UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 26-CV-22513-Williams

NICOLE BETANCUR-GONZALEZ, a.k.a.
Alvaro Eduardo Betancur Gonzalez,
Petitioner,

v.

GARRETT J. RIPA, Field Office Director,
U.S. Immigration and Customs Enforcement,
Miami, Field Office, *et al.,*
Respondents.

_____ /

MEMORANDUM OF FACT AND LAW AS TO
WHY PETITION SHOULD NOT BE GRANTED

Respondents[1], by and through the undersigned Assistant United States Attorney, and consistent with this Court's Order to (ECF No. 5), respectfully submit this memorandum of fact and law as to why Petitioner Nicole Betancur-Gonzalez, a.k.a. Alvaro Eduardo Betancur Gonzalez's Verified Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and Complaint for Declaration and Injunctive Relief (ECF No. 1) should not be granted. In the Petition, Petitioner raises two claims. First, Petitioner claims that Petitioner's Temporary Protective Status ("TPS") prevents removal of Petitioner from the United States. Second, Petitioner claims to be entitled to a bond hearing. Neither claim has merit.

[1] 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). The only appropriate respondent is the Assistant Field Office Director (AFOD) of the Krome North Service Processing Center, Charles Parra.

FACTUAL BACKGROUND

Nicole Betancur-Gonzalez a.k.a. Alvaro Eduardo Betancur-Gonzalez ("Petitioner") is a native and citizen of Venezuela who unlawfully entered the United States at or near Del Rio, Texas, on or about July 28, 2021. *See* Exh. A, Form I-213, Record of Deportable/Inadmissible Alien ("Form I-213"), dated November 4, 2025. On December 24, 2023, Petitioner filed a Form I-821, Application for Temporary Protected Status ("TPS"). *See* Exh. B, DO Declaration, ¶ 6. On or about September 19, 2024, United States Citizenship and Immigration Services ("USCIS") granted Petitioner's TPS application until April 2, 2025. Id. at ¶ 7.

On November 1, 2025, Petitioner was encountered at Orange County Jail after been arrested for Domestic Violence. *See* Exh. A. On or about November 5, 2025, Petitioner was determined to be inadmissible and taken into United States Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO") custody. *See* Exh. C, Form I-200, dated November 2, 2025; *see also* Exh. D, Detention History.

On November 20, 2025, USCIS terminated Petitioner's TPS application. See Exh. B, DO Declaration, ¶ 10. On the same day, Petitioner was served with a Notice to Appear ("NTA"), charging Petitioner with inadmissibility, pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), in that Petitioner was an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General; and 8 U.S.C. §1182(a)(7)(A)(i)(I), in that Petitioner was an immigrant who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document 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. E, Notice to Appear, dated November 4, 2025.

On February 3, 2026, Petitioner, *pro se*, appeared at a preliminary hearing before Miami Krome Executive Office for Immigration Review ("EOIR"), and requested a custody redetermination hearing. *See* Exh. F, Custody Redetermination Notice of Hearing, dated February 3, 2026; *see also* Exh. B, DO Declaration ¶ 12. The Immigration Judge denied bond citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Exhibit G, Immigration Judge's Order, dated February 3, 2026. On the same day, Petitioner was served a Form I-261. *See* Exh. H, Form I-261, dated February 3, 2026.

On March 5, 2026, Petitioner filed a Motion for Bond Redetermination with the Miami Krome EOIR. *See* Exhibit I, Notice of Custody Redetermination Hearing in Immigration Proceeding, dated March 5, 2026. On March 10, 2026, a custody redetermination hearing was held where the Immigration Judge entered a "no action" order. *See* Exhibit J, Immigration Judge's Order, dated March 10, 2026. On the same day, Petitioner, through counsel, admitted the allegations in the NTA and Form I-261, conceded the charges under 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I). See Exhibit B, DO Declaration, ¶ 17. The Immigration Judge sustained both charges. *Id.* at 18.

Petitioner is next scheduled for a hearing before Miami Krome EOIR on June 3, 2026. *See* Exhibit K, Notice of Hearing in Removal Proceedings, dated April 6, 2026. To date, Petitioner remains in ICE custody at the Krome North Service Processing Center. *See* Exhibit D, Detention History.

ARGUMENT

I. PETITIONER DOES NOT HAVE TEMPORARY PROTECTED STATUS.

Petitioner claims to be entitled to TPS pursuant to Venezuela's 2023 designation and that a judgment issued by the Central District of California in *Nat'l TPS All. v. Noem*, No. 25-CV-01766, applies to Petitioner. That judgment declared the DHS Secretary's vacatur of the January 17, 2025, TPS extension and termination of Venezuela's 2023 TPS designation unlawful. *See* Pet. at ¶¶ 31, 44-54.

TPS is a statutory program that provides work authorization and removal protection for eligible aliens from countries designated by the Secretary of Homeland Security. 8 U.S.C. §1254a(a)(1)(A)-(B). Venezuela was initially designated for TPS in 2021 based on extraordinary and temporary conditions that prevented its citizens from safely returning. *Designation of Venez. for [TPS]*, 86 Fed. Reg. 13,574 (Mar. 9, 2021). In 2023, then DHS Secretary Alejandro Mayorkas extended the 2021 Designation through September 2025 and, at the same time, redesignated Venezuela for TPS until April 2025. *Extension and Redesignation of Venez. for [TPS]*, 88 Fed. Reg. 68,130 (Oct. 3, 2023).

On January 17, 2025, days before leaving office, Secretary Mayorkas published an extension of the not-yet-expired 2023 Designation for 18 months and established a consolidated filing process that allowed all Venezuela TPS beneficiaries to obtain TPS through the expiration of that extension (*i.e.*, until October 2, 2026), including registrants under the separate 2021 designation, which remained effective until September 2025. *Extension of the 2023 Designation of Venez. for [TPS]*, 90 Fed. Reg. 5,961 (Jan. 17, 2025).

On January 28, 2025, then DHS Secretary Kristi Noem vacated that extension, months before it was scheduled to take effect, reasoning that both the consolidation of the

two tracks and the premature extension failed to "acknowledge the novelty of its approach" or "explain how it is consistent with the TPS statute." *Vacatur of 2025 TPS Decision for Venez.*, 90 Fed. Reg. 8,805 (Feb. 3, 2025). On February 5, 2025, Secretary Noem then terminated Venezuela's 2023 designation because it was "contrary to the national interest to permit the covered Venezuelan nationals to remain temporarily in the United States." *Termination of the October 3, 2023 Designation of Venez. for [TPS]*, 90 Fed. Reg. 9,040, 9,041 (Feb. 5, 2025).

To date, the Supreme Court has twice permitted the termination of the 2023 TPS designation to take effect. *Noem v. Nat'l TPS Alliance*, 146 S. Ct. 23, 24 (2025) (staying set-aside under 5 U.S.C. § 706); *Noem v. NTPSA*, 145 S. Ct. 2728, 2728-29 (2025) (staying interim relief under 5 U.S.C. § 705). After the Supreme Court's most recent stay order and after the government's opening brief challenging the district court's partial final judgment on plaintiffs' Administrative Procedure Act ("APA") claims, plaintiffs filed an untimely motion to alter or amend the judgment under Fed. R. Civ. P. 60. Although the district court was divested of jurisdiction by the government's appeal of the same merits issues, it nevertheless entered a second judgment, this time providing declaratory relief. *Nat'l TPS Alliance v. Noem*, 3:25-cv-01766-EMC, 2025 WL 3539156 (N.D. Cal. Dec. 10, 2025), *appeal pending* No. 26-187 (9th Cir.).

The district court's declaratory judgment should not be given effect in habeas corpus challenges because the declaratory judgment is on appeal. Moreover, even if the district court were inclined to give effect to the declaratory judgment, Petitioner must demonstrate that Petitioner was a member of National TPS Alliance on July 8, 2025, when plaintiffs' supplemental amended complaint was filed, because the case does not involve a class action.

A. The Court Should Decline to Give Preclusive Effect to the *Nat'l TPS Alliance* Declaratory Judgment.

Preclusive effect should not be given to the declaratory judgment in *Nat'l TPS Alliance* because the government's appeal is pending (9th Cir. No. 26-187) and, in granting a stay, the Supreme Court necessarily concluded that the plaintiffs' underlying APA claims are unlikely to survive appeal. *Noem*, 146 S. Ct. at 24; *see Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (requiring "a fair prospect that a majority of the Court will vote to reverse the judgment below" to secure a stay pending the filing and disposition of a petition for a writ of certiorari).

Courts must exercise significant caution before giving preclusive effect to declaratory judgments that are on appeal. *But see Reed v. Allen*, 286 U.S. 191, 201 (1932) (discussing the "well-settled rule that a judgment, not set aside on appeal or otherwise, is equally effective as an estoppel upon the points decided, whether the decision be right or wrong."); *Amcast Indus. Corp. v. Detrex Corp.*, 45 F.3d 155, 158 (7th Cir. 1995) ("a final judgment is res judicata even if it is still appealable"); *Southern Pac. Comm. Co. v. Am. Tel. & Tel. Co.*, 740 F.2d 1011, 1018 (D.C. Cir. 1984) (discussing the "federal rule and the rule in this circuit is that collateral estoppel may be applied to a trial court finding even while the judgment is pending on appeal.") (citing *Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183, 189 (1941)); 18 James Wm. Moore et al., Moore's Federal Practice § 131.30 (3d ed. 1999).

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, it would not be proper to impose res judicata effect 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").

Further, 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 effect 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 judicata 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.").

Relatedly, concerning another decision from the Central District of California that a petitioner attempted to apply to Petitioner's habeas case in this district, this Court correctly recognized that, "only this Court, and not the California court, has jurisdiction to rule of

Petitioner's []Petition." *See Ocegueda Gonzalez v. Noem*, Case No. 25-62261-CIV-MIDDLEBROOKS/AGUSTIN-BIRCH, ECF No. 25 at 10 (S.D. Fla. Dec. 23, 2026), *adopted by*, ECF No. 28 (S.D. Fla. Jan. 15, 2026).

In sum, the *Nat'l TPS Alliance* declaratory judgment has no preclusive effect on this case.

B. The Declaratory Judgment in *Nat'l TPS Alliance* is Limited to Members of the National TPS Alliance on July 8, 2025.

Even if this Court was inclined to give preclusive effect to the declaratory judgment in *Nat'l TPS Alliance*, any preclusion only extends to Venezuelans who can demonstrate actual membership in National TPS Alliance on July 8, 2025, when plaintiffs' supplemental amended complaint was filed. *Nat'l TPS Allianc,* 2025 WL 3539156, at *3 ("declaratory relief would simply be an adjudication of a case or controversy between the parties."). Issue preclusion is available only if "the person against whom collateral estoppel is asserted in the present action was a party or in privity with a party in the previous action." *Kendall v. Visa U.S.A., Inc.* 518 F.3d 1042, 1050 (9th Cir. 2008). Notably, *National TPS Alliance* does not involve a certified class under Fed. R. Civ. P. 23. And the Supreme Court has rejected the argument that the preclusive effect of a judgment against the government extends to non-parties in the prior action. *See Smith v. Bayer Corp.*, 564 U.S. 299, 313, 315 (2011) ("in the absence of a certification under [Rule 23], the precondition for binding Smith was not met"); *United States v. Mendoza*, 464 U.S. 154, 162 (1984) ("nonmutual offensive collateral estoppel simply does not apply against the government in such a way as to preclude relitigation of issues such as those involved in this case.").

Here, Petitioner attached an undated "Membership Form" purporting to show Petitioner's membership in the National TPS Alliance (ECF No. 1-16). This is insufficient,

and there is nothing in the record indicating that Petitioner was a member of the National TPS Alliance on or before July 8, 2025. Thus, Petitioner has failed to satisfy Petitioner's burden of demonstrating that the privity element of issue preclusion is satisfied through reliable evidence of membership in National TPS Alliance on or before July 8, 2025. *Kendall*, 518 F.3d at 1050-51.

For these reasons, the Court should decline to apply the declaratory judgment in *Nat'l TPS Alliance* to this case. Accordingly, Petitioner lacks TPS status.

II. PETITIONER'S CLAIMS CHALLENGING DETENTION WITHOUT BOND SHOULD BE DISMISSED FOR LACK OF JURISDICTION UNDER RULE 12(b)(1)

A. 8 U.S.C. § 1252(g) bars review of Petitioner's claims.

Petitioner also challenges Petitioner's detention without bond pursuant to 8 U.S.C. § 1225(b)(2). See Pet. at ¶¶ 56-69. As a Judge in this District previously recognized in *Mokanu v. Warden, Federal Detention Center Miami*, No. 25-24121-ARTAU, ____F.Supp.3d___, 2026 WL 472294 (S.D. Fla. Feb. 19, 2026), 8 U.S.C 1252(g) prohibits the Court in a habeas proceeding from reviewing the denial of bond to a person present without admission or parole who is detained pursuant to 8 U.S.C. § 1225. *Id.* at *5. The same analysis applies to this case.

Section 1252(g) categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings*, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security's decision to *commence removal proceedings*, including the decision to detain an alien pending such removal proceedings, squarely falls within this jurisdictional bar. In other words, detention clearly "aris[es] from" the decision to commence removal proceedings against an alien. *See Alvarez v.*

ICE, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) ("The text of § 1252(g)... strips us of jurisdiction to review... [T]o perform or complete a removal, the [Secretary of Homeland Security] must exercise [her] discretionary power to detain an alien for a few days. That detention does not fall within some other part of the deportation process.") (cleaned up) (internal quotations and citations omitted); *Valencia-Mejia v. United States*, No. CV 08–2943 CAS (PJWx), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge *arose from* this decision to commence proceedings[.]") (emphasis added); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010) (citing *Khorrami v. Rolince*, 493 F. Supp. 2d 1061 (N.D. Ill. 2007) ("[Plaintiff's] detention necessarily *arises from* the decision to initiate removal proceedings against him.") (emphasis added); *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008) (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) ("The [Secretary] may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings. ... Thus, an alien's detention throughout this process *arises from* the [Secretary]'s decision to commence proceedings[]" and review of claims arising from such detention is barred under § 1252(g)) (emphasis added). Put in the Supreme Court's words, detention pending removal is a "specification" of the decision to commence proceedings. *See Reno v. Am.-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 485 n.9 (1999) ("§ 1252(g) covers" a "specification of the decision to 'commence proceedings'").

As such, judicial review of the Petitioner's claims is barred by § 1252(g).

B. 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claims.

Under § 1252(b)(9), "judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("*AADC*"). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of all [claims arising from deportation proceedings]" to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)). Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings. Notwithstanding any other provision of law (statutory or nonstatutory), . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States]. 8 U.S.C. § 1252(a)(5). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings"); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is "unrelated to any removal action or proceeding" is it within

the district court's jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a "primary effect" of the REAL ID Act is to "limit all aliens to one bite of the apple" (internal quotation marks omitted)).

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law.").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the decision and action to detain Petitioner, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove

[him/her] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why the Petitioner's claims cannot be reviewed by the Court.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, the Petitioner *does* challenge the government's decision to detain Petitioner in the first place. Though the Petitioner frames his challenge as relating to detention authority, rather than a challenge to DHS's decision to detain Petitioner in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

The fact that the Petitioner is challenging the basis upon which Petitioner is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). The Court should dismiss the Petitioner's claims for lack of jurisdiction, pursuant to § 1252(b)(9), and Petitioner must then present Petitioner's claims before the appropriate court of appeals

because Petitioner challenges the government's decision or action to detain Petitioner, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

III. PETITIONER ENTERED WITHOUT INSPECTION AND IS SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(B)(2).

The Court should also follow its decision in *Mokanu* on the merits of the Petition. Petitioner here entered the United States without inspection, and therefore like Mokanu, Petitioner is an applicant for admission who is seeking admission. In *Mokanu*, the Court correctly recognized that "an alien seeking admission [who] is not clearly and beyond a doubt entitled to be admitted, . . . shall be detained for a proceeding under section 240." *Mokanu*, 2026 WL 472294, at *5 (quoting 8 U.S.C. § 1225(b)(2)); *see also Morales v. Noem*, et al., No. 25-62598-CIV SINGHAL, ____F.Supp.3d___, 2026 WL 236307 (S.D. Fla. Jan. 29, 2026))(same); *Perez Morales v. Noem*, No.26-60251-CIV-DIMITROULEAS, ECF No. 15 (S.D. Fla. Feb. 9, 2026)(same, adopting the analysis of the majority opinion in *Buenrostro Mendez v. Bondi,* No. 25-20496, 25-40701, ___F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6 2026)); *Hernandez v. Miami Field Office Director*, Case No. 26-20440-ALTMAN, 2026 WL 554694 (S.D. Fla. Feb. 27, 2026) ("The plain text of § 1225(a)(1) defines aliens, like our [p]etitioner, as "applicants for admission" notwithstanding their distance from the border or the time they've spent in the United States without admission").

The same conclusion has been reached by the Fifth and Eighth Circuits. *See Buenrostro-Mendez v. Bondi,* No. 25-20496, 25-40701, ___F. 4th ___, 2026 WL 323330 (5th Cir. Feb. 6 2026) (holding that the noncitizen petitioners in removal proceedings were subject to mandatory detention under 28 U.S.C. § 1225(b)(2) because they were present in the United States without being admitted or paroled, despite having entered illegally many years ago). In *Buenrostro-Mendez*, the Fifth Circuit recognized that presence without admission renders an

individual like Petitioner both an "applicant for admission" and "seeking admission" under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention--regardless of how much time the individual has been present in the United States. *Buenrostro-Mendez*, at *4-9.

Additionally, like the Fifth Circuit, the Eighth Circuit recently held that "Because the text here is clear that an 'applicant for admission' is also an alien who is 'seeking admission,' *see* § 1225(a)(1), (b)(2)(A), we may not resort to legislative history to cloud a statutory text that is clear, *Cont'l Res., Inc. v. N. Dakota Bd. of Univ. & Sch. Lands*, 136 F.4th 778, 785 (8th Cir. 2025) (citation omitted). Accordingly, we find that the district court erred in holding that the Government could not detain [petitioner] without bond under § 1225(b)(2)(A) and in granting habeas relief on that basis." *Herrera Avila v. Bondi*, No. 25-3248____F.4th____, 2026 WL 819258, at *6 (8th Cir. Mar. 25, 2026)

A. The plain language of § 1225(b)(2) mandates detention of applicants for admission.

"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." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). 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 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, § 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). 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. Petitioner was "present in the United States" and has "not been admitted." 8 U.S.C. § 1225(a). Therefore, § 1225(b)(2) 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 is 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 voluntarily, 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 the application for admission or voluntary departure.

For example, § 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).[2] No 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, § 1225(b) unambiguously provides that an alien who is an "applicant

[2] As § 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. § 1103(A)(13)(C).

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 § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that "is not a license to rewrite" § 1225 "contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020); *see 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 Immigrant 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.

C. Section 1226 does not support Petitioner's argument.

Petitioner's reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioner's detention is controlled by § 1225(b)(2), not § 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 § 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.[3] 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, § 1226(a) does not control Petitioner's detention.

Section 1226(c) provides for mandatory detention and is an exception to § 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien" who is

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[3] 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.

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 is not alleged to have engaged in terrorism-related actions. Accordingly, he is not detained under § 1226(c).

Earlier this year, Congress passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 2 (2025), which amended portions of § 1226(c). While that amendment adds some overlap between aliens subject to detention under § 1225(b)(2) and § 1226(c), that overlap does not apply to Petitioner, and as explained below, it does not create a redundancy as the amendment does independent work.

The Laken Riley Act provides for mandatory detention for an alien who is "present ... without being admitted or paroled"—i.e., is inadmissible under §1182(a)(6)(A)—and "is charged with, is arrested for, is convicted of, admits having committed, or admits committing" one of the enumerated criminal acts. 8 U.S.C. § 1226(c)(1)(E). Aliens subject to detention under § 1226(c)(1)(E) are effectively applicants for admission that committed one of the enumerated acts and, as applicants for admission, would also be subject to mandatory detention under § 1225(b)(2). There is no redundancy, however, because the two statutes provide for different forms of release.

D. The Government's reading 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 § 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. 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. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (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 (3d Cir. 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 yet 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.

E. The Government's reading accords with *Jennings*.

The Government's interpretation is 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 § 1225(b) and § 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 § 1225(b) or § 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of § 1225(b) that § "1225(b)(2) …. serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

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

Any argument that prior agency practice applied § 1226(a) is unavailing because under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), the plain language of the statute and not prior practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, 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*.[4]

CONCLUSION

Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b). Accordingly, the Court should deny Petitioner's habeas petition.

Respectfully submitted,

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[4] In a footnote, Petitioner merely mentions a certified class action in *Bautista v. Santacruz*, Case No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), but Petitioner does not claim that this Court is bound by that opinion. *See* Pet. at p. 12 n. 4. Indeed, neither the December 18, 2025, partial final judgment in *Bautista* nor the *Bautista* Court's February 18, 2026, order are binding on this Court, and neither presents an independent basis for granting the petition for a myriad of reasons. Both the *Bautista* Court's December 18, 2025 Partial Judgment and its February 18, 2026 Order enforcing the partial judgment are under appellate review and both have been stayed by the Ninth Circuit Court of Appeal pending a ruling on the government's emergency motion for stay pending appeal. Moreover, in *Bautista*, per the operative pleading, habeas relief was sought only by the named petitioners in that case, and Petitioner is not one of the named petitioners. *Bautista*, No. 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d. ----, 2025 WL 3713987, at * 14 (C.D. Cal. Dec. 18, 2025). In addition, 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. Given that Petitioner's custodian was not named in the *Bautista* case and the *Bautista* Court would have lacked jurisdiction over such custodian had they been named, any relief in the *Bautista* case would not be preclusive here, as neither collateral estoppel nor res judicata could possibly apply. In short, *Bautista* provides no basis for habeas relief for Petitioner. *See also Rodriguez Mendoza v. Raycraft*, Case No. 4:25-CV-2183, 2026 WL 507389, at *7 (N.D. Ohio Feb. 24, 2026).