

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

MOISES ANGEL FUENTES,	)	
	)	
Petitioner,	)	
	)	
v.	)	
Todd LYONS, in his capacity as	)	
Acting Director, Immigration and	)	
Customs Enforcement; Kristi	)	Case No. 5:25-cv-153
NOEM, Secretary, U.S.	)	
Department of Homeland Security;	)	
Pamela BONDI, U.S. Attorney	)	
General; EXECUTIVE OFFICE	)	
FOR IMMIGRATION REVIEW;	)	
NORBAL VASQUEZ, Warden of	)	
Rio Grande Processing Center	)	
,	)	
Respondents.	)	
	)	

**PETITIONER’S REPLY AND OPPOSITION TO
RESPONDENTS’ MOTION TO DISMISS**

INTRODUCTION

In its Motion to Dismiss, the Respondents present a series of contradictory arguments to this Court: Petitioner’s detention is mandatory yet discretionary and exhaustion of remedies is strictly required however no remedy exists which may be exhausted. Since the Respondents’ argument regarding mandatory detention has been rejected by at least fourteen District Courts nationwide, including in Texas, it appears no viable argument exists to support their conclusion. *Buentrostro Mendez v. Bondi*, 4:25-cv-03726 (S.D. Tex.); *Lopez-Arevelo v. Ripa*, 3:25-cv-00337 (W.D. Tex. 09/22/2025) (discusses the BIA’s reasoning in *Yajure-Hurtado* and rejects the argument), *See also* Petitioner’s Memorandum of Law at 10-11. All that is left is contradictions.

Most concerning is Respondents' belief that Mr. Angel Fuentes' release is merely "discretionary" and not subject to this Court's review. At a time when ICE is committing egregious Constitutional violations against non-citizens and proudly filming them for the world to see, this Court must uphold the core principle that the Constitution protects all who live here. *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001); *Castanon Nava v. DHS*, 1:18-cv-03757, Petitioners' Notice of Additional Violations of Consent Decree and Request for Status Conference (09/26/2025 N.D. Ill.) (documenting increasingly violent warrantless arrests by ICE in violation of a court settlement).

Petitioner moves this Court to reject Respondents' opposition and order immediate relief in the form of a § 1226(a) bond hearing before an Immigration Judge. Petitioner responds to each of Respondents' points in turn-

ARGUMENT

A. Petitioner has Exhausted Remedies

a. Respondents argue that Petitioner has not exhausted remedies because his parole denial is not a formal bond request before ICE ERO

Respondents argue that Petitioner did not exhaust remedies because he did not formally make a bond request before ICE ERO pursuant to 8 CFR § 1236. The Respondents do not explain how Petitioner's bond request was deficient. The regulation itself also provides no explicit process for what constitutes a bond request before ICE ERO. *Id.*

Counsel reached out to ICE ERO, and ICE ERO responded that under no circumstance would it consider releasing Mr. Angel Fuentes. Petitioner's Ex. B. Respondents' own exhibit confirms this as the ICE agent states that Mr. Angel Fuentes is subject to "mandatory detention" and may not be released from detention. Respondents' Ex. 9-1. It is unclear what additional steps Respondents would like Mr. Angel Fuentes to take in order to exhaust remedies. Submit more

documentation so that the ICE agent may simply reiterate that Mr. Angel Fuentes is subject to mandatory detention? By ICE 's own declaration, this remedy has been exhausted, and any further exhaustion would be futile.

b. Respondents argue that Petitioner has not exhausted remedies because he did not request a bond from the Immigration Judge

In the first half of their opposition, Respondents argue that Petitioner failed to exhaust remedies because he did not request a bond hearing before the Immigration Judge. However, in the second half of their opposition, Respondents contradict themselves by arguing that *Yajure-Hurtado*, which they filed as an exhibit, prevents any Court from granting a bond to Mr. Angel Fuentes, and therefore, no remedy exists. *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Forcing Mr. Angel Fuentes to jump through hoops for no reason is not exhaustion- it is futility. *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders requiring prudential exhaustion futile). By Respondents' own admission and case law, they would not grant a bond to Mr. Angel Fuentes. ICE has said it will not release Mr. Angel Fuentes, and the Immigration Court believes that it does not have jurisdiction to review ICE's decision. All remedies have been exhausted.

B. Respondents argue that this Court does not have jurisdiction to hear Petitioner's case

a. Respondents argue that this Court does not have subject matter jurisdiction

Respondents' again contradict themselves by trying to argue that Mr. Angel Fuentes' detention is both mandatory and discretionary. Respondents believe that whether or not Mr. Angel Fuentes is subject to mandatory detention is a discretionary determination of the Attorney General and thus is not subject to judicial review. Respondents' Opposition at 17-18. Whether or not Mr. Angel Fuentes is subject to mandatory detention is a legal question, not a discretionary one.

However, most importantly, Mr. Angel Fuentes does not seek any discretionary review of the merits of his bond decision from this Court. He seeks his *statutory* right to a bond hearing as established by § 1226(a). Mr Angel Fuentes has been unlawfully deprived of that right by the Respondents' decision to simply rewrite decades of jurisprudence that have no basis in statutory interpretation. This Court has subject matter jurisdiction over this legal question.

b. Respondents argue that Petitioner is subject to mandatory detention as an applicant for admission, and thus, this Court does not have jurisdiction.

This Court has always had jurisdiction to review Constitutional and APA claims by non-citizens. *Zadvydas*, 533 U.S. at 690; *Mendez v. Bondi*, 4:25-cv-03726 (S.D. Tex.); *Lopez-Arevelo v. Ripa*, 3:25-cv-00337 (W.D. Tex. 09/22/2025); *Diallo v Pitts*, 1:19-cv-00216 (S.D. Tex. 04/21/2020). To the extent that Mr. Angel Fuentes asserts that his rights have been violated by Respondents, this Court has jurisdiction.

This Court should also strongly consider the ongoing Constitutional violations being committed by Respondents on a daily basis. *Castanon Nava v. DHS*, 1:18-cv-03757, Petitioners' Notice of Additional Violations of Consent Decree and Request for Status Conference (09/26/2025 N.D. Ill.) (documenting increasingly violent warrantless arrests by ICE in violation of a court settlement). Because the Respondents continue to show by their actions that they believe the Constitution does not apply to non-citizens, this Court must act to protect Mr. Angel Fuentes' Constitutional right to liberty. This Court must order that a bond hearing be held as required by the APA and the Immigration and Nationality Act.

C. Respondents argue that Petitioner is subject to mandatory detention as an applicant for admission

This Court must follow numerous District Courts, including the Western and Southern District of Texas, that have rejected Respondents' argument that anyone who enters the United

States without inspection is therefore an applicant for admission. *See* Petitioner’s Memorandum of Law at 10-11; *Mendez v. Bondi*, 4:25-cv-03726 (S.D. Tex.); *Lopez-Arevelo v. Ripa*, 3:25-cv-00337 (W.D. Tex. 09/22/2025). Mr. Angel Fuentes is not an applicant for admission because he had been present in the United States for two decades at the time he was detained by ICE. *See* Petitioner’s Ex. A. Mandatory detention under Section 1225(b)(2) applies to non-citizens who are arriving in the United States. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). However, Mr. Angel Fuentes is subject to discretionary detention under Section 1226(a) because he had been in the United States for decades at the time of his detention. He is therefore eligible for a bond hearing before the Immigration Judge. *Lopez-Santos v. Noem*, 3:25-cv-01193 (09/11/2025 W.D. La.) (holding Petitioner is eligible for a bond hearing because he was not “arriving” in the United States but had been “physically present” in the United States for decades upon his detention).

CONCLUSION

Wherefore, this Court should grant Petitioner’s Motion for Preliminary Injunction and grant relief.

Respectfully submitted,

/s/ Jennifer Scarborough

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing

**PETITIONER'S REPLY AND OPPOSITION TO
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to be served on all counsel of record via ECF.

Dated this 8th day of October 2025,

/s/ Jennifer Scarborough
Jennifer Scarborough