UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 0:26-cv-60155-MD

ISRAEL RORRES AREVALO,

Petitioner,

v.

DHS SECRETARY, *et al.*,

Respondents.
_____/

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents,[1] through the undersigned Assistant U.S. Attorney and pursuant to the Court's *Order to Show Cause* [DE 4], respond to the *Petition for Writ of Habeas Corpus* [DE 1] (the Petition).

OVERVIEW

Petitioner Israel Rorres Arevalo (Petitioner)[2] asks the Court to order his release from immigration detention at the Broward Transitional Center (BTC) or, alternatively, to order Respondents to provide him with a bond hearing. Petition at 15. Petitioner argues that his immigration detention is governed by 8 U.S.C. § 1226(a) and not § 1225(b)(2) as that section was interpreted by the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). For the reasons below, the Petition should be denied.[3]

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[1] Several of the named respondents are not proper parties-defendant to a habeas action and should be dismissed.

[2] Respondents' records indicate Petitioner's last name is *Torres* Arevalo. But the name "Rorres" appears throughout the Petition and in Petitioner's underlying immigration court proceedings. In both instances, this appears to be a scrivener's error.

[3] Respondents recognize that numerous district courts, including this Court, have rejected the BIA's interpretation of Section 1225(b)(2) as set forth in its *Hurtado* decision, on which Respondents'

FACTUAL & PROCEDURAL BACKGROUND

With one notable exception, Petitioner accurately sets forth the relevant factual and procedural background in his Petition. *See* Petition at ¶¶ 1-2, 14-16.

In the interest of brevity—largely because this Court has already rejected Respondents' argument regarding the applicability of 8 U.S.C. § 1225(b)(2) to aliens like Petitioner in substantially similar cases, which would also be dispositive here—Respondents incorporate paragraphs 14 through 16 of the Petition as the relevant factual background, with the exception of Petitioner's allegation that he was arrested on December 17, 2025 "without a warrant." *See* **Exhibit A**, Form I-200, Warrant for Arrest of Alien, dated December 17, 2025.

ARGUMENT

The Petition should be denied because Petitioner's detention is lawful. He is currently detained under Section 235(b)(2)(A) of the INA [8 U.S.C. § 1225(b)(2)(A)]. Under this provision, "[a]n alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Petitioner entered the United States in May of 2022 *without* inspection or *admission*. Petition at ¶ 14. Accordingly, under a plain reading of Section 1225, Petitioner is an applicant for admission and is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

I. Preliminary matters

First, two housekeeping matters. Together with the arguments set forth in Sections III

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substantive argument in Section II, *infra*, is premised. *See e.g. Encarnacion v. Field Office Director*, No. 25-cv-61898, DE 29 (S.D. Fla. Dec. 23, 2025) (Damian, J.). Respondents maintain and preserve these arguments and note the question is before the Eleventh Circuit in at least two pending appeals. To the extent the Court would adhere to its prior decision in *Encarnacion*, among others, the undersigned respectfully suggests that a hearing on this Petition would not be a provident use of judicial or party resources.

through V, *infra*—these are independent of Respondents' position with respect to 8 U.S.C. § 1225(b)(2), and they are not affected by this Court's prior decisions on that statute's applicability to aliens similarly situated to Petitioner.

A. Lack of verification

The habeas statutes provide that an "[a]pplication for a writ of habeas corpus shall be in writing signed *and verified* by the person for whose relief it is intended or by someone acting in his behalf." 28 U.S.C. § 2242 (emphasis added). The Petition here does not appear to be verified. The Court should require compliance with the statute and direct Petitioner to immediately file a verification, and should dismiss the Petition without prejudice absent such compliance.

B. Dismissal of improper parties

Petitioner has named several improper parties to this suit. Petition, ¶¶ 9-13. But a writ of habeas corpus should "be directed to the person having custody of the person detained." 28 U.S.C. § 2243. In cases involving physical confinement, Supreme Court precedent confirms that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004).

Petitioner is detained at BTC, a detention facility in Broward County, Florida. His immediate custodian is acting ICE Assistant Field Office Director Carlos Nunez. Accordingly, the only proper respondent to this case is AFOD Nunez, in his official capacity. He should be substituted as the sole respondent to this action and all other named respondents should be dismissed. *See id.* at 435 ("[I]n habeas challenges to present physical confinement—'core challenges'—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory

official."); *see also Masingene v. Martin*, 424 F. Supp. 3d 1298, 1300 (S.D. Fla. 2020) (Williams, J.) (citing *Padilla* for the proposition that the sole proper respondent to a habeas petition is the official who has custody over the petitioner); *Mayorga v. Meade*, No. 24-cv-22131, 2024 WL 4298815, at *3 (S.D. Fla. Sept. 26, 2024) (Bloom, J.) (substituting as respondent the Assistant Field Director of facility where petitioner was detained because denial of a habeas petition for failure to name proper respondent would give an unreasonably narrow reading to habeas corpus statute).

II. Petitioner's detention is lawful and does not violate due process

A. Section 1225(b)(2) mandates detention of aliens, like Petitioner, who are present in the United States without having been lawfully admitted

Under the plain language of § 1225(b)(2), the government is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text."); *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) ("As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms.").

Section 1225(a) deems all aliens who either "arrive[] in the United States" or who are "present in the United States [and] who ha[ve] not been admitted" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the Immigration and Nationality Act (INA) means lawful entry after inspection by immigration authorities, and not mere physical entry. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without

permission is and remains an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.

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

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

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

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

admission and depart from the United States, is "seeking admission," i.e., seeking legal authority to remain in the United States.

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

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

For example, Section 1225(a) provides that "[a]ll aliens … who are applicants for admission *or otherwise* seeking admission or readmission … shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "'[o]therwise' means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of § 1225(b)(2)(A).[4] No

[4] As Section 1225 shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. 8 U.S.C. § 1225(a)(3). For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1101(a)(13)(C).

separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws"). Accordingly, Section 1225(b) unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

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

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

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

Moreover, "the surplusage canon ... must be applied with statutory context in mind" and should not be employed to undermine congressional intent. *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017). As explained in greater detail below, in 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), with the goal of ensuring that aliens who enter the United States unlawfully do not receive greater privileges and benefits than aliens who lawfully present themselves for inspection at a port of entry. The canon against surplusage should not be employed to re-write the statute in contravention of this statutory context.

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

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

Section 1225(b)(2)(A) applies to an alien who is present in the United States unlawfully, regardless of how long the alien has been in the United States. Although the alien may not have been affirmatively seeking admission during those years of illegal presence, Section 1225(b)(2) is not concerned with the alien's pre-inspection conduct. Rather, the statute's use of present tense language ("seeking" and "determines") shows that its focus is a specific point in time—when "the examining immigration officer" is making a "determin[ation]" regarding the alien's admissibility. 8 U.S.C. § 1225(b)(2)(A). At *that* point, the alien is "seeking" admission into the United States, and that application for admission is a continuing one. *See* The American Heritage Dictionary of the English Language (defining "seek" and "seeking" as "to endeavor to obtain"). Were it otherwise, the applicant would not

attempt to show that he is "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). That inference is confirmed by Section 1225(a)(4), which authorizes an alien to withdraw their application for admission and voluntarily "depart immediately from the United States." 8 U.S.C. § 1225(a)(4). An applicant who, once placed in removal proceedings, like Petitioner, forgoes that statutory option and instead endeavors to prove admissibility proceedings in which the alien has the "burden of establishing that [he] is clearly and beyond a doubt entitled to be admitted," *id.* § 1229a(c)(2)(A)—is endeavoring to obtain admission to the United States in the same way someone who is encountered just after crossing the border is attempting to obtain admission to the United States.

C. Section 1226 does not support Petitioner's argument

Petitioner's reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. *See e.g.* Petition at ¶¶ 21-27. As shown above, his detention is controlled by Section 1225(b)(2), not Section 1226.

Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention and, generally, apply to different groups of aliens. While, as explained below, there is some overlap between the aliens subject to detention under the two detention provisions, that overlap does not create a redundance because the two statutes provide for different bases for release.

Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed "applicants for admission" subject to Section 1225(b)(2)(A)—specifically, aliens who have been admitted to the United States but are now removable, like those who overstay a visa or lawful permanent residents who engage in

conduct that renders them removable.[5] Thus, Section 1225(b)(2) is the more specific detention provision. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). Accordingly, Section 1226(a) does not control Petitioner's detention.

Section 1226(c) provides for mandatory detention and is an exception to Section 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Petitioner has not committed one of the specified offenses and has not engaged in terrorism-related actions. Accordingly, he is not detained under Section 1226(c).

1. The government's reading of Section 1225 comports with congressional intent

Before 1996, federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. In 1996, Congress passed the IIRIRA specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Accordingly, the government's reading of the statute is not only supported by the express language of Section 1225, but it also comports with congressional intent. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to a result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S.

[5] The detention of any of the millions of aliens who have overstayed their visas is governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Hurtado*, 29 I. & N. Dec. at 222-223 (citing 8 U.S.C. §§ 1225(a); 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099. Accordingly, the INA's prior framework, which distinguished between aliens based on physical "entry," had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection ... were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("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").

Congress discarded that regime through enactment of IIRIRA. Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar).

Petitioner's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law, but grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants that IIRIRA sought to eradicate. Accordingly, this Court should reject Petitioner's interpretation. *King*, 576 U.S. at 492 (rejecting "petitioners' interpretation because it would … create the very [thing] that Congress designed the Act to avoid"). The government's reading, on the other hand, is true to Congress's intent and should be adopted.

2. The government's reading of Section 1225 accords with Jennings

The government's interpretation is also consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under Section 1225(b) and Section 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to Section 1225(b) or Section 1226. Nonetheless, consistent with the government's reading, the Court recognized that Section "1225(b)(2) .... serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

D. Under Loper Bright, the statute controls, not prior agency practice

Any argument (*see* Petition at ¶ 25) that prior agency practice applying Section 1226(a) to aliens like Petitioner is unavailing because under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024), the plain language of the statute and not prior agency practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron* deference, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes." *Loper Bright*, 603 U.S. at 411. *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Id.* at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*.

III. Petitioner's reliance on *Bautista* is misplaced

Any reliance by Petitioner on the partial final judgment in *Bautista v. Noem* is misplaced. *See* Petition at ¶¶ 28-30. That judgment is neither binding nor applicable here and presents no independent basis for granting the Petition.

As this Court recently determined, *see e.g. Irure-Rodriguez v. Lyons*, No. 25-cv-62585, DE 9 (S.D. Fla. Jan. 20, 2026) (Damian, J.), the judgment in *Bautista* "has no bearing on this Court's determination of the Petition for several reasons." *Id.* at 3-4. Among those, this Court noted, are the fact that (1) habeas relief in *Bautista* was sought only for the named petitioners, (2) the petitioners did not seek nationwide habeas relief, (3) the *Bautista* decision is limited to the Central District of California, and (4) the *Bautista* court itself noted that habeas relief could only be afforded to class members who were located within its own judicial district. *Id.* at 4 (citing *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d. ---, 2025 WL 3713987, at * 14 (C.D. Cal. Dec. 18, 2025)).

Petitioner has not presented any facts or legal argument that would disturb this Court's prior determination on this issue.

IV. Petitioner's reliance on the Fourth Amendment (Count 2) is also misplaced

Petitioner cites the Fourth Amendment as another basis for granting his Petition. Petition at ¶¶ 33; 40-41. The Fourth Amendment does not assist Petitioner for two reasons—one factual and one legal.

Factually, Petitioner's Fourth Amendment argument is wholly premised on his claim that he was arrested and detained without a warrant. As noted above and apparent from Exhibit A, Petitioner is simply mistaken on this point; he was arrested pursuant to a duly

issued arrest warrant. This correction to the record negates Petitioner's Fourth Amendment claim.

But beyond that, the Fourth Amendment claim is not properly before the Court in a habeas proceeding. The remedy for such a violation—assuming one occurred, which it did not here—would be declaratory or injunctive relief. Because this claim and any remedy the Court could provide falls outside the "core" of habeas, it may not be pursued via a habeas petition. *See e.g. Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 119 (2020) ("Habeas is at its core a remedy for unlawful executive detention and what these individuals wanted was not "simple release".... Claims so far outside the 'core' of habeas may not be pursued through habeas.") (cleaned up); *Mbutha v. U.S. Immigration & Customs Enf't*, No. 25-cv-23593, 2025 WL 3550997, at *3 (S.D. Fla. Dec. 11, 2025) ("[T]he Court would not be able to grant the injunctive and declaratory relief the petitioner seeks because this relief is outside the 'core' of the historical relief afforded by the writ of habeas corpus."); *see also e.g. I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984) (mere fact of illegal arrest had no bearing on subsequent deportation proceeding against alien who had objected only to fact that he had been summoned to a deportation hearing following unlawful arrest, but had entered no objection to receipt in evidence of admission, after arrest, of illegal entry into country).

V. Petitioner's APA Claim (Count 4) must be dismissed[6]

Petitioner's claim under the Administrative Procedure Act (APA) is also not properly before the Court and should be dismissed. *See* Petition at ¶¶ 45-48.

[6] Of course, to the extent the Court follows *Encarnacion* or is otherwise inclined to grant habeas relief, the Court need not reach Petitioner's APA claim (or his *Bautista* and Fourth Amendment arguments).

The APA authorizes a reviewing court to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13) (emphasis added). The APA addresses concerns about bureaucratic limbo by mandating that "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b). However, the court's power to compel agency action under the APA is limited: the APA "empowers a court only to compel an agency 'to perform a ministerial or non-discretionary act,' or 'to take action upon a matter, without directing how it shall act.'" *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis in original) (quoting Attorney General's Manual on the Administrative Procedure Act 108 (1947)).

Because habeas actions and non-habeas actions have different filing fee requirements, different pleading standards, and different substantive standards, it is generally inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case. *King v. Carlton*, No. 21-cv-21634, 2021 WL 1738766, at *2 (S.D. Fla. May 3, 2021) (Bloom, J.) (finding that petitioner could not circumvent filing fee requirements by filing a "joint or hybrid" habeas action); accord *Burnam v. Marberry*, 313 F. App'x 455, 456 n.2 (3d Cir. 2009) (noting that the district court should not have considered habeas claims and claims under the Privacy Act and Administrative Procedures Act in a single case); *Malcom v. Starr*, No. 20-cv-2503, 2021 WL 931213, at *2 (D. Minn. Mar. 11, 2021) ("As many other cases from this District have noted, habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees."). Petitioner did not pay the

required filing fee for any non-habeas claims. *See* DE 1 ($5.00 filing fee receipt). The statute governing filing fees in district court clearly states: "The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of $350, except that on application for a writ of habeas corpus the filing fee shall be $5." 28 U.S.C. § 1914(a). "The payment of the $5 habeas filing fee relegates this action to habeas relief only. One cannot pay the minimal habeas fee and pursue non-habeas relief." *Ndudzi v. Castro*, No. 20-CV-0492, 2020 WL 3317107, at *2 (W.D. Tex. June 18, 2020).

Setting aside whether Petitioner may properly *bring* an APA claim via a habeas petition, the Court separately lacks subject-matter jurisdiction over the claim. By the APA's own terms, judicial review is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Thus, the Court lacks jurisdiction under the APA because Petitioner has an obvious alternate avenue for identical relief—the habeas writ that Petitioner also requests by way of the Petition.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the 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, "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.

CONCLUSION

Because Petitioner's detention is lawful and, in fact, mandated by Section 1225(b)(2), Respondents request that the Court deny all relief sought in the Petition and dismiss the APA count for lack of jurisdiction.

Respectfully submitted,

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