

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Fernando Gonzalez Guerrero, §

§

Petitioner, §

§

V. §

§

KRISTI NOEM, Secretary of the United States §

Department of Homeland Security; §

PAMELA BONDI, United States Attorney §

General; §

Civil Case No. 1:25-cv-1334

MIGUEL VERGARA, San Antonio Field Office §

Director for Enforcement and Removal, U.S. §

Immigration and Customs Enforcement, §

Department of Homeland Security; §

CHARLOTTE COLLINS, Warden, T. Don Hutto §

Detention Center, Taylor, Texas; §

OSCAR MONTEMAYOR; Acting Chief Counsel, §

U.S. Immigration and Customs Enforcement, §

Department of Homeland Security; §

CELESTIN NKENG; Assistant Chief Counsel, §

U.S. Immigration and Customs Enforcement, §

Department of Homeland Security; §

UNITED STATES DEPARTMENT OF §

HOMELAND SECURITY;

UNITED STATES IMMIGRATION AND

CUSTOMS ENFORCEMENT;

Respondents.

FIRST AMENDED

¹ EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

¹ Added verification under penalty of perjury on page 10.

1. Petitioner Fernando Gonzalez Guerrero, through counsel, respectfully petitions this Court for an emergency writ of habeas corpus under 28 U.S.C. § 2241 to challenge his unlawful detention by Immigration and Customs Enforcement (ICE) at the T. Don Hutto Detention Center, Taylor, Texas. Petitioner seeks immediate release on the \$5,000 bond ordered by the Immigration Judge (IJ) on July 23, 2025, or, alternatively, an order lifting the Department of Homeland Security's (DHS) automatic stay and enforcing the IJ's bond decision. This petition raises constitutional claims and pure questions of law, over which this Court has jurisdiction.

I. INTRODUCTION

2. Petitioner, a Mexican citizen, has resided in the U.S. for over 20 years, with U.S. citizen children, stable employment, and no criminal convictions. On July 17, 2025, ICE detained him after a dismissed assault charge in Travis County, Texas, pursuant to an ICE Detainer and a Warrant for Arrest of Alien. On July 23, 2025, the IJ granted a \$5,000 bond, finding detention governed by 8 U.S.C. § 1226(a) (discretionary detention), not § 1225(b) (mandatory detention for arriving aliens), and that the respondent was not a danger to the community and not a flight risk.

3. DHS improperly invoked an automatic stay under 8 C.F.R. § 1003.19(i)(2) by filing Form EOIR-43 and appealing to the Board of Immigration Appeals (BIA), keeping Petitioner detained. The stay is unlawful, as DHS's no-release determination relies on an erroneous application of § 1225(b). DHS actions are ultra vires and violate statutory authority and the Fifth Amendment due process. See *Mayo Anicasio v. Kramer*, No. 4:25CV3158 (D. Neb.

Aug. 14, 2025) (finding the automatic stay provision violates procedural and substantive due process rights and is ultra vires of the delegating statute in a similar case involving an alien present in the U.S. who was granted bond by an IJ but detained via automatic stay).

II. JURISDICTION AND VENUE

4. Petitioner is in the physical custody of the Respondents in the T. Don Hutto Detention Center, in Taylor, Texas.

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101–1537.

6. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

7. This Court has jurisdiction under 28 U.S.C. § 2241 to review the lawfulness of Petitioner's detention, as this petition raises constitutional claims (Fifth Amendment due process violations) and pure questions of law (whether DHS's automatic stay under 8 C.F.R. § 1003.19(i)(2) is authorized when detention is governed by 8 U.S.C. § 1226(a) rather than § 1225(b)). See *Rosales v. Bureau of Immigration and Customs Enforcement*, 426 F.3d 733, 736 (5th Cir. 2005) (holding that courts retain jurisdiction to review constitutional claims and questions of law in immigration cases under the REAL ID Act).

8. Venue is proper as Petitioner is detained in Taylor, Texas, within this District.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

9. There is no statutory exhaustion requirement for habeas corpus petitions under 28 U.S.C. § 2241. See *Puri v. Gonzales*, 464 F.3d 1038, 1041 (9th Cir. 2006) (noting that § 2241 does not contain an exhaustion requirement). Although courts may impose a prudential

exhaustion requirement, exhaustion is excused here because this petition raises pure questions of law and constitutional claims that the BIA lacks authority to resolve. See *McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992) (exhaustion not required where administrative remedies cannot provide relief or are futile); *Rosales*, 426 F.3d at 736. 9. Moreover, exhaustion would be futile given DHS's entrenched position on § 1225(b) applicability, the BIA's inconsistent non-precedential decisions, and chronic delays in adjudicating bond appeals—typically six months or more—which would prolong Petitioner's unlawful detention without meaningful review. See *Rodriguez v. Bostock*, No. 2:24-cv01234, at 3 (W.D. Wash. 2025) (noting BIA bond appeals take six months or more); *Oliveira Gomes v. Hyde*, No. 25-11572 (D. Mass. 2025); *Mayo Anicasio v. Kramer*, No. 4:25CV3158 (D. Neb. Aug. 14, 2025) (granting habeas relief without requiring exhaustion, noting the automatic stay's potential for extension beyond 90 days through discretionary mechanisms). In *Oliveira Gomes v. Hyde*, the District Court issued a writ of habeas corpus long before the BIA had time to issue a decision on the bond appeal. Judicial intervention is necessary to prevent irreparable harm from extended detention.

IV. FACTS

10. Petitioner entered the U.S. without inspection in 2005 and has resided continuously in Austin, TX, with his wife (a VAWA self-petitioner with a prima facie determination) and four U.S. citizen children. He has no criminal convictions.

11. On June 24, 2025, Petitioner was arrested for an alleged assault charge in Travis County, Texas, which was dismissed “in the interest of justice” on July 15, 2025, due to self-defense circumstances involving his stepson. While he was in Travis County custody,

Petitioner was served with Form I-200, Warrant for Arrest of Alien, and Form I-247A, ICE Detainer.

12. On July 16, 2025, after the charges were dismissed, ICE picked up the Petitioner at the Travis County Jail pursuant to the arrest warrant and detained him at T. Don Hutto Detention Center. He has been there since that date. On that same date, ICE issued the Petitioner a Notice to Appeal (NTA), charging the respondent as inadmissible pursuant to INA § 212(a)(6)(A)(i) because “You [Petitioner] are an alien present in the United States who has not been admitted or paroled.”

13. On July 23, 2025, after a bond hearing, the IJ granted a \$5,000 bond, finding § 1226(a) applies, as Petitioner was apprehended inside the U.S. after 20 years of residence and pursuant to a Warrant for Arrest of Alien issued by DHS. On that same date, DHS filed Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination, invoking an automatic stay. On August 5, 2025, DHS filed an appeal with the Board of Immigration Appeals (BIA), with a certification of the Acting Chief Counsel, Oscar Montemayor. The appeal is currently pending before the BIA, where such appeals typically take six months or more to resolve, prolonging Petitioner’s detention improperly. See *Rodriguez v. Bostock*, No. 2:24-cv-01234, at 3 (W.D. Wash. 2025); *Oliveira Gomes v. Hyde*, No. 25-11572 (D. Mass. 2025); *Mayo Anicasio v. Kramer*, No. 4:25CV3158 (D. Neb. Aug. 14, 2025) (highlighting how the automatic stay can be extended beyond 90 days via discretionary stays, leading to prolonged detention).

14. DHS’s sole argument on the appeal before the BIA is that the IJ did not have jurisdiction to set a bond amount because the respondent is an “applicant for admission” and subject to mandatory detention pursuant to INA §§ 235(b)(1) and 235(b)(2). This is despite the

fact that the respondent is not in expedited removal proceedings and was issued an arrest warrant while being detained in Travis County, Texas, making his detention pursuant to § 1226(a), as the IJ properly found in the bond proceedings. This mirrors the facts in *Mayo Anicasio v. Kramer*, No. 4:25CV3158 (D. Neb. Aug. 14, 2025), where DHS attempted to classify an alien present in the U.S. as an "arriving alien" under § 1225, an argument rejected by the IJ and later by the district court.

15. Petitioner has significant equities: 20 years of U.S. residence, stable employment in construction, U.S. citizen children, and eligibility for VAWA relief (as a battered stepparent) and Cancellation of Removal under INA § 240A(b)(1) due to exceptional hardship to his U.S. citizen children.

IV. LEGAL ARGUMENT

A. The Automatic Stay is Ultra Vires.

16. Under 8 C.F.R. § 1003.19(i)(2), an immigration judge's order authorizing the release of a noncitizen is automatically stayed—and detention continues—pending appeal to the Board of Immigration Appeals if DHS had initially denied release or set a bond of \$10,000 or more, provided DHS files the appeal within one business day of the order.

17. In this case, the IJ's \$5,000 bond is below this threshold, and DHS's no-release determination is invalid, as it relies solely on § 1225(b), which does not apply to noncitizens apprehended inside the U.S. with a warrant. See *Oliveira Gomes v. Hyde*, No. 25-11572 (D. Mass. 2025); *Rodriguez v. Bostock*, No. 2:24-cv-01234 (W.D. Wash. 2025) (holding that interior apprehensions with warrants fall under § 1226(a), entitling noncitizens to bond hearings); *Mayo Anicasio v. Kramer*, No. 4:25CV3158 (D. Neb. Aug. 14, 2025) (holding the automatic stay ultra

vires because it permits DHS, outside the Department of Justice, to override an IJ's bond determination, exceeding the Attorney General's delegated authority under 8 U.S.C. § 1226(a) and 28 U.S.C. § 510). The respondent entered 20 years ago and was arrested by ICE pursuant to a warrant, and he was charged as an alien present in the U.S. without admission or parole. DHS's reliance on § 1225(b) is a pure question of law, as the Form I-200 warrant, NTA charge, and Petitioner's long-term residence confirm § 1226(a) governs. The automatic stay exceeds DHS's authority under the regulation, rendering it ultra vires. DHS argument is against long-standing tradition of treating aliens as "applicants for admission," those who recently crossed the border.

18. Moreover, appeals before the Board of Immigration Appeals (BIA) routinely take six months or more to resolve, far exceeding the regulation's intended 90-day cap on automatic stays (which is often tolled or ignored in practice), thereby prolonging detention unnecessarily and undermining the purpose of bond hearings. See *Rodriguez v. Bostock*, No. 2:24-cv-01234, at 3 (W.D. Wash. 2025) (noting BIA bond appeals take six months or more); *Oliveira Gomes v. Hyde*, No. 25-11572 (D. Mass. 2025); *Mayo Anicasio v. Kramer*, No. 4:25CV3158 (D. Neb. Aug. 14, 2025) (noting extensions via discretionary stays under 8 C.F.R. § 1003.6(c), allowing indefinite detention). For instance, according to recent agency data, the average processing time for a BIA bond appeal in FY 2024 was 204 days—nearly seven months—with some cases extending to a year or longer, leading to compounded harms for detainees. This delay is not merely administrative but systemic, as evidenced by multiple sources confirming timelines ranging from six to eighteen months for non-detained cases, during which individuals remain in custody without resolution.

19. DHS's invocation of the automatic stay, solely arguing that the IJ did not have jurisdiction, is thus ultra vires not only because it misapplies the statutory framework but also because DHS is fully aware that these appeals drag on for over six months, effectively using the process to frustrate respondents who are otherwise eligible for bond. By keeping individuals detained in jail-like conditions during these protracted delays, DHS exacerbates the difficulty of mounting a defense in underlying removal proceedings—such as securing legal representation or gathering evidence—often leading many noncitizens to abandon their claims and opt for voluntary departure out of desperation. This tactic subverts the regulatory intent of prompt bond determinations and fair hearings under § 1226(a), transforming a purported appellate safeguard into a tool for coercive prolonged detention, which exceeds DHS's lawful authority and violates due process principles established in cases like *Rodriguez* and *Oliveira Gomes*, and *Mayo Anicasio*.

B. The Automatic Stay, As Applied, Violates Due Process

20. The stay, as applied here, violates Fifth Amendment due process by arbitrarily prolonging detention despite the IJ's finding that Petitioner is neither a flight risk nor a danger, and by overriding a judicial determination without sufficient justification. DHS's sole argument—that Petitioner is subject to mandatory detention under § 1225(b) as an “applicant for admission”—was already litigated and rejected by the IJ, yet the stay allows DHS to ignore this ruling, rendering the bond hearing meaningless. See *Ashley v. Ridge*, 288 F. Supp. 2d 662 (D.N.J. 2003); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003) (automatic stay violates due process when it results in indefinite detention and applied to non-threatening non-criminals)²;

² “Thus, as demonstrated by Bezmen's case, by initial detention determination and subsequent use of the automatic stay, the INS may effectively metamorphose the custody of any deportable alien into detention without effective

Mayo Anicasio v. Kramer, No. 4:25CV3158 (D. Neb. Aug. 14, 2025) (applying *Mathews v. Eldridge*, 424 U.S. 319 (1976), to find the automatic stay violates procedural due process due to high risk of erroneous deprivation, significant private liberty interest, and minimal government interest, and substantive due process by lacking special justification for continued detention). Continued detention causes irreparable harm, including family separation and financial strain on Petitioner's U.S. citizen children, given his strong equities and relief eligibility (VAWA, Cancellation of Removal). Moreover, BIA appeals of bond denials typically take six months or more, exacerbating the due process violation by imposing prolonged detention without resolution. See *Rodriguez v. Bostock*, No. 2:24-cv-01234, at 3 (W.D. Wash. 2025). See *Rosales*, 426 F.3d at 736 (courts may review constitutional claims in immigration detention cases); *Sanchez Puentes v. Garite*, No. 25-CV-00127-DB (W.D. Tex. 2025) (granting habeas relief for unlawful detention). DHS's pattern of misusing automatic stays underscores the need for judicial intervention to prevent abuse of discretion.

C. The Automatic Stay Regulation Itself Exceeds Statutory Authority and Violates Due Process

21. Alternatively, 8 C.F.R. § 1003.19(i)(2) is facially invalid, as it exceeds the INA's statutory authority by allowing DHS to merge prosecutorial and adjudicatory roles, unilaterally overriding IJ decisions without congressional authorization. See *Zabadi v. Chertoff*, No. C 05-01796 WHA, 2005 WL 1514122 (N.D. Cal. 2005); *Mayo Anicasio v. Kramer*, No. 4:25CV3158 (D. Neb. Aug. 14, 2025) (declaring the regulation ultra vires and violative of due process on both procedural and substantive grounds). It also violates due process on its face by

bona fide individualized bond determination for an indeterminate period of time" *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003)

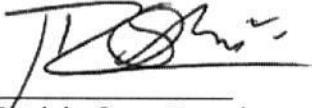
permitting prolonged detention without individualized review or meaningful time limits, leading to arbitrary deprivations of liberty. *Nken v. Holder*, 556 U.S. 418 (2009) (stays should be discretionary, not automatic).

V. RELIEF REQUESTED

22. Petitioner requests: (a) A writ of habeas corpus ordering immediate release on the \$5,000 bond; (b) An order lifting the automatic stay under 8 C.F.R. § 1003.19(i)(2) as ultra vires and unconstitutional as applied; (c) A declaration that 8 C.F.R. § 1003.19(i)(2) is facially invalid; (d) A temporary restraining order enjoining detention pending BIA appeal; and (e) Costs and attorney's fees.

I declare under penalty of perjury that I am the petitioner's attorney, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury

Respectfully submitted, August 21, 2025.



Patricio Garza Izaguirre
Attorney for the Petitioner

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TX SBN 24087568

INDEX OF DOCUMENTS

	Exhibit
- Notice to Appear	A
- Order of the IJ granting a \$5000 bond	B
- Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination	C
- Form EOIR-26, Bond Appeal	D

CERTIFICATE OF SERVICE

I, Patricio Garza Izaguirre, certify that on this date a true and correct copy of this **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**, and all the attached documents described in the index above, were served to:

1. KRISTI NOEM, Secretary of the United States Department of Homeland Security;
2. PAMELA BONDI, United States Attorney General;
3. MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
4. CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center, Taylor, Texas;
5. OSCAR MONTEMAYOR; Acting Chief Counsel, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
6. CELESTIN NKENG; Assistant Chief Counsel, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
7. UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
8. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;

On August 21, 2025



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