UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

EDUARDO COLMENERO-LOPEZ, *Petitioner*, v. KRISTI LYNN NOEM, Secretary of the U.S Department of Homeland Security; TODD LYONS, Acting Director of Immigration and Customs Enforcement; PAMELA BONDI, United States Attorney General; MIGUEL VERGARA, Field Office Director of Enforcement and Removal Operations, Laredo Field Office, *Respondents*.	§ § § § § § § § § § § § § § § § §	CIVIL ACTION NO. 5:25-cv-00221

RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS, MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION TO DISMISS AND, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Respondents[1] hereby respond to Petitioner's Writ of Habeas Corpus (Dkt. No. 1) and Motion for Temporary Restraining Order (Dkt. No. 2) and respectfully request that this Court deny his petition under 28 U.S.C. § 2241 and grant summary judgment for the Government under Federal Rule of Civil Procedure 56.

First, Petitioner failed to exhaust administrative remedies. This is enough, by itself, to deny his § 2241 petition. Second, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), based on the statute's plain language and structure, the history of the Immigration and

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

Nationality Act (INA), the Board of Immigration Appeals (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and persuasive decisions from other district courts, including the recent decisions in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge) and *Arquimedes Maceda Jiminez v. Raymond Thompson, et al.* No. 4:25-cv-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (J. Eskridge). Accordingly, this Court should deny Petitioner's habeas petition and grant summary judgment for the Government.

BACKGROUND

Petitioner, Eduardo Colmenero-Lopez, is a citizen of Mexico, who last entered the United States without inspection in 2010 in Texas. *See* Dkt. No.1 at 9, ¶ 1; **USA Bate 018**.[2] Petitioner has three prior Voluntary Returns and was sent back to Mexico on September 7, 2010, May 2, 2005, and January 5, 2003. **USA Bate 019.** On April 18, 2019, Petitioner was taken into ICE custody after he admitted that he was in the United States illegally. **USA Bate 018.** On the same day, Petitioner was served with 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. No. 1-2 at 124. Petitioner was subsequently released on his own recognizance. Dkt. No. 1 at 9, ¶1.

On March 27, 2023, Petitioner was served another NTA. **USA Bate 003**. 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 was charged with violating the INA Sections 212(a)(6)(A)(i).

[2] A copy of the A-file is filed under seal and a copy has been provided to Petitioner's counsel via email correspondence.

Petitioner is currently in ICE custody. Dkt. No. 1 at 9 ¶ 1. Petitioner has not requested a bond hearing. Dkt. No. 1.

On November 17, 2025, Petitioner filed a Writ of Habeas Corpus, requesting the Court release the Petitioner or in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C § 1226(a). Dkt. No. 1. On the same day, Petitioner filed his emergency motion for Temporary Restraining Order. Dkt. No. 2.

APPLICABLE LAW

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 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).

ISSUE PRESENTED

Whether Petitioner's detention under 8 U.S.C. § 1225(b)(2) is lawful.

ARGUMENT

Prior to addressing the merits, the Government acknowledges that some Courts in this District have previously rejected its arguments concerning the applicability of § 1225(b)(2). However, the Government, with this motion, requests 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 and the Southern District of Texas, this Court should reconsider its interpretation of § 1225(b)(2) and find that Petitioner is subject to mandatory detention.

A. PETITIONER FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES PRIOR TO FILING THE PETITION.

As a threshold matter, the Court should dismiss the habeas Petition because Petitioner has not administratively exhausted his claims. In accord with the general rule that parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, it is well-taken that a habeas petitioner must exhaust all administrative remedies prior to filing a federal habeas petition under § 2241. *See*, *e.g.*, *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same). In this case, Petitioner has not requested a bond hearing before an immigration judge in light of *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Dkt. No. 1.

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.

B. 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. Here, Petitioner is an alien present in the United States who entered the country unlawfully "without being admitted or paroled." Dkt. No. 1-2 at 121; **USA Bate 003**. As discussed below, an alien "present in the United States who has not been admitted," is by definition "an applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, Petitioner 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). Based on this text, if an alien is an "applicant for admission," then they are subject to mandatory detention. 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). Here, there is no question that Petitioner was not previously admitted into the United States, and the Petitioner is therefore subject to mandatory detention and is not eligible for a bond.

Petitioner may argue, and other courts has mistakenly held, that there is separate requirement: that Petitioner also be "seeking admission." But, in the context of § 1225(b)(2), "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).

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 should govern over a more general provision

encompassing that same matter. *See Matter of GFS Indus., L.L.C.*, 99 F.4th 223 (5th Cir. 2024). 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.[3] The Court should be reluctant 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. The BIA's Decision in *Matter of Hurtado*

The text of the INA requires 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. Here, the

[3] To be clear, there remains a large population of aliens who remain subject to § 1226 discretionary detention (and not § 1225 mandatory detention). For example, aliens who were admitted to the United States via a tourist visa, but who overstayed that visa, are subject to § 1226 detention.

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.

3. Persuasive decisions from other district 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).[4] Although the Government acknowledges that there are

[4] The Court should be aware that a court in the Central District of California recently certified a class of aliens who are being detained under § 1225(b)(2). *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D.

district court decisions that hold to the contrary,[5] several district courts have adopted the Government's 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).

Most recently, a district court in the Western District of Louisiana 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.

Another court in the Southern District of Texas decided *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge), in the Government's favor. In denying the habeas petition and granting the Government's motion for summary judgment, the

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Cal. Nov. 25, 2025). The Bautista court granted class certification and partial summary judgment for the plaintiffs in that case, but did not issue a class-wide declaratory judgment. The court also did not issue a class-wide injunction. As such, although the matter is still being reviewed by the Department of Justice, the Bautista court's decision does not have preclusive effect with respect to this case.

[5] 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).

Cabanas Court held "[t]he text of § 1225(b)(2)(A) supports the Government's position." 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 she 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.

Similarly, another court in the Southern District of Texas decided *Arquimedes Maceda Jiminez v. Raymond Thompson, et al.* No. 4:25-cv-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (J. Eskridge) in the Government's favor. In denying the habeas petition and granting the Government's motion for summary judgment, the *Maceda* Court adopted the ruling and analysis of the *Cabanas* Court in its entirety. *Id.* at 2. Furthermore, the *Maceda* Court found that Petitioner provided no persuasive argument or decision to suggest that §1225(b)(2)(A), as applied to him, violates his due process rights. *Id.* 8 U.S.C. § 1225 does not provide for a bond hearing or release from custody on bond, regardless of whether the applicant for admission is placed into full removal proceedings. The Supreme Court upheld the facial constitutionality of § 1225(b) in *Thuraissigiam*, (finding that applicants for admission are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more"). *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 140 (2020). Similarly, this Court should reject Petitioner's due process claims as they are without merit. The Government urges this Court to follow the reasoning of *Cabanas* and the Government's other proffered authorities.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that the Court deny Petitioner's request for habeas relief (Dkt. No. 1) and motion for temporary restraining order (Dkt.

No. 2) and grant the instant motion. Furthermore, the Respondents request the Court 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: December 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ancy Thomas, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 3rd day of December 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: ***s/ Ancy Thomas***
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