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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Marlon Omar Baca Beltrand Petitioner, 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 (EOIR) Respondents.	SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS Case No. 2:25-cv-01430-CDS-EJY Agency Case Number: A[redacted]

I. INTRODUCTION

1. Petitioner, by and through the above-named counsel of record, submits this Second Amended Petition for Writ of Habeas Corpus against the above-named Respondents for unlawful detention in contravention of the laws and constitution of the United States.

2. Utah Counsel are licensed to practice in and reside in Utah. Both counsels are admitted to appear pro hac vice in this matter.

3. Petitioner Marlon Omar Baca Beltrand resided in Utah and retained counsel for immigration matters prior to having been arrested and transported by Immigration and Customs Enforcement (ICE) to Nevada for detention because ICE does not have a detention facility in Utah.

4. Petitioner is a presently detained by ICE at the Nevada Southern Detention Center.

5. Petitioner has been detained there since July 14, 2025, in violation of the constitution and laws of the United States, as well as the clear order of an Immigration Judge that he be allowed to post a bond and released.

II. JURISDICTION

6. Petitioner is in the physical custody of Respondents, detained at the Nevada Southern Detention Center in Pahrump, Nevada.

7. 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 Sates Constitution (the Suspension Clause).

8. 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.

III. VENUE

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

10. 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.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

11. 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 Respondent must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

12. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative relief in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

V. PARTIES

13. Petitioner Marlon Omar Baca Beltrand is a citizen of Honduras who has been in immigration detention since July 9, 2025. After arresting Petitioner in Salt Lake City, Utah, ICE refused to set a bond and Petitioner requested review of his custody by an Immigration Judge on July 16.

14. On July 22, 2025, Petitioner was granted a $5,000 bond by the Immigration Judge at the Las Vegas Immigration Court over the opposition of DHS that argued that he was ineligible for bond as he is an "applicant for admission."

15. 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 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

16. Respondent Charles Wall is the Principal Legal Advisor of ICE's Office of the Principal Legal Advisor.

17. Respondent Sandra D. Anderson is a Chief Counsel with U.S. ICE's Office of the Principal Legal Advisor. She is sued in her official capacity.

18. 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.

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

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

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

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

VI. SUMMARY OF PRIOR PROCEEDINGS

23. Mr. Baca Beltrand is a 40-year-old native of Honduras. He is married and has two children. He entered the United States without inspection with his partner and their two minor children in September 2023, seeking asylum protection, after his life, and the lives of his children were threatened.

24. After his entry with his family on September 30, 2023, Mr. Baca Beltrand and his family were detained by Customs and Border Protection (CBP) from the Department of Homeland Security (DHS). According to the documents provided to Mr. Baca Beltrand and his family, their initial detention was pursuant to 8 U.S.C. 1357. (Exhibit A: Warrant for Arrest).

25. Thereafter, on October 1, 2023, DHS issued warrants for the arrest of Petitioner, his partner, and their two children as provided by 8 U.S.C. 1226(a). (Exhibit A: Warrant for Arrest).

26. Pursuant to those warrants, also on October 1, 2023 DHS issued individual Notices to Appear (NTA) to initiate removal proceedings under 8 U.S.C. § 1229(a) against Petitioner, his partner, and their two minor children, alleging that they were not citizens or nationals of the United States, that they were natives of Honduras and citizens of

Honduras, that they arrived in the United States at or near Eagle Pass, Texas, on or about September 30, 2023, and that they were not then admitted or paroled after inspection by an Immigration Officer (Exhibit B: Notice to Appear).

27. They were each charged under 8 USC § 1182(a)(6)(A)(i) with being aliens present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. (Exhibit B).

28. They were advised to appear before the Immigration Court in West Valley City, Utah, on August 28, 2025. (Exhibit B).

29. DHS thereafter formally released Petitioner, his partner, and their two children on their own recognizance, with ICE reporting requirements, and subject to Petitioner's enrollment in the Alternatives to Detention (ATD) Program. (Exhibit C: Notice of Release and Notice of ATD).

30. Petitioner subsequently enrolled in the ATD program as ordered and has, upon information and belief, been fully and completely compliant with the requirements of that program.

31. Petitioner and his partner each filed Form I-589 applications for asylum with the Immigration Court on September 20, 2024. Petitioner is the primary witness in his own application, and a vital witness to facts and experiences underlying his partner's claim.

32. Their applications outline their flight from Honduras due to the threats against their lives and the lives of their children, because they had purchased land and built a home in territory controlled by one gang (and cooperating law enforcement) despite the fact that they had previously resided in territory controlled by an enemy gang (and cooperating law enforcement) (Exhibit D: I-589 Application).

33. Mr. Baca Beltrand's minor daughter suffers from a form of cerebral palsy; she is being treated at the Shriner's hospital in Salt Lake City, Utah.

34. Petitioner and his partner have also sought appropriate (charitable) medical care and treatment with the Shriner's Hospital for Children for their daughter Mia Isabella Aguilar Baca, who has suffered from a type of cerebral palsy since her birth. As parents they have been working with their daughter's medical team provide her care and treatment, and also to identify the etiology of her condition—whether her condition is genetic, or some other cause—in order to identify the best course of treatment for this permanent, life-long condition (Exhibit E: Shriners Medical Treatment Schedule).

35. Petitioner and his family had retained counsel and were preparing for their Master Calendar Hearing before the Immigration court located in West Valley City, Utah, on August 28. 2025.

36. On information and belief, Petitioner was re-detained in Salt Lake City, Utah, by ICE on the morning of July 9, 2025, as an otherwise random collateral detainee to an ICE enforcement action on another target.

37. Petitioner had been fully compliant with the ATD program requirement and had not committed any criminal offenses; ICE had no reason to actively seek his arrest and ICE officers involved had no other reason to detain him.

38. On July 9, 2025, in the late afternoon, DHS filed two motions with the Immigration Court in Salt Lake City, Utah. (Exhibits F and G).

39. The first motion was to sever Petitioner's removal case from that of his partner and children. (Exhibit F: Motion to Sever).

40. The second was a Motion to Dismiss the NTA that had been filed to initiate proceedings against Petitioner in Immigration Court. (Exhibit G: Motion to Dismiss).

41. DHS's Motion to Dismiss argued that Petitioner is subject to removal under 8 U.S.C. § 1225(b)(2)(A), rather than pursuant to 8 U.S.C. § 1226(a), as DHS had originally determined and processed him (and his family) in October 1, 2023 (Exhibit G).

42. On the morning of July 10, 2025, the Immigration Court granted DHS's Motion to Dismiss. (Exhibit H: IJ Order Granting DHS Motion to Dismiss NTA).

43. On July 13, 2025, Petitioner filed an appeal of the Immigration Judge's Order Terminating the Removal Proceedings to the Board of Immigration Appeals. That appeal remains pending (Exhibit I: Notice of Appeal to the BIA).

44. On July 16, 2025, Petitioner requested a Custody Redetermination Hearing by the Immigration Court under 8 C.F.R. § 1236.1(d)(1), which states that where DHS unilaterally changes the terms and conditions of a prior DHS Order of Release, such as the one given to the Petitioner on October 1, 2023, an alien may request IJ review of the changes to the terms and conditions of release (Exhibit J).

45. On July 17, 2025, the Immigration Court held a Custody Redetermination Hearing for Petitioner (Exhibit K).

46. During the bond hearing, DHS present no evidence in support of their theory that the Petitioner was subject to mandatory custody.

47. DHS merely argued, as a matter of law, that notwithstanding DHS's previous affirmative, deliberate choice on October 1, 2023, to issue a warrant for Petitioner's arrest pursuant to 8 U.S.C. § 1226(a), rather than to detain Petitioner and his family pursuant to the equally applicable (at the time) provisions of 8 U.S.C. § 1225(b)(1), DHS, more than 20 months

later, had the legal authority to retroactively revoke their prior choice and, without showing any change in Petitioner's circumstances, terminate removal proceedings under 8 U.S.C. § 1229a, and instead institute expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1).

48. On July 22, 2025, Immigration Judge Lindsy Roberts rejected DHS' theory, found that Petitioner met his burden to show that he is not subject to mandatory detention and is eligible for bond, and granted his release from custody on payment of a $5,000 bond, subject to alternatives to detention at the discretion of the Department of Homeland Security (Exhibit L: IJ Bond Memorandum).

49. Petitioner's continued detention is an unlawful violation of due process, an incorrect interpretation of immigration law, and is ultra vires to DHS' statutory authority.

50. On July 22, 2025, DHS filed form EOIR-43, "Notice of ICE Intent to Appeal Custody Redetermination" of the IJ's order finding Petitioner is eligible for bond. (Exhibit M: EOIR-43.)

51. Despite its name, the purpose of that form is not notification. By reserving their right to appeal DHS has notified Respondent of that intent in the hearing itself. Nor is this an actual Notice of Appeal. Rather, the sole purpose of the EOIR-43 form is to invoked the "Automatic stay" authority of 8 C.F.R. § 1003.19(i)(2).

52. Petitioner's family members attempted to post the bond on July 23, and learned that DHS had invoked the "Automatic Stay."

53. Eleven business days from July 22nd, on August 6, 2025, when neither of Petitioner's two attorneys of record (John West, a colleague of Ms. Jones', represented Petitioner in the bond proceedings) had received service of the required Notice of Appeal and

Certification by the senior legal official, as required by 8 C.F.R. § 1003.6 (c)(1), counsel advised the family to pay the bond.

54. Petitioner's family members again attempted to post the bond, and were refused, on the grounds that DHS had appealed.

55. Neither Mr. West nor Ms. Jones received electronic service of that Notice of Appeal. After Mr. West entered his appearance before the BIA on the Bond matter, Counsel learned from the Certificate of Service that the Notice of Appeal was served on both Petitioner and Mr. West by U.S. mail.

56. Thereafter, without legal authority, DHS purported to initiate expedited removal proceedings against Petitioner under 8 U.S.C. § 1225 (b)(1), by providing him a telephonic credible fear interview.

57. After Petitioner sought a Temporary Restraining Order from this Court, and this Court issued a Temporary Restraining Order against continuation of Expedited Removal proceedings against Petitioner, Defendants recognized that their actions in pursuing Expedited Removal proceedings against the Petitioner violated the law, because he was still in regular removal proceedings.

58. Those Expedited Removal proceedings against Petitioner have now been terminated.

59. Nevertheless, the Petitioner remains detained, now on Respondents' theory that he is retroactively subject to mandatory detention under § 1225(b)(2)(A), despite DHS' prior deliberate choice to issue a warrant for his arrest under § 1226(a) and place him in proceedings before an Immigration Judge pursuant to § 1229a.

60. On their Notice of Appeal of the IJ's Bond decision, DHS asserts that because Petitioner is "deemed" by 8 U.S.C. § 1225(a) to be an applicant for admission, he is permanently

subject to mandatory detention under 8 U.S.C. § 1225, regardless of the fact that DHS chose to process him under 8 U.S.C. § 1226 in 2023.

61. On October 1, 2023, DHS made a deliberate legal choice to prepare and issue warrants pursuant to 8 U.S.C. § 1226(a), rather than to place Petitioner and his family in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1).

62. Revoking the government's own deliberately chosen course of action twenty months after Petitioner's entry with his family violates Congress's detailed statutory scheme for processing noncitizen applicants for admission.

63. Respondents' legal argument, that the statute authorizes them to unilaterally and retroactively revoke the agency's prior acts and choices based on new policies, is contrary to both the statutory framework and decades of routine agency practice applying 8 U.S.C. § 1226(a) to people like Petitioner and his family.

64. Respondents also seek to retroactively apply to Petitioner other recent Executive Orders, new policy memoranda and internal directives as detailed below.

VII. LEGAL FRAMEWORK:

A. CIVIL DETENTION PROVISIONS OF THE INA

65. "In 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).

66. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V.

67. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*

v. Davis, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

68. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 678.

69. The Supreme Court, thus, "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); see also *Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

70. In 1996, acting within the recognized constraints of constitutional due process, Congress rebalanced and codified three explicit detention regimes for noncitizens. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. 1., No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

71. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *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), while noncitizens who have been arrested,

charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

72. 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 8 U.S.C. § 1225(b)(2).

73. 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).

74. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) of 1996, Pub. 1., No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

75. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 State. 3 (2025).

76. Following enactment of IIRIRA, EOIR drafted new regulations establishing that, in general, people who entered the country without inspection were not subject to the border detention regime of § 1225 and that they were instead subject to the detention provisions of § 1226. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

77. Those regulations are consistent with the record of Congressional intent, as documented in the Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, Part I (March 4, 1996) and in the Report of the Conference Committee, Report No. 104-828 (September 24, 1996). The Congressional recognition that applying the provisions of 8 U.S.C. § 1225 to undocumented immigrations found within the continental U.S. would

violate constitutional due process is further documented in the Comments on the Proposed Regulations filed by Lamar Smith, the Chairman of the House Judiciary Committee Subcommittee on Immigration and Claims. *See* Exhibit R, attached.

78. The Congressional record shows that Congress was very aware during the drafting of IIRIRA of the constitutional parameters within which they were working. That includes the robust precedent establishing that persons present in the U.S., regardless of their manner of entry, are constitutionally entitled to due process of law, including when they are subject to civil detention. *See, e.g., Yick Wo v. Hopkins,* 118 U.S. 356, (1886); *Yamataya v. Fisher*, 189 U.S. 86 (1903); *Plyler v. Doe*, 102 S. Ct. 2382 (1982).

79. As explicitly set out in the implementing regulations, individuals arrested and detained pursuant to the procedures of § 1226 are presumed to be 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, in which case they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

80. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) are consistent with the constitutionally reviewed procedures of decades of prior practice, in which noncitizens present in the U.S.—noncitizens who were not "arriving aliens" as defined at 8 C.F.R. § 1001.1(q)—were entitled to a custody hearing before an Immigration Judge 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 § 1251(a)).

81. Thus, in the decades that followed implementation of IIRIRA, the common understanding of the law was that 8 U.S.C. § 1225 and 8 U.S.C. § 1226 provide DHS

with several choices for how to process a noncitizen whom it alleges is inadmissible pursuant to 8 U.S.C. § 1182 (a)(6) or (a)(7).

82. In those decades, most people who entered the United States without inspection were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not "arriving aliens" as defined at 8 C.F.R. § 1001.1(q) were entitled to a custody hearing before an Immigration Judge 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 § 1251(a)).

83. The Supreme Court's interpretation of § 1225(b) in *Jennings v. Rodriguez*, 583 U.S. 281, 302-303 (2018) also supports a reading of the statute that permits DHS to subject any given inadmissible applicant for admission to the process of either § 1226 or to § 1225, but not both, with no authority for a course reversal thereafter.

84. For certain allegedly inadmissible noncitizens, such as Petitioner and his family, it was the common understanding that DHS could chose to either place them into expedited removal under 8 U.S.C. § 1225(b)(1) or place them into full removal proceedings under 8 U.S.C. § 1225(b)(2). *See Matter of E-R-M- & L-R-M-*, 25 I&N Dec. at 523 (holding that "DHS has discretion to put [noncitizens] in section 240 removal proceedings even though they may also be subject to expedited removal under section 1225(b)(1)(A)(i) of the Act"); *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023). (See also, IJ Bond Memorandum, Exhibit L.)

85. While DHS at the time of initial processing of the individual clearly has the statutory authority under 8 U.S.C. § 1226(a) to issue the noncitizen a warrant, prior to issuing them an NTA, as DHS did in Petitioner's case, there is no statutory authority, nor has DHS cited any authority either in its Motion to Terminate/Dismiss or in opposition to Petitioner's Motion for Bond, that would grant the Department the authority to reverse that choice more than 20 months after Petitioner was originally processed with his family as persons who had not previously been admitted.

86. In a series of actions initiated since January 2025, DHS has actively enacted new policies and announced or directed its employees to apply new interpretations of existing law to expand the classes of immigrants it subjects to detention, and to argue that most of these new classes are ineligible for bond.

87. On January 20, 2025, President Donald Trump signed an Executive Order titled "Protecting the American People Against Invasion." https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/. Among other actions, this Executive Order significantly expanded the scope and application of expedited removal.

88. On January 23, 2025, Acting Secretary of DHS Benjamine Huffman issued a memorandum to the leadership of USCIS and U.S. Customs and Border Protection (CBP) providing "guidance regarding how to exercise enforcement discretion in implementing" two "policies" that he had announced in the days prior. Dep't of Homeland Sec., Memorandum from Acting Secretary Benjamine C. Huffman on Guidance Regarding How to Exercise Enforcement Discretion (Jan. 23, 2025), https://perma.cc/4HPX-45Z7. (January 23 Huffman Memo).

89. The official announcement was made in a Notice published in the Federal Register on January 24, 2025, entitled "Designating Aliens for Expedited Removal," 90 Fed. Reg. 8139, 8139 (January 24, 2025). (2025 Designation Notice). That Notice rescinding a prior DHS announcement of March 21, 2022, and "restore[d] the scope of expedited removal to the fullest extent authorized by Congress" pursuant to 8 U.S.C. §1225(b)(1)(A)(iii).

90. Referencing the 2025 Designation Notice, the January 23 Huffman Memorandum "direct[ed]" USCIS and CBP officials to "consider" placing in expedited removal "any alien DHS is aware of who is amenable to expedited removal but to whom expedited removal has not been applied." January 23 Huffman Memo at 2. The Huffman Memo stated that applying expedited removal "may include steps to terminate any ongoing removal proceeding…" *Id.*

91. The January 23 Huffman Memorandum also included a few qualifiers to its directives. For one, it repeatedly emphasized that the instructions were to be understood as "consistent with the principles of enforcement discretion"—namely, that "'[t]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case,'" including in immigration enforcement. *Id.* at 1–2 (quoting *United States v. Nixon*, 418 U.S. 683, 693 (1974)). In addition, the Memorandum stated that "actions contemplated by" it "shall be taken in a manner consistent with applicable statutes, regulations, and court orders," as well as "in a manner that takes account of legitimate reliance interests." *Id.* at 2.

92. On July 8, 2025, despite the IRRIRA implementing regulations at 8 C.F.R. §§ 1003.19(a) and 1236.1(d), and despite the record of Congressional intent and the nearly three

decades of practical implementation, DHS internally disseminated a notice titled "Interim Guidance Regarding Detention Authority for Applicants for Admission." The notice was directed to all ICE employees.

93. As noted in *Maldonado-Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY, 6-8, (D. Nev. Sep 17, 2025) ftnt 2: "The memo was leaked to the American Immigration Lawyers Association ("AILA"). *See* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Doc. No. 25071607 (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regardingdetention-authority-for-applications-for-admission [https://perma.cc/5GKM-JYGX]." *See also,* Exhibit P, attached.

94. In *Maldonado-Vasquez v. Feeley* Judge Boulware describes the contents of this notice:

> The Notice indicated that DHS, in coordination with the DOJ, 'revisited its legal Position' on the INA and determined that § 1225(b)(2), rather than § 1226, is the applicable immigration authority for any alien present in the U.S. 'who has not been admitted. . . whether or not at a designated port of arrival.' Accordingly, 'it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.' The Notice further provides '[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated.'

Maldonado-Vasquez v. Feeley, pp 8-9; Exhibit P.

95. As Judge Boulware also noted in *Maldonado-Vasquez*, on September 5, 2025 the Board of Immigration Appeals (BIA) issued a precedent decision, *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025). In that precedent decision, the Board of Immigration Appeals formally agreed with the statutory interpretation as laid out in the July 8, 2025 ICE memo.

96. In other words, as of September 5, 2025, despite the conflicting regulatory language, express Congressional intent and long-standing constitutional due process requirements, it is now the explicit legal position of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) that all non-citizens present within the United States who have not been lawfully admitted subject to mandatory detention without bond, regardless of the length of their physical presence or their ties to the United States.

97. As occurred in Petitioner's case, and as Judge Boulware noted in *Vasquez* at 10-11, "since the July 8, 2025 DHS Guidance Memo, Petitioner asserts most IJs in Las Vegas have rejected DHS' new interpretation of 1225(b)(2), and instead found jurisdiction under 1226(a)" *Id.* at 10-11.

98. That was Petitioner's experience. He applied for a bond, IJ Roberts found him legally eligible for a bond, and ordered him released upon posting a bond of $5,000.

99. Despite IJ Robert's Order granting Petitioner a $5,000 bond, DHS filed a Notice of Automatic Stay and appealed IJ Robert's Bond order in Petitioner's case.

100. Following the September 5 decision in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), the BIA will no doubt sustain the Defendants' appeal of the IJ's bond decision.

101. Nevertheless, the Supreme Court has long recognized that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). To do so would add "new legal consequences to events completed [prior to the expansion]." *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 269-70 (1994); *see also, INS v. St. Cyr*, 533 U.S. 289, 315-316 (2001).

102. Because Congress did not grant DHS the power to retroactively expand expedited removal, or to reinterpret the statutory language at 8 U.S.C. § 1225(b)(2)(A) after nearly thirty years, or to ignore the clear intent of the implementing regulations at 8 C.F.R. § 1003.19(a) and 8 C.F.R. § 1236.1(d), DHS cannot constitutionally apply these new policies and legal interpretations to arbitrarily detain Petitioner without bond or to terminate 8 U.S.C. § 1229a proceedings that were initiated in October 2023 solely in order to subject this Petitioner or a similarly situated Petitioner to expedited removal proceedings under 8 U.S.C. § 1225 (b)(1).

103. DHS' actions in re-detaining Petitioner and holding him without bond based on these unconstitutional legal interpretations and the retroactive application of new policies and legal interpretations have caused Petitioner and his family significant harm.

B. DHS' AUTOMATIC STAY REGULATION AT 8 C.F.R. § 1003.19(i)(2)

104. On July 22, 2025, DHS filed form EOIR-43, "Notice of ICE Intent to Appeal Custody Redetermination" of the IJ's order finding Petitioner is eligible for bond. (Exhibit M: EOIR-43.)

105. Despite its name, the purpose of that form is not notification. By reserving their right to appeal DHS has notified Respondent of that intent in the hearing itself. Nor is this an actual Notice of Appeal. Rather, the sole purpose of the EOIR-43 form is to invoked the "Automatic stay" authority of 8 C.F.R. § 1003.19(i)(2).

106. Multiple federal courts, including the Federal District Court of Nevada, in *Herrera-Torralba v. Knight* 2:25-cv-01366-RFB-DJA (D. Nev. Sep 05, 2025); *Maldonado-Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY (D. Nev. Sep 17, 2025); *Zavala v. Ridge*, 310 F.Supp.2d 1071 (N.D. Cal. 2004); *Bezmen v. Ashcroft*, 245 F.Supp.2d 446 (D. Conn.

2003); *Zabadi v. Chertoff,* No. 05-CV-1796 (WHA), 2005 WL1514122 (N.D. Cal. June 17, 2005); *Uritsky v. Ridge*, 286 F.Supp.2d 842 (E.D. Mich. 2003) have held that the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) is *ultra vires*, lacking any statutory authority, and a violation of the constitution.

107. As invoked pursuant to 8 C.F.R. § 1003.19(i)(2), the Automatic Stay is a unilateral decision by ICE through a boilerplate form (EOIR-43), which does not proffer any evidence or analysis of the noncitizen's status as either a flight risk or a danger to the community.

108. This automatic stay results in ICE, the party that lost the issue in front of the IJ, being able to unilaterally prevent the execution of the IJ's Order of Release, which is founded on a particularized determination that the noncitizen can safely be released from custody upon posting of bond.

109. That is, ICE is allowed to overrule the Immigration Judge's ruling without any legal review or authority. As multiple federal courts have concluded, this is both ultra vires and unconstitutional, because it eliminates the discretionary authority of immigration judges and exceeds the authority granted to ICE by Congress.

110. The violation of Petitioner's constitutional right to due process of law is particularly egregious when ICE knows that by forcing the noncitizens to wait several months for a decision by the BIA on the appeal, they will effectively coerce a high percentage of noncitizens into abandoning their cases.

111. There is no congressional authority for ICE, DHS, or any agency within DHS to unilaterally and automatically stay an IJ's bond decision. In fact, the only congressional

authority cuts the other way: Congress determined that the default for noncitizens detained under Section 1226(a) is discretionary release. Jennings, 583 U.S. at 289.

112. The automatic stay is not subject to review by either the IJ or the BIA.

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

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

> Automatic stay in certain cases. In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR § 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

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

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

- IJ orders DHS to release noncitizen on bond:
  - DHS files EOIR-43 Notice of Intent to Appeal within one business day, invoking automatic stay. 8 C.F.R. § 1003.19(i)(2).
  - DHS files EOIR-26 Notice of Appeal within ten business days. 8 C.F.R. § 1003.6(c)(1).

- Automatic stay lapses 90 days after DHS files EOIR-26 Notice of Appeal. 8 C.F.R. § 1003.6(c)(4).

- DHS may seek discretionary stay before 90 days lapse. 8 C.F.R. §§ 1003.6(c)(5); 1003.19(i)(1).

- BIA orders release on bond or denies discretionary stay motion:

  - Release is automatically stayed for an additional five business days. 8 C.F.R. § 1003.6(d).
  - Within that five business day automatic stay, DHS may refer the case to the Attorney General. 8 C.F.R. § 1003.6(d).
  - Automatic stay is extended for 15 business days after DHS refers the case to the Attorney General. 8 C.F.R. § 1003.6(d).
  - DHS may seek a discretionary stay with the Attorney General for the duration of the case. 8 C.F.R. § 1003.6(d).

116. The regulations are written in such a way that it does not matter what either the IJ or BIA orders; if the government disagrees, the government can, through its own actions and per its own regulations, keep the noncitizen detained. And that detention could be, in reality, indefinite.

117. "Indefinite detention of a [noncitizen]" raises "a serious constitutional problem." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The automatic stay provision detains individuals indefinitely, without a "discernible termination point" (*Ashley*, 288 F.Supp.2d at 672), "definite termination point" (*Zabadi v. Chertoff*, No. C05-01796 WHA, 2005 WL 1514122, at *1 (N.D. Cal. 2005)), "finite time frame" (Id.), "certain time parameters for final resolution" (*Zavala v. Ridge*, 310 F. Supp.2d 1071, 1075 (D. N.D. Cal. 2004), or "ascertainable end point" (*Bezmen v. Ashcroft*, 245 F.Supp.2d 446, 449-50 (D. Conn. 2003).

118. Even more troubling, the automatic stay does not provide for review by the IJ or BIA–a clear due process violation. A noncitizen subject to DHS's arrest and continued detention in spite of an IJ ordering his release has no method to challenge the automatic stay before the immigration court or BIA.

119. *See Ashley*, 288 F.Supp.2d at 675 ("continued detention of alien without judicial review of the automatic stay of bail determination violated alien's procedural and substantive due process rights").

120. The automatic stay "operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied." *Mohammed H. v. Trump*, – F. Supp. 3d – , No. CV 25-1576 (JWB/DTS), 2025 WL 1334847 at *6 (D. Minn. May 5, 2025).

C. COUNSTITUTIONAL DUE PROCESS

121. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976).

122. As to the first *Mathews* factor, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250

(S.D.N.Y. 1996)). Petitioner has been detained for more than a month, preventing him from seeing and supporting his children and his partner, from obtaining his employment authorization document, working, and otherwise participating in his community.

123. As to the second *Mathews* factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards. As explained above, the current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention. Unlike the typical requests for a stay which require a demonstration of the likelihood of success on the merits, the automatic stay provision demands no such showing; in fact, it was enacted precisely to avoid the need for such an individualized determination. DHS in 2023 determined that Petitioner was neither a flight risk nor a danger to the community; an IJ has now reaffirmed that individualized assessment.

124. DHS has offered no evidence to contradict either their prior decision in 2023 or the IJ's individualized assessment and ruling made on July 22, 2025.

125. But that individualized, reasoned, decision and order from the IJ was effectively overruled by a unilateral determination by an ICE attorney. That unilateral determination "poses a serious risk of error." *Zavala*, 310 F.Supp.2d at 1076.

126. The unilateral nature of the automatic stay provision allows the DHS attorney, "who has by definition failed to persuade a judge in an adversary hearing that detention is justified," to make the stay decision without oversight or review. *Ashley*, 288 F.Supp.2d at 671.

127. This conflates the role of prosecutor and adjudicator, which is impermissible due to the high potential for error. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955).

128. As to the third *Mathews* factor, the government's interest in maintaining the "current" procedure is minimal here. This "policy and procedure" has not been officially published by DHS and was only discovered by press observation of an intraoffice memo issued on July 8, 2025--the day before Petitioner was re-detained. *See* Ex. P: Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025).

129. As explained above, DHS originally and the IJ last month, each determined that Petitioner posed no danger to the community, and was not a flight risk. *See* Ex. C; Ex. L; Ex. M.

130. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show prejudice. "To show prejudice, [a Petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).

131. Had ICE never re-detained Petitioner, had ICE and the Immigration Court not dismissed the Notice to Appear against him, Petitioner, like his partner and their children, would now be have employment authorization. (Exhibit Q: Employment cards of partner and children).

132. Certainly, if DHS could not invoke the automatic stay, Petitioner would have been released on bond and would be home with his children and his partner, able to support his household and continue the medical investigation into his daughter's cerebral palsy while he argues to the BIA that the IJ should not have summarily dismissed the NTA against him, and that the IJ's orders should be overruled, and Petitioner's case be presented with that of his partner and their children.

133. Petitioner's release on bond would have occurred in July, pursuant to the IJ's order that he may be released upon posting of a $5,000 bond which was and is ready to be posted on Petitioner's behalf.

134. Petitioner's re-detention and his continued detention, despite the IJ's order, based first on ICE's "interim guidance" published solely via interoffice memo, based second on DHS' abuse of the unconstitutional "automatic stay" and finally based on the BIA's equally unconstitutional decision in *Yajure-Hurtado*, constitutes actual prejudice.

135. Petitioner has no other forum in which to seek judicial review of the constitutional and legal issues raised by his re-detention and his continued detention on the basis of Defendants' actions, memos, and decisions.

136. In this case, Petitioner and his family have relied in good faith on the prior actions taken by DHS to place them in removal proceedings under 8 U.S.C. § 1229a. Petitioner filed a completed I-589 Application for Asylum in September 2024. (Exhibit D). His partner has also filed an I-589, one that relies significantly on Petitioner's direct experiences and witness.

137. The ex post facto application of DHS' new policies and legal interpretations to subject Petitioner to mandatory detention as though he had not previously been issued a warrant and placed in removal proceedings pursuant to § 1226(a) is a clear violation of Petitioner's constitutional rights to due process and freedom from ex post facto law.

138. Petitioner remains in removal proceedings pursuant to 8 U.S.C. § 1229a, pending his appeal to the Board of Immigration Appeals of the Immigration Judge's Order Dismissing the Notice to Appear filed against him in those proceedings.

139. Similarly, although DHS has now indicated they plan to ask the BIA to remand Petitioner's removal case to the Immigration Judge, that has yet to occur.

140. Should the BIA uphold the IJ's Order of Dismissal, because DHS asked EOIR to dismiss removal proceedings against the Petitioner, there is not now, and may never be, a final order of removal against him, for a Court of Appeals to subject to judicial review via a Petition for Review pursuant to 8 U.S.C. § 1252.

141. This forum may therefore be Petitioner's sole avenue for judicial review of DHS' ex post facto application of this administration's orders and policy changes to reconsider and unilaterally readjudicate, with no change in Petitioner's circumstances, the procedural choices the government made in 2023, when he and his family were initially detained, processed into removal proceedings, and released.

142. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas at* 690.

143. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be allowed to pay the $5,000 bond and be released immediately.

144. This petition is therefore Petitioner's sole means of seeking judicial review of DHS' unconstitutional actions and legal claims in this matter.

VIII. CLAIMS FOR RELIEF

COUNT I

Violation of Fifth Amendment Right to Procedural Due Process

145. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

146. 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).

147. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

148. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. § 1158(a)(1). Any noncitizen who is "physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen's] status, may apply for asylum." Id.

149. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, see Id. §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, see Id. § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, see Id. §§ 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, see Id. § 1229a(c)(6)-(7).

150. Neither Petitioner nor his counsel were advised by DHS that they would be seeking to sever his case from that of his partner and their two children explicitly in order to terminate his proceedings in order to place him in expedited removal, thus depriving him of the bundle of rights associated with his pending asylum application.

151. DHS filed their Motion late in the day on the day he was detained, without reaching out to counsel, and the Immigration Judge signed the orders severing the cases and dismissing his before 9:00 a.m. local time the following morning, July 10, 2025.

152. Because of his legal interest in his pending asylum application, this violated Petitioner's Constitutional right of due process. See generally *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

153. The Ninth Circuit has also 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. & Custome Enf't.* 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).

154. Petitioner has a separate fundamental interest in liberty and being free from official restraint.

155. The Government's continued detention of Petitioner even after an Immigration Judge has granted him bond, finding that he is neither a flight risk nor a danger to others, violated his right to due process under the law.

156. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty; equally, there is no question that the government is seeking to deprive the Petitioner of his previously granted right to apply for asylum before the Immigration Court.

157. The government's re-detention and continued detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*,

533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

158. The automatic stay provision keeping Petitioner detained today is unconstitutional as applied to him, and a violation of his due process rights. An IJ ordered ICE to release Petitioner on a reasonable bond of $5,000.00, and because ICE disagrees with that order based upon a new and novel "interim guidance," it invoked an automatic stay of the order, rendering Petitioner stuck in detention.

159. The automatic stay regulation rendered Petitioner's bond hearing a charade, because the outcome of the hearing or the validity of the IJ's reasoning was completely irrelevant. ICE wants Petitioner detained, and through the automatic stay, it can effectively ignore the IJ's order to the contrary. There is no due process when the government, who lost the argument in court, gets to do what it wants regardless of the IJ's order.

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

COUNT II
Violation of Article I, Section 9, Clause 3 of the U.S. Constitution

161. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

162. The Government may not pass or otherwise implement a law ex post facto. deprive a person of life, liberty, or property without due process of law. U.S. Const. Article 1, Section 9, Clause 3.

163. That constitutional provision has been applied to retroactive application of new policy. See, e.g., *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269-70 (1994); *INS v. St. Cyr*, 533 U.S. 289, 315-316 (2001).

164. The Government's continued detention of Petitioner, despite Petitioner's reliance on the Government's prior case initiation and detention choices, violates his constitutional right to be free of ex post facto application of changed government policy.

COUNT III

Violation of the Administrative Procedure Act – 5 U.S.C. 706(2)(A): Action Not in Accordance with Law and in Excess of Statutory Authority, Unlawful Detention

165. Petitioner restates and realleges all paragraphs as if fully set forth here.

166. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

167. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983)).

168. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York,* 139 S. Ct. 2551, 2569 (2019) (citation omitted).

169. By categorically revoking Petitioner's release, severing his case from that of his family and transferring him away from the district where he resided with them, without

consideration of his individualized facts and circumstances, Respondents have violated the APA.

170. Respondents have made no finding that Petitioner is a danger to the community.

171. Respondents have made no finding that Petitioner is a flight risk, and in fact, the Immigration Judge has explicitly ruled that he is not.

172. By detaining and transferring the Petitioner categorically, Respondents have further abused their discretion: since the agency made its initial custody determination in October 2023 there have been no changes to his facts or circumstances that would support the revocation of the decision DHS made at that time to release him from custody.

173. Respondents in October 2023, and the Immigration Judge more recently in July 2025, have considered Petitioner's facts and circumstances and determined that he is neither a flight risk nor danger to the community. There have been no changes to the facts that justify DHS' revocation of his original release. The fact that Petitioner has already been granted release by Respondents under the same facts and circumstances shows that Respondents do not consider him, on an individualized basis, to be a danger to the community or a flight risk.

IX. PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter.

b. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately on bond as ordered by the Immigration Judge.

c. Declare that the Petitioner's re-detention by ICE without any showing of changed circumstances or individualized determination of danger or flight risk violates the Due Process Clause of the Fifth Amendment;

d. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval.

e. Award Petitioner 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 the law; and

f. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 29th day of September, 2025.

STOWELL CRAYK PLLC

/s/ Marti L. Jones
Attorney for Petitioner

EXHIBIT LIST

A. Warrant for Arrest of Alien (Marlon Omar Baca-Beltrand)

B. Notice to Appear in Removal Proceedings under section 240 of the INA.

C. ATD Enrollment – Notice to Alien and Order of Release on Recognizance

D. I-589 Initial Filing

E. Daughter's Treatment schedule with Shriners Children's Hospital.

F. DHS Motion to Sever

G. DHS Motion to Dismiss

H. IJ Order on Motion to Dismiss

I. Filing Receipt for Appeal to BIA

J. Petitioner's Motion for Bond

K. Bond Hearing Notice

L. IJ Bond Memorandum

M. IJ Order granting Bond

N. DHS 8 C.F.R. § 1003.19(i)(2) Automatic Stay Notice

O. DHS Notice of Appeal to the BIA of IJ Order Granting Bond

P. Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025)

Q. Employment cards of partner and their children

R. Comments on Proposed Regulations filed by Congressman Lamar Smith, Chair of the House Subcommittee on Immigration and Claims 1997-1998.