UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

PEDRO MONTOYA TOVAR, *Petitioner*,	§	
	§	CIVIL ACTION NO. 1:25-cv-307
v.	§	
PAMELA BONDI, *et al*., *Respondents*.	§	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

The Respondents[1] hereby respond to Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1), move for summary judgment, and request that the Court deny the Petition.

SUMMARY OF ARGUMENT

Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") and is presently detained at the Port Isabel Detention Center in Los Fresnos, Texas. Petitioner filed this habeas corpus Petition, seeking immediate release from immigration detention or alternatively, a bond hearing before an Immigration Judge. Dkt. No. 1 at 7. Petitioner, however, is subject to mandatory detention under

[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). The Port Isabel Detention Center is a federal facility, so there is no warden involved in this case. That said, it is the originally named federal respondents who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

8 U.S.C. § 1225(b)(2). As such, the petition for a writ of habeas corpus should be denied and summary judgment entered in favor of the government.

BACKGROUND

Because Respondents could not obtain the complete A file within the deadline to file this response, Respondents state the following factual background, when not supported by Exhibits, based on information[2] and belief. Petitioner entered the United States near Hildago, Texas on or about January 1, 1999. **Gov't Ex. 1**. Petitioner was not then admitted or paroled after inspection by an immigration officer. *Id.* On or about November 11, 2020, Petitioner was encountered by immigration authorities near Sarita, Texas. **Gov't Ex. 2**. On November 12, 2020, the Petitioner was served with a notice to appear and charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien who is 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. **Gov't Ex. 1**.

On or about November 2, 2020, Petitioner filed a Form I-130, Petition for Alien Relative. **Gov't Exh. 3**. Petitioner's Form I-130 was approved by United States Citizenship and Immigration Services ("USCIS") on or about February 26, 2021. *Id.* On or about August 1, 2024, the Department of Homeland Security ("DHS") agreed to dismiss Petitioner's removal proceedings as an exercise of prosecutorial discretion. On November 24, 2025, Petitioner was taken into immigration custody. Petitioner was served with a Notice to Appear and was again charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien who is present in the United States

[2] The information gathered is primarily from ICE sources. Copies of these documents are not attached because Respondents could not obtain the full A file in the deadline allowed for a response.

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. **Gov't Ex. 4**.

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 IS SUBJECT TO MANDATORY DETENTION.

Petitioner's habeas petition should also be denied because Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner has been charged by the Department of Homeland Security as being an alien who is present in the United States without having been admitted or paroled. **Gov't Ex. 2**.. 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, the Petitioner was not previously admitted to the United States, and he has not otherwise shown that he is entitled to be admitted. 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 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 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 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 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

[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.

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. This 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 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. For the reasons discussed below, including recent decisions from other courts in the Fifth

Circuit and the Southern District of Texas, this Court should find that Petitioner is subject to mandatory detention pursuant to § 1225(b)(2).

3. Petitioner is Currently "Seeking Admission"

Respondents contend Petitioner is "seeking admission" as that phrase is used in 8 U.S.C. § 1225(b)(2). Petitioner has an approved Form I-130, Petition for Alien Relative. *See* **Gov't Exh. 3**. However, he cannot adjust his status in the United States under 8 U.S.C. 1255(a) because he has not been admitted or paroled into the United States. As such, Petitioner must file a Form I-601A waiver and seek consular processing to be lawfully admitted for lawful permanent residence through his approved Form I-130. This will require Petitioner to leave the United States, consular process, and then seek admission into the United States at a designated port of entry. Petitioner's case illustrates how many aliens who are present in the United States without admission are still "seeking admission." Because Petitioner is an applicant for admission who is presently seeking a future admission to the United States based on his approved Form I-130, he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). For this additional reason, the Court should deny the instant Petition.

B. THE APPROPRIATE REMEDY

Respondents urge the Court to deny the instant petition, as Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). If the Court grants the instant petition, Respondents urge the Court not to order the Petitioner's instant release. A bond hearing is the appropriate remedy, especially given the flight risk considerations in this case. An Immigration Judge should have the opportunity to review the evidence regarding flight risk concerns, prior to any potential release from custody.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner's request for habeas relief 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).

Dated: December 30, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 30, 2025, the foregoing was filed and served through the Court's CM/ECF system.

s/ Alexander McDonough
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