IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ELIAS ISAI AGUILAR GARCIA Petitioner v. **JACOB WELSH**, et al., Respondents	Case No. 5:26-cv-3028-JWL

TRAVERSE

The Respondents filed their response to the Court's Order to Show Cause on March 30, 2026, arguing primarily that the petition should be denied for failure to exhaust administrative remedies. See, Response to Amended Petition and Order to Show Cause [Doc. 7] at 2-5. They go on to argue that as bond hearings are discretionary, the Court lacks jurisdiction to hear our claims as well. Doc. 7 at 5. Because the Respondents are wrong on both counts, we ask that the Court order Petitioner's immediate release from custody.

Despite the Respondents' assertions, there is no statutory requirement to exhaust administrative remedies under 28 U.S.C § 2241. Instead, they cite to Tenth Circuit cases finding that under certain circumstances exhaustion is required prior to seeking Habeas relief. See, Doc. 7 at 3. However, there are two primary faults with the Respondents' reasoning: 1. Exhaustion is not required where it would be futile, and 2. The administrative remedies in this case are wholly inadequate as the agency itself can not adjudicate constitutional challenges.

To begin with, the Supreme Court has specifically refused to require exhaustion in a Habeas case, holding that: "The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008).

The Supreme Court has also held that the exhaustion requirement can be waived and that "sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. 140, 144, 145-49 (1992), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731 (2001). Because there is no statutory requirement to exhaust the Court should consider the reasons why prudential exhaustion is normally required, and why it is here inapplicable.

While the Tenth Circuit has said that exhaustion is sometimes a prerequisite to a Habeas claim, it has noted that "there are a number of exception to the general rule requiring exhaustion, covering situation such as where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th Cir. 1981). *See also McCarthy v. Madigan*, 503 U.S. 140, 146-49 (1992), *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731 (2001) (noting that traditional exceptions include where exhaustion would cause "undue prejudice to subsequent assertion of a court action" or "irreparable harm" to the petitioner, where there is "some doubt as to whether the agency was empowered to grant effective relief," or where it would be futile because "the administrative body is shown to be biased or has otherwise predetermined the issue before it") (internal quotation marks omitted).

The reasons generally given for prudential administrative exhaustion deals with things like: "(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, *Puga v. Chertoff*, 488 F.3d 812 (9th Cir. 2007). This is confirmed by other courts which have indicated similar rational for requiring administrative exhaustion. *See Beharry v. Ashcroft*, 329 F.3d 51, 56 (2d Cir. 2003) (purposes of exhaustion include protecting the authority of agencies, conserving judicial resources, and developing factual record); *see also Weinberger v. Salfi*, 422 U.S. 749, 765 (1975) (rationale includes giving courts the benefit of agency expertise and compiling record for judicial review).

None of these listed factors provide justification for requiring administrative exhaustion in this case. To begin with, the Board of Immigration Appeals has no more agency expertise in what the Fifth Amendment requires in a constitutionally compliant hearing than this Court. Neither would consideration by this Court of the constitutional claims presented here encourage bypassing of the Board, when the Board will not order a bond hearing for those who entered without authorization. That is, we do not believe the Board will address our claims in any event, as they will deem Mr. Aguilar Garcia subject to *Matter of Yajure Hurtado* now under the Eighth Circuit's decision in *Avila.*

While the Eighth Circuit's decision in *Avila v. Bondi*, agrees with the government's position that mandatory detention applies to all who enter this country without authorization, it is instructive that the Eighth Circuit's decision does not appear to rule out Due Process challenges

to detention. This is similar to the Fifth Circuit where after they issued *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, (5th Cir. Feb. 6, 2026), several District Court's have continued to grant immediate release of similarly-situated Petitioner's, relying on Due Process violations. See, *Alfonzo-Mujica v. Thompson*, Case No. SA-26-CA-00457-XR (W.D. Tx. 03/13/2026)(Orders direct release of petitioner finding violation of Due Process under consideration of the *Mathews v. Eldridge* factors); *Raga Alemán v. Homan*, Case No. 1:26-CV-00529-DAE (W.D. Tx. 03/16/2026)(Relying primarily on *See Dep't of Homeland Sec. v. Thuraissigiam,* 140 S. Ct. 1959 (2020) to order immediate release of petitioner); *Mekhtievi v. Thompson*, Case No. SA-26-CA-00553-XR (W.D. Tx. 03/16/2026); *Singh Singh v. Bondi*, Case No. SA-26-CA-00541-XR (W.D. Tx. 03/16/2026); *Pasto v. Bondi*, Case No. SA-26-CA-00999-XR (W.D. Tx. 03/13/2026); *Bokwe v. Bondi*, Case No. SA-26-CA-00409-XR (W.D. Tx. 03/13/2026); *Sevilla Pineda v. Noem*, Case No. 1:26-CV-510-RP (W.D. Tx. 03/13/2026); *Molina-Sanchez v. Bondi*, Case No. 1:26-CV-518-RP (W.D. Tx. 03/13/2026); *Romero Sosa v. Bondi*, Case No. SA-26-CA-00639-XR (W.D. Tx. 03/13/2026); *Alvarado Morales v. Vergara*, Case No. 1:26-CV-521-RP (W.D. Tx. 03/13/2026); *Flores Garcia v. Noem*, Case No. SA-26-CA-00937-XR (W.D. Tx. 03/13/2026); *Eskin v. Karnes*, Case No. SA-26-CA-00047-XR (W.D. Tx. 03/13/2026); *Mendez v. Bondi*; Case No. SA-26-CA-00543-XR (W.D. Tx. 03/13/2026); *Sanchez Lemus v. Noem*, Case No. 1:26-CV-260-RP (W.D. Tx. 03/03/2026).

The Respondents indicate that our "implicit argument that an appeal to the BIA would be futile is unsupported by the factual allegations contained in the Amended Petition." See, Doc. 7 at 5. They do this claiming that we do "not allege the unconstitutionality of a statute under the INA." *Id.* However, what we are claiming is that the actions of the Immigration Judge in

consideration of prejudicial and unsupported evidence violated the Fifth Amendment rights of Mr. Aguilar Garcia. See, Doc. 4 at 12-16.

Here, an appeal to the Board of Immigration Appeals would be futile. The Board has already determined that individuals who enter without authorization are not eligible for bond hearings in any event, and so an appeal based on constitutional challenges to the sufficiency of the process afforded Mr. Aguilar Garcia would be futile. The Board would simply indicate that *Matter of Yajure Hurtado* renders Mr. Aguilar Garcia without the right to a bond hearing at all. Our claim is that he has been deprived of his Due Process rights by the actions of the Immigration Court in his bond hearing. That hearing took place prior to the Eighth Circuit's holding in *Avila v. Bondi*, Appeal No. 25-3238, 2026 WL 819258, slip op. (8th Cir. March 25, 2026), which upheld the Board's decision in *Yajure Hurtado*. Therefore, Mr. Aguilar Garcia will not receive review of his claim regarding the violations of his Due Process rights before the Board.

The Respondents claim that "Petitioner is no longer detained pursuant to § 1225(b)(2)," but that is simply not the way the Board of Immigration Appeals views this issue. See, Doc. 7 at 5, ft. 3. Instead, the Board has very clearly stated that even when the government originally treats someone as being subject to 1226 for many years, they can then treat them as subject to 1225 if they originally entered without authorization. See, *Yajure Hurtado* at 215-216 (detailing how he was originally treated as subject to 1226). Additionally, in a recent case in the Western District of Missouri, the Court there granted immediate release of someone who had originally been subject under 1226, was later redefined and held without bond under 1225. See, *Rodriguez Vasquez v. Arnott*, Case Number: 6:26-cv-3101-MDH (W.D. Mo. 02/23/2026).

For these reasons, should Petitioner file an appeal to the Board of Immigration Appeals it appears overwhelmingly likely that the Board would deem him subject to 1225 pursuant to *Yajure Hurtado* and *Avila*, and therefore avoid consideration of the constitutional defects in his bond hearing.

Respondents argue that under 1226(e), this Court lacks jurisdiction to reconsider the IJ's bond determination as it was "discretionary." See, Doc. 7 at 5. However, what we have asked for is not review of discretionary determinations, but rather a finding that Petitioner's Due Process rights were violated by the Department of Justice in denying him bond on the uncorroborated, late filed, and prejudicial HSI report, where no criminal charges were even pending. See, Doc. 4 at 12-16.

The Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976) found that Due Process is "flexible" and laid out a three-prong test for determining the "the constitutional sufficiency of administrative procedures" for in this case detaining individuals: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedures would entail." See, *Mathews* at 335.

Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release.

1. Private interest in being free from detention:

Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

Mr. Aguilar Garcia has a "liberty interest" in not being detained by the Respondents. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects. . . . [G]overnment detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in certain special and 'narrow' non punitive 'circumstances' where a special justification, such as harm-threatening mental illness, outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (Internal citations omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana,* 504 U.S. 71, 80 (1992).

2. Risk of erroneous deprivation:

As one of the court's to order immediate release of a similarly-situated petitioner after the Fifth Circuit's decision found:

> Our immigration law has long recognized that noncitizens have an interest in an individualized hearing prior to detention in connection with immigration proceedings. *See Yamataya*, 189 U.S. at 101. And the Supreme Court has required individualized hearings for deprivations of interests less fundamental than Petitioner's interest in freedom from detention. *See Goldberg v. Kelly*, 397 U.S. 254, 268 (1970) (requiring an individualized hearing prior to the termination of welfare benefits). Here, the risk of an erroneous deprivation of Petitioner's rights is high. Without an individualized

> hearing, there is substantial risk that noncitizens with a substantial presence in the United States who pose neither flight risk nor danger to the community will be detained. An individualized assessment before an immigration judge substantially reduces this risk. *Cf. Demore*, 538 U.S. at 531-32 (Kennedy, J., concurring) (reasoning that "due process requires individualized procedures to ensure there is at least some merit to the" charge and detention). An individualized analysis ensures the purpose of detention is not punitive.
> *Alfonzo-Mujica v. Thompson*, Case No. SA-26-CA-00457-XR (W.D. Tx. 03/13/2026)

Here, Mr. Aguilar Garcia poses neither danger nor flight risk, and so his continued detention is exactly the sort of risk of erroneous deprivation that the *Mathews* test is meant to stop."The fundamental requirement of due process is the opportunity to be heard `at a meaningful time and in a meaningful manner.'" *Mathews* at 333. His "opportunity to be heard" was constitutionally defective. See, Doc. 4 at 13-14.

3. Petitioner's interests outweigh burden to Government:

The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35. In *Montalvan Reyes v. Warden*, Case No. 1:26-cv-00441-DC-JDP (W.D. Cal. 02/13/26) the court looked at the *Mathews* test for someone who had been in the United States for several years and then detained (in that case re-detained), finding that the government interest in detention was low. Similarly, the court in *Raga Alemán v. Homan*, Case No. 1:26-CV-00529-DAE (W.D. Tx. 03/16/2026) found "In weighing all three factors, the Court finds the scale tips in Petitioner's favor; thus, Petitioner's detention without an opportunity to

challenge his detention through an individualized assessment violates his right to procedural due process under the Fifth Amendment of the United States Constitution." See, *Raga Alemán* at 5. That court went on to order the immediate release of the petitioner for two reasons: first because "it need not depart from the "typical remedy" in habeas cases challenging the lawfulness of detention, which "is, of course, release." See, *Raga Alemán* at 5, citing *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Second, because: ordering a bond hearing under these circumstances would require the Immigration Judge to do that which he believes he lacks authority to do following *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). *Id.*

Remedies

We continue to urge the Court to order Mr. Aguilar Garcia's immediate release as laid out in our petition. See, [Doc. 4] at 16-19. As we noted: Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas shall "dispose of the matter as law and justice require."); *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). As noted above, several court's in the Fifth Circuit have continued to order the immediate release of petitioner's even after *Buenrostro-Mendez v. Bondi.* See, cases cited at pages 3-4 above. Additionally, any hearings held by the Immigration Court would be limited by the Board's decision in *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025).

For these reasons we believe the Court should find that it indeed has jurisdiction over the legal issues presented, and grant related relief as requested in our Petition, namely order the immediate release of Mr. Aguilar Garcia.

Respectfully submitted this 2nd day of April, 2026:

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