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 FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS (ECF NO 31)

Petitioner, JESUS MORALES LOPEZ, by and through undersigned counsel, respectfully submits this reply in support of his First Amended Petition for Writ of Habeas Corpus (ECF No. 31). On December 3, 2025, Respondents filed their Response in reply to the First Amended Petition for Writ of Habeas Corpus. ECF No. 35. As in other cases, Respondents argued that Morales Lopez's requested relief should be denied because he entered the United States without inspection and remained in the country without being admitted and is properly subject to 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision as an "applicant for admission" to the United States. ECF No. 35. This argument fails for the same reason courts across the country have rejected it: the government has no lawful statutory authority to detain individuals like Morales Lopez under § 1225(b)(2), and its reinterpretation of the statute cannot displace the statutory scheme Congress created under § 1226(a).

With the Immigration Judge's December 4, 2025, order expressly concluding that he lacks jurisdiction to conduct a custody redetermination under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), Morales Lopez is now left without (1) an authorized detention statute, (2) any forum for custody review, or (3) any mechanism for release—a result Congress did not permit, and the Constitution does not tolerate. For the reasons below, the Court should Order any of the following that the Court deems appropriate including Morales Lopez's 1) immediate release pending the scheduling of a new bond hearing, at which the government must prove by clear and convincing evidence that Morales Lopez is a flight risk or danger to the community, or 2) immediate release pursuant to the IJ's individualized determination that he is not a flight risk or danger to the community.[1]

I. Jurisdiction

Morales Lopez's procedural history establishes unequivocally that this Court—not the Tenth Circuit—is the only court with jurisdiction to adjudicate his challenge to unlawful detention. *See* ECF No. 34 at 4 ("the Court cannot effectively reverse the BIA's decision and revive the IJ's Order. That specific power would appear to lie with the Tenth Circuit Court of Appeals."). Morales Lopez's first and only custodial arrest by Respondents on July 2, 2025, was pursuant to 8 U.S.C. § 1226(a), and all subsequent proceedings unfolded within that statutory framework: an IJ conducted a full individualized custody hearing, found that Morales Lopez posed no risk of flight or danger to the community, and ordered release on bond. DHS appealed, and the BIA vacated solely based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), without disturbing any of the factual finding made by the IJ regarding flight risk or danger to community. The IJ's

[1] On December 11, 2025, the parties conferred regarding a forthcoming joint request stipulating to Morales Lopez's conditional release pending a bond hearing where the government bears the burden of proof.

December 4, 2025, order confirmed the structural collapse of the statutory scheme by concluding that he "lacks jurisdiction" to conduct a custody redetermination at all.

The Court's earlier concern that the Tenth Circuit would be the only court with authority to "reverse" the BIA and "revive" the IJ order, misunderstands the nature of the challenge presented herein. Morales Lopez is not seeking review of the BIA's decision as a final order of removal, nor contesting removability, or any issue arising in removal proceedings. The INA, and as codified at 8 U.S.C., contains no provision for judicial review with the Tenth Circuit unless it is a final removal order.

While Morales Lopez received a decision from the BIA, this is not a final order of removal and therefore does not move jurisdiction to the Tenth Circuit. Additionally, Morales Lopez challenges the statutory authority for detention itself, precisely the type of claim that the Supreme Court has said is expressly precluded from review by the Tenth Circuit from review under 8 U.S.C. § 1252(b)(9) and is proper for the District Court's review. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018) (holding that detention-authority challenges are not barred by § 1252(b)(9)); *Nielsen v. Preap*, 586 U.S. 392 (2019); *see also Vaupel v. Ortiz*, 244 F. App'x 892, 894-96 (10th Cir. 2007).

The BIA's October 23, 2025, decision likewise does not divest this Court of jurisdiction. Decisions of the BIA are persuasive, not binding, authority on the Court and this Court should reject the holding of *Matter of Yajure Hurtado*, because it conflicts with the plain meaning of the INA. *See Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF (D.N.M. Nov. 7, 2025) (finding that *Yajure Hurtado* conflicts with the Supreme Court's reasoning under *Jennings*, and previous determinations by district courts that noncitizens already present in the United States are subject to § 1226 necessarily implies a rejection of *Yajure Hurtado*). Moreover, the Supreme Court recently directed district courts that they "must exercise independent judgment in determining the

meaning of statutory provisions" and "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413 (2024).

Said best by the District of New Jersey, where an Immigration Judge finds no jurisdiction under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as the IJ did on December 4, 2025, and jurisdiction is the sole basis for denying bond, "any decision by the Immigration Judge to keep [a] [p]etitioner detained based on *Yajure Hurtado* would be at odds with the laws of the United States—because the [p]etitioner must be treated as detained under Section 1226 not Section 1225." *Barzola v. Warden*, No. 2:25-cv-17326 (D.N.J. Dec. 1, 2025). In Morales Lopez's case, there was either a finding that he merited release under § 1226(a) or a finding of no jurisdiction under *Matter of Yajure Hurtado*. Therefore, there is no preclusive effect preventing the Court from granting Morales Lopez's requested relief either based on the BIA or IJ decision.

Therefore, jurisdiction lies exclusively with this Court.

The IJ's December 4, 2025, determination that he lacks jurisdiction confirms that exhaustion is both satisfied and excused. There is a narrow exception to the exhaustion requirement where a petitioner can demonstrate that exhaustion would be futile. *Garza v. Davis*, 596 F.3d 1198, 1203-04 (10th Cir. 2010). Morales Lopez has pursued every available administrative avenue: he received a bond under § 1226(a), DHS invoked the automatic stay, the BIA adjudicated DHS's appeal, and Morales Lopez sought another review with the IJ based on his class membership under *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, ---F. Supp. 3d ---, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

This proves that the immigration court can no longer provide any relief, exhaustion is categorically futile, and only the district court can ensure Morales Lopez's release. Further administrative review by Respondents would be futile because of the categorical rule imposed by

the agency in *Matter of Yajure Hurtado*. This is the exact circumstance under which courts have categorically found exhaustion to be unnecessary and futile because the agency has foreclosed the very process by which Morales Lopez is entitled to by statute. *See Salazar-Martinez v. Lyons*, No. 2:25-cv-00961-KG-KBM (D. N.M. Nov. 17, 2025).

Accordingly, exhaustion is both complete and excused.

II. 8 U.S.C. § 1225 v. 8 U.S.C. § 1226

The legal issue presented here has been recently litigated and decided in the District Court for the District of Colorado, as well as many other courts across the country. Those cases similarly concerned noncitizens living in the United States for decades and being held in immigration-related detention and denied bond hearings following the government's recent reinterpretation of 8 U.S.C. § § 1225 and 1226. The arguments raised here echo identical arguments raised across the country and in this judicial district. *See Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025); *Arauz v. Baltazar*, No. 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025); *Nava Hernandez v. Baltazar, et al.*, No. 1:25-CV03094-CNS, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Hernandez Vazquez v. Baltasar, et al.*, No. 1:25-cv-3049-GPG, ECF No. 22 (D. Colo. Oct. 23, 2025); *Loa Caballero v. Baltazar, et al.*, No. 1:25-cv-3120-NYW, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltasar, et al.*, No. 1:25-cv-2955-GPG, ECF No. 21 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez v. Baltasar, et al.*, No. 1:25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Garcia-Arauz v. Noem*, No. 2:25-cv-02117-RFB-EJY, --- F. Supp. 3d ----, 2025 WL 3470902 (D. Nev. Dec. 3, 2025); *Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY, --- F. Supp. 3d ----, 2025 WL 3205356 (D. Nev. Nov. 17, 2025); *Ramos v. Rokosky*, No. 25cv15892 (EP), 2025 WL 3063588 (D.N.J. Nov. 3, 2025);

Godinez-Lopez v. Ladwig, 2025 WL 3047889 (W.D. Tenn. Oct. 31, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Romero v. Hyde*, Civil Action No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); and *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), --- F.Supp.3d ----, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025).[2]

Other than relying on the government's sudden and unsupported reinterpretation of § 1225(b)(2)(A)'s mandatory detention provisions, Respondents provide no authority to support Morales Lopez's detention under 8 U.S.C. § 1225. ECF No. 35. Accordingly, the Court should adopt the reasoning previously articulated and find that Morales Lopez is and should be detained under § 1226(a). *See generally id.*; *see also Espinoza Ruiz*, 2025 WL 3294762, at *2 (discussing "the proper application of § § 1225 and 1226" as articulated by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018)).

III. Due Process

Morales Lopez's continued detention despite his clear classification under 8 U.S.C. § 1226 violates his right to due process. The Fifth Amendment's Due Process Clause prohibits the government from depriving any person of liberty without due process of law. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

The Due Process Clause's protections extend to all persons in the United States, including noncitizens "whether their presence here is lawful, temporary, or permanent." *Id.* at 693. Morales

[2] Indeed, in denying Morales Lopez's Third Temporary Restraining Order (TRO) on November 21, 2025, the Court indicated that "[t]he parties should assume that the Court will likely conclude, as numerous other courts have, that undocumented immigrants who have resided in the country for years fall within the auspices of section 1226(a)—not section 1225(b)(2)(A)." ECF No. 34 at 2.

Lopez is detained under 8 U.S.C. § 1226(a) and is therefore owed the due process of § 1226—namely an individualized bond hearing before an IJ. *See Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729, at *9 (D.N.M. Sept. 23, 2025) (quoting *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2396379, at *9 (E.D. Mich. Aug. 29, 2025)).

Here, the due process violation becomes more egregious based on the second detention invoked in the automatic stay which must independently satisfy due process, which it does not, and the separate detention under § 1225, which equally does not satisfy due process. *See Silva v. LaRose*, No. 25-cv-2329-JES-KSC (S.D. Cal. Sept. 29, 2025) (ordering petitioner's immediate release upon posting of the ordered bond based on the ongoing due process violations).

Respondents present no meaningful argument to dispute the violation of Morales Lopez's right to due process. ECF No. 35. The Court is empowered to fashion any relief necessary to address injuries in violation of the Constitution and Morales Lopez requests that the Court find any of his remedies discussed below appropriate to address this continued violation of his right to due process.

IV. Remedy

Once the Court determines that Morales Lopez's detention is governed by 8 U.S.C. § 1226(a), the question becomes the appropriate remedy. Because Respondents are detaining Morales Lopez in violation of the INA, in violation of his right to Due Process, in violation of an IJ's previous individualized determination under § 1226, and in violation of the declaratory judgment issued in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, ---F. Supp. 3d ---, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment) the relief requested by Morales

Lopez includes any of the following that the Court deems proper: 1) his immediate release pending the scheduling of a new bond hearing, at which the government must prove by clear and convincing evidence that Morales Lopez is a flight risk or danger to the community, or 2) his immediate release pursuant to the IJ's individualized determination that he is not a flight risk or danger to the community.

The power of this Court to issue injunctions to protect rights guaranteed by the Constitution have long been recognized. *See Maehr v. U.S. Dep't of State*, 5 F.4th 1100, 1106 (10th Cir. 2021) (*citing Bell v. Hood*, 327 U.S. 678, 684 (1946)). And "[o]nce a right and a violation have been shown, the scope of the district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. Of Educ.*, 402 U.S. 1, 15 (1971). It is the "nature of the violation" that "determines the scope of the remedy." *Id.* at 17. The core basis of the habeas petition has always been Petitioner's unlawful continued detention despite a valid August 14, 2025, bond order. The intervening December 4, 2025, IJ decision disclaiming jurisdiction did not alter the underlying facts; it merely confirmed that no administrative avenue exists to effectuate that order.

Morales Lopez's requested relief of immediate release pursuant to the bond order previously determined by the IJ is an appropriate remedy when a bond hearing would be providing Morales Lopez the procedures under § 1226(a) which he received prior to *Matter of Yajure Hurtado*. *See Garcia-Arauz v. Noem*, No. 2:25-cv-02117-RFB-EJY, --- F. Supp. 3d ----, 2025 WL 3470902, *9 (D. Nev. Dec. 3, 2025) (ordering the petitioner's immediate release pursuant to the bond conditions imposed by the IJ); *see also Carrillo Fernandez v. Knight, et al.*, No. 2:25-cv-02221-RFB-BNW, 2025 WL 3485800, at *3, *8 (granting petitioner's writ of habeas corpus and

ordering petitioner's immediate release from detention under § 1226(a) after an IJ previously ordered petitioner released on bond).

In *Ramirez v. Noem*, the Southern District of California rejected the government's argument that a new bond hearing was the only appropriate remedy, and instead reasoned that the petitioner's immediate release pursuant to the IJ's $ 4,500 bond order was appropriate, *even with petitioner's individual BIA decision that relied on Matter of Yajure Hurtado*, "because the court would not be setting aside the discretionary decision to grant or revoke bond, and instead, would be leaving in place the Immigration Judge's discretionary bond determination, which the BIA did not disturb beyond applying *Yajure Hurtado* to his case." *Ramirez v. Noem*, No. 25-cv-03076-BAS-AHG, *n. 1 (S.D. Cal. Dec. 3, 2025); *see also Rodriguez v. LaRose*, No. 3:25-cv-02940-RBM-JLB, *n. 5 (S.D. Cal. Dec. 2, 2025) (finding that immediate release from custody subject to the same bond conditions of release as ordered by the immigration judge, including with an individualized BIA decision, because factual findings as to flight risk and danger to the community had been made); *see also Pastrana-Saigado v. Lyons*, 2:25-cv-950-MLG-LF (D.N.M. Oct. 1, 2025) (ordering the petitioner's immediate release upon payment of the IJ order because he had already determined the petitioner was neither a danger nor a flight risk). Notably the court in *Ochoa*, only ordered a bond hearing because no IJ had made the necessary factual findings as opposed to Morales Lopez's case where an IJ did make those findings and neither the BIA decision nor the IJ December 4 Order disturbed those findings. *See Ochoa v. Noem*, No. 1:25-cv-00881-JB-LF (D.N.M. Nov. 7, 2025).

In the alternative, Morales Lopez requests his immediate release pending a bond hearing where the government bears the burden of establishing that Morales Lopez is a danger to the community or flight risk (an impossible burden as the IJ made factual findings that he is not a flight risk, and no factual circumstances have changed). A bond hearing with the burden shifted to

the government is an appropriate order for relief because of Morales Lopez's continued unlawful detention in violation of his constitutional rights. *See Sacvin v. De Anda-Ybarra*, No. 2:25-cv-01031-KG-JFR (D.N.M. Nov. 14, 2025) (explaining why in these circumstances shifting the burden to the government is appropriate given the constitutional violations).

As the Court has broad powers within its jurisdiction to fashion relief for Morales Lopez given the continued violation of the INA and his constitutional right to due process, he respectfully requests that the Court order any of the above relief as it deems appropriate.

CONCLUSION

For the reasons set forth above, Morales Lopez's continued detention is unlawful. The record establishes that he was initially detained under 8 U.S.C. § 1226(a), that an Immigration Judge already made an individualized determination that he is neither a danger to the community nor a flight risk, and that DHS's reliance on *Matter of Yajure Hurtado* to reclassify him under § 1225(b)(2)(A) has stripped him of the very custody-review mechanism Congress provided. The IJ's December 4, 2025, order confirms that the immigration court no longer believes it has jurisdiction to provide any custody redetermination at all. As a result, there is no functioning administrative forum, no lawful statutory basis identified for his ongoing detention, and no avenue for release—an outcome the INA does not authorize, and the Constitution does not permit.

Accordingly, Morales Lopez respectfully requests that the Court grant the First Amended Petition for Writ of Habeas Corpus and order any of the following relief that it deems proper: 1) his immediate release pending the scheduling of a new bond hearing, at which the government must prove by clear and convincing evidence that he is a flight risk or danger to the community; or 2) his immediate release pursuant to the IJ's individualized determination that he is not a flight

risk or danger to the community. In light of the statutory, constitutional, and equitable principles governing habeas corpus, the Court should grant the Petition and order one of these forms of relief.

Dated this 11th day of December 2025.

Respectfully submitted,

/s/ Skylar M. Larson
Skylar M. Larson, Esq.
8275 E. 11th Ave. # 200176
Denver, CO 80220
Tel: (970) 692-3156
Email: skylarmlarsonesq@gmail.com
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2025, I electronically filed the foregoing **Petitioner's Reply in Support of First Amended Petition for Writ of Habeas Corpus (ECF No. 31)** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Leslie Schulze
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Leslie.schulze@usdoj.gov

/s/ Skylar M. Larson
Skylar M. Larson, Esq.

ATTORNEY FOR PETITIONER