UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Acxel Stiven Quinteros Del Cid,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of Homeland Security,

Department of Homeland Security,

Todd M. Lyons, Acting Director of Immigration and Customs Enforcement,

Immigration and Customs Enforcement,

Sirce Owen, Acting Director for Executive Office for Immigration Review,

Executive Office for Immigration Review,

Samuel Olson, Director, Ft. Snelling Field Office Immigration and Customs Enforcement,

and,

Ryan Shea, Sheriff of Freeborn County.

Respondents.

0:25-cv-03348

(PAM/DLM)

MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner Acxel Stiven Quinteros Del Cid (hereinafter "Petitioner" or "Quinteros Del Cid") is detained in Immigration and Customs Enforcement ("ICE") custody, despite an immigration judge's order for the Department of Homeland Security ("DHS") to release him, in violation of the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment.

Pursuant to Counts 2, 3, 4, 5, 7, and 8 of Petitioner's Petition for Habeas Corpus, Petitioner requests a Temporary Restraining Order ("PI") to (i) enjoin Respondents from moving Petitioner outside of the geographic boundaries of the District of Minnesota, (ii) enjoin the enforcement of the automatic stay provision during the pendency of this Court's consideration of this Petition for a Writ of Habeas Corpus; and, (iii) order Respondents to permit Petitioner to post the ordered bond and release him from custody forthwith.

Petitioner's continued detention under the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) is both ultra vires and unconstitutional. This automatic stay regulation finds no authority in the statute and contravenes the plain text of the INA, which empowers the Department of Justice, not the Department of Homeland Security, to adjudicate custody matters. *See* 6 U.S.C. § 521(a); 8 U.S.C. § 1101(b)(4); 28 U.S.C. § 510. Moreover, the regulations would permit Respondents

to veto an immigration judge's order and authorizes indefinite detention without process.[1]

As such, this PI is proper. Petitioner is very likely to prevail on the merits of his case, his continued illegal detention is a quintessential irreparable harm, and the government has no interest in unlawfully detaining Petitioner despite the order granting bond. The Court should grant this motion.

FACTS

Petitioner, a citizen of Guatemala, entered the United States without inspection on or about July 17, 2021, as an unaccompanied alien child ("UAC"). Petitioner was only 16 years old. *See* Exhs. B–C. Petitioner was initially placed under the custody of the Department of Health and Human Services ("HHS"), Office of Refugee Resettlement, Division of Unaccompanied Children Operations. On July 19, 2021, Petitioner was served with a Notice to Appear. On August 3, 2021, Petitioner was released under an order of recognizance into the custody of a relative. Petitioner moved to Maryland under the care of extended family and

[1] Furthermore, the plain language, Congressional history, and structure of the Immigration and Nationality Act ("INA") evince that Petitioner is not subject to 8 U.S.C. § 1225(b)(2)(A), rendering the legal basis to invoke the stay entirely unjustified. This, however, is beyond the scope of what the Court must decide in this case as here, the Immigration Judge properly found jurisdiction and ordered a bond. Therefore, this matter is limited to the propriety of the automatic stay provision at 8 C.F.R. § 1003.19(i)(2).

submitted an I-360, Application for Special Immigrant Juvenile Status ("SIJS") on September 30, 2024. On April 30, 2025, Petitioner's SIJS application was approved, along with a grant of deferred action from the Department of Homeland Security.

ICE encountered Petitioner while he was visiting family in Minnesota. ICE apprehended and detained Petitioner on July 31, 2025. On the same day, Respondents served Petitioner with a new Notice to Appear charging him with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) consistent with 8 U.S.C. § 1229(a). *See* Exh. E. Respondents simultaneously served an I-200 Warrant of Arrest and a Notice of Custody Determination. *See* Ex. G.

Petitioner sought a custody redetermination hearing before the immigration court sitting in Ft. Snelling, Minnesota. *See* Exh. I. The hearing was held on August 13, 2025. Respondent ICE argued a lack of jurisdiction to release because of § 1225(b)(2), pursuant to its new policy. *See* Exh. A. The presiding immigration judge, however, resolved the matter in Petitioner's favor, holding that, because Petitioner entered as a UAC, subject to release under 8 U.S.C. § 1232(b), rather than detention under 8 U.S.C. § 1225(b)(2), she had jurisdiction. Due to Petitioner's approved application indicating a strong form of relief and no finding of danger or flight risk, the immigration court set a bond in the amount of $1,500.00. *See* Exh. I.

On August 13, 2025, Respondent ICE filed an automatic stay of the immigration's order granting bond pursuant to 8 C.F.R. § 1003.19(i)(2), preventing Respondent from paying his bond and being released from custody. *See* Exhs. J–K.

ARGUMENT

I. THE COURT HAS JURISDICTION OVER PETITIONER'S CLAIMS.

Respondents will contend that 8 U.S.C. § 1252(b)(9) precludes review of Petitioner's claims. However, § 1252(b)(9) comes under the authority of § 1252(b), which lists "[r]equirements for review of orders of removal." This provision channels review of "final orders of removal" to federal courts of appeals. 8 U.S.C. § 1252(b)(9). Nothing in this record indicates that any order of removal has been issued for Petitioner. Rather, Petitioner has been granted bond by an Immigration Judge. Without an order of removal, § 1252(b)(9) alone does not bar this Court from reviewing Petitioner's PI regarding the legality of the auto stay provision at 8 C.F.R. § 1003.19(i)(2). Indeed, custody is entirely separate and independent from removal proceedings. *Compare* 8 U.S.C. § 1229a, *with* 8 U.S.C. § 1226. By regulation, "[c]onsideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding." 8 C.F.R. § 1003.19(d). They have nothing to do with each other.

Respondents will likely argue that 8 U.S.C. § 1252(g) also bars relief. Petitioner, however, is asserting that the application of 8 C.F.R. § 1003.19(i)(2) was improper and that he is not subject to mandatory detention. He is not challenging any decision to commence proceedings, adjudicate cases, or execute removal orders. These matters are "separate and apart from" each other. 8 C.F.R. § 1003.19(d). Moreover, the initiation of proceedings is governed under 8 U.S.C. § 1229, regardless of whether the mandatory detention provisions at 8 U.S.C. § 1225(b)(2)(A), or the discretionary detention framework at 8 U.S.C. § 1226(a)(2)(A), apply. Proceedings are commenced with the filing of an NTA that complies with the requirements at 8 U.S.C. § 1229(a). *Cf.* 8 U.S.C. §§ 1225(b)(2)(A); 1229(a); 1229a.

Proceedings have not "commenced" proceedings under 8 U.S.C. § 1225(b)(2). Section 1229 is titled "initiation of proceedings" for a reason. It governs that process. This matter is a challenge to how to interpret the sections that address Respondents' authority to detain, not commence, initiate, or execute the removal process. Petitioner is not challenging any action taken under 8 U.S.C. § 1229.

The Supreme Court has previously characterized § 1252(g) as a narrow provision, determining that it applies "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*,

525 U.S. 471, 482 (1999) (emphasis in original). The Supreme Court found it "implausible that the mention of *three discrete events* along the road to deportation was a shorthand way to referring to all claims arising from deportation proceedings." *Id.* (emphasis added).

Moreover, even if this suit did somehow relate to the discreet events outlined at 8 U.S.C. § 1252(g), the Eighth Circuit has explicitly observed that "an exception to § 1252(g) for a habeas claim raising a pure question of law." *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (citing *Jama v. I.N.S.*, 329 F.3d 630, 633 (8th Cir. 2003), *aff'd sub nom. Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005)). This is a pure question of law in the habeas context. 8 U.S.C. § 1252(g) does not apply because resolving the legal authority of detention is the question before the Court.

Finally, section 1252, titled "Judicial Review of Orders of Removal," contains a provision detailing "[m]atters not subject to judicial review." *See* 8 U.S.C. § 1252(a)(2). This provision contains four subsections outlining categories of claims that are not subject to judicial review. *See* 8 U.S.C. § 1252(a)(2)(A)-(D). None of these subsections precluding judicial review apply to this matter, as the specified statutory provisions do not cite to 8 C.F.R. § 1003.19(i)(2), which is the provision that this PI challenges. Thus, no part of § 1252 deprives the Court of jurisdiction.

II. EXHAUSTION IS FUTILE WHEN RESPONDENTS COLLABORATE IN DEVELOPING A NATIONWIDE CHANGE OF POLICY

Prudential exhaustion is applicable in this case because the application of 8 C.F.R. § 1003.19(i)(2) is not administratively reviewable and even if it were, the Board of Immigration Appeals ("BIA") would be bound to enforce it, rendering administrative exhaustion inherently futile.

The Supreme Court has noted that prudential exhaustion is not required when to do so would be futile or "the administrative body . . . has . . . predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, "[t]he 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). It is not subject to administrative review.

Moreover, even if the BIA could somehow review the stay, it is only empowered to "resolve the questions before it in a manner that is timely, impartial, and consistent with the Act and **regulations**." 8 C.F.R. § 1003.1(d). "The Board shall be governed by the provisions and limitations prescribed by applicable law, **regulations**, and procedures." 8 C.F.R. § 1003.1(d)(i). In short, the Board is "bound by '[r]egulations with the force and effect of law.'" *Matter of Rodriguez-Tejedor*, 23 I. & N. Dec. 153, 166 (BIA 2001) (citing *Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954)). "Moreover, it is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations." *Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992). Thus, given that Petitioner squarely

challenges the validity of the regulation on statutory and Constitutional grounds, the BIA cannot grant the relief he requests, rendering prudential exhaustion meaningless.

Furthermore, "[t]here is no useful purpose to proceeding through the administrative remedy process where the petitioner presents a pure question of law." *Vang v. Eischen*, No. 23-CV-721 (JRT/DLM), 2023 WL 5417764, at *3 (D. Minn. Aug. 1, 2023). Petitioner's request contains a pure legal question. In addition, "A party also may escape the exhaustion requirement if it is able to show that the agency clearly exceeded its statutory authority." *Trinity Indus., Inc. v. Reich*, 901 F. Supp. 282, 286 (E.D. Ark. 1993) (citing *Philip Morris, Inc. v. Block*, 755 F.2d 368, 370 (4th Cir. 1985). Respondents are attempting to exceed the statutory detention authority found in 8 U.S.C. § 1225(b)(2)(A), so, once again, prudential exhaustion is not required.

Similarly situated courts have agreed. *See Antonia Aguilar Maldonado*, 2025 WL 2374411; *Ferrera Bejarano*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Rodriguez*, 779 F. Supp. 3d 1239; *Martinez*, 2025 WL 2084238; *Rocha Rosado*, 2025 WL 2349133; *Gomes*, 2025 WL 1869299; *Dos Santos*, 2025 WL 2370988; *Lopez Benitez*, 2025 WL 2371588; *Anicasio*, 4:25CV3158 (Neb. Aug. 14, 2025). Prudential exhaustion is not required.

III. A TEMPORARY RESTRAINING ORDER IS APPROPRIATE.

"[F]our factors [are] to be weighed by the district court in deciding whether to grant or deny preliminary injunctive relief: (1) whether there is a substantial probability movant will succeed at trial; (2) whether the moving party will suffer irreparable injury absent the injunction; (3) the harm to other interested parties if the relief is granted; and (4) the effect on the public interest." *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 112 (8th Cir. 1981). The Eighth Circuit has held that the first two factors are particularly important as they comprise what is known as the "traditional test" employed to evaluate the necessity of a Temporary Restraining Order. *Id.* at 12. Petitioner maintains that weighing of these factors militates towards the Court granting this motion.

A. Likelihood of Irreparable Harm

At the outset, "the equitable balancing test a court must conduct using the *Dataphase* factors requires an initial determination that threatened irreparable harm exists." *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 420 (8th Cir. 1987). It most certainly does in this case.

As Minnesota federal district courts have recognized "a loss of liberty … is perhaps the best example of irreparable harm." *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018). *See also Farella v. Anglin*, 734 F. Supp. 3d 863, 885 (W.D. Ark. 2024). Indeed, "[f]reedom from imprisonment lies at the heart of the

liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 679 (2001). Respondents are keeping Petitioner detained since July 31, 2025, despite an immigration judge's order to the contrary.

Petitioner has remained "detained at the Freeborn County Jail, which is 'not meaningfully different from a penal institution for criminal detention.'" *Ararso U.M. v. Barr*, No. 19-CV-3046 (PAM/DTS), 2020 WL 1452480, at *4 (D. Minn. Mar. 10, 2020), *report and recommendation adopted,* No. 19CV3046 (PAM/DTS), 2020 WL 1445810 (D. Minn. Mar. 25, 2020) (citing *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 860 (D. Minn. 2019)). This is despite a total absence of criminal history or contacts with law enforcement. The government's actions have already deprived Petitioner of his liberty, and because these violations continue each day he remains in custody, he has suffered and will continue to suffer actual prejudice. *See Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (prejudice exists where an alternate result may well have occurred absent the violation). Immediate relief is warranted to halt ongoing harm and restore his rights. Petitioner's continued unjustified detention constitutes irreparable and immediate harm and justifies the issuance of a PI while his habeas proceedings are pending.

Petitioner will be further harmed if Respondents are not enjoined from transferring him to a detention facility in another state. Petitioner is aware of other detained aliens similarly fighting both removal and detention who have been

transferred around the country, causing loss of access to their counsel and support networks, and significantly delaying any proceedings and due process they are owed. *See Khalil v. Joyce*, No. 25-CV-01963 (MEF)(MAH), 2025 WL 972959 (D.N.J. Apr. 1, 2025), *motion to certify appeal granted,* No. 25-CV-01963 (MEF) (MAH), 2025 WL 1019658 (D.N.J. Apr. 4, 2025), *et al.*; *Ozturk v. Hyde*, No. 25-1019, 2025 WL 1318154 (2d Cir. May 7, 2025); *Khalil*, 2025 WL 972959.

In-person meetings between immigrants and their attorneys are necessary for all aspects of representation in immigration proceedings including: (1) conducting an assessment of clients' legal claims and eligibility for relief; (2) interviewing clients to obtain a lengthy personal declaration that often details traumatic facts about physical, sexual, and other violence; (3) counseling clients as to their legal options and developments in their case; (4) obtaining signatures on applications and release forms when seeking client records from outside agencies; and (5) preparing clients to testify in court, including to face cross-examination by an experienced ICE attorney. A transfer further impedes these vital attorney-client exchanges by limiting how Petitioner and his attorneys can communicate confidentially. Moving Petitioner out of this District, therefore, inhibits these crucial attorney-client communications. Given the time sensitive nature of continued unlawful detention, this too is irreparable harm.

The aforementioned establish irreparable harm and justify the prompt issuance of a PI in this matter ordering Respondents not to transfer Petitioner out of Minnesota. Moreover, it also illustrates the irreparable harm if Petitioner is not released pursuant to the Immigration Judge's order granting bond in accordance with 8 U.S.C. § 1226(a)(2)(A). Petitioner has and will continue to suffer significant irreparable harm if he remains detained. Thus, this Court should issue a PI to prevent irreparable harm to Petitioner arising from deprivations of due process in violation of Petitioner's Fifth Amendment rights.

Plaintiff avers that he has demonstrated the requisite irreparable harm.

B. Likelihood of Success on Merits

"While no single factor is determinative, the probability of success factor is the most significant" in determining whether to grant a … Temporary Restraining Order. *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013). Analyzing the likelihood of a party's success on the merits is not an inquiry aimed at pinning down the mathematical probability that a plaintiff will prevail on the merits. Rather, the court seeks to ascertain whether the "balance of equities so favors the movant that justice requires the Court to intervene to preserve the status quo until the merits are determined." *Dataphase Systems, Inc.*, 640 F.2d at 113.

Courts in this District have already issued rulings favorable to Petitioner. *See, e.g.*, *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 12, 2025); *Günaydın*

v. Trump, 2025 WL 1459154 (D. Minn. May 21, 2025); *Ferrera Bejarano v. Bondi et al*, No. 25-cv-03236 (D. Minn. Aug. 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug. 19, 2025). Petitioner will succeed on the merits because the plain language of the law is clear. The Court is likely to find that Petitioner is detained in violation of the INA and due process via Respondents' invocation of the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2). The regulation contradicts the statute, and all the *Mathews v. Eldridge* factors weigh in his favor.[2]

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[2] Petitioner is also likely to succeed on the merits of his claim that 8 U.S.C. § 1225(b)(2)(A) does not apply to him given that he entered the country as a Unaccompanied Alien Child, subject to custody and release under 8 U.S.C. § 1232(b), has been granted Special Immigrant Juvenile Status under 8 U.S.C. § 1101(a)(27)(J), and it is clear that 8 U.S.C. 1226(a), not 8 U.S.C. § 1225(b)(2), governs the detention of individuals arrested and detained inside the United States. *See Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Ferrera Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Aguilar Vazquez v. Bondi*, 25-cv-03162 (D. Minn. Aug 19, 2025); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025); *Jose J.O.E. v. Bondi*, 25-cv-3051 (D. Minn. Aug. 27, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rocha Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); and *Anicasio v. Kramer*, 4:25CV3158 (Neb. Aug. 14, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025). The underlying basis for the stay, however, is beyond the scope of what this Court must decide. The Department is free to pursue its underlying legal theory on appeal before the BIA, *see* 8 C.F.R. § 1003.19(f), but on this record, a bond was ordered, so it is not necessary to reach the issue of Respondents' underlying legal theory. If the Court

a. 8 CFR 1003.19(i)(2) is Ultra Vires.

"Agency actions beyond delegated authority are 'ultra vires,' and courts must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (holding that an immigration regulation that is inconsistent with the statutory scheme is invalid).

The invocation of an automatic stay provision exceeds the authority given to the agency by Congress. Under the statutory detention authority invoked by the Immigration Judge in this case, "the **Attorney General** … may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the **Attorney General**." 8 U.S.C. § 1226(a)(2)(A) (emphasis added). Furthermore, "[t]he Attorney General may from time to time make such provisions as he considers appropriate authorizing the performance by any other officer, employee, or agency of the **Department of Justice** of any function of the Attorney General." 28 U.S.C. § 510.

> The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229a of this title.

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finds that the automatic stay at 8 C.F.R. § 1003.19(i)(2) is consistent with the statute and the Constitution, then Petitioner will happily provide full briefing on the impropriety of the government's underlying legal theory, either as it relates to the PI or on the full habeas petition.

8 U.S.C. § 1101(b)(4). "There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General." 6 U.S.C. § 521(a). Immigration judges preside over bond matters.

In contrast, the ICE attorney who invoked the automatic stay is an employee and agent of the Department of Homeland Security. *See* Exh. J. The Department of Homeland Security is a standalone agency that does not report to the Department of Justice or the Attorney General. *See* 6 U.S.C. § 111. DHS cannot wield the powers entrusted to DOJ by Congress. As Judge Bataillon in the District of Nebraska recently held,

> By permitting DHS to unliterally extend the detention of an individual, in contravention of the findings of an agent (the IJ) properly delegated the authority to make such a determination, 8 C.F.R § 1003.19(i)(2) exceeds the statutory authority Congress gave to the Attorney General.

Anicasio v. Kramer, 2025 WL 2374224, at *5 (D. Neb. Aug. 14, 2025). "Because this back-ended approach effectively transforms a discretionary decision by the immigration judge to a mandatory detention imposed by [DHS], it flouts the express intent of Congress and is ultra vires to the statute." *Id.* (citing Zavala v. Ridge, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004).

b. 8 CFR 1003.19(i)(2) is Unconstitutional

Immigration Judge Kalin Ivany already determined that Petitioner is neither a flight risk nor a danger to the community and ordered DHS release him on bond. However, he remains detained. The automatic stay provision at 8 C.F.R. § 1003.19(i)(2) upon which that DHS relies on to keep him detained is patently unconstitutional under the Fifth Amendment's Due Process Clause.

Under *Mathews v. Eldridge*, courts weigh three factors in determining whether due process requires additional procedural protections. 424 U.S. 319 (1976). These are (1) the private interest affected by the government's action; (2) the risk of erroneous deprivation under the procedures used, and the probable value of additional safeguards; and (3) the government's interest and any burdens additional safeguards would impose. *Id.* at 335. All three factors cut in favor of Petitioner.

i. Private Interest

Here, the first *Mathews* factor, private interest, weighs in Petitioner's favor. Petitioner has a fundamental liberty interest in remaining free from physical restraint—an interest long recognized as deserving the highest constitutional protection. *Pierce v. Soc'y of the Sisters*, 268 U.S. 510, 534-35 (1925); *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982). *See also Günaydın*, 2025 WL 1459154, at

*9 ("being free from physical detention is 'the most elemental of liberty interests'" (citation omitted)).

Additionally, "[w]hen assessing this factor, courts consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration." *Günaydın*, 2025 WL 1459154, at *9 (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 852 (2d Cir. 2020)). Petitioner is detained at Kandiyohi County Jail, a jail that houses pre-trial criminal arrestees and incarcerated prisoners serving sentences in addition to immigration detainees. "He is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, interruptions to his education, lack of privacy, and, most fundamentally, the lack of freedom of movement." *Id.* This is a profound private interest.

ii. Risk of Erroneous Deprivation

The second *Mathews* factor, risk of erroneous deprivation, also weighs in Petitioner's favor. The government invoking the automatic stay under 8 C.F.R. § 1003.19(i)(2) rendered the immigration judge's individualized, fact-based custody determination a farce and replaced it with a categorical rule that requires no showing of danger, flight risk, or necessity. "[T]he risk of deprivation is high because the only individuals adversely affected by this regulation are those who

have already prevailed in a judicial hearing." *Günaydın*, 2025 WL 1459154, at *9. "[T]he regulation permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge's decisions" in a manner that "represents a basic conflict of interest of which courts have disapproved in other contexts." *Id.* at *8.

Furthermore, "the automatic stay regulation includes no requirement that the agency official invoking it consider any individualized or particularized facts, which increases the potential for erroneous deprivation of individuals' private rights." *Id.* at *10. "[T]he automatic stay regulation [also] does not include any standards for the agency official to satisfy and operates as an appeal of right. In this way, the regulation runs counter to the more typical process, in which a stay pending appeal is deemed 'an extraordinary remedy,' and 'an intrusion into the ordinary processes of administration and judicial review[.]'" *Id.* (internal citations omitted).

In addition to the procedural concerns increasing the risk of erroneous deprivation, DHS's unsupportable position on Petitioner's custody is not likely to succeed. *See infra*.

iii. Respondents' Interest and Burdens of Safeguards

The third *Mathews* factor offers no counterweight to these private interests. There is no specific, legitimate interest justifying Petitioner's continued detention.[3] The government's reliance on the automatic stay to hold Petitioner in jail adds no substantive safeguard and instead operates solely to nullify the immigration judge's

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[3] Bolstering the show of a clear liberty interest is Petitioner's SIJS designation. *Rodriguez v. Perry*, 747 F. Supp. 3d 911 (E.D. Va. 2024) held that, "[b]ecause Sandoval was awarded SIJ status in January 2017, which converted him from being an arriving alien to an alien present in the United States, he was entitled to a bond hearing in June 2023 under § 1226(a)." *Id.* at 916. The court held as much because "Congress also afforded these aliens a host of procedural rights designed to sustain their relationship to the United States and to ensure they would not be stripped of SIJ protections without due process." *Id.* at 918 (citing *Osorio-Martinez v. Attorney Gen.*, 893 F.3d 153, 170 (3d Cir. 2018)). These include a right to notice before revocation, 8 C.F.R. § 205.2, eligibility to adjust status to lawful permanent residence, 8 U.S.C. § 1255(h)(1), exemptions from inadmissibility grounds, 8 U.S.C. § 1255(h)(2)(A), and "various forms of support within the United States, such as access to federally funded educational programming and preferential status when seeking employment-based visas." *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 659 (E.D. Va. 2020) (citing 8 U.S.C. §§ 1232(d)(4)(A), 1153(b)(4)). SIJ designees stand much closer to lawful permanent residents than to aliens present in the United States for a few hours before their apprehension. Indeed, [SIJ designees] are a hair's breadth from being able to adjust their status, pending only the availability of immigrant visas and the approval of the Attorney General. This proximity to LPR status is significant because the lawful permanent resident is the quintessential example of an alien entitled to "broad constitutional protections." *Osorio-Martinez*, 893 F.3d at 170 (quoting *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 447 (3d Cir. 2016); *Kwong Hai Chew v. Holding*, 344 U.S. 590, 596 (1953)). Petitioner here "is an SIJ designee who is accorded significant benefits and procedural protections that put him 'a hair's breadth from being able to adjust [his] status,'" and as in *Rodriguez*, "he is entitled to procedural due process under the Fifth Amendment, [which] mandates that [he] receive a prompt, individualized bond hearing." *Rodriguez*, 747 F. Supp. at 919.

decision. "[E]nsuring that persons subject to possible removal do not commit crimes or evade law enforcement during the pendency of their removal proceedings presents a significant governmental interest." *Günaydın*, 2025 WL 1459154, at *9; *see also El-Dessouki v. Cangemi*, 2006 WL 2727191, at *3 (D. Minn. Sept. 22, 2006) ("a finite period of detention to allow the BIA an opportunity to review the immigration judge's bond redetermination is a narrowly tailored procedure that serves the government's interest in preventing flight of aliens likely to be ordered removable and in protecting the community") (emphasis added). However, here, IJ Ivany has already ruled that Petitioner is neither a danger nor a flight risk.

The Court should observe that measured alternatives are intermeshed into the regulation. In line with how stays generally work, "[t]he Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion" and "DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time." 8 C.F.R. § 1003.19(i)(1). This permits a stay where the appellate body overseeing the reasoned decision-maker, the immigration judge, sees fit.

Further, even if the BIA upheld IJ Ivany's order, granting Petitioner a bond and ordering him released, he would remain in detention while DHS has the

opportunity to refer the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1). 8 C.F.R. § 1003.6(d). The same additional automatic five-day stay applies if the BIA denies DHS's motion for discretionary stay or fails to act on such a motion before the automatic stay period expires. *Id.* If the case is referred to the Attorney General, that second automatic stay expires 15 business days after referral. *Id.* DHS may thereafter file another motion for discretionary stay. *Id.* Importantly, if a case is referred to the Attorney General, "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." *Id.* There is no proscribed time limit for this stay or these decisions. Nor is there a legal mechanism for a noncitizen to challenge the grant of an automatic or discretionary stay before EOIR or the BIA.

Considering the manner in which DHS has acted thus far, Petitioner has every reason to expect that DHS will continue to act in this manner and seek further discretionary stays. Indeed, all DHS has to do is **request** a discretionary stay for Petitioner to continue to be detained. 8 C.F.R. § 1003.6(d). Even if the BIA denies such a motion, a separate automatic stay will be invoked, and DHS is given more time to present the case to the Attorney General and file yet another discretionary stay request. *Id.* Petitioner is therefore likely to show that he is unconstitutionally detained pursuant to the automatic stay and will succeed on the merits of his habeas petition.

The third *Mathews* factor thus also weighs in Petitioner's favor, demonstrating he is likely to succeed on the merits of his habeas corpus petition, and a PI should be granted releasing him during the pendency of these proceedings.

iv. Existing Precedent

Courts in this District and elsewhere have granted immediate release to similarly situated noncitizens, finding the automatic stay violates due process. *See Maldonado v. Olson*, 2025 WL 2374411, at *14 (D. Minn. Aug. 15, 2025); *Gunaydin*, 2025 WL at *5-10; *Mohammed H. v. Trump*, No. 25-CV-1576 (JWB/DTS), 2025 WL 1334847, at *6 (D. Minn. May 5, 2025) ("Invoking the automatic stay without justifying evidence twists the rule into an unfair and improper procedure, which due process does not permit.") (emphasis added); *Jacinto v. Trump*, 2025 WL 2402271, at *5 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223, at *4 (D. Neb. Aug. 14, 2025); *Anicasio*, 2025 WL 2374224, at *5 (D. Neb. Aug. 14, 2025); *Ashley v. Ridge*, 288 F. Supp. 2d 662 (D. N.J. 2003); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004). These courts all recognized that the private liberty interests, the absence of individualized findings, the absence of any method of securing review, and the availability of existing stay mechanisms all compel relief.

IV. RELEVANT HARDSHIPS AND PUBLIC INTEREST

"The balance of the equities and the public interest … factors merge [when]

the federal government is the party opposing the injunction." *Missouri v. Trump*, 128 F.4th 979, 996–97 (8th Cir. 2025). These factors require the Court to consider "whether the movant's likely harm without a Temporary Restraining Order exceeds the nonmovant's likely harm with a Temporary Restraining Order in place." *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1347 (8th Cir. 2024).

Courts have recognized that the public interest includes upholding constitutional safeguards, ensuring due process, and preventing unnecessary deprivation of liberty. *See, e.g.*, *Mohammed H. v. Trump*, 2025 WL 1692739, at *6 (D. Minn. June 17, 2025) (rejecting public-interest argument where detention rested solely on automatic stay without evidence); *Günaydın*, 2025 WL 1459154, at *10 (same). The public interest is not served by needlessly incarcerating a young man with no criminal conviction, particularly when that detention is maintained only through an automatic stay provision that bypasses individualized findings and review.

Granting Petitioner's PI is fully consistent with the government's ability to enforce its immigration laws. An immigration judge has already determined that Petitioner can be released on bond while his removal case proceeds. If the PI is granted, DHS retains all tools to continue his removal case, to monitor his compliance with conditions of release, and to seek re-detention if circumstances change. As is here, the government can enforce the law, and the Court can ensure

that enforcement proceeds within constitutional bounds by ordering his release on the bond already set.

The harms to Petitioner have been articulated, *supra*, and they are severe. Moreover, preservation of the status quo here would be release on bond given that Petitioner was previously free, the Immigration Judge called for release on bond, and only the invocation of an unlawful stay prevented that release. In contrast, "[t]here is generally no public interest in the perpetuation of unlawful agency action." *Missouri v. Trump*, 128 F.4th 979, 997 (8th Cir. 2025). The Eighth Circuit has called the federal interest in an action is "minimal" where the plaintiff has illustrated a "strong likelihood of success in showing it exceeds agency authority." *Id.* As that is precisely the case here, all factors favor the issuance of a PI.

CONCLUSION

The evidence compels the conclusion that Petitioner, who has demonstrated a strong likelihood of success on the merits, will suffer significantly and irreparably in the absence of a PI. As such, a PI must be granted, enjoining Respondents from moving Petitioner outside of Minnesota, enjoining the enforcement of the automatic stay provision during the pendency of this Court's consideration of this Petition for a Writ of Habeas Corpus, and ordering Respondents to permit Petitioner to post the ordered bond and release him from custody forthwith.

Respectfully submitted,

/s/ David L. Wilson **August 28, 2025**
Date

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