UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 26-20319-CIV-ALTONAGA

NORBERTO BENITEZ HERNANDEZ,

Petitioner,

v.

ASSISTANT DIRECTOR, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, ENFORCEMENT AND REMOVAL OPERATIONS MIAMI FIELD OFFICE, *et al.*,

Respondents.

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ORDER

THIS CAUSE came before the Court on Petitioner, Norberto Benitez Hernandez's Petition for Writ of Habeas Corpus [ECF No. 1], filed on January 16, 2026. Petitioner challenges his detention at the Krome Detention Center ("Krome") in Miami, Florida without being afforded an individualized bond determination. (*See generally id.*). Respondents filed a Response [ECF No. 6]; to which Petitioner filed a Reply [ECF No. 7]. The Court has considered the record, the parties' written submissions, and applicable law. For the following reasons, the Petition is granted in part.

I. BACKGROUND

Petitioner is a Mexican national who has allegedly resided in the United States for 22 years. (*See* Pet. ¶¶ 1, 14 (citations omitted)). Petitioner entered the United States without inspection (*see id.* ¶ 14 (citation omitted)), and he does not allege his residence in the country has ever been lawful (*see generally id.*). On September 10, 2025, Florida law enforcement encountered Petitioner

during a traffic stop, and the next day, he entered Department of Homeland Security ("DHS") custody. (*See* Resp. 2 (citations omitted)).[1] On September 25, 2025, Petitioner was transferred to Krome, where he now remains. (*See id.*, Ex. C, Detention History [ECF No. 6-3]; Pet. ¶ 12; Resp. 3 (citation omitted)). On September 27, 2025, DHS filed a Notice to Appear, charging Petitioner with removability. (*See* Pet. ¶ 15 (citation omitted); Resp. 2–3 (citation omitted)).

On December 4, 2025, Petitioner moved for a custody hearing in the Krome immigration court, and six days later, the Immigration Judge ("IJ") denied the motion, finding the court lacked jurisdiction over the bond proceedings due to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). (*See* Resp. 3 (citations omitted)). On December 30, 2025, Petitioner again moved for a custody hearing in the Krome immigration court ("Bond Motion"). (*See* Pet. ¶ 16 (citation omitted); Resp. 3 (citation omitted)). On January 8, 2026, the IJ entered an order taking "no action" on Petitioner's Bond Motion. (*Id.* (citation omitted); *see* Pet. ¶ 17). Petitioner's next hearing before the Krome immigration court is on March 2, 2026. (*See* Resp. 3 (citation omitted)).

On January 16, 2026, Petitioner filed the Petition, requesting the Court issue a writ of habeas corpus requiring Respondents to either release Petitioner or afford him a bond hearing. (*See* Pet. 12; *see also id.* 12–13 (requesting other forms of relief)). Petitioner asserts two claims for relief based on violations of: the Immigration and Nationality Act ("INA"), 8 U.S.C. sections 1225–26, and the Administrative Procedure Act ("APA"), 5 U.S.C. sections 553, 555, 706 (Count I) (*see* Pet. ¶¶ 60–64; *see also id.* ¶¶ 22–43, 55–59); and the Fifth Amendment to the U.S. Constitution (Count II) (*see* Pet. ¶¶ 65–68; *see also id.* ¶¶ 44–54). Respondents maintain the relief Petitioner seeks is not available under any of the theories he asserts, and that Petitioner cannot

[1] The Court uses the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

bring his claims because he has not exhausted available administrative remedies. (*See generally* Resp.).

II. LEGAL STANDARD

District courts have the authority to grant writs of habeas corpus. *See* 28 U.S.C. § 2241(a). Habeas corpus is fundamentally "a remedy for unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (citation omitted). A writ may be issued to a petitioner who demonstrates he is being held in custody in violation of the Constitution or federal law. *See* 28 U.S.C. § 2241(c)(3). The Court's jurisdiction extends to challenges involving immigration-related detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

III. DISCUSSION

The Court begins by addressing the issue of exhaustion and then considers Petitioner's claims regarding his continued detention without a bond hearing.[2]

Exhaustion. Respondents appear to contend Petitioner has not exhausted all available administrative remedies because he has not appealed his case to the Board of Immigration Appeals ("BIA"). (*See* Resp. 10). Petitioner notes that courts have found pursuit of administrative relief in his situation futile due to *Yajure Hurtado* — a BIA decision requiring IJs to conclude that noncitizens, like Petitioner, who have resided in the United States for years without admission or parole are subject to mandatory detention without bond under 8 U.S.C. section 1225(b)(2). (*See* Pet. ¶ 39 (citation omitted)). The Court has previously held that *Yajure Hurtado* renders the

[2] According to Respondents, the only proper Respondent in this action is "Assistant Field Office Director Charles Parra" and so the remaining Respondent should be dismissed. (Resp. 1 n.1). Petitioner appears to interpret this request to mean he must substitute in a different party. (*See* Reply 3–4). But Petitioner's pleading lists as the first Respondent "Assistant Director, . . . Miami Field Office[.]" (Pet. 1 (alterations added; capitalization altered; emphasis omitted); *see also id.* ¶ 10 (listing Respondent "Miami Field Office Assistant Director")). Respondents do not assert that Petitioner did not sue Charles Parra in his official capacity. (*See* Resp. 1 n.1).

outcome of any appeal of the detention of an individual such as Petitioner "nearly a foregone conclusion[,]" and therefore relieves Petitioner of any exhaustion requirements. *Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-Civ, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025) (alteration added; citations omitted). Respondents supply no reason to depart from *Puga*'s reasoning, and the Court therefore finds that Petitioner is not required to challenge his detention before the BIA.

Violation of the INA (Count I). Whether Respondents have violated the INA turns on which of its provisions, section 1225(b) or section 1226(a), governs Petitioner's detention. Petitioner asserts that because he was residing in the United States at the time of his detention, section 1226(a) — which "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings[,]" *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis and alteration added) — governs his detention (*see, e.g.*, Pet. ¶¶ 61–62; *see also id.* ¶¶ 22–42). Respondents contend that because Petitioner has not been deemed eligible for admission into the United States, he is an "applicant for admission" as defined in section 1225(a)(1), and subject to mandatory detention thereunder. (Resp. 4; *see also id.* 3–9). Like their exhaustion arguments, the parties' contentions concerning the applicability of section 1225(b) or 1226(a) of the INA are also familiar. *See generally Puga*, 2025 WL 2938369.

In *Puga*, the Court rejected the arguments Respondents make here. *See generally id.*; (*see also* Pet. ¶ 41 (citations omitted)). Once again, Respondents do not persuade that the Court's prior conclusion was in error or that the facts of this case merit a different outcome. Consequently, as in *Puga*, the Court concludes that section 1226(a) — not section 1225(b) — governs Petitioner's

detention. *See Puga*, 2025 WL 2938396, at *4–5. Petitioner is entitled to an individualized bond hearing as a detainee under section 1226(a).[3, 4]

IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Petitioner, Norberto Benitez Hernandez's Petition for Writ of Habeas Corpus **[ECF No. 1]** is **GRANTED in part**. Respondents shall afford Petitioner an individualized bond hearing consistent with 8 U.S.C. section 1226(a) or otherwise release Petitioner.

2. Count II is **DISMISSED without prejudice**.

DONE AND ORDERED in Miami, Florida, this 28th day of January, 2026.

Cecilia M. Altonaga

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record

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[3] Because the Court finds for Petitioner on Count I based on an INA violation, it does not reach the parties' contentions regarding the APA (*see* Pet. ¶¶ 55–59, 61; Resp. 16–17), or *Maldonado Bautista v. Santacruz*, No. 25-cv-01873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) (*see* Pet. ¶¶ 42–43, 63–64; Resp. 10–16).

The Court likewise declines to reach the merits of Count II, a Fifth Amendment due process claim, as the Court grants the relief Petitioner seeks in Count I. (*See* Pet. ¶¶ 65–68; Resp. 9); *see, e.g.*, *Puga*, 2025 WL 2938396, at *6 (citing *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *8 (E.D. Mich. Sep. 9, 2025)). If Respondents fail to provide Petitioner a bond hearing in compliance with this Order, Petitioner may renew his due process claim. And because Count II is an unripe claim contingent on Petitioner not receiving a custody determination hearing under 8 U.S.C. section 1226(a), "the Court must dismiss it without prejudice[.]" *Babilla v. Allstate Ins. Co.*, No. 20-cv-1434, 2020 WL 6870610, at *1 (M.D. Fla. Aug. 27, 2020) (alteration added; citations omitted); *see also Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580–81 (1985))).

[4] The Court also declines to address Petitioner's perfunctory request for costs and attorney's fees, as he supplies no basis for such an award. (*See* Resp. 13); *see In re Atlas Roofing Corp. Chalet Shingle Prods. Liab. Litig.*, No. 13-md-2495, 2018 WL 2929831, at *9 (N.D. Ga. June 8, 2018) (plaintiff not entitled to attorney's fees where he "provided no viable statutory or contractual basis for an award of attorneys' fees, and the [c]ourt can discern no basis from the record for awarding attorneys' fees other than [a] conclusory request in the" complaint (alterations added; citation omitted)).