

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE**

**ALEX MANUEL REYES CALDERON**

**Petitioner,**

**v.**

**E.L. TATUM, JR.**, Warden of the Federal Correctional Institute, Berlin; **PATRICIA H. HYDE**, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Boston Field Office; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General;

**Respondents.**

**PETITION FOR WRIT OF HABEAS CORPUS**  
**PURSUANT TO 28 U.S.C. § 2241**  
**(Expedited Consideration Requested)**

**INTRODUCTION**

This case involves the question of whether a regulation permitting the Department of Homeland Security (DHS) to unilaterally and mandatorily detain a person after an Immigration Judge (IJ) has ordered the person's release is unconstitutional as applied to Petitioner. The Court should find that 8 C.F.R. § 1003.19(i)(2) is unconstitutional as applied to Petitioner. *See Günaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 U.S. Dist. LEXIS 99237, at \*27 (D. Minn. May 21, 2025) ("In conclusion, all three *Mathews* factors favor [the petitioner's] position, and the Court

concludes the automatic stay regulation at § 1003.19(i)(2) violates [the petitioner’s] procedural due process rights under the Fifth Amendment.”).

Petitioner Alex Manuel Reyes Calderon is a noncitizen from El Salvador whom the IJ already granted a release with the condition of posting a \$8,000 bond on July 14, 2025, because the IJ found that Respondents failed to satisfy the dangerous prong under the clear and convincing evidence or the flight risk prong under the preponderance of evidence. Ex. 1 (IJ Bond Order). This bond decision is unsurprising because Petitioner has no criminal convictions and has only traffic related charges. Ex. 2 (DHS Evidence); Ex. 3 (Petitioner’s Bond Motion and Evidence).

However, Petitioner could not be released because Respondents filed Form EOIR-43, a notice of intent to appeal the IJ’s bond decision, with the Immigration Court within one business day, which triggered an automatic stay of release under 8 C.F.R. § 1003.19(i)(2). Ex. 4 (Form EOIR-43). Subsequently, Respondents appealed the IJ’s bond decision to the Board of Immigration Appeals (BIA), which continued the automatic stay of release while the appeal is pending before the BIA. Ex. 5 (DHS’s Notice of Appeal); *see* 8 C.F.R. § 1003.19(i)(2) (“any order of the immigration judge authorizing release (on bond or otherwise) . . . shall remain in abeyance pending decision of the appeal by the Board”). *See also* 8 C.F.R. § 1003.6(c).

It is well-settled that Petitioner has due process rights under the Fifth Amendment of the Constitution. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”). This Court’s due process “inquiry is guided by the three-part balancing test articulated in *Mathews v. Eldridge*[,]” 424 U.S. 319, 335 (1976). *Id.* at 27.

All three *Mathews* factors weigh heavily in Petitioner’s favor.

*First*, “[t]here is no question that [Petitioner] suffer[s] a substantial deprivation of liberty” who remains in detention “alongside criminal inmates at the Strafford County Jail[.]” *Hernandez-Lara*, 10 F.4th at 28; *Günaydin*, 2025 U.S. Dist. LEXIS 99237, at \*20-21 (similar analysis).

*Second*, the automatic stay of release regulation, 8 C.F.R. § 1003.19(i)(2) “creates a substantial risk of erroneous deprivation of a detainee’s interest in being free from arbitrary confinement” particularly as “the automatic stay regulation includes no requirement that the agency official invoking it consider any individualized or particularized facts[.]” *Günaydin*, 2025 U.S. Dist. LEXIS 99237, at \*21-23. Indeed, the risk of erroneous deprivation is more substantial than the burden of proof question presented in *Hernandez-Lara*. *See Hernandez-Lara*, 10 F.4th at 31 (“proving a negative (especially a lack of danger) can often be more difficult than proving a cause for concern”).

*Third*, while “prompt execution of removal orders is a legitimate government interest . . . , which detention may facilitate,” the government’s interest is less compelling in Petitioner’s case. *Id.* at 32-33. Indeed, “limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention.” *Id.* at 33.

Because “the automatic stay regulation at § 1003.19(i)(2) violates [Petitioner’s] procedural due process rights under the Fifth Amendment[,] [t]he Court [should] order[] [Petitioner’s] immediate release.” *Günaydin*, 2025 U.S. Dist. LEXIS 99237, at \*27.

Petitioner further alleges as follows:

### **PARTIES**

1. Petitioner Alex Manuel Reyes Calderon is a noncitizen from El Salvador who is currently detained by Respondents at the Federal Correctional Institute (FCI) Berlin in Berlin, New Hampshire.

2. Respondent E.L. Tatum, Jr. is the warden of FCI Berlin, and he is being sued in his official capacity as the warden. He is Petitioner's immediate custodian.

3. Respondent Patricia Hyde is the Acting Boston Field Office Director, U.S. Immigration and Customs Enforcement, and she is being sued in her official capacity. She is Petitioner's legal custodian.

4. Respondent Todd Lyons is the Acting Director, U.S. Immigration and Customs Enforcement, and he is being sued in his official capacity. He is Petitioner's legal custodian.

5. Respondent Kristi Noem is the Secretary of U.S. Department of Homeland Security, and she is being sued in her official capacity. She is Petitioner's legal custodian.

6. Respondent Pamel J. Bondi is the United States Attorney General, and she is being sued in her official capacity. She oversees Immigration Judges and the Board of Immigration Appeals. She is also Petitioner's legal custodian.

### **JURISDICTION AND VENUE**

7. The Court has jurisdiction under 28 U.S.C. § 1331, 2241 (habeas corpus) and Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause").

8. Venue is proper in the District of New Hampshire because Petitioner is currently detained by Respondents at FCI Berlin in Berlin, New Hampshire, which is in the territorial jurisdiction of this Court. 28 U.S.C. § 1391; *Vasquez v. Reno*, 233 F. 3d 688, 696 (1st Cir. 2000).

### **FACTS**

9. Petitioner is 27 years old and from El Salvador. Ex. 2 (DHS Evidence before the Bond Hearing).

10. Petitioner entered the United States without a lawful entry in October 2021. Since his entry, Petitioner has resided in Everett, Massachusetts. Ex. 3.

11. Before the October 2021 entry, in September 2021, Petitioner attempted to enter the United States but was returned to Mexico under Title 42.

12. Respondents arrested Petitioner at his residence on June 26, 2025, and detained him first at the Plymouth County Correctional Facility in Plymouth, Massachusetts, and then at FCI Berlin. Ex. 2.

13. Petitioner has a dismissed case for unlicensed operation of a motor vehicle under M.G.L. Chapter 90, Section 10, and speeding exceeding the posted limit under Chapter 90, Section 17 and other traffic charges. However, Petitioner has no conviction for any of these charges. Ex. 2; Ex. 3.

14. Respondents placed Petitioner in removal proceedings. Ex. 2.

15. Petitioner filed an asylum application in removal proceedings. Ex. 3.

16. On or about July 11, 2025, Petitioner requested a bond hearing before the IJ pursuant to 8 U.S.C. § 1226(a). Ex. 3.

17. On July 14, 2025, Respondents, first, argued that Petitioner was detained under 8 U.S.C. § 1225(b) instead of 8 U.S.C. § 1226(a) because all inadmissible noncitizens are detained under 8 U.S.C. § 1225(b) as applicants for admission and, second, also contended that Respondents met their burden of justifying Petitioner's detention. Ex. 2.<sup>1</sup>

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<sup>1</sup> Petitioner notes that it appears that Respondents have recently changed their position. As of July 2025, Respondents took the position that "aliens who have not been admitted or paroled but who can establish that they have been physically present in the United States continuously for the 2-year period immediately preceding their

18. On July 14, 2025, the IJ rejected the Respondent's arguments, found that he was detained under 8 U.S.C. §1226(a), further found that Respondent failed to prove Petitioner was a flight risk or danger to the community and granted Petitioner's release with the condition of posting a bond of \$8,000. Ex. 1.

19. However, Petitioner could not post the bond because Respondents filed Form EOIR 43, Notice of ICE Intent to Appeal Custody Redetermination. Ex. 4. This filing within one business day of the IJ's bond decision triggered the automatic stay of release under 8 C.F.R. § 1003.19(i)(2).

20. On July 25, 2025, Respondents filed a notice of appeal to the Board of Immigration Appeals (BIA). Ex. 5 (DHS's Notice of Appeal).

## **CLAIMS FOR RELIEF**

### **COUNT 1**

#### **U.S. CONSTITUTION - FIFTH AMENDMENT**

21. The foregoing allegations are realleged and incorporated herein.

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

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

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encounter with immigration authorities are exempt from expedited removal proceedings and their detention is governed instead by § 1226.” Docket Number (DN) 14, at 2 n.1, *Duchi-Naula v. Tatum et al*, 1:25-cv-247-LM-AJ. *Cf. Ex. 2* at 9 (Petitioner “has been a dedicated member of our community since 2012”).

24. This Court's due process "inquiry is guided by the three-part balancing test articulated in *Mathews v. Eldridge*[,]” 424 U.S. 319, 335 (1976). *Id.* at 27.

25. The Court should find that 8 C.F.R. § 1003.19(i)(2) is unconstitutional as applied to Petitioner, who is neither a danger to the community nor a flight risk. *See Günaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 U.S. Dist. LEXIS 99237, at \*27 (D. Minn. May 21, 2025) (“In conclusion, all three *Mathews* factors favor [the petitioner's] position, and the Court concludes the automatic stay regulation at § 1003.19(i)(2) violates [the petitioner's] procedural due process rights under the Fifth Amendment.”).

#### **PRAYER FOR RELIEF**

Petitioner asks that this Court grant the following relief:

- (1). Assume jurisdiction over this matter;
- (2). Issue a Writ of Habeas Corpus directing Respondents to immediately release Petitioner;
- (3). Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (4). Order any further relief this Court deems just and proper.

Respectfully submitted this 10th day of August 2025.

Alex Manuel Reyes Calderon,

By and through his Counsel,

/s/ SangYeob Kim

Gilles R. Bissonnette (NH Bar: 265393)

SangYeob Kim (NH Bar: 266657)

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