UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MARWELL PICADO,

Petitioner,

v.

PATRICIA HYDE, FIELD OFFICE DIRECTOR, MICHAEL KROL, HOMELAND SECURITY INVESTIGATIONS NEW ENGLAND SPECIAL AGENT IN CHARGE, MICHAEL NESSINGER, WARDEN, DONALD W. WYATT DETENTION FACILITY, TODD M. LYONS, BOSTON FIELD OFFICE, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, KRISTI NOEM, U.S. SECRETARY OF HOMELAND SECURITY, and PAMELA BONDI, ATTORNEY GENERAL,

Respondents.

Civil Action No. 1:25-cv-00614-MSM-PAS

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

Respondents Patricia Hyde, Michael Krol, Todd Lyons, Kristi Noem, and Pamela Bondi, in their official capacities, by and through their attorney, Sara M. Bloom, First Assistant United States Attorney for the District of Rhode Island, submit this opposition to Petitioner Marwell Picado's Petition for a Writ of Habeas Corpus, Doc. 1.[1]

[1] The U.S. Attorney's Office does not represent the Warden of Wyatt Detention Facility.

The legal issues presented in the 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 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.[2]

On November 21, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. The Petitioner states that he was detained by immigration officials when he was caught crossing the border into Hidalgo, Texas, in April 2022, and issued a Notice to Appear before an immigration judge as an alien present in the United States without being admitted or paroled pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *See* Doc. 1, ¶ 1; Petitioner's Exhibit 2, Doc. 1-2. In his Writ, Petitioner claims he is a person arrested inside the United States and that his detention violates 8 U.S.C. § 1226(a) and associated regulations, and that his detention and the failure to have a bond hearing violates the Due Process Clause of the Fifth Amendment. Doc. 1 at Count One.

Title 8, Sections 1225 and 1226 principally govern the detention of noncitizens in removal proceedings. *Doe v. Moniz*, _ F. Supp. 3d _, 2025 WL 2576819, at *1 (D.

[2] In addition to the arguments raised in this 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").

Mass. Sept. 5, 2025), *appeal docketed*, No 25-2095 (1st Cir. Nov. 14, 2025). Detention is mandatory in the case of an alien who is an applicant for admission or otherwise seeking admission to the United States. *Id.; see* 8 U.S.C. § 1225(a)(3). An applicant for admission is defined as an "alien present in the United States who has not been admitted or who arrives in the United States." *Id.* § 1225(a)(1). Courts have found that section 1225(b) authorizes the government to detain aliens seeking admission into the country. *Doe*, 2025 WL 2576819, at *5 (collecting cases).

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 a Judge of this Court and several sessions in the District of Massachusetts have issued rulings concerning similar challenges to those at issue in this case. *See e.g., Elias v. Hyde, et al.*, No. 25-cv-540-JJM, 2025 WL 3004437 (D.R.I. Oct. 27, 2025); *Rodriguez v. Nessinger*, No. 25-cv-505-MSM, 2025 WL 3306576 (D.R.I. Oct. 17, 2025), *Doe*, 2025 WL 2576819, *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__ 2025 WL 2403827 (D. Mass. Aug. 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 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 Nicaragua. Doc. 1 ¶ 1. He entered the United States without inspection in 2022 and was detained and placed in removal proceedings upon entering. *Id.* In October 2025 he was arrested in Rhode Island and charged with assault and disorderly conduct. *Id.* ¶ 2. He was taken into ICE custody again on November 10, 2025. *Id.* On December 4, 2025, the immigration court issued an order stating that "[a]fter full consideration of the evidence presented," it was denying the petitioner's request for bond on grounds that he was not eligible pursuant to *In re Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The immigration judge's order denying bond is attached as Exhibit 1.

Discussion

In his Petition, Petitioner principally seeks an order from this Court directing ICE to immediately release him from ICE, or alternatively order the immigration judge to hold a custody redetermination hearing. Doc. 1 ¶ 20; Prayer for Relief 5, 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. 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 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 *Yajure 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); 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 in 2025 following his arrest for assault and disorderly conduct. 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.

The Court should also deny the petition because even if the petitioner is subject to detention under 8 U.S.C. § 1226, he has been in custody only for 32 days—far shorter than the presumptively reasonable six-month period discussed by the Supreme Court in *Zadvydas v. Davis*. In that case the Court found that § 1231(a)(6) "does not permit indefinite detention." 533 U.S. 678, 689 (2001). Rather, "read in light of the Constitution's demands, [the statute] limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." *Id.* "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. A six-month period for detention is presumptively reasonable and constitutional. *Id.* at 701. This presumption does not trigger a per se release of every detainee at the six-month mark; "[t]o the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* (emphasis added)." *Zavala*, 2022 WL 684147, at*3. In this case, the Petitioner by his own admission has been in custody for 32 days, which is well below the presumptively reasonable period of six months.

Conclusion

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

Respectfully Submitted,

UNITED STATES OF AMERICA
By its Attorney,

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CERTIFICATION OF SERVICE

On this 12th day of December, I caused this Opposition to Petitioner's Writ of Habeas Corpus to be filed electronically and it is available for viewing and downloading from the ECF system.

/s/ *Julianne Klein*
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