

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

YEFERSON GONZALEZ
CONTRERAS

Petitioner,

v.

Samuel L. OLSON, Field Office Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; **Kristi NOEM**, in her official capacity as Secretary of the U.S. Department of Homeland Security; **Todd LYONS**, in his official capacity as acting director of U.S. Immigration and Customs Enforcement; **Pam BONDI**, in her official capacity as Attorney General of the United States; **Joel BROTT**, Sherburne County Jail Sheriff.

Respondents.

Case No. 0:25-cv-4814

**PETITIONER'S REPLY TO
FEDERAL RESPONDENTS'
MEMORANDUM IN
OPPOSITION TO
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER AND RESPONSE TO
PETITION FOR WRIT OF
HABEAS CORPUS**

I. Introduction

Petitioner respectfully submits this reply to Federal Respondent's Memorandum in Opposition, ECF 12. Federal Respondents fail to meaningfully confront the core constitutional and statutory defect in this case: the unlawful revocation of Petitioner's parole and the resulting unlawful detention.

Federal Respondents take internally inconsistent positions in their argument. On one hand, they concede that Petitioner is properly detained under §1226. ECF 12 at 16-17. On the other hand, they argue that Petitioner is categorically barred from the statutorily guaranteed §1226(a) bond hearing due to the application of 8 C.F.R. § 1003.19(h)(2)(i)(B). *Id.* This ultra vires regulation is analogous to the auto-stay regulation under 8 C.F.R. § 1003.19(i)(2) which other Courts in this District have found to surcharge statutory authority and deprive similarly situated Petitioners of their due process rights. This position creates a legal impossibility: a noncitizen cannot be lawfully detained under § 1226 while simultaneously being denied the procedural protections that § 1226 expressly guarantees. The Petitioner thus requests the Court either order immediate release or find that EOIR has jurisdiction and order a §1226(a) compliant bond hearing and restore the Petitioner's unlawfully revoked parole.

Sections 1225 and 1226 establish mutually exclusive detention regimes. Courts in this District and across the country have repeatedly rejected efforts to blur or collapse these categories. A regulation purporting to impose mandatory detention consequences from § 1225 onto individuals detained under § 1226 exceeds statutory authority and violates due process.

Because Petitioner is detained under § 1226, he is entitled as a matter of statute and due process to a § 1226(a) bond hearing. The Court should therefore (1) order immediate release, (2) order such a hearing forthwith be held subsequent to release and (3) restore Petitioner's unlawfully revoked parole pending a lawful custody determination.

II. Argument

A. Federal Respondents Mischaracterize the Posture of the Case

The Federal Respondents assert that the initial habeas petition was “resolved” because an IJ conducted a “bond redetermination hearing on November 25, 2025.” ECF 12, 7. This characterization is incorrect.

A hearing occurred, and the Immigration Judge expressly stated that he lacked jurisdiction under 8 C.F.R. § 1003.19(h)(2)(i)(B), and thus the IJ did not enter a finding pursuant to §1226(a). *Id.* In fact, the IJ noted that if he

had jurisdiction, he would have likely granted bond in the amount of \$5,000.

ECF 1-11, 3 n.2.

A Minnesota District Court has noted that under statute and regulations, noncitizens detained under §1226 are to be provided with a bond hearing at the outset of detention. *Fuentes v. Olson*, No. 25-CV-4456 (LMP/ECW), 2025 WL 3524455, at *4 (D. Minn. Dec. 9, 2025). The *Fuentes* Court noted that there is no §1226(a) bond hearing where an IJ finds they lack jurisdiction and thus cannot rule on the merits. *Id.*, at *4 n.4 (D. Minn. Dec. 9, 2025) “Calling that hearing a ‘bond hearing’ is disingenuous (at best) because the opportunity to receive bond was never actually on the table.” *Id.* This is consistent with analysis of over one hundred Courts ordering a bond hearing be held after an IJ found they lacked jurisdiction pursuant to the BIA decision in *Yajure Hurtado. Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *23 (E.D.N.Y. Nov. 28, 2025) (citing to *Barco Mercado v. Francis*, No. 25-cv-6582, at 9–10 (S.D.N.Y. Nov. 26, 2025) and noting 160 different judges in 350 out of 362 cases have agreed with petitioners on a preliminary or final basis).

Accordingly, Petitioner has never received the hearing required by statute.

If the Petitioner had been granted his statutorily guaranteed § 1226(a) hearing, he would have likely been granted release on a \$5,000 bond.

B. 8 C.F.R. § 1003.19(h)(2)(i)(B) Is Ultra Vires and Unlawful as Applied to Petitioner

Federal Respondents concede the Petitioner is properly detained pursuant to §1226. ECF 12, 16. As a non-citizen who had valid parole at the time of detention, the Petitioner could only be detained under §1226 and was entitled to a §1226(a) bond hearing. Federal Respondents nonetheless maintain that 8 C.F.R. § 1003.19(h)(2)(i)(B) strips the IJ of jurisdiction to hold a § 1226(a) hearing. ECF 12, 17. Federal Respondents note the regulation has been promulgated “for years” in support of the proposition that it is lawful. ECF 12, 25. They also note that regulations enable DHS to file an automatic stay. ECF 12, 14.

Respondents’ arguments fail for three reasons.

First, Section 1226 (a) explicitly authorizes immigration judges to conclude bond hearing and order release. A regulation that categorically removes that authority for individuals whom DHS concedes are detained under § 1226 impermissibly “surcharges” the statute.

Minnesota District Courts, considering analogous regulations such as the automatic stay regulation, have granted non-citizens a bond hearing on the grounds the regulation unlawfully deprived them of the individualized determination guaranteed by § 1226(a). *Maldonado v. Olson*, 795 F. Supp. 3d

1134, 1152–53 (D. Minn. 2025); *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187–89 (D. Minn. 2025). Other Courts have gone further and determined the automatic stay regulation is ultra vires by eliminating the discretionary authority granted to judges by §1226(a). *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004); *Zabadi v. Chertoff*, No. C 05-01796 WHA, 2005 WL 1514122, at *2 (N.D. Cal. June 17, 2005). Other Courts have found the automatic stay regulation to be unconstitutional for violating non-citizens right to due process. *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003); *Kambo v. Poppell*, No. SA-07-CV-800-XR, 2007 WL 3051601, at *20 (W.D. Tex. Oct. 18, 2007). None of these decisions turn on the duration of the promulgation of the automatic stay regulation, as that is immaterial to its legality or constitutionality.

The 8 C.F.R. § 1003.19(h)(2)(i)(B) is analogously ultra vires and unlawful as applied to the petitioner. 8 C.F.R. § 1003.19(h)(2)(i)(B) is analogous to the automatic stay in that it strips IJs of their statutory authority to make individualized bond determination for individuals subject to Minnesota §1226(a). This regulation effectively nullifies §1226 by simultaneously subjecting non-citizens eligible for a discretionary bond hearing to mandatory detention. Minnesota District Courts have repeatedly rejected the outlier cases finding that a non-citizen can be subject to both discretionary detention

under §1226 and mandatory detention under §1225. *E.M. v. Noem*, No. 25-CV-3975 (SRN/DTS), 2025 WL 3157839, at *4 (D. Minn. Nov. 12, 2025); *Santos M.C. v. Olson*, No. 25-CV-4264 (PJS/DJF), 2025 WL 3281787, at *2 n.4 (D. Minn. Nov. 25, 2025). In *E.M. v. Noem*, the court emphasized that §§ 1225 and 1226 are “non-overlapping detention schemes.” 2025 WL 3157839, at *4 (D. Minn. Nov. 12, 2025). In *Santos M.C. v. Olson*, the Court reaffirmed that a noncitizen cannot simultaneously be subject to discretionary detention under § 1226 and mandatory detention under § 1225. 2025 WL 3281787, at *2 n.4 (D. Minn. Nov. 25, 2025). 8 C.F.R. § 1003.19(h)(2)(i)(B) is ultra vires insofar as it simultaneously subjects non-citizens eligible for discretionary release to mandatory detention.

The regulation is unlawful as applied to the Petitioner insofar as it deprives him of his due process right to the statutory §1226(a) hearing on the merits.

C. INA Violations Are Not Waived And Appeals Are Futile

Federal Respondents argue that Petitioner waived his statutory claims by failing to appeal the Immigration Judge’s decision to the BIA. ECF 12,18, 20. This argument misunderstands both exhaustion doctrine and the posture of this case.

Where an Immigration Judge concludes that he lacks jurisdiction, there is no meaningful administrative remedy to exhaust. Moreover, exhaustion is not required where it would be futile or where the petitioner raises constitutional claims beyond the BIA's authority.

Federal Respondents acknowledge the IJ determined he lacked jurisdiction pursuant to DHS regulations. ECF 12, 7. Federal Respondents also assert that the Petitioner can simply allow the BIA to remand his dismissed removal proceedings back to the IJ. ECF 12, 15.

A petitioner is not required to make administrative appeals where such appeals would be futile. As to the bond issue, here, the BIA has already adopted a definitive position in *Matter of Yajure Hurtado*. Requiring Petitioner to pursue administrative review would merely prolong unlawful detention without any realistic prospect of relief.

Courts across the country, including Federal District Courts in Minnesota, have repeatedly excused exhaustion under similar circumstances.

D. This Court Has Jurisdiction and Can Grant Petitioner His Requested Relief

Here, Federal Respondents argue that this Court lacks jurisdiction. ECF 12, 18-19. Respondents aver that the Petitioner's parole lapsed during his detention. ECF 12, 25.

Respondents arguments in response, including reliance on 8 U.S.C §1252(g) are meritless. Courts have consistently held that §1252(g) does not bar habeas challenges to unlawful detention or denial of a bond hearing. *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1145 (D. Minn. 2025); *Fuentes v. Olson*, No. 25-CV-4456 (LMP/ECW), 2025 WL 3524455, at *3 (D. Minn. Dec. 9, 2025); *Mayamu K. v. Bondi*, No. 25-3035 (JWB/LIB), 2025 WL 3641819, at *6 (D. Minn. Oct. 20, 2025) (noting broad consensus across courts on the narrow limits of § 1252(g)).

Minnesota courts have repeatedly exercised jurisdiction to order bond hearings and release where parole or other orders of release were unlawfully revoked or § 1226(a) procedures were denied. *Gabriel v. Bondi*, No. 25-CV-4298 (KMM/EMB), 2025 WL 3443584 (D. Minn. Dec. 1, 2025); *Sarail A. v. Bondi*, No. 25-CV-2144 (ECT/JFD), 2025 WL 2533673 (D. Minn. Sept. 3, 2025); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025).

Petitioner's parole would have lapsed during the pendency of his case had Respondents not unlawfully revoked it while it was still valid. Respondents unlawfully revoked parole by virtue of initiating arrest without an individualized determination to support revocation. *Gonzalez Prada v. Raycraft*, No. 1:25-CV-1944, 2026 WL 123879, at *4 (W.D. Mich. Jan. 16,

2026). The Respondents revoked Petitioner's parole with no process, which is "plainly inadequate." *Savane v. Francis*, 801 F. Supp. 3d 483, 493–95 (S.D.N.Y. 2025). That unlawful revocation ought to be set aside. *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1143–47 (D. Or. 2025); *see also Gabriel v. Bondi*, 2025 WL 3443584, *7 (D.Minn. Dec. 1, 2025). The Petitioner should be released on the condition of his pre-existing parole. *Salazar v. Casey*, No. 25-CV-2784 JLS (VET), 2025 WL 3063629, at *6 (S.D. Cal. Nov. 3, 2025); *Sekhon v. Warden of Golden State Annex Det. Facility*, No. 1:25-CV-1692-JDP, 2026 WL 74151, at *4 (E.D. Cal. Jan. 9, 2026); *Pablo-Mendoza v. Lynch*, No. 1:25-CV-1774, 2026 WL 40070, at *8 (W.D. Mich. Jan. 7, 2026).

III. Conclusion

For all of the foregoing reasons, Petitioner asks this Court to grant his Motion for a Temporary Restraining Order and Preliminary Injunction to:

1. Declare that the actions of Respondents as set forth in Mr. Gonzalez Contreras's Petition, Motion, and Memorandum of Law violated the Fifth Amendment of the United States Constitution, 28 U.S.C. § 2241, and the APA.
2. Order Petitioner's Immediate Release.

3. Require his release be subject to the same conditions as his improperly revoked grant of parole, until such time as purposes of parole have been satisfied.
4. Enjoin Respondents from continuing to detain Mr. Gonzalez Contreras in their custody during the pendency of his petition for writ of habeas corpus before this Court.
5. If Mr. Gonzalez Contreras is not immediately released from Respondents' custody, enjoin Respondents from transferring him to a detention facility out of this District where he would lose access to his counsel and support network.
6. If Mr. Gonzalez Contreras is not immediately released from Respondents' custody, declare that EOIR has jurisdiction to grant bond and order Respondents grant him a bond redetermination hearing on the merits of his release.
7. Grant Mr. Gonzalez Contreras such other relief as the Court deems appropriate and just.

Date: January 20, 2026

Respectfully submitted,

/s/ Gloria Contreras Edin

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