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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA (Las Vegas)**

12 * * *

13 SAMUEL SANCHEZ APARICIO

14 Petitioner,

15 vs.

16 KRISTI NOEM, Secretary of the
17 United States Department of Homeland
18 Security;

19 PAMELA BONDI, Attorney General of
20 the United States;

21 THOMAS E. FEELEY, Field Office
22 Director of Salt Lake City Field Office,
23 U.S. Immigration and Customs
24 Enforcement;

25 REGGIE RADER, Henderson Police
26 Chief; and

27 MARIA BELLOW, Corrections Captain.

28 Respondents.

CASE NO. 2:25-cv-01919-RFB-DJA

Agency No. 

**REPLY TO FEDERAL
RESPONDENTS' RESPONSE TO
PETITION FOR WRIT OF HABEAS
CORPUS (ECF No. 20)**

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I. ARGUMENT

A. THIS COURT HAS JURISDICTION.

This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All-Writs Act, 28 U.S.C. § 1651.

Further, the Respondents do not make any arguments regarding jurisdiction in their response to the instant petition for habeas corpus, thus this Court should find that Respondents have waived any argument on this issue. *See United States v. Orozco*, 858 F.3d 1204, 1210 (9th Cir. 2017) (holding the government waived an argument by failing to address it in its answering brief); *see also Clem v. Lomeli*, 566 F.3d 1177, 1182 (9th Cir. 2009) (stating that a failure to address an argument in an answering brief constitutes waiver of the argument); *see also United States v. Gamboa-Cardenas*, 508 F.3d 491, 502 (9th Cir. 2007) (same).

In the alternative, if the Court considers the Respondents previously asserted jurisdictional arguments in response to the Petitioner's motion for temporary restraining order this Court should reject them as they are the same ones that this Court has rejected now on at least twelve similar cases. *See Mendez v. Noem*, 2025 U.S. Dist. LEXIS 219483, *1; 2025 LX 578463.

i. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction.

Concerning the question of removability, 8 U.S.C. § 1252(b)(9) funnels judicial review to the appropriate federal court of appeals, which would be the Ninth Circuit here. However,

1 where a petitioner is not seeking review of a removal order or is challenging their detention or
2 a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586
3 U.S. 392, 402 (2019); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*,
4 591 U.S. 1, 19 (2020) (“§ 1252(b)(9) does not present a jurisdictional bar where those bringing
5 suit are not asking for review of an order of removal, the decision to seek removal, or the
6 process by which removability will be determined.”).

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9 **ii. 8 U.S.C. § 1252(g) does not preclude jurisdiction.**

10 Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot
11 hear “any cause of claim by or on behalf of any alien arising from the decision or action by the
12 Attorney General to commence proceedings, adjudicate cases, or execute removal orders
13 against any alien under this chapter.” § 1252(g). The Supreme Court has limited application of
14 this section to three discrete actions that an Attorney General may take: (1) the decision or
15 action to commence proceedings, (2) the decision or action to adjudicate cases, and (3) the
16 decision or action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*,
17 525 U.S. 471, 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is
18 not a challenge to one of the three discrete events listed in *Reno*.

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21 **iii. 8 U.S.C. § 1226(e) does not preclude jurisdiction.**

22 While Section 1226(e) of the INA precludes an alien from challenging a discretionary
23 judgment by the Attorney General or a decision that the Attorney General has made regarding
24 their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section
25 1226(e) “does not preclude challenges to the statutory framework that permits the alien’s
26 detention without bail.” *Jennings*, 138 S. Ct. at 841.
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2 Moreover, Section 1226(e) does not limit habeas review over constitutional claims or
3 questions of law. *Singh v. Holder*, 638 F.3d 1196 at 1202. As Petitioner is raising constitutional
4 claims and questions of law—whether the automatic stay provision in this case and the BIA’s
5 new interpretation of the INA violate the Petitioner’s right to procedural due process and
6 substantive due process after denying him the ability to post a bond—Section 1226(e) does not
7 preclude this Court’s jurisdiction to review Petitioner’s habeas petition.
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9 **B. PETITIONER IS UNLAWFULLY DETAINED UNDER 8 U.S.C. § 1225(b)(2)**

10 This Court has recognized on various occasions that the Respondents’ new position,
11 reaffirmed by the BIA’s precedential decision in *Matter of Yajure Hurtado*, contravenes the
12 plain text of the statute and is unenforceable as implemented. *See, e.g., Sanchez Aparicio v.*
13 *Noem*, No. 25-CV-01919, 2025 WL 2998098, at *6 (D. Nev. Oct. 23, 2025); *E.C. v. Noem*,
14 No. 25-CV-01789, 2025 WL 2916264, at *8 (D. Nev. Oct. 14, 2025); *Roman v. Noem*, No. 25-
15 CV-01684, 2025 WL 2710211, at *5; *Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL
16 2676082, at *13 (D. Nev. Sep. 17, 2025). Section §1226(a), not §1225(b), applies to
17 individuals like the Petitioner. Section 1226(a) governs by default all individuals in removal
18 proceedings under § 1229a, which determine inadmissibility or deportability. The statute
19 explicitly covers those charged as inadmissible, including entrants without inspection, and
20 ensures they are entitled to bond hearings under subsection (a). On the other hand, § 1225(b)
21 applies only to individuals arriving at ports of entry or immediately after entry, as it is built
22 around inspection of applicants for admission. Thus, the mandatory detention provision of §
23 1225(b)(2) does not extend to the Petitioner.
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2 Therefore, Respondents' detention of Petitioner is therefore unlawful and contravenes
3 8 U.S.C. § 1226(a), and the U.S. Constitution. Accordingly, Respondents' detention of
4 Petitioner is contrary to statute. The Due Process Clause of the Fifth Amendment requires that
5 the deprivation of Petitioner's liberty interest be narrowly tailored to serve a compelling
6 government interest.

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8 Any government interest in detaining Petitioner for purposes of effectuating removal
9 cannot justify his ongoing unlawful and prolonged detention. The record demonstrates that
10 Petitioner potentially qualifies for relief under 8 U.S.C. § 1255(i); I.N.A. § 245(i) which
11 permits certain individuals otherwise ineligible to adjust to apply for adjustment if they are the
12 beneficiaries of a qualifying petition or labor certification filed on or before April 30, 2001 and
13 a family-based petition filed by an immediate relative such as his U.S. citizen son over the age
14 of 21. Alternatively, Petitioner would be seeking asylum related relief based on his fears of
15 persecution if he was forced to return to Mexico pursuant to 8 U.S.C. § 1231(b)(3)(A). Thus,
16 any claim that his detention serves a legitimate removal-related purpose is both speculative
17 and unsupported.
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20 While the government retains the procedural right to appeal to the Board of Immigration
21 Appeals and, subsequently, to seek review before the Ninth Circuit Court of Appeals, such
22 avenues of review do not create or sustain a compelling governmental interest in continued
23 detention. At this juncture, the government's interest in keeping Petitioner detained pending
24 the conclusion of appellate and judicial proceedings is minimal at best, and is outweighed by
25 the substantial liberty interest at stake and the constitutional prohibition against indefinite
26 detention.
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2 In their response, Respondents emphasize the same arguments regarding mandatory
3 detention that this Court has rejected in every other case it has heard regarding the issue of
4 interpretation of §§ 1225 and 1226.

5 Petitioner asserts that his detention violates due process because (1) the automatic stay
6 provision at 8 C.F.R. §1003.19(i)(2) violates his procedural and substantive due process rights
7 after already having been granted relief from removal; and (2) the BIA's new interpretation in
8 *Matter of Yajure Hurtado* that §1225(b)(2) is applicable to Petitioner, not section 1226(a), is
9 incorrect and violates the INA.
10

11 **i. Automatic stay at 8 C.F.R. §1003.19(i)(2) is unlawful.**

12 Most recently, numerous federal courts, including this Court, have held that detaining
13 individuals like Petitioner under 8 C.F.R. § 1003.19(i)(2), namely the automatic stay provision
14 constitutes a violation of their procedural and due process rights. *Sanchez Aparicio*, 2025 WL
15 2998098, at *1; *Vazquez v. Feeley*, 2025 WL 2676082, at *16; *Günaydin v. Trump*, 784 F.
16 Supp. 3d 1175 (finding the automatic stay provision violates Petitioner's due process and
17 describing the history of the automatic stay provision and its problems); see also, *Reynosa*
18 *Jacinto v. Trump*, No. 25-CV-03161, 2025 U.S. Dist. LEXIS 160314, at *7 (D. Neb. Aug. 19,
19 2025); *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411, at *13 (D. Minn. Aug. 15,
20 2025).
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23 To determine whether Petitioner's continued detention violates his procedural due
24 process, the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976).
25 Here the court weighs the following factors: (1) "the private interest that will be affected by
26 the official action"; (2) "the risk of an erroneous deprivation of such interest through the
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2 procedures used, and the probable value, if any, of additional or substitute procedural
3 safeguards"; and (3) "the Government's interest, including the function involved and the fiscal
4 and administrative burdens that the additional or substitute procedural requirement would
5 entail." *Mathews*, 424 U.S. at 335.

6 In this case, Petitioner's private interest is his freedom— "the most elemental of liberty
7 interests—the interest in being free from physical detention by one's own government." *Hamdi*
8 *v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)
9 ("Freedom from imprisonment—from government custody, detention, or other forms of
10 physical restraint—lies at the heart of the liberty that the Clause protects."). This factor weighs
11 heavily in Petitioner's favor, as the automatic stay provision deprives him of his fundamental
12 liberty interest in freedom from incarceration. Further, the Immigration Judge already
13 determined that Petitioner is worthy of being released.

14 In addition, continued detention inflicts further harms, including separation from his
15 children and community; the loss of employment; the denial of adequate healthcare; the
16 invasion of his privacy; and the impairment of his right to counsel due to the obstacles in
17 maintaining communication and access. Whereas the government's interest to keep the
18 Petitioner detained throughout his appeal is not as weighty.

19 In regard to the second factor, "the risk of erroneous deprivation" of Petitioner's right to
20 be free from incarceration, the court must review if the invocation of the automatic stay
21 procedure increases that risk. Here, Petitioner will most certainly be at risk of erroneous
22 deprivation of his liberty because he was found not to be a danger to the community or a risk
23 of flight, and prevailed before the Immigration Judge to be released upon posting a bond in the
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2 amount of \$3,500, and the Department has the unilateral power to override this decision.
3 Recently, this court found “this unchecked power vested in DHS to prolong an individual's
4 detention cannot in any circumstance be a ‘carefully limited exception’ to an individual's right
5 to liberty as required by the Due Process Clause”). *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS
6 182412, at *56; 2025 LX 460110; 2025 WL 2676082 (citing *Salerno*, 481 U.S. at 755).
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8 Other courts reviewing this issue have found that a regulation permitting the losing party
9 to stay a decision allowing the Petitioner to remain detained results in an increased risk of
10 erroneous deprivation of his liberty interest. *See Ashley*, 288 F. Supp. 2d at 671 (“It produces
11 a patently unfair situation by ‘taking the stay decision out of the hands of the judges altogether
12 and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary
13 hearing that detention is justified.’”) *see also Reynosa Jacinto v. Trump*, 25-CV-03161, 2025
14 U.S. Dist. LEXIS 160314, at *7 (D. Neb. August 19, 2025); *Maldonado v. Olson*, No. 25-CV-
15 3142, 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025);
16 *Silva v. Larose*, No. 25-CV-2329, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025).
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19 As to the last factor, the government’s interest and burden of additional or substitute
20 procedural requirements, the *Mathews* test requires the court to weigh the Petitioner’s private
21 liberty interests and risk of erroneous deprivation against the government’s interest in
22 enforcing the automatic stay regulation, which includes the use of additional or substitute
23 procedural requirements.
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25 Petitioner’s continued detention separates him from his children, grandchildren,
26 sibling, and wife—most of whom possess lawful status. His family suffers in his absence,
27 deprived of the love, guidance, and support they have long depended upon. The conditions of
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1 confinement impose further harms, including incarceration in jail-like facilities, inadequate
2 medical care, and other substandard living conditions.
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4 Therefore, his mandatory detention infringes upon the fundamental liberty interest in
5 freedom from physical restraint. Accordingly, Respondents cannot show a “sufficiently strong
6 special justification” for continuing to deprive Mr. Sanchez Aparicio of his fundamental human
7 rights.
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9 **C. THIS CASE IS READILY DISTINGUISHABLE FROM *VARGAS LOPEZ V.***
10 ***TRUMP AND CHAVEZ V. NOEM.***

11 The Respondents cite a decision from the U.S. District Court for the District of Nebraska,
12 which is nonbinding on this court, where the petitioner’s request for a writ of habeas corpus
13 was denied. *Vargas Lopez v. Trump*, No. 25CV526, 2025 WL 2780351 (D. Neb. Sep 30, 2025).
14 This case is significantly distinguishable because the petitioner failed to adequately plead
15 grounds demonstrating his detention was unlawful. *Id.*
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17 In *Vargas Lopez*, the petitioner was identified on the NTA as being inadmissible under 8
18 U.S.C. § 1182(a)(6)(a)(i) for being present in the United States without having been inspected
19 and admitted or paroled. *Id.* at *4. In *Vargas Lopez*, the court did not make a ruling regarding
20 the petitioner’s writ based on the merits of the law, rather, the petitioner simply failed to meet
21 his burden of proof to “demonstrate[e] by a preponderance of the evidence that his detention
22 [was] unlawful.” *Id.* at *6. Based on lacking evidence and an inability to prove the
23 circumstances of his detention, the court rejected his writ for habeas corpus. *Id.*
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25 Here, the Petitioner’s facts are notably different. While Petitioner is also in the United
26 States without having been inspected and admitted or paroled, he has already demonstrated
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2 that Petitioner has been in the United States far longer than necessary to fall under § 1226
3 instead of § 1225(b). Further, Petitioner’s Form I-213, Record of Deportable Alien is annotated
4 that he was issued a warrant for his arrest. See Exhibit L for Petitioner’s Emergency Motion
5 for Temporary Restraining Order (ECF No. 6 at 96-98). The District of Nebraska’s argument
6 does not reference the temporal limits of 8 U.S.C. § 1225(b) that this Court has recognized in
7 its decisions in similar cases. Respondents here are conflating the existence of a denied habeas
8 corpus writ with sympathy to their position; however, the court denied the *Vargas Lopez*
9 petition based on the underdeveloped record and pleadings. The court did not say that
10 individuals in Petitioner’s situation are always subject to mandatory detention under § 1225(b).
11 Moreover, in *Vargas Lopez*, the court decided not to address the automatic stay regulation
12 directly because it concluded that *Vargas Lopez* was not subject to §1226, but mentioned had
13 it done so, “it would have had considerable doubt that the automatic stay in 8 C.F.R.
14 §1003.19(i)(2) comports with due process.” *Id.* at *24.
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17 Because the Respondents attempt to analogize a case with different facts, their argument
18 fails. Petitioner here has a solid record of his length of residence in the United States and that
19 he is not subject to §1225(b). Furthermore, the record in this case is more substantially
20 developed and demonstrates that mandatory detention is improper.
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22 Respondents also cite to a case from the Southern District of California where petitioners
23 were similarly denied preliminary equitable relief for inadequately pleading the unlawfulness
24 of their detention. *Chavez v. Noem*, No. 25-C-02325, 2025 WL 2730228, at *3 (S.D. Cal. Sep.
25 24, 2025). In *Chavez v. Noem*, the court rejected the government’s arguments regarding
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1 jurisdiction and exhaustion—two arguments that Respondents here made irrespective of this
2 decision and the numerous other district court decisions addressing the issue.
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4 However, *Chavez v. Noem* is readily distinguishable, for its lack of substantive analysis
5 and because the court ultimately concluded that the petitioners failed to plead sufficient
6 grounds for equitable relief. First, the *Chavez* court did not meaningfully engage with, let alone
7 address, the more than thirty decisions that have directly confronted the same issues presented
8 here. Rather than analyzing this robust body of precedent, the court disregarded the
9 overwhelming consensus among federal district courts that have rejected the reasoning of
10 *Yajure Hurtado*, finding that individuals who entered without inspection and have resided in
11 the United States for years are properly detained under 8 U.S.C. § 1226(a), not § 1225(b).
12 Second, and more specifically, Respondents’ reliance on *Chavez* rests on a single, narrow
13 portion of the opinion in which the court denied a temporary restraining order merely because
14 “the Court finds on the present record that Petitioners have not shown either a likelihood of
15 success or serious questions.” This isolated statement does not constitute substantive guidance
16 on the statutory detention issue presently before this Court.
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20 Therefore, this case is unpersuasive as it relates to the Petitioner’s case as he has already
21 been granted a bond and has resided in the country for at least ten years. Instead of addressing
22 the overwhelming body of adverse precedent, the government selectively relies on two isolated
23 cases in which a petitioner’s writ of habeas and injunctive relief was denied—cases that are
24 readily distinguishable on their facts and legal posture.
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2 **D. ADMINISTRATIVE EXHAUSTION IS FUTILE AND SHOULD BE**
3 **WAIVED.**

4 The Respondents' insistence on further "exhaustion" is futile as recognized by this Court
5 and nearly one hundred court decisions around the nation. This custody determination is
6 premised on the very issue of statutory interpretation, i.e., *Matter of Yajure Hurtado*, that
7 underlies every recent Habeas Corpus petition this Court has decided with respect to
8 immigration detention. Petitioner was already granted bond by an Immigration Judge in the
9 amount of \$3,500, and the only reason he remains detained is the BIA's interpretation of
10 U.S.C. § 1225(b) as explained in *Yajure Hurtado*. Even if Petitioner had remaining options for
11 administrative exhaustion, this Court has granted Habeas Corpus and injunctive relief to
12 petitioners who have yet to request a custody redetermination hearing in immigration court
13 because *Yajure Hurtado* renders consideration of custody redetermination moot. *See, e.g.,*
14 *E.C.*, 2025 WL 2916264 ("[R]equiring Petitioner to request a bond hearing only to be denied
15 one pursuant to *Hurtado* would be an exercise in futility.)
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18 The government itself has conceded that an appeal to the BIA would be pointless. In its
19 own filing, the government expressly stated that it fully expects the BIA to apply the sweeping
20 rule announced in *Matter of Yajure Hurtado* and overturn the Immigration Judge's bond
21 decision, noting that the Board would "apply the broad holding in *Hurtado* and reverse the
22 immigration judge's release of the Petitioner on no bond." Respondents' Response to Petition
23 for Habeas Corpus, ECF No. 20 at 14. Given this explicit acknowledgment and the fact that
24 the BIA has already resolved the statutory question in *Yajure Hurtado*, 29 I&N Dec. 216 (BIA
25 2025), requiring Petitioner to pursue an appeal would serve no purpose. The outcome is
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2 predetermined, and forcing Petitioner to wait for the BIA to issue a decision, would impose
3 needless delay and further detention without any meaningful review.

4 **E. *MATTER OF YAJURE HURTADO* IS NOT ENTITLED TO SIGNIFICANT**
5 **WEIGHT UNDER *LOPER BRIGHT*.**

6 Respondents argue that the BIA in *Matter of Yajure Hurtado* provided substantial
7 reasoning for changing the way the agency interpreted the provisions of the INA dealing with
8 detention during pending removal proceedings. Respondents also argue that the Supreme
9 Court's decision in *Loper Bright* renders prior agency practice irrelevant when a court reviews
10 the new interpretation. This is faulty reasoning and ignores the spirit of *Loper Bright* because
11 it fails to consider the underlying issue of statutory ambiguity and the importance of using
12 longstanding agency practice in deciding how to interpret ambiguous language.
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14 Recently, the District of Colorado heard the case of *Gutierrez v. Baltasar* and explicitly
15 rejected the same argument with respect to *Yajure Hurtado* and *Loper Bright*. There, the court
16 addressed the decision in *Yajure Hurtado* and emphasized that "interpretation of a statute
17 belongs to the 'independent judgment' of the courts, as 'agencies have no special competence
18 in resolving statutory ambiguities.'" *Gutierrez v. Baltasar*, No. 25-CV-2720, 2025 WL
19 2962908, at *8 (D. Co. Oct. 17, 2025) (quoting *Loper Bright Enterprises v. Raimondo*, 603
20 U.S. 369, 385–86, 401 (2024)). The *Gutierrez* court concluded that it disagreed with the
21 holding of *Yajure Hurtado* and declined to follow it as the BIA has no particular expertise in
22 deciding the issue of statutory interpretation.
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2 **F. LEGISLATIVE HISTORY DOES NOT WEIGH IN FAVOR OF**
3 **RESPONDENTS' INTERPRETATION.**

4 Respondents also argued that the legislative history favors their approach. This is
5 erroneous, and numerous district courts have also disagreed with this notion, finding exactly
6 the opposite: that legislative history weakens Respondents' interpretation of §§ 1225 and 1226.
7 *See, e.g., Gutierrez*, 2025 WL 2962908, at *8. When Congress passed the Illegal Immigration
8 Reform and Immigrant Responsibility Act (IIRIRA), it changed the language of the detention
9 scheme, which Respondents argue bolsters their position because they understand it to make
10 any person who has not been deemed admitted by an immigration official an “applicant for
11 admission.”
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13 However, this interpretation ignores the preceding statute that included discretionary
14 release on bond. *Id.* The previous statute provided that “any such [noncitizen] taken into
15 custody may, in the discretion of the Attorney General” be released on bond. *Id.* (quoting 8
16 U.S.C. § 1252 (1994)). In passing the IIRIRA, Congress explicitly stated that the new
17 § 1226(a) reimplemented the same authority under the 1994 version of § 1252.
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19 **G. PETITIONER SHOULD BE AWARDED EAJA FEES IF HE IS A**
20 **PREVAILING PARTY**

21 Petitioner respectfully provides notice of his intent to seek an award of attorney’s fees
22 and costs pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412, upon the
23 conclusion of these proceedings should he be deemed a prevailing party. This notice is made
24 to satisfy the procedural prerequisite that the United States be apprised of a party’s intent to
25 seek recovery under the statute. As required by 28 U.S.C. § 2412(d)(1)(A), Petitioner will
26 demonstrate that (1) the government’s position was not substantially justified, (2) no special
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2 circumstances exist that would make an award unjust, (3) he is a prevailing party within the
3 meaning of the statute, and (4) his application will be timely filed within thirty days of final
4 judgment. Petitioner includes this statement at this stage to ensure Respondents are on notice
5 of his intent to seek EAJA relief thereby preserving his right to recover the reasonable fees and
6 expenses incurred in the course of litigating this habeas petition.
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8 II. CONCLUSION

9 WHEREFORE, and for the foregoing reasons, Petitioner requests that this Court grant
10 his Petition for Writ of Habeas Corpus.
11

12 Dated: November 18, 2025

13 /S/ Sylvia L. Esparza

14 Sylvia L. Esparza, Esq.

15 Attorney for Petitioner
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