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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ROBERTO VLADIMIR PORTILLO MARTINEZ, Petitioner, v. PATRICIA HYDE, Field Office Director, TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, KRISTI NOEM, U.S. Secretary of Homeland Security, PAMELA BONDI, Attorney General of the United States, and and ANTONE MONIZ, Superintendent, Plymouth County Correctional Facility, Respondents.	Case No. 1:25-cv-11909 **SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner, Roberto Vladimir Portillo Martinez, is a 22-year-old native of El Salvador designated an Unaccompanied Child upon his entry to the United States in 2016. He was placed in removal proceedings and then released from the custody of the Office of Refugee Resettlement in November 2016. On December 18, 2019, his petition for Special Immigrant Juvenile Status ("SIJS") was approved, and he was awaiting his ability to adjust to lawful permanent residency based on that status. His asylum application filed as an unaccompanied child also remains pending. Roberto is gainfully employed building and repairing watercraft for a Massachusetts company contracted by the U.S. Coast Guard. He helps to support his minor brother and chronically ill U.S. citizen grandmother, which allows his mother to care for and visit his minor sister, who resides in long-term inpatient medical care.

2. On July 3, 2025, Roberto was first detained by Immigration & Customs Enforcement (ICE) agents without notice on the street where he resides in Lynn, MA.

3. Although an immigration judge ("IJ") conducted an individualized bond determination, awarded a $10,000 bond to Roberto on July 21, 2025, and that bond was paid, Respondents have utilized various mechanisms, as described below, to keep Roberto detained without due process.

4. Subsequent to Petitioner's posting bond and July 30, 2025 release from ICE custody, the Department of Homeland Security (DHS) was granted a discretionary stay of that bond by the Board of Immigration Appeals (BIA) only minutes after DHS's request was lodged by the BIA.

5. While DHS has maintained that Petitioner is a flight risk and danger to society, he continued to reside with his family at his same address and returned to his same job as prior to his initial detention. He was not alleged to have engaged in any new criminal behavior. Nevertheless, when he attended his September 8, 2025 asylum interview with U.S. Citizenship & Immigration Services (USCIS), he was taken back into ICE custody by officers awaiting him at his scheduled asylum interview.

6. To remedy the violation of Petitioner's statutory and Due Process rights and clarify the IJ's authority to grant bond, this Court should grant the instant petition for a writ of habeas corpus.

JURISDICTION AND VENUE

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

9. Venue is proper because Petitioner is presently detained at Plymouth County Correctional Facility (PCCF) in Plymouth, MA.

PARTIES

10. The Petitioner, Roberto Vladimir Portillo Martinez, is an asylum seeker and Special Immigrant Juvenile who is detained by the Respondents in Plymouth, MA. Prior to his detention, he resided in Lynn, MA with his mother, younger brother, and grandmother.

11. Respondent Patricia Hyde is the Field Director for the Boston, MA Immigration & Customs Enforcement ("ICE") office of Enforcement and Removal Operations ("ERO"), which is responsible for ERO operations in New England.

12. Respondent Todd Lyons is the Acting Director for ICE and is responsible for ICE's policies, practices, and procedures, including those relating to the detention of noncitizens during their removal procedures.

13. Respondent Kristi Noem is the U.S. Secretary of Homeland Security and is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

14. Respondent Pamela Bondi is the United States Attorney General. She oversees immigration judges and the Board of Immigration Appeals.

15. Respondent Antone Moniz is the Superintendent of the Plymouth County Correctional Facility and is petitioner's immediate custodian.

16. All respondents are named and sued in their official capacities.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Prior to the July 21, 2025 Custody Redetermination Hearing

17. Petitioner Roberto Vladimir Portillo Martinez in a 22-year-old young man from El Salvador.

18. At the age of 13, he came to the United States seeking protection and a safe caretaker. He entered the United States on or about October 21, 2016, without a parent or legal guardian, and therefore was designated an unaccompanied child ("UC") and placed in the custody of the Office of Refugee Resettlement (ORR). *See* 6 U.S.C. §279(g)(2); Exhibit A: Petitioner's Designation as an Unaccompanied Child. Because he sought protection at a U.S. port of entry, Roberto's Notice to Appear for removal proceedings alleges him to be an "arriving alien," but because he was designated a UC, he could not be subject to expedited removal or mandatory detention, as elaborated below. *See* Exhibit B: Notice to Appear; 8 U.S.C. § 1232(a)(5)(D); 8 C.F.R. § 236.3.

19. In November 2016, he was released to his father in California, by whom he suffered significant physical and verbal abuse. Exhibit C: Petitioner's Affidavit. Upon discovering the abuse, his mother brought him to Massachusetts. He attended eighth grade and high school in Chelsea, MA, but did not complete his education. *Id.*

20. In May 2019, a Massachusetts juvenile court judge entered findings that Roberto's reunification with his father is not viable due to abuse and neglect and that it is not in his best interests to return to El Salvador. Based on these findings, he was granted Special Immigrant Juvenile Status by the U.S. Citizenship & Immigration Services ("USCIS") in December 2019. *See* Exhibit D: I-360 Special Immigrant Juvenile Status Approval Notice.

21. A person granted Special Immigrant Juvenile Status is eligible to become a Lawful Permanent Resident ("LPR") of the United States and is deemed paroled into the United States by operation of statute. *See* 8 U.S.C. § 1255(h). However, due to the delay between the grant of Special Immigrant-Juvenile status and formal adjustment to LPR status due to a backlog in visa availability, Roberto has not yet obtained LPR status.

22. Additionally, on June 1, 2020, Petitioner filed for asylum as an unaccompanied child. *See* Exhibit E: Unaccompanied Child I-589 Application Receipt Notice. As an unaccompanied child, the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA") provides that USCIS, and not the immigration court, has initial jurisdiction of the applicant's asylum application. TVPRA § 235(d)(7); 8 U.S.C. § 1158(b)(3)(C).

23. Pursuant to the settlement reached in *J.O.P. v. DHS*, No. 8:10-cv-01944-SAG (D. Md. Nov. 25, 2024), Roberto is included in a class of individuals entitled to adjudication by the USCIS' Asylum Office of their unaccompanied child asylum applications that were filed on or before February 24, 2025, and he continues to await that adjudication.

24. On August 16, 2021, the Boston Immigration Court administratively closed Petitioner's removal proceedings while he awaited adjudication of his claims by USCIS.

25. Between 2019 and 2021, Roberto was subject to three juvenile delinquency proceedings, all of which were dismissed without any adjudication of delinquency and the last of which arose out of an interaction with his mother's abusive partner who has since left the family household. *See* Exhibit F: Letters of Juvenile Defense Counsel. An additional juvenile matter in 2019 was resolved prior to the filing of a complaint via magistrate hearing, wherein it was found that the allegations were premised upon the actions of a juvenile who was mistakenly identified as Roberto. *See* Exhibit C: Petitioner's Affidavit. To the extent that further discussion or documentation of delinquency matters may be necessary in this matter, counsel will seek to seal this case in light of the protections provided for by Mass. Gen. Law c. 119 § 60A.

26. Since reaching the age of majority, Roberto's only intersections with the criminal justice system have been driving-related charges, all of which are resolved. In 2024, Roberto was charged with driving offenses in Chelsea, MA District Court. *See* Exhibit G: Chelsea District Court Docket

No. 2414CR002057. He appeared to all of his scheduled court hearings, but was momentarily defaulted once when his hearing was scheduled to occur by zoom, but he instead appeared in court in person. *Id.* On January 8, 2025, a continuance without a finding was entered in Chelsea, MA District Court with respect to a charge of negligent operation of a motor vehicle. *Id.* On May 19, 2025, Roberto appeared on personal recognizance after an alleged probation violation. *Id.* On May 24, 2025, Roberto completed an 8-hour safe driving course pursuant to his probation orders. *See* Exhibit H: Certificate of Completion. After Roberto appeared once more on recognizance in June 2025, the matter was concluded on July 24, 2025, while Roberto was in ICE custody. *See* Exhibit G. Roberto's other driving charges were dismissed without any adjudication of guilt.

27. On July 3, 2025, Roberto was detained by ICE near his home in Lynn, MA and held without bond. He remained in custody at the ICE Field Office in Burlington, MA until approximately the evening of July 6, 2025, when he was brought to Plymouth County Correctional Facility for detention.

28. According to records submitted by the Department of Homeland Security ("DHS") in the bond proceedings, ICE in the course of Roberto's arrest issued an I-200 warrant of arrest and I-286 Notice of Custody Determination, citing Roberto's detention pursuant to INA § 236. *See* Exhibit I: I-286 Notice of Custody Determination and I-213 Excerpt.

Custody Redetermination Proceedings Before the Executive Office for Immigration Review (EOIR)

29. On July 21, 2025, an IJ found that as an individual who had entered the U.S. and was initially released from DHS custody as an unaccompanied child ("UC"), Roberto was not subject to mandatory detention. She further found that DHS had not met its burden of showing dangerousness, and set a bond of $10,000. *See* Exhibit J: IJ Bond Order.

30. On July 22, 2025, DHS filed a motion to reconsider the IJ's decision, arguing that Roberto is ineligible for bond, and stayed the posting of his bond pursuant to 8 C.F.R. § 1003.19(i)(2). Attached to its motion to reconsider, DHS attached a "cancelled" form I-286 Notice of Custody Determination, in support of its allegation that Roberto had not been detained under INA § 236 (8 U.S.C. § 1226).

31. On July 29, 2025, Roberto, through counsel, filed a response and opposition to DHS's motion to reconsider. Later that same day, DHS rescinded its automatic stay. *See* Exhibit K: Electronic Docket of Bond Proceeding.

32. On the morning of July 30, 2025, Roberto posted bond and was released. At 4:24 pm on July 30, 2025, after Roberto's release, DHS's appeal of the IJ's decision was receipted by the BIA. *See* Exhibit L: 7/30/2025 eROP Notice of DHS Motion for Stay.

33. The following morning, undersigned counsel filed an appearance with the BIA as well as a voluntary dismissal of the habeas due to Roberto's release. The appearance before the BIA was not accepted into the record until 3:03 pm on July 31, 2025. Only after the appearance was accepted could undersigned counsel see the appeal record that had developed since the day prior, including DHS's appeal, DHS's motion for stay of the bond pursuant to 8 C.F.R. § 1003.19(i)(1), and the BIA's entry of the stay of bond, entered on July 30, 2025, presumably sometime after 4:24 pm, and listing Roberto as *pro se*. *See* Exhibit K: Electronic Docket; Exhibit M: BIA Stay Order.

34. Upon discovery of the BIA's stay of bond on the afternoon of July 31, 2025, undersigned counsel sought to withdraw the voluntary dismissal filed earlier that same day, and this Court granted that request.

35. From July 31, 2025, until September 8, 2025, Roberto remained living with his family in Lynn, MA, and continued working at his same boat mechanic job in Marblehead, MA, where he

had been living and working prior to his July 2025 detention. *See* Exhibit C: Petitioner's Affidavit. It cannot be that the government truly believes he is a flight risk and danger when, knowing where Roberto lived and worked, they waited until he dutifully attended his asylum interview to redetain him.

LEGAL FRAMEWORK

General Framework of Mandatory v. Non-Mandatory Detention

36. Under the INA, two statutes govern the detention of noncitizens who do not yet have a final order of removal: 8 U.S.C. §§ 1225 and 1226.

37. Section 1226 governs the detention of noncitizens in "standard" removal proceedings under 8 U.S.C. § 1229a. Such individuals are entitled to a bond hearing absent the applicability of certain criminal inadmissibility provisions. *See* 8 U.S.C. § 1226(a), (c).

38. On the other hand, mandatory detention – meaning detention without bond – applies to those designated arriving aliens and who are subject to the procedures for the credible fear process described in 8 U.S.C. § 1225(b)(1) as well as to other recent arrivals "seeking admission" described in 8 U.S.C. § 1225(b)(2). *See* 8 U.S.C. § 1225(b)(1)(B)(IV); 8 U.S.C. § 1225(b)(2)(A).

39. As described below, Petitioner's custody is squarely under the framework of 8 U.S.C. § 1226(a), as his unaccompanied minor designation when he entered the U.S. prohibits him from being subject to the expedited removal or credible fear process.

The Framework Governing Detention and Release of Individuals Initially Encountered as Unaccompanied Children

40. An "unaccompanied alien child" or "UC" is defined as a child who, when initially encountered by DHS, has no lawful immigration status, has not yet attained 18 years of age, and who is not accompanied by a parent or legal guardian. 6 U.S.C. § 279.

41. Pursuant to the Trafficking Victims Protection Reauthorization Act ("TVPRA"), any unaccompanied minor sought to be removed from the United States by DHS, except for certain unaccompanied minors from contiguous countries, shall be placed in removal proceedings under 8 U.S.C. § 1229a. 8 U.S.C. § 1232 (a)(5)(D)(i). Therefore, the TVPRA prohibits unaccompanied minors from non-contiguous countries from being placed in expedited removal proceedings and subject to the credible fear process, where they can be removed without a hearing. 8 U.S.C. §§ 1232(a)(2)(B), (a)(3), (a)(5)(D); *cf.* 8 U.S.C. § 1225(b).

42. The detention and release of those who enter the U.S. as UCs is brought under the framework of 8 U.S.C. § 1226 through the implementing regulations found at 8 C.F.R. part 236. Regardless of how a UC is initially encountered by DHS, their detention is governed by 8 C.F.R. § 236.3: "Processing, detention, and release of alien minors," which lays out procedures for determining UC (or "UAC") classification and rules governing their apprehension and custody.[1] For UCs, custody and release is always governed by the scheme laid out in 8 C.F.R. § 236.3(f) and 8 U.S.C. § 1232(b), (d). There is no exception to this rule for UCs who, like Petitioner, may have been designated an arriving alien on their original Notice to Appear. *See* 8 U.S.C. § 1232(a)(2)(D); 8 U.S.C. § 1225(b)(1)(B)(IV) (stating only arriving aliens who are subject to the credible fear process are subject to mandatory detention).

43. Furthermore, while certain individuals considered "seeking admission" are subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A), this can never be true for a UC, even after turning 18 years of age. The language of 8 U.S.C. § 1232(c)(2)(B) orders that UCs who reach the age of 18 and are in DHS custody be placed in "the least restrictive setting available after taking

[1] Note that while several provisions of 8 C.F.R. § 236.3 were enjoined from taking effect, 8 C.F.R. § 236.3(f) was allowed to take effect. *Flores v. Rosen*, 984 F.3d 720, 737 (9th Cir. 2020).

into account the alien's danger to self, danger to the community, and risk of flight." To find that a UC, after turning 18, could become an applicant for admission and thereby subject to mandatory detention would render the statute at 8 U.S.C. § 1232(c)(2)(B) void contrary to principles of statutory interpretation. *See, e.g., Lopez v. Sessions*, No. 18-cv-4189-RWS, 2018 WL 2932726, at *10, 13 (S.D. NY June 12, 2018). This statutory and regulatory framework clearly places Roberto's custody outside of the realm of mandatory detention and under 8 U.S.C. § 1226(a).

44. That Petitioner's initial detention and release was governed by 8 U.S.C. § 1226 is consistent with the fact that Petitioner was re-detained in July 2025 on a warrant pursuant to 8 U.S.C. § 1226(a) and issued an I-286 Notice of Custody Determination citing his detention as falling under INA § 236 (8 U.S.C. § 1226). *See* Exhibit I; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *7-8 (D. Mass. July 7, 2025) (finding that detention with a warrant is governed by 8 U.S.C. § 1226); *Martinez v. Hyde*, No. 1:25-cv-11613, 2025 WL 2084238, at *4 n.11 (D. Mass. July 24, 2025) (finding that, the issuance of an I-286 Notice of Custody Determination constitutes "clear evidence" that DHS at some point found Petitioner subject to the authority of 8 U.S.C.§ 1226).

The Impact of the Approval of Special Immigrant Juvenile Status on Detention

45. The grant of Special Immigrant Juvenile Status (SIJS) further prevents a grantee from being subject to mandatory detention. An award of SIJS transforms any noncitizen who may have previously been deemed an applicant for admission to an "alien present in the United States." *Rodriguez v. Perry*, 747 F.Supp.3d 911, 916 (E.D. Va. 2024). Because "the INA defines a 'special immigrant' as 'an immigrant who is present in the United States,'" a noncitizen's "SIJ status weighs in favor of finding that . . . he was an 'alien present' in the United States and was entitled to a bond hearing" under 8 U.S.C. § 1226. *Id*.

46. That SIJS grantees cannot be subject to mandatory detention also tracks with Congressional intent to treat them as "'an immigrant who is present in the United States'" – no longer an applicant for admission – and to provide "a host of procedural rights designed to sustain their relationship to the United States[.]" *Rodriguez*, 747 F. Supp. 3d at 916 (quoting *Osorio-Martinez v. Att'y General*, 893 F.3d 153, 171 (3d Cir. 2018)); *Diaz Calderon v. Barr*, No. 2:20-cv-11235, 2020 WL 5645191, at *11 (E.D. Mich. Sept. 22, 2020). As Congress intended, a SIJS grantee enjoys the constitutional right not to be detained or summarily deported without procedural due process protection "that distinguishes them from arriving aliens" or other applicants for admission. *Rodriguez*, 747 F. Supp. 3d at 918; *see also Osorio-Martinez,* 893 F.3d at 173-74 (finding that SIJ grantees enjoy some level of due process rights including individualized review on account of their SIJ designation); *Duchi-Naula v. Tatum*, No. 1:25-cv-00247-LM-AJ, Doc. 17 (D. NH. July 7, 2025) (ordering bail for a SIJS grantee previously designated an arriving alien on his NTA under similar reasoning). Accordingly, Roberto's grant of SIJ affords him a level of due process that necessarily places him outside of the framework of mandatory detention.

The Cancellation of the I-286 Notice of Custody Determination Has No Impact on the Non-Mandatory Nature of Roberto's Detention in July 2025

47. On July 3, 2025, Roberto was detained by ICE pursuant to an I-200 Warrant of Arrest and I-286 Notice of Custody Determination, citing his custody to be pursuant to INA § 236 (8 U.S.C. § 1226). On July 13, 2025, DHS filed the I-286 Notice of Custody Determination with the Immigration Court. *See* Exhibit I. In its July 22, 2025 motion to reconsider the immigration judge's grant of bond, DHS then produced a document alleged to be a "cancellation" of the I-286 Form to justify Roberto's mandatory detention. However, the alleged "cancellation" also does not change the fact that on July 3, 2025, DHS made a custody determination to detain Roberto under 8 U.S.C. § 1226, which is now the subject of this habeas petition. *See, e.g., also Martinez*, 2025

WL 2084238, at *4 n. 11 (discussing how the existence of an I-286, even if cancelled, is clear evidence that DHS had previously treated the subject of the custody determination as subject to 8 U.S.C. § 1226).

The Immigration Judge Lawfully Conducted the July 21, 2025 Bond Hearing

48. The Due Process Clause of the Fifth Amendment protects both citizens and noncitizens. *See Zadvydas v. Davis,* 533 U.S. 678, 693 (2001) (Fifth Amendment protections apply to noncitizens "whether their presence here is lawful, unlawful, temporary, or permanent").

49. Due Process safeguards are essential to someone in immigration detention, which results in deprivation of liberty and separation them from one's family, and because such detention is "frequently prolonged." *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 30 (1st Cir. 2021). For these reasons, the minimum Due Process required for those in immigration detention is that a detainee receive an individualized bond hearing to determine whether they can be released on bond or must be detained due to flight risk or dangerousness. *See Hernandez-Lara*, 10 F.4th at 41.

50. As someone whose custody falls under 8 U.S.C. § 1226(a), who has resided in the United States for almost a decade, and has been granted SIJ protection, Roberto was entitled to the due process of an individualized bond hearing. *Id.*

The Entry of the Discretionary Stay of Bond Cannot Satisfy Due Process

51. The procedure, or lack thereof, by which the immigration bond was stayed does not, however, comport with the due process safeguards to which Roberto is entitled. Regulations provide for two mechanisms by which an immigration judge's custody order may be stayed such that a noncitizen must remain in custody even after the granting of bond. First, DHS may unilaterally stay the bond by filing a Form EOIR-43, in which DHS need only write the noncitizen's name, alien number, bond amount, and date. *See* 8 C.F.R. § 1003.19(i)(2). This Court

has already found that, in the case of a typical noncitizen separated from his family and whose posting of bond already minimizes flight risk, the *Mathews* factors counsel that the automatic stay process violates procedural due process. *See Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976); *Sampiao v. Hyde*, No. 1:25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025). Here, the unlawful imposition of the automatic stay upon Roberto's detention was withdrawn by DHS on July 29, 2025.

52. The regulations provide for a second stay mechanism under 8 C.F.R. § 1003.19(i)(1), whereby DHS may seek a discretionary stay of the custody order from the BIA while it appeals the immigration judge's decision, or the BIA may do so on its own motion. In the instant case, Roberto was released shortly after 2:00 pm on July 30, 2025. At 4:24 pm, DHS's appeal was accepted by the BIA, and counsel was concurrently noticed. Exhibit L: 7/30/2025 eROP Notice. Presumably it was at this same time that DHS's filing of the motion for discretionary stay was also accepted, but because the immigration court electronic filing system does not serve counsel with BIA filings until counsel's notice of appearance on appeal is accepted, counsel did not receive time-stamped service of DHS's motion for discretionary stay. Even if counsel has received such service, however, there would have been no opportunity to respond to DHS's motion. The following day when counsel's appearance on appeal was accepted by the BIA, the BIA's entry of the discretionary stay became visible, indicating it had been entered on July 30, 2024, evidently sometime between 4:24 pm and the BIA's close at 5:30 pm, and listing Roberto as *pro se*. Exhibit K: Electronic Docket. In fact, the BIA's grant of DHS's motion for stay was entered so close in time to DHS's motion that it appears on Roberto's immigration court docket *before* the acceptance of DHS's appeal or motion for stay. *Id.* In counsel's experience, this indicates that DHS's motion and the BIA's stay essentially occurred simultaneously.

53. The outcome of the *Mathews* factors in *Sampiao* is no different when applied to an evaluation of the discretionary stay of bond as it was imposed in Roberto's case. Due process also requires an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews*, 424 U.S. at 333. Roberto clearly received no such opportunity when the BIA seems to have instantaneously granted DHS's motion for stay.

54. To determine whether government conduct violates procedural due process, the Court weighs three factors: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures. *Id*. at 335.

55. Roberto's private interest is the right to be free from government detention and be with his family, including his minor siblings and U.S. citizen grandmother, for whom he shares financial and caregiving responsibilities with his mother. *See* Exhibit C: Petitioner's Affidavit. Despite being in custody for a civil offense, he is detained with and subject to the same rules as those incarcerated for criminal offenses. He and his family are deprived of his income, and his employer is deprived of a skilled boat mechanic they depend upon for the operation of their business. *Id.* Roberto's interest in being free from detention and with his family weighs heavily in the consideration of the *Mathews* factors. *See Sampiao*, 2025 WL 2607924 at *10.

56. Similarly, the risk of erroneous deprivation of Roberto's liberty is substantial. Roberto prevailed at the initial bond hearing. The stay is not based on any new evidence, finding of legal error, or finding of likelihood of success on appeal. Just like the automatic stay, the discretionary stay runs counter to the typical judicial process. *See Sampiao*, *id.* at *11. A stay is an extraordinary remedy. Even in the civil context, a stay is never granted as of right. Rather, the movant must

show a likelihood of success on the merits, a risk of irreparable injury, and that the balance of interests tips in the movant's favor. Here, a motion for discretionary stay does not require the government to make any such showing, or for the BIA to find as much. And here, the risk is significantly greater than in an ordinary civil case. Detention is at issue, and Roberto is facing a loss of liberty. There are no alternative procedures available to safeguard the risk of the loss of liberty.

57. The government's interest here carries little weight in comparison to Roberto's liberty interest, particularly where, as here, the government clearly saw no urgency to redetain Roberto for five weeks in spite of its claims that he is a danger to society and poses a risk of flight. As to these concerns, the immigration judge has already addressed them by requiring a significant bond of $10,000. The government has no special or compelling justification to continue detaining Roberto, and certainly not an interest that outweighs his interest in avoiding government restraint. *See, e.g., Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003) ("[T]he Government has not shown that any 'special justification' exists which outweighs Petitioner's constitutional liberties so as to justify his continued detention without bail.").

58. On balance, the private interests affected, the risk of erroneous deprivation of liberty, as well as the societal cost of both detaining Roberto and removing a breadwinner from his family all greatly outweigh the government's interest. *See id.*, at *12.

59. Therefore, the *Mathews* factors counsel that the stay in the instant case must be vacated, and Roberto must be released.

Further Exhaustion of Administrative Remedies is Not Required

60. The only possible avenue for further administrative exhaustion that Petitioner could pursue – a motion to the BIA to reconsider its entry of the discretionary stay – would be futile. Such a

motion would necessarily ask the BIA to find that the BIA had itself deprived Petitioner of due process in its entry of the stay of bond. Therefore, pursuing such a motion would be futile because not only is it unreasonable to believe that the BIA would find it had itself violated Petitioner's rights, but also the immigration courts lack jurisdiction to adjudicate constitutional claims. *See McCarthy v. Madigan*, 503 U.S. 140, 148, 112 S.Ct. 1081 (1992) (noting administrative exhaustion not required where, *inter alia*, the Petitioner's challenge is to the adequacy of the procedure or when the administrative body would be biased); *Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (holding "exhaustion is excused by the BIA's lack of authority to adjudicate constitutional questions and its prior interpretation" of the relevant statute).

61. Further exhaustion here is not required because Petitioner is being irreparably harmed by his ongoing unlawful detention. *See Aguiriano Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at *6-8 (D. Mass. Aug. 19, 2025) (no exhaustion required because "[o]bviously, the loss of liberty is a . . . severe form of irreparable injury" (internal quotation marks omitted)); *Flores Powell*, 677 F. Supp. at 463 (declining to require administrative exhaustion, including because "[a] loss of liberty may be an irreparable harm"); *cf. Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (citing *Bois v. Marsh*, 801 F.2d 462 468 (D.C. Cir. 1986), for proposition that "'[e]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest'").

62. There is also no statutory requirement for Petitioner to exhaust administrative remedies. *See Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025) ("[E]xhaustion is not required by statute in this context.").

63. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74,

(1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome).

CLAIMS FOR RELIEF

Violation of Right to Procedural and Substantive Due Process

1. The allegations in the above paragraphs are realleged and incorporated herein.

2. Roberto remains in the custody of Respondents under or by color of the authority of the United States – that is, subject to ICE custody at the direction of Respondents.

3. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that "[n]o person shall...be deprived of life, liberty, or property, without due process of law." U.S. Const. amend V.

4. It is undisputed that Petitioner has a right not to be detained arbitrarily. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) (any "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections") (quoting *Addington v. Texas*, 441 U.S. 418, 425 (1979)) (emphasis in original).

5. This Court's due process "inquiry is guided by the three-part balancing test articulated in *Mathews v. Eldridge*[,]" 424 U.S. 319, 335 (1976). *Id*. at 27. The result of this balancing test should be that the stay of the immigration judge's custody order as it occurred in this case is unconstitutional as applied to Petitioner, who is neither a danger to the community nor a flight risk, as demonstrated by the government's own lack of interest in redetaining him until it became administratively convenient for them when Roberto appeared at a government building for a scheduled appointment. *See Sampiao*, 2025 WL 2607924 at *9-12 (finding identical interests under the *Mathews* test counseled in favor of release in the context of the automatic stay provision).

6. Substantive due process asks whether a person's life, liberty, or property is deprived without sufficient purpose. There is no question that Roberto has been deprived of his liberty.

7. The government's continued detention of Roberto is not supported by any special interest or compelling justification that outweighs his liberty interest. Roberto's liberty interest, the risk of erroneous deprivation, and the public interest far outweigh the government's interest in continued detention. The application of the stay in Roberto's case violates his substantive due process rights, which requires the opportunity to be heard at meaningful time and in a meaningful manner. Roberto has not received that opportunity here.

8. The stay as imposed in Roberto's case violates his procedural and substantive due process rights under the Fifth Amendment of the U.S. Constitution, especially considering the protections from mandatory detention that Congress intended for UCs and the due process protections intended for SIJS grantees. *See* 8 U.S.C. §§ 1101(a)(27)(J), 1232, 1255(h); 8 C.F.R. § 236.3.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the District of Massachusetts;

(3) Order Respondents to promptly respond to the instant amended petition;

(4) Issue a Writ of Habeas Corpus finding that the statutory and regulatory scheme clearly places Roberto's custody within the framework of 8 U.S.C. § 1226(a), such that the immigration judge properly found authority to grant him bond;

(5) Declare that Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment;

(6) Order Respondent's release with his employment authorization document;

(7) Grant any further relief this Court deems just and proper.

Respectfully submitted,
Roberto Vladimir Portillo Martinez,
By his attorney,

Dated: October 6, 2025

/s/ *Elizabeth Badger*

Elizabeth Badger
BBO # 663107
Political Asylum/Immigration
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Roberto Vladimir Portillo Martinez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, having reviewed documentary and video evidence of the events described.

Dated this 6th day of October 2025.

/s/ *Elizabeth Badger*
Elizabeth Badger

CERTIFICATE OF SERVICE

I, Elizabeth Badger, hereby certify that this document filed through the ECF system will be sent electronically to the Respondents who are registered ECF participants as identified on the Notice of Electronic Filing (NEF).

Dated: October 6, 2025

/s/ *Elizabeth Badger*
Elizabeth Badger
BBO # 663107