IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

ESTEBAN SANCHEZ PEREZ, Petitioner, v. **MIGUEL VERGARA**, *et al.*, Respondents.	**Case No. 1:25-cv-283** **PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Hundreds upon hundreds of district court decisions have rejected the arguments Respondents make here. *Barco Mercado v. Francis*, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (citing "350 cases decided by over 160 different judges sitting in about fifty different courts spread across the United States"); *Demirel v. Fed. Det. Ctr. Philadelphia*, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) (noting that 282 of 288 district court decisions favor Petitioner's position). The only court of appeals to consider the issue has also rejected Respondents' arguments. *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, -- F. 4th --, 2025 WL 3552514, at *10 (7th Cir. Dec. 11, 2025) (Respondents were "not likely to succeed on the merits of their argument that those individuals, whom ICE arrested without a warrant, are subject to mandatory detention under § 1225(b)(2)(A)"). Finally, numerous courts in this district have also repudiated Respondents' position. *See Ponce Cervantes v. Noem*, 5:25-cv-192, Dkt. 20 (S.D. Tex. Dec. 12, 2025) (Saldaña, J.); *Espinoza Andres v. Noem*, 25-cv-5128, 2025 WL 3458893 (S.D. Tex. Dec. 2, 2025) (Hittner, J.); *Cabrera-Hernandez v. Bondi*, 5:25-cv-197, Dkt. 24 (S.D. Tex. Dec. 2, 2025) (Marmolejo, J.); *Cruz Gutierrez v. Thompson*, 4:25-cv-4695, 2025 WL 3187521 (S.D. Tex. Nov. 14, 2025) (Hanks,

J.); *Covarrubias v. Vergara*, 5:25-cv-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025) (Kazen, J.); *Buenrostro-Mendez v. Bondi*, 25-cv-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.). But Respondents "make no attempt to distinguish the authority rejecting their arguments. Instead, they simply rehash the same arguments other judges in this District have already rejected … [This] [C]ourt … should 'resist the temptation to repastinate ground already well-spaded by other tribunals which have heard – and overruled – these selfsame arguments.'" *Jimenez Facio v. Baltazar*, 2025 WL 3559128 (D. Colo. Dec. 12, 2025) (citing *Quigley v. Vane*, 834 F.2d 14, 15 (1st Cir. 1987)) (internal citation omitted).

Faced with an overwhelming tide of authority that rejects their position, Respondents fall back on almost universally rejected arguments about administrative exhaustion. Dkt. 7 at 3-4. But in fact, Mr. Sanchez has applied for bond with an immigration court and has been denied. *See* Dkt. 8-1. And the Fifth Circuit has made clear that administrative exhaustion is not required in situations like this, where administrative remedies are inadequate or futile, or where a petitioner is bringing a constitutional claim that cannot be resolved in the administrative tribunal.

For the reasons that follow, this Court should join "nearly every other district court to address this issue" and grant the petition for writ of habeas corpus. *Cabrera-Hernandez v. Bondi*, 5:25-cv-197, Dkt. 24, slip op. at 8 (citing *Buenrostro-Mendez*, 2025 WL 2886346, at *3).

ARGUMENT

I. Administrative exhaustion is not required by statute or under Fifth Circuit precedent.

Respondents argue that the Court "should dismiss the habeas Petition because Petitioner has not administratively exhausted his claims." Dkt. 7 at 3. Aside from a single outlier case in Ohio cited by Respondents, courts have overwhelmingly rejected this argument in cases like this one.

On September 5, 2025, the Board of Immigration Appeals (BIA) adopted the Government's novel interpretation of 8 U.S.C. § 1225 in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Yajure Hurtado*, the BIA held that "Immigration judges have no authority to redetermine the custody" of noncitizens who "crossed the border unlawfully without inspection." *Id.* at 228. It is undisputed that Petitioner entered the United States without inspection. Dkt. 7 at 2.

Yajure Hurtado forecloses administrative remedies in this case, and courts have recognized as much. *See e.g., Buenrostro-Mendez*, 2025 WL 2886346, at *3; *Cabanas v. Bondi*, 4:25-cv-4830, 2025 WL 3171331, at *3 (S.D. Tex. Nov. 13, 2025). Indeed, Respondents' "argument is Kafkaesque. Requiring Petitioner to exhaust his administrative remedies would be futile because Respondents' position is that he is *statutorily precluded* from obtaining the relief he seeks." *Delgado Avila v. Crowley*, -- F. Supp. 3d --, 2025 WL 3171175, at *2 (S.D. Ind. Nov. 13, 2025) (emphasis in original). Notably, even *Cabanas*, a minority case from this district erroneously holding that § 1225(b)(2)(A) applied to a noncitizen's detention, found that it could reach the merits and that administrative exhaustion did not apply. *Cabanas*, 2025 WL 3171331, at *3.

As an initial matter, "exhaustion does not bar this court's review because it is not a statutory requirement in these circumstances." *Buenrostro-Mendez*, 2025 WL 2886346, at *3. And the Fifth Circuit has recognized exceptions to exhaustion, including "where available administrative remedies are (i) unavailable, (ii) wholly inadequate, (iii) patently futile, or (iv) when a constitutional challenge is advanced that is unsuitable for determination in an administrative proceeding." *Cabanas*, 2025 WL 3171331, at *3 (citing *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994); *Garner v. U.S. Dep't of Labor*, 221 F.3d 822, 825 (5th Cir. 2000)).

In fact, Mr. Sanchez has pursued administrative remedies in this case, seeking bond from an immigration judge in light of the court's decision in *Bautista v. Santacruz*, 5:25-cv-1873, 2025

WL 3288403 (C.D. Cal. Nov. 25, 2025), which granted a declaratory judgment to a nationwide class that includes Petitioner, finding that such persons are detained pursuant to § 1226(a), not § 1225(b). *Bautista*, 2025 WL 3288403, at *9. However, the immigration judge denied bond, concluding that *Bautista* did not overrule the BIA's decision in *Yajure Hurtado*. *See* Dkt. 8-1 (Dec. 11, 2025 bond order). Although Mr. Sanchez could theoretically appeal this determination to the BIA, the result of that appeal is already predetermined by *Yajure Hurtado*; requiring him to jump through that hoop anyway would be the quintessence of futility. The problem is exacerbated by the slowness of the immigration court process: bond appeals have "an average processing time of 204 days," while many cases take "a year or longer to resolve." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253 (W.D. Wash. 2025). To require Petitioner to file a bond appeal that is guaranteed to fail and then make him wait 6-12 months (or more) for that inevitable denial only underscores the nature of the futility here, given that Petitioner's immigration case will likely be over by that time anyway, leaving him without effective recourse to challenge his unlawful detention. *See Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).

Finally, exhaustion of administrative remedies is also warranted in cases involving constitutional claims. *Cabanas*, 2025 WL 3171331, at *3; *Garner*, 221 F.3d at 825. Here, Mr. Sanchez Perez brings a constitutional due process claim (Dkt. 1 at 25) that cannot be adjudicated by the BIA, since it cannot rule on constitutional claims. *See* Dkt. 1 at ¶ 29 (collecting cases).

In short, exhaustion is not required by statute, and there are any number of prudential reasons to excuse it here, as nearly every district court in the country to consider this issue has previously found. Therefore, this Court should reach the merits of the case.

II. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225.

As noted above, the Seventh Circuit and hundreds upon hundreds of district courts

nationwide, including at least six jurists in this district, have rejected Respondents' arguments; however, for the sake of thoroughness, Petitioner will briefly address them here.

First, Respondents argue that the plain text of § 1225(b) supports their position. They made the same arguments before the Seventh Circuit in *Castañon-Nava*, which rejected them. 2025 WL 3552514 at *9. "In [Respondents'] view, an 'applicant for admission' is synonymous with a person 'seeking admission' because, as they put it, one cannot apply for something without also seeking it. And, admittedly, this argument has some superficial appeal." *Id.* However, the court rejected such a reading for several reasons. First, it reasoned that Congress "could easily have included noncitizens who are 'seeking admission' within the definition" of applicants for admission "but elected not to do so." *Id.* "What is more, [Respondents'] construction would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous, violating one of the cardinal rules of statutory construction." *Id.* Finally, the court noted that "the difference in treatment between a noncitizen at the border and one already in the United States fits within the broader context of our immigration law. Indeed '[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law.'" *Id.* (citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). *See also Covarrubias*, 2025 WL 2950097, at *3-4 (citing "two particularly strong statutory interpretation arguments that undercut Respondents' interpretation" and largely echoing the Seventh Circuit's reasoning); *Buenrostro-Mendez*, 2025 WL 2886346, at *3 (noting that "almost every district court to consider this issue" has concluded that the statutory text supports Petitioner's argument, not Respondents').

Respondents also rely upon the BIA's decision in *Yajure Hurtado* (Dkt. at 7-8). But "this court is not bound by *Matter of Yajure Hurtado*'s interpretation of the relevant statutes."

Buenrostro-Mendez, 2025 WL 2886346, at *3, n.3 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)); *Patel v. Crowley*, 2025 WL 2996787 (N.D. Ill. Oct. 24, 2025), at *6 ("The BIA's decision in *Yajure Hurtado* is unpersuasive and not entitled to deference"). As the *Patel* court noted, the BIA's decision "is unpersuasive for several reasons," not least of which is the fact that it contradicted three of the BIA's own recent decisions which had held to the contrary. *Patel*, 2025 WL 2996787, at *6.

Finally, Respondents cite three out-of-district cases and two from Judge Eskridge in this district, while grudgingly "acknowledg[ing] that there are district court decisions that hold to the contrary," a remarkable understatement, given that as of three weeks ago 350 district court decisions had held to the contrary, and a dozen or more new ones are added to Westlaw daily. *See Barco Mercado*, 2025 WL 3295903, at *4. Of course, it is difficult to conceive of any novel legal issue on which every jurist in the country would fully agree; however, if the *Barco Mercado* court's statistics are correct (showing 350 of 362 decisions that have sided with petitioners), that represents close to a 97% consensus that § 1225(b)(2) does not apply here, and Respondents have simply offered nothing to overcome that weight of authority. It is worth noting, too, that Respondents have cited these minority cases elsewhere and other courts have them unpersuasive. *See, e.g., Alonso v. Tindall*, 2025 WL 3083920, at *7 (W.D. Ky. Nov. 4, 2025); *Alejandro v. Olson*, 2025 WL 2896348, at *6 (S.D. Ind. Oct. 11, 2025).

Ultimately, the most telling evidence of the speciousness of Respondents' argument comes from their own documents. The Notice to Appear (Dkt. 8 at 1, 6) has the box checked showing that "You are an alien present in the United States who has not been admitted or paroled," not the "You are an arriving alien" box. *See, e.g., E.M. v. Noem*, 2025 WL 3157839, at *7 (D. Minn. Nov. 12, 2025) (citing this as evidence that § 1226, not § 1225, applied to petitioner's detention); *Guaita*

Quinapanta v. Bondi, 2025 WL 3157867, at *5 (W.D. Wis. Nov. 12, 2025) (same). Similarly, the warrants (Dkt. 8 at 4-5) cite INA § 236 [8 U.S.C. § 1226] as the basis of authority. *See Jimenez Facio*, 2025 WL 3559128, at *3; *Rico-Tapia v. Smith*, 2025 WL 2950089, at *7 (D. Haw. Oct. 10, 2025) (citing similar warrant as evidence that Respondents' position is "disingenuous and lacks support in both the record and the law"). Finally, the Notice of Custody Determination (Dkt. 8 at 9-10) again cites § 236. Collectively, these documents provide conclusive evidence that § 1226, not § 1225, is the applicable statute in this case. *See, e.g., Delgado Avila*, 2025 WL 3171175, at *4 (noting that a petitioner cannot be subject to both § 1225 and § 1226). This Court should discount Respondents' conclusory statements in this litigation and instead take DHS's documentation citing to detention authority under § 1226 "at face value." *See Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6 (E.D. Mich. Sept. 9, 2025). Respondents' post-hoc justifications purporting to change the basis for an individual's detention deserve no credit. *Beltran Barrera v. Tindall,* 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, 2025 WL 2699219, at *5 (W.D. Ky. Sept. 22, 2025); *Lopez-Campos*, 2025 WL 2496379, at *7.

In short, the overwhelming tide of authority, not only in this district but around the country, and now even at the appellate level, weighs against Respondents' arguments, and they offer no compelling reason to diverge from that authority.

III. Petitioner's detention violates his right to due process.

Finally, Respondents argue that Mr. Sanchez's unlawful detention does not violate his right to due process. Dkt. 7 at 10-12. Petitioner acknowledges that this court can resolve this case purely on statutory grounds by determining that § 1226(a), not § 1225(b), applies to Petitioner's detention. *See, e.g., Mairena-Munguia v. Arnott*, -- F. Supp. 3d --, 2025 WL 3229132, at *4 (W.D. Mo. Nov. 19, 2025) (finding that resolution of the statutory claim obviated need to consider due process

claim, while noting "significant initial concerns regarding constitutionality of Respondents' detention policy"); *Buenrostro-Mendez*, 2025 WL 2886346, at *3, n.4 (declining to reach due process claim). However, numerous other courts have found that subjecting noncitizens to detention without bond under an inapplicable statute violates due process. *See, e.g., Delgado Avila*, 2025 WL 3171175, at *4-5 (applying *Mathews v. Eldridge* balancing test and collecting cases); *Chavez Garay v. Perry*, 2025 WL 3540070, at *1, n.1 (E.D. Va. Dec. 10, 2025) (granting petition on due process grounds and declining to reach statutory arguments).

Here, Mr. Sanchez has been unlawfully denied an individualized bond hearing. As such, his current detention runs contrary to the INA, and detention that is contrary to statutory authority violates the due process clause, which applies to "*all 'persons' within* the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693 (emphasis added); *Lopez-Campos*, 2025 WL 2496379, at *9 (finding that Petitioner's unlawful detention under Section 1225(b)(2) violated due process). Further, whatever interest Respondents have in detaining Petitioner cannot outweigh the public interest in the faithful application of the constitution and laws that Congress drafted.

Respondents attempt to downplay Petitioner's due process claim by arguing the Supreme Court has authorized detention during removal proceedings. Dkt. 7 at 10. But as courts have consistently recognized, custody determinations and removal proceedings are distinct processes. *See A.A. v. Olson*, 2025 WL 2886729, at *6 (D. Minn. Oct. 8, 2025) ("A petition for review with the BIA … cannot substitute for habeas review of ongoing detention."). Although, as Respondents point out, the Supreme Court has in some cases found that detention during removal proceedings does not violate due process, *see, e.g., Demore v. Kim*, 538 U.S. 510 (2003), that has no bearing on the question here, which is whether denying a person a hearing to which they are legally entitled

violates their due process rights. *See, e.g., Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Vieira v. De Anda-Ybarra*, -- F. Supp. 3d --, 2025 WL 2937880, *5-6 (W.D. Tex. Oct. 16, 2025) (applying *Mathews v. Eldridge* balancing test in legally indistinguishable case and finding constitutional violation).

IV. The court's decision in *Bautista* further supports a grant of relief in this case.

Although Respondents do not discuss it, the court's recent decision in *Bautista* is relevant to the Court's analysis in this case. In *Bautista*, a court in the Central District of California certified a nationwide class of noncitizens of which Mr. Sanchez is part and granted declaratory relief to the class, ruling that they are detained pursuant to § 1226(a), not § 1225(b). *Bautista v. Santacruz*, -- F.R.D. --, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

The court in *Bautista* has not yet entered final judgment under Fed. R. Civ. P. 54, so it does not have a preclusive effect on this case. However, courts have nonetheless cited it as additional grounds for granting habeas petitions in cases like this one. *See, e.g., Velasco-Sanchez v. Raycraft*, 2025 WL 3553672, at *3 (E.D. Mich. Dec. 11, 2025) (citing *Bautista* in granting habeas relief); *Morales-Flores v. Lyons*, 2025 WL 3552841, at *3 (E.D. Cal. Dec. 11, 2025) (citing *Bautista* as additional reason for granting habeas relief); *Rodriguez v. Larose*, 2025 WL 3456475, at *5, n.4 (S.D. Cal. Dec. 2, 2025) ("Petitioner is a member of this class and entitled to the same relief"); *Santuario v. Bondi*, 2025 WL 3469577, at *2, n.4 (D. Minn. Dec. 2, 2025) ("the Court also concludes that Petitioner qualifies as a class member pursuant to the order in *Bautista*, and is entitled to his habeas petition being granted on those alternative grounds").

V. If the Court does not order immediate release, it should order a bond hearing at which Respondents are enjoined from relying upon *Yajure Hurtado* and are required to justify Mr. Sanchez Perez's detention by clear and convincing evidence.

At the December 11 bond hearing in Mr. Sanchez Perez's case, the IJ persisted in citing *Yajure Hurtado* as a justification for denying bond. Dkt. 8-1. This Court should enjoin Respondents from denying bond on the basis that Mr. Sanchez is detained pursuant to § 1225(b). *See, e.g., Chavez Garay*, 2025 WL 3540070, at *4. Furthermore, the Court should require Respondents to bear the burden of proving by clear and convincing evidence that Mr. Sanchez is a danger or a flight risk. "When granting immigrant detainees' habeas petitions, an 'overwhelming consensus' of courts have placed the burden on the government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Ochoa v. Noem*, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025), at *8 (collecting cases from the First, Second, Third, and Ninth Circuits and several district courts); *see also L.G.*, 744 F. Supp. 3d at 1186 (recognizing that "the rights of noncitizens are not the same as citizens" but nonetheless concluding that due process requires the burden to be on the Government); *Acosta de Perez v. Frink*, 2025 WL 3626347, at *5 (S.D. Tex. Dec. 12, 2025) (ordering that "the respondents will have the burden to show by clear and convincing evidence that Acosta de Perez presents a danger to the community or a flight risk"); *Espinosa Andres*, 2025 WL 3458893, at *5 (same); *Escobar-Arauz v. Noem*, 2025 WL 3543648, at *4 (W.D. Tex. Dec. 10, 2025) (same) (collecting cases).

CONCLUSION

This Court should grant the petition for writ of habeas corpus and order a bond hearing within seven days at which Respondents bear the burden of proof by clear and convincing evidence, or order Mr. Sanchez's immediate release.

Dated: December 16, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 16th day of December, 2025, which sent notice of such filing to all parties receiving electronic notice.

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