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

9 * * *

10 ROGELIO BERTO MENDEZ

11 Petitioner,

12 vs.


13 KRISTI NOEM, Acting Secretary of the
14 United States Department of Homeland
15 Security;

16 PAM BONDI, Attorney General of the
17 United States;

18 THOMAS E. FEELEY, Salt Lake City
19 Field Office Director, U.S. Immigration
20 and Customs Enforcement;

21 JOHN MATTOS, Warden at Nevada
22 Southern Detention Center

23 Respondents.

CASE NO. 2:25-cv-02062-RFB-MDC
Agency No. 

**REPLY TO FEDERAL
RESPONDENTS' RESPONSE TO
PETITION FOR WRIT OF HABEAS
CORPUS (ECF No. 17)**

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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 several occasions. *See, e.g., Sanchez Aparicio*, 2025 WL 2998098, at *6; *E.C. v. Noem*, 2025 WL 2916264, at *8; *Roman v. Noem*, 2025 WL 2710211, at *5; *Vazquez v. Feeley*, 2025 WL 2676082, at *13.

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

3 Concerning the question of removability, 8 U.S.C. § 1252(b)(9) funnels judicial review
4 to the appropriate federal court of appeals, which would be the Ninth Circuit here. However,
5 where a petitioner is not seeking review of a removal order or is challenging their detention or
6 a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586
7 U.S. 392, 402 (2019); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*,
8 591 U.S. 1, 19 (2020) (“§ 1252(b)(9) does not present a jurisdictional bar where those bringing
9 suit are not asking for review of an order of removal, the decision to seek removal, or the
10 process by which removability will be determined.”).

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

14 Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot
15 hear “any cause of claim by or on behalf of any alien arising from the decision or action by the
16 Attorney General to commence proceedings, adjudicate cases, or execute removal orders
17 against any alien under this chapter.” § 1252(g). The Supreme Court has limited application of
18 this section to three discrete actions that an Attorney General may take: (1) the decision or
19 action to commence proceedings, (2) the decision or action to adjudicate cases, and (3) the
20 decision or action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*,
21 525 U.S. 471, 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is
22 not a challenge to one of the three discrete events listed in *Reno*.
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25 **iii. 8 U.S.C. § 1226(e) does not preclude jurisdiction.**

26 While Section 1226(e) of the INA precludes an alien from challenging a discretionary
27 judgment by the Attorney General or a decision that the Attorney General has made regarding
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1 their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section
2 1226(e) “does not preclude challenges to the statutory framework that permits the alien’s
3 detention without bail.” *Jennings*, 138 S. Ct. at 841.

4 Moreover, Section 1226(e) does not limit habeas review over constitutional claims or
5 questions of law. *Singh v. Holder*, 638 F.3d 1196 at 1202. As Petitioner is raising constitutional
6 claims and questions of law—whether the automatic stay provision in this case and the BIA’s
7 new interpretation of the INA violate the Petitioner’s right to procedural due process and
8 substantive due process after denying him the ability to post a bond—Section 1226(e) does not
9 preclude this Court’s jurisdiction to review Petitioner’s habeas petition.
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11 **B. PETITIONER IS UNLAWFULLY DETAINED UNDER 8 U.S.C. § 1225(b)(2)**

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

3 Therefore, Respondents' detention of Petitioner is therefore unlawful and contravenes
4 8 U.S.C. § 1226(a), and the U.S. Constitution. Accordingly, Respondents' detention of Petitioner
5 is contrary to statute. The Due Process Clause of the Fifth Amendment requires that the
6 deprivation of Petitioner's liberty interest be narrowly tailored to serve a compelling government
7 interest.
8

9 Any government interest in detaining Petitioner for purposes of effectuating removal
10 cannot justify his ongoing unlawful and prolonged detention. The record demonstrates that
11 Petitioner is not significantly likely to be removed in the reasonably foreseeable future, as he has
12 already been granted relief from removal through Cancellation of Removal for Certain
13 Nonpermanent Residents pursuant to 8 U.S.C. §1229(a), INA § 240A(b)(1) ("EOIR-42B").
14 Having prevailed on the merits before an Immigration Judge, Petitioner now holds lawful
15 entitlement to remain in the United States unless and until the government successfully overturns
16 that decision on appeal.
17

18 Moreover, Petitioner's eligibility for Parole in Place as the parent of an active-duty U.S.
19 service member further underscores that he will not likely be removed as he is also eligible for
20 adjustment of status under 8 U.S.C. § 1255(a), INA § 245(a). See also USCIS Policy
21 Memorandum or AFM 21.1(c). Thus, any claim that his detention serves a legitimate removal-
22 related purpose is both speculative and unsupported.
23

24 While the government retains the procedural right to appeal to the Board of Immigration
25 Appeals and, subsequently, to seek review before the Ninth Circuit Court of Appeals, such
26 avenues of review do not create or sustain a compelling governmental interest in continued
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1 detention. At this juncture, the government's interest in keeping Petitioner detained pending the
2 conclusion of appellate and judicial proceedings is minimal at best, and is outweighed by the
3 substantial liberty interest at stake and the constitutional prohibition against indefinite detention.

4 In their response, Respondents emphasize the same arguments regarding mandatory
5 detention that this Court has rejected in every other case it has heard regarding the issue of
6 interpretation of §§ 1225 and 1226.
7

8 Petitioner asserts that his detention violates due process because (1) the automatic stay
9 provision at 8 C.F.R. §1003.19(i)(2) violates his procedural and substantive due process rights
10 after already having been granted relief from removal; and (2) the BIA's new interpretation in
11 *Matter of Yajure Hurtado* that §1225(b)(2) is applicable to Petitioner, not section 1226(a), is
12 incorrect and violates the INA.
13

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

15 Most recently, numerous federal courts, including this Court, have held that detaining
16 individuals like Petitioner under 8 C.F.R. § 1003.19(i)(2), namely the automatic stay provision
17 constitutes a violation of their procedural and due process rights. *Sanchez Aparicio*, 2025 WL
18 2998098, at *1; *Vazquez v. Feeley*, 2025 WL 2676082, at *16; *Günaydin v. Trump*, 784 F. Supp.
19 3d 1175 (finding the automatic stay provision violates Petitioner's due process and describing the
20 history of the automatic stay provision and its problems); see also, *Reynosa Jacinto v. Trump*, No.
21 25-CV-03161, 2025 U.S. Dist. LEXIS 160314, at *7 (D. Neb. Aug. 19, 2025); *Maldonado v.*
22 *Olson*, No. 25-CV-3142, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025).

23 To determine whether Petitioner's continued detention violates his procedural due process,
24 the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Here the
25 court weighs the following factors: (1) "the private interest that will be affected by the official
26 action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and
27 the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the
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1 Government's interest, including the function involved and the fiscal and administrative burdens
2 that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

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

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

17 In regard to the second factor, "the risk of erroneous deprivation" of Petitioner's right to
18 be free from incarceration, the court must review if the invocation of the automatic stay procedure
19 increases that risk. Here, Petitioner will most certainly be at risk of erroneous deprivation of his
20 liberty because he was found not to be a danger to the community or a risk of flight, and prevailed
21 before the Immigration Judge to be released upon posting a bond in the amount of \$5,000, and the
22 Department has the unilateral power to override this decision. Recently, this court found "this
23 unchecked power vested in DHS to prolong an individual's detention cannot in any circumstance
24 be a 'carefully limited exception' to an individual's right to liberty as required by the Due Process
25 Clause"). *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, at *56; 2025 LX 460110; 2025 WL
26 2676082 (citing *Salerno*, 481 U.S. at 755).

27 Other courts reviewing this issue have found that a regulation permitting the losing party
28 to stay a decision allowing the Petitioner to remain detained results in an increased risk of

1 erroneous deprivation of his liberty interest. *See Ashley*, 288 F. Supp. 2d at 671 (“It produces a
2 patently unfair situation by ‘taking the stay decision out of the hands of the judges altogether and
3 giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing
4 that detention is justified.’”) *see also Reynosa Jacinto v. Trump*, 25-CV-03161, 2025 U.S. Dist.
5 LEXIS 160314, at *7 (D. Neb. August 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142, 2025
6 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025); *Silva v. Larose*,
7 No. 25-CV-2329, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025).

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

13 Petitioner’s continued detention separates him from his children, grandchildren, sibling,
14 and lifelong partner—most of whom possess lawful status. His family suffers in his absence,
15 deprived of the love, guidance, and support they have long depended upon. The conditions of
16 confinement impose further harms, including incarceration in jail-like facilities, inadequate
17 medical care, and other substandard living conditions.

19 Therefore, his mandatory detention infringes upon the fundamental liberty interest in
20 freedom from physical restraint. Accordingly, Respondents cannot show a “sufficiently strong
21 special justification” for continuing to deprive Mr. Berto Mendez of his fundamental human
22 rights.
23

24 **C. THIS CASE IS READILY DISTINGUISHABLE FROM *VARGAS LOPEZ V.***
25 ***TRUMP AND CHAVEZ V. NOEM.***

26 The Respondents cite a decision from the U.S. District Court for the District of Nebraska,
27 which is nonbinding on this court, where the petitioner’s request for a writ of habeas corpus was
28 denied. *Vargas Lopez v. Trump*, No. 25CV526, 2025 WL 2780351 (D. Neb. Sep 30, 2025). This

1 case is significantly distinguishable because the petitioner failed to adequately plead grounds
2 demonstrating his detention was unlawful. *Id.*

3 In *Vargas Lopez*, the petitioner was identified on the NTA as being inadmissible under 8
4 U.S.C. § 1182(a)(6)(a)(i) for being present in the United States without having been inspected
5 and admitted or paroled. *Id.* at *4. In *Vargas Lopez*, the court did not make a ruling regarding
6 the petitioner's writ based on the merits of the law, rather, the petitioner simply failed to meet
7 his burden of proof to "demonstrate[e] by a preponderance of the evidence that his detention
8 [was] unlawful." *Id.* at *6. Based on lacking evidence and an inability to prove the circumstances
9 of his detention, the court rejected his writ for habeas corpus. *Id.*

10
11 Here, the Petitioner's facts are notably different. While Petitioner is also in the United
12 States without having been inspected and admitted or paroled, he has already been granted
13 immigration relief based on the approval of his EOIR-42B case. The grant of his Cancellation
14 of Removal application necessarily demonstrates that Petitioner has been in the United States far
15 longer than necessary to fall under § 1226 instead of § 1225(b). Further, Respondents have
16 already conceded Petitioner was arrested on a warrant. *See* Federal Respondents' Response to
17 Petition for Habeas Corpus. ECF No. 17, p.8. Petitioner has further provided several documents
18 regarding the circumstances of his immigration detention. The District of Nebraska's argument
19 does not reference the temporal limits of 8 U.S.C. § 1225(b) that this Court has recognized in its
20 decisions in similar cases. Respondents here are conflating the existence of a denied habeas
21 corpus writ with sympathy to their position; however, the court denied the *Vargas Lopez* petition
22 based on the underdeveloped record and pleadings. The court did not say that individuals in
23 Petitioner's situation are always subject to mandatory detention under § 1225(b). Moreover, in
24 *Vargas Lopez*, the court decided not to address the automatic stay regulation directly because it
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1 concluded that Vargas Lopez was not subject to §1226, but mentioned had it done so, “it would
2 have had considerable doubt that the automatic stay in 8 C.F.R. §1003.19(i)(2) comports with
3 due process.” *Id.* at *24.

4 Because the Respondents attempt to analogize a case with different facts, their argument
5 fails. Petitioner here has a solid record of his length of residence in the United States based on
6 his approved application for Cancellation of Removal. Furthermore, the record in this case is
7 more substantially developed and demonstrates that mandatory detention is improper.
8

9 Respondents also cite to a case from the Southern District of California where petitioners
10 were similarly denied preliminary equitable relief for inadequately pleading the unlawfulness of
11 their detention. *Chavez v. Noem*, No. 25-C-02325, 2025 WL 2730228, at *3 (S.D. Cal. Sep. 24,
12 2025). In *Chavez v. Noem*, the court rejected the government’s arguments regarding jurisdiction
13 and exhaustion—two arguments that Respondents here made irrespective of this decision and
14 the numerous other district court decisions addressing the issue.
15

16 However, *Chavez v. Noem* is readily distinguishabl, for its lack of substantive analysis
17 and because the court ultimately concluded that the petitioners failed to plead sufficient grounds
18 for equitable relief. First, the *Chavez* court did not meaningfully engage with, let alone address,
19 the more than thirty decisions that have directly confronted the same issues presented here.
20 Rather than analyzing this robust body of precedent, the court disregarded the overwhelming
21 consensus among federal district courts that have rejected the reasoning of *Yajure Hurtado*,
22 finding that individuals who entered without inspection and have resided in the United States for
23 years are properly detained under 8 U.S.C. § 1226(a), not § 1225(b). Second, and more
24 specifically, Respondents’ reliance on *Chavez* rests on a single, narrow portion of the opinion in
25 which the court denied a temporary restraining order merely because “the Court finds on the
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1 present record that Petitioners have not shown either a likelihood of success or serious
2 questions.” This isolated statement does not constitute substantive guidance on the statutory
3 detention issue presently before this Court.

4 Therefore, this case is unpersuasive as it relates to the Petitioner’s case as he has already
5 been granted relief from deportation and has been found by an IJ to have been in the country for
6 at least ten years. Instead of addressing the overwhelming body of adverse precedent, the
7 government selectively relies on two isolated cases in which a petitioner’s writ of habeas and
8 injunctive relief was denied—cases that are readily distinguishable on their facts and legal
9 posture.
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11 **D. PETITIONER HAS FULLY EXHAUSTED ALL AVAILABLE**
12 **ADMINISTRATIVE REMEDIES.**

13 Petitioner has fully exhausted all available administrative remedies as they relate to his
14 unlawful detention. The Respondents’ insistence on further “exhaustion on the merits” is both
15 misplaced and legally irrelevant as this petition does not challenge—nor could it challenge—
16 the underlying removal order. With respect to Petitioner’s detention, the BIA has already
17 issued its decision, concluding the administrative process. The Respondents’ suggestion that
18 Petitioner must await a “final decision on the merits” improperly conflates removal
19 proceedings with the separate question of constitutional detention.
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22 Further, Respondents assert that this matter varies from other matters that this Court has
23 decided with respect to immigration detention because the Petitioner has received a final
24 custody determination from the BIA. This custody determination is premised on the very issue
25 of statutory interpretation, i.e., *Matter of Yajure Hurtado*, that underlies every recent Habeas
26 Corpus petition this Court has decided with respect to immigration detention. *See* BIA Bond
27 Decision. Petitioner was already granted bond by an Immigration Judge in the amount of
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1 \$5,000, and the only reason he remains detained is the BIA's interpretation of 8 U.S.C.
2 § 1225(b) as explained in *Yajure Hurtado*. Even if Petitioner had remaining options for
3 administrative exhaustion, which he does not, this Court has granted Habeas Corpus and
4 injunctive relief to petitioners who have yet to request a custody redetermination hearing in
5 immigration court because *Yajure Hurtado* renders consideration of custody redetermination
6 moot. *See, e.g., E.C.*, 2025 WL 2916264 (“[R]equiring Petitioner to request a bond hearing
7 only to be denied one pursuant to *Hurtado* would be an exercise in futility.”) Moreover, this
8 matter varies from the numerous cases grappling with the issue of *Yajure Hurtado* in that
9 Petitioner here has already been granted relief from removal by an Immigration Judge.
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12 Additionally, the Respondents' argument on “temporary” detention ignores the record
13 and mischaracterizes the facts of this case. By granting the Petitioner's application for
14 Cancellation of Removal for Certain Nonpermanent Residents (EOIR-42B), the Immigration
15 Judge has made explicit factual findings regarding Petitioner's good moral character,
16 favorability for discretion, and credibility. Those determinations necessarily demonstrate that
17 Petitioner is not a flight risk and has twice been found deserving of relief. The Respondents'
18 reliance on generic assertions of “temporary detention pending BIA review” is unavailing.
19 Petitioner has now been detained for nearly five months, which is well beyond any “temporary”
20 period contemplated by the automatic-stay regulation. The Respondents' reasoning fails to
21 address the specific and compelling facts of this case.
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24 It is worth noting that the Respondents' argument with respect to administrative
25 exhaustion is pure boilerplate and fundamentally disingenuous. First, the argument recycles
26 generic language that bears no relation to Petitioner's procedural posture. *See* Federal
27 Respondents' Response to Petitioner's Petition for Writ of Habeas Corpus. ECF No. 17,
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1 pp. 23–25. Such rote arguments and oversight demonstrate a lack of good-faith engagement
2 with the record and underscore the weakness of their position. The exhaustion doctrine simply
3 does not apply here, and the Respondents’ reliance on it is improper.

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 it
11 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 in
18 resolving statutory ambiguities.’” *Gutierrez v. Baltasar*, No. 25-CV-2720, 2025 WL 2962908,
19 at *8 (D. Co. Oct. 17, 2025) (quoting *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 385–
20 86, 401 (2024)). The *Gutierrez* court concluded that it disagreed with the holding of *Yajure*
21 *Hurtado* and declined to follow it as the BIA has no particular expertise in deciding the issue of
22 statutory interpretation.
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1 **F. LEGISLATIVE HISTORY DOES NOT WEIGH IN FAVOR OF**
2 **RESPONDENTS' INTERPRETATION.**

3 Respondents also argued that the legislative history favors their approach. This is
4 erroneous, and numerous district courts have also disagreed with this notion, finding exactly the
5 opposite: that legislative history weakens Respondents' interpretation of §§ 1225 and 1226. *See,*
6 *e.g., Gutierrez*, 2025 WL 2962908, at *8. When Congress passed the Illegal Immigration Reform
7 and Immigrant Responsibility Act (IIRIRA), it changed the language of the detention scheme,
8 which Respondents argue bolsters their position because they understand it to make any person
9 who has not been deemed admitted by an immigration official an "applicant for admission."

11 However, this interpretation ignores the preceding statute that included discretionary
12 release on bond. *Id.* The previous statute provided that "any such [noncitizen] taken into custody
13 may, in the discretion of the Attorney General" be released on bond. *Id.* (quoting 8 U.S.C. § 1252
14 (1994)). In passing the IIRIRA, Congress explicitly stated that the new § 1226(a) reimplemented
15 the same authority under the 1994 version of § 1252.
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18 **G. PETITIONER SHOULD BE AWARDED EAJA FEES IF HE IS A**
19 **PREVAILING PARTY.**

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

1 preserving his right to recover the reasonable fees and expenses incurred in the course of litigating
2 this habeas petition.

3 **II. CONCLUSION**

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

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7 Dated: November 6, 2025

8 */S/ Sylvia L. Esparza*

9 _____
10 Sylvia L. Esparza, Esq.
11 Attorney for Petitioner

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