

In September, the Board of Immigration Appeals (BIA), the highest administrative body for interpreting and applying immigration laws, found that the former was correct. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That decision brought pre-removal order detention practices in line with the plain text of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA).

With the IIRIRA, Congress enacted what is now 8 U.S.C. § 1225, which requires the detention of any alien “who is an applicant for admission” and defined that term to encompass any “alien present in the United States who has not been [lawfully] admitted” following inspection by immigration authorities. 8 U.S.C. § 1225(a), (b)(2)(A). The statute makes mandatory detention the rule for aliens, like Petitioner, who have never been lawfully admitted. Contrary to the Magistrate Judge’s conclusion in the R&R, there is no exception for how far into the country the alien traveled or how long the alien managed to evade detection by law enforcement officials.

Since the BIA’s *Hurtado* decision in September, district courts across the country have faced a wave of litigation over the same question. As the R&R correctly points out, decisions of the lower courts have gone both ways. No federal appellate court has yet ruled on the issue. More recently, several district courts in the Fifth Circuit have sided with the BIA’s (and Federal Respondents’) interpretation. Last week, this Court joined those other district courts which have found that individuals such as Petitioner are subject to mandatory detention under Section 1225. *See Delgado v. Noem*, No. 9:25-cv-329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025); *Rodriguez v. Noem*, No. 9:25-cv-320, 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025).

Here, the Magistrate Judge incorrectly found that Petitioner is detained pursuant to 8 U.S.C. § 1226, which addresses the detention of aliens generally (versus applicants for admission

specifically). In addition, ordering the Federal Respondents to provide Petitioner with a bond hearing under Section 1226 is improper habeas relief. The Court should sustain these objections and dismiss the petition.

OBJECTIONS

In the R&R, the Magistrate Judge determined that “§ 1226 (not § 1225) controls detention for noncitizens like the Petitioner who are already inside the country and placed in full removal proceedings, thereby making him eligible for a bond hearing.” ECF No. 5, at 8.¹ As a result, the Magistrate Judge recommended that Petitioner be afforded a bond hearing under 8 U.S.C. § 1226(a). ECF No. 5, at 9. Federal Respondents object to the finding of which statute applies. The Court should also overrule the R&R because the relief that Petitioner requests is not available in a habeas petition. Thus, the Court should dismiss the petition as it did in *Rodriguez v. Noem*, No. 9:25-cv-00320 2025 WL 3639440 (E.D. Tex. Dec. 10, 2025) and *Delgado v. Noem*, No. 9:25-cv-329, 2025 WL 3639439 (E.D. Tex. Dec. 12, 2025).

I. Petitioner is an “applicant for admission” and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

On the question of whether Section 1225—which would not permit a bond hearing—or Section 1226—which would—governs Petitioner’s detention, the Magistrate Judge found the latter. In support, the R&R includes a string cite to non-binding decisions from other districts that have declined to follow Federal Respondents’ interpretation. Respectfully, these cases are wrongly decided and were issued in the months shortly after *Hurtado*.

¹ Section 1226 provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Detention under this statute is generally discretionary: The Attorney General “may” either “continue to detain the arrested alien” or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2). This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted.

The Magistrate Judge relied primarily on two cases from the Western District of Louisiana, *see Lopez Santos v. Noem*, No. 3:25-cv-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 25-cv-01093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025), and one from the Southern District of Texas. *See Benrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025). These cases should not carry the day.

In the Western District of Louisiana, more recent decisions from that district have reached a different result than those cases relied upon in the R&R. *See, e.g. Alves de Andrade v. Patterson*, No. 5:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov 21., 2025); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025). Notably, within the last two weeks, Judge Terry A. Doughty—who authored *Lopez-Santos*—issued an opinion rejecting his earlier conclusion in *Lopez-Santos* that Section 1226(a) governs detention of aliens such as Petitioner. In *Topal v. Bondi*, No. 1:25-cv-01612-TAD-JPM (E.D. La. Dec. 3, 2025) (attached as Exhibit A), Judge Doughty adopted Federal Respondents’ position that detention in cases such as the instant action is governed by § 1225(b)(2), which affords no right to a bond hearing. Thus, one of the primary cases supporting the R&R, if decided today, would support the Federal Respondents’ position.

As to the Southern District of Texas, the R&R cites *Benrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025). That case is now on appeal. Also, another court in the Southern District of Texas decided *Cabanas v. Bondi*, No.4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025), in the Federal Respondents’ favor. In denying the habeas petition and granting summary judgment, the *Cabanas* Court held “[t]he text of § 1225(b)(2)(A) supports the Government’s position.” *Id.* at *1. The *Cabanas* Court reasoned that “[t]he statutory definition of applicant for admission is broad and, indeed, so broad that

Petitioner doesn't dispute that she is such a person. . . . That factual determination itself resolves the question as to whether § 1225(b)(2)(A) applies." *Id.* at *4.

More significantly, since the R&R was issued, this Court has found that an individual such as Petitioner is subject to mandatory detention under Section 1225.² In *Rodriguez v. Noem*, No. 9:25-cv-320, 2025 WL 3639440, at *1 (E.D. Tex. Dec. 10, 2025), petitioner was a Mexican national who entered the country illegally. United States Immigration and Customs and Enforcement (ICE) detained him and initiated removal proceedings. *Id.* Because ICE determined that Rodriguez was subject to mandatory detention, he was not afforded a bond hearing. *Id.* Thereafter, Rodriguez filed a habeas petition, claiming that the government's failure to provide him a bond hearing rendered his detention unlawful. *Id.* This Court disagreed and found that Rodriguez was an "applicant for admission" subject to the mandatory detention provisions of Section 1225(b)(2)(A). *Id.* at *2.

The R&R's finding that Section 1226 governs here is not consistent with this Court's decision in *Rodriguez*. Federal Respondents urge this Court to sustain the objection to the Magistrate Judge's finding.

II. Federal Respondents' failure to provide a bond hearing does not entitle Petitioner to habeas relief.

In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. As this Court has recognized, "a petition for habeas corpus is generally not the proper vehicle for challenging conditions of confinement or confinement-related procedures." *Delgado v. Noem*, No. 9:25-cv-329, 2025 WL 3639439, at *2 (E.D. Tex. Dec. 12, 2025). A habeas petition is the appropriate device "only when the challenged

² Federal Respondents acknowledge that prior to issuance of the R&R, the Court found differently. *See Carlos v. Bondi*, 9:25-cv-00249-MJT-CLS (E.D. Tex. Nov. 21, 2025); *Cantarero v. Bondi*, 9:25-cv-00250-MJT-CLS (E.D. Tex. Nov. 20, 2025).

procedure would result in the petitioner's automatic release from custody if adequately performed." *Rodriguez*, 2025 WL 3639440, at *3.

In *Rodriguez*, the Court denied the habeas petition and explained that a bond hearing merely affects the timing of a petitioner's release from custody and must normally be brought in federal civil-rights actions instead of habeas proceedings. *Id.* at 5. Because a bond hearing would not result in an automatic release from custody, the Court held that petitioner failed to demonstrate his detention violated federal law. *Id.*

Two days later, this Court reached a similar conclusion in *Delgado*. There, the petitioner challenged the government's failure to provide him a bond hearing. This Court denied the habeas petition because a bond hearing "could just as well have resulted in Delgado's continued detention, rather than his release from custody." *Delgado*, 2025 WL 3639439, at *2 (citing 8 C.F.R. § 236.1(d)(1)). As in *Rodriguez*, the Court held that the failure to provide a bond hearing did not entitle the petitioner to habeas relief. *Id.* (citing *Carson v. Johnson*, 112 F.3d 818, 820–21 (5th Cir. 1998) (Smith, J.)).

The R&R recommends that Federal Respondents be ordered to provide a bond hearing is contrary to this Court's analysis in *Rodriguez* and *Delgado*. Federal Respondents' objection to this recommendation is well-founded.

CONCLUSION

The Court should sustain Federal Respondents' objections to the R&R and dismiss the petition.

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CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2025, a true and correct copy of the foregoing document was filed electronically with the court and has been sent to counsel of record via the court's electronic filing system.

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