UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FERNANDO CORTES FLORES,

Petitioners,

v.

WARDEN, FLORIDA SOFT SIDE, ET AL.,

Respondents.

Case No. 2:25-CV-1162-KCD-NPM

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Fernando Cortes Flores ("Petitioner") seeks the grant of a petition for writ of habeas corpus, ECF No. 1 ("Petition"), pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody.[1] Petitioner also brings challenges pursuant to the Fifth Amendment to the United States Constitution, the Immigration and Nationality Act ("INA"), and bond regulations. His petition must be denied.

The Court must deny the petition as Petitioner has failed to exhaust administrative remedies, namely his ability to seek review of ICE's bond

[1] In the alternative, Petitioner seeks an order compelling that a bond hearing be completed within fourteen days *See* ECF No. 1, Prayer for Relief.

determination before an Immigration Judge ("IJ") as he has not requested such review. Additionally, Petitioner is currently detained under 8 U.S.C. § 1225(b)(2) and is therefore ineligible for release under 8 U.S.C. § 1226(a). He seeks to circumvent the detention statute under which he is rightfully detained to secure a custody redetermination hearing that he is not entitled to. Petitioner argues that—contrary to the plain language of 8 U.S.C. § 1225(b)(2)—the authority for his detention is better understood to arise under 8 U.S.C. § 1226(a), a detention statute that allows for release on bond or conditional parole. That argument fails to square with the fact that he falls neatly and precisely within the statutory definition of aliens subject to detention pursuant to 8 U.S.C. § 1225(b)(2).

BACKGROUND

Petitioner is an alien "applicant for admission." He is a citizen of Mexico who alleges to have unlawfully entered the United States in 2005. Petition, ¶¶ 2, 3, 24; ECF No. 1-2. On December 4, 2025, Petitioner was arrested for driving under the influence and ICE assumed custody after he posted bond in his criminal case. Petition, ¶ 4. On December 12, 2025, Petitioner filed the instant action in the U.S. District Court seeking habeas relief pursuant to the INA, the Fifth Amendment Due Process Clause of the U.S. Constitution, and pursuant to bond regulations. *Id.*, ¶¶ 9-10, 37. 39-55. On December 15, 2025, the Court issued an order instructing Respondents to respond to Petitioner's habeas petition and show cause why the petition should not be granted. ECF No. 4. Respondents have until January 5, 2026 to comply. *Id.*

In response to this Court's order, ECF No. 4, and for the reasons set forth below, Federal Respondents respectfully request that this Court deny Petitioner's Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

ARGUMENT

I. Respondents Ripa, Bondi, Lyons, Parra, and Noem Are Improper Parties in This Habeas Action.

The only appropriate respondent to a habeas case is the official with physical custody of petitioner. 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) ("[T]he 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."). Accordingly, all named Respondents with the exception of Respondent Mordant are improper parties in this case.

II. The Court Lacks Also Jurisdiction Over Petitioner's Claims.

Respondents acknowledge that this Court's prior rulings concerning jurisdiction pursuant to 8 U.S.C. §§ 1252(b)(9) and 1252(g) as well as those related to exhaustion in similar challenges to the government policy or practice at issue in this case would control the result in this case should the Court adhere to its legal reasoning in those prior decisions and find the facts sufficiently common.[2] *See e.g.*, *Hernandez-Lopez v. Hardin, et al.*, No. 2:25-cv-830-KCD-NPM, 2025 WL 302245 (M.D. Fla. Oct.

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[2] But *see Rivera-Amador v. Rhoden*, No. 3:25-CV-1460-WWB-SJH, 2025 WL 3687452, at *2 (M.D. Fla. Dec. 19, 2025)

29, 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 and incorporate by reference the legal arguments regarding jurisdiction under Sections 1252(b)(9) and 1252(g) and exhaustion as presented in *Hernandez-Lopez*, No. 2:25-cv-830-KCD-NPM, ECF No. 19. [3] Should the Court prefer to receive a more exhaustive and fulsome opposition brief on these issues, Respondents respectfully request leave to file such a brief and will do so upon the Court's request.

III. Petitioner is an "Applicant for Admission" and Subject to Section 1225(b)'s Detention Standards.

In his Petition, Petitioner argues that his detention should be governed by 8 U.S.C. § 1226 and that he is being unlawfully detained in violation of the Fifth Amendment to the United States Constitution and the INA. *See generally* Petition. Respondents contend that Petitioner's detention is governed by 8 U.S.C. § 1225, because he is an alien who entered without inspection or parole, was—and remains—an applicant for admission, and is treated, for constitutional purposes, as if stopped at

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[3] It should be noted, however, that several courts have recently ruled in Respondents' favor on similar issues. *See e.g., Montoya Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *3–7 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-cv-00168-JMD, 2025 WL 3131942, at *2–5 (E.D. Mo. Nov. 10, 2025); *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972, at *2–7 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, *2–7 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *2–10 (E.D. Wis. Oct. 30, 2025); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646, at *1–2 (W.D. La. Oct. 22, 2025*), report and recommendation adopted by* 2025 WL 3113644 (W.D. La. Nov. 6, 2025); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *7–10 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250-CAB-SBC, 2025 WL 2730228 at *4–5 (S.D. Cal. Sept. 24, 2025). *Cf. Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H, (Doc. 9), (N.D. Tex. Oct. 24, 2025).

the border. As such, he is subject to mandatory detention and not entitled to a bond hearing. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

In *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), the Board of Immigration Appeals ("BIA") examined the plain language of Section 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.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004)). Section 1225(a)(1) defines an "applicant for admission" as an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) . . . ." 8 U.S.C. § 1225(a)(1); *see Matter of Velasquez-Cruz*, 26 I&N Dec. 458, 463 n.5 (BIA 2014) ("[R]egardless of whether an alien who illegally enters the United States is caught at the border or inside the country, he or she will still be required to prove eligibility for admission."). Accordingly, by its very definition, the term "applicant for admission" includes two categories of aliens: (1) arriving aliens, and (2)

aliens present without admission. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that "an alien who tries to enter the country illegally is treated as an 'applicant for admission'" (citing 8 U.S.C. § 1225(a)(1)); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . . ."); *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011) (stating that "the broad category of applicants for admission . . . includes, *inter alia*, any alien present in the United States who has not been admitted" (citing 8 U.S.C. § 1225(a)(1))). An arriving alien is defined, in pertinent part, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry [("POE")] . . . ." 8 C.F.R. §§ 1.2, 1001.1(q).

All aliens who are applicants for admission "shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a) ("Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. [POE] when the port is open for inspection . . . ."). An applicant for admission seeking admission at a United States POE "must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States." 8 C.F.R. § 235.1(f)(1); *see* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in

removal proceedings). "An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated [POE] . . . is subject to the provisions of [8 U.S.C. § 1182(a)] and to removal under [8 U.S.C. § 1225(b)] or [8 U.S.C. § 1229a]." 8 C.F.R. § 235.1(f)(2).

Here, Petitioner did not present himself at a POE but instead alleges to have entered the United States in 2005 without having been admitted after inspection by an immigration officer. Petition, ¶ 3. Petitioner is, therefore, an alien present without admission and an applicant for admission.

IV. Petitioner's Detention is Not Punitive.

Petitioner's assertion that his detention is punitive in nature—Petition, ¶¶ 11-13—is not particularly compelling. Petitioner fails to show that his detention is not proportionately related to the government's non-punitive responsibilities and administrative purposes. While civil detainees retain greater liberty protections than individuals convicted of crimes, *see, e.g.*, *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982), immigration detention cannot be described as punitive or excessive in relation to the legitimate government purpose of protecting the public, ensuring attendance at removal proceedings, and ensuring that aliens appear for removal. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 523 (2003) ("[T]his Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process."); *Matos v. Lopez Vega*, No. 20-CIV-60784-RAR, 2020 WL 2298775, at *10 (S.D. Fla. May 6, 2020) ("it is a fallacy to think that Respondents do not have a

legitimate government purpose in 'preventing detained aliens from absconding and ensuring that they appear for removal.'"). Petitioner's claims do not negate Respondents' legitimate interest in his detention while removal proceedings are seen through. And, as discussed *supra*, Petitioner's detention for this purpose is indeed lawful.

V. Impact of *Bautista*

Respondents aware of a pending California case that certified a class of aliens who, like Petitioner, are in immigration detention and being denied access to a bond hearing. *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). But no final judgment has been issued in *Bautista* to bind the parties here. In many circumstances, a declaratory judgment will have preclusive effect as between the parties in future litigation. *See* Restatement (Second) of Judgments § 33; ECF 91 at 15. But the treatises recommend caution in imposing res judicata based on a declaratory judgment that remains subject to appeal. *See* 9 A.L.R.2d 984 ("both the rule under which the operation of a judgment as res judicata is, and the one under which it is not, affected by the pendency of an appeal, have very unfortunate consequences"). Not applying res judicata will result in delay of applying the final judgment. But by applying res judicata during the pendency of an appeal, the "evil result[]" is that if the first judgment is ultimately reversed, it could meanwhile lead to another judgment "from which it may be impossible to obtain relief notwithstanding such reversal." *Id.*; *see also* Federal Practice & Procedure § 4044

("Awkward problems can result from the rule that preclusive effects attach to the first judgment" while that judgment is subject to an appeal). In the circumstances here, and particularly given 8 U.S.C. § 1252(f)(1), it would not be proper to impose res judicata effect on a class-wide basis while the declaratory judgment is pending on appeal. *See* 9 A.L.R.2d 984 (the "only one safe way of avoiding conflicting judgments on the same cause . . . [is for] the final decision on the merits of the second suit should be delayed until the decision on appeal has been rendered")."

VI. Any Relief Ordered Should Take Into Consideration Respondents' Differing Roles In Custody Redetermination Hearings.

Should the Court ultimately find that Respondents are proper parties and that Petitioner's custody is more appropriately considered under Section 1226, Respondents flag the administrative predicament created when a bond hearing is ordered because bond hearings are scheduled and conducted by the Executive Office for Immigration Review ("EOIR"). *See, e.g.*, *Hinojosa Garcia*, No. 2:25-cv-879. When ICE makes a detention determination—under either Section 1225 or 1226 of the INA—the alien may seek a bond redetermination hearing before an immigration judge ("IJ") challenging ICE's decision. 8 C.F.R. § 1003.19(a). IJs are employed by EOIR and they conduct those bond hearings—not the Warden of the detention facility, ICE, DHS, or the Attorney General. EOIR endeavors to schedule bond redetermination hearings for the earliest possible date and time after receiving an alien's oral or written request. *See* 8 C.F.R. § 1003.19(b); EOIR Immigration Court

Practice Manual, Ch. 9.3(c)-(d).[4]

EOIR is not a party to this action, nor should they be under *Padilla v. Rumsfeld* and the remaining Respondents—even were they proper respondents in a habeas action—have no power to direct how a separate federal agency manages its docket. If a bond hearing is ordered, Respondent ICE can promptly redetermine bond—as ordered—and forward that documentation to EOIR upon Petitioner's request for a redetermination hearing before an IJ. However, the action that follows—scheduling the requested bond redetermination hearing—is wholly within EOIR's realm of responsibility and again, EOIR is a separate entity from the remaining named Respondents here.

Given these realities, if the Court were to grant relief, that relief should be limited to actions and deadlines within Respondents' control (i.e. an order compelling ICE to conduct a new bond determination under the appropriate statutory scheme within a specified period of time and compelling that any resulting request for redetermination of that decision be submitted to EOIR within a specific, reasonable time period). This would allow Respondents to promptly comply with Court orders in a manner consistent with their actual authority while also ensuring that scheduling of any subsequent hearing or release occurs promptly. It would also avoid any future disputes about compliance with an order that is ultimately attributable to an entity

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[4] Available at https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3 (last accessed Jan. 4, 2025).

not a party to the litigation.

CONCLUSION

The petition should be denied. Respondents are not proper parties in this habeas action. They have shown that Petitioner's detention pursuant to Section 1225 is lawful because the INA mandates his detention. Even so, this Court lacks jurisdiction to act on Petitioner's claims and he has failed to exhaust otherwise available administrative remedies.

DATED: January 4, 2026 Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 4, 2026, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice to all counsel of record.

Dated: January 4, 2026

Signed:

/s/Amanda Saylor
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