IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CRISTIAN AGUILAR MERINO

Petitioner,

v.

GARRETT RIPA *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Miami Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security;* and PAM BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 1:25-23845

INTRODUCTION

1. Petitioner Cristian Aguilar Merino ("Cristian" or "Petitioner") entered the United States as a child and has resided in the Miami area with his mother and siblings for nearly a decade. In 2019, the U.S. government granted him Special Immigrant Juvenile Status (SIJS), based on findings by a state court judge that it would be in his best interest to reside in this country with his mother. The Department of Homeland Security therefore voluntarily dismissed the removal proceedings against him, provided him with work authorization, and deferred his removal while he applies to become a Legal Permanent Resident.

2. But under the new Trump administration, everything changed. Immigration and Customs Enforcement (ICE) arbitrarily detained Cristian during a traffic stop while looking for

someone else. ICE served him with the same Notice to Appear (NTA) that it previously dismissed, charging him with the same removability ground that it knows it cannot sustain due to Cristian's SIJS.

3. Even still, Cristian vigorously fought his case in immigration court. An Immigration Judge (IJ) granted him release on bond, finding that he did not pose a danger to the community or a flight risk. The IJ also terminated his removal proceedings, after ICE failed to respond to his attorney's arguments about the invalidity of his removal proceedings. Yet ICE simply disregarded these two IJ decisions. It immediately appealed the bond grant to the Board of Immigration Appeals (BIA) and invoked a previously rare, but now ubiquitously abused, automatic stay to prevent Cristian from posting bond. And it simply refiled—for the third time—the same NTA that has twice been dismissed, once by ICE itself and once by the IJ earlier this month.

4. As a result of ICE's lawless actions, Cristian—a 24-year-old young man with no criminal convictions—remains detained at Krome North Service Processing Center, where he is approaching three months of incarceration separated from his family in Miami. He files this habeas petition seeking his immediate release from custody on two separate grounds.

5. First, ICE's invocation of the automatic stay regulation against Cristian is unlawful. The regulation—which allows ICE to unilaterally abrogate a neutral arbiter's release order—violates his due process rights. *See Günaydin v. Trump*, No. 25-cv-1151, 2025 WL 1459154 (D. Minn. May 21, 2025). Similarly, the automatic stay regulation is *ultra vires* because it is inconsistent with the Immigration and Nationality Act (INA), which calls for an individualized assessment of the necessity of each non-citizen's detention and gives IJs the

authority to release certain non-citizens based on such an assessment. *See Garcia Jimenez v. Kramer*, No. 4:25-cv-3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025).

6. Second, notwithstanding the legality of ICE's unilateral stay, ICE lacks any statutory to detain Cristian to begin with because he has been granted SIJS and cannot be removed based on the sole ground alleged in ICE's third NTA. *See Rodriguez v. Perry*, No. 1:24-cv-651, 2024 WL 4024047, at *4 (E.D. Va. Sept. 3, 2024) ("[A] juvenile with SIJ status . . . cannot be removed for having entered the country illegally.")

JURISDICTION & VENUE

7. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution ("the Suspension Clause"), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 2201 (Declaratory Judgment Act).

8. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

9. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is currently detained in this district and division and events or omissions giving rise to this action occurred in this district and division.

PARTIES

10. Petitioner Cristian Aguilar Merino is a native and citizen of Honduras and SIJS recipient who is currently detained at Krome North Service Processing Center ("Krome") in Miami.

11. Respondent Garrett Ripa is the Field Office Director for the ICE Miami Field Office. In that capacity, he is charged with overseeing Krome, which is owned by ICE and

operated by a contractor, and has the authority to make custody determinations regarding individuals detained there. Therefore, Respondent Ripa is the immediate custodian of Petitioner. He is sued in his official capacity.

12. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS). She supervises ICE, an agency within DHS that is responsible for the administration and enforcement of immigration laws, and she has supervisory responsibility for and authority over the detention and removal of non-citizens throughout the United States. Secretary Noem is the ultimate legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

13. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office for Immigration Review (EOIR), including all IJs and the BIA. Respondent Bondi is sued in her official capacity.

LEGAL BACKGROUND

A. Detention During Removal Proceedings

14. Section 1229a of Title 8 of the U.S. Code (Section 240 of the INA) describes the primary process through which the government seek to remove non-citizens from the United States. It specifies that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States." 8 U.S.C. § 1229a(a)(3).

15. To initiate removal proceedings against a non-citizen under Section 1229a, the Government must issue the non-citizen an NTA. 8 U.S.C. § 1229(a)(1). Most non-citizens go through removal proceedings from outside detention. But ICE is increasingly detaining non-citizens during their removal proceedings.

16. Section 1226 of Title 8 of the U.S. Code (Section 236 of the INA) is the default provision that governs the arrest and detention of non-citizens pending removal proceedings. It states that "on a warrant issued by the Attorney General,[1] a[] [non-citizen] may be arrested and detained pending a decision on whether the [non-citizen] is to be removed from the United States" 8 U.S.C. § 1226(a). Non-citizens arrested upon a warrant and in ongoing removal proceedings are eligible to seek bond from an IJ. *Id.* § 1226(a)(2).

17. A separate provision governs the detention of people who seek admission to the United States at the border. It states that "in the case of a [non-citizen] who is an applicant for admission, if the examining immigration officer determines that a [non-citizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the non-citizen shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). IJs do not have jurisdiction to grant bond for such "applicant[s] for admission," though DHS retains the discretion to release such non-citizens on a specific type of parole "for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

B. Special Immigrant Juvenile Status

18. In 1990, Congress established SIJS "to protect abused, neglected or abandoned children who . . . illegally entered the United States . . ." *Osorio-Martinez v. Attorney General*, 893 F.3d 153, 163 (3d Cir. 2018) (internal quotation marks and citations omitted). In doing so, Congress exempted SIJS recipients from several grounds of removability from the United States. *See* 8 U.S.C. § 1227(c) ("Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) . . . shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based

[1] In 2003, the Immigration and Naturalization Service (INS) within the Department of Justice (DOJ) became what is now ICE, which is housed within DHS. Therefore, some statutory references to the "Attorney General," like this one, now refer to the Secretary of DHS.

upon circumstances that existed before the date the [non-citizen] was provided such special immigrant status."). Thus "although a juvenile with SIJ status can be removed on certain grounds, such as having been convicted of a serious criminal offense, he cannot be removed for having entered the country illegally." *Rodriguez v. Perry*, No. 1:24-cv-651, 2024 WL 4024047, at *4 (E.D. Va. Sept. 3, 2024).

19. An SIJS recipient is eligible to adjust their status to that of a Lawful Permanent Resident (LPR), once a visa becomes available to them. 8 U.S.C. § 1255(h); *id.* § 1153(b)(4). While adjustment of status typically occurs through U.S. Citizenship and Immigration Services (USCIS), IJs have jurisdiction to adjust a non-citizen's status in removal proceedings. 8 C.F.R. § 1245.2(a)(1)(i).

C. The Automatic Stay Provision

20. When an IJ issues a decision granting bond, ICE can appeal that decision to the BIA within 30 days. 8 C.F.R. § 1003.19(f). But in normal circumstances, ICE's appeal does not stay the IJ's decision, and the non-citizen is released once they post the appropriate bond amount. Prior to 1998, the only way the government could prevent a non-citizen's release on an IJ-ordered bond was to file, brief, and win a stay motion at the BIA, and this option remains available to ICE in a similar form today. 8 C.F.R. § 1003.19(i)(1).

21. In response to the September 11 terrorist attacks, DOJ issued an interim rule establishing a new procedure through which ICE could unilaterally and automatically stay an IJ's bond order, expanding a previous version from 1998. *Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001). It was specifically designed to prevent the immediate release of non-citizens "whom the government believed posed a national security threat." Stacy L. Brustin, *A Civil Shame: The Failure to*

Protect Due Process in Discretionary Immigration Custody & Bond Redetermination Hearings, 88 Brook. L. Rev. 163, 197 (2022).

22. A body of caselaw quickly emerged finding the new automatic stay provision unconstitutional or otherwise unlawful. *See, e.g., Ashley v. Ridge*, 288 F.Supp.2d 662 (D.N.J. 2003). In 2006, DOJ issued the final rule, with a few modest changes. *See Executive Office for Immigration Review; Review of Custody Determination*, 71 Fed. Reg. 57873 (Oct. 2, 2006); 8 C.F.R. § 1003.19(i)(2). The regulation currently in place requires a "senior legal official" to certify that the stay has proper legal and evidentiary support. 8 C.F.R. § 1003.6(c)(1). It also provides that the stay will generally lapse after 90 days but gives ICE several options for extending the stay, which in turn trigger additional stay periods to give the BIA or the Attorney General time to weigh in. *Id.* § 1003.6(c)(4)-(5); *id.* § 1003.6(d).

23. The automatic stay provision was utilized rather sparingly from 2006 until the first Trump administration. Then, from 2017 to 2020, ICE invoked the automatic stay approximately 171 times. Brustin, *supra*, at 197 n.231. In the last few months, ICE's abuse of the automatic stay regulation has amplified even further, to the point where it has become the norm rather than the exception. ICE is now using these stays not for non-citizens who it claims to be particularly dangerous, but rather for cases where ICE believes the IJ lacks jurisdiction to grant bond pursuant to its new, largely untested legal theories. On information and belief, ICE is invoking the stay in *every* such case where an IJ rejects its jurisdictional arguments and grants bond.

24. In August alone, at least three different federal district courts have found ICE's invocation of the automatic stay unlawful and ordered the non-citizen petitioner's release on bond accordingly. *See, e.g., Leal-Hernandez v. Noem*, 1:25-cv-2428, Dkt. No. 20 (D. Md. Aug.

24, 2024); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez*, 2025 WL 2374223.

STATEMENT OF FACTS

Cristian's Early Life and Family Circumstances

25. Cristian is a 24-year-old resident of Miami who has lived in the United States for nearly eight years, since he was a child. He has never left the United States since he arrived the first time as a child. He is a survivor of abuse, abandonment, and neglect from his father. He is a hardworking young adult who has consistently maintained employment to help his mother and two younger siblings, who are U.S. citizens.

26. Cristian was born and raised in Honduras, [redacted]

[redacted] Cristian's early experiences in the United States

were therefore marked not by stability and family unity, but by domestic violence, fear, and abandonment, which have left him especially vulnerable to harm and underscore the injustice of his continued detention. *Id.*

29. Cristian has no criminal convictions in the United States or in any other country, including his home country of Honduras.

Cristian's Immigration History

30. Cristian entered the United States on or about October 22, 2016, as an unaccompanied minor at the age of fifteen. Ex. 2, Notice to Appear 2016.

31. Immigration authorities apprehended Cristian at the border, issued him an NTA, *id.*, and took him into custody pursuant to a warrant "as authorized by section 236 of the Immigration and Nationality Act." Ex. 3, Arrest Warrant 2016.

32. Because Cristian was an unaccompanied minor, authorities transferred him to the custody of the Office of Refugee Resettlement (ORR). From there he was resettled with his parents on or around November 3, 2016.

33. In 2019, with the help of counsel, Cristian applied for SIJS through USCIS, based on a predicate order from a state family court finding that Cristian had been abandoned and neglected by his father and placing him in the sole custody of his mother, who had since separated from his father. USCIS approved the SIJS application, called an I-360, on December 03, 2019. Ex. 4, SIJS Grant and Deferred Action.

34. Later, on May 11, 2022, USCIS granted Cristian "deferred action" pursuant to his SIJS grant. *Id.* This deferred action status, which is in effect until at least 2026, means that Cristian is a "lower priority for removal from the United States." *Id.* As of today, neither Cristian's SIJS nor his deferred action has been rescinded or otherwise modified by USCIS. With this status, Cristian applied for and received an Employment Authorization Document (EAD),

which is active until May 2026 and can be renewed.

35. Due to Cristian being granted SIJS, the Immigration Court dismissed Cristian's removal proceedings at the request of DHS on September 14, 2021. Ex. 5, IJ Dismissal Order and DHS Motion. In DHS's motion to dismiss, it said "the Department has determined that the circumstances of this case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government." *Id.*

36. In May 2024, when Cristian's priority date became current such that he is eligible for a visa, he filed an I-485 application to become a Legal Permanent Resident (LPR). That application remains pending before USCIS.

Cristian's Arrest by ICE

37. On June 6, 2025, ICE arrested Cristian during a traffic stop. ICE appears to have been targeting Cristian's friend, who was driving Cristian to work. Ex. 1. ICE issued him a new NTA, which contains the exact same charge as his original NTA from 2016. Ex. 6, Second NTA June 2025. ICE also issued Cristian another arrest warrant "pursuant to section[] 236." *Id.*[2]

38. Cristian entered ICE custody at Krome. He had his first hearing in the Krome Immigration Court on June 24, 2025, at which Cristian appeared through counsel and requested that the IJ issue him a bond. The IJ continued proceedings until July 11; at that hearing, ICE disputed the IJ's jurisdiction to grant bond and the IJ ordered the parties to submit briefs on this issue.

39. That same day, through counsel, Cristian submitted a Motion to Terminate his removal proceedings, arguing that ICE cannot remove Cristian on the sole ground alleged in his new NTA because Cristian has SIJS. ICE never responded to the motion, despite asking the IJ

[2] Counsel obtained the June 2025 arrest warrant through a FOIA request. It is unclear whether ICE ever served Cristian with a copy of this warrant, as the certificate of service claims.

for more time to do so and despite an IJ-imposed deadline. On July 21, Cristian also submitted a brief in support of the IJ's jurisdiction to grant bond.

40. On July 31, 2025, the IJ issued a written decision finding jurisdiction for bond because Cristian is detained under 8 U.S.C. § 1226(a) as Cristian argued, rather than § 1225(b)(2) as ICE had argued. The IJ cited two key factors in this decision: that Cristian was issued an arrest warrant under § 1226(a) at the border and that Cristian has been granted SIJS. Ex. 7, IJ Decision on Bond Jurisdiction.

41. On Friday, August 1, at an on-the-record bond hearing in the Krome Immigration Court, the IJ ordered Cristian's release on a $8000 bond, concluding that he does not pose a present danger to person or property and is not a flight risk. Ex. 8, IJ Bond Order.

42. Cristian's family went to pay the bond on Monday, August 4, but learned that ICE had filed an E-43 Notice of Intent to Appeal late on August 1, automatically staying the bond under 8 C.F.R. §1003.19(i)(2). Ex. 9, ICE Notice of Intent to Appeal. ICE filed its notice of appeal on August 6, primarily relying on the same jurisdictional arguments rejected by the IJ. Ex. 10, ICE Notice of Appeal.

43. On August 5, 2025, a different IJ granted Cristian's Motion to Terminate, thereby closing his removal proceedings. Ex. 11, IJ Termination Order. But despite outreach attempts from Cristian's counsel, ICE merely refiled the same NTA for the third time on August 11. Like the previous two NTAs, it charges Cristian as removable from the United States solely under 8 U.S.C. § 1182(a)(6)(A)(i) for being "present in the United States without being admitted or paroled." Ex. 12, Third NTA August 2025.

Cristian's Traumatic Experiences in ICE Detention

44. Cristian began his detention in June 2025 at Krome, where he shared a cell

with one hundred and twenty other people. Ex. 1. Because of overcrowding, Cristian did not have a bed on which to sleep, and his movement was significantly restricted. *Id.* Rather, Cristian slept on a cot and, because of the limited space, spent the majority of the day sitting on his cot. *Id.*

45. Overcrowding was just the beginning of Cristian's suffering during detention. A few weeks later, he was transferred to Miami Federal Detention Center (FDC), where he experienced verbal abuse from guards and unjust deprivation of privileges that caused harm to his mental and emotional wellbeing. Ex. 1.

46. At FDC, Cristian was allowed out of his small cell for only three hours a day. On several days, the guards at FDC punished Cristian by not allowing him out of his cell at all. Cristian recalls that the guards often punished all of the detainees for the indiscretions of just one person. Furthermore, the guards called the detainees "pigs" and mocked them. Ex. 1.

47. Cristian was fed expired food on multiple occasions and had his phone privileges taken away from him merely because the guards decided that people were speaking too loudly during their time outside of their cells. Ex. 1.

48. On Friday, August 8, ICE released Cristian from FDC, due to what ICE would later claim was an error. On Monday, August 11, ICE redetained Cristian at his home and took him to Krome, where he had been detained previously.

49. Back at Krome, Cristian now shares a cell with sixty other people. More people arrive to Krome every day and Cristian fears that the negative effect his prolonged detention has had on his wellbeing will become permanent. Ex. 1.

50. If released, Cristian will go back to live with his mother and return to his previous employment. His LPR applicating remains pending with USCIS. He hopes to become an LPR

and subsequently a U.S. citizen, like his sisters.

ARGUMENT

51. Respondents' unilateral imposition of an automatic stay to prevent Cristian's release on a court-ordered bond is patently unlawful. It violates his substantive due process rights insofar as his continued civil detention after being granted bond is no longer reasonably related to a legitimate governmental purpose. Moreover, it violates his procedural due process rights under the *Mathews* test because his strong liberty interest, and the serious risk of erroneous deprivation of that liberty caused by the automatic stay, overwhelmingly outweigh any governmental interest in continuing to detain him after he was already granted bond. In any case, the automatic stay regulation is *ultra vires* because it allows ICE to override the IJ's individual assessment of each non-citizen's circumstances and the appropriateness of their release, for which the INA gives IJs clear authority.

52. Furthermore, irrespective of the IJ's bond grant and ICE's automatic stay of that grant, Respondents lack the legal authority to detain Cristian in the first place. ICE has initiated removal proceedings against Cristian three times, each time with a virtually identical NTA that charges him solely with being present in the United States without parole or inspection. The NTA and the resulting removal proceedings are invalid and futile, because the INA makes clear that ICE *cannot remove* non-citizens like Cristian who possess SIJS. *See* 8 U.S.C. § 1227(c). Indeed, this is why an IJ has twice dismissed or terminated the removal proceedings against Cristian. Without a valid NTA and valid removal proceedings, there is no "pending . . . decision on whether [he] is to be removed from the United States," and therefore ICE cannot lawfully detain him. 8 U.S.C. § 1226(a).

A. Respondents' Unilateral, Automatic Stay of Cristian's Bond Grant is Unlawful

a. The Automatic Stay Violates Cristian's Due Process Rights

53. Civil immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). The Supreme Court has made clear that there are only two plausible purposes for immigration detention: ensuring a non-citizen's appearance at his removal proceedings and/or preventing danger to the community. *Zadvydas*, 533 U.S. at 690. Indeed, where civil detention "is of potentially *indefinite* duration," courts have "also demanded that the dangerousness rationale be accompanied by some other special circumstance." *Id.* If immigration detention is not reasonably related to one of these purposes, it is essentially punitive and therefore violative of the Due Process Clause. *See id.*

54. Here, an IJ—who routinely hears bond cases and has significant experience evaluating the appropriateness of immigration detention—has already found that Cristian is *not* a danger to the community or a flight risk. Indeed, because non-citizens bear the burden of proof at immigration court bond hearings, the IJ necessarily found that Cristian *proved* he was not a danger or flight risk. *See Matter of R-A-V-P*, 27 I&N Dec. 803, 804 (BIA 2020) ("[W]e have clearly held that section 236(a) places the burden of proof on the [non-citizen] to show that he merits release on bond").

55. Where the IJ has already made this determination regarding Cristian's individual circumstances, continuing his detention is evidently unreasonable. *See Garcia Jimenez*, 2025 WL 2374223, at *4 ("The governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake."). ICE barely contests the IJ's no-danger finding in its notice of appeal, *see* Ex.

10, let alone can they show that "any special justification exists which outweighs Petitioner's constitutional liberties so as to justify his continued detention without bail." *Ashley*, 288 F.Supp.2d at 669.

56. Therefore, this Court should join many that came before it in finding that "Respondents' invocation of the automatic stay provision to detain Petitioner has violated [his] substantive due process rights." *Garcia Jimenez*, 2025 WL 2374223, at *4; *see also Zavala v. Ridge,* 310 F.Supp.2d at 1071, 1079 (N.D. Cal. 2004); *Bezmen v. Ashcroft,* 245 F.Supp.2d 446, 451 (D. Conn. 2003).

57. The invocation of the automatic stay also violates Cristian's procedural due process rights under *Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* test "directs the Court to weigh the private interests at stake and the risk of erroneous deprivation of those interests against Respondents' interests in persisting with the regulation, including the fiscal and administrative burdens of an additional or substitute procedural requirement." *Günaydin*, 2025 WL 1459154, at *9.

58. First, Cristian's liberty interest is undoubtedly substantial. Freedom from physical constraint is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004). And as an SIJS recipient, Cristian enjoys enhanced due process rights. *See Rodriguez*, 2024 WL 4024047, at *5 (citing *Osorio-Martinez*, 893 F.3d at 168-171).

59. For the past three months, Cristian has been "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." *Günaydin*, 2025 WL 1459154, at *7. This should have ended on August 1 when he

was granted bond by the IJ, but Respondents prevented his release through an evidently unlawful procedure.

60. Second, the automatic stay provision employed against Cristian poses an extremely high risk of erroneous deprivation of his and other non-citizens' liberty. The regulation, 8 C.F.R. § 1003.19(i)(2), creates a fundamentally unfair power imbalance between ICE and the non-citizen. *See Günaydin*, 2025 WL 1459154, at *8 ("The regulation only confers on *agency officials* the right to invoke an automatic stay and, presumably, agency officials would not act to stay favorable decisions") (emphasis added). And it allows for an "agency official who is also a participant in the adversarial process to unilaterally override the immigration judge's decisions." *Id.* Such a process through which an ICE attorney effectively serves as the prosecutor, jailer, *and* judge is entirely "anomalous in our legal system." *Id.*

61. Moreover, the regulation does not require the "agency official invoking it [to] consider any individualized or particularized facts," nor does it provide "any standards for the agency to apply." *Id.* at *8-9. This is particularly evident in Cristian's case, which obviously does not involve unique circumstances warranting a bond stay. Cristian is 24 years old and has no criminal convictions. He is far from the alleged terrorist for which this regulation was originally created. *See* Brustin, *supra* pg. 7, at 197. Rather, his case is just one of many in which ICE indiscriminately invokes the automatic stay to vindictively advance its baseless jurisdictional arguments. *See, e.g., Leal-Hernandez*, No. 1:25-cv-2428, Dkt No. 20 at 7 (agreeing with petitioner that "the Government has contorted the automatic stay from its many years' long (and intended) use as the exception to the rule such that it is now the rule -- to be applied reflexively in every circumstance in which DHS disagrees with an IJ on custody.").

62. The automatic stay's significant constitutional shortcomings are juxtaposed against the obvious alternative available to ICE, which is to move for, brief, and obtain a stay of the IJ's bond order from the BIA pending full adjudication of its appeal. *See* 8 C.F.R. § 1003.19(i)(1). This is the "more typical process, in which a stay pending appeal is deemed an 'extraordinary remedy'" *Günaydin*, 2025 WL 1459154, at *9 (citing *M.M.V. v. Barr*, 459 F. Supp. 3d 1, 4 (D.D.C. 2020)). To do this, ICE would presumably have to show a substantial likelihood of success on the merits of its appeal, as well as irreparable harm and that a stay is in the public interest. *See Nken v. Holder*, 556 U.S. 418, 427 (2009). That ICE has not done so is a telling admission of the weakness of its arguments on appeal. Moreover, employing this standard stay procedure "would significantly reduce the risk of erroneous deprivation without imposing significant burdens on the Government." *Aguilar Maldonado*, 2025 WL 2374411, at *14. Therefore, the second *Mathews* factor clearly favors Cristian.

63. With regard to the third *Mathews* factor, Respondents have little to no legitimate interest in detaining someone like Cristian who an IJ has already found is not a danger or flight risk. And even if they did, merely seeking a discretionary stay from the BIA as described above could accomplish that interest. *See Günaydin*, 2025 WL 1459154, at *10 ("The Court identifies little, if any, additional burden that Respondents face if they were unable to invoke the automatic stay regulation which, as noted in its implementing regulations, is a rare and somewhat exceptional action in the first place.").

b. The Automatic Stay Regulation is *Ultra Vires*

64. In addition to violating Cristian's due process rights as-applied here, the automatic stay regulation is *ultra vires* insofar as it is plainly inconsistent with the statutory scheme. A federal regulation is *ultra vires* when it exceeds the authority delegated by Congress

to the agency implementing it. *See City of Arlington v. F.C.C.*, 569 U.S. 290, 297 (2013) ("Both [agencies'] power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly . . . what they do is ultra vires").[3]

65. Here, the relevant Congressional statute is 8 U.S.C. § 1226(a)(2), which says that "the Attorney General . . . may release the [non-citizen] on . . . bond of at least $1,500." Functionally, ICE makes an initial determination on whether to release the non-citizen, which "may be reviewed by an Immigration Judge" through what is typically called a "bond redetermination." 8 C.F.R. § 1003.19(a)-(b).

66. Yet the automatic stay regulation purports to give ICE the authority to override the IJ's redetermination of its initial custody decision and continue the detention of a non-citizen whom the IJ deems worthy of release. This is non-sensical. "By permitting DHS to unliterally extend the detention of an individual, in contravention of the findings of [an IJ] properly delegated the authority to make such a determination, [the automatic stay regulation] exceeds the statutory authority Congress gave to the Attorney General." *Garcia Jimenez*, 2025 WL 2374223, at *5; *see also Zavala,* 310 F.Supp.2d at 1079 ("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.").

67. Indeed, even the former general counsel of ICE (then INS) has argued that the automatic stay has exceeded its original intent and should be repealed. *See* David A. Martin, *Preventive Detention: Immigration Law Lessons for the Enemy Combatant Debate, Testimony Before the National Commission on Terrorist Attacks Upon the United States,* December 8,

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[3] Following *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), federal agencies are no longer owed any deference in matters of statutory interpretation. With *Chevron* overruled, this Court need not determine whether the relevant statute is ambiguous; it need only ask whether DOJ exceeded or contradicted its statutory authority in implementing 8 C.F.R. § 1003.19(i)(2).

2003, 18 Geo. Immigr. L.J. 305, 313 (2004) ("I say this because there are indications that the automatic stay mechanism is now being used routinely and without careful calculation by the enforcement agencies of the individual merits that led the IJ to reduce the bond in the first place.").

68. Today, ICE is using the automatic stay even more indiscriminately than when Mr. Martin made those remarks. *See, e.g., Aguilar Maldonado*, 2025 WL 2374411, at *2 (describing case in which ICE invoked automatic stay against 25-year-old woman with two young children and no criminal history). The same agency jailing non-citizens is effectively making the final decision as to whether they should remain jailed, even where a different agency grants bond within its specifically delegated authority. Not even DOJ, when it promulgated the 2006 final rule, seems to have intended such widespread use of the automatic stay. *See* 71 Fed. Reg. at 57882 (stating that "DHS does not invoke the automatic stay in every case" and that "DHS will inevitably be obligated to consider such competing priorities and limited resources in each case in deciding whether or not to pursue an appeal . . ."). And it certainly cannot be what Congress intended when it passed 8 U.S.C. § 1226(a).

B. Respondents Lacks Legal Authority to Detain Cristian

69. When Congress established Special Immigrant Juvenile Status, it exempted SIJS recipients from several grounds of removability from the United States. *See* 8 U.S.C. § 1227(c) ("Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), and (3)(A) of subsection (a) . . . . shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title based upon circumstances that existed before the date the [non-citizen] was provided such special immigrant status.").

70. The only removability ground with which Cristian is charged in his most recent NTA, and indeed the only removability ground with which Cristian has *ever* been charged, is 8

U.S.C. § 1182(a)(6)(A)(i), which renders inadmissible non-citizens who are present in the United States "without being admitted or paroled." Ex. 12. But this is one of the grounds that "*shall not apply* to a special immigrant." *See* 8 U.S.C. § 1227(c) (including "Paragraph[](1)(A)" among grounds that "shall not apply"); *id.* § 1227(a)(1)(A) (describing inadmissible non-citizens).

71. Accordingly, "although a juvenile with SIJ status can be removed on certain grounds, such as having been convicted of a serious criminal offense, he cannot be removed for having entered the country illegally." *Rodriguez*, 2024 WL 4024047, at *4. That Cristian has been granted deferred action on account of his SIJS, Ex. 4, and that ICE previously voluntarily dismissed the removal proceedings against him on account of his SIJS, Ex. 5, further illustrates the impropriety of his current removal proceedings.

72. To the extent that ICE lacks legal authority to continue pursuing removal proceedings against Cristian, it also lacks the authority to detain him "pending a decision" in those invalid removal proceedings. 8 U.S.C. § 1226(a).

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT
Substantive Due Process

73. The Supreme Court has found that the "Due Process Clause applies to all persons within the United States, including [non-citizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 682.

74. Immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore*, 538 U.S. at 527. Since an IJ already found that Cristian is not a danger or flight risk, his detention is not reasonably related to its purpose and thereby violates his due process rights.

COUNT II

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT
Procedural Due Process

75. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate whether adjudicatory procedures sufficiently protect individuals' due process rights.

76. The automatic stay regulation, as applied to Cristian's case, violates his due process rights under *Mathews* because his liberty interest, and the risk of erroneous deprivation of his liberty posed by the automatic stay procedure, outweigh the government's interest in utilizing the stay instead of non-burdensome alternatives.

COUNT III

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)
Stay Provision *Ultra Vires*

77. An agency regulation is *ultra vires* when it exceeds Congressionally delegated authority. *See City of Arlington*, 569 U.S. at 297.

78. 8 C.F.R. § 1003.19(i)(2) is *ultra vires* because it allows DHS to effectively nullify the IJ's decision to release a non-citizen on bond, for which the IJ is delegated the authority under 8 U.S.C. § 1226(a).

COUNT IV

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)
No Authority to Detain

79. 8 U.S.C. § 1226(a) authorizes immigration detention only during pending removal proceedings.

80. There are no valid removal proceedings currently pending against Cristian because he cannot be removed on the grounds with which he is currently charged. Therefore, Respondents have no authority to detain him. *See* 8 U.S.C. § 1227(c).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Order, under the All Writs Act, 28 U.S.C. § 1651, that Respondents not transfer Petitioner outside of the jurisdiction of the U.S. District Court for the Southern District of Florida during the pendency of this petition;

b. Declare that Respondents' actions or omissions violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution and/or the Immigration and Nationality Act;

c. Order that Respondents release Petitioner from custody immediately upon him posting the bond amount ordered by the IJ;

d. Award Petitioner reasonable fees under the Equal Access to Justice Act, 5 U.S. Code § 504;

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

Respectfully submitted,

Dated: August 26, 2025

/s/ Felix A. Montanez

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Pending Pro Hac Vice Admission

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: August 26, 2025

Respectfully submitted,

/s/ Ian Austin Rose
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system, which will send a notice of electronic filing (NEM) to all counsel of record. My co-counsel will furthermore serve a copy of the petition and exhibits on each Respondent by certified mail.

Dated: August 26, 2025

Respectfully submitted,

/s/ Felix Montanez
Counsel for Petitioner