

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

NESTOR I. BELTRAN BARRERA,  
(A [REDACTED])

Petitioner,

v.

JEFF TINDALL, Jailer, Oldham County Detention  
Center; and SAMUEL OLSON, Field Office  
Director, Chicago Field Office, Immigration and  
Customs Enforcement,

Respondents.

Case No. 3:25-cv-541-RGJ

**PETITIONER'S REPLY TO RESPONDENT'S  
RESPONSE TO ORDER TO SHOW CAUSE**

**Introduction**

In the Response, Respondents muddy the waters as to the procedural status of this case and the nature of the legal challenge. Immigration and Customs Enforcement (ICE) arrested Petitioner and detained him pursuant to the provisions of 8 U.S.C. section 1226, as is clear from the record. (Dkt 1-3, at 34, stating, "Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 9, Code of Federal Regulations...") Petitioner requested bond redetermination pursuant to section 1226, and the Immigration Judge ordered Petitioner's release upon posting of bond pursuant to section 1226 of the Act. (Dkt 1-1, p. 31, referencing 8 C.F.R. section 1236). The Respondents, the losing party in bond proceedings, disagreed with the judge's decision and filed an appeal, unilaterally invoking an automatic stay which keeps Petitioner in custody despite the judge's lawful order. It is his continued detention pursuant to the automatic stay provision that Petitioner contests.

### **Argument**

Respondent arrested and detained Petitioner pursuant to 8 U.S.C. section 1226, as is evident from the record; the court should not accept Respondent's post hoc justification for his arrest or detention. Analysis of the plain language of the law and review of the section within the greater statutory scheme also reveal that section 1225(b)(2) does not and cannot apply to Petitioner, as courts across the nation have held in similar cases, Respondent's arguments notwithstanding. Petitioner's ongoing detention violates due process and the procedure used to keep him detained, one created solely by DHS outside of the authority of Congress, is ultra vires.

#### **A. Despite Respondent's protestations to the contrary, Respondent arrested and detained Petitioner pursuant to section 1226.**

According to ICE's own documentation, the agency arrested and detained Respondent according to section 1226. *See* Dkt 1-2, at 33, authorizing arrest "pursuant to sections 236 and 287 of the Immigration and Nationality Act [8 U.S.C. 1226]"; *see also* Dkt 1-3, at 34: "Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations... you will be detained by the Department of Homeland Security." Respondents would have this court simply ignore the legal authority ICE relied upon to justify Petitioner's arrest and detention – ignore the sole document provided to Respondent that outlines the authority under which he was taken from his home, transported to a detention facility, and detained. The government cannot claim legal authority to arrest a person, and then simply expect the reviewing court and the detainee to ignore that paperwork that cites that authority. "...[W]ords are how the law constrains power." *Niz-Chavez v. Garland*, 141 S.Ct. 1474, 1486 (2020). We must assume that paperwork issued by the government means what it says. In the words of the Supreme Court, "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.” *Niz-Chavez*, 141 S. Ct. at 1486 (2020).

In fact, the *first* time that detention under 1225(b)(2) was raised was at the bond hearing, held 43 days after Petitioner was arrested and detained, when DHS orally opposed Petitioner’s release on bond. The immigration judge disagreed with DHS’s new justification for the arrest and detention, based upon a new interpretation of the law, and granted bond. The court should not credit a post hoc justification for Petitioner’s detention. *Cf. Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22, 24, 140 S.Ct. 1891 (2020) (holding that, under arbitrary and capricious review in the administrative law context, “[t]he basic rule here is clear: An agency must defend its actions based on the reasons it gave when it acted,” not on “impermissible post hoc rationalizations”).

**B. Section 1225(b)(2) does not apply to Petitioner, a person who entered the United States without inspection over 20 years ago and has been residing here since that time.**

Respondent twists the meaning of words beyond recognition in arguing that Petitioner, who has been present in the United States for over 20 years, is somehow “seeking entry” into this country. Dkt 10, at 5. “Not every encounter with an immigration officer constitutes an examination under section 1225,” as Respondent seems to argue. *Martinez v. Hyde*, --- F.Supp.3d ----, 2025 WL 2084238, \*3 (D. Mass. July 24, 2025). Indeed, it is “difficult to square a noncitizen’s continued presence with the term ‘seeking admission,’ when that noncitizen never attempted to obtain lawful status.” *Pizarro Reyes v. Raycraft*, 25-cv-12546, 2025 WL 2609425, \*6 (W.D. Mich. Sept. 9, 2025); *see also Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, \*6-7 (E.D. Mich. Aug. 29, 2025).

Court after court has analyzed the language of section 1225(b)(2), reviewed it within the context of the entire statutory scheme, and held that 1225(b)(2) applies only to those seeking admission at the border, and not to those who entered without admission and have been residing in the United States. *Pizarro-Reyes*, 2025 WL 2609425; *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Gomes, v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299 (D. Mass. July 7); *Rodriguez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash 2025); *Martinez v. Hyde*, No. 25-11613, 2025 WL 2084238 (D. Mass. July 24, 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); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, --- F. Supp. 3d ---, 2025 WL 2374411, at \*10-12 (D. Minn. Aug. 15, 2025); *Romero v. Hyde, et al.*, No. 1:25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

Respondents have not cited a single federal case that adopted their novel interpretation of 1225(b)(2)(A) and applied it to noncitizens like Petitioner.<sup>1</sup>

**C. None of Respondent's other justifications support application of 1225(b)(2) to Petitioner.**

Respondent argues that Congress required mandatory detention of noncitizens present in the country without admission or parole as part of the enactment of IIRIRA. “Laid bare,

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<sup>1</sup> Respondent purports to cite *Florida v. United States*, 660 F. Supp. 3d 1239 (N.D. Fla. 2023) for the proposition that 1225(b) applies to those aliens present without admission. However, that case concerned aliens apprehended at the Southwest border of the United States without warrant while arriving in the United States; it does not concern noncitizens who are present without admission and inspection and already residing in the U.S. Similarly, *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) concerned an alien apprehended 25 yards from the border within minutes of crossing. Even Respondent's selected quote concerns noncitizens who were paroled into the country; Petitioner was not paroled into the United States. See *Pizarro Reyes*, 2025WL 9609425 at \*6.

Respondent's is really a policy argument, projected onto Congress." *Romero v. Hyde*, --- F.Supp. 3d at \_\_, 25 WL 2403827, \*12. If Congress really intended "such a major shift"—ordering the mandatory detention of all noncitizens present in the United States who entered without inspection and admission – "it is reasonable to assume that Congress would have made it plain." *Id.*, at \*12. "Realistically speaking, if Congress's intention was so clear, why did it take thirty years to notice?" *Id.*

Indeed, contemporaneously with IIRIRA's passage, the Executive Office of Immigration Review (within which the immigration courts and Board of Immigration Appeals are housed) understood that section 1226 applied to aliens who are present without having been admitted or paroled. The agency, when promulgating the regulations which gave IIRIRA effect, expressly acknowledged that "aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10323 (Mar. 6, 1997); *see Rodriguez*, 779 F. Supp. 3d at 1260.

The Respondent further presents a truly tortured reading of *Jennings v. Rodriguez*, 583 U.S. 281 (2018). In that case, the Supreme Court examined whether periodic bond hearings were required under various mandatory detention statutes; the Court did not examine who, precisely, was subject to mandatory detention pursuant to those sections. Regardless, the decision supports Petitioner's reading of the statute, and not Respondents. The Court stated, "As noted, §1225(b) applies primarily to aliens *seeking entry* into the United States..." *Jennings*, 583 U.S. at 297 (emphasis added). And conversely, "As noted, §1226 applies to aliens *already present* in the United States." *Id.* at 303 (emphasis added). The *Jennings* decision does not support Respondents' new interpretation of section 1225(b)(2). *See also, Rodriguez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash 2025) (further examining *Jennings*); *Fernandez v. Lyons*, No. 8:25-

cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) (finding that courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of aliens already in the country and relying upon *Jennings*).

Respondents' reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (2025), is also unavailing. This court is not bound by decision of the Board of Immigration Appeals; Respondents do not claim otherwise. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) (statutory interpretation belongs within the province of the courts); see *Pizarro-Reyes*, 2025 WL 2609425 at \*6. At least one federal court, also sitting in the Sixth Circuit, has already considered *Yajure Hurtado*, and disagreed entirely with the Board's conclusion. *Pizzaro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025). In addition, the reasoning upon which the Board based that opinion has already been examined and rejected by district courts across the nation. *Rodriguez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025) (canons of statutory interpretation support Petitioner's interpretation; agency's interpretation of 1225(b)(2) would render sections of 1226 as well as recent enactments by Congress superfluous; legislative history and *Jennings* support 1226 as basis of detention; relying upon longstanding practice as an interpretive aid); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (holding "the plain language of the statutes, the overall structure, the intent of Congress, and over 30 years of agency action make clear that Section 1226(a) is the appropriate statutory framework for determining bond for noncitizens who are already in the country and facing removal."); *Martinez v. Hyde*, --- F.Supp.3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025) (analyzing the present tense form of "seeking admission", comparing the entire statutory scheme, and also determining that the recent passage of the Laken Riley Act would be mere surplusage if the agency's interpretation of 1225(b)(2) was correct); *Sampaio v.*

*Hyde et al.*, No. 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (same); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same).

**D. Petitioner's continued detention violates due process and is ultra vires.**

Respondent argues that the automatic stay provision is permissible because detention itself is permissible and that the automatic-stay provision is limited in duration. However, these arguments ignore the realities of the process and the particular facts of this case.

First, the procedure Respondent has followed in extending Petitioner's detention does not appear in the Immigration and Nationality Act nor anywhere in the law; it was not a procedure enacted by Congress. Instead, it is entirely DHS-created, appearing only in the regulations promulgated by DHS. 8 C.F.R. § 1003.6. Though Congress authorized some forms of detention in the immigration context, it did not authorize the detention scheme at issue here. *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (determining the automatic stay provision effectively re-writes the INA and creates a new class of noncitizens subject to mandatory detention, depriving them of rights Congress expressly provided); *Jacinto v. Trump*, --- F. Supp. 3d ---, 25 WL 2402271, \*5 (D. Neb. Aug. 19, 2025) (this back-end approach transforms a discretionary decision of the immigration judge into mandatory detention imposed by ICE, flouting the express intention of Congress).

Second, Respondent can extend Petitioner's detention for far longer than ninety days. If the Board of Immigration Appeals (BIA) does not resolve the appeal within the ninety-day period, ICE can seek a discretionary stay for an additional 30 days. 8 C.F.R. § 1003.6(c)(5). If the BIA authorizes a release, denies the discretionary stay, or fails to act, the stay is extended by five business days. *Id.* § 1003.6(d). Indeed, bond appeals "typically take six months or more to be resolved at the [Board of Immigration Appeals]." *Pizarro Reyes*, 2025 WL 2609425, \*3,



citing *Rodriguez*, 779 F. Supp 3d at 1245. Alternatively, if the Secretary of Homeland Security or another designated official refers the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1), the stay is extended by fifteen business days. *Id.* Once such a referral is made, the Attorney General can extend the stay indefinitely by ordering a discretionary stay pending disposition of the case. *Id.* § 1003.6(d). *See Sampaio*, --- F.3d at \_\_, 2025 WL 2607924 at \*20 (analyzing the auto-stay provisions). Therefore, Petitioner’s detention may extend far longer than ninety days.

Third, in reviewing the *Mathews* factors, Respondent has claimed, without analysis, that Petitioner’s due process rights “do not overcome the Government’s interests in maintaining his detention.” Dkt. 10, at 14. Respondent fails to acknowledge that the Government, in the form of the immigration judge and in a Congressionally-set procedure, has already examined evidence, listened to arguments, determined that Petitioner is not a flight risk or a danger to the community, and ordered his released upon the posting of a bond. Dkt. 1-2, at 31. Respondent has failed to explain how, in this situation, the losing party’s interest in keeping Petitioner detained surpasses Petitioner’s interest in being free from physical detention, “one of the most elemental of liberty interests.” *Romero*, 2025 WL 2403827, at \*7, citing *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004). Further, in this case, Respondent did not appeal the judge’s determination that Petitioner is neither a danger to the community nor a flight risk. Dkt. 1-7, at 50. Instead, Respondent based the appeal entirely upon the novel argument that Petitioner was detained pursuant to section 1225(b)(2) rather than 1226. *Id.* The government’s interest, therefore, is truly minimal.

Indeed, federal courts across the nation have determined that noncitizens’ continued detention pursuant to the automatic stay provision violates substantive and procedural due process. *Sampaio v. Hyde, et al.* No. 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9,



2025) (detention pursuant to automatic stay provision violates due process under the Fifth Amendment); *Alvarez Martinez v. Noem, et al.*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. TX Sept. 8, 2025) (same); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (same); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025) (same); *Herrera Torralba v. Knight, et al.*, No. 2:25-cv-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025) (detention pursuant to automatic stay provision violates procedural due process both facially and as applied, and also substantive due process); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025) (petitioner showed likelihood of success on substantive due process claim); *Gamez Lira v. Noem, et al.*, 1:25-cv-00855-WJ-KK, 2025 WL 2581710 (D. N.M. Sept. 5, 2025) (same); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025) (detention pursuant to the automatic stay provision violates procedural and substantive due process rights); *Perez v. Berg*, No. 8:25-cv-494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025) (same); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (same).

### Conclusion

For the reasons stated above, Petitioner requests this Honorable Court issue a writ of habeas corpus and order Respondents to immediate release Petitioner from custody in accordance with the bond order from the immigration judge.

Dated: September 15, 2025

Respectfully Submitted,

/s/ Erin C. Cobb

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**Certificate of Service**

I hereby certify that on September 15, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

/s/ Erin C. Cobb

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