UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JUAN MORALES BAUTISTA,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:25-CV-05664
	§	
BRET BRADFORD, *et al.*,	§	
	§	
Respondents.	§	

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

Respectfully submitted,

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Respondents Bret Bradford, Kristi Noem, and Pamela Bondi (hereinafter, the "Federal Respondents")[1] hereby request that the Court deny the petition for writ of habeas corpus and grant summary judgment in the Government's favor, in accordance with Federal Rule of Civil Procedure 56.

This case centers around whether an alien present in the United States who has never been admitted is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). This challenge to the mandatory detention framework must fail on the merits as a plain reading of 8 U.S.C. § 1225 instructs 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 his removal proceedings. 8 U.S.C. § 1225(b)(2)(A). This Court should deny Petitioner's habeas petition, as multiple other district courts in the Fifth Circuit alone have done. *See, e.g., Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Topal v. Bondi*, No. 1:25-CV-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.).

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[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also id.* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the Federal Respondents, not the named warden in this case, who makes the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code. Therefore, while the named warden is the proper party in form, the Federal Respondents respond herein as the real party in interest.

II. BACKGROUND

As Petitioner Juan Morales Bautista himself concedes, he is a native and citizen of Mexico and entered the United States without inspection. ECF No. 4 ¶¶ 1, 19. Bautista came into ICE custody after a traffic stop in Florica and was placed directly into removal proceedings. *Id.* ¶ 3. He has been 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. In the NTA, the examining immigration official determined that Petitioner was not entitled to admission, explained the basis for charging Petitioner with being subject to removal, and ordered Petitioner to appear in immigration court. *Id.*

On November 13, 2025, an immigration judge denied Petitioner's bond request, finding it lacked jurisdiction because Petitioner's detention was governed by INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). ECF No. 4 ¶ 4. Petitioner now brings this habeas claim asserting that his detention is unlawful because he falls under the INA's discretionary detention provision. For the following reasons, the Court should grant summary judgment in favor of the Government and deny the habeas petition.

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 is the more general detention statute, and it provides that an alien may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers has discretion to release an alien who demonstrates that he "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 as such aliens are 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 his habeas petition as three claims, but his central claim is (or at least should be) Count Two, which essentially argues that he is entitled to a bond hearing

notwithstanding the Government's application of the mandatory detention provision.[2] *See* ECF No. 4 ¶¶ 30–32 ("Respondents lack statutory authority to detain him while his removal proceedings are pending[.]"). In addition to that claim, he asserts two other ancillary arguments. In Count One, Petitioner alleges that detention without bond inherently violates due process, including under *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). *See* ECF No. 4 ¶¶ 25–29. And in Count Three, he argues that his "significant ties to the United States warrant release." *Id.* ¶¶ 33–38.

The Federal Respondents first address Counts One and Three, which can be summarily disposed of, before turning to the main statutory dispute.

A. COUNT ONE: DUE PROCESS

Count One appears to assert that detention without a bond hearing during removal proceedings is inherently unlawful because the Government cannot detain him without an individualized assessment. To the extent this is Petitioner's argument, this claim amounts to no more than a throwaway argument which can be swiftly rejected, as it is well-settled that detention during the pendency of removal proceedings presents no constitutional infirmities, such as due process concerns. This argument is addressed by the Federal Respondents' earlier

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[2] Peculiarly, whether intentional or inadvertent, it does not appear that Petitioner actually makes the argument that Section 1225(b)(2)(A) is inapplicable to him, and that Section 1226(a) is the proper detention authority. Indeed, his entire petition makes no mention of Section 1226 at all. Despite that he references the BIA's decision in *Hurtado*, it is dubious at best that he has actually made the relevant statutory challenge. Instead, he argues that the Government's application of Section 1225(b)(2)(A) "creates an unconstitutional scheme of mandatory detention without procedural safeguards." This argument is, at heart, a due process argument—the same as Count One—not the statutory argument which some petitioners across the country have prevailed on.

All the same, in an abundance of caution, the Federal Respondents respond herein to address the applicability of Section 1225(b)(2)(A) in the event the Court construes Petitioner to have made the statutory claim.

discussion, *see supra* Part IV, as to the propriety of detention during removal proceedings. *See, e.g.*, *Carlson v. Landon*, 342 U.S. 524, 238, 72 S.Ct. 525, 96 L.Ed. 547 (1952) ("Detention is necessary a part of th[e] deportation procedure."); *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).

Petitioner's misplaced reliance on *Zadvydas* only highlights the groundlessness of his argument, as *Zadvydas* and its six-month presumption as to the lawfulness of detention apply only to aliens in "post-removal-period detention," i.e., it addresses the impropriety of indefinite post-removal order detention. 533 U.S. at 701. Indeed, the Supreme Court in *Demore* contrasted *Zadvydas* post-removal-order detention with detention during removal proceedings, finding the latter permissible in light of the "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings[.]" 538 U.S. at 526. It explained that such detention was permissible in light of "th[e] fundamental premise of immigration law" that "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Id.* at 521. And the Supreme Court explicitly distinguished this type of detention—that is, detention during removal proceedings—with post-removal-order detention, which is governed by *Zadvydas*; in so doing, the Supreme Court

rejected the extension of *Zadvydas* to detention during removal proceedings and explained why the two were fundamentally different. *See id.* at 527–31.

Petitioner's argument amounts to a claim that mandatory detention under 8 U.S.C. § 1225(b)(2)(A)—and thus that provision itself—violates the Due Process Clause of the Constitution.[3] As Judge Eskridge recently explained when considering and rejecting this very argument, while post-removal period detention under *Zadvydas* "require[es] a constitutional constraint on unbounded detention," detention pending a determination of removability "is a constitutional part of [the removal] process." *Jimenez v. Thompson*, 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) (quoting *Demore*, 538 U.S. at 531). He observed that the Supreme Court in *Zadvydas* explicitly distinguished post-removal-period detention from detention during removal proceedings, finding the latter permissible. *Id.*; *see also Zi v. Gillis*, No. 5:19-CV-00150, 2020 WL 7390488, at *2 (S.D. Miss. Oct. 6, 2020) ("*Zadvydas* does not apply to Petitioner as he is currently detained pending removal proceedings."). By Petitioner's line of argument, 8 U.S.C. § 1225(b)(2)(A) would have to itself be unconstitutional on its face.[4] There is no support for such an argument.

B. COUNT THREE: SIGNIFICANT TIES

For his third claim, Petitioner alleges that his "significant ties to the United States warrant release." ECF No. 4 at 6. Of course, "significant ties" is not an independent cause

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[3] The mandatory detention provision provides for just that: mandatory detention. *See* 8 U.S.C. § 1225(b)(2)(A). If Petitioner's argument is that his detention without bond under that statute is a violation of due process, he is necessarily making the claim that the mandatory detention statute itself is unconstitutional; after all, the statute does not merely permit detention, the statute requires it. Petitioner has failed to identify, and undersigned counsel is unaware, of a single case holding that 8 U.S.C. § 1225(b)(2)(A) is unconstitutional (as opposed to merely inapplicable in certain contexts, as a statutory matter).

[4] *See supra* note 3.

of action nor otherwise a claim for relief, as Petitioner would have it. As pled, his discussion of his ties is no more than an equitable appeal that does not bear on the resolution of the legal issues.[5]

C. COUNT TWO: MANDATORY VS. DISCRETIONARY DETENTION UNDER THE INA

Finally, Petitioner has not been unlawfully deprived of a bond hearing.[6] This contention must be denied because the plain text of the INA provides that he falls under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A) 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

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[5] At most, Petitioner's discussion of government versus private interests in detention in paragraph 37 go toward a due process balancing framework, but such argument would be duplicative of, and bleed in with, Petitioner's Count One due process claim. And as already addressed, there is no balancing to be done in this context as detention during removal proceedings decidedly does not present any due process concerns. *See supra* Part V.A.

[6] *See supra* note 2 (explaining that Petitioner has not actually made the statutory argument but rather seems to have re-cast his due process challenge).

shall be detained" for removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Petitioner cannot contest that he 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," he 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, he is subject to mandatory detention. *See id.* § 1225(b)(2)(A) (instructing that "the alien *shall* be detained" in the case of "an alien seeking admission" who "is not clearly and beyond a doubt entitled to be admitted" (emphasis added)).

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) (emphasis added). 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). Of particular note, the "or otherwise" indeed highlights that the INA considers "applicants for admission" to be a *subset* of "seeking admission." *See, e.g., Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963–64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"). This language informs that at most, not all aliens "seeking admission" are necessarily "applicants for admission," but all "applicants for admission" are necessarily "seeking admission." And as Petitioner does not contest, he is an applicant for admission. 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); *see also Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (rejecting this purported distinction as "pack[ing] a lot of meaning into what appears to be an alternate phrasing"); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) ("'[A]pplicant' and 'seeker' are, indeed, accepted synonyms." (citing multiple dictionaries)). Indeed, multiple federal courts of appeals have implicitly rejected this strained effort to separate "seeking admission" from "applicant for admission." *See Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) ("Because [Petitioner] was never lawfully admitted, he qualifies as someone 'seeking admission[].'"); *Succar v. Ashcroft*, 394 F.3d 8, 13 (1st

Cir. 2005) (treating, based on statute, "aliens who are present in the United States, but who have not been inspected and admitted," as "aliens who are seeking admission").

Moreover, to the extent Petitioner is making the argument that Petitioner could no longer be "seeking admission" because he is already in the United States, that argument—to whatever extent it carries colloquial appeal—is, to someone well-versed in the INA, misguided. The INA speaks precisely, and has explicitly defined what "admission" means. "Admission" is not defined as "entry," as Petitioner would need, but rather as "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added); *see Olalde v. Noem*, No. 1:25-CV00168, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025) (making this same observation when ruling for the Government); *Chen v. Almodovar*, No. 1:25-CV-8350, 2025 WL 3484855, at *5 (S.D.N.Y. Dec. 4, 2025) (same). An alien is an applicant for admission notwithstanding any time he has been present in the United States if that alien has never lawfully gained entry into the country; he is still "seeking admission" because he has not attained what "admission" means: "lawful entry."[7] 8 U.S.C. § 1101(a)(13)(A); *see Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws[.]").

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),

[7] By way of a common analogy, a person might be physically present in a movie theater after sneaking into the theater, but that of course does not mean that he has been admitted into the theater.

(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, e.g.*, *Cabanas*, 2025 WL 3171331 at *5 (Eskridge, J.) ("The problem with the argument, however, is that Congress could have said that § 1225(b) applied only to arriving aliens if that's what was meant. But it didn't, even as three other closely related subsections did."); *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.C.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 Evolution 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); *see Naranjo v. Uhls*, No. 4:25-CV-05756, 2025 WL 3771447, at *2 (S.D. Tex. Dec. 31, 2025) ("[C]anons of statutory construction (like the presumption against superfluity) apply only where the text is ambiguous . . . but where, as here [in the case of whether Section 1225(b)(2)(A) is applicable], the statutory text is unambiguous, canons of construction don't support departure from that text.").

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 he initially snuck onto U.S. soil illegally, he 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, e.g.*, *Chen v. Almodovar*, No. 1:25-CV-08350, 2025 WL 3484855, at *7 (S.D.N.Y. Dec. 4, 2025) ("A failure by the Executive Branch to enforce a statutory provision, or its conclusion that the law does not apply, does not nullify a duly-enacted law."); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451, at *4 (E.D. Wis. Dec. 8, 2025) ("The fact that previous administrations did not seek to administer or enforce the laws Congress had enacted, however, does not change the meaning of those statutes.").

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).[8] To be sure, as Petitioner has identified, many courts have held otherwise.

[8] To be sure, 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.*; *see, e.g.*, *Rojas v. Olson*, No. 25-CV-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) ("Indeed, nothing in the Laken Riley Act suggests any Congressional thoughts concerning the issues presented in this case."); *Chen v. Almodovar*, No. 1:25-CV-8350, 2025 WL 3484855, at *6 (S.D.N.Y. Dec. 4, 2025) (noting that the Laken Riley Act was a response to Congress's "perception that the Executive Branch had *failed to enforce* the detention options that were already available to it" (emphasis added)).. 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 (continue)

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 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, 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

Barton decision. *Id.* (citing *Barton v. Barr*, 590 U.S. 222, 239 (2020) (holding, specifically interpreting the INA, 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.

Government "appear to defer substantially to each other."[9] *Olalde*, 2025 WL 3131942, at *1. Many district courts have adopted the Federal Respondents' and the BIA's interpretation, and the list continues to grow. *See, e.g.*, *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 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.); *Chen v. Almodovar*, No. 1:25-CV-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Ramos v. Lyons*, No. 2:25-CV-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.); *Valencia v. Chestnut*, -- F.Supp.3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.); *Olalde v. Noem*, No. 1:25-CV-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Devine, J.); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr., J.); *Topal v. Bondi*, No. 1:25-CV-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Buescher, J.); *Chavez v. Noem*, -- F.Supp.3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.).[10]

[9] Of course, what Judge Devine was getting at is the reality that many of the judges who have ruled on this issue have not actually critically looked into the issue, and instead have opted to defer to the majority. Of course, this deference then snowballs, as subsequent courts are in turn even more inclined to defer as the ratio grows more lopsided. On this point, the Federal Respondents again urge the Court that "[w]hat governs this case is the text of the statute, not what other district courts have concluded." *Id.* Judge Eskridge made a similar point in his opinion, reminding that "it remains incumbent upon district courts to each make their own, independent assessment." *Cabanas*, 2025 WL 3171331 at *5.

[10] This list of favorable authorities is not and does not purport to be exhaustive.

And multiple federal appellate courts have implicitly adopted the Government's position on this issue. *See Jiminez-Rodriguez*, 996 F.3d at 194 n.2 ("Because [Petitioner] was never lawfully admitted, he qualifies as someone 'seeking admission[].'"); *Succar*, 394 F.3d at 13 (treating, based on statute, "aliens who are present in the United States, but who have not been inspected and admitted," as "aliens who are seeking admission"). For instance, in *Garibay-Robledo*, 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." *Garibay-Robledo*, 2025 WL 3264482 at *2. The other district courts similarly reached their holdings based on the same arguments presented herein.

The Government would urge the Court to adopt these courts' 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 in favor of the Government.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 5, 2026, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

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