IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Camden Division

ZENGHUI GU, *Petitioner*, v. JUDITH ALMODOVAR, *et al.* *Respondents*.	Case No.: 1:25-cv-17746-RMB **PETITIONER'S BRIEF IN SUPPORT OF PETITION OF WRIT OF HABEAS CORPUS AND IN RESPONSE TO RESPONDENT'S ANSWER**

Petitioner respectfully submits this brief in support of Petition of Writ of Habeas Corpus and in response to Respondents' Answer.

PRELIMINARY STATEMENT

Respondents stipulate that Petitioner entered the United States in September 2023 and that ICE arrested him on November 4, 2025, in New York City. The Government therefore acknowledges that Petitioner's most recent encounter with immigration authorities occurred inside the United States, not at or near the border. These stipulated facts place Petitioner outside the scope of § 1225(b)(2), which applies only to individuals encountered at the border or ports of entry. Accordingly, § 1226(a) governs the detention of noncitizens arrested in the interior.

Critically, Respondents do not meaningfully engage with Petitioner's constitutional claims, including (1) the violation of procedural due process resulting from detention without an individualized determination; (2) the substantive due process limits on civil detention; and, (3) the unlawfulness of punitive or arbitrary confinement.

Recent Decisions, Including *Marca Lima*, Confirm That § 1226(a)—Not § 1225(b)(2)—Applies

Respondents rely heavily in *Marca Lima v. Soto*, 25-cv-17098 (D.N.J.). The case of Marca Lima was decided on December 3, 2025. But as this Court explained today in *Marca Lima*, Marca Lima expressly agrees with those courts rejecting ICE's reading of § 1225(b)(2). This Court observed that ICE's interpretation is "contrary to the plain text of the statute and the overall statutory scheme." Romero v. Hyde, No. 25-11631, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025). As other courts have explained, "[b]y reading [the] phrase ['seeking admission'] out of the statute, Respondents' interpretation of § 1225 clearly violates the rule against

surplusage." *Lopez Benitez v. Francis*, No. 25-5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025). Even assuming a noncitizen meets the statutory definition of "applicant for admission," "the phrase 'seeking admission' cannot reasonably be stretched to encompass someone who entered the country years ago" and who "was simply present in the United States" at the time of the arrest. *Esparza v. Knight*, No. 1:25-cv-00601-BLW, 2025 WL 3228282, at *6 (D. Idaho Nov. 19, 2025). As the Court concluded in *Marca Lima*, DHS cannot detain such individuals under § 1225(b)(2); at most, detention may occur only under § 1226(a). *See* Marca Lima at 7.

Even if the Court determined that § 1226(a) governs Petitioner's detention, requiring him to exhaust administrative remedies through a bond hearing would be futile. Federal courts have acknowledged that, in the wake of *Matter of Yajure-Hurtado*, DHS now treats noncitizens charged under INA § 212(a)(6)(A)(i), stripping immigration judges of bond jurisdiction and dismantling decades of settled practice that classified these individuals as § 1226(a) respondents eligible for bond. Even where courts have restored jurisdiction, the hearings are not meaningful. DHS routinely opposes release, relies on speculative allegations of flight risk or danger, and presents unverified claims that frequently carry persuasive weight before IJs.

Exhaustion Does Not Apply Where the Constitutional Violation Occurred at the Time of Detention

Federal courts therefore treat exhaustion as flexible, particularly where the recognized exceptions apply. As many courts have explained, exhaustion may be excused when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain

instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)).*Nian Liu v. Almodovar*, No. 1:25-cv-09256 (ER), slip op. at 10 (S.D.N.Y. Dec. 2, 2025) (first quoting *Araujo Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014); then quoting *Quintanilla v. Decker*, No. 21-cv-417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021)).

Here, the exhaustion is excused based on the first, third, and fourth exceptions. Petitioner was detained without any individualized assessment, which cannot be cured through later immigration-court review. Once a noncitizen has been taken into custody without the required, case-specific determination, any post-deprivation hearing is inherently inadequate. This also makes it clear that the courts of this District may raise a substantial constitutional question that cannot be resolved administratively.

Petitioner's re-detention under these circumstances—whether Respondents label it 8 U.S.C. § 1225 or 8 U.S.C. § 1226—is precisely the sort of arbitrary, process-less deprivation of liberty that the Due Process Clause forbids. Respondents argue that if the Court finds that 8 U.S.C. § 1226, the Court should require Petitioner to exhaust his administrative remedies through a bond hearing. This position is untenable. Post-deprivation immigration-court review cannot possibly remedy DHS's failure to perform the required individualized custody assessment. The Constitution demands that the government exercise discretion *before* depriving a person of liberty, and the regulations do not authorize immigration judges to manufacture an initial custody determination where DHS made none. DHS-ICE has conducted no individualized assessment whatsoever, and the BIA's recent decision in *Hurtado* demonstrates that a bond hearing is not feasible. Seeking administrative exhaustion is no adequate remedy here. Due process requires that the only adequate remedy is Petitioner's release from custody.

Petitioner Is Not a Member of the Maldonado Bautista Class, and the Decision Does Not Control This Case

On November 25, 2025, the Central District of California issued a nationwide class certification order in *Maldonado Bautista v. Santacruz*, extending declaratory relief to a newly defined "Bond Eligible Class." *See* Exhibit 1. Petitioner addresses it for completeness and confirms that he does not fall within the class definition. Because Petitioner was apprehended at the border upon arrival—placing him outside the scope of that order—the *Maldonado Bautista* ruling has no bearing on the statutory and constitutional issues in this habeas action.

The class definition certified in *Maldonado Bautista* expressly excludes all individuals who "were apprehended upon arrival." *Id* at 2. (defining the class to cover only noncitizens who: (1) entered without inspection, (2) "were not or will not be apprehended upon arrival," and (3) are not otherwise subject to detention under §§ 1226(c), 1225(b)(1), or 1231). The administrative record conclusively establishes that Petitioner was apprehended at or near the border immediately after entry. Petitioner was encountered by immigration authorities near Tecate, California on October 30, 2023, issued a Form I-862 Notice to Appear, and served with a Form I-200 Warrant for Arrest at that time. *See* Respondents' Return Exhibits 8-1 and 8-3.

Although Petitioner was apprehended at the border and therefore is not a member of the Bond Eligible Class, a federal court has certified a class action which rejects the very statutory premise the Government invokes here. The court expressly rejected the BIA's decision in Matter of Yajure-Hurtado—the same interpretation the Respondents rely upon here—holding that DHS's post-Hurtado policy of treating EWI respondents as mandatory detainees under § 1225(b)(2)(A).

That conclusion is a statement of law, not a class-limited remedy, and it directly refutes the legal premise underlying Petitioner's re-detention. Thus, even though Petitioner is not a class member, the court's repudiation of Hurtado's reasoning strongly reinforces that DHS lacked any lawful statutory authority to convert Petitioner—two years after his § 1226(a) release—into a § 1225(b)(2) mandatory detainee. The invalidation of Hurtado's interpretation therefore strengthens Petitioner's claim that his re-detention is unlawful and violates due process.

Moreover, the inconsistency between federal judicial decisions and EOIR's internal instruction to immigration judges to ignore Maldonado Bautista and continue applying *Hurtado*. *See* Exhibit 2. This further illustrates that any administrative bond process is incapable of providing meaningful, uniform, or legally accurate relief. When one federal court declares DHS's *Hurtado*-based policy unlawful, while the adjudicatory body overseeing bond determinations instructs judges to disregard that ruling, the result is systemic inconsistency and an administrative process that cannot reliably vindicate statutory or constitutional rights.

This divergence confirms the futility of requiring Petitioner to pursue a bond hearing before the immigration court. In such a landscape, requiring Petitioner to seek relief through that same administrative channel would serve no purpose, as the outcome is predetermined by policy rather than law.

CONCLUSION

For these reasons—and those set forth in the Petition—Petitioner respectfully requests that the Court consider the constitutional consequences of his continued detention. Petitioner has already suffered a deprivation of liberty without any individualized determination, in violation of due process. Because this constitutional harm cannot be cured retroactively, and because the administrative process offers no meaningful or reliable opportunity to remedy the violation, this

Court should apply the recognized exceptions to administrative exhaustion and grant immediate habeas relief.

Petitioner therefore respectfully requests that this Court order his release, consistent with the constitutional principles recognized by federal courts.

Dated: December 3, 2025,

LAW OFFICE OF NG & WASSERMAN PLLC
/s/ Jed S. Wasserman
By: Jed Wasserman
LAW OFFICE OF NG&WASSERMAN PLLC
27 East Broadway, 2nd Floor
New York, NY 10002
Telephone: (212) 925-5616
jedwasserman@ngwasserman.com

Dated: December 3, 2025,

/s/ Stephanie E. Gibbs
STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Senior Litigation Attorney
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915
Email: sgibbs@murrayosorio.com
Local Counsel for Petitioner

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Dated: December 3, 2025,

/s/ Stephanie E. Gibbs
STEPHANIE E. GIBBS
New Jersey State Bar No. 047482013
Senior Litigation Attorney
Murray Osorio PLLC
50 Park Place, Mezzanine Level,
Newark, NJ 07102
Tel.: (571) 455-1915
Email: sgibbs@murrayosorio.com
Local Counsel for Petitioner