UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ARMANDO DE MACEDO MENDES, Petitioner, v. PATRICIA HYDE, Field Office Director, MICHAEL KROL, HSI New England Special Agent in Charge, and TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, and KRISTI NOEM, U.S. Secretary of Homeland Security, MICHAEL NESSINGER, Warden of the Donald W. Wyatt Detention Center, And PAMELA BONDI, United States Attorney General, Respondents.	Case No. 1:25-cv-00627-JJM-AEM

REPLY TO GOVERNMENT'S ABBREVIATED RESPONSE TO HABEAS PETTION

Petitioner Armando De Macedo Mendes, 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. De Macedo Mendes 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. De Macedo Mendes 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. De Macedo Mendes is likely to experience irreparable harm if he is unable to seek habeas relief unless, assuming the Immigration Judge agrees with the Respondent's argument and denies bond based on the belief the Petitioner is ineligible for release, 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)). 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).

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. De Macedo Mendes has been living in the United States prior to when when the Government detained him, 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).

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. De Macedo Mendes, 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. De Macedo Mendes falls within the exemptions set forth in 8 U.S.C. §1226(c), and thus, the Government's

argument that Mr. De Macedo Mendes is subject to mandatory detention and not entitled to a bond hearing contradicts the plain language of § 1226(a).

More than two dozen courts across the country have rejected the Governments' reinterpretation of the INA in a way that deprives individuals, like Mr. De Macedo Mendes, 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). A recent federal court has also issued an injunction, enjoining the Respondents from continuing to rely on *Matter of Yajure Hurtado*. (See *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al,* 5:25-cv-01873 (Cent. Dist. of Cal. filed July 23, 2025)). In doing so, the Government has (and continues to) unconstitutionally deprived Mr. De Macedo Mendes of his Fifth Amendment right to due process by holding him without a bond hearing.

Accordingly, the Petitioner requests that the Court order Mr. De Macedo Mendes, release immediately and issue an order that at the upcoming bond hearing the Petitioner is detained pursuant with 8 U.S.C. § 1226(a)(2). Because there is nothing in the record to suggest that Mr. De Macedo Mendes is a danger to society, the only proper interim release condition should be directed at assuring his appearance at the bond hearing. *See Chang Barrios v. Shepley*, 2025 WL 2772579, at*12 (D. Me. Sept. 29, 2025).

Dated: December 4, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2025, I electronically filed the within Reply 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