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Attorney for Petitioners

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Heriberto Herrera Torralba,
Gaudencio Dominguez Castillo,
Jose Vazquez Jacobo.

Petitioners,

v.

Jason Knight, Acting Las Vegas/Salt Lake
City Field Office Director, Enforcement
and Removal Operations, United States
Immigration and Customs Enforcement
(ICE); John Mattos, Warden, Nevada
Southern Detention Center; Kristi NOEM,
Secretary, United States Department of
Homeland Security; Pamela BONDI,
Attorney General of the United States;
Executive Office for Immigration Review
Respondents.

**AMENDED PETITION FOR WRIT OF
HABEAS CORPUS**

Case No. 2:25-cv-01366-RFB-DJA

INTRODUCTION

1. Counsel is an attorney that practices exclusively immigration law and is licensed to practice in and resides in Utah. Counsel has complied with LR IA 11-2 and the verified petition to allow counsel to represent the parties in this case has been filed and granted.

2. Petitioners are filing this amended Habeas Petition at the request of the District Court. Because counsel now has another client in the same situation, Jose Vazquez Jacobo we are adding him as a petitioner.

3. The three petitioners reside in Utah and had retained counsel for immigration matters prior to having been arrested and moved by Immigration & Customs Enforcement (ICE) to Nevada for detention because ICE does not have a detention facility in Utah.

4. Petitioners Heriberto Herrera Torralba (“Mr. Herrera”), Gaudencio Dominguez Castillo (“Mr. Dominguez”) and Jose Vazquez Jacobo (“Mr. Vazquez”), by and through above-named counsel of record, submit this Petition for Writ of Habeas Corpus against the above-named Respondents for unlawful detention. Mr. Herrera’s immigration case number is A [REDACTED] [REDACTED] Mr. Dominguez’s immigration case number is A [REDACTED] Mr. Vazquez’s immigration case number is A [REDACTED]

5. The petitioners are noncitizens detained by Immigration & Customs Enforcement (“ICE”) at the Nevada Southern Detention Center. They now face unlawful detention because the Department of Homeland Security (DHS) has concluded based on novel arguments that they are subject to mandatory detention even though in all three cases an

immigration judge ordered their release on bond. These novel arguments contradict decades of established law.

6. Mr. Herrera is a 51-year-old noncitizen who has resided continuously in the U.S. since 1995. He is married and has four US citizen children ages 25, 20, 16 and 13. Mr. Herrera's 25-year-old son works for the Sheriff's office, the 20-year-old is in the U.S. Air Force, and the 16-year-old is being treated for Cerebellar Neoplasm and Obstructive Hydrocephalus and recently had brain surgery and requires regular follow-up treatment.

7. Mr. Dominguez is a 33-year-old non-citizen who has resided in the U.S. since 2010 and is currently married to a U.S. citizen who has been abusive, making him eligible for an immigration benefit under the Violence Against Women's Act (VAWA) and that application has been pending with U.S. Citizenship & Immigration Services since 2022. USCIS Receipt Notice Attached as Exhibit F.

8. Mr. Vazquez is a 34-year-old non-citizen who has resided in the U.S. for more than 18 years. He lives with the mother of his two U.S. citizen children ages 11 and 16, the youngest of whom has Down Syndrome. Mr. Vazquez has not been convicted of any crimes, nor does he pose a danger to the community. He was recently arrested for the first time for a DUI. The state court conducted a Public Safety Assessment which found him to be a low risk due to no prior convictions, no other pending charges, failures to appear or incarceration. Assessment Attached as Exhibit I. The state court then released him on his own recognizance, but ICE detained him.

9. The petitioners are charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

10. Mr. Herrera last entered the U.S. in 1995 prior to the passage of 8 U.S.C. § 1225(b)(1).

11. Mr. Dominguez last entered the U.S. in 2010.

12. Mr. Vazquez last entered the U.S. in 2006.

13. ICE refused to issue a bond to all the petitioners based on a new ICE policy interpreting detention statutes that is unsupported by the law, its history and precedent as discussed below.

14. The petitioners then sought and were granted a bond redetermination hearing by the Immigration Judge (“IJ”)-Executive Office for Immigration Review (“EOIR”).

15. DHS failed to present any evidence for the bond hearing in Mr. Herrera’s case but argued that notwithstanding his 30 years of residence in the United States, he is nevertheless an “applicant for admission” who is “seeking admission” and subject to mandatory detention under § 1225(b)(2)(A). DHS made the same argument in the other two bond hearings and apparently in every similar bond hearing around the country.

16. On July 18 the IJ found that DHS failed to present any evidence and that Mr. Herrera met his burden to show he is not subject to mandatory detention and is eligible for bond, and granted bond of \$1500, the lowest bond an IJ can grant.

17. On July 22nd, the IJ agreed with Mr. Dominguez that he was not subject to mandatory detention and granted a bond of \$1500.

18. On August 12th the IJ agreed with Mr. Vazquez that he was not subject to mandatory detention and granted a bond of \$2000.

19. In Mr. Herrera's and Mr. Dominguez's cases DHS reserved appeal and then filed form EOIR-43 invoking an automatic stay to their release on bond for the duration of the appeal with the Board of Immigration Appeals ("BIA") which can take 10 or more months to resolve.

20. In Mr. Vazquez's case which was heard on August 13, today's date, DHS reserved appeal and indicated on the record that it would file form EOIR-43 on the following business day which unilaterally stays the bond decision.

21. The petitioners' detention on this basis violates the plain language of the Immigration and Nationality Act ("INA") and due process. 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like the petitioners who previously entered years ago, were detained by ICE recently and have been residing in the United States for many years.

22. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like the petitioners, are charged as inadmissible for having entered the United States without inspection.

23. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioners.

24. In addition, the unilateral automatic stay of the IJ decisions granting bond filed on from EOIR-43, violates the petitioners' right to both procedural and substantive due process.

25. Accordingly, Petitioners seek a writ of habeas corpus requiring that they be allowed to pay the bond granted by the Immigration Judge and be released immediately while the bond is on appeal.

JURISDICTION

26. Petitioners are in the physical custody of Respondents. Petitioners are detained at the Nevada Southern Detention Center in Pahrump, Nevada.

27. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

28. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

29. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for Nevada, the judicial district in which Petitioners are currently detained. Thus, three residents of Utah and an attorney who resides in Utah are forced to file this action in Nevada solely because ICE moved them from Utah to Nevada.

30. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in Nevada.

REQUIREMENTS OF 28 U.S.C. § 2243

31. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

32. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

33. Petitioner Heriberto Herrera Torralba is a citizen of Mexico who has been in immigration detention since July 10, 2025. After arresting Petitioner in Salt Lake City, ICE did not set bond and Petitioner requested review of his custody by an IJ. On July 18, 2025, Petitioner was granted a \$1500 bond by an IJ at the Las Vegas Immigration Court over the opposition of DHS that argued that he was an “applicant for admission.” IJ Bond Order and Recent Bond Memorandum Attached as Exhibit A. Petitioner has resided in the United States since 1995.

34. Petitioner Gaudencio Dominguez Castillo is a citizen of Mexico who has been in immigration detention since July 7, 2025. After arresting Petitioner in Salt Lake City, ICE did not set bond and Mr. Dominguez requested review of his custody by an IJ. On July 22, 2025, Mr. Dominguez was granted a bond by an IJ at the Las Vegas immigration court over the opposition of DHS that argued that he was an “applicant for admission.” IJ Bond Order and Recent Bond Memorandum Attached as Exhibit D. Mr. Dominguez has resided in the United States since 2010.

35. Petitioner Jose Vazquez Jacobo is a citizen of Mexico who was initially detained by the State of Utah and charged with a first-time misdemeanor DUI on June 30, 2005. He was arrested even though the breathalyzer did not register any trace of alcohol and that case is being defended by another attorney and remains pending. ICE took custody of him on August 5, 2025 after the state court released him on his own recognizance after a Public Safety Assessment (Exhibit I) indicated he was a low risk to the community. ICE refused to set a bond, so Mr. Vazquez requested a bond redetermination by the Immigration Judge (“IJ”). A bond hearing was conducted on August 13, 2025 and the IJ issued a bond of \$2000 after determining that Mr. Vazquez was not subject to mandatory detention, not a danger to the community and not a flight risk. IJ Bond Order Attached as Exhibit G.

36. Respondent Jason Knight is the Acting Director of the Las Vegas Field Office of ICE’s Enforcement and Removal Operations division. As such, Mr. Knight is Petitioners’ immediate custodian and is responsible for Petitioners’ detention and removal. He is named in his official capacity.

37. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

38. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

39. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

40. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings and appeals thereof.

41. Respondent John Mattos is employed by CoreCivic- as Warden of the Nevada Southern Detention Center, where Petitioners are detained. He has immediate physical custody of Petitioners. He is sued in his official capacity.

LEGAL FRAMEWORK

42. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

43. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes and then they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

44. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

45. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

46. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

47. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

48. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

49. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which all noncitizens who were not apprehended “arriving” at the border were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

50. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

51. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”¹ claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

52. ICE has adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Diaz Martinez v. Hyde, et al.*, No. CV 25-11613-BEM, 2025 WL 204238, at *2–3 (D. Mass. July 24, 2025).

53. Finally, this month the Board of Immigration Appeals issued a published decision in *Matter of Akhmedov* 29 I&N 29 I&N Dec. 166 (BIA 2025). While the issue in the instant petition is not the main holding in the case as it does not deal with the jurisdictional argument, the BIA noted in that case that the respondent’s custody determination is governed by the provisions of section 1226(a), even though he entered unlawfully. *Id.*

54. DHS’s interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

55. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

56. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph

(E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

57. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

58. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C.

§ 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

59. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like the Petitioners, who have already entered and were residing in the United States at the time they were apprehended.

60. In Mr. Herrera’s case, he last entered the U.S. in 1995 prior to the passage of IIRIRA, so ICE could not have subjected him to expedited removal at the time of his entry.

DUE PROCESS VIOLATIONS

61. DHS has continued to detain the petitioners under a unilateral authority to stay the immigration court's bond under 8 C.F.R. §1003.19(f). First, the application of this regulation to the petitioners violates due process.

62. Second, petitioners contend that the regulation also facially violates substantive due process because it is not authorized by statute and provides the jailer with unfettered authority which implicates the fundamental right to be free from detention and is not narrowly tailored to meet the compelling government interest of protecting public safety.

63. Prior to 2001, detainees subject to discretionary detention under 8 U.S.C. § 1226(a) who were then granted bond by an immigration judge remained detained only if the BIA granted a request to stay the bond order. 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).

64. In response to the terrorist attacks of September 11, 2001 the Immigration and Naturalization Service (INS) (now DHS) implemented an interim rule to expand its authority to issue automatic stays to prevent the effectuation of immigration judges' custody decisions pending their appeal. *See Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001).

65. Although INS was previously required to seek an emergency stay from the BIA to prevent the immigration judge's order for release on bond, the new rule allowed the INS to unilaterally invoke an emergency stay at its own discretion to prevent the detainee's release. *Id.* Notes in the Federal Register explained that this revision would "allow the Service to maintain

the status quo while it seeks review by the Board, and thereby avoid the necessity for a case-by-case determination of whether a stay should be granted[.]” *Id.* The INS emphasized that the stay was “a limited measure,” to be used only “where the Service determines that it is necessary to invoke the special stay procedure pending appeal.” *Id.*

66. The new rule raised due process concerns from its inception. Comments to the rule expressed strong opposition arguing that it violated the Fifth Amendment’s Due Process Clause. *Id.*

67. A former INS General Counsel testified about his concerns regarding the agency’s use of automatic stays because it was being used routinely and without careful calculation by the agencies of the merits of each bond case and in cases that involved nonviolent offenders. *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).

68. Federal courts during that period of time following the 9/11 attacks concluded that the automatic stay provisions violated the due process rights of detainees. *Ashley v. Ridge*, 288 F. Supp. 2d 662, 673 (D.N.J. 2003) (finding that continued detention on the automatic stay despite the IJ’s decision to grant bond violated procedural and substantive due process rights); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003) (finding the government goal of preventing the release of noncitizens posing a threat to national security was not served by the petitioner’s ongoing detention and was outweighed by the petitioner’s Fifth Amendment right to be free from detention); *See, e.g., Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 WL1514122 (N.D. Cal.

June 17, 2005) (finding the automatic stay provision unconstitutional); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (same); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003).

69. In 2006, the EOIR promulgated the final rule with some notable changes. *See Executive Office for Immigration Review; Review of Custody Determination*, 71 Fed. Reg. 57873 (Oct. 2, 2006). The final rule added the requirement that any decision to invoke the automatic stay must be made by the Secretary of DHS and a senior legal official who must certify that sufficient factual and legal bases exist to justify continued detention. *Id.* at 57876. The rule also imposed some limitations by providing that the stay will lapse 90 days after filing the bond appeal unless DHS sought a discretionary stay. 8 C.F.R. § 1003.6(c)(2006).

70. The automatic stay regulation is a very rare and somewhat exceptional action in the first place. *See Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909 (Oct. 31, 2001) (describing the automatic stay as a “limited measure”); *See also* 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) (providing data yielded from a DHS FOIA request showing considerable variance but revealing that, on average, DHS invoked an automatic stay twenty-six times per year over the last seven years). In fact, counsel has never seen it invoked in her 29 years of immigration practice.

71. Yet now it is being invoked categorically to stay an IJ bond decision that is contrary to ICE’s new policy, subjecting all persons who entered without inspection to

mandatory detention under § 1225(b)(2)(A), regardless of whether they have been residing for years in this country without any criminal history.

72. The Constitution guarantees every person in the United States due process of law, including persons who are not United States citizens. *E.g.*, *Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) (“The Supreme Court has long recognized that deportable aliens are entitled to constitutional protections of due process.” (citing *Yamataya v. Fisher*, 189 U.S. 86, 100–01, 23 S.Ct. 611, 47 L.Ed. 721 (1903))); *see also, e.g.*, *Trump v. J.G.G.*, 604 U. S. —, —, 145 S. Ct. 1003, 1006, — L.Ed.2d — (2025) (*per curiam*) (“‘It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993))); *Zadvydas v. Davis*, 533 U.S. 678, 695, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) (“[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”).

73. To determine whether a civil detention violates a detainee's due process rights, courts apply a three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, “when considering due process challenges to [discretionary noncitizen detention] other circuits ... have applied the Mathews test”).

74. Under *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, 96 S.Ct. 893.

75. The private interest in this case is significant; being free from physical detention. The Supreme Court has found this to be “the most elemental of liberty interests.” *Hamdi v. Runsfeld*, 542 U.S. 507 at 529, 531, 124 S.Ct. 2633 (directing courts, when assessing the first Mathews factor, to consider only the petitioner's interests at stake in ongoing detention without consideration of the respondents’ justifications for the detention (quotation omitted)); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (advising that an individual's interest in being free from detention “lies at the heart of the liberty that [the Due Process] Clause protects”).

76. The petitioners are being held at the Nevada Southern Detention Center and experiencing the loss of contact with family and friends, loss of income and inability to provide for their families, lack of privacy and lack of freedom. They are not held in their home state of Utah where at least they could be visited regularly by their family members. Mr. Herrera and Mr. Vazquez are particularly affected due to their inability to provide daily care to the sons that have health issues or a disability.

77. The second Mathews factor is whether the challenged procedure creates a risk of erroneous deprivation of individual rights and whether there are alternative procedures that could ameliorate these risks. In these cases, the risk of deprivation is very high because the petitioners and any other adversely affected individuals by the automatic stay are those who have already prevailed in a bond hearing before an immigration judge. The challenged regulation permits an

agency official who is involved in the adversarial process and the non-prevailing party to unilaterally override the immigration judge's decision. This represents a conflict of interest disapproved by courts in other contexts. *See, e.g.*, 5 U.S.C. § 554(d)(2) (prohibiting agency employees engaged in prosecuting functions from participating in the adjudicatory decision); *Marcello v. Bonds*, 349 U.S. 302, 305–06 (1955) (holding that the special inquiry officer adjudicating over an immigration case cannot also undertake the functions of prosecutor in the same matter).

78. Other courts have agreed that a rule permitting a non-prevailing party to stay a judgment permitting release creates a risk of erroneous deprivation. *See e.g., Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, at 1078 (N.D. Cal. 2004) (noting that the automatic stay procedure “creates a potential for error because it conflates the functions of adjudicator and prosecutor”); *Ashley*, 288 F. Supp. 2d at 671 (concluding that the regulation creates a “patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified” (quotation omitted)).; *Mohammed H. v. Trump*, --- F.Supp.3d ---- (2025) 2025 WL 1692739 (noncitizen's Fifth Amendment right to due process was violated by government's invocation of automatic-stay provision of immigration regulations to keep noncitizen in custody despite an immigration judge's (IJ) order that he be released on bond).

79. Further, the risk of erroneous deprivation of rights is increased because the automatic stay regulation does not require that an agency official consider the facts of the case or

make any case-by-case determinations. As noted above the procedure additionally creates a potential for error because it conflates the functions of adjudicator and prosecutor. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 75 S.Ct. 757 (1955); *see also Ashley v. Ridge*, 288 F.Supp.2d at 662, 671 (It produces a patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversarial hearing that detention is justified.) In these cases, the same prosecutor who lost before the immigration judge in the bond hearing effectively overruled his decision as the adjudicator by invoking the automatic stay.

80. When considering a bond redetermination request and immigration judge must consider whether the applicant is a danger to society, a threat to national security or poses a flight risk. 8 U.S.C. § 1226(a) (2018); *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *see also Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112 (BIA 1999); 8 C.F.R. § 1236.1(c)(8). The immigration judge in each of these cases considered these factors carefully, reviewed all of the evidence and, in all three cases, found that a low bond was appropriate. Further, the IJ in the Herrera bond hearing noted that DHS had failed to submit any evidence at all for the bond hearing. However, when invoking a stay of the bond, the agency official need not make any individualized review of the case or consider any of the factors.

81. The automatic stay does not include any standards for the agency official to satisfy and operates as an appeal of right rather than being an extraordinary remedy. The official need not introduce any proof and it can effectively overrule the bond decision and keep the petitioners detained indefinitely. In so doing, the automatic stay rendered the continued detention

arbitrary and gave the petitioner's no chance to contest the case for detention even though they had prevailed at the bond hearing before the immigration judge. *Mathews*, 424 U.S. at 348–49, 96 S.Ct. 893 (“The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.”) Invoking the automatic stay as the Government did here contorts § 1003.19(i)(2) into an unfair procedure. *Cf. Bridges*, 326 U.S. 135, 152–53, 65 S.Ct. 1443 (administrative rules are designed to afford due process and to serve as “safeguards against essentially unfair procedures”).

82. Moreover, a stay of an order directing the release of a detained individual 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, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). This is contrary to any other stay while on appeal or a stay of a court order in any other context where the party must make a strong showing that they are likely to ultimately prevail, and address the risk of irreparable injury and the balance of interests in order to obtain a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). No such requirements apply to the automatic stay regulation.

83. The regulation provides alternative procedural safeguards. Section 1003.19(i)(1) sets forth a procedure by which DHS may request an emergency stay of the immigration judge's custody determination from the BIA. The BIA then conducts an expedited preliminary review to determine whether a stay is warranted based on the individual circumstances and merits of the case. This process ameliorates the due process issues of § 1003.19(i) (2) while preserving the government's interest in preventing an erroneous release. *See Zavala*, 310 F. Supp. 2d at 1077

(concluding that 8 C.F.R. § 1003.19(i)(1) provides “an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner's liberty interest”); see also *Bezmen*, 245 F. Supp. 2d at 451; *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025) (reaching same conclusion).

84. In the third step of the *Mathews* test, the court must weigh the private interests at stake and the risk of erroneous deprivation against the government's interest in persisting with the regulation, including the fiscal and administrative burdens of a substitute procedural requirement. Given that the petitioners satisfy all the requirements for release on bond, it is difficult to see any legitimate purpose for continued detention. The process by which an immigration judge issues a bond redetermination accounts for the government's safety and flight concerns.

85. If the purpose of the detention is not to facilitate deportation, protect against the risk of flight or danger to the community, then it must be solely for the purpose of incarceration and in this administration, motivated largely by politics.

86. Any government interest can be addressed by the regulation which provides a process to request a stay from the BIA pending appeal of the immigration judge's bond decision. 8 C.F.R. § 1003.19(i)(1). The government can do this in any case in which it believes that the IJ's decision was erroneous.

87. In this case, the Petitioners availed themselves of the procedural safeguards by requesting a bond redetermination with evidence that they were not a flight risk, not a danger to

the community and should be granted bond. The bond hearing was resolved entirely in their favor by the IJ granting the lowest bond available by law in two of the cases, and a slightly higher bond in the third. *See* 8 U.S.C § 1226. However, DHS unilaterally invoked a rarely used form EOIR-43 to stay the bond decision, without any individualized review of the cases instead of availing itself of the less punitive alternative procedure proscribed by the same regulation. The regulation on its face and its application to these cases that contain no risk factors of release violates due process.

FACTS

88. Petitioner Herrera has resided in the U.S. without departure since 1995 and currently resides in Utah.

89. Mr. Herrera was arrested by ICE on July 10, 2025. ICE was looking for Mr. Herrera because he had been granted voluntary departure by an IJ in 1990 and ICE did not have any evidence that he had departed on time which, if true, would convert the voluntary departure to a deportation order. Luckily Mr. Herrera had saved documentation of his voluntary departure in 1990 and counsel was able to present that evidence to ICE so it could not deport him under the 1990 order. However, ICE placed Mr. Herrera in a newly commenced removal proceeding pursuant to 8 U.S.C. § 1229a. ICE has charged Mr. Herrera with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

90. Mr. Herrera is a 51-year-old noncitizen who has resided continuously in the U.S. since 1995 a year prior to the passage of IIRIRA. He is married and has four US citizen children ages 25, 20, 16 and 13. Mr. Herrera's 25-year-old son works for the Sheriff's

office, the 20-year-old is on active duty in the U.S. Air Force and the 16-year-old is being treated for Cerebellar Neoplasm and Obstructive Hydrocephalus, recently had brain surgery and requires regular follow-up treatment. He is neither a flight risk nor a danger to the community and the IJ agreed.

91. Days before his arrest, Mr. Herrera had applied to U.S. Citizenship & Immigration Services (“USCIS”) for Military Parole in Place (PIP), a process that allows applicants with children in the military to apply for lawful permanent residence in the U.S. without having to depart the country. That application is currently pending.

92. Following Mr. Herrera’s arrest and transfer to the Nevada detention facility, ICE issued a custody determination to continue his detention without an opportunity to post bond or be released on other conditions.

93. At the bond hearing on July 18, 2025 DHS failed to present any evidence in Mr. Herrera’s case but argued that notwithstanding his 30 years of residence in the United States, he is nevertheless an “applicant for admission” who is “seeking admission” and subject to mandatory detention under § 1225(b)(2)(A).

94. The IJ found that DHS failed to present any evidence and that Mr. Herrera met his burden to show he is not subject to mandatory detention and is eligible for bond, and granted a bond of \$1500, the lowest bond an IJ can grant. IJ Bond Order and Memorandum Attached as Exhibit A.

95. Mr. Dominguez is a 33-year-old non-citizen who has resided in the U.S. since 2010.

96. Mr. Dominguez entered the U.S. without inspection but was not apprehended by immigration officials at any time until July 7, 2025, when he was pulled over by local law enforcement, who then turned him over to ICE. No criminal activity was alleged or reported, but ICE decided to arrest him when they discovered he is currently undocumented, albeit with a pending immigration petition.

97. Mr. Dominguez's first wife, a U.S. Citizen, fell gravely ill a few months after their marriage and passed away at the age of 29 in July 2014. He later married Elizabeth Hernandez in 2016, also a U.S. Citizen, who worked with him to move through several rigorous steps of the immigration process to apply for his permanent residence, including a waiver application for unlawful presence in the United States. Mr. Dominguez developed close relationships with Elizabeth's four young children and was a much-needed, supportive father figure to them. Unfortunately, Elizabeth subjected Mr. Dominguez to repeated psychological, verbal, and emotional abuse. She often threatened to call immigration authorities, particularly when he did not have enough money to buy the things she wanted. She isolated him from his family and refused to allow him to speak on the phone with his dying grandparents in Mexico. Mr. Dominguez developed posttraumatic stress disorder from the abuse and has suffered greatly from the separation from Elizabeth's four children he helped raise.

98. Based on this abuse, he qualifies for lawful permanent residence under the Violence Against Women Act, and since December 2022 has had a VAWA Self-Petition pending with USCIS. Mr. Dominguez qualified to immediately apply for adjustment of status to permanent resident along with the VAWA Self-Petition but did not do so at the time due to

financial constraints but he has a clear pathway available to obtain lawful permanent residence in the U.S., yet he remains detained by ICE despite his lack of a criminal record and his nearly 15 years of residence and gainful employment in the United States.

99. ICE placed Mr. Dominguez in removal proceedings pursuant to 8 U.S.C. § 1229a and charged him with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

100. ICE soon transferred him away from his family to the detention facility in Nevada. At a bond hearing before an immigration judge held on July 22, 2025, ICE argued that Mr. Dominguez is subject to mandatory detention, despite having no criminal record aside from one traffic ticket. The IJ disagreed and granted him a \$1500 bond, the lowest amount possible, specifically finding that he is not a flight risk and not a danger to the community. IJ Bond Order for Mr. Dominguez and Recent Bond Memorandum Attached as Exhibit D.

101. Mr. Vazquez is a 34-year-old non-citizen who has resided in the U.S. for more than 18 years and lives with his partner, the mother of his children and their two sons, ages 16 and 11. Mr. Vazquez's 11-year-old son has Down's Syndrome and receives special education in school. Mr. Vazquez is the sole provider in his home because his partner stays home to care for the children, especially the 11-year-old who needs more care due to his disability. Mr. Vazquez works in landscaping to support his family.

102. Mr. Vazquez's release does not pose a danger to property or persons. Mr. Vazquez has not been convicted of any crimes, nor does he pose a danger to the community. He was recently arrested in Utah for the first time for a DUI even though he passed the

breathalyzer test. The court conducted a Public Safety Assessment which found him to be a low risk due to no prior convictions, no pending charges, failures to appear or incarceration. Public Safety Assessment Attached as Exhibit H. The court then released him on his own recognizance but ICE had a hold on him and immediately detained him.

103. Upon detention, Mr. Vazquez was transported from the state of Utah by ICE and taken to the Southern Nevada Detention Center. The same day he was moved, he filed a Motion for Bond Redetermination with the Immigration Court in Las Vegas, Nevada and was granted a bond hearing on August 13, 2025. The IJ reviewed all the bond evidence including proof of favorable equities and found that Mr. Vazquez was not subject to mandatory detention, not a danger to society and did not pose a flight risk so he granted him a bond of \$2000.

104. All of the petitioners are eligible for Cancellation of Removal in removal proceedings under 8 U.S.C. 1129(b)(b) in that they have been present in the U.S. longer than 10 years, have good moral character, have not been convicted of a disqualifying offense and can show that at least one of their children will suffer exceptional and extremely unusual hardship if they are removed. Mr. Dominguez also qualifies for Cancellation of Removal under VAWA under that same section of the law.

105. However, in the first two cases, DHS reserved appeal and filed form EOIR-43 (known as the “nuclear option” because of its previously rare use) to stay the bond while it is on appeal at the BIA which could take 10 or more months during which time, Mr. Herrera and Mr. Dominguez will be unlawfully detained and separated from their families, jobs and communities.

106. With respect to Mr. Vazquez who just had his bond hearing on today's date, the DHS attorney verbally stated on the record that he intends to file the E-43 but the time limit for filing this has not yet passed.

107. In the meantime, with the unilateral stay in place, the petitioners remain separated from their home state, their families and in two cases children with medical issues or disabilities.

108. Any appeal to the BIA is futile and the petitioners could not appeal the bond decision because it was in their favor. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission.² Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

109. Petitioners incorporate by reference the allegations of fact set forth in the preceding paragraphs.

² Available at <https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf>.

110. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

111. The application of § 1225(b)(2) to Petitioners unlawfully mandates their continued detention and violates the INA.

COUNT II

Violation of Due Process

112. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

113. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

114. The Ninth Circuit has held that “[r]emaining confined in jail when one should otherwise be free is an Article III injury plain and simple[.]” *Gonzalez v. United States Immigr. & Customs Enft.*, 975 F.3d 788, 804 (9th Cir. 2020) (*quoting Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).

115. Petitioners have a fundamental interest in liberty and being free from official restraint.

116. The government's continued detention of Petitioners and the filing of the automatic stay of the bond after an IJ has granted a bond after making individualized findings that they are neither a flight risk nor a danger to others violates their right to procedural due process as applied to this case.

117. The automatic stay regulation also facially violates substantive due process because it applies only to situations in which an IJ has already determined the applicant is not a danger or flight risk and ordered him released. The regulation permits unilateral detention of individuals without a case-by-case determination at the unfettered discretion of the arresting agency. As such it violates the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that Respondents release Petitioners immediately;
- c. Award Petitioners attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- d. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 13th day of August, 2025.

PERRETTA LAW OFFICE

/s/ Leonor Perretta
Attorney for Petitioners

EXHIBIT LIST

- A. IJ Bond Order for Mr. Herrera and Recent Bond Memorandum
- B. EOIR-43 form filed by ICE to stay the bond for Mr. Herrera
- C. USCIS Receipt for Military Parole in Place for Mr. Herrera
- D. IJ Bond Order for Mr. Dominguez and Recent Bond Memorandum
- E. EOIR-43 form filed by ICE to stay the bond for Mr. Dominguez
- F. VAWA Application Receipt for Mr. Dominguez
- G. IJ Bond Order for Mr. Vazquez
- H. Public Safety Assessment for Mr. Vazquez