

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JORGE ASTUDILLO,

Petitioner,

v.

PATRICIA HYDE, Field Office Director of Enforcement and Removal Operations, Boston Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; MICHAEL NESSINGER, Warden of Wyatt Detention Facility

Respondents.

Civil Action No. 25-cv-551-JJM-AEM

REPLY TO GOVERNMENT'S ABBREVIATED RESPONSE TO HABEAS PETITION AND REQUEST TO PROCEED WITHOUT ADDITIONAL BRIEFING OR ARGUMENT

Petitioner Jorge Astudillo, 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. Astudillo 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. Astudillo should be required to exhaust his administrative remedies before bringing a habeas challenge in court. No. ECF 6. 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. Astudillo is being held in an ICE detention facility against his will without a clear reason, which constitutes "a severe form of irreparable injury." *Rodriguez v. Bondi*, No. 25-cv-406-JJM-PAS, 2025 WL 2899769, at *4 (D.R.I. Oct. 10, 2025) (quoting *Ferrara v. United States*, 370 F. Supp. 2d 351, 360 (D. Mass. 2005)). He will continue to experience irreparable harm if he is unable to seek habeas relief unless and until the BIA decides an appeal of his request for release on bond. According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024. *See Ayala Casun*, 2025 WL 2806769, at *3 (citing *Rodriguez v. Bostock*, 779 F. Supp.3d 1239, 1239, 2025 WL 1193850, at *5 (W.D. Wash. Apr. 24, 2025)). The Immigration Judge denied Petitioner's request for release on bond on September 11, 2025. Assuming the BIA is processing appeals at the same rate as last year, any appeal that Mr. Astudillo would file before the BIA would likely not be resolved until late March 2026, giving rise to the possibility that he would endure more than five additional months of detention that may be unlawful. Such a prolonged loss of liberty would, in these circumstances, constitute irreparable harm. *Id.* 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).

Finally, as this Court recently ruled, the Government’s positions in its response both that Mr. Astudillo is statutorily ineligible for a hearing, yet should still be required to exhaust his administrative remedies before an IJ, are “plainly at odds with one another” and thus must be disregarded. *See Tomas Elias v. Hyde*, No. 25-cv-00540-JJM-AEM, 2025 WL 3004437, at *3 (D.R.I. Oct. 27, 2025).

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)].” No. ECF No. 6. 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. Astudillo is not seeking admission to the country, but that he was already in the country at the time ICE arrested him, for the reasons in *Doe*, *Escobar*, and courts across the county, Section 1226(a) applies, and not Section 1225(b). *See Doe*, 2025 WL 2576819, at *5; *Elias Escobar*, 2025 WL 2823324, at *3; *Tomas Elias*, 2025 3004437, at *2.

In its abbreviated response, the Government entirely ignores the plain text of 8 U.S.C. § 1226(a). Section 1226 provides the “default rule” for the detention of individuals, like Mr. Astudillo, who are “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288-89 (2018). Section 1226(a) states that, “[e]xcept as provided in subsection (c),” detained noncitizens may be released on bond pending a decision in their removal proceedings. 8 U.S.C. § 1226(a). Subsection (c) specifically exempts from § 1226(a)’s default rule individuals who have been arrested for, charged with, or convicted of certain crimes. As the Supreme Court has recognized, when Congress creates “specific exceptions” to a statute’s applicability, it “proves that absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). Here, there is no allegation that Mr. Astudillo falls within the exemptions set forth in 8 U.S.C. § 1226(c), and thus, the Government’s argument that Mr. Astudillo is subject to mandatory detention and not entitled to a bond hearing, ECF No. 6, contradicts the plain language of § 1226(a).

This Court, along with more than two dozen courts across the country have rejected the Governments’ reinterpretation of the INA in a way that deprives individuals, like Mr. Astudillo, of their liberty without any opportunity to seek bond. *See Tomas Elias*, 2025 WL 3004437, at *3; *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. Astudillo of his Fifth Amendment right to due process by holding him without a bond hearing.

Accordingly, the Petitioner requests that the Court order Mr. Astudillo’s release immediately and order a bond hearing, in accordance with 8 U.S.C. § 1226(a)(2), to be held within the next ten (10) days. Because there is absolutely nothing in the record to suggest that Mr. Tomas Elias is a danger to society—to the contrary, ICE encountered him solely because he

is a Hispanic male who was in the proximity of the person they were targeting—the only proper interim release condition should be directed at assuring his appearance at the bond hearing. *See Tomas Elias*, 2025 WL 3004437, at *5.

Date: October 29, 2025

Respectfully submitted,

/s/ Amy R. Romero

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 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/ Amy R. Romero