

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

LAREDO DIVISION

BERTA MARIA SOLARES RODRIGUEZ,	§	
	§	
Petitioner,	§	
	§	
v.	§	CIVIL ACTION NO. 5:25-CV-222
	§	
	§	
KRISTI NOEM, Secretary, U.S. Department Of Homeland Security, ET AL.,	§	
	§	
Respondents.	§	

**RESPONDENTS' RESPONSE TO PETITIONER'S PETITION
FOR WRIT OF HABEAS CORPUS AND EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION
AND MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW the Respondents, Kristi Noem, Secretary of the U.S. Department of Homeland Security; the U.S. Department of Homeland Security; Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement (ICE); Pamela Bondi, U.S. Attorney General; and Miguel Vergara, ICE Field Office Director of Detention and Removal Operations, Laredo Field Office, in their official capacities, ¹ by and through the United States Attorney for the Southern District of Texas, and hereby file their Response to Petitioner Berta Maria Solares Rodriguez's Petition for Writ of Habeas Corpus (Petition) and Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction (TRO/PI Motion) and Motion to Dismiss Petitioner's Petition

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 named federal respondents who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

for Writ of Habeas Corpus and respectfully request that this Court deny her Petition and TRO/PI Motion under 28 U.S.C. § 2241 or dismiss the Petition under Federal Rules of Civil Procedure 12(b)(1) and/or 12(b)(6).

BACKGROUND

Petitioner Berta Maria Solares Rodriguez (Solares) is a native and citizen of Guatemala who entered the United States without inspection on or about January 27, 2008. See Exhibit A – Form I-213 Record of Deportable/Inadmissible Alien. On October 24, 2025, Solares was encountered by ICE Officers at the Dallas County Jail following her arrest by the Dallas Police Department on domestic assault charges. *Id.* at page 2. On that date, a U.S. Department of Homeland Security Warrant for Arrest of Alien was issued and was served on Solares on November 8, 2025. See Exhibit B – Form I-200 Warrant for Arrest of Alien. On November 8, 2025, ICE served Solares with a Notice to Appear (NTA) in removal proceedings under section 240 of the Immigration and Nationality Act (INA) charging her with being subject to removal pursuant to Section 212(a)(6)(A)(i) of the INA as an alien present in the United States without admission or parole or who arrived in the United States at any time or place other than as designated by the Attorney General. See Exhibit C – Notice to Appear. Currently, Solares remains in ICE custody at the Webb County Detention Center in Laredo, Texas. Petition at page 12, paragraph 10.

LEGAL STANDARDS

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).

Rule 12(b)(1), Federal Rules of Civil Procedure, permits dismissal of an action when the court lacks subject matter jurisdiction. A motion under Rule 12(b)(1) may be decided on any of three bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts. *Barrera-Montenegro v. United States*, 74 F.3d 657,659 (5th Cir. 1996); *Fletcher v. United States Dept. of Veterans Affairs*, 955 F.Supp. 731, 733-34 (S.D. Tex. 1997).²

A motion under Rule 12(b)(1) should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief. *Home Builders Association of Miss., Et Al. v. City of Madison, Miss., Et Al.*, 113 F.3d 1006,1009 (5th Cir. 1998); *Benton v. United States*, 960 F.2d 19,21 (5th Cir. 1992). A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case. *Home Builders Association of Miss.*, 113 F.3d at 1009; *Nowak v. Ironworkers*

² Because this motion is based on Rule 12(b)(1) of the Federal Rules of Civil Procedure, evidence of undisputed facts that bear on the Court’s subject matter jurisdiction may be introduced without converting the motion into a motion for summary judgment. *Williamson*, 645 F.2d at 414.

Local 6 Pension Fund, 81 F.3d 1182,1187 (2d Cir 1996). The burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting subject matter jurisdiction. *St. Paul Reinsurance Company, LTD. v. Greenburg*, 134 F.3d 1250,1253 (5th Cir. 1998). The question of subject matter jurisdiction is an issue for the court to decide. *Williamson v. Tucker*, 645 F.2d 404,413 (5th Cir. 1981).

Rule 12(b)(6) allows dismissal if a plaintiff fails “to state a claim upon which relief may be granted.” Fed. R. Civ. P. 12(b)(6). In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), the Supreme Court confirmed that Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). *Twombly* overruled the Supreme Court's prior statement in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), that “a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” See *Twombly*, 550 U.S. at 562-63 (“*Conley's* ‘no set of facts’ language ... is best forgotten as an incomplete, negative gloss on an accepted pleading standard ...”). To withstand a Rule 12(b)(6) motion, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570.

In *Ashcroft v. Iqbal*, --- U.S. ----, 129 S.Ct. 1937 (2009), the Supreme Court elaborated on the pleading standards discussed in *Twombly*. The Court set out the following procedure for evaluating whether a complaint should be dismissed: (1) identify allegations that are conclusory, and disregard them for purposes of determining whether the complaint states a claim for relief; and (2) determine whether the remaining allegations, accepted as true, plausibly suggest an entitlement to relief. *Iqbal*, 129 S.Ct. at 1949-50.

With respect to the “plausibility” prong of the dismissal analysis, *Iqbal* explained that “[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). The *Iqbal* Court further noted that “[t]he plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (citing *Twombly*, 550 U.S. at 556). Finally, the Supreme Court has made clear that “when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, ‘this basic deficiency should ... be exposed at the point of minimum expenditure of time and money by the parties and the court.’” *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007)(quoting *Twombly*, 550 U.S. 544).

RELIEF REQUESTED BY PETITIONER

Through her Petition, Solares challenges her continuing civil immigration detention pending her removal proceedings. Solares contends that as an alien apprehended after many years of continuous, although illegal, presence in the United States, she is not subject to mandatory detention under INA Section 235 (8 U.S.C. § 1225) but rather is eligible for release on bond pending her removal proceedings pursuant to INA Section 236 (8 U.S.C. § 1226). See Petition at page 9, paragraph 2. Solares’s Petition sets out three claims for relief: violation of the INA, violation of due process, and ICE’s violation of its own regulations and statutory violation. *Id.* at pages 69 -71, paragraphs 139 – 147.

In her Petition’s prayer for relief, Solares requests her immediate release, or in the alternative, that she be provided with a bond hearing before a neutral Immigration Judge pursuant to 8 U.S.C. § 1226(a) within 3 days. *Id.* at page 71. Similarly, through her TRO/PI Motion,

Solares seeks a temporary restraining order and/or a preliminary injunction compelling Respondents to release her from ICE custody or in the alternative, provide a prompt bond hearing at which the government bears the burden of demonstrating flight or safety risk by clear and convincing evidence. See TRO/PI Motion at pages 25-26.

LEGAL ANALYSIS

I. Failure to Exhaust Administrative Remedies.

As a threshold matter, the Court should dismiss the habeas petition because Solares has not administratively exhausted her 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). Here, Solares has not indicated that she has requested a bond hearing before an immigration judge (IJ), nor that she has been denied a bond by an IJ. See Petition at page 16, paragraph 23.

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, 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. *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.

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

Prior to addressing the merits, Respondents acknowledge that this Court has previously rejected arguments concerning the applicability of § 1225(b)(2) in similar cases. However, the Respondents respectfully request a reconsideration of those prior rulings. *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 Solares is subject to mandatory detention.

Solares's habeas petition should be denied because she falls under the plain language of the mandatory detention provisions in 8 U.S.C. § 1225. Here, Solares admits that she is an alien present in the United States who entered the country unlawfully without being "admitted or paroled." 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, Solares 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)).

A. 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 Solares was not previously admitted into the United States, and that she is therefore subject to mandatory detention and is not eligible for a bond.

Solares may argue, and other courts have mistakenly held, that there is a 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 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).

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 been admitted.” *Id.* § 1225(a). So, while the general rule might be that aliens detained pending removal may be detained, the specific rule for aliens who have not been admitted is that this subset of aliens must be detained.³ The Court should be loath to eviscerate the specific text

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.

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 Solares 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).

B. The BIA’s Decision in *Matter of Hurtado*.

The text of the INA requires that aliens like Solares 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, Respondents 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 BIA utilized its immigration expertise and gave a lengthy, comprehensive account as to why the Respondents’ 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.

C. 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 Solares subject to mandatory detention under § 1225(b)(2). Although the Respondents acknowledge that there are numerous district court decisions that hold to the contrary,⁴ several district courts have adopted the Respondents’ and the BIA’s interpretation. *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 agreed with the BIA’s reading of the INA. *See Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La.

⁴ 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).

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.

Finally, another court in the Southern District of Texas recently 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 *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. ⁵

⁵ The Court should be aware that a court in the Central District of California recently certified a class of

CONCLUSION

Solares 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 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 decision in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge). Moreover, Solares failed to exhaust her administrative remedies prior to filing her Petition for Writ of Habeas Corpus with this Court. Accordingly, the Court should deny or dismiss her § 2241 petition and Emergency Motion for Temporary Restraining Order and/or Preliminary Injunction.

Respectfully submitted,

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aliens who are being detained under § 1225(b)(2). *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. 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.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONDENTS' RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION AND MOTION TO DISMISS PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS in the case of BERTA MARIA SOLARES RODRIGUEZ v. KRISTI NOEM, ET AL, Civil Action Number 5:25-CV-222, was sent to Dan Gividen, Attorney for Petitioner, 18208 Preston Road, Suite D9-284, Dallas, Texas 75252, by electronic mail through the District Clerk's electronic case filing system, on this the 2nd day of December, 2025.

"S/" Hector C. Ramirez _____
HECTOR C. RAMIREZ
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