IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WESTERN TEXAS
SAN ANTONIO DIVISION

Victor Manuel Chavez Badillo Petitioner v. **Miguel Vergara**, Acting Director of the San Antonio Field Office, U.S. Immigration and Customs Enforcement; **David Venturella**, Acting Director, U.S. Immigration and Customs Enforcement; **Markwayne Mullin**, Secretary of the U.S. Department of Homeland Security; **Rose Thompson**, Warden of Karnes County Immigration Processing Center; Respondents.	**PETITION FOR WRIT OF HABEAS CORPUS**

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INTRODUCTION

1. Petitioner, Victor Manuel Chavez Badillo (Mr. Chavez Badillo), is a forty-year-old citizen of Mexico who is eligible for Asylum and or Withholding of Removal.
2. Petitioner's Alien Number is 233-163-386.
3. Mr. Chavez Badillo entered the United States without inspection in February of 2004. Petitioner entered the United States through Tucson, Arizona. Petitioner was never encountered by United States Border Patrol nor was he ever detained upon entry.
4. Occurring on June 26, 2026, the Petitioner was stopped by Texas Police for a routine commercial truck inspection. During the stop, the officer contacted ICE authorities after

determining that Mr. Chavez Badillo did not have lawful immigration documents, ICE arrived and transferred the Petitioner into their custody.

5. Mr. Chavez Badillo has no criminal history and has never been arrested, charged, or convicted of any criminal act or offense.
6. The Petitioner has an approved Form I-130, *Petition for Alien Relative*, due to being legally married to a United States citizen.
7. Petitioner was never previously detained by ICE at any other time while at liberty in the United States prior to his detainment on June 26, 2026.
8. The Petitioner has an eleven-year-old United States citizen son who was born in Texas.
9. Petitioner has been at liberty in the United States for more than twenty-two years prior to his detention by ICE on June 26, 2026.
10. For more than twenty-two years, Petitioner has lived peacefully in the United States and has demonstrated respect for the laws and refrained from any criminal conduct and maintaining a law-abiding citizen lifestyle. Two decades of liberty in the United States proves stability, responsibility, and a commitment to being a productive member of society in the United States.
11. In order to vindicate Petitioner`s constitutional, statutory and regulatory rights, this Honorable Court should grant this instant petition for a writ of habeas corpus to ensure his continued freedom. Petitioner humbly asks this Honorable Court to find that his detention to be unlawful and to order ICE to release him.

JURISDICTION

12. This instant action is rooted in the United States Constitution and the Immigration and Nationality Act (INA).

13. This Honorable court has jurisdiction over this matter under 28 U.S.C. § 2241 (Habeas Corpus), 28 U.S.C. § 1331 (Federal Question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause)

VENUE

14. Venue is proper because the petitioner is currently detained at the Karnes County Immigration Processing Center, located at **409 FM 1144, Karnes City, TX 78118**. Therefore, the Petitioner remains detained in the District of Western Texas in the San Antonio Division.

REQUIREMENTS SET FORTH ON 28 U.S. U.S.C. § 2243

15. The Honorable Court must grant this instant petition for writ of habeas corpus or issue an order to show-cause to the respondents "forthwith", unless the petitioner is not entitled to relief, 28 U.S.C § 2243. If an order to show cause is issued, the Honorable Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed"

PARTIES AND FACTS ALLEGED

16. The Petitioner, Mr. Chavez Badillo, upon information provided by ICE, is currently detained at the Karnes County Immigration Processing Center.

17. Respondent **Miguel Vergara** is sued in his official capacity as the Acting Director of the San Antonio Field Office for U.S. Immigration and Customs Enforcement (ICE).

18. Respondent **David Venturella** is sued in his capacity as the Acting Director for the U.S. Immigration and Customs Enforcement (ICE).

19. Respondent **Markwayne Mullin** is sued in his capacity as the Secretary of the U.S. Department of Homeland Security (DHS).

20. Respondent **Rose Thomspon** is sued in her capacity as the Warden of the Karnes County Immigration Processing Center.

21. All respondents are named in their official capacities.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process Clause

22. The Fifth Amendment provided that "no person shall be deprived of life, liberty, or property without due process of law"

23. "[t]he Due Process clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent" *Zadvydas v. Davis*, 533 U.S. 693 (2001)

24. Respondent mandatory detention without consideration for release on bond or access to a bond hearing violates his due process rights.

25. The length of the Petitioner's detention clearly establishes beyond the threshold for prolonged detention, and his continued detention without consideration for release violates his due process rights.

COUNT TWO

Violation of 8 U.S.C. § 1226(a) Unlawful Denial of Release on Bond

26. Mandatory detention as set forth on 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States whom are subject to the ground of inadmissibility, most relevant, it does not apply to those who previously entered the country and have been residing in the U.S. prior to being detained by Defendants, historically, such noncitizens would be detained under § 1226(a), and therefore, eligible for release on bond.

27. Nonetheless, the Department of Justice has issued a decision on September 5th, binding to all IJs, thus rendering the Petitioner ineligible for release on Bond, *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025).

COUNT THREE

Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19 Unlawful Denial of Release on Bond

28. In 1997, following enactment of IIRIRA, EOIR and the Immigration and Naturalization Service issued an interim rule interpreting its detention provisions. Under the heading "Apprehension, Custody, and Detention of [Noncitizens]," the agencies clarified that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection*) will be eligible for bond and bond redetermination."* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Thus, individuals who entered without inspection are eligible for custody redetermination hearings under 8 U.S.C. § 1226 and its implementing regulations.

29. Application of 8 U.S.C. § 1225(b)(2) to Petitioner, who is bond-eligible, unlawfully mandates his continued detention in contravention of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT FOUR

Violation of the Administrative Procedure Act Contrary to Law and Arbitrary and Capricious Agency Policy

30. The Administrative Procedure Act ("APA") requires that a "reviewing court shall…hold unlawful and set aside agency action, findings, and conclusions found to be…arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

31. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens physically present in the United States who are subject to grounds of inadmissibility. Critically, it does not apply to those who have already entered the country and resided here prior to being apprehended and placed into removal proceedings. Such individuals fall under 8 U.S.C. § 1226(a), which provides for release on bond absent applicability of § 1225(b)(1), § 1226(c), or § 1231.

32. Nevertheless, DHS and the Immigration Court have applied § 1225(b)(2) to Petitioner.

33. This application is arbitrary, capricious, and contrary to law, and therefore violates the APA. See 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1) Assume jurisdiction over this matter;
2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
3) Order that Defendants not remove Petitioner from the State of Texas;
4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment as well as the relevant statute and regulations governing detention of noncitizens;
5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
7) Grant any further relief this Court deems just and proper.

Respectfully Submitted,

Victor Manuel Chavez Badillo
Petitioner

By and through undersigned counsel.

/s/ Stephen A. Lagana

Dated: July 1, 2026

Stephen A. Lagana, Esq.
Law Offices of Stephen A. Lagana
145 Essex Street
Lawrence, MA 01840
BBO-MA# 565811

VERIFICATION PURSUANT TO 28 U.S.C. §. 2242

I represent Petitioner, **Victor Manuel Chavez Badillo**, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Stephen A. Lagana

Dated: July 1, 2026

Stephen A. Lagana, Esq.
Law Offices of Stephen A. Lagana
145 Essex Street
Lawrence, MA 01840
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VICTOR MANUEL CHAVEZ BADILLO, *Petitioner* v. DAVID J. VENTURELLA, et al. *Respondents*	Civil Action No. 5:26-CV-04151-XR

RESPONSE TO PETITION

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) to the extent such relief is requested.[2]

Earlier this year, the Fifth Circuit confirmed that aliens who entered the United States illegally and are not "clearly and beyond a doubt entitled to be admitted"—like Petitioner in this case—"shall be detained" under 8 U.S.C. § 1225(b)(2)(A) until the conclusion of their removal proceedings. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026). Accordingly, any statutory argument that Petitioner's detention instead should be governed by 8 U.S.C. § 1226(a), which permits certain other categories aliens to be "release[d] on bond," is foreclosed by binding circuit precedent and must be rejected by this Court.

More recently, the Fifth Circuit also clarified that aliens "are not, by sheer dint of crossing a boundary line, cloaked in the full protection of the United States Constitution." *Sosnava Rodriguez v. Ortega*, No. 26-50183, 2026 WL 1906557, at *7 (5th Cir. July 2, 2026), *vacated on*

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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).

rehearing en banc (5th Cir. July 10, 2026). Nevertheless, the Fifth Circuit further held that the Constitution does not "permit[] interminable detention of aliens either awaiting a decision on removal or in being removed." *Id.* at *16. The Court stated that "detention without an individualized bond hearing can become constitutionally impermissible" if it continues beyond "the passage of a reasonable time in which the Government may accomplish the initial custody, determine the individual risk of the alien, and effect removal." *Id.* (citations omitted). The Court therefore concluded that "the Government **may detain aliens under Section 1225(b)(2)(A) for ninety days** but no longer without a bond hearing." *Id.* (emphasis added). However, *Sosnava* was recently vacated on rehearing en banc. *Sosnava Rodriguez v. Ortega*, No. 26-50183 (5th Cir. July 10, 2026) (en banc).

BACKGROUND

Petitioner (A# 233 163 386), a native and citizen of Mexico, entered the United States at an unknown location on an unknown date without inspection, admission, or parole. Exh. A (I-213), pg. 2. Petitioner alleges that he entered the United States without inspection in February 2004 via Tucson, Arizona, and was never encountered or detained by immigration authorities upon entry. ECF No. 1, pg. 2. On June 26, 2026, Petitioner was arrested by immigration authorities after they determined during a traffic stop that Petitioner was believed to be present in the United States without lawful status. Exh. A, pg. 2. On the same date, Petitioner was served with a Notice to Appear charging him with removability under Section 212 (a)(6)(A)(i) of the Immigration and Nationality Act (INA) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Exh. B (NTA), pg. 1. Petitioner has an approved Form I-130 (Petition for Alien Relative). Exh. A, pg. 3; ECF No. 1, pg. 2. Petitioner is in full removal proceedings with his next

scheduled hearing (Master) on July 21, 2026, at 9:00 a.m. *See* EOIR automated case information system (last accessed on 7/13/2026) https://acis.eoir.justice.gov/en/caseInformation. Petitioner maintains that his continued detention violates due process, bond regulations, and the Administrative Procedure Act (APA). ECF No. 1, pgs. 5-7.

BUENROSTRO APPLIES AND PETITIONER IS LAWFULLY DETAINED UNDER § 1225(b)(2).

Petitioner's detention is lawful under Section 1225(b)(2) and subject to the Fifth Circuit's *Buenrostro-Mendez* opinion. Petitioner seeks an order from this Court directing the Department of Homeland Security to immediately release Petitioner from immigration detention. 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 and the Eighth Circuit. *Buenrostro-Mendez*, 166 F.4th 494, 498; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); *Joaquin Herrera Avila*, No. 25-3248, 2026 WL 819258, ---F.4th--- (8th Cir. Mar. 25, 2026).

The arguments that Petitioner's 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-Mendez*. 166 F.4th at 498. To the extent Petitioners claim they are not properly categorized as an applicant for admission "[t]he text and context of § 1225 contradict the petitioners' reading of the statute." *Id.* at 502.

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." *Id.* at 501. 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 502. 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.*

Buenrostro-Mendez, 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. 166 F.4th at 506. "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 (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 508.

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. *Id.* at 498.

The Fifth Circuit is not the only court to so hold. The Eighth Circuit's decision in *Avila* also supports the Government's position. *Joaquin Herrera Avila*, No. 25-3248, 2026 WL 819258 ---F.4th--- (8th Cir. Mar. 25, 2026).

First, *Avila* held that "the ordinary meanings of the phrases 'applicant for admission' and 'seeking admission' are the same." Slip Op. 5-6. In so holding, the Eighth Circuit explained that the text and statutory context of §1225(b)(2)(A) foreclose interpreting "seeking admission" to refer

to a "present tense, affirmative action." *Id.* at 6-8;. In addition, the Eighth Circuit correctly held that the Government's interpretation does not render any portion of §1225(b)(2)(A) surplusage. Slip Op. 7. Second, *Avila* held that the Government's interpretation is consistent with the "statutory purpose of §1225" of "placing all aliens 'on equal footing'" in immigration proceedings. Slip Op. 8-9. By contrast, Avila's interpretation—like Petitioners' here—"contradicts the statute's goal." *Id.* at 9. Third, *Avila* rejected Avila's reliance on language in *Jennings v. Rodriguez*, 583 U.S. 281 (2018)—also relied on by Petitioners here—which "was offered only as general background information" and "does not preclude other statutory provisions—such as §1225(b)(2)(A)—from also applying" to aliens inside the country. Slip Op. 9. Fourth, *Avila* correctly held that prior administrations' decisions to "not exercise their full authority under §1225" does not justify departing from the statute's text, because "'authority granted by Congress cannot evaporate through lack of administrative exercise.'" Slip Op. 10. Finally, *Avila* held that the Government's reading of §1225(b)(2)(A) does not render §1226(c) superfluous. Slip Op. 10-11. Although §1225(b)(2)(A) and §1226(c) may overlap, the Eighth Circuit correctly held that such overlap does not give "license to rewrite or eviscerate" clear statutory text. *Id.* at 11.

District courts around the country also agree. *See Garibay-Robledo v. Noem*, 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); *Rodriguez v. Olson*, 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 Off. Dir. of Enf't & 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); *Paredes 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, Dep't of Homeland Sec.*, 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-MKV, 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. United States*, 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); *Ramirez 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 (JLS), 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-MKV, 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 SEC P, 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); *Hernandez Cruz v. Noem*, No. 8:25-CV-02566-SB-MAA, 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); *Duenas 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) *Alves de 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*, No. 1:25-CV-01519 WBS SCR, 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*, No. 1:25-CV-01550 WBS JDP, 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); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 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); *Mejia Olalde v. Noem*, No. 1:25-CV-00168-JMD, 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.), *R. & R. adopted*, No. 6:25-CV-00451, 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-BHL, 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*, 801 F. Supp. 3d 1133 (S.D. Cal. 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 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. 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." *Matter of Yajure Hurtado,* 29 I. & N. Dec. at 225.

DUE PROCESS CLAIMS

Petitioner contends that his continued detention violates his right to due process. Federal Respondents have considered this Court's prior orders addressing this question as instructed by the Court.[3] Federal Respondents hereby reallege and preserve the legal arguments made by the Federal Respondents in those previous cases with respect to the due process claim.

APA CHALLENGES MAY NOT BE ASSERTED AS HABEAS PETITIONS

In this proceeding, Petitioner expressly challenges his civil detention and raises an additional argument under the APA, which are not cognizable in habeas, and which are not covered under the $5 habeas filing fee. As such, the APA and any other non habeas claim should be dismissed. *See Ndudzi v. Castro*, No. SA–20–CV–0492–JKP, 2020 WL 3317107 at *2 (W.D. Tex. June 18, 2020) (citing 28 U.S.C. § 1914(a)); *Lopez Contreras v. Bondi*, No. SA-25-CV-177-OLG, page 2, footnote 1 (W.D. Tex. February 20, 2026). "When a filing contains both habeas and non-habeas claims, 'the district court should separate the claims and decide the [non-habeas] claims' separately from the habeas ones given the differences between the two types of claims. *Id* (collecting cases and further noting the "vast procedural differences between the two types of actions"). Given the differences, the Court should either sever the non-habeas claims or dismiss them altogether without prejudice if severance is not warranted. *Id.* at *3; *see also Montoya v. Noem*, SA–CV–1410–FB (W.D. Tex. Jan. 26, 2026) (dismissing all non-habeas claims without prejudice under Rules 12(b)(1) and (6)).

[3] *E.g., Valencia Reyes v. Noem*, No. SA-25-CV-1921-XR, (W.D. Tex. Feb. 25, 2026); *Gonzalez Carrillo v. Bondi*, No. SA-26-CV-778-XR, (W.D. Tex. Feb. 26, 2026).

Even if the APA claim were cognizable, there is no final action for this Court to review. When review of an agency action is sought "under the general review provisions of the APA, the 'agency action' in question must be 'final agency action.'" *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882 (1990) (quoting 5 U.S.C. § 704) ("Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review") (emphasis added). "Agency action must meet two conditions to be final: (1) 'the action must mark the 'consummation' of the agency's decisionmaking process' and (2) 'the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Patterson v. Def. POW/MIA Acct. Agency*, 343 F. Supp. 3d 637, 651 (W.D. Tex. 2018) (citing *Am. Airlines, Inc. v. Herman*, 176 F.3d 283, 287 (5th Cir. 1999)). If, as in this case, there is no final agency action, federal courts lack subject matter jurisdiction. *Qureshi v. Holder*, 663 F.3d 778, 781 (5th Cir. 2011).

Qureshi is relevant and binding precedent. *Qureshi* affirmed dismissal of an APA challenge to USCIS's termination of asylum, finding that termination of asylum is not a final agency action because it is "only an intermediate step in a multi-stage administrative process, succeeded (or accompanied) by removal proceedings." 663 F.3d at 781. The Court noted that "the IJ and BIA lack jurisdiction to review asylum terminations, they both retain the power to halt removal proceedings altogether, either by an alien's successful contest to removability . . . or by a successful new asylum application . . ." *Id.*

Petitioner is in removal proceedings, subject to a non-final order of removal, and thus the immigration court and the BIA retain authority to grant relief or order removal in this case, thereby demonstrating that "further administrative relief" is available, and detention is not the final decision in ICE or EOIR's decision making process. *See* 8 U.S.C. § 1229a; *see also* 8 C.F.R. §

1003.1. At least one Court in the Western District of Texas and one other district court within the Fifth Circuit have applied *Qureshi's* reasoning regarding agency decisions in the immigration detention context. *See Santiago Santiago v Noem*, 3:25-CV-361-KC, 2025 WL 2792588 at *5-6 (W.D. Tex. Oct. 2, 2025) (finding no jurisdiction to rule on an APA claim due to lack of final agency decision); *Bhatia v. United States*, No. 16-cv-11, 2016 WL 6127799, at *2 (S.D. Miss. Sept. 19, 2016), *report and recommendation adopted*, 2016 WL 6126666 (Oct. 20, 2016) (citing *Qureshi*, 663 F.3d at 781); *see also Gamez Lira v. Noem*, No. 25-cv-855, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025).

CONCLUSION

This Court should follow the Fifth Circuit's reasoning in *Buenrostro-Mendez* and the Eighth Circuit's reasoning in *Avila*. Respondents respectfully request that the Court deny this petition.

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Respectfully submitted,

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