UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No: 1:25-cv-24535-ALTONAGA

VICTOR MANUEL ALVAREZ PUGA,

Petitioner,

v.

ASSISTANT FIELD OFFICE DIRECTOR, KROME NORTH SERVICE PROCESSING CENTER, *et al.*,

Respondents.

PETITIONER'S REPLY TO FEDERAL GOVERNMENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Respondents do not contest that Petitioner is not a flight risk or a danger to the community, or that his continued detention constitutes irreparable harm. *See United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022) ("[F]ailure to raise an issue in an initial brief . . . should be treated as a forfeiture of the issue[.]"); *Watkins v. Session*, No. 19-60810-CIV, 2023 WL 2302876, at *3 (S.D. Fla. Feb. 28, 2023) (holding that a plaintiff "forfeited" an argument not raised in his briefing); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (civil detention is only permissible to "ensur[e] the appearance of aliens at future immigration proceedings" and to "[p]revent[] danger to the community"). Rather, Respondents claim (1) that the petition should be dismissed for failure to exhaust administrative remedies; and (2) that Petitioner's detention is lawful and governed by 8 U.S.C. § 1225(b)(2)(A), which subjects him to mandatory detention without any opportunity to administratively challenge his detention. Neither of these claims, raised repeatedly by the government across the country, have found a meaningful foothold with any court.

This Court should join the ever-growing line of courts rejecting these very same arguments and hold that Petitioner's detention is governed by 8 U.S.C. § 1226(a), and order that Petitioner be released, or at minimum, order Respondents to provide Petitioner a constitutionally adequate individualized bond hearing under 8 U.S.C. § 1226(a).[1] **As Petitioner is currently scheduled to**

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[1] *See, e.g.*, *Pizzaro Reyes v. Raycraft*, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) *Gomes v. Hyde*, 2025 WL 1869299 at *5–6 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1255-1260 (W.D. Wash. 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180 (S.D. Ca. Sept. 3, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379; *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Rosado v. Figueroa et al.*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis et al.*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25 cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde, et al.*, No. 1:25-cv-11631-BEM, 2025 WL

appear before an Immigration Judge on October 16, 2025, Petitioner respectfully requests a ruling on his habeas petition prior to that date so that he can have a meaningful bond hearing on that date.[2]

ARGUMENT

I. The Court Should Reject Respondents' Invocation of Administrative Exhaustion

Respondents contend that the petition should be dismissed because Petitioner has failed to exhaust his administrative remedies. ECF No. 5 at 3. They argue that Petitioner should be required to appeal his designation as subject to detention under 8 U.S.C. § 1225(b) to the Board of Immigration Appeals ("BIA"). ECF No. 5 at 3. But forcing Petitioner to exhaust—a requirement which has no statutory basis for writs of habeas corpus under 28 U.S.C. § 2241—is inconsistent with the intent and purpose of administrative exhaustion, and should be rejected. *See, e.g.*, *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) ("[28 U.S.C. § 2241] does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus."); *Parisi v. Davidson*, 405 U.S. 34, 37 (1972) ("The basic purpose of the exhaustion doctrine is to 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.").

In *Ross v. Blake*, 578 U.S. 632, 136 S. Ct. 1850, 195 L.Ed.2d 117 (2016), the Supreme Court addressed the exhaustion requirement in the Prison Litigation Reform Act, 42 U.S.C. §

2403827 (D. Mass. Aug. 19, 2025); *Benitez et al. v. Noem et al.*, No. 5:25-cv-02190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump et al.*, No. 3:25-cv 01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Singh v. Lewis*, No. 4:25-cv-00096 (W.D. Ky. Sep 22, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025).

[2] As discussed *infra*, absent a ruling from this Court holding that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b), the Immigration Judge will be without power to conduct a meaningful bond hearing.

1997e—a requirement, as noted above, not included for claims under 28 U.S.C. § 2241. Despite the statutorily-based exhaustion requirement, the Court held inmates do not need to exhaust remedies that are "unavailable" such that the remedy "operates as a simple dead end—with officers unable or consistently unwilling to provide any relief," *id.* at 643, 136 S. Ct. 1850; or (2) "an administrative scheme [is] so opaque that it becomes, practically speaking, incapable of use," *id*; *see also Turner v. Burnside*, 541 F.3d 1077, 1084 (11th Cir. 2008) ("A remedy has to be available before it must be exhausted, and to be 'available' a remedy must be 'capable of use for the accomplishment of [its] purpose.") (quoting *Goebert v. Lee County,* 510 F.3d 1312, 1322-23 (11th Cir. 2007)).

Requiring exhaustion serves no purpose here. The result of Petitioner's custody redetermination, and any subsequent bond appeal to the BIA, is a foregone conclusion in light of *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216, 220 (BIA 2025). In *Matter of Yajure Hurtado*, the BIA held that all noncitizens who entered the United States without admission or parole are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are ineligible for bond hearings. *Matter of Yajure Hurtado* is binding on immigration judges and the BIA, and as *Matter of Yajure Hurtado* and Respondents' positions on the application of 8 U.S.C. § 1225(b)(2), are one and the same, the conclusion of the administrative process can be readily presumed and would not provide for an adequate remedy. *United States v. Barbieri*, No. 18-20060-CR, 2021 WL 2646604, at *2 (S.D. Fla. June 28, 2021) ("The Court recognizes . . . that administrative exhaustion may be unnecessary where the administrative process would be incapable of granting adequate relief.") (citing *United States v. Gallagher*, 473 F. Supp. 3d 1362, 1367 (S.D. Fla. 2020)); *id.* ("[E]xhaustion may be unnecessary where pursuing administrative review would generate undue prejudice due to an unreasonable or indefinite timeframe for administrative action."); *Gibson v. Berryhill,* 411 U.S.

564, 575 (1973) (holding that appellee was not required to exhaust state administrative remedies where "the question of the adequacy of the administrative remedy . . . was for all practical purposes identical with the merits of appellees' lawsuit").

Respondents' reliance on *Monroy Villalta v. Greene*, No. 4:25-CV-01594, 2025 WL 2472886, at *2 (N.D. Ohio Aug. 5, 2025), is of no moment as that decision was issued one month prior to *Matter of Yajure Hurtado*. Thus, at the time that decision was issued, the BIA had not spoken precedentially on this issue. Respondents provide no other case, post-*Matter of Yajure Hurtado*, to demonstrate the prudence of awaiting a BIA decision. Indeed, Respondents' own characterization of *Matter of Yajure Hurtado* makes clear that the agency will not provide a meaningful remedy. *Cf. Ross*, 578 U.S. at 642 ("[T]he ordinary meaning of the word 'available' is 'capable of use for the accomplishment of a purpose,' and that which 'is accessible or may be obtained.'") (cleaned up); ECF No. 5 at 6-8.

Petitioner will continue to be subject to unlawful detention should the Court wait on the administrative process to conclude, with bond appeals taking up to six months, and such continued detention constitutes irreparable harm further justifying waiver of exhaustion. *Rodriguez*, 779 F. Supp. 3d at 1245. Moreover, administrative exhaustion is less served in instances where the Court is called upon to address a purely legal question, to wit: what detention statute governs. *See, e.g.*, *Ulysse v. DHS,* 291 F. Supp. 2d 1318, 1324 (M.D. Fla. 2003) ("Ulysse's claim that she is being unlawfully detained because Respondents have violated the removal statute is a pure question of law, and therefore, clearly within the habeas jurisdiction of this Court.") (citing *Zadvydas*, 533 U.S. at 688, 121 S. Ct. 2491); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) ("a record of administrative appeal is not germane to the purely legal question of what standard is most

appropriate for such hearings."). Any further insight from the administrative body is not needed considering the agency has already spoken on the issue in *Matter of Yajure Hurtado*.

Many courts have not required exhaustion in similar circumstances, and there is no basis in the present case to justify a different result. *See, e.g.*, *Singh v. Lewis*, No. 4:25-cv-00096, 2025 WL 2699219, at *5 (W.D. Ky. Sep 22, 2025) ("Courts within this district and across the country have waived exhaustion under similar circumstances. Therefore, this Court will follow their fellow trial courts and waive the exhaustion requirement for Singh and reach the merits of his Petition"); *Romero*, 2025 WL 2403827, at *5-8 (waiving exhaustion requirement because further BIA proceedings would be futile given the BIA's position articulated in *Matter of Q. Li*); *Rodriguez*, 779 F. Supp. 3d at 1252-53 (not requiring exhaustion when it will result in the irreparable injury of prolonged detention without a bond hearing); *Lopez-Campos,* 2025 WL 2496379, at *4 (same); *Pizarro*, 2025 WL 2609425; *Sampiao v. Hyde*, 1:25-CV-11981-JEK, 2025 WL 2607924, at *7 (D. Mass. Sept. 9, 2025).

II. 8 U.S.C. § 1226(a) Governs Petitioner's Detention

On the merits, the Government is wrong that Petitioner is subject to mandatory detention, without opportunity for bond. Properly construed, the statutory framework governing civil immigration detention makes clear that Petitioner's detention is governed by 8 U.S.C. § 1226(a)—which allows for release of noncitizens on bond—and not 8 U.S.C. § 1225(b)(2)(A), which imposes mandatory detention regardless of a noncitizen's lack of flight risk or danger.

As a threshold matter, at no point do Respondents acknowledge that the interpretation of the governing detention statutes they are now pressing constitutes a significant, material break from how the government has operated for decades. Had there been no such break, there would have been no need for DHS to issue a new policy memorandum, on July 8, 2025, instructing all

ICE employees to consider each person alleged inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—*i.e.*, those who are alleged to be present without admission—to be deemed an "applicant for admission," and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A), rather than discretionary detention under 8 U.S.C. § 1226(a). Nor would there have been a need for the BIA to issue *Matter of Yajure Hurtado*—only two months later—adopting this interpretation of the detention statutes.

The need for such recent actions after decades of contrary practice highlights a fact Respondents cannot escape: their newfound interpretation conflicts with the INA. Contrary to Respondents' contentions, detention under 8 U.S.C. § 1225(b)(2) applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Several textual indicators underscore this scope, including the statute's focus on recent arrivals, inspecting those arrivals, and requirement that those subject to detention under 8 U.S.C. § 1225(b)(2)(A) be "seeking admission." *See generally* 8 U.S.C. § 1225(a)-(b).

In another recent decision, *Matter of Q. Li*, the BIA's analysis closely tracks Petitioner's reading, as that decision explained § 1226(a) "applies to [noncitizens] already present in the United States," while § 1225(b) "applies primarily to [noncitizens] seeking entry into the United States and authorizes DHS to detain a[] [noncitizen] without a warrant at the border." 29 I. & N. Dec. 66, 70 (BIA 2025) (citation modified). Thus, Respondents' attempts to cast a noncitizen present in the United States without admission or parole as in a constant state of "seeking admission" has no basis in the statute. *See, e.g.*, *Chafla v. Scott*, No. 2:25-cv-00437, 2025 U.S. Dist. LEXIS 184909, at *17 (D. Me. Sept. 21, 2025) (a noncitizen seeking admission indicates that "the noncitizen is actively engaged in the exercise of being admitted to the United States, rather than currently

residing here and seeking to stay."); *Lopez Benitez v. Francis*, No. 25-CIV-5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025) (similar); *Martinez*, 2025 WL 2084238, at *6 (similar).

Moreover, in light of Petitioner's arrest pursuant to a warrant, *see* ECF No. 5-4 ("Warrant for Arrest of Alien" issued for Petitioner), the plain language of 8 U.S.C. § 1226(a) demonstrates its applicability to Petitioner. Section 1226(a) "authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings," *Jennings*, 583 U.S. at 289, "and it applies when a noncitizen is 'arrested and detained' '[o]n a warrant issued by the Attorney General.'" *Gomes*, 2025 WL 1869299, at *5 (quoting 8 U.S.C. § 1226(a)). Petitioner was arrested pursuant to a warrant over four years after his last entry to the United States. *See* ECF No. 5, Exhibit D. 8 U.S.C. § 1226(a) "authorizes detention *only* '[o]n a warrant issued' by the Attorney General," *Jennings*, 583 U.S. at 302, and 8 U.S.C. § 1225(b) contains no warrant requirement, *see* 8 U.S.C. § 1225(b). Indeed, the warrant issued to Petitioner expressly states that the authority under which he was subject to arrest was INA § 236, the corollary to 8 U.S.C. § 1226, further evincing the abrupt shift in the government's position.[3] Of note, *Matter of Q. Li* highlighted the absence of a warrant as signifying that a noncitizen's detention is governed by 8 U.S.C. § 1225(b). *See* 29 I. & N. Dec. at 69 ("we hold that 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

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[3] Notably, the Respondents' submissions establish that Petitioner was detained under 8 U.S.C. § 1226(a). The Notice of Custody Determination indicates that detention is authorized under INA § 236, 8 U.S.C. § 1226. ECF No. 5, Exhibit F. The Form I-213 indicates, under the heading "Custody Determination," that Petitioner "will remain detained pending IJ determination." ECF No. 5, Exhibit A. Should he be subject to mandatory detention, no further determination by an immigration judge would be necessary. Moreover, it appears that Petitioner's detention was re-classified as governed by 8 U.S.C. § 1225(b)(2)(A) on October 7, 2025, after the filing of the instant habeas petition and Petitioner's request for a custody redetermination hearing on October 3, 2025. ECF No. 5 at 2 n.1, Exhibit B.

U.S.C. § 1225(b).") (emphasis added). The use of a warrant is strong evidence that Petitioner may be detained, if at all, only pursuant to 8 U.S.C. § 1226(a).

Canons of interpretation reinforce that Petitioner is detained under 8 U.S.C. § 1226(a). The Respondents' interpretation subjects all inadmissible noncitizens to 8 U.S.C. § 1225 and its mandatory detention provisions. But such a reading renders superfluous significant portions of 8 U.S.C. § 1226(c) that reference inadmissible noncitizens, including the specific amendments at 8 U.S.C. § 1226(c)(1)(E) that Congress enacted just months ago by passing the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). *TRW Inc. v. Andrews,* 534 U.S. 19, 31, 122 S. Ct. 441, 151 L.Ed.2d 339 (2001) (explaining that construing a statute to avoid rendering any clause, sentence, or word "superfluous, void, or insignificant" "is a cardinal principle of statutory construction" (quotation omitted)). Contrary to Respondents' contention, their interpretation of 8 U.S.C. § 1225(b)(2) would in fact render 8 U.S.C. § 1226(c)(1)(E) superfluous. ECF No. 5 at 14-15. Indeed, the portion of *Matter of Yajure Hurtado* Respondents quote emphasizes the need for statutory interpretation to avoid rendering language "null and void," within the same breath it minimizes the impact of 8 U.S.C. § 1226(c)(1)(E), which deems a noncitizen subject to mandatory detention if he (i) is inadmissible under 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), or (7); and (ii) is charged with, arrested for, convicted of, or admits to committing certain crimes, as a "redundac[y]" that may have occurred "simply because of the shortcomings of human communication." ECF NO. 5 at 14-15; *see Rodriguez*, 779 F. Supp. 3d at 1259 (pointing to Laken Riley Act in rejecting government's overbroad reading of § 1225(b)).

Contrary to *Matter of Yajure Hurtado*'s framing, courts must "presume" that statutory amendments "have real and substantial effect," *Stone v. INS*, 514 U.S. 386, 397 (1995), and that "a new law [enacted] against the backdrop of a longstanding administrative construction . . .

work[s] in harmony with what has come before," *Monsalvo v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified). And such "harmony" is demonstrated by the fact that these newly established amendments render a noncitizen present without admission or parole subject to mandatory detention only when the criminal criterion is satisfied.

Further, Respondents' reliance on IIRIRA to redefine which individuals are subject to mandatory detention ignores contemporaneous administrative action and legislative history. ECF No. 5 at 9. After the enactment of IIRIRA, the Executive Office for Immigration Review explained that individuals like Petitioner were covered by 8 U.S.C. § 1226(a), and that IIRIRA, in this context, "maintain[ed] the status quo." *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination . . . The effect of this change is that inadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving [noncitizens] do not. This procedure maintains the *status quo* . . ."). This adhered to the intent of Congress in its passage of IIRIRA as it pertained to the availability of bond for noncitizens apprehended inside the United States. H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (explaining 8 U.S.C. § 1226(a) "restates" the existing discretionary detention framework under 8 U.S.C. § 1252(a)).[4]

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[4] Respondents' reliance on *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020), provides little support. ECF No. 5 at 13. *Ortega-Lopez* did not address the question of detention. Rather, it focused on the disparate burdens of proof in exclusion and deportation proceedings for noncitizens apprehended at the border (burden on noncitizen to establish they are not excludable) and those apprehended while present in the United States without inspection (burden on government to establish deportability). IIRIRA eliminated the two separate proceedings by creating removal proceedings, and ultimately placing noncitizens apprehended at the border and those who had entered without admission or parole on the same footing vis-à-vis burden of proof. *See id.*

As Respondents' interpretation of the governing statutory scheme runs contrary to long-standing precedent and basic forms of statutory interpretation, the legal rationale underpinning *Matter of Yajure Hurtado* similarly runs contrary to law. Because the BIA's decision in *Matter of Yajure Hurtado* is a deviation from the agency's long-standing interpretation of 8 U.S.C. §§ 1225 & 1226, does not serve as guidance issued contemporaneously with enactment of the relevant statutes, and contradicts the statutory interpretations of dozens of federal courts, it is not entitled to deference by this Court. *Loper Bright Enters.*, 603 U.S. at 412-13.

Thus, Respondents' efforts to classify Petitioner, who was apprehended inside the United States four years after his last entry, as subject to the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) should be rejected. His detention is governed by 8 U.S.C. § 1226(a), under which detention is discretionary and subject to individualized bond hearings. The Court should therefore order Petitioner's release, or at minimum, order Respondents to grant Petitioner an individualized bond hearing[5] under 8 U.S.C. § 1226(a) consistent with long-standing practice.

CONCLUSION

For the foregoing reasons, the Court should hold that 8 U.S.C. § 1226(a) governs Petitioner's detention, and either order his immediate release or direct Respondents to afford Petitioner a meaningful bond hearing consistent with the requirements of § 1226(a).

Dated: October 9, 2025

Respectfully submitted,

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5 As Respondents note, Petitioner is currently scheduled for a bond hearing on October 16, 2025. But absent a grant of relief from this Court directing that 8 U.S.C. § 1226(a) governs Petitioner's detention, that bond hearing will be utterly meaningless as the Immigration Judge will be bound by *Matter of Yajure Hurtado* to hold that Petitioner is categorically ineligible for bond.

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