

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

JOSE CARLOS SALINAS PADILLA,

Petitioner

v.

GRANT DICKEY, et al,

Respondents,

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Civil Action No. 4:25-cv-5556

PETITIONER’S RESPONSE TO GOVERNMENT’S RESPONSE

Petitioner submits this response to the Government’s argument that the Court must deny habeas relief because Petitioner failed to exhaust administrative remedies. The exhaustion issue is the Government’s only serious procedural defense, and it fails for one simple reason: **the Government concedes that the immigration court lacks jurisdiction to hear a bond request under Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025).** If the immigration court has **no jurisdiction to adjudicate a custody redetermination request**, then exhaustion is **legally impossible**, and the futility exception applies.

I. Exhaustion is Not Required Where No Administrative Remedy Exists

The Fifth Circuit recognizes that exhaustion under §2241 is not mandatory where the petitioner can show that pursuing an administrative remedy would be futile or impossible, or where the remedy is inadequate. See *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). The futility

exception applies when the agency is powerless to grant relief as a matter of law, not merely where the petitioner is unlikely to prevail.

That is exactly our situation.

The Government argues that Petitioner was required to request bond from the immigration judge and appeal to the Board of Immigration Appeals. But in the very same brief, the Government explicitly argues that, under *Matter of Yajure Hurtado*, an immigration judge has no authority whatsoever to hear or grant a bond request for any individual deemed an “applicant for admission.” The Government repeats this position throughout its brief and stresses that *Hurtado* strips IJs of jurisdiction to entertain a custody redetermination.

“In that decision, the BIA held that an IJ lacks authority to hear a respondent’s request for bond where the respondent is an applicant for admission and subject to mandatory detention under Section 235(b)(2)(A) of the INA.”

Thus, under the Government’s own legal theory, the IJ would be legally prohibited from granting a bond request and could not conduct a custody hearing even if Petitioner requested one. The Government’s exhaustion position therefore asks this Court to require Petitioner to file a motion that the agency is not allowed to adjudicate, then appeal a denial that the agency is required to issue, and then wait for the BIA to affirm a denial that is mandatory under *Hurtado*.

That is not “exhaustion.” That is a purely performative exercise with a guaranteed outcome.

The Fifth Circuit has never required exhaustion where the administrative forum lacks legal jurisdiction to act, because such a process is not an “administrative remedy” at all.

II. The Government Misreads *Fuller v. Rich*

The Government relies heavily on *Fuller v. Rich*, 11 F.3d 61 (5th Cir. 1994) to argue exhaustion must occur unless the agency has already denied a request. But *Fuller* involved a situation where the agency **did have legal authority to provide relief**, and the petitioner merely argued that he would likely lose. The Fifth Circuit rejected futility because agency discretion had not yet been exercised.

Here, that distinction is critical.

In *Fuller*, the question was: “*Should the petitioner bother appealing when the agency could theoretically grant relief?*”

Here, the question is: “*Can exhaustion be required when the agency has **no jurisdiction to hear the request?***”

Those are fundamentally different concepts.

Fuller is about predicted likelihood of success. This case is about legal impossibility.

Administrative exhaustion cannot apply when the administrative body is jurisdictionally barred from acting, because exhaustion doctrine presumes that a remedy exists and could provide

relief if granted. See Fuller, 11 F.3d at 62 (exhaustion exception reserved for *extraordinary circumstances*).

There is nothing more “extraordinary” than the Government’s own position that the administrative body is legally forbidden from deciding the issue.

III. Hurtado Makes Administrative Exhaustion Moot

Even if Petitioner filed a custody motion tomorrow:

- The IJ would be **required to deny jurisdiction** under Hurtado;
- The BIA would be **required to affirm**, because Hurtado is binding;
- Petitioner would then end up **back in federal court**, with the same issue.

Exhaustion requires a process that is capable of resolving the dispute, not merely a ritualistic set of filings that cannot change anything.

A remedy is “inadequate” and exhaustion is excused when pursuing it would be a waste of time and a meaningless formality, because the agency:

- cannot grant relief as a matter of law,

- has no jurisdiction,
- and cannot interpret its way out of *Hurtado* even if it wanted to.

That is precisely our posture.

IV. Habeas Jurisdiction Exists Because Petitioner Challenges Statutory Authority, Not Discretion

Petitioner does not seek review of the IJ's discretionary custody judgment, because no such judgment can lawfully occur under the Government's reading of §1225(b)(2).

Rather, Petitioner challenges whether DHS has statutory authority to detain him indefinitely without a final order and without access to a custody proceeding. That is a classic use of habeas jurisdiction. See *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (habeas appropriate where the challenge is to the extent of detention authority, not to discretionary judgment).

If the Constitution and the INA do not authorize indefinite civil detention without meaningful review, the question is legal—not administrative—and habeas review is proper.

V. The Government Cannot Block Bond Hearings by Invoking *Hurtado*, Then Demand Exhaustion of Bond Hearings

The Government's position is internally inconsistent:

1. **The IJ has no jurisdiction to hear bond**
2. **Petitioner failed to request bond**
3. **Therefore relief must be denied**

That logic collapses under the weight of its own premises.

By invoking *Hurtado* as a jurisdictional bar, the Government eliminates the very administrative remedy it claims must be pursued. Once that occurs, exhaustion is not merely “difficult”—it no longer exists.

Courts do not require exhaustion of non-existent remedies.

PRAYER

For the reasons stated above, Petitioner respectfully requests that the Court:

- Reject the Government's exhaustion argument as moot, futile, and legally impossible;
- Exercise habeas jurisdiction over the legality of Petitioner's detention;

- Grant immediate release or, at minimum, order a constitutionally compliant custody hearing.

Respectfully submitted,

/s/ Matthew R. Mendez

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Attorney for Petitioner

PETITIONER VERIFICATION

Petitioner, is currently detained in ICE custody, and has authorized Counsel, Matthew Mendez, to verify, on her behalf, that the facts stated therein are true and correct to the best of his knowledge and belief.

/S/ Matthew Mendez

Matthew Mendez
Attorney for Petitioner

12/10/25

Date

CERTIFICATE OF SERVICE

On December 10,2025, Counsel for Plaintiff served a copy of the attached TRO via USPS Certified Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, GRANT DICKEY, in his official capacity as Warden of the Montgomery Processing Center;** at the Immigration and Customs Enforcement (“ICE”) Montgomery Processing Center, located at 806 Hilbig Road, Conroe, TX 77301.

/S/ Matthew Mendez

Matthew Mendez
Attorney for Petitioner

12/10/25

Date

CERTIFICATE OF SERVICE

On December 10,2025, Counsel for Plaintiff served a copy of the attached TRO via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent,**

Bret Bradford, in his Official Capacity as Field Office Director, of ICE Enforcement and Removal Operations Houston Field Office, at (1) Office of the Field Office Director, Enforcement and Removal Operations, Houston Field Office, 126 Northpoint Drive, Houston, Texas 77060, and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 1000 Louisiana Street, Suite 2300, Houston, Texas 77002.

/S/ Matthew Mendez

Matthew Mendez
Attorney for Petitioner

12/10/25

Date

CERTIFICATE OF SERVICE

On December 10,2025, Counsel for Plaintiff served a copy of the attached TRO via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the **Respondent, Kristi Noem, in her Official Capacity as Director of U.S. Department of Homeland Security**, at (1) Office of General Counsel, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20530; and (2) to the United States at Civil Process Clerk, U.S. Attorney's Office, 1000 Louisiana Street, Suite 2300, Houston, Texas 77002.

/S/ Matthew Mendez

Matthew Mendez
Attorney for Petitioner

12/10/25

Date

CERTIFICATE OF SERVICE

On December 10,2025, Counsel for Plaintiff served a copy of the attached TRO 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

Matthew Mendez
Attorney for Petitioner

12/10/25

Date