

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, Orange 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

**AMENDED PETITION FOR WRIT
OF HABEAS CORPUS**

AMENDED 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.”)¹ is a 32-year-old asylum seeker from Venezuela who remains in Immigration and Customs Enforcement (“ICE”) custody at Orange County Jail (“OCJ”), despite an Immigration Judge twice ordering him to be released on bond and the Board of Immigration Appeals (“BIA” or “Board”) affirming his release on bond.

2. J.J.O.H. was detained by ICE, on January 30, 2025, 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, ICE 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 January 30, 2025 Form I-213 or “Record of Deportable/Inadmissible Alien” the Department of Homeland Security (“DHS”) filed 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 a rarely used 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 BIA.

¹ Petitioner is proceeding by pseudonym. See ECF No. 15, Order Granting Petitioner’s Motion For Leave To Proceed Under Pseudonym.

4. 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 regarding the false gang allegation 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 yet another appeal to the BIA, keeping J.J.O.H. in detention in violation of his due process rights and the Immigration Judge's discretionary authority to determine custody status.

5. In general, prior to this year, when an Immigration Judge granted a noncitizen bond, that person was released from ICE custody once bond was paid even where DHS appealed the bond decision to the BIA. Now, the automatic stay provision is being used routinely to unlawfully hold noncitizens, like Petitioner, in ICE custody without any individualized basis or ability to respond.

6. After the initiation of this action for habeas corpus and the filing of a motion for a temporary restraining order and preliminary injunction seeking Petitioner's release, ICE filed a discretionary stay request with the BIA. The BIA granted the stay request less than two hours later, without a pre-deprivation opportunity for Petitioner to be heard.

7. J.J.O.H. has now been unlawfully detained by ICE for five months since the Immigration Judge first ordered him released on bond, 92 days since the BIA affirmed the Immigration Judge's decision to grant bond, and 82 days since the Immigration Judge ordered him released on bond a second time, a severe and ongoing deprivation of his core interest in liberty from arbitrary physical restraint.

8. As a result, J.J.O.H. has been in ICE detention over six months without an adequate recourse to secure his release absent the filing of this action. Respondents cannot be permitted to detain J.J.O.H. in flagrant violation of the Due Process Clause.

9. J.J.O.H. brings this Petition pursuant to the INA, 8 U.S.C. § 1254a, the Administrative Procedure Act (“APA”), 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

10. 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

11. 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.

12. 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).

13. 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

14. 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).

15. 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

16. 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.

17. Respondent Paul Arteta is the Sheriff of Orange County, New York and acts as the warden of the 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.

18. Respondent William Joyce is named in his official capacity as Acting Field Office Director of the New York Office for ICE within 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.

19. 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.

20. 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.

21. 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

DHS Has Improperly Used Stay Provisions to Overrule an Immigration Judge's Orders that J.J.O.H. Should Be Released on Bond.

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

22. J.J.O.H. is a 32-year-old asylum seeker from Venezuela. He entered the U.S. on September 3, 2022 and encountered DHS officials shortly after. DHS interviewed him and made the determination to parole him into the United States.

23. He filed a timely, affirmative application for asylum with United States Citizenship and Immigration Services ("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.

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

25. J.J.O.H. lived in a 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.

26. 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." ECF No. 1-1, Form I-213, dated January 30, 2025.

27. 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." ECF No. 1-2, First Bond Decision at 1.

28. 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.

29. 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.*

30. 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.

31. 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.

32. DHS filed Form EOIR-43 that same day to invoke the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) to stay the Immigration Judge's decision on bond and prevent J.J.O.H. from posting bond and being released. The Form EOIR-43 merely states that ICE is automatically staying the Immigration Judge's bond decision. In it, ICE makes no individualized, fact-specific arguments or claims regarding exigency or the potential harm of release. This provision was used on average only 26 times per year between 2015 and 2021,² on a detained population that numbers in the tens of thousands on any given day,³ with only two cases being subject to the automatic stay in 2021.

33. J.J.O.H. posted bond on March 19, 2025, however, the bond was rejected because of the automatic stay.

34. DHS appealed the bond decision to the BIA.

35. 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. ECF No. 1-3, BIA Decision at 2-3.

36. 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. ECF No. 1-4, 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 [asylum] application for relief alongside a

²See Stacy L. Brustin, *A Civil Shame: The Failure to Protect Due Process in Discretionary Immigration Custody & Bond Redetermination Hearings*, 88 Brook. L. Rev. 163, 225 n.231 (2022).

³ See *ICE Detention Trends*, Vera Institute of Justice, available at <https://www.vera.org/ice-detention-trends>.

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 [J.J.O.H.] given his financial means” and that “if the bond amount were to be set any higher, [J.J.O.H.] would be unable to pay the amount, rendering the granting of bond moot.” *Id.*

37. Despite the Immigration Judge’s clear compliance with the BIA’s instructions, DHS again filed a Form EOIR-43 that same day to invoke the automatic stay provision in 8 C.F.R. § 1003.19(i)(2) to once again stay the Immigration Judge’s bond decision and prevent J.J.O.H. from being released on bond. Again, in the Form EOIR-43, ICE made no individualized, fact-specific arguments or claims regarding exigency or the potential harm of release.

38. J.J.O.H. posted bond on June 18, 2025 and it again was rejected because of the automatic stay.

39. DHS filed an appeal of the Immigration Judge’s May 30, 2025, decision. This appeal remains pending.

40. On June 24, 2025, Petitioner initiated the instant action for a writ of habeas corpus before this Court. ECF No. 1.

41. On June 26, 2025, the Immigration Judge granted J.J.O.H.’s oral motion for a continuance of his merits hearing on his defensive asylum application. J.J.O.H. made his motion for a continuance on the Immigration Judge’s suggestion, due to DHS’s ongoing violation of his rights. The Immigration Judge said to J.J.O.H., “[u]sually I wouldn’t do this but I do believe that your due process rights are being violated.” ECF No. 27-1, Declaration of Ilana Herr (“Herr Decl.”) ¶17. The Immigration Judge further explained to J.J.O.H. that adjourning the merits hearing “will

also give you an opportunity to be released and to be able to actually have your case adjudicated while you can participate more in the case” from outside of ICE custody. *Id.*

42. On July 3, 2025, J.J.O.H. filed a Motion for a Temporary Restraining Order and/or Preliminary Injunction in this habeas action, and consented to an extension for Respondents to file their Opposition by July 14, 2025. ECF Nos. 16, 22.

43. On the day the government’s opposition was due, DHS requested from the BIA—and received less than two hours later—a discretionary stay, with no opportunity for J.J.O.H. to respond. Respondents filed their Opposition to the Motion for a Preliminary Injunction hours later. ECF No. 24.

44. The BIA’s discretionary stay decision is three sentences in length and merely states, “[a]fter consideration of all the information, the Board has concluded that the motion for emergency stay of the bond order will be granted.” ECF No. 26-1. The decision did not provide any standard by which the BIA decided the stay request.

45. J.J.O.H. requested that the BIA reconsider its grant of the discretionary stay in his custody appeal briefing filed on July 17, 2025. ECF No. 30-1. To date, J.J.O.H. has not received any response from the BIA regarding the custody appeal or reconsideration of the discretionary stay, and there is no prescribed timeframe by which to expect a response.

46. The day after oral argument on Petitioner’s motion for a preliminary injunction, ICE sought to withdraw the automatic stay with the BIA. *See* ECF Nos. 33-35. After ICE’s initial filing was rejected due to a filing error, ICE filed a “Withdrawal of Notice of Intent To Appeal Custody Redetermination” on July 31, 2025 with the BIA. ECF No. 35-1.

47. After briefing and oral argument concluded, this Court denied Petitioner’s motion for a preliminary injunction. ECF No. 36.

48. One hundred and fifty-five days after an Immigration Judge first ordered him released on bond, 92 days since the BIA affirmed the Immigration Judge's decision to grant bond, and 82 days since the Immigration Judge ordered him released on bond, J.J.O.H. remains in civil immigration detention.

B. The Regulatory Structure of the Automatic Stay Provisions.

49. 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 noncitizens in removing proceedings.

50. The INA grants people held in immigration detention pursuant to 8 U.S.C. § 1226(a) the right to seek review of DHS's 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 noncitizen 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 with 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 without any means to challenge the stay. *See* 8 C.F.R. § 1003.19(i)(2).

51. Prior to 2001, noncitizens 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).

52. 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 release in any case where it determined that a noncitizen 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 intended to be "a limited measure," to be used only "where the Service determines that it is necessary to invoke the special stay procedure pending appeal." *Id.*

53. The Form EOIR-43, used to invoke the automatic stay provision, merely states that ICE is automatically staying the immigration judge's bond decision.. The form requires no individualized, fact-specific arguments or claims regarding exigency or the potential harm of release of the noncitizen.

54. 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 urged the agency to repeal the automatic stay provision, stating "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.

55. During this same period, several federal district courts concluded that the automatic stay provision violated the due process rights of noncitizens. In *Ashley v. Ridge*, for example, the court vacated the automatic stay on a 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.” 288 F. Supp. 2d 662, 675 (D.N.J. 2003); *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, 2005 WL 1514122 (N.D. Cal. June 17, 2005) (same); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (same).

56. 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.

57. Second, the final rule imposed some time limitations. *Id.* at 57873. The regulations provide that DHS’s 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). However, the automatic stay regulations allow for the automatic stay to be extended and detention to continue well beyond ninety days.⁴

⁴ 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*

58. “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). “If DHS has submitted such a motion and the Board is unable to resolve the custody appeal within the period of the automatic stay, the Board will issue an order granting or denying a motion for discretionary stay pending its decision on the custody appeal.” *Id.*

59. 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).

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

61. This additional five day stay in the event of the BIA authorizing a noncitizen’s release provides DHS with another opportunity to keep the person automatically detained despite judicial orders to the contrary.

62. If, within that five day stay period, the custody case is referred to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1), “the [non-citizen’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).

Decisions by Immigration Judges (Oct. 26, 2006), available at <https://www.aila.org/library/ice-releases-revised-procedures-for-automatic-stay>.

63. DHS may request a discretionary stay when referring the case to the Attorney General, 8 C.F.R. § 1003.6(d), and “[t]he 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).

64. Under the automatic stay scheme, the length of potential detention can result in between 150 to 177 days of detention after an immigration judge has determined that a noncitizen is neither a flight risk nor a danger to the society.⁵ However, if the case is referred to the Attorney General, the detention period is indefinite.

65. Nothing in the regulations prevents DHS from invoking the automatic stay provisions and appealing the immigration judge’s bond decision to the BIA multiple times in a row, as they have in the instant case, and therefore extending detention past the 177-day estimate.

66. Notably, the entire regulatory process is unilateral in the agency and the government’s favor.

67. Viewed as a whole, the automatic stay scheme incrementally adds to a person’s length of detention at every stage. It does not matter what the immigration judge or BIA orders, or how many times they rule in favor of the noncitizen; if DHS disagrees with the bond orders, DHS can, through its own actions, keep the noncitizen detained in perpetuity.

LEGAL FRAMEWORK

I. J.J.O.H.’s Detention Is Unlawful Because It Violates His Due Process Rights.

⁵ This calculation considers: 10 days from the time DHS files its Form EOIR-43 with EOIR until filing its Notice of Appeal with the BIA, 90 days after DHS files its Notice of Appeal, 30 days if DHS seeks a discretionary stay with the BIA, five business days or up to seven calendar days during which DHS can refer the case to the Attorney General, and 15 business days or up to 19 calendar days after DHS refers the case to the Attorney General. *See* 8 C.F.R. §§ 1003.6, 1003.19. Separately, a 21-day briefing extension from the BIA if requested by the noncitizen will also extend the auto-stay. 8 C.F.R. § 1003.6(c)(4).

68. 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*, 533 U.S. at 690; *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”).

69. J.J.O.H. is suffering a severe, ongoing 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 decision to grant bond.

70. Additionally, J.J.O.H.’s due process rights are being violated through the extension of his detention due to a procedurally improper discretionary stay issued without an opportunity for him to be heard or decisional standards.

A. DHS’s Detention of J.J.O.H. Pursuant to the Automatic Stay Violates His Procedural Due Process Rights.

71. Courts have found a *single* use of the revised automatic stay provision to be an unconstitutional violation of procedural due process. Here, J.J.O.H. has been subject to this unilateral extension of his detention *twice* after being ordered released on bond by the Immigration

Judge. This is particularly egregious where the BIA has already affirmed the decision to grant release on bond.

72. In *Gunaydin v. Trump*, the court considered a similar circumstance, where the petitioner was detained pursuant to the automatic stay provision in spite of an immigration judge ordering him released on bond. No. 25-cv-01151, 2025 WL 1459154 (D. Minn. May 21, 2025).⁶ That district 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; *see also Mohammed H. v. Trump*, No. 25-cv-1576, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025) ("Simply by fiat—without introducing any proof and without immediate judicial review—the Government effectively overruled the bond decision and kept Petitioner detained. In doing so, the automatic stay rendered Petitioner's continued detention arbitrary and gave him no chance to contest the Government's case for detention.").

73. Just last week, the court in *Aguilar Maldonado v. Olson* granted a motion for a preliminary injunction ordering the petitioner released on bond and enjoining the enforcement of the automatic stay provision during the pendency of the habeas action. The court found that petitioner was likely to establish that she was detained pursuant to the automatic stay provision in violation of the Due Process Clause after the immigration judge had ordered her released on bond. No. 25-cv-3142, 2025 WL 2374411, at *14 (D. Minn. Aug. 15, 2025).

74. In each of these cases, courts ordered petitioners released after being detained for shorter periods of time than the 154 days J.J.O.H. has endured since he was first ordered released on bond. *See Gunaydin*, 2025 WL 1459154 (petitioner ordered released after being detained 41

⁶ At the time of release, the removal case of the petitioner in *Gunaydin* was in the same posture as J.J.O.H.'s is now, in that removal proceedings are pending without a final determination on the merits.

days after the immigration judge ordered release on bond); *Mohammed H.*, 2025 WL 1692739 (petitioner ordered released on several grounds including the due process violation of the automatic stay provision after being detained 26 days after the immigration judge ordered release on bond); *Aguilar Maldonado*, 2025 WL 237441 (petitioner ordered released after being detained for 12 days after the immigration judge ordered release on bond); *Ashley*, 288 F. Supp. 2d at 664 (petitioner ordered released after being detained 76 days after the immigration judge ordered release on bond).⁷ In these cases, courts did not consider the length of the petitioner's detention relevant, only the due process violations inherent in the use of the automatic stay provision. Additionally, in each of these cases the court ordered release while the custody appeal to the BIA was still pending.

75. To determine whether civil detention violates a noncitizen'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).

76. 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.

77. 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

⁷ In fact, Petitioner has been detained 82-days after the second order releasing him on bond, which is still in excess of the period of detention in the aforementioned cases.

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).

78. 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 noncitizens are currently held, including whether they are 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"). ICE is detaining J.J.O.H. in the Orange County Jail, a facility that houses people in civil immigration detention, people in criminal pre-trial detention, and people serving criminal sentences. He is experiencing all the deprivations of incarceration, including loss of contact with friends and family, lack of privacy, and the lack of freedom of movement.

79. J.J.O.H.'s detention is causing a severe emotional and physical toll on himself and his family. For the first time in his life, he is experiencing suicidal ideation. *See* ECF No. 18-1, Declaration of J.J.O.H. ¶16. He struggles with the pain of insufficient medical care, insufficient food and hygienic products, and the isolation and violence of detention. *Id.* ¶¶18, 20, 21. Petitioner's detention is also causing serious difficulties for his family. He cannot work, so he can no longer help support or care for his family and cannot maintain regular communication with his loved ones. *Id.* ¶23. These harms are compounding as J.J.O.H.'s detention continues—his mental state worsens, he continues to suffer physical impairments, and he thinks about giving up. *Id.* ¶¶16, 17, 19.⁸

⁸ In this Court's August 5, 2025 oral decision on petitioner's motion for a preliminary injunction, the Court found that J.J.O.H. had established he is suffering irreparable harm while detained.

80. The second *Mathews* factor requires courts to assess whether the challenged procedure creates a risk of erroneous deprivation of an individual's private right 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.

81. 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. The Immigration Judge twice determined that J.J.O.H. has established he does not pose a danger to the public and that any flight risk can be mitigated by bond, and the BIA agreed.

B. DHS's Detention of J.J.O.H. Pursuant to the Discretionary Stay Violates His Procedural Due Process Rights.

82. Petitioner's detention pursuant to the discretionary stay process is unlawful for several reasons, including: the granting of the discretionary stay was procedurally improper; J.J.O.H. did not have an opportunity to be heard violating his procedural due process rights; and the lack of decisional standards violated procedural due process.

1. The Issuance of the Discretionary Stay Was Procedurally Improper

83. 8 C.F.R. § 1003.6(c) states, "the following procedures will be applicable with respect to custody appeals in which DHS has invoked an automatic stay DHS may seek a

discretionary stay pursuant to 8 C.F.R. § 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.*” (emphasis added). The BIA may issue a decision on the discretionary stay motion “[i]f . . . the Board is unable to resolve the custody appeal within the period of the automatic stay.” *Id.* The Board’s decision to issue the discretionary stay with approximately a month and a half left in the automatic stay period was procedurally improper.

84. The timing of Respondents’ request—when there was a month and a half left of the automatic stay period—and their claim that it “moot[s] the challenges to ICE’s use of the automatic stay provision,” (ECF No. 26) suggest the request was made from a desire to insulate their unconstitutional application of the automatic stay provision in this case from judicial review, rather than a concern that the BIA may not decide the custody appeal within the automatic stay period.

85. The BIA’s premature issuance of the discretionary stay and DHS’s purported withdrawal of the Form EOIR-43 may further prolong Petitioner’s detention pending the resolution of the custody appeal. Should the BIA now consider J.J.O.H.’s detention to be pursuant to a discretionary stay, J.J.O.H.’s custody appeal would presumably no longer on the BIA’s expedited docket for automatic stay cases. *See* 8 C.F.R. § 1003.6(c)(3).

2. The Issuance of a Discretionary Stay Violated Due Process Because J.J.O.H. Was Deprived of an Opportunity to Be Heard

86. There was no pre-deprivation opportunity for J.J.O.H. to be heard; therefore, the BIA’s near instantaneous grant of DHS’s motion for a discretionary stay created a serious risk of erroneous deprivation. *See Hamama v. Adducci*, No. 17-cv-11910, 2018 WL 1905074, at *2 (E.D. Mich. Apr. 23, 2018) (finding the BIA’s issuance of discretionary stay without a pre-deprivation opportunity for petitioner to be heard violated due process).

87. There was no exigency to justify depriving Petitioner of his right to be heard pre-deprivation, nor did DHS provide J.J.O.H.'s immigration counsel advance notice of the request for a discretionary stay. *Cf. Organista v. Sessions*, 2018 WL 776241, at *2-3 (D. Ariz. Feb. 8, 2018) (denying preliminary injunction motion on claim that petitioner was not given opportunity to challenge discretionary stay, finding "exigency justifie[d] a rapid decision on [DHS's] . . . request for discretionary stay because this detainee is wealthy and is the subject of Mexican and Interpol arrest warrants" and was not in ICE custody, and pre-deprivation claim was weakened because DHS provided removal counsel advanced notice of stay request and the discretionary stay was not granted until the next day). Here, DHS failed to identify what "exigency" exists that led it to request this discretionary stay since Petitioner is currently detained by DHS's implementation of the automatic stay provision.

88. J.J.O.H. requested that the BIA reconsider its decision to grant a discretionary stay on July 17, 2025. *See* ECF No. 30-1, Pet. Second BIA Appeal Brief. However, the procedural due process violation cannot be cured after the deprivation has already occurred by allowing a motion to reconsider. *See Daily Servs., LLC v. Valentino*, 756 F.3d 893, 904 (6th Cir. 2014) (internal citation and quotations omitted) ("Procedural due process generally requires that the state provide a person with notice and an opportunity to be heard before depriving that person of a property or liberty interest."); *see also Hamama*, 2018 WL 1905074, at *2 (finding a post-deprivation opportunity to be heard insufficient in this circumstance).

3. The BIA's Issuance of a Discretionary Stay Violated Due Process Because It Lacked Adjudication Standards.

89. The BIA issued the discretionary stay in a three-sentence decision that merely states, "[a]fter consideration of all the information, the Board has concluded that the motion for

emergency stay of the bond order will be granted” only two hours after DHS filed its motion. *See* ECF No. 26-1.

90. The regulations governing discretionary bond stays do not specify any adjudication standard for the BIA’s adjudication of bond stay requests. *See* 8 C.F.R. §§ 1003.19(i)(1), 1003.6(c)(5),

91. The ordinary stay standard that is familiar and applicable before the federal courts requires a four-factor test: (1) whether the applicant has shown a likelihood of success on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies. *See Nken v. Holder*, 556 U.S. 418, 425 (2009). In the immigration context, the last two factors merge because the government is both the opposing litigant and public interest representative. *Id.* at 435.

92. As recognized by the *Nken* court, a stay is an extraordinary remedy that constitutes an “intrusion into the ordinary processes of administration and judicial review” that should not be applied reflexively. *Id.* at 427 (internal citations omitted). The “parties and the public, while entitled to both careful review and a meaningful decision, are also generally entitled to the prompt execution of orders that the legislature has made final.” *Id.* at 427. A stay of an order directing the release of a detained person is an “especially” extraordinary step, because “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

93. Multiple courts that have found the automatic stay provisions to be in violation due process have held that *if* a discretionary stay decision mirrored the traditional stay standard before the federal courts, such a stay could pass constitutional muster. *See Gunaydin*, 2025 WL 1459154,

at *9 (describing a discretionary stay process that must include a threshold standard of showing likelihood of success on the merits, risk of irreparable injury, and the balance of interests); *Zavala*, 310 F. Supp. 2d at 1078 (finding that seeking a stay under 8 C.F.R. § 1003.19(i)(1) would require the government to demonstrate “that it was likely to succeed on the merits of its appeal to the Board and that it would suffer irreparable harm in the interim”); *Ashley*, 288 F. Supp. 2d at 671 (describing a stay request that would require the government to show that “it was likely to succeed on its appeal and would suffer irreparable harm in the meantime”).

94. The BIA’s grant of DHS’s discretionary stay request in this case bore no resemblance to the evaluation of a traditional stay request before a federal court. The discretionary stay grant was unconstitutional in this case, not because it relied on constitutionally flawed standards, but because it relied on no standards at all.

4. The Discretionary Stay Does Not Prevent the Court from Evaluating the Use of the Automatic Stay or the Constitutionality of Petitioner’s Detention.

95. Although DHS has requested and received a discretionary stay of the Immigration Judge’s orders releasing J.J.O.H., this neither insulates the unconstitutional use of the automatic stay provision from judicial review, nor makes Petitioner’s continued detention constitutional.

96. “The Supreme Court has been unambiguous that executive detention orders, which occur without the procedural protections required in courts of law, call for the most searching review.” *Velasco Lopez*, 978 F.3d at 850 (citing *Boumediene v. Bush*, 553 U.S. 723, 781–83, (2008)). Respondents’ violation of J.J.O.H.’s due process rights began with DHS’s first invocation of the automatic stay provision on March 18, 2025, and cannot be cured by any *post hoc* rationalization after that unlawful detention is challenged. Due process requires that detention be lawful *at the time* of detention, not weeks or months later if an alternative basis for detention subsequently emerges. Judge Román in this District, for example, rejected ICE’s attempts to

correct its initial unlawful detention of a noncitizen where the agency sought to provide him notice of its intent to reinstate his removal order well after he filed a petition seeking release. *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 365 (S.D.N.Y. 2019). As the court concluded, “[the writ of habeas corpus] relates back to when Petitioner was first unlawfully detained, and it can be used to equitably redress that unlawful detention.” *Id.* The court further noted that “the Supreme Court has repeatedly upheld prisoners’ rights to challenge the constitutionality of their detentions, and allow[ed] courts to implement corrective remedies, regardless of whether there were other bases for the petitioners to be subsequently detained.” *Id.* at 366; *see also Arias Gudino v. Lowe*, No. 1:25-cv-00571, 2025 WL 1162488 (M.D. Pa. Apr. 21, 2025) (ordering petitioner’s release where ICE provided a basis for his detention after his unlawful detention). Habeas courts “must use their authority to consider not only the present circumstances of confinement, but the actions that led to it.” *Ozturk v. Trump*, No. 2:25-cv-374, 2025 WL 1145250, at *15 (D. Vt. Apr. 18, 2025).

97. It was not until Petitioner moved for a preliminary injunction that Respondents manufactured a separate basis for J.J.O.H.’s continued detention by requesting a discretionary stay from the BIA on the same day that Respondents filed their opposition to Petitioner’s preliminary injunction motion. Herr. Decl. ¶21. Similarly, DHS did not request a discretionary stay during the first bond appeal, prior to the filing of this Petition, and only attempted to withdraw the Form EOIR-43 after oral argument on the preliminary injunction motion where withdrawal was raised.

98. Further, even after the issuance of the discretionary stay and ICE’s purported withdrawal of the automatic stay, Petitioner remains detained pursuant to the automatic stay scheme. Additional regulatory stays provided for in the automatic stay regulations (8 C.F.R. § 1003.6), that extend Petitioner’s detention, such as the discretionary stay or a potential stay upon referral of the BIA’s decision to the Attorney General by DHS, would *only* be triggered *because*

ICE invoked an automatic stay of the immigration judge's bond decision via Form EOIR-43 at the inception of the BIA custody appeal, and constitute regulatory extensions of the automatic stay. *See Gunaydin*, 2025 WL 1459154, at *5 (describing potential extensions of the automatic stay, including the use of the discretionary stay in conjunction with the automatic stay, to be continued detention pursuant to the initial automatic stay). For example, the *Gunaydin* court described 8 C.F.R. § 1003.6(d) as stating that if the BIA upholds an immigration judge's custody ruling, "the automatic stay would *remain in place* for an additional five business days to permit the Secretary or a designated DHS official to decide whether to refer the decision for the Attorney General's review." *Id.* (emphasis added).

99. Had ICE not invoked an automatic stay preventing Petitioner's release after the immigration judge granted bond, he would have been released from immigration custody and in the community during the pendency of the BIA appeals and any future Attorney General referral, and no stay under 8 C.F.R. § 1003.6(c)(5) or (d) would be triggered. Thus, the entire period of Petitioner's detention is attributable to ICE's use of the automatic stay and therefore Respondents cannot shield their use of the automatic stay in this case from judicial review.

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

100. 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).

101. 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 Id.* 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 Immigration Judge has *twice* ordered J.J.O.H.’s release on bond and DHS continues to utilize the automatic stay scheme to overrule and render meaningless the Immigration Judge’s bond determinations, as well as the BIA’s decision affirming the decision to release J.J.O.H. on bond.

102. Several district courts have considered similar challenges and found that the automatic stay provision violates noncitizen’s 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. 07-cv-800, 2007 WL 3051601, at *20 (W.D. Tex. Oct. 18, 2007).

103. Moreover, Petitioner’s detention pursuant to the discretionary stay also violates his substantive due process rights. As discussed *supra*, J.J.O.H.’s continued detention pursuant to the discretionary stay bears no reasonable relation to legitimate government objectives because he has twice met his burden to prove he is not a danger to the community and that any risk of flight is sufficiently mitigated by bail.

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

II. J.J.O.H.’s Detention is *Ultra Vires* to the Immigration and Nationality Act

105. Congress conferred the power to determine release noncitizens 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 set forth by Congress is invalid. *See Romero v. INS*, 39 F.3d 977, 980 (9th Cir.1994).

106. The court in *Zabadi* found the automatic stay regulation “*ultra vires* because it eliminates the discretionary authority of immigration judges to determine whether an individual may be released.” 2005 WL 1514122, at *1.

107. This issue was similarly before the court in *Almonte Vargas v. Elwood*, No. 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 automatic stay 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.

108. 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 [noncitizens] 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 [noncitizen] 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 [noncitizens], 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 [noncitizen] should be held without bail or has set bond at \$10,000 or more.

310 F.Supp.2d at 1079; *see also Ashley*, 288 F.Supp.2d at 672-73 (“As Congress specifically exempted [noncitizens] like Petitioner from the mandatory detention of § 1226(c), it is unlikely

that it would have condoned this back-end approach to detaining [noncitizens] like Petitioner through the combined use of § 1226(a) and § [1003.19](i)(2).”).

III. The Proper Remedy Is Immediate Release.

109. The proper remedy for Respondents’ unilateral invocation of the automatic stay provision, thus overruling the reasoned decisions of the Immigration Judge for a second time and the BIA, and its constitutionally and procedurally flawed use of a discretionary stay is to order J.J.O.H.’s immediate release.

110. “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.

111. Release is the only appropriate remedy for Respondents’ shocking disregard for J.J.O.H.’s fundamental due process rights. *See Gunaydin*, 2025 WL 1459154 (ordering release on bond as ordered by the immigration judge, thus properly effectuating the immigration judge’s determination); *Mohammed H.*, 2025 WL 1692739 (same); *Aguilar Maldonado*, 2025 WL 2374411 (same).

IV. Petitioner Should Be Released on Bail Pending the Adjudication of this Petition.

112. Petitioner merits release pending the adjudication of this Petition pursuant to *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001).

113. *Mapp* established the controlling bail standard: “a court considering a habeas petitioner’s fitness for bail must inquire into whether the habeas petition raises substantial claims

and whether extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy effective.” 241 F.3d at 230 (cleaned up).

114. A substantial claim exists where a petitioner demonstrates that he is “very likely to succeed” on the claim. *United States v. Manson*, 788 F. App’x 30, 32 (2d Cir. 2019). This Petition details J.J.O.H.’s strong arguments that he is entitled to release, and the BIA’s procedurally and constitutionally flawed discretionary stay does not alter this. In particular, J.J.O.H.’s substantive and procedural due process claims raise “important issues concerning potential constitutional violations” that “satisfy the *Mapp* requirement of substantial questions.” *Mahdawi v. Trump*, No. 2:25-cv-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025).

115. Under *Mapp*, courts must find “extraordinary circumstances” before granting bail. It is evident that Respondents’ serial application of rarely employed procedural stays to prevent his release in spite of three judicial findings ordering him released on bond constitute extraordinary circumstances. Additionally, J.J.O.H.’s declining health in custody provides another basis for finding extraordinary circumstances. *See Ozturk v. Trump*, No. 2:25-cv-374, 2025 WL 1420540 at *8 (D. Vt. May 16, 2025) (finding petitioner’s “declining health in custody,” in particular her asthma, was an “additional extraordinary circumstance which warranted immediate release”). J.J.O.H.’s detention is inhumane and life-threatening. Over the course of more than six and a half months of detention, he has struggled with worsening depression, and is now experiencing suicidal ideation and enduring unrelenting pain from broken teeth, headaches and a knee injury, but has not received adequate access to medical care. *See* ECF No. 18-1, J.J.O.H. Decl. ¶¶16, 18. As J.J.O.H. is faced every day with the impossible choice between enduring continued detention causing increasing pain and suicidal ideation, or giving up and returning to Venezuela where he would be tortured or killed, is it necessary for him to be released to make the habeas remedy

effective. *Id.* ¶¶17,19; *see also Ozturk*, 2025 WL 1420540 at *8 (“if the Court later finds that [his] substantial claims are in fact proven claims, [his] detention will have been an unconstitutional deprivation with no public purpose or benefit.”).

116. Finally, as the Immigration Judge and the BIA have already found, J.J.O.H. proved he is not a danger to the public and that any potential flight risk can be mitigated if he is released on bond. J.J.O.H. should be released given his lack of a criminal record, affirmative asylum application, strong community ties, work history, and worsening health. *Cf Ozturk*, 2025 WL 1420540 at *8 (ordering petitioner released even though an immigration judge had denied bond and DHS urged the court to avoid “‘improper judicial review of a bail determination’ of the [immigration court].”); *see also Mapp*, 241 F.3d at 244 (noting that the district court had ordered release after finding that petitioner was not a serious flight risk or threat to the community).

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF PROCEDURAL DUE PROCESS – STAY OF BOND DETERMINATIONS U.S. Const. amend. V

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

118. The Due Process Clause of the Fifth Amendment provides in relevant part that: “No person shall be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

119. The automatic stay regulations on their face violate procedural due process. The automatic stay regulations conflate the prosecutorial and adjudicatory role, creating an unacceptable risk of erroneous deprivation of Petitioner’s most fundamental liberty interests.

120. DHS has *twice* unilaterally overruled an Immigration Judge's individualized determination that Petitioner does not present a risk to public safety or a sufficiently high risk of flight that cannot be mitigated by setting bond, as well as the BIA's individualized determination on bond.

121. Respondents' use of the discretionary stay to manipulate the automatic stay regulatory scheme and prevent Petitioner's release on bond violates procedural due process because it was issued without a pre-deprivation opportunity to be heard, was procedurally improper, and lacked clear decisional standards.

122. Petitioner's continued detention triggered by 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

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

124. 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).

125. Petitioner's ongoing 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 and that any flight risk would be mitigated by bond. That Immigration Judge has twice ordered Petitioner's release on bond and the BIA agreed that release on bond was appropriate.

126. Respondents' insistence on repeatedly invoking the automatic stay provision and utilizing its regulatory scheme, such as the discretionary stay, to prevent Petitioner's release on bond as ordered by the Immigration Judge and affirmed by the BIA, is therefore arbitrary as it does not serve a legitimate government interest.

127. Petitioner's detention is not narrowly tailored to serve any other compelling state interest.

128. 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

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

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

131. 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.

132. 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 and the authority of the BIA to review these determinations, thereby exceeding the authority bestowed upon the agency by Congress.

133. 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)

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

135. 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).

136. 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 in order to mitigate any flight risk concerns. 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.

137. Respondents' actions are 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.

COUNT FIVE
VIOLATION OF PROCEDURAL DUE PROCESS – PROLONGED DETENTION
U.S. Const. amend. V

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

139. Petitioner's prolonged detention in civil immigration custody—now over six and a half months—violates the Due Process Clause as there is no constitutionally adequate mechanism to seek release.

140. Petitioner has been detained over six and a half months and his immigration proceedings are likely to last for many additional months, if not years. Under Second Circuit case law, his detention has passed the point where heightened procedural protections are necessary. *See Velasco Lopez*, 978 F.3d at 855 n.13 (noting that “a presumptively constitutional period of detention does not exceed six months”) (citing *Zadvydas*, 533 U.S. at 701)); *see also Black v. Decker*, 103 F.4th 133, 151-52, 157-58 (2d Cir. 2024) (concluding that seven months was sufficiently lengthy to trigger special protections against arbitrary detention, including a bond hearing where ICE had to bear the burden by clear and convincing evidence, in the mandatory detention context).

141. Respondents have detained Petitioner without providing him a bond hearing at which the government bears the burden of proof to justify continued detention by proving by clear and convincing evidence that he is a danger to others or a flight risk. The BIA did not consider the

government's burden at the time of adjudicating the discretionary stay. And the government has not proven by clear and convincing evidence that Petitioner is a danger or flight risk.

142. Taken together, the individual factors in Petitioner's case overwhelmingly demonstrate the unreasonableness of his continued detention and require a constitutionally adequate, individualized hearing before this Court at which Respondents bear the burden of establishing that Petitioner's continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered. *See L.G.M. v. LaRocco*, No. 25-cv-263, 2025 WL 2173577, at *2 (E.D.N.Y. July 31, 2025) (ordering a bond hearing before the district court for petitioner detained pursuant to 8 U.S.C. § 1226(c)).

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. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
4. Declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. § 1226(a);
5. Declare that Petitioner's detention violates the Administrative Procedure Act;
6. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody on his own recognizance or under parole, bond, or other reasonable conditions of supervision;
7. In the alternative, grant a writ of habeas corpus ordering a constitutionally adequate, individualized hearing before this District Court at which Respondents bear the burden of establishing that Petitioner's continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered;

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: August 19, 2025

Respectfully submitted,

/s/Alyssa Briody

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Lucas Marquez

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