UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TOMAS RUIZ MEJIA Petitioner, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; ROBERT LYNCH, Field Office Director, Detroit Field Office, Immigration and Customs Enforcement, Respondents.	)	Case No. 1:25-cv-1227

REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S HABEAS PETITION

Petitioner submits this reply in accordance with the Court's October 17, 2025 order, and in support thereof states as follows:

A. Exhaustion is not required as seeking a bond redetermination before an immigration court would be futile

Exhaustion is not required as Respondents suggest since requesting a bond hearing before an Immigration Judge would be futile. The Immigration and Nationality Act mandates exhaustion in order to challenge "final order[s] of removal." 8 U.S.C. § 1252(d)(1). However, this provision does not cover challenges to preliminary custody or bond determinations, which are quite distinct from "final order[s] of removal." *See Gornicka,* 681 F.2d at 505 ("[I]t is clear bond hearings are separate and apart from deportations hearings.... A bond determination is not a final order of deportation ... and does not effect [sic] the deportation proceeding.").

Congress does require exhaustion for certain types of habeas petitions, but not for those petitions, such as Petitioner's, brought under 28 U.S.C. § 2241. *See James v. Walsh*, 308 F.3d

162, 167 (2d Cir .2002) ("Section 2254(b)(1) requires state prisoners to exhaust all available state court remedies before filing a Section 2254 petition, whereas Section 2241 contains no such exhaustion requirement.").

"[W]here Congress has not clearly required exhaustion, sound judicial discretion governs." *McCarthy v. Madigan,* 503 U.S. 140, 144 (1992). In exercising that discretion, we must balance the individual and institutional interests involved, taking into account "the nature of the claim presented and the characteristics of the particular administrative procedure provided." *Id.* at 146. We start with "the general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts." *Id.* at 144-45; *see also Sanchez v. Miller,* 792 F.2d 694, 697 (7th Cir.1986) (accord). This rule, however, is not absolute.

The Sixth Circuit has previously held that a due process challenge generally does not require exhaustion since the Board of Immigration Appeals lacks authority to review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006); *accord Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006) ("exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to an agency's procedures.")(citation omitted); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).

The Sixth Circuit also applies a three-factor test which here weighs against requiring exhaustion. Courts may require prudential exhaustion when:

1) Agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;

2) Relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
3) Administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

See Shweika v. Dep't of Homeland Sec., No. 1:06-cv-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015). These factors weigh in Petitioner's favor. First, the issues raised in Petitioner's case are purely legal in nature and do not require the agency to develop the record. Second, since Petitioner's petition includes a due process claim, the administrative scheme, an appeal to the Board, is futile, as the Board lacks the authority to review constitutional claims. Finally, administrative review is unlikely to change Respondents' position that Section 1225(b)(2)(A) applies in Petitioner's case. The Department of Homeland Security's policy makes clear that mandatory detention is the position taken and it is done in conjunction with the Department of Justice.

Here, exhaustion would be futile due to the Board of Immigration Appeals' recent September 5, 2025 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). This case proclaimed for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond. The Board's decision, in contravention of decades of immigration law, Supreme Court precedent, and Executive Office of Immigration Review policies and procedures, takes a new reading of INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), which requires mandatory detention of "Applicants for Admission," to include those present in the United States without having been inspected and admitted and who are later apprehended.

Prior to the Board's decision, noncitizens present in the United States without having been inspected and admitted and who are later apprehended are subject to detention under INA § 236(a), 8 U.S.C. § 1226(a). Noncitizens detained under this section are not subject to mandatory detention and may be released on bond or on their own recognizance. Requiring Petitioner to request a bond redetermination with the immigration court in the first instance would be futile as the bond would be denied in light of *Matter of Yajure Hurtado*. It would be prejudicial to Petitioner in prolonging his detention in order to request a bond that will ultimately be denied.

Even if this Court were to agree that prudential exhaustion should apply, waiver of the exhaustion requirement is warranted here as Petitioner is likely to experience irreparable harm if he is unable to seek habeas relief until after an immigration judge denies bond, and the Board would have to decide an appeal on the denied bond motion. *Sampiao v. Hyde, et al.* 1:25-cv-11981-JEK, at *1 (D.Mass. Sept. 9, 2025); *Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403872, at *7 (D.Mass. Aug 19, 2025) (finding that loss of liberty is a form of irreparable harm and citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987)). Waiver is appropriate where the interests of the individual weigh heavily against requiring administrative exhaustion, or exhaustion would be futile and unable to afford the petitioner the relief he seeks. *See McCarthy*, 503 U.S. at 145; *see also Fazzani v. NE Ohio Corr. Ctri,* 473 F.3d 229 (6th Cir. 2006)(citing *Aron v. LaManna*, 4. F. App'x 232, 233 (6th Cir. 2001) and *Goar v. Civletti*, 688 F.2d 27, 28-29 (6th Cir. 1982)); *Lopez v. Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 at *5 (E.D. Mich. Aug 29, 2025)("because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waives administrative exhaustion").

The average processing time for bond appeals exceeded 200 days in 2024. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash 2025). There is no requirement for the Board to act promptly or decide the appeal quicker than any other case. Should the Board act promptly, it would be unlikely to decide Petitioner's appeal anytime soon, and if the Board processed the appeal at the same rate as last years' appeals, the appeal may not be resolved until spring of 2026. As such, Petitioner is likely to endure several months of additional detention. Such a prolonged loss of liberty would, in these circumstances, constitute irreparable harm. *Bois v. Marsh*, 801 F.2d 462, 469 (D.C. Cir. 1986).

Additionally, requiring Petitioner to wait six months in detention to reach a decision on whether he could be released on bond would be futile. Petitioner is scheduled for a preliminary master calendar hearing before the Detroit Immigration Court on November 7, 2025- less than six months from now. As such, exhaustion would not effectively afford Petitioner the relief he seeks, given that a removal determination would likely come before the Board's determination of whether a bond is appropriate in his case.

Therefore, given the constitutional claims raised by Petitioner, this Court should find that exhaustion is not required according to the Sixth Circuit standards. Should this Court find that exhaustion applies, then the Court should waive exhaustion as it would be futile and would not prove Petitioner with the relief he requests in a timely manner. *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).

B. Petitioner is detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of "Applicants for Admission." Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance.

Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226. This argument fails for several reasons.

The Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge's authority to hear a bond request for any noncitizen present in the United States without having been inspected and admitted and who are later apprehended by DHS. 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of "Applicants for Admission." Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226. This argument fails for several reasons.

The Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge's authority to hear a bond request for any noncitizen present in the United States without having been inspected and admitted and who are later apprehended by DHS.

Prior to and since the decision in *Matter of Yajure Hurtado*, federal district courts in the First Circuit, Second Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit, Seventh Circuit, Eighth

Circuit, Ninth Circuit, and Tenth Circuit have all disagreed with Respondents' interpretation and have subsequently granted relief to habeas petitioners:

First Circuit

- *Chafla v. Scott*, Case No. 2:25-cv-00437 (D. Me. September 21, 2025)
- *Tamay v. Scott*, Case No. 2:25-cv-00438 (D. Me. September 21, 2025)
- *Lema v. Scott*, Case No. 2:25-cv-00439 (D. Me. September 21, 2025)
- *Hilario Rodriguez v. Moniz*, No 25-12358 (D. Mass. September 18, 2025)
- *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
- *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025)
- *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
- *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)
- *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025)
- *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)

Second Circuit

- *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

Fourth Circuit

- *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025)
- *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

Fifth Circuit

- *Lopez-Areveloa v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025)
- *Lopez Santos v. Noem*, 2025 WL 2642278, (W.D. La. Sept. 11, 2025)
- *Martinez v. Noem*, No. 5:25-CV-01007, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025)
- *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

Sixth Circuit

- *Sanchez Alvarez v. Noem*, 1:25-cv-01090-JMD (W.D. Mich. Oct. 17, 2025)
- *Singh v. Lewis*, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025)
- *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025)
- *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025)
- *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)
- *Sanchez Ballestros v. Noem*, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025)

Seventh Circuit

- *Mariano Miguel v. Noem*, 1:25-cv-11137 (N.D. Ill. Oct. 21, 2025)

- *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. In. Sept. 22, 2025)
- *Alejandro v. Olson*, 1:25-cv-02027 (S.D. In. Oct. 11, 2025)
- *B.D.V.S. v. Forestal*, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025)
- *Ochoa Ochoa v. Noem*, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025)

Eighth Circuit

- *Aditya W.H. v. Trump,* 782 F. Supp. 3d 691 (D. Minn. 2025).
- *Helbrum v. Williams,* 2025 WL 2840273 (S.D. Iowa, Sept. 30, 2025)
- *Giron Reyes v. Lyons*, Case No. C25-4048 (N.D. Iowa September 23, 2025)
- *Duenas Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 2025)
- *Brito Barrajas v. Noem*, No. 4:25-cv-00322 (S.D. Iowa September 23, 2025)
- *Lorenzo Perez v. Kramer*, 2025 WL 2624387 (D. Neb. Sept. 11, 2025)
- *Ozuna Carlon v. Kramer*, 2025 WL 2624386 (D. Neb. Sept. 11, 2025)
- *Genchi Palma v. Trump*, 2025 WL 2624385 (D. Neb. Sept. 11, 2025)
- *Hernandez Marcelo v. Trump*, 3:25-cv-0000934 (S.D. Iowa Sept. 10, 2025)
- *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025)
- *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
- *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
- *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)

Ninth Circuit

- *N.A. v. LaRose,* 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025)
- *E.C. v. Noem,* 2025 WL 2916364 (D. Nev. Oct 14, 2025)
- *Guerrero Lepe v. Andrews et al*, No. 1:2025cv01163 (E.D. Cal. 2025)
- *Vazquez v. Feeley*, No. 2:25-CV-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025)
- *Herrera Torralba v. Knight*, No. 2:25-CV-01366, 2025 WL 2581792 (D. Nev. Sept. 5, 2025)
- *Benitez et al. v. Noem,* No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025)
- *Sanchez Roman v. Noem* 2025 WL 2710211 (D. Nev. Sep. 23, 2025)
- *Maldonado Vazquez v. Feeley*, 2025 WL 2676082 (D. Nev. Sept. 17, 2025)
- *Salcedo Aceros v. Kaiser*, 2025 WL 2637503 (N.D. Cal Sept. 12, 2025)
- *Cuevas Guzman v. Andrews*, 2025 WL 2617256, (E.D. Cal. Sept. 9, 2025)
- *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025)
- *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025)
- *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)
- *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)
- *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025)
- *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)

- *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025)

Tenth Circuit

- *Salazar v. Dedos* 2025 WL 2676729 (D. NM. Sept. 17, 2025)
- *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025)

This Court is not required, and should not, give deference to *Matter of Yajure Hurtado*. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the numerous district court decisions confirm that he is subject to section 1226(a)'s discretionary detention scheme.

C. Petitioner's Continued Detention Without a Bond Hearing is a Fifth Amendment Violation

Petitioner's deprivation of his liberty by being deprived of the opportunity to request a bond hearing is a violation of the Due Process Clause of the Fifth Amendment. Petitioner has not been found to be a danger to the community and Respondents do not allege that detention is to ensure Petitioner's appearance during removal proceedings. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents have not put forth a credible argument that Petitioner could not be safely released to his community and family.

The Sixth Circuit has held that the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), regarding the adequacy of process, applies in the context of immigration detention. See *United States v. Silvestre-Gregorio,* 983 F.3d 848, 852 (6th Cir. 2020). Thus, under *Mathews*, this Court must consider the following three factors: "(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *See Lopez-Campos*, 2025 WL 2496379, at *9 (citing *Mathews*, 424 U.S. at 335).

In regards to the first *Mathews* factor, Petitioner has a significant private interest in avoiding detention, one of the "most elemental of liberty interests." *See Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Additionally, Petitioner resides in Oak Lawn, Illinois with his U.S. citizen wife and child, and supports himself and his family. *See* Dkt. 1. Pg. 4. Petitioner is now detained in another state, "experiencing [many of] the deprivations of incarceration, including loss of contacts with friends and family, loss of income earning…lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025).

As to the second *Mathews* factor, a risk of erroneous deprivation is minimized through a bond hearing, where an Immigration Judge can determine whether Petitioner is a flight risk or a danger to the community. *See Lopez Campos*, 2025 WL 2496379, at *9. Petitioner has a pending Form I-130, Petition for Alien Relative, which his spouse submitted on his behalf since July 26, 2024, thereby exhibiting he was in the process of seeking lawful status which would minimize his flight risk. *See* Dkt. 1. Pg. 1-2.

Finally, as to the third factor, while Respondents do have "a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community," here, Respondents have not established an interest in regards to detaining Petitioner who may well convince "a neutral adjudicator, following a hearing and assessment of the evidence, that his ongoing detention is not warranted." *Sampiao v. Hyde,* No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025).

As such, Petitioner's current detention under the framework of Section 1225(b)(2)(A) violates Petitioner's Fifth Amendment Due Process rights.

D. The Secretary of Homeland Security is a Proper Respondent

Petitioner has named the Field Office Director as Petitioner's immediate custodian. He also names the Secretary of Homeland Security, Kristi Noem, as Respondent in this action. Petitioner alleges violations of law and the application of law by agents of the Department of Homeland Security. Given Secretary Noem's broad authority over the operation and enforcement of the immigration laws, she is thus an appropriate Respondent for the subject case.

CONCLUSION

For the foregoing reasons, this Court should order Petitioner's release or in the alternative, order Respondents to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order.

Dated: October 24, 2025

Respectfully Submitted,
/s/ Khiabett T. Osuna

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