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

ROGELIO BERTO MENDEZ Petitioner, vs. KRISTI NOEM, Acting Secretary of the United States Department of Homeland Security; PAM BONDI, Attorney General of the United States; THOMAS E. FEELEY, Salt Lake City Field Office Director, U.S. Immigration and Customs Enforcement; JOHN MATTOS, Warden at Nevada Southern Detention Center Respondents.	CASE NO. 2:25-cv-02062-RFB-MDC Agency No. [redacted] **REPLY TO FEDERAL RESPONDENTS' RESPONSE TO PETITIONER'S EMERGENCY MOTION FOR RESTRAINING ORDER (ECF No. 14)**

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 make the same arguments with respect to jurisdiction that this Court has rejected now on several occasions. *See, e.g.*, *Sanchez Aparicio v. Noem*, No. 25-CV-01919, 2025 WL 2998098, at *6 (D. Nev. Oct. 23, 2025); *E.C. v. Noem*, No. 25-CV-01789, 2025 WL 2916264, at *8 (D. Nev. Oct. 14, 2025); *Roman v. Noem*, No. 25-CV-01684, 2025 WL 2710211, at *5; *Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082, at *13 (D. Nev. Sep. 17, 2025). In Respondents' response, they sidestep this Court's prior decisions—and numerous decisions from federal district courts nationwide—that have squarely recognized jurisdiction over habeas petitions challenging this type of immigration detention.

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, where a petitioner is not seeking review of a removal order or is challenging their detention or a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 402 (2019); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) ("§ 1252(b)(9) does not present a jurisdictional bar where those bringing

suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined."). Further, Respondents concede that 8 U.S.C. § 1252(b)(9) does "not bar claims challenging the conditions or *scope of detention* of foreign nationals in removal proceedings." Respondents' Response in Opposition, at 10 (emphasis added). Respondents argue that § 1252(b)(9) should be read to bar all claims "challenging the decision to detain." *Id.* This reading contradicts the clear language of the statute as the decision to detain is unequivocally a part of the "scope of detention."

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

Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot hear "any cause of 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." § 1252(g). The Supreme Court has limited application of this section to three discrete actions that an Attorney General may take: (1) the decision or action to commence proceedings, (2) the decision or action to adjudicate cases, and (3) the decision or action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is not a challenge to one of the three discrete events listed in *Reno*.

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

While Section 1226(e) of the INA precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section

1226(e) "does not preclude challenges to the statutory framework that permits the alien's detention without bail." *Jennings*, 138 S. Ct. at 841.

Moreover, Section 1226(e) does not limit habeas review over constitutional claims or questions of law. *Singh v. Holder*, 638 F.3d 1196 at 1202. As Petitioner is raising constitutional claims and questions of law—whether the automatic stay provision in this case and the BIA's new interpretation of the INA violate the Petitioner's right to procedural due process and substantive due process after denying him the ability to post a bond—Section 1226(e) does not preclude this Court's jurisdiction to review Petitioner's habeas petition.

B. PETITIONER HAS FULLY EXHAUSTED ALL AVAILABLE ADMINISTRATIVE REMEDIES.

Petitioner has fully exhausted all available administrative remedies as they relate to his unlawful detention. The Respondents' insistence on further "exhaustion on the merits" is both misplaced and legally irrelevant as this petition does not challenge, nor could it challenge, the underlying removal order. With respect to Petitioner's detention, the BIA has already issued its decision, concluding the administrative process. The Respondents' suggestion that Petitioner must await a "final decision on the merits" improperly conflates removal proceedings with the separate question of constitutional detention.

Further, Respondents assert that this matter varies from other matters that this Court has decided with respect to immigration detention because the Petitioner has received a final custody determination from the BIA. However, this custody determination is premised on the very issue of statutory interpretation, i.e., *Matter of Yajure Hurtado*, that underlies every recent Habeas Corpus petition this Court has decided with respect to immigration detention. *See* BIA

Bond Decision. Petitioner was already granted bond by an Immigration Judge in the amount of $5,000, and the only reason he remains detained is the BIA's interpretation of 8 U.S.C. § 1225(b) as explained in *Yajure Hurtado*. Even if Petitioner had remaining options for administrative exhaustion, which it does not, this Court has granted Habeas Corpus and injunctive relief to petitioners who have yet to request a custody redetermination hearing in immigration court because *Yajure Hurtado* renders consideration of custody redetermination moot. *See, e.g.*, *E.C.*, 2025 WL 2916264 ("[R]equiring Petitioner to request a bond hearing only to be denied one pursuant to *Hurtado* would be an exercise in futility.) However, this matter does differ from the vast array of cases grappling with the issue of *Yajure Hurtado* in that Petitioner here has already been granted relief from deportation by an Immigration Judge.

Additionally, the Respondents' argument on "temporary" detention ignores the record and mischaracterizes the facts of this case. By granting the Petitioner's application for Cancellation of Removal for Certain Nonpermanent Residents (EOIR-42B), the Immigration Judge has made explicit factual findings regarding Petitioner's good moral character, favorability for discretion, and credibility. Those determinations necessarily demonstrate that Petitioner is not a flight risk and has twice been found deserving of relief. The Respondents' reliance on generic assertions of "temporary detention pending BIA review" is unavailing. Petitioner has now been detained for nearly five months, which is well beyond any "temporary" period contemplated by the automatic-stay regulation. The Respondents' reasoning fails to address the specific and compelling facts of this case.

It is worth noting that the Respondents' argument with respect to administrative exhaustion is pure boilerplate and fundamentally disingenuous. First, the argument recycles

generic language that bears no relation to Petitioner's procedural posture. Federal Respondents' Response to Petitioner's Emergency Motion for Temporary Restraining Order, at 23–24. Additionally, in the introduction of their Response, Respondents refer to a petitioner from a previous petition for Habeas Corpus that this court decided a week prior. *Id.* at 2 (referring to "Petitioner Samuel Sanchez Aparicio"). Such rote arguments and oversight demonstrate a lack of good-faith engagement with the record and underscore the weakness of their position. The exhaustion doctrine simply does not apply here, and the Respondents' reliance on it is disingenuous at best.

C. MR. BERTO MENDEZ IS LIKELY TO SUCCEED IN SHOWING THAT HIS DETENTION VIOLATES DUE PROCESS OR THERE IS A SERIOUS QUESTION

A temporary restraining order is appropriate if a petitioner can show that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's alternative "sliding scale" approach, a temporary restraining order is appropriate if "a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (internal quotation marks omitted). Petitioner's due process claims satisfy these standards.

Petitioner asserts that his detention violates due process because (1) the automatic stay provision at 8 C.F.R. §1003.19(i)(2) violates his procedural and substantive due process rights

after already having been granted relief from removal; and (2) the BIA's new interpretation in *Matter of Yajure Hurtado* that §1225(b)(2) is applicable to Petitioner, not section 1226(a), is incorrect and violates the INA.

1. Automatic stay at 8 C.F.R. §1003.19(i)(2)

The automatic stay provision at 8 C.F.R. § 1003.19(i)(2) has been a source of concern since its implementation, as it grants the Department unilateral authority to suspend an Immigration Judge's decision and continue an individual's detention, even when the Judge has lawfully ordered that individual's release on bond. *Ashley v. Ridge*, 288 F. Supp. 2d 662, 673 (D.N.J. 2003) (finding that the "continued detention of Petitioner without judicial review of the automatic stay of the bail determination, despite the Immigration Judge's decision that he be released on bond, violated Petitioner's procedural and substantive due process constitutional rights"); *Zabadi v. Chertoff*, No 05-CV-1796, 2005 WL 1514122 (N.D. Cal. June 17, 2005) (finding the automatic stay provision unconstitutional); *Zavala v. Ridge*, 310 F. Supp 2d 1071(N.D. Cal. 2004) (same).

Most recently, numerous federal courts, including this Court, have held that detaining individuals like Petitioner under the automatic stay provision constitutes a violation of their procedural and due process rights. *Sanchez Aparicio*, 2025 WL 2998098, at *1; *Vazquez v. Feeley*, 2025 WL 2676082, at *16; *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (finding the automatic stay provision violates Petitioner's due process and describing the history of the automatic stay provision and its problems); see also, *Reynosa Jacinto v. Trump*, No. 25-CV-03161, 2025 U.S. Dist. LEXIS 160314, at *7 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025).

To determine whether Petitioner's continued detention violates his procedural due process, the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Here the court weighs the following factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures

used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

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

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

In regard to the second factor, "the risk of erroneous deprivation" of Petitioner's right to be free from incarceration, the court must review if the invocation of the automatic stay procedure increases that risk. Here, Petitioner will most certainly be at risk of erroneous deprivation of his liberty because he was found not to be a danger to the community or a risk of flight, and prevailed before the Immigration Judge to be released upon posting a bond in the amount of $5,000, and the Department has the unilateral power to override this decision. Recently, this court found "this unchecked power vested in DHS to prolong an individual's detention cannot in any circumstance be a 'carefully limited exception' to an individual's right

to liberty as required by the Due Process Clause""). *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, at *56; 2025 LX 460110; 2025 WL 2676082 (citing Salerno, 481 U.S. at 755).

Other courts reviewing this issue have found that a regulation permitting the losing party to stay a decision allowing the Petitioner to remain detained results in an increased risk of erroneous deprivation of his liberty interest. *See Ashley*, 288 F. Supp. 2d at 671 ("It produces a patently unfair situation by 'taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified.'") *see also Reynosa Jacinto v. Trump*, 25-CV-03161, 2025 U.S. Dist. LEXIS 160314, at *7 (D. Neb. August 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142, 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025); *Silva v. Larose*, No. 25-CV-2329, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025).

As to the last factor, the government's interest and burden of additional or substitute procedural requirements, the *Mathews* test requires the court to weigh the Petitioner's private liberty interests and risk of erroneous deprivation against the government's interest in enforcing the automatic stay regulation, which includes the use of additional or substitute procedural requirements.

D. PETITIONER WILL SUFFER IRREPARABLE HARM IF HE IS NOT RELEASED FROM DETENTION.

Petitioner will suffer two significant harms if a temporary restraining order is not issued in this matter: (1) the present and ongoing violation of Petitioner's constitutional rights resulting from his unlawful detention, and (2) the harms that flow from the unlawful and continuing detention such as loss of family, loss of employment, loss of home, and risk to Petitioner's health.

1. Constitutional Violations

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated General Contractors of Calif., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (recognizing presumption of irreparable harm when constitutional infringement alleged); *see also Federal Practice & Procedure*, § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Further, as the Eleventh Circuit has held, the "unnecessary deprivation of liberty clearly constitutes irreparable harm." *United States v. Bogle*, 855 F.2d 707, 710–11 (11th Cir. 1998). Here, Respondents' continued deprivation of Petitioner's liberty violates Petitioner's due process rights and constitutes irreparable injury. Indeed, each day of confinement is a day of freedom forever taken from Petitioner.

2. Increased Risk of Health Concerns

Petitioner is at risk of deteriorating his health if he remains in detention. *See* Petitioner's Combined Memorandum of Points and Authorities in Support of Writ of Habeas and Emergency Motion for Temporary Restraining Order. ECF No. 2-5, p.6. Petitioner's partner alleges that the conditions of confinement have directly endangered Petitioner's health and well-being. *Id.* He suffers from recurring headaches, insomnia, and exhaustion due to the cold, damp, and unsanitary conditions of his cell. *Id.* Requests for medical attention are met with

weeks-long delays, reflecting deliberate indifference to his basic medical needs. Such conditions contravene the constitutional requirement that immigration detention remain non-punitive in nature. Each additional day of confinement worsens his physical and emotional state.

As previously stated, in the correctional setting, the stakes are high, and any delay or denial of care can convert an otherwise manageable condition into a catastrophic event. Tragically, inadequate medical care in jails and prisons is a well-documented systemic failure. Incarcerated persons often endure delays, missed appointments, staffing shortages, and willful indifference by correctional medical staff.[1] Therefore it is not speculative to fear that Petitioner's health will deteriorate rapidly while he remains detained.

Since his confinement, his wife and children have been deprived of meaningful communication with him. *Id.* Phone calls are routinely canceled without notice or explanation, and when permitted, they are brief, monitored, and emotionally inadequate. *Id.* Video calls are not allowed, effectively cutting off the family's only opportunity for face-to-face connection. *Id.* Given his spouse's work obligations and lack of childcare, in-person visits are nearly impossible. *Id.* As a result, the family's contact has been reduced to sporadic, impersonal exchanges that have caused significant emotional distress, especially to the couple's young children, who cry when calls fail and struggle to understand why their father remains locked away. *Id.*

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[1] Homer Venters, The Health Crisis of U.S. Jails and Prisons, New Eng. J. Med. 2259 (2022), https://www.nejm.org/doi/full/10.1056/NEJMms2211252

Petitioner's detention has caused profound and compounding harm to his entire family. His life partner is struggling to meet their basic financial obligations. The loss of Petitioner's income has left the family in severe financial distress, forcing them to make impossible choices between essential expenses. Beyond the financial hardship, the emotional toll has been devastating. Petitioner has been completely separated from his life partner, children, and granddaughter, unable to see or hold them since his incarceration. His absence has created a deep void in the family. His children constantly ask when their dad will come home. In short, Petitioner's detention has this family's stability, causing pain, anxiety, and hardship that worsen with every passing day he remains in detention.

E. EQUITABLE CONSIDERATIONS AND PUBLIC INTEREST FAVOR PETITIONER'S RELEASE.

The last two factors under *Winter* "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435; 129 S. Ct. 1749, 1762; 173 L. Ed. 2d 550, 567; 2009 U.S. LEXIS 3121, *31; 77 U.S.L.W. 4310. First the balance of equities strongly favors Petitioner. Petitioner faces irreparable harm to his constitutional rights and other harms that flow from ongoing detention.

Moreover, the government's interest in Petitioner's continued detention is minimal and pales in comparison to the concrete and irreparable harm that Petitioner continues to suffer. Here, Petitioner remains in custody even though he was found by the Immigration Judge not to be a danger or a flight risk and was granted Cancellation of Removal. His continued detention not only violates his constitutional rights but also causes direct suffering to him, his family and his community. As the Ninth Circuit has regularly held, there is no harm to the government when a

court prevents the government from engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

Finally, the temporary restraining order sought here is in the public interest. The public has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) ("[I]t is always in the public interest to protect constitutional rights."). Moreover, the public has an interest in accurate determinations in all legal proceedings, including in the decision of whether to detain individuals during their immigration cases. The public is also served by avoiding excessive expense on detention and ensuring that the government does not expend its resources to detain individuals unnecessarily.

II. CONCLUSION

WHEREFORE, and for the foregoing reasons, Petitioner asserts that his continued detention is unlawful, and he respectfully requests that this Court grant his request for a temporary restraining order and order his immediate release from custody, or in the alternative upon posting a bond in the minimum amount of $1,500 because Petitioner has already been granted Cancellation of Removal for Certain Nonpermanent Residents (EOIR-42B) while his removal proceedings are pending on appeal.

Dated: October 30, 2025

/S/ Sylvia L. Esparza

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