IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

EDWIN CAGUANA SAULA

Petitioner

v.

MISTY MACKEY, et al.,

Respondents

Case No. 5:26-cv-03094-JWL

TRAVERSE

The Respondents filed their response to the Court's Order to Show Cause on May 5, 2026, arguing that our petition should not be approved because Mr. Caguana Saula received a bond hearing and did not file either an appeal or a request for a new bond hearing. See, Response to § 2241 Habeas Petition and Order to Show Cause [Doc. 5] at 4-5. They go on to argue that the petitioner did not exhaust his administrative remedies. Doc. 5 at 5-7. Also, that he has been afforded all the Due Process to which he is entitled. Doc. 5 at 8-10. Finally, they argued that this court lacks jurisdiction over our claims. Doc. 5 at 10-13. Because the Respondents are all incorrect on all counts, we ask that the Court order Mr. Caguana Saula's immediate release from custody.

Just as this Court has repeatedly ordered the immigration courts to hold bond hearings for those deemed ineligible, we now ask this Court to order a bond redetermination hearing in light of the change in circumstances, given the petitioners criminal issues. See, *Galdamez Orellana v.*

Welsh, Case Number: 26-2019-JWL (D. Ks. 03/13/2026); *Aldana Belloza v. Mackey*, Case Number: 5:26-cv-03093-JWL (D. Ks. 04/30/2026); *Chacon v. Welsh*, Case Number: 5:26-cv-03077-JWL (D. Ks. 04/09/2026); *Vasquez Perez v. Lyons*, Case Number: 26-3102-JWL (D. Ks. 04/09/2026), etc.

A. Bond redeterminations in light of Yajure Hurtado

The Respondents repeatedly state that the petitioner has not requested a bond redetermination hearing yet. However, as noted in our petition, doing so would be futile given the Board of Immigration Appeals decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). See Doc. 1 at 17.

A review of the facts may be helpful here, on July 11, 2025 the Immigration Court denied bond, because it determined that the petitioner was a flight risk given his then-pending criminal charges. See, Exhibit 1. Then, on September 5, 2025, the Board issued its decision in *Matter of Yajure Hurtado* rendering the Petitioner no longer eligible for a bond hearing in their view. Subsequently, on January 20, 2026, the previously-pending criminal charges were dismissed, at which point he was no longer eligible to seek a bond redetermination under *Yajure Hurtado.* See, Exhibit 2.

Despite this, the Respondents repeatedly argued that this petition should be denied because the Petitioner did not appeal the Bond denial or seek a redetermination from the Board. See, Doc. 5 at 4-10.

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 would be futile. The Board would simply indicate that *Matter of*

Yajure Hurtado renders Mr. Caguana Saula without the right to a bond hearing at all. Our claim is that, without the intervention of this Court, Mr. Caguana Saula can not seek a bond redetermination from the Board under 8 C.F.R. § 1003.19(e), because of the Board's decision in *Yajure Hurtado*. The bond hearing he had, took place prior to the Board rendering its decision in *Yajure Hurtado*. Therefore, Mr. Caguana Saula will not receive review of his claim regarding changed circumstances before the Board.

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 v. Bondi*, Appeal No. 25-3238, 2026 WL 819258, slip op. (8th Cir. March 25, 2026), and therefore avoid consideration of the change in his circumstances.

B. Exhaustion

The Respondents cite to *Garcia v. Welsh* for the proposition that this petition should be denied due to an alleged failure to exhaust administrative remedies. See, Doc. 5 at 5-7. Despite the Respondents' assertions, there is no statutory requirement to exhaust administrative remedies under 28 U.S.C § 2241. Instead, they cite to cases finding that under certain circumstances exhaustion is required prior to seeking Habeas relief. See, Doc. 5 at 5-7. 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 has already indicated a refusal to hold bond hearings for those who entered without authorization.

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 exhaustion is sometimes a prerequisite to a Habeas claim, it has been noted that "there are a number of exceptions to the general rule requiring exhaustion, covering situations 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 rationale 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 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. Caguana Saula subject to *Matter of Yajure Hurtado.*

C. Jurisdiction

Respondents argue that this Court lacks jurisdiction to consider these claims for a variety of reasons: That the APA isn't implicated as the Petitioner could seek a new hearing under 1003.19(e); that the SIJS statute doesn't specifically call for a stop to removal or detention of those approved; that 1252(g) denies this Court jurisdiction over removal issues; and that the

Court lacks jurisdiction over the Department's prosecutorial discretion and determinations of where to detain people. See, Doc. 5 at 11-14.

As laid out above, the right to seek a bond redetermination is futile in light of the Board's decision in *Yajure Hurtado*. See, 2-3 above. Additionally, this Court has repeatedly found that: "This Court has habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal. *See Demore v. Kim*, 538 U.S. 510, 517–18 (2003)." See, *Aldana Belloza v. Mackey*, Case Number: 5:26-cv-03093-JWL (D. Ks. 04/30/2026)(Doc. 6 at 2).

The Respondents argue that the Supreme Court decision in *Jennings v. Rodriguez,* 583 U.S. 281 (2018) rejected the idea that a bond hearing is due to be held every six months, and therefore one should not be ordered in this case as the bond redetermination regulations can be accessed. See, Doc. 5 at 8-10. However, the decision in *Jennings* actually said that detention under 1226(c) had ""a definite termination point": the conclusion of removal proceedings." See, *Jennings* at 304. While the Respondents claim this was speaking of detention under 1226(a), a more careful reading would show that it was talking about the mandatory detention provisions of the INA and the Court's prior decision in *Zadvydas v. Davis*, 533 U. S. 678 (2001). None of that is implicated here.

The Respondents' arguments with respect to the Petitioner's Special Immigration Juvenile Status are frankly inapplicable to the claims made in our petition. See, Doc. 5 at 11-13. We did not argue that this Court should order his release simply because he has SIJS status. But rather that the Respondents' decision to continue to detain him at this point is unreasonable, and he should be granted release or a new bond hearing in light of the significant change in his circumstances, specifically the dismissal of the criminal charges which were pending at the time of the first bond hearing. See, Doc. 1 at 11.

D. *Mathews v. Eldridge* Factors

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: "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 procedural requirements 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. Caguana Saula 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' nonpunitive '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 courts 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. Caguana Saula 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. While he was initially denied due to then-pending criminal charges, those charges were subsequently dismissed, unfortunately, *Matter of Yajure*

Hurtdo had been issued in the meantime, rendering him no longer eligible to seek release from the Respondents. See, Doc. 1 at 16-19.

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. Caguana Saula's immediate release as laid out in our petition. See, Doc. 1 at 29-30. 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"). 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. Caguana Saula.

Respectfully submitted this 19th day of May, 2026:

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