UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

JHONATAN A. MARTINEZ MENJIVAR, *Petitioner,*	§ § §	
v.	§	CIVIL ACTION NO. 5:25-cv-00230
KRISTI NOEM, Secretary, Department of Homeland Security, *et al.*, *Respondents*.	§ § § §	

RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND MOTION FOR SUMMARY JUDGMENT

Respondents, Kristi Noem, Secretary of Homeland Security, *et al.,*[1] file this response to the Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief (hereafter "the Petition") (Dkt. No. 1) and respectfully request that the Court deny his Petition under 28 U.S.C. § 2241 and grant summary judgment for Respondents under Federal Rule of Civil Procedure ("FRCP") 56 for two significant reasons.

First, Petitioner Jhonatan A. Martinez Menjivar failed to exhaust administrative remedies. This is enough, by itself, to deny his § 2241 Petition. Second, following an arrest in October 2025. and pending an appeal of a removal order, 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 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

[1] Respondents note that the proper respondent in a habeas petition is the person with custody over the petitioners. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Since the filing of the Petition, Petitioner has remained in the U.S. Immigration and Customs Enforcement ("ICE") federal facility: Webb County Detention Center in Laredo, Texas. Dkt. No. 1, ¶ 2; **Gov't Ex. 1**, ¶ 4(j) (Declaration of Supervisory Deportation Officer Juan Medina Jr.). That said, it is the originally named federal respondents, 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.

district courts, including the recent decisions in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) and *Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.).

For these reasons, and the reasons provided below, the Court should deny the Petition (Dkt. No. 1) and grant summary judgment for Respondents.

RELEVANT FACTUAL BACKGROUND[2]

Petitioner, Jhonatan A. Martinez Menjivar, is a native and citizen of El Salvador. Dkt. No. 1-1 at 1; **Gov't Ex. 1**, **¶ 1**. In or about June 8, 2016, Petitioner, his mother, and two siblings illegally entered the United States, without inspection by an immigration officer at the time of entry, at or near the Rio Grande Valley, Texas Border Patrol Sector. Dkt. No. 1, ¶ 34; **Gov't Ex. 2** at 1, 3 (Petitioner's Record of Deportable/Inadmissible Alien). On that date, U.S. Border Patrol encountered and apprehended Petitioner and his family members and transported them to the McAllen Station after a determination that they had entered unlawfully from Mexico. **Gov't Ex. 2** at 3.

On June 9, 2016, Petitioner was processed and placed in expedited removal proceedings pursuant to Section 235 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b)(1). **Gov't Ex. 1**, ¶ 4(c); **Gov't Ex. 2** at 1, 3-4. However, on June 20, 2016, USCIS determined a positive credible fear finding as to Petitioner; as a result, on June 26, 2016, Petitioner was released pursuant to an Order of Release on Recognizance and under ICE's Alternatives to Detention Program ("ATD Program"). **Gov't Ex. 1**, ¶ 4(d)-(f).

[2] Respondents' Relevant Background is taken from Petitioner's Petition (Dkt. No. 1) and attached **Gov't Exs. 1-4**.

On April 11, 2024, the Immigration Judge ("IJ") presiding over Petitioner immigration proceedings, and over Petitioner's family unit, where his mother is the lead in immigration case, orally denied Petitioner's applications for asylum, withholding of removal to El Salvador, and deferral of removal under Article III of the Convention Against Torture ("CAT"). **Gov't Ex. 3** at 1-2 (April 11, 2024- Order of the Immigration Judge); **Gov't Ex. 1**, ¶ 4(g). The IJ, thus, ordered Petitioner removed from the United States to El Salvador. **Gov't Ex. 3** at 1-2. Petitioner reserved his right to appeal the IJ's decision by the appeal deadline of May 13, 2024. *Id.* at 2. Petitioner timely filed his Notice to Appeal from a Decision of an Immigration Judge on May 13, 2024, with the Board of Immigration Appeals ("BIA"), and his appeal remains pending before the BIA. *See* **Gov't Ex. 4** at 1-10 (Petitioner's Notice to Appeal from a Decision of an Immigration Judge).

On October 26, 2025, ICE re-encountered Petitioner after the Midlothian Police Department in Ellis County, Texas arrested Petitioner for driving while intoxicated; the charges for driving while intoxicated remain pending. **Gov't Ex. 1**, ¶ 4(i). Petitioner was taken into the custody of ICE at the Webb County Detention Center in Laredo, Texas, where Petitioner remains detained pending the BIA's decision on Petitioner appeal of the IJ's removal decision. *Id.* ¶ 4(g)-(k).

<u>PROCEDURAL BACKGROUND</u>

On November 24, 2025, Petitioner filed his Petition pursuant to 28 U.S.C. § 2241, claiming Respondents' detention of Petitioner is unlawful under the INA, it violates bond regulations, his Fifth Amendment rights under the due process clause, thus, he requests a writ directing his immediate release or in the alternative, a bond hearing pursuant to 8 U.S.C. § 1226. *See* Dkt. No. 1, ¶¶ 39-49; Dkt. No. 1 at 17. On December 3, 2025, the Court ordered the parties to "file advisories, specifically addressing whether Petitioner is a class member, and the effect of the

declaratory relief" provided for in *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSSBFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Dkt. No. 3 at 2. Only Respondents filed an Advisory with the Court, outlining their position that Petitioner is not a member of the *Maldonado* class. Dkt. No. 10 at 2.

On December 12, 2025, the Court ordered Respondents to file a response to the petition by **December 17, 2025**, instructing Respondents that the pleading must specifically address whether the Court has jurisdiction to entertain the Petition. Dkt. No. 11 at 1 (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)). In response, Respondents provide that the proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Padilla*, 542 U.S. at 435. Since the filing of the Petition, Petitioner has remained in the ICE federal facility: Webb County Detention Center in Laredo, Texas. **Gov't Ex. 1**, ¶ 4(j). The warden of that facility is Warden Marico Garcia. That said, originally named federal respondents in this case, not Warden Mario Garcia, make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

Respondents note that while an IJ ordered the expedited removal of Petitioner from the United States to El Salvador on April 11, 2024 and denied Petitioner's applications for asylum, withholding of removal, and deferral of removal under CAT (**Gov't Ex. 3**), the IJ's decision is not final until the pending appeal to the BIA is dismissed. *See* 8 C.F.R. § 1241.1(a). Because the IJ's removal decision is not final, and Petitioner's detention is thus not subject to 8 U.S.C. § 1231, the Court has jurisdiction over Petitioner's claims challenging the legality of his detention by ICE following his DWI arrest on October 26, 2025 under 8 U.S.C. § 1225(b)(2)(A). *See* **Gov't Ex. 1**, ¶ 4(j).

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).

ARGUMENT

A. Petitioner Failed to Exhaust his Administrative Remedies Prior to Filing the Petition.

As a threshold matter, the Court should dismiss the 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).

In this case, Petitioner did not plead any facts concerning any requests for a bond hearing or any challenges to his detention by ICE following his DWI arrest by Midlothian Police Department on or about October 26, 2025. *See* **Gov't Ex. 1**, ¶ 4(k) ("Currently, the Petitioner has

not filed a bond redetermination request with the immigration court."). Furthermore, the Petition fails to state any relief that Petitioner sought from the IJ, or the BIA in the pending appeal of the IJ's April 2024 removal decision. Instead, the Petition provides that "[a]ny bond application at this point would be deemed futile as IJ's are bound by *Yajure Hurtado*." *See id.*; Dkt. No. 1, ¶ 37. Here, Petitioner has not exhausted his available remedies for challenging his current detention, specifically by requesting a custody redetermination by an IJ or the BIA pending a decision on his appeal of the IJ's removal decision. *See id*. Hence, habeas relief is unwarranted. *See id*.

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's failure to exhaust his remedies warrants, by itself, the denial of habeas relief.

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 admits that he is an alien present in the United States who entered the country in approximately in 2016 unlawfully "without inspection." Dkt. No. 1, ¶ 34. 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 have 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 Respondents' 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 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. 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

[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.

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 Government's position in this case is not only correct, but comfortably so. The Court should thus accord great weight to the persuasiveness of *Hurtado*.

Moreover, the BIA's interpretation of § 1225(b)(2) is not undermined by the passage of the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3 (2025). The BIA's *Hurtado* decision specifically addressed the issue of whether its interpretation of § 1225(b)(2) rendered the recent Laken Riley Act superfluous. *Hurtado*, 29 I. & N. Dec. at 221. The BIA first pointed out that nothing in the Laken Riley Act purported to alter or amend § 1225(b)(2)'s mandatory detention requirement. *Id*. Moreover, the BIA noted that the fact that the Laken Riley Act required mandatory detention for a subset of illegal aliens that are also subject to mandator detention under § 1225(b)(2) is not a basis to ignore the mandatory detention requirement of § 1225(b)(2). *Id*. at 222. In support of this holding, the BIA cited the Supreme Court's *Barton* decision. *Id*. (citing *Barton v. Barr*, 590 U.S. 222, 239 (2020) (holding that because "redundancies are common in statutory drafting--sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication,"--"[r]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text")). Thus, the BIA correctly concluded

that both § 1225(b)'s and the Laken Riley Act's mandatory detention requirements should be given effect.

3. Persuasive decisions from other district courts.[4]

In the absence of controlling authority, the Court should follow those district courts that have applied the plain language of the INA and found aliens like the Petitioner subject to mandatory detention under § 1225(b)(2). Although Respondents acknowledge that there are district court decisions that hold to the contrary,[5] several district courts have adopted the Respondents' and the BIA's interpretation, and more are likely to follow. *See Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) and *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025).

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

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[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. 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) (on appeal).

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.

Lastly, on November 13, 2025, 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 *Cabanas* Court held "[t]he text of § 1225(b)(2)(A) supports the Government's position." *Accord Maceda Jimenez*, 2025 WL 3265493, at *1-*2. 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.

Respondents request that the Court follow the reasoning of *Cabanas* and *Maceda Jimenez* and the Respondents' other proffered authorities.

C. Petitioner's Remaining Due Process Claim Fails.

In addition to the statutory arguments (Dkt. No. 1, ¶¶ 39-45), Petitioner asserts a Due Process claim. Dkt. No. 1, ¶¶ 46-49. This claim has no merit. With respect to Due Process, Petitioner argues that his detention "without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates her [sic] right to due process." Dkt. No. 1, ¶ 49. This type of conclusory assertion, which merely reasserts a disagreement with Respondents' application

of § 1225(b)(2), does not establish a valid Due Process claim. *See, e.g.*, *Cabanas*, 2025 WL 3171331, at *7 (acknowledging that the habeas petition's allegation that government's detention without a bond redetermination violates due process "appears to present nothing beyond the larger contention as to the relevant and applicable statute to apply"). Therefore, the Due Process Claim should be denied.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny Petitioner's request for habeas relief (Dkt. No. 1) and grant the instant motion. The Court should enter judgment as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Baltazar Salazar, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on December 17, 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: *s/ Baltazar Salazar*
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