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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF NEVADA**

9 Miguel Angel MALDONADO VAZQUEZ, on
10 behalf of himself as an individual and on
behalf of others similarly situated,

Plaintiff,

11
12 v.

13 Thomas E. FEELEY, et al.,

14 Defendants.

Case No. 25-cv-1542

**PLAINTIFF'S REPLY IN SUPPORT
OF MOTION FOR PRELIMINARY
INJUNCTION (ECF NO. 5)**

I. INTRODUCTION

Defendants' opposition cannot justify Plaintiff's continued detention. Their brief misstates their own regulations, relies on a statutory interpretation that every district court to consider has rejected, and ignores Plaintiff's showing that his arrest was unlawful.

Most importantly, the government's premise of exhaustion has collapsed. On September 5, 2025, the BIA issued Matter of Hurtado, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position that 8 U.S.C. § 1225(b)(2) governs detention of individuals who entered without inspection. That decision eliminates any doubt that exhaustion is futile. The BIA has now fixed its position, making clear that only this Court can resolve the statutory question as a matter of law.

That question is straightforward. Section 1226(a) governs detention of long-settled residents apprehended in the interior. Section 1225(b)(2) applies only to "applicants for admission" at or near the border. DHS's July 8 memorandum, abruptly collapsing these categories "in a blink", has been rejected by every federal court to consider it.

This Court has already found EOIR-43 unconstitutional in *Herrera Torralba v. Knight*, No. 25-cv-01366, ECF No. 28 (D. Nev. Sept. 2, 2025). Defendants now compound that unlawful practice with a statutory argument foreclosed by text, structure, and precedent. Their missteps extend to claiming that EOIR-43 expires after "90 days" (Opp'n at 7:25), a limit found nowhere in the regulation, and to ignoring Plaintiff's showing that ICE officers lacked reasonable suspicion to seize him, in violation of *Sanchez v. Barr*, 904 F.3d 643 (9th Cir. 2018).

The Court should enforce the IJ's \$1,500 bond order or, at minimum, order a prompt custody hearing under § 1226(a) free from the July 8 policy and EOIR-43 stay.

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II. THE GOVERNMENT'S STATUTORY THEORY FAILS

A. Section 1226(a) Is the Default Rule

Section 1226(a) authorizes detention “pending a decision on whether the alien is to be removed.” 8 U.S.C. § 1226(a). The Supreme Court has described it as the default custody framework during removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018). By contrast, § 1225(b)(2) applies only to “applicants for admission.” 8 U.S.C. § 1225(a)(1).

Congress has repeatedly confined § 1225(b) to recent, border-proximate encounters, not long-settled residents in the interior. See 8 U.S.C. § 1225(b)(1)(A)(iii) (two-year/100-mile limits). Plaintiff, a decades-long Nevada resident, falls outside those categories.

B. The July 8 Memo Improperly Collapsed These Limits

On July 8, 2025, DHS circulated a memorandum declaring that all noncitizens charged under § 1182(a)(6) are subject to mandatory detention under § 1225(b)(2). That abrupt reversal of decades of practice mischaracterized long-standing regulations, erasing Congress’s geographic and temporal limits.

C. *Hurtado* Cannot Control This Court

On September 5, 2025, the BIA issued *Matter of Hurtado*, adopting DHS’s view that § 1225(b)(2) applies to EWIs. That decision cannot control this Court. The question before the Court is purely legal: whether Congress intended § 1225(b)(2) to govern interior arrests.

The statute’s text forecloses the BIA’s reading. And even if ambiguity existed, *Hurtado* is not entitled to deference. It represents an abrupt, unexplained reversal of decades of contrary practice. See *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016). Constitutional concerns independently foreclose deference. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

1 **D. Congress Confirmed § 1226(a)’s Operation**

2 In 2025, Congress amended § 1226(c)(1)(E) through the Laken Riley Act to mandate
3 detention for certain § 1182(a)(6) noncitizens with criminal charges. Pub. L. No. 119-1, 139 Stat.
4 3 (2025). If § 1225(b)(2) already required detention of all § 1182(a)(6) cases, these amendments
5 would have been unnecessary. See *Corley v. United States*, 556 U.S. 303, 314 (2009).

6 **E. Every Court to Consider the July 8 Policy Has Rejected It**

7 While *Hurtado* adopted DHS’s position, every federal district court to address the July 8
8 memo has reached the opposite conclusion. See *Ceja Gonzalez v. Bondi*, No. 25-cv-02054 (C.D.
9 Cal. Aug. 13, 2025); *Mayo Anicasio v. Kramer*, No. 25-cv-03158 (D. Neb. Aug. 14, 2025);
10 *Aguilar-Maldonado v. Olson*, No. 25-cv-03142 (D. Minn. Aug. 15, 2025); *Aguiriano Romero v.*
11 *Hyde*, No. 25-cv-11631 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 25-cv-02428 (D.
12 Md. Aug. 24, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180 (S.D. Cal. Sept. 3, 2025).

13 **III. THE EOIR-43 AUTOMATIC STAY VIOLATES DUE PROCESS**

14 Defendants defend Plaintiff’s detention solely through the EOIR-43 automatic stay. But
15 this Court has already ruled that DHS’s invocation of 8 C.F.R. § 1003.19(i)(2) is unconstitutional.
16 In *Herrera Torralba v. Knight*, No. 25-cv-01366, Dkt. 28 (D. Nev. Sept. 2, 2025), this court finding
17 that the automatic stay “violates the Fifth Amendment procedural due process rights of Petitioners,
18 both facially and as applied.” *Id.*

19 **A. This Court’s Own Reasoning Controls Here**

20 In *Herrera Torralba*, the Court explained that the automatic stay:

- 21 • nullifies the due process protections of a bond hearing, after a detainee has shown by
22 clear and convincing evidence that detention is unjustified;

- 1 • is invoked unilaterally, with “no discernable standard” and “no meaningful process to
- 2 challenge or seek review”; and
- 3 • is not reviewable by the BIA, and even if reviewable, the period of prolonged detention
- 4 cannot be remedied. *Id.*

5 Applying *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), the Court found the balance
6 “weighs heavily in favor of Petitioners”: (1) liberty interest is fundamental; (2) risk of erroneous
7 deprivation extraordinarily high; (3) government’s interest minimal where an IJ has already found
8 no danger or flight risk and where emergency-stay procedures exist. *Id.* (citing *Rodriguez Diaz v.*
9 *Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022)).

10 The same reasoning applies here.

11 **B. Defendants’ “90-Day” Argument Reveals Misreading**

12 Defendants assert that the EOIR-43 stay expires after 90 days. (ECF No. 15 at 7:25). That
13 is false. Section 1003.19(i)(2) provides only that an IJ’s custody order “shall remain in abeyance
14 pending decision of the appeal by the Board.” There is no time cap. In practice, custody appeals
15 average over 200 days. ECF No. 5-1. Defendants’ contrary assertion reflects a misreading of their
16 own regulation and underscores the indefinite, unreviewable nature of the stay.

17 **C. Exhaustion Is Now Foreclosed**

18 This Court already recognized in *Herrera Torralba* that exhaustion was futile: the BIA
19 cannot cure the constitutional defect, and prolonged unlawful detention cannot be undone. ECF
20 No. 28 (citing *Iraheta-Martinez v. Garland*, 12 F.4th 942, 949 (9th Cir. 2021)).

21 With the BIA’s *Hurtado* decision now issued, futility is beyond dispute. The Board has
22 endorsed DHS’s statutory theory; no relief is available through administrative channels.
23 Exhaustion cannot bar this Court’s review.

1 **IV. PLAINTIFF’S ARREST WAS UNLAWFUL**

2 Defendants do not dispute Plaintiff’s showing that ICE officers violated 8 C.F.R. §
3 287.8(b)(2) by seizing him without reasonable suspicion. The regulation requires an immigration
4 officer to have “reasonable suspicion, based on specific articulable facts, that the person being
5 questioned is, or is attempting to be, engaged in an offense against the United States or is an alien
6 illegally in the United States.” 8 C.F.R. § 287.8(b)(2).

7 The Ninth Circuit has made clear that suppression or termination is warranted when
8 immigration arrests rest on egregious Fourth Amendment violations. *Sanchez v. Barr*, 904 F.3d
9 643, 655–56 (9th Cir. 2018) (termination required where ICE officers stopped and questioned
10 individuals solely on the basis of race and without reasonable suspicion). Here, ICE’s stop of
11 Plaintiff while he was driving to work was unsupported by articulable suspicion and violated both
12 the regulation and the Fourth Amendment.

13 Defendants’ opposition is silent on this point. Their failure to respond concedes the
14 violation. See, e.g., *Stenlund v. Marriott Int’l, Inc.*, 172 F. Supp. 3d 874, 887 (D. Md. 2016) A
15 party ‘concedes the point’ when it fails to respond to an argument. Because Plaintiff’s seizure was
16 unlawful, his ongoing detention cannot stand.

17 **V. IRREPARABLE HARM, BALANCE OF EQUITIES,**
18 **AND PUBLIC INTEREST**

19 The loss of liberty is the “quintessential irreparable injury.” *Hernandez v. Sessions*, 872
20 F.3d 976, 994 (9th Cir. 2017). Each additional day Plaintiff remains detained under an unlawful
21 stay inflicts harm that cannot later be remedied. The impact is not abstract: Plaintiff’s detention
22 separates him from his family, imperils his small business, and severely impedes his ability to
23 consult with counsel at Nevada Southern Detention Center. These harms are immediate,
24 compounding, and irreparable.

1 The balance of equities favors Plaintiff. When an IJ has already found by clear and
2 convincing evidence that a detainee is neither a danger nor a flight risk, the government's interest
3 in continued detention is minimal. See *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011).
4 The government retains adequate tools, to protect its interests without resorting to a unilateral and
5 indefinite automatic stay.

6 The public interest likewise favors enforcing the statute and Constitution. There is no
7 public interest in the enforcement of an unlawful policy. *Valle del Sol Inc. v. Whiting*, 732 F.3d
8 1006, 1029 (9th Cir. 2013). On the contrary, the public interest lies in ensuring that long-settled
9 residents are not subjected to indefinite detention based on a misreading of the INA and a
10 regulation this Court has already found unconstitutional. Several district courts have considered
11 the July 8 policy from California to Maryland, Nebraska to Massachusetts and have rejected the
12 government's theory. The public interest is best served by aligning with this national consensus
13 and ordering Plaintiff's release under § 1226(a).

14 VI. PUTATIVE CLASS CONTEXT

15 Defendants argue that classwide relief is unavailable absent certification. Plaintiff agrees.
16 No class has been certified, and Plaintiff's motion seeks only individualized relief: enforcement of
17 the Immigration Judge's \$1,500 bond order or, in the alternative, a prompt custody hearing under
18 § 1226(a) free from the July 8 policy and EOIR-43 stay.

19 That said, the context matters. The July 8 memorandum is a uniform, nationwide policy.
20 Several district courts have already recognized its systemic nature. See, e.g., *Leal-Hernandez v.*
21 *Noem*, No. 25-cv-02428 (D. Md. Aug. 24, 2025); *Aguiriano Romero v. Hyde*, No. 25-cv-11631 (D.
22 Mass. Aug. 19, 2025). The policy affects all noncitizens arrested in the interior and charged under
23 § 1182(a)(6).

1 Rule 23(b)(2) certification may be appropriate later. For now, Plaintiff seeks only the
2 narrow, individualized relief necessary to remedy his unlawful detention.

3 **VII. CONCLUSION**

4 The government's defense of Plaintiff's detention rests on two pillars that cannot stand.
5 First, the EOIR-43 automatic stay has already been held to violate "... the Fifth Amendment
6 procedural due process rights of Petitioners, both facially and as applied." *Herrera Torralba*, supra.
7 ECF 28. Second, the BIA's new *Hurtado* decision only underscores futility and crystallizes the
8 statutory question. Article III courts must decide whether § 1225(b)(2) applies to long-settled
9 residents apprehended in the interior, and several district courts have held it does not.

10 Plaintiff has already prevailed before the Immigration Judge, who found by clear and
11 convincing evidence that he is neither a danger nor a flight risk and ordered release on a \$1,500
12 bond. Defendants' continued reliance on the July 8 memo and EOIR-43 stay prolongs detention
13 that the INA and the Constitution do not permit.

14 For these reasons, Plaintiff respectfully asks this Court to enforce the IJ's bond order or, in
15 the alternative, to order a prompt custody hearing under § 1226(a) untainted by the July 8 policy
16 and EOIR-43 stay.

17 Respectfully submitted this 5th day of September, 2025.

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