

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION**

Maikel Nazaret Jose Sosa-Mosquera v. Unknown Party #1 et al.

Sosa-Mosquera · No. 1:26-cv-635 · Decided March 19, 2026

OPINION

Sosa-Mosquera

PER CURIAM.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MAIKEL NAZARET JOSE SOSA-
MOSQUERA,

Case No. 1:26-cv-635 Petitioner, Honorable Paul L. Maloney v. UNKNOWN PARTY #1 et al.,
Respondents. _____/

OPINION

Petitioner, a United States Immigration and Customs Enforcement (ICE) detainee currently detained at the North Lake Processing Center located in Baldwin, Lake County, Michigan, initiated this action by filing a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Pet., ECF No. 1.) For the following reasons, the Court will conditionally grant Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Discussion I. Procedural History In Petitioner's § 2241 petition, Petitioner challenges the lawfulness of his current detention and asks the Court to issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241 either ordering Respondents to release Petitioner or ordering Respondents to conduct a bond hearing to satisfy the requirements of due process. (Pet., ECF No. 1, PageID.3.) In an order entered on February 27, 2026, the Court directed Respondent to show cause, within three business days, why the writ of habeas corpus and other relief requested by Petitioner should not be granted. (Order, ECF No. 5.) Respondents filed their response on March 3, 2026, (ECF No. 6). Petitioner did not file a reply. II. Factual Background Petitioner is a native and citizen of Venezuela. (Pet., ECF No. 1, PageID.2; 2022 Form I- 213, ECF No. 6-1, PageID.56.) Petitioner entered the United States in 2022 (Id.) He contends he surrendered to the Department of Homeland Security (DHS) and was placed under humanitarian parole pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA). (Pet., ECF No. 1, PageID.2.) On or about February 1, 2023, DHS agents encountered Petitioner in Ohio. (2023 Form I- 220A, ECF No. 6-2, PageID.58.) DHS agents served Petitioner with a Notice to Appear charging him with inadmissibility under §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the

Immigration and Nationality Act (INA) because Petitioner is an immigrant “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,” and “who, at the time of application for admission, is not in possession of a valid unexpired [immigration or travel document].” (2023 I-862, ECF No. 6-3, PageID.64–68.) Petitioner was released on his own recognizance. (2023 Form I-220A, ECF No. 6- 2, PageID.58–62.) Petitioner timely applied for asylum, withholding of removal, and protection under the Convention Against Torture. (Pet., ECF No. 1, PageID.2). On May 1, 2025, an Ohio Immigration Judge issued a decision denying Petitioner’s application for asylum, withholding of removal, and protection under the Convention Against Torture. (Order Immigration Judge, ECF No. 6-3, PageID.69–72.) The Immigration Court also ordered Petitioner removed to Venezuela. (Id.) Petitioner filed an appeal to the Board of Immigration Appeals (BIA), which remains pending. (ECF No. 1, PageID.2.) Petitioner asserts that his appeal has been pending since June 2025. (ECF No. 1, PageID.2.) Because Petitioner’s appeal to the BIA remains pending, Petitioner’s order of removal is not “administratively final” for purposes of the INA.¹ See 8 U.S.C. §§ 1101(a)(47)(B), 1231(a)(1)(B)(i), 1231(a)(2)(A). ICE agents arrested Petitioner “on [his] way to work on September 5, 2025.” (Decl., ECF No. 1-1, PageID.8.) He has been detained for five and a half months. (Id.).

III. Habeas Corpus Legal Standard

The Constitution guarantees that the writ of habeas corpus is “available to every individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). Section 2241 of Title 28 confers the federal courts with the power to issue writs of habeas corpus to persons “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241. This includes challenges by non-citizens in immigration- related matters. See *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); see also *A. A. R. P. v. Trump*, 145 S. Ct. 1364, 1367 (2025).

1 Section 1231 of Title 8, titled, “Detention and removal of aliens ordered removed,” provides in relevant part that, “[d]uring the removal period, the Attorney General shall detain the alien.” 8 U.S.C. § 1231(a)(2)(A). However, as relevant to this case, the removal period does not begin to run until “[t]he date the order of removal becomes administratively final.” Id. § 1231(a)(1)(B)(i). For the purposes of § 1231(a)(1)(B)(i), a removal order “shall become final upon the earlier of (i) a determination by the Board of Immigration Appeals affirming such an order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.” Id. § 1101(a)(47)(B); see *Jusufi v. Chertoff*, No. 07-15450, 2007 WL 4591760, at *4 (E.D. Mich. Dec. 28, 2007) (discussing that a final removal order becomes administratively final when the BIA denies an appeal of it); see also *Johnson v. Guzman Chavez*, 594 U.S. 523, 534–35 (2021) (“[O]nce the BIA has reviewed [and affirmed] the [removal] order (or the time for seeking the BIA’s review has expired), DHS is free to remove the alien unless a court issues a stay. That reinforces why Congress included ‘administratively’ before the word ‘final’ in the first provision.”). Because Petitioner’s appeal to the BIA remains pending, § 1231

does not apply, and § 1226(a) governs Petitioner's detention. See *Johnson*, 594 U.S. at 533 ("The parties agree that § 1226 governs the detention of aliens until § 1231's 'removal period' begins.")).

IV. Exhaustion Respondent argues that the Court should deny Petitioner's request for habeas corpus relief because Petitioner has not exhausted his administrative remedies. Specifically, Respondent argues that Petitioner should pursue a bond hearing and, if necessary, appeal any unfavorable decision to the Board of Immigration Appeals. The Court declines to enforce the doctrine of prudential exhaustion against Petitioner, and even if the Court were to conclude that exhaustion is warranted, the Court concludes in the alternative that waiver of exhaustion is appropriate, for the reasons set forth in the Court's exhaustion analysis in each of the following cases: *Antele Cobix v. Raycraft*, No. 1:25-cv-1669, 2025 WL 3562651, at *2–3 (W.D. Mich. Dec. 12, 2025); *Candela Bastidas v. Noem*, No. 1:25-cv- 1528, 2025 WL 3562638, at *2–4 (W.D. Mich. Dec. 12, 2025); *Acuna Sanchez v. Noem*, No. 1:25- cv-1442, 2025 WL 3562577, at *2–4 (W.D. Mich. Dec. 12, 2025); *Penagos Robles v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-1578, 2025 WL 3558128, at *2–3 (W.D. Mich. Dec. 12, 2025). Accordingly, the Court will proceed to address the merits of Petitioner's § 2241 petition.

V. Merits Discussion A. Statutory Basis for Petitioner's Detention Petitioner contends that Respondent has violated the INA by concluding that Petitioner is detained pursuant to the mandatory detention provisions set forth in 8 U.S.C. § 1225(b)(2). Respondent, however, contends that Petitioner meets every element for detention under § 1225(b)(2), and that the statute's structure and history support Respondent's interpretation. The Court concludes that § 1226(a), not § 1225(b)(2)(A), governs noncitizens, such as Petitioner, who have resided in the United States and were already within the United States when apprehended and arrested for the reasons set forth in the Court's statutory analysis in each of the following cases: *Antele Cobix v. Raycraft*, No. 1:25-cv-1669, 2025 WL 3562651, at *3–6 (W.D. Mich. Dec. 12, 2025); *Candela Bastidas v. Noem*, No. 1:25-cv-1528, 2025 WL 3562638, at *4–6 (W.D. Mich. Dec. 12, 2025); *Acuna Sanchez v. Noem*, No. 1:25-cv-1442, 2025 WL 3562577, at *4–7 (W.D. Mich. Dec. 12, 2025); *Penagos Robles v. U.S. Dep't of Homeland Sec.*, No. 1:25- cv-1578, 2025 WL 3558128, at *3–6 (W.D. Mich. Dec. 12, 2025).²

B. Fifth Amendment Due Process Considerations Petitioner also argues that his detention violates the Fifth Amendment's Due Process Clause. Respondent counters Petitioner's arguments by stating that Petitioner has received notice of the charges against him, has access to counsel, may attend hearings with an immigration judge, can request bond at that time, has the right to appeal the denial of any request for bond, and has been detained by ICE for a relatively short period of time. The Court concludes that Petitioner's current detention under the mandatory detention framework set forth in § 1225(b)(2)(A) violates Petitioner's Fifth Amendment due process rights for the reasons set forth in the Court's constitutional analysis in each of the following cases: *Antele Cobix v. Raycraft*, No. 1:25-cv-1669, 2025 WL 3562651, at *6–8 (W.D. Mich. Dec. 12, 2025); *Candela Bastidas v. Noem*, No. 1:25-cv-1528, 2025 WL 3562638, at *7–8 (W.D. Mich. Dec. 12, 2025); *Acuna Sanchez v. Noem*, No. 1:25-cv-1442, 2025 WL 3562577, at *7–9 (W.D. Mich. Dec. 12,

2025); *Penagos Robles v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-1578, 2025 WL 3558128, at *6–8 (W.D. Mich. Dec. 12, 2025). 2 The Court is aware of *Buenrostro-Mendez v. Bondi*, No. 25-20496, --- F.4th ---, 2026 WL 323330 (5th Cir. Feb. 6, 2026), which was recently issued by the United States Court of Appeals for the Fifth Circuit. At this time, this non-binding case does not change the Court's analysis. VI. Other Claims and Other Forms of Relief Because the Court will conditionally grant Petitioner's § 2241 petition as set forth herein, the Court does not address other claims and other requested relief in Petitioner's § 2241 petition. VII. Proper Respondents Respondents argue that the Detroit ICE Field Office Director is the only proper Respondent in this action, and they seek the dismissal of all other named Respondents.³ The Court concludes that the ICE Detroit Field Office Director is not the only proper Respondent for the reasons set forth in the Court's analysis of the same argument in each of the following cases: *Antele Cobix v. Raycraft*, No. 1:25-cv-1669, 2025 WL 3562651, at *8–9 (W.D. Mich. Dec. 12, 2025); *Candela Bastidas v. Noem*, No. 1:25-cv-1528, 2025 WL 3562638, at *8–9 (W.D. Mich. Dec. 12, 2025); *Acuna Sanchez v. Noem*, No. 1:25-cv-1442, 2025 WL 3562577, at *9–10 (W.D. Mich. Dec. 12, 2025); *Penagos Robles v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-1578, 2025 WL 3558128, at *9–10 (W.D. Mich. Dec. 12, 2025). Nonetheless, the Court will dismiss the Department of Homeland Security and ICE as Respondents. Conclusion For the reasons discussed above, the Court will enter a judgment conditionally granting Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. (ECF No. 1.) The Court will order Respondent to provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within five business days of the date of this Court's opinion and judgment with notice to the Parties as soon as practicable, no later than 24 hours prior to the scheduled hearing or, in the alternative, 3 The Court previously dismissed the Warden of North Lake Processing Center as a Respondent. (Order, ECF No. 5.) immediately release Petitioner from custody.⁴ The Court will also order Respondent to file a status report within six business days of the date of this Court's opinion and judgment to certify compliance with this opinion and the corresponding judgment. The status report shall include if and when the bond hearing occurred, if bond was granted or denied, and if bond was granted, the conditions of the bond, or if bond was denied, the reasons for the denial. Finally, the Court will dismiss the Department of Homeland Security and ICE as Respondents. Dated: March 19, 2026 /s/ Paul L. Maloney Paul L. Maloney United States District Judge 4 This Court has adopted a standard practice of requiring such a hearing within five business days, even if the Petitioner requests a deadline that is shorter or longer.