



2. The IJ considered and rejected ICE's statutory jurisdiction argument, found that Petitioner was properly detained not under 8 U.S.C. § 1225(b) but rather 8 U.S.C. § 1226(a), and found herself to have jurisdiction to order bond pursuant to that statute. In considering bond on the merits, the IJ found that Petitioner easily met his burden of proof that he was neither a flight risk nor a danger to the community, and ordered him released on the statutory minimum bond of \$1500.

3. ICE then appealed this bond order to the Board of Immigration Appeals ("BIA"), as they were entitled to do. But while the appeal was pending, instead of allowing Petitioner to post the bond and be released, or instead of moving the BIA for a discretionary stay which would allow Petitioner at least some modicum of notice and opportunity to be heard, ICE invoked the "automatic stay" regulation which allows them to unilaterally stay the IJ's order and prevent release on bond while the BIA appeal is pending.

4. ICE's invocation of the automatic stay regulation violates the regulation, the statute, and due process in a case such as this where the dispute is solely a legal one, not over flight risk or danger to the community. The writ of habeas corpus should issue, and this Court should order Respondents to allow Petitioner to post his bond and be released pending the appeal of the IJ's order.

#### **JURISDICTION AND VENUE**

5. This action arises under the Immigration and Nationality Act of 1952 ("INA"), as amended, 8 U.S.C. § 1101 *et seq.*, and the Due Process Clause of the Fifth Amendment to the United States Constitution. This Court has jurisdiction pursuant to Art. I, § 9, cl. 2 of the United States Constitution; 28 U.S.C. § 2241 (general grant of habeas authority to the district courts); 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§2201, 2202 (Declaratory Judgment Act); and 28 U.S.C. § 1651 (All Writs Act).

6. Venue is proper under 28 U.S.C. § 1391(e)(1)(A), (B) because Respondent Hott, who has a principal place of business in Fairfax, Va., is the ICE official with immediate legal custody of Petitioner, and Petitioner is currently held in ICE custody within the territorial jurisdiction of this District.

### **PARTIES**

7. Petitioner Carlos Hubert Quispe-Ardiles is a native and citizen of Peru, currently detained at the Farmville Detention Center in Farmville, Va., who has a pending application for asylum.

8. Respondent Kristi Noem is the Secretary of Homeland Security, the cabinet department of which U.S. Immigration and Customs Enforcement is an agency. She is sued in her official capacity.

9. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the agency currently detaining Petitioner. He is the individual who issued an order to detain individuals like Petitioner, and also has legal custody over Petitioner. He is sued in his official capacity.

10. Respondent Pamela Bondi is the Attorney General of the United States. The Immigration Judge who conducted Petitioner's bond hearing and the Board of Immigration Appeals members who will decide ICE's appeal of Petitioner's bond order do so as her designees. In addition, the automatic stay regulation challenged in this lawsuit was promulgated by her agency. She is sued in her official capacity.

11. Respondent Russell Hott is the Field Office Director of the Washington Field Office of U.S. Immigration and Customs Enforcement, located in Fairfax, Va. He is the immediate custodian who is currently holding Petitioner in legal custody. He is sued in his official capacity.

12. Jeffrey Crawford is the warden of the Farmville Detention Center, where Petitioner is currently detained. He is the immediate custodian who is currently holding Petitioner in physical custody. He is sued in his official capacity.

**LEGAL BACKGROUND**  
*Custody hearings generally*

13. When a noncitizen is alleged to have violated immigration laws, they are generally placed into removal proceedings, during which an immigration judge will determine whether they have a legal basis to remain in the United States. 8 U.S.C. § 1229a.

14. The statute provides that an individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a), or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested or convicted of certain crimes. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), nor has ICE alleged that he is.

15. In addition, “arriving aliens” who are placed in removal proceedings for consideration of their applications for asylum are also subject to mandatory immigration detention under a different statute, 8 U.S.C. § 1225(b), even if they have had no criminal arrests or convictions. Regulations define an “arriving alien” as “an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.” 8 C.F.R. § 1.2.

16. For a noncitizen subject to discretionary detention under 8 U.S.C. § 1226(a), ICE makes an initial custody determination to either set a bond or hold the individual at no bond. The noncitizen may then seek a review of ICE’s initial custody determination before the IJ, who has the authority to modify ICE’s custody determination and set bond in a case in which ICE has

designated no bond, lower bond when ICE has set a cash bond amount, or deny bond completely.  
8 C.F.R. § 1003.19.

17. Both ICE and the noncitizen have the right to appeal an IJ's bond determination to the BIA. 8 C.F.R. § 1003.19(f).

18. Normally, filing an appeal of an IJ's bond decision "shall not operate to delay compliance with the order (except as provided in § 1003.19(i)), nor stay the administrative proceedings or removal." 8 C.F.R. § 236.1(d)(4). That means that if the noncitizen is appealing an IJ's order of no bond, he must stay detained while the BIA considers the appeal. Conversely, if ICE is appealing an IJ's order granting bond, the noncitizen may post bond and be released pending appeal of the order before the BIA.

19. Custody hearings are separate from hearings in the underlying removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the IJ, he must still appear in court for the IJ to hear his claim for relief from removal. Once IJ jurisdiction to consider bond is established, custody hearings are limited to an inquiry into whether the detainee is a danger to the community or a flight risk, and bond may only be granted when an IJ has determined that the detainee meets his burden of proof that he is neither. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

### *The Automatic Stay regulation*

#### 2001 Rule

20. The Automatic Stay Regulation affords ICE an exception to the general rules stated above. The initial, interim rule was implemented in October 2001 in response to the events of September 11, 2001. See Raha Jorjani, *Ignoring the Court's Order: The Automatic Stay in Detention Cases*, 5 Intercultural Human Rights L. Rev. 89, 97-100 (2010). Under 8 C.F.R. § 1003.19(i)(2), ICE may automatically stay an IJ's grant of bond upon the filing of a simple one-

page form with the Immigration Court. The regulation provides that Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination, if filed with the Court within one business day of the IJ's bond decision, triggers an automatic stay of the IJ's bond order, resulting in the noncitizen's continued detention.

21. Before 2001, the regulations permitted automatic stays only in cases of individuals the government believed were subject to mandatory detention due to criminal convictions under 8 U.S.C. § 1226(c). In 2001, the regulations were expanded to apply to individuals subject to discretionary detention. The 2001 regulations made the automatic stay available in any case in which the government had made an initial custody determination of no bond or set bond at \$10,000 or more. The agency openly justified the change as needed to “avoid the necessity for a case-by-case determination of whether a stay should be granted in particular cases.” 66 Fed. Reg. 54909-02 (Oct. 31, 2001) (codified at 8 C.F.R. § 1003.19(i)(2) (2006)). The new rule was implemented without public comment.

22. Several district courts found the 2001 version of the rule to be an unconstitutional violation of due process. One found the regulation to be *ultra vires* to the INA, reasoning that the automatic stay “effectively converts any alien detained pursuant to the discretionary detention provision of § 1226(a) into one held pursuant to the mandatory detention provision of § 1226(c). Such an application of [the regulation] seems to fly in the face of congressional intent.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 673 (D.N.J. 2003). Another found that the regulation impermissibly “allows the INS [the predecessor agency to ICE] to unilaterally override a decision of an IJ.” *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446, 449 (D. Conn. 2003). Another determined it violated due process, stating that “due process is not satisfied where the individualized custody

determination afforded to Petitioner was effectively a charade.” *Altagracia Almonte-Vargas v. Elwood*, 2002 WL 1471555, at \*5 (E.D. Pa., June 28, 2002).

#### 2006 Regulation

23. In November 2006, the final rule regarding the automatic stay went into effect. The notes published with the final rule indicate that six public comments to the rule were received during the 60-day notice period in 2001. Of those six, five opposed the rule as an unconstitutional violation of the Fifth Amendment’s Due Process Clause.

24. The final rule maintained the effect of the 2001 rule but added two procedural requirements. First, the current rule requires that ICE must file its appeal of the IJ’s bond decision to the BIA within ten days and attach a certification from a senior legal official within ICE. 8 C.F.R. § 1003.6(c)(1). The certification requirement does not require the official to articulate the evidence upon which the certification is based, but simply to certify that factual and legal support exists.

25. Second, the current rule purports to put a time limit on the effect of the stay. It provides that the automatic stay will lapse 90 days after the filing of the notice of appeal if the BIA has not acted on the appeal. 8 C.F.R. § 1003.6(c)(4). If the detainee requests a briefing extension from the BIA, however, the 90 days will be tolled for the same number of days of the extension, extending the stay past 90 days. *Id.* Additionally, after the automatic stay period has lapsed, ICE may request a discretionary stay under 8 C.F.R. § 1003.19(i)(1). 8 C.F.R. § 1003.6(c)(5). Such request extends the automatic stay up to an additional 30 days while the BIA considers the discretionary stay request. *Id.* Then, if the BIA rules in favor of the noncitizen’s release, the automatic stay is extended an additional five business days. 8 C.F.R. § 1003.6(d). If during those five days ICE refers the case to the Attorney General for review, the automatic stay is extended an

additional 15 business days. 8 C.F.R. § 1003.6(c)(4). All told, the automatic stay provision can hold an individual in custody for at least an additional 140 days after an IJ has made an individualized determination granting that person's release, and in some cases, even longer.

### FACTS

26. Petitioner entered the United States without inspection between ports of entry, across the U.S.-Mexico border, on December 6, 2023. *See* Ex. A (Notice to Appear) at 1; *see also* Ex. E (IJ bond order) at 1; Ex. F (I-213) at 2. He was apprehended and detained by Department of Homeland Security ("DHS") officers not long thereafter. *Id.*

27. The following day, on December 7, 2023, Petitioner was served with a Notice to Appear, placing him in removal proceedings pursuant to 8 U.S.C. § 1229a. Ex. A. The Notice to Appear charged him with being removable as "an alien 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." *Id.* at 1.

28. Later that same day, December 7, 2023, Petitioner was released from custody on his own recognizance "[i]n accordance with section 236 of the Immigration and Nationality Act," 8 U.S.C. § 1226. *See* Ex. B (Order of Release on Recognizance). Petitioner then made his way to Virginia, where he established a life.

29. On June 17, 2024, Petitioner filed an application for asylum. *See* Ex. C (asylum receipt notice).

30. On July 17, 2025, Petitioner attended a scheduled preliminary hearing before an Immigration Judge in Annandale, Va. During the hearing, the IJ set the case for an April 6, 2026 trial date on Petitioner's asylum application. *See* Ex. D (Notice of In-Person Hearing dated July

17, 2025). Leaving the hearing, Petitioner was arrested by ICE agents in the courthouse hallway who called Petitioner by name as he was walking out of the courtroom. *See* Ex. E at 1.

31. Later that same day, Petitioner, by his immigration counsel, filed a motion for bond pursuant to 8 U.S.C. § 1226(a). *Id.*

32. The IJ heard Petitioner's bond motion on July 30, 2025. *See* Ex. E. At the bond hearing, the ICE attorney argued that Petitioner was ineligible for bond, since (the ICE attorney argued) he was an arriving alien under 8 U.S.C. § 1225(b). Petitioner disagreed, and argued that he was eligible for bond under 8 U.S.C. § 1226(a).

33. At the conclusion of the bond hearing on July 30, 2025, the IJ found that Petitioner was not an arriving alien within the meaning of 8 U.S.C. § 1225(b) and was therefore eligible to seek bond under 8 U.S.C. § 1226(a); and that he had met his burden of proof that he was neither a flight risk nor a danger to the community, and granted Petitioner a bond of \$1500—the statutory minimum. *See* Ex. E.

34. Later that same day on July 30, 2025, ICE filed an EOIR-43 Notice of ICE Intent to Appeal Custody Redetermination form, invoking the automatic stay regulation. *See* Ex. G (EOIR-43 form).

35. On August 13, 2025, ICE filed a Notice of Appeal to the Board of Immigration Appeals. *See* Ex. H (BIA Filing Receipt).

36. As of the date of filing this habeas corpus petition, ICE will not accept payment of the \$1500 bond, and will not release Petitioner from custody. As of the date of filing this habeas corpus petition, Petitioner remains detained by Respondents at the Farmville Detention Center in Farmville, Va. *See* Ex. I (ICE Detainee Locator screenshot).

37. Petitioner has exhausted all administrative remedies.

**CAUSES OF ACTION  
FIRST CLAIM FOR RELIEF:  
Declaratory Judgment**

38. Petitioner re-alleges and incorporates by reference the preceding paragraphs 1-37.

39. Petitioner requests a declaration from this Court that he is not an “arriving alien.”

**SECOND CLAIM FOR RELIEF:  
No-Bond Detention in Violation of 8 U.S.C. § 1226(a)**

40. Petitioner re-alleges and incorporate by reference the preceding paragraphs 1-37.

41. Since Petitioner is not an “arriving alien,” and has no disqualifying criminal arrests or convictions, he is entitled to a bond redetermination by an immigration judge pursuant to 8 U.S.C. § 1226(a).

42. Respondents’ actions, as set forth herein, violate Petitioner’s statutory right to a bond redetermination hearing in front of an immigration judge.

**THIRD CLAIM FOR RELIEF:  
Detention and Re-Detention in Violation of Due Process**

43. Petitioners re-allege and incorporate by reference the preceding paragraphs 1-37.

44. Immigration detention is civil, not criminal, in nature. There are only two permissible reasons for immigration detention: to avoid flight risk, and to avoid danger to the community.

45. Petitioner has been lawfully paroled into the United States and allowed to develop ties to the community. Petitioner has lawfully and timely filed an application for asylum in the United States, and has lawfully obtained employment authorization in the United States and is lawfully employed in the United States. He is therefore a “person” within the meaning of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

46. Petitioner has a liberty interest in his freedom from physical restraint. He is a

valuable employee of a U.S. business, has two minor children, and is the primary breadwinner for his family.

47. Respondents' actions in re-detaining Petitioner without any individualized determination that he needs to be detained for reasons of flight risk or danger to the community, and for no individualized reason other than to meet an arbitrary policy, deprives Petitioner of his liberty rights without due process of law.

48. Respondents' actions in detaining Petitioner without a bond hearing before a neutral and detached magistrate, and in failing to allow Petitioner to pay his bond and be released from detention as ordered by the neutral and detached magistrate, deprives Petitioner of his liberty rights without due process of law.

**FOURTH CLAIM FOR RELIEF:  
The Automatic Stay Provision Is *Ultra Vires*, and Petitioner's No-Bond Detention Is  
Unauthorized by Statute**

49. Petitioners re-allege and incorporate by reference the preceding paragraphs 1-37.

50. 8 U.S.C. § 1226 does not authorize Petitioner's present detention, nor does any other detention statute.

51. In evaluating whether an agency action is *ultra vires*, the Court examines whether the agency has taken an action other than that which Congress has permitted. *City of Arlington v. FCC*, 133 S. Ct. 1863, 1869 (2013).

52. Detention of individuals who are awaiting a decision about whether they can be removed from the United States is governed by 8 U.S.C. § 1226. Subsection (a) of this provision provides that the Attorney General, whose authority is delegated to EOIR, "may continue to detain the arrested alien" and "may release the alien" on bond of at least \$1,500 or on conditional parole. 8 U.S.C. § 1226(a). The only limitation on this discretionary power is if mandatory detention

applies.

53. The automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) is *ultra vires* to the INA because it goes beyond how Congress has authorized the agency to act. In 8 U.S.C. § 1226, Congress explicitly granted the Attorney General broad discretion to make an individualized bond determination for individuals whose claims to relief from removal remain pending, and who are not subject to mandatory detention.

54. Congress' intent to assign this discretion to IJs is evident upon comparing 8 U.S.C. § 1226 with 8 U.S.C. § 1231, which discusses detention of "aliens ordered removed." That statute provides, "During the removal period, the Attorney General shall detain the alien. Under no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 212(a)(2) or 212(a)(3)(B) or deportable under section 237(a)(2) or 237(a)(4)(B)." 8 U.S.C. § 1231 (internal citations omitted).

55. Congress has established a robust framework within the INA distinguishing between when an IJ has discretion to order an individual's release on bond and when an IJ does not. The Automatic Stay Regulation negates this distinction. Rather, it allows DHS to detain virtually any alien it wishes to detain, regardless of the result of the IJ's careful individualized evaluation of that detainee's specific circumstances.

56. The government's 2006 updates to the regulation do not cure this. The first modification of the 2006 rule from the 2001 interim rule requires that a "senior legal official of DHS" certify that the official approves the filing of the notice of appeal and "is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent." 8 C.F.R. §

1003.6(c)(2) (2006).

57. In sum, to stay the determination of a neutral arbiter, exercising his or her express statutory authority, DHS must only affirm it approves of its own legal strategy and promise it has a basis for that strategy. As one expert has observed, this “requires no more of DHS, than their minimum ethical obligation to any court.” Jorjani, *supra*, at 105.

58. The second modification in the final rule implemented in 2006 purports to impose a time limit on the automatic stay. DHS has one business day to file the EOIR-43 that invokes the automatic stay and ten days to file a notice of appeal with the BIA. If the BIA has not adjudicated the appeal within 90 days after the notice of appeal was filed, the automatic stay will lapse. However, if the detainee requests an extension of the 21-day briefing schedule for BIA appeals, the 90-day period is tolled for the same amount of time. DHS may also seek a discretionary stay, after the 90-day period expires, staying the bond order by up to 30 more days. If after that period, the BIA still has not adjudicated the bond appeal or has authorized the detainee’s release, the detainee’s release is automatically stayed another five business days to allow DHS to refer the case to the Attorney General. If the Attorney General takes up the matter, DHS may request another discretionary stay pending the disposition of the case by the Attorney General or the BIA. By cobbling together stay after stay after stay, DHS can therefore push off indefinitely the individual’s release, even after an IJ has determined that he warrants bond.

59. In considering the interim rule from 2001, one court reasoned:

As Congress specifically exempted aliens like Petitioner from the mandatory detention of § 1226(c), it is unlikely that it would have condoned this back-end approach to detaining aliens like Petitioner through the combined use of § 1226(a) and § 3.19(i)(2) [the interim automatic stay provision]. Moreover, this ‘conversion’ to mandatory detention is not done through any process resembling a hearing that provides safeguards to ensure its fairness, accuracy and consistency with the Constitution, nor through any required showing of future dangerousness or likelihood of escape, but through the mere filing of a notice of appeal.

*Ashley v. Ridge*, 288 F. Supp. 2d 662, 673 (D.N.J. 2003). The changes in the final regulation do not alleviate the constitutional concerns expressed by the court in *Ashley*. Petitioner's continued detention is not authorized by statute, to his injury.

**FIFTH CLAIM FOR RELIEF:**  
**The Automatic Stay Regulation, as Applied to Petitioner, Violates Petitioner's Due Process Rights**

60. Petitioners re-allege and incorporate by reference the preceding paragraphs 1-37.

61. The Due Process Clause's guarantee to substantive due process prohibits the government from infringing upon certain "fundamental" liberty interests, "unless the infringement is narrowly tailored to support a compelling government interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). It applies to "all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

62. Petitioner is entitled to due process protections while in the custody of Respondents in immigration detention, as "[f]reedom from imprisonment from government custody, detention, or other forms of physical restraint lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

63. Because immigration proceedings are civil, rather than criminal, they are presumed to be "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690. Government detention violates due process in non-punitive circumstances unless "a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal quotations omitted). A "special justification" must be narrowly applied to a small segment of individuals and include strong procedural protections. *Id.* at 690-91.

64. No special justification justifies Petitioner's current detention. ICE opposed

Petitioner's detention based on a disputed question of statutory interpretation (one for which ICE has no support from Fourth Circuit caselaw, at that). The IJ held that Petitioner met his burden of proving that he is neither a danger to the community nor a flight risk, and ordered him released on the statutory minimum bond of \$1500.

65. Petitioner's detention under the automatic stay provision is neither applied narrowly nor subject to strong procedural protections. As noted earlier, ICE has the discretion to invoke an automatic stay in virtually any case in which an IJ has granted bond. The absence of procedural protections for individuals like Petitioner, much less "strong" protections, is obvious and apparent.

66. Allowing ICE to continue holding Petitioner in custody, despite an IJ's order requiring his release on bond, makes the process of IJ review a meaningless farce. Essentially, the automatic stay provision allows DHS to comply with the orders it likes and reject the orders it doesn't, on the mere promise that the agency has a factual or legal basis for flouting the laws passed by Congress. This violates the Due Process Clause, to Petitioner's injury.

67. Procedural due process invokes "the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal citations omitted). The requirement of procedural due process extends to individuals in removal proceedings. *See Flores*, 507 U.S. at 306; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). 76. To determine the due process required in this case, the Court should consider (1) the private interest impacted 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 function involved and the fiscal and administrative burdens that the substitute procedural requirement

would entail. *Mathews*, 424 U.S. at 335.

68. The private interest at stake here – Petitioner’s physical liberty – is perhaps the most important liberty that exists. Although the government’s interest in community safety can in certain circumstances outweigh a person’s liberty interest, *United States v. Salerno*, 481 U.S. 739, 748, such circumstances do not exist here. Respondents have not articulated any specific threat to the community that requires an automatic stay of Petitioner’s release without any judicial review.

69. Under the current procedure permitted by the automatic stay provision, there is an incredibly high risk of an erroneous deprivation of Petitioner’s interest in freedom from confinement. The automatic stay provision allows a solitary ICE official, who already had the opportunity to convince the IJ to deny Petitioner bond and failed, to unilaterally keep Petitioner detained. The only “check” on ICE’s decision is that a “supervisory” officer within the same agency sign off on that decision, with no requirement that the agency articulate the factual or legal basis for it.

70. If ICE wants to keep a noncitizen detained on the basis of danger to the community or flight risk notwithstanding an IJ’s release order, a procedure already exists that can be pursued with minimal burden. The agency can seek an emergency discretionary stay under 8 C.F.R. § 1003.19(i)(1), where it can obtain the same result upon showing that the agency is likely to succeed on its appeal and would suffer irreparable harm while the appeal is pending if the noncitizen were released.

71. Accordingly, applying the Automatic Stay regulation to Petitioner on the facts presented in this case violates Petitioner’s due process rights. *See also Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at \*10 (D. Minn. May 21, 2025).

72. Although the IJ conducted a meaningful, individualized review of whether

Petitioner's continued detention was warranted, Petitioner's due process rights were nonetheless rendered meaningless by DHS' use of the automatic stay provision, to his injury.

**SIXTH CLAIM FOR RELIEF:  
Violation of the Automatic Stay Regulation**

73. Petitioners re-allege and incorporate by reference the preceding paragraphs 1-37.

74. The Automatic Stay regulation, properly interpreted in a manner to avoid constitutional infirmity, is not meant to apply to the case of Petitioner, where the dispute between the parties has nothing to do with whether Petitioner is subject to mandatory detention due to criminal issues, but rather pertains solely to a dispute of statutory interpretation related to the Petitioner's manner of entry into the United States.

**PRAYER FOR RELIEF**

75. WHEREFORE, Petitioners respectfully request that this Court assume jurisdiction over this matter and enter an order:

- a) Enjoin Petitioner's transfer outside of this judicial district pending this litigation;
  - b) Declare that Petitioner is not an "arriving alien";
  - c) Declare that Respondents' actions, as set forth herein, violate Petitioner's due process rights;
  - d) Declare that application of the automatic stay regulation, as set forth herein, violates Petitioner's due process rights;
  - e) Declare that Respondents may properly detain Petitioner, if at all, only pursuant to 8 U.S.C. § 1226(a);
  - f) Grant the writ of habeas corpus and order Respondents to release Petitioner forthwith, upon payment of the \$1500 bond as ordered by the Immigration Judge;
- and

g) Grant any other relief that this Court deems just and proper.

Respectfully submitted,

Date: August 22, 2025

//s// Simon Sandoval-Moshenberg

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Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk  
U.S. Attorney's Office for the Eastern District of Virginia  
2100 Jamieson Ave  
Alexandria, VA 22314

Office of the General Counsel  
U.S. Department of Homeland Security  
245 Murray Lane, SW, Mail Stop 0485  
Washington, DC 20528-0485

Pamela Bondi, Attorney General of the United States  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement  
500 12th Street SW, Mail Stop 5902  
Washington, DC 20536-5902

Jeffrey Crawford, Warden  
Farmville Detention Center  
CoreCivic  
SERVE: CT Corporation System  
4701 Cox Rd., Ste 285  
Glen Allen, VA, 23060-6808

Respectfully submitted,

Date: August 22, 2025

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