

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

VICTOR BUENROSTRO-MENDEZ, §
§
Petitioner, §
§
v. § CIVIL NO. 4:25-CV-3726
§
PAMELA JO BONDI, Attorney §
General of the United States, *et al.*, §
§
Respondents. §

**RESPONSE TO EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF SEEKING DISMISSAL, AND ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT**

Dated: September 12, 2025

Respectfully submitted,

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The Government¹ files this response to the Emergency Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Complaint for Declaratory and Injunctive Relief (ECF 1), and requests that the Court dismiss, or alternatively, grant summary judgment in the Government's favor in the case, in accordance with Federal Rules of Civil Procedure 12(b)(1) or 56, respectively.

I. SUMMARY OF THE ARGUMENT

The Petitioner has admittedly failed to exhaust his administrative remedies. Because no exception to the exhaustion requirement applies, the Court should dismiss the petition for writ of habeas corpus.

Even if the Court reaches the merits of the Petitioner's claim, he is not entitled to habeas relief because the Petitioner is admittedly an applicant for admission in the United States who has not been admitted or paroled in the United States. Therefore, the Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) until full removal proceedings have concluded. The Department of Homeland Security has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." INA § 235(b)(2)(A), 8 U.S.C. §§ 1182(d)(5)(A) and 1225(b)(2)(A). As of the date of filing, the Petitioner has not sought and DHS has not granted parole to the Petitioner.

¹ As the Court has noted, there is generally only one proper respondent in a habeas petition, that being the person with custody over the petitioner. Dkt. 3 ¶ 6; 28 U.S.C. §§ 2242 and 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). However, it is the named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

II. NATURE AND STAGE OF THE PROCEEDING

Petitioner Victor Buenrostro-Mendez, a native and citizen of Mexico, is an alien who has allegedly been residing in the United States for over ten years and has not sought admission. Dkt. 1 at 10. On July 2, 2025, Homeland Security Investigations (“HSI”) encountered the Petitioner near Giddings, Texas. Government Ex. 1. The Petitioner admitted to HSI that he unlawfully entered the United States, he did not possess or present any valid entry documents, and he was not admitted or paroled into the United States. *Id.* HSI transferred the Petitioner into the custody of Immigration and Customs Enforcement (“ICE”), Enforcement and Removal Operations (“ERO”) Houston at the Montgomery Processing Center in Conroe, Texas. *Id.*

On July 2, 2025, ICE served the Petitioner with a Notice to Appear (“NTA”) charging him with removability pursuant to Immigration and Nationality Act (“INA”) 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, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* The NTA advised the Petitioner that he was to appear before an Immigration Judge (“IJ”) in Conroe, Texas, for a hearing scheduled for July 14, 2025. *Id.*

On July 14, 2025, the Petitioner appeared before an IJ and was reset to August 13, 2025, to provide more time to hire an attorney. *Id.*

On July 17, 2025, ICE transferred the Petitioner to the Houston Contract Detention Facility in Houston, Texas. *Id.*

On July 29, 2025, an IJ denied the Petitioner's request for a change in custody status due to the court's finding that she lacked jurisdiction to redetermine the Petitioner's custody status because it is governed by INA § 235(b)(2) (codified as 8 U.S.C. § 1225(b)). *Id.*; Dkt. 8-1 and 8-2. The Petitioner reserved the right to appeal the IJ's decision. *Id.*

On August 13, 2025, the Petitioner appeared before an IJ with an attorney. Government Ex. 1. The IJ rescheduled the Petitioner to a hearing on September 9, 2025, to provide more time for pleadings. *Id.*

On August 28, 2025, ICE learned that the Petitioner filed a petition for writ of habeas corpus pursuant to 8 U.S.C. § 2241. *Id.*

On September 4, 2025, the Petitioner appeared before an IJ with an attorney. Pleadings were taken and the charge of removability was sustained. The IJ rescheduled the Petitioner's hearing to October 7, 2025, to file an application for relief from removal.

ICE intends to monitor the Petitioner while he is in immigration proceedings. *Id.*

As of September 12, 2025, the Petitioner's bond appeal remains pending at the Board of Immigration Appeals (BIA). *Id.*; Dkt. 8-3.

The Petitioner has not requested his release on parole and ICE does not presently intend to release him on parole. Government Ex. 1.

To date, the Petitioner remains mandatorily detained under 8 U.S.C. § 1225(b)(2).

III. STATEMENT OF ISSUES

1. Whether the Court has jurisdiction to hear the Petitioner's claims when the Petitioner has admittedly failed to exhaust administrative remedies.
2. Whether the Petitioner is lawfully detained.

IV. STANDARD OF REVIEW

A. Federal Rule of Civil Procedure 12(b)(1)

When considering a Rule 12(b)(1) motion challenging subject matter jurisdiction, the court “is free to weigh the evidence and resolve factual disputes in order to satisfy itself that it has power to hear the case.” *Montez v. Dep’t of the Navy*, 392 F.3d 147, 149 (5th Cir. 2004); *Krim v. Pcorder.com*, 402 F.3d 489, 494 (5th Cir. 2005). The court may consider any of the following to resolve a Rule 12(b)(1) motion: “(1) the complaint alone; (2) the complaint supplemented by the undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008); *see also Schaeffler v. United States*, 889 F.3d 238, 242 (5th Cir. 2018). The plaintiff bears the burden of establishing subject matter jurisdiction. *Exelon Wind 1, L.L.C. v. Nelson*, 766 F.3d 380, 388 (5th Cir. 2014). If the plaintiff fails to meet his burden, the case must be dismissed. *Id.*

B. Federal Rule of Civil Procedure 56

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only if the pleadings, along with evidence, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* Fed. R. Civ. P. 56(c). Once a motion has been made, the nonmoving party may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to show the existence of a genuine issue for trial. *Celotex Corp.*, 477 U.S. at 322-23. If the moving party meets its burden, the non-moving party must show a genuine issue of material fact exists. *Id.*

at 322. Furthermore, “only *reasonable* inferences can be drawn from the evidence in favor of the nonmoving party.” *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 469 n.14 (1992) (emphasis in original) (quoting *H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1012 (2d Cir. 1989)).

V. STATUTORY BACKGROUND

A. Detention Under 8 U.S.C. § 1225

Section 1225 applies to “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of prosecution, or is “found not to have such a fear,” he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” *shall* be detained for a removal proceeding “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); *see Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018)). Still, the Department of Homeland Security (“DHS”) has the sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

B. Detention Under 8 U.S.C. § 1226(a)

Section 1226 provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (i.e., a bond hearing) by an immigration judge (“IJ”) at any time before a final

order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). But regardless of the factors IJs consider, an alien “who presents a danger to persons or property should not be released during the pendency of removal proceedings.” *Id.* at 38.

C. Review at the BIA

The BIA is an appellate body within the Executive Office for Immigration Review (“EOIR”). *See* 8 C.F.R. § 1003.1(d)(1). Members of the BIA possess delegated authority from the Attorney General. 8 C.F.R. § 1003.1(a)(1). The BIA is “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it,” including IJ custody determinations. 8 C.F.R. §§ 1003.1(d)(1), 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, [it] shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). “The decision of the [BIA] shall be final except in those cases reviewed by the Attorney General.” 8 C.F.R. § 1003.1(d)(7).

On September 5, 2025, the IBA issued a precedential decision in the *Matter of Jonathan Javier YAJURE HURTADO*, Respondent, 29 I&N Dec. 216 (BIA 2025).² In that decision, the

² Available at <https://www.justice.gov/eoir/media/1413311/dl?inline> (last accessed September 9, 2025).

BIA held that an Immigration Judge lacks authority to hear a respondent's request for bond where the respondent is an applicant for admission and 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). *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 229 (BIA 2025).

VI. ARGUMENT

A. The Court Does Not Have Jurisdiction to Entertain the Petitioner's Claims Because He has not Exhausted His Administrative Remedies

As a threshold matter, the Court does not have jurisdiction to entertain the Petitioner's habeas claims because the Petitioner has not administratively exhausted his claims. "A person seeking habeas relief must first exhaust available administrative remedies." *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (citing *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (per curiam)).

"Exceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Id.* (quoting *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam) (quoting *Hessbrook v. Lennon*, 777 F.2d 999, 1003 (5th Cir. 1985)). "The petitioner bears the burden to demonstrate an exception is warranted." *Id.* (citing *DCP Farms v. Yeutter*, 957 F.2d 1183, 1189 (5th Cir. 1992); *Gardner v. Sch. Bd. Caddo Par.*, 958 F.2d 108, 112 (5th Cir. 1992)).

The Petitioner concedes that he has not exhausted his administrative remedies and an appeal with the Board of Immigration of Appeals (BIA) remains pending. Dkt. 1 at 18-19. The Petitioner claims that he is not required to exhaust his administrative remedies because to do so would be futile. Dkt. 1 at 19. However, the appeal is not futile in this case. The BIA recently

considered an issue not previously addressed and provided a precedential opinion addressing the same issue presented by the Petitioner in this case—specifically, “the Immigration Judge’s authority to hold a bond hearing for an alien present in the United States who has not been admitted after inspection.” *Yajure Hurtado*, 28 I&N Dec. at 216. The Petitioner’s remedy for being denied a bond by the IJ is to file an appeal with the BIA, which the Petitioner has done. Because exhausting administrative remedies would not be futile, but would address the issue presented by the Petitioner, no exception applies, and the Court should require the Petitioner here to exhaust administrative remedies prior to seeking habeas relief.

B. The Petitioner is Lawfully Detained Under INA § 235(b)(2), 8 U.S.C. § 1225

Even if the Court determines that it has jurisdiction to hear the Petitioner’s claims, Petitioner’s claims fail on the merits because the Petitioner is being lawfully detained by ICE/DHS under INA § 235(b)(2), 8 U.S.C. § 1225 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. Government Ex. 1; *Matter of Yajure Hurtado*, 29 I&N Dec. at 229.

The Petitioner is not being subjected to expedited removal, but rather is being afforded due process in full removal proceedings. Petitioner claims that he has not received meaningful administrative review because he has not had the opportunity to prove he is not a danger or a flight risk. Dkt. 1 at 2. However, the questions of whether the Petitioner is a danger or a flight risk are not before the Court. Rather, the sole issue is whether the Petitioner is subject to mandatory detention based on the statute, §1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. at 229, n.8 (quoting *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (“As a general

rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.”)). Under a plain reading of the statute, the Petitioner is subject to mandatory detention while he is afforded due process. As explained in the recent *Matter of Yajure Hurtado* BIA decision, applicants for admission who have successfully evaded detention for more than two years are not rewarded with the opportunity for a bond hearing before an IJ for over aliens who presented themselves for inspection at a port of entry. *Matter of Yajure Hurtado*, 29 I&N Dec. at 228. “This is an incongruous result which is not supported by the plain language or any reasonable interpretation of the INA.” *Id.*

The petitioner concedes that he is an applicant for admission as an alien present in the U.S. without being admitted or paroled. Dkt. 1 at 7. Petitioner alleges that the Immigration Judge (IJ) determined Petitioner is not eligible for a bond redetermination decision is an unsupported and arbitrary reading of the bond statutes in 8 U.S.C. §§ 1225 and 1226(a). Petitioner further alleges the IJ misapplied a recent Board of Immigration Appeals (BIA) case, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), which alters long-standing interpretations of 8 U.S.C. §§ 1225 and 1226(a) and indicates that the IJ does not have jurisdiction to redetermine Petitioner’s bond. However, as the BIA has made clear in *Matter of Yajure Hurtado*, the IJ’s interpretation of 8 U.S.C. §§ 1225 and 1226(a) was correct and is supported by a plain reading of the statutory language.

Petitioner alleges his detention is governed by the discretionary authority granted to the Attorney General under Section 236(a) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1226(a). The Petitioner’s assertion is incorrect. Section 236 of the INA is the applicable detention authority for aliens who are already present in the United States after an

admission and are deportable. INA §§ 236, 237(a). The Petitioner is present in the United States without admission or parole; therefore he is an applicant for admission in INA § 240 proceedings and is consequently detained under 8 U.S.C. § 1226(b)(2)(A). The Petitioner is subject to mandatory detention unless he is paroled, which is in the sole discretionary authority of DHS. INA § 235(b)(2)(A), 8 U.S.C. §§ 1182(d)(5)(A) and 1225(b)(2)(A).

Further, as discussed in the preceding section the Petitioner's administrative proceedings have not concluded, including not only his appeal of the IJ's decision that she lacked authority to order a bond but also that the Petitioner has been afforded time at the administrative level to file an application for relief from removal. Therefore, the Petitioner cannot show that his detention is unlawful for this additional reason. *Zadydas v. Davis*, 533 U.S. 678 (2001); *Lawal v. Lynch*, 156 F. Supp. 3d 846, 850 (S.D. Tex. 2016).

Contrary to his assertions, neither the Petitioner's Constitutional nor due process rights have been violated. Rather, he is being afforded his due process rights by allowing him to exercise his rights to appeal and proceed through his full removal proceedings. Permitting the Petitioner to exercise his due process does not change that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and as explained above and by the BIA in *Matter of Yajure Hurtado*, aliens who evade detection for more than two years are afforded more process than aliens who are encountered at a port of entry; however, neither is eligible for a bond hearing before an IJ. *Matter of Yajure Hurtado*, 29 I&N Dec. at 228. The Petitioner cannot show a violation of the Administrative Procedures Act because the Respondents have followed the applicable statutes, and regulations, including mandatorily detaining the petitioner under 8 U.S.C. § 1225(b)(2). Therefore, the Petitioner's requested stay of removal is not warranted.

VII. CONCLUSION

For the reasons stated above, the Court should dismiss the Petitioner's writ of habeas corpus under Rule 12(b)(1) for failure to exhaust, or alternatively, grant summary judgment in Respondents' favor under Rule 56 and deny the writ of habeas corpus.

Dated: September 12, 2025

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CERTIFICATE OF SERVICE

I certify that on September 12, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

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