IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

Oscar Leiva-Claros, *Petitioner* **v.** **Charlotte Collins,** ***in her official capacity as Warden of the T. Don Hutto Detention Center,*** **et al.,** *Respondents*	§ § § § § § § § §	**Case No. 1:26-cv-00091-ADA-SH**

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

TO: THE HONORABLE ALAN D ALBRIGHT UNITED STATES DISTRICT JUDGE

Before the Court is Petitioner Oscar Leiva-Claros' ("Petitioner") Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, filed on January 14, 2026 (Dkt. 1).[1] On January 20, 2026, pursuant to 28 U.S.C. § 2243, the Court ordered Respondents to show cause as to why the petition should not be granted. Dkt. 3. On January 22, 2026, Respondents Pam Bondi, Kristi Noem, Todd Lyons, and Miguel Vergara[2] ("Respondents") timely filed a response in opposition. Dkt. 5.

Having considered the parties' arguments, the evidence presented, and the relevant law, the Court recommends the District Court grant Petitioner's Petition for Writ of Habeas Corpus.

[1] The District Court referred to this Magistrate Judge all non-dispositive pretrial matters for disposition and all case-dispositive motions for findings and recommendations, pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, and Judge Alan D Albright's Standing Order on referrals to United States Magistrate Judges. Dkt. 2.

[2] All individual respondents were sued in their official capacities. The Response is filed only on behalf of the federal employees. Dkt. 5 at 1 n.1.

I. Background

Petitioner is detained at the T. Don Hutto Detention Center in Taylor, Texas. Dkt. 1 ¶ 1. Petitioner has resided in the United States since July 20, 2021. *Id.* ¶ 39. He was twice removed from the United States to Mexico on June 24 and July 7, 2021 under 42 U.S.C. § 265 to prevent the spread of communicable diseases. Dkt. 5-2 at 2. On November 2, 2025, Petitioner was arrested by U.S. Immigration and Customs Enforcement ("ICE"), issued a Notice to Appear (Dkt. 5-3), and placed in removal proceedings. Dkt. 1 ¶¶ 41-42. He was ordered removed on January 5, 2026, and has reserved his right to appeal. Dkt. 5-4. He remains detained by Respondents. Dkt. 1 ¶ 43. Respondents assert that Petitioner is being detained under "mandatory detention" authority for aliens who are in the process of entering the United States, 8 U.S.C. § 1225. Dkt. 5 at 2-3; *see also Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

Petitioner challenges his detention through a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner alleges that his ongoing detention without bond violates Fifth Amendment Due Process rights, the Administrative Procedure Act ("APA"), and the Immigration and Nationality Act ("INA"). Dkt. 1 ¶¶ 49-90.

II. Discussion

A. Subject Matter Jurisdiction

Respondents argue that because Petitioner challenges his detention pending removal proceedings, this Court is stripped of jurisdiction to review his challenge under the jurisdiction stripping provisions of the INA. They assert 8 U.S.C §§ 1252(b)(4),[3] (b)(9), and (g), as well as § 1226(e), as potential bars to this Court's jurisdiction. Dk. 5 at 3-5.

[3] Respondents cite 8 U.S.C. § 1225(b)(4) for the proposition that "even if the alien claims he is not appropriately categorized as an applicant for admission subject to § 1225(b), such a challenge must be raised before an immigration judge in removal proceedings." Dkt. 5 at 5. Section 1225(b)(4) deals with the ability of an immigration officer to challenge another immigration officer's favorable admission decision

Section 1252(b)(9) channels "[j]udicial review of all questions of law . . . including interpretation of constitutional and statutory provisions, arising from any action taken . . . to remove an alien from the United States" to the appropriate court of appeals – here, the Fifth Circuit. But when a Petitioner is not "asking for review of an order of removal," "challenging the decision to detain them in the first place or seek removal," or "challenging any part of the process by which their removability will be determined," § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 402 (2019).

Petitioner's challenge to his continued detention without bond as unlawful under the INA, APA, and U.S. Constitution does not fall into any of those categories. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) ("§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined."). Rather than challenging his removal proceedings, Petitioner challenges the lawfulness of his detention without bond during the pendency of his removal proceedings. Thus, § 1252(b)(9) poses no bar.

To the extent that Respondents invoke § 1252(b)(4), they fail to assert a valid jurisdictional bar for the same reasons. Under § 1252, "Judicial Review of Orders of Removal," Subsection (a)(1) states that "[j]udicial review of a final order of removal . . . is governed only by chapter 158 of Title 28, except as provided in subsection (b)." 8 U.S.C. § 1252(a)(1). Section 1252(b) generally, and (b)(4) specifically, elaborates on "requirements for review of orders of removal" as

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and appears to have no relation to the question before the Court. The Court presumes that Respondents intended to refer to 8 U.S.C. § 1252(b)(4), which discusses the scope and standard of review for orders of removal, and will rule on that basis and refer to § 1252(b)(4) in this opinion. If Respondents intended to refer to § 1225(b)(4) as a jurisdictional bar to Petitioner's claims, the Court finds nothing in that subsection that bars its jurisdiction here.

set forth in Subsection (a)(1). Because Petitioner does not assert a challenge to an order of removal, that subsection does not bar Petitioner from seeking relief from his continued detention.

Unless other laws provide jurisdiction, Section § 1252(g) strips all courts of jurisdiction to hear "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." But this section applies "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Section 1252(g) does not apply to all claims with any relationship to deportation proceedings. Because Petitioner challenges the lawfulness of his continued detention during the pendency of his removal proceedings, he does not challenge one of the "three discrete events along the road to deportation" to which § 1252(g) applies. *Reno*, 525 U.S. at 482.

Respondent's jurisdictional argument also fails under § 1226(e), which states, in full: "The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." Petitioner is not challenging a discretionary decision to grant or deny parole under § 1226, but the determination that, as a matter of law, his detention is governed by § 1225, not § 1226. Dkt. 1 ¶ 49-90. For these reasons, Respondents cannot assert a jurisdictional bar to the instant petition.[4]

[4] To the extent an administrative exhaustion requirement would normally apply in this situation, "[b]ecause Respondents argue the detention of Petitioner is mandatory, claiming no one, including the [immigration judge], can review the detention issue, any attempt to require Petitioner to exhaust any administrative remedies [would be] futile." *Lorenzo C. P., v. Noem*, No. 1:25-CV-181, 2025 WL 3684859, at *5 (S.D. Tex. Oct. 31, 2025); *see also Shi v. Lyons*, No. 1:25-CV-274, --- F. Supp. 3d ----, 2025 WL 3637288, at *4 n.6 (S.D. Tex. Dec. 12, 2025) (holding that administrative exhaustion would be futile in light of *Matter of Yajure Hurtado*).

B. Petition for Writ of Habeas Corpus

At the heart of this dispute are two provisions of the INA: 8 U.S.C. §§ 1225(b)(2) and 1226, the statute's mandatory and discretionary detention provisions. Under § 1225(b)(2), the INA requires mandatory detention for a noncitizen who is either subject to expedited removal under § 1225(b)(1) or, as here, an "applicant for admission" who is "seeking admission," when the examining immigration officer determines the individual to not be "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2). Individuals detained under § 1225(b)(2) receive no bond hearing and can only be released on humanitarian parole at the arresting agency's discretion. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1192(d)(5).

By contrast, § 1226(a) provides for the discretionary detention of noncitizens arrested "on a warrant." Section 1226 allows for release on bond and provides "procedural protections that are not afforded under the mandatory detention statute, such as the right to a bond re-determination hearing in front of an Immigration Judge and a right to appeal any custody determination." *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN, 2025 WL 2783642, at *2 (D. Me. Sept. 30, 2025).

Respondents contend that § 1225(b)(2) applies to anyone who, like Petitioner, is a noncitizen who was found to be present within the United States without ever having been admitted or paroled, regardless how long the individual has been present in the country. Dkt. 5 at 6-7. This position relies on § 1225(a)(1)'s definition of an "applicant for admission" as "an alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). Given this definition, "applicant for admission" would be a broad enough category to include an individual like Petitioner, who was not admitted to the United States, no matter long that individual has resided in the United States.

But § 1225(b)(2) refers not just to an "applicant for admission" but an "applicant for admission" who is "seeking admission." Many courts read this "seeking admission" requirement to mean a noncitizen present in the United States without admission who has recently arrived and is actively seeking admission, not a noncitizen who has been residing in the country for years. *See Aguilar v. Bondi*, No. 5:25-CV-01453-JKP, --- F. Supp. 3d ----, 2025 WL 3471417, at *5 (W.D. Tex. Nov. 26, 2025); *Rojas Vargas v. Bondi*, No. 1:25-CV-01699-DAE, 2025 WL 3251728, at *3 (W.D. Tex. Nov. 5, 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *22 (E.D.N.Y. Nov. 28, 2025); *Romero v. Hyde*, 795 F. Supp. 3d 271, 283-84 (D. Mass. 2025). Reading § 1225(b)(2) as Respondents suggest would make "seeking admission" surplus language with no effect on the meaning of the provision. *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025) ("Respondents' selective reading of the statute—which ignores its 'seeking admission' language—violates the rule against surplusage and negates the plain meaning of the text."); *see also Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 488 (S.D.N.Y. 2025) ("If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute."); *Aguilar*, 2025 WL 3471417, at *6 (quoting *id.*) ("Respondents interpretation 'would render the phrase "seeking admission" in § 1225(b)(2)(A) mere surplusage.").

Reading § 1225(b)(2) to sweep so broadly also would eliminate much of the meaning of § 1226: nearly every noncitizen would be subject to mandatory detention, making it unclear why the INA also contains a broadly worded discretionary-detention provision. *Lopez Benitez*, 795 F. Supp. 3d at 490. "Interpretations of statutes and regulations that avoid surplusage are favored." *Sanderson Farms, Inc. v. Occupational Safety & Health Rev. Comm'n*, 964 F.3d 418, 425 (5th Cir. 2020). A more natural way to read the plain language of these two statutory sections alongside one another is to read § 1226 as governing detention of noncitizens already residing in the United States and § 1225 as governing detention of recently arrived noncitizens who are actively seeking admission to the country.

This reading is also supported by legislative history, recent amendments, and longstanding agency practice. Both § 1225(b)(2) and § 1226 were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. The IIRIRA left in place an earlier distinction between noncitizens arrested in the interior of the country (not subject to mandatory detention) and noncitizens stopped at the border (subject to mandatory detention). *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *4 (D. Nev. Sept. 17, 2025). This dual approach was reflected by the *Jennings*, which did not squarely address the issue in this case but framed the distinction between § 1225 and § 1226 as follows:

> 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).

Jennings, 583 U.S. at 289 (emphasis added).

A recent amendment to the INA reinforces this reading. The Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), amended § 1226, authorizing mandatory detention for certain categories of individuals who entered the United States without inspection. The Act created § 1226(c)(1)(E), which requires mandatory detention for those who both (1) are charged as being inadmissible for entry without inspection or lacking valid documentation to enter the United States and (2) have been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E). This amendment reinforces the idea that noncitizens who entered the country without inspection but have been present for years – that is, are not actively "seeking admission" – generally are subject to discretionary detention under § 1226. If all noncitizens charged as inadmissible due to entry without inspection were already subject to mandatory detention under § 1225(b)(2), it would make no sense for Congress to have amended the statute to require mandatory detention for specific subcategories of those individuals. *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1326 (W.D. Wash. Sept. 30, 2025).

The Court is not persuaded by Respondents' assertion that the Laken Riley Act should be read as merely redundant, out of a recognition that "drafters *do* repeat themselves and *do* include words that add nothing of substance." Dkt. 5 at 8. What Respondents allege to be mere redundancy is not simple repetition or a few words that add nothing of substance; their allegation is that the entire change that the Laken Riley Act made to § 1226 is effectively meaningless. By contrast, Congress's amendments fit logically into the statute if § 1225 and § 1226 are read as Petitioner suggests. *See Aguilar*, No. 5:25-CV-01453-JKP, at *5 (reasoning that "Congress's amendments [through the Laken Riley Act] fit logically into the statute if § 1225 and § 1226 are read as Petitioner suggests").

The interpretation that § 1225 applies to recent entries and § 1226 applies to noncitizens already residing in the United States also is supported by longstanding agency regulations and practice. U.S. Department of Justice's Executive Office for Immigration Review ("EOIR") regulations drafted after the IIRIRA was passed reflect this distinction, and from 1996 to 2025, agencies consistently interpreted § 1225 and § 1226 as providing for mandatory detention of noncitizens arrested near international borders or who recently arrived in the United States and discretionary detention of noncitizens already residing in the United States. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025); *Vasquez,* 2025 WL 2676082, at *15; *Rodriguez*, 802 F. Supp. 3d at 1333-1334.

This approach changed in July 2025, when DHS introduced internal guidance directing that noncitizens long-present in the United States who had not been admitted were now to be treated "in the same manner that 'arriving aliens' have historically been treated," that is, subject to mandatory detention under § 1225(b) and therefore ineligible for custody redetermination hearings before immigration judges or release except on parole granted by DHS. *Vasquez,* 2025 WL 2676082, at *9-10. This new agency interpretation was adopted by the Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The BIA held that the immigration judge "did not have authority over the bond request because aliens who are present in the United States without admission are applicants for admission as defined under . . . 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Id.* at 220.

Matter of Yajure Hurtado was a departure from the BIA's previous interpretation of the statute. *See Rodriguez*, 802 F. Supp. 3d at 1309. For example, in *Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025), decided one month before *Matter of Yajure Hurtado*, the BIA applied § 1226 to the detention of a noncitizen who had entered the United States without inspection three years earlier. That decision was designated as precedent by the U.S. Attorney General. *See Rodriguez*, 802 F. Supp. 3d at 1309. Moreover, in an unpublished 2023 decision on the application of § 1225(a)(2) versus § 1226 to a noncitizen already present in the United States, the BIA said that it was "unaware of any precedent stating that an Immigration Judge lacks authority to redetermine the custody conditions of a respondent in removal proceedings under the circumstances here." *Id.* at *26. While the BIA's interpretation of the INA is not entitled to any deference by this court under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), *Matter of Yajure Hurtado*'s inconsistency with prior pronouncements reduces even its "power to persuade." *Loper Bright*, 603 U.S. at 402 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)); *see also Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *3 n.3 (S.D. Tex. Oct. 7, 2025) (collecting cases declining to follow *Matter of Yajure Hurtado* under *Loper Bright*).

District courts across the country have been weighing this new interpretation. Repeatedly, they have found that DHS and BIA's construction of the INA is incorrect and that petitioners who have long resided in the United States but are being held under § 1225 are entitled to relief. *See Buenrostro-Mendez*, 2025 WL 2886346, at *3 ("As almost every district court to consider this issue has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades' support finding that § 1226 applies to these circumstances.") (citing *Pizarro Reyes*, 2025 WL 2609425, at *4); *see also Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025) (joining the "chorus" of courts concluding that § 1226 applies); *Rodriguez*, 802 F. Supp. 3d at 1303-04 (W.D. Wash. Sep. 30, 2025) ("Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *Lopez-Arevelo*, 2025 WL 2691828, at *7 ("In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect.").

For the reasons discussed above and cited by other district courts – the statute's text and history, congressional intent, and the consistent past application of the statute – the Court finds that Petitioner is correct that his detention under § 1225(b)(2) is in violation of the INA.

Respondents argue that even if Petitioner is only subject to detention under § 1226, he is not entitled to relief because he has already been given a bond hearing. Dkt. 5 at 1; Dkt. 5-1. In denying

Petitioner's request for a custody redetermination, the Immigration Judge ("IJ") first found that the judge did not have jurisdiction based on *Matter of Yajure Hurtado*, but "[a]lternatively" found that Petitioner poses a flight risk. Dkt. 5-1. Because the IJ found no jurisdiction, the remaining findings are insignificant. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 93-95 (1998) (declining to endorse the lower court's practice of issuing a finding on the merits after determining it lacked jurisdiction). Given this Court's finding that Petitioner's detention under §1225(b)(2) violates the INA, it is immaterial that the IJ determined in dicta that Petitioner poses a flight risk because Petitioner was detained under statutory authority that does not apply to him.

Having determined that Petitioner cannot be detained under § 1225(b)(2) and is entitled to relief, the Court does not reach Petitioner's constitutional or APA claims.

III. Conclusion

This Magistrate Judge **RECOMMENDS** that Petitioner's Petition for Writ of Habeas Corpus be **GRANTED**. The Court recommends that the District Judge:

1. Order Respondents to immediately release Petitioner from custody under conditions no more restrictive than those in place prior to the detention at issue in this case;
2. Order Respondents to notify Petitioner's counsel by email[5] of the exact location and time of Petitioner's release as soon as is practicable, and no less than two hours before release;
3. Enjoin Respondents from detaining Petitioner under 8 U.S.C. § 1225; and
4. Order Respondents to provide a status report within seven days of any order adopting this report detailing their compliance with the Court's order.

SIGNED on January 29, 2026.

SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE

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