UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BRYAN MIGUEL DURAN JAVIER, Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	§ § § § § § § § §	Civil Action No. 4:25-CV-06120

THE FEDERAL RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND, IN THE ALTERNATIVE, MOTION TO STAY PROCEEDINGS OR DEFER RULING PENDING FIFTH CIRCUIT EXPEDITED REVIEW

Respectfully submitted,

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Rules

Federal Rule of Civil Procedure 56 1

Respondents Bret Bradford, Kristi Noem, Pamela Bondi, Todd Lyons, and Randy Tate (hereinafter, the "Federal Respondents")[1] hereby respond to Petitioner Bryan Miguel Duran Javier'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.[2]

At the outset, the Federal Respondents acknowledge the elephant in the room—that this Court has previously held that aliens like Petitioner fall under the discretionary detention provision of Section 1226(a), not Section 1225(b)(2)(A), and thus are entitled to a bond hearing. Nevertheless, the Government, in addition to urging this Court to re-consider, submits that this case is fundamentally different for a great multitude of reasons.

First, the habeas should be denied because, as an initial matter, Javier failed to exhaust administrative remedies. While exhaustion might perhaps be excusable where a detainee has at least requested a bond in the first place (but then did not appeal denial), here Petitioner never tried to request a bond at all. This is enough, by itself, sufficient grounds to deny his § 2241 petition.

On the merits of his legal arguments, Petitioner presents a single count alleging substantive due process violation which can be summarily rejected. Of particular note, this *constitutional* argument is entirely separate from the typical *statutory* argument—Section 1225 vs.

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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 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 also respond herein as the real party in interest.

[2] As stated in the Government's Reply to Petitioner's Notice, the Federal Respondents make this filing in accordance with the deadline to respond to the original petition, as counsel for Petitioner had since informed that he no longer intends to amend.

Section 1226—that these cases almost invariably turn on. Rightfully so, as the constitutional argument is unmistakably foreclosed by Supreme Court precedent. And while his petition does at points discuss the INA statutory dispute, it is wholly omitted from his Causes of Action. Indeed, this oversight in omitting the statutory INA claim as a cause of action is precisely what led the undersigned, in a gesture of goodwill and professional courtesy, to initially reach out and offer unopposed amendment as an easy fix. Yet Petitioner, while originally appreciative and in agreement, now refuses to do so. He is, then, choosing to put forth a petition which does not assert an INA statutory violation as a cause of action.[3] As such, there is a singular substantive due process to consider, which can be swiftly rejected.

Finally, the Federal Respondents would advise the Court that even if it were inclined to construe the petition as having asserted an INA statutory cause of action (which it has not), the Court should in turn grant the Government's request herein to stay the case or defer a ruling, given the very recent agreement by the Fifth Circuit to consider the INA statutory argument on expedited appeal. *Buenrostro-Mendez v. Bondi*, No. 25-20496, Dkt. No. 80-2 (5th Cir. Jan. 9, 2026). Oral argument is already scheduled for February 4, 2026, with briefing to conclude before then. Particularly given the inconsistent rulings on this issue, this Court should stay this case or at least defer ruling pending the expedited resolution of the Fifth Circuit appeal. (But again, Court should deny the habeas and need not consider whether to stay or defer consideration of an INA statutory claim at all, as such claim has not been properly asserted.)

[3] To whatever extent this Court would have been inclined to permit Petitioner to amend to correct this glaring blunder, it should decline to do so now given Petitioner has already been specifically appraised of the defect and still refused.

I. BACKGROUND

As Petitioner Bryan Miguel Duran Javier himself admits, he is a native and citizen of Mexico. Dkt. No. 1 ¶ 24. He pleads that he "was arrested by ICE" in "October 2025" and "has remained in ICE custody since that time." *Id.* ¶ 25. As an initial matter, this representation appears incorrect, as he was arrested on October 20, 2025, by local law enforcement for various criminal offenses, including unlawful carrying of a weapon and possession of marijuana. *See* Exhibit 1. Only upon his release from county jail was he taken into ICE custody on November 13, 2025. *See* Exhibit 2 (NTA). 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. *See id.* 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.*

II. ARGUMENT

As stated earlier, agency records indicate that Petitioner to-date has never requested a bond, and his petition does not allege the contrary. *See* Dkt. No. 1. Thus, as a preliminary matter, the Court should deny the habeas petition, even if without prejudice until Petitioner at least checks that baseline box. On the substance, Petitioner's singular count for Due Process is no more than a throwaway argument which can be swiftly rejected. And as discussed, an INA statutory argument is not properly before the Court. Finally, even if Petitioner had

properly brought an INA statutory argument, the Court should stay or defer a ruling on the matter until the Fifth Circuit's expedited ruling forthcoming on precisely that issue.

A. FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES

Here, Petitioner has not indicated that he has exhausted his administrative remedies; to the contrary, Petitioner never sought a bond at all. Petitioner's likely rationale is that because the BIA in *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), held that aliens like him do not qualify for a bond, he therefore does not have to seek a bond at all—i.e., exhaust. But this line of argument runs contrary to controlling caselaw instructing that the general rule is parties seeking relief against federal agencies must exhaust administrative remedies prior to seeking judicial relief, and this rule includes habeas petitioners 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).

Here, Petitioner merely states that he "has exhausted all administrative remedies to the extent feasible," but such conclusory statements do not meet his "burden to demonstrate an exception [to the exhaustion requirement] is warranted." *Hinojosa*, 896 F.3d at 314. As explained by the Fifth Circuit, exceptions to exhaustion "apply only in extraordinary circumstances," including when exhaustion would be "patently futile." *See Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted). *Fuller* itself is illustrative, where the petitioner argued that administrative appeal was futile because the time for filing the appeal has already elapsed. *See id.* Despite this seemingly dispositive bar, the Fifth Circuit disagreed,

holding that "until he actually appeals and that appeal is acted on, we do not know what the appeals board will do with [petitioner]'s claim, and until the appeals board has been given an opportunity to act, [petitioner] has not exhausted his administrative remedies." *Id.*

The mere fact that the administrative body is unlikely to find the law in the petitioner's favor does not supply the "extraordinary circumstances" circumstance where exhaustion is futile. Petitioner must, at the very least, at least have an appeal pending to the BIA for the matter to be administratively exhausted.[4] *See id.* (requiring an appeal in order to satisfy exhaustion requirement). It is of little moment whether Petitioner would be able to successfully convince the BIA that departure from *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), is warranted for some reason or another; the point is that Petitioner cannot altogether eschew even the baseline initial IJ bond request. Until/unless he makes an initial request for a bond, he cannot even allege any wrongful action the agency has taken against him.

It is worth highlighting the practical ramifications of Petitioner's notion of futility, which contemplates that aliens need not even ask for a bond in the first place—much less appeal an adverse determination—and may do so for the first time via a federal habeas petition. This logic would turn federal district courts into immigration courts. It would flood federal district courts and saddle them with determining bond eligibility as a matter of first impression, where a request had never even been made—much less exhausted—at the administrative level. The exhaustion doctrine was precisely designed to prevent such a result. *See*, *e.g.*, *Woodford v. Ngo*, 548 U.S. 81, 89, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006) (explaining

[4] Perhaps exhaustion might be excusable if Petitioner had actually (1) requested and was denied a bond in her removal proceedings, (2) appealed that bond denial to the BIA, and that appeal was pending. But here, he has not taken even the first of those steps.

that exhaustion of administrative remedies serves two main purposes: protecting administrative agency authority and promoting judicial efficiency).

In sum, not only does the law require exhaustion, practical and intuitive considerations highlight why this result must follow here in the bond context.[5] *See*, *e.g.*, *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 a habeas petition 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. SUBSTANTIVE DUE PROCESS

Separate from the INA, Petitioner asserts a substantive due process claim separate from the INA which, upon review, seems to assert the theory that his detention without bond—not detention without a bond *hearing*—is itself unlawful.[6] This argument can be summarily rejected.

It is well-settled that detention during the pendency of removal proceedings presents no constitutional infirmities, such as due process concerns. *See*, *e.g.*, *Carlson v. Landon*, 342 U.S. 524, 538, 72 S.Ct. 525, 96 L.Ed. 547 (1952) ("Detention is necessary a part of th[e] deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235, 16 S.Ct. 977, 41 L.Ed. 140 (1896)

[5] This holding would not be inconsistent with the Court's prior rejection of the exhaustion argument in *Buenrostro-Mendez v. Bondi*, No. 4:25-CV-03726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025). As the Court acknowledged there, the detainee at least made the request, was denied, and the appeal was pending before the BIA. *See id.* at *1.

[6] If his argument were that detention without a bond *hearing* violates due process, that would be a procedural due process claim, not a substantive one which claims that detention in this context is by its very nature unlawful. And as he confirms, his claim is for substantive due process. *See* Dkt. No. 1 ¶¶ 37, 39 (citing to substantive due process); *id.* ¶ 44 (arguing that his "detention without bond is unconstitutional," not that detention without a bond *hearing* is unconstitutional).

("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 Supreme Court has stated in no unmistakable terms, "Detention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003). Indeed, under a substantive due process theory here, Petitioner's detention would be unlawful even if he were afforded a hearing and the IJ denied bond, since his theory is that "his detention without bond is unconstitutional." Dkt. No. 1 ¶ 44. This argument is wholly without legal support.

That settles substantive due process. But to be sure, a procedural due process argument (which Petitioner does not make, *see* note 6) would also comfortably fail, as the Supreme Court in *Demore* plainly held that detention during removal proceedings is permissible considering its "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings[.]" 538 U.S. at 526. As Judge Eskridge recently explained when considering and rejecting the procedural argument, mandatory detention pending a determination of removability "is a constitutional part of [the removal] process." *Jimenez v. Thompson*, 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025) (quoting *Demore*, 538 U.S. at 531).

Finally, the Federal Respondents note that regardless of whether the due process theory is substantive or procedural, both arguments amount to a claim that mandatory detention

under 8 U.S.C. § 1225(b)(2)(A)—i.e., the INA's text itself—is unconstitutional.[7] There is no legal support for such an argument.

C. THE (ABSENT) INA STATUTORY ARGUMENT

Petitioner alleges one count: substantive due process. Dkt. No. 1 ¶¶ 35–46. That constitutional claim comfortably fails. And he has neglected to assert as a cause of action the one INA statutory claim which has enjoyed success (including with this Court). Indeed, this Court has acknowledged the (unspectacular) point that these two claims are separate. *See Buenrostro-Mendez*, 2025 WL 2886346 at *3 n.4 (explaining that the detention was challenged "on both statutory and constitutional grounds," and declining to consider the latter given it was already ruling on the INA statutory claim).

Here, the INA is an entirely separate statutory claim; if that claim is one Petitioner intended to plead, he "commits the sin of not separating into a different count each cause of action or claim for relief." *Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1323 (11th Cir. 2015). As-is, the INA statutory claim is not properly before the Court. *See*, *e.g.*, *Coleman v. C R England, Inc.*, No. 3:08-CV-00180, 2009 WL 812077, *2 (N.D. Tex. Mar. 27, 2009) (rejecting the plaintiff's reliance on the Texas Labor Code, as "the operative pleading states only one cause of action—violation of the FMLA," and "the Court will not pass judgment on a cause of action not properly before it."); *Skinner v. Switzer*, No. 2:09-CV-00281, 2010 WL 273143 (N.D. Tex. Jan. 20, 2010) (finding, where "plaintiff has not raised [certain claims] as a

[7] The mandatory detention provision provides for just that: *mandatory* detention. *See* 8 U.S.C. § 1225(b)(2)(A). If Petitioner's argument is that his detention without bond, or without a bond hearing, under that statute is a violation of due process, he is necessarily making the claim that the mandatory detention statute itself is unconstitutional; after all, the statute does not merely permit detention, the statute requires it. Petitioner has not identified, and undersigned counsel is unaware of, a single case holding that 8 U.S.C. § 1225(b)(2)(A) is itself unconstitutional (as opposed to merely inapplicable in certain contexts, as a statutory matter).

claim for relief and has not sought to amend his complaint to assert them," that those claims have not been asserted), *aff'd*, 363 F.App'x 302 (5th Cir. 2010), *rev'd on other grounds*, 562 U.S. 521, 131 S.Ct. 1289, 179 L.Ed.2d 233 (2011).

Simply put, Petitioner cannot obtain relief on a cause of action—here, the INA statutory argument—that he has not pled. This point is well-taken. *See*, *e.g.*, *Ins. Co. of N. Am. v. Moore*, 783 F.2d 1326, 1328 (9th Cir. 1986) (finding the district court properly refused to award relief on an unpled cause of action); *Compton v. Alton S.S. Co.*, 608 F.2d 96, 104 n.16 (4th Cir. 1979) (explaining that defendants may rightfully assume that a court will not grant relief, even in case of default, for unpled causes of action); *Dixon v. Reid*, No. 23-CV-09878, 2025 WL 2256760, *3 (S.D.N.Y. Aug. 7, 2025) (rejecting consideration of causes of action not listed in the complaint); *Marshall v. Abdoun*, No. CV 22-0010, 2023 WL 2588166, *12 (E.D. Pa. Mar. 20, 2023) (holding proper the rejection of an unpled claim).

Generally, such error at such early stage of litigation is uneventful, as the pleader may simply amend. But Petitioner has inexplicably refused to do so—even after suggestion by the Government.[8] Absent amendment, there is no INA statutory cause of action to consider. If Petitioner insists on making his bed this way, this Court should let him lie in it.

D. REQUEST TO STAY OR DEFER RULING

Finally, the Federal Respondents would submit that even if it construes the pending petition as having asserted an INA violation as a cause of action (which it has not), significant

[8] While the parties originally agreed to the Federal Respondents responding within seven (7) days from the filing of an amended complaint, upon Petitioner later informing that they no longer wished to amend, the Government in fact offered to respond to any amended complaint within one (1) day. Petitioner still refused to amend.

developments warrant a stay of this case or at least a deferral on a ruling. A few days ago on January 9, 2026, the Fifth Circuit agreed to take the INA statutory argument on expedited appeal. *Buenrostro-Mendez v. Bondi*, No. 25-20496, Dkt. No. 80-2 (5th Cir. Jan. 9, 2026). And expedited it has been indeed, as the Fifth Circuit has already canceled the original briefing schedule in favor of an expedited briefing schedule which will close by February 2, 2026, and scheduled oral arguments for February 4, 2026. No. 25-20496 at Dkt. Nos. 85, 88. While the majority of district courts—including this one—have ruled in favor of Petitioner on this issue, many district courts have held the opposite, including at least four in the Fifth Circuit alone, among which includes Judge Eskridge in this Division. *See*, *e.g.*, *Cabanas v. Bondi*, No. 4:25-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.).[9] The point is not merely that the Court should re-consider its prior holding on this issue and adopt the reasoning advanced by those judges (which the Government of course urges the Court to do). The point is also that this issue is one that has divided district courts across

[9] In addition to the BIA's unanimous and comprehensive opinion in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and the four aforementioned judges in the Fifth Circuit, additional courts nationwide that have ruled in favor of the Government include (but are not limited to): *Ugarte-Arenas v. Olson*, No. 25-C-1721, 2025 WL 3514451 (E.D. Wis. Dec. 8, 2025) (Griesbach, J.); *Chen v. Almodovar*, No. 1:25-CV-08350, 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025) (Vyskocil, J.); *Ramos v. Lyons*, No. 2:25-CV-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, J.); *Cruz v. Noem*, No. 8:25-CV-02566, 2025 WL 3482630 (C.D. Cal. Dec. 2, 2025) (Blumenfeld Jr., J.); *Valencia v. Chestnut*, -- F.Supp.3d --, 2025 WL 3205133 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Olalde v. Noem*, No. 1:25-CV-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025) (Devine, J.); *Candido v. Bondi*, No. 25-CV-867, 2025 WL 3484932 (W.D.N.Y. Dec. 4, 2025) (Sinatra Jr., J.); *Rojas v. Olson*, No. 25-CV-1437-BHL, 2025 WL 3033967 (E.D. Wis. Oct. 30, 2025) (Ludwig, J.); *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (Buescher, J.); *Chavez v. Noem*, -- F.Supp.3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (Bencivengo, J.).

the nation, including in the Fifth Circuit. The Fifth Circuit is well-aware of the disarray, which explains its expeditious consideration of the matter. In light of imminent forthcoming and controlling guidance on this issue, this Court should stay this case or at least defer ruling pending the expedited resolution of the Fifth Circuit appeal. (But again, Court should deny the habeas and need not consider whether to stay or defer consideration of an INA statutory claim at all, as such claim has not been properly asserted.)

III. CONCLUSION

For the foregoing reasons, the Federal Respondents respectfully request that the Court deny the habeas petition or, in the alternative, stay this case or take it under advisement pending guidance from the Fifth Circuit.

Dated: January 14, 2026

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CERTIFICATE OF SERVICE

I certify that on January 14, 2026, the foregoing was filed and served on counsel for Petitioner via the Court's CM/ECF service.

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