

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

MOISES ANGEL FUENTES,
Petitioner,

v.

KRISTI NOEM, Secretary, Department of
Homeland Security, *et al.*,
Respondents.

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CIVIL ACTION NO. 5:25-cv-00153

**RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER**

INTRODUCTION AND SUMMARY OF ARGUMENT

1. Respondents, Kristi Noem, the Secretary of Homeland Security (DHS), *et al.*, file this opposition to Petitioner, Moises Angel Fuentes' Motion for Preliminary Injunction and Temporary Restraining Order (hereafter "Motion for Injunctive Relief") (Dkt. No. 2). As discussed below, Petitioner has failed to satisfy the heavy burden of showing a clear entitlement to the extraordinary relief that he seeks. Here, Petitioner cannot seek to enforce an Immigration Judge's bond decision because Petitioner has yet to seek a bond hearing in his pending removal proceedings. But even if Petitioner did seek a bond hearing, Petitioner's claims lack merit. Petitioner is detained under § 235(b) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b) as an "applicant for admission" and he is therefore subject to mandatory detention. Contrary to the Motion for Injunctive Relief, no Immigration Judge (IJ) has determined that it lacks the authority to issue the bond in question. But even if an IJ did find it lacked jurisdiction to do so, that point cannot be disputed in light of a recent Board of Immigration Appeals decision: *In Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Further, this habeas petition fails because Congress divested the courts of jurisdiction over the type of discretionary bond Petitioner challenges in this case. Nevertheless, the habeas petition fails because there is no evidence in this

habeas action that Petitioner was arrested pursuant to a warrant as mandated under § 236(a) of the INA, 8 U.S.C. § 1226(a). For these and all the reasons discussed below, the Court should deny Petitioner's Motion for Injunctive Relief (Dkt. No. 2).

STANDARD OF REVIEW

2. 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 ~~shall~~ 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 TRO 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 DHS to perform the express act of releasing him. He therefore must show a clear entitlement to relief under the facts and law.

BACKGROUND

3. On August 5, 2025, in Corpus Christi, Nueces County, Texas, a law enforcement officer with Nueces County Sherriif's Office conducted a traffic stop of a vehicle transporting Petitioner, who was "on his way to work." Dkt. No. 1, ¶¶ 17, 44; Dkt. No. 9-1, ¶ 4(c) (Unsworn Declaration of ICE Deportation Officer Marcos L. Gamez); Dkt. No. 9-2 at 3 (Petitioner's Record of Deportable/Inadmissible Alien). Upon suspicion of an immigration violation, the officer contacted the U.S. Border Patrol Station in Corpus Christi to request assistance in determining Petitioner's immigration status. *See* Dkt. No. 9-1, ¶ 4(c); Dkt. No. 9-2 at 3. After determining that Petitioner was an undocumented alien, originally from Mexico, who illegally entered the United States, the officer "arrested and transported" Petitioner to the U.S. Border Patrol Station. *Id.* Upon arrival, Petitioner was placed into custody of U.S. Customs and Border Protection ("DHS/CBP"). *Id.*

4. Because DHS/CBP found Petitioner entered the United States illegally from Mexico and had remained in the United States since approximately 2005, without prior admission or parole, DHS/CBP transferred Petitioner to the Port Isabel Service Processing Center and served Petitioner with a Notice to Appear, commencing removal proceedings and charging Petitioner as removable under the following sections of the INA: (1) Section 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled; and (2) Section 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant who, at the time of entry, did not possess a valid entry document or suitable travel document. *See* Dkt. No. 1-2, Ex. A at 2-6; Dkt. No. 9-1, ¶¶ 4(a), (b), (d); Dkt. No. 9-2 at 2-3. Additionally, DHS/CBP served Petitioner with DHS Form I-826 "Notice of Rights and Request for Disposition" (Dkt. No. 9-3), which

Petitioner refused to sign, notifying Petitioner of his right to request a bond a hearing before an Immigration Court:

You have been arrested because immigration officers believe that you are illegally in the United States. You have the right to a hearing before the Immigration Court to determine whether you may remain in the United States. ***If you request a hearing before a judge in Immigration Court, you may be detained, or you may be eligible to be released from detention, either with or without payment of bond.***

Dkt. No. 9-3 at 1 (emphasis added).

5. The following day, August 6, 2025, CBP/DHS issued an Order to Detain Petitioner pending his removal proceedings at Port Isabel Service Processing Center (Dkt. No. 9-4) based on its finding that Petitioner was subject to mandatory detention as an applicant for admission under 8 U.S.C. § 1225(b)(2)(A). *See* Dkt. No. 9-4 at 1; Dkt. No. 9-2 at 2-3; Dkt. No. 1-2, Ex. A at 2-6. Subsequently, Petitioner was transferred to the custody of DHS/ICE and detained at the Rio Grande Processing Center in Laredo, Webb County, Texas, where Petitioner remains in mandatory detention pending issuance of a final administrative order. Dkt. No. 9-1, ¶ 4(i).

6. In his pending removal proceedings, Petitioner is scheduled for his final merit hearing on October 31, 2025. Dkt. No. 9-1, ¶ 4(i). 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. *Id.*, ¶ 4(e). Instead, on September 17, 2025, through retained counsel record, Petitioner inquired about the possibility of parole, but has not submitted a formal request for humanitarian parole, including the basis for the request and all pertinent supporting documents. *Id.*, ¶ 4(g); *see also* Dkt. No. 1-2, Ex. B at 7-9. Nevertheless, despite being informed of his right to do so on August 5, 2025 (Dkt. No. 9-3 at 1), Petitioner failed to request a bond redetermination from DHS/ICE's ERO or a bond redetermination hearing from the IJ at prior Immigration Court hearings on September 10, 2025, and September 24, 2025. *See* Dkt. No. 9-1, ¶¶ 4(e)-(h).

7. On September 20, 2025, Petitioner filed the instant Habeas Petition (Dkt. No. 1), along with a Motion for Preliminary Injunction and Temporary Restraining Order (Dkt. No. 2), claiming: (1) the mandatory detention provision of 8 U.S.C. § 1225(b)(2) is unlawfully applied to Petitioner and violates the INA because Petitioner should be detained under 8 U.S.C. § 1226(a); and (2) the detention of Petitioner “without a bond redetermination hearing” pending removal proceedings violated procedural and substantive due process under the Fifth Amendment. Dkt. No. 1, ¶¶ 50-56. There is no indication in the Petition that Petitioner exhausted administrative remedies available to him prior to seeking habeas relief under 28 U.S.C. § 2241. The Court noticed an Injunction Hearing for Friday, October 17, 2025, at 9:00 a.m. Dkt. No. 10.

ARGUMENT

I. Petitioner has no likelihood of success on the merits because he is subject to mandatory detention.

A. Petitioner cannot succeed on the merits of his habeas petition because he is subject to mandatory detention.

8. Petitioner is detained under INA § 235(b), 8 U.S.C. § 1225(b)(2), which subjects him to mandatory detention. “As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an “applicant for admission” as an “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . .” 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) (“[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission.”). Accordingly, by its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, and (2) aliens

present without admission. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’” (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission”); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that “the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted” (citing 8 U.S.C. § 1225(a)(1))). An arriving alien is defined, in pertinent part, as “an applicant for admission coming or attempting to come into the United States at a port-of-entry [(“POE”)]...” 8 C.F.R. §§ 1.2, 1001.1(q).

9. All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection...”). An applicant for admission seeking admission at a United States POE “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal...and is entitled, under all of the applicable provisions of the immigration laws...to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a].” 8 C.F.R. § 235.1(f)(2).

10. Here, Petitioner did not present himself at a POE but instead entered the United States on or about November 2005 between POEs and without having been admitted after inspection by an immigration officer. Dkt. No. 1, ¶ 17; Dkt. No. 9-1, ¶ 4(b); Dkt. No. 9-2 at 1-2. On or about August 5, 2025, a law enforcement officer with Nueces County Sheriff's Office detained Petitioner on traffic stop and brought him directly to DHS/CBP at the U.S. Border Patrol Station in Corpus Christi, Texas after determining Petitioner had crossed into the United States illegally and remained in the United States without legal documentation. *See* Dkt. No. 9-1, ¶ 4(c); Dkt. No. 9-2 at 3. Petitioner is, therefore, an alien present without admission and, consequently, an applicant for admission.

11. Both arriving aliens and aliens present without admission, as applicants for admission, may be removed from the United States by, *inter alia*, expedited removal procedures under 8 U.S.C. § 1225(b)(1)¹ or removal proceedings before an IJ under 8 U.S.C. § 1229a. 8 U.S.C. §§ 1225(b)(1), (b)(2)(A), 1229a; *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing how “applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)”). Immigration officers have discretion to apply expedited removal under 8 U.S.C. § 1225(b)(1) or to initiate removal proceedings before an IJ under 8 U.S.C. § 1229a. *E-R-M- & L-R-M-*, 25 I&N Dec. at 524; *see also Matter of Q. Li*, 29 I&N Dec. 66, 68 (BIA 2025)

¹ Section 1225(b)(1) authorizes immigration officers to remove certain inadmissible aliens “from the United States without further hearing or review” if the immigration officer finds that the alien, “who is arriving in the United States or is described in [8 U.S.C. § 1225(b)(1)(A)(iii)] is inadmissible under [8 U.S.C. § 1182(a)(6)(C) or (a)(7)].” 8 U.S.C. § 1225(b)(1)(A)(i); *see* 8 C.F.R. § 235.3(b)(2)(i). If the Department of Homeland Security (DHS) wishes to pursue inadmissibility charges other than 8 U.S.C. § 1182(a)(6)(C) or (a)(7), DHS must place the alien in removal proceedings under 8 U.S.C. § 1229a. 8 C.F.R. § 235.3(b)(3). Additionally, an alien who was not inspected and admitted or paroled, but “who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with [8 U.S.C. § 1225(b)(2)] for a proceeding under [8 U.S.C. § 1229a].” *Id.* § 235.3(b)(1)(ii); *id.* § 1235.6(a)(1)(i) (providing that an immigration officer will issue and serve an NTA to an alien “[i]f, in accordance with the provisions of [8 U.S.C. § 1225(b)(2)(A)], the examining immigration officer detains an alien for a proceeding before an immigration judge under [8 U.S.C. § 1229a]”).

(“DHS may place aliens arriving in the United States in either expedited removal proceedings under [8 U.S.C. § 1225(b)(1)], or full removal proceedings under [8 U.S.C. § 1229a]” (citations omitted)).

- i. **Petitioner is an applicant for admission in 8 U.S.C. § 1229a removal proceedings and mandatorily detained pursuant to 8 U.S.C. § 1225(b)(2)(A).**

12. Applicants for admission whom DHS places in § 1229a removal proceedings are subject to detention and ineligible for a custody redetermination hearing before an IJ. Specifically, aliens present without admission placed in 8 U.S.C. § 1229a removal proceedings are both applicants for admission as defined in 8 U.S.C. § 1225(a)(1) *and* aliens “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). Such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond redetermination hearing before the IJ.

13. Applicants for admission whom DHS places in 8 U.S.C. § 1229a removal proceedings are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings*, 583 U.S. at 287; *see* 8 U.S.C. § 1225(b)(2)(A), (B). Under 8 U.S.C. § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under [8 U.S.C. § 1229a]” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added); 8 C.F.R. § 235.3(b)(3) (providing that an alien placed into 8 U.S.C. § 1229a removal proceedings in lieu of expedited removal proceedings under 8 U.S.C. § 1225 “shall be detained” pursuant to 8 U.S.C. § 1225(b)(2)); 8 C.F.R. § 235.3(c) (providing that “any arriving alien . . . placed in removal proceedings pursuant to [8 U.S.C. § 1229a] shall be detained in accordance with [8 U.S.C. § 1225(b)]” unless paroled pursuant to 8 U.S.C. § 1182(d)(5)).

14. Thus, according to the plain language of 8 U.S.C. § 1225(b)(2)(A), applicants for admission in 8 U.S.C. § 1229a removal proceedings “*shall* be detained.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only in ‘rare and exceptional circumstances,’ ...” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)); see *Lamie*, 540 U.S. at 534 (“It is well established that when the statute’s language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.” (quotation marks omitted)). As the Supreme Court observed in *Jennings*, nothing in 8 U.S.C. § 1225(b)(2)(A) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that 8 U.S.C. § 1225(b)(2)(A) applies only to arriving aliens. The distinction the Attorney General drew in the 1997 Interim Rule (addressed in detail below) between “arriving aliens,” see 8 C.F.R. §§ 1.2, 1001.1(q), and “aliens who are present without being admitted or paroled,” Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997), finds no purchase in the statutory text. No provision within 8 U.S.C. § 1225(b)(2) refers to “arriving aliens,” or limits that paragraph to arriving aliens, as Congress intended for it to apply generally “in the case of an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to “arriving aliens,” it uses that specific term of art or similar phrasing. See, e.g., *id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

15. On September 5, 2025, the BIA issued a published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). See Dkt. No. 9-5. In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because

aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Yajure Hurtado*, 29 I&N Dec. at 220.² The BIA concluded that aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

16. In so concluding, the BIA rejected the alien’s argument that “because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined that this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* If the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA’s decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of 8 U.S.C. § 1225(b)(2), but also with the Supreme Court’s 2018 decision in *Jennings* and other caselaw issued subsequent to *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that 8 U.S.C. § 1225(b) applies to all applicants for admission, noting that the language of 8 U.S.C. § 1225(b)(2) is “quite clear” and “unequivocally

² Previously, as alluded to in BIA decisions, DHS and the Department of Justice interpreted 8 U.S.C. § 1226(a) to be an available detention authority for aliens present without admission placed directly in 8 U.S.C. § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747 (BIA 2023); *Matter of R-A-V-P-*, 27 I&N Dec. 803, 803 (BIA 2020); *Matter of Garcia-Garcia*, 25 I&N Dec. 93, 94 (BIA 2009); *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216.

mandate[s]” detention. 583 U.S. at 300, 303 (explaining that “the word ‘shall’ usually connotes a requirement” (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))).

17. Similarly, relying on *Jennings* and the plain language of 8 U.S.C. §§ 1225 and 1226(a), the Attorney General, in *Matter of M-S-*, unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not overlap but describe “different classes of aliens.” 27 I&N Dec. at 516. The Attorney General also held—in an analogous context—that aliens present without admission and placed into expedited removal proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. 27 I&N Dec. at 518-19. In *Matter of Q. Li*, the BIA held that an alien who illegally crossed into the United States between POEs and was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29 I&N Dec. at 71. This ongoing evolution of the law makes clear that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that “no amount of policy-talk can overcome a plain statutory command”); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that “the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit”).³ *Florida’s* conclusion “that § 1225(b)’s ‘shall be detained’ means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*.” *Florida*, 660 F. Supp. 3d at 1273.

³ Though not binding, *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (quoting 18 J. Moore et al., *Moore’s Federal Practice* § 134.02[1] [d], p. 134–26 (3d ed.2011)) (providing that “[a] decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case”); *Evans v. Skolnik*, 997 F.3d 1060, 1067 (9th Cir. 2021) (same), the U.S. District Court for the Northern District of Florida’s decision is instructive here. *Florida* held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either 8 U.S.C. §§ 1225(b) or 1226(a). 660 F. Supp. 3d at 1275. The court held that such discretion “would render mandatory detention under 8 U.S.C. § 1225(b) meaningless.” *Id.*

18. Given 8 U.S.C. § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien was initially processed for expedited removal proceedings under 8 U.S.C. § 1225(b)(1) or placed directly into removal proceedings under 8 U.S.C. § 1229a—and “[b]oth [8 U.S.C. § 1225(b)(1) and (b)(2)] mandate detention...throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 301–03, IJs do not have authority to redetermine the custody status of an alien present without admission.

19. Here, Petitioner is an applicant for admission (specifically, an alien present without admission), placed directly into removal proceedings under 8 U.S.C. § 1229a. Petitioner is therefore subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. “It is well established . . . that the Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the [INA].” *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). “In the context of custody proceedings, an Immigration Judge’s authority to redetermine conditions of custody is set forth in 8 C.F.R. § 1236.1(d) . . .” *Id.* at 46. The regulation clearly states that “the [IJ] is authorized to exercise the authority in [8 U.S.C. § 1226].” 8 C.F.R. § 1236.1(d); *see id.* § 1003.19(a) (authorizing IJs to review “[c]ustody and bond determinations made by [DHS] pursuant to 8 C.F.R. part 1236”); *see id.* § 1003.19(h)(2)(i)(B) (“[A]n IJ may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]rriving aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C. § 1182(d)(5).]”). “An [IJ] is without authority to disregard the regulations, which have the force and effect of law.” *Matter of L-M-P-*, 27 I&N Dec. 265, 267 (BIA 2018).

20. Aliens, like Petitioner, present without admission in 8 U.S.C. § 1229a removal proceedings are both applicants for admission under 8 U.S.C. § 1225(a)(1) and aliens seeking

admission under 8 U.S.C. § 1225(b)(2)(A). As discussed above, such aliens placed in removal proceedings under 8 U.S.C. § 1229a are applicants for admission as defined in 8 U.S.C. § 1225(a)(1), subject to detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for a bond redetermination hearing before the IJ. Such aliens are also considered “seeking admission,” as contemplated in 8 U.S.C. § 1225(b)(2)(A). To be sure, “many people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be ‘seeking admission’ under the immigration laws.” *Lemus*, 25 I&N Dec. at 743; *see Yajure Hurtado*, 29 I&N Dec. at 221; *Q. Li*, 29 I&N Dec. at 68 n.3; *see also Matter of Valenzuela-Felix*, 26 I&N Dec. 53, 56 (BIA 2012) (explaining that “an application for admission [i]s a continuing one”).

21. In analyzing 8 U.S.C. § 1225(b)(2)(A), the Supreme Court in *Jennings* equated “applicants for admission” with aliens “seeking admission.” *See Jennings*, 583 U.S. at 289. As noted above, the Supreme Court stated that 8 U.S.C. § 1225(b)(2) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* at 287. In doing so, it specifically cited 8 U.S.C. § 1225(b)(2)(A)—and thus did not appear to consider aliens “seeking admission” to be a subcategory of applicants for admission. *Id.* The Supreme Court also stated that “[a]liens who are instead covered by § 1225(b)(2) are detained pursuant to a different process . . . [and] ‘shall be detained for a [removal] proceeding’ . . .” *Id.* at 288 (quoting 8 U.S.C. § 1225(b)(2)(A)). The Supreme Court considered all aliens covered by 8 U.S.C. § 1225(b)(2) to be subject to detention under subparagraph (A)—not just a subset of such aliens. Moreover, *Jennings* found that 8 U.S.C. § 1225(b) “applies primarily to aliens *seeking entry* into the United States (‘*applicants for admission*’ in the language of the statute).” *Id.* at 297 (emphases added). The Court

therefore considered aliens seeking admission and applicants for admission to be virtually indistinguishable; it did not consider them to be merely a subcategory of applicants for admission.

22. Indeed, the Supreme Court explicitly stated that aliens seeking admission are subject to 8 U.S.C. § 1225(b) detention: “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).” *Id.* at 289. This was recently reiterated by the BIA in *Matter of Q. Li*, which held that for aliens “seeking admission into the United States who are placed directly in full removal proceedings, [8 U.S.C. § 1225(b)(2)(A)] . . . mandates detention ‘until removal proceedings have concluded.’” 29 I&N Dec. At 68 (quoting *Jennings*, 583 U.S. at 299).

- ii. **Even assuming Petitioner had requested a bond redetermination by an Immigration Judge, Petitioner cannot succeed on the merits of his habeas petition because the Immigration Judge lacked authority to issue a bond as he is subject to mandatory detention under 8 U.S.C. § 1225(b).**

23. As noted above, Petitioner is an applicant for admission placed in removal proceedings under INA § 235(b), 8 U.S.C. § 1225(b). *See* Dkt. No. 9-4 at 1; Dkt. No. 9-2 at 2-3; Dkt. No. 1-2, Ex. A at 2-6. Petitioner is therefore subject to mandatory detention. *See id.*; Dkt. No. 9-5 at 14 (BIA dismissing *Yajure Hurtado* appeal because the IJ “lacked authority to hear the respondent’s request for a bond as the respondent is an applicant for admission and is subject to mandatory detention under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and the regulation at 8 C.F.R. § 235.3(b)(1)(ii)”). The *Yajure Hurtado* decision (Dkt. No. 9-5), which was issued after the DHS initially served Petitioner with DHS Form I-826 “Notice of Rights and Request for Disposition” (Dkt. No. 9-3), notifying Petitioner of his right to request a bond a hearing before an Immigration Court, is binding precedent on immigration judges. *See* Dkt. No. 9-3 at 1; Dkt. No. 9-5. Therefore, even assuming had Petitioner had exhausted administrative remedies available to him and requested a bond redetermination hearing, an IJ would

unquestionably find that it lacked the authority to issue Petitioner a bond pending his removal from the United States.

- iii. **Nevertheless, Petitioner’s claim under INA § 236(a), 8 U.S.C. § 1226(a), does not succeed on the merits because there is no evidence in the record that Petitioner was arrested by DHS pursuant to warrant as mandated under § 1226(a).**

24. Section 1226(a) is the applicable detention authority for aliens who have been admitted and are deportable who are subject to removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. §§ 1226, 1227(a), and 1229a, and does not impact the directive in 8 U.S.C. § 1225(b)(2)(A) that “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 a proceedings under [8 U.S.C. § 1229a],” *id.* § 1225(b)(2)(A).⁴ As the Supreme Court explained, 8 U.S.C. § 1226(a) “applies to aliens already present in the United States” and “creates a default rule for those aliens by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 289, 303; *Q. Li*, 29 I&N Dec. at 70; *see also M-S-*, 27 I&N Dec. at 516 (describing 8 U.S.C. § 1226(a) as a “permissive” detention authority separate from the “mandatory” detention authority under 8 U.S.C. § 1225).⁵

⁴ The specific mandatory language of 8 U.S.C. § 1225(b)(2)(A) governs over the general permissive language of 8 U.S.C. § 1226(a). “[I]t is a commonplace of statutory construction that the specific governs the general...” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992); *see RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (explaining that the general/specific canon is “most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission” and in order to “eliminate the contradiction, the specific provision is construed as an exception to the general one”); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1075 (9th Cir. 2016) (discussing, in the context of asylum eligibility for aliens subject to reinstated removal orders, this canon and explaining that “[w]hen two statutes come into conflict, courts assume Congress intended specific provisions to prevail over more general ones”). Here, 8 U.S.C. § 1225(b)(2)(A) “does not negate [8 U.S.C. § 1226(a)] entirely,” which still applies to admitted aliens who are deportable, “but only in its application to the situation that [8 U.S.C. § 1225(b)(2)(A)] covers.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 185 (2012).

⁵ Importantly, a warrant of arrest is not required in all cases. *See* 8 U.S.C. § 1357(a). For example, an immigration officer has the authority “to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation” or “to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a

25. Generally, such aliens may be released on bond or their own recognizance, also known as “conditional parole.” 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not, however, confer the *right* to release on bond; rather, both DHS and IJs have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Further, ICE must detain certain aliens due to their criminal history or national security concerns under 8 U.S.C. § 1226(c). *See* 8 U.S.C. § 1226(c)(1), (c)(2); 8 C.F.R. §§ 236.1(c)(1)(i), 1236.1(c)(1)(i); *see also id.* § 1003.19(h)(2)(i)(D). Release of such aliens is permitted only in very specific circumstances. *See* 8 U.S.C. § 1226(c)(2).

26. Notably, 8 U.S.C. § 1226(c) references certain grounds of inadmissibility, 8 U.S.C. § 1226(c)(1)(A), (D)-(E), and the Supreme Court in *Barton v. Barr*—after issuing its decision in *Jennings*—recognized the possibility that aliens charged with certain grounds of inadmissibility could be detained pursuant to 8 U.S.C. § 1226. 590 U.S. 222, 235 (2020); *see also Nielsen v. Preap*, 586 U.S. 392, 416-19 (2019) (recognizing that aliens who are inadmissible for engaging in terrorist activity are subject to 8 U.S.C. § 1226(c)). However, in interpreting provisions of the INA, the Board does not view the language of statutory provisions in isolation but instead “interpret[s] the statute as a symmetrical and coherent regulatory scheme and fit[s], if possible, all parts into an harmonious whole.” *Matter of C-T-L-*, 25 I&N Dec. 341, 345 (BIA 2010) (internal quotation marks

warrant can be obtained for his arrest...” *Id.* § 1357(a)(2); 8 C.F.R. § 287.3(a), (b) (recognizing the availability of warrantless arrests); *see Q. Li*, 29 I&N Dec. at 70 n.5. Moreover, DHS may issue a warrant of arrest within 48 hours (or an “additional reasonable period of time” given any emergency or other extraordinary circumstances), 8 C.F.R. § 287.3(d); doing so does not constitute “post-hoc issuance of a warrant,” *Q. Li*, 29 I&N Dec. at 69 n.4. While the presence of an arrest warrant is a threshold consideration in determining whether an alien is subject to 8 U.S.C. § 1226(a) detention authority under a plain reading of 8 U.S.C. § 1226(a), there is nothing in *Jennings* that stands for the assertion that aliens processed for arrest under 8 U.S.C. § 1225 cannot have been arrested pursuant to a warrant. *See Jennings*, 583 U.S. at 302.

omitted) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). As the Supreme Court in *Barton* also noted, “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.” *Barton*, 590 U.S. at 239. “Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text . . .” *Id.*; see also *Matter of Yajure Hurtado*, 29 I&N Dec. at 222 (“Interpreting the provisions of section [1226(c)] as rendering null and void the provisions of section [1225](b)(2)(A) (or even the provisions of section... 1225(b)(1)), would be in contravention of the ‘cardinal principle of statutory construction,’ which is that courts are to give effect, if possible, to every clause and word of a statute, rather than to emasculate an entire section.”) (quoting *United States v. Menasche*, 348 U.S. 528, 538–39 (1955)). The statutory language of 8 U.S.C. § 1226(c)—including the most recent amendment pursuant to the Laken Riley Act, see 8 U.S.C. § 1226(c)(1)(E), merely reflects a “congressional effort to be doubly sure” that certain aliens are detained, *Barton*, 590 U.S. at 239.

27. To reiterate, to interpret 8 U.S.C. § 1225(b)(2)(A) as not applying to all applicants for admission would render it meaningless. As explained above, Congress expanded 8 U.S.C. § 1225(b) in 1996 to apply to a broader category of aliens, including those aliens who crossed the border illegally. IIRIRA § 302. There would have been no need for Congress to make such a change if 8 U.S.C. § 1226 was meant to apply to aliens present without admission. Thus, 8 U.S.C. § 1226 does not have any controlling impact on the directive in 8 U.S.C. § 1225(b)(2)(A) that “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 a proceeding under [8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).

28. Petitioner's Motion for Injunctive Relief contends he will likely succeed on the merits, relying on various recent decisions where federal district courts have granted injunctive relief that Petitioner seeks in this action, challenging bond decisions made in removal proceedings under 8 U.S.C. § 1226(a). *See* Dkt. No. 2-1 at 7-13. These cases are distinguishable as Petitioner did not request a redetermination of a bond decision pursuant to applicability of § 1226(a), nor has a decision been made by an IJ presiding over removal proceedings at any point as Petitioner has failed to request a bond. The case before the Court is akin to the *Vargas Lopez v. Trump*, the exception to the majority of district court cases, where a Nebraska district court denied a habeas cause of action that DHS's application of 8 U.S.C. § 1225(b)(2) instead of 8 U.S.C. § 1226(a) was unlawful after the district court found 8 U.S.C. § 1226(a) was not controlling because there was no evidence the habeas petitioner was arrested pursuant to a warrant as § 1226(a) mandates. *See, e.g., Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *6-7 (D. Neb. Sept. 30, 2025) ("No warrant of any kind for Vargas Lopez's arrest has been submitted to the record in this case. Indeed, Vargas Lopez does not allege anywhere in his Petition that he was arrested on a warrant...Vargas Lopez has not provided this Court with the documents necessary for Vargas Lopez to be eligible for release on bond under § 1226(a). Therefore, the Court denies Vargas Lopez's Second Cause of Action."); *Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (concluding that "aliens present in the United States who have not been admitted" are, "[b]y the plain language of § 1225(a)(1)... 'applicants for admission' and thus subject to the mandatory detention provision of 'applicants for admission' under § 1225(b)(2)"); (cleaned up); *but see Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *3-4 (S.D. Tex. Oct. 7, 2025) (noting "its agreement" with the majority of district court that "§ 1226(a), not § 1225(b)" applied to petitioner's detention) (collecting cases).

29. Because DHS processed Petitioner as an “applicant for admission” under § 1225(b)(2) following his arrest, detention, and transfer of custody by Nueces County Sheriff’s Department to DHS/CBP in Corpus Christi, there is no evidence that a warrant for arrest was issued by DHS as required under § 1226(a). *See* Dkt. No. 9-1, ¶ 4(c); Dkt. No. 9-2 at 3. Therefore, Petitioner claim fails on the merits because there is no evidence that he was arrested under a warrant as mandated 8 U.S.C. § 1226(a).

II. Injunctive relief is not available to petitioner because he has not shown irreparable harm.

30. Petitioner cannot demonstrate irreparable harm. Respondents make 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. First, Petitioner’s motion and supporting documentation assert that his earnings are relied upon by his family. And that the absence of those earnings is irreparable harm. However, Petitioner has no current immigration status and is not authorized to work in the United States. Second, Petitioner incorrectly asserts that the delay in obtaining a bond hearing is a violation of rights which is itself irreparable harm. However, for the reasons discussed above, no IJ has issued a bond decision that not in compliance with the law because Petitioner has yet to request a bond redetermination. Nevertheless, Petitioner is subject to mandatory detention under the INA.

III. The balance of equities and public interest favor the government.

31. 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 favor 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. Respondents expect the IJ to reconsider and reverse its bond decision in light of the BIA's *Yajure Hurtado* decision if one were issued. Thus, granting Petitioner the relief that he seeks would likely only cause further complications in obtaining a final removal order in Petitioner's pending removal proceedings.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that the Court deny Petitioner's Motion for Preliminary Injunction and Temporary Restraining Order (Dkt. No. 2).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Baltazar Salazar, do hereby certify that on this 14th day of October, 2025, 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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