

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J.J.O.H.,

Petitioner,

v.

PAUL ARTETA *in his official capacity as Sheriff of Orange County, New York and Warden, Pike County Correctional Facility; WILLIAM JOYCE, in his official capacity as Acting Field Office Director, New York Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, in his official capacity as Acting Director, United States Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; PAM BONDI, in her official capacity as United States Attorney General,*

Respondents.

Civil Action No.: 25-5278

**PETITION FOR WRIT OF
HABEAS CORPUS**

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. J.J.O.H. (“Petitioner” or “J.J.O.H.”) is a 31-year-old asylum seeker from Venezuela who remains in Immigration and Customs Enforcement (“ICE”) custody, despite an Immigration Judge twice ordering him to be released on bond.

2. J.J.O.H. was detained by ICE during a home raid merely because he happened to be home when ICE officers entered by force, looking for someone who no longer lived in the

house where J.J.O.H. was renting a room. Despite his lack of criminal history and his pending affirmative asylum application, DHS arrested him and charged him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) for being present in the United States without being admitted or paroled. The I-213 or “Record of Deportable/Inadmissible Alien” filed by the Department of Homeland Security (“DHS”) in support of the sole charge of removability included a conclusory and unsubstantiated allegation that J.J.O.H. was a member of the Tren de Aragua gang.

3. After a bond hearing on March 18, 2025, the Immigration Judge rejected DHS’s false claims that J.J.O.H. was a Tren de Aragua member, and found that he would not present a danger to the public or a flight risk if released on bond, citing his lack of criminal history, his pending asylum application and his community support. DHS, however, invoked the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) to keep J.J.O.H. detained while it appealed the Immigration Judge’s decision to the Board of Immigration Appeals (“BIA”).

4. In general, prior to this year, absent individualized and extraordinary circumstances, when an Immigration Judge granted a non-citizen bond, that person was released from ICE custody once bond was paid even where DHS appealed the bond decision to the BIA. Thus, the automatic stay provision was rarely employed. Now it is being exploited to unlawfully hold non-citizens, like Petitioner, in ICE custody.

5. In its appeal, DHS argued that the Immigration Judge should have credited DHS’s unsupported claim regarding J.J.O.H.’s alleged gang membership. However, the BIA agreed with the Immigration Judge and found that she properly determined that J.J.O.H. did not pose a danger to the public, but remanded for the Immigration Judge to increase the bond to account for any concerns regarding risk of flight. On remand, the Immigration Judge complied

with the BIA's instructions and nearly doubled the bond amount. However, DHS immediately invoked the automatic stay provision again and filed a baseless appeal to the BIA, keeping J.J.O.H. stuck in indefinite detention in violation of his due process rights and the Immigration Judge's discretionary authority to determine custody status.

6. J.J.O.H. has now been unlawfully detained by ICE for more than three months since the Immigration Judge first ordered him released on bond, a severe and ongoing deprivation of his core interest in liberty from arbitrary physical restraint. Respondents cannot be permitted to detain J.J.O.H. in flagrant violation of the Due Process Clause.

7. J.J.O.H. brings this Petition pursuant to the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1254a, the Administrative Procedure Act, 5 U.S.C. § 706(2), and the Due Process Clause of the Fifth Amendment, and respectfully requests that this Court issue a writ of habeas corpus ordering Respondents to release him from custody.

CUSTODY

8. J.J.O.H. is in the physical custody of Respondents. Petitioner is detained at the Orange County Jail, an immigration detention facility, in Goshen, New York. J.J.O.H. is under the direct control of Respondents and their agents.

JURISDICTION

9. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment, U.S. CONST. amend. V; and the Suspension Clause, U.S. CONST. art. I, § 9.

10. The Court has jurisdiction in equity to order Petitioner's immediate release from unlawful custody. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release.") (citation omitted).

11. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

12. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over the petitioner.'" (citing 28 U.S.C. § 2242) (cleaned up).

13. The place of employment of Respondent Joyce is also located within the district, at 26 Federal Plaza, New York, NY. *See Braden v. 30th Judicial Circuit*, 410 U.S. 484, 493-94 (1973) (laying out traditional venue factors).

PARTIES

14. Petitioner is currently detained by Respondents at the Orange County Jail, an immigration detention facility. He has been in ICE custody since January 30, 2025, when he was arrested during an ICE raid of his home in the Bronx, NY.

15. Respondent Paul Arteta is the Sheriff of Orange County, New York and acts as the warden of the Orange County Jail ("OCJ"), where Petitioner is currently detained. In his capacity as Warden, he oversees the administration and management of OCJ. He is a legal custodian of

Petitioner and is named in his official capacity. His business address is 110 Wells Farm Rd, Goshen, NY 10924.

16. Respondent William Joyce is named in his official capacity as Acting Field Office Director of the New York Office for ICE within the Department of Homeland Security (“DHS”). In this capacity, he is responsible for the administration of immigration laws and execution of detention and removal determinations and, as such, is an immediate custodian of Petitioner. Respondent Joyce’s office is located at 26 Federal Plaza, New York, NY 10278.

17. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity. In this capacity, he is responsible for administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), he routinely transacts business in the Southern District of New York, he supervises Respondent Joyce, and he is legally responsible for the pursuit of Petitioner’s detention and removal. Respondent Lyons’ office is located at the United States Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20536.

18. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. In this capacity, she is responsible for administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), she routinely transacts business in the Southern District of New York, she supervises Respondents Lyons and Joyce, and she is legally responsible for the pursuit of Petitioner’s detention and removal. Respondent Noem’s office is located at the United States Department of Homeland Security, Washington, D.C. 20528.

19. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to 8 U.S.C. § 1103(g). She

routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal and custody redetermination proceedings and the standards used in those proceedings. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

STATEMENT OF FACTS

I. DHS Has Twice Improperly Invoked the Automatic Stay Provision To Overrule an Immigration Judge's Order that J.J.O.H. Should Be Released on Bond.

A. Petitioner's Immigration History and the Bond Decisions.

20. J.J.O.H. is a 31-year-old asylum seeker from Venezuela. When he arrived at the U.S. border, DHS interviewed him and made the determination to parole him into the United States.

21. He filed a timely, affirmative application for asylum with USCIS on July 9, 2023, on the basis of persecution he faced as a political opponent of the Maduro regime in Venezuela. He also applied for and obtained work authorization, and found work in construction and as a delivery person for DoorDash.

22. He resided in the Bronx, NY without incident until his arrest by DHS on January 30, 2025.

23. J.J.O.H. lived in large house with more than ten different rooms, each of which were rented separately. On January 30, 2025, ICE entered the house to look for someone who no longer lived there, but still rounded up J.J.O.H. and eight other Venezuelans present in the house, handcuffing them and demanding to see their identification documents. J.J.O.H. and the eight other Venezuelans were arrested by ICE. Petitioner has remained in ICE custody since his arrest.

24. Despite having a pending application for asylum and no criminal history, DHS placed J.J.O.H. in removal proceedings and charged him with removability pursuant to section

212(a)(6)(A)(i) of the INA for being present in the United States without being admitted or paroled. The I-213 filed by DHS in support of the sole charge of removability contained a conclusory and unsupported assertion that J.J.O.H. “has been identified as a Tren De Aragua gang member.” Ex. A, I-213, dated January 30, 2025.

25. At a custody re-determination hearing on March 18, 2025, the Immigration Judge considered evidence submitted by both J.J.O.H. and DHS, including J.J.O.H.’s testimony, and found he had shown by clear and convincing evidence “that he does not represent a danger to the community and is not a flight risk.” Ex. B, First Bond Decision at 1.

26. In finding that J.J.O.H. is not a danger to the community, the Immigration Judge relied on the fact that he has no criminal history in the United States or in Venezuela, and that he has work authorization, occasional employment with DoorDash and stable housing. The Immigration Judge also noted the numerous letters of support “detailing his good moral character.” *Id.* at 2.

27. DHS claimed that J.J.O.H. was classified as a member of Tren de Aragua “because he was apprehended at a residence where other members of Tren de Aragua were located.” *Id.* at 3. However, none of the other people apprehended at the residence were identified as members of Tren de Aragua, nor was the person who was the subject of the alleged warrant that triggered the home raid. *Id.* Instead, “the extent of the information listed [on the I-213] about these individuals is simply that they were ‘a positive match for being in the United States illegally.’” *Id.*

28. The Immigration Judge found that “it became abundantly clear throughout this proceeding that the Department was not able to provide meaningful justification for this assertion,” and that J.J.O.H. gave “credible testimony stating that he is not and has never been a member of Tren De Aragua.” *Id.* at 3-4.

29. The Immigration Judge also found that J.J.O.H. does not pose a flight risk, citing the fact that after entering the country, he timely applied for asylum and work authorization and has a stable place to live with his partner, who provided both a letter from her landlord and proof of her income. *Id.* at 4. The Immigration Judge ordered J.J.O.H. released on \$5,000 bond.

30. DHS, however, invoked the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) to ensure that J.J.O.H. was not released on bond while DHS appealed the bond decision to the BIA.

31. On May 19, 2025, the BIA found that the Immigration Judge “properly held that [J.J.O.H.] met his burden of proving that his release was not a danger to the community” but remanded to the Immigration Judge to set bond in an amount higher than \$5,000 to ensure his presence at future court appearances. Ex. C, BIA Decision at 2, 3.

32. On May 30, 2025, in response to the BIA’s decision, the Immigration Judge nearly doubled the bond previously set, ordering J.J.O.H. released on \$9,500 bond. Ex. D, Second Bond Decision. The Immigration Judge noted that she considered both the BIA’s concerns regarding flight risk—which the BIA specifically found would be mitigated by setting a higher bond amount—and the evidence that he “has a pending application for relief alongside a filed TPS application, has been granted work authorization, and his sponsor has agreed to allow him to reside with her should he be released.” *Id.* at 2. The Immigration Judge found that J.J.O.H. “has met his burden of establishing that any flight risk concerns can be mitigated by his posting bond in the amount of \$9,500.” *Id.* She found that “this would be a significant amount for [Petitioner] given his financial means and that “if the bond amount were to be set any higher, [Petitioner] would be unable to pay the amount, rendering the granting of bond moot.” *Id.*

33. Despite the Immigration Judge’s clear compliance with the BIA’s instructions, DHS again invoked the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) to prevent J.J.O.H.

from being released on bond and appealed the Immigration Judge's bond decision once again. Nearly five months after DHS arrested him, and more than three months after an Immigration Judge ordered him released on bond, J.J.O.H. remains in detention despite the BIA's order upholding the Immigration Judge's decision to grant bond.

B. The History of the Automatic Stay Provision.

34. Section 236(a) of the INA (codified as 8 U.S.C. § 1226(a)) confers discretion to the Attorney General and DHS to make decisions in some circumstances as to the detention and bond of people charged with removal actions while they await removal decisions.

35. The INA grants people detained pursuant to 8 U.S.C. § 1226(a) the right to seek review of the initial custody determination before an immigration judge at any time. 8 U.S.C. §§ 1226(a)(1), (c)(1); 8 C.F.R. § 1003.19(a). If an immigration judge finds that a detainee is eligible for bond, DHS may appeal the decision of the immigration judge to the BIA. 8 C.F.R. § 1003.19(f). The regulations also provide DHS the unilateral authority to automatically stay an immigration judge's bond order and keep the person who was granted bond detained pending DHS's appeal to the BIA. *See* 8 C.F.R. § 1003.19(i)(2).

36. Prior to 2001, detainees subject to discretionary detention under 8 U.S.C. § 1226(a) who were then granted bond by an immigration judge remained detained only if the BIA granted a request to stay the bond order. *See, e.g.*, 8 C.F.R. § 3.19(i)(2) (1998) (permitting the use of automatic stays only where the noncitizen was subject to a mandatory detention statute).

37. On October 31, 2001, following the terrorist attacks of September 11, 2001, the Immigration and Naturalization Service ("INS")—an agency whose functions now fall under DHS's purview—implemented an interim rule to expand its authority to issue automatic stays to prevent immigration judges' custody decisions from being implemented pending appeal. *See*

Executive Office for Immigration Review; Review of Custody Determination, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001). For circumstances in which the INS was previously required to seek an emergency stay from the BIA to prevent the effectuation of an immigration judge's order for release on bond, the new rule allowed the INS to unilaterally invoke an emergency stay at its own discretion to prevent the detainee's release in any case where it determined that a detainee should not be released or when bond had been set in the amount of \$10,000 or more. *Id.* The INS emphasized that the stay was "a limited measure," to be used only "where the Service determines that it is necessary to invoke the special stay procedure pending appeal." *Id.*

38. The new automatic stay regulation raised due process concerns from its inception. For example, a former General Counsel of INS, David Martin, provided testimony in 2003 to the National Commission on Terrorist Attacks in which he voiced his concern regarding the agency's use of automatic stays. See David A. Martin, *Preventive Detention: Immigration Law Lessons for the Enemy Combatant Debate, Testimony Before the National Commission on Terrorist Attacks Upon the United States, December 8, 2003*, 18 Geo. Immigr. L.J. 305 (2004). He stated that "there are indications that the automatic stay mechanism is now being used routinely and without careful calculation by the enforcement agencies of the individual merits that led the [immigration judge] to reduce the bond in the first place." *Id.* at 313. He urged the agency to repeal the automatic stay provision and revert to the old process of seeking emergency stays from the BIA, which, he believed, would provide "sufficient safeguards, both of public safety and of the core interest in liberty." *Id.*

39. During this same period, several federal district courts concluded that the automatic stay provision violated the due process rights of detainees. In *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003), for example, the court vacated the automatic stay on a detainee's petition

for a writ of habeas corpus, finding that “the continued detention of Petitioner without judicial review of the automatic stay of the bail determination, despite the Immigration Judge’s decision that he be released on bond, violates Petitioner’s procedural and substantive due process constitutional rights.” *Id.* at 675; *see, e.g., Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003)(finding the automatic stay provision unconstitutional); *Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 WL 1514122 (N.D. Cal. June 17, 2005) (same); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (same).

40. In 2006, the Department of Justice promulgated its final rule. *See Executive Office for Immigration Review; Review of Custody Determination*, 71 Fed. Reg. 57873 (Oct. 2, 2006). The final rule included the language of the interim rule, with some notable changes. First, “to allay possible concerns that in some case the automatic stay might be invoked. . . without an adequate factual or legal basis,” the final rule added a requirement that the decision to invoke an automatic stay “is subject to the discretion of the Secretary [of DHS],” and a senior legal official at DHS must certify “there is factual and legal support justifying the continued detention.” *Id.* at 57874.

41. Second, the final rule imposed some time limitations. The final rule provides that DHS’s order of automatic stay will lapse ninety days after the filing of the notice of appeal if the BIA has not acted on the custody appeal. 8 C.F.R. § 1003.6(c)(4) (2006).

42. However, the rule actually allows for continued detention well beyond ninety days. DHS may seek an additional discretionary stay from the BIA to prevent the stay from lapsing if the BIA has not yet acted on the appeal. To do so, DHS can submit a motion to the BIA asking for a discretionary stay pending the BIA’s decision on the custody appeal. The automatic stay would then remain in place for up to thirty additional days to permit the BIA time to rule on the stay motion. 8 C.F.R. § 1003.6(c)(5). If the BIA denies the discretionary stay, fails to act upon it within

the requisite period, or issues a decision upholding the immigration judge's custody ruling, then the automatic stay would remain in place for an additional five business days (potentially 7 calendar days) to permit the Secretary or a designated DHS official to decide whether to refer the decision for the Attorney General's review. 8 C.F.R. § 1003.6(d). If the agency decides to refer the decision, then the automatic stay would remain in place for an additional fifteen business days (potentially nineteen calendar days) to permit the Attorney General time to consider the merits of the referred decision and decide whether to act on the referred decision. *Id.* Therefore, although DHS's automatic stay order could lapse after ninety days without action from the BIA, DHS could also maintain the automatic stay for a total of 140-146 days without judicial review of any kind.

43. Additionally, nothing in the regulations prevents DHS from invoking the automatic stay provision and appealing the immigration judge's bond decision to the BIA multiple times in a row, as they have in the instant case. The result is indefinite civil detention.

44. DHS has subjected J.J.O.H. to unlawful detention for more than three months after the Immigration Judge initially ordered him released on bond with no end in sight.

LEGAL FRAMEWORK

II. J.J.O.H.'s Detention Is Unlawful Because It Violates His Due Process Rights.

45. As the Supreme Court has repeatedly instructed, freedom "from government custody, detention, or other forms of physical restraint" is at "the heart" of what the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action."). This is particularly true in the context of civil detention. *See, e.g., Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."); *Kansas v. Hendricks*, 521 U.S. 346,

368 (1997) (requiring “strict procedural safeguards” to justify involuntary civil commitment of certain sex offenders); *Foucha*, 504 U.S. at 81-82, 86 (holding unconstitutional a state civil commitment “statute that place[d] the burden on the detainee to prove that he is not dangerous”).

46. J.J.O.H. is suffering a severe due process violation because of DHS’s decision to unilaterally detain him in violation of two decisions from an Immigration Judge ordering his release on bond, as well as the BIA’s decision upholding the Immigration Judge’s bond grant.

A. DHS is Detaining J.J.O.H. in Violation of His Procedural Due Process Rights.

47. J.J.O.H.’s circumstances are egregious. To allow an agency official to unilaterally detain a person after a judge has *twice* ordered their release is a flagrant violation of due process. This is especially true where the BIA has already affirmed the decision to grant release on bond. And the time limits set forth in the automatic stay provision do not remedy the violation where DHS continues to appeal the immigration judge’s bond decision, resulting in indefinite detention. In *Gunaydin v. Trump*, the court considered a similar circumstance, where the petitioner was detained pursuant to the automatic stay provision in spite of two rulings from an immigration judge ordering his release. No. 25-cv-01151, 2025 WL 1459154 (D. Minn. May 21, 2025). That court concluded that the petitioner’s detention pursuant to the automatic stay provision violated his procedural due process rights and ordered his immediate release. *Id.* at 10.

48. To determine whether a civil detention violates a detainee’s procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (applying *Mathews* test to a challenge involving discretionary noncitizen detention).

49. Pursuant to *Mathews*, courts weigh the following three factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of

such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

50. The first *Mathews* factor requires consideration of the private interest affected by Respondents’ invocation of the automatic stay provision. This factor weighs heavily in Petitioner’s favor because J.J.O.H.’s interest in being free from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

51. Additionally, the conditions of J.J.O.H.’s detention add weight to his private interest. When assessing this factor, courts consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration. *See Velasco Lopez*, 978 F.3d at 852 (noting that a noncitizen was incarcerated in conditions identical to those imposed on criminal defendants after being convicted of “violent felonies and other serious crimes”). J.J.O.H. is being detained in the Orange County Jail, a facility that houses civil detainees in the immigration context, pre-trial criminal arrestees, and incarcerated prisoners serving criminal sentences. He is experiencing all the deprivations of incarceration, including loss of contact with friends and family, complete loss of income, lack of privacy, and the lack of freedom of movement.

52. The second *Mathews* factor requires courts to assess whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks. The automatic stay provision of § 1003.19(i)(2) creates a substantial risk of erroneous deprivation of Petitioner’s interest in being free from arbitrary confinement because the only people adversely effected by DHS’s automatic

stay are people who have already prevailed at a judicial hearing. DHS does not invoke this provision to stay decisions that are favorable to it. “Thus, the challenged regulation permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge’s decisions. Such a rule is anomalous in our legal system.” *Gunaydin*, 2025 WL 1459154, at *7.

53. Regarding the value of additional safeguards, there is a clear alternative to the automatic stay set forth in § 1003.19(i)(1) which also provides a process by which DHS can request an emergency stay of an immigration judge’s custody determination from the BIA. Requesting a stay from an appellate court is the appropriate procedure because “a stay of an order directing the release of a detained individual is an especially extraordinary step” and such a decision should not be in the hands of the prosecutorial agency. *Id.* (internal quotations omitted).

54. The third *Matthews* factor, the Government’s interest, also weighs in favor of granting this petition. The Government’s only legitimate interest at stake is its interest in ensuring that people facing removal do not endanger the public or abscond during the pendency of their removal cases. As discussed *supra*, this interest is easily protected by DHS’s ability to seek an emergency stay from the BIA pursuant to § 1003.19(i)(1) of an immigration judge’s bond decision.

B. DHS’s Continued Detention of J.J.O.H. Violates His Substantive Due Process Right to be Free from Arbitrary Detention.

55. At a bare minimum, “the Due Process Clause includes protection against *unlawful or arbitrary* personal restraint or detention.” *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting) (emphasis added).

56. To meet the strictures of due process, J.J.O.H.’s detention must “bear[] a reasonable relation to [the] purpose[s]” of civil immigration detention, which the Supreme Court has identified as mitigating flight risk and mitigating danger to the community. *See Zadvydas*, 533

U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715 (1972)) (quotation marks omitted). An Immigration Judge—after an adversarial hearing—found that J.J.O.H. had met his burden to prove he was neither a danger to the community nor a flight risk. That Judge has *twice* ordered J.J.O.H.’s release on bond and DHS continues to invoke the automatic stay provision, overruling and rendering meaningless the Immigration Judge’s bond determination, as well as the BIA’s decision affirming the decision to release J.J.O.H. on bond.

57. Several district courts have considered similar challenges and found that the automatic stay provision violates detainees’ substantive due process rights. *See, e.g.*, *Ashley*, 288 F. Supp. 2d at 669; *Zavala*, 310 F. Supp. 2d at 1077; *Kambo v. Poppell*, No. SA-07-cv-800-XR, 2007 WL 3051601, at 20 (W.D. Tex. Oct. 18, 2007).

58. In light of the Immigration Judge’s individualized findings, which the BIA affirmed (aside from an instruction to increase the amount of bond), Respondents have not and could not show that J.J.O.H.’s detention without bond is necessary to prevent flight or to mitigate danger.

III. The Proper Remedy Is Immediate Release.

59. The proper remedy for Respondents’ unilateral invocation of the automatic stay provision, overruling the reasoned decisions of the Immigration Judge for the second time, is to order J.J.O.H.’s release.

60. “It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (ordering release where detention became unlawful once condition release date had passed); *see also Munaf*, 553 U.S. at 693.

61. Release is the only appropriate remedy for Respondents' shocking disregard for J.J.O.H.'s fundamental due process rights.

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF PROCEDURAL DUE PROCESS
U.S. Const. amend. V

62. Petitioner realleges and incorporates by reference each and every allegation contained above.

63. DHS has *twice* unilaterally overruled an Immigration Judge's individualized determination that Petitioner does not present a risk to public safety or a risk of flight to impose indefinite detention on Petitioner. This merging of the prosecutorial and adjudicatory role creates an unacceptable risk of erroneous deprivation of Petitioner's most fundamental liberty interests.

64. The government's interest here is easily protected through an existing regulation that allows DHS to make an emergency request that the BIA stay an immigration judge's custody determination.

65. Petitioner's detention pursuant to the automatic stay provision therefore deprives him of his right to procedural due process, and he is entitled to immediate release.

COUNT TWO
VIOLATION OF SUBSTANTIVE DUE PROCESS
U.S. Const. amend. V

66. Petitioner realleges and incorporates by reference each and every allegation contained above.

67. The Due Process Clause of the Fifth Amendment protects the substantive right of all persons in the United States, including noncitizens, to be free from unjustified deprivations of physical liberty. U.S. CONST. amend. V; *see generally Reno v. Flores*, 507 U.S. 292 (1993).

“[G]overnment detention violates the [Due Process Clause] unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (quotation marks and citations omitted).

68. Petitioner’s detention does not serve the special justifications for immigration detention: mitigating flight risk and mitigating risk to the community. An Immigration Judge made an individualized determination that Petitioner met his burden to prove he was neither a danger to the community nor a flight risk. That Judge has twice ordered Petitioner’s release on bond and the BIA agreed that release on bond was appropriate.

69. Respondents’ insistence on repeatedly invoking the automatic stay provision to force Petitioner to remain in indefinite detention despite these judicial decisions is therefore arbitrary as it does not serve a legitimate government interest.

70. Petitioner’s detention is not narrowly tailored to serve any other compelling state interest.

71. Petitioner’s detention therefore deprives him of his right to substantive due process, and he is entitled to immediate release.

COUNT THREE
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
8 U.S.C. § 1254a

72. Petitioner realleges and incorporates by reference each and every allegation contained above.

73. Section 1226(a) of Title 8 of the U.S. Code grants immigration judges the authority to re-determine custody status unless mandatory detention applies. The INA also empowers the BIA to review immigration judges' custody redeterminations.

74. Petitioner has been properly granted bond *twice* by an Immigration Judge. The BIA has also affirmed the Immigration Judge's decision to permit Petitioner to be released on bond.

75. Accordingly, DHS's mandate that Petitioner must be held without bond in violation of the orders of both the Immigration Judge and the BIA is *ultra vires* to the INA. DHS's actions eliminate the discretionary authority of immigration judges to determine whether an individual may be released, thereby exceeding the authority bestowed upon the agency by Congress.

76. Thus, Petitioner's detention violates Section 1226(a), and he is entitled to immediate release from custody.

COUNT FOUR
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 706(2)

77. Petitioner realleges and incorporates by reference each and every allegation contained above.

78. The Administrative Procedure Act ("APA") enables courts to "hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law." 5 U.S.C. § 706(2).

79. After Respondents' first use of the automatic stay provision, the BIA found the Immigration Judge's decision to release Petitioner on bond was correct, but remanded for the Immigration Judge to increase the amount of bond. The Immigration Judge did just that, nearly doubling the amount of bond previously set. Because an appellate court already reviewed the bond

decision and the Immigration Judge acted in accordance with the BIA's express instructions, Respondents' current invocation of the automatic stay provision to appeal yet again was arbitrary and capricious.

80. Respondents' action is therefore arbitrary and capricious, in violation of the constitutional right to due process, in excess of statutory jurisdiction, and without observance of procedure required by law.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the New York Field Office and the Southern District of New York pending the resolution of this case;
3. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
5. Declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. § 1226(a);
6. Declare that Petitioner's detention violates the Administrative Procedure Act;
7. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody on his own recognizance or under parole, bond, or reasonable conditions of supervision;
8. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
9. Grant such further relief as this Court deems just and proper.

Dated: June 24, 2025

Respectfully submitted,

/s/Alyssa Briody

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