

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

ANSELMO FLORES PEREZ,  
Petitioner,

v.

KRISTI NOEM, et al.,  
Respondents.

Civil Action No. 3:25-CV-2920-K-BN

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

This habeas case was filed by petitioner Anselmo Florez Perez, a Mexican citizen who entered the United States without being inspected or paroled and who was recently detained by U.S. Immigration and Customs Enforcement (ICE) for removal proceedings after being arrested in Euless, Texas while driving without a license. Although the government has detained Petitioner under the authority of 8 U.S.C. § 1225, which requires mandatory detention, Petitioner 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. (Dkt. No. 13.) The government now objects and asks the Court to reject the FCR, for the reasons explained below.

**I. Background**

- A. Petitioner enters the United States illegally, is later interviewed by immigration authorities at a jail after being arrested by local authorities in Euless, Texas, and is placed in removal proceedings.**

Petitioner, a Mexican citizen, entered the United States illegally at an unknown

time. (See Dkt. No. 11 at App. 002; *see also* Dkt. No. 10 at 1; Dkt. No. 1, ¶ 20.) He was arrested in Euless, Texas in October 2025 (apparently by local authorities, for driving without a license), and he was later transferred to the custody of U.S. Immigration and Customs Enforcement (ICE) for removal proceedings. (Dkt. No. 1, ¶ 22.) Petitioner has been charged with removability as an alien present in the United States who has not been admitted or paroled into the country. (See Dkt. No. 11 at App. 002.)

**B. Petitioner files a habeas petition challenging the government’s authority to detain him.**

Shortly after Petitioner was detained by ICE in October 2025, he filed his habeas petition. (Dkt. No. 1.) Petitioner generally asserts that in the past, aliens in his position were commonly granted bond in immigration court while their removal proceedings were pending, but that a recent decision of the Board of Immigration Appeals (BIA) known as *Matter of Yajure Hurtado*, 29 I.& N. Dec. 216 (BIA 2025), holds that bond is not available to them. (See Dkt. No. 1, ¶¶ 2–4.) Petitioner seeks habeas relief in three counts by which he asserts an entitlement to a bond hearing of the type he could receive if detained under 8 U.S.C. § 1226 (or be released from custody outright). (Dkt. No. 1, ¶¶ 94–102 & Prayer for Relief.)

**C. The Magistrate Judge recommends a limited grant of relief to order that Petitioner 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 if Petitioner had not exhausted administrative remedies by seeking bond from the immigration court, this was no bar to his habeas action because the BIA, which essentially functions as the administrative

appellate court for the immigration court system, has already held that aliens in Petitioner's position have no right to a bond hearing. (Dkt. No. 13 at 4–6.) Thus, requiring exhaustion “would exacerbate [Petitioner's] alleged constitutional injury,” the FCR found. (Dkt. No. 13 at 5.) Next, the FCR concluded that detaining Petitioner under the authority of 8 U.S.C. § 1225(b) without a bond hearing violated the Immigration and Nationality Act, because in the FRC's view, a separate statute that does allow for bond hearings—8 U.S.C. § 1226(a)—actually applies to Petitioner. (Dkt. No. 13 at 6–7.) The FCR additionally concluded that detaining Petitioner without a bond hearing violates his procedural due process rights under a *Mathews v. Eldridge* analysis. (Dkt. No. 13 at 7–11.)

The government now files these objections to the FCR.

## II. Argument and Authorities

In recommending that the Court grant habeas relief by ordering that Petitioner 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 Petitioner'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 Petitioner'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 Petitioner'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 Petitioner’s position, that does not mean that Petitioner 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 Petitioner’s.

**B. The FCR erred in concluding that Petitioner’s detention falls under 8 U.S.C. § 1226 (which allows for bond) rather than 8 U.S.C. § 1225.**

The FCR first took issue with the government’s “detaining [Petitioner] without a bond hearing under [8 U.S.C. §] 1225(b),” because in the FCR’s view, § 1225 does not

apply to Petitioner and instead the applicable statute is 8 U.S.C. § 1226. (Dkt. No. 13 at 6.) 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,<sup>1</sup> and therefore the FCR runs afoul of this jurisdictional limitation by recommending that Petitioner be granted relief under a theory that § 1225's application to Petitioner violates some statutory (or constitutional) provision.

As explained in the government's prior brief (*see* Dkt. No. 10 at 9–13), 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 Petitioner'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

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<sup>1</sup> 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 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 erred in holding that § 1225 does not apply because Petitioner is, in fact, considered an applicant for admission under the statute—and therefore is properly subject to mandatory detention. “As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a)(1) deems any “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)” to be an “applicant for admission.” 8 U.S.C. § 1225(a)(1); *see also Ascencio-Rodriguez v. Holder*, 595 F.3d 105, 108 n.3 (2d Cir. 2010) (explaining that an alien who “was present in the country and had been for years,” but “whose entry into the United States was not lawful or authorized” was “not considered ‘admitted’ into the United States,” and that such aliens are “treated as ‘applicants for admission’” and “deemed to be legally at the border”).

Accordingly, by its very definition, the term “applicant for admission” includes two categories of aliens: (1) arriving aliens, but also (2) aliens present without admission. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’”); *Matter of Lemus-Losa*, 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 . . . .”). Indeed, that “arriving aliens” are just one subset of the larger group of “applicants for admission” is made clear by the fact that “arriving alien” is defined as “an applicant for admission coming or attempting to come into the United States at a port-of-entry”—thus making clear that there are other types of applicants for admission. 8 C.F.R. §§ 1.2, 1001.1(q) (emphasis added).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a). An applicant for admission seeking admission at a port-of-entry “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see also* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry . . . is subject to the provisions of [§ 1182(a)] and to removal under [§ 1225(b)] or [§ 1229a].” 8 C.F.R. § 235.1(f)(2). And, an alien who is an applicant for admission “shall be detained for a [removal] proceeding under section 1229a” if not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2)(A).

Here, Petitioner did not present at a port-of-entry but instead entered the United States elsewhere, in an unlawful fashion and without having been admitted or paroled

after inspection by an immigration officer. He is, therefore, an alien present without admission and, consequently, an applicant for admission, and the FCR therefore erred in concluding that § 1225 and its mandatory detention provision did not apply.

**C. The FCR further 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 Petitioner's claims and that, as a matter of statutory interpretation, Petitioner's detention fell under § 1226 rather than § 1225, the FCR nonetheless went on to consider whether due process requires that an alien in Petitioner's situation be given a bond hearing. Applying the *Mathews v. Eldridge* test, the FCR concluded that Petitioner'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 7–11.)

But as explained above, it is § 1225, rather than § 1226, that properly governs Petitioner's detention, and § 1225 is not unconstitutional and does not offend due process by requiring mandatory detention pending the completion of removal proceedings for aliens (like Petitioner) who have illegally entered the United States and have not been inspected or admitted. Compounding its statutory error in concluding that § 1226 applies, the FCR also erroneously concluded that the government's interest was not sufficient to outweigh Petitioner's alleged liberty interest and the alleged risk that he would be erroneously deprived of liberty. As an initial matter, because Petitioner entered the country without being admitted or paroled, the FCR erred in placing such weight on

his alleged liberty interest. Petitioner'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 Petitioner. 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 Petitioner 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 28, 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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