

Robert F. Loughran
TX Bar Number: 00784497
Foster LLP
912 S Capital of Texas Hwy, Suite 450
Austin, Texas 78746
Phone: 512-852-4142
Email: rloughran@fosterglobal.com
(Attorney-in-charge)

Danielle M. Claffey
GA Bar Number: 305649
KUCK BAXTER LLC
P.O. Box 501359
Atlanta, Georgia 31150
Tel.: (404) 949-8176
dclaffey@immigration.net
(Pro Hac Vice Admission)

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

Rafael SOSA VARGAS,

Petitioner,

v.

WARDEN, Houston Contract Detention Facility in their official capacity; Todd LYONS, in his official capacity as acting Director of U.S. Immigration and Customs Enforcement, Kristi NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security, and Pamela BONDI, in her official capacity as U.S. Attorney General; Daren MARGOLIN, Director for Executive Office for Immigration Review,

Respondents.

HEARING REQUESTED

Civil Case No.: 4:25-cv-06333

PETITIONER'S OPPOSITION IN RESPONSE TO RESPONDENT'S MOTION TO DISMISS

Petitioner respectfully submits this Opposition to the Respondent’s Motion to Dismiss, and in the Alternative, for Summary Judgment. Respondents argue for dismissal on three grounds.

I. EXHAUSTION

First, Respondents propose that Petitioner must exhaust administrative remedies before being eligible to see relief before this Court. This is false. The Fifth Circuit has carved out exceptions to an exhaustion requirement. Specifically, the Circuit has held that “where the 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”. See *Fuller v. Rich*, 11 F.3d 61 (5th Cir. 1994). Appealing a bond denial to the Board of Immigration Appeals (“BIA”) would be patently futile knowing that the BIA just issued their precedent decision in *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025).

II. MANNER OF ADMISSION

First, Petitioner is not an alien seeking admission to the United States. However, based on a fundamental misinterpretation of at least 30 years of immigration law, including U.S. Supreme Court precedent, Respondents have incorrectly deemed him as such. See *Make the Road New York v. Noem*, No. 25-cv-190 (JMC), 2025 WL 2494908, at *1 (D.D.C. Aug. 29, 2025) (discussing the government’s “untenable” reading of *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) and concluding that aliens who have affected an entry to the United States are entitled to due process). Respondents continue to deny Petitioner the process he is due by refusing to consider him eligible for bond in immigration court. Thus, the Court should grant Petitioner’s habeas petition because he is unquestionably eligible for bond and the government’s misreading of decades—if not a century—of precedent, requires a drastic remedy. See *Make the Road*, 2025 WL

2494908, at *11 (“To adopt [the government’s] view would be to undermine more than a century of precedent[.]”).

Second, the Supreme Court has emphasized that § 1252(g) should be given a “narrow reading” and does not cover “all claims arising from deportation proceedings.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, 487 (1999). Mr. Sosa Vargas does not challenge the Respondents’ decision to commence removal proceedings against him, and he will continue to be in removal proceedings whether or not he is detained. Instead, he challenges the lawfulness of his detention while his removal proceedings are in process. The Supreme Court has consistently reaffirmed that 28 U.S.C. § 2241 confers jurisdiction upon the federal courts to review challenges as to the lawfulness of detention while immigration proceedings are pending. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 292-96; *see also Grigorian v. Bondi*, Civ. No. 25-cv-22914, 2025 WL 2604573, at *4 (S.D. Fla. Sept. 9, 2025) (“[T]he Court does not believe that § 1252(g) bars review of this case to the extent Grigorian seeks only ‘substantive review of the underlying legal bases’ of his detention.”). This Court thus has jurisdiction over Mr. Hernandez Gomez’s claims challenging the unlawfulness of his detention.

Respondents’ fundamental misunderstanding of the statutes governing discretionary bond determinations further supports Petitioner’s position that he is eligible for consideration of bond. *See generally Make the Road*, 2025 WL 2494908. Respondents principally—and circularly—rely on their own guidance in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to argue that Petitioner is detained under § 1225 and therefore ineligible for bond.

Then, they urge this Court to deviate from its own prior decisions and align with decisions such as in *Cabanas v. Bondi*, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025). *Cabanas*, much like

Respondents in their Opposition, essentially regurgitates the Board of Immigration Appeals' opinion in *Yajure Hurtado*, to which this Court owes no deference. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (holding that "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority[.]"). The *Cabanas* decision, and the very few others, like *Yajure Hurtado*, is an anomaly and is legally flawed for the same reasons that Petitioner establishes in his Petition, and as laid out in the ever-expanding list of decisions in favor of detainees establishing their eligibility for bond. See, e.g., *Jose J.O.E.*, 2025 WL 2466670; *Maldonado*, 2025 WL 2374411; *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) ; *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Jimenez v. FCI Berlin*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, No. 1:25-CV-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero*, 2025 WL 2403827; *Martinez*, 2025 WL 2084238; *dos Santos v. Noem*, No. 1:25-CV-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Choglio Chafila v. Scott*, 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN,

2025 WL 2688160 (D. Me. Sept. 19, 2025); *Lopez Benitez*, 2025 WL 2371588; *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Beltran Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Cuevas Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Jabara Oliveros v. Kaiser*, 2025 WL 2677125 (N.D. Cal. Sept. 18, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853 (N.D. Cal. Sept. 18, 2025); *Leon Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Rosado*, 2025 WL 2337099.

III. APA AND DUE PROCESS VIOLATIONS

Finally, being detained indefinitely, based on legal findings that are clearly arbitrary and capricious, is clearly a violation of the Administrative Procedure Act (“APA”) and it results in a violation of Petitioner’s procedural and substantive due process rights.

IV. CONCLUSION

Petitioner thus respectfully requests that this Court follow its previous decisions in similar cases, grant his habeas petition, and order immediate release from custody, or that a bond hearing be immediately set pursuant to 8 U.S.C. § 1226.

Respectfully submitted this 15th day of January, 2026.

/s/ Robert F. Loughran
Robert F. Loughran
TX Bar Number: 00784497
Foster LLP
912 S Capital of Texas Hwy, Suite 450
Austin, Texas 78746
Phone: 512-852-4142
Email: rloughran@fosterglobal.com
(Attorney-in-charge)

Danielle M. Claffey
GA Bar Number: 222292
Kuck Baxter LLC
365 Northridge Road, Suite 300
Atlanta, GA 30350
Phone: 404-816-8611
Fax: 404-816-8615
dclaffey@immigration.net
(Pro Hac Vice Admission)