IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CRISTIAN AGUILAR MERINO,

Petitioner,

v.

GARRETT RIPA, *et al.*,

Respondents.

Case No. 1:25-cv-23845

PETITIONER'S REPLY TO RESPONDENTS' RETURN

In Respondents' brief, filed several hours after an already extended deadline,[1] the government brazenly seeks to mislead this Court with inapposite and warrantless argument to justify the detention of a young man who a judge already determined should be released from ICE's custody. The government raises several jurisdictional bars dealing with the initiation of removal proceedings and the execution of removal orders, but this habeas petition does not challenge either; it challenges Petitioner's continued *detention* and raises claims that many district courts have granted. The government also focuses heavily on brand new administrative caselaw purporting to establish the authority for Petitioner's detention, while all but glossing over the core of Petitioner's argument: that ICE's unilateral abrogration of an Immigration Judge's release order, which has no corollary or precedent in the U.S. justice system, is blatantly unconstitutional and

[1] Despite Respondents' return arguably being due on Friday, September 5, counsel for the parties mutually agreed on a deadline of Monday, September 8. *See* Dkt. No. 11. Then, at 11:30 PM on September 8, Respondents' counsel asked for an extension until 3 AM, to which Petitioner's counsel agreed. *See* Dkt. No. 13. But Respondents' counsel proceeded to miss that deadline too, not completing the filing until 11 am on September 9. *See* Dkt. No. 14.

ultra vires. Petitioner asks this Court to reject Respondents' baseless arguments and grant the petition so he can return to his family in Miami.

RESPONSE TO FACTUAL ALLEGATIONS

As a threshold matter, Respondents make several false or misleading statements in their response brief. Petitioner hereby counters or clarifies those factual allegations and updates the Court about recent developments since the petition was filed.

First, the government states that "[o]n August 11, 2025, Petitioner was again encountered and detained by ICE." Resp. at 4. This is a roundabout way of saying that ICE went to Petitioner's residence and re-arrested him two days after having released him, with no change in circumstances.

Second, the government states that Board of Immigration Appeals (BIA) "promptly entered a briefing schedule" on the bond appeal, Resp. at 13, which the government uses to suggest that the administrative appeal process it initiated will move quickly. But on September 9, the BIA inexplicably "suspended" the briefing schedule. Ex. 13, BIA Briefing Schedule Notice.

Finally, in support of its attempt to keep these important legal issues away from this Court's review, the government states that the bond appeal pending before the BIA "can later be litigated on appeal before the Eleventh Circuit Court." Resp. at 6. This is inaccurate. The statutory scheme only permits a Petition for Review (PFR) of a "final removal order," which Petitioner does not have because he is still in pending removal proceedings. 8 U.S.C. § 1252(a)(1). In any case, only a non-citizen can petition a federal circuit court for review of a BIA decision, not the government. Thus, Petitioner can seek federal circuit court review of his claims for relief from removal once those issues are decided by the Immigration Judge (IJ) and the BIA in the future, but he cannot seek federal circuit court review of issues related to his bond eligibility. There is no mechanism for federal court review of the issues presented here except for a habeas petition in this Court.

I. This Court Has Jurisdiction to Review ICE's Attempt to Override the IJ's Bond Decision.

The government relies on the tired argument that 8 U.S.C. § 1252(g) strips this Court of jurisdiction to review the legality of Petitioner's detention, including ICE's invocation of the automatic stay regulation to unilaterally override the IJ's bond decision. Resp. at 5. But this jurisdictional bar clearly does not apply, and ICE's attempt to funnel review into the same agency decision-making process it has attempted to override is stunningly non-sensical.

The Supreme Court made clear in *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999) that 8 U.S.C. § 1252(g) only applies to the three discrete actions outlined in the statute: commencement of removal proceedings, adjudication of the same, and execution of removal orders. 8 U.S.C. § 1252(g). The Court found it "implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.* at 482. Petitioner does not challenge ICE's decision to commence removal proceedings against him, nor could he challenge the result of removal proceedings that have not yet concluded. Rather, he solely challenges his unlawful ICE detention, primarily on the basis it continues only because ICE unlawfully invoked an illegal regulation. That challenge is not barred by § 1252(g), and this Court has jurisdiction to hear Petitioner's claims.

Indeed, in the last month alone, several courts have found they have jurisdiction to address this exact posture. *See, e.g., Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025). In rejecting the government's jurisdictional arguments, the U.S. District Court for the District of Maryland specifically noted that "[n]one of the cases on which the Government relies

bears remote relevant relation to this habeas action – not the facts, not the procedural posture, and not the relief requested." *Leal-Hernandez*, 2025 WL 2430025, at *6. The same is true here.

The Eleventh Circuit decision cited by the government, *Alvarez v. U.S. Immigr. & Customs Enf't,* 818 F.3d 1194 (11th Cir. 2016), involved a *Bivens* action seeking damages for purportedly unconstitutional immigration detention, and it actually found that the district court *did have* jurisdiction to review the challenge.[2] *Id.* at 1204 ("[N]o matter how broadly we define the term 'execute a removal order,' we would still be compelled to find that these actions, if accurately portrayed in the complaint, do not 'arise from' such a decision."). Meanwhile the out-of-circuit, unpublished district court decision cited by the government, *Taal v. Trump*, No. 3:25-cv-335, 2025 WL 926207 (N.D.N.Y. Mar. 27, 2025), did not involve a challenge to immigration detention but rather the implementation of recent Executive Orders. Thus, one case cited by the government actually supports Petitioner's argument, and the other has nothing to do with it.

More broadly, the government's jurisdictional argument is absurd given that ICE is the one seeking to circumvent the very administrative appeal process it asks Petitioner to follow. The Immigration and Nationality Act's jurisdictional bars largely seek to funnel appellate and judicial review into a step-by-step process from the IJ to the BIA to the federal circuit court. But there are no steps Petitioner can take before the IJ, BIA, or the Eleventh Circuit to challenge his current detention, in part due to other INA provisions and in part because ICE has already itself appealed the IJ's bond decision to the BIA and invoked an automatic stay without the BIA weighing in, which is precisely the issue in this case.

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[2] Once again, the government's parenthetical in this citation is blatantly inaccurate.

II. The government barely defends the legality of ICE's automatic stay, which is evidently unlawful.

Focusing mostly on jurisdictional arguments, the government all but avoids addressing the merits of Petitioner's claim. Stunningly, it does not even argue under the *Mathews* test, which is central to Petitioner's procedural due process claim. Similarly, it does not identify a compelling government interest that outweighs Petitioner's substantive due process right to liberty, nor does it even attempt to justify Petitioner's detention based on danger or flight risk. Finally, the government does not engage with the substance of Petitioner's argument that 8 C.F.R. § 1003.19(i)(2) is *ultra vires* to the statute, 8 U.S.C. § 1226(a).

The government focuses heavily on its argument that § 1225(b), rather than § 1226(a), governs Petitioner's detention. But setting aside that this argument is incorrect, as Petitioner further addresses below, ICE's argument about the IJ's jurisdiction to grant bond is immaterial to whether it can disregard the decision of a neutral arbiter rejecting that very argument. The central constitutional problem here is that the automatic stay regulation allows an "agency official who is also a participant in the adversarial process to unilaterally override the immigration judge's decisions." *Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). ICE is free to seek a discretionary stay from the BIA, which the BIA would decide after briefing from the parties and may grant if ICE can make a sufficient showing. *See* 8 C.F.R. § 1003.19(i)(1). But it has not done this, perhaps because it knows it will fail. *See Günaydin*, 2025 WL 1459154, at *9 (directing ICE to follow the "more typical process, in which a stay pending appeal is deemed an 'extraordinary remedy'"). Meanwhile, Petitioner remains deprived of his liberty based solely on ICE's argument that has not been endorsed by *any* neutral arbiter, creating an unacceptably high risk that this deprivation of liberty is erroneous.

With respect to the other two *Mathews* factors, the government does not dispute that Petitioner has a significant liberty interest, nor does it identify a governmental interest in maintaining custody of Petitioner in these circumstances. This is notable not only with respect to the procedural due process claim, but also regarding Petitioner's substantive due process claim. The Supreme Court has recognized that civil immigration detention is only constitutionally appropriate in "narrow nonpunitive circumstances . . . where a *special justification*" is present. *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001) (internal citations omitted and emphasis added). The government does not contend that Petitioner is a national security threat, nor does it argue here that he is even remotely dangerous. Indeed, an IJ to whom ICE would in most other cases urge deference has determined he is neither dangerous nor a flight risk. Thus, his detention serves no constitutionally permissible purpose, and he must be released. *See Garcia Jimenez*, 2025 WL 2374223, at *4 ("The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake.").

The government briefly minimizes the length of Petitioner's detention and how much longer it may last. But Petitioner's claims are not based on the length of his detention; rather he argues that *any additional day* he is detained after being granted bond by the IJ is unlawful. And his detention is likely to last at least several more months, absent intervention from this Court. The BIA just inexplicably suspended the briefing schedule after the parties already filed their briefs. Ex. 13. As the BIA is currently understaffed and overloaded, it could be as many as *six months* until it renders a decision on the bond appeal. While the automatic stay lapses after 90 days, ICE has several options to unilaterally extend it. 8 C.F.R. § 1003.6(c)(4)-(5); *id.* § 1003.6(d)

Finally, the government does not respond to Petitioner's Count III besides a few conclusory sentences denying that the automatic stay regulation is *ultra vires*. As several courts have recently held, it clearly is. *See, e.g., Garcia Jimenez*, 2025 WL 2374223, at *5. The government does not even attempt to reconcile 8 C.F.R. § 1003.19(i)(2) with the language of 8 U.S.C. § 1226(a). This statutory provision, along with its implementing regulations, gives the IJ the authority to review bond determinations initially made by ICE, not the other way around. But "the automatic stay of 8 C.F.R. § 1003.19(i)(2) renders both the discretionary nature of Petitioner's detention and the IJ's authority a nullity because it effectively allows ICE to subject any noncitizen it wants to mandatory detention." *Leal-Hernandez*, 2025 WL 2430025 at *26. The regulation is unlawful because it exceeds or contradicts the authority Congress delegated to the agency.

III. Petitioner's detention is governed by 8 U.S.C. § 1226(a) such that he was and still is eligible for release on bond.

To find ICE's unilateral stay unlawful in general or as applied to Petitioner's case, this Court need not precisely determine the statutory provision that governs Petitioner's detention. But if this Court reaches that issue, it is clear that § 1226(a) governs. This is the proper reading of the statute, it fits with Petitioner's unique circumstances, and it is how the government itself has treated Petitioner's custody from the time it encountered him at the border in 2016 until it abruptly changed its position last month.

Relying on a brand-new BIA decision issued just last week on September 5,[3] the government claims that a different statutory provision, 8 U.S.C.§ 1225(b), applies to *all* non-citizens who entered the United States unlawfully at any point, including Petitioner. But federal

[3] This BIA decision was issued more than a month after Petitioner was granted bond and ICE invoked the automatic stay for Petitioner's case. Its retroactive application to Petitioner's case presents serious due process concerns, and in any case, ICE's attempt to *post-hoc* justify its automatic stay with this erroneous decision should not be taken seriously.

courts have repeatedly, emphatically, and recently rejected this argument. *See Lopez-Campos v. Raycraft,* No. 2:25-cv-12486, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Romero v. Hyde*, No. 25-cv-11631, 2025 WL 2403827, at *27 (D. Mass. Aug. 19, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, No. 25-cv-02157, 2025 WL 2337099, at *11 (D. Ariz. Aug. 11, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

This new BIA decision, *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), is the only relevant support the government offers for its argument. However, *Matter of Yajure* is the discordant note in a class of well-reasoned federal decisions rejecting the government's overbroad expansion of § 1225(b). Established methods of statutory construction, congressional intent, and the legislative history all inevitably lead to the conclusion that Petitioner is detained under 8 U.S.C § 1226(a) and thus eligible for release on bond.

Congress enacted two statutes to govern the detention of non-citizens in removal proceedings. Under § 1225(b)(2)(A), an "applicant for admission" to the United States must undergo screening by an examining immigration officer, and if the officer determines that the applicant for admission is not clearly and beyond a doubt entitled to be admitted, the applicant for admission is mandatorily detained pending further removal proceedings. 8 U.S.C. § 1225(b)(2)(A). The plain language of terms like "seeking admission" demonstrates that § 1225(b) applies to non-citizens who are arriving to the United States and seeking to enter the country at its border. *See Lopez-Campos,* 2025 WL 2496379, at *14; *Martinez,* 2025 WL 2084238, at *8. Moreover, the section headings of section 1225(b), including the heading that reads "[i]nspections of aliens

arriving in the United States and certain other aliens who have not been admitted or paroled," are instructive in concluding that the statute applies to those presently arriving to the U.S. *Lopez-Campos,* 2025 WL 2496379, at *14.

Conversely, § 1226(a) governs the detention of non-citizens already living in the country, like Petitioner. The plain language of § 1226(a) indicates that it applies when a non-citizen is apprehended in the interior of the United States, pursuant to a warrant and pending a decision regarding removal. *See Lopez-Campos,* 2025 WL 2496379, at *14. The discretionary language therein makes clear that such non-citizens have a right to a bond hearing before an IJ. *Id.*

The structure of § 1226(a) reaches all non-citizens who are present in the U.S. without admission or parole. *See Rodriguez*, 779 F. Supp. 3d at 1256. Section 1226(c) exempts specific categories of non-citizens from the default eligibility to seek release on bond in section 1226(a), including non-citizens convicted of certain crimes. Earlier this year, through the Laken Riley Act, Congress added new mandatory detention grounds to section 1226(c) and limited those new grounds to non-citizens who are inadmissible because they entered the U.S. without proper authorization. *See* 8 U.S.C. § 1226(c)(1)(E). If Congress believed and intended that this entire universe of non-citizens is already subject to mandatory detention under § 1225(b), as the government alleges and the BIA has now held, then it would have been pointless for Congress to add these new mandatory detention grounds and "would render this recently amended section superfluous." *Lopez-Campos*, No. 2025 WL 2496379, at *8; *see also Rodriguez*, 779 F. Supp. 3d at 1259 (pointing to Laken Riley Act in rejecting government's overbroad reading of § 1225(b)).

The legislative history also establishes that § 1226(a) is the proper detention authority for non-citizens already residing within the U.S, like Petitioner. The predecessor statute in place before the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") authorized

the detention of non-citizens pursuant to a warrant and discretionary release through bond. *Rodriguez*, 779 F. Supp. 3d at 1260. In enacting IIRIRA, Congress explained that § 1226(a) continued the authority of its predecessor statute to arrest and detain non-citizens not lawfully present in the U.S. and still allowed their release on bond. *Id.* (citing to H.R. Rep. No. 104-469, pt. 1 at 229). Therefore, an examination of Congressional intent and legislative history rejects the application of § 1225(b) to individuals like Petitioner, who have already been present in the U.S. for years.

Moreover, Petitioner's unique situation as a Special Immigrant Juvenile Status (SIJS) beneficiary makes even clearer that § 1226(a) is the only provision that could plausibly apply to him. SIJS designees, by definition, are "present" in the United States, not "applicants for admission." *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 916 (E.D. Va. 2024). The definition of "special immigrant juvenile" starts with "an immigrant who is present in the United States." 8 U.S.C. § 1101(a)(27)(J). While the government makes light of Petitioner's SIJS, it is impossible to ignore the statutory protections and benefits Congress provided to SIJS recipients. *Osorio-Martinez v. Attorney Gen. United States of Am.*, 893 F.3d 153, 174 (3d Cir. 2018) (stating that SIJS recipients are a "hair's breadth from being able to adjust their status, pending only the availability of immigrant visas . . ." and therefore have additional due process rights). Of particular relevance is the waiver of removability extended to SIJS recipients. Federal law establishes that specified grounds of deportation shall not apply to a special immigrant juvenile based upon circumstances that existed before the date the non-citizen was provided SIJS. 8 U.S.C. § 1227(c). Furthermore, certain inadmissibility provisions do not apply to those with SIJS. *See* 8 C.F.R. § 245.1(e)(3). The Court pointed to these protections in *Rodriguez v. Perry* in finding that the non-citizen there was eligible for a bond hearing under § 1226(a). 747 F. Supp. 3d at 916.

Moreover, Congress explicitly provided that SIJS recipients are to be treated as if they had been paroled into the United States, for the purposes of adjustment of status. 8 U.S.C. § 1255(h). This provision was enacted to ensure that SIJS recipients are not precluded from seeking lawful permanent residency based on technical deficiencies in their manner of entry or parole classification. Thus, collectively, the waivers of deportability, exemptions from certain grounds of inadmissibility, and the removal of barriers to adjustment afforded to Petitioner as an SIJS recipient are irreconcilable with the contention that Petitioner is an "applicant for admission" subject to mandatory detention under § 1225(b).

Finally, the government's own records and treatment of Petitioner over the last several years and months demonstrate that he is detained pursuant to § 1226(a). Section 1226(a) refers to non-citizens arrested "on a warrant." Petitioner was arrested by immigration officials on a warrant in 2016 when he crossed the border, Dkt. No. 1-4, and arrested by ICE *again* with a warrant in June 2025. Dkt. No. 1-7 at 4. These warrants expressly referred to "Section 236 of the Immigration and Nationality Act," for which the U.S. code corollary is § 1226. It is clear that the government has viewed Petitioner as subject to § 1226(a) for years but abruptly changed its position in order to justify Petitioner's detention without bond.

Several federal courts have been confronted with similar facts. In *Romero v. Hyde*, the non-citizen was similarly arrested by ICE on two separate occasions with a warrant. 2025 WL 2403827, at *1-2. The Court disagreed with the government's argument that Romero was ineligible for bond under section 1225(b), concluding that the government's own treatment of and records on Romero indicated she was not and had never been an applicant for admission. *Id.* at *8 ("The abstract statutory interpretation issues raised by this case must be considered against the backdrop of one uncontestable fact—Petitioner has always been treated by Respondents as subject to discretionary

detention under section 1226, rather than mandatory detention under section 1225."). Similarly in *Lopez Benitez*, the Court rejected the government's argument that a non-citizen was currently detained under § 1225(b) when that non-citizen had been arrested pursuant to a warrant under § 1226. 2025 WL 2371588, at *5. The Court in *Lopez Benitez* refused to credit government's new argument that detention was governed under § 1225(b) in part because it was adopted *post hoc* and only recently raised in the litigation. *Id.*; *see also Lopez-Campos*, 2025 WL 2496379, at *19 (refusing to credit ICE's *post hoc* assertion of § 1225(b) detention despite clear indication that non-citizen arrested under § 1225(b)). This Court should reject the government's same *post hoc* rationalization here.

CONCLUSION

The government's response brief, untimely filed and riddled with numerous factual errors and egregious misstatements of the law, falls far short of showing why this habeas petition should not be granted. In the U.S. justice system, a person's prosecutor, who also here happens to be their jailer, cannot simply disregard the decision of a neutral arbiter such that they effectively become the person's *judge too*. But that is exactly what happened here. Petitioner implores this Court to remedy this grievous constitutional problem by ordering his immediate release from ICE custody on the bond that an Immigration Judge already deemed appropriate.

Respectfully submitted,

Dated: September 11, 2025

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that I filed this Reply and all attachments using the CM/ECF system, which will send a notice of this filing to all participants in this case.

Dated: September 11, 2025

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