

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JULIO EFRAIN CRIOLLO AYAVACA,

Petitioner,

v.

Civil Action No. 1:25-cv-00573-MSM-AEM

PATRICIA HYDE, Field Office
Director, MICHAEL KROL, HSI New
England Special Agent in Charge,
TODD LYONS, Acting Director U.S.
Immigration and Customs
Enforcement, KRISTI NOEM, U.S.
Secretary of Homeland Security,
PAM BONDI, United States Attorney
General, and MICHAEL NESSINGER,
Warden of the Donald W. Wyatt
Detention Facility,

Respondents.

**ABBREVIATED RESPONSE TO HABEAS PETITION AND REQUEST TO
PROCEED WITHOUT ADDITIONAL BRIEFING OR ARGUMENT**

Respondents Patricia Hyde, Michael Krol, Todd Lyons, Kristi Noem, and
Pam Bondi, in their official capacities, by and through their attorney, Sara M.
Bloom, Acting United States Attorney for the District of Rhode Island, submit this
opposition to Petitioner Julio Efrain Criollo Ayavaca's Petition for Writ of Habeas
Corpus. Doc. 1.¹

The legal issues presented in the Petition concern the statutory authority for
U.S. Immigration and Customs Enforcement's ("ICE") detention of Petitioner,

¹ The U.S. Attorney's Office does not represent Defendant Warden Nessinger.

whether Petitioner is entitled to a bond hearing, and 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.

On October 31, 2025, Petitioner filed a Petition for Writ of Habeas Corpus, claiming that his detention violates the Due Process Clause of the Fifth Amendment. ECF 1 at ¶ 31.

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 this Court, the Chief Judge of this District and several judges in the District of Massachusetts have issued rulings concerning similar challenges to those at issue in this case. *See, e.g., Doe v. Moniz*, No. 25-cv-12094-IT, --- F. Supp. 3d ---, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, No. 25-11631-BEM, --- F.Supp.3d ---, 2025WL 2403827 (D. Mass. Aug. 19, 2025); *Elias v. Hyde, et al.*, No. 25-cv-540-JJM, 2025 WL 3004437 (D.R.I. Oct. 27, 2025); *Escobar v. Hyde*, No. 25-cv-12620-IT, 2025 WL 2823324 (D. Mass. Oct. 3, 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.

Relevant Factual Background

Petitioner is a native and citizen of Ecuador. ECF 1-2. He admits that he entered the United States in approximately 1989 without inspection. ECF 1 ¶ 1. On or about August 14, 2025, he was first encountered by ICE and was detained. *See* ECF 1 ¶ 2; ECF 1-2 at 1. ICE 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. ECF 1-2 at 3. ICE detained Petitioner without bond. *Id.* On September 11, 2025, an Immigration Judge ("IJ") determined that Petitioner was statutorily ineligible for a custody redetermination. ECF 1-5 at 1. The IJ based her decision on *Matter of M-S*, 27 I. & N. Dec. 509 (A.G. 2019) ("An alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond."); *Matter of Q. Li.*, 29 I. & N. Dec. 66 (BIA 2025) ("an applicant for admission who was arrested without a warrant while arriving in the United States and thereafter placed in removal proceedings, is detained under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), until the conclusion of removal proceedings . . . [and is] therefore ineligible for bond."); and, *Matter of Yajure Hurtado*, 29 I. & N. Dec.

216 (BIA 2025) (determining that the immigration judge lacked authority to hear inadmissible alien's request for a bond as the alien was an applicant for admission subject to mandatory detention under section 8 U.S.C. § 1225(b)(2)(A)). *Id.* Petitioner was transferred to and remains detained at the Wyatt Detention Center in Central Falls, Rhode Island.

Discussion

Mandatory Detention Argument

Petitioner principally seeks an order from this Court directing ICE to immediately release him from ICE detention and order him released on conditions. ECF 1, Prayer for Relief, p. 6. Respondents contend that Petitioner's detention is governed by INA § 235, 8 U.S.C. § 1225, 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 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. Generally, a plaintiff's failure to exhaust his administrative remedies "precludes [him] from obtaining federal review of claims that would have properly been raised before the agency in the first instance." *Brito v. Garland*, 22 F.4th 240, 255 (1st Cir. 2021); see *Perevoznikov v. Wyatt et al.*, C.A. No. 25-cv-085-JJM-LDA, 2025 WL 1645294, at *1 (D.R.I. May 2, 2025) (McConnell, C.J.) (denying Petitioner's request for release or in the alternative, an order for a bond hearing, and stating, "[t]here is

no question that before filing a habeas petition a petitioner must exhaust all administrative remedies.”). 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). As the First Circuit has noted, “[e]xhaustion allows ‘an agency the first opportunity to apply [its] expertise’ and ‘obviat[es] the need for [judicial] review in cases in which the agency provides appropriate redress.” *Brito*, 22 F.4th at 256 (quoting *Anversa v. Partners Healthcare Sys., Inc.*, 835 F.3d 167, 174-76 (1st Cir. 2016)). It “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 (cleaned up). Moreover, administrative exhaustion often results in the creation of a developed administrative record that is useful to the court in the event of subsequent judicial review. *See id.* at 94-95.

Respondents further rely upon *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.

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 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); *Gomes v. Hyde*, 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. If the Court is inclined to order a hearing to be held by an immigration judge, the petitioner should remain in custody until the time of such hearing so that an immigration judge with experience assessing the risk of flight of individuals during immigration proceedings can make that determination in the first instance.

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 Attorney,

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CERTIFICATION OF SERVICE

On this 17th day of November, 2025, I caused this Abbreviated Response to be filed electronically and it is available for viewing and downloading from the ECF system.

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