

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

<p>Luis A. Hernández Gabriel Petitioner v. Bret Bradford, Director, HOUSTON DHS-ICE Field Office & Warden Randy Tate, Montgomery Processing Center</p>	<p>Case no. 4:25-cv-5687 WRIT OF HABEAS CORPUS</p>
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REPLY TO RESPONSE IN OPPOSITION TO WRIT

TO THE HONORABLE COURT:

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

1. The government's response is found at dkt. 9, filed 12/, 2025. We hereby submit our reply to their arguments.
2. The government's position is that the Court should dismiss because Petitioner "has not administratively exhausted" and because the BIA bond appeal remains pending. **Dkt. 9**, p. 3 -4.

3. The government also contends that Petitioner is an “applicant for admission,” subject to mandatory detention and “not eligible for bond,” and the Court should reconsider any prior contrary view. *Id.*, p. 5-6.
4. The government asks the Court to “reconsider” and adopt the Government’s interpretation based on a growing body of cases it cites, but not the cases decided by *this* Honorable Court. *Id.*, p. 3.
5. The government argues the “proper respondent” in habeas is the person with custody and discusses the originally named federal respondents versus the “warden. *Id.*, p. 1.
6. The government asks the court to dismiss/deny habeas and grant dispositive relief for the Government. *Id.*, p. 3, 6-7.

EXHAUSTION IS NOT REQUIRED

7. It is clear that exhaustion is not required for a writ of habeas corpus to issue. Detention simpliciter is a doctrine that is routinely excused where administrative review cannot provide timely, meaningful relief to continued detention. The government’s narrative in dkt. 9 incorporates futility and delay into their own arguments: at p. 4 it asks for dismissal because an appeal is pending, a position that supports excusing exhaustion where the harm is ongoing custody after a lack of jurisdiction finding by the IJ, and the agency

timeline is not adequate to prevent the irreparable injury it created in the first place.

8. The writ challenges the IJ's asserted lack of jurisdiction and the legality of continued detention during the administrative posture of the case; those are legal questions appropriate for habeas review notwithstanding pending agency action.
9. The categorical label applied to Petitioner by the IJ is that of an arriving alien under §1225, Dkt. 9, p. 4-5. This categorical application, found in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025) (Interim Dec. 4125) (decided Sept. 5, 2025), collapses the statutory scheme of arriving versus long-time residents inside the country into a single rule and effectively eliminates the traditional distinction between entry/inspection detention and post-entry arrest detention.
10. Even if we were to consider the government's arguments, the response seeks a dismissal based on its preferred interpretation of what is the correct legal framework to apply to Petitioner but does not offer a cure to the constitutional requirement for a meaningful, individualized process when a civil detention by a federal agency becomes prolonged.
11. This Honorable Court has decided many writs from undocumented immigrants: Espinoza Andres v. Noem, C. A. No. H-25-5128 (S.D. Tex. Dec.

2, 2025); Arenas Santoyo v. Dickey, Civ. A. No. H-25-5555 (S.D. Tex. Dec. 23, 2025); Acosta de Perez v. Frink, Civ. A. No. H-25-5357 (S.D. Tex. Dec. 15, 2025); Garcia-Espeticueta v. Bradford, Civ. A. No. H-25-5587 (S.D. Tex. Dec. 30, 2025), among others.

12. Some of the recurring language in the court's decisions we cite reject DHS's "lifetime § 1225(b)(2)(A)" detention theory and ordering § 1226(a) bond hearings (typically within 7 days, with a no-transfer/no-removal constraint). The court also repeats the distinction between the sections was a practice DHS applied for decades, since DHS applied § 1226(a), not § 1225(b), to people apprehended while already present who remained eligible for bond and bond redetermination. See, e.g., Espinoza, at p. 3-4; Acosta at pp. 3-4; Arenas at pp. 7-8 & 11-12; Garcia-Espeticueta at pp. 12-13.
13. Turning DHS's "turning §1225 into a permanent, mandatory detention regime" pends decades of practice, citing Margarito Castañon-Nava v. U.S. Dep't of Homeland Sec., No. 25-3050, slip op. 18–21 & n.13 (7th Cir. Dec. 11, 2025) See Arenas, supra, at p. 13, and Acosta, supra, at pp. 8-9.
14. Finally, the government's deference treatment for *Yajure Hurtado* is not warranted, since post Loper-Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), it is the district courts who decide what is the law under the Administrative Procedure Act, APA §706. See Espinoza at p. 8 (Loper Bright

quote; Hurtado “unpersuasive”); Acosta at pp. 8–9 (Loper Bright quote; Hurtado “unpersuasive”); Arenas at pp. 12–13 (Loper Bright quote; Hurtado “unpersuasive”); Garcia-Espericueta at pp. 13–14 (same Loper Bright / “not bound” framing).

**MATTER OF YAJURE HURTADO IS INAPPLICABLE AND NOT
BINDING**

15. The government argues that *Yajure Hurtado* is binding and that this Court has to treat Petitioner as an arriving alien to be detained under §1225. By improperly elevating *Yajure Hurtado* over the actual terms of the Immigration and Naturalization Act, 8 USC §1225 and §1226, the government elevates an administrative court opinion over Article III courts.
16. In dkt. 1 we ask the Court to construe the statute independently, decline to extend *Yajure Hurtado* to long-time interior detainees and hold that Petitioner is detained illegally under §1225. This court has consistently done so, so the government’s arguments should fail.

EXHAUSTION IS NOT REQUIRED

17. The government requests the court to find that Petitioner failed to exhaust administrative remedies. This is wrong. Exhaustion is only required for appeals of final orders of removal. See Arenas, at p. 5, Garcia-Espericueta, at p. 6.

18. Most importantly, the government is requiring exhaustion when it also argues the government lacks jurisdiction to grant bond under its §1225 theory, something this court has repeatedly rejected as a “nonexistent remedy”. See Arenas, at p. 7, Garcia-Espiricueta at p. 7.
19. In Montano v. Texas, 867 F.3d 540, 542 (5th Cir. 2017) the court finds that “Unlike 28 U.S.C. § 2254, Section 2241’s text does not require exhaustion.” It further finds that “[a]t the same time, we have recognized that ‘[e]xceptions to the exhaustion requirement are appropriate where the available ... remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action.” (Citations omitted.) *Id.* See also Fuller v. Rich, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam)
20. Also, in Loa-Herrera v. Trominski, 231 F.3d 984 (5th Cir. 2000) the court interprets 8 U.S.C. § 1226(e) and holds that individual discretionary decisions on parole/bond are not reviewable, but broader legal/constitutional challenges may be.
21. Therefore, §2241 does not require exhaustion of administrative remedies and habeas relief is available. Habeas corpus relief is thus available, as the IJ entered an unsupported, unlawful order under the extremely specific facts of

this case. Nothing in the government's response provides any support for the civil detention order we are challenging.

CONCLUSION

22. Petitioner belongs in the class of aliens correctly classified under §1226 and is therefore eligible for a bond redetermination request.

23. There is no challenge to the factual allegations in the writ, and therefore, under 28 U.S.C. § 2248, “[t]he allegations of a return to the writ of habeas corpus or of an answer to an order to show cause, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true.” We request that the court FIND that Petitioner is a long-time resident inside the US and that therefore, he should be correctly classified under §1226, not as a §1225 arriving alien.

24. The response in opposition fails to adequately respond to the writ, and this court should GRANT the relief requested.

Certificate of service: We certify that on this 15th day of January the undersigned filed the foregoing with the SD TX Houston clerk using the ECF system that will notify this document to all parties.

WHEREFORE, we respectfully request the court to **FIND** that Petitioner met his burden under 28 U.S.C. § 2254(e)(1) and **GRANT** the petition for relief.

RESPECTFULLY SUBMITTED on this 15th day of January, 2026 in
Houston, Texas.

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