

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JOSE ALEXANDER CASTRO VIGIL,

Petitioner,

v.

MICHAELNESSINGER, Warden of Wyatt Detention Facility; PATRICIA HYDE, Field Office Director of Enforcement and Removal Operations, Boston Field Office, Immigration and Customs Enforcement; TODD LYONS, Acting Director U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security;

Respondents.

Civil Action No. 25-cv-00547-MSM-PAS

REPLY TO GOVERNMENT'S ABBREVIATED RESPONSE TO HABEAS PETITION

Petitioner Jose Alexander Castro Vigil, by and through his undersigned counsel, respectfully submits this Reply to Respondents' Abbreviated Response to Habeas Petition and Request to Proceed without Additional Briefing or Argument. Mr. Castro Vigil submits this Reply pursuant to Rule 5(e) of the Federal Rules governing Section 2254 cases.

Because the Government's response is abbreviated, the Petitioner offers an abbreviated reply to the response as well, in the interest of having the court adjudicate the habeas petition and release him from unlawful detention in an expedited fashion.

1. Petitioner is Not Required to Exhaust Administrative Remedies

The Government contends that Mr. Castro Vigil should be required to exhaust his administrative remedies before bringing a habeas challenge in court. No. ECF 4. Because there is no statutory requirement of administrative exhaustion, the Government's exhaustion argument is measured by the "more permissive" common law exhaustion standard. *See Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021); *Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, 77 (1st Cir. 1997). As this Court has recently found, waiving the exhaustion requirement is especially appropriate where the petitioner may suffer irreparable harm, and being detained pending exhaustion of administrative remedies is, in fact, irreparable harm. *Ayala Casun v. Hyde*, No. 25-cv-427-JJM-AEM, 2025 WL 2806769, at *3 (D.R.I. Oct. 2, 2025) (citing *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *6 (D. Mass. Sept. 9, 2025)).

Waiver of the exhaustion requirement is warranted here because Mr. Castro Vigil is likely to experience irreparable harm while he remains detained. Moreover, waiver of any exhaustion requirement is appropriate for the independent reason "the BIA made its position on the scope of § 1225(b)(2) crystal clear in [*Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)] such that 'further agency proceedings would be futile[.]'" *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *4 (D. Mass. Oct. 3, 2025)(quoting *Portela-Gonzalez*, 109 F.3d at 78).

2. Petitioner's detention is governed by § 1226(a), not § 1225(b)(2)

The Respondents assert that Petitioner is lawfully detained pursuant to 8 USC § 1225(b)(2) and "acknowledge that questions of law in this case, and the challenges to the government's policy and practice, substantially overlap with those at issue in *Doe* [*v. Moniz*, No. 25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)] and *Escobar* [*v. Hyde*, 25-cv-12620-IT, 2025 WL 2823324 (D. Mass. Oct. 3, 2025)]." In *Doe*, the court noted that "[w]hereas Section 1225(b) authorizes the Government to detain certain aliens seeking admission into the country, Section 1226 authorizes the Government to detain certain aliens already in the country

pending the outcome of removal proceedings.” *Doe*, 2025 WL 2576819 at *5 (citation modified). Since there is no dispute that Mr. Castro Vigil has been living in the United States prior to when the Government detained him, *see* ECF No. 4 at 3 (noting that Ice encountered the Petitioner in the United States), Section 1225 does not apply to Petitioner. *Doe*, 2025 WL 2576819 at *5. And as the Court found in *Escobar*, the Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is unpersuasive and does not change the analysis. *See Escobar*, 2025 WL 2823324, at *3 (citing cases reaching the same conclusion).

More than two dozen courts across the country have rejected the Governments’ reinterpretation of the INA in a way that deprives individuals, like Mr. Tomas Elias, of their liberty without any opportunity to seek bond. *See Guerrero Orellana v. Moniz*, 2025 WL 280996, at *5 (D. Mass. Oct. 3, 2025) (collecting cases). In doing so, the Government has (and continues to) unconstitutionally deprive Mr. Castro Vigil of his Fifth Amendment right to due process by holding him without a bond hearing.

Accordingly, the Petitioner requests that the Court order Mr. Castro Vigil’s release immediately.

Date: November 3, 2025

Respectfully submitted,

/s/ Hans J. Bremer
Hans J. Bremer, Esq.
RI Bar No.: 8063
Bremer Law & Associates, LLC
717 Allens Avenue, Suite 105
Providence, RI 02905
(401) 621-4000
hans.j.bremer@bremerlawllc.com

Counsel for Petitioner

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2025, I electronically filed the within motion and it is available for viewing and downloading from the Court's CM/ECF System, and that the participants in the case that are registered CM/ECF users will be served electronically by the CM/ECF system.

/s/ Hans J. Bremer