

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FACUNDO SUAREZ GUERRERO,	§	
	§	
<i>Petitioner,</i>	§	
	§	
v.	§	CIVIL NO. H-25-5351
	§	
KRISTI NOEM, <i>et al.</i> ,	§	
	§	
<i>Respondents.</i>	§	

**GOVERNMENT’S AMENDED RESPONSE TO ORDER FOR
EXPEDITED RESPONSE**

The Government¹ files this amended response to the Court’s Order for Expedited Response. (Dkt. 7). The Petitioner, Facundo Suarez Guerrero, is not entitled to an immediate bond hearing under 8 U.S.C. § 1226(a) for the following reasons.

I. ARGUMENT SUMMARY

The Petitioner admittedly entered and remained within the United States without having been admitted, inspected, or otherwise paroled. (Dkt. 1 at 5). Therefore, he is subject to mandatory detention under § 235(b) of the Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1225(b)—even before his removal order becomes final,

¹ The Government notes that as stated by the Court (Dkt. 7 at 4), the default rule in habeas petitions is that the person having custody of the petitioner is the sole proper respondent. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). However, the named federal respondents in this case, rather than the named warden, make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

as confirmed in *Matter of Jonathan Javier YAJURE HURTADO*, 29 I. & N. Dec. 216 (BIA 2025),² an opinion from the Board of Immigration Appeals (“BIA”) that is controlling on immigration courts. The United States Border Patrol (“USBP”) charged Petitioner with removability pursuant to §212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”), 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. 1-3 at 1). The Petitioner has admittedly failed to request a bond in immigration court, alleging that to do so would be futile. (Dkt. 1 at 20). However, the Court should consider Petitioner’s failure to even request a bond in immigration court to be a failure to exhaust administrative remedies. Contrary to his assertion, the Petitioner is not subject to indefinite detention. Rather, he is mandatorily detained under 8 U.S.C. § 1225(b) during the duration of his removal proceedings until his removal order becomes final. Petitioner is being afforded the due process, statutory and constitutional rights to which he is entitled through his pending immigration proceedings.

II. 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

² Available at <https://www.justice.gov/eoir/media/1413311/dl?inline> (last accessed November 18, 2025).

(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); 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, the Government proceeds 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,” 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 she “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.

III. ARGUMENT

A. Petitioner Failed to Exhaust Administrative Remedies

The Court should decline to exercise jurisdiction over this case, because as a threshold matter, the Petitioner failed to exhaust administrative remedies. In accordance 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 this case, the Petitioner admittedly failed to request a bond in the immigration proceedings. Therefore, he has not exhausted administrative remedies. Petitioner may argue that exhaustion is futile in light of *Hurtado*. However, his failure to even seek a bond comports with failure to exhaust. 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 has 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 the petitioner’s favor does not mean that the “extraordinary circumstances” apply where exhaustion is futile. Petitioner must seek a bond, and if denied, he must appeal to (and receive a decision from) the BIA for the matter to be administratively exhausted. It is of little moment whether Petitioner would be able to successfully convince the BIA that *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), was wrongly decided or that his circumstances are factually distinguishable from *Hurtado*; the point is that Petitioner cannot eschew the process altogether. *See 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)

(dismissing for failure to exhaust where petitioner sought “review of the application and interpretation of *Matter of Yajure Hurtado*” but had yet to appeal to the BIA). In sum, not only does the law require exhaustion, practical and intuitive considerations highlight why this result must follow here in the bond context.

Accordingly, the Petitioner’s claims are not ripe for review by this Court.

Additionally, there is no impediment to Petitioner’s removal once he has exhausted his administrative remedies and his removal order becomes final. Therefore, any argument that Petitioner’s removal is indefinite is unfounded. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (requiring that petitioner provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future).

B. The Petitioner is Lawfully Detained Under the Mandatory Detention Provision of 8 U.S.C. § 1225(b)(2)

Petitioner is lawfully detained under the plain language mandatory detention provisions in INA § 235(b), 8 U.S.C. § 1225(b)(2). 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). Section 1225 authorizes the detention of applicants for admission. 8 U.S.C. § 1225(b)(1) and (2); *see also Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The Supreme Court has recognized that 1225(b)(2) “applies to all applicants for admission not covered by § 1225(b)(1). 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); *see also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023). While § 1225 does not provide for aliens to be released on bond, DHS has the sole discretion to temporarily release any applicant for admission on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022). Under the plain language of INA § 235, 8 U.S.C. § 1225, Petitioner—who is present in the United States without being admitted—is subject to detention under § 1225(b)(2). *Jennings v. Rodriguez*, 583 U.S. at 297 (“Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants of admission until certain proceedings have concluded.”). Indeed, the Petitioner admits that he entered the United States “without inspection or admission.” Dkt. 1 at 5. 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)). Because the Petitioner is properly detained under 8 U.S.C. § 1225(b), his claims that he is being detained before a final removal order had been entered without legal authority fail.

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 she 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 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 United States 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. Dec. 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. Dec. 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 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) (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. Persuasive Decisions from Other Courts

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 the Government acknowledges that there are district court decisions that hold to the contrary,³ 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 Government’s and the BIA’s interpretation, and more are likely to follow. *See Vargas*

³ This includes decisions from other courts in the Southern District of Texas. *See, e.g., Mejia Juarez v. Bondi, et al.*, No. 4:25-CV-03937 (S.D. Tex. October 27, 2025) (J. Hoyt); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *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).

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 Government's 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).

Recently, three district courts in the Fifth Circuit have followed *Hurtado's* reasoning—one in denying requested expedited temporary injunctive relief—and two in denying habeas relief. First, in *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, ECF No. 9, (N.D. Tex. October 24, 2025), a court in the Northern District of Texas agreed with the Government—including with respect to most of the points raised above. Government Exhibit 1. 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." Gov't Ex. 1. 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.

A district in the Southern District of Texas, has also recently agreed with the BIA's reading of the INA, holding that, “[t]he text of § 1225(b)(2)(A) supports the Government's position,” in denying the habeas petition and granting the Government's motion for summary judgment. *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge). The *Cabanas* Court reasoned that “[t]he statutory definition of applicant for admission is broad and, indeed, so broad that Petitioner doesn't dispute that he is such a person. []. That factual determination itself resolves the question as to whether §1225(b)(2)(A) applies.” *Id.* at *4 (emphasis in

original). Thus, the *Cabanas* Court held that the plain language of the Immigration and Nationality Act required a ruling in the Government's favor. The court also explained why it was not persuaded by the many other district court decisions deciding to the contrary. *Id.* at *5. The Government urges the Court to follow the reasoning of the court in *Cabanas*.

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

A. The Petitioner has been Afforded Due Process

Petitioner alleges that his due process rights are being violated. However, Petitioner is being permitted to exercise his due process rights through exercise of his right to request a bond in immigration court and appeal any unfavorable decision to the BIA, as well as the right to full removal proceedings which remain pending. Petitioner has received the due process to which he is entitled. Therefore, his claims of constitutional violations of his due process rights fail.

IV. CONCLUSION

For the reasons stated above, the Respondents have shown cause as to why the Petitioner is properly mandatorily detained under § 1225(b), and he is not entitled to an immediate bond hearing under § 1226(a). Therefore, the Petitioner's requested relief should be denied.

Dated: November 18, 2025

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney

By: /s/ Catina Haynes Perry

Catina Haynes Perry
Assistant United States Attorney
Attorney in Charge
Southern District No. 577869
Texas Bar No. 24055638
1000 Louisiana, Suite 2300
Houston, Texas 77002
Tel: (713) 567-9354
Fax: (713) 718-3300
E-mail: Catina.Perry@usdoj.gov

Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that on November 18, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/ Catina Haynes Perry
Catina Haynes Perry
Assistant United States Attorney