UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO.: 25-24484-CV-MIDDLEBROOKS

ROBERSON FLAVIO SANTANA,

Petitioner,

v.

CHARLES PARRA, FIELD OFFICE DIRECTOR, *et al.*,

Respondent(s).
_____/

RESPONDENTS' RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 [DE 1]

Respondents[1] by and through the undersigned Assistant United States Attorney hereby file this Response to Petitioner, Roberson Flavio Santana's ("Petitioner") Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (hereinafter the "Petition") [DE 1] and request that the Petition be denied and state in support thereof as follows:

I. INTRODUCTION

Petitioner is being lawfully detained at the Krome North Service Processing Center (Krome) in Miami, Florida and his position that he has been in custody for a "long time" fails to consider: (1) the appellate process that has prevented his removal to Brazil from being effectuated; (2) the impact of his criminal history; and (3) how the stay of removal entered by the United States Court of Appeals for the Ninth Circuit has reverted his detention status to pre-order detention,

[1] Charles Parra is the Assistant Field Office Director and is the proper Respondent because Petitioner is detained at Krome. *See Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

hence mandating detention without bond. *See Farah v. U.S. Attorney Gen.*, 12 F.4th 1312 (11th Cir. 2021); *see also Matter of Yajure-Hurtado,* 29 I&N Dec. 216, 228 (BIA 2025). Accordingly, this Court should deny his Petition.

II. PROCEDURAL BACKGROUND

Petitioner is a native and citizen of Brazil, who last entered the United States at an unknown place and unknown date. *See* Ex. 1, Notice to Appear (NTA), June 16, 2020; Ex. 2, Record of Deportable/Inadmissible Alien (Form I-213), June 16, 2020.

On June 15, 2020, Petitioner was taken into custody by the Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). *See* Ex. 2, Form I-213; Ex. 3, Notice of Custody Determination (Form I-286), June 16, 2020; Ex. 4, Detention History. Petitioner was placed in removal proceedings upon service and filing of an NTA dated June 16, 2020. *See* Ex. 1, NTA. The NTA charged Petitioner with removability pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, and 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. *See* Ex. 1, NTA.

On December 2, 2020, the immigration judge issued a Notice of Custody Redetermination Hearing pursuant to *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), *rev'd sub nom Jennings v. Rodriguez*, 583 U.S. 281 (2018). *See* Ex. 5, Notice of Custody Determination Hearing, December 2, 2020. Furthermore, Senior United States District Court Judge Terry J. Hatter, Jr., directed the government to conduct bond hearings on the cases of several identified class members, which included Petitioner. *See* Ex. 6, Decision and Order of the Immigration Judge, January 12, 2021. On January 12, 2021, the immigration judge denied Petitioner's bond request, finding that he posed a danger to the community due to the severity of his prior criminal acts in which he

stabbed two victims, one of whom died, and the recency of his criminal record wherein he was convicted of murder in Brazil. *Id.*

On January 6, 2021, the immigration judge denied Petitioner's applications for relief from removal and ordered Petitioner removed from the United States to Brazil. *See* Ex. 7, Order of the Immigration Judge, January 6, 2021. Petitioner appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). Ex 8, BIA decision, June 24, 2021. On June 24, 2021, the BIA dismissed Petitioner's appeal. *Id.* On July 6, 2021, Petitioner filed a Petition for Review to the United States Court of Appeals for the Ninth Circuit. (*Santana v. Garland*, Case No. 21-358 (9th Cir. July 6, 2021). *See* Ex 9, Order of the U.S. Court of Appeals for the Ninth Circuit, April 20, 2022; Ex. 10, Record of Deportable/Inadmissible Alien (Form I-213), August 11, 2022.

On April 5, 2022, ERO released Petitioner on an Order of Supervision. Ex. 10, Form I-213, August 11, 2022. On April 20, 2022, the Ninth Circuit Court of Appeals remanded the case to the BIA on an unopposed motion for remand. *See* Ex. 9, Order of the U.S. Court of Appeals for the Ninth Circuit, April 20, 2022. On August 11, 2022, Petitioner was redetained by ERO. *See* Ex. 10, Form I-213, August 11, 2022; Ex. 11, Form I-286, Notice of Custody Determination, August 11, 2022; and Ex. 4, Detention History. On December 13, 2022, Petitioner was transferred to Krome, where he remains detained today. *See* Ex. 12, Detention History.

On January 26, 2024, the BIA remanded the removal proceedings to the immigration judge for issuance of a new decision in compliance with the decision of the U.S. Court of Appeals for the Ninth Circuit. *See* Ex. 13, BIA Decision, January 26, 2024. On July 24, 2024, the immigration judge in Adelanto, California, again denied Petitioner applications for relief from removal and ordered Petitioner removed to Brazil. *See* Ex. 14, Order of the Immigration Judge, July 24, 2024.

On January 23, 2025, the BIA dismissed Petitioner's appeal. *See* Ex. 15, BIA Decision, January

23, 2025. Petitioner filed a petition for review in the United States Court of Appeals for the Ninth Circuit, which remains pending. *See* Ex 16, Order of the U.S. Court of Appeals for the Ninth Circuit, May 20, 2025. (*Santana v. Bondi*, Case No. 25-643 (9th Cir. Jan. 31, 2025). The Court issued a stay of removal relating to the petition for review, which is still in effect. *Id.*

On August 29, 2025, Petitioner was served with the Decision to Continue Detention from ICE ERO. *See* Ex. 17, Decision to Continue Detention, August 28, 2025. The decision indicated that Petitioner would not be released and found that he posed a danger to the community, to the safety of others or to property, and also posed a significant risk of flight pending removal. *Id.*

On or about September 17, 2025, Petitioner filed a Motion for Custody Redetermination before the immigration judge at the Krome Immigration Court in Miami, Florida. Ex. 18, Motion for Custody Redetermination, September 17, 2025.

On September 24, 2025, the immigration judge denied Petitioner's request for bond redetermination, finding the court lacked jurisdiction to redetermine custody since Petitioner has a final order of removal. *See* Ex. 19, Order of the Immigration Judge, September 24, 2025. On October 14, 2025, the United States Department of Homeland Security (DHS) filed a Motion to Reconsider Bond Decision in light of *Farrah v. U.S. Att'y Gen.*, 12 F.4th 1312 (11th Cir. 2021). *See* Ex. 20, DHS Motion to Reconsider Bond Decision, October 14, 2025.

On October 20, 2025, a Notice of Custody Redetermination Hearing was issued. *See* Ex. 21, Notice of Custody Redetermination Hearing, October 20, 2025. On October 22, 2025, the immigration judge found the court lacked jurisdiction to redetermine bond pursuant to the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025). *See* Ex. 22, Order of Immigration Judge Denying Bond, October 22, 2025.

Petitioner filed this Petition [DE 1] challenging his continued detention as a due process violation and presumptively unreasonable under *Zadvydas v. Davis*, 533 U.S. 678 (2001) because more than six months have passed without removal being effectuated. [DE 1-3, p. 4].

III. ARGUMENT

A. Petitioner is Subject to Pre-Order Detention in light of Farrah, and, as an Applicant for Admission, he is Subject to Mandatory Detention Pursuant to INA § 235(b)(2) and the BIA's decision in the Matter of Yajure-Hurtado.

As a preliminary matter, pre-order detention in contrast to post-order detention must be examined for purposes of understanding why Petitioner's detention status continues to be lawful. Pre-order detention is governed, in relevant part, by either INA § 236(a) or INA § 235(b)(2). With respect to pre-order detention, INA § 236(a), 8 U.S.C. § 1226(a), states in pertinent part:

> (a) Arrest, Detention and Release
> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General –
> (1) may continue to detain the arrested alien; and
> (2) may release the alien on –
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
> (B) conditional parole . . . .

Therefore, under § 1226(a), pre-order detention and the opportunity for release or a bond hearing remains available to an alien where removal proceedings are pending. Petitioner's pre-order detention status commenced as of June 16, 2020, when he was first placed in removal proceedings. *See* Ex. 2, Form I-213; Ex. 3, Form I-286, June 16, 2020. Petitioner was afforded a custody redetermination hearing and on January 12, 2021, bond was denied because Petitioner was found to pose a danger to the community. *See* Ex. 6, Decision and Order of the Immigration Judge, January 12, 2021. The basis for this finding was the severity of Petitioner's prior criminal acts in which he stabbed two victims, one of whom died, and the recency of his criminal record wherein

he was convicted of murder in Brazil. *Id.* Petitioner's detention status became post-order on July 24, 2024, when all applications for relief from removal were again denied and he was ordered removed to Brazil. *See* Ex. 14, Order of the Immigration Judge, July 24, 2024.

Under § 1225(a)(1), Petitioner is considered an applicant for admission which is defined as follows:

> **(1) Aliens treated as applicants for admission**
>
> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

The plain text of § 1225(a)(1) unambiguously encompasses *all* individuals living in the United States who never went through the process of being admitted. "An alien present in the United States who has not been admitted or who arrives in the United States…shall be deemed…an applicant for admission." § 1225(a)(1). "An alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.' §1225(a)(1)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It is unrefuted that Petitioner has not been admitted into the United States as he entered at an unknown place and unknown date. *See* Ex. 1, Notice to Appear (NTA), June 16, 2020; Ex. 2, Form I-213, June 16, 2020.

Additionally, the precedent established by the BIA supports that those who enter without inspection are considered applicants for admission. *See Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission…."); *Matter of Yajure Hurtado*, 29 I&N Dec. at 217–19 (clarifying that aliens who

enter the United States without inspection are applicants for admission and that where they are not subject to detention under § 1225(b)(1)(A), they fall under the catchall provision found under § 1225(b)(2)(A)). In the *Matter of Yajure-Hurtado,* the BIA further explained that immigration judges have no authority to redetermine the custody conditions of an alien who crossed the border unlawfully without inspection, even if that alien has avoided apprehension for more than two years. *Id.* at 228.

It is unequivocally recognized that 8 U.S.C. §§ 1225 and 1226(a) do not overlap but describe "different classes of aliens." *See Matter of M-S-,* 27 I&N Dec. 509, 516. The Attorney General also held—in an analogous context—that aliens present without admission and placed into expedited removal proceedings are detained under 8 U.S.C. § 1225 even if later placed in 8 U.S.C. § 1229a removal proceedings. 27 I&N Dec. at 518-19. In the *Matter of Q. Li*, the BIA held that an alien who illegally crossed into the United States between POEs and was apprehended without a warrant while arriving is detained under 8 U.S.C. § 1225(b). 29 I&N Dec. at 71. This ongoing evolution of the law makes clear that all applicants for admission are subject to detention under 8 U.S.C. § 1225(b). *Cf. Niz-Chavez v. Garland*, 593 U.S. 155, 171 (2021) (providing that "no amount of policy-talk can overcome a plain statutory command"); *see generally Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit"). *Florida's* conclusion "that § 1225(b)'s 'shall be detained' means what it says and . . . is a mandatory requirement . . . flows directly from *Jennings*." *Florida*, 660 F. Supp. 3d at 1273.

When a final order of removal is entered, 8 U.S.C. § 1231(a) or the statute governing the

detention, release, and removal of aliens ordered removed governs. Specifically, § 1231(a)(1)(B), states that the removal period begins on the latest of three possible dates:

> (i) The date the order of removal becomes administratively final.
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Here, the United States Court of Appeals for the Ninth Circuit is reviewing the removal order, and a stay of removal was entered May 20, 2025. *See* Ex 16, Order of the U.S. Court of Appeals for the Ninth Circuit, May 20, 2025. (*Santana v. Bondi*, Case No. 25-643 (9th Cir. Jan. 31, 2025). When the stay of removal was entered, Petitioner's detention status reverted to pre-order detention pursuant to *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312 (11th Cir. 2021). As the Eleventh Circuit explained in *Farah*, § 1231(a) does not govern where a stay has been entered pending a final order from the reviewing court. *Id.* at 1332. The plain language of § 1231(a)(1)(B) makes clear that the removal period has not yet begun. Thus, Petitioner's pre-order detention status is instead governed by the Immigration and Nationality Act (INA) § 235(b)(2)(A); 8 U.S.C. § 1225(b)(2)(A).

Because Petitioner is an applicant for admission, insofar as it is unrefuted he entered the United States without being inspected or admitted, he is subject to mandatory detention under § 1225(b)(2)(A) which states as follows:

> **(2) Inspection of other aliens**
>
> **(A) In general**
>
> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

As the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2) "says anything whatsoever about bond hearings." 583 U.S. at 297. Yet bond hearings have occurred both at the Petitioner's request and after DHS filed a Motion to Reconsider the finding that INA § 241 applied when Petitioner was indeed subject to mandatory detention under INA § 235(b)(2). *See* Ex. 19, Order of the Immigration Judge, September 24, 2025; Ex. 20, DHS Motion to Reconsider Bond Decision, October 14, 2025. While Petitioner has no statutory right to a bond or release, this does not eliminate the due process which continues to be afforded. In turn, his reliance on *Zadvydas v. Davis*, 533 U.S. 678 (2001) to suggest otherwise is misplaced. It should also be noted that *Zadvydas* concerns post-order detention which is inapplicable in this matter as there is no final order of removal.

B. The Petition should be Dismissed for Lack of Jurisdiction because Petitioner has Failed to Exhaust his Administrative Remedies.

The requirement of exhaustion may arise either from explicit statutory language or an administrative scheme that provides for agency relief. *See Sequeira-Balmaceda v. Reno*, 79 F. Supp. 2d 1378, 1381 (N.D. Ga. 2000). If a party fails to exhaust administrative remedies before seeking redress in the federal courts, the Court should dismiss the action because it lacks jurisdiction over the subject matter. *Perez-Perez v. Hanberry*, 781 F.2d 1477, 1478 (11th Cir. 1986). On October 22, 2025, a custody redetermination hearing was conducted, and bond was denied because the immigration judge found that there was no jurisdiction pursuant to the *Matter of Yajure-Hurtado*. *See* Ex. 24, Order of Immigration Judge Denying Bond, October 22, 2025. Petitioner has not availed himself of the administrative remedy to have the BIA review this decision for which it has authority to do as permitted under regulation. *See* 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3). Under these circumstances, habeas relief is inappropriate, and the Petition must be dismissed.

C. If the Court should find that Petitioner's Detention Status is Controlled by INA § 236(a), the Petition should still be dismissed because an Immigration Judge previously determined Petitioner is not only a Flight Risk and Poses a Danger to the Community, but also the Court Lacks Jurisdiction to Review Discretionary Bond Determinations.

Under §1226(a), aliens may be released on bond or their own recognizance, also known as "conditional parole." 8 U.S.C. § 1226(a); *Jennings*, 583 U.S. at 303, 306. Section 1226(a) does not confer the right to release on bond; rather, both DHS and immigration judges have broad discretion in determining whether to release an alien on bond as long as the alien establishes that he or she is not a flight risk or a danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). Under § 1226(e), "no court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole." Thus, Petitioner's serious criminal history and the consideration of that information when bond was denied cannot be disturbed.

D. Petitioner Cannot Establish a Due Process Violation when Reviewing the Procedural History of this Case.

Due process only requires that the government provide 'adequate procedural protections' to ensure that the government's asserted justification for physical confinement 'outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Hernandez v. Warden, Etowah Cty. Det. Ctr.*, No. 19-cv-00746-LSC-SGC, 2020 U.S. Dist. LEXIS 158977, at *7 (N.D. Ala. July 24, 2020). Petitioner has appeared before the immigration judge for custody redetermination hearings on more than one occasion, which supports he has had a meaningful opportunity to be heard. *See generally*, Ex. 23, Declaration of Deportation Officer Eric M. Porrata-Rodriguez Sr. Petitioner fails to provide any evidence that his detention has been contrary to the standards of substantive and procedural due process. The procedural background of Petitioner's

detention points to just the opposite conclusion due to the BIA appeals, bond hearings, and appellate review that have taken place in this case. *See Hernandez v. Warden, Etowah Cty. Det. Ctr.* No. 4:19-cv-00746-LSC-SGC, 2020 U.S. Dist. 158977, at * 6 (N.D. Ala. July 24, 2020) (stating that although a Petitioner may disagree with the outcome of a bond hearing this does not mean he has been denied due process). Moreover, the delays in Petitioner's removal, including the finality of his removal order have been caused by his own decisions to avail himself of judicial review.

E. Petitioner's Attempt to Challenge the Conditions of his Confinement is not a Proper Subject for Habeas.

It is well established that a § 2241 petition is not the vehicle for raising an inadequate medical care claim, as such a claim challenges the conditions of confinement, not the fact or duration of that confinement. *Vaz v. Skinner,* 634 Fed. Appx. 778, 781 (11th Cir. 2015). And, in any event, even if Petitioner established a constitutional violation, he would not be entitled to the relief he seeks because release from custody is not an available remedy for a conditions-of-confinement claim. *Id.* (internal citations omitted). Accordingly, Petitioner's reference to "physical and psychological torture, medical neglect during the Covid 19 pandemic, and long periods of hospitalization in psychiatric hospitals" should not be entertained by the Court for purposes of a habeas petition. [DE 1, p. 7].

IV. CONCLUSION

Petitioner has exercised his appellate rights throughout the course of his detention which he is entitled to do. Similarly, DHS has the right to respond and argue in opposition to the relief that Petitioner has sought. Petitioner's continued detention is not punitive or unlawful rather it is protective in that he has repeatedly been found to be a danger to the community and flight risk.

Due to the Ninth Circuit's stay of removal which remains in effect, Petitioner's detention status does not entitle him to discretionary detention under INA § 236(a); 8 U.S.C. §1226(a). Rather Petitioner is an applicant for admission whose detention is mandatory under INA § 235(b)(2); 8 U.S.C. §1225(b)(2), which is consistent with the BIA's most recent decision in the *Matter of Yajure-Hurtado.*

Dated: October 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of October, 2025, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being placed in the mail to the parties identified on the attached Service List.

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