

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

DANNY PEREZ AJTUM,
Petitioner,

v.

DAVID HARDIN, ET AL.,
Respondents.

Case No. 2:26-cv-57-SPC-DNF

**RESPONDENTS' OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner Danny Perez Ajtum ("Petitioner") seeks the grant of a petition for writ of habeas corpus ("Petition") pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody. Petitioner also asserts that his ongoing detention violates orders issued in *Lazaro Maldonado Bautista et al., v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873 (C.D. Cal. 2025). Petitioner is currently detained under 8 U.S.C. § 1225(b)(2) and is therefore ineligible for release under 8 U.S.C. § 1226(a). He seeks to circumvent the detention statute under which he is rightfully detained to secure a custody redetermination hearing that he is not entitled to. Petitioner argues that—contrary to the plain language of 8 U.S.C. § 1225(b)(2)—the authority for his detention is better understood to arise under 8 U.S.C. § 1226(a), a detention statute

that allows for release on bond or conditional parole. That argument fails to square with the fact that he falls neatly and precisely within the statutory definition of aliens subject to detention pursuant to 8 U.S.C. § 1225(b)(2).

BACKGROUND

Petitioner is an alien “applicant for admission.” He is a native and citizen of Guatemala who unlawfully entered the United States in 2018. Petition, ¶ 16; *see also* Form I-213, Notice of Deportable/Inadmissible Alien, attached as “Exhibit A” at pg. 3. Petitioner was issued a Notice to Appear following his initial encounter with immigration enforcement in 2018, however his proceedings were dismissed on October 25, 2023. Exhibit A at 3; *see also* Notice to Appear dated December 5, 2018, attached as “Exhibit B.” Petitioner was detained most recently by immigration enforcement on December 9, 2025 following a traffic stop and he has been placed back into immigration removal proceedings. Petition, ¶¶ 8, 34; *see also* Exhibit A at 2-3. On January 13, 2026, Petitioner filed the instant action in the U.S. District Court seeking habeas relief as a class member of the *Maldonado Bautista* class action. *See* Petition. On January 15, 2026, the Court issued an order instructing Respondents to respond. ECF No. 3. For the reasons set forth below, Respondents respectfully request that this Court dismiss Petitioner’s Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.¹

¹ The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec’y, Fla. Dep’t of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. *See, e.g., Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE either to bring petitioner for a bond hearing or release by a specific date).

ARGUMENT

I. Jurisdiction

Respondents acknowledge that prior rulings concerning jurisdiction pursuant to 8 U.S.C. §§ 1252(b)(9) and 1252(g) in similar challenges to the government policy or practice at issue in this case would control the result in this case should the Court adhere to its legal reasoning in those prior decisions and find the facts sufficiently common. *See e.g., Cetino v. Hardin, et al.*, No. 2:25-cv-1037-JES-DNF, 2025 WL 3558138 (M.D. Fla. Dec. 12, 2025). While Respondents respectfully disagree, in the interest of judicial economy, and to expedite the Court's consideration of this matter, Respondents hereby rely upon and incorporate by reference the legal arguments regarding jurisdiction under Sections 1252(b)(9) and 1252(g) as presented in *Cetino*.² *See Cetino*, No. 2:25-cv-830-JES-DNF, ECF No. 9. Should the Court prefer to receive a more exhaustive and fulsome opposition brief on these issues, Respondents respectfully request leave to file such a brief and will do so upon the Court's request.

II. Petitioner Lacks Standing to Bring an APA Claim

By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, Petitioner's APA claim is independently barred by this limitation in 5 U.S.C. § 704. In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the

² Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of judicial economy, Respondents respectfully request the Court to suspend application of the rule. *See* Local Rule 1.01(a) and 1.01(b).

invalidity of their confinement” those claims “must be brought in habeas.” 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, “given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner’s APA claim had merit, which it does not, the result would be the same as that in habeas—release from detention. The Supreme Court’s holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

III. *Maldonado Bautista* Lacks Preclusive Effect

Petitioner argues that Respondents have failed to give the judgement issued in *Maldonado Bautista* preclusive effect. He effectively asks the Court to impose *res judicata* effect on a class-wide basis while the declaratory judgment issued in *Maldonado Bautista* remains pending on appeal. See Petition, ¶¶ 11-14; see also *Maldonado Bautista*, 5:25-cv-01873 at ECF Nos. 94, 95. However, doing so would be improper, as this District has already recognized. See e.g., *Martinez Chavez v. Ripa, et al.*, No. 2:25-cv-01088-KCD-DNF (ECF No. 10), FN 4.

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). Here, 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”).

IV. Petitioner’s Detention is Lawful

As Petitioner’s only cause of action pertains to his purported membership in the *Maldonado Bautista* class and that argument has been addressed *supra* the Court need not go further in order to resolve this Petition. Still, Respondents aver that his detention is indeed lawful because his detention is governed by 8 U.S.C. § 1225, as he

is an alien who entered without inspection or parole, was—and remains—an applicant for admission, and is treated, for constitutional purposes, as if stopped at the border. As such, he is subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

In *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), the Board of Immigration Appeals (“BIA”) examined the plain language of Section 1225, the INA’s statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub L. No. 104-208, and DHS’s prior practices. After doing so, the BIA held that “under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission.” 29 I&N Dec. at 225.

“As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .)” 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”). Accordingly, by its very definition, the term

“applicant for admission” includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted” (citing 8 U.S.C. § 1225(a)(1))). An arriving alien is defined, in pertinent part, as “an applicant for admission coming or attempting to come into the United States at a port-of-entry [(“POE”)]” 8 C.F.R. §§ 1.2, 1001.1(q).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection”). An applicant for admission seeking admission at a United States POE “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in

removal proceedings). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2).

Here, Petitioner entered the United States in 2018 without having been admitted after inspection by an immigration officer at which time he was apprehended and placed into immigration proceedings the first time. Petition, ¶ 16. His proceedings were then dismissed so that he could pursue adjustment of status, which he has stated intends to proceed with in order to remain permanently here in the United States. *Id.*, ¶ 18-19; *see also* Exhibit A at 3. Petitioner is, therefore, an alien present without admission and an applicant for admission.

CONCLUSION

Petitioner’s claims must be dismissed. He has not demonstrated that this Court is bound by the declaratory judgment issued in *Maldonado Bautista*. Furthermore, Respondents have shown that Petitioner’s detention pursuant to Section 1225 is lawful because the INA mandates his detention. Even so, this Court lacks jurisdiction to act on Petitioner’s claims and he has failed to exhaust otherwise available administrative remedies. Petitioner fails to state a claim for relief under the Due Process Clause and fails to establish that this Court has subject matter jurisdiction. All counts should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: January 22, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney