UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

JAACKCIRELYS PEREZ GUERRA (A[redacted] Petitioner, v. JASON WOOSLEY, Jailer, Grayson County Jail; and RUSSELL HOTT, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, Respondents.	)	Case No. 4:25-cv-00119-RGJ

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE

The Petitioner, JAACKCIRELYS PEREZ GUERRA, by and through her own and proper person and through her attorneys, KRIEZELMAN BURTON & ASSOCIATES, LLC, files this reply to Respondent's Response to Order to Show Cause, and in support thereof, states as follows:

I. 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 two 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

- *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)
- *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

Sixth Circuit

- *Sanchez Alvarez v. Noem*, 1:25-cv-1090 (W.D. Mich. Oct. 17, 2025)
- *Rodriguez Carmona v. Noem*, 1:25-cv-1131 (W.D. Mich. Oct. 24, 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)

Seventh Circuit

- *Ochoa Ochoa v. Noem*, 1:25-cv-10865 (N.D. Ill. Oct. 16, 2025)
- *Mariano Miguel v. Noem*, 1:25-cv-11137 (N.D. Ill. Oct. 21, 2025)
- *Patel v. Noem*, 1:25-cv-11180 (N.D. Ill. Oct. 24, 2025)
- *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. In. Sept. 22, 2025)

Eighth Circuit

- *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)

Ninth Circuit

- *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)

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).

While Petitioner was paroled into the United States on or around July 10, 2023 under Venezuelan Humanitarian Parole, she was not issued a Notice to Appear until September 30, 2025, over two years after being admitted into the United States. Dkt 11-1. Further, the U.S. Government terminated Petitioner's parole on June 13, 2025, at least three months prior to being issued a Notice to Appear. Dkt 767-2. As Respondents correctly note, when parole is terminated upon written notice, the noncitizen "shall be restored to the status that he or she had at the time of parole." 8 CFR § 212.5(e)(2)(i). In other words, on June 13, 2025, Petitioner's status reverted to her previous immigration status, effectively turning her into a noncitizen present in the United States without being admitted or paroled pursuant to 8 USC § 1182(a)(6)(A)(i).

According to ICE's own documentation, the agency arrested and detained Respondent according to § 1226. *See* Dkt 11-3, (authorizing arrest "Pursuant to sections 236 and 287 of the Immigration and Nationality Act [8 U.S.C. 1226]"). Respondents would have this court simply ignore the legal authority ICE relied upon to justify Petitioner's arrest and detention – ignore the sole document provided to Respondent that outlines the authority under which she was taken

with a blank warrant and as a collateral arrest. The government cannot claim legal authority to arrest a person, and then simply expect the reviewing court and the detainee to ignore that paperwork that cites that authority. "...[W]ords are how the law constrains power." *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1486 (2020). We must assume that paperwork issued by the government means what it says. In fact, the *first* time that detention under 1225(b)(2) was raised was in the Respondent's Order to Show Cause response.

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

II. Petitioner's detention violates due process.

Petitioner's continued detention violates due process, as Respondent's arguments ignore the realities of the process of Petitioner's immigration proceedings and the particular facts of this case.

First, the procedure Respondents have taken to arrest Petitioner from her home without a warrant violates the Fourth and Fifth Amendment of the U.S. Constitution, which protects against unlawful searches and seizures as well as due process violations, respectively. While Respondents have provided a warrant at Document 11-3, Petitioner asserts that Respondents entered her home without her consent and without a signed warrant. Respondents initially were looking for Petitioner's roommate and provided a blank warrant. Thus, Petitioner was a collateral arrest and is a current class member of the pending class action suit, *Castanon Nava et al. v. Dep't of Homeland Security et al.*, No. 18-cv-3757 (N.D. Ill.).

Second, in reviewing the *Mathews* factors, Respondent has claimed, without analysis, that Petitioner's arrest and detention do not violate Petitioner's right to due process. Dkt. 11,

Page ID# 60-61. Respondent fails to acknowledge that the Government did not comply with due process requirements when entering Petitioner's home and arresting Petitioner without a warrant. *See G & V Lounge Inc. v. Mich. Liquor Control Comm.*, 23 F.3d 1071, 1079 (6th Cir. 1994); *Malam v. Adducci*, 452 F. Supp. 3d 643, (E.D. Mich. 2020) (finding that due process outweighs the "significant" public interest in enforcement of the country's immigration laws); *see Phelps-Roper v. Nixon*, 545 F.3d 685,690 (8th Cir. 2008) ("[I]t is always in the public interest to protect constitutional rights."). Petitioner does not claim that being placed in removal proceedings violates substantive and procedural due process, but rather the warrantless entry into her home and her warrantless arrest that led to her unlawful detention are clear violations of the U.S. Constitution that neither serve the Petitioner's nor the Governments' interests.

Finally, as explained under Section I, Petitioner is detained under 8 U.S.C. § 1226. Respondent's position that Petitioner must remain detained during the pendency of her removal proceedings and is not eligible for a bond redetermination hearing pursuant to 8 U.S.C. § 1225(b)(2), unlawfully deprives Petitioner of her liberty.

III. Exhaustion is not required and should be excused as seeking bond redetermination before the immigration court in the first instance 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." This rule, however, is not absolute.

The Sixth Circuit has held that a "due process challenge generally does not require exhaustion" because "the BIA lacks authority to review constitutional challenges." *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006). While certain correctable procedural errors must be raised with the BIA, a warrantless arrest and detention are not procedural errors that can be cured by the BIA.

Further, requiring exhaustion would be futile due to the Board of Immigration Appeal's September 5th decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which 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, precedent by the Supreme Court, 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 prejudice Petitioner by prolonging her detention to request a bond that will ultimately be denied. Further, even if Petitioner had received a bond denial order prior to filing the instant petition, an appeal to the BIA would also be futile because the BIA is without jurisdiction to decide constitutional questions, such as Petitioner's due process question. *Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994).

Additionally, Petitioner raises substantive due process concerns in her petition that neither the Immigration Court nor the Board of Immigration Appeals can address. *Bangura v. Hansen*, 434 F.3d 487, 493-94(6th Cir. 2006).

Therefore, given the constitutional claims raised by Petitioner, this Court should find that exhaustion is not required. If it does find the exhaustion applies, then the Court should waive exhaustion since any request for bond or appeal thereafter would be futile.

Conclusion

For the foregoing reasons, this Court should 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 27, 2025

Respectfully Submitted,

/s/ Lauren E. McClure
One of her attorneys

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Certificate of Service

I hereby certify that on October 27, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

/s/ Lauren McClure