

1 Daniel F. Lippmann, Esq.
2 Nevada Bar No. 11636
3 Lipp Law LLC
4 2580 Sorrel Street
5 Las Vegas, Nevada 89146
6 Tel: (702) 745-4700
7 info@lipplaw.vegas
8 *Counsel for Petitioners*

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 Kevin Ariel SALGUERO Y SALGUERO, and
12 Juan Manuel GARCIA-HERNANDEZ

13 Petitioners,

14 vs.

15 Kristi NOEM, Secretary, U.S. Department of
16 Homeland Security, in her official capacity; U.S.
17 DEPARTMENT OF HOMELAND SECURITY, et
18 al.

19 Respondents.

20 **Case No.: 2:25-cv-02328-RFB-NJK**

21 **PETITIONERS' REPLY IN SUPPORT**
22 **OF PETITION FOR WRIT OF**
23 **HABEAS CORPUS AND MOTION**
24 **FOR TEMPORARY RESTRAINING**
25 **ORDER AND PRELIMINARY**
26 **INJUNCTION**

27 **I. INTRODUCTION**

28 Respondents' opposition rests on the same legal theory that this Court has now rejected repeatedly: that DHS may detain long-settled interior arrestees in standard § 1229a removal proceedings as "applicants for admission" under 8 U.S.C. § 1225(b)(2), deny them bond jurisdiction based on Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), and insulate that regime from review through § 1252's jurisdiction-stripping provisions and EOIR's automatic stay.

That theory has now been squarely rejected on the merits in this District. In *Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY (D. Nev. Sep 17, 2025), this Court granted preliminary injunctive relief, holding that § 1226(a) is the default detention authority for long-settled

1 individuals arrested in the interior and placed in § 1229a proceedings, and that EOIR’s
2 automatic-stay mechanism cannot be used to nullify Immigration Judges’ custody
3 determinations for such individuals. In *Escobar-Salgado v. Mattos*, No. 2:25-cv-01872-RFB-
4 EJY, 2025 WL 2990988 (D. Nev. Nov. 17, 2025), the Court entered final judgment, again
5 concluding that long-term residents like Petitioners are detained under § 1226(a), not §
6 1225(b)(2), and that Respondents’ contrary interpretation is inconsistent with the text, structure,
7 and history of the INA and raises serious constitutional concerns. This same conclusion was also
8 held in a nationwide class-wide injunction against the same interpretation in *Lazaro Maldonado*
9 *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 2670875 (C.D. Cal. Nov. 25,
10 2025).

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12
13 Petitioners stand in the same posture as the petitioners in *Escobar-Salgado*: they entered
14 without inspection years ago, were arrested in the interior of Nevada, have been placed in §
15 1229a proceedings, and have been denied bond jurisdiction or bond hearings solely because DHS
16 has relabeled them as § 1225(b)(2) detainees under its July 8, 2025 “Interim Guidance” and
17 *Yajure Hurtado*.

18
19 Respondents’ briefs largely ignore this Court’s merits rulings, reasserting arguments that
20 have already been rejected: that § 1252 strips this Court of jurisdiction over Petitioners’
21 detention; that § 1225(b)(2) governs by virtue of Petitioners’ manner of entry; and that the EOIR-
22 43 automatic stay is a permissible exercise of agency authority. None of those arguments
23 withstands scrutiny after *Escobar-Salgado*.

24
25 Because Petitioners are detained under § 1226(a), this Court has jurisdiction to order their
26 release or, at a minimum, to direct prompt, constitutionally adequate bond hearings. Petitioners
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1 satisfy the *Winter* factors for interim relief, and Respondents identify no basis to depart from this
2 Court's prior holdings. The writ should be issued, and the TRO/PI should be granted.

3 **II. THIS COURT HAS JURISDICTION OVER THE PETITIONERS' HABEAS**
4 **AND EQUITABLE CLAIMS**

5 **A. Petitioners Challenge Ongoing Detention, Not the Merits of Any Removal Order**

6 Respondents contend that 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9) strip this Court of
7 jurisdiction because Petitioners' claims "arise from" DHS's decision to commence removal
8 proceedings and therefore must be "raised before a court of appeals, not this Court," via a petition
9 for review. See ECF 14 at 10–12.
10

11 But Petitioners do not ask this Court to review, enjoin, or otherwise interfere with any
12 removal order. They challenge the statutory authority and legality of their current *detention*—a
13 classic use of habeas corpus that falls outside § 1252(b)(9) and § 1252(a)(5).
14

15 As this Court has already held in *Vazquez* and *Escobar-Salgado*, "detention-only"
16 challenges by long-settled interior arrestees do not "arise from" the decision or action to remove
17 within the meaning of § 1252(b)(9). Instead, they arise from DHS and EOIR's independent
18 detention decisions and implementing policies, precisely the sort of claims that remain
19 reviewable in district court.
20

21 **B. Exhaustion Is Not Required and, In Any Event, Would Be Futile**

22 Respondents contend that Petitioners were required to exhaust administrative remedies
23 before the BIA.
24

25 Not so. Congress did not impose a statutory exhaustion requirement for detention-only
26 habeas challenges, and courts do not require exhaustion where, as here, the agency lacks the
27 authority to grant the requested relief or where pursuing administrative remedies would be futile.
28

1 The BIA authored *Yajure Hurtado* and is actively enforcing it. Petitioners have already
2 sought bond hearings and were denied solely because IJs concluded that *Yajure Hurtado* and
3 DHS’s new § 1225(b)(2) theory stripped them of jurisdiction. Asking the BIA to reconsider the
4 very policy it just adopted would be futile and is not a prerequisite to habeas review.
5

6 **III. PETITIONERS ARE DETAINED UNDER § 1226(a), NOT § 1225(b)(2)**

7 Respondents repeat their assertion that Petitioners are mandatorily detained as
8 “applicants for admission” under § 1225(b)(2) solely because they originally entered without
9 inspection. But this Court has already rejected that theory as inconsistent with the statute.
10

11 **A. The Text, Structure, and History of the INA Preserve § 1226(a) as the Default**
12 **Detention Authority in § 1229a Proceedings**

13 As Petitioners’ writ and PI motion explain, and as this Court held in *Escobar-Salgado*,
14 the INA establishes three main detention regimes: (1) § 1226 for detention “pending a decision
15 on whether the alien is to be removed,” including discretionary bond under § 1226(a) and
16 targeted mandatory detention under § 1226(c); (2) § 1225(b) for detention of certain “applicants
17 for admission” at or near the border during inspection; and (3) § 1231 for post-order detention.
18

19 For decades after IIRIRA, DHS and EOIR consistently treated individuals arrested in the
20 *interior* and placed in § 1229a proceedings as detained under § 1226(a), with access to IJ bond
21 hearings. EOIR’s 1997 regulations drew a sharp line between “arriving aliens” and interior
22 arrests, assigning bond jurisdiction to IJs for the latter.
23

24 DHS’s July 8, 2025, “Interim Guidance” and *Yajure Hurtado* abruptly reversed that
25 longstanding framework by declaring that any person “present without admission” is an
26 “applicant for admission” detained under § 1225(b)(2), no matter how long they have lived in
27 the country or where they were arrested. This Court has already found that reinterpretation
28

1 incompatible with the text and structure of the INA, which preserve § 1226(a) as the baseline
2 detention authority in § 1229a proceedings.

3 **B. This Court’s Merits Judgment Confirms that DHS’s New § 1225(b)(2) Regime Is**
4 **Unlawful**

5
6 In *Escobar-Salgado*, Judge Boulware entered final judgment, holding that DHS may not
7 use § 1225(b)(2) and *Yajure Hurtado* to reclassify long-settled interior arrestees as “arriving”
8 applicants for admission and thereby divest IJs of bond jurisdiction. He concluded that:

- 9
- 10 • § 1226(a) governs detention in § 1229a proceedings for individuals arrested in the
11 interior;
 - 12 • § 1225(b)(2) is limited to detention incident to border inspection, not a roving authority
13 that can be invoked years after entry; and
 - 14 • DHS’s expansive reading of § 1225(b)(2) undermines § 1226(c) and raises serious
15 constitutional concerns.

16
17 Petitioners here are indistinguishable from the *Escobar-Salgado* petitioners: they are
18 long-time Nevada residents, arrested in the interior, in standard § 1229a proceedings, and denied
19 bond jurisdiction solely because DHS has relabeled them as § 1225(b)(2) detainees pursuant to
20 its 2025 guidance and *Yajure Hurtado*. Under Judge Boulware’s merits ruling, they are detained
21 under § 1226(a) and entitled to individualized custody determinations.

22
23 **C. After *Loper Bright*, *Yajure Hurtado* Is Not Entitled to Deference**

24 Respondents lean heavily on *Yajure Hurtado*, suggesting this Court must defer to the
25 BIA’s interpretation of detention authority. But after *Loper Bright Enterprises v. Raimondo*, 603
26 U.S. 369 (2024), agencies are not entitled to *Chevron* deference on questions of statutory
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1 interpretation. At most, *Yajure Hurtado* merits *Skidmore* deference, which turns on
2 persuasiveness and consistency with the statute and prior practice.

3
4 Here, *Yajure Hurtado* directly conflicts with the statutory text, decades of consistent
5 agency implementation, and serious constitutional concerns identified by this Court. The
6 decision, therefore, warrants no deference.

7 **IV. PETITIONERS SATISFY THE *WINTER* FACTORS FOR**
8 **TRO/PRELIMINARY INJUNCTION**

9 **A. Likelihood of Success on the Merits**

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11 For the reasons above and those set out in the Petition and Motion for TRO/PI, Petitioners
12 are at least likely to succeed—and, given *Escobar-Salgado*, strongly likely to succeed—on their
13 claims that:

- 14 1. They are detained under § 1226(a), not § 1225(b)(2);
15 2. EOIR’s automatic-stay mechanism and DHS’s expanded § 1225(b)(2) theory are
16 contrary to the INA and arbitrary and capricious; and
17 3. Their continuing no-bond detention without meaningful individualized hearings violates
18 due process.
19

20 Respondents do little to distinguish *Escobar-Salgado* or *Vazquez*, instead re-arguing
21 positions the Court has already rejected. That is not enough to defeat the likelihood of success.
22

23 **B. Irreparable Harm**

24 Every additional day of unlawful civil detention is irreparable harm. Petitioners are
25 separated from their U.S.-citizen children and families, face continuing psychological and
26 economic injury, and risk deterioration of their immigration cases while detained.
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1 Mr. Salguero is the father of a five-year-old U.S.-citizen daughter, L.E.S., who depends
2 on him for emotional and financial support. Mr. Garcia-Hernandez has lived in Nevada for
3 decades and is prima facie eligible to adjust status under INA § 245(i) based on a pre-April 30,
4 2001, labor certification and a pending I-130 from his U.S.-citizen daughter; DHS has
5 affirmatively stated it will re-lodge an NTA to keep him detained even if proceedings are
6 terminated to allow USCIS adjudication.
7

8 Courts routinely recognize that such prolonged and allegedly unlawful detention, with
9 attendant family separation and risk to immigration relief, constitutes irreparable harm sufficient
10 to support injunctive relief.
11

12 **C. Balance of Equities and Public Interest**

13 The balance of hardships tips sharply in the Petitioners' favor. They face ongoing loss of
14 liberty, family separation, and disruption of their immigration cases. Respondents, by contrast,
15 face at most the administrative burden of either releasing Petitioners under supervision or
16 providing prompt § 1226(a) bond hearing processes the INA already contemplates.
17

18 If Respondents genuinely believe either Petitioner is a danger or a serious flight risk, they
19 can present that evidence at a bond hearing. An injunction would not require release regardless
20 of risk; it would simply ensure any continued detention is grounded in lawful statutory authority
21 and individualized findings.
22

23 The public interest is served by requiring agencies to follow the law, preventing arbitrary
24 detention, and keeping families and communities intact while cases are adjudicated. This Court
25 has already recognized, in *Vazquez* and *Escobar-Salgado*, that adherence to the INA's statutory
26 scheme and constitutional guarantees is a matter of profound public concern.
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CONCLUSION

For all of these reasons, and in light of this Court’s merits rulings in *Escobar-Salgado* and *Vazquez*, Petitioners respectfully request that the Court:

1. **Grant the Petition for Writ of Habeas Corpus** and order Petitioners’ immediate release under reasonable conditions of supervision; or, in the alternative,
2. **Order prompt individualized custody redetermination hearings under 8 U.S.C. § 1226(a)** before an Immigration Judge, at which the government bears the burden to justify continued detention by clear and convincing evidence; and
3. **Grant Petitioners’ Motion for Temporary Restraining Order and Preliminary Injunction**, enjoining Respondents from continuing to detain Petitioners under § 1225(b)(2) or using EOIR’s automatic-stay mechanism to block their release.

DATED this 6th day of December, 2025.

/s/Daniel F. Lippmann

DANIEL F. LIPPMANN, ESQ.
LIPP LAW LLC
2580 Sorrel St.
Las Vegas, Nevada 89146
Tel: (702) 745-4700
Counsel for Petitioners