UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSE ADALI ENAMORADO-AVILES,	§	
	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 4:25-CV-06016
	§	
GRANT DICKEY, *et al.*,	§	
	§	
Respondents.	§	

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

Respectfully submitted,

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

Regulations

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Respondents Bret Bradford, Kristi Noem, and Pam Bondi (hereinafter, the "Federal Respondents")[1] hereby requests 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.[2] *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 SEC P, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.).

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[1] 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.

[2] As ordered by the Court, the Federal Respondents filed a list of judges in the Southern District of Texas who have opined on the issue. While it may be true that most of these judges have ruled against the Government, there is a growing list of judges that have done the opposite. *See infra* Part V.B.4 (collecting cases).

II. BACKGROUND

As Petitioner Jose Adali Enamorado-Aviles does not dispute, he is a citizen of Honduras and entered the United States without inspection. Dkt. 1 at ¶ 11; *see also* Notice to Appear (NTA), Dkt. 1-2 at pp, 35-38. (charging Petitioner as an alien present in the United States without inspection or parole). As indicated in his petition, ICE detained Petitioner on or around November 19, 2025.[3]

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

[3] Before ICE detained him, Petitioner applied to U.S. Citizenship and Immigrations Services for asylum. See Dkt. 1 at ¶ 11. The pending request for asylum did not prevent the initiation of removal proceedings. Immigration judges have exclusive jurisdiction over asylum claims once an NTA is issued. *See* 8 CFR 208.2(b). Thus, Petitioner will be able to present his asylum claim to the immigration court.

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 two claims, but his central claim is Count I: that his detention is unlawful because he is bond-eligible under 8 U.S.C. § 1226(a), which gives the Attorney General the discretion to detain or release the alien on bond through the pendency of removal proceedings. Dkt. 1 ¶¶ 21-24. In addition to that claim, he asserts one other argument: that his detention violates due process (Count II). *See* Dkt. 1 ¶¶ 25-31.

The Federal Respondents first address Count II, which can be summarily disposed of, before turning to the main statutory dispute.

A. COUNT II: DUE PROCESS

Petitioner's due process claim fails because the principles of *Zadvydas v. Davis*, 533 U.S. 678 (2001) apply to post-final order of removal periods of detention—not to pre-removal detention. Here, Count II appears to assert that Petitioner's detention is itself unlawful because the Government cannot detain him indefinitely, which would violate *Zadvydas*. Dkt. 1 at ¶ 29. To the extent this is Petitioner's argument, it should be denied because 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 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 the 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).

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. *Maceda Jimenez v. Thompson,* No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) (quoting *Demore*, 538 U.S. at 531); *see also*

Moreno Sanchez v. Smith, No. 4:25-CV-05384, 2025 WL 3687914, at *3 (S.D. Tex. Dec. 19, 2025)("*Zadvydas* thus doesn't suggest that detention during removal proceedings itself violates due process."). By Petitioner's line of argument, even if he received a bond hearing pursuant to the discretionary detention provision but was denied bond, his due process rights would be violated since the very act of detention itself is unlawful. There is no support for such an argument.

B. COUNT I: MANDATORY VS. DISCRETIONARY DETENTION UNDER THE INA

Petitioner's statutory argument 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 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); *see* Dkt. at ¶ 11 (entering U.S. without inspection). 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" is highly instructive, as it 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). Indeed, multiple federal courts of appeal 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 here 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). 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."[4] 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), (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 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

[4] 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.

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.B.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. <u>The Evolution of the Text</u>

"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).

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* 8 U.S.C. § 1225(b)(2)(A) ("an alien who is an applicant for admission . . . *shall* be detained" for removal proceedings" (emphasis added)); *see Jennings v. Rodriguez*, 583 U.S. 281, 297, 138 S.Ct. 830, 200 L.Ed.2d 122 (2018) (explaining that Section 1225(b) "*mandate[s] detention of applicants for admission* until certain proceedings have concluded." (emphasis added)).

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). To be sure, as Petitioner has identified, many courts have held otherwise. 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 (including cases identified by Petitioner, 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 Government "appear to defer substantially to each other." *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*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (ruling in favor of the Government on this issue).[5] 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

[5] *See also Alonzo v. Noem*, -- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (Joseph, J.); Ba v. Dir. of Detroit Field Office, No. 4:25-CV-02208, 2025 WL 3264535 (N.D. Ohio Nov. 24, 2025) (Calabrese, J.); *Ba v. Dir. of Detroit Field Office*, No. 4:25-CV-02208, 2025 WL 2977712 (N.D. Ohio Oct. 22, 2025) (Calabrese, J.), reconsideration denied, 2025 WL 3264535 (N.D. Ohio Nov. 24, 2025); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr., J.); *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.); *Chen v. Almodovar*, No. 1:25-cv-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.); *Garcia v. Immigr. & Customs Enf't Dep't of Homeland Sec.*, No. 2:25-CV-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025) (Dudek, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), (Whitehurst, M.J.), report and recommendation adopted, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) (Joseph, J.); *Melgar v. Bondi*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) (Buescher, J.); *Mursalin v. Dedos, Warden*, No. 1:25-cv-00681, 2025 WL 3140824 (D.N.M. Nov. 10, 2025) (Strickland, M.J.); *Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Divine, J.); *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) (Gorton, J.); *Ramos v. Lyons*, No. 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Suarez v. Noem*, No. 1:25-CV-00202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.); *Valencia v. Chestnut*, -- F. Supp. 3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Buescher, J.).

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 as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on December 24, 2025, the foregoing was filed and served on all attorneys of record via the District's ECF system.

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