


UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GAGANDEEP SINGH, )  
() )  
)  
Petitioner, )  
)  
v. )  
)  
KRISTI NOEM, Secretary, U.S Department of )  
Homeland Security; and )  
ROBERT LYNCH, Field Office Director, Detroit )  
Field Office, Immigration and Customs )  
Enforcement, )  
)  
Respondents. )

Case No. 1:25-cv-01251-PLM-MV

**REPLY TO RESPONDENT’S RESPONSE TO PETITIONER’S HABEAS PETITION**

Petitioner submits this reply to Respondent’s Response to his Petition for Writ of Habeas Corpus. Petitioner continues to be detained unlawfully during his pending removal proceedings, in violation of his constitutional and statutory rights.

**A. Exhaustion is Not Required**

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.”). The Sixth Circuit has previously held that a due process challenge generally does not require exhaustion since the BIA 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).

Here, the Petitioner is not challenging his bond decision. He is challenging the inability to request a bond hearing in the first place. As evidenced by the decision in *Matter of Yajure Hurtado*, Petitioner has no ability to request bond and requiring exhaustion would be futile. 29 I&N Dec. 216 (BIA 2025). Since the BIA is without jurisdiction to decide constitutional questions, such as Petitioner’s due process question, any appeal would be futile. *See Gonzalez v. O’Connell*, 355 F.3d 1010 (7th Cir. 2004) (citing *Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994)).

Even so, the three-factor test applied by courts in this Circuit also 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 all work 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, because Petitioner's petition includes a due process claim, the administrative scheme (appeal to the BIA) is futile since, the BIA lacks authority to review constitutional claims. Lastly, administrative review is not likely to change Respondents' position that Section 1225(b)(2)(A) applies in this case. DHS's policy makes clear that mandatory detention is the position to be taken, and this is being done in conjunction with the Department of Justice.

Even if this Court were to agree that prudential exhaustion should apply, waiver of the exhaustion requirement is warranted here because Petitioner is likely to experience irreparable harm if he is unable to seek habeas relief until an Immigration Judge denies bond, and then the BIA decides an appeal on the denied bond. *Sampiao v. Hyde, et al.* 1:25-cv-11981-JEK, at \*11-12 (D. Mass. Sept. 9, 2025); *Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827, 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 when 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. Ctr.*, 473 F.3d 229 (6th Cir. 2006) (citing *Aron v. LaManna*, 4 F. App'x 232, 233 (6th Cir. 2001) and *Goar v. Civiletti*, 688 F.2d 27, 28-29 (6th Cir. 1982)); *Lopez-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 and will address the merits of the habeas petition.").

The average processing time for bond appeals exceeded 200 days (more than 6 months) in 2024. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025). There is no requirement for the BIA to act promptly or decide the appeal quicker than any other case. If the

BIA were to act promptly, it would be unlikely to decide Petitioner's appeal anytime soon, and if it processes the appeal at the same rate as last year's appeals, the appeal may not be resolved until spring 2026. As such, Petitioner is likely to endure several additional months of detention is likely unlawful. Such a prolonged loss of liberty would, in these circumstances, constitute irreparable harm. *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986).

Additionally, requiring Petitioner to wait six months in detention to reach a decision on whether he can be released on bond would be futile. While waiting for a decision, his Immigration Court final hearing would be scheduled. As such, exhaustion would not effectively afford him the relief he seeks, given that a removal determination would likely come before the BIA's determination of whether a bond is appropriate in this case.

Therefore, given the constitutional claims raised by Petitioner, this Court should find that exhaustion is not required according to the Sixth Circuit standards. If it does find the exhaustion applies, then the Court should waive exhaustion since it would be futile and would not provide Petitioner with the relief he requests in a timely manner. *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 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. 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.

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. However, prior to and since the decision in *Matter of Yajure Hurtado*, federal district courts in this Circuit have also disagreed with Respondents' interpretation and have subsequently granted relief to habeas petitioners. *Sanchez Alvarez v. Noem et al.*, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Diaz Sandoval v. Raycraft*, 2025 WL 2977517 (E.D. Mich. Oct. 17, 2025); *Pacheco Mayen v. Raycraft*, 2025 WL 2978529 (E.D. Mich. Oct. 17, 2025); *Contreras-Cervantes, et al., v. Raycraft*, 225 WL 952796 (E.D. Mich. Oct. 17, 2025); *Contreras-Lomeli v. Raycraft*, 2025 WL 2976739 (E.D. Mich. Oct. 21, 2025); *Santos Franco v. Raycraft*, 2025 WL 2977118 (E.D. Mich. Oct. 21, 2025); *Casio-Mejia*, 2025 WL 2976737 (E.D. Mich. Oct. 21, 2025); *Rodriguez Carmona v. Noem*, 2025 WL 2992222 (W.D. Mich. Oct. 24, 2025); *Gimenez Gonzalez v. Raycraft*, 2025 WL 3006185 (E.D. Mich. Oct. 27, 2025); *Puerto-Hernandez v. Lynch*, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Marin Garcia v. Noem, et al.*, 2025 WL 3017200 (W.D. Mich. Oct. 29, 2025); *Cervantes Rodriguez v. Noem*, 2025 WL 3022212 (W.D. Mich. Oct. 29, 2025); *Escobar Ruiz v. Raycraft et al.*, 2025 WL 3039255 (W.D. Mich. Oct. 31, 2025); *De Jesus Ramirez v. Noem at al.*, 2025 WL 3039266, at \*1 (W.D. Mich. Oct. 31, 2025).

Outside of the Sixth Circuit, courts in every Circuit -the First Circuit, Second Circuit, Fourth Circuit, Fifth Circuit, Seventh Circuit, Eighth Circuit, Ninth Circuit, Tenth Circuit and Eleventh Circuit- have all also confirmed that 8 U.S.C. § 1226 is the proper statute to apply for

detention of those already within the U.S..<sup>1</sup> 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).

---

<sup>1</sup> *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); *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); *Hasan v. Crawford*, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *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); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Corona Diaz v. Olson*, No. 25-cv-12141 (N.D. Ill. Oct. 29, 2025); *Patel v. Noem et al*, No. 25-cv-11180 (N.D. Ill. Oct. 24, 2025); *Perez Padilla v. Noem et al*, No. 25-cv-12462 (N.D. Ill. Oct. 22, 2025); *Miguel v. Noem, et al*, No. 25-cv-11137 (N.D. Ill. Oct. 21, 2025); *H.G.V.U v. Smith et al*, No. 25-cv-10931 (N.D. Ill. Oct. 20, 2025); *Ochoa Ochoa v. Noem et al.*, No. 25-cv-10865 (N.D. Ill. Oct. 16, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. In. Sept. 22, 2025); *Duenas Arce v. Trump*, 2025 WL 2675934 (D. Neb. Sept. 18, 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); *Guerrero Lepe v. Andrews et al*, No. 1:2025cv01163 (E.D. Cal. 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); *Salazar v. Dedos* 2025 WL 2676729 (D. NM. Sept. 17, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025)

In addition to the Supreme Court’s own analysis of the statutory language, the custody paperwork filed by DHS during the bond proceedings plainly states that Petitioner was arrested and detained pursuant to INA § 236, 8 U.S.C. § 1226. *See* Ex. 1. The arrest warrant states that “any immigration officer authorized pursuant to section 236...to serve warrants of arrest for immigration violations.” *Id.* To now argue that Petitioner is now subject to mandatory detention under 8 U.S.C. § 1225(b)(2) entirely contradicts the plain language of the arrest warrant.

Respondents seemingly wish for this Court to disregard those documents stating that a “warrant does not change Petitioner’s status.” Response, at 18. However, the documents that DHS have filed related to Petitioner’s custody do matter. Otherwise, the custody documents would have no meaning or authority – which is certainly not what the Supreme Court has held should be the case. In *Niz-Chavez v. Garland*, the Court discussed the nature of removal proceedings and specifically found that “...words are how the law constrains power [and that] when the federal government seeks a procedural advantage against an individual, it will at least supply him with a single and reasonably comprehensive statement of the nature of the proceedings against him. If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.” 593 U.S. 155 (2021).

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the repeated representations of the government in Petitioner’s case before the Court confirm that he is subject to section 1226(a)’s discretionary detention scheme.

**C. Petitioner's criminal history does require detention under 8 U.S.C. § 1226(c)**

Respondents argue they are detaining Petitioner pursuant to section 1225(b)(2) but alternatively argue that Petitioner is subject to detention pursuant to section 1226(c). However, Petitioner is already before the Immigration Court, meaning that his removal proceedings have already commenced. 8 C.F.R. § 1239.1. If Respondents wish to assert a separate section of the mandatory detention statute applies to Petitioner, Respondents have an obligation to comply with the regulatory requirements pursuant to 8 C.F.R. § 1003.30 requires that:

At any time during deportation or removal proceedings, additional or substituted charges of deportability and/or factual allegations may be lodged by the Service in writing. The alien shall be served with a copy of these additional charges and/or allegations and the Immigration Judge shall read them to the alien. The Immigration Judge shall advise the alien, if he or she is not represented by counsel, that the alien may be so represented. The alien may be given a reasonable continuance to respond to the additional factual allegations and charges. Thereafter, the provision of § 1240.10(b) of this chapter relating to pleading shall apply to the additional factual allegations and charges.

In this case, Respondents have not complied with this regulation by filing any of the required documentation with the Immigration Court. Further, this issue is one that would be decided at a bond hearing before an Immigration Judge- something the Respondents claim that Petitioner is not entitled to. 8 U.S.C. § 1229a.

At the time Petitioner was taken into custody, his application for asylum and withholding of removal was pending with the Detroit Immigration Court. Petitioner's wife, Justina, also had filed an I-130, Petition for Alien Relative, on Petitioner's behalf. Dkt. 1, at 4. Should Respondents wish to assert that section 1226(c) apply to Petitioner, then they must do so in the proper manner, and not before this Court.

**D. Kristi Noem is a Proper Respondent in this case**

Kristi Noem should not be removed as Respondent. Petitioner has named the Field Office Director, as Respondent's immediate custodian – which is all the Court required. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). Nothing in that decision prevents Petitioner from also naming the DHS Secretary as a Respondent in such an action. *See id.* That decision simply states that Petitioner must name the immediate custodian to maintain the court's jurisdiction. *Id.* Here, Petitioner alleges violations of law and application of law by agents of the Department of Homeland Security. Given Kristi Noem's broad authority over the operation and enforcement of the immigration laws, she is an appropriate Respondent for the subject case.

### **CONCLUSION**

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

Dated: November 4, 2025

Respectfully Submitted,  
Gagandeep Singh

By: s/ Lauren McClure  
One of his attorneys

Lauren E. McClure, Esq.  
KRIEZELMAN BURTON & ASSOCIATES, LLC  
200 West Adams Street, Suite 2211  
Chicago, Illinois 60606  
(312) 332-2550  
lmclure@krilaw.com