UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Jesus Saucedo Portillo, *Petitioner*,	§	
	§	CIVIL ACTION NO. 4:25-cv-06042
v.	§	
PAMELA BONDI, U.S. Attorney General, KRISTI NOEM, Secretary, U.S. Department of Homeland Security; TODD LYONS, Acting Director of Immigration and Customs Enforcement; MIGUEL VERGARA, Director, Immigration and Customs Enforcement, Harlingen Field Office; Warden of Port Isabel Detention Center. *Respondents*.	§	

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

The Respondents[1] hereby respond to Petitioner Jesus Saucedo Portillo's Petition for Writ of Habeas Corpus (Dkt. No. 1), move for summary judgment, and request that the Court deny the Petition.

SUMMARY OF ARGUMENT

Petitioner is an immigration detainee in the custody of the Department of Homeland Security/U.S. Immigration and Customs Enforcement ("DHS/ICE") and is presently detained at the Port Isabel Detention Center in Los Fresnos, Texas. Petitioner filed this habeas corpus Petition,

[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). The Port Isabel Detention Center is a federal facility, so there is no warden involved in this case. That said, it is the originally named federal respondents who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

seeking immediate release from immigration detention or alternatively, a bond hearing before an Immigration Judge. Dkt. No. 1 at 27. Petitioner, however, is subject to mandatory detention under 8 U.S.C. § 1225 and 8 C.F.R. § 1003.19(h)(2)(i) because he is an arriving alien. Petitioner also has not exhausted his administrative remedies. As such, the petition for a writ of habeas corpus should be denied and summary judgment entered in favor of the government.

BACKGROUND

Due to the short time the Court allowed in filing this response, Respondents state the following factual background based on information[2] and belief. The Petitioner entered the United States on November 8, 2016, at the Mariposa Port of Entry in Nogales, Arizona. The Petitioner was served with a notice to appear and charged an arriving alien who is inadmissible under 8 U.S.C. § 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. The alien was paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5). On November 15, 2016, The Department of Homeland Security ("DHS") revoked Petitioner's parole pursuant to 8 C.F.R. 212.5(e)(2)(i).

On May 2, 2022, Petitioner's case was administratively closed. On June 4, 2025, DHS filed a motion to recalendar Petitioner's case so that his removal proceedings may resume. On August 31, 2025, Petitioner was charged with Driving Under the Influence in Minnesota. On December 6, 2025, Petitioner was arrested. On December 9, 2025, Petitioner was transferred to the custody of Immigration and Customs Enforcement and detained at the Port Isabel Detention Center.

[2] The information gathered is primarily from ICE sources and the Petitioner's FBI RAP sheet. Copies of these documents are not attached because Respondents faced difficult gathering the documents in the short deadline allowed for a response, and as they are relevant only if a bond hearing is held at which time the Immigration Judge would review them in the context of whether the Petitioner is a danger to the community or a flight risk.

APPLICABLE LAW

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. *See*, *e.g.*, *Walker v. Johnston*, 312 U.S. 275, 286 (1941). When it comes to detention during removal proceedings, it is well-taken that the authority to detain is elemental to the authority to deport, as "[d]etention is necessarly 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 in no unmistakable terms, "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003).

ARGUMENT

A. PETITIONER FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES PRIOR TO FILING THE PETITION.

As a threshold matter, the Court should dismiss the habeas petition 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). The Fifth Circuit has recognized exceptions to the exhaustion requirement and noted that they "apply only in extraordinary circumstances," including when exhaustion would be "patently futile." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted).

In this case, Petitioner has not demonstrated that he requested a custody redetermination before an Immigration Judge, so he has not been denied bond before filing this habeas petition. This is important because the Immigration Judge may find the Petitioner's individual circumstances present facts that may result in the Immigration Judge lacking jurisdiction based on a rationale that is unrelated to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). For example, the information available to the Respondents shows the Petitioner is an arriving alien, as term is defined in 8 C.F.R. §§ 1.2, 1001.1(q). As such, Petitioner is likely ineligible for bond under C.F.R. § 1003.19(h)(2)(i)(B). The parties can only speculate, however, as to the decision of the Immigration Judge, because Petitioner did not seek a bond hearing prior to filing this petition. Petitioner therefore has not exhausted his administrative remedies.

B. PETITIONER IS SUBJECT TO MANDATORY DETENTION.

Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. This case involves an alien who presented himself for inspection at a port of entry and was paroled into the United States. As such, Petitioner is classified as an "arriving alien" – as defined in 8 C.F.R. § 1001.1(q).

> The term arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the Act, and even after any such parole is terminated or revoked.

8 C.F.R. § 1001.1(q). By regulation, an Immigration Judge does not have jurisdiction to conduct bond hearings for arriving aliens. 8 C.F.R. § 1003.19(h)(2)(i)(B). The Board of Immigration Appeals and the immigration regulations have long taken the position that arriving aliens are not eligible for bond. *See Matter of Oseiwusu*, 22 I&N Dec. 19, 20 (BIA 1998). As such,

the Court should deny the instant petition because the Petitioner is not eligible for bond as an arriving alien.

Alternatively, Petitioner is also subject to mandatory detention as an applicant for admission under 8 U.S.C 1225(b)(2) since Petitioner was issued an NTA and placed in full removal proceedings under Section 240 of the INA. The fact that Petitioner was paroled does not change the § 1225(b)(2) analysis because once Petitioner's parole expired on September 11, 2023, the petitioner returned to the custody under Section 235(b) "from which he was paroled." INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A). Since Petitioner was placed directly in full removal proceedings rather than expedited removal, 8 U.S.C. § 1225(b)(2)(A) requires that Petitioner remain detained "until removal proceedings have concluded." *See Jennings v. Rodriguez*, 583 U.S. 299 (2018).

The government asks the Court to reconsider its prior rulings regarding the scope of mandatory detention under 8 U.S.C § 1225(b)(2). The Court should adopt the decision of another court in the Southern District of Texas, namely *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (J. Eskridge), which ruled 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). The well-reasoned analysis of the *Cabanas* decision 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.[3]

The Government requests this Court follow the reasoning of *Cabanas* and find that the Petitioner is subject to mandatory detention as an applicant for admission under 8 U.S.C. § 1225(b)(2).

C. THE APPROPRIATE REMEDY

Respondents urge the Court to deny the instant petition, as the Petitioner is an arriving alien who is ineligible for bond under 8 C.F.R. § 1003.19(h)(2)(i)(B) and is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). If the Court grants the instant petition, Respondents urge the Court not to order the Petitioner's instant release. A bond hearing is the appropriate remedy, especially given the potential dangerousness in releasing the Petitioner due to his recent arrest for Driving Under the Influence. An Immigration Judge should have the opportunity to review the evidence regarding this recent arrest to determine whether the Petitioner is a danger, as well as evidence indicating whether the Petitioner is a flight risk, prior to his release from custody.

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court deny Petitioner's request for habeas relief and grant the instant motion. The Court should enter judgment as a matter of law finding that Petitioner is lawfully subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2).

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[3] The Court should be aware that a court in the Central District of California recently certified a class of aliens who are being detained under § 1225(b)(2). *Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM, 2025 WL3288403 (C.D. Cal. Nov. 25, 2025). On December 18, 2025, the *Bautista* court entered final judgment in favor of the petitioners and members of the certified class. The Department of Justice is still reviewing the *Bautista* court's decision to determine if the decision has preclusive effect with respect to this case. However, the Petitioner does not appear to be a class member because he was apprehended upon his arrival to the United States.

Dated: December 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 19, 2025, the foregoing was filed and served through the Court's CM/ECF system.

s/ Alexander McDonough
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