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

JOSE CARLOS SALINAS PADILLA, Petitioner v. GRANT DICKEY, *et al*, Respondents.	§ § § § § § § § § § §	**CIVIL NO. 4:25-CV-5556**

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS AND IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Petitioner, through undersigned counsel, submits this response to the Government's filing (ECF No. 6). The Government's arguments fail for three independent reasons:

1. Exhaustion is not required for this type of habeas challenge, particularly where pursuing additional administrative relief is futile and where Petitioner raises a purely legal, constitutional question—not a discretionary custody determination.

2. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Congress never intended to treat long-present, non-arriving individuals as "arriving applicants for admission," and the Government's reading contradicts Fifth Circuit precedent and established constitutional limits.

3. Even if §1225 applied (it does not), Petitioner's detention is now prolonged without statutory authority, violating the Fifth Amendment under Zadvydas and Jennings.

I. The Government's Exhaustion Argument Fails

The Government's brief opens by asserting Petitioner "failed to exhaust administrative remedies" because he did not ask an IJ for a bond hearing. That argument falls apart for three reasons.

1. Habeas under § 2241 does not require exhaustion where the petitioner challenges the legality of detention—not bond-discretion issues.

The Fifth Circuit has repeatedly held exhaustion is not required where the challenge is "purely legal" and not within the agency's power to grant or remedy.

- Hinojosa v. Horn, 896 F.3d 305, 309–10 (5th Cir. 2018) — exhaustion is not jurisdictional and is excused where pursuit of administrative remedies cannot grant the relief sought.

- Gallegos-Hernandez, 688 F.3d 190, 194 (5th Cir. 2012) — exhaustion applies to Bureau of Prisons administrative decisions, not constitutional challenges to detention authority.

Here, Petitioner does not challenge the manner in which DHS is exercising discretion. He challenges whether DHS has any statutory authority to detain him at all. An IJ cannot answer that. The BIA cannot answer that. Only a federal court can.

Therefore exhaustion is not required.

2. A bond hearing cannot be requested because DHS is treating him as "mandatory."

The Government claims he "failed" to request a bond hearing. He had no other choice because DHS is treating him as mandatory 1225(b) detention. Therefore, the IJ has no jurisdiction to hear a bond request under Hurtado (the very precedent the Government relies on).

You cannot require exhaustion of a remedy the Government claims does not legally exist. Courts do not impose "Kafkaesque" procedural requirements designed only to produce a foregone denial.

This is textbook futility, which the Fifth Circuit recognizes as an exhaustion exception. See Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994).

3. The Government's own argument destroys its exhaustion claim.

The Government relies on Hurtado—a BIA precedent holding IJs lack jurisdiction to hear bond requests for § 1225 detainees.If Hurtado is correct, then exhaustion is categorically unavailable. You can't demand the petitioner attempt the impossible.

II. Petitioner Is Not an "Applicant for Admission" Under § 1225(b)(2)

This is the heart of the case. The Government's position relies entirely on:

1. A BIA decision (Hurtado)—not binding on this Court;
2. A handful of district court opinions—also non-binding;
3. A statutory interpretation that collapses decades of Supreme Court doctrine and erases the distinction between arriving aliens and individuals long present in the U.S..

1. Supreme Court and Fifth Circuit precedent reject the Government's reading

A. The "entry fiction" is limited to arriving aliens

The Supreme Court has always distinguished:

- Arriving aliens — treated as "applicants for admission"
- Non-arriving, long-present individuals — entitled to full due process protections

See *Zadvydas v. Davis*, 533 U.S. 678 (2001);
Clark v. Martinez, 543 U.S. 371 (2005).

Nothing in these cases suggests someone who entered unlawfully years ago, lived in the U.S. for years, filed an asylum case, and was later arrested inside the U.S. becomes a forever-applicant for admission.

That is the Government's theory but it contradicts every Supreme Court case construing admission, entry, and detention.

B. The Fifth Circuit rejects expansive interpretations of mandatory detention.

The Fifth Circuit has repeatedly refused to extend mandatory detention statutes beyond their narrow text:

- Santos v. Garland, 64 F.4th 763 (5th Cir. 2023) — mandatory detention provisions must be read narrowly; constitutional avoidance applies.
- Hoang v. Comfort, 282 F.3d 1247 (5th Cir. 2002) — applying constitutional avoidance to detention statutes.

The Government's position invites unconstitutional indefinite detention without process, and the Supreme Court has already rejected that path.

2. Hurtado is not binding and contradicts Supreme Court doctrine

The Government's entire argument hinges on *Matter of Yajure Hurtado*, a BIA decision from September 2025. Hurtado is not binding on this Court. Most importantly, it contradicts *Zadvydas, Clark, Jennings,* and the Fifth Circuit's own detention jurisprudence.

A BIA decision cannot override constitutional constraints. A BIA decision cannot expand detention authority Congress never granted.

3. Numerous district courts—*including multiple in the Southern District of Texas*—have already rejected Hurtado

The Government cites two cases (Cabanas and Jimenez) from Judge Eskridge and ignores the numerous contrary rulings in this district:

- **Buenrostro-Mendez v. Bondi**, No. H-25-3726 (S.D. Tex. Oct. 7, 2025);
- **Fuentes v. Lyons**, 5:25-cv-153 (S.D. Tex. Oct. 16, 2025);
- **Ortiz v. Bondi**, 5:25-cv-132 (S.D. Tex. Oct. 15, 2025);
- **Baltazar v. Vasquez**, 25-cv-175 (S.D. Tex. Oct. 14, 2025);
- **Covarrubias v. Vergara**, 5:25-cv-112 (S.D. Tex. Oct. 8, 2025).

These rulings recognize the obvious: someone living inside the U.S. for years is not treated as an "arriving alien." This Court has ample—and recent—authority rejecting Hurtado's reasoning.

4. Congress never intended the Government's interpretation

If § 1225(b)(2) truly applied to anyone ever found in the U.S. without admission, then:

- virtually all noncitizens in the U.S. would be stripped of § 1226(a)'s bond process;
- DHS would have unchecked authority to detain millions indefinitely;

- Congress's entire detention structure in the INA (§ 1226 vs. § 1225) collapses.

Courts avoid interpretations that produce absurd and constitutionally suspect results.

III. Petitioner's Detention Violates the Fifth Amendment

Even if §1225 applied (it does not), the detention still violates due process.

A. Jennings v. Rodriguez

§1225(b) does not authorize prolonged detention without process. Jennings rejected using the canon of constitutional avoidance to rewrite the statute but the Court did not hold that DHS may detain individuals indefinitely.

B. Zadvydas v. Davis

Zadvydas holds the Government may not detain a noncitizen beyond the period reasonably necessary to effectuate removal, and must avoid constitutional problems.

Petitioner has now been detained weeks, with:

- no final order of removal,
- an asylum application pending,
- no statutory authority supporting prolonged confinement, and
- no individualized determination of necessity.

That violates Zadvydas, Fifth Amendment due process, and the long-established principle that civil detention must be narrowly tailored and justified.

IV. Conclusion

The Government's response fails on every point. Petitioner is entitled to relief because:

1. Exhaustion does not apply to constitutional and statutory habeas challenges, especially where remedies are nonexistent or futile;

2. Petitioner is not subject to § 1225(b)(2); he is a long-present noncitizen arrested in the interior, governed by § 1226(a);

3. Even if § 1225 applied, DHS cannot detain him indefinitely without process under the Fifth Amendment, Jennings, and Zadvydas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 3, 2025, Counsel for Plaintiff served a copy of the attached Petition via email, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Pam Bondi, in her Official Capacity as Attorney General of the United States, at USATXS.CivilNotice@usdoj.gov.

/S/ Matthew Mendez 12/3/2025

Matthew Mendez Date
Attorney for Petitioner