UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

JONNY FRANCISCO PALLES-FRANCO, Petitioner, v. WARDEN, FOLKSTON ICE PROCESSING CENTER, et al. Respondents.	Case No. 5:25-cv-154 Hon. Lisa Godbey Wood, D.J. Hon. Benjamin W. Cheesbro, M.J.

REPLY TO RESPONDENTS' RESPONSE TO SHOW CAUSE ORDER

I. Introduction

Petitioner Jonny Palles-Franco petitioned this Court for a writ of habeas corpus because, like the petitioners in *Villa v. Normand*, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), *report and recommendation adopted*, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025), he is properly detained pursuant to 8 U.S.C. § 1226(a) and therefore has been unlawfully denied access to a bond hearing. Pet. (Doc. No. 1). In response to this Court's order to show cause why Mr. Palles-Franco is not entitled to the same relief ordered in *Villa*, Respondent[1] alleges that he is detained pursuant

[1] Acknowledging this Court's prior statement that the Warden-Respondent will be the only named Respondent absent compelling argument to the contrary, Order (Doc. No. 8), at 1 n.1, Mr. Palles-Franco respectfully suggests that this case presents a scenario where the default rule for the proper respondent does not apply because ICE transferred him out of this District after the petition was properly filed. *See Rumsfeld v. Padilla*, 542 U.S. 426, 440–41 (2004) (reaffirming the holding in *Ex Parte Endo*, 323 U.S. 283 (1944) that where the district court

to 8 U.S.C. § 1225(b)(1), rather than § 1225(b)(2), because he was subjected to expedited removal at the border. The documents he provides in support of this claim, however, show otherwise. Therefore, the Court should reject Respondent's contention and order that he release Mr. Palles-Franco or provide him with a bond hearing.

II. Updated Factual Background

As discussed in his habeas petition, Mr. Palles-Franco entered the United States in 2023 and was apprehended shortly after crossing the border. Pet. at ¶ 20; Resp. (Doc. No. 10), at 4. Immigration officials initially indicated an intention to place him in expedited removal proceedings, but ultimately never fully executed or served the I-860, Notice and Order of Expedited Removal. Resp. Exh. 1-B (Doc. No. 10-1), at 8. Mr. Palles-Franco never had a credible fear interview with an asylum officer. Resp. Exh. 1-A, at 6. Instead, immigration officials issued a Notice to Appear

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initially acquired jurisdiction because the petitioner had "properly named her immediate custodian and filed in the district of confinement," after which the Government transferred her to another judicial district while the case was pending, "the District Court retain[ed] jurisdiction and [could] direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release"). In this scenario, the Warden-Respondent no longer has physical custody of Mr. Palles-Franco, but the remaining Respondents (supervisory officials) retain the legal authority to procure his release. Nevertheless, if Respondents continue to aver that the Warden-Respondent still has authority to effectuate all relief this Court might order, Petitioner defers to the Court's selection of the proper respondent.

and placed him in full removal proceedings, pursuant to 8 U.S.C. § 1229a. Resp. Exh. 1-C, at 11.

Mr. Palles was re-detained on October 4, 2025 at a check-in with Immigration and Customs Enforcement (ICE). Pet. at ¶ 23. He was initially detained at the Elizabeth Detention Center in Elizabeth, NJ, and then transferred to the Folkston D. Ray ICE Processing Center, where he was detained when he filed this petition. Resp. Exh 1-A, at 3. On November 15, 2025, he was transferred to the Karnes County Immigration Processing Center in Karnes, Texas. He is scheduled for a master calendar hearing on January 7, 2026.[2] *Id.*

III. Argument

A. Mr. Palles-Franco Is Not Detained Under § 1225(b)(1)

Contrary to Respondent's contention, Mr. Palles-Franco was never placed in expedited removal proceedings, and therefore is not detained under 8 U.S.C. § 1225(b)(1).

Expedited removal allows the government to quickly deport noncitizens who have not been admitted or paroled and cannot show they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(iii). The

[2] Petitioner notes that by that point he will have been detained for over two months without a hearing since his October 30, 2025 master calendar hearing in New Jersey.

government must follow procedures required by the statute and implementing regulations to remove someone via expedited removal. *See* 8 U.S.C. § 1225(b)(1); 8 C.F.R. § 235.3. An immigration officer must inform the noncitizen of the charges against him on Form I-860, Notice and Order of Expedited Removal, and the noncitizen shall be given an opportunity to respond. 8 C.F.R. § 235.3(b)(2). Then, "[a]fter obtaining supervisory concurrence . . . the examining immigration official shall serve the [noncitizen] with Form I-860." *Id.*

Once a noncitizen has been placed in expedited removal, if he indicates an intention to apply for asylum, the immigration officer must refer him for a credible fear interview ("CFI"). 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the noncitizen is found to have a credible fear of persecution, he is placed in removal proceedings in order to apply for asylum. 8 C.F.R. § 1225(b)(1)(B)(ii). Under these circumstances, there is a box checked on the Notice to Appear indicating "This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture." *See, e.g.*, Resp. Exh. 1-C, at 11.

Mr. Palles-Franco was not subjected to this process when he entered the United States in 2023. The documents provided by Respondent show that immigration officials filled out part of the I-860, but never obtained the required supervisory concurrence or served the form on Mr. Palles-Franco. Resp. Exh. 1-B,

at 8; *cf.* 8 C.F.R. § 235.3(b)(2)(i). These key portions of the I-860 are blank, rendering it void. Nor did immigration officials proceed to schedule the credible fear interview as required by 8 U.S.C. §§ 1225(b)(1)(A)(ii) and 1225(b)(1)(B). The narrative of Mr. Palles-Franco's immigration history from ICE's computer system does not provide any indication of a credible fear interview, nor does the record contain a CFI transcript or decision.[3] Resp. Exh. 1-A, at 6. Rather, immigration officials proceeded to issue an NTA without first conducting a CFI, as is routine for noncitizens present without admission who are not placed in expedited removal. *Id.* Therefore, the NTA does not have the box checked indicating that it was issued after a CFI. Resp. Exh. 1-C, at 11.

All the documents in the record show that Mr. Palles-Franco was not placed in expedited removal proceedings when he crossed the border. He cannot now be placed in expedited removal proceedings because he was detained more than two years after entering the United States. Resp. at 5, 8 U.S.C. § 1225(b)(1)(A)(iii); *see Lopez v. Lyons*, 2025 WL 3124116, at *2 (E.D. Cal. Nov. 7, 2025); *Salgado Bustos v. Raycraft*, 2025 WL 3022294, at *7 (S.D. Mich. Oct. 29, 2025); *Rico-Tapia v.*

[3] The statement of Deportation Officer Daniel Czerniak that "[o]n June 15, 2023, the United State Citizen[ship] and Immigration Services (USCIS) made a positive initial determination as to the claim" is misleading at best. Resp. Exh. A, at ¶ 9. Respondent does not provide any contemporaneously-created document showing any involvement of USCIS in petitioner's case whatsoever. In any event, Officer Czerniak does not and cannot state that this "initial determination" was a credible fear determination described in § 1225(b)(1)(B) and 8 C.F.R. § 235.5(b)(4).

Smith, 2025 WL 2950089, at *7 (D. Hawaii Oct. 10, 2025). For all these reasons, Mr. Palles-Franco is not subject to mandatory detention pursuant to § 1225(b)(1).

B. Mr. Palles-Franco Is Not Detained Under § 1225(b)(2)

As discussed in his habeas petition, Mr. Palles-Franco is not detained pursuant to § 1225(b)(2) for the reasons discussed in *Villa*. As this Court explained, § 1225(b)(2) applies to "an individual who is actively seeking admission, not one who is already present in the United States." 2025 WL 3095969, at *7. Mr. Palles-Franco was not seeking admission when he was detained in October 2025, and therefore is not subject to § 1225(b)(2) now. *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 491 (S.D.N.Y. Aug. 13, 2025).

C. The Court Should Order Mr. Palles-Franco's Release

Respondent has not invoked 8 U.S.C. § 1226(a) to justify Mr. Palles-Franco's current detention, instead insisting incorrectly that he is detained pursuant to 8 U.S.C. § 1225(b)(1). Therefore, there is "no reason to consider § 1226 as a basis for [his] current detention." *Tinoco Pineda v. Noem*, 2025 WL 3471418, at *6 (W.D. Tex. Dec. 2, 2025); *see also Bethancourt Soto v. Soto*, 2025 WL 2976572, at *9 (D.N.J. Oct. 22, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 n. 23 (D. Mass. 2025). Instead, the Court should order Mr. Palles-Franco's immediate release under the conditions that were in place prior to his unlawful October 2025 arrest. *See Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420, at *32 (E.D.N.Y. Nov. 28,

2025) (ordering release when ICE unlawfully attempted to justify the petitioner's detention under § 1225(b)(1)); *Salgado Bustos*, 2025 WL 3022294, at *8 (E.D. Mich. Oct. 29, 2025) (same); *Patel*, 2025 WL 2823607, at *6 (same); *see also Gonzalez Mateo v. Noem*, 2025 WL 3499062, at *7 (W.D. Ky. Dec. 5, 2025) (ordering release to remedy unlawful detention under § 1225(b)(2)); *Tinoco Pineda*, 2025 WL 3471418, at *6 (same); *Singh v. Lewis*, 2025 WL 3298080, at *6 (W.D. Ky. Nov. 26, 2025) (same); *Aguilar v. Bondi*, 2025 WL 3471417, at *6 (W.D. Tex. Nov. 26, 2025) (same).

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Respectfully Submitted,

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