UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

RAULDRIS CAMACHO SALINAS, Petitioner, v. JASON WOOSLEY, Jailer, Grayson County Jail; and RUSSELL HOTT, Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement, Respondents.	)	Case No. 4:25-cv-121-DJH

REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S HABEAS PETITION

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

A. 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.

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
- *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)
- *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)

Seventh Circuit
- *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)
- *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)

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).

According to ICE's own documentation, the agency arrested and detained Respondent according to § 1226. *See* Dkt. 11-6 at PageID#81 (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 detained. 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 Brief in Opposition to Habeas Petition 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.

B. Petitioner's continued detention without a bond hearing is a Fifth Amendment violation.

Petitioner's continued detention violates due process, as Respondents' arguments ignore the realities of the process of Petitioner's immigration proceedings and the particular facts of this case. Respondents do not allege that Petitioner's detention is necessary because she is a danger to the community, nor to ensure her appearance during removal proceedings. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In fact, Petitioner was detained while complying with a CART appointment with ICE, pursuant to the conditions of her original release. Dkt. 11 at PageID#51. Petitioner's continued deprivation of her liberty by being deprived of the opportunity to request a bond hearing is a violation of the Due Process Cause of the Fifth Amendment.

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." *Mathews*, 424 U.S. at 335.

In regard 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). Petitioner is now detained in another state, away from her family, U.S. citizen fiancé, and support system, "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 v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *9 (E.D. Mich. Aug. 29, 2025). Petitioner has been in the United States for over two years and has no criminal history. Dkt. 11-7 at PageID#82-83. She is engaged to a U.S. citizen and has a pending asylum application. Dkt. 11-3 at PageID#76. All of these factors suggest she is neither a danger to the community nor a flight risk.

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 regard 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).

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.

C. 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." *Id.* at 144-45. This rule, however, is not absolute.

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., Case 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.

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 misinterpretation and misapplication of law is not a procedural error that can be cured by the agency.

Respondents claim that requiring exhaustion would not be futile, while simultaneously claiming that Respondent is subject to section 1225(b), which does not accord Petitioner a bond hearing. Dkt. 11 at PageID#62-63. Should Petitioner file a request for bond with the Immigration Judge, the Judge is unable to issue a bond due to the Board of Immigration Appeal's September 5th 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, 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.

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).

Yet 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 she 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.* Case No. 1:25-cv-11981-JEK, at *11-12 (D. Mass. Sept. 9, 2025); *Romero v. Hyde*, Case No. 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 she 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*, Case 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 waivers 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. 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, 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.

D. This Court Possesses the Authority to Release Petitioner Prior to a Bond Hearing.

Respondents wrongly assert that this Court lacks authority to grant Petitioner release without a bond hearing. Dkt. 11 at PageID#66. Respondents fail to articulate the changed circumstances that would require Petitioner's re-detention. In fact, Respondents' own evidence supports the release of Petitioner. For instance, Respondents provided Petitioner's pending asylum claim (Dkt. 11-3 at PageID#76), which demonstrates she is not a flight risk, and Form I-213, which states she has no criminal history and is not a public safety threat. Dkt. 11-7 at

PageID#83. Ordering Petitioner's release does not disturb Petitioner's removal proceedings, as bond hearings are completely separate processes, and does not overstep judicial authority in a habeas corpus petition. *See Gornicka,* 681 F.2d at 505.

CONCLUSION

For the foregoing reasons, this Court should order Respondents to release Petitioner or 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 30, 2025

Respectfully Submitted,
Rauldris Camacho Salinas

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Certificate of Service

I hereby certify that on October 30, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

/s/ Maya A. Flores