UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Jesus ASCENCIO VILLEDA	§	
Petitioner,	§	
	§	
v.	§	**Case No. 4:25-cv-6272**
	§	
Pamela Jo BONDI, Attorney General of	§	**PETITIONER'S MOTION IN**
the United States, *et al.,*	§	**OPPOSITION TO**
Respondents.	§	**RESPONDENTS' MOTION**
	§	**TO DISMISS**

PETITIONER'S MOTION IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

Respectfully submitted,

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INTRODUCTION

Petitioner, Jesus Ascencio Villeda hereby submits this response to Respondents' Motion to Dismiss (Dkt. 9) per the Court's Order to Answer dated January 9, 2026. (Dkt. 7).

In Respondents' Motion to Dismiss Petitioner's Writ of Habeas Corpus, Respondents argue that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), that Petitioner has failed to exhaust administrative remedies, and that the class action ruling in *Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025) is not binding here.

Petitioner hereby opposes Respondents' Motion to Dismiss as a matter of law and respectfully requests that the Court grant his habeas petition or any other relief this Court deems just and proper.

STATEMENT OF FACTS

Petitioner is a noncitizen who entered the United States without inspection and who has lived in this country for over 20 years. For more than half a century, when immigration authorities arrested and detained people like Petitioner, they considered them for release on bond. If release was denied, they also provide a bond hearing before an immigration judge (IJ) to determine if they present a flight risk or danger or, if not, should be released. But Respondents have now upended this decades-old legal interpretation. They now declare, based on new directives from July 8, 2025, that regardless of how long a person has lived here, and regardless of their ties to this country, individuals like Petitioner are subject to mandatory detention under the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2)(A), and may not be released on bond. Respondents'

radical new policy defies both the plain text of the statute providing for release on bond, 8 U.S.C. § 1226, and the structure of the INA's detention scheme. As the Supreme Court explained in *Jennings v. Rodriguez*, § 1226(a) governs the detention of those, like Petitioner, who are "already in the country" and are detained "pending the outcome of removal proceedings." 583 U.S. 281, 289 (2018). That statute provides that such people are eligible for bond. In contrast, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry" to noncitizens "seeking to enter the country." *Id.* at 287. That understanding is reinforced by canons of statutory construction, the legislative history, the implementing regulations, and Respondents' long history of providing individuals like Petitioner with bond hearings.

Accordingly, Petitioner asks the Court to affirm his right to be considered for release on bond, just as they have for decades and as the INA's plain text and implementing regulations require. Because Respondents' new policies are unlawful, the Court should grant Mr. Ascencio Villeda's habeas petition.

LEGAL ARGUMENT

` Respondents' motion fails on threshold grounds. Exhaustion under § 2241 is **prudential, not jurisdictional**, and is excused here because further administrative review would have been futile, the petition presents a pure question of law, and Petitioner is suffering ongoing unlawful detention. Because genuine legal disputes remain—and because continued detention without statutory authority constitutes irreparable harm—summary dismissal and summary judgment must be denied.

Further, the material facts in this case are not in dispute. As a matter of policy, Respondents assert that all noncitizens whom they arrest and detain after having entered without inspection are subject to mandatory detention under § 1225(b)(2), including those who have already entered the country and have been residing in the United States for months or even years. According to Respondents, such persons are ineligible for release on bond.

Respondents' policy violates the INA. As the Supreme Court has explained, § 1225 is concerned "primarily [with those] seeking entry," *Jennings*, 583 U.S. at 297, i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *id*. at 287. In contrast, § 1226(a) applies to those who, like Petitioner, are "already in the country" and are detained "pending the outcome of removal proceedings." *Id*. at 289. The INA's plain text, canons of statutory construction, the statutes' legislative history, the implementing regulations, and decades of agency practice all support this conclusion.

I. This Court has jurisdiction to review Petitioner's statutory and constitutional challenge to immigration detention

The Supreme Court has ruled that District Courts may review immigration detention apart from final removal orders. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) accordingly this Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651. In the present case Petitioner seeks an order from this Court declaring his continued and prolonged detention unlawful and ordering Respondents to provide Petitioner with a bond hearing.

> "Which statute applies to Petitioner is a question of statutory interpretation, and is therefore province of the courts, not agencies. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). "Judges have always been expected to apply

> their 'judgment' independent of the political branches when interpreting the laws those branches enact. And one of those laws, the APA, bars judges from disregarding that responsibility just because an Executive Branch agency views a statute differently. . . . Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires." *Id*. at 412–13 (citation omitted)." *Fuentes v. Lyons*, Civil Action 5:25-cv-00153 Dkt. 15 (S.D. Tex. Oct. 16, 2025).

A. Exhaustion would be Futile

In addition, this Court has jurisdiction under 28 U.S.C. § 2241 to review statutory and constitutional challenges to immigration detention under *Zadvydas* (*Zadvydas v. Davis* 533 U.S. 678 (2001)), provided that administrative remedies have been exhausted. Administrative remedies in this case should be considered to be exhausted: Petitioner reserved appeal upon the Immigration Judge's decision denying Petitioner's bond request due to lack of jurisdiction under *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). Further pursuing an appeal of this decision before the Board of Immigration Appeals would be futile, and the Fifth Circuit does not require exhaustion where the agency has already adopted a definitive legal position. *Tesfamichael v. Gonzales*, 469 F.3d 109, 114 (5th Cir. 2006) (exhaustion excused where further administrative review would be futile).

The BIA is bound by its own precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which strips Immigration Judges of bond jurisdiction over noncitizens subject to be process under § 235(b)(2)(A). Any further waiting on an appeal to the BIA would be futile. See *Galvez*, 52 F.4th at 825 (courts may waive exhaustion when resort to administrative remedies would be futile).

B. Exhaustion under § 2241 is Prudential in the Fifth Circuit

Unlike 8 U.S.C. § 1252(d)(1), which imposes exhaustion for petitions for review of final orders of removal in the courts of appeals, there is no statutory exhaustion mandate for habeas petitions challenging immigration detention under § 2241. The Fifth Circuit has consistently recognized that **exhaustion in this context is prudential, not jurisdictional**. *Galvez v. Jaddou*, 52 F.4th 821, 825 (5th Cir. 2022); *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). In the Fifth Circuit, exhaustion in § 2241 proceedings is not jurisdictional and may be excused. *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194–95 (5th Cir. 2012). Courts routinely excuse exhaustion where exhaustion would be futile, the issue is purely legal, or irreparable harm is ongoing. All three apply in this instance.

C. The Petition Presents a Pure Question of Law

Petitioner does not challenge discretionary bond factors. He challenges which statute governs his detention—§ 1225(b)(2) or § 1226(a). The Fifth Circuit recognizes that exhaustion is unnecessary where the claim raises a pure legal question. *Goonsuwan v. Ashcroft*, 252 F.3d 383, 389 (5th Cir. 2001). Petitioner raises statutory and constitutional challenges concerning the proper interpretation of 8 U.S.C. §§ 1225 and 1226, and the Fifth Amendment right to due process. These are purely legal issues well within this Court's competence, and no factual record needs further development. *See McCarthy v. Madigan*, 503 U.S. 140, 147 (1992) (exhaustion not required where claim involves purely legal question).

Respondents' decision to detain Mr. Ascencio Villeda is no longer legally justifiable and is capricious and arbitrary. There is no better time for the Court to consider the merits of Mr. Ascencio Villeda's request for release.

II. Petitioner is not subject to mandatory detention because Petitioner's detention and bond hearing was authorized by 8 U.S.C. § 1226, not 8 U.S.C. § 1225

Respondents argue Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) based on a plain reading of the text. (Dkt. 7.) Respondents' position is consistent with new Department of Homeland Security (DHS) policy issued on July 8, 2025, and the Board of Immigration Appeals' September 5, 2025, decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission). However, the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades, support that Petitioner's detention falls within the confines of § 1226(a), and not § 1225(b)(2)(A).

A. DHS's Statutory Authority to Detain Petitioner under 8 U.S.C. §§ 1226(a) and 1225(b)(2)

8 U.S.C. § 1226(a) expressly covers noncitizens who are present without admission and provides the general right to seek release on bond. 8 U.S.C. § 1226. The Supreme Court has explained that Section 1226(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an alien 'pending a decision on whether the alien is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1226(a)). Under 8 U.S.C. § 1226(a), a noncitizen is generally entitled to a bond hearing at the outset of their

detention. *See id.* ("the Attorney General 'may release' an alien detained under § 1226(a) 'on bond or conditional parole'" (quoting 8 U.S.C. § 1226)).

On the other hand, 8 U.S.C. § 1225(b)(2) is limited to noncitizens who are seeking admission. As the Supreme Court has explained, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). "[A]liens who are covered by § 1225(b)(2) are detained pursuant to a different process" and "'shall be detained for a [removal] proceeding' if an immigration officer 'determines that [they are] not clearly and beyond a doubt entitled to be admitted' into the country." *Id*. (quoting § 1225(b)(2)(A)). Therefore, "noncitizens detained under section 1225(b)(2) must remain in custody for the duration of their removal proceedings, while those detained under section 1226(a) are entitled to a bond hearing before an IJ at any time before entry of a final removal order." *Rodriguez v. Bostock*, 2025 WL 2782499, at *3 (W.D. Wash. Sept. 30, 2025).

"In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Jennings*, 583 U.S. at 289.

B. Section 1226(a) Applies to Petitioner's Detention

Respondents argue that "the plain text of the INA provides that [Petitioner] falls under the mandatory detention provisions of 8 U.S.C. § 1225 as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than

designated by the Attorney General. *See Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)." Dkt. 7. Respondents primarily argue that all applicants for admission, like Petitioner, who are present in the United States without having been admitted are subject to mandatory detention under § 1225 and therefore Immigration Judge's lack authority to issue bond in these cases. However, Petitioner argues that Respondents misinterpret the plain text of the statute and that Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a) based on a plain reading of the statutes and regulations as well as the historical agency interpretation of the statute.

Respondents' interpretation of 8 U.S.C. § 1225 relies entirely on the breadth of the definition of "applicants for admission" at § 1225(a)(1) and fails to acknowledge that this definition does not control who is subject to detention under § 1225(b)(2), which concerns not all "applicants for admission" but instead is limited those who are "seeking admission." By stating that (b)(2) applies only to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioner, who have already entered and are now residing in the United States, and who did not take affirmative steps to obtain admission when they arrived. *See generally* 8 U.S.C. § at 1225; *see also* H.R. Rep. No. 104-469, pt. 1, 157-58, 228-29 (1996) (explaining the purpose of the new provisions in § 1225 was to address the perceived problem of noncitizens arriving in the United States); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.) (same).

"This active construction of the phrase 'seeking admission'" accords with the plain language in § 1225(b)(2)(A), by requiring both that a person be an "applicant for admission" and "also [be] doing something" following their arrival to obtain authorized entry. *Diaz Martinez*, 2025 WL. 2084238, at *6—7; *see also Lopez Benitez*, 2025 WL 2267803, at *7 (stating the same and

also explaining, "For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described 'seeking admission' to the theater. Rather, that person would be described as already present there."').

Upon a plain reading of the text, as a noncitizen already present in the country at the time of his arrest, Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a) and is therefore entitled to a bond hearing. Petitioner was not actively seeking admission into the United States when he was detained by Immigration and Customs Enforcement (ICE) after 22 years of continuous physical presence in the US and thus must be considered an alien present subject to the conditions of detention under § 1226.

Additionally, Petitioner submits that upon examining this issue most courts across the United States have held that the applicable detention authority for noncitizens who have been physically present in the United States, like Petitioner, is 8 U.S.C. § 1226(a). Almost every district court has concluded, including courts in the Southern District of Texas, that "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" clearly support the finding that §1226 is the applicable statute, not §1225. *See Buenrostro-Mendez v. Bondi*, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (quoting Pizarro Reyes v. Raycraft, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025) and citing *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025)); *Rodriguez*, 2025 WL 2782499, at *1 & n.3 (collecting cases); *Belsai D.S. v. Bondi*, 2025 WL 2802947, at *6 (D. Minn. Oct. 1, 2025)). "In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention

under the INA is either incorrect or likely incorrect." *Lopez-Arevelo*, 2025 WL 2691828, at *7 (quoting *Fuentes v. Lyons*, Civil Action 5:25-cv-00153 Dkt. 15 (S.D. Tex. Oct. 16, 2025)).

"Nearly every district court to address the statutory question 'has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.'" *Fuentes v. Lyons*, Civil Action 5:25-cv-00153 Dkt. 15 (S.D. Tex. Oct. 16, 2025) (quoting *Rodriguez*, 2025 WL 2782499, at *1 n.3.)

III. Respondents' new policy violates Petitioner's right to due process

Petitioner's ongoing detention without an opportunity for release on bond violates both statute and due process; requiring Petitioner to wait on futile administrative steps would cause prolonged unlawful detention without any prospect of release on bond, inflicting ongoing irreparable harm on Petitioner's liberty interest. Petitioner "suffers potentially irreparable harm every day that he remains in custody without a hearing, which could ultimately result in his release from detention." *Rodriguez Vazquez*, 2025 WL 1193850, at *16 (citation omitted). Indeed, "because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (citation modified).

That Petitioner's detention constitutes such a harm should come as no surprise, as "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). "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." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). While the Petitioner presents statutory and regulatory claims in this motion, due

process caselaw underscores his significant interest in receiving a timely opportunity to test the legality of detention before a "neutral and detached magistrate." *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975); see also *Zadvydas*, 533 U.S. at 690 (government must demonstrate that a person's "detention . . . bears a reasonable relation" to a valid government purpose (citation modified)).

Respondents' new legal interpretation of 8 U.S.C. § 1225(b)(2)(A) reflected in the Department of Homeland Security's recent policy changes and the BIA's decision in *Matter of Yajure Hurtado* is unlawful and a clear violation of the fifth amendment and the due process clause.

IV. This Court is bound by the ruling in *Maldonado Bautista*.

Pursuant to 28 USC 2201, a declaratory judgment shall have the force and effect of a final judgment or decree and shall be reviewable as such. Declaratory relief is usually limited to the district in which a court sits. 28 USC 2201. However, *Maldonado-Bautista* certified a nationwide class, the members of the class are eligible for relief. Rule 23 FRCP; See also *Trump v. Casa*, 606 U.S. ____ (2025) (explicitly excluding from the ruling certain cases involving certified nationwide classes under Rule 23 and drawing a distinction between universal relief and complete relief). Further, unlike *Trump v. Casa*, the decision in *Maldonado-Bautista* is based entirely on use of judicial authority – interpreting the meaning of the underlying laws relied upon in *Matter of Yajure-Hurtado*.

The Central District of California is a court with constitutional authority to interpret provisions of law pursuant to *Loper Bright Enterprises v. Raimondo*. 602 U.S. ____ (2024) and may certify a class under FRCP Rule 23. *Maldonado-Bautista*'s decision lies solely within the judiciary's Article III constitutional powers. The District Court's interpretation of law in

Maldonado-Bautista for relief is binding on the immigration courts and to be applied to all members of the designated class.

To this respect, we can find guidance from the district courts in Texas regarding the binding nature of the Maldonado Bautista final judgement for declaratory relief extended to all members of the nationwide certified class. We find that this district, the Southern District of Texas, recently addressed this issue in *Palacios v. Bondi*, No. 5:25-cv-00283 (S.D. Tex. Dec. 31, 2025). In *Palacios v. Bondi*, this Court found that the petitioner in that case was a member of the "Bond Eligible Class" having met all requirements for *Maldonado Bautista* class membership and as such was entitled to the declaratory relief entered by the Central District of California:

> "Mr. Palacios entered the United States without inspection, admission, or parole in 2001; has been living in the United States for twenty-four years; and is currently being detained under 8 U.S.C. § 1225(b)(2). (*See id*. At 6; *id*., Attach. 2.) Thus, the Court holds that because Petitioner is a member of the Bond Eligible Class, he is entitled to the declaratory relief entered by the Central District of California that his current detention under 8 U.S.C. § 1225(b)(2) is unlawful. See *Hernandez v. Otay Mesa Detention Center*, 2025 WL 3724913, at *1 (S.D. Cal. Dec. 24, 2025) (Noting that Respondents conceded that because petitioner was a member of the bond eligible class he was considered detained under 8 U.S.C. § 1226(a), pursuant to the final judgment entered in *Maldonado Bautista*, 2025 WL 3289861); see also *Mohammadi v. Larose*, 2025 WL 3731737 (S.D. Cal. Dec. 26, 2025) (holding that the final judgment issued in *Maldonado Bautista*, 2025 WL 3289861 provided independent support for why petitioner was not subject to mandatory detention). Consequently, this Court may craft an injunctive remedy in accordance with that determination and order that Respondents either release Petitioner or provide him with a bond hearing under 8 U.S.C. § 1226(a)." *Palacios v. Bondi.*

See also for reference, *Manzanares Hernandez v. Noem*, No. 5:25-cv-00243 (S.D. Tex. Dec. 30, 2025); *Moncada Velasquez v. EOIR*, No. 5:25-cv-00272 (S.D. Tex. Dec. 31, 2025); *Colmenero-Lopez v. Noem*, No. 5:25-cv-00221 (S.D. Tex. Dec. 22, 2025).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court vacate Respondents' policies and grant Petitioner's writ of habeas corpus and any other relief which this Court deem just and proper.

Dated: January 15, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 15, 2026, the foregoing Motion in Opposition to Respondents' Motion to Dismiss was filed with the Court through the Court's CM/ECF system on all parties and counsel registered with the Court CM/ECF system.

/s/ Octavio M. Rivera Bugesa
Octavio M. Rivera Bugesa, Esq.