UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRUNO FELIPE GREGORIO,

Petitioner,

v.

KEVIN RAYCRAFT, et al.,

Respondents.
_____/

CASE NO. 1:26-CV-00640

HON. ROBERT J. JONKER
U.S. District Court Judge

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Bruno Felipe Gregorio is an alien applicant seeking admission to the United States whose administrative immigration proceedings are ongoing. Under section 1225 of the Immigration and Nationality Act (INA) as amended as amended by the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), Petitioner is subject to mandatory detention by U.S. Immigration and Customs Enforcement (ICE) and not entitled to a bond hearing.

The Court should deny this Petition for Writ of Habeas Corpus for three reasons: Petitioner is lawfully detained under 8 U.S.C. § 1225(b); Petitioner's detention does not violate due process; and, to the extent the Court finds the detention procedurally or substantively improper under section 1225, Petitioner has not exhausted the available administrative remedies. Additionally, the Court need not restrict Petitioner's transfer outside this district; the only proper Respondent is the Acting Director of ICE's Detroit Field Office; Petitioner cannot obtain relief under the Administrative Procedure Act or *Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal.); and Petitioner is not entitled shift the burden at an immigration court bond hearing.

This Court has recently considered other petitions that presented these legal issues in similar factual circumstances, and it entered judgment conditionally granting the habeas petitions. Respondents concede that, should the Court adhere to its legal reasoning in those prior decisions, it likely would conditionally grant this Petition. Respondents respectfully disagree with the Court's analyses in those matters, however, and note that they conflict with the recent Fifth Circuit decision, *Buenrostro-Mendez v. Noem*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026). To preserve the legal issues in this matter while attempting to conserve the Court's and the parties' resources, Respondents submit their legal arguments in a standardized format. Respondents reserve all rights, including to appeal.

FACTUAL BACKGROUND

Petitioner is a citizen of Guatemala. (Pet., ECF # 1, ¶ 12.) Petitioner unlawfully entered the United States as an unaccompanied minor child in September 2021. (Pet., ECF # 1, Introduction & ¶ 44; Ex. A, 2021 Rec.) He admitted to illegally crossing the international boundary without being inspected by an immigration officer at a designated port of entry. (Ex. A, 2021 Rec.) Petitioner was processed for a warrant and notice to appear under section 212(a)(6)(A)(i). (*Id.*)

Petitioner was transferred to the custody of the Department of Health and Human Services Office of Refugee Resettlement Division of Unaccompanied Children Operations. (Pet., ECF # 1, ¶ 45.) On October 20, 2021, Petitioner was released into the care of his uncle. (Pet. Ex C, ECF # 1-3, Verification of Rel.)

Petitioner applied for Special Immigrant Juvenile Status. (Pet., ECF # 1, ¶ 47.) The petition was approved on July 8, 2023. (*Id.* ¶ 48.) Petitioner concedes that this classification only makes a person potentially eligible for adjustment of status; it does not confer lawful immigration status. (*Id.* ¶¶ 37-38.)

On February 15, 2026, ICE issued a warrant for Petitioner's arrest. (Ex. B, Warrant.) ICE served it on Petitioner and arrested him for being illegally present in the United States. (*Id.*; *see also* Pet., ECF # 1, ¶ 12.) The Department of Homeland Security (DHS) subsequently detained Petitioner at the North Lake Processing Center in Baldwin, Michigan. (*See, e.g.*, Pet., ECF # 1, ¶ 1.)

Petitioner is scheduled next to appear before the immigration court on March 18 2026. (Ex. C, Not. of Hrg.)

On February 25, 2026, Petitioner petitioned in habeas for immediate release or, alternately, a bond hearing. (Pet., ECF # 1, Prayer for Relief 1, 6.) Petitioner additionally requested a declaration that this detention violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and the Administrative Procedures Act; an order prohibiting Petitioner's transfer during these proceedings; enforcement of the *Bautista* class action; and other relief. (*Id.*, Prayer for Relief.)

STATUTORY FRAMEWORK

Under the INA, an alien who is present in the United States but who has not been granted lawful admission by immigration authorities is subject to section 1225. All aliens are separately subject to section 1226, regardless of admission status; this provision offers an alternate authority under which an alien may be arrested, detained, and removed, with different applicable release and parole tools. The INA's focus on admission is highlighted by two statutory provisions—sections 1225 and 1226—and their contrast with the pre-1996 statutory framework.

I. Section 1225 applies to an alien who is present in the United States but not lawfully admitted; it provides such alien is an applicant seeking admission, shall be detained until admitted or removed, and is ineligible for release on bond.

Section 1225 provides that an alien is an applicant seeking admission to the United States from the time the alien is "present in" or "arrives in" the United States until the alien is

"admitted" or removed. *See* 8 U.S.C. § 1225(a)(1); *Buenrostro-Mendez*, 2026 WL 323330, at *4-5. Section 1225 creates the paths by which the United States determines whether to admit or remove an applicant for admission, including whether removal should be expedited or subject to additional consideration. All the paths provide for detention of the alien until the alien is admitted or removed.

A. An alien is both an "applicant for admission" and "seeking admission" to the United States until lawfully admitted or removed, whether the alien is separately classified as "arriving" or "present in" the United States.

Today, the INA makes a foundational distinction between an alien who has been legally "admitted" to the United States—that is, determined by an appropriate authority to be lawfully authorized to be present—and one who has not. *See generally* 8 U.S.C. § 1225. "Admitted" is a term of art; an alien only becomes "admitted" once it is determined by immigration authorities that his or her entry is lawful and authorized. 8 U.S.C. § 1101(a)(13)(A).

Under section 1225, an alien who is present in but not admitted to the United States is both an "applicant for admission" and "seeking admission" until he or she is admitted or removed. *Buenrostro-Mendez*, 2026 WL 323330, at *4-5. Some subsections of section 1225 refer to an "applicant for admission," and others to a person "seeking admission." *Compare, e.g.*, 8 U.S.C. § 1225(a)(1) *with* 8 U.S.C. § 1225(a)(3); *see also* 8 U.S.C. § 1225(a)(5) ("An applicant for admission may be required to state . . . the purposes and intentions of the applicant in seeking admission to the United States . . . ."). These terms are "equivalent." *Buenrostro-Mendez*, 2026 WL 323330, at *5.

Presence and admission status are the only factors that influence an alien's designation as an "applicant for admission" who is "seeking admission." The designation does not turn on how long the alien has been in the United States, or where the alien encountered immigration officials. *See id.* at *1-2 & n.1 ("Following the passage of IIRIRA, then, an alien's status as an

applicant for admission does not turn on where or how the alien entered the United States."). It does not turn on the alien's personal intent; the alien need not engage in an affirmative act to obtain lawful status, or even to intend or wish to do so. *Id.* at *5 n.9, 8-9; *In re 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"); *see also, e.g.*, *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *1 (E.D. Mo. Nov. 10, 2025); *Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1-2 (D. Mass. July 28, 2025); *Barrios Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025). It does not turn on whether an immigration official charged the alien, for purposes of removal proceedings, with being an "arriving alien" or "an alien present . . . who has not been admitted or paroled." *See Buenrostro-Mendez*, 2026 WL 323330, at *6 & n.10. An alien in the United States is an applicant seeking admission until the alien is admitted or removed.

B. Section 1225 establishes the process by which immigration authorities determine whether an unadmitted alien should be admitted, referred to expedited removal proceedings, or referred for removal proceedings with additional consideration.

The first step under section 1225 is inspection by an immigration officer, which is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, the type of removal proceeding to which the alien must be referred. 8 U.S.C. § 1225(a)(3). If the examining officer determines the alien is "clearly and beyond a doubt entitled to be admitted," and no other officer challenges that decision, the alien is admitted. *See* 8 U.S.C. § 1225(b)(2)(A)-(b)(4). Otherwise, the alien is referred to removal proceedings. For example, an applicant who does not possess a valid entry document is referred for removal. 8 U.S.C. § 1182(a)(7)(a)(i); 8 U.S.C. § 1225(b)(1)(A)(i)-(ii); *see, e.g., U.S. Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020).

If the alien is not admitted following this step, the second step under section 1225 is for the immigration officer to determine whether to refer the alien for expedited removal proceedings, as set forth in section 1225(b)(1), or for additional consideration as set forth in section 1225(b). Expedited removal is the baseline; if no statutory provision would route an applicant into additional consideration, the alien receives no further hearing or review and is detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii); *see also Buenrostro-Mendez*, 2026 WL 323330, at *2 (noting that all aliens not admitted or removed under section 1225(b)(1) are covered by section 1225(b)(2)).

Various circumstances, however, route an applicant for admission who "is not clearly and beyond a doubt entitled to be admitted" into additional consideration under section 1225(b)(2), a "catchall provision that applies to all applicants for admission not covered by" section 1225(b)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). This generally results in non-expedited removal proceedings under 8 U.S.C. § 1229a, in which an alien may apply for a variety of forms of relief or protection from removal. *See, e.g.*, 8 U.S.C. § 1229a(c)(4)(A).

C. Section 1225 mandates detention and does not afford an alien release on bond.

Under section 1225, an applicant for admission must be detained unless or until immigration authorities determine that the alien "clearly and beyond a reasonable doubt" is "entitled to be admitted," or until the alien is removed. 8 U.S.C. § 1225(b)(2)(A). The provision mandates detention whether the alien applicant is routed into expedited removal or additional consideration. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(B)(ii) (providing that an inadmissible alien who has demonstrated a credible fear of persecution "shall be detained" for consideration of his asylum application); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (providing for detention until removal for an alien who does not prevail on his asylum application); 8 U.S.C. § 1225(b)(2)(A) (providing that an alien who has not been determined by an immigration officer "clearly and beyond a

reasonable doubt" to be "entitled to be admitted" is a person who "shall be detained" pending removal proceedings); *see also* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring the detention mandate in section 1225(b)(2)).

Section 1225(b)'s detention mandates remain in force "throughout the completion of applicable proceedings." *Jennings*, 583 U.S. at 302; *see Buenrostro-Mendez*, 2026 WL 323330, at *4. The detention mandate terminates only when the applicant is admitted or removed.

An alien detained in accordance with section 1225(b)(2) and has no right to—indeed, is ineligible for—release on bond. *See generally* 8 U.S.C. § 1225; *see also Buenrostro-Mendez*, 2026 WL 323330, at *2 & n.3, 4-5. Release on bond remains unavailable regardless of how long the alien has resided in the United States of where in it the alien was apprehended. *Buenrostro-Mendez*, 2026 WL 323330, at *3.

DHS has discretion to parole or temporarily release a section 1225 detainee, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole is not admission, and when the Secretary determines that "the purposes of such parole . . . been served," the "alien shall . . . be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." *Id.*; *see also Jennings*, 583 U.S. at 288.

II. Section 1226 applies to all aliens, regardless of the alien's admission status.

Wholly separate from the provisions of section 1225, the INA establishes other statutory authority by which the government may arrest, detain, and remove an alien. See 8 U.S.C. § 1226. Section 1226(a) can apply to any alien, but it differs from section 1225 in that it provides detention authority for the significant group of aliens who are *not* "applicants for admission" subject to section 1225(b)(2)(A)—specifically, any alien who has been admitted to the United States but is now removable. *Buenrostro-Mendez*, 2026 WL 323330, at *2; *see Barton v. Barr*,

590 U.S. 222, 223 (2020) (holding that redundancies "are common in statutory drafting," and no cause for rereading or rewriting the statute). This includes, for example, an alien who was lawfully admitted pursuant to visa but who is now removable because the alien overstayed that visa or violated its terms, and an alien who was admitted due to error. Section 1226 also requires action from the Attorney General in some circumstances, including specifically when alien is released from another entity's criminal custody. 8 U.S.C. § 1226(c); *see Nielson v. Preap*, 586 U.S. 392, 414 (2019) (holding that the duty to arrest is triggered upon release from criminal custody).

Section 1226 authorizes the Attorney General to issue a warrant to arrest and detain an alien "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Detention under section 1226 is generally left to the discretion of the Attorney General. The Attorney General "may" either "continue to detain the arrested alien" or, in some circumstances, release the alien on bond or conditional parole. 8 U.S.C. § 1226(a)(1)-(2); *Buenrostro-Mendez*, 2026 WL 323330, at *2. It additionally narrows the circumstances under which an alien may be released from mandatory detention; section 1226 eliminates the option of release or parole for an alien who has committed or engaged in certain acts unless strict conditions are met. 8 U.S.C. § 1226(c)(1)-(4).

III. IIRIRA was enacted to remedy unjust results created by the prior statutory framework, which unintentionally offered some benefits to an alien who avoided lawful entry procedures and penalized some aliens who did not.

The pre-1996 immigration statute, and the commentary explaining why Congress replaced it with IIRIRA, are in stark contrast with the current immigration framework. *See Buenrostro-Mendez*, 2026 WL 323330, at *9. Legal admission is the foundational concept of the current framework. *See generally* 8 U.S.C. § 1225. The pre-1996 INA, in contrast, made a foundational distinction between an alien who had "entered" the country, whether lawfully or by

evading detection, and one who had not, for example because they followed procedures, presented at the border, and were turned away without having entered the United States.

Before IIRIRA, the INA established two types of removal proceedings—exclusions and deportations—each of which involved distinct detention and release opportunities. 8 U.S.C. §§ 1225(a), 1251 (1994)); *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc); *Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010); *see also, e.g.*, *In re Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025). An alien was routed into exclusion or deportation based on physical presence at the time the alien encountered officials. *See Hing Sum*, 602 F.3d at 1099; *see also* 8 U.S.C. § 1101(a)(13) (1994). An alien who arrived at a port of entry and presented for inspection had not physically entered the United States and, if an immigration officer determined the alien was not lawfully present, routed into exclusion proceedings. 8 U.S.C. §§ 1225(a)-(b), 1226(a) (1995). In contrast, an alien who was found physically in the interior of the United States (including after entering illegally and avoiding inspection entirely) was routed into deportation proceedings. *Hing Sum*, 602 F.3d at 1100; *see* 8 U.S.C. § 1252(a)(1) (1994).

This bifurcation created undesirable and unintended consequences. For example, an alien in exclusion proceedings was subject to mandatory detention, with potential release solely by means of a grant of parole. *See* 8 U.S.C. §§ 1225(a)-(b), 1226(a) (1995); *see also, e.g.*, *In Re Hurtado*, 29 I. & N. Dec. at 223. Whereas an alien who had avoided lawful channels, was found in the interior, and accordingly routed into deportation proceedings, could request release on bond. *Hing Sum*, 602 F.3d at 1100; *see* 8 U.S.C. § 1252(a)(1) (1994).

IIRIRA was enacted in large part to eliminate the focus on physical entry, and its attendant injustices, in favor of a focus on lawful admission. *Buenrostro-Mendez*, 2026 WL 323330, at *9. It was designed with 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). This history informs the current statutory interpretation and supports the plain text's focus on admission in determining the relief and processes available to an alien. *See, e.g.*, 8 U.S.C. § 1225(b).

Despite the overhaul Congress enacted when it enacted IIRIRA, however, various executive administrations and immigration judges continued apply what amounted to a continuation of the exclusion/deportation system for many years after IIRIRA was enacted. *See Buenrostro-Mendez*, 2026 WL 323330, at *8. They routinely permitted an alien who was "present without having been admitted[] to seek release on bond" under section 1226(a) instead of detaining the alien under section 1225(b)(2)(A). *See id.*; *see also Hurtado*, 29 I. & N. Dec. at 225 n.6.

The government's past practice of not exercising its full enforcement authority does not create any right enforceable by an alien applicant or make unlawful a correct application of the statutory text: an unadmitted alien must be detained under section 1225 and cannot be released on bond. *Buenrostro-Mendez*, 2026 WL 323330, at *7-9. The government currently is enforcing the changes enacted by Congress when it adopted IIRIRA; it is administering the INA such that "[a]liens . . . remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer," and an immigration judge lacks authority under section 1225 to hear bond requests or to grant bond to an alien who is present in the United States without admission. *See, e.g.*, *Hurtado*, 29 I&N Dec. at 225, 228.

ARGUMENT

The Court should deny Petitioner's request for a writ of habeas corpus. First, Petitioner is properly detained under section 1225(b) as an applicant for admission to the United States.

Second, Petitioner's detention comports with the Constitution because Petitioner has been provided the process required by law. Third, to the extent the Court concludes Petitioner's detention does not comply in any way with the INA, Petitioner has not exhausted administrative remedies and the Court should not excuse that failure. Additionally, the Court should dismiss all Respondents but the Director of ICE's Detroit Field Office, and Petitioner's other bases and requests for relief are without merit.

I. Section 1225 applies to Petitioner and mandates detention without opportunity for release on bond.

Petitioner is lawfully detained under section 1225, and release on bond is not available to Petitioner, for seven reasons. The plain language of section 1225(b)(2), as well as IIRIRA's history and structure, support Respondents' interpretation of the statute, and no other provision is rendered superfluous thereby. To the extent Petitioner applied for admission at a port of entry, this interpretation is not novel but a continuation of more than a hundred years of continuous immigration law. To the extent Petitioner was previously released or paroled—under section 1225, section 1226, or otherwise—this is irrelevant to the current application of section 1225 detention to Petitioner, and it created no right in Petitioner to obtain relief. Last, Petitioner's own actions confirm Petitioner is an applicant seeking admission to the United States.

A. The plain language of the statute supports Respondents' interpretation.

The plain text of section 1225(b)(2) supports Petitioner's detention. *E.g.*, *Buenrostro-Mendez*, 2026 WL 323330, at *8; *see also 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."). Petitioner is subject to section 1225 as an applicant for admission because Petitioner is present in the United States and has not been admitted. 8 U.S.C. § 1225(a)(1), (3); 8 C.F.R. § 235.1; *Buenrostro-Mendez*, 2026 WL 323330, at *4; *Mejia Olalde*, 2025 WL 3131942, at *3. As

discussed above, an "applicant for admission" is the same as "seeking admission;" that is, an alien present in but not lawfully admitted to the United States. *Buenrostro-Mendez*, 2026 WL 323330, at *2 & n.1, *5. No other factor changes this determination; not the alien's efforts to obtain (or avoid) lawful status, the length of time the alien has spent in the United States, or the alien's separate status as "arriving" or "present" in the United States. *Id.* at *5 n.9, 6.

Petitioner will remain an applicant for admission until lawfully determined to be admitted, or removed. *See Thuraissigiam*, 591 U.S. at 140 (holding that an unadmitted alien is "is deemed 'an applicant for admission'"); *Jennings*, 583 U.S. at 287 ("[A]n alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission'"); *Buenrostro-Mendez*, 2026 WL 323330, at *6 & n.10 (holding that whether the alien is "arriving" or "present" does not affect the fact that an unadmitted alien is both an applicant and seeking admission); *Mejia Olalde*, 2025 WL 3131942, at *1 ("An alien can have physically entered the country many years before and still be an applicant for lawful entry, seeking legal 'admission.'").

As an applicant, Petitioner is subject to mandatory detention under the plain text of section 1225, whether routed into expedited removal proceedings or additional consideration, until admitted or removed. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(B)(ii); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 U.S.C. § 1225(b)(2)(A); *see also* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring the detention mandate in section 1225(b)(2)). The statute's multiple uses of the term "shall" make clear that detention is mandatory. *See Buenrostro-Mendez*, 2026 WL 323330, at *4; *see also Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998). The mandate remains in force "throughout the completion of applicable proceedings." *Jennings*, 583 U.S. at 302; *see Buenrostro-Mendez*, 2026 WL 323330, at *2 n.2, 4.

Petitioner has no right to—indeed, is ineligible for—release on bond. *See generally* 8 U.S.C. § 1225; *see also Buenrostro-Mendez*, 2026 WL 323330, at *2 & n.3. Release on bond is not a relief available under section 1225. DHS has discretional parole authority to temporarily release an applicant for admission in some circumstances, but Petitioner has no right to pursue this legal relief through a habeas petition. *Buenrostro-Mendez*, 2026 WL 323330, at *2 & n.3.

Petitioner does not claim to have been admitted, and has not been; neither has Petitioner been removed. Petitioner accordingly is "unambiguously" subject to "mandatory detention" under section 1225 and not entitled to release on bond. *Buenrostro-Mendez*, 2026 WL 323330, at *4; *see, e.g.*, 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 287.

B. The history of IIRIRA's adoption and the choice of language in the statutory amendment confirm that section 1225(b) applies to Petitioner.

In addition to the plain text of section 1225, the history of changes to the INA and the adoption of IIRIRA show that section 1225 applies to all aliens who are present but unadmitted. *Buenrostro-Mendez*, 2026 WL 323330, at *9. Congress intended to dispense with an immigration system under which an alien who entered the United States unlawfully was given privileges in immigration proceedings unavailable to an alien who presented for inspection, including the right to secure release on bond. House Rep., *supra*, at 225. To interpret the statute otherwise subverts IIRIRA's express goal of eliminating preferential treatment for aliens who enter the country unlawfully. *Buenrostro-Mendez*, 2026 WL 323330, at *9; *see King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to result "that Congress designed the Act to avoid"); *see also Hurtado*, 29 I&N Dec. at 228.

The language Congress chose to amend the INA also confirms that section 1225 continues to apply to an alien until an alien's admission is adjudicated. *Buenrostro-Mendez*, 2026 WL 323330, at *5. The verb tense of "seeking" indicates continuous application. *Id.*; *see*

also United States v. Wilson, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."); *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019); *see also Pena v. Hyde,* No. CV 25-11983-NMG, 2025 WL 2108913, at *1-2 (D. Mass. July 28, 2025) (finding that, in the absence of the receipt of lawful immigration status, even an alien present in the U.S. for twenty years and who had an approved U-130 Petition for Alien Relative "remains an applicant for admission" subject to mandatory detention under section 1225(b)(2)). Nowhere does the INA state that, an applicant for admission is no longer seeking admission under section 1225 after some undefined period of time residing in the interior of the United States without lawful status.

Petitioner's interpretation, by contrast, would restore the exclusion/deportation regime Congress sought to discard in 1996; disfavor those aliens who present themselves for inspection at the border in compliance with law; and grant a bond hearing to an alien "present" in the United States and not attempting to comply with the immigration laws, while denying one to an alien who presented at the border and awaited lawful adjudication. That is exactly the "perverse incentive to enter" unlawfully that the adoption and text of IIRIRA sought to eradicate. *Thuraissigiam*, 591 U.S. at 140.

Respondents concede that the Court has applied section 1226, rather than section 1225(b)(2), to a noncitizen who is encountered in the interior of the United States despite that person not having been lawfully admitted. Many courts, however, including the only Circuit Court of Appeals to have opined on the issue, have adopted the government's interpretation of section 1225(b)(2). *See, e.g.*, *Buenrostro-Mendez*, 2026 WL 323330, *passim*; *Mejia Olalde*, 2025 WL 3131942, at *1 (finding petitioner, as an applicant for admission, "is governed by [section] 1225(b)(2) and is ineligible to receive a bond hearing" under the "plain language" of

the statute); *Vargas Lopez v. Trump*, — F. Supp. 3d —, 2025 WL 2780351, at *10 (D. Neb. Sept. 30, 2025) (holding that "the plain language of § 1225(b)(2) and the 'all applicants for admission' language of *Jennings*" permit DHS to detain similarly-situated aliens § 1225(b)(2)); *Barrios Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *5 (W.D. La. Oct. 31, 2025) (same); *Chavez v. Noem*, — F. Supp. 3d —, 2025 WL 2730228, at *4-5 (S.D. Cal. Sept. 24, 2025); *Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) ("Because petitioner remains an applicant for admission, his detention is authorized so long as he is 'not clearly and beyond doubt entitled to be admitted' to the United States." (*quoting* 8 U.S.C. § 1225(b)(2)(A))). Applying "all relevant interpretive tools" to select the best interpretation, a court should find that section 1225(b)(2) permits Petitioner's detention. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

C. Respondents' interpretation of section 1225 does not render any other provision superfluous.

Respondent's interpretation of section 1225(b)(2) does not render section 1226 superfluous. *Buenrostro-Mendez*, 2026 WL 323330, at *7; *see Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute"). Although sections 1226(c) and 1225(b)(2) overlap for some aliens and in some circumstances, each provision has independent structure and effect. *Buenrostro-Mendez*, 2026 WL 323330, at *7. The recent amendment of section 1226(c) through the Laken Riley Act does not alter this conclusion. *Id.*

D. Even before the BIA's decision in *Hurtado*, an alien who applied for admission at a port of entry remained an applicant for admission after release or parole into the United States and gained no rights thereby.

Last, to the extent Petitioner applied for admission at a port of entry, the *Hurtado* opinion neither altered Petitioner's rights or remedies or afforded him a new claim for relief. An

individual who applied at a port of entry is not in the class of persons defined by the case. 29 I&N Dec. at 228 (addressing aliens "who surreptitiously cross into the United States," and holding they "remain applicants for admission unless and until they are lawfully inspected and admitted by an immigration officer").

Section 1225(b)(2)(A) always applied to such individuals. *See, e.g.*, *Clark v. Martinez*, 543 U.S. 371, 373 (2005) (discussing the applicability of section 1225(b)(2)(A) to arriving aliens); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025) (distinguishing arriving aliens subject to section 1225(b)(2)(A) from those who have "already present" in the United States). *Hurtado* merely clarified that an alien who was not admitted, even if the individual had resided for years in the United States without lawful status, also is subject to mandatory detention under section 1225(b)(2). *Id.* at 220.

This is consistent with the broader history of American immigration law. For more than one hundred years, courts have employed the "entry fiction" to avoid giving favorable treatment to an alien who is present in the United States but not lawfully admitted by immigration authorities. Under that doctrine, all "aliens who arrive at a port of entry . . . are treated for due process purposes as if stopped at the border," and that also includes aliens "paroled elsewhere in the country for years pending removal" who have developed significant ties to the country. *Thuraissigiam*, 591 U.S. at 139 (*quoting Shaughnessy v. United States*, 345 U.S. 206, 215 (1953)). Well before the INA, an alien who was paroled into the United States was "regarded as stopped at the boundary line" and "had gained no foothold" here. *Id.* at 230 (discussing *Kaplan v. Tod*, 267 U.S. 228 (1925)); *see also Shaughnessy v. Mezei*, 345 U.S. 206, 214-15 (1953). The "entry fiction" prevents favorable treatment of an alien who was not lawfully admitted—

including those who have "entered the country clandestinely." *Yamataya v. Fisher*, 189 U.S. 86, 100 (1903).

E. No past government action or inaction, including release or parole of Petitioner, excludes Petitioner from being subject to detention under 1225(b)(2).

To the extent Petitioner previously was paroled from detention under section 1225, it creates no rights for Petitioner; Petitioner remains subject to detention under that provision. Parole under section 1225 does not constitute admission to the United States or a determination of admissibility, and a paroled alien remains an applicant for admission who is subject to section 1225. 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A); *see also* 8 C.F.R. §§ 1.2 (providing that an "arriving alien remains an arriving alien even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole is terminated or revoked"), 1001.1(q) (same); *Jennings*, 583 U.S. at 288 (holding that parole under section 1182(d)(5) "shall not be regarded as an admission of the alien"). When parole terminates, for any reason—including the discretion of DHS—the "alien shall . . . be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

To the extent Petitioner was previously released from a detention under the authority of section 1226, that, too, does not relieve Petitioner from the application of section 1225. An alien may be simultaneously subject to detention authority under multiple sections of the INA; indeed, the alien may additionally be subject to detention or incarceration under other state and federal sources of authority. Detention and release under one authority does not void the applicability of another. To the extent that it might, section 1225 is more specific than section 1226—applying only to an unadmitted alien, rather than all aliens—and accordingly would apply to Petitioner.

See RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012) (holding that "the specific governs the general").

To the extent Petitioner contends that section 1225 is inapplicable because the government previously applied 1226 to other aliens in Petitioner's circumstances, this too is without merit. The government's past practice of not exercising its full enforcement authority—by permitting an alien who was "present without having been admitted[] to seek release on bond" under section 1226(a) instead of detaining the alien under section 1225(b)(2)(A)—does not make unlawful the government's current, correct application of the statutory text to any alien. *Buenrostro-Mendez*, 2026 WL 323330, at *8-9.

F. By Petitioner's own actions, Petitioner is an applicant for admission.

Petitioner in fact is "seeking admission" to the United States. Petitioner has not been admitted; to the contrary, Petitioner has been charged with inadmissibility and presently is in removal proceedings. Petitioner has not conceded removability and agreed to depart. Whether Petitioner has engaged in any overt attempt to gain lawful admission or possesses the intent to do so, Petitioner is an applicant seeking admission to the United States under section 1225. 8 U.S.C. §§ 1101(a)(13), 1182(a)(6), 1225(a)(3); *Buenrostro-Mendez*, 2026 WL 323330, at *6-7 & n.10; *see* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A); *but see Diego v. Raycraft*, No. 25-13288, 2025 WL 3159106, at *4 (E.D. Mich. Nov. 12, 2025) (finding alien who was present in the United States without seeking any form of citizenship, such as asylum, was not "seeking admission").

Petitioner's application for Special Immigrant Juvenile Status also demonstrates an active intent to seek admission by adjusting status under 8 U.S.C. § 1229b. *See Moctezuma-Reyes v. Garland*, 124 F.4th 416, 419 (6th Cir. 2024); *Lopez-Soto v. Garland*, 857 F. App'x 848, 854 (6th Cir. 2021); *see also Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1204, 1213 (S.D. Cal. 2019) (asylum applicants are "seeking admission" to the United States).

II. Petitioner's detention comports with due process.

Petitioner cannot assert a viable claim under the Due Process Clause of the Fifth Amendment. The Fifth Amendment protects against the deprivation of life, liberty, or property "without due process of law." U.S. const. amend. V. That includes freedom from government detention unless "adequate procedural protections" are applied. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 690, 701 (2001). In the immigration context, the Supreme Court holds that the process due under the Constitution is coextensive with the removal procedures provided by Congress. *Thuraissigiam*, 591 U.S. at 138-40; *see also United States v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process[.]").

A statutory provision mandating detention and denying release on bond during administrative removal proceedings does not violate the due process clause. *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."). Even after a noncitizen is subject to a final order of removal and accordingly is no longer subject to section 1225, detention for up to six months is presumptively valid under the due process clause. *Zadvydas*, 533 U.S. at 701. Although *Zadvydas* has no direct application to an alien who is detained during the pendency of removal proceedings, this holding supports the conclusion that detention without bond during such a proceeding complies with due process. *See Buenrostro-Mendez*, 2026 WL 323330, at *9.

The Constitution has long been recognized to require less process for an unadmitted alien than for one lawfully admitted to the United States. Although the specific terms used to describe this distinction has changed over time, the theme remains clear. An alien who entered the United States without attempting to comply with immigration procedure—for example, by evading detection while crossing the border—is to be treated no better than one who was stopped at the border in the first place and, though not yet admitted, remains physically present in the country.

See Thuraissigiam, 591 U.S. at 138-40. This is in contrast with an alien who has been admitted, who may claim additional due-process protections. *See Wong Yang Sung v. McGrath*, 339 U.S. 33, 49–50 (1950) (holding that the Constitution had long been understood to afford some due process protection to a person lawfully admitted to the United States, in contrast with one who "entered the country clandestinely"); *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903) (holding that an executive officer cannot detain and deport an alien who presented for inspection "without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States").

For these reasons, Petitioner does not present a plausible due process claim. Petitioner entered the country without inspection and has not been admitted. Petitioner received notice of the removability charges, has access to counsel, and is scheduled to attend hearings with an immigration judge. (*See generally* Pet., ECF # 1, *passim*.) This process is coextensive with the INA, and no additional process—including the opportunity for release on bond—is due to Petitioner. *Thuraissigiam,* 591 U.S. at 138-40.

III. The Court should require Petitioner to exhaust administrative remedies.

If the Court concludes that Petitioner's detention under section 1225 is improper, the Court should dismiss this habeas petition without prejudice because Petitioner has not exhausted administrative remedies. *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Administrative relief is available to Petitioner and exhaustion of these remedies is required before the Court grants a writ of habeas corpus, but Petitioner has not exhausted these administrative remedies.

Administrative remedies are available to Petitioner. A detained alien can request bond in immigration court and appeal any unfavorable decision to the BIA. *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 WL 2444114, at *9 (N.D. Ohio Aug. 25,

2025); *Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018) (unpublished order). To exhaust administrative remedies in connection with a request for release on bond from immigration detention, an alien must move for a custody redetermination and release on bond, receive an adverse determination from an immigration judge (IJ), and appeal that determination to the BIA. *Leonardo*, 646 F.3d at 1160.; *see also Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)).

Exhaustion of administrative remedies within the immigration courts is required before Petitioner may seek relief in federal court. "When a petitioner does not exhaust administrative remedies, a district court ordinarily should either dismiss the [habeas] petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo*, 646 F.3d at 1160. The Sixth Circuit has endorsed this procedure for challenging bond determinations. *See Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018) (unpublished order) (*citing Leonardo*, 646 F.3d at 1160).

There is no evidence that Petitioner has exhausted administrative remedies. Petitioner has not requested a bond hearing, received an adverse determination, and appealed it to the BIA. *See Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 WL 2444114, at *9 (N.D. Ohio Aug. 25, 2025); *Rabi v. Sessions*, No. 19-3249, 2018 U.S. App. LEXIS 19661, at *1-2 (6th Cir. July 16, 2018) (unpublished order). Accordingly, the Court should dismiss his petition without prejudice.

Respondents acknowledge that the Court previously declined to require actual or prudential exhaustion by an alien contesting detention under section 1225(b)(2). Here, however, the three-factor test for prudential exhaustion weighs in favor of requiring Petitioner to exhaust.

See, e.g., *Hernandez Torrealba v. U.S. Dep't of Homeland Sec.*, No. 1:25CV01621, 2025 WL 2444114, at *9 (N.D. Ohio Aug. 25, 2025). The test considers whether:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Id. (*quoting Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)).

First, Petitioner's claims "turn[] on interpretation and application of the governing removal regime." *Monroy Villalta v. Greene*, — F. Supp. 3d —, 2025 WL 2472886, at *2 (N.D. Ohio Aug. 5, 2025) (*quoting Khalili v. Holder*, 557 F.3d 429, 435 (6th Cir. 2009) (abrogated on other grounds)). Review accordingly "should proceed before the Board of Immigration Appeals" so that the administration can "apply its experience and expertise without judicial interference." *Id.*; *see also Hernandez*, 2025 WL 2444114, at *10 (applying *Monroy Villalta* to find that the first factor weighs in favor of requiring exhaustion of claims premised on the statutory interpretation of the INA); *Ba v. Dir. of Detroit Field Office, U.S. Immigr. and Customs Enf't*, No. 4:25-CV-02208, 2025 WL 2977712, at *2-3 (N.D. Ohio Oct. 22, 2025) ("Because of the expertise the Board of Immigration Appeals and the immigration courts more generally have in the statutory and administrative regimes governing the admission and removal of foreigners, many of the purposes for requiring exhaustion may be served by permitting agency review in the first instance." (quotation omitted)).

Second, "relaxing the exhaustion requirement would encourage the deliberate bypass of the administrative scheme in favor of what may be perceived as a potentially more favorable and/or timely reviewing body, i.e., federal court." *Hernandez*, 2025 WL 2444114, at *10. Petitioner has not even begun the process of seeking relief through the administrative process

provided by the immigration courts but already seeks the Court's "interference in agency affairs." *See id.* Waiving administrative exhaustion in this context would undermine the authority of the agency and the "important purposes served by exhaustion" in the immigration context, *id.*, including "protecting the authority of administrative agencies" and "developing the factual record to make judicial review more efficient," *Ba*, 2025 WL 2977712, at *3 (*quoting Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)).

Third, allowing the immigration court and, if necessary, the BIA to evaluate Petitioner's bond motion "would permit the agency to correct its own mistakes, if any, and preclude the need for judicial review if Petitioner is successful." *Id.* at *10. If Petitioner applies for and the immigration court grants bond, there will be no need for judicial review of these claims. Likewise, if the immigration court denies such a motion, Petitioner may appeal the adverse decision to the BIA.

For all these reasons, "prudential principles of exhaustion counsel that Petitioner pursue [] administrative remedies before seeking a writ of habeas corpus." *Monroy Villalta*, 2025 WL 2472886, at *2 (requiring administrative exhaustion where habeas petitioner challenged a bond determination based on the statutory interpretation of section 1225(b) and 1226(a)); *see also Ba*, 2025 WL 2977712, at *3. Petitioner must pursue administrative remedies up to and through the BIA before seeking relief from this Court. *Leonardo*, 646 F.3d at 1160.

IV. A prohibition on Petitioner's transfer is unnecessary.

Petitioner asks the Court to prohibit transfer out of the Western District of Michigan. Such a restriction is unnecessary, however, because the Court will maintain jurisdiction regardless of where DHS holds Petitioner in custody. *See Rumsfeld v. Padilla*, 542 U.S. 426, 440 (2004); *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Even if the government were to move Petitioner, the Court would retain jurisdiction of the action and could direct the writ "to

any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release." *Padilla*, 542 U.S. at 440; *see also Rodriguez Carmona, v. Noem*, No. 1:25-CV-1131, 2025 WL 2992222, at *8-9 (W.D. Mich. Oct. 24, 2025) (declining to grant alien's request for an order that he remain within the district where he filed his habeas petition); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352, at *3 (S.D.N.Y. Aug. 26, 2025) (retaining jurisdiction over alien's habeas proceedings after he had been moved to another district).

Petitioner named the immediate custodian, the ICE Field Office Director, as a respondent to this action. The Court accordingly will retain jurisdiction over Petitioner during the pendency of these habeas proceedings and should deny the request for an unnecessary transfer restriction.

V. The Detroit ICE Field Office Director is the only proper respondent.

A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Except in extraordinary circumstances, the only proper respondent in a habeas action is the detainee's immediate custodian. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003); *but see Sanchez Alvarez v. Noem*, No. 1:25-cv-1090, 2025 WL 2942648, at *9 (W.D. Mich. Oct. 17, 2025) (applying an exception to decline to dismiss the Secretary of Homeland Security as a respondent to a habeas action). In the immigration context, the only proper respondent is the ICE Field Office Director. *See Roman*, 340 F.3d at 320; *cf., e.g., Toledo Martinez, v. Unknown Party*, No. 1:25-CV-1298, 2025 WL 3223774, at *8 (W.D. Mich. Nov. 19, 2025) (dismissing the Attorney General and North Lake Processing Center, but applying an exception and declining to dismiss the Secretary of DHS as a respondent). The Court should dismiss all respondents except the Detroit ICE Field Office Director. *Id.*

VI. Petitioner cannot make APA claims in his habeas petition.

Petitioner improperly attempts to shoehorn an APA claim into this habeas action. First, Petitioner has not pleaded an APA claim; Petitioner paid only a $5.00 filing fee and did not go

through the mechanisms for serving a summons and civil complaint pursuant to Federal Rule of Civil Procedure 4.

More genereally, The Court should not combine this habeas petition with a claim under the APA. A habeas petitioner is limited to challenging the fact or duration of their confinement, not the conditions of that confinement or the agency policies governing it. *Wilson v. Williams*, 961 F.3d 829, 838 (6th Cir. 2020); *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004). And, as a prudential matter, courts in this circuit have not permitted "combined habeas corpus and other civil claims to proceed together in one case." *J.O.B. v. United States*, No. 3:23-CV-217, 2024 WL 4011825, at *7 (S.D. Ohio Aug. 30, 2024) (collecting cases), *R. & R. adopted*, No. 3:23-CV-217, 2024 WL 4223636 (S.D. Ohio Sept. 18, 2024); *Ruza v. Michigan*, No. 1:20-CV-504, 2020 WL 4670556, at *2 (W.D. Mich. Aug. 12, 2020), *aff'd*, No. 20-1841, 2021 WL 3856305 (6th Cir. Apr. 7, 2021) (same). The purpose of a habeas petition is "distinct" from that of a civil action, and they "contain unique procedural requirements that make a hybrid action difficult to manage." *Ruza*, 2020 WL 4670556, at *2.

In addition, APA claims are unavailable where habeas relief presents an adequate alternative remedy. *Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring). Habeas relief would be an adequate remedy for Petitioner's claims, by addressing whether he is entitled to release from unlawful custody. That "fall[s] within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Id.* at 672 (per curium). This Court has rejected similar efforts to include APA claims in habeas petitions. *See, e.g., Toledo Martinez v. Unknown Party*, No. 1:25-cv-1298, 2025 WL 3223774, at *7 n.3 (W.D. Mich. Nov. 19, 2025) (concluding that habeas was an adequate remedy).

The Court accordingly should dismiss Petitioner's APA claims.

VII. The Central District of California's recent decision in Bautista is on appeal and should not be applied in this district and to Petitioner's Michigan custodian.

In *Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal.)., a district court recently granted partial summary judgment to a group of petitioners detained under 8 U.S.C. § 1225(b)(2), granted class certification for a similarly situated group of petitioners, and entered partial final judgment on December 18, 2025. Respondents appealed. The partial final judgment is not binding or applicable to custodians outside its district; it was issued despite a lack of jurisdiction; and the Court should not give it preclusive effect because doing so creates a risk of inconsistent judgments and unfair results in the event *Bautista* judgment is reversed or vacated.

First, the principles of habeas jurisdiction dictate that the *Bautista* declaratory judgment does not have preclusive effect outside that district and over custodians outside that district. The *Bautista* class sought a declaratory judgment that class members such as Petitioner were unlawfully detained under 8 U.S.C. § 1225(b)(2), rather than § 1226(a). This is core habeas relief that must be brought as a habeas claim alone. 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) (quotations omitted).

The Supreme Court has imposed two fundamental limits on federal court jurisdiction over core habeas claims. First, "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also J.G.G.*, 604 U.S. at 672. Second, a habeas petitioner must name the petitioner's immediate custodian—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 Ct.*, 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.").

Here, the vast majority of *Bautista* class members are confined outside of the Central District of California by immediate custodians who are also outside the Central District of California and have not been named in the lawsuit. Therefore, the *Bautista* court lacked jurisdiction to issue habeas relief to all class members who are confined outside the Central District of California by immediate custodians outside that District, and a court's judgment cannot be binding and preclusive against a party over which it lacked jurisdiction. *Burnham v. Superior Ct. of Cal.*, 495 U.S. 604, 608 (1990). Indeed, another federal district court has already held that the *Bautista* declaratory judgment does not have preclusive effect. *Calderon Lopez v. Lyons*, No. 1:25-cv-226, 2025 WL 3683918, at *6-14 (N.D. Tex. Dec. 19, 2025).

In sum, the *Bautista* court's declaratory judgment purporting to grant relief that at its core sounds in habeas is a legal nullity outside that district. Petitioner is detained in Michigan, outside the Central District of California. And Petitioner's immediate custodian is the Director of ICE's Detroit Field Office, who was not a party in the Central District of California; subjecting the Director to the judgment of the Central District of California would be inconsistent with the immediate custodian rule. *Padilla*, 542 U.S. at 439-40.

Second, the Court should not give preclusive effect to *Bautista* because it is on appeal. *Bautista v. U.S. Dep't of Homeland Sec.*, No. 25-7958 (9th Cir.). Courts must exercise significant caution before giving preclusive effect to declaratory judgments that are on appeal. *See, e.g.*, E.H. Schopler, Annotation, *Judgment as res judicata pending appeal or motion for a new trial, or during the time allowed therefor*, 9 A.L.R.2d 984 (1950). Courts should strive to avoid the "evil results" that commonly occur in this posture *Id.*; *see also* 18A Wright & Miller's Federal Practice & Procedure § 4404 (noting that "[a]wkward problems can result from the rule that preclusive effects attach to the first judgment" while it is subject to an appeal); *id.* § 4433

(noting that treating a declaratory judgment on appeal as final for the purposes of preclusion creates "[s]ubstantial difficulties").

At most, the Court should delay proceedings in this action pending conclusion of the appeal. *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* Schopler, 9 A.L.R.2d 984 (the "only one safe way of avoiding conflicting judgments on the same cause . . . [is] the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered").

VIII. The Court should not opine on the burden applicable to a bond hearing or, alternatively, should not place the burden on the government.

The Court should not issue any directive regarding the burden of proof at a bond hearing in immigration court. All immigration authority—the statute, its implementing regulations, and BIA interpretation of both—rejects any argument that the government carry a burden of proof in a bond hearing. *See Matter of Adenji*, 22 I. & N. Dec. 1102, 1111-12 (BIA 1999); *Matter of Urena*, 25 I. & N. Dec. 140, 141 (BIA 2009) ("The alien bears the burden of proving that his release would not pose a danger to property or persons."); *Matter of R-A-V-P*, 27 I. & N. Dec. 803, 804 (BIA 2020) ("The respondent's assertion that the DHS should bear the burden to demonstrate that he is a flight risk by clear and convincing evidence lacks merit because we have clearly held that section 236(a) places the burden of proof on the alien to show that he merits release on bond.").

Nothing in the text of 8 U.S.C. § 1226(a), "which says only that the Attorney General 'may release' the alien 'on . . . bond'—even remotely supports the imposition" of an evidentiary burden on the government. *Jennings*, 583 U.S. at 306; *see also Nielsen v. Preap*, 586 U.S. 392,

397–98 (2019) ("[T]he alien may secure his release if he can convince the officer or immigration judge that he poses no flight risk and no danger to the community."). Furthermore, the relevant regulations provide that "*the alien* must demonstrate" that he is not a flight risk or danger to persons or property. 8 C.F.R. 236.1(c)(8), 1236.1(c)(8) (emphasis added); *see In re Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006) ("The burden is on the alien."); *see also*, 8 C.F.R. § 1003.19(h)(3) (imposing the clear and convincing evidentiary burden on noncitizens).

CONCLUSION

Respondents respectfully request that the Court deny Bruno Felipe Gregorio's petition for a writ of habeas corpus and the additional requested relief.

Respectfully submitted,

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Dated: March 5, 2026

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