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

Luis A. Hernández Gabriel Petitioner v. Bret Bradford, Director, HOUSTON DHS-ICE Field Office & Warden Randy Tate, Montgomery Processing Center	WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 USC §2241

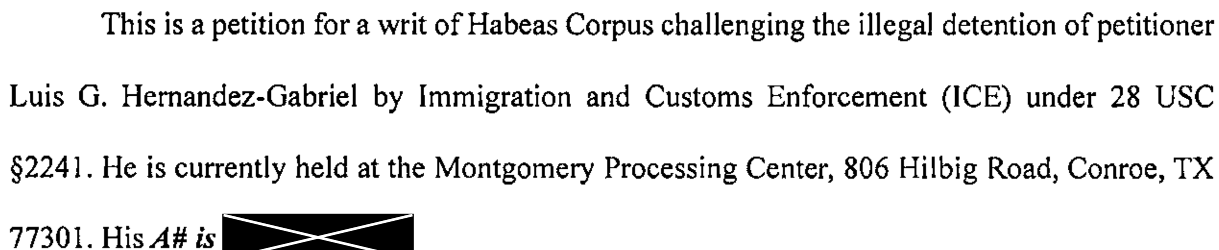
TO THE HONORABLE COURT:

COMES NOW Luis G. Hernandez Gabriel , through the undersigned counsel, and most respectfully **STATES ND PRAYS** as follows:

I. INTRODUCTION

"Every statute has limits which are capable of being exceeded thus even under statutes granting an official the broadest discretion there will be some I'll be at fewer cases capable of arising under the statute which will present issues to which the court will have to apply the law." Abdelhamid v. Ilchert, 774 F 2d 1447, 1449 (CA9 1985) This court has the authority to ensure that the Executive Office for Immigration Review and the Board of Immigration Appeals. Both federal agencies do not act beyond the legislative intent of their enabling statute.

"Any hearing held by the agency must be fair, there must be no error of law, there must be evidence to support the findings of fact. If one of the elements mentioned is lacking the proceeding is void and must be set aside." (Internal quotations omitted.) Kessler v. Strecker, 307 US 22, 34, 59 S. Ct. 694, 83 L. Ed. 1082 (1939).

This is a petition for a writ of Habeas Corpus challenging the illegal detention of petitioner Luis G. Hernandez-Gabriel by Immigration and Customs Enforcement (ICE) under 28 USC §2241. He is currently held at the Montgomery Processing Center, 806 Hilbig Road, Conroe, TX 77301. His *A# is* 

II. JURISDICTION AND VENUE

The district court has subject matter jurisdiction under 28 U.S.C. § 2241, AND under 28 U.S.C. § 1331 (federal question). The court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651 and Article I § 9, cl. 2 of the U.S. Constitution (Suspension Clause). See INS v. Cyr, 533 US 289 (2001) and Guerrero-Lasprilla v. Barr, 589 US 221, 140 S. Ct. 1062, 1067-73, 206 L. Ed. 2d 271.

This action arises under the Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq.

Jurisdiction is proper as he is detained and the proceedings challenged took place within the jurisdiction of the court. Rumsfeld v. Padilla, 542 U.S. 426, 443 (2004)Venue is proper under 18 USC §1391 (e) as he is currently detained within the jurisdiction of the court by the officers and agencies of the United States identified as defendants.

This is a challenge to "detention simpliciter" under § 2241—not to the validity of the removal order itself—so the jurisdiction-stripping provisions of 8 USC § 1252 don't bar review of the immigration detention conditions and duration.

III. PARTIES

Bret Bradford is the Director of the Houston ICE Field Office, located in 126 Northpoint Drive, Houston, Texas, 77060. He has responsibility over the detention facility or contract governing the detention facility where Petitioner is held.

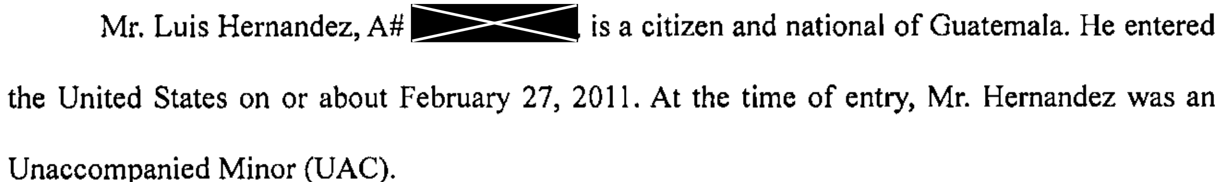
Randy Tate is the warden and "immediate custodian" at the Montgomery Processing Center, 806 Hilbig Road, Conroe, TX 77301 where Petitioner is being held. He is who makes custodial decisions regarding non-citizens detained in immigration custody.

See Rumsfeld v. Padilla, 542 US 426, 439 (2004); 28 U.S.C. § 2242 and § 2243.

IV. AGENCY FINAL DECISION

The immigration court issued an order on July 10, 2025 denying Mr. Hernandez Gabriel request for bond for lack of jurisdiction. See **Exhibit 1**. The court issued a "bond memo" stating she has jurisdiction over the bond but was denying it for risk of flight, see **Exhibit 2**, after an appeal from the July 10 order was filed. See **Exhibit 3**.

V. STATEMENT OF FACTS



Mr. Luis Hernandez, A# [redacted], is a citizen and national of Guatemala. He entered the United States on or about February 27, 2011. At the time of entry, Mr. Hernandez was an Unaccompanied Minor (UAC).

He is currently married to a Guatemalan citizen, lives in Texas and is the father of two United States citizen daughters. He has never left the United Sates since his entry in 2011.

In February 2011, Mr. Hernandez filed a Form I-589, Application for Asylum, with THE United States Citizenship and Immigration Services agency, USCIS. USCIS determined he was not eligible for asylum and referred his case to the Immigration Court on April 12, 2011.

The Department of Homeland Security issued and filed a Notice to Appear (NTA) with the Immigration Court on February 27, 2011. On March 8, 2012, Mr. Hernandez filed an updated asylum application with the Executive Office for Immigration Review (EOIR).

On or about August 26, 2022, Mr. Hernandez filed a Form EOIR-42B, Application for Cancellation of Removal for Certain Nonpermanent Residents, based on hardship to his U.S. citizen daughter, G[redacted], born J[redacted] At this time, he only had one daughter; he now has two (2), both US citizens.

After a hearing on the merits of the pending application, on September 30, 2022, the Immigration Judge (IJ) issued an order denying both his cancellation of removal application and his asylum application and ordered him removed. Mr. Hernandez timely appealed the order to the Board of Immigration Appeals (BIA) on or about October 31, 2022. That order of removal is stayed during the appeal. 8 C.F.R. § 1003.6(a). The appeal is pending.

Mr. Hernandez was arrested and detained by ICE on June 17, 2025, in the parking area of his home in Houston, Texas, while preparing to leave for work.

On or about June 30, 2025, Mr. Hernandez submitted a Motion for Bond Redetermination.

On July 10, 2025, the Immigration Judge denied bond, incorrectly stating the Court lacked jurisdiction due to the pending appeal and concluding that Respondent was a flight risk. On July 15, 2025, Mr. Hernandez requested reconsideration of the bond denial, and on July 16, 2025, the IJ denied bond again.

On July 22, 2025, the Respondent timely appealed both bond denials (July 10 and July 16 orders) to the BIA.

On August 4, 2025, while the denial of the bond was (and still is as of this filing) pending before the BIA, the IJ issued an additional written decision titled "Bond Memorandum Supporting

Denial of Motion for Bond Redetermination", acknowledging that the Court did in fact have jurisdiction to adjudicate bond at the prior hearing, denying it based on risk of flight.

On August 6, 2025, Mr. Hernandez filed a Motion to Remand (or Motion to Reopen, as appropriate) with the Board of Immigration Appeals, BIA, under INA §240A(b). This petition is pending.

On August 23, 2025, Respondent submitted a brief to the BIA challenging the bond denial. This petition is also pending before the BIA.

On September 15, 2025, Mr. Hernandez filed a Motion to Expedite proceedings with the BIA , which is pending.

Mr. Hernandez has now been detained for more than five (5) months days.

VI. CLAIMS FOR RELIEF

We ask the court to order the immediate release of petitioner from detention and:

1. Find that the IJ incorrectly determined she lacked jurisdiction to conduct bond redetermination hearings on July 10, 2025.
2. Find that the IJ unlawfully issued a "bond memo" attempting to correct her finding of lack of jurisdiction for a bond redetermination hearing on August 4, 2025.
3. Find that the five (5) month detention without a bond redetermination hearing is prolonged and constitutes a violation of due process and immigration statutes that establish a respondent's right to have a detention hearing under INA §236, 8 USC §1226.

VII. APPLICABLE LAW

Habeas review depends upon the circumstances of the case, including the thoroughness of procedures provided during the underlying administrative proceedings. Boumediene v. Bush, 553 US 723, 781, 128 S. Ct. 2229, 171 L. Ed. 2d 41 (2008)

While a BIA appeal is pending, the removal order is automatically stayed under 8 C.F.R. § 1003.6(a), so there is not yet a "final" order for purposes of INA § 241 / 8 U.S.C. § 1231. The person is still in the pre-final-order detention framework of INA § 236/8 USC §236.

The automatic stay of removal is codified at 8 C.F.R. § 1003.6(a) which states:

"[T]he decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed ... while an appeal is pending...," "[e]xcept as provided under § 236.1 of this chapter, § 1003.19(i), and paragraph (b) of this section." That clause ("Except as provided under § 236.1...") makes explicit that the stay of the removal order does not strip the Department of Homeland Security, DHS, of its detention/custody authority under § 236. The appeal freezes execution of the removal order, but custody continues to be governed by § 1226 and 8 C.F.R. §§ 236.1 / 1236.1.

In Exhibit 1, the IJ determined she lacked jurisdiction for a bond redetermination hearing because there removal order was pending appeal before the BIA. Petitioner's detention is under INA § 236, because the removal order is stayed under 8 C.F.R. § 1003.6(a). Under 8 C.F.R. §§ 1003.19(a), (d), (h)(2) and Manual 9.3, the IJ had jurisdiction to conduct the hearing . There is no regulatory provision stripping bond jurisdiction simply because the merits are on appeal. Petitioner was arrested by ICE in an exercise of discretionary detention, not mandatory detention under INA § 236(a) and bond jurisdiction lies with the IJ by regulation and EOIR policy, notwithstanding the pending merits appeal. Therefore, denying a bond hearing on that basis is legal error.

This (a) the refusal to exercise bond jurisdiction, and (b) prolonged detention without a meaningful custody determination, particularly this five (5) month lengthy detention pending appeal and is a suspect decision implying am unsupported legal ruling and categorical theory that would make everyone with a pending BIA appeal ineligible for bond. This is explicitly contrary to

current immigration law. Regulations grant continuing bond jurisdiction until a final order, not until a BIA appeal is filed. 8 C.F.R. § 1236.1(d)(1) provides that after DHS's initial custody determination, a respondent may, at any time before an order under 8 CFR part 1240 becomes final, request amelioration of the conditions under which he or she may be released. Prior to such final order the IJ is authorized to exercise the authority in section 236 of the Immigration and Naturalization Act to detain the alien in custody, release the alien, and determine the amount of bond as provided in § 1003.19.

After the bond denial order of July 10, 2025 was entered, the BIA issued an interim decision #4125, *Matter of Yajure Hurtado*, I&N Dec. 216 (BIA September 5, 2025), which stripped the immigration courts from jurisdiction to conduct bond redetermination hearings during the pendency of immigration proceedings. The decision addresses detention under §236 and found that the IJ "did not have authority over the bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings". Id, p. 20. This §235 is the mandatory detention statue, whereas §236 is the discretionary detention statute, and they are applied to distinct groups pf respondents in immigration proceedings. See Jennings v. Rodriguez, 583 U.S. 281, 288–89 (2018). Petitioner belongs to the category of aliens already present in the United States and who may be detained pending removal proceedings, with certain exceptions for certain criminal offenses and terrorism. *Id,* at p. 303. Even the BIA, as recently as June 30, 2025, in *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025), stated that a noncitizen present in the U.S. without inspection or admission was in custody pursuant to§ 236(a), not§ 235. This was the precedent in place when the IJ issued her July 10, 2025 "no jurisdiction" order and her August 4, 2025 "bond memo".

The structure of the July 10, 2025 order citing lack of jurisdiction to conduct such a redetermination follows the arguments in *Yajure*, which have been repeatedly found to be contrary to the black letter of the immigration act. See Fuentes v. Lyons, 5:25-cv-00153, Dkt. No. 15 (S.D. Tex. Oct. 16, 2025); Buenrostro-Mendez v. Bondi, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025)

It is clear that §1226 (a) applies to Mr. Hernandez, and not §1225 (b)(2), therefore, his detention without bond is unlawful. IN addition, and as a further factor for the court to consider, he has been free pending his appeal from the order of removal of 2022 and under current BIA regulation, he had been free pending resolution of the case since that year.

VIII. A THORNY TWIST: THE AUGUST 4, 2025 BOND MEMO

Just what is this "memo"? Her prior denial of bond was already appealed by that date.

Exhibit 2 states that the IJ "had jurisdiction at the time of the bond proceedings". Then the memo discusses "flight risk", which lacks specific findings of fact and law. The memo intends to clarify that "[bond was denied… due to the court lacking jurisdiction during the pending appeal". This reason was NOT identified in the original order, Exhibit 1. The record as it stands is utterly devoid of any grounds that would justify the "bond memo" as a document that alters or changes the order denying bond of July 10. 2025. There is no authority we have found in the EOIR Practice Manual that allows an IJ to alter an order pending an appeal.

BIA Practice Manual (Chapter 4.2(a)(ii)) states that "[o]nce a party files an appeal with the Board, jurisdiction is vested with the Board, and the Immigration Judge is divested of jurisdiction over the case. Accordingly, once an appeal has been filed with the Board, an Immigration Judge may no longer entertain a motion to reopen or a motion to reconsider." Could she issue such an "amendment" to her in the form of a "memorandum"? We believe she could NOT. The "bond

memorandum" is dated August 4, 2025, AFTER the appeal of the initial denial of bond had been filed. On August 4, 2025 there was NO bond redetermination request pending before the immigration court for her to issue that "memo". This memo is an illegal "order" when nothing was before the IJ.

The EOIR Practice Manual is clear that the IJ is divested of all authority in matters related to the case. See Chapter 5.8(h) (Motions to Reconsider – "Motions Filed while an Appeal is Pending"): "Once an appeal is filed with the Board of Immigration Appeals, the Immigration Judge no longer has jurisdiction over the case. Thus, motions to reconsider should not be filed with an Immigration Judge after an appeal is taken to the Board." Chapter 6.3 (Jurisdiction) confirms that after an appeal is filed, jurisdiction "shifts between the Immigration Court and the Board" and directs parties to consult the BIA / EOIR materials on who has jurisdiction at each stage, which in turn reflect that the BIA controls once the appeal is filed. Only on Chapter 5.10 (v), Motions to Amend, Other motions, does the IJ entertains motions to amend previous filings in limited situations (e.g., to correct a clerical error in a filing). This is clearly not the case for the August 4, 2025 "bond memo", Exhibit 2.

The bottom line is that there is no EOIR practice-manual, policy-manual, or bench book provision that affirmatively authorizes an IJ to issue a post-appeal "memorandum" that changes or alters an order already on appeal.

Finally, in that "bond memo" the IJ attempted to make factual findings to support her newly found jurisdiction. This fact finding lacks any reference to substantial evidence to support them. The court can review those factual determinations to see if they are lawful, that is, fair and reasonable in light of the record, and not founded on conjecture, suspicion and not upon evidence.

See Kessler v. Strecker, 307 US 22, 34 (1939); Ragbir v. Homan, 923 F 3d 53, 76-78 (CA2 2019); Ong Chew v. Burnett, 232 Fed. 853, 855 (CA9 1916).

A final consideration of the illegality of the IJ's "order" denying bond in her "bond memo", Exhibit 2, is that it flies against established precedents the IJ had to follow in making a risk of flight determination. The IJ failed to engage in the proper evaluation of the test for risk of flight risk found in *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). There is discussion of these factors. In addition, the consideration of the pending appeal of his final removal order before the BIA is an improper factor as it appears from the order itself, p. 2 of Exhibit 3, which has been found to be legally erroneous because "the IJ appeared to deny bond mainly because Petitioner had been ordered removed" and the IJ failed to address the Guerra factors in her decision. See Sales v. Johnson, 323 F. Supp. 1131,1141 (ND CA 2017). The distinction made that a "currently pending removal creates a notable and heavy factor that outweighs the issuance of bond" is legally erroneous also, because the citing authority, *Matter of Sugay*, 171 I&N Dec. 637, (BIA 1981), which discusses bond factors and risk analysis (pp. 638–39), establishes the following factors or a test for the IJ to consider:

The Board reiterated that, in determining the need for and amount of bond, the following factors should be considered:

- stable employment history;
- length of residence in the community;
- family ties;
- record of nonappearance at court;
- prior criminal or immigration law violations;

Clearly, Exhibit 3 clearly shows the IJ did not follow the law of the case4.

IX. ORDERING A FURTHER DETENTION HEARING IS FUTILE

Existing BIA precedent on bond jurisdiction does not tie jurisdiction to appeal status. *Matter of Cerda Reyes*, 26 I&N Dec. 528 (BIA 2015) holds that the filing rules in 8 C.F.R. § 1003.19(c) are about venue, not subject-matter jurisdiction, and confirms that the IJ's bond authority derives from INA § 236 via 8 C.F.R. § 1236.1(d)(1). This IJ had jurisdiction to consider the bond request.

However, the BIA precedent *Yajure*, supra, at p. 227-228, restricts the immigration courts' jurisdiction for those "present without admission", the restriction applies regardless of whether a BIA appeal is pending, and is therefore not affected on the pendency of the appeals by this petitioner to the BIA. This means that even if the IJ was ordered to conduct a bond redetermination hearing the BIA precedent in *Yajure*, supra, could mean that the IJ would now have to deny the availability of a hearing based on lack of jurisdiction.

Therefore, this Petitioner can show that the new precedent in *Matter of Yajure Hurtado* renders further administrative appeal to the BIA futile, and if a hearing is ordered the IJ would more likely than not look for guidance at her "bond memo" of August 4, 2025 that illegally "finds" that Petitioner was a risk of flight and denied bond. An Appeal from a further bond denial would run the same fate as the already pending appeal from the July 10, 2025 denial in Exhibit 1.

X. CONCLUSION

Because 8 USC §1226(a) applies, his detention without a bond hearing is unlawful. Because the Bond Memorandum of August 4, 2025, was issued during the pending appeal to the BIA of the bond denial of July 10, 2025, it is an unlawful order by the IJ. Because there are mixed issues of fact and law affecting the sequence of orders issues by the IJ and the appeals pending before the BIA, this Honorable Court should GRANT this petition, order him released after more

than five (5) months in detention pending the appeal of all the issues raised before the BIA, so that the immigration courts can do their proper job and consider the merits of his appeals.

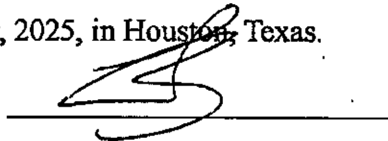
WHEREFORE, we respectfully request the Most Honorable Court to:

- ORDER that Respondents immediately release Mr. Hernandez from custody, or in the alternative, provide him with a bond hearing under 8 U.S.C. § 1226(a).
- If released, ORDER that Respondents must notify Mr. Hernandez' counsel of the exact time and location of his release no less than three hours prior to releasing him.
- ORDER that Respondents provide the Court with a status update on the outcome of any bond hearing conducted pursuant to this Order.
- ORDER that if no bond hearing is held, advise the Court as to the status of Mr. Hernandez' release from custody pursuant to this Order.
- ORDER that the parties should also notify the Court if the Government seeks a stay of the bond under 8 C.F.R. § 1003.19(i).

VERIFIED PETITION

I hereby declare, under penalty of perjury, that the information contained in this petition is true and correct and that I have personally verified its contents before signing and submitting it.

Signed on this 25th day of November, 2025, in Houston, Texas.



Julie Soderlund, Attorney

RESPECTFULLY SUBMITTED on this 25th day of November, 2025, in Houston, Texas.

S/. Julie Soderlund

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