UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ADRIAN SALCEDO MARTINEZ, Petitioner, v. KRISTI NOEM, Respondents.	§ § § § § § § § § § §	CIVIL NO. 4:25-CV-06170

RESPONSE TO THE PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS AND, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

The Government[1] hereby responds to Petitioner, Adrian Salcedo Martinez's habeas petition and respectfully requests that this 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, Salcedo Martinez failed to exhaust administrative remedies. This is enough, by itself, to deny his § 2241 petition. Second, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), 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 the recent decision in *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025) and *Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL

[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). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

3265493 (S.D. Tex. Nov. 24, 2025). Third, the Court lacks jurisdiction to review the immigration judge's (IJ) determination denying bond and finding that Petitioner is a flight risk and danger to the community.

Accordingly, this Court should deny Salcedo Martinez's petition and grant summary judgment for the Government.

I. BACKGROUND

Petitioner, Salcedo Martinez, is a native and citizen of Mexico. Dkt. 1 at ¶ 3. In 1998, Petitioner entered the United States without inspection. Dkt. 1 at ¶ 10. Petitioner was taken into ICE custody on or around June 2025 *Id.* at ¶ 16. 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. Government's Ex. 1, Notice to Appear (NTA). 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 for his removal proceedings. *Id.* Petitioner applied for cancellation of removal based on hardship of his LPR father and on September 4, 2025, and IJ denied Petitioner's request for cancellation of removal because he did not demonstrate exceptional and unusual hardship. Dkt. 1-2; Dkt. 1 at ¶ 19. Petitioner appealed this denial to the BIA. *Id* at 20; Dkt. 1-2. This appeal remains pending.

Petitioner requested a custody redetermination and on December 17, 2025, an immigration judge denied Petitioner's request for a bond, finding a lack of jurisdiction because

Petitioner entered the United States without inspection. Dkt. 1-3. Making his detention under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2). The IJ additionally denied the request for custody redetermination, in the alternative, finding that Salcedo Martinez was (1) a flight risk because his application for cancellation of removal had been denied and (2) a danger to community because he has been convicted of driving while intoxicated (DWI), and has an additional DWI matter pending. Government's Ex. 2, IJ Order Denying Custody Redetermination. Petitioner has not appealed this determination to the BIA.

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). However, the Government, with this motion, requests a reconsideration of that prior ruling. *See Camreta v. Greene*, 563 U.S. 692, 701 n. 7 (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) 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. Dkt. 1-3. The IJ denied the request for custody redetermination on jurisdictional grounds but also denied the request finding that Petitioner was a flight risk and a danger to community. Dkt. 1-3. Petitioner argues that the IJ failed to consider Petitioner's length of residency, family ties, employment history, caregiving responsibilities or compliance with proceedings. Dkt. 1, ¶ 41. However, Petitioner has not appealed that bond denial to the BIA, the appellate body with delegated authority to review a custody determination made by an IJ. Petitioner argues that an administrative appeal of the bond decision would be futile in light of *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Dkt. 1, ¶ 62. However, because Petitioner has not 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 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). This is especially significant with the facts of this case, where the IJ held a bond hearing under 8 U.S.C. § 1226 and made findings regarding Petitioner <u>being a flight risk and a danger to community</u>. Dkt. 1-3. Also rendering, Salcedo Martinez's request for a bond hearing moot. Petitioner's request for relief should be an appeal to the BIA.

B. PETITIONER IS SUBJECT TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225

Petitioner's habeas petition should also 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 being admitted or paroled. Dkt. 1, ¶ 10. 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. The Plain Language and Statutory Structure of the INA

"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 Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025).

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 recent decisions of several district courts that have adopted the Government's and the BIA's interpretation.

Most recently, another court in the Southern District of Texas decided *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025), 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). Thus, the *Cabanas* Court 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; *see also Jimenez v. Thompson*, No. 4:25-CV-05026, 2025 WL 3265493, at *1 (S.D. Tex. Nov. 24, 2025).[3]

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[2] Other courts in the Southern District of Texas have issued decisions that reject the Government's position. *See, e.g., Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 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 Alonzo v. Noem*, -- F. Supp. 3d --, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) (Shubb, J.); *Andrade v.* (continue)

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

C. ASSUMING THAT THE COURT FINDS PETITIONER IS SUBJECT TO § 1226, THE IJ HAS ALREADY FOUND HIM INELIGIBLE FOR BOND.

Even assuming for the sake of argument that the Court finds that Petitioner is eligible for a bond under § 1226, it is without jurisdiction to review the IJ's determination that Petitioner is a flight risk and danger to the community.

1. Discretionary Detention Under 8 U.S.C. § 1226

Section 1226 provides that an alien may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under

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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-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025) (Dudek, J.); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 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. 8:25CV555, 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.); *Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) (Gorton, J.); *Ramos v. Lyons*, No. 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025) (Wilson, 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-JMD, 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.).

§ 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release aliens if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). An alien can also request a custody redetermination (*i.e.*, a bond hearing) by an immigration judge ("IJ") at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

At a custody redetermination, the IJ may continue detention or release the alien on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. & N. Dec. 37, 39–40 (BIA 2006) (listing nine factors for IJs to consider). *See also, Matter of E-Y-F-G*, 29 I & N Dec. 103, 103.-04 (BIA 2025). But regardless of the factors the IJs consider, an alien "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Id.* at 38. The IJ may base a determination as to an alien's custody status **on any information that is available to the IJ** or that is presented to the IJ by either party. 8 C.F.R. § 1003.19(d) (emphasis added). The alien bears the burden of establishing to the satisfaction of the IJ 'that he or she does not present a danger to persons or property, is not a threat to national security, and does not pose a risk of flight.' *Matter of R-A-V-P*, 27 I & N Dec. 803, 804 (BIA 2020)(citing and quoting *Matter of Siniauskas*, 27 I & N Dec. 207, 207 (BIA 2018); see also *Matter of Fatahi*, 26 I & N Dec. 791, 795 n. 3 (BIA 2016)("We have consistently held that aliens have the burden to establish eligibility for bond while proceedings are pending.").

2. The Court Lacks Jurisdiction to Review Discretionary Decisions Made by an Immigration Judge

As another Court in this district has previously found in a similar factual scenario, pursuant to statute governing apprehension and detention of aliens, 8 U.S.C. § 1226(e), district courts do not have jurisdiction to review discretionary decisions made by an IJ regarding bond. *Fuentes v. Lyons,* No. 5:25-CV-00153, 2025 WL 3022478 (S.D. Tex. Oct. 29, 2025)(holding that, pursuant to § 1226(e), "district courts do not have jurisdiction to review discretionary decisions made by an IJ regarding bond").

Statute governing apprehension and detention of aliens may strip court of jurisdiction to review judgments designated as discretionary under pertinent language of the statute, but it does not deprive court of all authority to review statutory and constitutional challenges, and courts retain jurisdiction to review a noncitizen's detention insofar as that detention presents constitutional issues. *Id.* In *Fuentes*, this Court considered Petitioner's challenge to the constitutional adequacy of a bond hearing and analyzed whether there was a constitutional deficiency in the notice for bond hearing.

Here, Petitioner states the immigration court failed to conduct an individualized analysis and took no arguments regarding Petitioner being flight risk or danger to the community. Dkt. 1, ¶ 35. However, the IJ clearly stated in its order denying bond the reasons for denial: (1) that Petitioner is a flight risk because his application for cancellation of removal was denied and (2) that Petitioner is a danger to the community because of a previous conviction for driving while intoxicated and has a pending matter for the same reason (DWI). This was based on information the IJ had, which is not denied by Petitioner.

Petitioner is therefore asking this Court to assess the discretionary bond determination, without a real showing of a constitutional or statutory deficiency. Therefore, the Court lacks jurisdiction to review the underlying decision of the IJ and his findings and determination to not issue a bond.

III. CONCLUSION

For the foregoing reasons, the Government respectfully request that the Court deny Petitioner's request for habeas relief and grant the instant motion. As discussed above, Petitioner has not exhausted his administrative remedies and is subject to mandatory detention. Even assuming Petitioner is eligible for a bond hearing, the Court does not have jurisdiction to review the underlying discretionary decision by the IJ to deny bond. Thus, if the Court finds that Petitioner's detention is governed by 8 U.S.C. § 1226, the habeas petition should nevertheless be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on December 29, 2025, the foregoing was filed and served on all attorneys of record via the District's ECF system.

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