

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

RICARDO DE LEON TREJO,

Petitioner,

v.

CHRISTOPHER S. BULLOCK, Director of
the New Orleans Field Office of ICE, in his
official capacity; TOM SPANGLER,
Sheriff of Knox County, Tennessee, in his
official capacity,

Respondents.

Case No. 3:26-cv-00047

**CHRISTOPHER BULLOCK'S RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS**

Federal Respondent¹ Christopher S. Bullock, Director of the New Orleans Field Office of the United States Immigration and Customs Enforcement,² responds to Petitioner's petition for habeas corpus (Doc. 1) and requests that the Court deny and dismiss the petition because Petitioner is an "applicant for admission" properly detained under 8 U.S.C. § 1225.

INTRODUCTION

Petitioner is not lawfully admitted to the United States and has no lawful immigration status. He is currently detained by U.S. Immigration and Customs Enforcement ("ICE") while the Agency pursues administrative removal proceedings against him. Petitioner challenges the

¹ 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition also names Tom Spangler, the Knox County Sheriff, as a respondent.

² Christopher S. Bullock was recently named as the Field Office Director of the New Orleans Field Office for United States Immigration and Customs Enforcement and, by virtue of Fed. R. Civ. P. 25(d) is automatically substituted for named respondent Scott Ladwig.

Agency's decision to detain him and seeks an order from this Court for his immediate release. Because Petitioner has not been lawfully admitted to the United States, he is an applicant for admission and, as such, is lawfully detained under 8 U.S.C. § 1225(b)(2)(A). Accordingly, the Petition should be denied and dismissed.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Petitioner is a Mexican national who entered the United States illegally and without inspection at a time and place currently unknown to the government. (*See* Exhibit 1 at 1; Doc. 1, ¶ 13). He alleges that he has resided in the United States for some time and reports having “a pending application [for] lawful permanent residence and an approved work permit.” (Doc. 1, ¶ 13). He was taken into custody by ICE officers on January 27, 2026, in Knoxville, Tennessee. (*Id.* ¶ 6(d)). He was served with a Notice to Appear (“NTA”), which was issued on the basis that he was present in the United States without having been admitted or paroled, in violation of 8 U.S.C. § 1182(a)(6)(A)(i), and that he was present without being in possession of valid entry or travel documents in violation of 8 U.S.C. § 1182(a)(7)(A)(i)(I). (Exhibit 1). Petitioner was briefly detained in Knox County and was initially scheduled for a hearing before an immigration judge at the Lasalle Detention Facility in Jena, Louisiana. (*Id.* at 1). Petitioner filed a habeas petition in this Court on February 2, 2026. (*See* Doc. 1).³ The petition asserts three grounds for challenging his detention: (1) that his detention is unlawful under the Immigration and Nationality Act (“INA”); (2) that his detention is unlawful under the Central District of California’s decision in *Bautista v. Santacruz*; and (3) that his detention violates the Fifth Amendment Due Process Clause and the Administrative Procedures Act (“APA”). (*Id.* ¶ 13).

³ Petitioner also filed an emergency motion for a TRO and preliminary injunction requesting the same relief as in his habeas petition. (Doc. 2).

ARGUMENT

I. The Court Should Deny the Habeas Petition because Petitioner is Lawfully Detained under 8 U.S.C. § 1225(b)(2).

The Court may only grant a writ of habeas corpus if Petitioner shows he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *see also Dickerson v. United States*, 530 U.S. 428, 439, n. 3 (2000) (“Habeas corpus proceedings are available only for claims that a person ‘is in custody in violation of the Constitution or laws or treaties of the United States’”, quoting 28 U.S.C. § 2254(a)); *Caver v. Straub*, 349 F.3d 340, 351 (6th Cir. 2003) (quoting *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001): “in a habeas proceeding the petitioner ‘has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.’”).

Before 1996, the federal immigration laws required the detention of aliens⁴ who presented at a port of entry but allowed aliens who—having evaded inspection—were already unlawfully present in the United States to obtain release pending removal proceedings. Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”) specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Congress enacted 8 U.S.C. § 1225, which requires the detention of any alien “who is an applicant for admission,” and it defined that term to include any “alien *present in the United States* who has not been admitted” following inspection by immigration authorities. 8 U.S.C. §§ 1225(a) (emphasis added), (b)(2)(A). “The terms ‘admission’ and ‘admitted,’” in turn, “mean, with respect to an alien, 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). Section 1225 makes no

⁴ The term “alien” means any person who is not a U.S. citizen. 8 U.S.C. § 1101(a)(3).

exception for how far the alien traveled into the country or how long the alien managed to evade detection. Unless the Secretary exercises the narrow and discretionary parole authority, mandatory detention for the purpose of removal proceedings is the rule for aliens who have never been lawfully admitted. § 1225(b)(2)(A).

It cannot be disputed that Petitioner is an “applicant for admission” under § 1225(a). Petitioner acknowledges that he is present in the United States after entering the country without inspection. (Doc. 1, ¶ 13). Petitioner also states that he “has a pending application [for] lawful permanent residence.” (*Id.*). By all accounts, he is an applicant for admission and is actively seeking admission. *See* 8 U.S.C. §§ 1225(a), (b)(2)(A); 1101(a)(13)(A). As such, Petitioner’s detention is governed by § 1225(b), which includes two subcategories. Section 1225(b)(1), also known as Expedited Removal Proceedings, addresses both the detention and removal of “aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Jennings*, 583 U.S. at 287 (cleaned up). Such aliens “are normally ordered removed without further hearing or review . . . [unless the alien] indicates either an intention to apply for asylum . . . or a fear of persecution, then that alien is referred for an asylum interview.” *Id.* Section 1225(b)(2) “is broader . . . [and] serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Id.* Such aliens are subject to the 8 U.S.C. § 1229a removal statute and referred “for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted into the country.” *See id.* at 288 (cleaned up). Further, they “shall be detained” for those removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

Despite the clear statutory text, Petitioner claims he has been unlawfully detained and is entitled to immediate release. Specifically, he contends that his case is governed by 8 U.S.C.

§ 1226, but that provision applies to aliens *not* subject to § 1225(b)(2)(A), including admitted aliens who are now removable—such as those who were lawfully admitted but then overstay their visas or commit criminal offenses. For those aliens, § 1226 continues to govern detention, but even then, detention is still permissible pending a removal decision, with bond or parole optional in certain circumstances. § 1226(a)(2). Still, the Attorney General may revoke any bond or parole granted “at any time.” § 1226(b).

Although the Government has previously operated under a different and more forgiving application of the law, the Court must apply 8 U.S.C. § 1225(b)(2)(A) as written. Anything else would be contrary to the plain statutory text and would reinstate the same inverted regime that IIRIRA was meant to eliminate—requiring the detention of aliens who present at a port of entry as the law requires but authorizing the release of those aliens who evade detection and enter the United States in violation of law. *See Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *6, n.7 (W.D. La. Oct. 31, 2025) (refusing “to interpret the INA in a way that would in effect repeal [Congress’s] statutory fix,” quoting *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024)). The Court should not endorse such a backward outcome, especially when Congress has legislated to preclude it.

This conclusion is consistent with the Board of Immigration Appeals’ (“BIA”) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 223 (BIA 2025), to which this Court may accord *Skidmore* deference. Specifically, the BIA determined that “aliens who are present in the United States without admission are applicants for admission” under § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220 (citing *Jennings*, 583 U.S. at 300). This Court should defer to this persuasive interpretation of the statute, even if it is not bound by it. *See Pemberton v. Bell’s Brewery, Inc.*, 150 F.4th 751, 763, n. 4 (6th Cir. 2025) (explaining that *Skidmore* deference survived the Supreme

Court's decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024)). As the BIA explained, an "applicant for admission" under 8 U.S.C. § 1225(a)(1), by virtue of his entry without inspection, must necessarily be "seeking admission," as the term is used in § 1225(b)(2)(A). *Hurtado*, 29 I. & N. Dec. at 220; *see also Rojas v. Olson*, 2025 WL 3033967, at *8 (E.D. Wis. Oct. 30, 2025) (explaining that "seeking admission" "is best read as simply another way of referring to aliens who are applicants for admission"). It also recognized that a contrary reading would create a "legal conundrum," because there "is no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer 'seeking admission,' and has somehow converted to a status that renders him or her eligible for a bond hearing under . . . 8 U.S.C. § 1226(a)." *Hurtado*, 29 I. & N. Dec. at 221.

The question before this Court, whether an alien without lawful admission who's nonetheless been living in the United States for some appreciable period of time is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) or instead is subject to discretionary detention and may receive a bond hearing under 8 U.S.C. § 1226(a), has been the subject of much litigation over the past year and is presently on appeal in this Circuit in *Reyes v. Raycraft*, No. 25-1982 (6th Cir.). Most recently, the United States Court of Appeals for the Fifth Circuit held—after a thorough and careful analysis—that section 1225(b)(2)(A) controls. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, --- F.4th --- (5th Cir. Feb. 6, 2026). In doing so, the Fifth Circuit considered and soundly rejected the same interpretations of sections 1225 and 1226 that Petitioner urges here. *See Buenrostro-Mendez*, 2026 WL 323330, at *4-8.

Similarly, several district courts analyzing the text of § 1225(b)(2) have also found that it applies to aliens such as Petitioner. *See, e.g., Lopez v. Dir. of Enft & Removal Operations*, No.

3:25-CV-1313-JEP-SJH, 2026 WL 261938 (M.D. Fla. Jan. 26, 2026); *Singh v. Noem*, No. 2:25-CV-00157-SCM, 2026 WL 74558 (E.D. Ky. Jan. 9, 2026); *Masis Lucero v. Field Office Director of Enforcement and Removal Operations*, No. 1:25-CV-823, 2025 WL 3718730 (S.D. Ohio Dec. 23, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872, at *8 (C.D. Cal. Nov. 12, 2025); *Olalde v. Noem*, 2025 WL 3131942, at *1 (E.D. Mo. Nov. 10, 2025); *Chavez v. Noem*, 801 F.Supp.3d 1133, 1140-41 (S.D. Cal. 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926, at *6, n.7 (W.D. La. Oct. 31, 2025); *Rojas*, 2025 WL 3033967, at *5, 9-10; *Pena v. Hyde*, 2025 WL 2108913, No. 25-11983-NMG (D. Mass. July 28, 2025); *Vargas Lopez v. Trump*, 802 F. Supp. 3d 1132 (D. Neb. 2025); *Garibay-Robledo v. Noem*, No. 3:25-CV-2461-L-BN, 2025 WL 2638672, at *1 (N.D. Tex. Sept. 12, 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Pipa-Aquise v. Bondi*, 2025 WL 2490657, at 2 (E.D. Va. Aug. 5, 2025). Most notably, district courts in in this circuit have held that aliens who are present in the country unlawfully are “applicants for admission” subject to § 1225(b)(2) and have soundly rejected the contrary arguments Petitioner makes here. *See Singh*, 2026 WL 74558, at *3-6 (rejecting arguments that § 1225(b)(2)(A) is limited to “arriving aliens,” that petitioner was not “seeking admission,” and that the government’s interpretation rendered the Laken Riley Act superfluous); *Masis Lucero*, 2025 WL 3718730, at *2-4 (citing *Jennings and Coronado v. Secretary, Department of Homeland Security*, No. 1:25-cv-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) in holding petitioner was subject to § 1225(b)(2)(A) and rejecting additional textual arguments). The District Court for the Eastern District of Kentucky put it succinctly: “[A]n “applicant for admission” is any alien who is either literally applying for admission or else is present in the United States without having received permission to be here.” *Singh*, 2026 WL 74558, at *3. Petitioner here is both. Consistent with those decisions, the

statutory text compels the conclusion that aliens like Petitioner are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

The Government acknowledges that some district courts disagree. District courts in Tennessee, including this Court on one occasion, have interpreted sections 1225 and 1226 in the manner he proposes. *See, e.g., Rios Pena v. Ladwig*, No. 2:25-CV-03082-TLP-CGC, 2025 WL 3679766 (W.D. Tenn. Dec. 18, 2025); *Patino v. Ladwig*, No. 3:25-cv-00569, 2025 WL 3628450 (E.D. Tenn. Dec. 15, 2025). But “[w]hat governs this case is the text of the statute, not what other district courts have concluded.” *Olalde*, 2025 WL 3131942 at *1. And to reiterate, other courts in this circuit have thoroughly examined the statutory language alongside contrary district court holdings and found that “the few have it right.” *See Singh*, 2026 WL 74558, at *1. As for this Court’s prior decision in *Patino v. Ladwig*, the Court relied almost exclusively on dicta in *Jennings* in reaching its conclusion. 2025 WL 3628450, at *2. But *Jennings* does not undermine the government’s interpretation, particularly in the face of the statute’s plain text. And Petitioner’s other arguments against application of § 1225(b)(2) similarly do not withstand scrutiny.

A. The Government’s Interpretation is Consistent with *Jennings*.

Jennings reviewed a Ninth Circuit decision that applied constitutional avoidance to “impos[e] an implicit 6-month time limit on an alien’s detention” under Sections 1225(b) and 1226. 583 U.S. at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to Section 1225(b) or Section 1226. Nonetheless, consistent with the Government’s reading, the Court recognized in its description of Section 1225(b) that “Section 1225(b)(2) serves as a catchall provision that applies to all applicants for admission not covered by §1225(b)(1).” *Id.* at 287.

As this Court noted in *Patino, Jennings* described the detention authorities in Sections 1225(b) and 1226, and in that context summarized Section 1226 as applying to aliens “already in the country”:

In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

583 U.S. at 289; *see also id.* at 288 (characterizing Section 1226 as applying to aliens “once inside the United States”). But “[t]he language of an opinion is not always to be parsed [like the] language of a statute,” and instead “must be read with a careful eye to context.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74 (2023) (quotation omitted). Earlier in its opinion, the *Jennings* Court had already acknowledged that “an applicant for admission” included an alien who “is present” in the country under § 1225. 582 U.S. at 287. And when describing the scope of Section 1226 in particular, *Jennings* refers to aliens “present in the country” who are removable under 8 U.S.C. § 1227(a)—a provision that applies *only* to admitted aliens. *See* 583 U.S. at 288. The Government’s interpretation is perfectly consistent with that understanding: it allows that Section 1226 is the exclusive source of detention authority for the substantial category of aliens who are were admitted into the United States but are now removable. *Supra* p. 7.

Moreover, nothing in the quoted language from *Jennings* suggests that Section 1226 is the *sole* detention authority for *every* “alien[] already in the country,” and the passage’s use of the word “certain” conveys the opposite. *See Buenroostro-Mendez*, 2026 WL 323330, at *7 (evaluating *Jennings* dicta and finding that § 1226’s application to “aliens in the United States...does not preclude § 1255 from also applying to such aliens.”). At a minimum, the quoted language is ambiguous and such uncertain language is insufficient to displace the statute’s plain text and the manifest congressional purpose. That is especially so given that—as this Court recognized—the

quoted language is “dicta, not the holding of *Jennings*.” *Patino*, 2025 WL 3628450, at *2.

B. *Bautista* is Not Controlling.

Petitioner also argues that he is a member of the “Bond Eligible Class” certified in *Bautista v. Santacruz*, No. 5:25-cv-01873, 2025 WL 3713982 (C.D. Cal. Dec. 18, 2025), but the judgment in that case is neither binding nor applicable here and presents no basis for granting the instant petition. The judgment there, which arose out of a habeas corpus petition, cannot bind any courts, custodians, or detainees outside the Central District of California—let alone the court, custodians, and detainees in this district. *See, e.g., Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2025 WL 3683918 (N.D. Tex. Dec. 19, 2025) (declining to enforce *Bautista* judgment against out-of-district petitioner); *Alberto Rodriguez v. Jeffreys*, No. 8:25CV714, 2025 WL 3754411 (D. Neb. Dec. 29, 2025); *Ore Falcon v. Wofford*, No. 1:26-CV-00181-WBS-EFB, 2026 WL 171927 (E.D. Cal. Jan. 22, 2026). The habeas statute forecloses such extraterritorial effect. Settled principles of preclusion confirm it. This Court may decline preclusive effect without awaiting appellate review.

Petitioners in *Bautista* challenged the DHS policy that required ICE to treat all noncitizens apprehended in the United States as “applicants for admission” under 8 U.S.C. § 1225(b)(2)(A). But the named petitioners in *Bautista* shared a unique factual characteristic: they were detained before *Hurtado* was decided and were then denied bond hearings based on *Hurtado*, which renders their factual situation distinguishable from Mr. De Leon Trejo, who was apprehended after *Hurtado* had been decided. The district court in *Bautista* issued temporary restraining orders and partial summary judgment as to the individual petitioners. *See Maldonado Bautista v. Santacruz (Bautista I)*, 2025 WL 3289861, at *1–2, *11 (C.D. Cal. Nov. 20, 2025). The court then granted class certification for a nationwide class, defined as “[a]ll noncitizens in the United States without lawful status who (1) have entered . . . the United States without inspection; (2) were not . . . apprehended upon arrival; and (3) are not . . . subject to detention under 8 U.S.C. § 1226(c),

§ 1225(b)(1), or § 1231” when DHS makes the initial custody determination. *Maldonado Bautista v. Santacruz (Bautista II)*, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The court extended relief granted to the petitioners to the entire class. *Id.* Later, the court issued an order granting in part and denying in part a petition for reconsideration or clarification while denying vacatur of the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216. *Maldonado Bautista v. Santacruz (Bautista III)*, 2025 WL 3713982, at *7 (C.D. Cal. Dec. 18, 2025). The *Bautista* judgment is on appeal. *Maldonado Bautista v. DHS*, No. 25-7958 (9th Cir. filed Dec. 18, 2025).

The pending appeal alone belies granting preclusive effect. Courts have long recognized the unfairness of imposing preclusion based on a judgment that may yet be reversed or vacated. *See* 18A Charles Alan Wright et al., *Federal Practice and Procedure* § 4433, n.21 (citing cases). Indeed, this concern has been recognized by at least one court in this specific context. *See Calderon Lopez*, 2025 WL 3683918, at *13 (“[T]he government could ultimately prevail on appeal in *Maldonado Bautista* . . . [if the Government] must fend off thousands of additional cases addressing the same issue that claim the Central District’s orders are binding, and it would face the real risk that other district courts will take the same improper approach”). Contrary to any argument Petitioner may make in reply, neither a stay nor vacatur is required to refuse preclusive effect because if the issuing court lacks jurisdiction to issue a decision with nationwide effect, comity does not require blind obedience. *See generally id.*

Several other considerations counsel against giving *Bautista* preclusive effect here. District courts are limited to granting habeas relief “within their respective jurisdictions,” but the *Bautista* decisions were purportedly nationwide. 28 U.S.C. § 2241(a). And core habeas claims may be adjudicated in only one district: the district of confinement. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *Wooten v. United States*, No. 23-1072, 2023 WL 5519152, at *2 (6th Cir. Aug. 23,

2023). Petitioner here was detained in this district when he filed his petition, not the Central District of California. Section 2241(a) similarly requires “that the court issuing the writ have jurisdiction over the custodian.” *Braden v. 30th Jud. Cir. Ct. of Kentucky*, 410 U.S. 484, 495 (1973). His immediate custodian was not named in *Bautista* and performs duties in this district. Accordingly, the *Bautista* court lacked jurisdiction over the Petitioner and his custodian. *See Lopez*, 2025 WL 3683918; *Rodriguez*, 2025 WL 3754411; *Ore Falcon*, 2026 WL 171927.

Second, Petitioner’s theory depends on nonmutual offensive issue preclusion against the United States. But non-mutual offensive collateral estoppel does not apply to the federal government. *United States v. Mendoza*, 464 U.S. 154, 160-62 (1984). The Supreme Court has squarely held that allowing nonparties to estop the government would freeze the development of important legal questions and distort the certiorari process. *Id.* The Court recently reaffirmed that principle in *Trump v. CASA, Inc.*, 606 U.S. 831, 852 n.13 (2025). Petitioner was not a named party in *Bautista*. Yet he seeks to bind the government nationwide based on one court’s resolution of a hotly contested question of statutory interpretation that is currently on appeal in this circuit. *Mendoza* forbids that result.

Third, preclusion principles apply with diminished force in habeas corpus proceedings, if they apply at all. The writ has never been governed by conventional notions of finality. *See Sanders v. United States*, 373 U.S. 1, 8 (1963). In fact, the District Court for the Western District of Tennessee has recognized that “it is well-settled that the principles of res judicata have no application in habeas corpus cases.” *Fernandez Luiz v. Luttrell*, 46 F. Supp. 2d 754, 756 (W.D. Tenn. 1999) (citing *Sanders*). Petitioner’s argument runs directly against that tradition.

Courts across the country have reached divergent conclusions on the same question of statutory interpretation, which renders reliance on a single adverse judgment—that is presently on

appeal—questionable. *See Calderon Lopez*, 2025 WL 3683918, at *13; *Alberto Rodriguez*, 2025 WL 3754411, at *9; *Ore Falcon*, 2026 WL 125270, at *2; *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330–31 (1979). *Bautista* constitutes a single decision from a district court across the country that is not binding here, conflicts with the INA, and should not be followed here.

C. The Laken Riley Act Does Not Disturb § 1225(b)(2)’s Application to Petitioner.

Petitioner may argue that the government’s interpretation of § 1225 renders § 1226(c)—which was added as part of the Laken Riley Act, Pub. L. No. 119-1, January 29, 2025, 139 Stat. 3 (2025)—superfluous. It does not. *See Buenrostro-Mendez*, 2026 WL 323330, at *7. The Laken Riley Act restricts the Attorney General from releasing ‘any alien’ who is ‘inadmissible’ under certain provisions *and* ‘is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of’ certain crimes.” *Olalde*, 2025 WL 3131942 at *4, quoting 8 U.S.C. § 1226(c)(1)(E) (emphasis in original). The “Laken Riley Act may apply to situations where § 1225 might not.” *Id.* “For example, an individual who has been admitted through fraud might not be an ‘applicant for admission’ under § 1225.” *Id.*, citing 8 U.S.C. § 1182(a)(6)(C)(i) (“Any alien who, by fraud...has procured...a visa, other documentation, or *admission* into the United States...is inadmissible.”) (emphasis in original). “But the Laken Riley Act may require that person to be detained even if § 1225 would not apply.” *Id.* Similarly, an alien who has been lawfully admitted but who is later removable following the commission of a crime would not be an “applicant for admission” under § 1225 but would instead be detained under § 1226. *See Sandoval*, 2025 WL 3048926, at *5 (discussing the alien in *Jennings*).

Several courts that have examined this issue—including the Fifth Circuit Court of Appeals—have rejected this argument. *See, e.g., Buenrostro-Mendez*, 2026 WL 323330, at *7; *Singh*, 2026 WL 74558 at *5-6 (“[T]he provisions of the Laken Riley Act specify *when* certain

aliens are to be detained. In this respect, the Laken Riley Act adds something that Section 1225(b)(2)(A) lacks.” (internal quotation marks omitted)); *Cabanas*, 2025 WL 3171331 at *6 (“Simply put, amendment by the recent Laken Riley Act to § 1226 isn’t superfluous. Beyond that, and regardless, the Supreme Court holds, ‘Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text.’” (quoting *Barton v. Burr*, 590 US 222, 239 (2020))); *Olalde*, 2025 WL 3131942 at *4 (noting that “it is perfectly plausible to interpret [§§ 1225 and 1226] as overlapping” and still finding the government’s interpretation of § 1225 “does not render the Laken Riley Act superfluous”); *Rojas*, 2025 WL 3033967 at *9 (“[L]egislation passed in 2025 has little bearing on the meaning of legislation enacted in 1996.... These newly added provisions [in § 1226] do not indicate anything with respect to either party’s proposed interpretations of Sections 1225 or 1226.”). For the same reasons, the Court should do the same here.

II. Petitioner’s Assertions Regarding Due Process and the APA Fail.

Petitioner vaguely appears to assert Due Process and APA claims based on his detention “without individualized review.” (See Doc. 1 at 7). But any Due Process or APA claim fails. Because Petitioner is properly detained as an applicant for admission under 8 U.S.C. § 1225(b)(2), he cannot show that his detention violates his due process rights. The Supreme Court has recognized that “the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings,” foreclosing any argument by Petitioner regarding substantive due process. *Demore v. Kim*, 538 U.S. 510, 521 (2003). Furthermore, he is presently in removal proceedings, which is all the due process required under § 1225(b)(2)(A). See *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (“[A]n alien in respondent’s position has only those rights regarding admission that Congress has provided by statute.”). Petitioner has not alleged that he was not given notice of the charges against him, was not given access to counsel, or will not

have an opportunity to be heard by an immigration judge. Accordingly, his petition presents no basis on which to find that his detention violates any procedural due process rights.

Any APA claim would be similarly unavailing. By the APA's terms, it is available only for "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704; *see also Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882 (1990). But Petitioner does not identify a final agency action, his immigration proceedings are ongoing, and he has an alternative adequate remedy either in immigration court or in this court. Petitioner does not have a direct challenge to the BIA's precedential decision in *Hurtado* because Petitioner was not a party to *Hurtado*, which merely conforms with Congress's mandate and in any event is not arbitrary and capricious under the APA.⁵ At most, Petitioner could challenge the application of *Hurtado* to his case. Indeed, as a general matter, an agency must treat like cases alike. *See Nat'l Cable & Telecomms Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) ("Unexplained inconsistency is . . . a reason for holding [agency action] . . . arbitrary and capricious . . ."); *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 776 (D.C. Cir. 2005) ("An agency must provide an adequate explanation to justify treating similarly situated parties differently."). Here, however, while

⁵ The BIA had never issued a precedential decision directly addressing the question before *Hurtado*, and thus it did not depart from its own prior reasoning. *Hurtado*, 29 I. & N. Dec. at 225 n.6. Prior practice cannot change the plain statutory text mandating detention under § 1225(b)(2). *Loper Bright*, 603 U.S. at 385–86; *Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) ("[N]o amount of policy-talk can overcome a plain statutory command"). Moreover, an agency can "change its existing position as long as it provided a reasoned explanation for the change. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); *Food & Drug Admin. v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542 (2025). In *Hurtado*, the BIA acknowledged prior practice, including interim guidance from 1997, before providing thorough reasoning supporting its announced position. *Compare* 29 I. & N. Dec. at 225 n.6 *with id.* at 220–23. Finally, the BIA explained that "the long-standing practice of the government" cannot "change, or even eviscerate, explicit statutory text that is contrary to that practice." *Id.* at 226. Thus, the BIA acknowledged prior contrary practice by immigration judges and DHS (and INS) and provided a thorough explanation for its disagreement with that practice. The APA requires no more.

Petitioner may not agree with his detention, it is undisputedly not a departure from *Hurtado*. Because Petitioner is challenging the legality of his detention, Petitioner's claim sounds in habeas corpus (if at all) and not under the APA. *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025).

III. This Court Cannot Release Petitioner Prior to the Immigration Judge Entertaining a Bond Hearing.

Petitioner incorrectly asserts that he is detained pursuant to § 1226, even though he is an applicant for admission under the INA. Nevertheless, Petitioner requests that this Court order his immediate release. This request ignores the very process statutorily mandated by the detention statute he claims as applicable. Section 1226 “generally governs the process of arresting and detaining . . . aliens pending their removal.” *Jennings*, 583 U.S. at 288. Section 1226(a) provides that “an alien may be . . . detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)).

If DHS decides to release the alien, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If DHS determines that an alien should remain detained during the pendency of his removal proceedings, the alien may request a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen on bond. *See Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006);⁶ *see also* 8 C.F.R. § 1003.19(d). If, after the bond

⁶ The BIA has identified the following non-exhaustive list of factors the immigration judge may consider: “(1) whether the alien has a fixed address in the United States; (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6) the alien’s criminal record,

hearing, either party disagrees with the decision of the immigration judge, that party may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3).

Section 1226(a) does not provide an alien with a right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Section 1226 release under bond occurs only when the detained alien moves for bond and circumstances forming bond and release are determined by an immigration judge, not by a district court. The idea that § 1226 simply permits release is antithetical to its language and its statutory purpose of detention. A finding that a detained alien should be detained under § 1226, rather than § 1225(b)(2), is not a finding for release, but rather a finding that the alien should be detained, unless he seeks and obtains bond from the immigration court.⁷

CONCLUSION

The Court should deny and dismiss the petition because Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2) and the Agency has afforded him all due process to which he is entitled.

including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States." *Guerra*, 24 I. & N. Dec. at 40.

⁷ Indeed, in *Patino v. Ladwig*, upon which Petitioner relies in his emergency motion for TRO and preliminary injunction, the court ruled that the appropriate remedy was a "prompt" bond hearing, not immediate release. 2025 WL 3628450, at *3. Although the government respectfully disagrees with the *Patino* court's conclusion that Section 1226 applies in these circumstances, the government agrees that the law does not require immediate release.

Respectfully submitted,

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