UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JEREMIAS GARCIA DE LA CRUZ	§	
	§	
Petitioner,	§	
	§	
v.	§	CIVIL NO. 4:25-cv-05577
	§	
PAM BONDI, UNITED STATES ATTORNEY GENERAL, *et al.*,,	§	
	§	
Respondents.	§	

RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

The Government[1] responds to Petitioner's habeas petition and respectfully requests that this Court deny his petition under 28 U.S.C. § 2241 and grant summary judgment for the Government under Federal Rule of Civil Procedure 56.

First, Petitioner failed to exhaust administrative remedies. This is enough, by itself, to deny his § 2241 petition. Second, Petitioner is subject to mandatory detention under 8 U.S.C. §1225(b)(2), based on the statute's plain language and structure, the history of the Immigration and Nationality Act (INA), the Board of Immigration Appeals (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and persuasive decisions from other district courts, including the recent decision in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) and *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493 (S.D. Tex. Nov. 24, 2025).

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[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

Accordingly, this Court should deny Petitioner's petition and grant summary judgment for the Government.

I. BACKGROUND

1. Petitioner, a Mexican citizen, entered the United States illegally in 1999 and has continued his illegal presence in the United States for over 25 years. [ECF No. 1, at ¶¶ 3, 14]. [ECF No. 1-2]. On November 09, 2025, the Houston Police Department arrested the Petitioner for driving while intoxicated, a Class B misdemeanor. [ECF No. 1, at ¶¶ 2, 21]; [Gov. Ex. 1].

2. The following day, ICE served Petitioner with a Notice to Appear ("NTA") charging him with removability pursuant to 8 USC §1182(a)(6)(A)(i) as an alien "present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General," *and* 8 USC §1182(a)(7)(A)(i)(I) as an alien "who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document." [ECF No. 1-2, at p.4] (emphasis added). In the NTA, the examining immigration official denied Petitioner admission into the United States, explained the basis for charging Petitioner with being subject to removal, and ordered Petitioner to appear in immigration court. *Id.*

3. The Department of Homeland Security also instituted removal proceedings against Petitioner pursuant to 8 USC §1229(a) [ECF No. 1-2, at p.1], which remain pending before the Conroe immigration court. [ECF No. 1, at ¶4]. Petitioner is currently in the custody of the United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE") at the Joe Corley processing facility in Conroe, Texas, for removal proceedings pursuant to 8 USC §1229(a).

4. On November 19, 2025, Petitioner sought a writ of habeas corpus, challenging the legality of his detention. [ECF No. 1]. He specifically alleges that 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b)(2), governs his detention and consequently, he should be released, amongst other relief requested. (*See generally* ECF No. 1).

5. On December 09, 2025, based on a lack of jurisdiction, an immigration judge denied Petitioner a bond hearing. Petitioner has not appealed that decision. Petitioner's next immigration court hearing is scheduled for January 21, 2025, at 9:00 am.

I. ARGUMENT

6. Prior to addressing the merits, the Government acknowledges that this Court has previously rejected its arguments concerning the applicability of § 1225(b)(2). However, the Government, with this motion, requests a reconsideration of that prior ruling. *See Camreta v. Greene*, 563 U.S. 692, 701 n. 7 (2011)("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case."). For the reasons discussed below, including recent decisions from other courts in the Fifth Circuit and the Southern District of Texas, this Court should reconsider its interpretation of § 1225(b)(2) and find that Petitioner is subject to mandatory detention.

7. In a petition for a writ of habeas corpus, the petitioner is challenging the legality the restraint or imprisonment. *See* 28 U.S.C. § 2241. The burden is on the petitioner to show the confinement is unlawful. *Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-understood that the authority to detain is elemental to the authority to deport, as "[d]etention is necessarily a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for

their deportation."). As the Supreme Court has stated, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

A. Petitioner failed to exhaust his administrative remedies prior to filing the petition.

8. As a threshold matter, the Court should dismiss the habeas petitioner because Petitioner has not administratively exhausted his claims. In accord with the general rule that parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, it is well-taken that a habeas petitioner must exhaust all administrative remedies prior to filing a federal habeas petition under § 2241. *See, e.g., Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies); *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018) (same); *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992) (same).

9. In this case, the immigration judge denied Petitioner's bond hearing on December 09, 2025, due to a lack of jurisdiction. In his petition, Petitioner asserts he "would then pursue an administrative appeal to the Board of Immigration Appeals ('BIA')" if denied a bond hearing in Immigration court, but that has not taken place. [ECF No. 1, at ¶26]. Because Petitioner has not appealed the bond denial to the BIA, he has failed to exhaust administrative remedies. *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (requiring an appeal in order to satisfy exhaustion requirement); *Abdoulaye Ba v. Director of Detroit Field Office, ICE*, No. 4:25-CV-02208, 2025 WL 2977712, at *2 (N.D. Ohio Oct. 22, 2025) (dismissing for failure to exhaust where petitioner sought "review of the application and interpretation of *Matter of Yajure Hurtado*" but had yet to appeal to the BIA).

B. Petitioner is Subject to Mandatory Detention Under 8 U.S.C. § 1225

10. Petitioner's habeas petition should be denied because he falls under the plain language of the mandatory detention provisions in 8 U.S.C. § 1225. Here, Petitioner is an alien present in the

United States who entered the country unlawfully "without being admitted or paroled." [ECF No. 1-2]. As discussed below, an alien "present in the United States who has not been admitted," is by definition "an applicant for admission." 8 U.S.C. § 1225(a)(1). Thus, Petitioner is subject to mandatory detention. *See id.* § 1225(b)(2)(A) (instructing that "the alien *shall* be detained" in the case of "an alien seeking admission" who "is not clearly and beyond a doubt entitled to be admitted" (emphasis added)).

i. The Plain Language and Statutory Structure of the INA

11. "As usual, we start with the statutory text." *Restaurant Law Center v. U.S. Dep't of Labor*, 120 F.4th 163, 177 (5th Cir. 2024). Section 1225(b)(2) provides the following:

> in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings].

12. Based on this text, if an alien is an "applicant for admission," then they are subject to mandatory detention. The INA defines "applicant for admission" as "an alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1). Here, Petitioner was not previously admitted into the United States, and the Petitioner is therefore subject to mandatory detention and not eligible for a bond. *See Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025).

13. Petitioner erroneously argues that 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b)(2), governs his detention because Petitioner was arrested pursuant to a warrant of arrest. [ECF No. 1, at ¶31-39]. But, serving Petitioner with an arrest warrant does not *per se* make the Petitioner an alien under 8 U.S.C. § 1226(a), nor have other District Courts faced with similar facts agreed. *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 278035, at *15-23 (D. Neb. Sept. 30, 2025)(ICE Warrant would be a requirement to fall within 8 U.S.C. § 1226(a), but even if so, the

Alien is still within the scope of mandatory detention as an "applicant for admission" under 8 U.S.C. § 1225(b)(2)); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 U.S. Dist. LEXIS 213983, at *2 (E.D. Wis. 2025) (Denied Habeas to Petitioner served with ICE Warrant).

ii. Persuasive decisions from other district courts.

14. Although the Government acknowledges that many district courts have ruled against the Government on the § 1225(b)(2) issue, including this Court[2], the Court should consider the recent decisions of several district courts that have adopted the Government's and the BIA's interpretation.

15. Most recently, another court in the Southern District of Texas decided *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025), in the Government's favor. In denying the habeas petition and granting the Government's motion for summary judgment, the *Cabanas* Court held "[t]he text of § 1225(b)(2)(A) supports the Government's position." The *Cabanas* Court reasoned that "[t]he statutory definition of applicant for admission is broad and, indeed, so broad that Petitioner doesn't dispute that she is such a person. . . . That factual determination itself resolves the question as to whether § 1225(b)(2)(A) applies." Id. at *4 (emphasis in original). Thus, the *Cabanas* Court held that the plain language of the Immigration and Nationality Act required a ruling in the Government's favor. The court also explained why it was not persuaded by the many other district court decisions deciding to the contrary. Id. at * 5; *see also Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025).[3]

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[2] Other courts in the Southern District of Texas have issued decisions that reject the Government's position. *See, e.g., Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025)(on appeal); *Fuentes v. Lyons*, 5:25-cv-153 (S.D. Tex. October 16, 2025); *Ortiz v. Bondi*, 5:25-cv-132 (S.D. Tex. October 15, 2025); *Baltazar v. Vasquez*, 25-cv-175 (S.D. Tex. October 14, 2025); *Covarrubias v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025).

[3] Although many courts originally rejected the Government's interpretation of § 1225(b)(2), including this Court, there is a growing body of case law agreeing with the Government's position. *See Alonzo v.* (continue)

16. The Government urges this Court to reconsider its prior rulings and follow the reasoning of *Cabanas* and the Government's other proffered authorities.

C. Petitioner's remaining claims fail

17. The Court should deny Plaintiff's remaining claims concerning an alleged Due Process violation (First and Third Claim for Relief), Administrative Procedure Act (APA) (Fourth Claim for Relief) violation, and alleged Suspension Clause (Sixth Claim for Relief) claim. First, Petitioner fails to identify a Due Process violation. Procedural due process protects an individual's right to be heard prior to deprivation of life, liberty or property. *See Matthews v. Eldridg*e, 424 U.S. 319, 332-333 (1976). In the instant case, Petitioner's Due Process claims are based on a lack of a custody redetermination during his continued detention, pursuant to a warrant, pending a determination of removability. [ECF No. 1, at Sec VI].

Noem, -- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Andrade v. Patterson*, No. 6:25-cv-01695, 2025 WL 3252707 (W.D. La. Nov. 21, 2025) (Joseph, J.); Ba v. Dir. of Detroit Field Office, No. 4:25-CV-02208, 2025 WL 3264535 (N.D. Ohio Nov. 24, 2025) (Calabrese, J.); *Ba v. Dir. of Detroit Field Office*, No. 4:25-CV-02208, 2025 WL 2977712 (N.D. Ohio Oct. 22, 2025) (Calabrese, J.), reconsideration denied, 2025 WL 3264535 (N.D. Ohio Nov. 24, 2025); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr., J.); *Chavez v. Noem*, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.); *Chen v. Almodovar*, No. 1:25-cv-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.); *Garcia v. Immigr. & Customs Enf't Dep't of Homeland Sec.*, No. 2:25-CV-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025) (Dudek, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2025 WL 3264478 (N.D. Tex. Oct. 24, 2025) (Hendrix, J.); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646 (W.D. La. Oct. 22, 2025), (Whitehurst, M.J.), report and recommendation adopted, 2025 WL 3113644 (W.D. La. Nov. 6, 2025) (Joseph, J.); *Melgar v. Bondi*, No. 8:25CV555, 2025 WL 3496721 (D. Neb. Dec. 5, 2025) (Buescher, J.); *Mursalin v. Dedos, Warden*, No. 1:25-cv-00681, 2025 WL 3140824 (D.N.M. Nov. 10, 2025) (Strickland, M.J.); *Olalde v. Noem*, No. 1:25-cv-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Divine, J.); *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) (Gorton, J.); *Ramos v. Lyons*, No. 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.); *Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Suarez v. Noem*, No. 1:25-CV-00202-JMD, 2025 WL 3312168 (E.D. Mo. Nov. 28, 2025) (Divine, J.); *Topal v. Bondi*, No. 1:25-cv-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.); *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.); *Valencia v. Chestnut*, -- F. Supp. 3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Buescher, J.).

18. But the lack of a bond hearing, does not establish a Due Process violation. *See Jimenez v. Thompson*, 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025). Moreover, because Petitioner is in full removal proceeding, he will be afforded numerous procedural protections in immigration court. Thus, there is no showing that his due process rights have been violated. Finally, the threshold question in assessing substantive due process is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience. *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n. 8 (1998). The Petition does not suggest that any immigration officer involved in Petitioner's case acted in a manner that could be characterized as egregious or that would shock the conscience. Thus, the substantive due process claim set forth in the petition fails and should be denied.

19. Second, Petitioner cannot bring an APA claim in this habeas action. Petitioner's APA claim is merely a repeat of the statutory arguments set forth in Count I. *See* Dkt. 2, p. 16. The APA only provides a basis for relief when "there is no other adequate remedy" available. 5 U.S.C. § 704. Here, habeas itself provides an adequate remedy to address his statutory arguments regarding the availability of a bond. Thus, his APA claim fails. *See Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring) (noting that the availability of habeas relief constitutes an "adequate remedy" barring suit under the APA).

20. As to the suspension clause claim, the Supreme Court in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), clarified that the Suspension Clause does not apply to claims, like here, that merely seek additional administrative review and ultimate reclassification of his immigration status as those remedies are outside the scope of a traditional habeas writ. *Thuraissigiam*, 591 U.S. 103, at 107; *See* ECF No. 1, at Sec. VIII (Seeking release to pursue an administrative adjustment of his alien status to outright cancel removal proceedings under 8 U.S.C.

§1229b; Seeking an order to obtain the department's alien file; Seeking an order for a personal recognizance bond; Seeking an order for the immigration court to conduct an administrative hearing pursuant to *Matter of Joseph*, 22 I&N Dec. 660 (BIA 1999) to determine whether the Alien is properly included in the mandatory detention provision based on his DWI arrest). Similarly, Habeas provides an adequate remedy to address Petitioner's relief such that the Suspension Clause is not necessary.

II. CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner's request for habeas relief and grant the instant motion.

Dated: December 29, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on December 29, 2025, the foregoing was filed and served on all attorneys of record via the District's ECF system.

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