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 PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Jesus Morales Lopez, by and through undersigned counsel, respectfully submits the following Reply in Support of his Petition for Writ of Habeas Corpus, ECF No. 1, and the Court's Order to Show Cause, ECF No. 9. On October 1, 2025, Morales Lopez filed the instant Petition for Writ of Habeas Corpus challenging the automatic stay provision at 8 C.F.R. § 1003.19(i)(2) as unlawful under the Fifth Amendment and ultra vires of the authority delegated in the Immigration and Nationality Act. ECF No. 1. On October 27, 2025, in answer to the Petition, Respondents argued the Petition should be denied because Morales Lopez is "lawfully detained pursuant to 8 U.S.C. § 1225(b)(2)(A)" and that if the Court determines he is detained under § 1226(a), Morales Lopez's "detention remains lawful due to Respondents' invocation of an automatic stay of the bond." ECF No. 19 at 1. Morales Lopez's reply follows accordingly.

PROCEDURAL HISTORY

Emergency Temporary Restraining Order

On October 2, 2025, one (1) day after filing his Petition with the Court, Morales Lopez was scheduled with the Aurora Immigration Court for an Individual Hearing on October 15, 2025. ECF No. 10. On October 10, 2025, Morales Lopez moved the Court for an Emergency Temporary Restraining Order preventing Respondents from conducting that Individual Hearing, as he had only been given thirteen (13) days' notice and out of concern that the "abrupt timing" of this scheduling was "in retaliation of Morales Lopez pursuing a judicial proceeding." ECF No. 13 at 2. On October 14, 2025, the Court denied the Emergency Temporary Restraining Order on the ground that his requested relief, related to the underlying removal case, bore little nexus to the basis of his habeas petition. ECF No. 13 at 3.

Temporary Restraining Order

On October 20, 2025, Morales Lopez filed a Temporary Restraining Order seeking his immediate release pursuant to the Immigration Judge's bond order dated August 14, 2025. *See* ECF No. 14. On October 23, 2025, Respondents filed their opposition to the Temporary Restraining Order. ECF No. 17. On October 27, 2025, Morales Lopez filed his reply to Respondents' opposition of the Temporary Restraining Order. ECF No. 18.

Change in Circumstances

As addressed in Morales Lopez's reply to Respondents' opposition of the Temporary Restraining Order, on October 23, 2025, the Board of Immigration Appeals (BIA) purportedly vacated the IJ's August 14, 2025, Bond Order. *See* ECF No. 18 at Attachment A. The BIA's sole analysis was that under the newly decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025),

"there is no authority to grant a bond in this case" as Morales Lopez "is present in the United States without admission." ECF No. 18 at Attachment A.

On October 28, 2025, the Court Ordered Supplemental Briefing from the parties regarding 1) whether Morales Lopez's Petition was moot in light of the BIA decision and 2) whether it would appropriate for the Court to grant Morales Lopez leave to amend his Petition. ECF No. 21.

On November 3, 2025, Morales Lopez moved for leave to amend his Petition (ECF No. 1) and included a proposed First Amended Petition with his Motion (ECF No. 23). Respondents did not oppose the Motion for Morales Lopez to address the change in circumstances with the BIA decision. ECF No. 23. In his First Amended Petition, Morales Lopez addressed the substantive argument Respondents have made about his case—that he is detained under § 1225. The plain statutory language states that Morales Lopez is properly detained under § 1226(a) not § 1225, the two statutes are mutually exclusive of each other, and Morales Lopez must be released in accordance with the IJ's bond order. ECF No. 23. Morales Lopez also explained the following BIA case history:

Aug. 14, 2025:	DHS filed EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination (ECF No. 23 at Attachment E)
Aug. 18, 2025:	Undersigned counsel filed EOIR-27, Entry of Appearance before the BIA (ECF No. 23 at Attachment G)
Aug. 20, 2025:	DHS filed EOIR-26, Notice of Appeal with Cancelled DHS Form I-286 (ECF No. 23 at Attachments H and I)
Aug. 27, 2025:	Undersigned counsel received notice of EOIR-26 ***for the first time*** and simultaneous notice that her EOIR-27 filed on Aug. 18 was rejected (ECF No. 23 at Attachment K)
Sept. 2, 2025:	Undersigned counsel filed a Motion to Dismiss for failure to properly serve EOIR-26 (ECF No. 23 at Attachment K)

Oct. 23, 2025: BIA issued decision with no adjudication of the pending Motion to Dismiss (ECF No. 23 at Attachment L)

Morales Lopez was prejudiced by the invocation of the automatic stay provision beginning on August 27, 2025, when an entire week had elapsed without any notice of the appeal that perfected the automatic stay. During this critical period, Morales Lopez remained detained without knowledge that his bond order had been automatically stayed, depriving him of the opportunity to meaningfully respond or prepare a defense. This lost week represented valuable time that could have been used to prepare the instant Petition or seek other legal remedies while his liberty was at stake. The deprivation of notice in this context is not a mere procedural irregularity—it directly impacted Morales Lopez's ability to defend against continued detention and to make informed strategic decisions in his case. These procedural anomalies are not isolated oversights but integral to understanding how DHS's invocation of the automatic stay stripped Morales Lopez of the timely notice and meaningful opportunity to challenge his ongoing detention.

On November 5, 2025, Respondents filed their Supplemental Briefing wherein they argued the Petition at ECF No. 1 was moot but that the Motion for Leave to file the First Amended Petition at ECF No. 23 should be granted. *See* ECF No. 25.

ARGUMENTS

Morales Lopez first contends that his detention is governed by § 1226(a) and not § 1225(b)(2)(A) as the IJ properly concluded during his custody redetermination hearing. Morales Lopez also contends that that the automatic stay regulation, which stays an IJ's release order during an appeal to the BIA is unlawful and cannot be enforced.

I. MORALES LOPEZ IS PROPERLY DETAINED UNDER § 1226(a) AND ENTITLED TO BOND.

Morales Lopez is properly detained under § 1226(a) and entitled to bond. The plain language of the statute in conjunction with Respondents' treatment of Morales Lopez establishes that he is detained under § 1226(a) discretionary authority.

A. Plain Statutory Text Says Morales Lopez is Detained Under 8 U.S.C. § 1226(a).

The relevant detention statutes at issue here are 8 U.S.C. § 1225(b)(2), which requires mandatory detention "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that the alien seeking admission is not clearly and beyond a doubt entitled to be admitted," and 8 U.S.C. § 1226(a), which states that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § § 1225, 1226. The primary dispute between the parties largely hinges on the meaning of "seeking admission." 8 U.S.C. § 1225(b)(2). While the INA defines the terms "admission," "admitted," and "applicant for admission," it does not define "*seeking* admission." 8 U.S.C. § § 1101(13)(A), 8 U.S.C. § 1225(a)(1) (emphasis added).

The District Court of Colorado has found that Respondents' interpretation of the statute is contrary to its plain language. *See Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *12 (D. Colo. Oct. 22, 2025); *Mendoza Gutierrez v. Baltazar*, No. 25-cv-2720-Case RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Nava Hernandez v. Baltazar*, No. 25-cv-03094-CNS (D. Colo. Oct. 24, 2025); *Moya Pineda v. Baltazar, et al.*, 1:25-cv-02955-GPGTPO (D. Colo. Oct. 20, 2025), ECF 21 at 2, 3 (determining that petitioner, who has lived in the United States for "nearly twenty years" and "was not detained while attempting to enter the country ... is not subject to § 1225(b)(2)(A)'s mandatory detention provision"). The weight of authority interpreting § 1225 has recognized that for § 1225(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. *Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *12 (D. Colo. Oct. 22, 2025) (*citing Martinez v. Hyde*, No. 25-cv-11613-BEM, 2025 WL 2084238, at *2 (D. Mass. July 24, 2025).

The plain meaning of the phrase "seeking admission" requires that an applicant be presently and actively seeking lawful entry into the United States. *Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *12-13 (D. Colo. Oct. 22, 2025). The use of the present participle in § 1225(b)(2)(A) "implies action—something that is currently occurring, and in this instance, would most logically occur at the border upon inspection." *Id.* at *13 (*citing Lopez-Campos v. Raycraft*, F. Supp. 3d, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025). Simply put, "noncitizens who are just present in the country...,who have been here for years upon years and never proceeded to obtain any form of citizenship...are not 'seeking admission' under § 1225(b)(2)(A)." *Id.*

As § 1225(b)(2)(A) applies only to those noncitizens who are actively 'seeking admission' to the United States, it cannot, according to its ordinary meaning, apply to persons who have already been residing in the United States for several years. *Id.* (*citing Lopez-Benitez v. Francis*, F. Supp. 3d, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025). Morales Lopez has been present in the United States since approximately 2006. Therefore, notwithstanding any lack of lawful status, Morales Lopez was not seeking lawful entry into the United States at the time he was detained—he was already here. He was thus not "seeking admission" and is not subject to § 1225(b)(2)(A)'s mandatory detention provision. *See Loa Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650, at *16 (D. Colo. Oct. 22, 2025) (*citing Lepe v. Andrews*, F. Supp. 3d, 2025 WL 2716910,

at *5 (E.D. Cal. Sept. 23, 2025) ("[P]etitioner is not actively 'seeking' 'lawful entry' because he already entered the United States—thirty-two years ago. If anything, petitioner is seeking to *remain* in the United States.").

The plain language of § 1225, especially when considering the title of the statute, applies only to arriving aliens "seeking" admission at a port of entry, and not those who have been in the country for a period of time, such as Morales Lopez. The expression "alien seeking admission" plainly describes an individual taking some action, and, given the placement in the statute, that action would likely occur at the border upon inspection.

In addition to the plain text, the INA's legislative history and past enforcement of the at-issue statutes supports Morales Lopez's reading of the statutes. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, 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").

Thus, in the decades that followed their enactment in 1996, most people who entered without inspection and were thereafter arrested and placed in standard removal proceedings were considered eligible for release on bond and received bond hearings before an IJ, unless their

criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

On July 8, 2025, ICE "in coordination with" the Department of Justice announced a new policy that rejected this well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and are ineligible for IJ bond hearings. *Id.*

Dozens of federal courts, including this Court, have rejected Respondents' new interpretation of the INA's detention authorities. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Los Caballero v. Baltazar,* No. 25-cv-03120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Mendoza Gutierrez v. Baltazar,* No. 25-cv-2720-Case RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Nava Hernandez v. Baltazar,* No.

25-cv-03094-CNS (D. Colo. Oct. 24, 2025); and *Moya Pineda v. Baltazar, et al.*, 1:25-cv-02955-GPGTPO (D. Colo. Oct. 20, 2025), ECF 21.

Respondents contended that out of the dozens of courts that have reviewed this exact issue, that the "decisions do not explain why the text of section 1225(b)(2)(A) does not apply to non-citizens who enter without inspection and then reside in the United States ... this Court must follow *Jennings*, not those decisions." ECF No. 19 at 14. While § 1225(b)(2) is broader than § 1225(b)(1), that does not mean that § 1225(b)(2) applies to all other noncitizens in the United States who have not been admitted. *Mendoza Gutierrez v. Baltazar*, No. 25-cv-2720-Case RMR, 2025 WL 2962908, at *6 (D. Colo. Oct. 17, 2025). Respondents ignore the greater context from *Jennings*, which made clear that § 1225(b)(2)'s "catchall" provision—and, in fact, all provisions of § 1225—apply to noncitizens "seeking admission into the country," as opposed to those who are "already in the country." See *Nava Hernandez v. Baltazar*, No. 25-cv-03094-CNS (D. Colo. Oct. 24, 2025) (*citing Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)).

Aside from the statutory construction, if the Court were to agree with Respondents' interpretation of the INA, a large part of the INA's statutory scheme would be rendered superfluous. A "noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under § 1226." *See Nava Hernandez v. Baltazar*, No. 25-cv-03094-CNS (D. Colo. Oct. 24, 2025) (quoting *Lopez Benitez,* 2025 WL 2371588, at *4). Indeed, "if § 1225(b)(2) already mandated detention of any noncitizen who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless." Id. (quoting *Barrera v. Tindall,* 3:25-cv-541-RGJ, 2025 WL 2690565, *4 (W.D. Ky. Sept. 19, 2025)). The Court should decline to adopt Respondents' interpretation as it would lead to redundancy and render parts of the INA superfluous.

Respondents' interpretation of § 1225 is contrary to the agency's own implementing regulations; its published guidance; the decisions of its immigration judges (until very recently); decades of practice; the Supreme Court's gloss on the statutory scheme; and the overall logic of our immigration system. Therefore, this Court should join in the numerous courts across the country that have held that petitioners like Morales Lopez are subject to the discretionary detention framework of § 1226(a).

B. Other Factors Indicate § 1226(a) Detention Authority

Although the plain text of the statute demonstrates that Morales Lopez is not detained under § 1225, there are other factors present to demonstrate that Morales Lopez is detained under § 1226(a).

Aside from being inconsistent with the statute's plain language, Respondents' interpretation is inconsistent with the related implementing regulations. Though not binding, "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). The implementing regulations state that "any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act shall be detained in accordance with section 235(b) of the Act." 8 C.F.R. § 235.3(c)(1). The regulations define "arriving alien" as "an applicant for admission coming or attempting to come into the United States." *Id.* § 1.2. The regulations appear "to contemplate that applicants seeking admission are a subset of applicants 'roughly interchangeable' with 'arriving aliens,'" *Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL 2822876, at *11 (N.D. Cal. Oct. 3, 2025) (quoting *Martinez*, 2025 WL 2084238, at *6), and underscore Morales Lopez's interpretation of § 1225.

Respondents' treatment of Morales Lopez also conflicts with their assertion that he is detained pursuant to § 1225. DHS's Notice of Custody Determination (Form I-286) states that Morales Lopez was being detained "[p]ursuant to the authority contained in section 236 of the Immigration and Nationality Act." ECF No. 23 at Attachment B. INA § 236(a) is codified at 8 U.S.C. § 1226. Therefore, the Government's own detention paperwork suggests that Morales Lopez is detained under § 1226, not § 1225. *Lopez Benitez*, 2025 WL 2371588, at *4 ("Respondents' own exhibits unequivocally establish that Mr. Lopez Benitez was detained pursuant to Respondents' discretionary authority under § 1226(a). The warrants for Mr. Lopez Benitez's respective arrests in 2023 and 2025 explicitly authorized those arrests pursuant to 'section 236 of the Immigration and Nationality Act'—i.e. § 1226.").

The record shows that Morales Lopez was never properly served with the DHS Notice of Appeal, which included the purportedly "cancelled" Form I-286. ECF No. 23 at Attachment K. Under 8 C.F.R. § 1003.3(a)(1), the filing of an appeal must be properly served on opposing counsel of record, to afford a respondent notice and an opportunity to respond to the contents of the appeal, including any new or altered evidence the Department seeks to introduce. Because the purportedly "cancelled" Form I-286 was first presented as part of the late-served Notice of Appeal, it arrived outside the procedural bounds of the record that the Immigration Judge relied upon and that Morales Lopez could meaningfully challenge. Consequently, this document cannot be given retroactive authority to alter the record or the basis of the IJ's custody decision.

Granting effect to an unserved and belated filing would effectively sanction ex parte supplementation of the record, contrary to the requirements of 8 C.F.R. § § 1003.3(a)(1) and 1003.38(g) (governing filing and service) and the fundamental due process guarantee of notice and an opportunity to be heard. The late service of the EOIR-26—accompanied by a previously unseen

"cancelled" I-286—deprived Morales Lopez of a meaningful opportunity to contest or rebut this new evidence. The regulation's procedural safeguards exist precisely to prevent such one-sided record supplementation. The government's unilateral alteration of the custody record, without service or adjudication, renders any subsequent reliance on that document procedurally defective and constitutionally infirm. The IJ's original bond determination remains the only valid custody order, and Morales Lopez's continued detention based on an unserved and defective filing violates both agency regulation and due process.

Second, the warrant for his arrest (DHS Form I-200) similarly stated that the arrest was pursuant to "section 236 of the Immigration and Nationality Act." ECF No. 23 at Attachment C. Lastly, the Notice to Appear issued to Morales Lopez contains three designation options for Morales Lopez: 1) "an arriving alien"; 2) "an alien present in the United States who has not been admitted or paroled"; and 3) a person "admitted to the United States, but ... is removable." ECF No. 23 at Attachment A. The issuing DHS officer did not designate Morales Lopez as "an arriving alien," which, as explained above, "is the active language used to define the scope of section 1225(b)(2)(A) in its implementing regulation." *See* 8 C.F.R. § 235.3(c)(1). Instead, it stated that he was being placed in full removal proceedings under INA § 240.

The Court must also find the BIA's reliance on *Matter of Yajure Hurtado* unpersuasive. The Supreme Court has instructed that courts must exercise independent judgment in determining the meaning of statutory provisions and they may not defer to an agency interpretation of the law simply because a statute is ambiguous. *Loper Bright*, 603 U.S. at 413. As the Supreme Court has made clear, agencies have no special competence in resolving statutory ambiguities. *Id.* at 400-01.

Here, the BIA's reliance on *Yajure Hurtado* which collapses the distinction between applicants for admission and long-term residents, is not only inconsistent with the plain text and

implementing regulations but also constitutes an impermissible agency attempt to expand its jurisdiction. *See Ortiz Donis v. Chestnut*, No. 1:25-cv-01228, 2025 WL 2879514, at *8 (E.D. Cal. Oct. 9, 2025). The BIA's novel interpretation that any alien present in the United States is "seeking admission" distorts the plain meaning of the statute. *J.A.M. v. Streeval, et al.*, No. 4:25-cv-342 (CDL), 2025 WL 3050094, at *4 (M.D. Ga. Nov. 1, 2025). *Yajure Hurtado* also ignores § 1226 and fundamental canons of statutory interpretation that require consideration of the relevant context within which the statute exists. *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025).

The BIA's decision in *Yajure Hurtado* represents an unauthorized reinterpretation of the INA that disregards decades of settled understanding and violates the separation of powers. Because Morales Lopez was already granted bond, only for it to be retracted by the BIA in reliance on the erroneous *Yajure Hurtado* decision, the Court should find Morales Lopez is entitled to be released.

II. THE APPLICATION OF THE AUTOMATIC STAY WAS UNCONSTITUTIONAL AND FURTHER WARRANTS MORALES LOPEZ'S IMMEDIATE RELEASE.

Morales Lopez asserts that the automatic stay provision as applied to him was unconstitutional and the BIA's decision that did not address fundamental procedural errors in his case violated his right to due process. Here, because a sole DHS official invoked authority beyond that which he was delegated by Congress, Morales Lopez has been unlawfully and unnecessarily detained and separated from his family.

Morales Lopez asserts that the Court must still review the question of the automatic stay provision as applied in his case as there were important procedural questions not addressed by the BIA in its decision and because Morales Lopez would remain vulnerable to re-detention and

therefore DHS could use the automatic stay provision again. The prospect of re-detention is not speculative. Habeas petitions filed around the country confirm that Respondents are re-detaining—and subjecting to their new detention policy—individuals previously released. *See e.g.*, *Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at *1 (N.D. Cal. Sept. 9, 2025) (three petitioners originally released on their own recognizance before being subject to Respondents' mandatory detention policy); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *1 (N.D. Cal. Sept. 3, 2025) (same for one petitioner); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *2 (N.D. Cal. Aug. 21, 2025) (same); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at *2 (E.D. Cal. Sept. 9, 2025) (bond revoked for petitioner who was later subjected to Respondents' mandatory detention policy).

The automatic stay provision found in 8 C.F.R. § 1003.19 vests authority in a DHS official to unilaterally and automatically stay an IJ's order that a noncitizen's continued detention is not warranted. The automatic stay's lack of procedural safeguards to prevent the federal government from arbitrarily detaining noncitizens for up to ninety days renders it unconstitutional under the Due Process Clause of the Fifth Amendment, both facially and as applied to noncitizens like Morales Lopez. *See Herrera v. Knight*, No. 2:25-cv-01366-RFB-DJA, 2025 WL 2581792, at *8-13 (D. Nev. Sept. 5, 2025).

The statutory section under which Petitioner is charged permits the Attorney General to detain or release aliens on bond. 8 U.S.C. § 1226(a). Congress has permitted the Attorney General to delegate detention determinations to "any other officer, employee, or agency of the Department of Justice." 28 U.S.C. § 510. IJs are administrative law judges within the DOJ and are thus properly delegated bond-determination authority. *See* 8 U.S.C. § 1101(b)(4). By contrast,

DHS, the party that invoked the automatic stay provision, is not within the Department of Justice, but is a separate executive department. *See* 6 U.S.C. § 111.

By permitting DHS to unliterally extend the detention of an individual, in contravention of the findings of an agent (the IJ) properly delegated the authority to make such a determination, 8 C.F.R § 1003.19(i)(2) exceeds the statutory authority Congress gave to the Attorney General. "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." *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004). Accordingly, the challenged regulation is invalid and Petitioner's detention on that basis is unlawful.

To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, (1976). Pursuant to *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

The automatic stay provision functions as a unilateral executive veto over a judicial determination of liberty, effectively transforming a neutral adjudication into an unreviewable executive command. Such unchecked power offends the very core of due process. The absence of notice and individualized findings before reinstating detention is precisely the kind of arbitrary government action that the Fifth Amendment forbids. Here, Morales Lopez's harm is not

hypothetical. The week-long delay in service and the BIA's refusal to adjudicate the motion to dismiss demonstrate a system operating without the most basic procedural guardrails. No amount of post hoc justification can cure a deprivation of liberty that occurred without process of law.

First, Morales Lopez has a significant interest at stake. Being free from physical detention by one's own government "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Morales Lopez is being held in conditions indistinguishable from criminal incarceration and separated from his 4 USC children. *See Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. May 21, 2025) (noting the petitioner, housed in a county jail facility along with other civil detainees in addition to criminal suspects and convicted criminals, was "experiencing all deprivations of incarceration, including loss of contact with friends and family, loss of income earning, interruptions to his education, lack of privacy, and, most fundamentally, the lack of freedom of movement.").

Second, there is a large risk of erroneous deprivation of Morales Lopez's liberty interest through the procedures used in this case, as the only individuals subject to the automatic stay are those who, by definition, prevailed at their bond hearing. In this case, the Immigration Judge found Morales Lopez was not a threat to public safety and determined the $ 7,500 bond would mitigate any risk of flight. Nevertheless, despite a neutral decision-maker finding a bond was warranted, the automatic stay provision allowed DHS, the party who lost its bond argument, to unliterally deprive Morales Lopez of his liberty. Other courts considering the automatic stay provision have found this problematic as well. *See Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1078 (N.D. Cal. 2004) ("The [automatic stay] procedure additionally creates a potential for error because it conflates the functions of adjudicator and prosecutor.").

Additionally, the stay provision does not require DHS to consider or demonstrate any individualized facts or show a likelihood of success on the merits. *See* 8 C.F.R § 1003.19(i)(2) (stating the stay is automatic and the bond "shall be stayed" upon filing of the form EOIR-43). "[A] stay of an order directing the release of a detained individual is an 'especially' extraordinary step, because '[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.'" *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *9 (D. Minn. May 21, 2025) (alteration in original) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). By contrast, the automatic stay regulation "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *Id.*

Lastly, as to the third *Mathews* factor, there is not a significant governmental interest at stake in Morales Lopez's detention pursuant to the automatic stay provision. Respondents have not attempted to show any "special justification" or compelling governmental interest which would outweigh Morales Lopez's constitutional liberty. Rather than explain its potential interest, Respondents focused instead on its supposed authority under § 1225 to detain Morales Lopez. Even if the Court were to assume the government had asserted an interest in, for example, ensuring Morales Lopez's availability for his immigration case, this interest had already been secured by the IJ's finding that Morales Lopez is neither a danger nor a flight risk. The governmental interest in the continued detention of the least-dangerous individuals, in contravention of the order of a neutral factfinder, does not outweigh the liberty interest at stake. Accordingly, the Court must agree that Respondents' invocation of the automatic stay provision to detain Morales Lopez violated his substantive due process rights under the Fifth Amendment.

"Agency actions beyond delegated authority are 'ultra vires,' and courts must invalidate them." U.*S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid). When undersigned counsel timely objected to this due process violation by filing a Motion to Dismiss for failure to serve, the BIA failed to adjudicate the Motion either separately or within its final decision. The BIA's silence on a pending, properly filed motion constitutes reversible error. The BIA is required by regulation to consider and address all issues raised by the parties. *See* 8 C.F.R. § 1003.1(d)(3)(i) (limiting the BIA's review to the record but obligating it to "resolve the appeal in a manner that is consistent with the record and arguments raised"). By failing to acknowledge or rule on the service violation and the resulting prejudice, the BIA not only denied Morales Lopez a reasoned decision but also contravened the fundamental principle of administrative law that agencies must articulate a rational connection between the facts found and the decision made. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The automatic stay provision in 8 C.F.R. § 1003.19(i)(2) is both unconstitutional and ultra vires. It authorizes an executive agency to nullify a lawful custody determination by a neutral adjudicator without notice, hearing, or judicial review, in direct violation of due process and the statutory scheme Congress enacted. The regulation's mechanical invocation—without individualized findings, procedural safeguards, or any showing of necessity—transforms a discretionary statutory scheme into a regime of arbitrary detention. By applying this provision to Morales Lopez, DHS exceeded the authority delegated by Congress and deprived him of liberty without due process of law. This unlawful use of authority that was never delegated to DHS prejudiced Morales Lopez in real time: first, during the critical week he was not served with the

Notice of Appeal, and again when the agency failed to adjudicate his Motion to Dismiss beginning on September 2, 2025. This Court must therefore invalidate the automatic stay as applied and order Morales Lopez's immediate release pursuant to the Immigration Judge's prior bond order.

Conclusion

For the foregoing reasons, the Court should grant the Petition for Writ of Habeas Corpus. The record makes clear that Morales Lopez's detention is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and that he has already been found eligible for release on bond by a neutral decision-maker. The Government's attempt to override that determination through an automatic stay regulation that is both ultra vires and constitutionally infirm violates the fundamental guarantees of due process and the separation of powers.

Respondents' reliance on the BIA's decision in *Matter of Yajure Hurtado*—a decision inconsistent with the plain text of the INA, its implementing regulations, and decades of settled practice—cannot justify the continued detention of a person who has lived in the United States for nearly two decades and who has been found neither dangerous nor a flight risk.

Morales Lopez's continued detention under these circumstances is arbitrary, unlawful, and contrary to both statutory and constitutional limits on executive detention. The Court should therefore 1) declare that Morales Lopez's detention is authorized by 8 U.S.C. § 1226(a) and not § 1225; 2) declare that the automatic stay provision is invalid as applied to Morales Lopez and unconstitutional on its face; and 3) order Morales Lopez's immediate release under the Immigration Judge's previously issued bond order.

Dated this 12th day of November 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, I electronically filed the foregoing **Reply in Support of Petition for Writ of Habeas Corpus** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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