

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RENATO ANDRE FONSECA DE SA,

Petitioner,

v.

Civil Action No. 25-cv-12734-WGY

PATRICIA HYDE, Boston Field Office
Director, U.S. Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"); TODD LYONS, Acting Director
U.S. Immigration Customs Enforcement
("ICE"); KRISTI NOEM, Secretary of the
Department of Homeland Security ("DHS");
U.S. DEPARTMENT OF HOMELAND
SECURITY; and PAMELA BONDI, Attorney
General of the United States

Respondents.

**ABBREVIATED RESPONSE TO 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 and whether Petitioner is entitled to a bond hearing under the Immigration and Nationality Act and the Constitution. 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, considering this Court's prior decisions in *Morales v. Plymouth County Correctional Facility*, No. 25-cv-12602-ADB, ECF No. 15 (D. Mass. Sept. 30, 2025) and *Chavez Juarez v. Hyde*, No. 1:25-cv-12668-ADB, ECF No. 9 (D. Mass. Oct. 2, 2025).

While Respondents respectfully disagree with the Court's prior decisions and the decisions from this District that the Court followed in reaching its conclusion in *Morales* and *Chavez Juarez*, Respondents acknowledge this Court's prior decisions control the result in this case if the Court adheres to its reasoning. Thus, in the interest of judicial economy, and to expedite the Court's consideration of this matter, the Respondents hereby rely upon and incorporate by reference the legal arguments it presented in *Morales* and submit that the Court can decide this matter without further briefing and without oral argument. However, should the Court prefer to receive a more exhaustive and fulsome opposition brief in this matter, Respondents respectfully request the opportunity to file such a brief and will do so upon the Court's request.

BACKGROUND

Petitioner is a citizen of Brazil who has not been admitted or paroled into the United States. Doc. No. 1, ¶ 1. Petitioner was arrested on September 24, 2025 by ICE. *Id.*, ¶ 2. He claims that ICE is detaining him in violation of statute and the Constitution because ICE asserts that his detention is mandatory pursuant to 8 U.S.C. § 1225(b). *Id.*, ¶ 3. Petitioner instead contends that ICE's detention authority stems from Section 1226(a) and therefore he is eligible to receive a bond hearing in Immigration Court. *Id.*, ¶ 4. He therefore asks this Court to order that he be immediately released or that he at least receive a bond hearing pursuant to Section 1226(a) in Immigration Court. *Id.*, PRAYER FOR RELIEF.

ARGUMENT

Respondents contend that Petitioner's detention does not violate statutory, regulatory, or constitutional rights and therefore the Petition should be denied.

As to Petitioner's claim that his detention violates his statutory rights, Respondents' position remains that the Court should deny the petition because Petitioner is an applicant for admission, which means 8 U.S.C. § 1225(b)(2)(A) authorizes Petitioner's detention. Petitioner fits the statutory definition of an applicant for admission as he is present in the United States and he has not been admitted. Respondents assert that Petitioner is subject to Section 1225(b)(2)'s mandatory provision because he is "not clearly and beyond a doubt entitled to be admitted" and because he is "seeking admission" to the United States as he is currently before an Immigration Judge whose role is to "conduct proceedings for deciding the inadmissibility" through removal proceedings which "are the sole and exclusive procedure for determining whether an alien may be admitted to the United States". 8 U.S.C. § 1229a(a)(1)-(3). As Petitioner does not contend he is trying to depart from the United States and return to his home country, then he is certainly seeking admission to the United States and therefore Section 1225(b)(2) requires his detention during such process.

Respondents further note that the Board of Immigration Appeals recently held that noncitizens "who are present in the United States without admission are applicants for admission" who "must be detained for the duration of their removal proceedings." *See generally Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (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. Respondents urge this Court to similarly adopt this reasoning and find Petitioner's detention mandatory under Section 1225(b)(2) and that as an applicant for admission, as a matter of due process, he is only entitled to the rights and protections set forth by statute, which he has received.

However, Respondents concede that principal factual and legal issues in this case concerning ICE's statutory and constitutional authority to detain Petitioner substantially overlap with those at issue in *Morales* and *Chavez Juarez*. Accordingly, while preserving all rights, Respondents incorporate here by reference the legal arguments it presented in *Morales*. Should the Court apply the same reasoning of that case here, it would reach the same result as the relevant facts are materially indistinguishable from the relevant facts presented in this case. Because of this, Respondents submit that further briefing and/or oral argument on the legal issues addressed in those cases would not substantively benefit the Court or the parties and would not be a good use of judicial or party resources.

Therefore, in its current posture, the Court can decide this matter without delay. If the Court is inclined to decide this matter in a similar manner as to its decision in *Morales* and *Chavez Juarez*, Respondents assert that the relief awarded by this Court should be limited to an order that Petitioner receive a bond hearing under Section 1226(a) in Immigration Court, and that Petitioner's alternative request for immediate release from detention be denied.¹

¹ Even if this Court finds that 8 U.S.C. § 1226(a) is the applicable statute that provides detention authority in this case, Petitioner is not entitled to an order for immediate release from this Court while he pursues relief from removal in Immigration Court as ICE has statutory authority under 8 U.S.C. § 1226(a) to detain during the course of removal proceedings and the Supreme Court has repeatedly "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003).

CONCLUSION

Accordingly, Respondents respectfully submit that the Court resolve this petition without further briefing or oral argument and find that Petitioner's detention is lawful. Respondents thank the Court for its consideration of this abbreviated submission and assure this Court that it will promptly communicate any Order issued by this Court to ICE upon receipt.

Respectfully submitted,

LEAH B. FOLEY
United States Attorney

Dated: October 7, 2025

By: /s/ Mark Sauter
Mark Sauter
Assistant United States Attorney
United States Attorney's Office
1 Courthouse Way, Suite 9200
Boston, MA 02210
Tel.: 617-748-3347
Email: mark.sauter@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served by means of the Court's Electronic Case Filing system.

Dated: October 7, 2025

By: /s/ Mark Sauter
Mark Sauter
Assistant United States Attorney