UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAIANE CRUZ DE MOURA,
as Next Friend of
MAIKON ANDRE DIAS FERREIRA,

Petitioner,

v.

WARDEN, BROOME COUNTY CORRECTIONAL FACILITY, U.S. DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE),

Respondents.

Civil Action No.:
9:26-cv-00449 (BKS)

FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

TODD BLANCHE
Acting Attorney General

JOHN A SARCONE III
First Assistant United States Attorney

Karen Folster Lesperance
Assistant United States Attorney
Attorneys for Federal Respondents

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

FACTUAL BACKGROUND 1

STATUTORY AND LEGAL FRAMEWORK 3

I. Discretionary Detention Under Section 1226(a) 3

II. Judicial Review 5

ARGUMENT 6

I. The Petition Should Be Dismissed Pursuant to Federal Rule of Civil Procedure 12(b)(6) Because it Fails to Allege That Petitioner's Detention is Unlawful 6

II. Even if the Petition Were Sufficient on its Face, it Should Be Denied for Failure toExhaust Administrative Remedies 9

A. Petitioner Has Not Exhausted Administrative Remedies 9

B. Recognized Exceptions to Exhaustion are Inapplicable Here. 11

CONCLUSION 14

PRELIMINARY STATEMENT

Petitioner Maikon Andre Dias Ferreira (Petitioner) is a citizen and native of Brazil who, on November 10, 2018, entered the United States on a B1/B2 visitor visa that was valid for six months. He never left. When he was encountered by Border Patrol agents in Watertown, New York on December 10, 2025, he had overstayed his visa by more than five-and-a-half years. He was placed into removal proceedings and taken into custody, and is currently in ICE custody. Petitioner is bond eligible and, on March 16, 2026, was provided a bond hearing before the immigration court. The Immigration Judge (IJ) denied bond. The IJ based his decision on evidence presented that Petitioner was a danger to the community due to two [redacted] and that he presented a flight risk due to his widespread travel in other states. As of the date of this filing, Petitioner has not appealed the IJ's decision to the Board of Immigration Appeals (BIA).

The Petition should be denied because Petitioner was provided a bond hearing and bond was denied based on an individualized assessment. Petitioner asks this Court to overturn the IJ's decision and order Petitioner's release from detention. The appropriate forum for such a challenge is the BIA, not a habeas petition filed in federal district court.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Brazil. He entered the United States lawfully on or about November 10, 2018, pursuant to a B1/B2 Visitor Visa that was valid for six months, until May 9, 2019. Muehlig Decl. ¶ 4, Ex. A at 1-2. *See also* Petition, ECF 2-1 at 5 ("Lawful entry (B1/B2 visa"). Petitioner has remained in the United States since, overstaying his visa by more than five years. Muehlig Decl. ¶ 5, Ex. A at 13 (noting "no records of Petitioner's departure"); ECF 2-1 at 10 (noting Petitioner "entered the United States lawfully on November 10, 2018, under a B-1/B-2 visitor visa and overstayed his authorized period of admission").

On or about December 10, 2025, Border Patrol agents encountered Petitioner in Watertown, New York, driving a pick-up truck with New Jersey license plates. Muehlig Decl. at ¶ 5, Ex. A at 13. When questioned about his immigration status, Petitioner acknowledged being a citizen of Brazil and was unable to produce any immigration documentation that would allow him to be or remain in the United States. Muehlig Decl. ¶ 5. Border Patrol agents determined that Petitioner had entered the United States at Miami International Airport on November 10, 2019, and that there was no record of his departure. *Id.* A criminal history check revealed Petitioner had been arrested in Philadelphia two months prior, on October 15, 2025, and charged with [redacted] *Id.*, Ex. A. at 13.

Petitioner was taken into custody and placed in removal proceedings. Muehlig Decl. ¶ 6. On December 22, 2025, Petitioner was served with a Notice to Appear in immigration court. *Id.* ¶ 6, Ex. A at 2-4. The Notice to Appear charged him under Section 237(a)(1)(B) of the Immigration and Nationality Act (INA) with having remained in the United States for a time longer than permitted after admission as a nonimmigrant under Section 101(a)(15) of the INA. *Id.*

On January 23, 2026, Petitioner requested a custody redetermination before the immigration court. Muehlig Decl. ¶ 7. In an Order dated January 29, 2026, the Immigration Judge noted that Petitioner had withdrawn that request. *Id.*, Ex. A at 6-7. On February 24, 2026, Petitioner filed a second request for custody redetermination pursuant to 8 C.F.R. § 1236. *Id.* at ¶ 8. In an Order dated March 2, 2026, the Immigration Judge noted that Petitioner had withdrawn that request. *Id.*, Ex. A at 8-9.

On March 5, 2026, Petitioner filed a third request for custody redetermination pursuant to 8 C.F.R. § 1236. Muehlig Decl. ¶ 9. *See also* Petition, ECF 2-1 at 9-15. In an Order dated March

16, 2026, "[a]fter full consideration of the evidence presented," the Immigration Judge denied bond. Muehlig Decl. ¶ 9; Ex. A at 10-11. The IJ found that Petitioner "presents a danger to the community based on two [redacted]. He also presents as a flight risk due to his widespread travel in other states." *Id.* at Ex. A at 10-11. The Order further noted that the bond denial decision "relies on [the Court's] opinion placed on the record on March 16, 2026. *Id.*

As of the date of this filing, Petitioner has not appealed the IJ's bond denial decision to the BIA and his deadline to do so has not yet lapsed. 8 C.F.R. § 1003.38(b).

STATUTORY AND LEGAL FRAMEWORK

The Immigration and Nationality Act (INA) is a multi-layered statutory scheme for the civil detention of noncitizens during removal proceedings, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. The time and circumstances of entry, as well as the stage of the removal process, determines where a noncitizen falls within this scheme and whether detention of the noncitizen is discretionary or mandatory.

For noncitizens who entered the country lawfully, but remain in the country unlawfully, (like Petitioner), Section 1226 "generally governs the process of arresting and detaining [deportable] aliens pending their removal." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Section 1226(a) provides that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

I. Discretionary Detention Under Section 1226(a)

Under § 1226(a), the government may detain deportable noncitizens for the duration of removal proceedings or may release the noncitizen "on bond of at least $1,500" or conditional parole. *See* § 1226(a)(1)-(2). Per regulations, to be eligible for bond or conditional parole, the

noncitizen "must demonstrate to the satisfaction of the [decision maker] that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8).

When an alien is detained under § 1226(a), ICE makes an initial custody determination. *See* 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1). If ICE determines that the noncitizen should remain detained during the pendency of his removal proceedings, the noncitizen may request a custody redetermination hearing (colloquially called a "bond hearing") before an IJ. *See* 8 C.F.R. §§ 236.1(d), 1003.19, 1236.1(d). "[A] noncitizen detained under § 1226(a) is subject to detention unless that person is able to show 'to the satisfaction of the Immigration Judge that he or she merits release on bond.'" *Velasco Lopez v. Decker*, 978 F.3d 842, 849 (2d Cir. 2020) (quoting *Matter of Guerra*, 24 I. & N. Dec. at 40; *Matter of Fatahi*, 26 I. & N. Dec. 791, 795 n.3 (B.I.A. 2016)).

IJs have broad discretion in deciding whether to release a noncitizen on bond. *Guerra*, 24 I. & N. Dec. at 39. IJs may consider multiple discretionary factors, including any information that the IJ may deem to be relevant. *Id.* at 40. These factors include: (1) whether the noncitizen has a fixed address in the United States; (2) the noncitizen's length of residence in the United States; (3) the noncitizen's family ties in the United States; (4) the noncitizen's employment history; (5) the noncitizen's record of appearance in court; (6) the noncitizen's criminal record, including the extensiveness of criminal activity, time since such activity, and the seriousness of the offenses; (7) the noncitizen's history of immigration violations; (8) any attempts by the noncitizen to flee prosecution or otherwise escape authorities; and (9) the noncitizen's manner of entry to the United States. *Id.* These factors are nonexclusive and the IJ has "broad discretion in deciding the factors [they] may consider in custody redeterminations . . . and may give greater weight to one factor over others as long as the decision is reasonable." *Id.*

Further, *Guerra* establishes the INA in no way "limit[s] the discretionary factors that may be considered" in bond determinations. 24 I. & N. Dec. at 39; *see also* 8 C.F.R. § 1003.19(d) (the regulations provide that "[t]he determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the [noncitizen] or [ICE]."). Although an IJ has broad discretion in deciding whether to grant bond, a noncitizen "who presents a danger to persons or property should not be released during the pendency of removal proceedings." *Guerra*, 24 I & N Dec. at 38; *see also Matter of Urena*, 25 I & N Dec. 140, 141 (BIA 2009) ("Dangerous [noncitizens] are properly detained without bond"); *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018) (same).

A noncitizen may request a second bond redetermination hearing before the IJ, but the hearing will only be granted based on a showing that the noncitizen's circumstances have materially changed since the first bond redetermination hearing. *See* 8 C.F.R. § 1003.19(e). Further, even if a noncitizen does not request a second bond redetermination hearing, the noncitizen may seek further administrative review of a bond redetermination before the BIA at any time before a final order of removal. 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38, 1236.1(d)(3).

II. Judicial Review

Under § 1226(a), Congress has delegated to the Attorney General the discretion to detain noncitizens during the pendency of their removal proceedings. "The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." *Velasco Lopez*, 978 F.3d at 849-50 (quoting 8 U.S.C. § 1226(e)).

Similarly, 8 U.S.C. § 1252(a)(2)(B)(ii) bars judicial review of discretionary decisions including bond determinations under § 1226(a): Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title. § 1252(a)(2)(B)(ii). Courts are precluded under § 1252(a)(2)(B)(ii) from reviewing any "decision or action" that is committed to the agency's discretion by statute. *See Kucana v. Holder*, 558 U.S. 233, 241-52 (2009).

ARGUMENT

I. The Petition Should Be Dismissed Pursuant to Federal Rule of Civil Procedure 12(b)(6) Because it Fails to Allege That Petitioner's Detention is Unlawful.

A district court may "grant a writ of habeas corpus whenever a petitioner is 'in custody in violation of the Constitution or laws or treaties of the United States." *Wang v. Ashcroft*, 320 F.3d 130, 140 (2d Cir. 2003) (quoting 28 U.S.C. § 2241(c)(3)). When a petitioner brings a habeas petition pursuant to § 2241, the petitioner "bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, the petitioner must satisfy his burden of proof by a preponderance of the evidence." *Dzhabrailov v. Decker*, No. 20-CV-3118 (PMH), 2020 WL 2731966, at *3 (S.D.N.Y. May 26, 2020) (quoting *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011)).

A court reviews a motion to dismiss a habeas petition according to the same principles as a motion to dismiss a civil complaint under Federal Rule of Civil Procedure 12(b)(6). *Kelly v. Dep't of Homeland Sec.*, No. 23-CV-399-LJV, 2024 WL 36861, at *2 (W.D.N.Y. Jan. 3, 2024)

(citing *Hines v. United States*, 2023 WL 2346540, at *2 (D. Conn. Mar. 3, 2023)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). "[A]lthough 'a court must accept as true all of the allegations contained in a complaint,' that tenet 'is inapplicable to legal conclusions,' and 'threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.'" *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678).

Here, the Petition states in conclusory terms that it "challenges [Petitioner's] unlawful, prolonged, and unconstitutional detention in violation of the Fifth Amendment." Petition, ECF 2-1 at 5. But it contains no factual allegations or legal analysis to establish how Petitioner's detention violates the law or the Constitution. Petitioner does not plausibly allege that his detention was "prolonged"; he has been detained for three-and-a-half months, and the Supreme Court has held that immigration detention up to six months is "presumptively reasonable." *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Indeed, the section of the Petition captioned "Grounds" contains three bullet points that read: "violation of substantive due process"; "violation of procedural due process"; and "impermissible punitive detention." There are no facts alleged to support these grounds, and no further explanation of the alleged constitutional violations.

Accompanying the Petition for a Writ of Habeas Corpus is a document captioned "motion for release or, in the alternative, for a constitutionally adequate bond hearing," and a declaration of Daiane Cruz de Moura, Petitioner's partner and mother of his child, who brings the Petition as Petitioner's Next Friend.[1] Those documents also state in conclusory terms that Petitioner's detention is unlawful and unconstitutional, but lack factual allegations or legal analysis to support those assertions. Rather, they focus primarily on facts related to a bond analysis, such as Petitioner's character, relationships, and family ties, and assert that Petitioner is not a danger or a flight risk. ECF 2-1 at 3-4, 6-8.

Indeed, the Petition establishes that Petitioner's detention complied both with statutory and due process requirements. It attaches a motion for a bond hearing submitted to the immigration court by counsel on Petitioner's behalf. The submission includes counsel's arguments in support of bond, referencing documentary exhibits, as well as an Affidavit by Petitioner "in support of bond release and clarification of criminal allegations." ECF 2-1 at 9-15. It also attaches the IJ Order denying bond, upon consideration of the evidence presented, based on his finding that Petitioner presented a danger to the community based on [redacted] and presented a flight risk. These documents establish that Petitioner was provided a bond hearing

---

[1] Ms. Cruz de Moura pursues this case as next friend of Petitioner but provides no basis on which to proceed in that capacity. She alleges simply that she "has standing due to her relationship and acting in best interest." ECF 2-1 at 5. She has not established why Petitioner is "unable . . . to seek relief" such as, for example, "because of mental incompetence or inaccessibility. *Whitmore v. Arkansas*, 495 U.S. 149, 162 (1990). Petitioner bears this burden, and the failure to carry it can result in dismissal. *Id.; see also Tarver v. Superintendent*, No. 9:20-CV-0108 (GTS), 2020 WL 586797, at *2 (N.D.N.Y. Feb. 6, 2020) (requiring "concrete evidence," including "documentary proof," of inmate's inability to advocate for himself in habeas proceedings). The Court has directed Ms. Cruz de Moura to provide adequate explanation to establish "next friend" standing in her reply. See Dkt. 2 (citing *Iza by Iza v. Larocco*, 25-cv-6915, 2026 WL 31378, at *8 (E.D.N.Y. Jan. 5, 2026)).

before an Immigration Judge, at which evidence and arguments were presented, and the IJ made an individualized assessment before denying bond. Petitioner fails to allege how this process violated the statute or his due process rights.

Petitioner's due process claim also fails because he has been detained for less than six months. *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020); *Zadvydas,* 533 U.S. at 701. Petitioner cannot establish a due process violation under *Zadvydas* because he has been detained for approximately three-and-a-half months—far short of the presumptively reasonable six-month detention duration contemplated there.

The Petition should therefore be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

II. Even if the Petition Were Sufficient on its Face, it Should Be Denied for Failure to Exhaust Administrative Remedies.

The Petition seeks immediate release, arguing that his strong family ties negate a risk of flight, that the criminal charges against him were the result of a "misunderstanding," and that his criminal case has been "resolved and closed." ECF 2-1 at 7. Petitioner is asking this Court to overturn the IJ's bond decision, and order him released. The appropriate forum to challenge his bond determination is an appeal to the BIA, not a habeas petition in federal district court.

A. Petitioner Has Not Exhausted Administrative Remedies

Generally, "a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself." *See Guitard v. U.S. Sec'y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992). Where, as here, a noncitizen seeks to challenge an IJ's bond decision, he has an administrative remedy available to him: file an appeal to the BIA. *See* 8 C.F.R. §§ 1003.19(f), 1236.1(d)(3). Petitioner has not done so here;

rather, he seeks to bypass this readily available option and seek redress before this Court. As the Second Circuit has stated, such actions undermine the very purpose of requiring administrative exhaustion. *See Bastek v. Federal Crop Ins. Corp.*, 145 F.3d 90, 93-94 (2d Cir. 1998) ("[E]xhaustion serves myriad purposes, including limiting judicial interference in agency affairs, conserving judicial resources, and preventing the 'frequent and deliberate flouting of administrative processes [that] could weaken the effectiveness of an agency.'"); *id.* at 94 ("Exhaustion also allows the agency to develop the factual record of the case, which aids such judicial review as may be available.").

Indeed, several courts in this Circuit have held that "'[a] habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention.'" *See Castillo Lachapel v. Joyce, et al.*, No. 25-cv-4693, 25 WL 1685576, at *3 (S.D.N.Y. June 16, 2025) (quoting *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 (S.D.N.Y. 2018). *See also Capunay Guzman v. Joyce, et al.*, No. 25-cv-4777, 2025 WL 1696891, at *2 (S.D.N.Y. June 17, 2025); *J.C.G. v. Genalo*, No. 24-cv-8755, 2025 WL 88831, at *4 (S.D.N.Y. Jan. 14, 2025); *Roman v. Decker*, No. 20-cv-3752, 2020 WL 4273823, at *7 (S.D.N.Y. July 24, 2020); *Paz Nativi v. Shanahan*, No. 16-cv-8496, 2017 WL 281751, at *1 (S.D.N.Y. Jan. 23, 2017) ("before immigration detention may be challenged in federal court . . . exhaustion is generally required as a prudential matter" (collecting cases)). The exhaustion requirement "aims to provide the agency with a chance to correct its own errors, 'protect[ ] the authority of administrative agencies,' and otherwise conserve judicial resources by 'limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.'" *Id.* (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (Sotomayor, J.)).

The INA and its accompanying regulations provide a two-level administrative review process for aliens detained pursuant to 8 U.S.C. § 1226(a). A detainee may request, as Petitioner here did, a "custody redetermination hearing" (also referred to as a "bond hearing") before an immigration judge (see 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d)). Should the immigration judge set a bond amount that he believes is too high or—as here—conclude that the detainee should not be released, he may appeal to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3)). *See also Castillo Lachapel*, 2025 WL 1685576 at *3 ("even if the immigration judge denies bond, [Petitioner]'s petition could be mooted if the Board of Immigration Appeals reverses that determination."). Thus, the Court should require that Petitioner exhaust the administrative avenues available to him before seeking judicial relief. Until that process is complete, his habeas petition is premature for failure to exhaust administrative remedies.

B. Recognized Exceptions to Exhaustion are Inapplicable Here.

A district court may in its discretion excuse exhaustion when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile and (4) in certain instances a plaintiff has raised a substantial constitutional question." *See Beharry*, 329 F.3d at 62.

With respect to the first exception, as explained above, Petitioner has available administrative remedies—namely, appealing the IJ's decision to the BIA. *See Castilla Lachapel,* 2025 WL 1685576, at *3 (where available administrative review petitioner with the relief that he seeks—i.e., his release—petitioner "must exhaust these avenues before seeking judicial relief."). *See also Paz Nativi*, 2017 WL 281751, at *2 ("The pendency of a BIA appeal that could potentially moot [petitioner's] habeas petition counsels for the Court to stay its hand until the exhaustion of

administrative review in the name of preserving scarce judicial resources and avoiding the possibility of duplicative or conflicting rulings.").

The second exception is also inapplicable because the Petition alleges no facts that would establish irreparable harm if he must appeal his bond determination to the BIA before seeking relief in this Court. Petitioner alleges he has been subject to prolonged detention that is "excessive" and "punitive." ECF 2-1 at 4. Petitioner has been detained since December 10, which as of the date of this filing is 3 months and 24 days. This is just over half of what the Supreme Court has held presumptively reasonable. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Where detention is not "prolonged," courts generally find that the irreparable harm exception to the exhaustion requirement has not been met. *See, e.g., Capunay Guzman*, 2025 WL 1696891, at *1, *3 ("'[t]he risk of prolonged detention'—as opposed to actual prolonged detention—'does not constitute an irreparable injury that excuses the prudential exhaustion requirement'") (quoting *Roman*, 2020 WL 4273823, at *8). *Cf. Michalski*, 279 F. Supp. 3d at 496 (petitioner's "claim that prolonged detention constitutes an irreparable injury that may excuse exhaustion has been rejected by courts in this District").

As to the third exception, nothing in the Petition establishes that an appeal of the IJ's bond determination would be futile in these circumstances. Recently, many district courts in this Circuit and others have found that requesting a bond hearing or appealing the denial of bond hearing would be futile, but those cases have largely arisen where ICE has asserted detention authority under 8 U.S.C. § 1225(b)(2). *See, e.g., Rivera Esperanza v. Francis*, No. 25-CV-8727, 2025 WL 3513983 at *9 (S.D.N.Y. Dec. 8, 2025) (failure to exhaust administrative remedies before ICE "would be futile in light of ICE's position that § 1225(b)(2)(A) applies" and the BIA's decision upholding that position) (citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)); *Yao v.*

Almodovar, No. 25 CIV. 9982 (PAE), 2025 WL 3653433, at *11 (S.D.N.Y. Dec. 17, 2025) (same); *Alvarez Ortiz v. Freden*, 808 F. Supp. 3d 579, 590 (W.D.N.Y. 2025) (exhaustion futile because immigration judges are bound to follow *Hurtado*). But that is not this case. Because Petitioner entered the United States lawfully, he is not subject to detention under Section 1225. He is detained pursuant to Section 1226, and was given a bond hearing on request. There is no reason to believe that an appeal of the IJ's determination would not be given due consideration by the BIA, and Petitioner does not so allege. Petitioner does not meet the futility exception to the exhaustion requirement.

Nor has Petitioner raised a substantial constitutional question. As discussed in Point I, the Petition is devoid of any factual allegations or legal analysis to support any constitutional claim. Petitioner does not allege any procedural irregularities with respect to the bond hearing, such as a failure to consider evidence or to consider the appropriate factors. Nor does Petitioner allege that he was entitled to, but did not receive, a bond hearing at which the government bore the burden of proof to justify continued detention. Nor could he, as he has not been subject to prolonged detention under Section 1226(a). *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020) (detainee entitled to a bond hearing at which the government bears the burden of proof once detention becomes prolonged); *Zadvydas,* 533 U.S. at 701 (detention of up to six months "presumptively reasonably"). As such, this case is distinguishable from those excusing exhaustion requirements where petitioners raise due process concerns based on improper burden of proof. *See, e.g., J.C.G. v. Genalo*, No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *5 (S.D.N.Y. Jan. 14, 2025) (noting that courts "routinely excuse noncitizens' failure to exhaust administrative remedies when noncitizens challenge the burden allocation at a Section 1226(a) bond hearing") (collecting cases).

Petitioner's appropriate remedy to challenge the IJ's denial of bond is to file an appeal with the BIA. He did not do so here, and his failure to do so does not fall within any of the exceptions to the exhaustion requirement. This Petition should therefore be denied.

CONCLUSION

For these reasons, the Federal Respondents respectfully request that this Court enter an Order denying the Petition for a Writ of Habeas Corpus.

Dated: April 3, 2026

TODD BLANCHE
Deputy Attorney General

JOHN A SARCONE III
First Assistant United States Attorney

By: _____

Karen Folster Lesperance
Assistant United States Attorney
Bar Roll No. 514108