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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

REYES CABRERA-CORTES **Petitioner,** **vs.** **Jason Knight, Acting Las Vegas/Salt Lake City Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); John Mattos, Warden, Nevada Southern Detention Center; Kristi NOEM, Secretary, United States Department of Homeland Security; Pamela BONDI, Attorney General of the United States; Executive Office for Immigration Review** **Respondents.**	**REPLY MEMORANDUM** **Case No. 2:25-cv-01976** **Honorable Judge: Richard F. Boulware, II**

REPLY MEMORANDUM TO FEDERAL RESPONDENTS' RESPONSE TO THE PETITION RESPONSE

I. INTRODUCTION

This memorandum addresses the government's opposition to Petitioner Reyes Cabrera-Cortes's habeas corpus petition challenging his continued civil immigration detention. Mr. Cabrera-Cortes, a long-term U.S. resident with deep family ties and no criminal history, was granted release on bond under 8 U.S.C. § 1226(a) after a full custody hearing before an Immigration Judge on August 14, 2025. Despite that lawful determination, the Department of Homeland Security (DHS) unilaterally suspended his release by filing an EOIR-43 automatic stay, without seeking discretionary review or presenting new evidence of flight risk or danger. Weeks later, the Board of Immigration Appeals issued *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), announcing for the first time that immigration judges lack authority to grant bond to individuals present in the United States without admission—even those who have lived here for decades—and retroactively applied this new rule to invalidate the IJ's order in Mr. Cabrera-Cortes's case.

This retroactive application is procedurally improper and constitutionally defective. Long-standing precedent establishes that agencies cannot impose new legal rules that affect substantive rights or liberty without explicit congressional authorization. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204 (1988). By nullifying a valid bond order based on a legal standard that did not exist when the IJ ruled, the BIA violated fundamental due process principles and disrupted settled precedent. The government's position thus cannot withstand judicial review, and habeas relief is appropriate.

The government now defends Petitioner's continued detention based on five principal arguments: 1) That § 1225(b)(2)(A) mandates his detention as an "applicant for admission"; 2)

That the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), is lawful and constitutional; 3) That the district court lacks jurisdiction under 8 U.S.C. § 1252; 4) That under *Loper Bright Enterprises v. Raimondo*, the Court must disregard longstanding agency practice interpreting § 1226(a) as authorizing bond for similarly situated individuals; and 5) That Petitioner is not entitled to attorneys' fees under the Equal Access to Justice Act.

Respondent asserts that each of the government's claims fails. Petitioner's continued detention lacks statutory authority and violates constitutional guarantees.

II. PROCEDURAL HISTORY

Respondent is charged as removable under INA § 212(a)(6)(A)(i) for being present in the United States without admission or parole, and under § 212(a)(7)(A)(i)(I) for lacking valid entry documents at the time of any application for admission.

On August 14, 2025, Respondent received a bond redetermination hearing before Immigration Judge Glen Baker. DHS presented no evidence but argued Respondent was an "applicant for admission" subject to mandatory detention under § 1225(b)(2)(A)—a new nationwide ICE position unsupported by statute or precedent. The IJ rejected DHS's argument, found Respondent not subject to mandatory detention, and granted the minimum bond of $1,500. Although DHS reserved appeal and filed an EOIR-43 automatic stay, DHS also processed and approved the bond; the family paid it, and counsel was informed that Respondent had been released. Despite this, the Respondent was never released.

Weeks later, the BIA issued *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), holding that immigration judges lack jurisdiction to issue bond for noncitizens present without admission—even long-term residents. DHS applied *Hurtado* retroactively to invalidate Respondent's previously granted bond under the prior legal framework.

III. MANDATORY DETENTION UNDER § 1225(b)(2)(A)

The government's primary argument rests on the assertion that Mr. Cabrera-Cortes, because he entered without inspection, is an "applicant for admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). This position is incorrect because: (1) the statute does not apply to individuals who were apprehended years after entering the United States and not within the borders of the United States and (2) longstanding agency and judicial precedent treated such individuals as subject to § 1226(a), not § 1225.

a. Petitioner Is Not Subject to Mandatory Detention Under § 1225(b)(2)(A)

By its plain terms, § 1225(b)(2)(A) mandates detention of an "alien who is an applicant for admission" and whom an immigration officer determines is not "clearly and beyond a doubt entitled to be admitted." But as courts have recognized, this provision applies primarily to noncitizens apprehended at or near the border, not individuals like Petitioner who resided in the United States for decades. Courts addressing this issue, including *Rodriguez Vazquez v. Bostock*, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); and *Perez-Gomez v. Warden*, No. 3:25cv773, 2025 WL 7019312 (E.D. Va. Nov. 10, 2025), have held that noncitizens apprehended inside the United States are properly detained under § 1226(a), not § 1225. These decisions reflect a coherent statutory framework: § 1225 governs individuals encountered at the threshold of entry, while § 1226 governs those like Petitioner who have lived openly here for many years, later placed into removal proceedings.

In *Perez-Gomez*, the court emphasized that § 1226(a) is the "default rule" governing detention of "aliens already present in the United States," and explicitly rejected DHS's claim that a long-settled noncitizen who entered without inspection could be classified as "seeking

admission" under § 1225(b)(2)(A). *Id.* at *8–9. Interpreting the statute this way would conflict with the INA's plain text and structure and render provisions superfluous. *Id.*

Even the government's favored precedent, *Jennings v. Rodriguez*, 583 U.S. 281 (2018), does not compel a contrary result. *Jennings* confirmed the statutory language of § 1225(b), but expressly reserved constitutional questions and did not determine which detention framework applies to long-settled individuals apprehended well after their entry.

This distinction is critical here. Mr. Cabrera-Cortes was not apprehended near a border or attempting a recent entry; he was arrested in Orem, Utah, more than 20 years after entering the United States. He has lived continuously in the U.S. since 2005. These facts distinguish him from individuals to whom § 1225(b)(2)(A) was intended to apply. Courts in *Rodriguez Vazquez*, *Gomes*, and *Perez-Gomez* correctly held that § 1226(a), not § 1225(b), governs detention for long-settled residents in standard removal proceedings. Applying § 1225(b) to Petitioner misreads the statute and imposes an unnecessarily harsh detention regime on individuals who have deep roots and lawful equities in the United States.

b. Agency Practice Prior to *Hurtado* Recognized § 1226(a) as Governing

For over two decades after the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, the Executive Office for Immigration Review (EOIR) and DHS routinely treated noncitizens apprehended in the country and charged as inadmissible under § 212(a)(6)(A)(i) as subject to § 1226(a) bond review. This approach was memorialized in EOIR's regulations. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Petitioner was charged under § 212(a)(6)(A)(i) and placed into § 1229a proceedings: the category which the government has for decades treated as eligible for bond hearings under § 1226(a). Immigration Judges across the country, including IJ Glen Baker in this case, have

long exercised that jurisdiction per this statutory and regulatory guidance.

Perez-Gomez v. Warden, No. 3:25cv773, 2025 WL 7019312 (E.D. Va. Nov. 10, 2025), affirmed this view, observing that "for decades, Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection," and that "[t]he plain text of the INA, Supreme Court precedent, district court decisions around the country, and decades of practice support this conclusion." *Id.* at *8–9. The court emphasized that DHS's revised interpretation, which seeks to funnel all such cases into § 1225(b)(2) detention, represented a "revisited legal position" unsupported by statute and precedent. *Id.*

Mr. Cabrera-Cortes fits squarely within this long-established category. He was charged under § 212(a)(6)(A)(i), for entering without inspection, and placed into full § 1229a removal proceedings, not expedited removal. Consistent with EOIR regulations and decades of practice, IJ Glen Baker properly exercised jurisdiction under § 1226(a) to conduct a bond hearing. The IJ granted a low bond of $1,500 after finding that Mr. Cabrera-Cortes posed no flight risk or danger to the community. At the time of this ruling, no binding authority questioned the IJ's jurisdiction, certainly not *Hurtado*, which had not been issued. Retroactively applying *Hurtado* to invalidate that hearing is legally unjustified.

IV. THE AUTOMATIC STAY PROVISION VIOLATES DUE PROCESS

The government defends its use of the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), to prevent Petitioner's release on bond, arguing it preserves the government's interest in appeal. But this regulation violates procedural and substantive due process, empowering DHS to override an Immigration Judge's custody determination without review, without standards and judicial oversight, nullifying the IJ's role and leaving individuals in prolonged, unchecked detention.

a. The Regulation Undermines Procedural Safeguards and Permits Arbitrary Detention

The automatic stay allows the government (the losing party at a bond hearing) to unilaterally block release simply by filing a notice of appeal (Form EOIR-43). No review by the BIA is required; no factual rebuttal is necessary; no legal standard must be met. This stands in sharp contrast to traditional stay procedures, which require a showing of irreparable harm, likelihood of success, and a balance of equities. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts weigh three factors: (1) the private interest affected; (2) the risk of erroneous deprivation under current procedures and the value of additional safeguards; and (3) the government's interest. Petitioner's interest in freedom from prolonged civil confinement is at its apex. The risk of erroneous deprivation is extreme when DHS can bypass a fully adjudicated IJ decision with a rubber-stamped automatic stay. The government's interest in ensuring appellate review could have been achieved through the narrower and more appropriate vehicle of § 1003.19(i)(1), which allows for discretionary stays based on a showing of specific need.

In *Perez-Gomez v. Warden*, 2025 WL 7019312 (E.D. Va. Nov. 10, 2025), the court highlighted this same concern. The court emphasized that denying a bond hearing to a long-settled, non-dangerous individual solely on the basis of an automatic government-triggered stay violates fundamental due process. Applying *Mathews*, the court found the petitioner's detention, without a meaningful opportunity for release, raised the kind of constitutional defect the automatic stay provision could not remedy. *Id.* at *14–16.

Here, DHS invoked the automatic stay the day after IJ Glen Baker granted bond. Petitioner was not released despite the IJ's finding he posed no danger to the community or flight risk. DHS provided no factual rebuttal at the hearing and did not seek a discretionary stay under

§ 1003.19(i)(1). Instead, they defaulted to § 1003.19(i)(2), using it to override the IJ's judgment without any neutral review. The arbitrariness of this action is further underscored by what followed: Mr. Cabrera-Cortes's bond was approved and processed by DHS, his family paid the bond, and DHS affirmatively notified counsel that Petitioner had been released though remained in custody. This sequence reveals the automatic stay as not only unconstitutional in principle but chaotic and abusive in execution, punishing noncitizens for prevailing in court.

b. The Automatic Stay Defeats Substantive Due Process Protections

The stay also violates substantive due process. Detention not narrowly tailored to a compelling government interest is constitutionally suspect. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Once an IJ determines continued detention is unnecessary and unlawful under applicable law, there is no basis for continued incarceration absent proof the IJ erred. But the automatic stay allows continued detention without any showing of error, even when, as here, the government presents no evidence.

Courts have struck down the use of automatic stays in similar contexts. In *Ashley v. Ridge*, 288 F. Supp. 2d 662 (D.N.J. 2003), *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004), and *Mohammed H. v. Trump*, 2025 WL 1692739 (D. Minn. 2025), courts held that 8 C.F.R. § 1003.19(i)(2) improperly lets an adversarial party, DHS, override judicial findings without oversight, violating the Due Process Clause. As the *Zavala* court noted, this regulation "conflates the roles of prosecutor and judge" and "invites arbitrary detention." *Id.* at 1078. Similarly, *Mohammed H.* observed "the automatic stay rendered Petitioner's continued detention arbitrary and gave him no chance to contest the Government's case for detention." *Id.* at *5.

In this case, the IJ conducted a full bond hearing and, based on evidence and argument,

determined that Mr. Cabrera-Cortes qualified for release under § 1226(a). He has no criminal history, has deep family ties in the U.S., and poses no risk of flight. Yet, solely because DHS invoked the automatic stay, he has remained in detention for months. This is a textbook example of prolonged civil detention imposed without individualized justification.

Moreover, Mr. Cabrera-Cortes's detention is particularly egregious because the government presented no evidence during the bond hearing to support his continued detention. They did not demonstrate he poses any flight risk or danger to the community. In fact, the IJ's ruling found that he did not. Detention under these circumstances is arbitrary, punitive, and unconstitutional in both process and substance. As the court in *Perez-Gomez v. Warden* reiterated, denying bond to a petitioner who poses no risk and has no criminal history unlawfully infringes on due process. 2025 WL 7019312, at *9–10.

V. THE DISTRICT COURT RETAINS JURISDICTION UNDER 28 U.S.C. § 2241 TO REVIEW THE PETITIONER'S DETENTION

The government's reliance on §§ 1252(g) and 1252(b)(9) is misplaced. District courts maintain habeas jurisdiction to review unlawful immigration detention, especially where the petitioner challenges the legality of continued custody, not the removal proceedings.

a. A. Section 1252(g) Does Not Bar Detention Challenges

Section 1252(g) applies only to three discrete actions: commencing proceedings, adjudicating cases, and executing removal orders. *Reno v. AADC*, 525 U.S. 471, 482 (1999). Courts have repeatedly held that detention-based *habeas* claims fall outside this narrow bar. *See Perez-Gomez v. Warden*, 2025 WL 7019312, at 6 (E.D. Va. Nov. 10, 2025); Ma v. Reno, 208 F.3d 815, 820 (9th Cir. 2000). Mr. Cabrera-Cortes challenges only the legality of his custody and DHS's use of an automatic stay—not the initiation of removal. Section 1252(g) does not

apply.

b. *B. Section 1252(b)(9) Does Not Eliminate Habeas Review*

The Supreme Court made clear § 1252(b)(9) preserves habeas review of detention claims. *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018). Detention challenges remain fully reviewable under § 2241. *See Demore v. Kim,* 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001). Perez-Gomez, 2025 WL 7019312, likewise held that prolonged-detention challenges are independent of removal proceedings and remain within district court jurisdiction. Id. at 5–6. Because Mr. Cabrera-Cortes seeks only release from unlawful detention, not review of a removal order, this Court retains jurisdiction. Any contrary reading would raise serious Suspension Clause concerns. *See Gonzalez v. ICE*, 975 F.3d 788, 804 (9th Cir. 2020).

VI. *LOPER BRIGHT* DOES NOT JUSTIFY DISREGARDING DECADES OF CONSISTENT STATUTORY INTERPRETATION FAVORING BOND ELIGIBILITY UNDER § 1226(a)

The government claims that under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 726 (2024), this Court must ignore the longstanding agency interpretation and practice that placed individuals like Mr. Cabrera-Cortes, long-settled, non-admitted individuals in § 1229(a) proceedings, under the bond framework of 8 U.S.C. § 1226(a). That argument misreads both the scope of *Loper Bright* and the nature of the relevant precedent.

c. *Loper Bright* Eliminated *Chevron* Deference, Not Judicial Discretion or Contextual Interpretation

It is true that *Loper Bright Enterprises v. Raimondo*, 603 U.S. 726 (2024), overruled the doctrine of Chevron deference, instructing courts to independently interpret statutes rather than reflexively deferring to agency interpretations. However, *Loper Bright* does not require courts

to ignore relevant statutory history, prior administrative practice, or long-established interpretations, especially when those practices are consistent with the plain meaning and language of the statute.

To the contrary, *Loper Bright* reaffirmed that judicial interpretation "must be guided by traditional tools of statutory construction," including agency history, context, legislative intent, and practical application. *Id.* at 741–742. In that light, courts must give weight to the fact that for more than 25 years, EOIR, DHS, and federal courts have interpreted § 1226(a) to govern individuals like Mr. Cabrera-Cortes, who entered without inspection, detained inside the United States, and placed into § 1229a removal proceedings, not subject to mandatory detention.

The Court in *Perez-Gomez v. Warden*, No. 3:25cv773, 2025 WL 7019312 (E.D. Va. Nov. 10, 2025), observed that, for decades, "Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection," recognizing that this longstanding practice aligns with the statutory framework. *Id.* at 9.

This principle is directly applicable to Mr. Cabrera-Cortes. The IJ in this case, Glen Baker, did exactly what the statutory framework and agency practice authorized. His bond order was issued before the BIA decided *Matter of Hurtado*, and it relied on long-settled principles that reflected EOIR's own understanding of the law. Even post-*Loper Bright*, this long-standing and coherent administrative practice remains relevant, not because of deference, but because it aligns with how the statute has been understood and applied consistently for decades.

Moreover, DHS's reliance on *Loper Bright* is inconsistent with its own litigation posture. On the one hand, the government invokes *Loper Bright* to argue that longstanding agency practice interpreting § 1226(a) should now be discarded. Yet on the other hand, it simultaneously asks this Court to treat *Matter of Hurtado* as authoritative and binding,

effectively demanding that *Hurtado* be given controlling weight despite *Loper Bright*'s clear rejection of automatic deference to agency interpretations. This is not a principled application of *Loper Bright*, it is selective opportunism. If courts are to evaluate statutory meaning independently, as *Loper Bright* instructs, then *Hurtado* should receive no presumption of correctness and must be assessed in light of its abrupt departure from decades of consistent statutory practice.

d. The Government's Own Practices Confirm § 1226(a) as the Governing Framework

Until *Matter of Hurtado*, EOIR regulations and routine ICE practice treated individuals charged under § 212(a)(6)(A)(i) and placed into § 1229(a) proceedings as eligible for bond hearings under § 1226(a). This was not *Chevron*-style deference, but practical statutory interpretation based on congressional design and immigration enforcement reality. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Congress has never amended § 1226(a) or § 1225(b) to override that understanding, even after years of practice. That silence speaks volumes. As the Supreme Court held in *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 156 (2000), longstanding agency practice informs statutory meaning when Congress has acquiesced. In other words, the IJ's bond decision in Mr. Cabrera-Cortes's case was not only valid under old agency policy, it aligned with congressional intent and legislative acquiescence.

Perez-Gomez v. Warden, 2025 WL 7019312 (E.D. Va. Nov. 10, 2025), reinforces this reasoning. The court noted that for decades, EOIR and DHS treated individuals like Petitioner who entered without inspection and were later apprehended in the interior as eligible for bond under § 1226(a). The court observed that longstanding agency practice remains vital when evaluating detention eligibility and found DHS's sudden shift post-*Hurtado* was not grounded in statutory or legislative change. *Id.* at *9. Congress had multiple opportunities over nearly 30

years to amend § 1226(a) or § 1225(b) to clarify or restrict bond eligibility for individuals in Mr. Cabrera-Cortes's position—and it never did. As the Court stated in *Perez-Gomez*, Congress's inaction, coupled with decades of consistent agency practice, supports the conclusion that this interpretation aligns with legislative intent. *Id.* at 8–9.

Petitioner was precisely the type of individual covered by the pre-*Hurtado* framework: charged under § 212(a)(6)(A)(i), placed into § 1229(a) removal proceedings, and apprehended after living in the United States interior for over two decades. Under longstanding EOIR and ICE practice grounded in the 1997 EOIR regulations, such individuals were routinely afforded bond hearings under § 1226(a). The IJ in Mr. Cabrera-Cortes's case followed that exact practice.

To now assert that Mr. Cabrera-Cortes was never eligible for bond and that the IJ's decision was *ultra vires* would rewrite decades of settled law and practice. That is precisely what *Loper Bright* cautioned against: abandoning traditional interpretive tools in favor of ad hoc agency reversals. *Loper Bright* requires courts to scrutinize agency reinterpretations that disrupt long-established practices, particularly when they have gone uninterrupted by Congress.

e. *Hurtado's* Interpretation is Not "Plain" and Is Open to Judicial Rejection

The government relies heavily on *Matter of Yajure Hurtado* as if it reflects a clear, uncontested interpretation of the INA. But this overlooks that multiple federal courts have already reached conclusions contrary to *Hurtado*, demonstrating the statute's application to individuals like Petitioner is not unambiguous and thus not insulated from judicial scrutiny.

In *Rodriguez Vazquez v. Bostock*, No. 2:24-cv-00224-TL, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025), the court held that a noncitizen who entered without inspection and was apprehended in the interior years later was subject to discretionary detention under § 1226(a), not

mandatory detention under § 1225(b). The court emphasized that Congress designed § 1225(b) for "arriving aliens," and that applying it to long-settled individuals would undermine statutory structure and constitutional safeguards. Similarly, in *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025), the court ruled DHS's reinterpretation of § 1225(b) to apply to long-residing, non-admitted individuals was "likely unlawful." It found the default detention statute in such cases remains § 1226(a), and DHS's treatment of these individuals as "applicants for admission" was inconsistent with decades of agency and judicial precedent.

These rulings reflect not a fringe view, but a mainstream, judicially supported position. Reasonable jurists have read the same statutory text and reached outcomes in direct opposition to *Hurtado*. This fact undermines the government's claim *Hurtado* reflects "plain meaning." In truth, *Hurtado* represents a novel and contested legal shift, and under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 726 (2024), courts are not only free but constitutionally obligated to question whether such interpretations comport with the statute's structure, context, and purpose.

Loper Bright removed the automatic deference that once shielded agency interpretations under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), but it did not replace deference with automatic acceptance; it emphasized courts must now evaluate agency positions using traditional tools of statutory construction, which include considering legislative history, prior practice, and consistency with the statutory scheme. As *Perez-Gomez v. Warden*, No. 3:25cv773, 2025 WL 7019312 (E.D. Va. Nov. 10, 2025) noted, longstanding agency practice in detention cases, like the bond eligibility for noncitizens like Petitioner, is critical to interpreting the statute. *Id.* at *9. The court emphasized that the sudden reversal of decades of practice is subject to judicial scrutiny and cannot be recklessly applied retroactively. *Id.*

Thus, *Loper Bright* gives more reason, not less, to reject *Hurtado*, if the Court determines it

undermines the plain structure of § 1226(a) or erases decades of lawful practice. The government's attempt to retroactively apply *Hurtado* to Mr. Cabrera-Cortes, despite a longstanding interpretation under which he lawfully received a bond, cannot withstand scrutiny under statutory text or the post-*Loper Bright* framework.

VII. PETITIONERS' REQUEST FOR EAJA FEES IS APPROPRIATE AND SHOULD NOT BE PREMATURELY DISMISSED

The government's argument that Petitioner is not entitled to fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, because he is not yet a "prevailing party" is misplaced. The request is simply preserved for post-judgment consideration as standard practice. Courts routinely allow EAJA applications after habeas relief is granted, so including the request in the prayer for relief is entirely appropriate. *See Ardestani v. INS*, 502 U.S. 129 (1991); *Kooritzky v. Herman*, 178 F.3d 1315, 1317–18 (D.C. Cir. 1999). Denial at this stage would be premature.

Even if the Court were to evaluate the issue now, the government cannot show its position was "substantially justified." To meet that standard, the government must demonstrate its legal and factual arguments had a reasonable basis. *Gonzalez v. Free Speech Coalition*, 408 F.3d 613, 618 (9th Cir. 2005). Here, the government's stance relies on: (1) retroactive application of a new BIA decision (*Hurtado*) to nullify a bond order issued under prior law; (2) invocation of an automatic stay procedure repeatedly found unconstitutional; (3) expansion of § 1225(b)(2)(A) to long-settled residents contrary to nationwide authority; and (4) jurisdictional arguments narrowed or rejected by the Supreme Court in *Jennings, Demore, and Zadvydas*.

The question of EAJA entitlement should be resolved after the Court rules on the merits. An attempt to dismiss the request now is premature and should be disregarded or deferred.

VIII. CONCLUSION

For decades, individuals like Mr. Cabrera-Cortes—charged under § 212(a)(6)(A)(i), apprehended in the interior, and placed in § 1229(a) proceedings—were uniformly eligible for bond under § 1226(a). Hurtado abruptly upended that settled framework, and the government now seeks to apply it retroactively to strip Immigration Judges of long-recognized authority and justify Petitioner's continued detention without meaningful process. This approach is unsupported by statute, due process principles, or the post-Loper Bright limits on agency interpretation. Because the automatic stay is unconstitutional, the jurisdictional defenses fail, and the EAJA arguments are premature, the Court should grant the writ, order Mr. Cabrera-Cortes's immediate release under the previously set conditions, and preserve his ability to seek costs and fees.

RESPECTFULLY SUBMITTED this 17th day of November, 2025.

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/s/Mari Alvarado
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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system, which sent notification of such filing to the following:

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