UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

CARLOS PONCE CERVANTES	§	
	§	
Petitioner,	§	
	§	
VS.	§	CIVIL NO. 5:25-cv-192
	§	
KRISTI NOEM, et al.,	§	
	§	
Respondents.	§	

RESPONSE AND MOTION FOR SUMMARY JUDGMENT

The Government respectfully requests that this Court dismiss Carlos Ponce Cervantes's petition for a writ of habeas corpus, or alternatively, grant summary judgment in favor of the Government. *See* Dkt. No. 1. *See* Fed. R. Cir. P. 56(a). Summary judgment is appropriate if the moving party demonstrates that there is "no genuine dispute as to any material fact and [it] is entitled to a judgment as a matter of law." *Id.* In this case there is no dispute as to any material fact, and the law requires that Cervantes be detained during his removal proceedings.

First, Cervantes has failed to exhaust the administrative remedies available to him, and does not meaningfully address this requirement except that he appears to have predetermined the outcome of (1) requesting a bond hearing, and (2) appealing any adverse ruling to the Board of Immigration Appeals. Otherwise, he offers no facts or evidence to show that he pursued any

remedy prior to filing a lawsuit against the Government under 28 U.S.C. § 2241. This alone is fatal to his claim for a writ of habeas corpus. "[E]xceptions to the exhaustion requirement apply only in 'extraordinary circumstances,' and [the petitioner] bears the burden of demonstrating the futility of administrative review." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). Cervantes has not meaningfully addressed exhaustion, much less shown extraordinary circumstances supporting his complaint. If there is error in Cervantes's case, the Board of Immigration Appeals should be given the opportunity, at the very least, to review it. Skipping review and instead filing a lawsuit in federal court is not permitted. This is true even if Cervantes believes he knows the outcome of attempting to litigate his case administratively. In fact, it is especially true—if Cervantes seeks to challenge the law, he should obtain a final judgment on it that this Court can review. To date, he has not, and therefore this Court is stuck with essentially issuing an advisory opinion speculating on how the BIA *might* rule in his particular case. This Court should decline that invitation.

Second, assuming *arguendo*, that an immigration judge and then the BIA were to issue rulings in line with *Matter of Hurtado, Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), such would be supported by a plain reading of 8 U.S.C. § 1225(b)(2)(A), and Cervantes would be subject to mandatory detention. Cervantes is "an alien who is an applicant for admission" who is

"seeking admission" and "is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Therefore, he "shall be detained" during the pendency of his deportation proceeding. 8 U.S.C. § 1225(b)(2)(A). Cervantes, therefore, cannot show a likelihood of success on the merits to support his request for a writ of habeas corpus, a temporary restraining order, or preliminary injunction.

This Court should deny Cervantes's petition for habeas corpus (or grant summary judgment in favor of the Government), deny his request for a temporary restraining order or preliminary injunction, and order that he be detained during the pendency of his removal proceedings. Doing so would bring this Court in line with other district courts in the Fifth Circuit. *See Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Rene Garibay-Robledo v. Noem*, No. 1:25-CV-177-H (N.D. Tex. Oct. 24, 2025).

I. Background.

The following facts are not disputed. Cervantes is a native and citizen of the United Mexican States. Dkt. No. 2, pg. 3; Exhibit 1, pg. 1. Cervantes entered the United States illegally in April 2022 near Eagle Pass, Texas. Dkt. No. 1-3, pg. 1; Exhibit 1, pg. 3. When he did so he was not admitted or inspected by an immigration officer. Dkt. No. 1-3, pg. 1. In August 2023, United States Immigration and Customs Enforcement served Cervantes with a Notice to

Appear charging him with removability pursuant to the Immigration and Nationality Act section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as 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. Dkt. No. 1-3, pg. 1. In the Notice to Appear, the examining immigration official denied Cervantes's admission into the United States, explained the basis for charging him with being subject to removal, and ordered that he appear in immigration court. Dkt. No. 1-3, at pgs. 1-3. Cervantes was ordered to appear in Dallas, Texas, in August 2027, and released. Dkt. No. 1, pg. 9, para. 20.

In the meantime, on September 12, 2025, Cervantes was detained by Immigration and Customs Enforcement in Dallas. Dkt. No. 1-4, pg. 1. Cervantes remains in custody pursuant to 8 U.S.C. § 1225(b)(2)(A).

II. Summary Judgment Standard.

Summary judgment is proper when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). If the moving party meets its burden of demonstrating the absence of a genuine factual dispute, the non-movant must then come forward with specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(c); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). The non-movant must "go beyond the pleadings and by [the

nonmovant's] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Nola Spice Designs, LLC v. Haydel Enters., Inc.*, 783 F.3d 527, 536 (5th Cir. 2015).

Summary judgment is not a disfavored procedural shortcut, but rather an important vehicle "designed to secure the just, speedy and inexpensive determination of every action" by quickly disposing of deficient claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Notably, summary judgment is available in the context of habeas corpus cases. *Clark v. Johnson*, 202 F.3d 760, 764-65 (5th Cir. 2000).

III. Applicable law.

In a petition for a writ of habeas corpus, the petitioner is challenging the legality of the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *See, e.g., Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as "[d]etention is necessarily a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952). As the Supreme Court has stated, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

a. Mandatory detention under 8 U.S.C. § 1225.

Section 1225 defines "applicants for admission" as "alien[s] present in the United States who ha[ve] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to have such a fear," he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" *shall* be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed

directly in full removal proceedings, section 235(b)(2)(A) of the Immigration and Naturalization Act, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'" (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)).

b. Discretionary detention under 8 U.S.C. § 1226.

Section 1226 provides that an alien may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the immigration judge may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider). Regardless of the factors immigration judges consider, an alien "who presents a danger to

persons or property should not be released during the pendency of removal proceedings." *Id.* at 38.

c. The Board of Immigration Appeals.

The Board of Immigration Appeals is the highest administrative body for interpreting and applying immigration law. It is the appellate body within the Executive Office for Immigration Review. *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is "charged with the review of those administrative adjudications under the [Immigration and Naturalization Act] that the Attorney General may by regulation assign to it," including immigration judge custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also "through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [Immigration and Naturalization Act] and its implementing regulations." *Id.* § 1003.1(d)(1). "The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General." 8 C.F.R. § 1003.1(d)(7).

On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In that decision, the BIA held that an immigration judge lacks authority to hear a respondent's request

for bond where the respondent is an applicant for admission and subject to mandatory detention under Section 235(b)(2)(A) of the Immigration and Naturalization Act, 8 U.S.C. § 1225(b)(2)(A), and the regulation at 8 C.F.R. § 235.3(b)(1)(ii). *Hurtado*, 29 I. & N. Dec. at 229.

IV. This Court's prior rulings.

The Government acknowledges that this Court has previously rejected its arguments concerning the applicability of § 1225(b)(2). The Government, however, requests reconsideration of that position. "A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." *Camreta v. Greene*, 563 U.S. 692, 701 n. 7 (2011). For the reasons discussed below, including recent decisions from other courts in the Fifth Circuit, this Court should reconsider its interpretation of § 1225(b)(2) and find that Cervantes is subject to mandatory detention.

V. Cervantes's petition should be denied.

a. Cervantes has not exhausted the administrative remedies available to him and other detained aliens.

Congress has created a framework by which the decisions of immigration judges may be challenged. Cervantes has opted to forego even attempting to challenge his detention in the manner prescribed by law. He has not stated why. Thus, this Court does not have authority to entertain his habeas claims

because he has not administratively exhausted his claims. In accord with the general rule that parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, it is well-taken that a habeas petitioner must exhaust all administrative remedies prior to filing a federal habeas petition under § 2241. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same).

"In practical terms, the law of habeas, like administrative law, requires proper exhaustion, and we have described this feature of habeas law as follows: 'To ... 'protect the integrity' of the federal exhaustion rule, we ask not only whether a prisoner has exhausted his [] remedies, but also whether he has *properly* exhausted those remedies....'" *Woodford v. Ngo*, 548 U.S. 81, 92 (2006) (emphasis in original). Exhaustion is required because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency. *Woodford*, 548 U.S. at 89. In other words, administrative exhaustion promotes: (1) the development of the necessary factual background upon which the claim is based; (2) the exercise of administrative expertise and discretionary authority often necessary for the resolution of the dispute; (3) the autonomy of the administration; and (4) judicial efficiency from the settlement

of disputes at the administrative level. *Lee v. Keffer*, No. 07-1873, 2007 WL 4680127, at *4 (W.D. La. Dec. 28, 2007).

Here, Cervantes states he is being held "without the statutorily required bond hearing," that he "will not be provided with a bond hearing," and that he is "being detained in ICE custody without being afforded the bond hearing required under the law." Dkt. No. 2, pgs. 2-5. Cervantes does not state, however, that he has asked for a hearing. Cervantes should, at the very least, request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge, as allowed at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the immigration judge may continue detention or release Cervantes on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). The immigration judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for immigration judges to consider).

Rather than following this statutory scheme, Cervantes has seemingly predetermined that such a hearing would be denied before even litigating the issue. Because he has not pursued a bond hearing, and because he has thus not appealed any decision from an immigration judge to the Board of Immigration Appeals concerning such a hearing, this Court is asked to rule on

a speculative matter about a non-existent final administrative order. It should decline to do so.

"The determination of an Immigration Judge with respect to custody status or bond redetermination shall be entered on the appropriate form at the time such decision is made, and the parties shall be informed orally or in writing of the reasons for the decision. An appeal from the determination by an Immigration Judge may be taken to the Board of Immigration Appeals pursuant to § 1003.38." 8 C.F.R. 1003.19(f). Cervantes offers no excuse for failing to take these steps. He has not availed himself of the administrative remedies available to him. If the executive branch has made a mistake in executing the law passed by Congress, it should be afforded, at the very least, the opportunity to be notified of it, and correct it.

The Fifth Circuit has recognized exceptions to the exhaustion requirement and noted that they "apply only in extraordinary circumstances," including when exhaustion would be "patently futile." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted). *Fuller* itself is illustrative, where the petitioner argued that administrative appeal was futile because the time for filing an appeal had already elapsed. *See id.* The Fifth Circuit disagreed, holding that "until he actually appeals, and that appeal is acted on, we do not know what the appeals board will do with [petitioner]'s

claim, and until the appeals board has been given an opportunity to act, [petitioner] has not exhausted his administrative remedies." *Id.*

Here, just because the administrative body is unlikely to find the law in Cervantes's favor does not mean that the "extraordinary circumstances" apply, and exhaustion is futile. Cervantes must receive a decision from the BIA for the matter to be administratively exhausted. It is of little moment whether Cervantes would be able to successfully convince the BIA that *Hurtado* was wrongly decided or that his circumstances are factually distinguishable from *Hurtado*; the point is that Cervantes cannot eschew the process altogether.

This Court would not be the first to find so. In *Abdoulaye Ba v. Director of Detroit Field Office, ICE*, No. 4:25-CV-02208, 2025 WL 2977712, at *2 (N.D. Ohio Oct. 22, 2025), the district court dismissed the habeas action for failure to exhaust where the petitioner sought "review of the application and interpretation of *Matter of Yajure Hurtado*" but had yet to appeal to the BIA. Cervantes has not even attempted the first step in the process, a redetermination hearing. Not only does the law require exhaustion, practical and intuitive considerations highlight why this result must follow here in the bond context.

For this reason alone, Cervantes's petition should be denied.

b. Cervantes is subject to mandatory detention under 8 U.S.C. § 1225.

Cervantes's habeas petition should be denied because the plain text of the Immigration and Naturalization Act provides that he falls under the mandatory detention provisions of § 1225 as 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 designated by the Attorney General. *See Hurtado*, 29 I. & N. at 216.

i. The plain text of § 1225 requires detention of Cervantes.

"As usual, we start with the statutory text." *Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163, 177 (5th Cir. 2024). Section 1225(b)(2) provides the following: "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 [removal proceedings]." As instructed by the familiar interpretive canon *noscitur a sociis*, "statutory words are often known by the company they keep." *In re Crocker*, 941 F.3d 206, 219 (5th Cir. 2019) (quoting *Lagos v. United States*, 584 U.S. 577, 582 (2018)). In the context presented in this case, "seeking admission" and "applying for admission" are plainly synonymous. Congress has linked these two variations of the same phrase in Section 1225(a)(3), which requires all aliens "who are applicants for

admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3).

The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). Read properly, a person "seeking admission" is just another way of describing a person "applying for admission," meaning he is an applicant for admission, which includes both those individuals arriving in the United States and those already present without admission. 8 U.S.C. § 1225(a)(1).

Congress used the phrase "arriving alien" throughout Section 1225. *See, e.g.*, 8 U.S.C. §§ 1225(a)(2), (b)(1), (c), (d)(2). To be sure, this phrase does distinguish an alien presently or recently "arriving" in the United States from other "applicants for admission" who, like Petitioner, have been in the United States without being admitted. But Congress did not use this phrase in Section 1225(b)(2)'s mandatory-detention provision, and instead prescribed mandatory detention for "alien[s] seeking admission." Had Congress intended to limit Section 1225(b)(2)'s scope to "arriving" aliens, it could have simply used that phrase like it did in Section 1225(b)(1). Instead, Congress used the phrase "alien seeking admission" as a plain synonym for "applicant for admission."

The statutory structure of Section 1225(b) also supports the Government's interpretation. It is true that Section 1225(b)(1) applies to

applicants for admission who are "arriving in the United States" (or those who have been present for less than two years) and provides for expedited removal proceedings. It also contains its own mandatory-detention provision applicable during those expedited proceedings. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

By contrast, Section 1225(b)(2) applies to "other aliens," *i.e.*, "an alien who is an applicant for admission" who is not an arriving alien (and thus not subject to expedited removal under Section (b)(1)). These aliens too "shall be detained"—not subject to expedited removal proceedings, but pursuant to a more typical removal "proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). Thus, Section 1225(b) applies to two groups of "applicants for admission": Section (b)(1) applies to "arriving" or recently arrived aliens who must be detained pending expedited removal proceedings; and (b)(2) is a "catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)," *Jennings*, 583 U.S. at 287, who, like Petitioner, must be "detained for a [non-expedited] proceeding under section 1229a of this title," 8 U.S.C. § 1225(b)(2). A contrary interpretation limiting Section 1225(b)(2) to "arriving" aliens would render it redundant and without any effect.

A comparison of Section 1225's mandatory-detention provisions against the discretionary detention provisions of Section 1226 also supports the Federal Respondents' interpretation. "A basic canon of statutory construction" is that "a specific provision applying with particularity to a matter should

govern over a more general provision encompassing that same matter." *Hughes v. Canadian Nat'l Ry. Co.*, 105 F.4th 1060, 1067 (8th Cir. 2024); *see Matter of GFS Indus., L.L.C.*, 99 F.4th 223 (5th Cir. 2024) (explaining that to the extent one could read tension among two statutory provisions, the more specific provision should govern over the general).

Here, Section 1226(a) is the general provision, applicable to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is much more specific, applying particularly to aliens who are "applicants for admission"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not been admitted." *Id.* § 1225(a). So, while the general rule might be that aliens detained pending removal may be detained, the specific rule for aliens who have not been admitted is that this subset of aliens must be detained. This Court should be loath to eviscerate the specific text of Section 1225(b)(2)(A) in favor of the more general text of Section 1226(a). Indeed, "[i]t is [this Court's] duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section[.]" *United States v. Menasche*, 348 U.S. 528, 538-39 (1955). Because Cervantes falls squarely within the definition of individuals deemed to be "applicants for admission," the specific detention authority under § 1225(b) governs over the general authority found at § 1226(a).

ii. The history of the INA also supports a finding that Cervantes should detained.

When a statute's text is clear, courts need not resort to legislative history. *See, e.g., Heinze v. Tesco Corp.*, 971 F.3d 475, 484 (5th Cir. 2020); *Adkins v. Silverman*, 899 F.3d 395, 403 (5th Cir. 2018) (citing *BedRoc Ltd. v. United States*, 541 U.S. 176, 183 (2004)). "When the words of a statute are unambiguous," the text of the statute is the first and last interpretive canon, and "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992).

Although the Respondents maintain the plain reading interpretation above, the history of the INA—specifically congressional amendments to Section 1225(b)(2)—is highly persuasive, and confirms the Government's position. As the BIA analyzed in-depth in *Hurtado*, Congress intended to ensure that it did not treat aliens who unlawfully crossed the border and evaded initial detection better than those who presented themselves at ports of entry and tried to enter lawfully. *See* 29 I. & N. at 222–25.

The Ninth Circuit has recognized the same, explaining that Congress passed the Illegal Immigration Reform and Immigrant Responsibility ACT ("IRIRA") to correct "an anomaly whereby immigrants who were attempting to lawfully enter the United States were in a worse position than persons who

had crossed the border unlawfully." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). Congress "intended to replace certain aspects of the [then-]current 'entry doctrine,' under which 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 at a port of entry." *Id.* (quoting H.R. Rep. 104-469, pt. 1, at 225).

This purpose undercuts the entire underlying premise of Cervantes's claims, which is that he, as a person who snuck into the country "without inspection," is entitled to more privileges in removal proceedings than an identical person who presented themselves for inspection at a port of entry. The legislative history, as confirmed by the Ninth Circuit, and the unambiguous text, rejects Cervantes's interpretation that because he evaded detection, he is entitled to more privileges than persons who presented themselves at the border.

iii. The BIA's decision in *Matter of Hurtado*.

The text and legislative history are unmistakable that aliens like Cervantes already present in the United States are applicants for admission and thus subject to mandatory detention under § 1225(b)(2). To be sure, while this interpretation is straightforward, that is not to say there are no colorable counterarguments. The Government, however, would point to the BIA's decision in *Hurtado*, which thoughtfully and meticulously considered and

rejected a myriad of counterarguments. *See* 29 I. & N. at 221–27 (discussing and rejecting no fewer than six distinct legal counterarguments). *Hurtado* is a unanimous, published decision from the BIA and binding on immigration courts.

As the Supreme Court stated when overruling *Chevron*, agency expertise "has always been one of the factors which may give an Executive Branch interpretation particular 'power to persuade, if lacking power to control.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Deference under *Skidmore* remains alive and well, with the degree of respect "depend[ent] upon the thoroughness evident in its consideration, the validity of its reasoning . . . and all those factors which give it power to persuade, if lacking in power to control." 323 U.S. at 140. Here, the BIA utilized its immigration expertise and gave a lengthy, comprehensive account as to why the Government's position in this case is not only correct, but comfortably so. This Court should thus accord great weight to the persuasiveness of *Hurtado*.

Cervantes argues that the passage of the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025), proves his point. Dkt. No. 1, pg. 35, para. 75. He is incorrect. The BIA's interpretation of § 1225(b)(2) is not undermined by the passage of the Laken Riley Act. The BIA's *Hurtado* decision specifically addressed the issue of whether its interpretation of § 1225(b)(2) rendered the

recent Laken Riley Act superfluous. *Hurtado*, 29 I. & N. Dec. at 221. The BIA first pointed out that nothing in the Laken Riley Act purported to alter or amend § 1225(b)(2)'s mandatory detention requirement. *Id.* Moreover, the BIA noted that the fact that the Laken Riley Act required mandatory detention for a subset of illegal aliens that are also subject to mandatory detention under § 1225(b)(2) is not a basis to ignore the mandatory detention requirement of § 1225(b)(2). *Id.* at 222.

In support of this holding, the BIA cited the Supreme Court's *Barton* decision. *Id.* (citing *Barton v. Barr*, 590 U.S. 222, 239 (2020)). In *Barton*, the Supreme Court held that "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." *Id.* Indeed, "[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, the BIA correctly concluded that both § 1225(b)'s and the Laken Riley Act's mandatory detention requirements should be given effect.

iv. This Court should join others in the Fifth Circuit finding 1225(b)(2) applicable.

In the absence of controlling authority, this Court should follow those district courts that have applied the plain language of the INA and found aliens

like the Petitioner subject to mandatory detention under § 1225(b)(2). Although the Government acknowledges that there are district court decisions, including from this Court, that hold to the contrary,[1] it bears mention that (1) none of these decisions are binding, (2) *Hurtado* carries far more weight considering the BIA's subject-matter expertise on the matter and the thoroughness of its analysis, and thus contrary district court rulings have comparatively less weight. Moreover, several district courts have adopted the Federal Respondents' and the BIA's interpretation, and more are likely to follow in the wake of *Hurtado*, including two district courts in this Circuit.

In *Rene Garibay-Robledo v. Noem*, No. 1:25-CV-177-H (N.D. Tex. Oct. 24, 2025) (Dkt. No. 9), Exhibit 2, the district court (Hendrix, J.) rejected the petitioner's request for reconsideration of its prior denial of petitioner's request for a temporary restraining order. *Id.* at 1. The Court found that the "Garibay-Robledo fails to demonstrate a substantial likelihood of success on the merits, which is fatal to his request" for a TRO and preliminary injunction. *Id.* at 4. In a detailed Order, the district court found, as argued here, that "the text of the INA weighs heavily against Garibay-Robledo's position," "the statutory

[1] This includes decisions from other courts in the Southern District of Texas. *See, e.g., Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) (on appeal); *Fuentes v. Lyons*, 5:25-cv-153 (S.D. Tex. October 16, 2025); *Ortiz v. Bondi*, 5:25-cv-132 (S.D. Tex. October 15, 2025); *Baltazar v. Vasquez*, 25-cv-175 (S.D. Tex. October 14, 2025); *Covarrubias v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025).

history of the INA supports a broad reading of the mandatory-detention provision," and that other district courts findings to the opposite "are not persuasive." *Id.* at 4-7.

In addition, a district court in the Western District of Louisiana also recently agreed with the BIA's reading of the INA. *See Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) Exhibit 3. In denying the habeas petition, the court held that "[b]ecause Petitioner crossed the United States-Mexico border without being inspected by an immigration officer, [Petitioner was] therefore also appropriately categorized as an inadmissible alien . . . [and thus concluded] that § 1225(b)(2)'s plain language and the 'all applicants for admission language' of *Jennings* permits [DHS] to detain Petitioner under § 1225(b)(2)." (citations omitted). *Id.* As argued above, the court reasoned that "to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA." *Id.* at *6.

These cases are not outliers. *See, e.g.*, *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (ruling in favor of the Government on this issue); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL

2730228 (S.D. Cal. Sept. 24, 2025) (same); *accord Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025) (albeit in a different context, but adopted the reasoning at issue here when it stated that a Brazilian national who entered the country illegally in 2005 "remains an applicant for admission" in 2025).

The Government's proffered authorities, including *Vargas*, *Chavez*, *Garibay-Robledo*, *Sandoval*, and of course, *Hurtado*, speak for themselves, and the Government would urge this Court to follow their textually faithful reasoning.

VI. Conclusion.

For the foregoing reasons, the Government respectfully request that the Court deny Petitioner's claim for emergency injunctive relief and grant the Government's motion and enter judgment as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1225(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 10, 2025, the foregoing was filed and served on counsel of Petition via the Court's CM/ECF service.

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