

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

BALWINDER SINGH ()
)
Petitioner,)
)
v.)
)
MIKE LEWIS, Jailer, Hopkins County Jail; and)
SAMUEL OLSON, Field Office Director, Chicago)
Field Office, Immigration and Customs)
Enforcement,)
)
Respondents.)

Case No. 4:25-CV-96-RGJ

REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S HABEAS PETITION

Petitioner submits this reply to Respondent's response to his Petition for Writ of Habeas Corpus. Petitioner continues to be detained unlawfully during his pending removal proceedings, in violation of his constitutional and statutory rights detention.

Respondents now argue that Petitioner is being held under 8 U.S.C. section 1225 and not eligible for bond. While this was not their initial position in their response to show cause, it appears they now take this position in light of the Board of Immigration Appeal (BIA)'s recent decision in *Matter of Hurtado*, 29 I&N Dec. 216 (2025).

First, it is important to note that Petitioner is detained pursuant to the automatic stay provision of 8 C.F.R § 1003.19(i)(2), not the mandatory-detention provision of 8 U.S.C. § 1225(b). The Court should, therefore, be concerned only with the lawfulness of the automatic stay, the present basis for Petitioner's detention.

The automatic stay provision under 8 C.F.R. section 1003.19(i)(2) is *ultra vires*, unlawful and violates Petitioner's due process rights. Since the filing of this case, numerous courts across the country have confirmed this and continue to issue decisions finding that detainees being held

in detention pursuant to this provision should be released. *Sampiao v. Hyde, et al.* No. 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Alvarez Martinez v. Noem, et al.*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. TX Sept. 8, 2025); *Herrera Torralba v. Knight, et al.*, No. 2:25-cv-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Doe v. Moniz, et al.*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Gamez Lira v. Noem, et al.*, 1:25-cv-00855-WJ-KK (D. N.M. Sept. 5, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25-cv-494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *1 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-cv-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *14 (D. Md. Aug. 24, 2025). In addition to these recent cases, courts have also historically held that this provision violates a detainee’s due process rights. *Zabadi v. Chertoff*, No. 05-CV-01796 (WHA), 2005 WL 1514122 (N.D. Cal. June 17, 2005); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003).

Courts have overwhelmingly reached this conclusion because the regulation permits unilateral government detention of a detainee without a case-by-case determination and “[d]etention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)) (emphasis added).

However, even if this Court considers the argument that Petitioner is in fact subject to mandatory detention, as Respondents argue, courts across the country continue to hold that section 1225 does not apply to individuals who entered without inspection and were detained, years later, within the United States. *Sampiao v. Hyde, et al.* 1:25-cv-11981-JEK (D. Mass. Sept. 9, 2025) (addressing *Matter of Hurtado* and finding that the Board’s analysis is incorrect); *Alvarez Martinez v. Noem, et al.*, 5:25-CV-01007-JKP (W.D. TX Sept. 8, 2025) (vacating the automatic stay of Petitioner’s bond, finding section 1225 does not apply); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025).

Further, this Court is not required, and should not, give deference to the recent Board decision cited in Respondent’s brief. In *Loper Bright*, the Supreme Court was clear that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority,” and indeed “may not defer to an agency interpretation of the law simply because a statute is ambiguous.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court’s own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens “seeking admission into the country”—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens “already in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

In addition to the Supreme Court’s own analysis of the statutory language, the custody paperwork filed by DHS during the bond proceedings indicated that Petitioner was detained “[p]ursuant to the authority contained in section 236” of the INA. Ex. 2, Notice of Custody Determination (July 2, 2025); Ex. 3, Warrant for Arrest. Respondents seemingly wish for this Court to disregard those documents stating that a “warrant does not change Petitioner’s status.”

Response, at 13. However, the documents that DHS have filed related to Petitioner's custody do matter. Otherwise, the custody documents would have no meaning or authority – which is certainly not what the Supreme Court has held should be the case. In *Niz-Chavez v. Garland*, the Court discussed the nature of removal proceedings and specifically found that “...words are how the law constrains power [and that] when the federal government seeks a procedural advantage against an individual, it will at least supply him with a single and reasonably comprehensive statement of the nature of the proceedings against him. If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.” 593 U.S. 155 (2021).

The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions and the repeated representations of the government in Petitioner's case before the Court confirm that he is subject to section 1226(a)'s discretionary detention scheme.

Finally, exhaustion is not required, and Respondents agree. Instead, Respondents contend that the doctrine of prudential exhaustion should be applied and require Petitioner to exhaust the process before seeking relief before this Court. Those arguments are misplaced. The primary case relied upon by Respondents does not deal with the automatic stay provision, but rather separate and distinct legal arguments. *Torrealba v. U.S. Dep't of Homeland Sec.*, 2025 WL 2444114 (S.D. Ohio Aug. 25, 2025) (challenging the application of an expedited removal order, not the automatic stay provision).

Here, Petitioner challenges his detention pursuant to the automatic stay provision of 8 C.F.R § 1003.19(i)(2). As stated in his petition, there is no process in place to challenge the automatic stay provision. Respondents also do not contest this in their response. Petitioner's only

method to challenge the automatic stay provision is through the subject habeas petition. *Sampiao v. Hyde, et al.* 1:25-cv-11981-JEK (D. Mass. Sept. 9, 2025); *Zabadi v. Chertoff*, No. 05-CV-01796 (WHA), 2005 WL 1514122 (N.D. Cal. June 17, 2005); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003).

The Sixth Circuit has previously held that a due process challenge generally does not require exhaustion since the BIA lacks authority to review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006); *accord Bangura v. Hansen*, 434 F.3d 487, 494 (6th Cir. 2006) (“exhaustion of administrative remedies may not be required in cases of non-frivolous constitutional challenges to an agency's procedures.”) (citation omitted); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025).

Even so, the three-factor test applied by courts in this Circuit also weighs against requiring exhaustion. Courts may require prudential exhaustion when:

- (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision;
- (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and
- (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

See Shweika v. Dep't of Homeland Sec., No. 1:06-cv-11781, 2015 WL 6541689, at *12 (E.D. Mich. Oct. 29, 2015). First, the issues raised in Petitioner's case are purely legal in nature and do not require the agency to develop the record. Second, because Petitioner's petition includes a due process claim, the administrative scheme (*i.e.* appeal to the BIA) is futile since, as stated above, the BIA lacks authority to review constitutional claims. Third, administrative review is not likely to change Respondents' position that Section 1225(b)(2)(A) applies in this context. DHS's policy

makes clear that mandatory detention is the position to be taken, and this is being done in conjunction with the Department of Justice.

Yet even if this Court were to agree that prudential exhaustion should apply, waiver of the exhaustion requirement is warranted here because Petitioner is likely to experience irreparable harm if he is unable to seek habeas relief until the BIA decides ICE's appeal of the Immigration Judge's order granting his release on bond. *Sampiao v. Hyde, et al.* 1:25-cv-11981-JEK, at *11-12 (D. Mass. Sept. 9, 2025); *Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 WL 2403827, at *7 (D. Mass. Aug. 19, 2025) (finding that loss of liberty is a form of irreparable harm and citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987)). Waiver is appropriate when the interests of the individual weigh heavily against requiring administrative exhaustion, or exhaustion would be futile and unable to afford the petitioner the relief he seeks. *See McCarthy*, 503 U.S. at 145; *see also Fazzani v. NE Ohio Corr. Ctr.*, 473 F.3d 229 (6th Cir. 2006) (citing *Aron v. LaManna*, 4 F. App'x 232, 233 (6th Cir. 2001) and *Goar v. Civiletti*, 688 F.2d 27, 28-29 (6th Cir. 1982)); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025).

The average processing time for bond appeals exceeded 200 days (more than 6 months) in 2024. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025). Because Petitioner is detained pursuant to the automatic stay regulation; the BIA is required to "track the progress" of his appeal "in order to avoid unnecessary delays in completing the record for decision." 8 C.F.R. § 1003.6(c)(3). But even if this tracking requirement is meant to encourage speedier processing of ICE's appeal, it does not require the BIA to decide the appeal more promptly than any other appeal. On the contrary, the regulations allow for extending Petitioner's detention beyond the 90-day period set by 8 C.F.R. § 1003.6(c)(4). *See* 8 C.F.R. §§ 1003.6(c)(4).

If the BIA were to act promptly, it would be unlikely to decide Petitioner's appeal before mid-November 2025, and if it processes the appeal at the same rate as last year's appeals, the appeal may not be resolved until spring 2026. As such, Petitioner is likely to endure several additional months of detention is likely unlawful. Such a prolonged loss of liberty would, in these circumstances, constitute irreparable harm. *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986).

Additionally, requiring Petitioner to wait six months in detention to reach a decision on whether the IJ's bond order was correct would be futile. He has a Master Calendar Hearing set for September 25, 2025 – less than six months from now. As such, exhaustion would not effectively afford him the relief he seeks, given that a removal determination would likely come before the BIA's determination of whether the IJ's bond order was appropriate.

Therefore, given the constitutional claims raised by Petitioner, this Court should find that exhaustion is not required according to the Sixth Circuit standards. If it does find the exhaustion applies, then the Court should waive exhaustion since it would be futile and would not provide Petitioner with the relief he requests in a timely manner. *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *5 (E.D. Mich. Aug. 29, 2025)

Therefore, Petitioner requests that the Court order Respondents to immediately release Petitioner from custody in accordance with the Immigration Judge's bond order.

Dated: September 11, 2025

Respectfully Submitted,

/s/ Lauren E. McClure

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