IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MOISES ANTONIO PARADA HERNANDEZ et al.,

Petitioners,

v.

JOSHUA JOHNSON, et al.,

Respondents.

Civil Action No. 3:25-CV-2729-K-BN

RESPONDENTS' OBJECTIONS TO THE MAGISTRATE JUDGE'S FINDINGS, CONCLUSIONS AND RECOMMENDATION

This habeas case was filed by petitioner Moises Antonio Parada Hernandez, a native of El Salvador who entered the United States illegally and who was recently arrested and detained by U.S. Immigration and Customs Enforcement (ICE) in connection with his removal proceedings. Although the government has detained Parada Hernandez under the authority of 8 U.S.C. § 1225, which requires mandatory detention, Parada Hernandez claims that he is entitled to a bond hearing in immigration court, and the Magistrate Judge recently issued a findings, conclusions, and recommendation (FCR) agreeing that a bond hearing is required.[1] (Dkt. No. 13.) The government now objects and asks the Court to reject the FCR, for the reasons explained below.

[1] Parada Hernandez's wife is also a petitioner, under a theory that she may at some point be taken into immigration custody and similarly be denied a bond hearing. Because the FCR did not recommend any relief to the wife, her claims are not discussed here.

I. Background

A. Parada Hernandez enters the United States unlawfully and is placed in removal proceedings.

At some time on or about March 2, 2019, Parada Hernandez, a native of El Salvador, entered the United States at an unknown location without being inspected, admitted, or paroled by an immigration officer. (*See* Dkt. No. 11 at App. 002.) He was later detained and interviewed by an asylum officer. (Dkt. No. 11 at App. 002.) The asylum officer determined that Parada Hernandez had a credible fear of returning to El Salvador, and therefore Parada Hernandez was placed in removal proceedings under § 240 of the Immigration and Nationality Act (INA), which is codified at 8 U.S.C. § 1229a.[2] (Dkt. No. 11 at App. 002, 003.) The charging document issued to commence the removal proceedings (the "notice to appear") specifically alleged that Parada Hernandez was an "applicant for admission" to the United States who had not been admitted or paroled. (Dkt. No. 11 at App. 003.) Parada Hernandez was released on his own recognizance in April 2019, but on October 7, 2025, he was taken back into custody by ICE on the basis that he is subject to mandatory detention under INA § 235 (8 U.S.C. § 1225). (Dkt. No. 11, App. 002.)

B. Parada Hernandez files a habeas petition challenging the government's authority to place him in mandatory detention.

Shortly after Parada Hernandez was detained, he filed his habeas petition. (Dkt. No. 1.) The petition generally assert that aliens who are arrested inside the United States and placed in removal proceedings are (or should be) subject to the detention provisions of 8 U.S.C. § 1226, which allows for release on bond, and that the government has instead misclassified Parada

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[2] In contrast, if no credible fear had been found, Parada Hernandez would have been subject to expedited removal proceedings and would not have received the benefit of the § 1229a removal proceedings. *See* 8 U.S.C. § 1225.

Hernandez and similarly situated aliens as being subject instead to 8 U.S.C. § 1225, which does not allow for release on bond. (Dkt. No. 1, ¶ 2.) Parada Hernandez seeks habeas relief in four counts by which he asserts an entitlement to a bond hearing of the type he could receive if detained under § 1226. (Dkt. No. 1, ¶¶ 48–58.) And in a fifth count, he brings an APA claim by which they challenge the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2015). (Dkt. No. 1, ¶¶ 59–60.)

C. The Magistrate Judge recommends a limited grant of relief to order that Parada Hernandez receive a bond hearing.

After receiving briefing from the parties, the Magistrate Judge issued the FCR. (Dkt. No. 13.) The FCR first concluded that, even though it was undisputed that Parada Hernandez had not exhausted administrative remedies by seeking bond from the immigration court, this was no bar to his habeas action because the Board of Immigration Appeals (BIA), which essentially functions as the administrative appellate court for the immigration court system, has already held that aliens in Parada Hernandez's position have no right to a bond hearing. (Dkt. No. 13 at 4–5.) Thus, requiring exhaustion "would exacerbate [Parada Hernandez's] alleged constitutional injury," the FCR found. (Dkt. No. 13 at 5.) Next, the FCR concluded that Parada Hernandez could not proceed under the APA and, at least ostensibly, did not rule on the propriety of the government's determination to detain Parada Hernandez under the authority of § 1225. (Dkt. No. 13 at 6–8.) Instead, the FCR concluded that "even if Parada-Hernandez was properly classified under Section 1225, detaining him without a bond hearing violates his Fifth Amendment rights" under a *Mathews v. Eldridge* analysis. (Dkt. No. 13 at 8; *see also id.* at 9–13 (applying *Matthews v. Eldridge*, 424 U.S. 319 (1976), and then declining to reach the parties' statutory arguments).)

The government now files these objections to the FCR.

II. Argument and Authorities

In recommending that the Court grant habeas relief by ordering that Parada Hernandez is entitled to a bond hearing in immigration court, the FCR erred in several respects, and therefore this Court should reject the FCR for each and any of the following independent reasons.

A. The FCR erred in excusing Parada Hernandez's failure to exhaust administrative remedies by not first seeking a bond hearing in immigration court.

The FCR reasoned that BIA precedent renders bond hearings unavailable to aliens in Parada Hernandez's position, and therefore that it would exacerbate his alleged constitutional injury to require him to first seek bond from the immigration court and, if necessary, from the BIA. (*See* Dkt. No. 13 at 5.) But Fifth Circuit caselaw makes clear that the FCR's excusal of the usual exhaustion requirement in these circumstances is erroneous.

Specifically, in the analogous situation of a state pretrial detainee who was alleging that his speedy trial and due process rights were being violated in state court, the Fifth Circuit found that the detainee was nonetheless required to exhaust available state remedies to pursue those claims. *See Dickerson v. State of Louisiana*, 816 F.2d 220, 224 (5th Cir. 1987). In other words, even though the detainee's claimed constitutional injury was the failure to receive a speedy trial, such that requiring exhaustion would exacerbate that injury in much the same way that the FCR cites a similar possible exacerbation of Parada Hernandez's claimed injury of the failure to receive a bond hearing as the reason to excuse exhaustion, the Fifth Circuit found that exhaustion was nonetheless required, even though the result would be to require additional proceedings in state court. *See id.*

Similarly, in *Daves v. Dallas County, Texas*, 64 F.4th 616 (5th Cir. 2023), the *en banc* Fifth Circuit held that the federal courts should not address claims by state pretrial detainees challenging state and local bail bonding requirements. In doing so, the court expressly

contrasted the claims before it with other bail-challenge litigation in federal court in which "the plaintiff challenging a bail determination had fully exhausted his state remedies without success, so there remained no state remedies available in which to raise his individual constitutional claims." *See id.* at 632 (discussing *Arevalo v. Hennessy*, 882 F.3d 737, 767 (9th Cir. 2018)). Although the case also involved issues of *Younger* abstention doctrine and mootness, the clear implication of the court's discussion of the exhaustion issue was that exhaustion is required before litigants can proceed on federal habeas claims challenging their inability to obtain bond in other forums.

To sum up, as was also true of the plaintiffs in *Daves*, the situation here is that a litigant is attempting to use the federal courts to challenge bail-bond practices in another forum (immigration court) without first exhausting available remedies in that forum. That is improper. *See also Little v. Doguet*, 71 F.4th 340, 342 (5th Cir. 2023) (explaining that "district courts must abstain from suits contesting a local jurisdiction's bail practices when there is an opportunity in state court to present constitutional challenges to bail"); *Randall v. 79th Dist. Ct. Jim Wells Cty.*, No. 2:24-CV-36, 2024 WL 3364035, at *1–*2 (S.D. Tex. June 7, 2024) (failure to exhaust barred a state pretrial detainee's habeas challenge to his inability to obtain bond in his state case), *rec. adopted*, 2024 WL 3371037 (S.D. Tex. July 9, 2024). Moreover, although the FCR referred to the fact that the BIA has held that bond hearings are not available to aliens in Parada Hernandez's position, that does not mean that Parada Hernandez cannot still appeal to the BIA and seek to have it change that precedent. Indeed, under the FCR's reasoning, state pretrial detainees could simply proceed directly into federal court without needing to first exhaust available state remedies (including appeal rights) so long as they could show that the precedent of the relevant state high court appeared to bar their claim—but that is not how exhaustion

doctrine works. Accordingly, the FCR erred in failing to enforce the normal exhaustion requirement that applies to habeas claims like Parada Hernandez's.

B. The FCR erred in concluding that due process requires a bond hearing for aliens who illegally enter the country.

Having determined that the failure to exhaust was no bar to Parada Hernandez's claims, the FCR went on to consider whether due process requires that an alien in Parada Hernandez's situation be given a bond hearing. Applying the *Mathews v. Eldridge* test, the FCR concluded that Parada Hernandez's private interest in liberty and the risk of an erroneous deprivation of liberty outweighed the government's interest in detaining him pending the completion of removal proceedings, and therefore that due process principles require a bond hearing. (Dkt. No. 13 at 10–12.) But for several reasons, this conclusion was incorrect and should be rejected.

First, although the FCR ostensibly did not weigh in on Parada Hernandez's status as a detainee under 8 U.S.C. § 1225, by "assuming that he is subject to Section 1225" and reasoning that "even if Parada-Hernandez was properly classified under Section 1225, detaining him without a bond hearing violates his Fifth Amendment rights," the FCR's holding essentially amounts to a determination that § 1225(b)'s mandatory detention provision for aliens who illegally enter the country is unconstitutional. But under 8 U.S.C. § 1252(e)(3), any such challenge to the validity and implementation of § 1225(b) may only be brought in the United States District Court for the District of Columbia,[3] and therefore the FCR runs afoul of this jurisdictional limitation by recommending that Parada Hernandez be granted relief under a theory that would hold § 1225(b)'s mandatory-detention provision unconstitutional.

Second, even if it were permissible to reach the merits, § 1225(b) is not unconstitutional

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[3] The government recognizes that it did not discuss the effect of § 1252 in its prior brief in this case, but nonetheless because the issue is jurisdictional it cannot be waived.

and does not offend due process by requiring mandatory detention pending the completion of removal proceedings for aliens (like Parada Hernandez) who have illegally entered the United States. As explained in the government's prior brief (*see* Dkt. No. 10 at 11–14), Congress created the current version of § 1225 as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, to eliminate certain anomalous provisions of prior law that favored aliens who illegally entered the country without inspection over aliens arriving at ports-of-entry. A rule—such as the one adopted by the FCR to guarantee bond hearings to aliens in Parada Hernandez's situation—that treats an alien who enters the country illegally more favorably than an alien detained after arriving at a port-of-entry "would 'create a perverse incentive to enter at an unlawful rather than a lawful location.'" *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024) (quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). Such a scenario reflects "the precise situation that Congress intended to do away with by enacting" the IIRIRA. *Id.* "Congress intended to eliminate the anomaly under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (internal quotation marks and citation omitted).

The FCR failed to grapple with these principles, and thereby erroneously concluded that the government's interest was not sufficient to outweigh Parada Hernandez's alleged liberty interest and the alleged risk that he would be erroneously deprived of liberty. As an initial matter, because Parada Herandez entered the country illegally, the FCR erred in placing such weight on his alleged liberty interest. Parada Hernandez's presence in the United States represents "*an ongoing violation* of United States law." *See Reno v. Am.-Arab Anti-*

Discrimination Comm. (AADC), 525 U.S. 471, 491 (1999). It is therefore incorrect to reason, as the FCR effectively does, that the fact of his presence here is a credit in his favor in the due process analysis. It is the opposite. In addition, the FCR overlooked the myriad valid reasons for Congress to provide for the mandatory detention of aliens like Parada Hernandez. One such reason is to ensure that such aliens remain in the government's custody so that they can in fact be removed at the conclusion of their removal proceedings, which is a consideration that the FCR improperly discounted through a cursory assertion that Parada Hernandez is not likely to abscond. But additionally, the government also has a heavy interest in removing the perverse incentives that would be created by a legal regime, like the one the FCR seeks to implement, in which aliens who enter the country illegally and seek to avoid detection are rewarded by obtaining more rights than aliens who present themselves to immigration authorities at the border in order to seek asylum or other relief. As detailed in the government's prior briefing, Congress created the present version of § 1225 to do away with such perverse incentives and to place all aliens who have not been lawfully admitted to the country on equal footing (as explained in detail in the government's prior brief). Because the FCR's due process analysis flips this interest on its head and improperly gives too much weight to an alleged interest of persons who have illegally entered the country to continue their illegal presence, it should be rejected.

III. Conclusion

The Court should reject the FCR and instead deny any relief in this action.

Respectfully submitted.

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Certificate of Service

On November 12, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

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