

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

MARVIN ASDRUAL DIAZ-ZELAYA,

Petitioner

v.

GRANT DICKEY, et al,

Respondents,

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Civil Action No. 4:25-cv-05777

**PETITIONER'S REPLY TO RESPONDENTS' RESPONSE AND OPPOSITION TO
MOTION TO DISMISS OR FOR SUMMARY JUDGMENT**

I. INTRODUCTION

The Government's response confirms precisely why habeas relief is appropriate here. Respondents insist Petitioner must exhaust a bond process that the Government itself contends does not exist, rely on a non-binding BIA decision to override federal courts, and stretch §1225 beyond its statutory and constitutional limits. That position fails as a matter of law.

Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), exhaustion is excused as futile, and continued detention without a bond hearing violates due process.

**II. EXHAUSTION IS EXCUSED BECAUSE IT IS LEGALLY AND PRACTICALLY
FUTILE**

The Government's exhaustion argument collapses under its own weight.

Respondents argue Petitioner must request bond from the Immigration Judge and appeal to the BIA. Nevertheless, Respondents simultaneously contend that based on *Matter of Yajure Hurtado*, Petitioner is categorically ineligible for bond.

That is the definition of futility.

The Fifth Circuit recognizes that exhaustion is not required where administrative remedies are unavailable or futile. *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). Here, Respondents argue that immigration judges lack authority to grant bond under §1225(b)(2). If the IJ lacks jurisdiction, exhaustion is not merely futile. It is impossible.

Courts in this District have repeatedly rejected the Government's attempt to force petitioners through a sham exhaustion process where the agency claims it lacks authority to grant relief. Habeas exists precisely for this scenario.

Respondents cannot have it both ways.

III. SECTION 1225(b)(2) DOES NOT GOVERN PETITIONER'S DETENTION

A. Section 1225 Applies to Arriving Aliens. Not those who have lived inn the U.S. for many years after entry.

Section 1225 is an inspection statute. Its text, structure, and historical application govern aliens at or near the border seeking admission, not individuals like Petitioner who entered years ago and lived in the United States before later ICE arrest.

The Government's interpretation would convert §1225 into a perpetual mandatory-detention statute for any noncitizen who ever entered without inspection, no matter

how long ago. Congress did not write such a statute, and courts should not invent one. Sections 1225 and 1226 were written and exist independently. The intent of the statute is not to have all undocumented individuals to fall under 1225.

The Fifth Circuit has consistently treated §1226—not §1225—as the detention authority for individuals arrested in the interior pending removal proceedings.

B. "Applicant for Admission" Does Not Erase the §1225 and §1226 Distinction

The Government's argument hinges on definitional gymnastics: because §1225(a)(1) defines certain noncitizens as "applicants for admission," Respondents claim §1225(b)(2) automatically governs detention.

That reading ignores statutory context.

Congress created two distinct detention schemes:

- §1225 for arriving aliens at inspection
- §1226 for arrest and detention pending removal

If mere presence without admission automatically triggered §1225(b)(2), §1226(a) would be largely meaningless. Courts reject interpretations that erase entire statutory provisions.

IV. *MATTER OF YAJURE HURTADO* IS NOT BINDING AND DOES NOT CONTROL

Matter of Yajure Hurtado is a BIA decision, not a statute, not a regulation, and not binding on this Court.

Federal district courts owe no Chevron deference in habeas cases involving constitutional detention challenges. At most, *Hurtado* is persuasive—and many courts (including this one) have rejected it.

More importantly, *Hurtado* cannot override:

- The Fifth Circuit’s detention framework
- The Constitution’s due process guarantees
- This Court’s independent obligation to interpret federal law

The Government’s reliance on *Hurtado* underscores the weakness of its position. If Congress clearly mandated detention here, Respondents would not need a brand-new BIA decision from September 2025 to justify it.

V. *CABANAS* v. *BONDI* IS NOT CONTROLLING AND IS FACTUALLY DISTINCT

Respondents lean heavily on *Cabanas v. Bondi*, but that case:

1. Is not binding

2. Acknowledges widespread disagreement among courts
3. Did not address prolonged detention without a hearing
4. Does not eliminate constitutional limits on detention

Numerous courts within this District have rejected the same argument the Government advances here. At minimum, the split confirms that detention without a bond hearing raises serious constitutional concerns requiring habeas review.

VI. PROLONGED DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS

Even if the Court were to accept Respondents' statutory argument (it should not), the Constitution still requires a meaningful opportunity for release.

Petitioner has been detained while his BIA appeal remains pending, with no individualized determination of flight risk or danger. The Supreme Court has made clear that civil detention cannot be arbitrary or indefinite.

Respondents' assertion that Petitioner "has due process because he can ask for bond" rings hollow when they simultaneously argue he is legally barred from receiving one.

VII. RELIEF REQUESTED

Petitioner respectfully requests that the Court:

1. Deny Respondents' Motion to Dismiss and Motion for Summary Judgment
2. Grant the Petition for Writ of Habeas Corpus
3. Order Petitioner's immediate release, or alternatively
4. Order a prompt individualized bond hearing under 8 U.S.C. §1226(a)

Respectfully submitted,

/s/ Matthew R. Mendez

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Attorney for Petitioner

CERTIFICATE OF SERVICE

On December 24, 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

12/24/25

Matthew Mendez
Attorney for Petitioner

Date

CERTIFICATE OF SERVICE

On December 24, 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

12/24/25
Date

CERTIFICATE OF SERVICE

On December 24, 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

12/24/25
Date

CERTIFICATE OF SERVICE

On December 24, 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

12/24/25
Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARVIN ASDRUAL DIAZ ZELAYA, §

Petitioner, §

v. §

GRANT DICKEY, WARDEN OF THE §
MONTGOMERY PROCESSING §
CENTER, *et al.*, §

Respondents. §

CASE NO. 4:25-cv-5777

JOINT STATUS REPORT

Petitioner, Marvin Asdrual Diaz Zelaya, and Federal Respondents, Bret Bradford, in his official capacity as Field Office Director of U.S. Immigration and Customs Enforcement (“ICE”) Enforcement and Removal Operations Houston Field Office, *et al.*, file this joint status report as ordered by the Court on December 24, 2025. (Dkt. 10).

- On December 31, 2025, a custody redetermination hearing was held under the Immigration and Nationality Act 8 U.S.C. § 1226(a), and the Immigration Judge (“IJ”) denied Petitioner’s bond due to finding the Petitioner a flight risk.
- The Petitioner reserved appeal of the IJ’s decision.

Dated: January 5, 2026

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney

By: /s/ Catina Haynes Perry
Catina Haynes Perry

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Attorney for Petitioner

*** signed with permission

CERTIFICATE OF SERVICE

I certify that, on January 5, 2026, the foregoing notice was filed and served through the Court CM/ECF system on all counsel of record.

/s/ Catina Haynes Perry
Catina Haynes Perry
Assistant United States Attorney