UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JEYSON ESTUARDO TOBAR TOVAR, Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	§ § § § § § § § § § §	CASE NO. 4:25-cv-6056

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

The Government[1] hereby responds to Jeyson Estuardo Tobar Tovar's habeas petition and respectfully requests that this Court deny his petition under 28 U.S.C. § 2241 and grant summary judgment for the Government under Federal Rule of Civil procedure 56.

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 the recent decisions from this Court in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) and *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025).

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not 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.

Accordingly, this Court should deny the instant habeas petition and grant summary judgment for the Government.

I. BACKGROUND

Petitioner, Jeyson Estuardo Tobar Tovar, is a native and citizen of Guatemala. Dkt. 1 at ¶ 4. He entered the United States without inspection in 2012.[2] Dkt. 1-2. ICE served Petitioner 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. *Id.* In the NTA, the examining immigration official denied Petitioner admission into the United States, explained the basis for charging Petitioner with being subject to removal, and ordered Petitioner to appear in immigration court. *Id.*

In August of 2025, Petitioner was arrested for domestic violence. *See* Exhibit 1 at p. 8 (Application for Cancellation of Removal). Thus, Petitioner came into ICE custody on an immigration detainer related to his criminal charges and his current ICE detention began in September of 2025. Petitioner remains detained under 8 U.S.C. § 1225(b)(2) pending the conclusion of his removal proceedings.

[2] Because Petitioner entered the United States as an unaccompanied minor, he was originally placed into the custody of the Office of Refugee Resettlement (ORR) pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. PL 110-457 (2008) ("TVPRA"). Dkt. 1 at ¶ 10. Petitioner is now an adult. He was an adult when ICE detained him in 2025. The TVPRA no longer applies to him. *See, e.g., Jose L.P. v. Whitaker*, 431 F. Supp. 3d 540, 550 (D.N.J. 2019) (holding that a former unaccompanied minor who had been released and aged out, was no longer entitled to the statutory protections of the TVPRA").

On or around December of 2025, an immigration judge denied Petitioner's request for a bond "because the Court in removal proceedings has sustained the charge that the respondent entered without inspection and admission or parole. Under the circumstances, the respondent has not established that the Court has jurisdiction to grant a bond in this case. *See Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025)." Dkt. 1 at ¶ 27; *see also* Exhibit 2, Bond Order. Thus, with this habeas, Petitioner argues that "[c]ontinued detention where the Immigration Court adjudicates the merits of removability and relief, yet—under the Respondents' reading of *Matter of Yajure Hurtado*—the Petitioner is denied any opportunity for an individualized bond hearing, serves no legitimate governmental purpose, and violates due process." Dkt. 1 at ¶ 26.

II. 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 (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).

III. ARGUMENT

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 is an alien present in the United States who entered the country unlawfully without being "admitted or paroled." *see* NTA, Dkt. 1-2; *see also* Exhibit 1 at p. 2 (admitting to entering unlawfully "without inspection"); Exhibit 2, Bond Order. 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)).

The Court recently decided this issue in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025). In denying the habeas petition and granting the Government's motion for summary judgment, the Court held "[t]he text of § 1225(b)(2)(A) supports the Government's position." The Court acknowledged that "[t]he statutory definition of *applicant for admission* is broad . . . ." *Id.* at *4 (emphasis in original). The Court thus agreed that the petitioner was "an 'applicant for admission' for the very reason that she is an alien 'present in the United States who has not been admitted.'" *Id.* Accordingly, the 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; *see also Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025).[3]

With respect to Petitioner's due process and excessive detention claims, they are merely a recast of his disagreement with the Government holding an alien without bond under § 1225(b)(2). Dkt. 1 at ¶¶ 46-52. In other words, the Petitioner argues that the Government's detention of him without an adequate bond determination violates his right to due process. *Id.* This Court has previously rejected such an argument. *See Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) (in denying a due process claim,

[3] Although many courts originally rejected the Government's interpretation of § 1225(b)(2), *see, e.g., Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025)(on appeal), there is a growing body of case law agreeing with the Government's position. *See 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.).

noting that "[i]t's thus the 'longstanding view' of the Supreme Court that 'the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.'" (quoting *Demore v Kim*, 538 US 510, 526 (2003)).

The facts of this case do not warrant a deviation from the Court's prior rulings.

IV. 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: January 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on January 9, 2026, the foregoing was filed and served on all attorneys of record via the District's ECF system.

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