UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSE CRUZ GARCIA PESCADOR, Petitioner, v. GRANT DICKEY, *et al.*, Respondents.	§ § § § § § § § §	Civil Action No. 4:25-CV-06070

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

Respondents Bret Bradford, Kristi Noem, and Pam Bondi (hereinafter, the "Federal Respondents")[1] hereby respond to Petitioner Jose Cruz Garcia Pescador's habeas petition and request that the 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, Pescador failed to exhaust administrative remedies. This is enough, by itself, to deny his § 2241 petition. Second, Pescador is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), 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 multiple in the Fifth Circuit alone. *See*, *e.g.*, *Cabanas v. Bondi*, No. 4:25-

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also id.* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the Federal Respondents, not the named warden in this case, who makes the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code. Therefore, while the named warden is the proper party in form, the Federal Respondents respond herein as the real party in interest.

CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) (Eskridge, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, -- F.Supp.3d --, 2025 WL 3264482 (N.D. Tex. Sept. 15, 2025) (Hendrix, J.); *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.); *Topal v. Bondi*, No. 1:25-CV-01612, 2025 WL 3486894 (W.D. La. Dec. 3, 2025) (Doughty, J.).

Accordingly, this Court should deny the habeas petition and grant summary judgment for the Government.

I. BACKGROUND

As Petitioner Jose Cruz Garcia Pescador himself admits, he is a native and citizen of Mexico. ECF No. 1 ¶ 6. He entered the United States in 1998 without inspection. *Id.* He submits that on September 5, 2025, he was taken into ICE custody following a routine traffic stop. *Id.* ¶ 9. ICE served Petitioner with a Notice to Appear ("NTA") charging him with removability pursuant to Immigration and Nationality Act ("INA") section 212(a)(6)(A)(i), 8 U.S.C. § 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. ECF No. 5 at 6–9. 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.*

On October 24, 2025, an immigration judge dened Petitioner's bond request, finding it lacked jurisdiction because Petitioner's detention was governed by INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2). ECF No. 1 ¶ 10. A few weeks later, on November 10, 2025, he was ordered removed, but he has since appealed the removal order to the BIA, and that appeal

remains pending. *Id.* ¶¶ 11–13. In the meantime, as he does not dispute, he is in removal proceedings.

II. ARGUMENT

Prior to addressing the merits, the Government acknowledges that this Court has previously rejected its arguments concerning the applicability of § 1225(b)(2)(A). However, the Government, with this motion, requests a reconsideration of that prior ruling. *See Camreta v. Greene*, 563 U.S. 692, 701 n.7, 131 S.Ct. 2020, 179 L.Ed.2d 1118 (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)(A) and find that Petitioner is subject to mandatory detention.

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) (holding that a federal prisoner seeking habeas relief under § 2241 must first exhaust all available administrative remedies).

In this case, Petitioner had a hearing before an immigration judge. ECF No. 1 ¶ 10. Petitioner has not indicated that he has appealed that bond denial to the BIA. *See generally id.*

Petitioner argues that he "has exhausted his administrative remedies to the extent required by law." *Id.* ¶ 3. However, because Petitioner 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 this type of claim 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.

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 admits that he is an alien present in the United States who entered the country unlawfully without having been admitted or paroled. ECF No. 1 ¶ 6. 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)).

1. <u>The Plain Language and Statutory Structure of the INA</u>

"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].

8 U.S.C. § 1225(b)(2). 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, was not previously admitted into the United States, and the Petitioner is therefore subject to mandatory detention and is not eligible for a bond. *See*, *e.g.*, *Cabanas*, 2025 WL 3171331.

2. Persuasive Decisions From Other District Courts

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 many district courts, including Judge Eskridge in this District, that have adopted the Government's and the BIA's interpretation.[3] Not only so, but multiple federal appellate courts

[2] Multiple courts in the Southern District of Texas have issued decisions that reject the Government's position. *See, e.g., Buenrostro-Mendez v. Bondi*, No. 4:25-CV-03726, 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*, *e.g.*, *Cabanas*, 2025 WL 3171331; *Alonzo v. 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-01004, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025) (Dudek, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-00177, 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. 8:25-CV-555, 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.); *Ramos v. Lyons*, No. 2:25-CV-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson,

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have implicitly endorsed the Government's position on this issue. *See Jimenez-Rodriguez v. Garland*, 996 F.3d 190, 194 n.2 (4th Cir. 2021) ("Because [Petitioner] was never lawfully admitted, he qualifies as someone 'seeking admission[].'"); *Succar v. Ashcroft*, 394 F.3d 8, 13 (1st Cir. 2005) (treating, based on statute, "aliens who are present in the United States, but who have not been inspected and admitted," as "aliens who are seeking admission").

By way of one example, in *Cabanas*, 2025 WL 3171331, the district court held that "[t]he text of § 1225(b)(2)(A) supports the Government's position." Judge Eskridge 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 court held that the plain language of the INA 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).

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

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, 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.).

III. CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that the Court grant the instant motion and deny the habeas petition.

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 counsel for Petitioner via the Court's CM/ECF service.

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