

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

FERNANDO VELAZQUEZ ARREDONDO, §

*Petitioner,* §

v. §

CIVIL ACTION NO. 1:25-CV-226 §

KRISTI NOEM, Secretary, U.S. Department  
of Homeland Security; CARLOS  
CISNEROS, Harlingen Field Office Director,  
Immigration and Customs Enforcement, §

*Respondents.* §

**RESPONDENTS' REPLY IN SUPPORT OF MOTION TO DISMISS**

Respondents file this Reply to Petitioner's Response (Dkt. No. 10) to Respondents' Motion to Dismiss (Dkt. No. 8) Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (hereafter "the Petition") (Dkt. No. 1).

**Petitioner failed to exhaust administrative remedies**

Although Petitioner argues that exhaustion of administrative remedies is not required and requesting a bond hearing before an Immigration Judge would be futile, Petitioner's argument is without merit. Here, Petitioner has not availed himself of the administrative remedies available to him since he has not requested a custody redetermination hearing before an immigration judge. *See Dkt. No. 8-1, ¶ 4(i)*. Petitioner argues that requesting a custody redetermination hearing would be futile in light of *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Fifth Circuit has recognized exceptions to the exhaustion requirement and noted that they "apply only in extraordinary circumstances," including when exhaustion would be "patently futile." *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (internal quotation marks omitted). *Fuller* itself is illustrative,

where the petitioner argued that administrative appeal was futile because the time for filing an appeal has already elapsed. *See id.* The Fifth Circuit disagreed, holding that “until he actually appeals and that appeal is acted on, we do not know what the appeals board will do with [petitioner]’s claim, and until the appeals board has been given an opportunity to act, [petitioner] has not exhausted his administrative remedies.” *Id.*

Here, just because the administrative body is unlikely to find the law in the petitioner’s favor does not mean that the “extraordinary circumstances” apply where exhaustion is futile. Petitioner must seek a bond from the IJ, and if denied, he must appeal to (and receive a decision from) the BIA for the matter to be administratively exhausted. It is of little moment whether Petitioner would be able to successfully convince the BIA that *Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) was wrongly decided or that her circumstances are factually distinguishable from *Hurtado*; the point is that Petitioner cannot eschew the process altogether. *See Abdoulaye Ba v. Director of Detroit Field Office, ICE*, No. 4:25-CV-02208, 2025 WL 2977712, at \*2 (N.D. Ohio Oct. 22, 2025) (dismissing for failure to exhaust where petitioner sought “review of the application and interpretation of *Matter of Yajure Hurtado*” but had yet to appeal to the BIA). Since Petitioner has not even requested a custody redetermination hearing with the IJ, Petitioner does not have a final administrative bond order and therefore, he has not exhausted his administrative remedies, and his Habeas petition should be dismissed.

**8 U.S.C. § 1225(b)(2)(A)**

Applicants for admission whom DHS places in 8 U.S.C. § 1229a removal proceedings are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a custody redetermination hearing before an IJ. While Respondents acknowledge that there are district court decisions that

hold to the contrary,<sup>1</sup> including cases identified by Petitioner (*see* Dkt. No. 10), it bears mention that (1) none of these decisions are binding, and (2) *Hurtado* carries far more weight considering the BIA's subject-matter expertise on the matter and the thoroughness of its analysis, and thus contrary district court rulings have comparatively miniscule persuasive weight. Moreover, multiple district courts—including at least two in the Fifth Circuit—have adopted the Federal Respondents' and the BIA's interpretation, and more are likely to follow in the wake of *Hurtado*. *See, e.g., Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Garibay-Robledo v. Noem*, 1:25-CV-00177, ECF No. 9 (N.D. Tex. Oct. 24, 2025)<sup>2</sup>; *Vargas Lopez v. Trump*, No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 3:25-CV-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). For instance, in *Garibay-Robledo*, 1:25-CV-00177, ECF No. 9, Judge Hendrix in the Northern District of Texas observed that “the plain language of the mandatory-detention provision weighs *heavily against* the petitioner’s assertion that he is subject only to discretionary detention,” and that the argument to the contrary “*flatly contradicts* the statute’s plain language and the history of legislative changes enacted by Congress.” Exhibit 1 at 1, 5 (emphasis added).

In addition, a district court in the Western District of Louisiana also recently agreed with the BIA's reading of the INA. *See Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025). In denying the habeas petition, the court held that “[b]ecause Petitioner crossed the United States-Mexico border without being inspected by an immigration officer, [Petitioner was] therefore also appropriately categorized as an inadmissible alien . . . [and thus

---

<sup>1</sup> This includes decisions from courts in the Southern District of Texas. *See, e.g., Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025) (on appeal); *Fuentes v. Lyons*, 5:25-cv-153 (S.D. Tex. October 16, 2025); *Ortiz v. Bondi*, 5:25-cv-132 (S.D. Tex. October 15, 2025); *Baltazar v. Vasquez*, 25-cv-175 (S.D. Tex. October 14, 2025); *Covarrubias v. Vergara*, 5:25-cv-112 (S.D. Texas October 8, 2025).

<sup>2</sup> To date, this order has not been published on Westlaw. The Government therefore attaches that decision as Exhibit 1.

concluded] that § 1225(b)(2)'s plain language and the 'all applicants for admission language' of *Jennings* permits [DHS] to detain Petitioner under § 1225(b)(2)." (citations omitted). *Id.* The court reasoned that "to conclude that an alien who has unlawfully entered the United States and managed to remain in the country for a sufficient period of time is entitled to a bond hearing, while those who seek lawful entry and submit themselves for inspection are not, not only conflicts with the unambiguous language of the governing statutes, but would also seemingly undermine the intent of Congress in enacting the IIRIRA." *Id.* at \*6. The Government urges the Court to rely on these decisions, which assessed the statutory question, and adopt their well-reasoned and textually faithful analysis. Accordingly, for the reasons discussed above, Petitioner, as an alien present without admission in 8 U.S.C. § 1229a removal proceedings, is an applicant for admission and an alien seeking admission and is therefore subject to detention under 8 U.S.C. § 1225(b)(2)(A) and ineligible for a bond redetermination hearing before an IJ.

Respondents respectfully request that the Court dismiss Petitioner's Petition for Writ of Habeas Corpus (Dkt. No. 1) in its entirety.

Respectfully submitted,

**NICHOLAS J. GANJEI**  
United States Attorney  
Southern District of Texas

By: s/ Ancy Thomas  
**ANCY THOMAS**  
Assistant United States Attorney  
S.D. Tex. ID No. 3869396  
New York Bar No.: 5449871  
**UNITED STATES ATTORNEY'S OFFICE**  
**SOUTHERN DISTRICT OF TEXAS**  
1701 W. Bus. Highway 83, Suite 600  
McAllen, TX 78501  
Telephone: (956) 992-9380  
Facsimile: (956) 618-8016  
E-mail: [ancy.thomas@usdoj.gov](mailto:ancy.thomas@usdoj.gov)

Attorney for Respondents

**CERTIFICATE OF SERVICE**

I, Ancy Thomas, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 7<sup>th</sup> day of November 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: s/ Ancy Thomas  
**ANCY THOMAS**  
Assistant United States Attorney