UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

DOĞUKAN GÜNAYDIN,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; JOEL BROTT, in his official capacity as the Sherburne County Sheriff; PETER BERG, in his official capacity as the St. Paul Field Office Director for U.S. Immigration and Customs Enforcement; JAMIE HOLT, in her official capacity as Homeland Security Investigations St. Paul Special Agent in Charge, U.S. Immigration and Customs Enforcement; TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; and MARCO RUBIO, in his official capacity as Secretary of State,

Respondents.

Case No. 0:25-cv-01151-JMB-DLM

SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS

TABLE OF CONTENTS

INTRODUCTION

1. Doğukan Günaydın has now languished in civil immigration detention for fifty (50) days. An immigration judge ordered Mr. Günaydın released on bond, determining he was not a flight risk or danger to the community. An immigration judge dismissed the latest removal charge that the Department of Homeland Security ("DHS") tried to lodge against Mr. Günaydın, terminating his removal proceedings. Despite having no immigration court case pending, no future hearings, an order that DHS was substantially unlikely to show he was subject to removal, an order that he is in fact not subject to removal, and an order that he is neither a danger to the community nor a flight risk, Mr. Günaydın remains detained at DHS prosecution's unilateral command.

2. "'In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.'... **Detention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm."** *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)) (emphasis added).

3. When given the opportunity for Department of Justice ("DOJ") review of DHS's removal charges and his custody status, Mr. Günaydın continues to win. So, in the latest chapter of this terrifying and unlawful saga, DHS has made a last-ditch effort to keep Mr. Günaydın detained pursuant to its own *ultra vires* regulation, 8 C.F.R. § 1003.19(i)(2). By signing a boilerplate two-page Form EOIR-43, DHS unilaterally invoked an "automatic stay" of the immigration judge's order that he be released from ICE custody on bond. This

automatic stay is not reviewable by an immigration judge. Because DHS keeps failing on immigration judge review, the only mechanism it can use to keep Mr. Günaydın detained now conveniently and intentionally avoids DOJ review.

4. The automatic stay provision allows for indefinite detention via DHS's filing of discretionary stays and/or referrals to the Attorney General. Mr. Günaydın could keep winning and continue to be detained despite further orders to the contrary. DHS's conduct in this case thus far provides no indication that it plans to relent.

5. The risk of erroneous deprivation of liberty here is substantial. The application of the automatic stay provision to keep Mr. Günaydın detained is the result of a unilateral determination by DHS prosecution to overrule and nullify the immigration judge's bond decision, impermissibly merging the functions of adjudicator and prosecutor. Importantly, unlike typical requests for stay of a judgment pending appeal which require a demonstration of the likelihood of success on the merits, the automatic stay demands no such showing whatsoever. In fact, DHS enacted the automatic stay regulation precisely to avoid the need for such an individualized determination. Noncitizens like Mr. Günaydın can consequently remain detained no matter how frivolous DHS's position on appeal.

6. Mr. Günaydın was arrested fifty days ago, on March 27, 2025, when two plainclothes federal officers surrounded him on the street just outside his home in St. Paul, Minnesota as he was on his way to class. Mr. Günaydın feared he was being kidnapped as a man in a hooded sweatshirt grabbed him and handcuffed him. He was placed into an unmarked vehicle and transported to a holding cell. Mr. Günaydın was held for hours with federal officers who would not—or could not—tell him why he was arrested, why he was

being held, or the charges against him, contrary to the U.S. constitution, immigration law, and ordinary Immigration and Customs Enforcement ("ICE") procedures.

7. Mr. Günaydın continues to be held in ICE custody at Sherburne County Jail in Elk River, Minnesota in violation of his statutory and constitutional rights. DHS's latest weaponization of 8 C.F.R. § 1003.19(i)(2) to hold Mr. Günaydın indefinitely in ICE custody is patently unlawful and unconstitutional. The automatic stay provision as applied to Mr. Günaydın is *ultra vires*, and his continued detention pursuant to this regulation violates substantive and procedural due process protections of the Fifth Amendment. Accordingly, to vindicate Mr. Günaydın's rights, this Court should grant the instant petition for writ of habeas corpus.

8. Mr. Günaydın asks this Court to find that his detention is unlawful and unconstitutional, and to order him immediately released from ICE custody pursuant to the terms of release set forth by Immigration Judge Sarah B. Mazzie in her April 14, 2025 custody determination decision.[1]

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[1] Mr. Günaydın's initial petition for writ of habeas corpus (ECF No. 1) and amended petition for writ of habeas corpus (ECF No. 18) additionally sought this Court's reinstatement of his nonimmigrant student status through DHS's Student and Exchange Visitor Information System ("SEVIS"). Mr. Günaydın hereby withdraws that request without prejudice. Mr. Günaydın maintains that his nonimmigrant student status was unlawfully terminated and is intricately tied to his current detention. However, through the instant second amended petition, he seeks only release from custody.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 2201 (declaratory judgment).[2] This action further arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

10. Venue is proper because Petitioner is detained in the District of Minnesota by ICE in Minnesota and under the custody and control of ICE officials in Minnesota. Respondent Peter Berg is the Director of the St. Paul Field Office of ICE Enforcement and Removal Operations ("ICE ERO"), with authority over ICE ERO's operations and detainees in Minnesota. Respondent Joel Brott is the Sheriff of Sherburne County, with authority over detainees in Sherburne County Jail. Respondent Jamie Holt is the Special Agent in Charge for the St. Paul Field Office of ICE Homeland Security Investigations ("HSI"), with authority over HSI operations and detainees in Minnesota.

PARTIES

11. Petitioner **Doğukan Günaydın** (pronounced DOH-kahn gyu-NYE-duhn) is a full-time STEM MBA student at the Carlson School of Management at the University of Minnesota. He resides in St. Paul, Minnesota. Mr. Günaydın last entered the United States on an F-1 nonimmigrant student visa and maintained his nonimmigrant student status without issue until May 27, 2025 when it was unlawfully terminated by DHS.

[2] Further discussion of the Court's jurisdiction to consider Mr. Günaydın's claims under this second amended petition for writ of habeas corpus follow in ¶¶ 116-129, *infra*.

12. Respondent **Donald J. Trump** is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and Department of Homeland Security.

13. Respondent **Peter Berg** is named in his official capacity as the St. Paul Field Office Director for U.S. Immigration and Customs Enforcement.

14. Respondent **Jamie Holt** is named in her official capacity as the St. Paul Special Agent in Charge for Homeland Security Investigations for U.S. Immigration and Customs Enforcement.

15. Respondent **Joel Brott** is named in his official capacity as the Sheriff of Sherburne County. As the Sheriff of Sherburne County, Respondent Brott is responsible for and has authority over detainees in the Sherburne County Jail.

16. Respondent **Todd Lyons** is named in his official capacity as the Acting Director for U.S. Immigration and Customs Enforcement. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States and is legally responsible for pursuing any effort to remove the Petitioner; and as such is a custodian of the Petitioner.

17. Respondent **Kristi Noem** is named in her official capacity as the Secretary of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner.

18. Respondent **Marco Rubio** is named in his official capacity as the United States Secretary of State. In this capacity, among other things, he has the authority to determine, based on "reasonable" grounds, that the "presence or activities" of a noncitizen "would have serious adverse foreign policy consequences for the United States."

FACTUAL AND PROCEDURAL HISTORY

19. Mr. Günaydın is a STEM MBA candidate at the Carlson School of Management ("Carlson") at the University of Minnesota. He received his undergraduate degree from St. Olaf College in Northfield, Minnesota on a full scholarship.

20. Mr. Günaydın always maintained lawful nonimmigrant student status until it was unlawfully terminated by DHS on March 27, 2025 after ICE arrested him. He has never worked without authorization.

21. On June 27, 2023, nearly two years before ICE unlawfully arrested him, Mr. Günaydın was arrested for driving while impaired ("DWI"). He pleaded guilty, served his sentence, and complied with all conditions of his release. Following the conviction, he was accepted into Carlson and granted a scholarship. He maintained a full course load with a high GPA and served in the MBA Student Association prior to being taken into ICE custody. Aside from a 2021 speeding ticket, Mr. Günaydın has no other criminal convictions or arrests.

22. Importantly, Mr. Günaydın has committed no crime that is cause for lawful termination of his nonimmigrant Student Status or that renders him deportable under INA § 237.

23. He is a STEM MBA student focused on finance and business consulting. He is close with his Carlson cohort and colleagues and is well-respected and cared-for in the Twin Cities community.

24. On March 27, 2025 at approximately 9:30 a.m., two plainclothes HSI officers approached Mr. Günaydın just outside his St. Paul apartment as he was leaving to go to class. The plainclothes federal officers handcuffed him and placed him into an unmarked vehicle. Mr. Günaydın feared he was being kidnapped.

25. Mr. Günaydın was taken to the ICE ERO Field Office in St. Paul, Minnesota, stripped of his phone and belongings, and was left waiting for hours without access to his family, friends, or attorney. He was not told the reason for his arrest, what would happen to him next, or what, if anything, were the charges against him. Officers periodically told him that his "F-1 visa is retroactively revoked," but offered no further explanation for the arrest.

26. Little did Mr. Günaydın know, this would set the stage for him spending more than six weeks in immigration detention despite beating the charges that DHS would eventually lodge against him.

27. The federal officers holding Mr. Günaydın apparently did not understand the reason they were instructed to arrest and hold him, and appeared confused about what to do with him or how to charge him. Indeed, at the time of his arrest, and for many hours thereafter, Mr. Günaydın was in a valid, lawful nonimmigrant status.[3] Mr. Günaydın's

[3] ECF No. 1-1.

initial charging document[4] indicates he was arrested and charged pursuant to INA § 237(a)(1)(C)(i)[5] for failing to maintain his nonimmigrant status.[6] This was plainly not the situation at the time of his arrest; there was no lawful basis for his arrest or charge. This is further evidenced by the fact that DHS eventually withdrew this charge of removability.[7]

28. Mr. Günaydın was apparently shown a copy of the Notice to Appear ("NTA"), which purports to contain his signature. The document indicates it was personally served on him.[8] However, Mr. Günaydın was not provided a copy of this charging document to keep, and still, as of the date of filing, has not been given a copy of the NTA.[9]

29. The Student and Exchange Visitor Information System ("SEVIS")[10] online records show that Mr. Günaydın's nonimmigrant student status was terminated by a "DHS Official" on May 27, 2025 at 4:24 p.m., roughly *seven hours after his arrest*, with the

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[4] The charging document in the immigration context is called a Notice to Appear ("NTA") and must be personally served on the non-citizen or their counsel of record. The NTA must specify, among other information, (1) "The nature of the proceedings against the alien"; (2) "The legal authority under which the proceedings are conducted"; (3) "The acts or conduct alleged to be in violation of law"; and, (4) "The charges against the alien and the statutory provisions alleged to have been violated." 8 U.S.C. § 1229(a)(1). This document was not properly personally served on Mr. Günaydın or counsel. Therefore, removal proceedings were not properly initiated.

[5] When quoting or referring to a specific document that references the INA, this second amended petition will do so; otherwise, citations will be to 8 U.S.C. § 1101, *et seq*.

[6] ECF No. 11-5.

[7] ECF No. 26-3 at 2; *see also* ECF No. 29-5 at 5.

[8] *Id.*

[9] ECF No. 19 ¶ 5.

[10] SEVIS is the online system maintained by DHS to monitor and track schools that accept international students and the statuses of those international students. *See* U.S. ICE, *Student and Exchange Visitor Information System*, https://www.ice.gov/sevis/overview (last accessed May 13, 2025).

termination reason listed as "OTHERWISE FAILING TO MAINTAIN STATUS" and the explanation listed as "SEVIS record terminated pursuant to INA 237(a)(1)(C)(i) and/or 237(a)(4)(C)(i)."[11]

30. Later that evening, Mr. Günaydın was told he would have a hearing on April 8, 2025 with an immigration judge and was transferred to Sherburne County Jail in Elk River, Minnesota.

31. As of March 30, 2025, Mr. Günaydın had been given no documents explaining the charges against him, no notice of his supposed April 8 immigration court hearing, and there was no pending case under his name in the Executive Office for Immigration Review ("EOIR") immigration court system.[12]

32. As of March 30, 2025, four days after Mr. Günaydın was arrested, despite requests to the St. Paul offices of ICE ERO and Chief Counsel of the ICE Office of the Principal Legal Advisor, neither Mr. Günaydın nor his counsel were provided with an NTA or even told verbally what the charges against him were. Governor Tim Walz's office had also directly reached out to DHS to seek information on Mr. Günaydın and was unable to ascertain any further information.

33. Therefore, on March 30, Mr. Günaydın filed a petition for writ of habeas corpus seeking his immediate release and reinstatement of his nonimmigrant student status.[13] Several days after Mr. Günaydın filed that petition, on April 1, counsel for

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[11] ECF No. 1-1.
[12] ECF Nos. 1-2, 1-3.
[13] ECF No. 1.

Respondents informally shared a copy of the NTA with Mr. Günaydın's counsel via email.

34. The events following Mr. Günaydın's arrest reflect a pattern of confusion, gamesmanship, and backtracking by Respondents. While Respondents have spent the last six weeks contradicting themselves and each other, and scrambling to come up with post hoc explanations for ICE's lawless arrest and Mr. Günaydın's continued detention, Mr. Günaydın remains behind bars, stripped of his freedom and liberty.

35. On April 1, counsel for Mr. Günaydın filed a request with EOIR to schedule a bond hearing for Mr. Günaydın on April 2, or as soon as could be heard.[14] On April 2, EOIR scheduled Mr. Günaydın for a removal and bond hearing to take place on April 8 at 8:30 a.m. before Immigration Judge Sarah B. Mazzie ("IJ Mazzie").[15]

36. On April 2, Respondent DHS filed the following documents with EOIR: (1) records related to Mr. Günaydın's conviction;[16] (2) a document from the Bureau of Consular Affairs explaining that Mr. Günaydın's F-1 student visa was revoked (hereinafter, "Visa Revocation Memo");[17] (3) Form I-213, Record of Deportable/ Inadmissible Alien;[18] (4) the NTA;[19] and, (5) Form I-261, Additional Charges of Inadmissibility/Deportability.[20]

37. This filing was the first time Mr. Günaydın became aware of the Visa Revocation Memo, or any action whatsoever by the Department of State ("DOS") to revoke

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[14] ECF No. 19 ¶ 6.
[15] *Id.* at ¶ 7.
[16] ECF No. 11-2.
[17] ECF No. 11-3.
[18] ECF No. 11-1.
[19] ECF No. 11-5.
[20] ECF No. 11-6.

his visa.[21] The Visa Revocation Memo is dated March 23, 2025 and states that Mr. Günaydın's F-1 visa is revoked "effective immediately" "in response to a request from DHS/ICE" and pursuant to 8 U.S.C. § 1201(i).[22] It also states "this revocation will [] be silent; [DOS] will not notify the subject of the revocation."[23]

38. The Visa Revocation Memo states that Mr. Günaydın's F-1 student visa is being revoked, but lists the Foil number for his B1/B2 tourist visa.[24] Mr. Günaydın's F-1 student visa expired on July 12, 2022.[25]

39. This April 2 filing by DHS also included a charge of deportability under INA § 237(a)(1)(B), as a noncitizen whose visa was revoked under INA § 221(i), specifically stating that DOS revoked his F-1 student visa on March 23, 2025, pursuant to INA § 221(i). As further explained, *infra* ¶¶ 153-170, this additional charge was always improper and baseless. This is further evidenced by the fact that DHS withdrew this charge.[26]

40. On April 2, Magistrate Judge Micko issued an Order to Show Cause ("OSC"), ordering Respondents to respond to Mr. Günaydın's petition by April 4.[27]

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[21] ECF No. 19 ¶ 9.
[22] ECF No. 11-3.
[23] *Id.* Respondents also filed an email notice to Mr. Günaydın of the revocation of his B1/B2 visa on April 4, 2025. ECF No. 15-1. It is unclear why this visa revocation was not required to be silent. Also, Mr. Günaydın is in jail without access to his email and thus has not received the notice.
[24] *Id.*; ECF No. 19-1.
[25] ECF No. 19-2; *see also* ECF No. 15 at ¶ 6 ("The Department did not revoke Gunaydin's F1 visa as it had expired in July 2022").
[26] ECF No. 26-3 at 2; *see also* ECF No. 29-5 at 5.
[27] ECF No. 5.

41. On April 4 at approximately 3:30 p.m., Respondents sought Mr. Günaydın's position on a motion for extension to respond to the OSC. Mr. Günaydın opposed the request. At 7:53 p.m., Respondents moved for an extension of time to respond to the OSC.[28] This motion was made in part on the basis of "new information that may affect the removal proceedings and the pending habeas action."[29] Respondents had not ascertained even the facts underlying that new information at the time of filing.

42. At 9:25 p.m., Mr. Günaydın filed an opposition to the motion.[30] At 10:03 p.m., Magistrate Judge Micko denied Respondents' motion.[31] At 11:09 p.m., Respondents filed their response (the "return").[32] Respondents' return did not address the constitutionality or statutory basis for Mr. Günaydın's arrest and continued detention, but rather argued that Mr. Günaydın's custody is not within the Court's jurisdiction to review.

43. On April 5, Mr. Günaydın filed over 200 pages of documents in support of his request for bond with EOIR, to demonstrate that he is neither a danger to the community nor a flight risk.[33] This included proof of completion of the conditions of his DWI sentence, a fixed address, years of taxes paid, school records, employment records, and over sixty (60) personal, detailed letters of support from his friends and chosen family in

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[28] ECF No. 6.
[29] ECF No. 6 at p. 2. Though never confirmed to Mr. Günaydın, presumably this "new information" turned out to be the fact that DOS had actually revoked his B1/B2 visa rather than his F-1 visa. Mr. Günaydın and counsel both learned this information for the first time at Mr. Günaydın's immigration court hearing on April 8. Brown Decl. ¶ 16.
[30] ECF No. 8.
[31] ECF No. 9.
[32] ECF No. 10.
[33] ECF No. 19 ¶ 12; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976).

the United States.[34]

44. On April 6, Mr. Günaydın's counsel contacted local ICE Chief Counsel to inquire if DHS would be willing to stipulate to a bond amount, or at least discuss Mr. Günaydın's custody status ahead of the April 8 bond hearing. DHS did not respond.[35]

45. On April 7, Mr. Günaydın replied to Respondents' return, addressing the jurisdictional issues raised in the return and the constitutionality of Mr. Günaydın's continued detention.[36]

46. Later on April 7, DHS filed another Form I-261 Additional Charges of Inadmissibility/Deportability with EOIR.[37] DHS newly charged Mr. Günaydın, on the eve of his bond hearing, with being deportable under INA § 237(a)(4)(A)(ii). As further explained herein, DHS filing this charging document immediately stripped IJ Mazzie of jurisdiction to hold Mr. Günaydın's bond hearing.

47. 8 U.S.C. § 1227(a)(4)(A)(ii) makes deportable a noncitizen who engages in "criminal activity which endangers public safety or national security." This newest charge is based on Mr. Günaydın's single conviction for DWI from nearly two years ago, which resulted in no damage to people or property.[38] This charge was not based on any new or newly discovered information; it was based on a years-old arrest, the record of which DHS was well-aware, considering it was the basis for DHS's request to DOS to revoke Mr.

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[34] *Id.*
[35] ECF No. 19 ¶ 13.
[36] ECF No. 12. Mr. Günaydın re-filed the same reply the following day (ECF No. 13) due to a scrivener's error in the caption and mislabeled filing in the ECF system.
[37] ECF No. 16-1.
[38] *Id.*

Günaydın's F-1 visa (which seems to have actually resulted in revocation of his B1/B2 visa) on March 23, 2025.[39]

48. On April 8, at Mr. Günaydın's initial bond hearing, ICE Assistant Chief Counsel Laura Trosen ("ACC Trosen") made no argument that Mr. Günaydın is subject to statutory mandatory detention under 8 U.S.C. §§ 1226(c) or 1226a.[40] Instead, she argued, Mr. Günaydın's custody status is not reviewable by an immigration judge, pursuant to 8 C.F.R. § 1003.19(h)(2)(i)(C).[41]

49. 8 C.F.R. § 1003.19(h)(2)(i)(C) provides, "an immigration judge may not redetermine conditions of custody imposed by the Service with respect to… Aliens described in section 237(a)(4) of the Act[.]" Thus, by filing the newest charge, merely alleging Mr. Günaydın is deportable under section 1227(a)(1)(A)(ii)—**with no proffer of proof, probable cause, or judicial review**—DHS immediately stripped IJ Mazzie of her jurisdiction to hear Mr. Günaydın's bond request.

50. Counsel for Mr. Günaydın orally moved for a hearing pursuant to *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999) and 8 C.F.R. § 1003.19(h)(2)(ii), which provides, "nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an immigration judge that the alien is not properly included within [8 C.F.R. § 1003.19(h)(2)(i)(C)]."[42] IJ Mazzie scheduled the *Joseph* hearing for April 11 at

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[39] ECF No. 11-3.
[40] ECF No. 19 ¶ 15.
[41] *Id.*
[42] Legally, *Joseph* hearings are reserved for immigration judge review of a noncitizen's inclusion in 8 U.S.C. § 1226(c), subjecting them to statutory mandatory detention. Mr.

8:30 a.m.; the sole issue at the *Joseph* hearing was whether Mr. Günaydın is properly described in 8 U.S.C. § 1227(a)(4).

51. On April 9, Respondents filed a supplemental return, without leave, updating the Court on the events that had transpired since they filed the return on April 4.[43]

52. On April 10, the Court ordered Mr. Günaydın to file an amended petition for writ of habeas corpus (hereinafter, "amended petition"), which he timely filed on April 11.[44]

53. On April 11, at Mr. Günaydın's *Joseph* hearing, Mr. Günaydın and DHS presented arguments to IJ Mazzie as to whether Mr. Günaydın was properly charged with deportability under 8 U.S.C. § 1227(a)(4)(A)(ii).[45] This was the only matter at issue at the *Joseph* hearing. IJ Mazzie heard arguments and took the matter under submission.

54. At the *Joseph* hearing, upon questioning from IJ Mazzie, ACC Trosen informed the Court—and counsel for the first time—that the newest charging document dated April 7[46] was meant to supersede all prior allegations and charges.[47] Notably, the document indicates that the 237(a)(4)(A)(ii) charge is an "additional" charge, and the seven

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Günaydın was not subject to statutory mandatory detention, but IJ Mazzie held a *Joseph*-style hearing nonetheless. Mr. Günaydın does not concede that he is subject to statutory mandatory detention, nor do Respondents so allege. Though technically not a traditional *Joseph* hearing, for the sake of ease and clarity, this amended petition will refer to Mr. Günaydın's April 11 hearing as a "*Joseph* hearing".

[43] ECF No. 14.
[44] ECF Nos. 17, 18.
[45] ECF No. 19 ¶ 17.
[46] ECF No. 16-1.
[47] *Id.* at ¶ 19.

factual allegations are "in lieu of those set forth in the original charging document."[48] Prior to this hearing, no representation was made to Mr. Günaydın or counsel that the charges under section 1227(a)(1)(C)(i) or 1227(a)(1)(B) had been withdrawn.

55. Indeed, Respondents' supplemental return and supporting declaration states that the charge under 1227(a)(4)(A)(ii) is "an additional charge" and makes no mention of the other charges being withdrawn or superseded.[49]

56. The government's pattern in Mr. Günaydın's case has been to backtrack, change the story, and confuse the issues. The new information presented at Mr. Günaydın's *Joseph* hearing follows in that pattern. DHS was apparently aware as of April 11 that it could not sustain the first charge of deportability lodged against Mr. Günaydın on the date of his arrest, March 27, nor the second charge of deportability lodged against Mr. Günaydın, six days after his arrest.

57. Mr. Günaydın filed the amended habeas petition on April 11, and Respondents filed a return to the amended petition on April 14.[50]

58. On April 14, after hearing arguments from Mr. Günaydın and DHS and reviewing hundreds of pages of evidence in the record, IJ Mazzie issued a seven page, single-spaced written decision ordering DHS to release Mr. Günaydın on bond.[51] IJ Mazzie held that DHS was substantially unlikely to sustain the 8 U.S.C. § 1227(a)(4)(A)(ii) charge of removability against Mr. Günaydın. She further held that he is not a danger to

[48] ECF No. 16-1.
[49] ECF No. 14 at p. 3; ECF No. 16 at p. 4.
[50] ECF Nos. 18, 20.
[51] ECF No. 22-1.

the community or a flight risk, and ordered that he be released on $5,000.00 bond.[52]

59. DHS appealed this decision, invoking an automatic stay of the bond grant pursuant to 8 C.F.R. § 1003.19(i)(2), forcing Mr. Günaydın's continued detention during the pendency of the bond appeal.[53] As further explained below, this automatic stay is the basis for Mr. Günaydın's current detention.

60. At Mr. Günaydın's removal hearing on April 15, DHS informed IJ Mazzie that it could not identify what charges are being brought against Mr. Günaydın in immigration proceedings. IJ Mazzie granted DHS until April 22 to brief the issue of removability, and finally identify the charges against Mr. Günaydın. IJ Mazzie gave Mr. Günaydın until April 29 to file a responsive brief and reset his hearing to May 6.[54]

61. On April 22, DHS filed a brief in immigration court stating that the first two charges against Mr. Günaydın are withdrawn, and that he is only being charged with removability pursuant to 8 U.S.C. § 1227(a)(4)(A)(ii) for engaging in criminal activity that endangered public safety.[55]

62. Despite arresting Mr. Günaydın on March 27, it was not until April 22 that DHS stated with certainty the charge against him. The sole remaining charge under § 1227(a)(4)(A)(ii) was not the basis for his arrest and detention; DHS did not even present this charge until April 7.

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[52] *Id.*
[53] ECF No. 22-2.
[54] ECF No. 22-6.
[55] ECF No. 26-3 at 2.

63. On April 25, Mr. Günaydın filed a motion for temporary restraining order ("TRO") and preliminary injunction in this Court seeking his immediate release, reinstatement of his nonimmigrant status, and an order not to transfer him out of this District in the alternative.[56]

64. On April 28, this Court granted the TRO in part, ordering Respondents not to transfer Mr. Günaydın out of this District, effective until May 12.[57]

65. On April 29, Mr. Günaydın filed a brief in immigration court in opposition to DHS's brief, explaining that DHS cannot sustain the § 237(a)(4)(A)(ii) charge by clear and convincing evidence.[58]

66. On May 1, IJ Mazzie issued a written decision regarding contested removability. After considering the briefs and evidence from both parties, she ordered:

> **IT IS HEREBY ORDERED** that the charge of removability under INA § 237(a)(4)(A)(ii) is **NOT SUSTAINED**.
> **IT IS FURTHER ORDERED** that the charge under INA § 237(a)(1)(C)(i) is **WITHDRAWN**.
> **IT IS FURTHER ORDERED** that the charge under INA § 237(a)(1)(B) is **WITHDRAWN**.
> **IT IS FURTHER ORDERED** that removal proceedings be **TERMINATED**.[59]

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[56] ECF Nos. 24, 25, 26, 26-1, 26-2, 26-3, 26-4.
[57] ECF No. 28 at 10.
[58] ECF No. 29-3. In essence, this charge was never supportable as the Board of Immigration Appeals ("BIA") has clear precedent that the charge must be narrowly construed as rendering someone deportable who has engaged in criminal activity that "endangers the public at large", and specifically does not include "everyday crimes". *See Matter of Tavarez Peralta*, 26 I&N Dec. 171, 174 (BIA 2013). The BIA respected Congressional intent to enumerate specific crimes and convictions that would render someone deportable and recognized that broad application of this removability charge would be contrary to that intent. *Id.*
[59] ECF No. 29-3 at 5 (emphasis in original).

With this order, IJ Mazzie terminated Mr. Günaydın's removal proceedings. There are no future hearings scheduled and no open case against him with the Immigration Court.

67. On the same day IJ Mazzie terminated Mr. Günaydın's case, DHS filed a notice of appeal to the BIA, appealing this decision.[60] DHS's filing this simple form stays IJ Mazzie's order during the pendency of the appeal, under 8 C.F.R. § 1003.6(a). Thus, despite having no case against him, Mr. Günaydın is still in custody. As of the date of filing, the BIA has not issued a briefing schedule.

68. On May 5, Respondents filed an opposition to the TRO in this Court.[61] On May 8, Mr. Günaydın filed a reply to the opposition.[62]

69. On May 8, both DHS and Mr. Günaydın filed briefs before the Board of Immigration Appeals ("BIA") related to IJ Mazzie's bond order.

70. On May 12, this Court held a hearing on the TRO and extended the TRO for an additional fourteen days, to May 26, in anticipation of Mr. Günaydın filing the instant second amended petition.

71. Meanwhile, Mr. Günaydın is still in jail. He has not seen the sun or been outside for 50 days. Mr. Günaydın was diagnosed with scoliosis as a young child and is suffering flare ups in detention because of the uncomfortable bed with little padding. During his first week of detention, he used books as pillows.[63]

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[60] ECF No. 29-6.
[61] ECF No. 30.
[62] ECF No. 32.
[63] Declaration of Doğukan ("Günaydın Decl.") ¶ 39.

72. He has also been effectively isolated, with no in-person access to his support system in the United States and limited ability to maintain contact with family members abroad in Turkey.[64] His detention has also interrupted his academic pursuits, despite his substantial financial investment of approximately $40,000.00 in student loans.[65] As a result, he faces significant financial strain and is at imminent risk of losing a competitive, high-paying summer internship critical to his professional development.[66]

73. Mr. Günaydın has experienced significant psychological distress due to his prolonged detention. He has suffered panic attacks following each hearing where he anticipated possible release, only to remain in custody.[67] The distress and confusion of continuing to win his immigration case while remaining detained is deeply affecting his mental health. He feels as though he is "tied to train tracks" and "can hear the train's horn."[68]

74. If this detention operated like a criminal sentence, Mr. Günaydın would at least know when he was going to be released. Instead, the lack of fixed time limit on his detention renders this situation that much greater of a physical and psychological deprivation. In fact, Mr. Günaydın has already spent more than twelve times as long in immigration custody than he was sentenced to and served for his criminal sentence.

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[64] *Id.* at ¶¶ 53, 83.
[65] *Id.* at ¶ 14.
[66] *Id.* at ¶¶ 18-23.
[67] *Id.* at ¶ 55.
[68] *Id.* at ¶ 59.

LEGAL FRAMEWORK

Due Process Framework

75. The Fifth Amendment of the U.S. Constitution guarantees that no person shall be deprived of liberty without due process of law. "[F]reedom from imprisonment—from government custody, detention, or other forms of physical restraint —lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). These rights apply equally to noncitizens in deportation proceedings. *See Reno v. Flores*, 507 302, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (resident alien "entitled to a fair hearing when threatened with deportation").

76. Substantive and procedural due process protections apply to all persons in the United States, notwithstanding their immigration status. *See e.g., Mathews v. Diaz,* 426 U.S. 67, 77 (1976) ("There are literally millions of aliens within the jurisdiction of the United States ... [t]he Fifth Amendment as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Zadvydas*, 533 U.S. at 693 ("[O]nce [someone] enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States…whether their presence here is lawful, unlawful, temporary, or permanent").

77. Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards and protection, or in certain special, narrow, and non-punitive circumstances where a special justification outweighs

the individual's constitutionally protected interest in avoiding physical restraint. *Zadvydas*, 533 U.S. at 690.

78. Civil confinement of non-citizens must be limited to the underlying purpose justifying the detention. *Zadvydas*, 533 U.S. at 690. "Once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699.

79. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process is due Petitioner, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

The Automatic Stay and the Path Ahead for Mr. Günaydın

80. Mr. Günaydın was taken into custody pursuant to 8 U.S.C. § 1226(a), which states, "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." § 1226(a) allows the Attorney General, through immigration judges, to continue to detain the noncitizen or release him on either conditional parole or a bond of at least $1,500.00. 8 U.S.C. § 1226(a)(1)-(2). Following these procedures, IJ Mazzie ordered DHS to release

Mr. Günaydın on bond in the amount of $5,000.00.[69]

81. Mr. Günaydın is not and has never been subject to statutory mandatory detention under 8 U.S.C. § 1226(c).[70] DHS created an additional procedural hurdle to Mr. Günaydın being granted bond by charging him as removable under INA § 237(a)(4)(A)(ii) on the eve of his bond hearing. This move subjected him to regulatory mandatory detention under 8 C.F.R. § 1003.19(h)(2)(i)(C). However, Mr. Günaydın, through a *Joseph* hearing, convinced IJ Mazzie that DHS was substantially unlikely to sustain that charge.[71]

82. Despite DHS's best efforts, it could not keep Mr. Günaydın in statutory mandatory detention under 8 U.S.C. § 1226(c) nor regulatory mandatory detention under 8 C.F.R. § 1003.19(h)(2)(i)(C). When given the opportunity for review of DHS's charges and his custody status, Mr. Günaydın continues to win and beat the charges. Respondents cannot deny this, as they stated, **"We concede that Mr. Günaydın is winning."**[72] So, DHS made its last effort to keep him detained pursuant to 8 C.F.R. § 1003.19(i)(2), by

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[69] ECF No. 22-1.

[70] Respondents rely heavily on *Barajas-Farias v. Garland*, No. 24-CV-4366 (MJD/LIB), ECF No. 14 (Dec. 4, 2024) and ECF No. 18 (Dec. 6, 2024) for their assertion that this Court should deny Mr. Günaydın's petition for writ of habeas corpus. The petitioner in that case was subject to regulatory mandatory detention pursuant to 8 C.F.R. § 1003.19(h)(1)(i)(C), and challenged that regulation as *ultra vires* to the 8 U.S.C. § 1226(c) mandatory detention statute. There is no indication whether the *Barajas-Farias* petitioner was given a bond hearing, let alone granted bond, let alone had his proceedings terminated. Though the limited available record suggests he did not. Clearly, the basic facts of that case are distinguishable from Mr. Günaydın's, and Mr. Günaydın challenges a different regulation (the automatic stay under 8 C.F.R. § 1003.19(i)(2)) than the *Barajas-Farias* petitioner (regulatory mandatory detention under 8 C.F.R. § 1003.19(h)(2)). This case is, therefore, inapposite to Mr. Günaydın's instant second amended petition.

[71] ECF No. 22-1.

[72] ECF No. 36, TRO Hrg. Tr. at 20:22-23 (May 12, 2025).

filing a simple form to invoke the automatic stay, **which is not reviewable by an immigration judge**. Because DHS keeps failing on immigration judge review, the only mechanism it can use to keep Mr. Günaydın detained must avoid such review.

83. Mr. Günaydın is detained today solely at the unilateral behest of DHS, pursuant to a regulation written by executive agencies, not Congress: 8 C.F.R. § 1003.19(i)(2). This regulation states, in whole:

> *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 C.F.R. § 1003.19(i)(2) (emphasis added).

84. The regulations expand on the related procedures in 8 C.F.R. § 1003.6(c). "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." 8 C.F.R. § 100.36(c)(4).

85. However, the regulations provide for DHS's continued power to keep a noncitizen detained even after the automatic stay lapses.[73]

[73] Further to Mr. Günaydın's assertion that there is no end in sight to his detention, there are no clear procedures outside of the regulation governing how the process plays out. A 2006 EOIR policy memorandum provided limited guidance, however, that policy memorandum was explicitly rescinded in December 2020. *See* EOIR Memo on Procedures for Automatic Stay Cases (Oct. 31, 2006) available at https://www.aila.org/library/eoir-memo-on-procedures-for-automatic-stay-cases; EOIR Policy Memo 21-22, Cancellation

86. "DHS may seek a discretionary stay pursuant to 8 CFR 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay." 8 C.F.R. § 1003.6(c)(5). All DHS must do is submit a motion, and "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." *Id.*

87. If the BIA has not resolved the custody appeal within 90 days and "[i]f the Board fails to adjudicate a previously-filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary stay." 8 C.F.R. § 1003.6(c)(5).

88. If the BIA rules in a noncitizen's favor, authorizing release on bond, or denying DHS's motion for a discretionary stay, "the alien's release shall be automatically stayed for five business days." 8 C.F.R. § 1003.6(d).

89. This additional five-day automatic stay in the event of the BIA authorizing a noncitizen's release is to provide DHS with another opportunity to keep the person detained despite orders to the contrary.

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of Certain Operating Policies and Procedures Memoranda (Dec. 22, 2020) available at https://www.aila.org/library/eoir-memo-cancelling-certain-oppm. Additionally, a 2006 ICE policy memorandum regarding the automatic stay concedes that the 90-day time period for the automatic stay is flexible and there are circumstances under which the 90-day time limit may increase. *See* ICE Memorandum on Revised Procedures for Automatic Stay of Custody Decisions by Immigration Judges (Oct. 26, 2006) available at https://www.aila.org/library/ice-releases-revised-procedures-for-automatic-stay.

90. "If, within that five-day [automatic stay] period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 CFR 1003.1(h)(1), the alien's release shall continue to be stayed pending the Attorney General's consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General." 8 C.F.R. § 1003.6(d).

91. "DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General…The Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." 8 C.F.R. § 1003.6(d).

92. Thus, even if the BIA upheld IJ Mazzie's order, granted Mr. Günaydın bond, and ordered him released, he would remain in detention for five more days while DHS is given the opportunity to refer the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1). 8 C.F.R. § 1003.6(d). The same additional automatic five-day stay applies if the BIA denies DHS's motion for discretionary stay or fails to act on such a motion before the automatic stay period expires. *Id.* If the case is referred to the Attorney General, that second automatic stay expires 15 business days after referral. *Id.* DHS may thereafter file another motion for discretionary stay. *Id.* Importantly, if a case is referred to the Attorney General, "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." *Id.* There is no proscribed time limit for this stay or these decisions.

93. The scheme, plainly designed by the executive branch to give DHS the power to circumvent both immigration judge and BIA orders, can be summarized as follows:

- Immigration judge orders DHS to release noncitizen on bond
  - DHS files Form EOIR-43 notice of intent to appeal within one business day, invoking automatic stay. 8 C.F.R. § 1003.19(i)(2).
  - DHS files Form EOIR-26 notice of appeal within ten business days. 8 C.F.R. § 1003.6(c)(1).
  - Automatic stay lapses 90 days after DHS files EOIR-26 notice of appeal. 8 C.F.R. § 1003.6(c)(4).[74]
  - DHS may seek discretionary stay before 90 days lapse. 8 C.F.R. §§ 1003.6(c)(5); 1003.19(i)(1).
- BIA orders release on bond or denies discretionary stay motion
  - Release is automatically stayed for an additional five business days. 8 C.F.R. § 1003.6(d).
  - Within that five business day automatic stay, DHS may refer the case to the Attorney General. 8 C.F.R. § 1003.6(d).
    - Automatic stay is extended for 15 business days after DHS refers the case to the Attorney General. 8 C.F.R. § 1003.6(d).
    - DHS may seek a discretionary stay with the Attorney General for the duration of the case. 8 C.F.R. § 1003.6(d).[75]

94. To be clear, the regulations are written in such a way that it does not matter what the immigration judge or BIA orders; if DHS disagrees, DHS can, through its own actions and per its own regulations, keep the noncitizen detained. And, that detention is

[74] Mr. Günaydın is currently detained at this phase of the regulatory scheme. DHS filed its Form EOIR-26 Notice of Appeal on April 15, 2025 (ECF No. 22-3), so the automatic stay will lapse on July 14, 2025. 8 C.F.R. § 1003.6(c)(4).

[75] Either party may petition for the Eighth Circuit to review a removal decision. 8 U.S.C. § 1252(a). A separate motion for stay would have to accompany such a petition in order to stay the decision pending appeal. 8 U.S.C. § 1252(b).

in reality indefinite.

95. "Indefinite detention of a [noncitizen]" raises "a serious constitutional problem." *Zadvydas*, 533 U.S. at 690. The automatic stay provision detains individuals indefinitely, without a "discernible termination point" (*Ashley,* 288 F.Supp.2d at 672), "definite termination point" (*Zabadi v. Chertoffi*, No. C05-01796 WHA, 2005 WL 1514122, at *1 (N.D. Cal. 2005) (unpublished)), "finite time frame" (*Id.*), "certain time parameters for final resolution" (*Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1075 (N.D. Cal. 2004)), or "ascertainable end point" (*Bezmen v. Ashcroft,* 245 F.Supp.2d 446, 449-450 (D. Conn. 2003)).[76]

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[76] Unlike the 2006 version of the automatic stay regulation (8 C.F.R. § 1003.19(i)), the 2001 version (8 C.F.R. § 3.19(i)(2)) did not proscribe a 90-day limit. However, the court's reasoning in *Ashley v. Ridge* and the other cases decided before 2006 is still on point and persuasive. The regulation as written today still allows for essentially indefinite detention via DHS's filing motions for discretionary stays and/or referrals to the Attorney General, as detailed in ¶¶ 81-94 *supra*. *See also Ignoring the Court's Order: The Automatic Stay in Immigration Detention Cases*, Raha Jorjani, 5 Intercultural Hum. Rts. L. Rev. 89 (2010), available at https://scholarship.stu.edu/ihrlr/vol5/iss1/6 ("While the 2001 regulations were later revised in response to public concern, these changes failed to cure the previous constitutional defects.") ("[T]he so-called "90 day limitation" of the new regulations can be dangerously deceptive.. The automatic stay regulations allow for continued detention well beyond 90 days.") ("More fundamentally, however, the limitation, be it 90 days, 150 days, or 177 days, does not cure the fundamental due process problem that occurs when a non-prevailing party can unilaterally stay a decision as critical as one having to do with the liberty of another human being…[T]he automatic stay presents an affront to the adversarial system."). Additionally, the 2006 version now requires that a "senior legal official of DHS" certify that s/he has approved the filing of the stay and that there is factual and legal support justifying continued detention of the detained individual. This modification does nothing to cure the constitutional defects of the 2001 version. "In effect, the regulations require only that DHS approve its own legal strategy. By requiring that DHS determine the validity of its own legal position, the regulations are tantamount to permitting DHS to adjudicate the identical legal issue that it is prosecuting before an independent authority." *Id.* "Furthermore, the new regulations require that DHS certify only that there is factual

96. Even more troubling, the automatic stay does not provide for review by the immigration judge–a clear due process violation. A noncitizen subject to DHS's arrest and continued detention in spite of an immigration judge ordering his release has no method to challenge the automatic stay before the immigration court or BIA. *See Ashley,* 288 F.Supp.2d at 675 ("continued detention of alien without judicial review of the automatic stay of bail determination violated alien's procedural and substantive due process rights").

97. Indeed, this is the path ahead for Mr. Günaydın. Respondents' sole justification for Mr. Günaydın's ongoing detention is that DHS "was disappointed in both of Judge Mazzie's orders" and "thought she was wrong."[77] Based on its past treatment of Mr. Günaydın, there is every reason to believe DHS will appeal every order and employ every legal mechanism to keep him detained.

The Automatic Stay Regulation is Unconstitutional and in Violation of Due Process

98. "[W]here detention's goal is no longer practically attainable, detention no longer bears a reasonable relation to the purpose for which the individual was committed." *Zadvydas*, 533 U.S. at 690.

99. Enacted just one month after the events of 9/11, the 2001 automatic stay regulation was a drastic change, one which passed without public comment. In authorizing publication of the rule, then Attorney General John Ashcroft called the notice and comment process "impracticable, unnecessary, and contrary to the public interest." 66 Fed. Reg.

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and legal support, without having to articulate what that support is or what evidence is being relied upon for such a conclusion." *Id.*

[77] ECF No. 36, TRO Hrg. Tr. at 26:21-25 (May 12, 2025).

54909-02 (Oct. 31, 2001).

100. "The Attorney General articulated several bases for the necessity of the automatic stay provision: (1) a concern that with the passage of time, there would be an increased risk that a dangerous alien may be released; (2) the need to avoid a case-by-case determination of whether a stay should be granted in cases in which the Service had already determined that the alien should be kept without bail or with bail in excess of $10,000; and, (3) a concern that the time difference between the east and west coast would permit the release of a dangerous alien after the Board had closed for the day, effectively eliminating the opportunity for an emergency appeal of the immigration judge's release order." *Zavala*, 310 F. Supp. 2d at 1076-77 (citing 66 Fed.Reg. 54909, 54910 (Oct. 31, 2001)).

101. To be perfectly clear: "the purpose for the automatic stay provision is to prevent the alien from fleeing and to protect the public from harm." *Ashley*, 288 F.Supp.2d at 669. Where, as here, the immigration judge has already made a determination as to a noncitizen's danger and flight risk, the purpose of the automatic stay provision is fulfilled or assuaged. The court in *Zavala* found exactly that: "The Immigration Judge, after a full hearing, including the presentation of evidence and a full opportunity for cross-examination, determined that Petitioner did not pose a danger to the community nor a significant flight risk, and released him on $5,000 bail. The bond determination by the Immigration Judge already addressed the government's stated safety concerns." *Zavala*, 310 F. Supp. 2d at 1077.

102. In any situation in which the automatic stay is invoked, an immigration judge has necessarily already made a determination that the noncitizen is neither a flight risk nor

a danger to the community. In any situation in which the automatic stay is invoked, an immigration judge has already addressed DHS's concerns that formulate the purpose of the stay itself.

The Automatic Stay Regulation is *Ultra Vires* to the Immigration Statutes

103. The Automatic Stay provision is *ultra vires*, and DHS's weaponization of the regulation to indefinitely detain individuals like Mr. Günaydın violates both substantive and procedural due process. Multiple courts have explicitly agreed. *See e.g., Ashley,* 288 F.Supp.2d 662; *Bezmen*, 245 F. Supp. 2d 446; *Zavala*, 310 F. Supp. 2d 1071; *Zabadi,* 2005 WL 1514122; *Uritsky v. Ridge,* 286 F. Supp. 842 (E.D. Mich. 2003); *see also McCullock v. Kane*, No. CV-07-2274 PHX-JWS, 2008 WL 5460211, at *2, fn. 1 (D. Ariz. 2008) ("The constitutionality of the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) has been successfully challenged by habeas petitioners in several district courts.").

104. Congress conferred the power to determine release on bond to the Attorney General, through immigration judges. *See* 8 U.S.C. § 1226(a). Through 8 C.F.R. § 1003.19(i)(2), DHS has circumvented Congress, taken that power away from the immigration judges and Attorney General, and conferred detention authority solely to itself. An immigration regulation which is inconsistent with the statutory scheme is invalid. *See Romero v. INS*, 39 F.3d 977, 980 (9th Cir.1994).

105. This issue was similarly before the court in *Almonte Vargas v. Elwood*, No. CIV. A 02-cv-2666, 2002 WL 1471555 (E.D. Penn. June 28, 2002). In that case, a noncitizen was granted bond but remained in detention pursuant to the automatic stay regulation. *Id.* In finding that the regulation is in conflict with Congress's intent, the court

held, "**due process is not satisfied where the individualized custody determination afforded to Petitioner was effectively a charade**. By pursuing an appeal of the Immigration Judge's bond determination…the INS has nullified that decision[.]" *Id.* at *5 (emphasis added).

106. The court in *Zavala v. Ridge* agreed, holding

> The automatic stay provision of 8 C.F.R. § 1003.19(i)(2) effectively eliminates the discretionary nature of the immigration judge's determination and results in a mandatory detention for the class of aliens who have been held [by ICE] without bail or on over $10,000 bond. As a result of the regulation, the immigration judge's individualized determination that the alien poses neither a danger to the community nor a significant flight risk is automatically stayed upon filing of an appeal. The regulation therefore has the effect of mandatory detention of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention. The automatic stay provision permits the government to impose mandatory detention, contrary to the immigration judge's finding, in all cases in which the Service has predetermined that the alien should be held without bail or has set bond at $10,000 or more.

Zavala, 310 F.Supp.2d at 1079; *see also Zabadi,* 2005 WL 1514122, at *1 (finding the automatic stay regulation "*ultra vires* because it eliminates the discretionary authority of immigration judges to determine whether an individual may be released"); *Ashley*, 288 F.Supp.2d at 672-73 ("As Congress specifically exempted aliens like Petitioner from the mandatory detention of § 1226(c), it is unlikely that it would have condoned this back-end approach to detaining aliens like Petitioner through the combined use of § 1226(a) and § [1003.19](i)(2).")

The Automatic Stay Requires No Showing of Merit and is Not Reviewable by the Immigration Court

107. DHS's automatic stay is an extraordinary and unconstitutional regulation unique to the immigration context. "A stay pending appeal . . . has functional overlap with an injunction, particularly a preliminary one." *Nken v. Holder*, 556 U.S. 418, 428 (2009). "A stay is not a matter of right, even if irreparable injury might otherwise result" but instead is "an exercise of judicial discretion." *Id.* at 433 (internal quotation marks omitted).

108. In federal courts, in order to seek the stay of a judgment pending appeal, a motion must be made either to the District Court or to the Court of Appeals. Fed. R. Civ. P. 8(a). A stay pending appeal is "an extraordinary remedy." *Adams v. Walker*, 488 F.2d 1064, 1065 (7th Cir. 1973). For this reason, the motion must show a likelihood of success on the merits, irreparable harm, and that the stay is in the public interest. *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). Notably, these requirements and safeguards apply in the civil context, where detention or loss of liberty is not on the line.

109. Because liberty and detention are at issue here, a more apt comparison is to the criminal context. First, when a criminal defendant is found not guilty after trial, the government has no right of appeal. *See* U.S. CONST. amend. V, cl. 2 (providing that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb"). However, 18 U.S.C. § 3731 provides for the government to appeal an order "granting the release of a person charged with or convicted of an offense[.]"

110. In order for the government to seek a stay of judgment pending appeal in the criminal context, it must follow the Federal Rules of Appellate Procedure, present a motion, and meet the *Nken* factors. *See* Fed. R. App. P. 8(a); *see also United States v. Williams*, No. 23-CR-20199, 2024 WL 1977151 (E.D. Mich. May 2, 2024).

111. In contrast, all DHS must do in order keep a noncitizen detained via the automatic stay is file a simple one-page form, EOIR-43. This form is available digitally format and requires DHS to fill in the following information: (1) the date, (2) the noncitizen's name and A-number, (3) the date of the immigration judge's decision, and (4) the amount of bond granted.[78] Practically, this could be completed in less than 30 seconds.

112. A close read of the regulation indicates that a senior legal official must certify the appeal and approve the filing in order for the automatic stay to remain in effect. 8 C.F.R. § 1003.6(c). While this provision creates the illusion of an additional safeguard, in practice, the "certification" signed in Mr. Günaydın's case by Chief Counsel Jim Stolley is boilerplate language, directly from the regulation and contains an inapplicable catch-all statement that the legal arguments "may be premised on the alien being subject to mandatory detention pursuant to [INA §] 236(c)".[79] This is clearly not in reference to Mr. Günaydın, who has never been subject to 236(c) mandatory detention. And in fact, this certification is just another standard form that was created by ICE in 2006.[80]

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[78] ECF No. 22-2.
[79] ECF No. 22-2 at 2.
[80] *See* ICE Memorandum on Revised Procedures for Automatic Stay of Custody Decisions by Immigration Judges, at Attachment 3 (Oct. 26, 2006) available at https://www.aila.org/library/ice-releases-revised-procedures-for-automatic-stay.

113. The executive branch, however, has written the immigration regulations to circumvent the reasonable and typical requirements for a stay pending appeal and allow DHS to bestow upon itself this extraordinary remedy so long as it disagrees with the immigration judge's custody determination.

114. The automatic stay is not reviewable by the immigration judge. Even more egregious is that DHS is able to utilize this extraordinary remedy in the context of keeping someone in civil detention.

MR. GÜNAYDIN'S DUE PROCESS RIGHTS ARE BEING VIOLATED

This Court's Jurisdiction Over Mr. Günaydın's Claims

115. Mr. Günaydın's petition is properly before this Court. First, this Court plainly has subject matter jurisdiction over the petition under 28 U.S.C. § 2241. On April 1, Judge Michael E. Farbiarz of the District of New Jersey stated plainly: "No one doubts that federal district courts have jurisdiction over the subject matter, habeas cases under 28 U.S.C. § 2241." *Khalil v. Joyce,* No. 25-cv-1963, 2025 WL 972959, at *6 n.12 (D.N.J. Apr. 1, 2025).

116. This Court has jurisdiction to consider Mr. Günaydın's constitutional challenge to the automatic stay provision of 8 C.F.R. § 1003.19(i)(2). To the extent the government argues that this Court lacks jurisdiction to entertain Mr. Günaydın's challenge to the invocation of the automatic stay provision because such invocation constitutes a discretionary administrative determination not subject to review, this argument is without merit. Mr. Günaydın here does "not seek review of the Attorney General's exercise of discretion; rather, [he] challenge[s] the extent of the Attorney General's authority [under

the stay provision]. And the extent of the authority is not a matter of discretion." *Zadvydas*, 533 U.S. at 688. Because Mr. Günaydın challenges whether the decision to continue his detention under 8 C.F.R. § 1003.19(i)(2) passes constitutional muster, this Court has jurisdiction over this claim.

117. A court in this District held just days ago that it had jurisdiction to review the habeas corpus petition of another noncitizen who was detained pursuant to the automatic stay. *See Mohammed H. v. Trump*, — F. Supp. 3d —, No. CV 25-1576 (JWB/DTS), 2025 WL 1334847 (D. Minn. May 5, 2025). Mohammed H "[did] not seek to end his removal proceeding or vacate the underlying executive determinations. Rather, he simply [sought] to end his allegedly unlawful confinement." *Id.* at *3. Mr. Günaydın makes the same challenges here.

118. In determining that this Court has jurisdiction, the cases of several other graduate students similarly situated to Mr. Günaydın outside this District—Mahmoud Khalil, Rumeysa Öztürk, and Mohsen Mahdawi—are also instructive. Each of these international students was detained by ICE following purported visa revocations/SEVIS terminations, each filed petitions for writ of habeas corpus, and each of the District Courts held that they retained jurisdiction over the petitions. *See, e.g.*, *Khalil*, 2025 WL 972959; *Mahdawi v. Trump*, No. 2:25-cv-389, — F.Supp.3d —, 2025 WL 1243135, at *4-8 (D. Vt. Apr. 30, 2025); *Öztürk v. Trump*, No. 2:25-cv-374, — F.Supp.3d —, 2025 WL 1145250, at *10-15 (D. Vt. Apr. 18, 2025).

119. The Supreme Court has repeatedly affirmed the basic principle that district courts have habeas jurisdiction over claims of illegal civil immigration detention. *See*

Jennings v. Rodriguez, 583 U.S. 281, 293 (2018) (finding jurisdiction over challenge to detention during removal proceedings); *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (same).

120. Respondents' return and supplemental return cite multiple provisions in the INA—8 U.S.C. §§ 1252(g), 1226(e), and 1201(i)—to urge that this Court lacks jurisdiction over this matter. None apply to Mr. Günaydın's detention claim.

121. 8 U.S.C. § 1252(g) does not preclude the Court's jurisdiction over Mr. Günaydın's challenge to the legality of his detention. This narrow provision is tethered solely to decisions with respect to "three discrete actions" by the Attorney General to "'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (citing 8 U.S.C. § 1252(g)). By its terms, § 1252(g) does not apply to detention. *See, e.g., Bello-Reyes v. Gaynor*, 985 F.3d 696, 698, 700 n.4 (9th Cir. 2021) (finding (g) did not bar First Amendment challenge to ICE detention); *Kong v. United States*, 62 F.4th 608, 609 (1st Cir. 2023) (holding that (g) does not preclude jurisdiction over challenges to the legality of the detention); *Michalski v. Decker*, 279 F. Supp. 3d 487, 495 ("the decision or action to detain an individual under § 1226(a) is independent from the decision or action to commence a removal proceeding").

122. In fact, Mr. Günaydın does not challenge ICE's general authority to detain him during removal proceedings, but its authority to do so without lawful basis or due process, and where the detention serves no legitimate purpose.[81]

[81] Indeed, Respondent Rubio recently confirmed the coercive purpose of detaining

123. 8 U.S.C. § 1226(e) also does not preclude this Court's review of Mr. Günaydın's detention. That provision precludes review of DHS's "discretionary judgment regarding the application of [Section 1226]." 8 U.S.C. § 1226(e). But Mr. Günaydın does not challenge a "discretionary judgment"; instead, he asserts that the government had no legal authority to arrest and detain him and that his detention violates due process. *See also Öztürk*, 2025 WL 1009445, at *4 & n.1 (rejecting government's 1226(e) argument).

124. Further, the Supreme Court has held § 1226(e) has no application to such claims challenging the legality of detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) ("Section 1226(e) contains no explicit provision barring habeas review, and . . . its clear text does not bar [a petitioner's] constitutional challenge" to the legal authority for their detention); *Nielsen*, 586 U.S. at 401 (Section 1226(e) does not bar challenges to "the extent of the statutory authority that the Government claims"). "Because the extent of the Government's detention authority is not a matter of 'discretionary judgment,'" Mr. Günaydın's challenge to the legal basis for detention "falls outside the scope of § 1226(e)." *Jennings*, 583 U.S. at 296.

125. Finally, to the extent Respondents believe this Court does not have jurisdiction, or should decline to exercise jurisdiction because the BIA may eventually order DHS to release him on bond, such a position also fails.[82]

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noncitizen students, stating that "if [the students] seek to self-deport they can do that, because that's what we've done. We're basically asking them to leave the country. That's why they've been detained." Sec'y of State Marco Rubio, Remarks to the Press En Route to Miami, Florida (Mar. 28, 2025) available at https://perma.cc/JUU8-GDQK.

[82] To be abundantly clear, Mr. Günaydın is not subject to statutory mandatory detention

126. There is no statutory exhaustion requirement prior to challenging the legality of detention. And prudential exhaustion is not required here because it would be futile. *See McCarthy v. Madigan*, 503 U.S. 140, 147 (1992) (recognizing that prudential exhaustion is not required where a plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of her claim," where there is "some doubt as to whether the agency was empowered to grant effective relief," and where the agency has "predetermined the issue" or resort to the agency would otherwise be futile); *see also Ashley*, 288 F.Supp.2d at 666-67 ("Petitioner will find no recourse on this particular constitutional claim [challenging the automatic stay] through administrative mechanisms.")

127. Section 1201(i) also does not bar this Court's jurisdiction over Mr. Günaydın's challenge to his ongoing unlawful detention and the termination of his SEVIS status. Indeed, as explained *infra* ¶¶ 161-162, the SEVIS termination is entirely collateral to the visa revocation(s). *See Jie Fang v. Dir. United States Immigr. & Customs Enf't*, 935 F.3d 172, 176 (3d Cir. 2019) (noting that the "mechanism of revocation is [] inapplicable to this appeal," which involved DHS's termination of a student's SEVIS status); *Maramjaya v. U.S. Citizenship & Immigr. Servs.*, 2008 WL 9398947, at *4 (D.D.C. Mar. 26, 2008) (Section 1201(i) did not bar claim that was collateral to visa revocation decision).

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pursuant to 8 U.S.C. § 1226(c) or 1226a. He has not committed any act that would place him under such mandatory detention. This distinguishes his situation from that in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024).

128. This Court should find, just as the *Mohammed H.*, *Khalil*, and *Öztürk* courts found, that it has jurisdiction to consider Mr. Günaydın's habeas petition and all claims therein.

The Automatic Stay Violates Mr. Günaydın's Due Process Rights

129. As applied to Mr. Günaydın, the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) is unconstitutional. Respondents' decision to prolong his detention under this regulation violates Mr. Günaydın's rights to substantive due process and procedural due process under the Fifth Amendment of the United States Constitution.

130. First, a court in this District just last week analyzed the legality of the automatic stay. *See Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1334847, at *6 (D. Minn. May 5, 2025). The petitioner in that case was also detained subject to the automatic stay and challenged the constitutionality of that provision as violating his due process rights. *Id.* The court noted, "**the Government's use of the automatic stay in Petitioner's case raises a substantial Fifth Amendment claim**." *Id.* (emphasis added). The court reasoned that the automatic stay requires no showing of dangerousness or flight risk, and is not reviewable by an immigration judge. *Id.*

131. Importantly, Mr. Günaydın remains detained but is no longer in removal proceedings; he has no future immigration hearings and an immigration judge has already determined that DHS cannot sustain the charge against him.

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The Automatic Stay Allows DHS to Unilaterally Keep Mr. Günaydın Detained Despite Orders to the Contrary

132. This Court should find, as the *Mohammed H.* court did, that the automatic stay "operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied." *Id.* In *Mohammed H.*, as here, "[w]ithout introducing evidence, the Government has wholly deprived Petitioner of notice and the chance to rebut its case for continued detention." *Id.*

133. Again, in determining whether due process has been violated, the Court should weigh (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews*, 424 U.S. 319 at 335.

134. As to the first *Mathews v. Eldridge* factor, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 ("freedom from confinement is a liberty interest of the 'highest constitutional import.'") (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250 (S.D.N.Y.1996)). Mr. Günaydın has been detained for fifty days and has been unable to

attend classes or speak with his family.

135. As to the second *Mathews v. Eldridge* factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards. As explained above, it is nearly guaranteed that the current procedures cause an erroneous deprivation of Mr. Günaydın's liberty interest in remaining free from detention. An immigration judge has not only determined that Mr. Günaydın is neither a flight risk nor a danger to the community, she also terminated his proceedings altogether. As it stands, Mr. Günaydın has no charges against him. A more erroneous deprivation of liberty is hardly conceivable.

136. Indeed, regarding the hearings provided to Mr. Günaydın thus far, any semblance of due process provided therein was a mere mirage, a charade, an empty gesture void of significance. *See e.g., Ashley*, 288 F.Supp.2d at 668-69 ("In effect, the automatic stay provision rendered the Immigration Judge's bail determination an ***empty gesture***") (emphasis added); *Almonte-Vargas,* 2002 WL 1471555, at *5 ("Due process is not satisfied where the individualized custody determination afforded to Petitioner was effectively a ***charade***... [P]ursuing an appeal of the Immigration Judge's bond determination [..] has nullified that decision.") (emphasis added).

137. Further, under the current regulatory scheme, there are no additional safeguards that could prevent this deprivation of liberty. Mr. Günaydın already fought his case in a *Joseph* hearing, a bond hearing, and via written arguments contesting his removability. He presented evidence that he is not a danger to the community or a flight risk, and not a danger to the public at large. IJ Mazzie considered arguments by Mr.

Günaydın and DHS, exhibits and evidence presented by both parties, and issued a reasoned, written decision determining that Mr. Günaydın is neither a flight risk nor a danger to the community. These are the safeguards that should have prevented Mr. Günaydın's detention.

138. On the other hand, the automatic stay keeping Mr. Günaydın detained is at the discretion of a single DHS attorney. "A unilateral determination made by the Service attorney that effectively overrules the reasoned decision of the Immigration Judge poses a serious risk of error." *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 ("The risk of the erroneous deprivation of liberty is substantial, as the application of the automatic stay provision here was the result of a unilateral determination made by a BICE district director which overruled the bail decision made by an Immigration Judge. Unlike the typical requests for a stay which require a demonstration of the "likelihood of success on the merits," the automatic stay provision demands no such showing; in fact, as previously discussed, it was enacted precisely to avoid the need for such an individualized determination. Aliens like Petitioner can consequently remain in detention no matter how frivolous the appeal by the Government"); *Zabadi,* 2005 WL 1514122, at *2 ("[T]he ability of the government to overturn or nullify an IJ's bail determination pending appeal without having to make a showing creates a risk of erroneous deprivation of the liberty interest").

139. "The procedure additionally creates a potential for error because it **impermissibly merges and conflates the functions of adjudicator and prosecutor**. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955) (holding that the special inquiry officer adjudicating over an immigration case cannot also undertake the functions of prosecutor in

the same matter); *see also Ashley*, 288 F.Supp.2d at 671 ("It produces a patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified."); *Zavala*, 310 F.Supp.2d at 1076 ("In this matter, the [side] who lost before the Immigration Judge as a prosecutor, effectively overruled the decision as the adjudicator by invoking the automatic stay. This unilateral procedure creates a risk of erroneous deprivation of the liberty interest."); *Zabadi*, 2005 WL 1514122, at *2 ("The prosecution who argued to [the] IJ that [the noncitizen] should be detained is the same [that] determined the [IJ's] bond determination should be automatically stayed pursuant to section 1003.19(i)(2). This procedure impermissibly merges the functions of adjudicator and prosecutor.").[83]

140. As to the third *Mathews v. Eldridge* factor, the government's interest in maintaining the current procedures are minimal here. As explained, IJ Mazzie already made a determination as to dangerousness and flight risk. Mr. Günaydın was arrested for DWI almost two years before DHS arrested him. Further, the regulations still allow for DHS to seek a discretionary stay under 8 C.F.R. § 1003.19(i)(1) which would require some

[83] *See also Structural Due Process in Immigration Detention*, Anthony Enriquez, 21 CUNY L. Rev. (2018), available at: https://academicworks.cuny.edu/clr/vol21/iss1/6 ("Where DOJ grants release, DHS may once again assume the role of detention adjudicator by automatically staying release through a ministerial filing… Neither a showing of likelihood of success on the merits of an appeal nor irreparable harm if release is granted is required for a stay to take effect. DHS substitutes its own judgment on custody for an immigration judge's by use of automatic stays of detention pending appeal to the BIA, without any showing of likelihood of success on the merits of the appeal or irreparable harm absent the stay of release. DOJ review of DHS detention decisions therefore *fails to meaningfully separate the jailer from the judge.*") (emphasis added).

showing of likelihood of success on the merits. *Ashley*, 288 F.Supp.2d at 670-71; *Zavala*, 310 F.Supp.2d at 1079.

141. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if "an alternate result may well have resulted without the violation." *Id.* (citation omitted) (internal quotations omitted); *see also Lazaro v. Mukasey*, 527 F.3d 977, 981 (9th Cir. 2008) (explaining that prejudice is not necessary where agency action was *ultra vires*). "To show prejudice, [a petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).

142. As explained above, without invocation of the automatic stay, Mr. Günaydın would have been released on bond and would be home with his dog and his friends. This is surely what would have occurred, because IJ Mazzie ordered DHS to release him on a $5,000.00 bond. The fact that he is still detained despite that order is clear prejudice.

Use of the Automatic Stay is Particularly Egregious Where Proceedings Have Been Terminated

143. Moreover, an immigration judge has already terminated Mr. Günaydın's proceedings. Removal is therefore not reasonably foreseeable and as a practical matter, there are no longer removal proceedings to which Mr. Günaydın's detention is tied.[84] Even if DHS could make some showing of dangerousness or flight risk, which it has had ample

[84] ECF No. 29-5.

opportunity to do and plainly cannot, there are no underlying proceedings to ground his detention. **DHS is not permitted to hold noncitizens in detention who are not subject to removal proceedings.** *See* 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained **pending a decision on whether the alien is to be removed from the United States**.")

144. The reasoning in *Uritsky* is instructive. *Uritsky*, 286 F. Supp. 2d 842. Both Mr. Günaydın and Mr. Uritsky continued winning, and it continued not to matter. In both cases, an Immigration Judge held a bond determination hearing and granted bond, *and* an Immigration Judge terminated removal proceedings, but DHS filed the Form EOIR-43 to trigger the automatic stay to keep Mr. Günaydın and Mr. Uritsky detained. The court in *Uritsky* held that DHS's continued detention via weaponization of the automatic stay provision violated substantive and procedural Due Process. The court granted Mr. Uritsky's petition for writ of habeas corpus and ordered him immediately released, reasoning:

> The Immigration Judge's termination of his removal proceedings on this basis suggests that there is a significant likelihood that Petitioner in fact is not subject to removal. Under these circumstances, the Court finds that under the Fifth Amendment, Petitioner is entitled to an individualized determination that his detention is necessary to further a sufficiently compelling governmental need. Because the Immigration Court, in fact, already has found that Petitioner's continued detention is not justified by such a need, the individualized determination requirement has been met.

Id. at 847.

145. To be abundantly clear, IJ Mazzie has determined in multiple orders that DHS's sole charge against Mr. Günaydın cannot be sustained. First, the burden was on Mr. Günaydın to show that DHS was substantially unlikely to sustain the INA § 237(a)(4)(A)(ii) charge. Mr. Günaydın had to overcome this hurdle before the immigration judge could even consider whether he should be ordered released on bond.[85] After both parties were permitted to file evidence and briefs, and after hearing arguments from both parties, IJ Mazzie reasonably determined that Mr. Günaydın had met his burden.[86]

146. Then, when the burden shifted to DHS, and DHS was given yet another opportunity to present any further evidence and/or arguments to support its INA § 237(a)(4)(A)(ii) charge by clear and convincing evidence, it failed yet again.[87] In fact, after delaying Mr. Günaydın's bond hearing by late-filing the charge, DHS requested and was granted an additional week to file a brief and evidence in support of the charge.[88] DHS had ample opportunity to pull together evidence and legal arguments to support its charge, but the truth is simply that it could not do so. In trying to keep Mr. Günaydın detained by any means necessary, that DHS has received more process than the person it is holding in custody.

147. IJ Mazzie has determined through two separate orders, after both DHS and Mr. Günaydın were given multiple opportunities and DHS was given a continuance to figure out its arguments, that DHS cannot sustain the charge against Mr. Günaydın, and

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[85] ECF No. 22-1 at 3-5.
[86] *Id.* at 5.
[87] ECF No. 29-5 at 5.
[88] ECF No. 22-6.

terminated removal proceedings. Yet, through the function of DHS's own regulation, Mr. Günaydın remains in detention with no end in sight.

Respondents' Arrest and Continued Detention of Mr. Günaydın Violates his Due Process Rights

148. It is clear that the basis for Mr. Günaydın's current detention–the automatic stay–is unconstitutional and in violation of due process. However, in addition, from the time ICE arrested Mr. Günaydın, DHS failed to follow ordinary procedure and failed to provide notice to Mr. Günaydın, resulting in ongoing violations of his due process rights.

149. As far as Respondents are concerned, the ends (detaining Mr. Günaydın until they can remove him from this country) justify the means (arresting and detaining him without lawful basis and in violation of due process).

150. DHS's intent was plainly to detain and remove Mr. Günaydın from the U.S. before there was basis to do so.

151. On March 23, 2025, four days before DHS arrested Mr. Günaydın, DOS, through Bureau of Consular Affairs Senior Bureau Official John L. Armstrong, stated, "We understand that DHS/ICE intends to immediately pursue removal of GUNAYDIN" and "I am providing this notice to you with express authorization for use by DHS/ICE in immigration court[.]"[89]

152. Clearly, then, DHS decided it wanted to remove Mr. Günaydın, and worked backwards to find a way to do so, despite there being no legal basis.

[89] ECF No. 11-3.

Mr. Günaydın's Visa Revocation(s) and Student Status Termination

153. Though no longer the basis of DHS holding Mr. Günaydın in detention, DOS's visa revocation and DHS's termination of his nonimmigrant student status formed the basis for DHS's initial arrest and detention. As explained below, DOS and DHS acted without notice and in contravention to ordinary procedures, depriving Mr. Günaydın of his due process rights. First, the statutes and regulations relevant to visa revocation and nonimmigrant status termination follow.

154. A nonimmigrant visa controls a noncitizen's admission into the United States, not their continued stay. Congress established a statutory basis for student visas under 8 U.S.C. § 1101(a)(15)(F)(i), requiring that a noncitizen engage in a full course of study to maintain nonimmigrant status. Once admitted in F-1 status, a student is granted permission to remain in the United States for the duration of status ("D/S") as long as they continue to meet the requirements established by the regulations governing their visa classification in 8 C.F.R. § 214.2(f), such as maintaining a full course of study and avoiding unauthorized employment.

155. SEVIS is a centralized database maintained by ICE to manage information on nonimmigrant students and exchange visitors and track their compliance with terms of their status. Under 8 C.F.R. § 214.3(g)(2), Designated School Officials ("DSO"s) must report through SEVIS when a student fails to maintain status. SEVIS termination is governed by policy and regulations. Termination must be based on a student's failure to maintain status.

156. DHS regulations distinguish between two separate ways a student may fall out of status: (1) a student who "fails to maintain status," and (2) an agency-initiated "termination of status."

157. The first category, failure to maintain status, involves circumstances where a student voluntarily or inadvertently falls out of compliance with the F-1 visa requirements, for example by failing to maintain a full course of study, engaging in unauthorized employment, or other violations of their status requirements under 8 C.F.R. § 214.2(f). In addition, 8 C.F.R. §§ 214.1(e)-(g) outlines specific circumstances where certain conduct by any nonimmigrant visa holder, such as engaging in unauthorized employment, providing false information to DHS, or being convicted of a crime of violence with a potential sentence of more than a year, "constitutes a failure to maintain status."

158. 8 C.F.R. § 214.1(g) sets forth that a nonimmigrant's conviction "for a crime of violence for which a sentence of more than one year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status . . . ." Misdemeanor offenses such as Mr. Günaydın's conviction do not meet this threshold for termination.

159. The second category, termination of status by DHS, can occur only under the limited circumstances set forth in 8 C.F.R. § 214.1(d), which only permits DHS to terminate status when: (1) a previously granted waiver under INA § 212(d)(3) or (4) [8 U.S.C. § 1182(d)(3) or (4)] is revoked; (2) a private bill to confer lawful permanent residence is introduced in Congress; or (3) DHS publishes a notification in the Federal Register identifying national security, diplomatic, or public safety reasons for termination.

DHS cannot otherwise unilaterally terminate nonimmigrant status. *See Fang*, 935 F.3d at 185, n.100.

160. As to Mr. Günaydın, according to the charging documents and warrant for his administrative arrest, DHS arrested him because he was deportable under 8 U.S.C. § 1227(a)(1)(C)(i) as a noncitizen who failed to maintain his nonimmigrant status.[90] This is the first immigration law violation with which he was charged formally on an NTA.[91] The NTA alleges: "**You have failed to maintain your status**, to wit:in 2025 the United States State Department retroactively revoked the F-1 student visa based on your criminal history."[92] This allegation and charge under 8 U.S.C. § 1227(a)(1)(C)(i) were baseless and unsupportable.

161. This allegation is not grounded in fact or law. Weeks after Mr. Günaydın's arrest, the Department of State admitted it did not retroactively revoke Mr. Günaydın's F-1 student visa.[93] Indeed, even if it had, such a revocation is not at all related to Mr. Günaydın's nonimmigrant student status.

162. The law and ICE policy guidance is clear that a revoked visa alone simply does not constitute failure to maintain student status.[94] Accordingly, a visa revocation

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[90] ECF No. 11-5.

[91] This was apparently charged on March 27, the day of Mr. Günaydın's arrest, though he still has not been given a copy of this document and has never conceded proper service. Günaydın Decl. ¶ 65.

[92] ECF No. 11-5 (emphasis added).

[93] *See* ECF No. 15-1; 22-5 at 0:11:16.

[94] ICE Policy Guidance 1004-04 – Visa Revocations specifically and clearly states: "**Visa revocation is not, in itself, a cause for termination of the student's SEVIS record.**" U.S. Department of Homeland Security, ICE Policy Guidance 1004-04 – Visa Revocations,

cannot therefore be a basis for SEVIS termination. Indeed, the SEVIS termination lists the reason for termination as INA §§ 237(a)(1)(C)(i) "and/or" 237(a)(4)(C)(i). Even in the SEVIS record itself, DHS appears to be unclear about the *actual* basis for terminating Mr. Günaydın's Student Status. Further, neither INA § 237(a)(1)(C)(i) nor § 237(a)(4)(C)(i) is a proper statutory basis for terminating nonimmigrant status.[95]

163. Mr. Günaydın has demonstrated that none of the above-described circumstances are applicable to him. DHS arresting Mr. Günaydın on the basis of having failed to maintain his nonimmigrant status was always baseless. Mr. Günaydın's first charging document, the basis for his arrest, was **never** based in fact or law.

164. Turning to the next purported justification for Mr. Günaydın's arrest: he was served with a second charging document on April 2, charging him as deportable under 8 U.S.C. § 1227(a)(1)(B) for having his nonimmigrant visa previously revoked, and alleging "On March 23, 2025, the United States Department of State revoked your F-1 student visa, effective immediately…".[96] Again, the clear issue here is that this is simply not true. Mr. Günaydın's second charging document, filed and served on his seventh day in detention, was not based in fact.

165. One of Respondents' evolving justifications for Mr. Günaydın's arrest and detention is that his visa was revoked pursuant to 8 U.S.C. § 1201(i), which provides: "After the issuance of a visa or other documentation to any alien, the consular officer or

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at p. 3 (June 7, 2010) https://www.ice.gov/doclib/sevis/pdf/visa_revocations_1004_04.pdf (last visited Apr. 24, 2025) (emphasis added).

[95] *See*, *supra*, ¶¶ 153-159.

[96] ECF No. 11-6.

the Secretary of State may at any time, in his discretion, revoke such visa or other documentation. Notice of such revocation shall be communicated to the Attorney General, and such revocation shall invalidate the visa or other documentation from the date of issuance[.]"

166. The Visa Revocation Memo put forth by Respondents to support this conclusion is internally contradictory.[97] This memo states Mr. Günaydın's F-1 student visa is being revoked, without notice, but lists the Foil number for his tourist visa.[98]

167. Importantly, the Visa Revocation Memo states that "in response to a request from DHS/ICE…the Bureau of Consular Affairs approved revocation" of Mr. Günaydın's visa. The Visa Revocation Memo makes clear that Respondent Rubio did not revoke any of Mr. Günaydın's visas in his discretion, but rather approved a request by DHS for the revocation. This cannot plausibly be an exercise of the Secretary's discretion under INA § 221(i).

168. In any case, the fact that neither DHS nor DOS understood until April 8 that Mr. Günaydın's B1/B2 visa had actually been revoked and not his F-1 visa further contradicts any attempt to rely upon said revocation as the legitimate basis for his March 27 arrest.

169. Mr. Günaydın did not receive any notice of his purported F-1 visa revocation, and in fact learned several days after his arrest that the revocation was "silent". Mr. Günaydın also has not received notice of his B1/B2 visa revocation, though Respondents

[97] ECF No. 11-3.
[98] *Id.*; ECF No. 19-1.

filed an email apparently sent to him by DOS on April 4 advising him of the visa revocation.[99] Mr. Günaydın is in jail without access to his email, and has not received that notice.

170. DHS and DOS's handling of Mr. Günaydın's visa revocation and SEVIS termination demonstrate two truths: (1) there was never a lawful basis for ICE to arrest him, and (2) he never received proper notice of these actions, and therefore could not have conformed his conduct accordingly.

Mr. Günaydın is Not Subject to Deportation for Any Past Criminal Activity

171. After arresting and holding Mr. Günaydın in detention, and realizing that it had no lawful basis for doing so, DHS lodged a rarely-used national security charge of removability, with the sole goal of keeping Mr. Günaydın detained.

172. On April 7, the eve of Mr. Günaydın's bond hearing, DHS added a charge of removability under INA § 237(a)(4)(A)(ii), alleging he engaged in criminal activity that endangered public safety, based on a two-year-old DWI arrest that did not result in any damage to people or property.[100] This charge subjected him to mandatory detention, by regulation, not statute. *See* 8 C.F.R. § 1003.19(h)(2)(C).

173. This charge of deportability is rarely used; it falls under the "Security and related grounds" subheading of 8 U.S.C. § 1227, and is situated between deportability grounds related to espionage and sabotage, and attempts to overthrow the U.S. government. *See* 8 U.S.C. § 1227(a)(4)(A)(i), (iii).

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[99] ECF No. 15-1.
[100] ECF No. 16-1.

174. There is only one BIA published case that analyzes charges under this statute: *Matter of Tavarez Peralta*, 26 I&N Dec. 171 (BIA 2013). In that case, the criminal activity at issue, found to endanger public safety, was shining a laser beam into the eye of the pilot of a police helicopter, causing the pilot to lose control, and continuing to shine the laser into his eyes even after regaining control. *Id.* The BIA warned that section 1227(a)(4)(A)(ii) should be construed narrowly and would not include the commission of "everyday crimes" but rather those "placing a large segment of the general population at risk." *Id.*

175. Further, Congress has enumerated specific acts and crimes that subject a noncitizen to deportability and/or mandatory detention. *See* 8 U.S.C. §§ 1226(c), 1226a, 1227(a)(2). If Mr. Günaydın's conduct fell within any statute that made him deportable or subject to mandatory detention, DHS would have so charged him. If Congress had intended for DWI convictions to render a noncitizen deportable, it would have included as much in the statute.

176. Indeed, "Public-safety crimes under subparagraph (A)(ii) are conspicuously not included [in the mandatory detention statute]. So, by requiring mandatory detention for all offenses listed under § 1227(a)(4) without specifying any of that section's subparagraphs, the 1003.19 regulation effectively mandates detention for a broader set of crimes than the ones Congress categorically and narrowly specified in § 1226(c)." *Torosyan v. Nielsen*, No. 218CV5873PSGSK, 2018 WL 5784708, *6 (C.D. Cal. Sept. 27, 2018), *report and recommendation adopted,* No. 218CV5873PSGSK, 2018 WL 6167918 (C.D. Cal. Oct. 26, 2018).

177. The fact is that this unprecedented and unsupportable charge was lodged against Mr. Günaydın eleven days after he was arrested and had the effect of subjecting him to mandatory detention in immigration custody. After realizing the initial two charges against Mr. Günaydın were not viable, rather than concede, dismiss proceedings against him, and release him from detention, DHS threw one final charge at the wall to see if it would stick. DHS is trying now to circumvent Congress and create a catch-all charge of deportability that could, in DHS's proposed application, subject someone with merely a speeding ticket to mandatory detention.

178. Indeed, IJ Mazzie agreed that this charge was not sustainable. On May 1, through a reasoned written decision, IJ Mazzie did not sustain this charge of removability and as a result terminated removal proceedings against Mr. Günaydın.[101]

179. Mr. Günaydın was not on notice that his DWI conviction would place him in removal proceedings, and certainly not that it would have subjected him to ongoing mandatory detention. In fact, Mr. Günaydın retained immigration attorneys to advise on whether his DWI arrest would result in detention or removal proceedings, and pleaded accordingly.[102]

180. Immigration attorneys with decades of combined experience agree: a single conviction for driving while impaired does not itself subject someone to removal proceedings.[103] Attorney Michael Davis has been practicing immigration law for more

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[101] ECF No. 29-5.
[102] Günaydın Decl. ¶¶ 67-71.
[103] *See* Declaration of Kelsey Allen; Declaration of Michael Davis; Declaration of Robyn Meyer-Thompson; Declaration of Kerry McGuire.

than 35 years and has "never seen an immigration case charging someone with being removable under INA § 237(a)(4)(A)(ii) based only on criminal activity."[104]

181. Attorney Robyn Meyer-Thompson has a decade of experience in immigration removal defense and "cannot recall seeing an immigration case charging someone with being removable under INA § 237(a)(4)(A)(ii)." In particular, she cannot recall seeing that charge for a DWI offense.[105] Additionally, Attorney Meyer-Thompson states, "Each case is unique and considered with its own facts. However, **in general, I advise that a DWI offense is not a removable or deportable offense** as long as there were not aggravating factors that may trigger another charge."[106]

182. Attorney Kerry McGuire has practiced removal defense since 2016 and advises clients of the same: "Each case is unique and considered with its own facts. However, in general, I advise that a DWI offense is not a removable or deportable offense as long as there were not aggravating factors that may trigger another charge."[107]

183. Attorney Kelsey Allen has practiced removal defense for seven years and "routinely advise[s] clients that a DWI offense (including a violation of Minn. Stat. § 169A.20.1(5)) is not a removable or deportable offense, so long as there was not a crash, kids in the car and there were no controlled substances involved."[108]

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[104] Declaration of Michael Davis.
[105] Declaration of Robyn Meyer-Thompson.
[106] *Id.* (emphasis added).
[107] Declaration of Kerry McGuire.
[108] Declaration of Kelsey Allen.

184. Mr. Günaydın could not possibly have been on notice that he would be subject to removal proceedings. He was advised by multiple experienced immigration attorneys that the DWI conviction was not a deportable offense.[109] He could not have known he would be subject to immigration detention or removal proceedings.

185. Due process at its core requires notice, and Mr. Günaydın was not on notice of any of the events that led to DHS arresting him.

186. Indeed, the charge of removability under 8 U.S.C. § 1227(a)(4)(A)(ii) is extremely infrequently-used. This is clear first from the dearth of published and unpublished cases analyzing the charge.

187. Additionally, according to the Transactional Records Access Clearinghouse ("TRAC"), which tracks and reports on immigration court and new case filings, since 2001, there have been 933 cases initiated in which the NTA lists a "national security charge".[110] This rounds up to roughly 0.01% of the total 9,684,506 cases that have been initiated in the same time period. This group of 933 cases includes various charges under INA §§ 212 and 237 related to national security and foreign policy.[111] Charges under INA § 237(a)(4)(A)(ii) are therefore just a portion of the 933 cases.

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[109] Günaydın Decl. ¶¶ 67-71.
[110] ECF No. 29-4 at 14-20.
[111] Specifically, TRAC considers the following charges to be "national security" charges for purposes of its data: INA §§ 237(a)(2)(D)(ii), 237(a)(2)(D)(iii), 237(a)(3)(B)(i), 237(a)(3)(B)(ii), 237(a)(4)(A)(i), 237(a)(4)(A)(ii), 237(a)(4)(A)(iii), 237(a)(4)(C)(i), 237(a)(4)(D), 237(a)(4)(E), 212(a)(3)(A)(i), 212(a)(3)(A)(ii), 212(a)(3)(A)(iii), 212(a)(3)(C)(i), 212(a)(3)(D)(i), 212(a)(3)(E)(i), 212(a)(3)(E)(ii), 212(a)(3)(E)(iii), and 212(a)(17). *See* ECF No. 29-4 at 16-17.

188. As another example, based on DHS's own data, in 2020, there were 35,716 arrested by DHS with criminal convictions for DWI.[112] In that same year, there were 48 national security removability charges lodged.[113] In 2019, there were 49,106 arrested by DHS with criminal convictions for DWI;[114] there were 51 national security removability charges lodged.[115] Simply: DHS very infrequently lodges charges under INA § 237(a)(4)(A)(ii), and rarely, if ever, lodges that charge against noncitizens based solely on DWI convictions.

189. Respondents have erroneously stated, "removal and detention are normal consequences of the situation in which [Mr. Günaydın] placed himself through his underlying criminal conduct."[116] As demonstrated above, this is not true. Removal and detention are neither normal nor foreseeable consequences of Mr. Günaydın's conviction. This is, in fact, why the immigration judge did not sustain the charge against him and terminated the proceedings.[117]

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[112] U.S. Immigration and Customs Enforcement Fiscal Year 2020 Enforcement and Removal Operations Report, at p. 15 https://www.ice.gov/doclib/news/library/reports/annual-report/eroReportFY2020.pdf (last visited Apr. 29, 2025).
[113] ECF No. 29-4 at 15.
[114] U.S. Immigration and Customs Enforcement Fiscal Year 2019 Enforcement and Removal Operations Report, at p. 14 https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf (last visited Apr. 29, 2025).
[115] ECF No. 29-4 at 15.
[116] ECF No. 30 at 18-19.
[117] ECF No. 29-5.

190. Why, then, might DHS have lodged such a rare and obviously unsustainable charge against Mr. Günaydın? First, the action was clearly taken to keep Mr. Günaydın detained by regulation (8 C.F.R. § 1003.19(h)(2)(i)(C)). Next, an understanding of the policies driving Respondents and particularly driving Respondent Trump's actions related to immigration is instructive.

191. First, Respondent Trump's administration is dedicated to detaining as many noncitizens as possible, and taking whatever actions—lawful or not—that may be necessary to keep them in detention. Just days ago, White House deputy chief of staff Stephen Miller told reporters, "you're going to see more and more resources and priorities put into the mass deportation program, and so on a day to day basis you're going to see exponentially larger numbers of illegal aliens being arrested and removed from the interior." To ensure those arrested cannot challenge their detention, Miller asserted, "the privilege of **the writ of habeas corpus can be suspended** in a time of invasion…so I would say **that's an option we're actively looking at.**"[118]

192. Additionally, Project 2025, a policy guidebook put forth by the Heritage Foundation and often referenced by Respondent Trump, provides a clue into Respondents' intentions and goals in holding Mr. Günaydın in detention. The author of the guidebook's chapter on DHS is Ken Cuccinelli. Mr. Cuccinelli served as Deputy Secretary of Homeland Security and Director of U.S. Citizenship and Immigration Services under

[118] BBC, Trump administration considers suspending habeas corpus (May 10, 2025) https://www.bbc.com/news/articles/c0qgz18glljo (last visited May 15, 2025) (emphasis added).

Respondent Trump's first term.

193. While this book is not an official policy document, it is relied upon by top officials in the executive branch and has influenced changes in the immigration system. Many of the recommendations in Project 2025 related to DHS and immigration have already been implemented.

194. For example, Project 2025 recommends ICE to strengthen partnerships with local law enforcement agencies to participate in immigration enforcement actions.[119] As of April 17, there were 456 active agreements between ICE and local agencies–more than three times as many as there were in December 2024.[120]

195. Project 2025 recommends the elimination of the Offices of Immigration Detention Ombudsman and Citizenship and Immigration Services Ombudsman.[121] Respondent Trump shut down both offices by March 21.[122] Project 2025 recommends increasing the use of civil search warrants for workplace raids.[123] ICE has increased

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[119] Paul Dans & Steven Groves, et al., *Mandate for Leadership The Conservative Promise Project 2025 Presidential Transition Project* at p. 150 (2023) (hereinafter, "Project 2025"), available in full at https://www.documentcloud.org/documents/24088042-project-2025s-mandate-for-leadership-the-conservative-promise/?mode=document.

[120] CBS News, *ICE partnerships with local law enforcement triple as Trump continues deportation crackdown* (Apr. 18, 2025) https://www.cbsnews.com/news/ice-partnerships-local-law-enforcement-trump-immigration/ (last visited May 15, 2025).

[121] Project 2025 at 165-166.

[122] New York Times, *Trump Shuts Down 3 Watchdog Agencies Overseeing Immigration Crackdown* (Mar. 21, 2025) https://www.nytimes.com/2025/03/21/us/politics/trump-civil-rights-homeland-security-deportations.html (last visited May 15, 2025).

[123] Project 2025 at 142.

workplace raids in recent months.[124]

196. As reported by Time, "nearly two-thirds of the executive actions Trump has issued [as of January 24] mirror or partially mirror proposals from [Project 2025], ranging from sweeping deregulation measures to aggressive immigration reform."[125] So, it comes as no surprise to see the following recommendation in Project 2025:

> ICE should be directed to take custody of **all aliens** with records for felonies, crimes of violence, **DUIs**, previous removals, and any other crime that is considered a national security or public safety threat as defined under current laws.[126]

197. Clearly, ICE is following this directive; however the reality is that DUIs are not considered a national security or public safety threat as defined under current laws. But this is no matter to DHS. The regulations allow for them to make the arrest and keep the noncitizen detained as long as they please, through a regulatory web of filing simple forms and delaying proceedings while evading judicial review.[127]

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[124] UPI, *ICE detains more than 530 people in workplace 'raids' in U.S. Northeast* (Jan. 23, 2025) https://www.upi.com/Top_News/US/2025/01/23/ice-details-538-ion-workplace-raids/7811737692376/ (last visited May 15, 2025).

[125] Time, *Trump's Early Actions Mirror Project 2025, the Blueprint He Once Dismissed* (Jan. 24, 2025) https://time.com/7209901/donald-trump-executive-actions-project-2025/ (last visited May 15, 2025).

[126] Project 2025 at 141 (emphasis added).

[127] Project 2025 also provides some unfortunate context for DHS's use of the automatic stay. Project 2025 explicitly calls for taking the immigration judges and Executive Office for Immigration Review out of the Attorney General's purview and moving them under DHS. Project 2025 at 166-167. Specifically, Project 2025 recommends: "Agree to move the Executive Office for Immigration Review and the Office of Immigration Litigation to DHS and/or, alternatively, to treat the administrative law judges (immigration judges and Board of Immigration Appeals) as national security personnel, decertify their union, and

198. The record is clear: DHS wants Mr. Günaydın detained, and will continue to ensure he stays in immigration detention–despite the law and immigration judge orders to the contrary–until this Court orders him released.

Mr. Günaydın is Not Detained for a Legitimate Purpose

199. Where, as here, the noncitizen's detention is not for a permissible or compelling government reason–to facilitate deportation or prevent flight risk or dangerousness–the Court must ask what *is* the purpose of the detention? *See Demore*, 538 U.S. at 1722 (Kennedy, concurring).

200. Civil detention cannot be a "mechanism for retribution," *Kansas v. Crane*, 534 U.S. 407, 407 (2002) (internal quotation marks omitted), because "[r]etribution and deterrence are not legitimate nonpunitive governmental objectives," *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979).

201. The timing of Respondents' actions in dealing with Mr. Günaydın is at best incompetent and at worst intentional gamesmanship designed to punish him and keep him detained for as long as possible.[128] Certainly, after 50 days of detention, Mr. Günaydın feels the latter.

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move to increase hiring significantly to enable the processing of more immigration cases." *Id.* This move would accomplish precisely what the automatic stay sets out to do: turn DHS into both the prosecutor and judge in immigration proceedings, and eliminate any check or balance on its power.

[128] Supreme Court precedent has long made clear that the government is prohibited from subjecting individuals in civil detention to punitive conditions of confinement, not rationally related to a legitimate government objective, or in excess of that objective. *Bell v. Wolfish*, 441 U.S. 520, 538 (1979) (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963)) (citing *Flemming v. Nestor*, 363 U.S. 603, 617 (1960)).

202. Mr. Günaydın's detention is being used for deterrence and punishment. Respondents are detaining Mr. Günaydın to compel other students with lawful status to self-deport out of fear for a similar fate (detention). Based on public reports, DHS has advised hundreds, if not thousands, of students in the last several weeks that they have lost their student status because their F-1 visas have been revoked and/or their visa records have been terminated.[129] Such purported visa revocations do not, however, result in a loss of status. *See* ¶¶ 153-169, *supra*.

203. Thus, Respondents' arrest and detention of international students such as Mr. Günaydın has the intent and effect of forcing students who are advised of revocations/termination (who may not have access to representation)—and who fear the same arrest and detention forced on noncitizens like Mr. Günaydın—to abandon their lawful status and "self-deport" without protesting or mounting legal challenges to their unlawful SEVIS terminations.[130]

Mr. Günaydın Remains Detained Despite Being Ordered Released on Bond and Having No Charges Against Him

204. The first justification given to Mr. Günaydın for his arrest and detention, based on the NTA dated March 27, was that he failed to maintain his nonimmigrant status and was therefore deportable under INA § 237(a)(1)(C)(i). However, as explained *supra*

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[129] Ashley Mowreader, *International Student Visas Revoked*, INSIDE HIGHER ED, https://www.insidehighered.com/news/global/international-students-us/2025/04/07/where-students-have-had-their-visas-revoked (last visited Apr. 25, 2025).

[130] On March 14, 2025, Respondent Kristi Noem issued a post on X: "I'm glad to see one of the Columbia University terrorist sympathizers use the CBP Home app to self deport." Kristi Noem (@KristiNoem), X (Mar. 14, 2025, 11:01 AM), https://x.com/Sec_Noem/status/1900562928849326488.

¶¶ 153-169, Mr. Günaydın was in lawful student status at the time of his arrest, and DHS's termination of his SEVIS record was unlawful. This charge was withdrawn.

205. The next justification given to Mr. Günaydın for his arrest and detention, almost a week later, was that his F-1 student visa was revoked and he was therefore deportable under INA § 237(a)(1)(B). However, as explained *supra* ¶¶ 153-169, Mr. Günaydın was not on notice of any visa revocation, Respondents were unsure about which visa was revoked, and importantly, this was not a proper revocation under INA § 221(i) because it was not made in the discretion of the Secretary of State, but rather at the request of DHS. This charge was also withdrawn.

206. The newest justification given to Mr. Günaydın for his arrest and detention, five days later, is that he is actually subject to mandatory detention, is a danger to public safety, and is deportable under INA § 237(a)(4)(A)(ii) based on his prior conviction for DWI. However, as explained *supra* ¶¶ 171-185, this charge is not properly applied to Mr. Günaydın.[131] The Immigration Judge agreed that DHS could not sustain such a charge, ordered him released on bond, and terminated his proceedings. But, DHS circumvented this order to keep Mr. Günaydın in jail.

207. Respondents, without acknowledging any wrongdoing or missteps, urge the Court to allow them to hold someone like Mr. Günaydın indefinitely in detention simply because that is where DHS wants him to be. Respondents' argument now is that DHS

[131] As explained herein, Respondents never had a legal basis for Mr. Günaydın's arrest, nor have their attempts to cover their tracks been successful. Mr. Günaydın maintains that all charges lodged against him are unlawful and improper, and his due process rights were and continue to be violated as a result of Respondents' actions.

disagrees and is disappointed with IJ Mazzie ordering Mr. Günaydın's release, so it will keep him detained anyway. Mr. Günaydın disagrees and is disappointed in the U.S. government depriving him of his liberty.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

208. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this petition as if fully set forth herein.

209. Due process asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Mr. Günaydın of his liberty. Mr. Günaydın has spent the last fifty days in civil immigration detention.

210. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

211. The government's detention of Mr. Günaydın is unjustified. Respondents have not demonstrated that Mr. Günaydın needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Mr. Günaydın cannot be safely released back to his community.

212. Mr. Günaydın's detention is also punitive and bears no "reasonable relation" to any legitimate purpose for detaining him. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("nature and duration" of civil confinement must "bear some reasonable relation to the purpose for which the individuals is committed"); *Zadvydas*, 533 U.S. at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). His "detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

213. Simply, the government must know and have some lawful basis for detaining any person. This, at minimum, is what due process demands. Here, the course of events that have transpired since Mr. Günaydın's arrest make clear that the government did not have a lawful basis for his arrest and detention on March 27, and has kept him detained, unlawfully, for the six weeks that followed, while they have worked to retroactively find some lawful justification for the detention—which, as argued herein, they still have not found.

214. Next, in addition to being ultra vires and unconstitutional (*see*, Count Two, *infra*), the automatic stay provision keeping Mr. Günaydın detained today is unconstitutional as applied to him and in violation of his due process rights. An immigration judge ordered DHS to release Mr. Günaydın on a reasonable bond of $5,000.00, and because DHS disagrees with that order, it invoked an emergency automatic stay of the order, rendering Mr. Günaydın stuck in detention.

215. The automatic stay regulation rendered Mr. Günaydın's bond hearing a charade, because it did not matter the outcome. DHS wants him in jail and it can effectively ignore the immigration judge's order to the contrary. There is no due process when the outcome of the process does not matter.

216. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT TWO
Ultra Vires Regulation - Automatic Stay per 8 C.F.R. § 1003.19(i)(2)

217. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this petition as if fully set forth herein.

218. The regulation at 8 C.F.R. § 1003.19(i)(2) exceeds the authority given to the agency by Congress. The statute at 8 U.S.C. § 1226(a), which applies to Mr. Günaydın, authorizes the discretionary release of a noncitizen.

219. IJ Mazzie found that Mr. Günaydın was not a danger to the community nor a sufficient flight risk so that release should be denied, and ordered DHS to release him on bond in the amount of $5,000.00.

220. Congress has created a class of individuals subject to mandatory detention by enacting 8 U.S.C. § 1226(c). As Mr. Günaydın falls under 8 U.S.C. § 1226(a), Congress requires that he be subject to an individualized determination regarding his release on bond.

221. Congress has not authorized DHS to automatically stay Mr. Günaydın's release after it has been granted by an immigration judge.

COUNT THREE
Release Pending Adjudication

222. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this petition as if fully set forth herein.

223. Federal courts sitting in habeas possess the "inherent power to release the petitioner pending determination of the merits." *Savino v. Souza*, 453 F. Supp. 3d 441, 454 (D. Mass. 2020) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (per curiam)); *see also Martin v. Solem*, 801 F.2d 324, 329, n.3 (8th Cir. 1986); *Da Graca v. Souza*, 991 F.3d 60 (1st Cir. 2021). Federal courts "have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in the criminal habeas case." *Id.* (quoting *Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001)). "A court considering bail for a habeas petitioner must inquire into whether the habeas petition raise[s] substantial claims and [whether] extraordinary circumstances exist[ ] that make the grant of bail necessary to make the habeas remedy effective." *Id.* at 453 (quoting *Mapp*, 241 F.3d at 230) (cleaned up).

224. Just last week, a court in this District ordered another similarly situated noncitizen released on bail pending adjudication of the underlying habeas petition. *Mohammed H.*, 2025 WL 1334847, at *8. There, as here, the noncitizen was held in detention pursuant to the automatic stay, despite being ordered released on bond by an immigration judge. *Id.*

225. Under *Martin v. Solem*, "to grant interim release the Court must find (1) a substantial federal constitutional claim that is not only clear on the law but also readily evident on the facts, and (2) the existence of exceptional circumstances justifying special treatment in the interests of justice." *Mohammed H.*, 2025 WL 1334847, at *3.

226. As explained above, Mr. Günaydın has raised a substantial federal constitutional claim that is both clear on the law and readily evident on the facts. Mr. Günaydın has clearly articulated that his initial arrest and detention were unlawful and not based in law or fact. It is uncontroverted that Mr. Günaydın's nonimmigrant student status was revoked after he was arrested; it is uncontroverted that DOS did not know which, if any visa was revoked before arresting him, or even for days after the arrest; it is uncontroverted that Mr. Günaydın received no notice of any adverse immigration action being taken against him before ICE arrested him, and could not have conformed his conduct or acted in any way to avoid detention.

227. After DHS backtracked and added a new charge of removability, it was given ample opportunity in multiple hearings and with briefing to prove its case against Mr. Günaydın, but could not do so. IJ Mazzie terminated proceedings and ordered Mr. Günaydın released on bond. Despite these clear, reasoned orders, DHS has the power to circumvent the immigration judge's orders and keep Mr. Günaydın detained. The automatic stay forming the basis for Mr. Günaydın's current detention is unconstitutional, as was his initial arrest. The constitutional violations against Mr. Günaydın have been clearly articulated and are supported by the uncontroverted facts.

228. Further, the exceptional circumstances here justify special treatment in the interest of justice. Notably, Mr. Günaydın has no removal proceedings pending against him at this time. IJ Mazzie ordered DHS's single charge of removability against him not sustained and terminated proceedings. He has suffered serious, irreparable harm as a result of his detention. The *Mohammed H.* court found exceptional circumstances existed for the petitioner's release when he had been in custody for over a month, and the factual record demonstrated that "an unrefuted IJ finding that Petitioner posed no danger…and shifting *post hoc* explanations to justify the arrest unsupported by any contemporaneous explanation demonstrating the reason for it." *Mohammed H.*, 2025 WL 1334847, at *7.

229. The *Mohammed H.* court further found reason to order the petitioner's interim release because he could not "participate in his required coursework, for which he paid tuition, while in custody. Detention also impairs his access to counsel and places him at risk of transfer to a remote ICE facility, which could frustrate meaningful judicial review even if jurisdiction technically remains intact." *Id.* at *7. Mr. Günaydın's situation is no different.

230. The *Mohammed H.* petitioner suffered a hernia, which contributed to the court's determination that exceptional circumstances warranted his immediate release. *Id.* at *7. Similarly, Mr. Günaydın has experienced depression and panic attacks as a result of his detention. As noted by the Mohammed H. court, "These are not ordinary incidents of detention[,]" but rather were compounded by the government's inability to specify the charges of removability. Additionally, "[t]he IJ's bond order has been effectively nullified by administrative fiat rather than by judicial findings." *Id.* at *7. The facts here are, as

explained above, remarkably similar.

231. Even more remarkable, however, is that Mr. Günaydın has won his immigration case and has no pending charges against him, and no future hearings at this time. *See Uritsky*, 286 F.Supp.2d at 847 (granting habeas petition and ordering immediate release when petitioner had bond granted and proceedings terminated but was subject to the automatic stay).

232. This petition raises substantial constitutional and statutory claims challenging Doğukan's arbitrary detention. Furthermore, extraordinary circumstances exist that make Doğukan's release essential for the remedy to be effective. Even if he is ultimately freed, as long as Doğukan remains in ICE's physical custody, he will be prevented from speaking freely and openly and his unlawful detention will serve to chill others.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1) Assume jurisdiction over this matter;

2) Order the immediate release of Petitioner pending these proceedings;

3) Declare that Respondents' actions to arrest and detain Petitioner violate the Due Process Clause of the Fifth Amendment;

4) Award reasonable attorneys' fees and costs for this action; and

5) Grant such further relief as the Court deems just and proper.

[signature block to follow]

Respectfully submitted,

Dated: May 15, 2025

/s/ Hannah Brown
Hannah Brown (SBN 0400017)
HB Law & Advocacy PLLC
1907 E. Wayzata Blvd., Ste. 300
Wayzata, MN 55391
(612) 439-1882
hannah@hblawadvocacy.com

/s/ Kelsey Hines
Kelsey Hines (SBN 0401226)
Hines Immigration Law PLLC
1700 S. Hwy 36 Service Dr., Suite 120
Roseville, MN 55113
(612) 643-9272
kelsey@hinesimmigration.com

Attorneys for Petitioner