UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JOSE ALEXANDER CASTRO VIGIL, **PETITIONER** **v.** **MICHAEL NESSINGER, Warden of Wyatt Detention Facility; PATRICIA HYDE, Field Office Director of Enforcement and Removal Operations, Boston Field Office, Immigration and Customs Enforcement; TODD LYONS, Acting Director U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security.** **RESPONDENTS.**	**C.A. No. 1:25-cv-547-MSM-PAS**

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, whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. 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.[1]

[1] 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").

On October 17, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. The Petition claimed, *inter alia*, that Petitioner's detention violates 8 U.S.C. § 1226(a) and associated regulations, as well as procedural and substantive due process claims. ECF Dkt. #1. The Respondents' position is that Petitioner is lawfully detained pursuant 8 U.S.C. § 1225(b)(2), and as such is subject to mandatory detention.

Respondents acknowledge that in addition to recent decisions from judges of this Court, several district courts in the District of Massachusetts issued prior rulings concerning similar challenges to the government policy or practice at issue in this case, and the common question of law between this case and those rulings would control the result in this case should this Court adhere to the legal reasoning in those prior decisions. *See, e.g., Elias v. Nessinger*, No. 25-cv-540-JJM, ___ F. Supp. 3d ___, (D. RI Oct. 27, 2025); *Rodriguez v. Nessinger*, No. 25-cv-505-MSM, ___ F. Supp. 3d ___, (D. RI 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); *Romero v. Hyde*, No. 25-11631-BEM __F.Supp.3d__ 2025WL 2403827 (D. Mass. August 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 not to immediately release Petitioner but, rather, to order a bond hearing before an immigration judge.

Should the Court prefer to receive a more comprehensive opposition brief, Respondents respectfully request leave to file such a brief and will do so upon the Court's request.

RELEVANT FACTS & TRAVEL

Petitioner is a native and citizen of El Salvador. *See* Ex. A, p. 1, attached. Petitioner entered the United States at an unknown location at an unknown time and was not admitted or paroled after inspection by an Immigration Officer. *Id.* Further, Petitioner is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act. *Id.*

Petitioner was encountered by Immigration and Customs Enforcement on or about September 21, 2025, and, after determining Petitioner's lack of status, took him into custody. He was served with a Warrant for Arrest of Alien on that date. *See* Exhibit B, attached. Having determined that Petitioner was not inspected, admitted, or paroled by an immigration officer at the time of entry and that Petitioner did not have a valid immigrant visa, reentry permit, border crossing card, or other valid entry document, ICE detained Petitioner pursuant to 8 U.S.C. § 1225. That same day, ICE served Petitioner with a Notice to Appear, charging him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I) and 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit A. Thereafter, ICE transferred Petitioner to the Wyatt Detention Center in Central Falls, Rhode Island, where he currently remains detained.

On October 9, 2025, Petitioner appeared at Immigration Court, in Chelmsford, MA and his initial removal hearing was held. Petitioner was advised of his rights and responsibilities in removal proceedings, he requested time to find an attorney, and the Immigration Judge continued the case to October 23, 2025. On that date, Petitioner appeared with an attorney, and the attorney requested time for preparation of applications and pleadings to the allegations contained in the Notice to Appear. Petitioner was granted another continuance to November 6th, 2025, to file the application and plead.

DISCUSSION

In his Petition, Petitioner principally seeks an order "releas[ing] Petitioner immediately, or, in the alternative, provid[ing] Petitioner with a bond hearing and order[ing] Petitioner's release on conditions the Court deems just and proper." ECF Dkt. #1, p. 9, Prayer for Relief, ¶ 5.

Respondents contend that Petitioner's detention is governed by INA § 235, 8 U.S.C. § 1225, because as an alien who entered without inspection or parole and remains an applicant for admission, he is treated, for constitutional purposes, as if stopped at the border. As such, he is subject to mandatory detention and not entitled to a bond hearing. Respondents further 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. *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 re 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. 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. 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.

Further, 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 – based on arguments and evidence proffered by the parties - 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). This is particularly apt in this case where Petitioner was

never previously encountered by immigration officials. Thus, it is appropriate for an immigration judge to determine, in the first instance, whether Petitioner is a flight risk or a danger to the community.

CONCLUSION

Respondents thank the Court for its consideration of this abbreviated submission and respectfully request that the Court deny the Petition.

Respectfully Submitted,
UNITED STATES OF AMERICA
By its attorneys,
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CERTIFICATE OF SERVICE

I, hereby certify that on this 31st day of October 2025, I caused the within document to be electronically filed with the United States District Court for the District of Rhode Island, using the CM/ECF System.

RONALD R. GENDRON
Assistant U.S. Attorney