UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ANGEL MARIO DE ALVA-ESCOBEDO, *Petitioner*, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; et al., *Respondents*.	§ § § § § § § § § § §	Civil Action No. 1:25-cv-00219

REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

As of two weeks ago, "[o]nly three of the thirty-eight decisions . . . citing the BIA's decision in *Yajure Hurtado*, have denied the relief requested by the noncitizen." *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at *5 (D. Colo. Oct. 17, 2025). None of Respondents' arguments here in opposition is persuasive because Petitioner's detention is pursuant to 8 U.S.C. § 1226(a), which permits release from detention on bond. The Court should therefore grant this petition.

To begin, it is difficult to follow Respondents' contentions that "[o]rdering his release . . . produces no net gain to Petitioner." Dkt. 10, at 6; *see Hamdi v.*

Rumsfeld, 542 U.S. 507, 529 (2004) (freedom from physical restraint "is the most elemental of liberty interests"). Petitioner is confined and separated from his family, including five U.S.-citizen children. Similarly, Respondents' argument is nebulous that "[a]s Petitioner exercised his right to request a bond determination hearing in his ongoing removal proceedings, he has had an opportunity to be heard by an IJ . . . on the issue of his right to be released on a bond." Dkt. 10, at 13-14. Indeed, the IJ ordered Petitioner released on bond; this petition results from Respondents' refusal to abide by that order.

Respondents are even further afield about exhaustion. The Opposition is wrong that "[f]or purposes of 28 U.S.C. § 2241 relief, exhaustion of administrative remedies is jurisdictional. *See Swain v. Pressley*, 430 U.S. 372, 383 (1977)." Dkt. 10, at 15. *Swain* contains no such holding; nor does *McCarthy v. Madigan*, 503 U.S. 140 (1992). Exhaustion as applicable here is a prudential requirement to ensure that federal courts "allow an administrative agency to perform functions within its special competence—to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies." *Parker v. Sessions*, No. CV H-18-2261, 2018 WL 11491450, at *2 (S.D. Tex. July 16, 2018). Petitioner has satisfactorily exhausted his administrative remedies by receiving a favorable bond determination from the IJ. Further proceedings before the BIA are not required. *See, e.g.*, *Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL

2950096, at *6 (S.D. Tex. Oct. 3, 2025) ("Numerous courts considering the exhaustion issue for noncitizen detainees have concluded that exhaustion would be futile and/or should be excused because the average wait to be heard in the BIA is more than six months."); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025) ("Requiring him to wait, indefinitely, for a ruling on [a BIA] appeal would be inappropriate because it would exacerbate his alleged constitutional injury—detention without a bond hearing. Bond denial appeals typically take six months or more to be resolved at the BIA. The prevention of six months or more of unlawful detention thus outweighs the interests the BIA might have in resolving [an appeal]." (internal quotation marks and citations omitted)).

Moreover, where the agency position is precedentially set in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), prudential exhaustion should be excused as futile. *See, e.g., Puga v. Asst. Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-CIV, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025) ("Other district courts have similarly excused administrative exhaustion following the BIA's decision in *Matter of Yajure Hurtado*. . . . Since the result of Petitioner's custody redetermination and any subsequent bond appeal to the BIA is nearly a foregone conclusion under *Matter of Yajure Hurtado*, any prudential exhaustion requirements are excused for futility.").

Respondents raise 8 U.S.C. §§ 1252(g) and (b)(9), along with § 1226(e), as jurisdictional bars, citing *SQDC v. Bondi*, No. 25-3348, 2025 WL 2617973 (D. Minn. Sept. 9, 2025). Dkt. 10, at 11-12. With respect to § 1252, "*S.Q.D.C.* appears to represent an extreme minority position, both in its own district and nationally. *See A.A. v. Olson*, No. 25-cv-3381, 2025 WL 2886729, at *5 (D. Minn. Oct. 8, 2025) (collecting cases)." *Gonzalez Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *2 (W.D. Tex. Oct. 21, 2025). "[M]any other courts have specifically found that § 1252(b)(9) does not present a jurisdictional bar to habeas challenges to immigration detention." *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *5 (W.D. Tex. Oct. 2, 2025); *see also id.* at *4 ("[I]n this Court, [Petitioner] does not challenge the continued adjudication of her removal proceedings. Instead, she challenges her ongoing detention. Such claims are not barred by § 1252(g)."); *see generally Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).

While conceding that Petitioner's due-process claim is unaffected, Dkt. 10, at 12, Respondents offer no authority to support their contention under § 1226(e) that refusing bond denial to Petitioner is discretionary. *See Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947, at *5 (D. Minn. Oct. 1, 2025) ("[C]ustody proceedings are independent of 'commencing' removal proceedings under § 1226, for which a separate jurisdictional provision applies, 1226(e).

Respondents' position that detention is mandatory for all who enter without inspection would effectively remove discretion, and would render § 1226(e) inapplicable, and § 1252(g) irrelevant." (citation modified)).

Finally, Respondents do not address this Court's recent conclusion that the automatic-stay regulation applicable if DHS appeals an IJ's bond determination to the BIA "is likely ultra vires in that it allows DHS to unilaterally stay an IJ's order of release on bond and thus interferes with the Attorney General's—and thereby an IJ's—statutory power to 'release [an] alien on . . . bond.' 8 U.S.C. § 1226(a)(2)." Case No. 1:25-cv-00181, Dkt. 11 (order on Temporary Restraining Order, Aug. 26, 2025); *see also id.* (concluding that the regulation also "likely violates due process").

For these reasons, and Petitioner's meritorious statutory and due-process arguments as elaborated in his petition, he should be ordered released.

DATED: October 29, 2025.

Respectfully submitted,

By: /s/ Jaime Diez

JAIME DIEZ
Attorney at Law
Jones & Crane

Texas State Bar Number 00783966
Southern District of Texas No. 23198

PO BOX 3070
Brownsville, Texas 78523
Telephone: (956) 544-3565
Fax: (956) 550-0006

CERTIFICATE OF SERVICE

I hereby certify that the foregoing response was served this day on all counsel of record through the Court's ECF Filing System.

s/ Jaime Diez
Attorney at Law
Plaintiff