UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Eduardo Isidro Alvarado, Petitioner, v. Kristi Noem, *et al.*, Respondents.	Civil Action No. 3:26-CV-00393-KC

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
CONSIDERING RECENT FIFTH CIRCUIT PRECEDENT

TABLE OF CONTENTS

STATEMENT OF ISSUES vi

I. Background 1

II. Petitioner is Subject to Mandatory Detention 2

III. Exhaustion of Administrative Remedies 9

IV. Due Process Claims 10

V. APA Challenges May Not Be Asserted as Habeas Petitions 12

VI. Application of Bautista 12

VII. Stays and Order Not to Transfer 13

VIII. Conclusion 13

TABLE OF AUTHORITIES

Cases

A.M. v. Joyce,
No. 2:25-CV-00615-LEW, 2025 WL 3706922 (D. Me. Dec. 22, 2025) 11
Acute Care Ambul. Serv., L.L.C. v. Azar II,
No. 7:20-CV-00217, 2020 WL 7640206 (S.D. Tex. Dec. 3, 2020) 1
Alonzo v. Noem,
-- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) 7
Andrade v. Patterson,
No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) 6
Armando C. G. v. Tsoukaris,
No. 20-5652, 2020 WL 4218429 (D.N.J. July 23, 2020) 12
Azizzadeh v. Rhoney,
No. 25-CV-1288 (JLS), 2026 WL 44324 (W.D.N.Y. Jan. 6, 2026) 4
Barco v. Witte,
65 F.4th 782 (5th Cir. 2023) 1
Bartolon v. Bondi,
No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025) 9
Buenrostro v. Bondi,
No. 25-20496, ---- F.4th ---- 2026 WL 323330 (5th Cir. Feb. 6, 2026) 1, 2, 3
Cabanas v. Bondi,
No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) 7
Calderon Lopez v. Lyons,
No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) 3, 10
Candido v. Bondi,
No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) 6
Chanaguano Caiza v. Scott,
No. 1:25-CV-00500-JAW, 2025 WL 3013081 (D. Me. Oct. 28, 2025) 8
Chavez v. Noem,
-- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) 8
Chen v. Almodovar,
No. 1:25-cv-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) 6
Coronado v. Sec'y, DHS,
No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) 5, 11
Cortez v. Lynch,
No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026) 9
Cruz v. Noem,
No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) 6
Cruz Rodriguez v. Olson,
F. Supp. 3d --, No. 1:25-CV-12961 2026 WL 63613 (N.D. Ill. Jan. 8, 2026) 3
Delgado v. Noem,
No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025) 5
E.R.J.B. v. Wofford,
No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) 4, 11

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) 6
Garcia v. U.S. Attn'y Gen.,
No. 2:25-CV-1053-KCD-DNF, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025) 5
Garibay-Robledo v. Noem,
No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) 9
Garibay-Robledo v. Noem,
-- F. Supp. 3d --, No. 1:25-CV-177-H, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026) 3
Gutierrez Sosa v. Holt,
No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026) 10
Hinojosa v. Horn,
896 F. 3d 305 (5th Cir. 2018) 9
Imran v. Harper,
No. 25-30370, 2026 WL 93131 (5th Cir. 2026) 13
INA. *Dep't of Homeland Sec. v. Thuraissigiam*,
91 U.S. 103 10
Jimenez v. Thompson,
No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) 11
Kum v. Ross,
No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025) 7
Kum v. Ross,
No. 6:25-CV-00451, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) 7
Liang v. Almodovar,
No. 1:25-cv-09322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) 5
Martin v. Singletary,
965 F.2d 944 (11th Cir. 1992) 1
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) 4
Matter of Yajure Hurtado,
29 I&N Dec. 216 (B.I.A. 2025) 2, 8
Melgar v. Bondi,
No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) 6
Mesina v. Wiley,
352 F. App'x 240 (10th Cir. 2009) 12
Miller v. Commw. of Pa.,
588 F. App'x 96 (3d Cir. 2014) 12
Montoya v. Holt,
No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) 4, 11
Naikpay v. Sukkar,
No. 2:25-CV-1167-KCD-DNF, 2026 WL 44820 (M.D. Fla. Jan. 7, 2026) 4
Olalde v. Noem,
No. 1:25-cv-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) 7
Oliveira v. Patterson,
No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) 7
Oliveria v. Albarran,
No. 1:25-CV-01760 WBS AC, 2025 WL 3525923 (E.D. Cal. Dec. 9, 2025) 5

P. B. v. Bergami,
No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) 5
Padilla v. Galovich,
No. 25-CV-865-JDP, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025) 4
Pastor v. Dir. of Detroit Field Off.,
No. 4:25-CV-02761, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025) 9
Pereira v. Sessions,
585 U.S. 198, 138 S. Ct. 2105 (2018) 3
Preiser v. Rodriguez,
411 U.S. 475 (1973) 12
Ramos v. Lyons,
No. 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) 7
Rivera Hernandez v. Noem,
No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) 4, 11
Rodriguez v. Noem,
No. 9:25-CV-00320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) 5
Rojas v. Olson,
No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) 8, 11
Sandoval v. Acuna,
No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) 8
Singh v. Noem,
No. 2:25-CV-00157-SCM, 2026 WL 74558 (E.D. Ky. Jan. 9, 2026) 3
Suarez v. Noem,
No. 1:25-CV-00202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) 6
Topal v. Bondi,
No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) 6
Ugarte-Arenas v. Olson,
No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) 5, 11
United States v. Cleto,
956 F.2d 83 (5th Cir. 1992) 9
Valencia v. Chestnut,
-- F. Supp. 3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) 7
Zuniga v. Lyons,
No. 1:25-CV-221-H, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) 4

Statutes

8 U.S.C. § 1225 ..... 2, 3
8 U.S.C. § 1225(b)(2) 1
8 U.S.C. § 1225(b)(2)(A) 1, 8
8 U.S.C. § 1226 2
8 USC § 1226(e) 9

Other Authorities

Pub L. No. 104-208 8

STATEMENT OF ISSUES

1. Whether mandatory detention under 8 U.S.C. § 1225(b) is unconstitutional as applied to petitioner.

2. Whether the writ of habeas corpus under 28 U.S.C. § 2241 provides any relief other than release.

Federal Respondents provide the following response to Petitioner's habeas petition.[1] Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought, including attorney's fees under the Equal Access to Justice Act ("EAJA").[2] Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). This conclusion is appropriate under recent Fifth Circuit precedent. The Fifth Circuit Court of Appeals recently held that aliens, like the Petitioner, who entered the United States illegally and who are not "clearly and beyond a doubt entitled to be admitted," "shall be detained" under 8 U.S.C. § 1225(b)(2)(A), until the conclusion of their removal proceedings. *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026). The *Buenrostro* decision is binding precedent and requires that the Court deny this habeas petition.[3]

Pursuant to the Court's Show Cause Order (ECF No. 3), Respondents have reviewed the cases referenced by the Court and note said cases were decided prior to the Fifth Circuit's decision in *Buenrostro v. Bondi*, No. 25-20496, ---- F.4th ---- 2026 WL 323330, (5th Cir. Feb. 6, 2026), and as such, there has been a material change to the legal landscape applicable to this case.

I. BACKGROUND

Petitioner alleges he is a native and citizen of Guatemala who entered the country unlawfully on or about September 2010. ECF No. 1, at ¶¶ 7, 13. Petitioner further alleges he was

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1 The Department of Justice represents only federal employees in this action.

2 *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

3 The *Buenrostro* decision is a published decision and precedential authority even though the mandate has yet to issue. *See, e.g., Martin v. Singletary*, 965 F.2d 944, 945 n.1 (11th Cir. 1992) (explaining that even a stay in the issuance of a mandate does not impact the precedential value of published opinions); *Acute Care Ambul. Serv., L.L.C. v. Azar II*, No. 7:20-CV-00217, 2020 WL 7640206, at *13 (S.D. Tex. Dec. 3, 2020) (rejecting the argument that a Fifth Circuit decision is not controlling because " the mandate has yet to issue, and thus not properly relied upon as precedent.").

recently detained and taken into custody on or about January 20, 2026. *Id.* at ¶ 16. Petitioner asserts he is currently detained at the El Paso Camp East Montana in El Paso, Texas. *Id.* at ¶ 7.

II. PETITIONER IS SUBJECT TO MANDATORY DETENTION

Petitioner seeks an order from this Court directing the Department of Homeland Security to immediately release Petitioner from immigration detention; alternatively, some Petitioners ask this Court to order a bond hearing in immigration court. Neither is appropriate and the Court should deny the petition in light of the recent Fifth Circuit precedent. The primary issue raised by Petitioner, namely that his detention pursuant to 8 U.S.C. § 1225 and the Board of Immigration Appeals (BIA) decision in *Hurtado* is unlawful, was rejected by the Fifth Circuit. *Buenrostro-Mendez v. Bondi*, No. 25-20496, No. 25-40701, 2026 WL 323330 at * 1 (5th Cir. Feb. 6, 2026); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

Petitioner's contention that detention should be governed by 8 U.S.C. § 1226, that Petitioner is being unlawfully detained and deprived of a bond hearing, and that the detention violates the United States Constitution were rejected in *Buenrostro*. *Id.* To the extent Petitioner claims they are not properly categorized as an applicant for admission "the text and context of § 1225 contradict the petitioners' reading of the statute." *Id.* at *9.

The Fifth Circuit made clear that aliens present in the United States who have not been admitted by lawful means, remain "applicants for admission" who were "seeking admission." 2026 WL 323330 at *4. The court explained that "[w]hen a person applies for something, they are necessarily seeking it." *Id.* In so holding, the court rejected the reasoning that the phrase "seeking admission" in § 1225(b)(2)(A) uses the present tense and thus applies only to individuals "currently and actively seeking to be admitted to the United States when [they are] apprehended." *Id.* at *3. The Fifth Circuit held that "the everyday meaning of the statute's terms confirms that

being an 'applicant for admission' is not a condition independent from 'seeking admission.'" *Id.* at *4.

Buenrostro, recognizing that the plain language of the INA controlled the analysis and outcome, also rejected arguments based on the Executive's past interpretation and application of § 1225 and § 1226. 2026 WL 323330 at * 8. "Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text." *Id* (citing, *Pereira v. Sessions*, 585 U.S. 198, 204, 138 S. Ct. 2105, 2111 (2018)). The Fifth Circuit observed that the Government's interpretation and application of § 1225(b)(2) "better honors" the intent of Congress's amendments to the INA—the full enforcement of § 1225(b)(2)'s plain terms "put aliens seeking admission lawfully on equal footing with those who entered without inspection." *Id.* at * 9.

Respondents acknowledge that many courts in the Western District of Texas have ruled otherwise in previous habeas cases. However, this significant development in the Fifth Circuit warrants this Court taking a different approach. "After reviewing carefully the relevant provisions and structure of the Immigration and Naturalization Act, the statutory history, and Congressional intent" the Fifth Circuit concluded that the detention authority relied upon by the government is lawful. *Buenrostro*, at *1.

The Fifth Circuit is not the only court to so hold. District courts around the country agree. *See Garibay-Robledo v. Noem*, -- F. Supp. 3d --, No. 1:25-CV-177-H, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026) (Hendrix, J.) (holding that Petitioner, as an applicant for admission, is properly detained without bond under § 1225); *Singh v. Noem*, No. 2:25-CV-00157-SCM, 2026 WL 74558 (E.D. Ky. Jan. 9, 2026) (Meredith, J.) (holding that Petitioner, as an applicant for admission, is properly detained without bond under § 1225); *Cruz Rodriguez v. Olson*, -- F. Supp. 3d --, No. 1:25-CV-12961, 2026 WL 63613 (N.D. Ill. Jan. 8, 2026) (Pacold, J.) (holding that Petitioner was

an applicant for admission seeking entry and thus subject to mandatory detention without bond); *Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); *Naikpay v. Sukkar*, No. 2:25-CV-1167-KCD-DNF, 2026 WL 44820 (M.D. Fla. Jan. 7, 2026) (Dudek, J.) (holding that alien released on humanitarian parole and later re-apprehended remained an applicant for admission under § 1225); *Azizzadeh v. Rhoney*, No. 25-CV-1288 (JLS), 2026 WL 44324 (W.D.N.Y. Jan. 6, 2026) (Sinatra, Jr., J.) (holding that despite being in the United States, Petitioner is an applicant for admission and no bond hearing is required); *Zuniga v. Lyons*, No. 1:25-CV-221-H, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025) (Hendrix, J.) (holding that alien residing in U.S. for 25-years remains an applicant for admission and shall be detained by § 1225 without entitlement to a bond hearing); *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J) (holding that Petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause); *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) (Cole, J.) (holding that § 1225 applies to noncitizens present in the US but never admitted and requires detention through the end of removal proceedings); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.) (holding that § 1225, as the more specific statute, governs Petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Padilla v. Galovich*, No. 25-CV-865-JDP, 2025 WL 3640960 (W.D. Wis. Dec. 16, 2025)

(Peterson, J.) (holding that Petitioner, as an applicant for admission, is not entitled to a bond hearing under § 1225 despite an improper release on bond when he was transferred from expedited removal into asylum proceedings); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole, J.) (holding that because Petitioner was never lawfully admitted, detention is governed by § 1225 and bond hearings are unavailable as a matter of statute and due process); *Liang v. Almodovar*, No. 1:25-cv-09322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 2025) (Vyskocil, J.)(holding that because no immigration officer has decided that Petitioner is clearly and beyond a doubt entitled to be admitted, he is subject to mandatory detention under § 1225); *P. B. v. Bergami*, No. 3:25-CV-02978-O, 2025 WL 3632752 (N.D. Tex. Dec. 13, 2025) (O'Connor, J.) (holding that Petitioner, still awaiting her asylum hearing, is an application for admission that is seeking admission subject to mandatory detention under § 1225); *Delgado v. Noem*, No. 9:25-CV-00329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025) (Truncale, J.) (holding that petitioner is validly detained pending removal proceedings under § 1225 and § 1226 and that habeas was an improper means to challenge custody redetermination decisions); *Garcia v. U.S. Attn'y Gen.*, No. 2:25-CV-1053-KCD-DNF, 2025 WL 3537592 (M.D. Fla. Dec. 10, 2025) (Dudek, J.) (holding that Petitioner, who was apprehended at the border, is an applicant for admission subject to mandatory detention under §1225, and that one month of detention falls below the constitutional threshold for a potential due process violation); *Rodriguez v. Noem*, No. 9:25-CV-00320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) (Truncale, J.) (holding that Petitioner is properly detained without a bond hearing as an applicant for admission subject to § 1225, that § 1226 would only permit a discretionary hearing, and that habeas relief is improper for the alleged procedural violation); *Oliveria v. Albarran*, No. 1:25-CV-01760 WBS AC, 2025 WL 3525923 (E.D. Cal. Dec. 9, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond

hearings, due process is satisfied by the statutory scheme itself); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (holding that Petitioner, as an applicant for admission, is properly detained without a bond hearing under § 1225, which does not violate Due Process Clause); *Melgar v. Bondi*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) (Buescher, J.) (holding that Petitioner is properly detained under § 1225, which does not require the alien to be actively seeking admission, even if he may also be subject to § 1226); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr., J.) (holding that Petitioner is an application for admission that is seeking admission under § 1225 despite having lived illegal within the United States since 2004); *Chen v. Almodovar*, No. 1:25-cv-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.) (holding that a § 1225 "applicant for admission" includes both arriving aliens and aliens present in the United States that did not enter lawfully); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.) (holding that Petitioner is unlikely to prevail on the merits of his relief because he is an applicant for admission properly detained under § 1225 that has never received permission to enter the United States); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.) (holding that Petitioner's lengthy presence in the United States after failing to present himself for inspection cannot remove him from § 1225's mandatory-detention framework and that he is still "seeking admission"); *Suarez v. Noem*, No. 1:25-CV-00202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.) (holding that Petitioner is an alien, present in the United States, who has not been admitted, so § 1225 applies to him and detention without a bond hearing is mandatory); *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.) (holding that release on recognizance following apprehension at the border does not alter Petitioner's legal

classification as an applicant for admission) *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (Joseph, J.) (holding that 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 ever intended to apply or enter properly); *Alonzo v. Noem*, -- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) (Shubb, J.) (holding that "applicant for admission" is a legal designation for purposes of the removal scheme that covers aliens present in the country but not yet admitted); *Valencia v. Chestnut*, -- F. Supp. 3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.) (holding that Petitioner is unlikely to succeed on his challenge to the INA and Due Process clause because an "applicant for admission" is a legal designation not a description of present conduct); *Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.) (rejecting Petitioner's argument that she was not "seeking admission" given her decades-long residence in the United States); *Ramos v. Lyons*, No. 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.) (holding that § 1225 applies to an alien who is physically present in the United States but not lawfully admitted, regardless of how long they have been physically present here); *Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Divine, J.) (holding that § 1225 does not render the Laken Riley Act superfluous and that Petitioner is detained under § 1225 despite a long-established government practice of detaining under § 1226); *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.) (holding that since Petitioner, who was detained upon entering the United States, is an applicant for admission under § 1225(b), there is no statutory entitlement to release on bond or to a bond hearing); *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.) (holding that 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); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.) (holding that 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); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) ((holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings); *Chanaguano Caiza v. Scott*, No. 1:25-CV-00500-JAW, 2025 WL 3013081 (D. Me. Oct. 28, 2025) (Woodcock, Jr., J.) (holding that Petitioner is unlikely to succeed on the merits because, upon the automatic expiration of his parole, he was restored to the § 1225 detention status held at the time of parole); *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.) (holding that Petitioner, as an alien present in the United States who has not been admitted, is an applicant for admission subject to mandatory provision under the plain text of § 1225(b)).

The Board of Immigration Appeals (BIA), the highest administrative body charged with interpreting and applying the immigration laws, also agreed in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). There, the BIA examined the plain language of § 1225, the INA's statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub L. No. 104-208, and DHS's prior practices. After doing so, the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to

hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." 29 I&N Dec. at 225.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

"A person seeking habeas relief must first exhaust available administrative remedies." *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018)(citing, *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (per curiam)). Exhaustion has been a long-standing prerequisite to habeas relief. *Id.*

There are approximately 3.74 million cases pending in immigration court. See, https://www.justice.gov/eoir/pr/eoir-announces-significant-immigration-court-milestones (Sept. 4, 2025). Federal district courts are not intended nor equipped to be the reviewing court for all immigration bond determinations or decisions related to the institution of removal proceedings. 8 USC § 1226(e) (district courts do not have jurisdiction to review discretionary decisions made by immigration judges regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole). "Challenges to removal proceedings, the government's evidence, and the merits of asylum claims are properly addressed to the immigration court and should be administratively exhausted before presenting in district court. *Hinojosa*, 896 F. 3d at 314 (5th Cir. 2018); *see Cortez v. Lynch*, No. 1:25-CV-822, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026) (McFarland, J.) (declining to review Petitioner's detention-based claims due to his failure to exhaust administrative remedies); *Pastor v. Dir. of Detroit Field Off.*, No. 4:25-CV-02761, 2025 WL 3746495 (N.D. Ohio Dec. 24, 2025) (Calabrese, J.) (holding that Petitioner must first pursue challenge before BIA for exhaustion and that such exhaustion is not futile); *Bartolon v. Bondi*, No. 1:25-CV-747, 2025 WL 3674604 (S.D. Ohio Dec. 18, 2025) (McFarland, J.) (holding that Petitioner's failure to exhaust claims with BIA precluded judicial review of habeas claims);

Garibay-Robledo v. Noem, No. 1:25-CV-177-H, 2025 WL 3264482 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.) (holding that Petitioner does not demonstrate grounds for excusing exhaustion and must first advance his request for relief to BIA).

Petitioner has either chosen not to seek bond before the immigration court, or Petitioner has received a bond determination from an immigration judge that Petitioner contests. Either way Petitioner must first seek relief with the immigration court or the BIA, fully exhausting administrative remedies before coming to this Court.

IV. DUE PROCESS CLAIMS

To the extent Petitioner raises due process claims those should likewise be denied. Petitioner is receiving or has received due process afforded through removal proceedings in immigration court. In upholding the facial constitutionality of § 1225(b) the Supreme Court in *Thuraissigiam* found that applicants for admission are entitled only to the protections set forth by statute in the INA. *Dep't of Homeland Sec. v. Thuraissigiam,* 91 U.S. 103, 140 (finding aliens who arrive at ports of entry are 'treated' for due process purposes 'as if stopped at the border' and 'only have rights regarding admission that Congress has provided by statute').

In addressing Petitioner's claims of potential abuse of detention pending removal proceedings, the Fifth Circuit found that *Zadvydas v. Davis* did not apply to detained aliens who received due process through removal proceedings. *Buenrostro*, at *9. District courts around the country have also dismissed due process concerns in similar contexts. *See Calderon Lopez v. Lyons*, No. 1:25-CV-226-H, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026) (Hendrix, J.) (holding that nothing in the INA or Due Process Clause contradicts mandatory detention of applications for admission without bond under § 1225); *Gutierrez Sosa v. Holt*, No. CIV-25-1257-PRW, 2026 WL 36344 (W.D. Okla. Jan. 6, 2026) (Wyrick, J.) (holding that Petitioner is unambiguously governed

by § 1225 and his due process claim coming three months after arrest is denied as premature); *Montoya v. Holt*, No. CIV-25-01231-JD, 2025 WL 3733302 (W.D. Okla. Dec. 26, 2025) (Dishman, J) (holding that Petitioner is unambiguously an applicant for admission and that detention without a bond hearing does not violate the Due Process Clause); *A.M. v. Joyce*, No. 2:25-CV-00615-LEW, 2025 WL 3706922 (D. Me. Dec. 22, 2025) (Walker, J.) (holding that Petitioner's approximately one-month detention without a prompt bond hearing is consistent with the INA and the Due Process Clause); *Rivera Hernandez v. Noem*, No. 9:25-CV-00326, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025) (Truncale, J.) (holding that § 1225, as the more specific statute, governs Petitioner's detention, which does not violate due process as it has not been shown to be indefinite); *E.R.J.B. v. Wofford*, No. 1:25-CV-01843-WBS-SCR, 2025 WL 3683118 (E.D. Cal. Dec. 18, 2025) (Shubb, J.) (holding that because § 1225 authorizes mandatory detention and is silent on bond hearings, due process is satisfied by the statutory scheme itself); *Coronado v. Sec'y, DHS*, No. 1:25-CV-831, 2025 WL 3628229 (S.D. Ohio Dec. 15, 2025) (Cole, J.) (holding that because Petitioner was never lawfully admitted, detention is governed by § 1225 and bond hearings are unavailable as a matter of statute and due process); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.) (holding that Petitioner, as an applicant for admission, is properly detained without a bond hearing under § 1225, which does not violate Due Process Clause); *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025) (Eskridge, J.) (rejecting Petitioners argument that mandatory detention without bond hearing violates substantive due process); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.) ((holding that Petitioner is an applicant for admission despite his prior bond and that his detention does not violate Due Process because it is limited to the conclusion of his removal proceedings).

V. APA CHALLENGES MAY NOT BE ASSERTED AS HABEAS PETITIONS

In this proceeding, Petitioners expressly challenge their civil detention. *See, e.g.*, ECF 1. Such a challenge must be brought in the form of a petition for a writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973) (holding that when a detainee "is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus"); *see also, e.g.*, *Miller v. Commw. of Pa.*, 588 F. App'x 96, 97 n.1 (3d Cir. 2014) ("Relief in the form of . . . release from custody indicates a challenge to 'the very fact or duration of [one's] physical imprisonment' and may be sought *only* through a petition for a writ of habeas corpus[.]" (emphasis added) (quoting *Preiser*, 411 U.S. at 500)). Put simply, "release from ICE custody . . . is a remedy that is *only* available through a habeas petition." *Armando C. G. v. Tsoukaris*, No. 20-5652, 2020 WL 4218429, at *7 (D.N.J. July 23, 2020) (emphasis added).

Some Petitioners purport to assert a claim under the Administrative Procedure Act ("APA")—a civil claim. *Id.* ¶¶ 61–68. This they may not do, as a civil APA claim is not cognizable in the habeas context. *See, e.g.*, *Mesina v. Wiley*, 352 F. App'x 240, 241-42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim").

VI. APPLICATION OF BAUTISTA

To the extent Petitioner invokes the December 18, 2025, partial final judgment in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), ECF No. 92, it is neither binding nor applicable here and presents no basis for granting the petition. First, the *Bautista* declaratory judgement is void with respect to petitioners and custodians outside the Central District of California because it was issued despite a palpable lack of jurisdiction. Second, the *Bautista* declaratory judgement has no preclusive effect outside the Central District of California and is on

appeal, creating a serious risk of inconsistent judgments and unfair results if the *Bautista* judgment is reversed or vacated on appeal. That is especially true where the judgment in *Bautista* now stands in direct conflict with the Fifth Circuit's decision on the underlying issue raised in *Baustista*. *Buenrostro* at *8-9.

VII. STAYS AND ORDERS NOT TO TRANSFER

If the Court in this case entered an order staying removal that order should be vacated. The Fifth Circuit recently stated in an unpublished decision that district courts lack jurisdiction to enter stays of removal. *Imran v. Harper*, No. 25-30370, 2026 WL 93131 (5th Cir. 2026).

VIII. CONCLUSION

The concerns expressed by district courts in the Western District of Texas in earlier rulings have been decided by the Fifth Circuit Court of Appeals and are pending before federal appellate courts in other circuits. This Court should follow the Fifth Circuit's reasoning in *Buenrostro*. The orderly legal administration of this issue is now properly before the federal appellate courts. This Court can trust that the issue will be decided in accordance with proper jurisprudence and the expedience that questions of detention deserve. Respondents respectfully request that the Court deny this petition.

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Respectfully submitted,

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