respondents request that the Court note the arguments made below and in *Fernando F.P.D.* and hold that they are preserved for appeal.

A. Additional Authority

A growing number of courts across the country have agreed with the government's interpretation of § 1225 in factually similar cases. *See, e.g., Naikpay v. Sukkar*, No. 2:25-cv-1167-KCD-DNF, 2026 WL 44820, *1 (M.D. Fla. Jan. 7, 2026); *Zakinyan v. Warden*, No. 25-CV-3717 JLS (MMP), 2026 WL 36081, *3 (S.D. Cal. Jan. 6, 2026); *Alfonso Parra v.*

Secretary, Department of Homeland Security, No. 2:25-cv-1116-KCD-DNF, 2026 WL 21243, * (M.D. Fla. Jan. 5, 2026); *Calderon Lopez v. Lyons*, --- F. Supp. 3d ----, 2026 WL 44683, *1, *4-8 (N.D. Tex. 2026); *Lopez v. Ladwig*, No. 6:25-cv-01884, 2026 WL 19095, *4 (W.D. La. Jan. 2, 2026); *Zuniga v. Lyons*, --- F. Supp. 3d ----, No. 1:25-CV-221-H, 2025 WL 3755126, *1, *3-7 (N.D. Tex. 2025); *Rodriguez v. Jeffreys*, 8:25CV714, 2025 WL 3754411, *11-14 (D. Neb. Dec. 29, 2025); *Montoya v. Holt*, CIV-25-01231-JD, 2025 WL 3733302, *6-10 (W.D. Okla. Dec. 26, 2025); *Lucero v. Field Office Director of Enforcement and Removal Operations*, No. 1:25-cv-823, 2025 WL 3718730, 2025 WL 3718730, *1-6 (S.D. Ohio Dec. 23, 2025); *A.M. v. Joyce*, No. 2:25-cv-00615-LEW, 2025 WL 3706922, *1,*4-5 (D. Me. Dec. 22, 2025); *De La Torre v. Lyons*, No. 1:25-cv-01516-DJC-CSK, 2025 WL 3704448, *2 (E.D. Cal. Dec. 22, 2025); *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025); *Urbina Zapata v. Chestnut*, No. 1:25-cv-01922-WBS-CKD, 2025 WL 3687643 (E.D. Cal. Dec. 19, 2025); *E.R.J.B. v. Wofford*, No. 1:25-cv-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025); *Romero Rebolledo v. Chestnut*, No. 1:25-cv-01904-WS-CKD, 2025 WL 3683122 (E.D. Cal. Dec. 18, 2025); *Liang v. Almodovar*, No. 1:25-cv-09322-MKV, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025); *Pablo Coronado v. Secretary, DHS*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025); *P.B. v. Bergami*, No. 3:25-cv-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Yanyun Mo v. Chestnut*, No. 1:25-cv-01789 WBS CSK, 2025 WL 3539063 (E.D. Cal. Dec. 10, 2025); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025); *Melgar v. Bondi, et al.*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *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 (JLS), 2025 WL 7484932, (W.D.N.Y. Dec. 4, 2025); *Topal v. Bondi*, No. 1:25-CV-01612 (SEC P), 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Hernandez Cruz v. Noem*, No. 8:2-cv-02566-SB-MAA, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025); *Suarez v. Noem*, No. 1:25-cv-202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Maceda Jimenez v. Thompson*, No. 4:25-cv-05025, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025); *Alves De Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025); *Valencia v. Chestnut*, No. 1:25-CV-01550 WBS JDP, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025); *Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, 2025 LX 568700 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-177, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025); *Vargas Lopez v. Trump*, --- F.Supp.3d ---, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Pipa-Aquise v. Bondi*, No. 1:25-cv-01094-MSN-WBP, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025).

And recently, this Court observed that there are "reasons to question" the majority view, that the "statutory-interpretation issue is difficult and close," and that courts reaching the opposite conclusion have done so "reasonably." *Ahmed M. v. Bondi*, No. 25-cv-4711 (ECT/SGE), Doc. No. 8 at 2, 2026 WL 25627, *1 (Jan. 5, 2026); *see also Hector G. v. Lyons*, No. 25-cv-4710 (PJS/EMB), Doc. No. 9 (Dec. 30, 2025 Order) ("Respondents' argument has some force."). The Government is well aware that taking a fresh look at this statutory scheme is no small task. "The complex provisions of the INA have provoked comparisons to a morass, a Gordian knot, and King Minos's labyrinth in ancient Crete. . . . Divining its meaning is ordinarily not for the faint of heart." *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) (en banc) (cleaned up).

However, given the importance of the question and recent developments in the caselaw, the United States respectfully urges this Court to revisit the majority approach and give serious consideration to the Government's view of the law as set forth in this response. *See Sandoval*, 2025 WL 3048926, at *6 (noting "many of the[] cases" taking the majority position did so "before—or soon after—the BIA issued its opinion in" *Hurtado*). And it is worth emphasizing that courts within the Eighth Circuit agree with the government's arguments. *See, e.g.*, *Melgar v. Bondi, et al.*, 2025 WL 3496721 (D. Neb. Dec. 5, 2025); *Suarez v. Noem*, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025); *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In particular, the District of Nebraska's decision in *Melgar* comprehensively and persuasively analyzes the text of § 1225 and § 1226 before concluding that a habeas petition like the one filed in this case failed on the merits because the petitioner was properly detained under § 1225. The Federal

Respondents contend that this authority justifies revisiting the Court's earlier decisions on the § 1225/1226 issue presented in this petition.

B. Mandatory Detention under § 1225

The Court should uphold Petitioner's mandatory detention under § 1225(b)(2). Petitioner is a noncitizen present in the United States who entered without inspection. Thus, he is "deemed" to be an "applicant for admission" under § 1225(a)(1). Pursuant to the statute's "catchall provision"—paragraph (b)(2)—a noncitizen like Petitioner who is deemed an applicant for admission and who is not subject to paragraph (b)(1) must be detained during removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The Court should reject Petitioner's request to recast his detention as arising under § 1226, for reasons that are evident from the text, context, and structure of the statutes at issue.

First, Petitioner's argument is contrary to § 1225's plain text, which "deem[s]" people who are already "present in the United States" without admission to be applicants for admission. *See* 8 U.S.C. § 1225(a)(1). Although paragraph (b)(1) applies to those "arriving" in the United States and other more recent arrivals, paragraph (b)(2) is not so limited and applies instead to any "other" noncitizen "who is an applicant for admission." *Compare id.* § 1225(b)(1)(A)(i), *with id.* § 1225(b)(2)(A); *accord Jennings*, 583 U.S. at 287. The term "seeking admission" does not implicitly narrow this provision to just those applicants for admission who are "arriving" at the border. Such an interpretation would render paragraph (b)(2) essentially redundant of (b)(1). Rather, (b)(2) includes all people deemed to be applicants for admission who are not already covered by paragraph (b)(1).

Second, the context of § 1225's passage in a 1996 reform package shows Congress intended to place noncitizens who are present without admission on equal footing with those who are apprehended upon arrival. Before the current version of § 1225 was enacted, under the entry doctrine, inadmissible noncitizens who successfully evaded apprehension and gained entry enjoyed greater rights than those who were found inadmissible after appearing for inspection. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (explaining history of § 1225), *declined to extend by United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024). But Congress did away with the distinction by, among other changes, deeming both categories to be treated as applicants for admission in § 1225(a) and treating them similarly in § 1225(b). Interpreting § 1225(b) to turn on physical entry rather than lawful admission after inspection would reinvigorate the entry doctrine, contrary to Congress's legislative efforts.

Third, Petitioner's approach contradicts the structure of the statute, both within § 1225 itself and between § 1225 and § 1226. Section 1225(b) divides applicants for admission between two subparagraphs: (b)(1) for those applicants for admission who are arriving, and (b)(2) for "other" applicants for admission. Section 1225(b) treats all "applicants for admission"—whether arriving or already present—as mandatory detainees under either (b)(1) or (b)(2), unlike admitted noncitizens who are subject to discretionary detention and allowed bond under § 1226.

Based on § 1225's plain text, context, and structure, the Court should hold Petitioner is properly subject to mandatory detention under § 1225(b)(2).

II. Petitioner's Status as a Class Member in *Maldonado Bautista* does not control the outcome in this case.

Petitioner alleges that he is a member of the class of plaintiffs in the Central District of California case, *Bautista v. Noem*[1] and argues that the decisions issued by that Court are dispositive of his habeas petition. *E.g.*, Petition ¶¶ 21-22. Respondents agree he appears to be a class member as defined by that court. The December 18, 2025 partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, however, is neither binding nor applicable here.

a. The *Bautista* Court Does Not Have Jurisdiction to Issue Relief to Petitioner Here.

The *Bautista* court's jurisdiction does not extend to allow for habeas relief for individuals detained in Minnesota. The *Bautista* class sought a declaratory judgment that class members like 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, in the district of confinement. 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).

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[1] *See* Order Granting Pl. Pet'rs' Mot. for Class Cert., *Maldonado Bautista v. Santacruz*, 5:25-cv-01873 (C.D. Cal. Nov. 25, 2025) (ECF No. 82).

The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. *First*, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also J.G.G.*, 604 U.S. at 672. *Second*, a habeas petitioner must name the petitioner's *immediate* custodian—*i.e.*, the custodian who has actual custody over the petitioner and can produce the "corpus." *Padilla*, 542 U.S. at 435. "Failure to name the petitioner's custodian as a respondent deprives federal courts of personal jurisdiction" needed to issue relief. *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994); *Padilla*, 542 U.S. at 444. Thus, a federal district court is wholly without authority to issue the writ in favor of a habeas petitioner who seeks habeas relief in a judicial district in which he is not confined and the immediate custodian is not located. *Padilla*, 542 U.S. at 442-43. And a "judgment entered without personal jurisdiction over a defendant is void as to that defendant." *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 (D.C. Cir. 1987).

Given that a challenge to the legality of detention is a core habeas claim, class-wide declaratory relief is inappropriate in the habeas context. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment action not appropriate to address "validity of a defense the State may, or may not, raise in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas proceeding"); *Fusco v. Grondolsky*, No. 17-1062, 2019 WL 13112044, at *1 (1st Cir. June 18, 2019) (declaratory judgment action must be dismissed when habeas available). Indeed, a class-wide declaratory judgment imposed from outside the district of confinement cannot be squared with the district-of-confinement requirement of habeas, where the relief is an order of release, 28 U.S.C. § 2241(a), not a declaration of legal rights that can later be enforced. *See Calderon*, 523 U.S. at 747 (1998); *Fusco*, 2019 WL 13112044, at *1; *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996) (holding that the "availability of a habeas remedy in another district ousted us of jurisdiction over an alien's effort to pose a constitutional attack . . . by means of a suit for declaratory judgment"); *Monk v. Sec. of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is 'in custody in violation of the Constitution . . . of the United States,' . . . . This specific determination must override the general terms of the declaratory judgment . . . statute.").

The vast majority of *Bautista* class members are confined *outside* of the Central District of California by immediate custodians who are also *outside* the Central District of California and have not been named in the lawsuit. Therefore, the *Bautista* court lacked jurisdiction to issue habeas relief to all class members who are confined outside the Central District of California by immediate custodians outside that District, and a court's judgment cannot be binding and preclusive against a party over which it lacked jurisdiction. *Burnham v. Superior Court of Cali.*, 495 U.S. 604, 608 (1990). Indeed, another federal district court has already held that the *Bautista* declaratory judgment does not have preclusive effect. Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12.

The *Bautista* court's declaratory judgment purporting to grant relief that at its core sounds in habeas is not valid outside that District. At the time of filing this habeas petition, Petitioner was detained in Minnesota. That ends the matter. Petitioner's immediate custodians he was detained at the time of filing was Acting Director Easterwood, who is not a party to *Bautista*, nor could he be. *Padilla*, 542 U.S. at 439-40.

b. The Court Should Not Give Preclusive Effect to the Declaratory Judgment in *Bautista* Because it is on Appeal.

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

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

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)—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").

Beyond the two most serious problems with giving effect to the *Bautista* declaratory judgment in this case, three more reasons counsel strongly against doing so.

First, under 28 U.S.C. § 2202, "[f]urther necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment." To the extent this Court considers whether to award "further" relief than what the *Bautista* court purported to grant to class members outside the Central District of California, such further relief is neither "necessary [n]or proper." Indeed, the Ninth Circuit—which of course has appellate jurisdiction over the Central District of California—has rejected waiving the district of confinement rule on prudential considerations given the clear congressional mandate limiting habeas jurisdiction to the district of confinement as provided by statute. *Doe 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).

Second, the circumstances of this case also 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,' *INS v. Hibi*, 414 U.S. 5, 8 (1973) (per curiam), both because of the geographic breadth of government litigation and also, most importantly, because of the nature of the issues the government litigates." *United States v. Mendoza*, 464 U.S. 154, 159 (1984). "Government litigation frequently involves legal questions of substantial public importance." *Id.* Thus, although the Supreme Court has held the federal government "may be estopped . . . from relitigating a question" when "the parties to the lawsuits are the same," *id.* at 163, 164, it is not so precluded in cases where the party seeking to offensively use preclusion was not a party to the initial litigation, *see id.* at 162. This is because allowing "nonmutual collateral estoppel against the government . . . would substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue." *United States v. Mendoza*, 464 U.S. 154, 160 (1984).

Applying preclusion against the government raises the same concern raised in *Mendoza*—it allows the *Bautista* court's decision to freeze the law for all district courts nationwide and stymies development of the law.

The Court should also decline to give the *Bautista* declaratory judgment preclusive effect given the existence of several inconsistent judgments from district courts around the country, suggesting that reliance on the adverse judgment in *Bautista* would be unfair. *See Parklane Hosiery*, 439 U.S. at 330–31 (citing the existence of prior inconsistent judgments as indicium of unfairness of applying issue preclusion); *see, supra*, pp. 4-5 (citation list).

Third, it is doubtful that issue preclusion is ever appropriate in the habeas context. For instance, in *Griffin v. Gomez*, the Ninth Circuit held that a prior "class action has no preclusive affect in habeas proceedings." *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998). The court later explained that res judicata and collateral estoppel do not apply to habeas proceedings. *See Clifton v. Attorney General*, 997 F.2d 660, 662 n.3 (9th Cir. 1993) (recognizing that because "conventional notions of finality of litigation have no place" in habeas and the inapplicability of res judicate to habeas is "inherent in the very role and function of the writ") (quoting Sanders v. United States, 373 U.S. 1, 8 (1963)); *see also Hardwick v. Doolittle*, 558 F.2d 292, 295 (5th Cir. 1977) ("The doctrines of res judicata and collateral estoppel are not applicable in habeas proceedings."); *Hierens v. Mizell*, 729 F.2d 449, 456 (7th Cir. 1984) ("[A] decision in another case is not res judicata as to a habeas proceeding.").

C. Issue Preclusion is Inapplicable Here.

Although it is generally customary for a court to give effect to another court's judgments, Supreme Court precedent supports departing from that practice certain situations. This is one of those situations. Assessing whether the *Bautista* declaratory judgment required granting an individual class member's habeas petition, the U.S. District Court for the Northern District of Texas persuasively explained why the *Bautista* declaratory judgment need not be followed by other U.S. district courts, even before a court of appeal stays or vacates that order. A lengthy quote explains the court's reasoning:

> A dispute in this posture is unusual, but not unheard of. As Justice Story remarked, the traditional comity between courts "does not prevent an inquiry into the jurisdiction of the court in which the original judgment was given." *Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8, 16 (1907) (quoting Joseph Story, Commentaries on the Constitution of the United States § 1313 (1833)). It is "a subject [that] may be inquired into every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings." *Williamson v. Berry*, 49 U.S. (8 How.) 495, 540 (1850); *Old Wayne*, 204 U.S. at 16–17 (same).
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> Indeed, traditional habeas proceedings normally could only challenge "the power and authority of the court" or other detaining authority "to act." *Brown v. Davenport*, 596 U.S. 118, 129 (2022) (quotation omitted). While the conclusions of another court, when enforced onto a peer court, are generally "unassailable collaterally," an exception has always existed for "lack of

> jurisdiction." *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939); *Ex parte Watkins*, 28 U.S. (3 Pet.) 193, 202–03 (1830) (Marshall, C.J.) (same). When the issuing court lacks jurisdiction, "its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought . . . in opposition to them; they constitute no justification, and all persons concerned in executing such judgments . . . are considered in law as trespassers." *Williamson*, 49 U.S. at 541 (quoting *Elliott v. Piersol*, 26 U.S. (1 Pet.) 328, 329 (1828)); *Watkins*, 28 U.S. at 203 ("An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity[.]"). . . .
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> The Court issues this Order with some reluctance. The business of another court is generally beyond this Court's concern. But the petitioner seeks relief based on the Central District's orders, leaving this Court no choice but to address their binding effect. Here, a fellow district judge purports to bind all pending and future cases involving the mandatory detention issue to her reasoning in an advisory opinion, disrupting this Court's extensive immigration docket and the dockets of fellow courts across the Nation. But the Central District's orders are not binding because the Central District lacked authorization to issue them. The orders are unauthorized because they are advisory and because they violate the INA's limits on judicial review. Additionally, they would require this Court to act in defiance of Supreme Court precedent. Thus, the Court rejects the petitioner's assertion that it is bound by the Central District's orders and must grant relief as a result.

Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12, at 11 & 28. This Court is not required to wait for a court of appeals to stay or vacate that judgment before this Court declines to give it preclusive effect.

The United States respectfully request that this Court not give the *Bautista* decision preclusive effect.

III. Petitioner's Pending U-Visa Application Does Not Impact His Detention or Removal Proceedings.

Petitioner incorrectly alleges that his pending U-Visa application impedes Respondents' ability to detain and potentially remove him. Pet. Facts. ¶ 4. As Judge Provinzino recently explained that deferred action is an exercise of prosecutorial discretion. *Id.* at 5 n.5. Slip Op., *Domingo M.M. v. Shea, et al.,* No. 25-cv-2830 (LMP/ECW) (D. Minn. August 1, 2025) (ECF 24). This Court should decline to follow this red herring argument.

A. The U-Visa Program

Congress created the U visa program in 2000 to help crime victims by granting status to noncitizens who assist criminal investigations and prosecutions. Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106–386, § 1513(a)(2), 114 Stat. 1464, 1533–34 (Oct. 28, 2020) (codified at 8 U.S.C. §§ 1101(a)(15)(U), 1184(a)(1)). *See generally* Slip Op., *Domingo M.M. v. Shea, et al.,* No. 25-cv-2830 (LMP/ECW) (D. Minn. August 1, 2025) (ECF 24). An individual is eligible for U-1 nonimmigrant status if he can show he: (1) has suffered substantial physical or mental abuse as a result of having been a victim of a qualifying crime; (2) has credible or reliable information about the crime, and has been, is being, or is likely to be helpful to law enforcement in investigating or prosecuting the crime; and (3) is admissible to the United States or has had all grounds of inadmissibility waived. *See* 8 U.S.C. §§ 1101(a)(15)(U), 1182(a); 8 C.F.R. §§ 214.1(a)(3)(i), 214.14(c)(2)(iv). If USCIS approves the petitioner's

U-visa petition and the petitioner is in the United States, the petitioner will receive lawful U-1 nonimmigrant status and employment authorization for up to four years, renewable. *See* 8 U.S.C. § 1184(p)(6).

Congress later enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA"), Pub. L. 109-162, 119 Stat. 2960 (Jan 5, 2006). That statute directed the Secretary of the Department of Homeland Security to promulgate regulations that implemented, among other things, section 1513 of the VTVPA. Pub. L. 109-162, § 828, 119 Stat. 3066. DHS published an Interim Rule, effective October 17, 2007, giving USCIS sole jurisdiction over U-visa petitions. *New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status*, 72 Fed. Reg. 53,014 (Sept. 17, 2007) (codified at 8 C.F.R. § 214.14).

B. Applying for a U-Visa

An individual seeking U nonimmigrant status submits a Form I-918 to USCIS. 8 C.F.R. §§ 214.14(c)(1), (f)(2). A petitioner may pursue a U-visa, like any other visa, while he is outside the United States. *See* U.S. Citizenship & Immig. Servs., *Victims of Criminal Activity: U Nonimmigrant Status*, https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status (last visited December 2, 2025).

An approvable U-visa petition is one that meets all the criteria to be granted U nonimmigrant status. The petitioner must submit a certification from a "Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity," and the certification must state the petitioner "has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution." 8 U.S.C. § 1184(p)(1). The petitioner must also be admissible to the United States or receive a waiver of all grounds of inadmissibility. *Id.* §§ 1182(a), (d)(3)(A)(ii), (d)(14); 8 C.F.R. §§ 212.17, 214.1(a)(3)(i).

C. The U-Visa Waitlist

Congress limited the program to just 10,000 available U-visas per year. 8 U.S.C. § 1184(p)(2). Expecting that some applicants might need to wait for approval, Congress allowed the DHS Secretary to "grant work authorization" for noncitizens with "a pending, bona fide application" for a U-visa. *Id.* § 1184(p)(6).

USCIS created a waiting list for eligible petitioners whose application is not granted "due solely to the cap" on the number of available U-visas. 8 C.F.R. § 214.14(d)(2). "USCIS will grant deferred action or parole," including work authorization, "to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list." 8 C.F.R. § 214.14(d)(2).

"Deferred action" is "an act of administrative convenience to the government that gives some cases lower priority" for removal. 8 C.F.R. § 274a.12(c)(14). In the preamble to the 2007 rulemaking, which created the U-visa regulations in 8 C.F.R. § 214.14, stays of removal were distinguished from deferred action:

> A stay of deportation or removal is an administrative decision to stop temporarily the deportation or removal of an alien who has been ordered deported or removed from the United States. See 8 CFR 241.6; 8 CFR 1241.6. *Deferred action is an exercise of prosecutorial discretion that defers the removal of the alien based on the alien's case being made a lower priority for removal.* Immigration and Customs

> Enforcement, Department of Homeland Security, Detention and Deportation Officer's Field Manual, ch. 20.8 (2005). *Deferred action does not confer any immigration status upon an alien.*

72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (emphasis added).

While deferred action does not provide immigrant or nonimmigrant status, an individual with deferred action does not accrue unlawful presence in the United States during the deferred-action period. 8 C.F.R. § 214.14(d)(3). "However, a petitioner may be removed from the waiting list, and the deferred action or parole may be terminated at the discretion of USCIS." *Id.*

D. Bona Fide Determination

USCIS established a procedure in 2021, known as the "BFD" process, for identifying bona fide applications and providing employment authorization documents to pending U-visa petitioners within the United States who merit a favorable exercise of discretion. *See* U.S. Citizenship & Immig. Servs. Policy Manual, Vol. 3, Part C, Ch. 5, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited on December 2, 2025). "USCIS generally does not conduct waiting list adjudications for aliens to whom USCIS grants BFD EADs and deferred action," and the BFD process therefore operates as an alternative to the waiting-list process allowing U-visa applicants within the United States to obtain work authorization and deferred action without a full waiting-list adjudication. *Id.*, Ch. 6, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-6 (last visited December 2, 2025).

But the deferred action offered by the process does not begin with a bona fide determination—it is contemporaneous with the period of employment authorization. As the USCIS Policy Manual explains, "If USCIS grants the alien a Bona Fide Determination Employment Authorization Document (BFD EAD) as a result of the BFD process, USCIS then also exercises its discretion to grant that alien deferred action for the period of the BFD EAD." *Id.*, Ch. 5, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited on December 2, 2025).

IV. Remedy

If the Court determines that Petitioner is detained under § 1226(a) and not under § 1225(b)(2), then the appropriate remedy is to order a custody redetermination hearing instead of immediate release. That approach would "comport[] with the general rule that 'the scope of injunctive relief is dictated by the extent of the violation established' and should be 'no more burdensome to the defendant than necessary to provide complete relief to the plaintiff.'" *Fuentes v. Olson*, 2025 WL 3524455, at *5 (D. Minn. Dec. 9, 2025) (alterations omitted) (quoting *Nebraska v. Biden*, 52 F.4th 1044, 1048 (8th Cir. 2022)); *see also Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (staying preliminary injunctions "to the extent that the injunctions are broader than necessary to provide complete relief to each plaintiff with standing to sue"). The result of this rule is that "[m]ost courts confronting claims analogous to" those raised by Petitioner "order a bond hearing, not immediate release, as a remedy." *Fuentes*, 2025 WL 3524455, at *5 (collecting authority). Petitioner should not obtain a different outcome here.

Under Petitioner's theory, he is not subject to expedited removal proceedings and not subject to detention under any provision of § 1225. If he is correct, then he would have to be subject to discretionary detention under § 1226(a). But § 1226(a) does not grant "any *right* to release on bond." *Matter of D-J-*, 23 I. & N. Dec. 572, 575 (original emphasis) (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). Instead, the statute provides that the government "*may* release the [noncitizen] on . . . bond of *at least* $1,500" or on conditional parole. 8 U.S.C. § 1226(a)(2) (emphasis added). Under this plain text, posting bond of "at least $1,500" is a condition precedent to release. *Id.* And whether a person is entitled to release on bond in the first place depends on if he can prove he "is not a danger to the community or a flight risk." *Miranda v. Garland*, 34 F.4th 338, 347 (4th Cir. 2022). Petitioner is not entitled to an order of immediate release from this Court, unmediated by the immigration court procedures ordinarily applicable to custody redetermination proceedings under § 1226(a).

V. Evidentiary Hearing

The Federal Respondents believe that the Court can rule on this petition without holding an evidentiary hearing. The facts are not likely to be disputed, and the only issues before the Court are ones of legal interpretation that are capable of resolution on the parties' submissions.

CONCLUSION

For the reasons discussed above, the Federal Respondents respectfully request that the Court deny this habeas petition.

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