

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

JEFERSON OMAR HERRERA MARTINEZ,

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-575-JJM-AEM

**REPLY TO GOVERNMENT'S ABBREVIATED RESPONSE TO HABEAS PETITION**

Petitioner Jeferson Omar Herrera Martinez, by and through his undersigned counsel, respectfully submits this Reply to Respondents' Abbreviated Response to Amended<sup>1</sup> Habeas Petition and Request to Proceed without Additional Briefing or Argument. Mr. Herrera Martinez 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**

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<sup>1</sup> The Government captions its pleading as a response to an "Amended Habeas Petition." However, there is no amended petition in this case to date.

The Government contends that Mr. Herrera Martinez should be required to exhaust his administrative remedies before bringing a habeas challenge in court. ECF No. 5. 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 the Petitioner 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)). Currently he has a date on his request for a bond hearing set for November 13, 2025, but given the BIA's position in *Matter of Yajure Hurtado*, 29 I&N Dec. 2016 (BIA 2025), it is already predetermined that he will be denied a hearing. Requiring Petitioner to engage in a BIA hearing and appeal, both of which will be futile, before seeking habeas relief would result in Petitioner enduring months of additional months of unlawful detention. *See Ayala Casun*, 2025 WL 2806769, at \* 3. Thus, waiver of any exhaustion requirement is appropriate for the 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. Herrera Martinez 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 several recent decisions from this Court and other District Courts, including in the District of Massachusetts concerning similar challenges to the government policy or practice at issue in this case, and the common question of law between this case and those rulings would control the result in this case should this Court adhere to the legal reasoning in those prior decisions.” ECF No. 5. Since there is no dispute that Mr. Herrera Martinez 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 *Astudillo* and *Tomas Elias*, and courts across the country, Section 1226(a) applies, and not Section 1225(b). *See, e.g., Astudillo v. Hyde*, No. 25-551-JJM-AEM (D.R.I. Oct. 30, 2025), *Tomas Elias*, 2025 WL 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 Petitioner, 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. Herrera Martinez falls within the exemptions set forth in 8 U.S.C. §1226(c), and thus, the Government's argument that Mr. Herrera Martinez 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. Herrera Martinez, 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. Herrera Martinez of his Fifth Amendment right to due process by holding him without a bond hearing.

Accordingly, the Petitioner requests that the Court order Mr. Herrera Martinez'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. Herrera Martinez is a danger to society—to the contrary, he is a human trafficking victim with no criminal convictions, who ICE arrested while he was meeting with his social worker—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: November 6, 2025

Respectfully submitted,

/s/ Amy R. Romero

Amy R. Romero (RI Bar # 8262)  
DeLuca, Weizenbaum, Barry & Revens, Ltd.  
199 North Main Street  
Providence, RI 02903  
(401) 453-1500  
Amy@dwbrlaw.com  
Cooperating counsel, Lawyers' Committee for RI

/s/ Celina B. Curillo

Celina B. Curillo, Esq.  
64 North Street, 2nd Floor  
Danbury, CT 06810  
(203)892-4060  
celina@cbclaw.net  
*Pro Hac Vice Pending*  
COUNSEL FOR PETITIONER

### CERTIFICATE OF SERVICE

I hereby certify that on November 6, 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