

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

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|----------------------------|---|--------------------------------|
| JOSE CRUZ GARCIA PESCADOR, | § | |
| | § | |
| Petitioner | § | |
| | § | |
| v. | § | |
| | § | Civil Action No. 4:25-cv-06070 |
| GRANT DICKEY, et al, | § | |
| | § | |
| Respondents, | § | |

**PETITIONER’S RESPONSE TO FEDERAL RESPONDENTS’ RESPONSE
AND OPPOSITION TO SUMMARY JUDGMENT**

I. INTRODUCTION

Respondents’ opposition fails for a simple reason: they cannot identify a lawful source of detention authority while Petitioner’s appeal is pending and the removal order is non-final. Their arguments rely on an expansive reading of INA § 1225(b)(2) that (1) conflicts with the statutory structure, (2) ignores constitutional limits on civil detention, and (3) collapses decades of settled habeas jurisprudence.

This Court should reject Respondents’ invitation to detain a long-term resident indefinitely without bond, without a final order, and without judicial review.

II. EXHAUSTION DOES NOT BAR HABEAS REVIEW

A. Exhaustion is prudential, not jurisdictional

In § 2241 cases, exhaustion is judge-made and discretionary, not jurisdictional. Courts routinely excuse exhaustion where:

- the issue is purely legal,
- further administrative review would be futile, or
- the agency lacks authority to grant relief.

Here, all three apply.

B. The IJ expressly disclaimed bond jurisdiction

The Immigration Judge denied bond for lack of jurisdiction, citing mandatory detention. Respondents now argue Petitioner should have appealed that denial to the BIA.

That argument collapses under its own weight.

Respondents' position is that the BIA has no authority to grant bond under *Matter of Yajure Hurtado*. If that is true, then exhaustion is impossible. The Fifth Circuit does not require exhaustion of illusory remedies.

C. Habeas review is proper where detention authority is challenged

Petitioner is not asking this Court to review a discretionary bond decision. He is challenging whether the Government has any statutory authority to detain him at all. That question is squarely within habeas jurisdiction and does not require exhaustion.

III. § 1225(b)(2) DOES NOT AUTHORIZE PETITIONER’S CONTINUED DETENTION

A. Respondents’ reading produces absurd and unconstitutional results

Under Respondents’ theory, any person who entered without inspection—no matter how long ago—can be detained indefinitely without bond simply because DHS chooses to issue an NTA decades later.

That interpretation would:

- erase the distinction between pre-entry and post-entry detention,
- nullify § 1226(a),
- and authorize potentially lifelong civil detention.

Courts must avoid interpretations that raise serious constitutional concerns. This one screams for avoidance.

B. “Applicant for admission” cannot mean “everyone, forever”

The Government leans heavily on the definition in §1225(a)(1), but ignores statutory context. §1225 governs inspection and admission, not the detention of settled residents living in the interior for decades.

Petitioner was not apprehended at the border, was not seeking admission, and was not undergoing inspection. Treating him as an arriving alien defies both reality and statutory design.

C. Non-binding district court cases do not control

Respondents cite a laundry list of district court decisions. None bind this Court. None are Fifth Circuit precedent. Several directly conflict with earlier Southern District of Texas rulings.

This Court is not required to follow a trend—especially one that undermines due process and habeas protections.

IV. DUE PROCESS INDEPENDENTLY REQUIRES RELEASE OR A BOND HEARING

Even if §1225 applied (it does not), indefinite mandatory detention without an individualized hearing violates the Fifth Amendment.

Petitioner:

- has no criminal history,
- poses no flight risk,
- has overwhelming family equities,
- and faces prolonged detention while his appeal remains pending.

Civil detention must be **reasonable in duration and purpose**. This detention is neither.

V. SUMMARY JUDGMENT IS IMPROPER

Material facts remain undisputed but legally dispositive:

- the removal order is not final;
- no bond hearing has occurred;
- detention has become prolonged;
- and no statute clearly authorizes continued custody.

Summary judgment for the Government would require this Court to bless detention without limit or review. The Constitution does not permit that result.

VI. CONCLUSION

Respondents ask this Court to endorse a regime of unchecked executive detention untethered from statutory limits or constitutional safeguards. Habeas corpus exists precisely to prevent that outcome.

The Court should:

1. deny Respondents' motion for summary judgment;
2. grant the writ of habeas corpus; and
3. order Petitioner's immediate release, or at minimum, an individualized bond hearing within 7 days under §1226a of the INA.

Respectfully submitted,

/s/ Matthew R. Mendez

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Attorney for Petitioner

CERTIFICATE OF SERVICE

On December 31, 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

12/31/25

Date

CERTIFICATE OF SERVICE

On December 31, 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

12/31/25

Date

CERTIFICATE OF SERVICE

On December 31, 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

12/31/25

Date

CERTIFICATE OF SERVICE

On December 31, 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

12/31/25

Date