

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUAN LAMAS AGUILAR,

Petitioner,

vs.

No. 1:25-cv-00996-KWR-KK

KRISTI NOEM, in her official capacity
as Secretary of the Department of
Homeland Security; U.S. DEPARTMENT
OF HOMELAND SECURITY; PAMELA
BONDI, in her official capacity as
Attorney General of the United States;
TODD LYONS, in his official capacity as
Acting Director and Senior Official
Performing the Duties of the Director of
U.S. Immigration and Customs Enforcement;
MARY DE ANDA-YBARRA, in her official
capacity as Field Office Director of U.S.
Immigration and Customs Enforcement,
Enforcement and Removal Operations for
the El Paso Field Office; and JAMIE RAYE
CARNES, in official capacity as Warden
of Torrance County Detention Facility,

Respondents.

**REPLY IN SUPPORT OF RESPONDENTS'
MOTION TO DISMISS**

INTRODUCTION

Respondents, Immigration and Customs Enforcement (“ICE”), the Department of Homeland Security (“DHS”), and Pamela Bondi in her official capacity as Attorney General of the United States (collectively “Respondents”), hereby submit this Reply in Support of Respondents’ Motion to Dismiss (Doc. 11).

On November 19, 2025, the Court requested additional briefing including clarification on how Petitioner’s were taken into custody, whether warrants for arrest were issued and to update the status of immigration proceedings. The Court further requested the parties to state whether the

Court may grant or deny the Petition (Doc. 1) based upon completed briefing on the pending Motion to Dismiss (Doc. 11) or, in the alternative, whether an additional Response is necessary.

ARGUMENT

I. Response to Court Inquiries

A. Arrest Circumstances and U.S. Immigration Court Status

Petitioner was encountered on July 10, 2025, by ICE officers at a parole and probation office in Albuquerque, NM. Petitioner had previously been convicted of driving under the influence on July 7, 2025. Upon information and belief, there was not a warrant issued for the arrest. Petitioner admitted to having no lawful status in the United States. Petitioner's next immigration court date is currently scheduled for December 8, 2025.

B. Requirement of Further Briefing

Respondents do not object to the Court considering the merits of the underlying Petition (Doc. 1) based upon the (now) completed briefing on Respondents' Motion to Dismiss (Doc. 11), without the necessity of an additional Response. Relatedly, Respondents withdraw the Fed. R. Civ. P. 12(b)(1) position regarding the subject matter jurisdiction to review § 1225(b) removal orders, raised and articulated in its Motion to Dismiss. *See* Doc. 11 at 11 § 2.

II. Response to Petitioner's Notice of Supplemental Authority (Doc. 17)

Petitioner raises a recent class certification in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr., et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025). While the court in *Bautista* did grant class certification and partial summary judgment, it did not issue a class-wide declaratory judgment or injunction. Rather, the court set a January 9, 2026, joint status report deadline and January 16, 2026, status conference. Until and unless the *Bautista* court issues a class-wide declaratory judgment or injunction, the *Bautista* court's opinion and partial grant of summary

judgment does not constitute a judgment. *See, e.g.*, Fed. R. Civ. P. 54(b). As such, they do not have preclusive effect with respect to other cases nationwide nor are they binding on the Court.

III. Response to Petitioner’s Opposition to Motion to Dismiss (Doc. 15)

Petitioner argues that Respondents’ position, articulated and formalized in the *Hurtado* Board of Immigration Appeals (“BIA”) decision, is inconsistent with the plain text of the statute and contrary to recent cases and precedent. Respondents, for the reasons articulated below, disagree.

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Noncitizens Unlawfully Present in the United States

Prior to 1996, the Immigration and Nationality Act (“INA”) treated noncitizens¹ differently based on whether they 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 also Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether a noncitizen had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the noncitizen would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). Noncitizens who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, noncitizens who

¹ The applicable statutes and regulations often refer to these individuals as “aliens”. For purposes of clarity, the use of the alternative term “noncitizen” in this brief is not intended to imply a legal distinction.

physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)). Thus, the INA’s prior framework distinguishing based on physical “entry” had:

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

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection”).

B. IIRIRA Eliminated the Preferential Treatment of Noncitizens Unlawfully Present in the United States and Mandated Detention of “Applicants for Admission”

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical 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 a noncitizen 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 based on whether the noncitizen 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.” See House Rep., at 226 (emphasis added); see also *Hing Sum v. Holder*, 602 F.3d at 1100. IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified in § 1225 and § 1226:

Section 1225(a): Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone. That provision states that noncitizens “present in the United States who has not been admitted or who arrives in the United States” “shall be deemed ... an applicant for admission”:

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added).

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited “240” proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for “expedited removal” proceedings, *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of noncitizens—those who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period

immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii).

Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

C. Post *Hurtado*

It cannot be disputed that Respondents previously operated under a different understanding of § 1225(b)(2)(A), such that noncitizens present in the interior of the United States who had entered without admission have historically been detained under § 1226(a). For many years after IIRIRA, DHS treated these noncitizens as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6.

However, past practice does not justify disregard of clear statutory language. *See, e.g., Armstrong v. Exceptional Child Ctr. Inc.*, 575 U.S. 320, 329 (2015). For example, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that were later deemed incompatible with statutory text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court must always interpret the statute “as written,” *Henry Schein, Inc.*

v. Archer & White Sales, Inc., 586 U.S. 63, 68 (2019). A “nontextual” practice, even longstanding ones, cannot upend plain statutory meaning upon review. *Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the Government’s prior understanding as “nontextual” and unsupported by any “thorough, reasoned analysis”).

Under the plain language of § 1225(b)(2), DHS is required to detain all noncitizens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the noncitizen has been in the United States or how far from the border they ventured. Section 1225(a) defines “applicant for admission” to encompass a noncitizen who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde*, 2025 WL 3131942, at *3. Thus, a noncitizen who enters the country without permission is and remains an applicant for admission, regardless of the duration of the noncitizen’s presence in the United States or distance from the border². As the geographic and temporal limits in the neighboring provision, § 1225(b)(1), demonstrate, “[i]f Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Id.* at *4.

² This reading is consistent with the everyday meaning of the statutory terms. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it. Compare Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal request (*to* someone *for* something)”), with *id.* at 1299 (“seek” means “to request, ask for”). For example, a person who is “applying” for admission to a college or club is “seeking” admission to the college or club. See The American Heritage Dictionary of the English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, a noncitizen who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is “seeking admission” to the United States.

A contrary view would make mandatory detention turn on the fortuity happenstance of when a noncitizen attempts to prove admissibility (or how successfully/unsuccessfully a noncitizen illegally enters the United States). *See, e.g., United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not “presume lightly” that statute’s application will turn on “arbitrary” issue of timing). There is no reason why Congress would desire mandatory detention to depend on the timing of when a noncitizen attempts to show admissibility (or how successful/unsuccessful an illegal entry attempt was), particularly given how susceptible that rule is to manipulation by the noncitizen’s own actions.

D. Compatibility with *Jennings* Precedent

Some district courts, as Petitioner suggests, have rejected Respondents’ argument based on language in *Jennings* where the Supreme Court described the detention authorities in § 1225(b) and § 1226, and in that context summarized § 1226 as applying to noncitizens “already in the country”:

In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings, 583 U.S. at 289; *see also id.* at 288 (characterizing § 1226 as applying to aliens “once inside the United States”). However, Respondents’ do not view this argument as inconsistent with that language: it allows that § 1226 is the exclusive source of detention authority for the substantial category of noncitizens who were admitted into the United States (and so are “in the country”) but are now removable. *Jennings* refers to noncitizens who are “in and admitted to the United States.” *See* 8 U.S.C. § 1227(a). The opinion’s reference to noncitizens “present in the country” specifically cites § 1227(a), which covers only *admitted* noncitizens. *See Jennings*, 583 U.S. at

288. Moreover, nothing in the quoted language from *Jennings* suggests that § 1226 is the *sole* detention authority that applies to “aliens already in the country.”

For these reasons, Respondents contend the *Hurtado* decision is not inconsistent with *Jennings* nor the plain text of the applicable statutes.

CONCLUSION

The Court should deny or dismiss the Petition for Writ of Habeas Corpus (Doc. 1) as Petitioners are appropriately classified under § 1225 pursuant to BIA guidance in *Hurtado* and Petitioners’ due process rights as § 1225 “arriving alien” has been met as a matter of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 2, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey
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