UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Iran Damaris ECHAVARRIA MORALES Petitioner, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security; ROBERT LYNCH, Field Office Director, Cleveland Field Office, Immigration and Customs Enforcement, DENNIS SULLIVAN, Executive Director of Corrections Center of Northwest Ohio Respondents.	)	Agency Case Number: [redacted] Case No. 3:25-cv-2691

BRIEF IN RESPONSE

The Petitioner, Iran Damaris ECHAVARRIA MORALES, by and through her own and proper person and through her attorneys, JENNIFER PEYTON, of KRIEZELMAN BURTON & ASSOCIATES, LLC, and hereby submits this "Brief in Response", pursuant to the Court's Order to Show Cause, issued December 29, 2025. Dkt. 2. In the Order to Show Cause, this Honorable Court directs Counsel to discuss the Court's decision in *Lopez v. Raycraft*, No. 4:25CV2449, 2025 WL 3280344 (N. D. Ohio Nov. 25, 2025) (Pearson, J.).

The Respondents filed their Response to Petition for Writ of Habeas Corpus on January 2, 2026. Dkt. 4. In that Response, they argue that Petitioner's Claims should be dismissed for lack of jurisdiction under Rule 12(B)(1), that Petitioner failed to exhaust administrative remedies, and that Petitioner is properly detained under 8 USC 1225. They additionally argue that the Bautista declaratory judgment has no impact on this case.[1]

[1] Petitioner's Counsel did not raise this argument in the underlying habeas petition.

The matter at bar falls squarely within the solid reasoning expressed in *Lopez v. Raycraft,* No. 4:25CV2449, 2025 WL 3280344 (N. D. Ohio Nov. 25, 2025) (Pearson, J.). In *Lopez*, the petitioner in the habeas had entered the United States in 1998, and was denied a bond from the Cleveland Immigration Court; the immigration judge found that the Immigration Court lacked jurisdiction to hear the bond request and but for the jurisdiction, would have granted bond.

In the matter at bar, the Petitioner herein entered without inspection in August 2002. She spent over twenty years in the United States. She and her husband were married, and had five United States children, including a member of the U.S. army. Petitioner resided in Dallas, Texas, and on a family vacation in Pontiac, Michigan, went to the grocery store and was encountered by ICE on July 12, 2025. She has been detained without option for a bond hearing since July 12, 2025 – **178 days**. Her individual hearing is scheduled for January 20, 2026 before the Cleveland Immigration Court.

A. Exhaustion is not required and should be excused as seeking an appeal from a bond redetermination before the Board of Immigration Appeals in the first instance would be futile.

As set forth in the Petition for Writ of Habeas Corpus, exhaustion is not required, and should not be excused as seeking an appeal from a bond redermination before the Board of Immigration Appeals would be futile.

The Immigration and Nationality Act mandates exhaustion in order to challenge "final order[s] of removal." 8 U.S.C. § 1252(d)(1). However, this provision does not cover challenges to preliminary custody or bond determinations, which are quite distinct from "final order[s] of removal." *See Gornicka v. INS*, 681 F.2d 501, 505 (7th Cir. 1982). ("[I]t is clear bond hearings

are separate and apart from deportations hearings.... A bond determination is not a final order of deportation ... and does not effect [sic] the deportation proceeding.").

Congress does require exhaustion for certain types of habeas petitions, but not for those petitions, such as Petitioner's, brought under 28 U.S.C. § 2241. *See James v. Walsh*, 308 F.3d 162, 167 (2d Cir.2002) ("Section 2254(b)(1) requires state prisoners to exhaust all available state court remedies before filing a Section 2254 petition, whereas Section 2241 contains no such exhaustion requirement.").

The Sixth Circuit has previously held that a due process challenge generally does not require exhaustion since the BIA lacks authority to review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006); *accord Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006) ("exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to an agency's procedures.") (citation omitted); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).

Even so, the three-factor test applied by courts in this Circuit also weighs against requiring exhaustion. Courts may require prudential exhaustion when:

> (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
> (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
> (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

See Shweika v. Dep't of Homeland Sec., No. 1:06-cv-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015). These factors all work in Petitioner's favor. First, the issues raised in Petitioner's case are purely legal in nature and do not require the agency to develop the record. Second, because Petitioner's petition includes a due process claim, the administrative scheme (appeal to the BIA) is futile since, the BIA lacks authority to review constitutional claims. Lastly,

while Respondents state in their response that Petitioner may appeal whatever results from his bond hearing, administrative review is not likely to change Respondents' position that Section 1225(b)(2)(A) applies in this case, adding to the futility argument. DHS's policy makes clear that mandatory detention is the position to be taken, and this is being done in conjunction with the Department of Justice.

Here, requiring exhaustion would be futile due to the Board of Immigration Appeal's September 5th decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which proclaimed for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is no longer eligible for release on bond. The Board's decision, in contravention of decades of immigration law, precedent by the Supreme Court, and Executive Office of Immigration Review policies and procedures, takes a new reading of INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), which requires mandatory detention of "Applicants for Admission," to include those present in the United States without having been inspected and admitted and who are later apprehended.

Prior to the Board's decision, noncitizens present in the United States without having been inspected and admitted and who are later apprehended are subject to detention under INA § 236(a), 8 U.S.C. § 1226(a). Noncitizens detained under this section are not subject to mandatory detention and may be released on bond or on their own recognizance. Therefore, requiring Petitioner to appeal a bond redetermination with the Board of Immigration Appeals in the first instance would be futile as the bond appeal would undoubtedly be denied in light of *Matter of Yajure Hurtado*. It would prejudice Petitioner by prolonging his detention to request an appeal to a bond that would simply be denied solely based on no jurisdiction.

Yet even if this Court were to agree that prudential exhaustion should apply, waiver of the exhaustion requirement is warranted here because Petitioner is likely to experience irreparable harm if she is unable to seek habeas relief until an Immigration Judge denies bond, and then the BIA decides an appeal on the denied bond, which the Immigration Judge denied solely based on lack of jurisdiction. *See Sampiao v. Hyde, et al.* 1:25-cv-11981-JEK, at *11-12 (D. Mass. Sept. 9, 2025); *Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827, at *7 (D. Mass. Aug. 19, 2025) (finding that loss of liberty is a form of irreparable harm and citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987)). Waiver is appropriate when the interests of the individual weigh heavily against requiring administrative exhaustion, or exhaustion would be futile and unable to afford the petitioner the relief he seeks. *See McCarthy*, 503 U.S. at 145; *see also Fazzani v. NE Ohio Corr. Ctr.*, 473 F.3d 229 (6th Cir. 2006) (citing *Aron v. LaManna*, 4 F. App'x 232, 233 (6th Cir. 2001) and *Goar v. Civiletti*, 688 F.2d 27, 28-29 (6th Cir. 1982)); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025) ("because exhaustion would be futile and unable to provide Lopez-Campos with the relief he requests in a timely manner, the Court waivers administrative exhaustion and will address the merits of the habeas petition."). Thus, exhaustion in this case is subject to the Court's discretion.

The average processing time for bond appeals exceeded 200 days (more than 6 months) in 2024. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025). There is no requirement for the BIA to act promptly or decide the appeal quicker than any other case. If the BIA were to act promptly, it would be unlikely to decide Petitioner's appeal anytime soon, and if it processes the appeal at the same rate as last year's appeals, the appeal may not be resolved until spring 2026. As such, Petitioner is likely to endure several additional months of detention.

Such a prolonged loss of liberty would, in these circumstances, constitute irreparable harm. *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986). Additionally, requiring Petitioner to wait six months in detention to reach a decision on whether she can be released on bond would be futile. Her individual hearing is scheduled for January 20, 2026,in two short weeks. As such, exhaustion would not effectively afford her the relief hse seeks, given that a removal determination would likely come before the BIA's determination of whether a bond is appropriate in this case.

Therefore, given the constitutional claims raised by Petitioner, this Court should find that exhaustion is not required according to the Sixth Circuit standards. If it does find the exhaustion applies, then the Court should waive exhaustion since it would be futile and would not provide Petitioner with the relief she requests in a timely manner. *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).

B. Petitioner is detained under 8 U.S.C. § 1226 and not under 8 U.S.C. § 1225.

By way of review, 8 U.S.C. § 1225(b)(2), INA § 235(b)(2), requires mandatory detention of "Applicants for Admission." Conversely, noncitizens detained under 8 U.S.C. § 1226(a), INA § 236(a), are not subject to mandatory detention and may be released on bond or on their own recognizance. Respondents argue in their response that Petitioner is properly detained under 8 U.S.C. § 1225(b)(2) and not under 8 U.S.C. § 1226. This argument fails for several reasons.

The Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), determined for the first time that any person who crossed the border unlawfully and is later taken into immigration detention is subject to detention under 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention and no longer eligible for release on bond. The decision strips the immigration judge's authority to hear a bond request for any noncitizen

present in the United States without having been inspected and admitted and who are later apprehended by DHS.

The relevant statutes at issue are Sections 1225 and 1226. Section 1225, titled "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing," states:

> An alien present in the United States who has not been admitted *or* who arrives in the United States…shall be deemed for purposes of this chapter an applicant for admission... Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking* admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

8 U.S.C. § 1225(a)(1), (b)(2)(A) (emphasis added).

Section 1226, entitled "Apprehension and detention of aliens," states:

> On a warrant issued by the Attorney General, an alien *may be arrested and detained pending a decision* on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General— (1) may continue to detain the arrested alien; and (2) may release the alien on— (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole…

8 U.S.C. § 1226(a) (emphasis added).

Prior to and since the decision in *Matter of Yajure Hurtado*, federal district courts in the First Circuit, Second Circuit, Third Circuit, Fourth Circuit, Fifth Circuit, Sixth Circuit, Seventh Circuit, Eighth Circuit, Ninth Circuit, Tenth Circuit, and Eleventh Circuit have all disagreed with Respondents' interpretation and have subsequently granted relief to habeas petitioners. At Exhibit 1 is a list of case citations supporting Petitioner's arguments herein. The text of Sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the numerous District Court decisions confirm that Petitioner is subject to section 1226(a)'s discretionary detention scheme.

C. Petitioner's continued detention without a bond hearing is a Fifth Amendment violation.

Petitioner's continued detention violates due process, as Respondents' arguments ignore the realities of the process of Petitioner's immigration proceedings and the particular facts of this case. Respondents do not allege that Petitioner's detention is necessary because she is a danger to the community, nor to ensure her appearance during removal proceedings. *See Zadvydas*, 533 U.S. at 690. There has been no evidence presented that Petitioner is a danger to the community or has done anything wrong to merit her detention. Petitioner's continued deprivation of her liberty by being deprived of the opportunity to request a bond hearing is a violation of the Due Process Cause of the Fifth Amendment.

The Sixth Circuit has held that the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), regarding the adequacy of process, applies in the context of immigration detention. *See United States v. Silvestre-Gregorio,* 983 F.3d 848, 852 (6th Cir. 2020). Thus, under *Mathews*, this Court must consider the following three factors: "(1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest; and (3) the government's interest, including the fiscal and administrative burdens that the additional or substitute procedures entail." *Mathews*, 424 U.S. at 335.

In regard to the first *Mathews* factor, Petitioner has a significant private interest in avoiding detention, one of the "most elemental of liberty interests." *See Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004). Petitioner is now detained in another state, away from her support system and her children, and she is "experiencing [many of] the deprivations of incarceration, including loss of contacts with friends and family, loss of income earning…lack of privacy, and, most fundamentally, the lack of freedom of movement." *See Günaydin v. Trump*, No. 25-cv-01151, 2025 WL 1459154, at *7 (D. Minn. May 21, 2025).

As to the second *Mathews* factor, a risk of erroneous deprivation is minimized through a fair bond hearing, where an Immigration Judge can determine whether Petitioner is a flight risk or a danger to the community. *See Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *9 (E.D. Mich. Aug. 29, 2025). Allowing an Immigration Judge to use their expertise to determine a Petitioner's eligibility for bond reduces the risk of erroneously depriving Petitioner of her liberty interests.

As to the third factor, while Respondents do have "a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community," here, Respondents have not established an interest in regard to detaining Petitioner who may well convince "a neutral adjudicator, following a hearing and assessment of the evidence, that his ongoing detention is not warranted." *Sampiao v. Hyde,* No. 1:25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025).

Petitioner is detained under 8 U.S.C. § 1226. Respondent's position that Petitioner must remain detained during the pendency of her removal proceedings and is not eligible for a bond redetermination hearing pursuant to 8 U.S.C. § 1225(b)(2), unlawfully deprives Petitioner of her liberty.

CONCLUSION

For the foregoing reasons, this Court should order Respondents to release Petitioner or to schedule a bond hearing for Petitioner's removal proceedings within 5 days of the order and accept jurisdiction to issue a bond order.

Dated: January 6, 2026

Respectfully Submitted,

/s/ Jennifer Peyton

Jennifer Peyton, Esq.
KRIEZELMAN

BURTON & ASSOCIATES
200 West Adams Street, Suite 2211
Chicago, Illinois 60606
(312) 332-2550,
jpeyton@krilaw.com
Attorney No. OH 0069675
Attorney for Petitioner