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

Cedric F. Massigoge Chevez Petitioner v. Bret Bradford, Director, HOUSTON DHS-ICE Field Office & Grant Dickey, Warden, Montgomery Processing Center	Case no. **4:25-cv-05737** WRIT OF HABEAS CORPUS

REPLY TO DHS-ICE RESPONSE IN OPPOSITION OF WRIT

TO THE HONORABLE COURT:

COMES NOW Cedric F. Massigoge-Chevez, through the undersigned counsel, and most respectfully **STATES ND PRAYS** as follows:

1. The government's response is found at dkt. 9, filed January 12, 2026. We hereby submit our reply to their arguments.

GOVERNMENT ARGUMENTS

2. In kt. 9, the government invokes 8 U.S.C. § 1252(a)(5), § 1252(b)(9), and § 1226(e) to argue the district court lacks jurisdiction over: the "discretionary detention decision,", the "custody/bond classification, and any "review" of immigration-judge type issues, which it characterizes as part of the overall removal process. It states this is an impermissible attempt to obtain review of "discretionary custody determinations to "circumvent the exclusive review scheme of 28 USC §1252. Dkt. 9, pp. 2-3.

3. ICE argues that Petitioner is properly treated as an "arriving alien" or "applicant for admission" subject to 8 U.S.C. § 1225(b)(2)(A) and *Matter of Yajure-Hurtado*, 29 I&N Dec. 123 (BIA 2025), therefore detention is mandatory and outside IJ bond jurisdiction, and Jennings v. Rodriguez, 583 US 281, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018) and related Supreme Court decisions foreclose any reading that would give the IJ bond authority under § 1226 in this posture. Dkt. 9, pp. 3-5.
4. ICE also contends that Petitioner has not exhausted all available administrative remedies (including pursuing whatever EOIR review on appeal ICE says still exists), and even if the court reaches the merits, habeas relief cannot include an order directing EOIR to hold a bond hearing or to disregard *Yajure-Hurtado*; at most, habeas may address very narrow statutory or constitutional questions. Dkt. 9, pp. 5-6.
5. ICE finally asks the court to deny the petition in full and to decline to order any bond hearing or release. Dkt. 9, p. 7
6. There is no discussion about the specific factual allegations in the petition about the absolute lack of evidence supporting the unlawful order denying bond. There is no place where they acknowledge a lack of evidence at the bond hearing, discuss what evidence (if any) the government presented, address the IJ's evidentiary findings or lack thereof, or engage with the clear-and-convincing burden for dangerousness/flight risk.
7. The government simply ignores the facts and the merits of this habeas corpus petition and argues he can never get a bond hearing as he is classified under 8 USC § 1225.

THIS WAS NOT A DISCRETIONARY DENIAL OF BOND

8. The denial of the bond was not a discretionary decision, as it was a based on A FACTUAL DETERMINATION of danger to persons and property. The immigration court rules and precedents have something to say about that.

9. Bond redetermination by an IJ is governed by the Immigration Court Practice Manual, ICPM, Chapter 9.3, which in turn relates to 8 CFR §1003.19. The steps are as follows:

    - The IJ first determines whether the respondent is eligible for bond and whether the court has jurisdiction to conduct the bond hearing.
    - Regulatory jurisdictional bars for bond (e.g., "arriving aliens" in removal proceedings, certain security/criminal categories) are listed by cross-reference to 8 C.F.R. § 1003.19(h)(2)(i).
    - The bond determination is framed around three merits considerations: whether release would pose (i) danger to property or persons, (ii) risk of nonappearance, or (iii) national security concerns. What the parties are expected to present at the hearing: DHS should state the bond amount (if set) and its justification and the respondent should proffer evidence on danger / risk of appearance / national security.
    - The decision is "based on any information" available or presented; bond hearings are generally not recorded, and if there is an appeal the IJ prepares a written decision from notes.

10. In the EOIR Benchbook on IJ Guidance, section on *evidence*, it states that Bond proceedings are "separate and apart" from removal proceedings, but the IJ's custody/bond

determination may be based on any information available to the IJ (including information from the removal case), or evidence presented at the bond hearing.[1] **Exhibit 2.**

11. The clearest directive that the IJ must give reasons (supporting the outcome) appears in the custody/bond regulation reproduced in EOIR's benchbook materials: the IJ's custody/bond decision must be entered on the appropriate form "at the time such decision is made," and the parties must be informed "orally or in writing of the reasons for the decision.". Id. The judge issues a bond order and orally advises the parties of the reasons for the decision, then a written order is filed.

12. Therefore, there are two components to a bond hearing: decision on jurisdiction, and decision on the merits of the release. For bond eligible respondents—danger, flight/nonappearance, national security—must be decided on the record/information presented, with reasons given by the court to support the decision. See Chapter 9, ante, pp. 141-2. (Nov. 2017 version.)

13. However, it is 8 CFR §1003.19(f) that **requires** the IJ to inform the parties of the reasons for the decision on the bond redetermination request. Here the reason was DANGER to persons and property. Therefore, there had to be evidence at the hearing to support ***this*** finding.

14. Furthermore, we have not found any BIA precedent authorizing an IJ, in an otherwise eligible bond redetermination, to deny bond by saying only "I deny in the exercise of discretion" without articulating any factual/legal basis, which is what the government seems to be saying happened here. In *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999) the Board remanded where the record was insufficient; it states it is inappropriate to rely on

[1] See https://www.justice.gov/eoir/page/file/988046/dl?inline=

merits-record material not made part of the bond record, and underscores the obligation to ensure the bond record captures the nature and substance of factual information relied upon.

§2248 SHOULD BE APPLIED

15. 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."

16. The bond hearing record was not only insufficient: there was NO EVIDENCE supporting the finding of danger in the IJ's order. The government doesn't even attempt to argue there was any evidence and its factual assertions basically mimic those at dkt. 1. There is no attempt to discuss the analysis of the dismissal of the criminal case "in the interest of justice", nor to argue why the document is enough to support the finding of "danger to person and property".

17. In Clark v. Johnson, 202 F.3d 760, 766-768 (5th Cir. 2000) the court makes three points:

18. that matter when the Petitioner fails to rebut the factual showings in the state's findings by clear and convincing evidence. They are:

- State-court factual determinations are presumed correct unless the petitioner rebuts them with clear and convincing evidence.
- To defeat summary judgment / obtain an evidentiary hearing, the petitioner must identify a genuine factual dispute that—if proven—would entitle relief; general or speculative allegations are insufficient.

- Where the petitioner does not meaningfully counter the State's factual basis with specific evidence, the court treats the State's factual posture (including state habeas fact findings) as controlling.

19. Petitioner has rebutted the claim that there was evidence to support a finding of danger by the IJ. Nothing in dkt. 9 contradicts Petitioner's evidence-backed assertions that there is an absence of a criminal record or of a criminal conviction to support the finding of danger; nor does the response provide any document as exhibit to prove its assertions.

20. We ask the court to find that there is no evidence in the response to the writ that rebuts Petitioner's claim that there is a lack of evidence to support the denial of the bond.

ARGUMENTS NOT ADDRESSED

21. The basis of our writ is an unlawful or illegal order of detention under 28 USC §2241 (c)(3) and the US Constitution Art. 1, §9, the Suspension Clause. Dkt. 1, p. 1-2.

22. This is a challenge of a pure, unlawful detention order, where we argue that §1252(a)(5) and (b)(9) do NOT bar review because we are ***not asking*** the district court to review or set aside any removal order, but only to decide to remedy and unlawful custody order. The government fails to address this distinction and frames the issue as a §1225 vs. §1226, *Yajure Hurtado, supra,* type issue.

23. We argue that § 1226(e) limits review of discretionary bond decisions, but not of the legal source of detention authority, and constitutional challenges to being categorically denied bond jurisdiction based on unlawful actions. Thus § 1226(e) does not bar this habeas action, which attacks the statutory classification and legality of custody, not the immigration judge's (IJ) exercise of discretion. The government fails to address this distinction.

24. We further argue that any reading of § 1252 that would entirely preclude habeas review of this type of detention would violate the Suspension Clause and therefore must be rejected or narrowly construed.

25. In summary, the Petition *squarely pleads § 2241 jurisdiction* to challenge unlawful authority for detention and the response at Dkt. 9 characterizes the case as an attack on discretionary bond or removal orders. The Court therefore has jurisdiction notwithstanding §§ 1252 and 1226(e).

26. The response argues that under *Yajure-Hurtado* and DHS-ICE's *July 8, 2025 policy*[2], **Exhibit 1**, any person present without admission is an "applicant for admission" and must be detained under § 1225(b)(2)(A) with no bond.[3]

27. This Petitioner has a long time presence in the US. He overstayed after a lawful admission into the US. He was the subject of a warrantless, interior arrest by Texas police and then by ICE in Montgomery County, Texas. That is how the government initiated the removal proceedings against Petitioner. Dkt. 1, pp. 6-9.

28. Under the INA, 8 USC §1225(b) governs aliens seeking admission at or near the border, in the context of inspection and admissions procedures. § 1226(a) governs arrest and detention of aliens already present in the United States pending removal proceedings, including EWIs and overstays arrested in the interior. The petition argues that treating Cedric as "seeking admission" years after entry, following an interior arrest, is contrary to the statutory scheme.

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[2] See DHS-ICE's July 8, 2025 policy, 2025.07.08 ICE - Interim Guidance Regarding Detention Authority for Applicants for Admission, found at https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents.

[3]

29. Because interior detainees in removal proceedings have been treated as § 1226(a) detainees with IJ bond jurisdiction, Petitioner was rightfully granted a bond hearing.

MATTER OF YAJURE HURTADO IS INAPPLICABLE AND NOT BINDING

30. 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. This is completely wrong and most courts dealing with habeas petitions after that say that there is no deference to that BIA precedent. By improperly elevating *Yajure Hurtado* over the actual terms of the Immigration and Naturalization Act, 8 USC §1225 and §1226, it elevates an administrative court pinion over Article III courts.

31. In dkt. 1 we ask the Court to construe the statute independently, decline to extend *Yahure Hurtado* to long-time interior detainees and hold that Petitioner is detained illegally under §1225.

NO BOND JURISDICTION

32. In dkt. 9, the government ignores the evidentiary record and frames the writ purely as an "alien"[4] classification dispute, stating that there is simply no bond authority at all. We claim the IJ failed to make individualized findings and issued an unsupported, unlawful order.

33. Petitioner presents facts that support the finding that there was no evidentiary basis for the IJ's conclusion that Petitioner was a danger to persons and property. There is no evidence to the contrary in dkt. 9. The conclusion this court should reach is that Petitioner's *civil detention* without a meaningful bond hearing following the actual rules and precedents to determine whether he qualifies for a bond violates his due process rights.

[4] We prefer the term immigrant over "alien". The term is not in the law, but it I our preferred term for all our clients in EOIR proceedings.

34. Since § 1226 applies to Petitioner as a long-time US resident, due process requires a bond hearing where the government must prove dangerousness or flight risk by clear and convincing evidence; a categorical "no jurisdiction" determination based on misclassification under *Yajure Hurtado* fails this standard. Therefore, what the government's response asks is that the court ignore the violations of law by the IJ.

35. The government NEVER discusses the lack of evidence supporting the IJ's order. We specifically ask the court to LOOK AT and EVALUATE this lack of evidence and therefore the illegality of the civil, administrative detention order. Because of the absence of evidence, that order is UNLAWFUL.

36. Contrary to what the government says at p. 5, we are not questioning the discretion nor the IJ's consideration of inadmissible evidence. This is not like what they say is stated in Fuentes v. Lyons, case No. 5:25-cv-00153, dkt 15, Memorandum and Order (S.D. Tex., Laredo Division) (Oct. 16, 2025) (Diana Saldaña, U.S.D.J.) **Exhibit 3.** [5]

37. When we read that opinion we see that it specifically finds there is no exhaustion requirement before the filing of a writ of habeas corpus, p. 4-5.

EXHAUSTION IS NOT REQUIRED

38. The government requests the court to find that Petitioner failed to exhaust administrative remedies. Petitioner did not appeal the bond denial order to the BIA. This is wrong.

39. 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

[5] Because the government did not provide a copy of the opinion they quote, we assume it is the opinion and order in the case we provide in Exhibit 3, under danger of equivocating...

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)

40. 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.

41. In Zadvydas v. Davis, 533 U.S. 678, 687-689 (2001), the court discusses how historically, immigration-related detention (including challenges to deportation orders) have been reviewed in habeas. The later APA and court-of-appeals review schemes did not displace habeas for continued custody after a final order. *Id.* The Court holds that "the IIRIRA" jurisdiction-stripping provisions (e.g., 8 U.S.C. § 1252(a)(2)(B)(ii) and § 1231(h)) do not bar habeas review because the petitioners challenge the extent of the Attorney General's authority, not a discretionary decision within that authority. *Id*, pp. 689-90.

42. In Granville v. Hunt, 411 F.2d 9, 12 (5th Cir. 1969) the court finds that habeas is available "only to deliver from imprisonment those who are illegally confined." (Internal citations omitted.)

43. Therefore, unlike 28 USC §2254, which is invoked by the government, §2241 does not require exhaustion of administrative remedies and habeas relief is available.

44. The government relies on *Yajure Hurtado* for the proposition that an IJ does not have jurisdiction to hear bond redetermination hearings in any situation, be it a §1225 arriving alien or a §1226 long-time resident inside the US. Any remand to an IJ would be subject to this "precedential" decision, which despite all the federal court cases deciding the contrary,

deprives the IJ of jurisdiction to hear the request. Requiring exhaustion of administrative procedures is futile under the current state of administrative law.

45. 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

46. In Pierre v. United States, 525 F.2d 933. 935-6 (5th Cir. 1976) the court finds that "habeas is not available to review questions unrelated to the cause of detention. Its sole function is to grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose. While it is correctly alluded to as the Great Writ, it cannot be utilized ... as a springboard to adjudicate matters foreign to the question of the legality of custody." This is what we are requesting here: *a review to the legality of the detention itself.*

47. Recent SDTX decisions interpreting 8 USC §1225 (b)(2)(A) have repeatedly held that, read in context, it applies to people currently "seeking admission" at or near the border, not long-term interior residents arrested years after entry. See, e.g., Cruz-Gutierrez v. Thompson, 4:25-cv-04695 (S.D. Tex. Nov. 14, 2025); Padron-Covarrubias v. Vergara, 5:25-c).112 (S.D. Tex. Oct. 8, 2025). Petitioner belongs to this class of aliens.

48. In particular, the case that the government cites as persuasive, Fuentes v. Lyons, ante, finds that a long time resident is not an arriving alien and is not subject to mandatory detention. Neither is Mr. Massigoge. Nor does this opinion support a finding that the court does not have authority to review a claim of unlawful civil detention.

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

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.

S/. Julie Soderlund

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