UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

THIAGO SANTOS DE FREITAS v. NESSINGER, HYDE, LYONS, NOEM, and BONDI	Civil Case No. 25-000517-MSM-AEM

GOVERNMENT RESPONDENTS' OPPOSITION TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS

By and through their attorney, Acting U.S. Attorney Sara M. Bloom, Respondents[1] Patricia Hyde, Todd Lyons, Kristi Noem, and Pamela Bondi, in their official capacities, oppose Thiago Santos De Frietas's Petition for Writ of Habeas Corpus (Dkt. No. 7 ("Petition")). Petitioner contends that he is entitled to a bond hearing before the immigration court and that his detention without a bond hearing violates the Immigration and Nationality Act ("INA") and his due process rights under the Fifth Amendment. (Petition, ¶¶ 17-28, 34-50, 51-64). To preserve legal issues while conserving judicial resources and the resources of the parties, Respondents, while reserving all rights, including the right to appeal, submit this abbreviated response in lieu of an exhaustive responsive.[2]

Background

The facts are not uncontroversial. The U.S. Attorney's Office was advised of the following facts by counsel for Immigration and Customers Enforcement ("ICE"). On or about September 28, 2000, Petitioner entered the United States without inspection, admission, or parole; was detained by Customs and Border Protection ("CBP") officers;

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[1] The U.S. Attorney's Office does not represent Respondent Michael Nessinger, the Warden of the Wyatt Detention Center, the facility at which Petitioner is being held.

[2] In addition to the arguments raised in this abbreviated response, Respondents also move for all Respondents other than Respondent Nessinger 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 warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official").

was issued a notice to appear; and was subsequently released. On or about July 24, 2003, he was ordered removed by an immigration judge after failing to appear for removal proceedings. On August 27, 2025, while under an administratively final order of removal, Petitioner was arrested and detained by ICE pursuant to 8 U.S.C. § 1231. On or about September 16, 2025, he moved to reopen his case before the immigration court. On September 30, 2025, his motion to reopen was granted. On October 16, 2025, while his re-opened immigration case was pending, the immigration court held a bond hearing and determined that Petitioner was ineligible for bond under *Matter of Yajure Hurtado*, 29 I&A Dec. 216 (BIA 2025), in which the Board of Immigration Appeals held that under the plain language of 8 U.S.C. § 1225(b)(2)(A) (or section 235(b)(2)(A) of the INA), immigration judges lack the authority to hear bond requests or to grant bond to those present in the United States without legal authorization. To the extent that these facts are disputed or characterized differently by Petitioner, the core dispositive issue remains unchanged: the lawfulness of Petitioner's mandatory detention.

It is the position of the Respondents that Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2), and as such is subject to mandatory detention. Respondents acknowledge that another judge in this Court and that several judges in the District of Massachusetts have issued contrary rulings. *See e.g., Elias v. Hyde, et al.*, No. 25-cv-540-JJM, __ F. Supp. 3d __, (D.R.I. Oct. 27, 2025); *Rodriguez v. Nessinger*, No. 25-cv-505-MSM, ___ F. Supp. 3d ___, (D.R.I. Oct. 17, 2025), *Doe v. Moniz*, No. 25-cv-12094-IT, _____F. Supp. 3d _, 2025 WL 2576819 (D. Mass. Sept. 5, 2025), *Escobar v. Hyde*, No. 25-cv- 12620-IT, 2025 WL 2823324 (D. Mass. Oct. 3, 2025) and *Romero v. Hyde*, No. 25-11631-BEM __F.Supp.3d__ 2025WL 2403827 (D. Mass. Aug. 19, 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 the legal arguments they 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 before an immigration judge, 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.

Discussion

Petitioner primarily seeks an order from the Court directing ICE to immediately release him from ICE detention. *See* Petition at 22 ("Prayer for Relief"). Respondents contend that Petitioner's detention is governed by 8 U.S.C. § 1225 (INA § 235) because he is an alien who entered without inspection or parole 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 is not entitled to a bond hearing.

Respondents also contend that Petitioner should be required to exhaust his administrative remedies as a prudential matter before bringing a habeas challenge in federal court. It is well-settled that an incarcerated person must exhaust his or her administrative remedies before filing a petition for habeas corpus under 28 U.S.C. § 2241. *See Rogers v. United States*, 180 F.3d 349, 356-58 (1st Cir. 1999) (affirming dismissal of habeas petition where inmate did not exhaust his administrative remedies); *Nygren v. Boncher*, 578 F. Supp. 3d 146, 151-52 (D. Mass. 2021). Moreover, exhaustion must be "proper," which requires "compliance with an agency's deadlines and other critical procedural rules," as well using "all steps that the agency holds out." *Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (internal quotations omitted); see also *Rodriguez-Rosa v. Spaulding*, No. 19-CV-11984, 2020 WL 2543239, at *7-11 (D. Mass. May 19, 2020). Administrative exhaustion "gives an agency 'an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court,' and it discourages 'disregard of [the agency's] procedures.'" *Woodford*, 548 U.S. at 89. Exhaustion in this context also "improves the quality of those prisoner suits that are

eventually filed because proper exhaustion often results in the creation of an administrative record that is helpful to the court." *Id.* at 95.

Respondents further rely upon *In 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. In *Hurtado*, 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 the courts 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.

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).

Conclusion

For the above reasons, Respondents request that the Court deny this Petition. Should the Court determine that 8 U.S.C. § 1226, not § 1225, is the operative provision, and that bond is permissible or otherwise determines that provision of bond is permissible, the Respondents request that the matter be returned to an immigration judge for bond determination.

Respectfully Submitted,

UNITED STATES OF AMERICA
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CERTIFICATION OF SERVICE

On this 30th day October 2025, I caused the within Opposition to be filed electronically, and it is available for viewing and downloading from the ECF system.

/s/ Milind Shah
MILIND SHAH
Assistant U.S. Attorney