

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:26-cv-20256-Bloom

Cristihan Y. Soto Aguirre,

Petitioner/Plaintiff,

v.

GARRET RIPA, in their official  
capacity as, Director of Miami Field  
Office, U.S. Immigration and Customs  
Enforcement;

KRISTI NOEM, in their official  
capacity as Secretary of the United States  
Department of Homeland Security;

Respondents-Defendants.

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**RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS  
AND RESPONSE TO ORDER TO SHOW CAUSE**

Respondents<sup>1</sup> file this Return to Petitioner, Cristihan Y. Soto Aguirre's Petition for Writ of Habeas Corpus [D.E. 1]<sup>2</sup> (hereinafter the "Petition") and Response to Court's Order to Show Cause

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<sup>1</sup> A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Federal Detention Center. *See* Exh. A. Therefore, the proper respondent is acting Assistant Field Office Director Charles Parra as the immediate custodian (Petitioner had incorrectly identified Garrett Ripa as "Field Office Director Krome Detention Center"). Respondents must all be dismissed as improper parties.

<sup>2</sup> Petitioner appears to file this case *pro se*, however, Respondents note that the signature line is not signed by petitioner but rather a signature "for Petitioner" appears in the space designated for the Signature of Attorney. *See* D.E. 1, p.9. Upon review of the exhibits, it appears that signature matches that of immigration counsel. D.E. 1-1, p.19 of 20.

[D.E. 4]. As set forth below, this action should be dismissed as Petitioner is properly detained pursuant to INA § 235(b)(2), 8 U.S.C. § 1225(b)(2)(A).

## **I. FACTUAL BACKGROUND**

Petitioner, Cristihan Y. Soto Aguirre is a native and citizen of Mexico, who entered the United States at an unknown time on an unknown date. *See* Exh. A, Declaration of Deportation Officer Lopez (“Declaration”); Exh. B, Form I-213, Record of Deportable/Inadmissible Alien (“Form I-213”). On December 12, 2025, he was encountered by Border Patrol upon his release from state custody, following a criminal arrest for Battery on a Police Officer, Resisting Officer with Violence, and Attempt to Escape. *See* Exh. A, Declaration; Exh. B, Form I-213.<sup>3</sup> Border Patrol verified alienage and transported Petitioner to DHS custody, where they confirmed he had no lawful status in the United States. *Id.* Border Patrol transferred Petitioner to the custody of Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). *Id.* Petitioner requested a custody redetermination hearing, and on December 29, 2025, the Immigration Judge found he lacked jurisdiction to consider the request. *See* Exh. E, Order of the Immigration Judge. To date, Petitioner has not filed an appeal of the custody decision. *See* Exh. A, Declaration.

On January 16, 2026, ICE ERO filed a Notice to Appear with the Executive Office for Immigration Review, charging Petitioner with removability pursuant to section 212(a)(6)(A)(i), in that he is present in the United States without being inspected or paroled, or arrived in the United States at a time or place other than as designated by the Attorney General, and section 212(a)(7)(A)(i), in that at the time of his application for admission, he was not in possession of an unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document

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<sup>3</sup> The Office of the State Attorney dismissed the charges on December 10, 2025.

required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211 (a) of the Act. *See* Exh. A, Declaration; Exh. D, Notice to Appear. Petitioner remains detained at the FDC, as an applicant for admission under section 235(b)(2)(A) of the INA. *See* Exh. A, Declaration. He is scheduled for a master calendar hearing on January 27, 2026. *See* Exh. F, Notice of Hearing in Removal Proceedings.

On January 15, 2026, Petitioner filed this habeas petition, challenging his continued detention under 8 U.S.C. § 1225(b). In the Petition, Petitioner argues he should be granted a bond hearing and points to the class action in *Maldonado Bautista et.al v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, Dkt. 92, at 8-9 (C.D. Cal. Dec. 18, 2025) (*see* D.E 1, ¶¶ 6, 13). In the statement attached as an exhibit, Petitioner also refers to *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025). Given that neither of these positions is meritorious, Petitioner's petition should be dismissed.

## II. ARGUMENT

### A. *Bautista* is neither binding, preclusive nor applicable to Petitioner.

To the extent that Petitioner is relying on *Bautista*, that reliance is misplaced. 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, is neither binding nor applicable, and presents no basis for granting the petition. First, the *Bautista* declaratory judgement lacks legal effect on petitioners and custodians, such as the parties to this case, outside the Central District of California. Second, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. Finally, issue preclusion is inapplicable here, particularly as preclusion principles apply with less force both against the government and in habeas corpus proceedings.

**1. The *Bautista* declaratory judgement lacks effect outside the Central District of California and over custodians located outside that District.**

The *Bautista* class sought a declaratory judgment that class members 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. 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).

The Supreme Court 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.”).

As with most *Bautista* class members, Petitioner is confined *outside* of the Central District of California by an immediate custodian also *outside* the Central District of California and neither he nor his custodian have been named in the *Bautista* lawsuit. Because the *Bautista* court lacks jurisdiction to issue habeas relief to any petitioner or class member confined outside the Central District of California or against immediate custodians outside that District, its judgment cannot be binding and preclusive against parties outside the Central District of California. *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 in its District. Order, *Calderon Lopez v. Lyons*, No. 25-cv-00226 (N.D. Tex. Dec. 19, 2025), ECF No. 12.

It is undisputed that Petitioner was detained in Florida, has remained detained in Florida and his immediate custodian is located in Florida. D.E. 1; Ex. C. This ends the analysis on the matter. *Padilla*, 542 U.S. at 439-40; *see also 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). Consequently, the *Bautista* decision has no preclusive effect in this district and its decision does not bind this Court.

**2. The Court should not give preclusive effect to a declaratory judgment 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 or to any underlying legal issues in deciding whether to grant habeas relief in this case.

Courts must exercise significant caution before giving preclusive effect to declaratory judgments 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. 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 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”). Accordingly, even if the *Bautista* judgment could be applicable to Petitioner, no preclusive effect should be given until its appeal is settled.

**3. Affording preclusive effect to the *Bautista* declaratory judgment contravenes other principles of preclusion**

Beyond the two most serious problems with giving effect to the *Bautista* declaratory judgment in this case addressed above, three more reasons counsel strongly against 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*, 109 F.4th at 1199.

*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).

For similar reasons, the government should not be precluded from litigating the issue of the proper detention authority here, where neither Petitioner nor his current custodian were named parties in the ongoing *Bautista* litigation. In such a circumstance, 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. This is particularly so because the *Bautista* court could never grant complete habeas relief to all class members as a result of § 1252(f)(1)—instead, the *Bautista* class action was merely a vehicle for seeking to use the judgment in individual habeas matters such as this one. At minimum, the court should exercise its discretion to decline to employ offensive issue preclusion, as it does in cases where a non-party seeks to invoke preclusion against a private party. *See Syverson v. Int’l Bus. Machines Corp.*, 472 F.3d 1072, 1078 (9th Cir. 2007) (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979)).

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, e.g., Altamirano Ramos v. Lyons*, – F. Supp. 3d –, 2025 WL 3199872, at \*4 (C.D. Cal. Nov. 12, 2025); *Mejia Olalde v. Noem*, No. 1:25-cv-168, 2025 WL 3131942, at \*2–3 (E.D. Mo. Nov. 10, 2025); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at \*6 (E.D. Wis. Oct. 30, 2025); *Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025); *Xiaoquan Chen v. Almodovar*, No. 1:25-cv-8350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025); *Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025).

**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 judicate 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.”).

In sum, the *Bautista* declaratory judgment has no preclusive effect on this case.

**4. The Court need not await a ruling staying or vacating the *Bautista* declaratory judgment before declining to give it preclusive effect.**

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 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). 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[.]”).

\* \* \*

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.

*Calderon Lopez v. Lyons*, No. 25-cv-00226, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025), ECF No. 12, at 11 & 28 attached as Exhibit G. Thus, because the *Bautista* declaratory judgment would be void if pertaining to Petitioner due to the *Bautista* Court's lack of jurisdiction over the Petitioner and over his immediate custodian as discussed above, 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.

Regardless, even if the Court does not treat the *Bautista* judgment as void *now*, the blatant jurisdictional flaws and other points noted above counsel strongly in favor of the Court declining to give it preclusive effect.

**B. Petitioner is an Applicant for Admission subject to Detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and discretionary detention under § 1226(a) is Inapplicable which was Clarified in the BIA's Decision in *Matter of Yajure Hurtado*.**

In this case, Petitioner is properly detained as an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). "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.").

By its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, and (2) aliens present without admission. *See Dept 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’”); *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”). 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 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 also* 8 U.S.C. § 1229a(c)(2)(A) (explaining that an applicant for admission has the burden to establish that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under 8 U.S.C. § 1182 in removal proceedings pursuant to § 1229a). “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).

Petitioner did not present himself at a POE but instead entered the United States without having been admitted or paroled after inspection by an immigration officer. *See* Ex. C ¶ 12. Petitioner is, therefore, an alien present in the United States without admission or parole and, consequently, an applicant for admission. The recently published decision issued by the BIA in *Matter of Yajure Hurtado* is instructive here. In *Matter of Yajure Hurtado*, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” 29 I&N Dec. at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA’s decision is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court’s decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and subsequent caselaw post *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is “quite clear” and “unequivocally mandate[s]” detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), recognized that §§ 1225 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission or parole who are placed into expedited removal proceedings are detained under § 1225 even if later placed in § 1229a removal proceedings after establishing a credible fear of persecution or torture. *Id.* at 518-

19; *see also* 8 U.S.C. 1225(b)(1)(B)(ii)(providing that if an alien subject to expedited removal demonstrates a credible fear of persecution or torture, the alien “shall be detained” for further consideration of an asylum application in § 1229a removal proceedings).

Additionally, in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA held that an alien who unlawfully entered the United States between POEs, was arrested and detained without a warrant while arriving, and was previously released from DHS custody pursuant to an 8 U.S.C. § 1182(d)(5)(A) parole is detained under § 1225(b) upon re-detention. 29 I&N Dec. at 70-71. This ongoing evolution of the law makes clear that all applicants for admission in various procedural postures are subject to detention under § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (stating that “no amount of policy-talk can overcome a plain statutory command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”). *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

**C. Petitioner is an Applicant for Admission in 8 U.S.C. § 1229a Removal Proceedings and as such his Detention Pursuant to 8 U.S.C. § 1225(b)(2)(A) is Proper.**

Both arriving aliens and aliens present without admission or parole, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under § 1225(b)(1) or removal proceedings before an immigration judge under § 1229a. §§ 1225(b)(1), (b)(2)(A). *See Jennings*, 583 U.S. at 287 (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”). For aliens amenable to expedited removal, immigration officers have discretion to apply expedited removal under § 1225(b)(1) or to initiate removal proceedings before an immigration judge under

§ 1229a. *See also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025) (“DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

Petitioner is currently in § 1229a removal proceedings and is subject to detention under § 1225(b)(2)(A). *See* Ex. D, Notice of Appear. Hence, under § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to § 1225(b)(2)). As the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens as no provision therein refers to “arriving aliens,” or limits that paragraph to arriving aliens. Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. *See, e.g.*, 8 U.S.C. §§ 1182(a)(9)(A)(i), 1225(c)(1).

**D. Section 1226 does Not Impact the Detention Authority that Governs with respect to Applicants for Admission in removal proceedings.**

Section 1226(a) is the applicable detention authority for aliens who have been admitted and are subject to removal proceedings under § 1229 and this does not impact the directive in § 1225(b)(2)(A) that “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceedings under [8 U.S.C. § 1229a],” § 1225(b)(2)(A). As the Supreme Court explained, § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for

those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a “permissive” detention authority separate from the “mandatory” detention authority under 8 U.S.C. § 1225).

Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to be released on bond; rather, both DHS and immigration judges have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). To interpret § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. There would have been no need for Congress to make such a change if § 1226(a) was meant to apply to aliens present without admission.

**E. Applicants for Admission may Only be Released from Detention on an 8 U.S.C. § 1182(d)(5) Parole.**

DHS has the exclusive authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5); *see* 8 C.F.R. § 212.5(b). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes temporary release from detention under § 1225(b). 583 U.S. at 300.

Parole, like an admission, is a factual occurrence. *See Hing Sum*, 602 F.3d at 1098; *Matter of Roque-Izada*, 29 I&N Dec. 106 (BIA 2025) (treating whether an alien was paroled as a question

of fact). The parole authority under 8 U.S.C. § 1182(d)(5) is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). Thus, neither the BIA nor immigration judges have authority to parole an alien into the United States under § 1182(d)(5). *Castillo-Padilla*, 25 I&N Dec. at 261; *see also Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771, 777 n.5 (BIA 2002) (indicating that “parole authority [under 8 U.S.C. § 1182(d)(5)] is now exercised exclusively by the DHS” and “reference to the Attorney General in [8 U.S.C. § 1182(d)(5)] is thus deemed to refer to the Secretary of Homeland Security”). Lastly, because DHS has exclusive jurisdiction to parole an alien into the United States, the manner in which DHS exercises its parole authority may not be reviewed by an immigration judge or the BIA. *Castillo-Padilla*, 25 I&N Dec. at 261; *see Matter of Castellon*, 17 I&N Dec. 616, 620 (BIA 1981) (noting that the BIA does not have authority to review the way DHS exercises its parole authority).

#### **F. Petitioner failed to Exhaust his Administrative Remedies**

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

Petitioner has not availed himself of the administrative remedies available to him, yet seeks a bond determination in the first instance from this Court. Petitioner sought a bond determination hearing, and has not appealed the denial (*see* Declaration), which is contrary to his assertion in the

Petition (*see* D.E. 1, ¶ 7). By regulation, the BIA has authority to review IJ custody determinations. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). The denial is a decision appealable to the BIA who “plainly has jurisdiction to determine whether an IJ properly denied an alien detainee’s motion for bond redetermination.” *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1349 (M.D. Ga. 2020) (holding that habeas petitioner failed exhaust his administrative remedies in appealing an IJ’s denial of bond redetermination to the BIA). Moreover, contrary to Petitioner’s claim, as set forth in the EOIR Policy Memo 25-45 the BIA and IJs can consider constitutional challenges to the INA – such could include a Fifth Amendment challenge to the BIA’s interpretation of 235(b)(2) in *Yajure Hurtado*. *See* <https://www.justice.gov/eoir/eoir-policy-manual/memoranda-pm-list>. Here, Petitioner has not availed himself of the administrative process and remedies available to him before proceeding to this Court in hopes of shopping for a more favorable forum. Accordingly, the Petition should be dismissed for failure to exhaust administrative remedies.

#### **G. CONCLUSION**

Based upon the foregoing, the Petition should be dismissed because detention is lawful under § 8 U.S.C. § 1225(b) and Petitioner has failed to exhaust his administrative remedies before seeking relief from the Court. Additionally, given that Respondents are not Petitioner’s immediate custodians, they must be dropped/dismissed as parties.

Dated: January 20, 2026

Respectfully submitted,

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