UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

SIXTO HERNANDEZ HERNANDEZ, Petitioner, vs. JEFFREY CRAWFORD, Warden, Farmville Detention Center, *et al.*, Respondents.	)	Civil Action No. 1:25cv1565

MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S EMERGENCY MOTION FOR MODIFIED ORDER

The federal respondents, through their undersigned counsel, hereby respectfully submit the instant memorandum of law in opposition to petitioner's emergency motion for modified order in the above-captioned habeas action.

BACKGROUND

In this habeas action, petitioner Sixto Hernandez Hernandez filed his petition for a writ of habeas corpus on September 18, 2025 (Dkt. No. 1). The gravamen of that petition was Hernandez's contention that federal immigration authorities – as a result of the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) – had erroneously concluded that he was subject to mandatory civil immigration detention pursuant to 8 U.S.C. § 1225(b)(2)(A), and not eligible for an exercise of discretionary release on bond pursuant to 8 U.S.C. § 1226(a), during the pendency of his removal proceedings. *Id.* ¶50. The petition contained no discussion of, nor sought any relief with respect to, putative detention after the entry of a final removal order; nor could it, of course, because any such order had not been

(and may not be) entered. After full briefing (Dkt. Nos. 11-12), on October 16, 2025, this Court entered an order granting the petition, which directed, *inter alia*, that Hernandez "be provided with a bond hearing by an Immigration Judge pursuant to 8 U.S.C. § 1226(a) within seven days" (Dkt. No. 11, at 6). Consistent with this Court's order, the presiding Immigration Judge held a bond hearing on October 20, 2025, and ordered Hernandez released on a $5,000 bond (Dkt. No. 16).

Claiming an "emergency," Hernandez is now back before this Court, asking for an unnecessary modification to this Court's prior order. More specifically, noting that a hearing will be held on October 22, 2025 regarding the merits of his putative removal from the United States, Hernandez asks this Court to modify its order in this habeas action to preclude – in the "possible" event that the presiding Immigration Judge issues an order of removal against him – federal immigration authorities from re-detaining him unless that order becomes administratively final (or, alternatively, that he violates a condition of his release on bond) (Dkt. No. 16, ¶¶7-8). Hernandez provides no facts – or even allegations – that federal immigration authorities intend to re-detain him should the presiding Immigration Judge here actually issue a non-final order of removal. But in Hernandez's view, "[t]his modification will ensure that Federal Respondents continue to follow the spirit of this Court's prior order even if [he] is not successful at his October 22, 2025 hearing" (*id.* ¶9).

ARGUMENT

At the outset, Hernandez's *general* view of the law is accurate. An alien remains in pre-order detention (*i.e.*, detention during removal proceedings), governed by *either* 8 U.S.C. §§ 1225 or 1226, until his or her removal order becomes *final* – which occurs when either the period within which an alien may notice an appeal from an adverse Immigration Judge order to the BIA expires, or the BIA affirms such an order after an alien notices an appeal. *See* 8 U.S.C. § 1101(47)(B).

And at that point, an alien's detention is governed by a different statutory provision, 8 U.S.C. § 1231, which was not a subject of Hernandez's habeas petition.

But even during the pendency of removal proceedings, an Immigration Judge's order releasing an alien on bond pursuant to § 1226(a) is not set in stone for the remainder of those removal proceedings, and can be redetermined at any time. More specifically, federal immigration district leadership retain authority to make a decision to redetain, such as when new circumstances change the discretionary bond calculus (*i.e.*, danger to the community and/or flight risk). *See* 8 C.F.R. § 236.1(c)(9) ("When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained."). But the alien would then have the opportunity to ask the presiding Immigration Judge to review the redetention decision – just as it did in the first instance. *See, e.g.*, *Matter of Sugay*, 17 I. & N. Dec. 637, 639-40 (BIA 1981). Either way, how the presiding Immigration Judge exercises that discretion is beyond this Court's jurisdiction. *See* 8 U.S.C. § 1226(e). Put simply, this Court has provided Hernandez with the only relief that it could, holding that his detention was governed by § 1226(a), which allows the presiding Immigration Judge the discretion to release him on bond – either before or after entry of a non-final removal order.

In any event, this Court should summarily deny Hernandez's instant motion for a simple reason – he provides no factual support whatsoever for the conclusion that federal immigration officials will seek to re-detain him should the presiding Immigration Judge issue a non-final order removal against him at the upcoming hearing. And without any such factual premise

demonstrating a *likely* injury, this Court lacks jurisdiction to entertain such a request because Hernandez lacks Article III standing to seek it. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Environmental Servs., Inc.*, 528 U.S. 167, 180-81 (2000) (holding that to possess standing, an individual must have "suffered an 'injury in fact' that is (a) concrete and particularized and (b) *actual or imminent, not conjectural or hypothetical*" (emphasis added)). Moreover, the type of speculation on which Hernandez's motion is based is not an "emergency" warranting immediate relief.

Respectfully submitted,

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ATTORNEYS FOR FEDERAL RESPONDENTS

Date: October 22, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing ("NEF") to the following:

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Date: October 22, 2025

/s/
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