UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

Jose Luis Nieto Torres, Petitioner, Kristi Noem, Secretary of Homeland Security; Pamela Bondi, U.S. Attorney General, Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Joshua Johnson, Dallas Field Office Director; Marcello Villegas, Warden of Bluebonnet Detention Center Respondents.	**Civil Case No. 1:25-cv-197**

REPLY TO RESPONDENTS' RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Respectfully submitted.

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Although the Petitioner was ordered released by an Immigration Judge (IJ) upon posting bond, the Respondents continue to detain him based on their unilateral filing of an automatic stay and their wrong interpretation of 8 U.S.C. §§ 1225(b)(2) and 1226(a). In their response, the Respondents failed to provide a valid basis to continue the Petitioner's unlawful detention. The Court should therefore follow the avalanche of other district court opinions made on this issue and grant the Petitioner's writ of habeas corpus.[1]

I. ARGUMENT

The sole issue in this case is whether Petitioner's continued immigration detention is lawful. For the reasons set forth below, the Court should: (A) reject Respondents' clearly erroneous jurisdictional argument; (B) hold that prudential exhaustion is not required; (C) determine that detention under the automatic stay regulation is unlawful; (D) conclude that Petitioner's detention

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[1] *See, e.g., Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 1:25-cv-06373-DEH, 2025 WL 2398831 (S.D.N.Y. Aug. 12, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Otero Escalante v. Bondi*, No. 25-cv-3051-ECT-DJF, --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Palma Perez v. Berg*, No. 8:25-cv-00494-JFB-RCC, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Vasquez Garcia v. Noem*, No. 3:25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Jimenez v. Berlin*, ---F. Supp. 3d---, 2025 WL 2639390, at *10 (D. Mass. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546-RJW-APP, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Choglio Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sep. 21, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923 (N.D. Cal. Sep. 25, 2025); *Savane v. Francis*, No. 1:25-CV-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. Aug. 4, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-CV-00094-RGE-WPK, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Barrera v. Tindall*, No. 3:25-CV-541, 2025 WL 2690565, at *5 (W.D. Ky. Sept. 19, 2025); *Luna Quispe v. Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025); *Silva v. Larose*, No. 25-cv-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025); *Chang Barrios v. Shepley*, No. 1:25-cv-00406-JAW, 2025 WL 2772579 (D. Me. Sep. 29, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Cerritos Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Padron Covarrubias v. Vergara, et al.*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Sanchez-Alvarez v. Noem et al.*,, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Bethancourt Soto v. Soto et al.*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025); *Arce-Cervera v. Kristi Noem, et al.*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025).

violates both the governing statutes and the Constitution; and (E) order Petitioner's immediate release.

A. This Court has jurisdiction over the Petitioner's habeas petition.

This Court has jurisdiction over the legal claims brought in this habeas corpus proceeding under 28 U.S.C. § 2241(c)(3), which authorizes federal courts to grant habeas relief to individuals held "in custody in violation of the Constitution or laws or treaties of the United States." Petitioner challenges the legality of his detention under federal immigration law and the due process clause of the Fifth Amendment. That question falls squarely within the jurisdiction conferred by § 2241.

Contrary to the Respondents' assertions, the jurisdictional bars in 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not apply. *See* Resp'ts' Response at 18–21, ECF No. 8.

1. Section 1252(g) does not bar jurisdiction over Petitioner's habeas claim.

8 U.S.C. § 1252(g) provides,

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, ... no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

The Supreme Court has made clear that 1252(g) is a "narrow" jurisdictional bar that "applies only to three discrete actions that the Attorney General make take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). Indeed, the Supreme Court has "rejected as 'implausible' the Respondents' argument that § 1252(g) covers 'all claims arising from deportation proceedings' or imposes 'a general jurisdictional limitation.'" *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (citation omitted)); *see also Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000) (recognizing that "section 1252(g) does not bar courts from reviewing an alien detention order, because such an order, 'while

intimately related to efforts to deport, is not itself a decision to "execute removal orders" and thus does not implicate section 1252(g).'"). Here, Petitioner does not challenge any of the three "discrete actions" identified in *Reno*. As such, his claim does not "arise from" the Attorney General's decision to commence removal proceedings. *See, e.g., Hernandez Marcelo*, 2025 WL 2741230, at *5; *Guerrero Orellana*, 2025 WL 2809996, at *3.

The Respondents' argument that 8 U.S.C. § 1252(g) "bars district courts from hearing challenges to the method by which the DHS Secretary chooses to commence removal proceedings, including the decision to detain an alien pending removal," *see* Resp'ts' at 19, was squarely rejected by the majority in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). As the Southern District of Iowa recently explained, the majority declined to adopt Justice Thomas's concurrence, which mirrored the argument raised by Respondents here: "The concurrence contends that 'detention is an "action taken ... to remove" an alien' and that therefore 'even the narrowest reading of "arising from" must cover' the claims raised by respondents. We do not follow this logic." *Hernandez Marcelo*, 2025 WL 2741230, at *5 (quoting *Jennings*, 583 U.S. at 295 n.3); *see also Maldonado*, 2025 WL 2374411, at *4–5.

2. Section 1252(b)(9) does not preclude jurisdiction over the Petitioner's claims.

Section 1252(b)(9) provides that:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.

8 U.S.C. § 1252(b)(9). This provision channels challenges to **final orders of removal** and **removal proceedings** into the courts of appeals. *See INS*, 533 U.S. at 313. As the district court in *Maldonado* emphasized that "§ 1252(b)(9) is aimed at challenges to removal proceedings," and "is a judicial channeling provision, not a claim-barring one." 2025 WL 2374411, at *7 (citation omitted).

The Supreme Court confirmed this narrow reading in *Jennings*, explaining that the phrase "arising from" in § 1252(b)(9) does not cover all claims merely related to or resulting from the fact of removal. *Jennings*, 583 U.S. at 293–94. Interpreting it otherwise, the Court cautioned, would lead to "staggering results" making claims of prolonged detention effectively unreviewable. *Id.* at 293. Since the Petitioner in this case is not challenging a final order of removal, the removal process, or his initial custody determination, the case falls outside the scope of (b)(9). *See, e.g.*, *Santiago Santiago, v. Kristi Noem, et al.*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *4–5 (W.D. Tex. Oct. 2, 2025).

B. The Petitioner is not required to file a futile appeal to the BIA before seeking relief before this Court.

Respondents maintain that the Court should require Petitioner to file an appeal with the BIA. However, Petitioner was the prevailing party in his bond proceedings. Even if the IJ had denied bond for lack of jurisdiction, an appeal to the BIA would be futile because the IJ would be bound to deny pursuant to *Yajure*. *See Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012) ("Prudential exhaustion may be excused . . . where the attempt to exhaust such remedies would itself be a patently futile course of action.'") (citation omitted); *see also Buenrostro-Mendez v. Bondi*, No. 25-CV-03726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025). Moreover, the Respondents cite no statute that requires an appeal to be filed to the BIA before seeking habeas relief and nor can they. Indeed, as the Respondents acknowledge, exhaustion of administrative remedies is statutorily required only on appeals from final orders of removal. *See* Resp'ts' at 7-8; *see also Padron Covarrubias v. Vergara, et al.*, No. 5:25-cv-112, 2025 WL 2950097, at *6 (S.D. Tex. Oct. 8, 2025). Because Petitioner does not seek review of a final order of removal, statutory exhaustion requirement does not apply.

C. The automatic stay provision of 8 C.F.R. § 1003.19(i)(2) violates the Petitioner's substantive and procedural due process rights under the Fifth Amendment and is *ultra vires*.[2]

1. The automatic stay violates the Petitioner's right to substantive due process under the Fifth Amendment.

The Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. This guarantee includes a substantive component that forbids the government from infringing upon certain "'fundamental' liberty interests *at all*," regardless of the procedures used, unless the infringement is narrowly tailored to serve a compelling governmental interest. *Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (emphasis in original). Substantive due process protections apply equally to noncitizens within the United States. *See Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Moreover, "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). Government detention, therefore, violates the Due Process Clause "unless the detention is ordered in a *criminal* proceeding with adequate procedural protections or, in certain special and 'narrow' nonpunitive circumstances where a special justification . . . outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* (internal citations and quotation marks omitted; emphasis in original). Respondents have not identified any "special justification" or "compelling governmental interest" sufficient to outweigh the Petitioner's constitutional liberty interest. To the extent Respondents may claim that detention is necessary to secure the Petitioner's appearance at future removal proceedings, that concern has already been addressed by the IJ, who determined that release upon a $4,000 bond adequately ensures the Petitioner's presence. As such, the automatic stay provision violates the Petitioner's substantive due process rights insofar as it "renders the

[2] The Respondents waived a response to the Petitioner's argument that the automatic stay regulation is ultra vires because it exceeds the scope of authority granted by Congress to the Attorney General.

Immigration Judge's bail determination an empty gesture." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 668 (D.N.J. 2003); *see also Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025).

2. *The automatic stay violates the Petitioner's right to procedural due process under the Fifth Amendment.*

When the Government interferes with a liberty interest, "the procedures attendant upon that deprivation [must be] constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) (citation omitted). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the available procedures; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). These three *Mathews* factors, which the Respondents wholly failed to address, strongly weigh in favor of granting Petitioner's habeas.

a. Petitioner has a significant liberty interest in being free from confinement.

The Petitioner has a compelling interest in remaining free from government confinement. *See Zadvydas*, 533 U.S. at 690; *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("The interest in being free from physical detention" is "the most elemental of liberty interests." (citation omitted)). The impact of this deprivation is substantial insofar as continued confinement has separated Petitioner from his wife and minor U.S. citizen child. Additionally, it has prevented him from earning income to provide for his family, which is causing significant financial hardship. *See Günaydin*, 2025 WL 1459154, at *20 ("He is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning . . . lack of privacy, and most fundamentally, the lack of freedom of movement."). Given the magnitude of this

constitutional interest, any deprivation of liberty must strictly comply with the requirements of due process.

b. The automatic stay provision creates a substantial risk of erroneous deprivation.

The risk of erroneously depriving the Petitioner of liberty is exceptionally high for several reasons. First, the risk of error is high because the provision allows DHS—the non-prevailing party in the bond proceedings—to unilaterally override the IJ's decision without providing any procedural safeguards. *See, e.g., Zavala v. Ridge*, 310 F.Supp.2d 1071, 1078 (N.D. Cal. 2004) ("[T]he [automatic stay] procedure additionally creates a potential for error because it conflates the functions of adjudicator and prosecutor."); *Alvarez Martinez v. Noem, et al.*, 5:25-c-01007-JKP-ESC, 2025 WL 2598379, at *3 (W.D. Tex. Sept. 8, 2025). Second, as the Minnesota District Court observed, "there is no requirement that the agency official invoking [the automatic stay] consider any individualized or particularized facts." *Günaydin*, 2025 U.S. Dist. LEXIS 99237 at *22–23. Nor does the provision impose any standards that DHS must satisfy in order to invoke the stay. *Id.* at *23. Unlike traditional stays in federal court pending an appeal, there is no requirement for DHS to demonstrate irreparable harm, likelihood of success on the merits, or any other threshold showing. *Cf. Nken v. Holder*, 556 U.S. 418, 433 (2009). The automatic stay regulation "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *Günaydin*, 2025 U.S. Dist. LEXIS 99237, at *24.

Finally, because the stay is automatic and not subject to review by an impartial adjudicator, it denies the Petitioner any meaningful opportunity to challenge it, as required by the Fifth Amendment. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Under current regulations, all DHS must do to invoke the stay is file Form EOIR-43 with the Immigration Court. *See* 8 C.F.R. § 1003.19(i)(2). Respondents' discussion of the process available under § 1226(a) for seeking a redetermination from the IJ misses the mark. *See* Resp'ts' at 23. Petitioner is not challenging the

IJ's favorable decision but the automatic stay of that decision—a procedural mechanism for which no challenge is available. Accordingly, the second *Mathews* factor strongly favors Petitioner.

c. DHS' interest in retaining its unilateral stay authority is minimal.

DHS' interest in preserving its unilateral authority to prevent the release of noncitizens who have already been found neither a significant flight risk nor a danger to the community is minimal. *See Ashley*, 288 F. Supp. 2d at 669 ("[T]he purpose for the automatic stay provision is to prevent the alien from fleeing and to protect the public from harm. The bond determination made by the Immigration Judge has already addressed these underlying concerns."). The two possible rationales for detention—flight risk and danger to the community—have already been addressed and rejected by the IJ. To the extent DHS believes the IJ erred in granting bond, it may seek an emergency stay under 8 C.F.R. § 1003.19(i)(1). Utilizing existing procedures imposes no additional burden on DHS. Unlike the automatic stay invoked in this case, the discretionary stay requires DHS to justify the stay to the BIA and affords the noncitizen an opportunity to respond. *See Alvarez Martinez*, 2025 WL 2598379, at *3. Permitting the BIA to determine whether a stay of release is in fact warranted reduces the risk of erroneous deprivation without any meaningful costs to the government. Accordingly, Petitioner has demonstrated that he satisfies the factors set forth in *Mathews* and, therefore, has established a procedural due process violation.

D. Respondents' construction of the detention statutes runs contrary to the provisions' plain language, their legislative history, and decades of practice.

The Petitioner has a clear right to a custody hearing before an IJ under 8 U.S.C. § 1226(a)(2), which authorizes the IJ to grant bond to noncitizens who are detained pending the outcome of removal proceedings. The plain language of § 1226(a) and its legislative history all support the Petitioner's position. 8 U.S.C. § 1226(a) provides, in pertinent part, as follows:

> (a) Arrest, detention, and release.
> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from

> the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
> (1) may continue to detain the arrested alien; and
> (2) may release the alien on—
> (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
> (B) conditional parole . . .

Section § 1226(a) specifically applies to "an alien" arrested "on a warrant" who is "detained pending a decision on whether the alien is to be removed from the United States." This statute clearly applies to the Petitioner's case. Indeed, the Respondents clearly used their authority under § 1226 to detain the Petitioner. *See* ECF No. 1-2 at 7 (warrant for arrest). They cannot change that authority after the arrest was made.

The plain language of § 1225(b)(2)(A) indicates that it applies only to individuals who are "seeking admission into the United States," a phrase that implies a present, affirmative act. *See Belsai D.S.*, 2025 WL 2802947, at *11. Once an individual has entered the United States, there is no longer any ongoing act of seeking admission; the process is complete. *See Bethancourt Soto*, 2025 WL 2976572, at *6. To treat "seeking admission" as a perpetual state would render the term superfluous. *See, e.g., Lopez Benitez v. Francis*, No. 1:25-cv-05937-DEH, 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 8, 2025). As such, the plain text of the statute supports the Petitioner's position that he is detained under § 1226(a) and is entitled to release on bond.[3]

Contrary to the Respondents' claim, the legislative history favors the Petitioner. Before IIRIRA's passage, noncitizens who entered the country without inspection were subject to discretionary release from detention. *See Guerrero Orellana*, 2025 WL 2809996, at *9. A congressional report issued during IIRIRA's passage confirms that the revised § 1226(a) "restates

[3] Tellingly, the Respondents have no response to the Petitioner's point that the passage of the Laken Riley Act (LRA) demonstrates that Congress did not intend for § 1225(b)(2)(A) to apply to all noncitizens who entered without inspection. As explained in the Petitioner's petition, the LRA would not have been necessary if all noncitizens who entered the country illegally are subject to mandatory detention under § 1225(b)(2).

the current provisions ... regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Id.* (citing H.R. Rep. No. 104-828, at 210 (1996) and H.R. Rep. No. 104-469, pt. I, at 229 (1996)). Thus, rather than eliminating bond eligibility for individuals who entered without inspection, Congress reaffirmed the Attorney General's longstanding authority to arrest and release such individuals under § 1226(a).[4]

Respondents further contend that "Congress intended to eliminate the anomaly under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry." Resp'ts' at 16. Yet, there is no anomaly in treating a recent arrival differently from one who, like the Petitioner, has resided in the United States for over a decade, has substantial family ties in this country, and holds a clear path toward legalization. Congress did not act unreasonably by allowing IJs to consider these very different classes of nonimmigrants differently—allowing bond for those with demonstrable equities but not for new arrivals. As the Supreme Court explained, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.[5]

II. CONCLUSION

For the foregoing reasons, the Court should grant the Petitioner's petition for a writ of habeas corpus.

Respectfully submitted,

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[4] The Respondents waived their response to the Petitioner's claim that they failed to follow their own regulations by failing to brief the issue.

[5] Although the BIA reached a contrary conclusion in *Yajure Hurtado*, that decision conflicts with the unambiguous language of § 1226(a) and § 1225(b)(2)(A), which plainly allow for Petitioner's bond eligibility. 29 I&N Dec. at 216. Even if the statute were ambiguous, the BIA's interpretation in *Yajure Hurtado* is not entitled to *Chevron* deference pursuant to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). Moreover, the Respondents waived their response to the Petitioner's claim that *Yajure* is a new rule that has an impermissible retroactive effect by failing to brief the issue.

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CERTIFICATE OF SERVICE

I certify that on today's date, November 12, 2025, I electronically filed the above reply to the Respondents' Response in Opposition by using the Court's CM/ECF system which will automatically send a notice of electronic filing to Respondents' counsel.

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