UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

DAVID ABGARIAN, *Petitioner*,	§ § §	
v.	§	CIVIL ACTION NO. 1:25-cv-00334
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, *et al.* *Respondents*.	§ § § §	

GOVERNMENT'S OPPOSITION TO PETITIONER'S PETITION OF HABEAS CORPUS AND MOTION FOR PRELIMINARY INJUNCTION

The Government[1] hereby files this opposition to Petitioner, David Abgarian's combined Petition for Writ of Habeas and Motion for a Preliminary Injunction (hereafter the "Habeas Petition") (Dkt. No. 1) and respectfully requests that the Court deny Petitioner's Habeas Petition and any relief under 28 U.S.C. § 2241.

As provided below, Petitioner's Habeas Petition should be denied its entirety because Petitioner failed to exhaust administrative remedies by seeking a bond hearing in his pending removal proceedings. But even if Petitioner had exhausted administrative remedies and sought a custody redetermination before an Immigration Judge ("IJ"), his claims lack merit. Petitioner failed to satisfy his heavy burden of showing a clear entitlement to a preliminary injunction because he cannot demonstrate the likelihood of success on the merits as he is "an applicant for admission" 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

[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.

2025), and persuasive decisions from other Fifth Circuit district courts, including the recent decisions in *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025); *Garibay-Robledo v. Noem*, --F.Supp.3d--, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025); *P.B. v. Bergami*, No. 3:25-CV-2978, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Naranjo v. Uhls*, No. 4:25-CV-05756, 2025 WL 3771447 (S.D. Tex. Dec. 31, 2025); *Montelongo Zuniga v. Lyons*, --F.Supp.3d--, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025); and *Calderon Lopez v. Lyons*, --F.Supp.3d--, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026).

Likewise, he failed to satisfy his heavy burden of showing a clear entitlement to a preliminary injunction because he cannot demonstrate the likelihood of success on the merits as to his claim that his continued detention violates his Due Process Rights under the Fifth Amendment. For these and all the reasons discussed below, the Court should deny Petitioner's request for a preliminary injunction and deny his Habeas Petition in its entirety under 28 U.S.C. § 2241.

FACTUAL BACKGROUND

Petitioner is a native of Armenia and a citizen of Russia. Dkt. No. 1, ¶ 15; **Gov't Ex. 1** at 1 (Petitioner's Notice to Appear). On December 14, 2021, Petitioner was paroled into the United States at San Ysidro, California, for a period not to exceed December 12, 2022. **Gov't Ex. 1** at 1; **Gov't Ex. 2** at 3 (Petitioner's Record of Deportable/Inadmissible Alien).

On October 6, 2025, "while driving through Texas for work," a U.S. Boder Patrol Agent encountered Petitioner at the Falfurrias Border Patrol Checkpoint in Falfurrias, Texas. Dkt. No. 1, ¶ 22; **Gov't Ex. 2** at 1, 3. U.S. Border Patrol determined that Petitioner remained in the United States beyond the December 2022 expiration of his parole. **Gov't Ex. 1** at 1; **Gov't Ex. 2** at 3.

Petitioner acknowledged he was a citizen of Russia and national of Armenia "without the necessary legal documents to enter, pass through, or to remain in the United States." **Gov't Ex. 2** at 3.

Petitioner was taken into the custody of DHS/ICE and transferred to the Rio Grande Valley Sector Centralized Processing Center in McAllen, Texas, and served with a Notice to Appear ("NTA"), commencing removal proceedings and charging Petitioner as "an arriving alien" removable under the Section 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an alien who, "at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity or nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act." **Gov't Ex. 1** at 1; *see* **Gov't Ex. 2** at 3; Dkt. No. 1, ¶ 22. Petitioner refused to sign that he was served with the NTA, *see* **Gov't Ex. 1** at 3, but acknowledged he was "advised of the administrative rights in Removal Proceedings" and notified of the right to communication with a consular officer from Armenia under Article 36 of the Vienna Convention of Consular Relations. *See* **Gov't Ex. 2** at 3.

Petitioner was transferred to the Port Isabel Detention Center in Cameron County, Texas, where he remains under DHS/ICE custody. Dkt. No. 1, ¶¶ 1, 15; **Gov't Ex. 3** at 1 (Notice of Internet-Based Hearing, Jan. 8, 2026). In his pending removal proceedings, Petitioner is scheduled for an Individual Hearing on January 30, 2026, with the Los Fresnos Immigration Court. *Id.* To date, Petitioner has not requested a bond redetermination from DHS/ICE's Enforcement and Removal Operations ("ERO") or the presiding IJ in his removal proceedings.

PROCEDURAL BACKGROUND

On December 16, 2025, Petitioner filed his Petition for Writ of Habeas Corpus and Complaint for Emergency Injunctive Relief (Dkt. No. 1), claiming his mandatory detention under 8 U.S.C. § 1225(b)(2) is unlawful under the INA and under the Due Process Clause of the Fifth Amendment. Dkt. No. 1, ¶¶ 26-101. Petitioner fails to allege that he requested a bond hearing before an IJ or that he exhausted administrative remedies available to him prior to seeking habeas relief under 28 U.S.C. § 2241. Yet Petitioner's prayer for relief requests that the Court issue writ and order the Government "to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order." Dkt. No. 1 at 17.

On December 18, 2025, the Court issued an Order construing Petitioner's request for injunctive relief as a motion for a preliminary injunction, scheduling a hearing on the motion for a preliminary injunction on January 21, 2026, at 1:30 p.m., and ordering the Government to respond to Petitioner's Motion by no later than January 9, 2026. Dkt. No. 4 at 1-2.

LEGAL AUTHORITIES

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).

A petitioner seeking a temporary restraining order or preliminary injunction typically must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Fifth Circuit has "cautioned repeatedly that a preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has clearly carried the burden of persuasion on all four requirements." *Bluefield Water Ass'n, Inc. v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009) (internal quotation marks omitted).

Moreover, here, the Petitioner's burden is even heavier because he seeks a mandatory injunction. The standard temporary restraining order merely preserves the status quo. *E.g., Wenner v. Tex. Lottery Comm'n*, 123 F.3d 321, 326 (5th Cir. 1997). A mandatory injunction, in contrast, "seeks to alter the status quo" and "mandates that defendants take some action inconsistent with the status quo." *Texas v. Ysleta del Sur Pueblo*, No. 3:17-CV-00179, 2018 WL 1566866, at *9 (W.D. Tex. Mar. 29, 2018).

A party seeking a mandatory injunction "bears the burden of showing a clear entitlement to the relief under the facts and the law." *Justin Indus., Inc. v. Choctaw Sec., L.P.*, 920 F.2d 262, 268 n.7 (5th Cir. 1990) (emphasis added). As such, mandatory preliminary relief "is particularly disfavored." *Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976). Here, the status quo is detention, which Petitioner seeks to alter by obtaining, as preliminary relief, a directive for the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") to

perform the express act of releasing him for detention. He therefore must show a clear entitlement to relief under the facts and law.

ARGUMENT

I. Petitioner is not entitled to habeas relief under 28 U.S.C. § 2241 as he failed to exhaust administrative remedies prior to filing suit.

As a threshold matter, the Court should deny Petitioner's Habeas Petition in its entirety because Petitioner has not administratively exhausted his claims. In accord with the general rule that parties seeking relief against federal agencies "must first exhaust available administrative remedies" prior to seeking judicial relief. *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018); *see*, *e.g.*, *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies).

Petitioner contends that his continued detention since October 7, 2025, "without the possibility to request a bond hearing, separates him from his family" and "inhibits him from being able to proceed with his asylum application." Dkt. No. 1, ¶ 24. Petitioner has had at least one hearing before an IJ on October 23, 2025, at 9:30 a.m., in Los Fresnos Immigration Court, *see* **Gov't Ex. 1** at 1, however, Petitioner fails to demonstrate that he sought a custody redetermination. His Habeas Petition fails to establish that DHS/ICE or the IJ presiding over his removal proceedings denied him such relief. Because Petitioner has not sought a bond hearing, he has failed to exhaust administrative remedies prior to filing this action.

The Fifth Circuit has recognized exceptions to the exhaustion requirement and noted that they "apply only in extraordinary circumstances," including when exhaustion would be "patently futile." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted). *Fuller* itself is illustrative, where the petitioner argued that administrative appeal was futile because the

time for filing an appeal has already elapsed. *See id.* The Fifth Circuit disagreed, holding that "until he actually appeals, and that appeal is acted on, we do not know what the appeals board will do with [petitioner]'s claim, and until the appeals board has been given an opportunity to act, [petitioner] has not exhausted his administrative remedies." *Id.*

Here, just because the administrative body is unlikely to find the law in the Petitioner's favor does not mean that the "extraordinary circumstances" apply where exhaustion is futile. Petitioner's failure to exhaust his remedies warrants, by itself, the denial of habeas relief. *See Fuller*, 11 F.3d at 62 (requiring an appeal in order to satisfy exhaustion requirement); *Abdoulaye Ba v. Director of Detroit Field Office, ICE*, No. 4:25-CV-02208, 2025 WL 2977712, at *2 (N.D. Ohio Oct. 22, 2025) (dismissing for failure to exhaust where petitioner sought "review of the application and interpretation of *Matter of Yajure Hurtado*" but had yet to appeal to the BIA).

II. Petitioner has no likelihood of success on the merits because he is "an arriving alien" subject to mandatory detention under 8 U.S.C. § 1225 and is not eligible for admission.

Petitioner's Habeas Petition should be denied in its entirety because he falls under the plain language of the mandatory detention provisions in 8 U.S.C. § 1225. In his Habeas Petition, Petitioner admits that he is an alien "present in the United States since 2021" and that he entered the country unlawfully "*without inspection*." Dkt. No. 1, ¶¶ 2, 19 (emphasis added). However, contrary to this allegation, Petitioner, an "arriving alien" at San Ysidro, California on December 14, 2021, was temporarily paroled into the United States for a period not to exceed December 12, 2022. **Gov't Ex. 1** at 1; **Gov't Ex. 2** at 3.

Pursuant to 8 U.S.C. § 1182(d)(5)(A), "[t]he Secretary of Homeland Security may temporarily parole into the United States 'any alien applying for admission' on a 'case-by-case basis for urgent humanitarian reasons or significant public benefit.'" *Montelongo Zuniga*, 2025

WL 3755126, at *2 (quoting 8 U.S.C. § 1182(d)(5)(A)); *see Biden v. Texas*, 597 U.S. 785, 806 (2022) (DHS may exercise its discretion to parole applicants under the framework of § 1182(d)(5)(A) but is required under Administrative Procedures Act that it "must be reasonable and reasonably explained"). Petitioner, "an alien applying for admission" on December 14, 2021, was paroled by DHS for approximately one year (until December 12, 2022). *See* **Gov't Ex. 1** at 1; **Gov't Ex. 2** at 3. Once the purpose of the parole has been served, the alien parolee "must immediately be returned to custody, and his case 'shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.'" *Montelongo Zuniga*, 2025 WL 3755126, at *2 (quoting § 1182(d)(5)(A)).

Here, Petitioner failed "to return or be returned to the custody from which he was paroled" as required under § 1182(d)(5)(A) upon the lapse of his parole in the United States; therefore, on October 7, 2025, U.S. Border Patrol encountered and inspected Petitioner at the Falfurrias Border Patrol Checkpoint "while driving through Texas for work." Dkt. No. 1, ¶ 22; **Gov't Ex. 1** at 1; **Gov't Ex. 2** at 3; *see* 8 U.S.C.§ 1225(a)(3) ("All aliens…who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers."). Without lawful status, and with parole having expired, Petitioner was treated as "any other applicant for admission to the United States" and subjected to mandatory detention under § 1225(b)(2)(A). *See* § 1182(d)(5)(A); **Gov't Ex. 1** at 1; **Gov't Ex. 2** at 3; *see also* 8 U.S.C. §§ 1225(a)(1), (b)(2)(A).

As discussed below, an alien "present in the United States who has not been admitted," is by definition "an applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, Petitioner is subject to mandatory detention. *See id.* § 1225(b)(2)(A) (instructing that "the alien *shall* be detained" in the

case of "an alien seeking admission" who "is not clearly and beyond a doubt entitled to be admitted" (emphasis added)).

1. The Plain Language and Statutory Structure of the INA.

"As usual, we start with the statutory text." *Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163, 177 (5th Cir. 2024). Section 1225(b)(2) provides the following:

> in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings].

8 U.S.C. § 1225(b)(2). Based on this text, if an alien is an "applicant for admission," then they are subject to mandatory detention. The INA defines "applicant for admission" as "an alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). Here, there is no question that on October 7, 2025, Petitioner was not previously admitted into the United States as his lawful admission as a parolee concluded on December 12, 2022, and the Petitioner is therefore subject to mandatory detention and is not eligible for a bond. *See* 8 U.S.C. § 1182(d)(5)(A); 8 U.S.C. §§ 1225(a)(1), (b)(2)(A).

Petitioner may argue, and other courts have mistakenly held, that there is separate requirement: that Petitioner also be "seeking admission." But, in the context of § 1225(b)(2), "seeking admission" and "applying for admission" are plainly synonymous. Congress has linked these two variations of the same phrase in Section 1225(a)(3), which requires all aliens "who are applicants for admission or otherwise seeking admission" to be inspected by immigration officers. 8 U.S.C. § 1225(a)(3). The word "or" here "introduce[s] an appositive—a word or phrase that is synonymous with what precedes it ('Vienna or Wien,' 'Batman or the Caped Crusader')." *United States v. Woods*, 571 U.S. 31, 45 (2013). Read properly, a person "seeking admission" is just another way of describing a person applying for admission, meaning he is an applicant for

admission, which includes both those individuals arriving in the United States and those already present without admission. 8 U.S.C. § 1225(a)(1).

A comparison of Section 1225's mandatory-detention provisions against the discretionary detention provisions of Section 1226 also supports Respondents' interpretation. A basic canon of statutory construction is that a specific provision should govern over a more general provision encompassing that same matter. *See Matter of GFS Indus., L.L.C.*, 99 F.4th 223 (5th Cir. 2024). Here, Section 1226(a) is the general provision, applicable to aliens "arrested and detained pending a decision" on removal. 8 U.S.C. § 1226(a). Section 1225(b), by contrast, is much more specific, applying particularly to aliens who are "applicants for admission"—a specially defined subset of aliens that explicitly includes those "present in the United States who ha[ve] not be admitted." *Id.* § 1225(a). So, while the general rule might be that aliens detained pending removal may be detained, the specific rule for aliens who have not been admitted is that this subset of aliens must be detained.[2] 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

[2] To be clear, there remains a large population of aliens who remain subject to § 1226 discretionary detention (and not § 1225 mandatory detention). For example, aliens who were admitted to the United States via a tourist visa, but who overstayed that visa, are subject to § 1226 detention.

sure, while this interpretation is straightforward, that is not to say there are no colorable counterarguments. However, the Government would point to the BIA's decision in *Hurtado*, which thoughtfully and meticulously considered and rejected a myriad of counterarguments. *See* 29 I. & N. at 221–27 (discussing and rejecting no fewer than six distinct legal counterarguments). *Hurtado* is a unanimous, published decision from the BIA and binding on immigration courts. Here, the BIA utilized its immigration expertise and gave a lengthy, comprehensive account as to why the Government's position in this case is not only correct, but comfortably so. The Court should thus accord great weight to the persuasiveness of *Hurtado*.

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

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

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

In the absence of controlling authority, the Court should follow those district courts that have applied the plain language of the INA and found aliens like the Petitioner subject to mandatory detention under § 1225(b)(2). Although the Government acknowledges that there are district court decisions that hold to the contrary,[4] including this Court's decision in *Shi v. Lyons*, --F.Supp.3d--, 2025 WL 3637288 (S.D. Tex. Dec. 12, 2025), several district courts have adopted the Government's and the BIA's interpretation, and more are likely to follow. *See Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Maceda Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025); *Garibay-Robledo v. Noem*, --F.Supp.3d--, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025); *P.B. v. Bergami*, No. 3:25-CV-2978, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025); *Naranjo v. Uhls*, No. 4:25-CV-05756, 2025 WL 3771447 (S.D. Tex.

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[3] The Court should be aware that a court in the Central District of California recently certified a class of aliens who are being detained under § 1225(b)(2). *Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM, --F.Supp.3d--, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025). The December 18, 2025, class action ruling in *Maldonado Bautista* is neither binding nor applicable here and presents no basis for granting the petition. First, the *Maldonado Bautista* declaratory judgement is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a lack of jurisdiction. Second, the Court should not give preclusive effect to the declaratory judgment because it is on appeal, creating a serious risk of inconsistent judgments and unfair results if the *Maldonado Bautista* judgment is reversed or vacated on appeal. Finally, the issue of preclusion is inapplicable here, particularly as preclusion principles apply with less force both against the government and in habeas corpus proceedings.

[4] This includes decisions from other courts in the Southern District of Texas. *See, e.g., Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) (on appeal); *Fuentes v. Lyons*, 5:25-cv-153 (S.D. Tex. October 16, 2025); *Ortiz v. Bondi*, 5:25-cv-132 (S.D. Tex. October 15, 2025); *Baltazar v. Vasquez*, 25-cv-175 (S.D. Tex. October 14, 2025); *Covarrubias v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025) (on appeal).

Dec. 31, 2025); *Montelongo Zuniga v. Lyons*, --F.Supp.3d--, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025); and *Calderon Lopez v. Lyons*, --F.Supp.3d--, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026).

Most recently, four district courts in the Fifth Circuit have followed *Hurtado's* reasoning in denying habeas relief. First, in *Garibay-Robledo v. Noem*, --F.Supp.3d--, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025), a court in the Northern District of Texas agreed with the Government—including with respect to virtually all, if not all, of the points raised above. Overall, the court observed 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 arguments to the contrary "flatly contradict[] the statute's plain language and the history of legislative changes enacted by Congress." 2025 WL 3264482, at *3. The court also made an additional observation regarding a 1997 regulation which evinced a "clear implication" that prior administrations recognized the applicability of mandatory detention in this context but "declined to exercise the full extent of its authority under the INA." *Id*. at *4.

In addition, a district court in the Western District of Louisiana also recently agreed with the BIA's reading of the INA. *See Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025). In denying the habeas petition, the court held that "[b]ecause Petitioner crossed the United States-Mexico border without being inspected by an immigration officer, [Petitioner was] therefore also appropriately categorized as an inadmissible alien . . . [and thus concluded] that § 1225(b)(2)'s plain language and the 'all applicants for admission language' of *Jennings* permits [DHS] to detain Petitioner under § 1225(b)(2)." (citations omitted). *Id*. The court reasoned that "to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the

unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA." *Id*. at *6.

Furthermore, on November 13, 2025, another court in the Southern District of Texas decided *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.), in the Government's favor. In denying the habeas petition and granting the Government's motion for summary judgment, the *Cabanas* Court held "[t]he text of § 1225(b)(2)(A) supports the Government's position." *Accord Maceda Jimenez*, 2025 WL 3265493, at *1-*2. The *Cabanas* Court reasoned that "[t]he statutory definition of *applicant for admission* is broad and, indeed, so broad that Petitioner doesn't dispute that she is such a person…That factual determination itself resolves the question as to whether § 1225(b)(2)(A) applies." *Id*. at *4 (emphasis in original). Thus, the *Cabanas* Court held that the plain language of the Immigration and Nationality Act required a ruling in the Government's favor. The court also explained why it was not persuaded by the many other district court decisions deciding to the contrary. *Id*. at * 5.

Lastly, on December 13, 2025, a court in the Northern District of Texas decided *P.B. v. Bergami*, No. 3:25-CV-2978, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025), involving an alien petitioner from Colombia who demonstrated a credible fear of returning to Colombia, resulting in her expedited removal proceeding being vacated and her subsequent placement under removal proceedings under 8 U.S.C. § 1229a. *P.B.*, 2025 WL 3632752, at *1. Pending resolution of her asylum application and removal to Colombia, Petitioner was released from custody of DHS pursuant to its "discretionary parole authority under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)." *Id.* Months later, ICE terminated her discretionary parole and the petitioner filed a habeas action, challenging the government's confinement of the petitioner under § 1225(b)(2)(A) because "she was not 'seeking admission' into the United States" as "she resided in the country

for 11 months before her current detention" while on parole. *Id.*, at *2. The district court concluded that the petitioner was "lawfully detained under § 1225(b)(2)(A) as an alien properly characterized as an 'applicant for admission' who is also 'seeking admission[.]'" *Id.*, at *5 (citing *Cabanas*, 2025 WL 3171331; *Garibay-Robledo*, 2025 WL 3264478; and *Sandoval*, 2025 WL 3048926). The court reasoned that the petitioner "ha[d] not been admitted into the United States, [wa]s not entitled to be, and therefore [was] subject to detention under § 1225(b)(2)(A) while seeking admission to [the United States." *Id.*

The Government respectfully requests that the Court follow the reasoning of *Garibay-Robledo*, *Sandoval*, *Cabanas*, *P.B.*, and the Government's other proffered authorities in finding Petitioner's continued detention at Port Isabel Detention Center is lawful under § 1225(b)(2)(A).

III. Petitioner has no likelihood of success on the merits as to his Due Process claim because Petitioner is not entitled to a bond under § 1225(b)(2)(A).

As provided above, Petitioner's continued detention under the custody of DHS/ICE is lawful under § 1225(b)(2)(A), thus, he is not entitled to bond hearing under § 1226(a). In addition to his statutory arguments, Petitioner claims that the Government "has deprived Petitioner of his liberty" in violation of the Due Process Clause under the Fifth Amendment. Dkt. No. 1, ¶¶ 55-60. His Due Process claim is based on Petitioner's contention that his continued detention under § 1225(b)(2) is unconstitutional as applied to him because he is not a "new arrival" nor is he a noncitizen "seeking admission into the country." Dkt. No. 1, ¶¶ 58-60.

However, Petitioner's conclusory assertions, which merely reassert a disagreement with the Government's application of § 1225(b)(2), do not establish a viable Due Process claim. *See, e.g.*, *Cabanas*, 2025 WL 3171331, at *7 (acknowledging that the habeas petition's allegation that government's detention without a bond redetermination violates due process "appears to present nothing beyond the larger contention as to the relevant and applicable statute to apply"). Contrary

to the Habeas Petition, Petitioner's continued detention is pursuant to § 1225(b)(2)(A), which "mandate[s] detention of applicants for admission until certain proceedings have concluded." *Zuniga*, 2025 WL 3755126, at * 8 (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018)). Petitioner is not entitled to a bond hearing or any relief based as the Government did not violate his Due Process Rights under the Fifth Amendment.

Accordingly, Petitioner has failed to satisfy his heavy burden to warrant a preliminary injunction as to his Fifth Amendment claim. The Court should deny his Habeas Petition in its entirety.

IV. Injunctive relief is not available to Petitioner because he has not shown irreparable harm.

Petitioner cannot demonstrate irreparable harm. The Government makes this argument not to minimize the absence of Petitioner from the home, but to point out the failure of the pleadings to meet the burden of demonstrating an entitlement to emergency injunctive relief in this case. Petitioner failed to demonstrate the irreparable harm he has suffered to warrant a preliminary injunction at this juncture in the case. Furthermore, Petitioner cannot argue that his continued detention since October 2025, following his direct encounter with U.S. Border Patrol at the Falfurrias Checkpoint, is unlawful, nor that his detention has caused him physical and mental harm. As noted previously, Petitioner has not requested a custody redetermination in his removal proceedings nor obtained a decision on a bond hearing at any point prior to this case. But even if he did, Petitioner is not entitled to a bond as his detention is lawful under § 1225(b)(2)(A) pending his removal from the United States. *See Cabanas*, 2025 WL 3171331, at *7 (holding the petitioner's claim with respect to violation of due process failed because "the Government provided the process to which Petitioner was due under § 1225(b)(2)(A)").

V. The balance of equities and public interest favor the Government.

Finally, the balance of equities and public interest factors "merge when the Government is the opposing party." *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner bears the burden of demonstrating that the balance tips in his favor. Here, the balance of equities favors the Government and its interest in detaining an alien subject to mandatory detention under the INA. Congress vested significant authority and discretion in the Secretary of Homeland Security to administer the immigration laws. Here, DHS is exercising its discretion, due to a change in law, to continue to detain the Petitioner. Thus, granting Petitioner the relief that he seeks would likely only cause further complications, more so, as 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)).

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner's Habeas Petition (Dkt. No. 1) and any relief under 28 U.S.C. § 2241.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Baltazar Salazar, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on January 9, 2026, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: *s/ Baltazar Salazar*
BALTAZAR SALAZAR
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