



ECBA
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November 6, 2025

VIA CM/ECF

Hon. Meredith Vacca
United States District Judge
Western District of New York
Kenneth B. Keating Federal Building
100 State Street
Rochester, New York 14614

Re: Luna Delgado v. Freden, et al
6:25-cv-6612-MAV
Response to Court Request in Dkt. No. 5

Dear Judge Vacca:

This office represents Petitioner Mr. Luna Delgado in this matter. I am writing in response to the government's letter of November 5, 2025, Dkt. No. 4, and this Court's subsequent text order, Dkt. No. 5.

In its letter, the government takes the position that the discretionary stay issued by the Board of Immigration Appeals effectively moots out Petitioner's automatic stay claim but preserves the remainder of the position. Dkt. No. 4.

Petitioner respectfully submits that there are now two stays in place preventing Petitioner from paying his bond - the automatic stay and the discretionary stay. Both stays operate independently of each other. Petitioner argues that the automatic stay is illegal for the reasons outlined in his petition. Dkt. No. 1.

With respect to the discretionary stay, the Department of Homeland Security took the position in that application that Petitioner is detained under 8 U.S.C. § 1225(b) instead of 8 U.S.C. § 1226(a) and that *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) applies. The Board granted the stay "[a]fter consideration of all information[.]" which presumably includes the motion papers filed by DHS. A true and accurate copy of DHS's motion seeking an emergency stay is attached as **Exhibit A**. A true and accurate copy of the Board's grant is attached as **Exhibit B**.

Given that the government is arguing in both in the bond proceedings and in this proceeding that Petitioner is detained under 8 U.S.C. § 1225(b) instead of 8 U.S.C. § 1226(a) and the discretionary stay is based on the Board's decision in *Yajure Hurtado*, Petitioner sees no benefit to waiting for the Board to issue a decision as that the statute of detention is one of the major issues in this case, and the outcome of the bond appeal is almost certain given *Yajure Hurtado*.

Mr. Khalil and I have spoken about the Board's discretionary stay order and its procedural and substantive implications for this case. Procedurally, Mr. Khalil and I agree that we should move this case forward in accordance with the current scheduling order. In addition, Petitioner will file an amended petition under Fed. R. Civ. P. 15 to include the discretionary stay component. The parties can argue any substantive legal matters including mootness, exhaustion of administrative remedies, the applicable statute of detention and other issues in their court filings.

With respect to the scheduling order, Mr. Khalil has advised that he will not need additional time to respond to the amended petition as each side is familiar with the other's arguments. That said, if the government does need a brief extension, Petitioner is more than willing to provide the government with that extension. We both agree that this is the best way forward and ask the Court to adopt our plan.

Please feel free to contact me with any questions or concerns.

Respectfully submitted,

s/ Aaron J. Aisen

Aaron J. Aisen
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cc: All counsel of record (via CM/ECF)

EXHIBIT A

Carol G. Bridge
Chief Counsel
Jeffrey T. Fiut
Deputy Chief Counsel
Nicholas C. Bussi
Assistant Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
250 Delaware Avenue
Buffalo, NY 14202

DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

In the Matter of:)
)
LUNA DELGADO, HUMBERTO)
)
In bond proceedings)
_____)

File No: A [REDACTED]

**DEPARTMENT OF HOMELAND SECURITY
DISCRETIONARY STAY MOTION IN EOIR-43 CASE**

Pursuant to 8 C.F.R. § 1003.6(c)(5), the Department of Homeland Security (DHS) moves the Board of Immigration Appeals (Board) to issue a discretionary stay of the Immigration Judge's custody redetermination decision issued on August 28, 2025, pending the Board's adjudication of DHS's appeal of that decision. This case involves a previously filed automatic stay, Notice of ICE Intent to Appeal Custody Redetermination (Form EOIR-43), which is set to expire on December 11, 2025. The Immigration Judge erred in ordering the respondent released from DHS custody pursuant to INA § 236(a) given the respondent is an applicant for admission detained under INA § 235(b)(2)(A), a question the Board resolved in a recent precedent. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). DHS filed a Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) on September 12, 2025, which remains pending.

The respondent did not present himself at a port of entry (POE) but instead entered the United States between POEs and without having been admitted or paroled after inspection by an immigration officer. The respondent is therefore an alien present without admission or parole and, consequently, an applicant for admission. INA § 235(a)(1). As an applicant for admission, DHS detained the respondent pursuant to INA § 235(b)(2)(A). *Id.* § 235(b)(2)(A). On July 9, 2025, DHS issued and served on the respondent a Notice to Appear (NTA), charging him as inadmissible under INA §212(a)(6)(A)(i). See NTA. DHS filed it on July 22, 2025, thereby commencing the respondent's removal proceedings. *Id.*; see 8 C.F.R. § 1239.1(a).

According to the plain language of INA § 235(b)(2)(A), applicants for admission in INA § 240 removal proceedings "shall be detained." INA § 235(b)(2)(A) (emphasis added). Such aliens are thus ineligible for a custody redetermination hearing before an Immigration Judge. *Yajure Hurtado*, 29 I&N Dec. at 218-19. The respondent, who is present in the United States without admission or parole, is an applicant for admission in INA § 240 removal proceedings and is

therefore detained pursuant to INA § 235(b)(2)(A). Nevertheless, on August 28, 2025, the Immigration Judge ordered the respondent released from DHS custody pursuant to INA § 236(a).

The Board has authority to stay an Immigration Judge's order redetermining an alien's conditions of custody when DHS appeals the custody decision. 8 C.F.R. § 1003.19(i)(1). DHS may "seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time." *Id.* DHS may also "seek a discretionary stay pursuant to 8 C.F.R. § 1003.19(i)(1) to stay the [I]mmigration [J]udge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay." *Id.* § 1003.6(c)(5). That the Immigration Judge lacked authority to redetermine the respondent's custody status as an applicant for admission who is subject to detention pursuant to INA § 235(b)(2)(A) is squarely controlled by *Yajure Hurtado*. 29 I&N Dec. at 229.

Pursuant to 8 C.F.R. § 1003.6(c)(5), DHS incorporates by reference the arguments presented in its brief in support of its position that the respondent should be detained during the pendency of his removal proceedings. In light of its appeal and the merits thereof, DHS respectfully requests that the Board issue a discretionary stay of the Immigration Judge's August 28, 2025 decision in the instant bond proceedings pending the Board's adjudication of the appeal.

Respectfully submitted on this 4th day of November 2025,

Nicholas C. Bussi

Nicholas C. Bussi
Assistant Chief Counsel
Jeffrey T. Fiut
Deputy Chief Counsel
Carol G. Bridge
Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

Humberto Luna Delgado
A# [REDACTED]

PROOF OF SERVICE

On 11/4/25, I, Nicholas C. Bussi, served a copy of this **Department of Homeland Security Discretionary Stay Motion in EOIR-43 Case** to:

Raymond Peters, Esq.
45 Ellicott Street, Suite 1
Batavia, NY 14020

- by overnight delivery service, postage pre-paid.
- by personally delivering a true copy thereof to the person set forth above.
- by electronic service, with prior consent, at the following e-mail address: [email address of party served].
- by eService pursuant to the Terms and Conditions agreed to between the parties.
- through ECAS, which will automatically send service notifications to both parties that a new document has been filed.

Nicholas C. Bussi

(signature)

EXHIBIT B

NOT FOR PUBLICATION

**U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals**

MATTER OF:

Humberto LUNA DELGADO, A [REDACTED]

Respondent

FILED
Nov 05, 2025

ON BEHALF OF RESPONDENT: Raymond Peters, Esquire

ON BEHALF OF DHS: Nicholas C. Bussi, Assistant Chief Counsel

IN BOND PROCEEDINGS

On Motion for Stay of Removal before the Board of Immigration Appeals

Before: Montante, Appellate Immigration Judge

MONTANTE, Appellate Immigration Judge

STAY ORDER

The Department of Homeland Security (DHS) has filed a motion for an emergency stay of the Immigration Judge's bond order, issued on August 28, 2025, ordering the respondent released from custody upon posting a bond of \$10,000. After consideration of all information, the Board has concluded that the motion for emergency stay of the bond order will be granted.

ORDER: The motion for stay of execution of the bond order is granted.



U.S. Department of Justice

Executive Office for Immigration Review
Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

[REDACTED]
Volunteer Lawyers Project
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DHS/ICE Office of Chief Counsel - BTV
4250 Federal Dr.
Batavia NY 14020

Name: LUNA DELGADO, HUMBERTO

A [REDACTED]

Date of this Notice: 11/5/2025

Enclosed is a copy of the Board's stay decision.

Sincerely,

A handwritten signature in black ink, appearing to read "John Seiler".

John Seiler
Acting Chief Clerk

Enclosure

User team: Paralegal