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Respondents argue dismissal is warranted because Petitioner has not pursued an immigration judge (IJ) bond request and BIA review. Dkt. 4 at 3. But the statutory exhaustion requirement they invoke, 8 U.S.C. § 1252(d)(1), applies to “review of a final order of removal.” Petitioner seeks no review of any final order—he challenges the legality of ongoing civil detention and the denial of bond process, which lies at the core of habeas jurisdiction under 28 U.S.C. § 2241. *See Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

Recent, directly on-point detention decisions confirm that exhaustion is not a statutory bar in this posture. In *Buenrostro-Mendez*, the Government raised the same threshold argument, and the court rejected it because “exhaustion does not bar this court’s review” where the petition challenges detention authority and the availability of custody process rather than a final order of removal. *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at \*3 (S.D. Tex. Oct. 7, 2025).

*B. Even if prudential exhaustion were considered, it is excused as futile and because delay causes ongoing irreparable harm.*

Any exhaustion requirement in a § 2241 detention case is prudential, not jurisdictional, and may be excused. *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012). The Fifth Circuit recognizes exceptions where remedies are “unavailable or wholly inappropriate to the relief sought,” or where exhausting them would be “a patently futile course of action.” *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (quoting *Hessbrook v. Lennon*, 777 F.2d 999, 1003 (5th Cir. 1985)); accord *Rourke v. Thompson*, 11 F.3d 47, 49 (5th Cir. 1993).

This case fits squarely within those exceptions. Respondents’ merits position forecloses the very relief they say Petitioner must pursue. Respondents contend Petitioner is detained under INA § 235, 8 U.S.C. § 1225, is subject to mandatory detention, and “not entitled to a bond hearing

before the immigration judge.” Dkt. 4 at 3. Under Respondents’ own theory, an IJ would deny jurisdiction, making any “exhaustion” requirement a “patently futile” exercise. *Fuller*, 11 F.3d at 62.

Courts have declined to require an IJ bond request first in materially identical circumstances. *Fuentes v. Lyons*, No. 5:25-cv-00153, Order at 3 (S.D. Tex. Oct. 16, 2025) (declining to require exhaustion because an IJ bond request “would be an exercise in futility”). And delay independently warrants excusal because continued civil detention without the process Congress provided is ongoing irreparable harm. See *Buenrostro-Mendez*, 2025 WL 2886346, at \*3–5; *Lopez-Arevelo v. Ripa*, No. EP-25-cv-00337-KC, 2025 WL 2691828, at \*6 (W.D. Tex. Sept. 22, 2025).

**III. Section 1226(a), not section 1225(b)(2), governs custody for long-resident interior arrests, and Respondents’ position cannot support continued detention.**

***A. The INA’s text and structure confirm that section 1226(a) is the governing custody statute.***

Respondents’ theory is categorical, that because Petitioner entered without inspection, he “was and remains an applicant for admission,” so detention must proceed under INA § 235, 8 U.S.C. § 1225, with mandatory detention and no bond. Dkt. 4 at 3. But § 1225 is organized around inspection and admission determinations by examining officers, including whether a person “seeking admission” is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A). Section 1226 is the arrest-and-detention statute Congress designed to govern custody “pending a decision on whether the alien is to be removed,” and it authorizes release on bond or conditional parole. 8 U.S.C. § 1226(a). The Supreme Court describes § 1226(a) as the “default rule” for detention pending removal. *Jennings*, 583 U.S. at 287–88.

Respondents’ reading would convert § 1225(b)(2) into a default detention authority for long-resident interior arrestees and render § 1226(a) largely superfluous for routine interior

arrests—an outcome courts avoid absent clear congressional command. *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

*B. Arrest authority reinforces the statutory divide, and Respondents do not engage it.*

Respondents' abbreviated response never addresses the arrest-warrant framework that Congress paired with § 1226(a). Dkt. 4. Section 1226(a) authorizes arrest and detention "on a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). Warrantless immigration arrests are narrowly permitted only when the officer has reason to believe removability and "is likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2); *see also* 8 C.F.R. § 287.8(c)(2)(ii). Administrative arrest warrants are issued under delegated authority. 8 C.F.R. § 287.5(e)(2). The regulatory scheme thus tracks § 1226(a)'s warrant-based, interior arrest-and-detention framework, not § 1225(b)(2)'s inspection-based mandatory detention regime.

This arrest-and-detention architecture further underscores the central flaw in Respondents' approach—they seek to justify ongoing mandatory detention for a person arrested in the interior while ignoring the statutory mechanisms Congress specified for interior arrest and detention pending removal proceedings.

*C. Texas authority rejects Respondents' § 1225(b)(2) theory for interior arrests.*

Courts in Texas have repeatedly rejected the Government's attempt to apply § 1225(b)(2) as the default detention statute for long-resident interior arrestees and have ordered § 1226(a) custody process or release. *See, e.g., Padron Covarrubias v. Vergara*, No. 5:25-cv-00112, 2025 WL 2950097, at \*4–6 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez*, 2025 WL 2886346, at \*2–5; *Espinoza Andres v. Noem*, No. 4:25-cv-05128, 2025 WL 3458893, at \*1–3 (S.D. Tex. Dec. 2, 2025); *Cruz Gutierrez v. Thompson*, No. 4:25-cv-04695, 2025 WL 3187521, at \*6–9 (S.D. Tex.

Nov. 14, 2025). Respondents' abbreviated response offers no case-specific basis to depart from this growing body of authority.

**IV. *Matter of Yajure-Hurtado* does not control, and the Court owes no deference.**

Respondents rely on *Matter of Yajure-Hurtado* and urge the Court to "rule the same." Dkt. 4 at 4. But this Court is not bound by the BIA's interpretation of the INA in a § 2241 habeas action. And after *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), the Court must independently interpret the statute; agency interpretations do not receive *Chevron* deference. *Id.* at 2262–66. *Yajure-Hurtado* therefore cannot substitute for this Court's independent analysis of the INA's detention structure, which supports § 1226(a) custody for long-resident interior arrests.

**V. Conclusion.**

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition and order Petitioner's immediate release from ICE custody on conditions no more restrictive than those that existed prior to his arrest.

Respectfully submitted on January 30, 2026.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing PETITIONER'S REPLY TO RESPONDENTS' ABBREVIATED RESPONSE in the case of *Colchado-Benitez v. Bondi, et al.*, Civil Action Case No. 1:25-cv-00099, was sent through the District Clerk's electronic case filing system on this day the 30th of January, 2026.

Dated this 30th day of January, 2026

s/ Maria Nereida Jaimes

Maria Nereida Jaimes