UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

LAZARO SAEZ MARTINEZ, Petitioner, v. MIGUEL VERGARA, *in his official capacity* as Field Office Director of the Harlingen ICE Field Office, et al. Respondents.	§ § § § § § § § § §	Case No.: 1:25-cv-00342

REPLY TO GOVERNMENT'S OPPOSITION TO PETITION FOR HABEAS CORPUS AND OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The Government posits three arguments as to why this Court should deny the petition. First, the Government contends that the Petitioner failed to exhaust his administrative remedies by applying for a bond before an immigration judge. But this argument fails because the law contains no requirement that Petitioner exhaust his administrative remedies in this proceeding and a prudential requirement by this Court to require it would not promote judicial efficiency and would only prolong the constitutional violation Petitioner is suffering while in detention. Finally, any effort to obtain a bond in this legal environment would be futile. The Government's other main argument, that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) is also unavailing. This Court has already held that 8 U.S.C. § 1225(b) applies primarily to aliens seeking entry into the United States while 8 U.S.C. § 1226 applies to aliens already present in the United States. In addition, while Petitioner was initially apprehended close to the border and close in time

to his arrival in the United States, from the moment that he stepped foot in the United States, the Department of Homeland Security ("DHS") has classified him as falling under 8 U.S.C. § 1226. This classification is in the warrant for his arrest, the document releasing him on his own recognizance, and the notice of custody determination. In addition, both Notices to appear, including the more recent one, classifies him as being present in the United States with admission or parole. The Government cannot now retract that custody determination without violating due process. For these reasons, the Court should deny the Government's motion for summary judgment and grant the petition.

ARGUMENT

I. PETITIONER IS NOT REQUIRED TO EXHAUST HIS ADMINISTRATIVE REMEDIES.

First, the Government argues that this Court should deny the petition on the basis that Petitioner has not exhausted his administrative remedies. This argument fails because an immigrant is only required to exhaust his administrative remedies when required to by statute. No such statutory requirement exists. *Santoyo v. Dickey*, No. H-25-5555, 2025 U.S. Dist. LEXIS 265636, at *5 (S.D. Tex. Dec. 23, 2025). In addition, while a Court may require exhaustion as a matter of prudence to "promote judicial efficiency," this requirement may not be required when a "legal question is fit for resolution and delay means hardship." *Id.* at *5-6. In those cases, "a court may choose to decide the issues itself." *Id.* at *6. This case turns on statutory interpretation, which is within the province of the Court. *Id.* at *6. To require Petitioner to wait would only exacerbate the constitutional injury alleged in the petition. Finally, the Government's own briefing demonstrates that any attempt to seek a bond would be futile as the Government is arguing that Immigration Judges do not have jurisdiction to give a bond to someone in the Petitioner's position. *Id.* at *6-7. Requiring him to apply for a bond would only waste time, money and other resources

only for him to get a denial based on lack of jurisdiction. Therefore, the Court should not require Petitioner to exhaust prudential administrative remedies.

II. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a).

Next, the Government argues that the Court should deny the petition because Petitioner is detained under 8 U.S.C. § 1225(b). This Court has already concluded "Section 1225 applies only to aliens at the time of their arrival at a United States border, whether presenting themselves at a port of arrival, or after being arrested while attempting to enter the country without detection." *Lang Shi v. Lyons*, No. 1:25-CV-274, 2025 U.S. Dist. LEXIS 260870, at *10-11 (S.D. Tex. Dec. 12, 2025). Similarly, this Court also noted that historically, the Department of Homeland Security "applied Section 1226 to individuals arrested after having entered the country without detection and who had lived in the country for some period of time." *Id.* at *14. At first blush, it would appear that Petitioner would fall under 8 U.S.C. § 1225 as he was detained near the border shortly after he crossed into the United States. But the documentary evidence points to a different conclusion.

When Petitioner crossed the border in January 2022, DHS detained him and issued several documents. First, DHS issued a Warrant for Arrest of Alien on January 4, 2022. Dkt. No. 1-4. That warrant states that DHS took him into custody "as authorized by section 236 of the Immigration and Nationality Act." This provision is codified as 8 U.S.C. § 1226. Second, DHS issued a Notice of Custody Determination. Dkt. No. 1-3. This document claims that DHS determined that he could be released on his own recognizance under the authority contained 8 U.S.C. § 1226. Third, DHS issued an Order of Release on Recognizance, in which Petitioner was released in accordance with 8 U.S.C. § 1226. In addition, DHS issued two separate Notices to Appear. The first Notice to Appear, dated January 4, 2022, when he came across the border, designates Petitioner as being

present in the United States without admission or parole. DHS had the opportunity to designate him as an arriving alien or place him in expedited removal proceedings and did not do so. The second Notice to Appear, dated November 27, 2025, also designates Petitioner as being present in the United States without admission or parole.[1] From his first day in the country, DHS has designated him as falling under 8 U.S.C. § 1226(a). And for the last four years, Petitioner has lived in this country on his own recognizance under 8 U.S.C. § 1226(a). Petitioner contends that for legal and practical reasons, Petitioner falls under 8 U.S.C. § 1226(a).

The Government's response does not really dispute this when discussing the rationale for his detention. The government does not contend that he has a criminal record. The Government does not contend that Petitioner is now a flight risk because he failed to appear in Court. The Government does not discuss, much less refute, any of the documents issued to Petitioner designating him as falling under 8 U.S.C. § 1226(a). The Government provides no explanation for its decision to now designate him as falling under 8 U.S.C. § 1225(b) except that the Government has chosen to reinterpret 8 U.S.C. § 1225(b) under the new *Yajure Hurtado* regime and now applies that new interpretation to the Petitioner.

The Government's reliance on other "persuasive" cases supporting its position is misplaced. A vast majority of courts have rejected the Government's position. In fact, it is not even close. Back in November 2025, courts rejected *Yajure Hurtado* in over 200 cases. *Ramirez v. Noem*, No. 2:25-cv-02136-RFB-MDC, 2025 U.S. Dist. LEXIS 230420, at *20 (D. Nev. Nov. 24, 2025. A recent article in Politico calculated that, at publication time, over 300 judges had ruled against *Yajure Hurtado* in 1,600 cases while just 14 judges adopted the Government's argument. Kyle Cheney, Hundreds of Judges Reject Trump's Mandatory Detention Policy, With No End in

[1] The November 27, 2025 Notice to Appear has his date of entry to the United States listed as July 15, 2022, while all other documents related to his entry list his entry date as January 4, 2022.

Sight, POLITICO (January 5, 2026) available at https://www.politico.com/news/2026/01/05/trump-administration-immigrants-mandatory-detention-00709494. As noted above, this Court previously rejected the Government's argument in *Lang Shi*. If the issue is persuasion based on other courts' decisions, Petitioner's position is favored by the majority of courts to decide this issue.

III. THE PROPER REMEDY IS IMMEDIATE RELEASE

Petitioner respectfully requests immediate release. DHS has already made a custody determination that he is detained under 8 U.S.C. § 1226(a), that he should be released on his own recognizance, and issued a separate order to that effect. A copy of that determination and that order are included in the Petition. Dkt. Nos. 1-2 and 1-3.

The Government has not produced any evidence whatsoever to show that Petitioner has violated the terms of that release. The government has not claimed that he is a flight risk. It has made no claims that he has missed immigration court or a check-in. It has made no claims that he has a criminal record or is otherwise a danger to persons or property. The government has not demonstrated at all why he should not have to go back to immigration court and apply for a bond. The government revoked that order only based on its new interpretation of 8 U.S.C. § 1225(b). Therefore, if the Court determines that he is detained under 8 U.S.C. § 1226(a), Petitioner submits that he should go back to the position he was before he was detained, i.e., released on his own recognizance.

In the alternative, Petitioner requests a bond hearing with the burden on the government to show by clear and convincing evidence that he is a flight risk and/or danger to persons or property and that no alternatives to detention exist to mitigate that risk.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny the Government's motion for summary judgment, grant the Petition, and order Petitioner's immediate release. In the alternative, Petitioner requests a bond hearing with the burden on the government to show by clear and convincing evidence that he is a flight risk and/or danger to persons or property and that no alternatives to detention exist to mitigate that risk.

Dated: January 16, 2026

Respectfully submitted,

s/Aaron J. Aisen

Aaron J. Aisen
Attorney for Petitioner
Aisen Law, PLLC
1967 Wehrle Drive, Suite 3 – PMB 225
Williamsville, New York 14221
Aaisen@aisenlawpllc.com
(585) 478-7728

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2026, I electronically filed the attached Declaration and accompanying exhibit with the Clerk of the Court for the United States District Court for the Southern District of Texas by using the CM/ECF system.

s/Aaron J. Aisen

Aaron J. Aisen
Attorney for Petitioner
Aisen Law, PLLC
1967 Wehrle Drive, Suite 3 – PMB 225
Williamsville, New York 14221
Aaisen@aisenlawpllc.com
(585) 478-7728