

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOSE EDUARDO CORTEZ RIVERA,

Petitioner,

v.

PATRICIA HYDE, Field Office Director;
TODD LYONS, Acting Director U.S.
Immigrations and Customs Enforcement;
KRISTI NOEM, U.S. Secretary of Homeland
Security; PAMELA BONDI, Attorney
General of the U.S., and ANTONE MONIZ,
Superintendent, Plymouth County
Correctional Facility,

Respondents.

Civil Action No. 1:25-CV-12390-IT

**ABBREVIATED RESPONSE TO AMENDED HABEAS PETITION AND
REQUEST TO PROCEED WITHOUT ADDITIONAL BRIEFING OR
ARGUMENT**

The legal issues presented in this Petition for Writ of Habeas Corpus (“Petition”) concern the statutory authority for U.S. Immigration and Customs Enforcement’s (“ICE”) detention of Petitioner, whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. While reserving all rights, including the right to appeal, Respondents submit this abbreviated response in lieu of an exhaustive responsive memorandum to preserve the legal issues and to conserve judicial and party resources.¹

¹ In addition to the arguments raised in this Abbreviated Response, Respondents also move for all Respondents other than Respondent Moniz to be dismissed from this action as they are not Petitioner’s custodian. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (noting that for habeas petitions challenging detention, “the default rule is that the proper respondent is the

Respondents acknowledge that this Court’s prior rulings concerning similar challenges to the government policy or practice at issue in this case, and the common question of law between this case and those rulings, would control the result in this case should the Court adhere to its legal reasoning in those prior decisions. *See Doe v. Moniz*, No. 25-cv-12094-IT, __ F. Supp. 3d __, 2025 WL 2576819 (D. Mass. Sept. 5, 2025), and *Escobar v. Hyde*, No. 25-cv-12620-IT, 2025 WL 2823324 (D. Mass. Oct. 3, 2025). While Respondents respectfully disagree with those decisions, in the interest of judicial economy, and to expedite the Court’s consideration of this matter, Respondents hereby rely upon and incorporate by reference the legal arguments it presented in *Doe* and *Escobar* and submit that the Court can decide this matter without further briefing and without oral argument. Should the Court decide that Petitioner is subject to detention under 8 U.S.C. § 1226, the appropriate remedy is to order a bond hearing, and not to immediately release Petitioner.

Should the Court prefer to receive a more exhaustive and fulsome opposition brief, Respondents respectfully request leave to file such a brief and will do so upon the Court’s request.

Relevant Underlying Facts

Petitioner is a native and citizen of El Salvador. ECF No. 11 ¶¶ 1-2, 4. He is not a citizen of the United States. *See id.* Petitioner entered the United States without inspection in 2017 and has not been previously admitted or paroled into the United States. *Id.* ¶¶ 4, 12, 15. Petitioner does not specify the location at which he entered, whether at a port of entry or elsewhere, but notes that he was apprehended and served a Notice to Appear (“NTA”), alleging that he was an alien present in the United States who has not admitted or paroled after an inspection, a Warrant

warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official”).

for Arrest, and an Order of Release on Recognizance. *Id.* ¶¶ 4-6. That NTA was docketed in the immigration court but, after seeking asylum before the immigration judge, Petitioner’s removal proceeding was dismissed with the consent of the Department of Homeland Security in June 2022. *Id.* ¶ 7. At some point after that, Petitioner then re-filed for asylum before the United States Citizenship and Immigration Services (“USCIS”) and has been waiting for an interview. *Id.*

At some point in 2025, Petitioner was charged with two crimes in Chelsea District Court. *Id.* ¶ 9. One charge has been dismissed while the other remains open. *Id.* Petitioner does not state what either charge was, and, according to his petition, has neither been convicted nor acquitted of those charges. *Id.* On August 28, 2025, the Petitioner was arrested by agents from the United States Customs and Enforcement (“ICE”). *Id.* ¶ 10.

Petitioner filed his original petition for writ of habeas corpus on August 29, 2025. ECF No. 1. Petitioner filed this Amended Petition on September 26, 2025. ECF No. 11.

Discussion

In his Amended Petition, Petitioner principally seeks an order from this Court directing ICE to immediately release Petitioner from ICE detention. ECF No. 1 at 10 (Prayer for Relief). In the alternative, Petitioner requests that this Court order Respondents to release Petitioner if he is not provided a bond hearing within seven (7) days of the Court’s order. *Id.* Petitioner argues that his detention is governed by INA § 236, 8 U.S.C. § 1226, that he is being unlawfully detained and deprived of a bond hearing, and that his detention violates the Fifth Amendment to the United States Constitution, 8 U.S.C. § 1226, and the Administrative Procedures Act (“APA”). *Id.* at pp. 7-9.²

² Because the paragraph numbering in the Amended Petition is inaccurate, Respondents cite the page numbers rather than the paragraph numbers for the Claims for Relief.

Respondents contend that Petitioner's detention is governed by INA § 235, 8 U.S.C. § 1225, because as an alien who entered without inspection or parole was and remains an applicant for admission who is treated, for constitutional purposes, as if stopped at the border. As such, he is subject to mandatory detention and not entitled to a bond hearing. Respondents further contend that Petitioner should be required to exhaust his administrative remedies as a prudential matter before bringing a habeas challenge in federal court.

Respondents further rely upon *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). 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." 29 I&N Dec. at 225. This Court should rule the same.

Respondents acknowledge that questions of law in this case, and the challenges to the government's policy and practice, substantially overlap with those at issue in *Doe* and *Escobar*. Accordingly, while preserving all rights, Respondents incorporate by reference the legal arguments it presented in those cases. Should the Court apply the same reasoning it did in those cases to this one, the legal principles espoused in those cases would likely warrant the same conclusion here. Because of this, Respondents submit that further briefing and/or oral argument on the legal issues addressed in those cases would not be a good use of judicial or party resources. In its current posture, the Court can decide this matter without delay. If, however, the Court prefers to receive a formal and exhaustive opposition brief in this matter, Respondents will provide such a brief upon the Court's request.

Further, Respondents contend that should this Court determine that Petitioner's detention is subject to 8 U.S.C. § 1226, the only appropriate remedy is a bond hearing before an Immigration Judge, during which an immigration judge can properly determine in the first instance whether Petitioner is a flight risk or danger to the community. *See, e.g., Doe*, 2025 WL 2576819, at *11; *Escobar*, 2025 WL 2823324, at *3 (ordering bond hearing); No. 25-cv-011571-JEK, 2025 WL 1869299, at *8-*9 (D. Mass. July 7, 2025) (finding the proper remedy is a bond hearing); *Romero*, 2025 WL 2403827, at *13 (same). This is particularly apt in this case where Petitioner admits to being charged with criminal conduct but does not specify for the Court the nature of those criminal charges. Thus, it is appropriate for an immigration judge to determine, in the first instance, whether Petitioner is a flight risk or a danger to the community.

Conclusion

Respondents thank the Court for its consideration of this abbreviated submission and respectfully request that the Court to deny this Petition.

Dated: October 10, 2025

Respectfully submitted,

LEAH B. FOLEY
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CERTIFICATE OF SERVICE

I, Anuj Khetarpal, Assistant United States Attorney, hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). Paper copies will be sent to those indicated as non-registered participants.

Dated: October 10, 2025

By: /s/ Anuj K. Khetarpal
Assistant United States Attorney