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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Jorge Javier Rodríguez Cabrera,

Petitioner,

v.

John Mattos, Warden, Nevada Southern Detention Center, et al.,

Respondents.

Case Number: 2:25-cv-01551-GMN-EJY

REPLY TO FEDERAL GOVERNMENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner is a devoted father of two lawful permanent resident children. He has lived in the United States for several years, and was arrested nearly three years after his entry pursuant to an administrative immigration warrant. An immigration judge determined that his detention is governed by 8 U.S.C. § 1226(a), not § 1225(b), and ordered his release on a $2,500 bond after finding he posed no flight risk or danger to the community.

Respondents have never contested that "no flight risk" and "no danger" findings. Yet they have refused to honor the immigration judge's order, asserting that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and invoking the automatic-stay regulation to block his release. Petitioner thus remains detained, even though the immigration judge's factual findings—including that he is not dangerous and has strong ties to the community—are uncontested. Indeed, those findings were reinforced when the same judge later noted his intent to grant Petitioner adjustment of status under the Cuban Adjustment Act, pending completion of final standard background checks.[1]

Respondents' opposition offers no valid basis for this ongoing detention. They contend that this Court lacks jurisdiction, that Petitioner failed to exhaust administrative remedies, that

[1] After this habeas petition was filed, the immigration judge indicated an intent to grant Petitioner's adjustment of status, and DHS indicated it would not appeal, conditioned on the completion of final security checks. See ECF No. 27, at 2. As of this filing, DHS has not confirmed that those checks have been completed. Petitioner's next hearing is set for October 23, 2025 (rescheduled from the hearing the immigration judge initially indicated would be set for October 16, 2025). If DHS completes the checks and facilitates an updated medical exam, the immigration judge's grant of relief on or before October 23, 2025 should result in Petitioner's release and could moot this case. However, because that outcome depends on DHS taking the necessary steps, Petitioner respectfully urges the Court to grant this petition to ensure he may be released on bond if DHS fails to take the necessary steps before the upcoming October 23, 2025 hearing.

§ 1225(b)(2) controls, and that the automatic stay regulation comports with due process. Each of these arguments has already been rejected by federal courts, including this one.

Because Petitioner's detention is properly governed by § 1226(a), and the government has no lawful ground to continue holding him, the Court should order Respondents to accept the $2,500 bond set by the immigration judge and release him upon the posting of such bond.

ARGUMENT

I. This Court has jurisdiction to decide Petitioner's habeas claims.

Respondents' threshold jurisdictional arguments have already been rejected by this Court. *See Maldonado Vasquez v. Feeley*, 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Sanchez Roman v. Noem, et al.*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211, at *5 (D. Nev. Sept. 23, 2025). The Court's analysis in those cases was correct.

A. 8 U.S.C. § 1252(g)

Respondents wrongly argue that § 1252(g) bars review because Petitioner's detention "arises out of" removal proceedings. But as the Supreme Court has made clear, § 1252(g) is "much narrower" than Respondents claim and applies only to three discrete actions—commencing proceedings, adjudicating cases, and executing removal orders. *Reno v. AADC*, 525 U.S. 471, 482 (1999); *see also DHS v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020); *Jennings v. Rodriguez*, 583 U.S. 287, 294 (2018). The Court has never held that detention challenges fall within § 1252(g). *See Jennings*, 583 U.S. 281; *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021); *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022).

Here, Petitioner does not challenge DHS's discretion to commence proceedings, but instead contests the legal basis for his detention—an issue separate from prosecutorial discretion.

See 8 C.F.R. § 1003.19(d); *United States v. Hovsepian*, 359 F.3d 1144, 1155-56 (9th Cir. 2004). Consistent with this Court's prior decisions, § 1252(g) does not bar jurisdiction. *Maldonado Vasquez*, 2025 WL 2676082, at *8.

B. 8 U.S.C. § 1252(b)(9)

Respondents' reliance on 8 U.S.C. § 1252(b)(9) is likewise misplaced. The Supreme Court in *Jennings* squarely rejected the idea—advanced by Respondents and in Justice Thomas's concurrence—that detention challenges "aris[e] from" actions to remove and are barred by § 1252(b)(9), calling that reading "absurd" because it would render detention claims effectively unreviewable. 583 U.S. at 293. Consistent with *Jennings*, the Ninth Circuit has recognized that detention claims are independent of removal proceedings. *See Gonzalez v. ICE*, 975 F.3d 788, 810 (9th Cir. 2020); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006). Because Petitioner challenges only the statutory basis for his detention, not a final order of removal, § 1252(b)(9) does not bar jurisdiction.

C. 8 U.S.C. § 1252(a)(5)

Respondents' reliance on 8 U.S.C. § 1252(a)(5) fares no better. That provision makes a petition for review the exclusive vehicle for judicial review of a removal order. But Petitioner is not challenging a removal order—final or otherwise. He challenges only his continued detention and Respondents' refusal to honor the bond granted by the Immigration Judge. As this Court recently recognized, "§ 1252(a)(5) only strips a district court of habeas jurisdiction where a petitioner seeks judicial review of a final order of removal." *Sanchez Roman v. Noem*, 2025 WL 2710211, at *5 (D. Nev. Sept. 23, 2025). Thus, Respondents' jurisdictional arguments all fail.

II. Administrative Exhaustion Poses no Bar to the Court's Review.

Respondents' exhaustion argument also fails. Habeas petitions under 28 U.S.C. § 2241 carry no statutory exhaustion requirement, and prudential exhaustion is excused where remedies are futile or inadequate. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 36 n.5 (2006); *Parisi v. Davidson*, 405 U.S. 34, 37 (1972); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Moreover, Petitioner already sought and obtained a custody redetermination hearing; it is the *Department of Homeland Security*—not Petitioner—that has appealed to the BIA. Finally, the administrative appeals outcome is foreordained in light of *Matter of Yajure Hurtado*, which is precedential and hence binding on the Board of Immigration Appeals. Courts routinely excuse exhaustion in such circumstances. See *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021); *Gonzales v. DHS*, 508 F.3d 1227, 1234 (9th Cir. 2007). Requiring Petitioner to wait months for an inevitable denial would only prolong unlawful detention and cause irreparable harm. *See Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1252-53 (W.D. Wash. 2025).[2] Because the exhaustion doctrine does not bar review here, this Court, as it has before, should proceed to the merits. *See Maldonado Vasquez*, 2025 WL 2676082, at *9-10.

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[2] Indeed, in a September 9, 2025, bond memorandum, the immigration judge, while noting his prior order granting bond in the amount of $2,500, stated: "[t]he authority of the Immigration Judge to set bond has been superseded by the decision of the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." **Exhibit A**. The immigration judge's bond order, however, has not been rescinded, and would be effective but-for DHS's appeal and its invocation of the automatic-stay regulation, discussed *infra*. As relevant here, the immigration judge's bond memorandum establishes that, absent relief from this Court, any further administrative process would be futile.

III. 8 U.S.C. § 1226(a) Governs Petitioner's Detention

Respondents persist in arguing that Petitioner's detention is governed by § 1225(b)(2), but courts—including this one—have repeatedly rejected that view. *See Maldonado Vasquez*, 2025 WL 2676082, at *5; *Sanchez Roman*, 2025 WL 2710211, at *5.[3] The statute that applies here is § 1226(a), as the immigration judge correctly found.

Respondents' new interpretation of § 1225(b)(2) has no basis in text or precedent. Section 1225 governs inspection and expedited procedures at the border; it does not apply to noncitizens, like Petitioner, arrested years after entry pursuant to a warrant. See *Jennings*, 583 U.S. at 287. By contrast, § 1226(a) expressly applies when a noncitizen is "arrested and detained" on a warrant issued by the Attorney General. *Id.* at 289, 302. Here, Petitioner was arrested within the United States nearly three years after entry, pursuant to such a warrant:

> ARREST:
> On July 21, 2025, LVG observed RODRIGUEZ exit his apartment and open the trunk of his Mercedes Benz. Deportation Officers Gonzales and Menocal along with Supervisory Detention and Deportation Officer Barbosa contacted RODRIGUEZ near his vehicle. Barbosa identified himself and advised RODRIGUEZ a warrant had been issued for his arrest. BARBOSA then placed RODRIGUEZ under arrest without incident.
>
> Upon arrival to the ICE office, RODRIGUEZ's fingerprints were electronically submitted and compared with records archived by the Department of Homeland Security and the Federal Bureau of Investigation. Fingerprint records indicated the RODRIGUEZ had no prior criminal arrests.

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[3] *See also, e.g.*, *Pizzaro Reyes v. Raycraft*, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) *Gomes v. Hyde*, 2025 WL 1869299 at *5–6 (D. Mass. July 7, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1255-1260 (W.D. Wash. 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180 (S.D. Ca. Sept. 3, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379; *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Rosado v. Figueroa et al.*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis et al.*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25 cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde, et al.*, No. 1:25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Benitez et al. v. Noem et al.*, No. 5:25-cv-02190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump et al.*, No. 3:25-cv 01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

See **Exhibit B (Form I-213)[4], at 2**. Under the plain statutory terms, therefore, 8 U.S.C. § 1226(a) governs.

Respondents invoke *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), but that decision actually underscores the distinction. *Q. Li* held that noncitizens arrested *without* a warrant at or near the border and later placed in removal remain detained under § 1225(b). *Id.* at 69–70. Here, however, Petitioner's detention is pursuant to a warrant of arrest in the U.S. interior, which places him squarely under § 1226(a). Courts have rejected DHS's attempt to extend *Q. Li* beyond its facts. *See Jimenez v. FCI Berlin, Warden*, --- F. Supp. 3d ----, 2025 WL 2639390, at *6 (D.N.H. Sept. 8, 2025) ("To the extent the government reads *Q. Li* as holding that, once a noncitizen is initially detained at or near the border under § 1225(b), any subsequent re-detention [is] under § 1225(b) as well, the court does not share the government's interpretation."); *Gomes v. Hyde*, 2025 WL 1869299, at *8 n.9 (D. Mass. July 7, 2025) (*Matter of Q. Li*, 29 I. & N. Dec. 69 n.4 "is best read to address only the situation where a noncitizen is arrested without a warrant pursuant to Section 1225(b) *and remains continually detained*.") (emphasis added).

Respondents also argue that Petitioner's prior parole under 8 U.S.C. § 1182(d)(5)(A) places him under § 1225(b), citing *Q. Li*. But unlike *Q. Li*, Petitioner was re-detained pursuant to a warrant. *See* **Exhibit B, at 2**. As *Q. Li* itself acknowledged, a warrant under § 1226(a) "is one leading to the alien's arrest." 29 I. & N. Dec. at 69 n.4 (citing *Jennings*, 583 U.S. at 302). That distinction is dispositive: parole does not erase the statutory requirement that only § 1226(a) authorizes detention on a warrant. And in any event, even if this case could be analogized to *Q. Li*

[4] The fact that Petitioner was arrested pursuant to an administrative warrant of arrest was documented in his Form I-213—which is "presumed to be reliable in the absence of evidence to the contrary." *Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995).

despite Petitioner's arrest on a warrant, this Court is not bound to defer to *Q. Li*'s statutory interpretation. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385, 412–13 (2024) ("Courts must exercise independent judgment in determining the meaning of statutory provisions" and may not defer to an agency interpretation simply because a statute is ambiguous).

Indeed, EOIR regulations implementing IIRIRA explicitly recognized that individuals present without admission or parole (other than "arriving" noncitizens) are eligible for bond under § 1226(a). 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). And Congress reaffirmed that framework in the Laken Riley Act, which would be rendered superfluous if DHS's interpretation were adopted. *See Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023); *Maldonado Vasquez*, 2025 WL 2676082, at *14 ("[T]he fact that the Laken Riley Act amended § 1226(c) to add additional categories of noncitizens who are subject to mandatory detention indicates that § 1226(a) applies to noncitizens charged as inadmissible by default.").

Finally, courts have refused to defer to *Matter of Yajure Hurtado*, which extended § 1225(b) to all entrants without admission. *See, e.g.*, *Chogllo Chafla v. Scott*, 2025 WL 2688541, at *7 (D. Me. Sept. 21, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025). This Court should do the same.

IV. The Automatic Stay Provision Is Unlawful.

A. The Automatic Stay Provision Violates Petitioner's Due Process Rights

Respondents argue the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), is constitutional because detention during removal proceedings is permissible under *Demore v. Kim*, 538 U.S. 510, 531 (2003). But that argument ignores the record. The immigration judge found Petitioner is neither a flight risk nor a danger—a finding supported by his fixed residence, lawful permanent

resident spouse and children, steady employment, and strong incentive to appear at future hearings. *See* Habeas Pet., Exs. D-E. DHS does not contest these findings.

Respondents' reliance on *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. July 28, 2025), is misplaced. *Pena* involved a petitioner who had entered illegally, was ordered removed, and had been detained only 17 days—far short of the six months the Supreme Court deemed presumptively constitutional in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). None of those circumstances apply here, where removal proceedings remain pending, an Immigration Judge has indicated his intent to grant relief, and Petitioner has been detained for months, despite an immigration judge's bond order under § 1226(a).

Federal courts to address this regulation—including this Court—have repeatedly held it violates due process. See *Maldonado Vasquez*, 2025 WL 2676082, at *16, *21; *Aguilar Merino v. Ripa*, 2025 WL 2941609, at *4 (S.D. Fla. Oct. 15, 2025); *Alves Da Silva v. US ICE*, 2025 WL 2778083, at *4 (D.N.H. Sept. 29, 2025) ("automatic stay regulation also allows the government to make an end run around the burden of proof that it bore at the bond hearing"); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Sampiao v. Hyde*, 2025 WL 2607924, at *10 (D. Mass. Sept. 9, 2025).

Indeed, that is far from surprising given application of the factors set forth under *Mathews v. Eldridge*, 424 U.S. 319 (1976). The liberty interest at stake is of the highest order. *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004). The risk of erroneous deprivation is high, as DHS can unilaterally override an immigration judge's bond determination without any independent review. And the government has no meaningful interest in a blanket stay when a discretionary stay procedure already exists under § 1003.19(i)(1). As this Court recently held, "[d]etention pursuant to the automatic stay after the government already failed to establish a

justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process." *Maldonado Vasquez*, 2025 WL 2676082, at *21.

B. The Automatic Stay Provision Is *Ultra Vires*.

The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), is ultra vires because it exceeds the statutory authority Congress conferred. Under § 1226(a), Congress vested bond authority in the Attorney General, who has delegated it to immigration judges. The regulation impermissibly allows DHS to override that authority by nullifying an immigration judge's bond order and imposing continued detention. Administrative agencies may act only within the bounds Congress sets. *City of Arlington v. FCC*, 569 U.S. 290, 297–98 (2013). By displacing the Attorney General's delegate, the regulation unlawfully expands DHS's power. Courts agree. See *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004) ("Because this back-ended approach effectively transforms a discretionary decision by the immigration judge to a mandatory detention imposed by [DHS], it flouts the express intent of Congress and is ultra vires to the statute."); *Leal-Hernandez v. Hyde*, 2025 WL 2430025, at *15 (D. Mass. Aug. 22, 2025) (automatic stay "renders both the discretionary nature of Petitioner's detention and the IJ's authority a nullity"); *Quispe v. Crawford*, 2025 WL 2783799, at *9 (E.D. Va. Sept. 29, 2025).

CONCLUSION

An immigration judge has already ordered Petitioner's release on a $2,500 bond after finding he is neither a flight risk nor a danger to the community—findings DHS has never disputed. Yet Petitioner remains detained only because DHS wrongly insists he is subject to mandatory detention under § 1225(b)(2) and has invoked the automatic stay regulation to block his release. Both grounds fail. First, § 1226(a) governs Petitioner's detention. Second, even if § 1225(b) were

implicated, the automatic stay regulation is *ultra vires* and unconstitutional, and cannot override an immigration judge's lawful bond order. Either ground independently requires habeas relief.

For these reasons, the Court should grant this habeas petition, hold that § 1226(a) applies, direct Respondents to accept payment of the $2,500 bond ordered by the immigration judge, and direct Petitioner's release from custody upon the posting of such bond.

Dated: October 17, 2025

Respectfully submitted,

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