

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**
Judge William J. Martinez

Civil Action No. 25-cv-3078-WJM-KAS

JESUS MORALES LOPEZ

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as warden
of the Aurora Contract Detention Facility, et al.

Respondents.

**PETITIONER'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY
RESTRAINING ORDER**

Petitioner Morales Lopez, by and through undersigned counsel, respectfully submits this Reply in Support of his Motion for Temporary Restraining Order filed on October 20, 2025. ECF No. 14. Respondents' opposition, filed on October 23, 2025, fails to rebut the central showing that Morales Lopez's continued detention is unlawful.

Since the filing of his Temporary Restraining Order, the Board of Immigration Appeals ("Board") issued a decision on October 23, 2025, purporting to vacate the Immigration Judge's prior bond order. *See Decision of the Board of Immigration Appeals, dated October 23, 2025, attached hereto as Exhibit A.* This abrupt agency action—taken while this case was pending before this Court—does not divest jurisdiction but rather underscores the necessity of judicial intervention. This Reply addresses both the deficiencies in Respondents' opposition and the effect

of this intervening agency action, which only strengthens Morales Lopez’s likelihood of success on the merits and the necessity of immediate judicial intervention.¹

LEGAL STANDARD FOR TRO

To prevail on a temporary restraining order, a movant must show: (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in the movant’s favor, and (4) an injunction is in the public interest. *M.G. through Garcia v. Armijo*, 117 F.4th 1230, 1238 (10th Cir. 2024). The final two factors “merge” when the government is the opposing party. *Denver Homeless Out Loud v. Denver, Colorado*, 32 F.4th 1259, 1278 (10th Cir. 2022).

Where a party seeks a “disfavored” preliminary injunction, the Tenth Circuit requires the moving party to make a *strong* showing that the likelihood-of-success-on-the-merits factor and the balance-of-harms factors tilt in his favor. *Free the Nipple—Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 797 (10th Cir. 2019) (emphasis added). A disfavored injunction may exhibit any of three (3) characteristics: (1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win. *Id.*

ARGUMENTS

Morales Lopez seeks a disfavored preliminary injunction, but his requested relief should be granted because he is more than likely to succeed on the merits of his underlying Petition as the issues presented for review—(1) the automatic stay and (2) the statutory basis for detention under INA § § 235(b) or 236(a)—have been dispositively determined in Morales Lopez’s favor.

¹ Alternatively, Morales Lopez would be amenable to additional briefing time for both parties to respond to this development in the case, but anticipates that Respondents will address the Board decision in its response to Morales Lopez’s Petition due today.

In those cases, this Court concluded that detainees placed in full § 240 removal proceedings that are long-term residents are held under § 236(a), not § 235(b), and are therefore entitled to bond hearings and that the automatic stay provision cannot lawfully prolong detention absent judicial review. Because those same two questions control this case and both have already been resolved in Morales Lopez's favor, the Court must find that he is more than likely to succeed on the merits. The Court must further find that the Board's October 23, 2025, decision, as applied here, violates due process principles against retroactivity and results in irreparable harm to Morales Lopez and his 4 USC children.

A. Jurisdiction

As a threshold matter, this Court has continued jurisdiction over this matter, even in light of the Board decision, because Morales Lopez remains detained. The power to determine whether an individual's detention is lawful lies at the heart of this Court's habeas jurisdiction under 28 U.S.C. § 2241. Whether labeled a "bond appeal" or a "235(b) determination," the question remains the same: whether the Executive Branch may detain Morales Lopez without statutory or constitutional authority.

In the event Respondents suggest that the Board's decision renders this matter moot, that argument would fail for several reasons. First, the agency's issuance of the decision while this Petition and Temporary Restraining Order were pending was not a neutral act, but a procedural maneuver by an executive agency to avoid judicial review of an issue already decided by this District. Second, the central question of whether Morales Lopez's detention is authorized by § 236(a) or § 235(b) has already been answered by this Court for detainees in a materially identical posture to Morales Lopez. Finally, even if Morales Lopez were to refile his habeas petition now, the outcome would be the same: the Court would find jurisdiction under § 236(a) and order a bond

hearing. That bond hearing has already occurred—and Morales Lopez was found suitable for release by an IJ. **To require him to endure continued detention or redundant proceedings based on an unlawfully retroactive administrative action would compound the due process violation.**

Morales Lopez does not ask this Court to review an order of removal, does not challenge the decision to detain him in the first place or the initiation of removal proceedings, and does not challenge the process by which his removability will be determined. Instead, he plainly challenges the legality of his continued detention and therefore this Court has continued jurisdiction to hear his claims under 8 U.S.C. § 1252(b)(9). The relief requested now by Morales Lopez is precisely the same as that original sought—implementation of the Immigration Judge’s August 14 bond order and cessation of unlawful detention.

B. Likelihood of Success on the Merits

Even with the Board’s decision, Morales Lopez remains more than likely to succeed on the merits of his habeas petition as courts have resolved the two (2) critical questions presented in Morales Lopez’s petition in his favor.

1. Automatic Stay Provision Unconstitutional — Reliance on *Mayo Anicasio v. Kramer*, No. 4:25-cv-3158 (D. Neb. Aug. 14, 2025).

Morales Lopez’s habeas petition presents the same legal question recently decided in *Mayo Anicasio v. Kramer*, No. 4:25-cv-3158 (D. Neb. Aug. 14, 2025), where the court held that detention under the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) violates both the Fifth Amendment and the Immigration and Nationality Act. The court ordered the petitioner’s immediate release, concluding that (1) the regulation is unconstitutional as applied, (2) it violates procedural and

substantive due process, and (3) it is *ultra vires* of the statutory authority Congress delegated to the Attorney General. *Mayo Anicasio v. Kramer*, No. 4:25-cv-3158 (D. Neb. Aug. 14, 2025).

While *Mayo Anicasio* arose in the District of Nebraska, its reasoning follows the growing line of federal courts rejecting 8 C.F.R. § 1003.19(i)(2) as unconstitutional or *ultra vires*, including *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (“The [automatic stay] procedure additionally creates a potential for error because it conflates the functions of adjudicator and prosecutor.”), *Ashley v. Ridge*, 288 F. Supp. 2d 662 (D.N.J. 2003), *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E. Mich. 2003), and *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446, 450 (D. Conn. 2003).

The automatic stay provision violates Morales Lopez’s procedural right to due process because despite a neutral decision-maker finding a bond was warranted, the automatic stay provision allowed DHS, the party who lost its bond argument before a neutral arbitrator, to unilaterally deprive Morales Lopez of his liberty. The automatic stay provision additionally violates Morales Lopez’s right to substantive due process because it allows for imprisonment in contravention of the order of a neutral factfinder without any special justification or compelling government interest. Morales Lopez’s ongoing detention—despite an Immigration Judge’s determination that a bond will ensure his appearance—likewise lacks any special justification.

Respondents argued that the automatic stay provision is not *ultra vires* because the Board not the IJ has the ultimate determination. ECF No. 17 at 8-10. However, this argument erroneously mis conflate the authority of the Department of Justice to issue bonds and the DHS’s unilateral authority to invoke the automatic stay. Morales Lopez does not challenge the Immigration Judge’s authority to make a bond determination. Rather, he challenges DHS’ authority—an adversarial party to the proceedings and separate from the Department of Justice—to invoke an automatic stay that in effect supersedes the IJ’s determination.

The government's interest in the continued detention of Morales Lopez, one of the least dangerous individuals, in contravention of the order of a neutral factfinder, does not outweigh his liberty interest at stake. Because his case presents the same factual posture and legal question, and no material distinction exists between his case and other district courts that have already considered this issue, Morales Lopez makes a very strong case for being likely to succeed on the merits of his underlying Petition for Writ of Habeas Corpus, ECF No. 1.

2. Mandatory Detention Under INA § 235(b) — Reliance on *Nava Hernandez v. Baltazar*, et. al., No. 1:25-cv-03094-CNS, at *7 (D. Colo. Oct. 24, 2025).

Morales Lopez challenges the Board's decision for its substantive and procedural deficiencies. Substantively, the Board applied new law retroactively in direct violation of Tenth Circuit law and took a legal position that has already been rejected in this District Court. Procedurally, the Board's decision failed to address dispositive issues raised by Morales Lopez during the appeal.²

Federal district courts have overwhelmingly rejected Respondents' "broad interpretation of section 1225(b)(2) [235(b)(2)]." *See, e.g., Choglo Chafra v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *5 (D. Me. Sept. 22, 2025) (collecting cases); *Ochoa Ochoa v. Noem*, No. 25-cv-10865, 2025 WL 2938779, at *5 n.8 (N.D. Ill. Oct. 16, 2025) (collecting cases). The weight of authority interpreting INA § 235 has recognized that for 235(b)(2)(A) to apply, "several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez v. Hyde*, No. 25-cv-11613-BEM, 2025 WL 2084238, at

² On September 2, 2025, and again on September 18, 2025, Morales Lopez moved the Board to Dismiss the appeal filed by DHS which perfected the automatic stay, for failure to properly serve undersigned counsel.

*2 (D. Mass. July 24, 2025). The plain meaning of the phrase “seeking admission” requires that the applicant be presently and actively seeking lawful entry into the United States.

As INA § 235(b) and INA § 236(a) are mutually exclusive by their statutory terms, the Immigration Judge properly concluded in accordance with this Court’s reasoning that Morales Lopez is detained under INA § 236(a). *See Nava Hernandez v. Baltazar*, et. al., No. 1:25-cv-03094-CNS, at *7 (D. Colo. Oct. 24, 2025). As Morales Lopez cannot be subject to both mandatory and discretionary detention, he requests that this Court affirm the IJ’s order and Order his immediate release pursuant to that order.

Administrative agencies may not retroactively apply a new rule to cases already pending unless Congress has expressly authorized such application or due process permits it. *See Gutierrez-Brizuela v. Lynch*, 834 F.3d 1142, 1150 (10th Cir. 2016). The procedural posture of this case is very similar to *Gutierrez-Brizuela*. There, the Tenth Circuit had interpreted an immigration statute to permit an alien who had entered the country illegally to seek a discretionary adjustment of status from the Attorney General and remanded the petitioner’s case for the Attorney General to make that discretionary finding. *Id.* Instead of undertaking that task, the Board interpreted the statutory scheme to reach the opposite conclusion the court had and applied its new statutory interpretation to the petitioner. *Id.* The Tenth Circuit determined that the Board’s ability to reverse the court’s decision “like some sort of super court of appeals,” was an unconstitutional revision of a judicial declaration of the law by a political branch. *Id.*

Here, the Board did precisely what *Gutierrez-Brizuela* forbids and acted like some super court of appeals by issuing an unconstitutional revision of judicial declaration. It applied a newly issued decision—one that was not in existence when Morales Lopez’s case was pending—to nullify a bond determination made under the governing law at that time. Morales Lopez and the IJ

both relied upon settled law recognizing jurisdiction under § 236(a). The subsequent Board decision attaching new jurisdictional consequences to his detention cannot constitutionally be applied to him retroactively.

Accordingly, the Court should find that no further proceedings are necessary. The only constitutionally appropriate remedy would be to restore the status quo ante and effectuate the prior lawful bond order. Because his case presents the same factual posture and legal question, and no material distinction exists between his case and other district courts that have already considered this issue, Morales Lopez makes a very strong case for being likely to succeed on the merits of his underlying Petition for Writ of Habeas Corpus, ECF No. 1.

C. Irreparable Harm

Beyond the constitutional violation, Morales Lopez's ongoing detention inflicts a concrete and individualized harm that the government has entirely failed to address. Morales Lopez is the sole provider for 4 USC children, all of whom depend upon him for financial stability, housing, and emotional support. The government's opposition offers the cursory assertion that there is "no alleged harm" from continued detention. That assertion is flatly contradicted by the record and betrays an indifference to the realities of family dependence recognized in habeas jurisprudence.

Detention that deprives 4 USC children of their sole provider is not an abstract harm—it is a daily, measurable deprivation of familial stability and economic survival. Each day he is detained, his family experiences increased financial, caregiving, and emotional burdens. ECF No. 1. He has been separated from them for over three (3) months—two (2) of those were beyond when the Immigration Judge agreed with him.

Respondents' failure even to acknowledge the severe and ongoing harm to Morales Lopez's 4 USC children and the "unique harm" it presents to him reinforces the arbitrariness of its position.

The equities strongly favor immediate release, not only to remedy the constitutional violation but to prevent further irreparable harm to these dependents.

D. Balance of Equities and the Public Interest

A movant must show that the harm they suffer outweighs any harm to the opposing party, and, if issued, the injunction would not adversely affect the public interest. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 112 (10th Cir. 2024). Respondents would not be injured in enforcing the Immigration Judge's Order as they previously had a chance to argue before a neutral arbitrator their positions and an Immigration Judge agreed with Morales Lopez after reviewing the evidence and hearing arguments that he is not a danger to the community or a flight risk.

Furthermore, the public interest is never served by continued unlawful detention. *See Xuyue Zhang v. Barr*, 612 F. Supp. 3d 1005, 1017 (C.D. Cal. 2020) (“[T]he public interest benefits from a preliminary injunction that expedites a bond hearing to ensure that no individual is detained in violation of the Due Process Clause.”). This is particularly so given the patently harsh conditions Morales Lopez continues to be subjected to, as outlined above.

For these reasons, this Honorable Court should find that the balance of equities and public interest factors favor a preliminary injunction for Morales Lopez's immediate release in accordance with the Immigration Judge's Order dated August 14, 2025.

CONCLUSION

For all the reasons set forth above, Morales Lopez respectfully requests that this Court grant his Motion for Temporary Restraining Order and order his **immediate release** pursuant to the Immigration Judge's August 14, 2025, bond determination. The undisputed record establishes that:

1. **Jurisdiction remains proper.** Because Morales Lopez challenges the legality of his continued detention and not a removal order, jurisdiction over this matter is proper under 28 U.S.C. § 2241.

2. **Morales Lopez is overwhelmingly likely to succeed on the merits.** This Court and others have already held that individuals in full § 240 proceedings are detained under § 236(a) and are entitled to bond hearings; and that the automatic stay provision violates due process and exceeds delegated authority.

3. **The Board's October 23, 2025, decision is unlawful.** The Board decision from October 23 applies new law retroactively, in violation of the Tenth Circuit's holding in *Gutierrez-Brizuela v. Lynch* and cannot erase a lawful bond order entered under governing law at the time.

4. **Irreparable harm is ongoing.** Morales Lopez remains detained in violation of his Fifth Amendment rights, separated from his wife and 4 USC children who depend on him for basic subsistence.

5. **The equities and public interest decisively favor release.** There is no articulable interest by Respondents that outweigh the liberty interest of Morales Lopez who is unlawfully detained.

Accordingly, this Honorable Court should grant Morales Lopez's Motion for Temporary Restraining Order and Order his immediate release upon reposting the bond amount as ordered by the Immigration Judge on August 14, 2025, notwithstanding the Board decision dated October 23, 2025.

Dated this 27th day of October 2025.

Respectfully submitted,

/s/ Skylar M. Larson

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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2025, I electronically filed the foregoing **Reply in Support of Motion for Temporary Restraining Order and Attachment A** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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ATTORNEY FOR PETITIONER

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martinez**

Civil Action No. 25-cv-3078-WJM-KAS

JESUS MORALES LOPEZ

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as warden
of the Aurora Contract Detention Facility, et al.

Respondents.

**ATTACHMENTS TO PETITIONER'S REPLY IN SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING ORDER**

Exhibit A. Decision of the Board of Immigration Appeals, dated October 23, 2025

A



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*



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DHS/ICE Office of Chief Counsel - AUR
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Centennial CO 80111-5663

Name: MORALES-LOPEZ, JESUS

A



Date of this Notice: 10/23/2025

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

A handwritten signature in black ink, appearing to read "John Seiler".

John Seiler
Acting Chief Clerk

Enclosure

Userteam: Docket



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

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Centennial CO 80111-5663

Name: MORALES-LOPEZ, JESUS

A



Date of this Notice: 10/23/2025

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

A handwritten signature in black ink that reads "John Seiler".

John Seiler
Acting Chief Clerk

Enclosure

Userteam: Docket

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

Jesus MORALES-LOPEZ, 

Respondent

FILED
Oct 23, 2025

ON BEHALF OF RESPONDENT: Skylar Madison Larson, Esquire

ON BEHALF OF DHS: James Cole Weber, Assistant Chief Counsel

IN BOND PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Aurora, CO

Before: Gallow, Appellate Immigration Judge

GALLOW, Appellate Immigration Judge

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s August 14, 2025, order which released the respondent from custody on condition of paying a \$7,500 bond.¹ The appeal will be sustained, and the Immigration Judge’s bond order will be vacated.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

While this appeal was pending, the Board issued a precedential decision concluding Immigration Judges lack the authority to hear bond requests or to grant bond to aliens who are present in the United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025); *see also* section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A). Because the respondent is present in the United States without admission, there is no authority to grant a bond in this case. *Id.*

Accordingly, the following order will be entered.

¹ On August 19, 2025, the government filed a Senior Legal Official Certification (Form EOIR-43), automatically staying the decision of the Immigration Judge which remains in abeyance pending a decision of the appeal by this Board. 8 C.F.R. § 1003.19(i)(2).

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ORDER: The appeal is sustained, and the Immigration Judge's August 14, 2025, bond order is vacated.