

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**Yuvicela Martinez Llamas**

Petitioner,

Case No. 25-5379

v.

BRET BRADFORD, Field Office Director of Enforcement and Removal Operations, Houston Field Office, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; MARTIN FRINK, Warden of Houston Contract Detention Facility,

Respondents.

**PETITIONER'S REPLY TO  
RESPONDENT'S RESPONSE TO THE  
PETITION OF WRIT OF  
HABEAS CORPUS, OPPOSITION TO  
RESPONDENT'S MOTION TO  
DISMISS AND OPPOSITION FOR  
SUMMARY JUDGMENT FOR THE  
GOVERNMENT**

## INTRODUCTION

1. Petitioner Yuvicela Martinez Llamas hereby submits this Reply Brief in response to Respondent's Response [Docket No. 11].

2. Petitioner replies to the issues and arguments made by the Respondents. The absence of any rebuttal is not, however, a waiver or abandonment of any claim or argument made previously. For arguments not addressed herein, Petitioner stands on the arguments presented in her Petition for Writ of Habeas Corpus and on the arguments presented in her emergency motion for temporary restraining order and/or preliminary injunction relief.

3. Petitioners oppose the motion to dismiss and the grant of summary judgment for the Government.

4. First, exhaustion of administrative remedies does not apply whereas here, a Petition challenges only the agency action collateral to removal proceedings, such as release on non-monetary conditions and/or bond. 8 U.S.C. § 1252(d)(1) applies only to challenges to a "final order of removal." Therefore, when a noncitizen files a habeas petition challenging detention, bond, custody, or other collateral issues, the exhaustion requirement does not apply. *See Hernandez v. Gonzales*, 204 F. App'x 272, 273–74 (5th Cir. 2006). Exhaustion is not required where the petitioner challenges the legality of detention itself, a matter the agency lacks authority to remedy. *Roy v. Ashcroft*, 389 F.3d 132, 137 (5th Cir. 2004). Even if administrative exhaustion was required it would be futile. Decisions of the Board of Immigration Appeals (BIA) are binding on immigration judges, and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) thus precludes an IJ from finding jurisdiction over noncitizens like Petitioner to hold a custody redetermination hearing and/or to grant release on bond. Pursuant to *Yajure Hurtado* a remedy of an appeal taken to the BIA from the determination would also be futile. Finally, exhaustion of administrative

remedies would be futile in this case because the BIA has no jurisdiction to adjudicate Constitutional issues raised here. *See Mathews v. Eldridge*, 424 U.S. 319, 328-30 (1976). Therefore, this court should grant Petitioner's § 2241 petition.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Petitioner has resided in the United States since 2000 and was residing in Cleveland, Texas prior to her Detention. Docket No. 1. On August 27, 2025, Petitioner was arrested after leaving a court hearing related to a pending case in which she was charged with domestic violence against her husband. *Id.* In truth, Petitioner is the victim of domestic violence and has suffered ongoing abuse throughout her marriage. *Id.* Petitioner is now detained at the Houston Contract Detention Facility in Houston, Texas. *Id.* DHS placed Petitioner in removal proceedings before the Conroe Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. *Id.* Mrs. Martinez Llamas has resided peacefully in the United States for decades. She lives with her eight (8) U.S. Citizen children. *Id.* Petitioner is neither a flight risk nor a danger to the community. *Id.* Following Petitioner's arrest and transfer to Houston Contract Detention Facility in Houston, Texas, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions. *Id.* Petitioner subsequently requested a bond redetermination hearing before an IJ. On November 10, 2025, The IJ denied a bond hearing stating that she lacked jurisdiction pursuant to *Matter of Yajure Hurtado*. *Id.* As a result, Petitioner remains in detention. *Id.* Without relief from this court, she faces the prospect of months, or even years, in immigration custody, separated from her family and community. *Id.* On information and belief, Mrs. Martinez Llamas is eligible for relief from removal, including

Cancellation of Removal for Non-Lawful Permanent Residents under INA § 240(A)(b) codified at 8 U.S.C. §1229b(b). *Id.*

### **APPLICABLE LAW**

Petitioner incorporates by reference the legal analysis and authorities contained in the Habeas Petition, the Memorandum of Law in Support of the Emergency Motion for a Temporary Restraining Order and/or Preliminary Injunction, and the Reply filed contemporaneously herewith shall govern and control the issues raised in connection with this matter. Petitioner argues that the Government is misinterpreting the law, is not applying the correct law in this case. The cases on which Respondents rely do not control the outcome here.

### **ARGUMENT**

Petitioner argues that the Government acknowledges that this Court has rejected its arguments concerning the applicability of § 1225(b)(2). Petitioner respectfully request to consider prior rulings from its own Courts and other Courts where it has recognized that 8 U.S.C. § 1226(a) is applicable to people like Petitioner and not § 1225(b)(2) and therefore has granted Habeas Petitions.

Petitioner requests that this Court consider that she is also seeking to enforce her rights as member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11. Petitioner is a member of the Bond Eligible class as she: a) does not have lawful status in the United States and is currently detained at the Houston Contract Detention Facility in Houston, Texas. She was apprehended by immigration authorities; b) entered the United State without inspection over 25

years ago, was not apprehended upon arrival; and c) is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231. This court should find that Petitioner is not subject to mandatory detention.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES PRIOR TO THE FILING  
OF THE HABES PETITION IS NOT REQUIRED**

Petitioners argues that this Court should not dismiss the Habeas Petition because exhaustion of administrative remedies is not required. Even if it was required it would be futile.

First, exhaustion of remedies may be excused when Constitutional claims are involved- administrative review would be futile as the BIA does not have jurisdiction to adjudicate constitutional issues raised here. *See Mathews v. Eldridge*, 424 U.S. 319, 328-30 (1976) (A constitutional challenge to administrative action does not require exhaustion.); *Ramirez Osorio v. INS*, 745 F.2d 937, 939 (5th Cir. 1984) (holding that “exhaustion is not required when administrative remedies are inadequate”).

Second, exhaustion does not apply whereas here, a petition challenges only the agency action collateral to removal proceedings, such as bond. 8 U.S.C. § 1252(d)(1) applies only to challenges to a “final order of removal.” Therefore, when a noncitizen files a habeas petition challenging detention, bond, custody, or other collateral issues, the exhaustion requirement does not apply. The Fifth Circuit held that a challenge to immigration bond proceedings is not a challenge to a final order of removal, and therefore §1252(d)(1) does not require exhaustion. *See Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1046 (5th Cir. 2007). Because the petition does not challenge a final order of removal and only seeks review of an IJ bond determination, the Court retains jurisdiction without any statutory exhaustion barrier.

Third, exhaustion is not required where the petitioner challenges the legality of the detention itself, a matter the agency lacks authority to remedy. *Roy v. Ashcroft*, 389 F.3d 132, 137

(5th Cir. 2004). Here, the IJ's exercise of authority is clearly at odds - to deny Petitioner release on bond on the ground that the IJ has no jurisdiction or statutory authority pursuant to *Matter of Yajure Hurtado*, nor statutory authority to impose conditions other than monetary conditions directly contravenes the specific language of INA § 236(a) codified in 8 U.S.C. 1226(a), which confers the IJ such authority.

Fourth, the court should find that any administrative exhaustion would be futile. BIA decisions are binding on immigration judges, and *Matter of Yajure Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens like Petitioner to hold a custody redetermination hearing. Therefore, judicial intervention enjoining Respondents from preventing Petitioner from having a bond hearing pursuant to the holding in *Yajure Hurtado* is necessary to enable Petitioner to avail herself of her administrative remedies. The IJ already held a custody redetermination hearing and determined that he lacked jurisdiction pursuant to *Matter of Yajure Hurtado*. A remedy of an appeal taken to the BIA from the determination would also be futile pursuant to *Matter of Yajure Hurtado*. Accordingly, the law does not require exhaustion, and even if it did, it would be futile.

**PETITIONER IS NOT SUBJECT TO ANY DETENTION AT ALL – IF ANY, NOT  
MANDATORY DETENTION**

Petitioner argues that the Habeas Petition should be granted under the plain language of the provision 8 U.S.C. § 1226(a).

Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2); in fact she is not subject to any detention at all - if any, it would be under 8 U.S.C. § 1226(a). Respondent's novel interpretation of the civil immigration detention statutes, as laid out on July 8, 2025, ICE Memorandum (ICE Memo), and the BIA precedential decision, *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), contravenes the plain language and statutory framework of the

Immigration and Nationality Act (INA). As the Supreme Court explained in *Jennings v. Rodriguez*, § 1226(a)—and its authority to seek release on bond—governs the detention of those, like Petitioner, who are “already in the country” and are detained “pending the outcome of removal proceedings.” 583 U.S. 281, 289 (2018).

By contrast, § 1225(b)(2)’s mandatory detention scheme applies “at the Nation’s borders and ports of entry” primarily to noncitizens “seeking to enter the country.” *Id.* at 287. DHS cannot retroactively convert an individual in § 240 proceedings into a § 1225(b) detainee because § 1225(b) applies only at the time of “inspection and admission,” not years later when placed in removal proceedings.

Courts across the country, more than two dozen to date— have uniformly rejected Defendants’ radical reinterpretation of the statute. Including the recent decisions by this Court; See *Buenrostro-Mendez v. Bondi*, No. 4:25-cv-3726, 2025 WL 2886346 (S.D. Tex. Nov.06, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-cv-00112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Mejia Juarez v. Bondi*, No. 4:25cv-3937 (S.D. Tex. Oct. 27,2025); *Cruz Gutierrez v. Thompson*, No. 4:25-cv-04965, 2025 WL 3187521 (S.D. Tex. Nov.14, 2025); *Cardenas Perez v. Noem*, No. 1:25-cv-181, 2025 (S.D. Tex. Nov.20, 2025); *Lopez-Tipaz v. Noem et al*, 4:25-cv-04905 (S.D. Tex. Nov. 25, 2025); *Granados v Noem et al*, 5:25-cv-01464 (W.D. Tex. Nov. 26, 2025); *Ramos de Lara v. Noem et al.*, 5:25-cv-01459 (W.D. Tex. Nov. 21, 2025); *Hernandez Hervert v. Bondi*, No. 1:25-cv-01763-RP, 2025 (W.D. Tex Nov. 14, 2025); *Lopez Baltazar v. Vasquez*, No. 5:25-cv-00160 (W.D. Tex. Oct. 14, 2025.).

Significantly, see *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.), where Petitioner is a member of the Bond Denial Class certified. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not

be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11. Petitioner is a member of the Bond Eligible class because she does not have lawful status in the United States and is currently detained, she was apprehended by immigration authorities, entered the United State over 25 years ago, was not apprehended upon arrival; and is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

The equities here underscore the *Mathews v. Eldridge* balance: (1) Petitioner's profound liberty and family interests; (2) the high risk of erroneous deprivation from DHS's categorical no-bond stance (and the value of individualized hearings); and (3) minimal governmental burden to provide the longstanding process Congress preserved. *See* 424 U.S. 319, 333, 335 (1976).

The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, there is no question that the government has deprived Petitioner of her liberty. Petitioner has a fundamental interest in liberty and being free from official restraint. The government's detention of Petitioner without a bond redetermination hearing to determine whether she is a flight risk or danger to others violates her right to due process. Respondents' actions in detaining Petitioner without any legal justification violate the Fifth Amendment. The government's detention of Petitioner is unjustified.

Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to her community and

family. None of Respondents' arguments are relevant to the analysis of the Constitutionality and precedential decisions applicable here.

Additionally, Respondents' continued efforts to deny her bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution. As set forth in the previous Courts, federal regulations and case law provide the procedure for a Respondent in removal proceedings like hers to seek a bond redetermination by an IJ. In being denied the opportunity to return to her family and pursue Cancellation of Removal for Non-Lawful Permanent Residents in a non-detained court setting where she is free to gather the necessary evidence, Petitioner would be deprived of the right to freedom to lawfully pursue her rights in this civil matter. The Government's "no-review" provisions are a violation of her procedural and substantive due process and without any statutory authority. There is no time-frame or procedure for requesting DHS to review its custody decision, and removal proceedings in this case will proceed during that time while Petitioner remains in custody. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is ultra vires because it exceeds the authority granted to ICE by Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should hold that Petitioner is detained under § 236(a), not § 235(b), and order her immediate release or, in the alternative, direct the Immigration Court to conduct a custody redetermination hearing under § 236(a) in which Petitioner has a meaningful opportunity to show that she is not a danger or flight risk. Any contrary reliance on *Matter of Yajure-Hurtado*

would unlawfully misapply the statute and deprive Petitioner of his rights under the INA, the APA, and the Due Process Clause.

Petitioners urge this Court to apply prior rulings favorable to Petitioner, rulings of multiple Circuits and other supporting authority.

**CONCLUSION**

For these reasons, and the reasons stated in the Petition, the Court should GRANT the Petition for Writ of Habeas Corpus and order Petitioner's immediate release or, in the alternative, a bond hearing which places the burden of proof on the government.

Dated this 5th day of December 2025

Respectfully submitted,

/s/ Xavier Vicente Chavez  
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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Yuvicela Martinez Llamas, and submit this verification on her behalf.

I hereby verify that the factual statements made in the foregoing Reply are true and correct to the best of my knowledge.

Dated this 5th day of December 2025.

/s/ Xavier Vicente Chavez

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Instrument was sent via ECF on this 5th day of December 2025, to all counsel of record.

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