

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MARLON GIMENEZ SILVA RODRIGUES,
PETITIONER

v.

C.A. No. 1:25-cv-600-MSM-AEM

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

**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 November 14, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. The petition claims, *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. See 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., *Castro Vigil v. Nessinger*, No. 25-cv-547-MSM, ___ F. Supp. 3d ___, (D. RI Nov. 5, 2025); *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 ___, 2025 WL 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 Brazil. *See* Exhibit A, p. 1, attached.

Petitioner entered the United States at or near Tecate, CA, on or about September 18, 2024, and the following day, was given an order of release on recognizance and served with a Notice to Appear before an Immigration Judge in Chelmsford on January 13, 2025. *Id.* The Notice of Appearance charged him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), to wit, being "[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." Since that time, Petitioner has been in removal proceedings.

Petitioner was arrested in November of 2025 for driving without a license after being involved in a motor vehicle accident. Immigration and Customs Enforcement in November of 2025, after determining Petitioner's lack of status, took him into custody and served Petitioner with a Warrant for Arrest of Alien, *see* Ex. B, attached. Because Petitioner arrived in the United States at a time and place not designated by the Attorney General and was not admitted or paroled after inspection by an Immigration Officer, ICE detained Petitioner

pursuant to 8 U.S.C. § 1225 as an alien seeking admission to the United States.

Thereafter, ICE transferred Petitioner to the Wyatt Detention Center in Central Falls, Rhode Island, where he is currently detained.

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 Immigration and Nationality Act (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 cites *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,

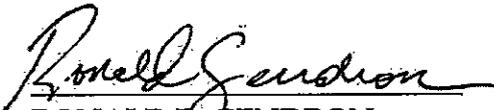
Respondents incorporate by reference the legal arguments it presented in those cases. Should the Court apply the same reasoning the courts did in those cases to this one, the legal principles espoused in those cases would likely warrant the same conclusion here. Because of this, Respondents submit that 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). 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

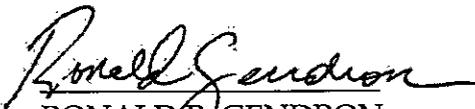
Respondents thank the Court for its consideration of this abbreviated submission and respectfully request that the Court deny the Petition.

Respectfully Submitted,
UNITED STATES OF AMERICA
By its attorneys,
SARA M. BLOOM,
Acting United States Attorney


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CERTIFICATE OF SERVICE

I, hereby certify that on this 5th day of December 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