UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

LUCAS CABRERA-HERNANDEZ,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action 5:25-cv-00197
	§	
PAMELA BONDI, ATTORNEY GENERAL OF THE UNITED STATES, et al.,	§	
	§	
	§	
Respondents.	§	

RESPONDENTS' OPPOSITION TO PETITIONER'S REQUEST FOR A TEMPORARY RESTRAINING ORDER

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RESPONDENTS' OPPOSITION TO PETITIONER'S REQUEST FOR A TEMPORARY RESTRAINING ORDER

Respondents[1], the Secretary of Homeland Security (DHS), et al., file this response in opposition to Petitioner's request for a Temporary Restraining Order (TRO) and response to the Amended Petition for Habeas Corpus. As discussed below, Petitioner has failed to satisfy the heavy burden of showing a clear entitlement to the emergency relief that he seeks requesting the Court declare that Petitioner's detainment under 8 U.S.C. § 1225, and not under 8 U.S.C. § 1226, violates due process laws and requesting the Court enjoin DHS from continuing to detain Petitioner. Here and as part of his habeas petition, Petitioner seeks to enforce a vacated Immigration Judge's bond decision and, a ruling that Petitioner is detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225. But Petitioner's claims lack merit. Plaintiff is detained under § 235(b) of the Immigration and Nationality Act (INA) and he is therefore subject to mandatory detention. Additionally, the Board of Immigration Appeals (BIA) vacated the IJ's bond determination for Petitioner based on the recent BIA decision: *In Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). For these and all the reasons discussed below, the Court should deny Petitioner's TRO request and habeas petition.

STANDARD OF REVIEW

A plaintiff seeking a temporary restraining order or preliminary injunction typically must establishthat he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Fifth Circuit has "cautioned repeatedly that a preliminary injunction is an

[1] The United States Department of Justice does not represent the warden in this action. Federal Respondents, however, have detention authority over aliens detained under Title 8 of the United States Code.

extraordinary remedy which should not be granted unless the party seeking it has clearly carried the burden of persuasion on all four requirements." *Bluefield Water Ass'n, Inc. v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009) (internal quotation marks omitted). Moreover, here, the Petitioner's burden is even heavier because he seeks a mandatory injunction. The standard TRO merely preserves the status quo. *E.g., Wenner v. Tex. Lottery Comm'n*, 123 F.3d 321, 326 (5th Cir. 1997). A mandatory injunction, in contrast, "seeks to alter the status quo" and "mandates that defendants take some action inconsistent with the status quo." *Texas v. Ysleta del Sur Pueblo*, No. 3:17-CV-00179, 2018 WL 1566866, at *9 (W.D. Tex. Mar. 29, 2018) A party seeking a mandatory injunction "bears the burden of showing a clear entitlement to the relief under the facts and the law." *Justin Indus., Inc. v. Choctaw Sec., L.P.*, 920 F.2d 262, 268 n.7 (5th Cir. 1990) (emphasis added). As such, mandatory preliminary relief "is particularly disfavored." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976). Here, the status quo is detention, which Petitioner seeks to alter by obtaining, as preliminary relief, enjoining DHS from continuing to detain him. He therefore must show a clear entitlement to relief under the facts and law.

BACKGROUND

Petitioner is an illegal alien, native and citizen of Mexico who entered the United States without inspection in April 2002 (Dkt. 5, ¶ 27). Petitioner was detained by U.S. Immigration and Customs Enforcement, Department of Homeland Security ("ICE") on or about July 26, 2025. ICE served Petitioner a Notice to Appear ("NTA") charging him with removability pursuant to Immigration and Nationality Act ("INA") 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. 1-2) In

the NTA, the examining immigration official denied Petitioner admission into the United States, explained the basis for charging Petitioner with being subject to removal, and ordered Petitioner to appear in immigration court. *Id* Petitioner requested a custody redetermination pursuant to 8 C.F.R. § 1236 and on August 6, 2025, the Immigration Judge ("IJ") ordered Petitioner released from custody under a bond of $5,000. (Dkt. 1-3) DHS filed a Notice of Intent to Appeal Custody Determination, EOIR Form 43, (Dkt. 1-27) which automatically stayed the bond decision for the duration of any appeal. *See* 8 C.F.R. § 1003.19(i)(2).

On August 19, 2025, Petitioner filed a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents ("cancellation application"). (Dkt. 1-15)

On September 5, 2025, the BIA issued its decision in *In Matter of Yajure Hurtado*. The decision is controlling precedent for IJs.

On October 1, 2025, an individual hearing was held in Petitioner's removal proceedings. The IJ in the removal proceedings denied Petitioner's cancellation application and ordered Petitioner removed from the United States to Mexico. (Dkt. 1-15) On October 21, 2025, Petitioner appealed the IJ's decision denying the cancellation application and order of removal and such appeal is still pending. (Dkt. 1-16)

On October 21, 2025, the BIA granted DHS' appeal challenging the bond determination based on *In Matter of Yajure Hurtado* holding that the IJ lacked jurisdiction to issue a bond in this case and vacated the IJ's bond order. (Dkt. 1-8).

On October 30, 2025, Petitioner filed the instant habeas petition and TRO.

ARGUMENT

Petitioner is detained under INA § 235(b), 8 U.S.C. § 1225(b)(2), which subjects him to mandatory detention.

Prior to addressing the merits, Respondents acknowledge that this Court has previously rejected its arguments concerning the applicability of § 1225(b)(2). However, Respondents, with this motion, request a reconsideration of that prior ruling. *See Camreta v. Greene*, 563 U.S. 692, 701 n. 7 (2011)("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."). 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 Petitioner is subject to mandatory detention.

I. Petitioner has no likelihood of success on the merits of his habeas petition because he is subject to mandatory detention under 8 U.S.C. § 1225.

In a petition for a writ of habeas corpus, the petitioner is challenging the legality 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 necessarly a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation."). As the Supreme Court has stated in no unmistakable terms, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

With this backdrop in mind, Respondents proceed to the statutory text on mandatory versus discretionary detention.

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). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of prosecution, 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 INA, 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 ("IJ") 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 IJ 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). IJs 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 IJs to consider). But regardless of the factors IJs 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. BIA Review

The BIA is an appellate body within the Executive Office for Immigration Review ("EOIR"). *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 [INA] that the Attorney General may by regulation assign to it," including IJ 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 [INA] 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 IJ 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 INA, 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.

D. Petitioner is Subject to Mandatory Detention Under 8 U.S.C. § 1225

Petitioner's habeas petition should be denied because he falls under the plain language of the mandatory detention provisions in 8 U.S.C. § 1225. In particular, he is 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 Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Petitioner does not deny that he is an alien present in the United States who entered the country unlawfully "without being admitted or paroled." As an alien "present in the United States who has not been admitted," he is by definition "an applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, he is subject to mandatory detention. *See id.* § 1225(b)(2)(A) (instructing that "the alien *shall* be detained" in the case of "an alien seeking admission" who "is not clearly and beyond a doubt entitled to be admitted" (emphasis added)).

1. The Plain Language and Statutory Structure of the INA

"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].

8 U.S.C. § 1225(b)(2). The INA defines "applicant for admission" as "an alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). 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 contract, 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 Government's 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 be 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. The 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). *See, e.g., United States v. Menasche*, 348 U.S. 528, 538-39 (1955) ("It is our duty to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section[.]"). Because Petitioner 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).

2. History of the INA

The congressional amendments to the INA support the Government's reading of the statute. It should be noted that this argument does not rely upon "legislative history"—the internal evolution of a statute as reflected in the comments of legislative committees or individual legislators. Instead, the Government is pointing to the statutory history of the legislation. *See U.S. v. Kay*, 359 F.3d 738, 752 (5th Cir. 2004) "[s]ubsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction.") (citing *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 380-81, 89 (1969)). In this case, the history of the INA—specifically congressional amendments to Section 1225(b)(2)—confirms the Government's position.

As the BIA analyzed in-depth in *Hurtado*, Congress amended the INA through the passage

of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, Div. C, § 302(a), 110 Stat. 3009-546, 3009-579, which added § 1225(a)(1), 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 recognized the same, explaining that Congress passed IIRIRA 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.* This purpose flies in the face of the underlying premise of Petitioner'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 history of the legislation, reflected in the unambiguous text, rejects Petitioner's interpretation that because he evaded detection, he is entitled to more privileges than persons who presented themselves at the border.

3. The BIA's Decision in *Matter of Hurtado*

The text and history of the INA are unmistakable that aliens like Petitioner 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. However, the Government 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*.

The BIA's interpretation of § 1225(b)(2) is not undermined by the passage of the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025). 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 mandator 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) (holding that because "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,"--"[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")). Thus, the BIA correctly concluded that both § 1225(b)'s and the Laken Riley Act's mandatory detention requirements should be given effect.

4. Non-controlling authority from other districts.

In the absence of controlling authority, the 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 Respondents acknowledge that there are district court decisions that hold to the contrary,[2] it bears mention that (1) none of these decisions are binding and (2) *Hurtado* carries far more weight considering the BIA's subject-matter expertise on the matter and the thoroughness of its analysis. Moreover, several district courts have adopted the Respondents' and the BIA's interpretation, and more are likely to follow. *See Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) and *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). And at least one court has, albeit in a different context, adopted the Respondents' position here that an alien who long ago entered the country illegally is still considered an applicant for admission. *See Pena v. Hyde*, 2025 WL2108913 (D. Mass. July 28, 2025) (stating that a Brazilian national who entered the country illegally in 2005 "remains an applicant for admission" in 2025).

Most recently, two district courts in the Fifth Circuit have followed *Hurtado's* reasoning in denying habeas relief. First, in *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, ECF No. 9, (N.D. Tex. October 24, 2025) Ex. 1, a court in the Northern District of Texas agreed with the

[2] 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).

Government—including with respect to virtually all, if not all, of the points raised above. Overall, the court observed that "the plain language of the mandatory-detention provision weighs heavily against the petitioner's assertion that he is subject only to discretionary detention," and that arguments to the contrary "flatly contradict[] the statute's plain language and the history of legislative changes enacted by Congress." Ex. 1 at 1, 5. The court also made an additional observation regarding a 1997 regulation which evinced a "clear implication" that prior administrations recognized the applicability of mandatory detention in this context but "declined to exercise the full extent of its authority under the INA." *Id.* at 5.

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). 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.* 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.

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.

II. Injunctive relief is not available to petitioner because he has not shown irreparable harm.

Petitioner cannot demonstrate irreparable harm. Respondents make this argument not to minimize the absence of Petitioner from the home, but to point out the failure of the pleadings to meet the burden of demonstrating an entitlement to emergency injunctive relief in this case. Petitioner incorrectly asserts that due process rights have been violated and that Petitioner has been unlawfully detained since an August 6, 2025 bond order causing him physical and mental harm. However, the bond order was vacated by the BIA on appeal based on the BIA's decision in *Hurtado* and for the reasons discussed above, Petitioner is subject to mandatory detention under the INA.

III. The balance of equities and public interest favor the government.

The balance of equities and public interest factors "merge when the Government is the opposing party." *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner bears the burden of demonstrating that the balance tips in his favor. Here, the balance of equities favor the government and its interest in detaining an alien subject to mandatory detention under the INA. Congress vested significant authority and discretion in the Secretary of Homeland Security to administer the immigration laws. Here, DHS is exercising its discretion, due to a change in law, to continue to detain the Petitioner. Thus, granting Petitioner the relief that he seeks would likely only cause further complications, more so, when Petitioner has an order of removal issued by an IJ.

CONCLUSION

For the foregoing reasons, the Respondents respectfully requests that the Court deny Petitioner's motion for a TRO and Petitioner's request for habeas relief. The Court should enter judgment as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1225(b).

Dated: November 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on November 7, 2025, the foregoing was filed and served on all attorneys of record via the District's ECF system.

s/ Hilda M. Garcia Concepcion
HILDA M GARCIA CONCEPCION
Assistant United States Attorney