

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. _____

DARYL SANTIAGO,

Petitioner,

v.

FIELD OFFICE DIRECTOR,

Miami Field Office,

U.S. Immigration and Customs Enforcement,

Respondent.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

The petitioner, Daryl Santiago, submits this Verified Petition for Writ of Habeas Corpus, by and through undersigned counsel, and alleges as follows:

INTRODUCTION

1. Mr. Santiago (the petitioner) is a Lawful Permanent Resident (LPR) of the United States. On March 8, 2024, the Department of Homeland Security (DHS) initiated removal proceedings against the petitioner, alleging that he was removable from the United States under INA §§ 237(a)(2)(A)(ii), (B)(i) for having been convicted of a two or crimes involving moral turpitude (CIMTs) and a controlled substance violation. Upon the commencement of those removal proceedings, DHS detained the petitioner at the Krome Service Processing Center (Krome) in Miami, Florida. On September 20, 2024, the immigration judge issued a custody order, granting the petitioner a bond; that order stipulated that the petitioner not be arrested again, “with the exception of any warrant for [his] failure to comply with probation in F22-003007 because of his detention by ICE.” The petitioner subsequently paid his bond and was released from

immigration detention, but returned to state custody to complete the sentence in Miami-Dade case no. F22-003007.

2. After the petitioner was released from ICE custody, the agency appealed the custody order to the Board of Immigration Appeals (BIA), while simultaneously seeking an emergency discretionary stay of that order. On September 23, 2024, the BIA granted ICE's emergency motion, ordering that the execution of the immigration judge's custody order be staying pending the resolution of the custody appeal, despite the fact that the custody order had already been executed, since the petitioner had already paid his bond and was released from custody.

3. Once petitioner completed his criminal sentence in state custody, DHS lodged an immigration detainer against him, took him into ICE custody, and transferred him back to Krome once again. Meanwhile, on October 6, 2024, the immigration judge ordered that petitioner's removal proceedings be terminated, finding that ICE failed to sustain the charges of removability; DHS appealed that order to the (BIA), and that appeal remains pending.

4. However, when ICE re-detained the petitioner, they agency did so in violation of the immigration judge's September 20, 2024, custody order, without demonstrating a change of circumstances to justify a modification of that order. Furthermore, when the BIA ordered that the execution of the custody order be stayed pending the resolution of the custody appeal, no such order existed which the BIA could stay, as that order had already been executed by the petitioner's release from custody. Therefore, the petitioner's detention is illegal, in violation of the Immigration and Nationality Act, its implementing regulations, and the Due Process Clause of the Fifth Amendment, and the petitioner presents the instant writ of habeas corpus.

PARTIES

5. The petitioner, **Daryl Santiago**, is a native and citizen of the Philippines, and a

Lawful Permanent Resident (LPR) of the United States. His alien registration number ("A no.") is A  He is currently detained by the respondent and his or her agents at the Krome Service Processing Center in Miami, Florida. **Appx, Tab F, p. 37.**

6. The respondent, **Field Office Director**, Miami Field Office, U.S. Immigration and Customs Enforcement is sued in his or her official capacity. In this capacity, the Field Office Director has jurisdiction over the detention facility in which the petitioner is held, is authorized to release the petitioner, and is a legal custodian of the petitioner.

JURISDICTION

7. This action arises under the Constitution of the United States of America, 28 U. S. C. § 2241 *et seq.* (habeas corpus), the Immigration and Nationality Act (INA), 8 U. S. C. § 1101 *et seq.*, and Title 8 of the Code of Federal Regulations.

8. The Court has jurisdiction over this case under 28 U. S. C. § 2241 (habeas corpus), and § 1331 (federal question).

9. The Court may grant relief pursuant to the U.S. Const., Art. I, § 9, cl. 2 (Suspension Clause), 28 U. S. C. § 1651 (All Writs Act), 28 U. S. C. §§ 2201–02 (declaratory relief), and 28 U. S. C. § 2241 (habeas corpus).

10. Additionally, "the primary federal habeas corpus statute, 28 U.S.C. § 2241, confers jurisdiction upon the federal courts to hear these cases." *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

11. Venue is proper in this district under 28 U. S. C. § 2241 because this is the district where the "the custodian can be reached by service of process." *Rasul v. Bush*, 542 U. S. 466, 478–79 (2004).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. No exhaustion is statutorily required for the petitioner's habeas claims because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo v. Warden*, 785 F.3d 467, 474 (CA11 2015)."

FACTUAL BACKGROUND

13. The petitioner, Daryl Santiago, is a native and citizen of the Philippines. **Appx, Tab D, p. 20.**

14. The petitioner has been a Lawful Permanent Resident (LPR) of the United States since on or around February 13, 2007, has continuously physically resided in the United States since May of 2000, when he initially entered the United States when he was fourteen (14) years-old with a valid B1/B2 nonimmigrant, accompanying his mother, sister, and brother. *Id.*

15. The petitioner's aforementioned mother, sister, and brother are all United States citizens, and his fiancé is a United States citizen as well. **Appx, Tab B, p. 14.**

16. On July 28, 2014, an immigration judge granted the petitioner relief under INA § 240A(a), cancellation of removal for certain permanent residents, while in removal proceedings.

17. On January 9, 2023, the petitioner was convicted in the Circuit/County Court of the Nineteenth Judicial Circuit in and for St. Lucie County, Florida for willful and wanton reckless driving, in violation of Fla. Stat. § 336.192(1)(A), for which he received a sentence of credit time served and six (6) months of probation, case no. 2020-CT-001569. **Appx, Tab B, p. 06.**

18. On September 7, 2023, the petitioner was convicted in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, of two counts of trafficking cocaine in violation of Fla. Stat. § 893.125(1)(b)1a., for which he was sentenced to one hundred

and eighty (180) days of incarceration and two-and-one-half years of probation, case no. F22-003007. *Id.*

19. On March 8, 2024, the Department of Homeland Security (DHS) initiated removal proceedings against the petitioner, by filing a Notice to Appear (NTA), dated March 4, 2024. **Appx, Tab D, p. 20-21.**

20. That NTA alleged that the petitioner was removable from the United States under INA § 237(a)(2)(B)(i) for having been convicted of a controlled substance violation, and under INA § 237(a)(2)(A)(ii) for having been convicted of two or more crimes involving moral turpitude (CIMTs). *Id.*

21. Those proceedings were initiated while the petitioner was detained at the Krome Service Processing Center (Krome) in Miami, Florida. **Appx, Tab B, p. 05.**

22. On or around August 29, 2024, the petitioner, by and through his attorney, filed a Motion Requesting Bond Determination And/Or Matter of Joseph Hearing with the immigration court at the Krome detention center. *Id.*

23. On September 6, 2024, the immigration court conducted a bond hearing in that matter but issued an order taking no action that day. *Id.*

24. Later that day, the petitioner filed a new bond redetermination request. *Id.*

25. On September 20, 2024, the immigration judge granted the petitioner a bond in the amount of \$5,000.00. That order stipulated that the petitioner not be arrested again, “with the exception of any warrant for [his] failure to comply with probation in F22-003007 because of his detention by ICE.” **Appx, Tab A, pp. 02-03.**

26. The court later issued a written decision in support of its decision to grant the petitioner a bond. **Appx, Tab B, pp. 05-15.**

27. The court determined that the petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c). *Id.*

(a) As to the petitioner's conviction for trafficking cocaine in violation of Fla. Stat. § 893.125(1)(b)1a., the court found it was not a conviction relating to a controlled substance as defined in the Controlled Substances Act (CSA), INA § 237(a)(2)(B)(i). More specifically, relying on the Eleventh Circuit's decision in *Chamu v. U.S. Att'y Gen.*, 23 F.4th 1324 (11th Cir. 2022), the court held that Florida's statutory definition of cocaine is categorically broader than the federal definition, and that unlike the petitioner in *Chamu*, he had met his burden in demonstrating that there is a realistic probability that Florida prosecutes cases arising from the possession or sale of nongeometric diastereomers of cocaine. **Appx, Tab B, pp. 07-11.**

(b) The court also found that because Fla. Stat. § 893.125(1)(b)1a does not necessarily criminal conduct that constitutes a CIMT, he was not convicted of two or more crimes involving moral turpitude, INA § 237(a)(2)(A)(ii). **Appx, Tab B, pp. 12-13.**

28. Because the petitioner demonstrated he was not subject to mandatory detention under 8 U.S.C. § 1226(c), the court found that his detention was governed by § 1226(a).

29. Finally, the court found that the petitioner demonstrated he was neither a danger to the community nor a flight risk. *Id.*, p. 13.

30. The petitioner subsequently paid that bond and was released from immigration detention, but immediately returned to state custody in Miami-Dade County to complete the sentence in his criminal case, Miami-Dade case no. F22-003007.

31. In other words, the immigration judge's order granting bond was executed by the

petitioner's posting of that bond and his release from DHS custody.

32. At no time did the petitioner violate the conditions of his bond.

33. DHS did not seek an automatic stay, pursuant to 8 CFR § 1003.19(i)(2), of the immigration judge's order within one business day of that order.

34. On September 23, 2024, after the petitioner was released from custody under the immigration judge's order granting bond, ICE filed a Notice of Appeal of that order to the Board of Immigration Appeals (BIA).

35. Instead of seeking an automatic stay of execution of the custody order granting the petitioner a bond within one business day of that custody order, pursuant to 8 CFR § 1003.19(i)(2), ICE filed, simultaneously with its notice of appeal, an "Emergency Motion for Discretionary Stay", pursuant to 8 CFR § 1003.19(i)(1), requesting a discretionary stay of the judge's order granting the petitioner a bond. **Appx, Tab I, pp. 76-82.**

36. Nowhere in its "Emergency Motion for Discretionary Stay" did DHS mention or advise the BIA that the immigration judge's September 20, 2024, order granting the petitioner a bond was already executed, *i.e.*, that the petitioner already posted the bond and was released from DHS custody. *Id.*

37. On September 24, 2024, the petitioner, by and through his counsel, filed a response to DHS' emergency motion, opposing the granting of an emergency discretionary stay of the bond order.

38. On September 25, 2024, the BIA granted DHS' emergency motion for stay of the bond order. **Appx, Tab C, p. 18** ("The request for stay of execution of the bond order is granted.").

39. On October 3, 2024, the BIA issued a briefing schedule in the bond appeal, providing that both parties submit their legal briefs in support of their respective positions by

October 24, 2024.

40. On October 6, 2024, the immigration judge terminated the petitioner's removal proceedings, finding that ICE had failed to sustain its charges of removability against the petitioner under INA §§ 237(a)(2)(A)(ii), (B)(i).¹ **Appx, Tab D, pp. 20-30.**

41. DHS subsequently appealed that termination order to the BIA; that appeal remains pending at the BIA.

42. On or around October 7, 2024, the petitioner filed a request for extension of the briefing schedule with the BIA; the BIA granted that request, making the parties legal brief due by November 14, 2024. On November 14, 2024, the petitioner filed his legal brief in opposition to DHS' bond appeal; that custody appeal remains pending at the BIA.

43. On or around October 24, 2024, in the criminal case no. F22-003007 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, the judge entered an order granting the petitioner credit time served and modifying his probation order. **Appx, Tab E, pp. 32-35.**

44. Upon information and belief, once the state court entered its order on October 24, 2024, the petitioner was scheduled to be released from state custody in connection with criminal case no. F22-003007. *Id.*, p. 32.

45. However, upon information and belief, DHS/ICE lodged an immigration detainer request against the petitioner pursuant to, 8 CFR § 287.7, § 1236.1(a), and on or after October 24,

¹ In its order granting termination, **Appx, Tab D, pp. 20-30**, the court utilized the same reasoning articulated in its bond decision as to why the petitioner was not removable under INA §§ 237(a)(2)(A)(ii), (B)(i), and thus not subject to mandatory detention under INA § 236(c), *supra* ¶ 27.

The petitioner, by and through his counsel, denied the allegations in the NTA that he was removable due to his criminal convictions in his "Written Pleadings", filed with the immigration court on May 6, 2024. On September 11, 2024, the petitioner filed a "Supplemental Legal Brief", in support of termination.

2024, ICE re-detained the petitioner, and took him into custody at the Krome detention center. *Id.*, p. 32; Tab F, p. 37.

46. The petitioner is currently detained by ICE at the Krome detention center, and that detention is illegal. Tab F, p. 37.

LEGAL BACKGROUND

I. Immigration Bond Appeals & Stays of Execution

47. Once ICE decides to initiate removal proceedings against an allegedly removable alien under 8 U.S.C. § 1229a by issuing a notice to appear (NTA), 8 U.S.C. § 1229, the agency may decide to detain the alien for the purpose of those proceedings pursuant to a warrant of arrest. 8 U.S.C. § 1226; 8 CFR § 1236.1(b)(1) (“At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest.”)

48. After detaining an alien in removal proceedings pursuant to a warrant of arrest, ICE may, in its discretion, either decide to continue to detain that alien, or release that alien should he or she demonstrate that they do not pose a danger to property or persons, and that they are likely to appear in any future removal proceedings. 8 U.S.C. § 1229a(a)(2); 8 CFR 1236.1(c)(8).

49. If ICE determines to continue an alien’s detention for the duration of removal proceedings, the alien may make an initial custody redetermination request, *i.e.*, a “bond” request, to an immigration judge. 8 CFR 1236.1(d)(1); 8 CFR §§ 1003.19(a), (b).

50. Those “bond proceedings” or “custody redetermination proceedings” before an immigration judge are separate and apart from the deportation or removal proceedings. 8 CFR § 1003.19(d).

51. An immigration judge’s order on a custody redetermination request “shall be

entered on the appropriate form at the time such decision is made and the parties shall be informed orally or in writing of the reasons for the decision.” 8 CFR § 1003.19(f).

52. Either party may appeal the immigration judge’s decision to the Board of Immigration Appeals (BIA), *i.e.*, a “custody appeal.” *Id.*

53. Should the immigrant judge grant the alien a bond to be released from custody, and if ICE appeals the immigration judge’s custody determination to the BIA, the agency may seek a “stay of [the] custody order pending appeal [by the government].” 8 CFR § 1003.19(i).

54. In general, an immigration judge’s order, in either removal or custody redetermination proceedings, “shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the [BIA] by way of certification.” 8 CFR § 1103.6(a).

55. The exception to this rule is when an immigration judge grants an alien a bond in custody redetermination proceedings—the alien may immediately pay the bond set by the immigration judge and will be released from custody during the time allowed for ICE to file an appeal to the BIA of the immigration judge’s custody redetermination order. 8 CFR § 1103.6(a); 8 CFR § 1103.6(a); 8 CFR § 1236.1(d)(1)(4) (“Effect of filing an appeal. The filing of an appeal from a determination of an immigration judge or district director under this paragraph **shall not operate to delay compliance with the order** (except as provided in § 1003.19(i)), nor stay the administrative proceedings or removal.”) (emphasis added).

56. Should DHS disagree with an immigration judge’s custody redetermination order, to stay the execution of that order, *i.e.*, prevent the alien from being released from ICE custody after posting bond, ICE must seek a stay of execution of the immigration judge’s custody order with the BIA within one business day. 8 CFR § 1003.19(i); 8 CFR § 1003.6. That rule states:

Automatic stay in certain cases. In any case in which DHS has determined that an alien should not be **released** or has set a bond of \$10,000 or more, **any order of the immigration judge authorizing release** (on bond or otherwise) **shall be stayed** upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of **the order**, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

8 CFR § 1003.19(i)(2) (emphasis added); 8 CFR §§ 1003.6.

57. The regulations governing automatic stays in custody appeals, “in which DHS has invoked an automatic stay pursuant to 8 CFR § 1003.19(i)(2),” are found at 8 CFR §§ 1003.6(c)(1)-(4), (d).

58. The BIA’s automatic stay of the order “shall lapse if DHS fails to file a notice of appeal with the [BIA] within ten business days of the issuance of the order [granting bond] of the immigration judge.” 8 CFR § 1003.6(c)(1).

59. If the BIA does not act on the custody appeal within 90 days after ICE files a notice of appeal, “the automatic stay shall lapse.” 8 CFR § 1003.6(c)(4).

60. But, if the alien seeks an enlargement of the 21-day briefing schedule in custody appeals, the BIA “shall also toll the 90-day period of the automatic stay for the same number of days [as the enlargement of the briefing schedule].” 8 CFR § 1103.6(c)(5).

61. “In the event the [BIA] does not issue a decision on the custody appeal within the period of the automatic stay,” “DHS [ICE] may seek a discretionary stay pursuant to 8 CFR § 1003.19(i)(1) to stay the immigration judge’s **order**,” “at any time after the filing of its notice of appeal of the custody decision, and **at a reasonable time before the expiration of the period of the automatic stay**.” 8 CFR § 1003.6(c)(4) (emphasis added).

62. If DHS/ICE submits a discretionary stay motion, and the BIA is unable to resolve the custody appeal within the period of the automatic stay, “the [BIA] will issue an order granting

or denying a motion for discretionary stay pending its decision on the custody appeal.” *Id.*

63. And if the BIA does not act upon ICE’s motion for a discretionary stay prior to the 90-day expiration of the automatic stay, the automatic stay will remain in effect, but for a maximum period of another 30 days, while the BIA “decides whether or not to grant a discretionary stay.” *Id.*

64. “If the [BIA] authorizes **the alien’s release** (on bond or otherwise), denies a motion for discretionary stay, or fails to act on such a motion before the automatic stay period expires,” including the aforementioned 30-day extension of the automatic stay, “the alien’s **release** shall be automatically stayed for five (5) business days,” to allow DHS/ICE to seek Attorney General review pursuant to 8 CFR 1003.1(h)(1). 8 CFR § 1003.6(d) (emphasis added).

65. If referred to the Attorney General, the automatic stay will remain in place an additional fifteen (15) days prior to expiring. *Id.* But, “the Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the [BIA].” *Id.*

66. The regulation authorizing DHS/ICE to request a discretionary stay while appealing an immigration judge’s bond determination to the BIA, or to extend the BIA’s automatic stay an additional 30-days if the custody appeal has yet to be decided, is found at 8 CFR § 1003.19(i)(1).

That regulation states:

General discretionary stay authority. The Board of Immigration Appeals (Board) has the authority to stay **the order** of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion. DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time.

8 CFR § 1003.19(i)(1) (emphasis added in bold).

67. DHS/ICE may not re-detain an alien released on an immigration judge’s custody

order granting him or her a bond unless there is a material change of circumstances, *Matter of Sugay*, 17 I&N Dec. 637, 639-40 (BIA 1981), in which case ICE must demonstrate to the immigration judge that such a change of circumstances has occurred to warrant a revocation of the prior custody order.

II. Background Constitutional Framework for Civil Immigration Detention.

68. Civil immigration detention is presumptively unconstitutional absent its authorization by a special justification enacted pursuant to an Act of Congress. *Sopo v. U.S. Att’y Gen.*, 825 F.3d 1199, 1210 (CA11 2016) (“Under the Due Process Clause, civil detention is permissible only when there is a ‘special justification’ that ‘outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’”) (citation omitted), vacated on mootness grounds, 890 F.3d 952 (2018).

69. Thus, absent a statutory special justification, civil immigration detention is unlawful and unconstitutional.

70. Further, only criminal detention, following a lawful conviction by jury trial, may be utilized for punitive purposes.

71. Civil detention becomes punitive when it is being used for purposes that are not contemplated within the special statutory justification authorizing its use. See *Bell v. Wolfish*, 441 U.S. 520, 539 (1979) (“Thus, if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to ‘punishment.’ Conversely, if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees.”) (citations and footnotes omitted); *In re Grand Jury Proc.*, 877 F.2d 849, 850 (CA11

1989) (“Civil contempt is a coercive device imposed to secure compliance with a court order and if the circumstances illustrate that the sanction will not compel compliance, it becomes punishment and violates due process.”) (citation omitted); *Lynch v. Baxley*, 744 F. 2d 1452, 1463 (CA11 1984) (“A court must decide whether the restriction is imposed to punish or whether it is simply an incident of legitimate governmental purpose. . . . Absent an express intent to punish, that determination will turn on whether the restriction appears excessive in relation to the alternative purpose assigned to it. . . . If a restriction is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court may infer that the purpose of the government action is punishment.”) (citations omitted); *United States v. Vasquez-Escobar*, 30 F. Supp. 2d 1364, 1365 (M.D. Fla. 1998) (ruling that improper use of civil immigration detention was unconstitutionally punitive).

72. Thus, where civil immigration detention becomes punitive in its nature, it has become unlawful and unconstitutional.

73. In sum, civil immigration detention is lawful only when: (1) it is being administered in accordance with the terms of duly enacted statutes and regulations; (2) which are based upon a special justification that outweighs the deprivation of liberty at stake; and (3) it is being carried out in a manner that is consistent with and reasonably related to that special statutory justification.

ALLEGATIONS OF UNLAWFUL DETENTION

74. First, the defendant lacks any legal authority to detain the petitioner.

75. “[T]he extent of that [detention] authority is not a matter of discretion.” *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

76. “It is central to the meaning of the rule of law, [and] not particularly controversial that a federal agency does not have the power to act unless Congress, by statute, has empowered

it do so.” *Succar v. Ashcroft*, 394 F.3d 8, 20 (1st Cir. 2005) (citations and quotation marks omitted) (alteration in original).

77. “[W]hen the record shows that a commissioner of immigration is exceeding his power, the alien may demand his release upon habeas corpus.” *Gegiow v. Uhl*, 239 U.S. 3, 9 (1915).

78. Here, the petitioner already demonstrated, and the immigration judge agreed with him and issued an order to that effect, that he is not subject to mandatory detention under 8 U.S.C. § 1226(c), that he is not a danger to the community, persons, or property, and that he is likely to appear for any future removal proceedings. **Appx, Tab B, pp. 05-15.**

79. In fact, notwithstanding DHS’ appeal to the BIA, there will not be any more hearings in his removal proceeding to which he will need to attend, because the immigration judge determined that DHS failed to sustain its charges of removability against the petitioner under INA §§ 237(a)(2)(A)(ii), (B)(i), and therefore terminated his removal proceedings. **Appx, Tab D, pp. 20-30.**

80. Therefore, the immigration judge granted him a bond, finding that his detention was governed by 8 U.S.C. § 1226(a). **Appx, Tab A, pp. 02-03.**

81. The petitioner posted the bond set by the immigration judge pursuant to the custody order issued on September 20, 2024, and he was released from ICE custody.

82. In other words, the custody order granting him a bond was already executed.

83. ICE did not seek an automatic stay from the BIA pursuant to 8 CFR § 1003.19(i)(2) within one business day of the immigration judge’s custody order.

84. Instead, ICE requested a discretionary stay of the immigration judge’s custody order pursuant to 8 CFR § 1003.19(i)(1) from the BIA, but only after the petitioner’s release from

custody. **Appx, Tab I, pp. 76-82.**

85. Nowhere in its “Emergency Motion for Discretionary Stay”, did DHS mention or advise the BIA that the immigration judge’s September 20, 2024, order granting the petitioner a bond had already been executed, *i.e.*, that the petitioner already posted the bond and was released from ICE custody. *Id.*

86. 8 CFR § 1003.19(i)(1) only authorizes the BIA to, “stay **the order** of an immigration judge redetermining the conditions of custody of an alien.” § 1003.19(i)(1) (emphasis added); *see also* 8 CFR § 1003.6(c)(5) (“DHS may seek a discretionary stay pursuant to 8 CFR § 1003.19(i)(1) to stay **the immigration judge’s order** ...”) (emphasis added); *compare to* 8 CFR 8 CFR § 1003.6(d) (providing for an automatic stay of “**the alien’s release**” for five (5) business days, to allow DHS/ICE to seek Attorney General review pursuant to 8 CFR 1003.1(h)(1), and describing process, “if the Board authorizes an alien’s **release** ...”) (emphasis added).

87. The regulations neither authorize nor contemplate the discretionary stay under procedure of 8 CFR § 1003.19(i)(1) to be used to re-detain an alien already released on a previously executed custody order issued by an immigration judge in custody proceedings. *See* 8 CFR § 1003.6(c)(5) (“... the motion may incorporate by reference the arguments presented in its brief in support of the need for **continued detention** of the alien during the pendency of the removal proceedings.”) (emphasis added).

88. Given that the immigration judge’s custody order had already been executed, there was simply nothing for the BIA to stay.

89. In fact, the BIA’s order granting ICE’s motion for discretionary says exactly that: “After consideration of all information, the Board has concluded that the motion for emergency stay of the bond **order** will be granted. ORDER: The request for **stay of execution of the bond**

order is granted.” **Appx, Tab C, p. 18.**

90. Second, prior to re-detaining the petitioner and taking him into ICE custody on or after October 24, 2024, the defendant failed to demonstrate to the immigration judge that change in circumstances existed to warrant to revocation of his bond. *Matter of Sugay*, 17 I&N Dec. 637, 639-40 (BIA 1981).

91. The immigration judge’s September 20, 2024, custody order, stipulated that the petition not be arrested again, “with the exception of any warrant for [his] failure to comply with probation in F22-003007 because of his detention by ICE.” **Appx, Tab A, pp. 02-03.**

92. Therefore, the petitioner did not violate this custody order when he returned to state custody after posting bond and being released from ICE custody, in order to finish his criminal sentence in Miami-Dade case no. F22-003007.

93. Therefore, no such change of circumstances existed that warranted his re-detention by ICE, and the defendant failed to seek any modification of the custody order issued by the immigration judge on September 20, 2024.

94. By seeking a post-release discretionary stay, as opposed to trying to comply with *Matter of Sugay* by showing a material change in circumstances to justify the revocation of the petitioners’ previously-posted bail, the agency’s action in re-detaining the petitioner is an unlawful and a circumvention of the procedure required by law.

95. Third, DHS use of an “emergency” discretionary stay in this situation, instead of following the prescribed automatic stay procedures, contradicts the governing regulations, subverts the regulatory framework’s intent, and violates due process.

96. The initial bond regulations authorizing the government to file for a discretionary stay of an immigration judge’s custody order while appealing said custody order to the BIA, or

request an automatic stay of the execution of an immigration judge's custody order were published in 1998. See *Procedures for the Detention and Release of Criminal Aliens by the Immigration and Naturalization Service and for Custody Redeterminations by the Executive Office for Immigration Review*, 63 FR 27441-01, 1998 WL 248023 (May 19, 1998). **Appx, Tab G, pp. 39-55.**

97. That rule amended former regulation and provided the BIA with general, discretionary emergency stay authority, 8 CFR § 3.19(i)(1), and also provided for automatic stays of “any order of the immigration judge authorizing release,” “upon the Service's filing of a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) with the Immigration Court on the day the order is issued[.]” 63 FR 27441-01, at 27448-49 (former 8 CFR § 3.19(i)(2)). **Appx, Tab G, p. 52.**

98. That rule stated that the automatic stay to “shall remain in abeyance pending [a] decision of the appeal by the Board of Immigration Appeals,” and would only lapse, “upon failure of the Service to file a timely notice of appeal[.]” *Id.*

99. That initial automatic-stay regulation and process was deemed unconstitutional on multiple occasions by various U.S. District Courts across the country. *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004); *Ashley v. Ridge*, 288 F.Supp.2d 662, 668-75 (D.N.J. 2003); *Uritsky v. Ridge*, 286 F.Supp.2d 842, 846-47 (E.D. Mich. 2003); *Bezmen v. Ashcroft*, 245 F.Supp.2d 446, 450 (D.Conn.2003); *Altamonte-Vargas v. Elwood*, 2002 WL 1471555 (E.D. Prior art. June 28, 2002); *Zabadi v. Chertoff*, No. C 05-01796 WHA, 2005 WL 1514122, at *1 (N.D. Cal. June 17, 2005).

100. As one district court aptly described:

Moreover, this Court does not find either a special or compelling interest to detain Petitioner for a potentially indefinite period without bail by virtue of the automatic stay. The regulation applies *only* to those situations in which an immigration judge has already determined that the alien is not a danger and has ordered the alien

released on bond. In this matter, Petitioner remains detained for an indeterminate period of time pursuant to the unilateral determination by a Service official, despite the reasoned findings of the Immigration Judge.

The regulation, which permits unilateral government detention of individuals without a case-by-case determination after a reasoned finding that they do not pose threat to safety or a risk of flight, violates the Due Process Clause because no special justification exists that outweighs the individual's constitutionally protected interest in avoiding physical restraint. *See Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491. Accordingly, this Court finds that Petitioner is currently detained in violation of substantive due process.

Zavala v. Ridge, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004) (footnote omitted);

101. Following these decisions, the Attorney General modified the automatic-stay rule, adding more constitutional safeguards and limiting the duration of an automatic-stay. *Review of Custody Determinations*, 71 FR 57873-01, 2006 WL 2811410 (October 2, 2006). **Appx, Tab H, pp. 57-75.**

102. That rule implemented the current governing procedures and time limitations of automatic stays of custody orders found at 8 CFR §§ 1003.6(c)(1)-(4), (d). *Id.*

103. That rule also modified former 8 CFR § 3.19(i), changing it to 8 CFR § 1003.19(i). *Id.*, pp. 58, 74.

104. As is relevant here, the new rule maintained DHS' authority to seek a discretionary stay of a custody order from the BIA in 8 CFR 1003.19(i)(1), but only, "[i]n the event the [BIA] does not issue a decision on the custody appeal within the period of the automatic stay[.]" 8 CFR § 1003.6(c)(4). *Id.*, p. 74.

105. In that event, "DHS [ICE] may seek a discretionary stay pursuant to 8 CFR § 1003.19(i)(1) to stay the immigration judge's **order**," "at any time after the filing of its notice of appeal of the custody decision, and **at a reasonable time before the expiration of the period of the automatic stay.**" 8 CFR § 1003.6(c)(4) (emphasis added).

106. The pertinent regulations do not authorize DHS to use its general, discretionary-stay authority on an emergency basis to effectively subvert the automatic-stay proscribed requirements and safeguards, *Id.*, p. 69-71 (*e.g.*, senior official certification), just because the agency failed to file “a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court **within one business day** of the [immigration judge custody] order[.]” 8 CFR § 1003.19(i)(2) (emphasis added).

107. DHS’ use of its general, discretionary-stay authority, on an emergency basis—as it did in the instant case, three (3) days after the immigration judge’s custody order, after the execution of that custody order, *i.e.*, the petitioner’s release from ICE custody after posting the required bail amount, and without advising the BIA that the petitioner was already released from ICE custody, such that the immigration judge’s custody order had already been executed—raises the same constitutional and due process problems that existed with former 8 CFR § 3.19(i)(2). *E.g.*, *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004).

108. DHS’ use of its general, discretionary-stay authority, on an emergency basis, instead of invoking the automatic-stay procedure, essentially creates to a new limitless stay, “without limits [on] the duration of that [automatic] stay.” 71 FR 57873-01. 71 FR 57873-01, 2006 WL 2811410 (October 2, 2006). **Appx, Tab H, p. 57.**

109. In this case, DHS’ use of its general, discretionary-stay authority, on an emergency basis, when the petitioner had already been released from custody, subverts the regulatory intent of the automatic-stay rule, given that it was adopted specifically address the, “possibility of the government releasing an alien before DHS can file a motion for a stay.” *Id.*, p. 70.

110. “The automatic stay process was intended to provide an orderly process for the

expedited consideration of custody decisions in those cases where the former INS (now DHS) had determined that an alien should not be **released** during the period of time necessary for DHS to pursue an expedited appeal to the Board.” *Id.*, p. 71. (emphasis added).

111. When interpreting a statute, a Court’s interpretation, “will be informed by context.” *Dubin v. United States*, 599 U.S. 110, 119 (2023).

112. “[A] statute’s meaning does not always turn solely on the broadest imaginable definitions of its component words.” *Id.*, at 120 (citing *Epic Systems Corp. v. Lewis*, 584 U. S. 497, 523 (2018) (internal quotation marks omitted)).

113. “In deciding between the parties’ readings, **one limited and one near limitless**, precedent and prudence require a careful examination of [the statute]’s text and structure.” *Id.*, at 118 (emphasis added).

CLAIMS FOR RELIEF

COUNT I:

Civil Immigration Detention in Violation of Due Process

114. The allegations in paragraphs 1-113 are realleged and incorporated herein.

115. The defendant lacks any statutory or regulatory authority to detain the petitioner.

116. As such, the petitioner’s ongoing and continued civil immigration detention is unlawful, as it is in violation of the Immigration and Nationality Act, its implementing regulations, and the Due Process Clause of the Fifth Amendment of the Constitution of the United States of America.

117. Therefore, the petitioner is entitled to a writ of habeas corpus ordering: (1) that he be immediately released from the respondent’s custody.

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

- (a) Assume jurisdiction over this matter;
- (b) Set this matter for expedited consideration pursuant to 28 U.S.C. § 1657;
- (c) Order the respondents to show cause why the writ should not be granted within three days, and allowing the petitioner three days to file a traverse, and, if necessary, set a hearing on this petition within five days of the submission of the return, pursuant to 28 U. S. C. § 2243;
- (d) Order the respondents to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding and while the petitioner remains in the respondents' custody;
- (e) Grant the petitioner a writ of habeas corpus ordering his immediate release from the respondents' custody because that custody has become unconstitutionally punitive;
- (f) Award Petitioner attorneys' fees and costs under the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. § 2412, and on any other basis justified under law; and
- (g) Grant any other and further relief that the Court deems just and proper.

Dated: January 27, 2025

s/ Anthony Dominguez
Fla. Bar No. 1002234
Prada Dominguez, PLLC
12940 SW 128 Street, Suite 203
Miami, FL 33186
c. 440.315.4610
o. 786.703.2061
adominguez@pradadominguez.com

Counsel for Petitioner

**VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I, Anthony R. Dominguez, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney in these proceedings. Based upon a review of the administrative record, discussions with the petitioner's other attorneys, and/or discussions with the petitioner, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 27, 2025

s/ Anthony Dominguez
Fla. Bar No. 1002234
Prada Dominguez, PLLC