



June 17, 2025

By ECF
The Honorable George B. Daniels
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Valdez v. Joyce*, No. 25-cv-4627 (GBD)

Dear Judge Daniels:

Petitioner Yefry Valdez writes to respond to Respondents' submission of a decision in another case, *Castillo v. Joyce*, 1:25-cv-04693 (SDNY June 16, 2025), to support their argument that Mr. Valdez should exhaust his administrative remedies in immigration court before raising his due-process challenges to detention before this Court. (ECF No. 12). *Castillo* began as a challenge to the use of expedited removal against an individual who cannot lawfully be subject to expedited removal—an error Respondents belatedly remedied after he filed a habeas petition. Because of that, the petitioner there is in an appreciably different posture than Mr. Valdez. Those differences counsel a different outcome here for several reasons.

First, Mr. Castillo is indisputably eligible for a bond hearing. By contrast, despite Respondents' counsel's representations to the contrary, the Department of Homeland Security's own rules provide for Mr. Valdez's mandatory detention without access to a bond hearing. In *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025), a case which is binding on immigration judges, the Board of Immigration Appeals recently held: "an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)." Mr. Castillo was apprehended years after entry and does not fall under the ambit of *Matter of Q. Li*.

The same is not true for Mr. Valdez. Respondents have stated that Mr. Valdez was "encountered Valdez at or near the Lukeville Port of Entry near Ajo, Arizona" and taken into

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161 PORT RICHMOND AVENUE
STATEN ISLAND, NY 10302
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LONG ISLAND
1090 SUFFOLK AVENUE
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custody, Eugenie Decl. at 4 (ECF No. 10), placing him within the ambit of *Matter of Q. Li*. Because Mr. Valdez is now subject to *mandatory* detention, exhaustion is futile. *See* Pet. Reply at 5 (ECF No. 11).

Second, the petitioner in *Castillo* also does not face the imminent prospect of dismissal of his proceedings as a prelude to expedited removal, which would also activate mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(A). In that case, after Mr. Castillo filed a habeas petition, Respondents conceded their error in dismissing his immigration court proceedings, canceled the expedited removal order issued against him, and once again commenced removal proceedings. Accordingly, the status of his removal proceedings is resolved and he no longer faces the prospect of mandatory detention pursuant to 8 U.S.C. § 1225(b)(1)(A). The motion to dismiss in Mr. Valdez’s case, by contrast, has not yet been adjudicated and remains pending.

Finally, as he set forth in Mr. Valdez’s brief, even a bond hearing pursuant to 8 U.S.C. § 1226(a) would not vindicate Mr. Valdez’s right to due process. His detention violates his right to substantive due process, insofar as it serves no purpose, which compels his release. *Cf. Ozturk v. Trump*, No. 2:25-CV-374, 2025 WL 1145250, at *14–15 (D. Vt. Apr. 18, 2025) (by urging the Court to impose an administrative exhaustion requirement, “the government argues that § 1226(a) grants practically limitless, unreviewable power to detain individuals for weeks or months, even if the detention is patently unconstitutional”), *amended on other grounds sub nom. Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025).

The violation of Mr. Valdez’s right to procedural due process also requires release, *see* Pet. Reply at 6, or at a minimum a hearing at which Respondents bear the burden of justifying Mr. Valdez’s return to confinement—not the other way around. *Cf.* Pet. Reply at n. 5 (Mr. Valdez would bear the burden in a bond hearing pursuant to § 1226(a), which the Second Circuit has held violates due process in the prolonged detention context). *Cf. J.C.G. v. Genalo*, No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *5 (S.D.N.Y. Jan. 14, 2025) (“courts in this District routinely excuse noncitizens’ failure to exhaust administrative remedies when noncitizens challenge the burden allocation at a Section 1226(a) bond hearing.”)

For the foregoing reasons, Mr. Valdez asks the Court not to impose a prudential exhaustion requirement and to order an end to his unlawful confinement.

Respectfully submitted,

/s/ Paige Austin

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