UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CONCEPCION CORONADO ACUNA, Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	§ § § § § § § § § §	Civil Action No. 4:25-CV-05359

THE FEDERAL RESPONDENTS' RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

Respectfully submitted,

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

As directed by the Court (ECF No. 3), Kristi Noem, Marcos Charles, Todd Lyons, and Pamela Bondi (hereinafter the "Federal Respondents") hereby respond to Petitioner's habeas petition. The Federal Respondents request that the Court deny the petition and grant summary judgment in the Government's favor, in accordance with Federal Rule of Civil Procedure 56.

First, Petitioner has failed to exhaust the administrative remedies available to her, offering no facts or evidence to show that she pursued any remedy past ICE's initial bond denial. Petitioner has not even sought a bond hearing before an IJ, let alone give the BIA the opportunity to review an IJ's decision. Eschewing the administrative process altogether is not permitted.

Second, as this Court just recently held, this case must fail on the merits as a plain reading of 8 U.S.C. § 1225(b)(2) supports a finding that Petitioner is subject to mandatory detention. As an alien who has not been admitted into the United States, Petitioner is considered an applicant for admission in the United States and therefore "shall be detained" during the pendency of her removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

This Court should deny Petitioner's habeas petition, as this Court and multiple other district courts in the Fifth Circuit alone have done.[1] *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL

[1] The Government would note that it is irresponsible for Petitioner to misrepresent that "Courts have uniformly rejected DHS' and EOIR's new interpretation[.]" ECF No. 1 ¶ 27.

3048926 (W.D. La. Oct. 31, 2025); *Rene Garibay-Robledo v. Noem*, No. 1:25-CV-00177 (N.D. Tex. Oct. 24, 2025).[2]

While this Court has already ruled on the issue, the Government's legal arguments are restated below.

II. BACKGROUND

It is undisputed that Petitioner Concepcion Coronado Acuna is a non-citizen who entered the United States without inspection. ECF No. 1 ¶ 34. She was taken into ICE custody on October 23, 2025, and is charged with having physically entered the United States without being inspected, admitted, or paroled by an immigration officer. She currently remains in detention through the pendency of her removal proceedings, as is required pursuant to the mandatory detention provision of 8 U.S.C. § 1225(b)(2) for aliens like Petitioner who have not been admitted into the United States. Petitioner has not indicated that she has sought a custody redetermination hearing from an immigration judge ("IJ").

Petitioner now brings this habeas claim asserting that she is bond-eligible because she should instead fall under 8 U.S.C. § 1226(a), which gives the Attorney General the discretion to detain or release the alien on bond through the pendency of removal proceedings. As the Federal Respondents herein show, the petition should be denied for failure to administratively exhaust. And exhaustion aside, summary judgment is proper as Section 1226(a) is inapplicable.

[2] To date, this order has not been published on Westlaw. The Government therefore attaches that decision herein as Exhibit 1.

III. LEGAL STANDARD ON SUMMARY JUDGMENT

Generally, 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 is 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, 106 S.Ct. 1348, 89 L.Ed.2d 538 (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). The non-movant's burden "will not be satisfied by 'some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence.'" *Boudreaux v. Swift Transp. Co.*, 402 F.3d 536, 540 (5th Cir. 2005) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (per curiam)).

IV. 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, 61 S.Ct. 574, 85 L.Ed. 830 (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 necessary a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 238, 72 S.Ct. 525, 96 L.Ed. 547 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235, 16 S.Ct. 977, 41 L.Ed. 140 (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 Supreme Court has stated in no unmistakable terms, "Detention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003).

With this backdrop in mind, the Federal 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, 138 S.Ct. 830, 200 L.Ed.2d 122 (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," she 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*, 583 U.S. at 299).

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 her removal proceedings, release her on bond, or release her 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 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). BIA members 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 IBA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). In that decision, the BIA held that IJs lack 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.

V. ARGUMENT

Petitioner styles her habeas petition as three distinct claims: a violation of the INA, a violation of federal bond regulations, and a violation of due process. *See* ECF No. 1 ¶¶ 48–64. As an initial matter, Counts II and III are unavailing and, in any event, get at the same central statutory challenge presented in Count I: that her detention is unlawful because she is entitled to a bond hearing as an alien detained under Section 1226, not Section 1225. Count II, which alleges a violation of a federal bond regulation, is functionally duplicative of his statutory claim. The bond regulation that she avails himself to is only applicable to her if she is subject to discretionary detention, as opposed to mandatory detention. Thus, the statutory dispute remains the core issue. And Count III, which alleges a due process violation for failing to provide a bond hearing, is also duplicative. Again here, the lack of a bond hearing would implicate due process only if Petitioner did fall within Section 1226. If Petitioner falls within Section 1225, there would be no due process issues because any right to a bond hearing during removal proceedings comes from a federal statute and not the Constitution, as it is well-settled that detention during the pendency of removal proceedings presents no constitutional infirmities, such as due process concerns. *See supra* Part IV (discussing Supreme Court precedent establishing that detention during removal proceedings is permissible under the Constitution). Thus, where mandatory detention—i.e., detention without bond—is applicable, such detention does not violate due process.

As discussed below, Petitioner's habeas petition should be denied because (1) she has not exhausted the administrative remedies available to detained aliens, and (2) she is subject to mandatory detention.

A. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

As a threshold matter, the Court should deny Petitioner's habeas petition because she has not administratively exhausted her claims. It is well-taken that a federal prisoner 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).

Here, Petitioner has not indicated that she has exhausted her administrative remedies; to the contrary, Petitioner never sought a bond at all because she believes such efforts would be unsuccessful.[3] *See* ECF No. 1 ¶ 36. Petitioner's rationale is essentially that because the BIA in *Hurtado* held that aliens like her do not qualify for a bond, she does not have to seek a bond at all—i.e., exhaust. But this line of argument is unpersuasive and does not meet the petitioner's "burden to demonstrate an exception [to the exhaustion requirement] is warranted." *Hinojosa*, 896 F.3d at 314. As explained by the Fifth Circuit, exceptions to exhaustion "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

[3] The facts here stand in contrast with *Cabanas*, where the detainee at least sought a bond before the immigration judge in the first instance before filing for habeas. *See* 2025 WL 3171331 at *1.

omitted). *Fuller* itself is illustrative, where the petitioner argued that administrative appeal was futile because the time for filing the 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, the notion that the administrative body is unlikely to find the law in the petitioner's favor does not mean that the "extraordinary circumstances" apply and exhaustion is futile.[4] Petitioner must seek a bond, and if denied, she 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 her circumstances are factually distinguishable from *Hurtado*; the point is that Petitioner cannot eschew the process altogether. This Court would not be the first to reach this result. *See, e.g., 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 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). Even in *Abdoulaye*, the petitioner had actually asked the IJ for a bond and was denied. If declining to appeal to the BIA alone constitutes failure to exhaust, surely declining to even ask the IJ in the first instance is all the more impermissible. The exhaustion doctrine was precisely designed to prevent such a practice. *See, e.g., Woodford v. Ngo*, 548 U.S. 81, 89, 126 S.Ct. 2378,

[4] Indeed, if the BIA's decision *Hurtado* were as clearly erroneous as Petitioner would maintain, an appeal to the BIA to re-consider the issue—even if ultimately unsuccessful—would be far from futile.

165 L.Ed.2d 368 (2006) (explaining that exhaustion of administrative remedies serves two main purposes: protecting administrative agency authority and promoting judicial efficiency).

Not only does the law require exhaustion, practical and intuitive considerations highlight why this result should follow here in the bond context. For this reason alone, the habeas petition should be denied.

B. 8 U.S.C. § 1225(B)(2) VS. 8 U.S.C. § 1226(A)

Petitioner's statutory argument, and her habeas petition, must be denied because the plain text of the INA provides that she falls under the mandatory detention provisions of 8 U.S.C. § 1225 as an alien present in the United States without being admitted or paroled.

1. The Plain Text

"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). As the INA unmistakably instructs, "[a]n alien present in the United States who has not been admitted . . . shall be deemed . . . an applicant for admission." 8 U.S.C. § 1225(a)(1). The Supreme Court has repeatedly affirmed this point: that aliens present in the country who have not been admitted are considered applicants for admission. *See Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109, 140 S.Ct. 1959, 207 L.Ed.2d 427 (2020) (same). In turn, Section 1225 of the INA provides that "in the case of an alien who is an applicant for admission," if that alien "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)(A). Petitioner cannot contest that she is "an alien present in the United States who has not been admitted[.]" 8 U.S.C. § 1225(a)(1). As a straightforward statutory matter, as an alien "present in the United

States who has not been admitted," she is by definition "an applicant for admission." 8 U.S.C. § 1225(a)(1); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *3 (W.D. La. Oct. 31, 2025) ("[U]nder the plain text of § 1225(a)(1), any alien physically present in the United States who has not been admitted is an 'applicant for admission,' regardless of how long they have been in the country or whether they intended to apply or enter properly."). Thus, she 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)).

To be sure, there is no distinction between "an applicant for admission" and "an alien seeking admission," as those terms appear in 8 U.S.C. § 1225(b)(2)(A). 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, 138 S.Ct. 1684, 201 L.Ed.2d 1 (2018)). Here, "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, 134 S.Ct. 557, 187 L.Ed.2d 472 (2013). Read properly, a person "seeking admission" is just another way of describing an applicant for admission. 8 U.S.C. § 1225(a)(1). As put by Judge Hendrix, "Insofar as the term 'applicant for admission' is more passive than 'seeking admission,' this is inherent in the nature of agent nouns and their corresponding

gerunds." *Garibay-Robledo*, 1:25-CV-00177, Exh. 1 at 9. Similarly, Judge Devine concluded that the two terms are synonymous, and the petitioner's "hair-splitting parsing of the statute's text contradicts the ordinary meaning" and "makes no sense." *Olalde v. Noem*, No. 1:25-CV-00168, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025).

Also noteworthy is Congress' use of the phrase "arriving alien" at certain points throughout Section 1225, but not Section 1225(b)(2)(A). *See, e.g.*, 8 U.S.C. §§ 1225(a)(2), (b)(1), (c), (d)(2). This phrase "arriving alien" distinguishes 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). *See Olalde*, 2025 WL 3131942 at *4 ("Here, in contrast, § 1225(b)(2) has no similar language limiting applicability only to aliens who are in the process of 'arriving.'"). Instead, Congress focused not on arrival, but on admission. And as explained *infra* Part V.B.2, this choice was deliberate.

The statutory structure of Section 1225(b) also supports the Federal Respondents' interpretation. Section 1225(b)(1) applies to applicants for admission who are "arriving in the United States" and provides for expedited removal proceedings, and 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. 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.

Finally, 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 be admitted." *Id.* § 1225(a). Here, 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, 75 S.Ct. 513, 99 L.Ed. 615 (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. The History of the Text

"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, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992).

All the same, the evolution of Section 1225(b)(2) over time 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. 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.* (quoting H.R. Rep. 104-469, pt. 1, at 225). This consideration belies Petitioner's interpretation that because she initially snuck onto U.S. soil illegally, she is entitled to more privileges than a person who presented themselves at the border.

Moreover, despite that prior presidential administrations had taken a more permissive approach and afforded bond hearings to aliens like Petitioner, such leniency is just that—leniency—and does not change the plain text of the statute which requires detention. *See* 8 U.S.C. § 1225(b)(2)(A) ("an alien who is an applicant for admission . . . *shall* be detained" for removal proceedings" (emphasis added)). Indeed, consider the language from the Federal Register that Petitioner herself relies on (*see* ECF No. 1 ¶¶ 41–44), which provides that "*[d]espite being applicants for admission*, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination." *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (emphasis added). First of all, this statement flies squarely in defiance of the text of the INA. *Compare id. with Jennings v. Rodriguez*, 583 U.S. 281, 297, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018) (explaining that Section 1225(b) "*mandate[s] detention of applicants for admission* until certain proceedings have concluded." (emphasis added)). A valid statute always prevails over a conflicting regulation or policy statements made in connection to such a regulation. *See, e.g.*, *Duarte v. Mayorkas*, 27 F.4th 1044, 1060 n.13 (5th Cir. 2022). Not only so, but this statement in fact highlights why the Government's position is correct. As put by Judge Hendrix in the Northern District of Texas, "[t]he clear implication of [this language] is that . . . the government [previously] declined to exercise the full extent of its authority under the INA." *Garibay-Robledo*, 1:25-CV-00177 (Exh. 1). In conceding that aliens present who have not been admitted or paroled are in fact

applicants for admission, yet contemplating bond "[d]espite" this point, this language tacitly acknowledged that its terms were more lenient than—i.e., conflicted with—the INA. As Judge Hendrix pointed out, this acknowledgement actually supports the Government's position.

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

The text and its history 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)(1). To be sure, as Petitioner has identified, many courts have held otherwise. However, the Government would point firstly 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. The BIA utilized its immigration expertise and gave a lengthy, comprehensive account as to why the Federal Respondents' position in this case is not only correct, but comfortably so. *See, e.g.*, *Sandoval*, 2025 WL 3048926 at *6 ("[T]he BIA is a court that possesses subject matter expertise on immigration matters . . . when considering the BIA's thorough analysis of the plain statutory text and legislative history of the INA, this Court finds *Hurtado* persuasive."). This Court should thus accord great weight to the persuasiveness of *Hurtado*.

4. Persuasive Authority from Other Courts

In the absence of controlling authority, this Court should follow its own prior judgment as well as the multitude of district courts that have carefully interpreted the plain language of the INA and found Section 1225(b)(2) applicable. While there are district court decisions that

hold to the contrary (including cases identified by Petitioner (*see* ECF No. 1 ¶ 25)), 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 miniscule persuasive weight, and (3) as Judge Devine noted, many of the courts that have ruled against the Government "appear to defer substantially to each other." *Olalde*, 2025 WL 3131942, at *1. Many district courts have adopted the Federal Respondents' and the BIA's interpretation, and more are likely to follow in the wake of *Hurtado*. *See*, *e.g.*, *Cabanas*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (ruling in favor of the Government on this issue); *Sandoval*, 2025 WL 3048926 (same); *Garibay-Robledo*, 1:25-CV-00177, ECF No. 9 (Exh. 1) (same); *Olalde*, 2025 WL 3131942; *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (same); *Oliveira v. Patterson*, 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (same); *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). For instance, in *Garibay-Robledo*, 1:25-CV-00177, ECF No. 9, Judge Hendrix in the Northern District of Texas squarely agreed with the Government, observing 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 the argument to the contrary "*flatly contradicts* the statute's plain language and the history of legislative changes enacted by Congress." Exh.

2 at 1, 5 (emphasis added). The other district courts similarly reached their holdings based on the same arguments presented herein.

The Government would urge the Court to rely on its own decision and these others, which critically assessed the statutory question, and adopt their well-reasoned and textually faithful analysis.

VI. CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that the Court deny the habeas petition 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)(2).

Dated: November 17, 2025

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I certify that the forgoing motion has 4,965 words, in accordance with this Court's procedures.

/s/ Shawn D. Ren
Shawn D. Ren
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that on November 17, 2025, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

/s/ Shawn D. Ren
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