UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GERSON ANTONIO ALAS DUARTE,

PETITIONER

v.

MICHAEL NESSINGER, Warden, Wyatt Detention Facility,
DAVID WESTLING, Acting Field Office Director,
MICHAEL KROL, HSI New England Special Agent in Charge,
TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement,
KRISTI L NOEM, U.S. Secretary of Homeland Security, and
PAMELA BONDI, U.S. Attorney General

RESPONDENTS.

C.A. No. 25-cv-598-MSM-AEM

ABBREVIATED RESPONSE TO AMENDED 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[1] submit this abbreviated response in lieu of an exhaustive responsive memorandum to preserve the legal issues and to conserve judicial and party resources.[2]

[1] The United States does not represent Warden Michael Nessinger, and this response is not filed on his behalf.
[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

On November 13, 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 No 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 a recent decision from a Judge 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., 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) and *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 to order a bond

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").

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 Underlying Facts

Petitioner is a native and citizen of El Salvador. *See* ECF No. 1 at 6. Petitioner entered the United States at an unknown location and on an unknown date in or around February 2022. *Id.* On August 2, 2024, Petitioner filed a Form I-589 Application for Asylum, which remains pending. *Id at 7.* On or about November 9, 2025, Petitioner was arrested in New Bedford, Massachusetts. *Id.* at 6. On November 10, 2025, Petitioner first encountered Immigration and Customs Enforcement ("ICE") and was taken into custody following the court appearance resulting from his arrest. *Id.* Petitioner was transferred by ICE to the Wyatt Detention Facility in Central Falls, Rhode Island and remains detained pursuant to 8 U.S.C. § 1225(b)(2). *Id.*

Discussion

In his Petition, Petitioner principally seeks an order from this Court directing ICE to immediately release Petitioner from ICE detention. In the alternative, Petitioner requests that this Court order Respondents to cause the Immigration Court to grant him a bond hearing (7) days of the Court's order. (ECF No. 1 at 12, 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 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. 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 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.

Conclusion

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

Respectfully submitted,

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CERTIFICATION OF SERVICE

On this November 14, 2025, I caused the within Abbreviated Response to be filed electronically and it is available for viewing and downloading from the ECF system.

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