UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-61845 SMITH

MARIO RODRIGUEZ IZQUIERDO,

Petitioner,

v.

GARRETT RIPA, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Miami Field Office, et al.,

Respondents.
_____/

PETITIONER'S REPLY ("TRAVERSE") TO THE GOVERNMENT'S RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Mario Rodriguez Izquierdo ("Izquierdo" or "Petitioner") respectfully submits this Reply in support of his Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 [ECF No. 5] ("Petition"). Contrary to Respondents' assertions, this case is not moot, and Petitioner's detention remains unlawful. For nearly four months, Petitioner has been subjected to immigration detention without a meaningful opportunity to be heard and without the procedural protections the Constitution requires.

Although an Immigration Judge ordered release on bond, ICE invoked an automatic stay, and the Board of Immigration Appeals ("BIA") later reversed a grant of bond. That sequence highlights – not cures – the constitutional defect: that Petitioner has been detained since June 5, 2025, without any individualized determination of whether his confinement remains necessary.

His immigration detention without due process is unlawful. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Jennings v. Rodriguez*, 583 U.S. 830 (2018). Petitioner therefore asks this Court to order his immediate release.

ARGUMENT

I. This Presents a Live Controversy and Falls Within Article III Jurisdiction

Respondents contend that the BIA's September 24, 2025, reversal of the immigration judge's ("IJ") bond order moots this case. That is incorrect. Petitioner remains detained at Broward Transitional Center and continues to suffer the very injury challenged in the Petition: incarceration without a constitutionally adequate bonding hearing. As the Supreme Court has explained, "a case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). Here, relief remains available: Petitioner seeks a habeas order requiring release or a lawful bond hearing.

Respondents cite *Juvenile Male* for the proposition that a controversy must remain "extant throughout the litigation." *United States v. Juvenile Male*, 564 U.S. 932, 936 (2011). But that principle favors Petitioner: his detention remains ongoing and unlawful. Likewise, *Sanchez-Gomez* emphasized that mootness does not apply where, as here, the challenged action is "capable of repetition, yet evading review." *United States v. Sanchez-Gomez*, 584 U.S. 381 (2018). ICE's invocation of the automatic stay exemplifies such an action because it prevents meaningful judicial review before liberty is lost. As one court observed, "because the automatic stay repeatedly deprives similarly situated petitioners of liberty in a timeframe too short for judicial review, it presents a classic example of a controversy capable of repetition yet evading review." *Maldonado Vazquez v. Feeley*, 2025 WL 2676082, at *12 (D. Nev. Sept. 17, 2025).

Respondents also frame their mootness argument as a challenge to this Court's subject matter jurisdiction under Rule 12(b)(1). [ECF No. 8] at p. 2. That framing misunderstands the nature of habeas jurisdiction. Section 2241 provides jurisdiction so long as the petitioner is "in custody" and asserts that custody is unlawful. Both conditions are plainly met here. The government's mootness theory goes not to jurisdiction, but to whether a live controversy remains. As explained above, Petitioner's detention continues, the constitutional injury persists, and the case also falls within the exception for matters "capable of repetition, yet evading review." *Sanchez-Gomez*, 584 U.S. at 385.

Courts around the country have confronted – and rejected – the same mootness argument the government makes here with regard to the invocation of the automatic stay. In *Leal-Hernandez v. Noem*, 2025 WL 2430025, at *6 (D. Md. Aug. 24, 2025), the court explained that "the government's invocation of mootness ignores the ongoing deprivation of liberty that flows from the automatic stay regulation." Similarly, in *Hasan v. Crawford*, 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025), the court held that "[b]ecause the automatic stay deprives the petitioner of liberty without process, the injury is ongoing, and the case is not moot." In *Sampiao v. Hyde*, 2025 WL 2607924, at *7 (D. Mass. Sept. 9, 2025), the court rejected the government's claim of mootness outright, observing that "[t]he automatic stay, as applied, denies detained noncitizens a meaningful opportunity for judicial review. That injury is ongoing and not mooted by subsequent BIA decisions."

These decisions reflect a consistent principle: the Department of Homeland Security ("DHS") cannot moot a habeas case by invoking the automatic stay and then pointing to a subsequent BIA decision months later. The constitutional violation persists so long as the petitioner remains detained without a meaningful bond hearing. This approach aligns with

Eleventh Circuit precedent, which holds that a case is moot only if "no effective relief can be granted" to redress an ongoing injury. *Chafin*, 568 U.S. at 172; *see also Coral Springs St. Sys., Inc. v. City of Sunrise*, 371 F.3d 1320, 1328 (11th Cir. 2004) ("if events that occur subsequent to the filing of a lawsuit . . . create a situation in which the court can no longer give the plaintiff meaningful relief, the case is moot.") Because Petitioner remains in custody, this Court can order release or require a constitutionally adequate bond hearing. That is meaningful relief. Under binding Eleventh Circuit precedent, this case is not moot.

II. Section 1225(b)(2) Does Not Authorize Petitioner's Detention

Respondents mischaracterize Petitioner's claims by asserting that the Petition challenges his detention solely during the immediate operation of their automatic stay. [ECF 8] at p. 2 ("…Petitioner's petition challenges only the government's application of the automatic stay invocation to deny Petitioner bond, this action is now moot.") That is incorrect. Count IV of the Amended Petition specifically pleads that Petitioner is detained under the wrong statutory provision and that 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), governs his custody. [ECF No. 5] at ¶¶54-55. Therefore, in addition to his due process challenges, Petitioner squarely raises a statutory claim. Federal courts across the country have repeatedly agreed that § 1226(a), not § 1225(b)(2)(A), applies in these circumstances. *See, e.g., Martinez v. Hyde*, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025); *Garcia Cortes v. Noem*, 2025 WL 2652880, at *7 (D. Colo. Sept. 16, 2025); *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, ECF No. 9 (M.D. Fla. Sept. 25, 2025) (order on TRO).

Respondents contend that Petitioner's custody is mandated under 8 U.S.C. § 1225(b)(2)(A), citing a BIA decision, *Matter of Yajure Hurtado,*and *Jennings*. *Matter of Yajure*

Hurtado, 29 I&N Dec. 216 (BIA 2025); *see also Jennings v. Rodriguez*, 583 U.S. 281 (2018). That argument fails. Section 1225(b)(2)(A) governs persons "seeking admission." *See id.* It does not apply to noncitizens like Petitioner, who was released into the interior on his own recognizance in 2022 and later re-detained by ICE. As multiple courts have recognized, once DHS releases a noncitizen from initial border custody, the statutory framework shifts to § 1226(a). *See*, e.g., *Martinez*, 2025 WL 2084238, at *6 ("Section 1226(a), not § 1225(b)(2) authorizes detention of a noncitizen who was previously released on recognizance and later re-detained.")Reading § 1225(b)(2)(A) to swallow § 1226(a) would render the latter meaningless, a result contrary to basic principles of statutory interpretation.

Respondents also acknowledge that Petitioner was placed in removal proceedings under § 1229a. But detention during § 1229a proceedings is precisely the default position that § 1226(a) governs. The government's reliance on the automatic stay further undermines its statutory argument. If §1225(b)(2)(A) truly stripped IJs of bond authority, there would have been no reason for ICE to invoke an automatic stay of the IJ's July 18 bond order. The fact that DHS resorted to that regulation demonstrates that the statute does not operate as clearly as they suggest.

Federal courts have overwhelmingly rejected DHS's effort to expand § 1225(b)(2)(A) in this way. In *Lopez Benitez*, the court held that "redetention without process under § 1225(b)(2) violates the INA; detention authority lies in § 1226(a)." *Lopez Benitez v. Francis*, 2025 WL 2371588, at *5. The District of Colorado agreed, explaining that "the statutory text, structure, and precedent confirm that § 1226(a) applies once a noncitizen is in the interior and subject to arrest by ICE." *Garcia Cortes*, 2025 WL 2652880, at *7. Courts within this Circuit have done the same. *Hernandez Lopez* observed that "every court to address the question presented here has found that an alien who is not presently seeking admission and has been in the United States for an extended

period of time . . . is appropriately classified under § 1226(a) and not § 1225(b)(2)(A)." *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, at 4. That reasoning is particularly persuasive here, as this Court sits within the Eleventh District and should follow the approach already adopted by its sister district courts.

Finally, the BIA decision *Yajure Hurtado* itself has been widely rejected. District courts have described it as "a stark departure from past practice." *Lorenzo Perez v. Kramer*, 2025 WL 2624387, at *5 (D. Neb. Sept. 11, 2025). Others have found it "contrary to the plain text of the INA." *Guerrero Lepe v. Andrews*, 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025).[1] This Court should follow the overwhelming weight of authority and decline to extend § 1225(b)(2)(A) to interior arrests like Petitioners. In summary, Respondents' own statutory framing undermines their argument, and the consensus of federal courts confirms that § 1226(a), not § 1225(b)(2)(A), governs Petitioners' detention. Because § 1226(a) governs, Petitioner is entitled to an individualized bond hearing before an immigration judge.

III. The Automatic Stay Regulation is Ultra Vires and Violates Due Process

Even if Respondents were correct that § 1225(b)(2)(A) applied – and they are not – Petitioner's detention remains unlawful because it rests on the operation of the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2). That regulation is both ultra vires to the INA and unconstitutional under due process.

A. The Automatic Stay Exceeds Statutory Authority

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[1] *See also* Martinez, *2025* WL 2084238, at *6; Lopez Benitez*, 2025 WL 2371588, at *5; *Garcia Cortes*, 2025 WL 2652880, at *7; *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, ECF No. 9, at 4; *Lorenzo Perez*, 2025 WL 2624387, at *5; *Guerrero Lepe*, 2025 WL 2716910, at *10; Encarnacion*, No. 25-12237; *Sampiao*, *2025* WL 2607924, at *7; *Maldonado* Vazquez, *2025* WL 2676082, at *12; *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *8 (E.D. Cal. Sept. 9, 2025); Rosado v. Figueroa*, 2025 WL 2337099, at *5 (D. Ariz. Aug. 11, 2025).]

The INA provides no authority for DHS to unilaterally override an Immigration Judge's bond determination by administrative order. Section 1226(a) expressly contemplates individualized custody determinations, but the automatic stay provision strips that process away. Courts have recognized this disconnect and held the regulation ultra vires. In *Leal-Hernandez*, the court held that the autostay "is ultra vires to the INA's statutory scheme," explaining that Congress never authorized DHS to nullify IJ bond decisions by automatic operation of regulation. *Leal-Hernandez*, 2025 WL 2430025, at *6.

B. The Automatic Stay Violates Due Process

Even if authorized, the regulation is unconstitutional because it categorically denies noncitizens any meaningful opportunity to contest their detention before being deprived of liberty. Applying the familiar balancing test of *Mathews v. Eldridge*, courts have found the regulation indefensible. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

In *Encarnacion*, the court held that "the automatic stay, as applied, violates due process," because it forces detention without an individualized assessment. *Encarnacion v. Moniz*, No. 25-12237 (D. Mass. Sept. 5, 2025). In *Sampiao*, the court explained, "the automatic stay, as applied, denies detained noncitizens a meaningful opportunity for judicial review." *Sampiao v. Hyde*, 2025 WL 2607924, at *7. Most strikingly, in *Maldonado*, the court held that "the autostay regulation facially violates due process, both procedural and substantive," and enjoined its use in Nevada. *Maldonado*, 2025 WL 2676082, at *12.

These decisions reflect a consistent recognition that the regulation fails *Mathews*: the private interest in liberty is paramount, the government's asserted efficiency interest is minimal, and the risk of erroneous detention is intolerably high when release orders are automatically nullified without any individualized showing.

C. Respondents' Reliance on the Stay Undermines Their Statutory Claim

Respondents argue that § 1225(b)(2)(A) categorically strips IJs of bond authority. But if that were so, ICE would have no need to invoke the automatic stay to block the IJ's July 18 bond order. The fact that DHS relied on the regulation to keep Petitioner detained demonstrates that IJ jurisdiction was recognized, and that DHS itself understood the statute does not operate as automatically as it now claims. In summary, the automatic stay is ultra vires, unconstitutional, and independently unlawful. Even if this Court were to accept Respondents' strained reading of § 1225(b)(2)(A), Petitioner's detention cannot stand because it rests on a regulatory mechanism that strips him of due process and exceeds the bounds of congressional authority.

An automatic stay purports to give ICE the authority to override the IJ's redetermination of its initial custody decision and continue the detention of a non-citizen whom the IJ deems worthy of release. This is non-sensical. "By permitting DHS to unilaterally extend the detention of an individual, in contravention of the findings of [an IJ] properly delegated the authority to make such a determination, [the automatic stay regulation] exceeds the statutory authority Congress gave to the Attorney General." *Garcia Jimenez*, 2025 WL 2374223,at *5; see also *Zavala*, 310 F.Supp.2d at 1079 ("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.").

IV. Petitioner's Detention Without an Effectual Bond Hearing Violates Due Process

Even if Respondents were correct on mootness, statutory authority, and the automatic stay, Petitioner's continued detention is independently unconstitutional. He has been confined since June 5, 2025, with no end in sight and no meaningful opportunity to demonstrate that his release

would not pose a danger or flight risk. The Due Process Clause does not permit such open-ended confinement.

The Supreme Court has long recognized that "[f]reedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty the clause protects." *Zadvydas*, 533 U.S. at 690. Although *Jennings* rejected a statutory reading that imposed a six-month limit on detention, the Court emphasized that prolonged confinement without individualized process raises "serious constitutional concerns." *Jennings*, 583 U.S. at 298-99.

District courts applying these principles have found due process violations even after only several months of re-detention, particularly where ICE manipulates proceedings to prolong confinement. *See, e.g., Cuevas Guzman*, 2025 WL 2617256, at *8 (granting habeas after several months of renewed detention, finding due process violation); *Rosado v. Figueroa*, 2025 WL 2337099, at *5 (ordering bond hearing because detention had become unreasonably prolonged without individualized review). Petitioner's situation is indistinguishable. He has already been detained for months, and the resolution of his BIA appeal and Eleventh Circuit proceedings may stretch confinement indefinitely. That prolonged deprivation of liberty without individualized assessment of necessity does not comply with the Constitution.

Accordingly, even if this Court were to reject Petitioner's other arguments, the Due Process Clause requires his release, or, at minimum, a prompt and meaningful bond hearing.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that this Court award habeas relief, grant the Amended Petition for Writ of Habeas Corpus, and order his immediate

release from custody. In the alternative, Petitioner requests that this Court order a prompt, constitutionally adequate bond hearing before an Immigration Judge.

Dated: October 2, 2025

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