

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

MAHAMUDUL HASAN,)	
Petitioner,)	
)	
VS.)	PETITION FOR WRIT OF
)	HABEAS CORPUS
JEFFREY CRAWFORD, in his official)	
Capacity as Warden of Farmville Detention)	
Center; JOSEPH SIMON, Director of the)	
Washington Field Office of U.S.)	
Immigration and Customs Enforcement,)	
Enforcement and Removal Operations;)	
KRISTI NOEM, Secretary of the)	
Department of Homeland Security; and)	
PAMELA BONDI, in her official)	
capacity as Attorney General of the)	
United States,)	
Respondents)	

INTRODUCTION

1. Petitioner Mahamudul Hasan respectfully petitions this Court for a Writ of Habeas Corpus ordering his immediate release from custody. ICE detained Mr. Hasan during a routine check-in on July 22, 2025. He remains unlawfully in the physical custody of Respondents (“the Government”) at Farmville Detention Center.

2. The Department of Homeland Security (“DHS”) erroneously believes that Mr. Hasan is subject to “mandatory detention,” i.e. not eligible for bond. An Immigration Judge (“IJ”) disagreed and ordered Mr. Hasan released upon posting the statutory minimum bond amount. Despite this order, the Government continues

to unlawfully detain Mr. Hasan by invoking a regulation, 8 C.F.R. § 1003.19(i)(2) (“the Automatic Stay Regulation”), which other courts have held violates due process.

3. Mr. Hasan is charged with, *inter alia*, having entered the United States “without inspection.” 8 U.S.C. § 1182(a)(6)(A)(i). Based on this allegation, DHS argued at his bond hearing that Mr. Hasan was subject to mandatory detention under *Matter of Q. Li*, a recent decision from the Board of Immigration Appeals (BIA). In *Q. Li*, the BIA held for the first time that people entering the United States without inspection and detained without a warrant are “applicants for admission.” 29 I&N Dec. 66 (BIA 2025); *see also* Exhibit A, Notice to Appear (“NTA”), marking Mr. Hasan as having entered without inspection.

4. Because “applicants for admission” are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and Mr. Hasan is charged with entering without inspection, DHS argued at the bond hearing that he was not eligible for bond. This is incorrect for several reasons, including subsequent conflicting BIA precedent, inapplicability of *Q. Li* to people arrested with a warrant, and the fundamental incompatibility of the BIA’s interpretation with the Administrative Procedure Act (APA) and due process.

5. At an August 13, 2025 bond hearing, the IJ found that Mr. Hasan was not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore

eligible for bond. Exhibit B, IJ Ruling on Bond. Further determining that Mr. Hasan was neither a danger to the community nor a flight risk, the IJ granted the statutory minimum bond amount of \$1,500. *Id.* However, DHS subsequently filed a Form EOIR-43 Notice of Service Intent to Appeal Custody Redetermination, invoking the Automatic Stay Regulation to prevent Mr. Hasan's release.

6. Independent DHS' attempted misapplication of *Matter of Q. Li* to Mr. Hasan, the Automatic Stay Rule is *ultra vires*, in excess of any authority delegated by Congress under the Immigration and Nationality Act (INA) or any other statute, and violates Mr. Hasan's basic guarantee of due process under the Fifth Amendment.

7. Accordingly, Mr. Hasan seeks a writ of habeas corpus requiring that he be released immediately upon posting bond, pursuant to the IJ's bond order.

JURISDICTION & VENUE

8. Mr. Hasan is in the physical custody of the Government, and is detained at the Farmville Detention Center in Farmville, Virginia.

9. This action arises under the Due Process Clause of the Fifth Amendment of the United States Constitution and under the INA, 8 U.S.C. § 1101 *et seq.* This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Eastern District of Virginia, the judicial district in which Mr. Hasan is currently detained.

12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Virginia.

13. Venue is proper within the Alexandria Division because Respondent Joseph Simon has a principal place of business in Chantilly, Virginia, and the bond decisions giving rise to the claims in this action took place in Annandale, Virginia.

PARTIES

14. Petitioner Mahamudul Hasan is a citizen of Bangladesh who has been in immigration detention since July 22, 2025. Mr. Hasan has resided in the United States since approximately November 5, 2024.

15. Respondent Jeffrey Crawford is the Warden of the Farmville Detention Center, which is owned and operated by Core Civic, and is the facility at which Respondents have detained Mr. Hasan. ICE contracts with the Farmville Detention

Center to detain immigrants. Mr. Crawford is thus Mr. Hasan's immediate custodian. He is sued in his official capacity.

16. Respondent Joseph Simon is the Director of the Washington Field Office of ICE's Enforcement and Removal Operations division. Mr. Simon is a legal custodian of Mr. Hasan and is responsible for Mr. Hasan's detention.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Mr. Hasan's detention. Ms. Noem has ultimate custodial authority over Mr. Hasan and is sued in her official capacity.

18. Respondent Pamela Bonda is the Attorney General of the United States. As such, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. She has the authority to interpret immigration laws and adjudicate removal cases. As the head of the U.S. Department of Justice, she oversees the EOIR and the BIA. She issued in her official capacity.

FACTS

19. Mr. Hasan is an educated and accomplished artist whose work has been exhibited in India, Italy, Latvia, China and the United Kingdom. His [REDACTED] [REDACTED] lead to his [REDACTED] by [REDACTED] [REDACTED] in his native country of Bangladesh. Fearing for his life and seeking asylum,

he entered the United States in San Diego around November 4, 2024. Shortly after entering the United States, DHS officials detained Mr. Hasan pursuant to a DHS administrative warrant. DHS officials released him from custody the next day pursuant to an ICE Form I-200A Order of Release on Recognizance and issued an NTA, informing him that he would have his first immigration hearing at the Sterling Immigration Court on March 6, 2025.

20. Mr. Hasan then moved to Charlottesville, Virginia. Since then, Mr. Hasan filed for asylum with the Sterling Immigration Court. He also established friendships with students, artists, and fellow members of the Muslim community in Virginia. He has no criminal history anywhere in the world.

21. ICE notified Mr. Hasan that he would need to attend a check-in appointment on July 8, 2025, at the Richmond ICE office. Mr. Hasan and his counsel attended that appointment together. ICE agents took his fingerprints and told him to report to the office of the Intensive Supervision Appearance Program (“ISAP”) the same day.

22. Mr. Hasan and his counsel went to the ISAP office directly from the ICE office. Mr. Hasan then had a meeting with a case manager who told him that he would be required to wear an ankle monitor. Mr. Hasan asked why, and she told him that there was an Executive Order (“EO”) requiring all noncitizens to wear ankle monitors. When Mr. Hasan’s counsel pressed for the name or number of the order,

the case manager did not know and had to call someone from ICE. She put that person on speaker phone, who explained that there is no EO, but that his ankle monitor was required pursuant to “internal guidance” from DHS.

23. Mr. Hasan reluctantly accepted the ankle monitor, which the ISAP case manager placed on his left leg. She told him to report back to the ISAP office on July 22, 2025.

24. Mr. Hasan has nerve damage in his leg and secured a note from a medical clinic requesting that the ankle monitor be removed. Mr. Hasan provided this note to his ICE Deportation Officer (DO), through counsel, on July 21, 2025 – the day before his next check-in. The DO never responded.

25. Mr. Hasan went to his next check-in alone, without counsel. He went to the ISAP office as instructed and showed the employees his medical note. They told him to take the note to the ICE office, which he did. An ICE agent looked at the note and sent him back to ISAP, where a case manager told him ICE was denying his request to have his ankle monitor removed. The case manager Mr. Hasan spoke to that day was different from the case manager he met on July 8. That case manager explained that Mr. Hasan would need to keep his ankle monitor on and said he could place it on the other leg, to which Mr. Hasan agreed.

26. The case manager asked him if he would like to speak to his attorney. Mr. Hasan said yes, and the case manager called Mr. Hasan’s counsel on speaker

phone. Counsel reiterated to Mr. Hasan that the government was requiring him to wear an ankle monitor but offered to try to call DO Davila to see if he would reconsider this decision, given Mr. Hasan's nerve damage. Counsel called and emailed DO Davila and also contacted Supervisory DO Trump. Neither responded, nor have they since.

27. Counsel called Mr. Hasan back and was again put on speaker phone. Counsel explained that the DOs did not respond. The case manager then said that ICE agents were on their way to the ISAP office and assured Counsel that they would speak to her when they arrived. Instead, they marched into the room, sharply told Mr. Hasan to stand up, aggressively arrested him and shoved him into their car. When he asked if they would speak to his attorney, they refused. He explained that he was just asking for the ankle monitor to be put on the other leg, and the officer told him it was "too late."

28. Mr. Hasan reasonably believes, along with counsel who witnessed most of his interactions with ICE and ISAP, that he has been detained at Farmville since July 22, 2025, for simply daring to ask the legal basis for his ankle monitor and testing ICE's patience.

29. After arresting Mr. Hasan on July 22, 2025, ICE did not set bond. Mr. Hasan requested review of his custody by an IJ, who set a hearing for August 13, 2025.

30. At that August 13th hearing, Mr. Hasan was granted the minimum bond amount of \$1,500 by an IJ at the Annandale Immigration Court. DHS argued at the bond hearing that Mr. Hasan was subject to mandatory detention under 8 U.S.C. § 1225(b)(2), relying largely on the BIA's decision in *Q. Li*. DHS asserted that because Mr. Hasan entered without inspection, he is an "applicant for admission" and therefore subject to mandatory detention without opportunity to post bond under 8 U.S.C. § 1225(b)(2).

31. Mr. Hasan was arrested and detained at the border pursuant to a warrant, meaning *Matter of Q. Li* does not apply. Exhibit A. Further, Mr. Hasan noted the conflicting BIA decision in *Matter of Roque Izada*, 29 I&N Dec. 106 (BIA 2025), which post-dates *Q. Li*. In *Roque Izada*, which also involved a noncitizen detained and released shortly after entering the United States, the BIA noted that the NTA marked the respondent as having entered without inspection but never addressed whether his entry made him an "applicant for admission." *Id.* The BIA's decision does not even reference 8 U.S.C. § 1225(b). *Id.* The BIA simply found that the respondent's release at the border was pursuant to conditional parole under 8 U.S.C. § 1226(a), the very provision that makes noncitizens eligible for bond. 29 I&N Dec. at 108.

32. Mr. Hasan further noted in argument that DHS's own evidence showed that he entered without inspection and could not therefore be considered an applicant

for admission. His NTA marks him as having entered without inspection, as does his Form I-213, Record of Deportable/Inadmissible Alien. Exhibit A, NTA; Exhibit C, Form I-213. The I-213 is a form DHS creates before removal proceedings begin and is often based on an interview with the noncitizen. Mr. Hasan's I-213 notes that he entered "without being inspected." Exhibit C. The government's own documents therefore bolstered the conclusion that his detention was governed by § 1226(a).

33. Finally, the I-213 confirmed Mr. Hasan had been released at the border pursuant to an Order of Release on Recognizance, a document that itself states that a noncitizen is being released pursuant to § 1226(a). Exhibit D, Mr. Hasan's Order of Release on Recognizance. The I-213 also notes that Mr. Hasan posed no danger or flight risk. Exhibit C.

34. Evaluating the arguments and evidence before her, the IJ concluded that Mr. Hasan was detained pursuant to a warrant and thus subject to § 1226(a) and that she therefore had jurisdiction to conduct bond proceedings. Exhibit B.

35. The IJ then found that Mr. Hasan was not a danger because he has no criminal history. *Id.* The IJ also found he posed no flight risk, based on his timely filing of his asylum application, attendance at two ICE check-ins, and compliance with the ankle monitor, in addition to his community ties in the Charlottesville area. *Id.* The IJ noted that her findings regarding danger and flight risk were the same as

those memorialized in the I-213. *Id.* The IJ then ordered that Mr. Hasan be released upon payment of the minimum bond amount allowed by the INA, \$1,500. *Id.*

36. DHS reserved appeal of the IJ's decision in the bond proceedings. Later that afternoon, DHS filed a Form EOIR-43, invoking a regulatory automatic stay of the IJ's bond order. 8 C.F.R. § 1003.19(i)(2).

37. As a result, Mr. Hasan remains in government custody despite an IJ finding no justification for his continued detention.

LEGAL FRAMEWORK

Requirements of 28 U.S.C. § 2243

38. The Court must grant a petition for writ of habeas corpus or order the Government to show cause "forthwith," unless Mr. Hasan is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Government must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

39. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within

the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

Custody Hearings for Noncitizens in Removal Proceedings

40. Section 1229a of Title 8 of the U.S. Code (Section 240 of the INA) describes the primary process through which the government seeks to remove noncitizens 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 [a noncitizen] may be . . . removed from the United States.” 8 U.S.C. § 1229a(a)(3).

41. Removal proceedings begin when the government files an NTA with the immigration court, listing the allegations against the noncitizen that constitute potential grounds for removal. The filing of the NTA also vests the court with jurisdiction to decide whether the noncitizen has any basis for relief from removal, including asylum. 8 CFR § 1003.14. Here, DHS filed the NTA with the immigration court on November 5, 2024, beginning removal proceedings under 8 U.S.C. § 1229a.

42. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). The IJ only grants bond if she determines that the

noncitizen poses neither a danger to the community nor a flight risk. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

43. Some noncitizens are statutorily ineligible for bond because they are subject to mandatory detention. Noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

44. The INA also provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission to the United States (referred to as “applicants for admission”) under § 1225(b)(2).

The Automatic Stay Regulation at 8 C.F.R. § 1003.19(i)(2)

45. Both DHS and the detained noncitizen have the right to appeal an IJ’s bond determination to the BIA. 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 detainee is appealing an IJ’s order of no bond, he must stay detained while the BIA considers the appeal. Conversely, if DHS is appealing an IJ’s order granting bond, the detainee may post bond and be released pending appeal of the order before the BIA.

46. In response to the September 11 terrorist attacks, the government issued an interim rule establishing a new procedure through which ICE could unilaterally and automatically stay an IJ's bond order. *See Raha Jorjani, Ignoring the Court's Order: The Automatic Stay in Detention Cases*, 5 Intercultural Human Rights L. Rev. 89, 97-100 (2010).

47. The 2001 interim 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 interim rule was initially implemented without public comment.

48. Several district courts found the 2001 version of the rule to be an unconstitutional violation of due process. One court found 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 DHS] 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).

49. In November 2006, the final rule regarding the automatic stay went into effect. The final rule maintained the effect of the 2001 rule but added two procedural requirements. First, the current rule requires that DHS 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 DHS. 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.

50. 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 noncitizen 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.*

51. Additionally, after the automatic stay period has lapsed, DHS 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 DHS 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).

52. 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.

53. 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. 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 n.231 (2022). 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 generally uses these stays not for noncitizens whom 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.

54. In the last three months alone, federal district courts in at least three different cases have found ICE's invocation of the automatic stay unlawful and ordered the noncitizen petitioner's release on bond. *See, e.g., Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez*, 2025 WL 2374223; *Günaydin*, 2025 WL 1459154.

55. Without relief from this court, Mr. Hasan faces the prospect of indefinitely prolonged detention, also because the BIA has no time limit for issuing its decisions. *See Marroquin Ambriz v. Barr* 2019 WL 5550049, *9 (N.D. Cal., Oct. 28, 2019) (noting government concession that the BIA has no deadline by which to decide bond appeals).

56. Participating in the appeal to the BIA, while available, is futile as a mechanism for securing Mr. Hasan's immediate release. DHS's new interpretation of the INA's detention provisions was issued in coordination with DOJ, which oversees the immigration courts. Further, as noted, the BIA has recently created a great deal of confusion in its attempt to broaden the applicability of mandatory detention under 8 U.S.C. § 1003.6 to noncitizens who are detained shortly after entering the United States without inspection, like Mr. Hasan, via its decision in *Matter of Q. Li*. Finally, as noted above, the BIA has no time limit within which to decide bond appeals, and given enormous backlogs and recent firings of BIA

adjudicators, it would likely take months for the BIA to render a decision on ICE's appeal in this case.

New and Unlawful Interpretations Regarding Bond Eligibility

57. Just as the Automatic Stay Regulation does not provide justification for Mr. Hasan's continued detention, the underlying argument that he is not eligible for bond is also unlawful.

58. In a major departure from prior practice, DHS now claims that all noncitizens who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225 and therefore are subject to mandatory detention under § 1225(b)(2)(A).¹ The policy applies regardless of when a person is apprehended and no matter how long someone has resided in the United States.

59. On May 15, 2025, the BIA issued *Matter of Q. Li*, holding that noncitizens who unlawfully enter the United States and are detained without a warrant are considered "applicants for admission" subject to the mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A). Numerous habeas courts across the country have already rejected this decision as contrary to the plain text of the statute

¹ See <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>

and the overall statutory scheme. *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025); *see also, e.g., Rodriguez Vazquez v. Bostock*, — F. Supp. 3d —, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) (holding same); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (same); *Garcia v. Hyde*, Civ. No. 25-11513 (D. Mass. July 14, 2025) (same); *Rosado v. Bondi*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (same), *report and recommendation adopted without objection*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, — F. Supp. 3d —, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (same); *e*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same); *Aguilar Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Escalante v. Bondi*, 2025 WL 2212104 (D. Minn. July 31, 2025) (granting preliminary relief after positively weighing likelihood of success), *report and recommendation adopted sub nom. O. E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte motion for temporary restraining order after finding likelihood of success); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same).

60. DHS and DOJ have adopted this interpretation despite conflicting BIA precedent. On June 20, 2025, one month after *Matter of Q. Li* was published, the

BIA issued *Matter of Roque Izada*. That case does not categorize people who enter without inspection as “applicants for admission” at all. *Matter of Roque Izada*, 29 I&N Dec. at 108. Instead, it treats people who enter without inspection and get released from custody as having been conditionally paroled into the United States under 8 U.S.C. § 1226(a). . *Matter of Roque Izada*, 29 I&N Dec.

61. This novel interpretation also defies the INA, which clarifies that the existence of standard removal proceedings demonstrates that § 1226(a) controls Mr. Hasan’s detention. That provision states that noncitizens may be arrested “pending a decision on whether the [noncitizen] is to be removed from the United States,” but that they may be released on bond. § 1226(a). Mr. Hasan’s removal proceedings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” As the decision about his removal remains “pending,” § 1226(a) governs his detention.

62. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. Congress in fact passed § 1226(c) to exclude noncitizens with certain criminal histories from bond eligibility under § 1226(a). § 1226(c)(1)(E). Subsection (c)’s carve-out cannot apply to Mr. Hasan, who has no criminal accusations, charges, or convictions anywhere in the world. And as one court has explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the

statute generally applies.” *Rodriguez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025) at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

63. Section 1226(a) therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who entered without inspection and who are arrested pursuant to a warrant, like Mr. Hasan. 8 U.S.C. § 1226(a) (“On a warrant issued by the Attorney General, [a noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States.”). The government indeed admitted that Mr. Hasan’s custody was governed by § 1226(a) when it issued him an Order of Release on Recognizance stating the custody determination was governed by that provision. Exhibit D.

64. Federal courts agree, holding that a noncitizen released on an “Order of Release on Recognizance” necessarily must have been detained and released under § 1226, including because he was not an “arriving alien” under the regulations governing § 1225 examinations. *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (finding that a release on recognizance is pursuant to § 1226); *see also Martinez v. Hyde*, 2025 WL 2084238 (D. Mass 2025) (holding that “[r]elease on recognizance is ... a form of ‘conditional parole’ from detention upon a charge of removability,

authorized under section 1226”); *Oliveria Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. 2025) (“In addition to bond, the government may release a noncitizen detained under Section 1226(a) on an Order of Recognizance, which is a form of conditional parole.”).

65. Mr. Hasan made these statutory and evidentiary arguments in his written motion and oral argument during his bond proceedings. The IJ agreed with Mr. Hasan that she had jurisdiction, found that his arrest at the border was pursuant to a warrant, and proceeded to grant bond.

Finally, even if the BIA’s interpretation were entitled to deference (which it is not), *Matter of Q. Li* itself concedes that this interpretation applies only to people arrested and detained “without a warrant.” *Matter of Q. Li*, 29 I&N Dec. at 69-70; *see also Jennings v. Rodriguez*, 583 U.S. 281, 302-03 (2018). Mr. Hasan was detained pursuant to a warrant. Exhibit E, Fom I-200, Warrant for Arrest of Noncitizen. He is therefore detained under 8 U.S.C. § 1226(a), and *Q. Li* does not apply to him.

CLAIMS FOR RELIEF

COUNT I

Ultra Vires / APA – “Automatic Stay”

66. Mr. Hasan incorporates the preceding paragraphs by reference.

67. “It is axiomatic that an administrative agency’s power... is limited to the authority granted by Congress.” *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988); *see also* 5 U.S.C. § 706(2)(C) (in the context of judicial review

under the Administrative Procedures Act (APA)). 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*, 569 U.S. 290, 291 (2013).

68. Congress has established a robust statutory framework within the INA to determine when an IJ has jurisdiction to order a person's release on bond, and when they do not. The Automatic Stay Regulation has no statutory basis, without which there can be no delegation of such power to DHS. More than that, the Automatic Stay Regulation negates the careful balance Congress has devised. It purports to allow DHS to cast aside an IJ's careful individualized evaluation of that detainee's specific circumstances, including the reasons an IJ believes she has jurisdiction in the first place and the required evaluation of danger and flight risk concerns. The end result is that DHS may detain virtually any noncitizen it wishes to detain, as if the IJ's decision on bond had never happened.

69. By cobbling together stay after stay after stay, DHS can push off indefinitely the individual's release, even after an IJ has determined that he warrants bond. This exceeds the authority granted to DHS by Congress, is ultra vires, and thus not a lawful justification for Mr. Hasan's continued detention.

COUNT II
Substantive Due Process – “Automatic Stay”

70. Mr. Hasan incorporates the preceding paragraphs by reference.

71. 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 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

72. Mr. Hasan is entitled to substantive due process protections while detained in Respondents' custody, 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." *Id.* at 690.

73. Because immigration proceedings are civil, rather than criminal, they are presumed to be "nonpunitive in purpose and effect." *Id.* 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.

74. No special justification exists here. A neutral arbiter, the IJ, reviewed written and oral arguments about whether Mr. Hasan was subject to mandatory

detention under § 1225(b)(2). She found that he was not. She then found that he posed no danger or flight risk, factoring his community ties and compliance with all previous immigration court orders and ICE appointments.

75. DHS may believe that the IJ's decision regarding her jurisdiction and her conclusion that Mr. Hasan warranted bond was erroneous. Fair enough. But disagreeing with a judge's decision is not a "special justification" entitling DHS to continue physically restraining Mr. Hasan. It is a reason for DHS to appeal the decision to the BIA.

76. Even where the parties disagree about the immigration court's jurisdiction to adjudicate bond cases in the first place, courts have found that the ability of one party to halt the effect of the IJ's decision undermines due process. *See, e.g., Altagracia Almonte-Vargas v. Elwood*, 2002 WL 1471555, at *5 (E.D. Pa., June 28, 2002). Indeed, the automatic stay provisions allows a single party—the government—to circumvent that appeals process for any reason it wishes, without any justification at all, let alone "special justification." Its invocation therefore violates due process.

77. Moreover, the detention of Mr. Hasan under the automatic stay provision is neither applied narrowly nor subject to strong procedural protections. As noted earlier, DHS 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 Mr. Hasan, much less “strong” protections, is obvious.

78. Finally, allowing DHS to continue holding Mr. Hasan in custody, despite an IJ’s order requiring his release, makes the process of IJ bond review meaningless. 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 Mr. Hasan’s injury.

COUNT III
Procedural Due Process – “Automatic Stay”

79. Mr. Hasan incorporates the preceding paragraphs by reference.

80. Even if the government were to show a “special justification” for Mr. Hasan’s continued detention, and therefore survive substantive due process scrutiny, the government’s action must still be implemented fairly. Because it is not, Mr. Hasan’s detention violates procedural due process requirements.

81. 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).

82. 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.

83. The private interest at stake here – Mr. Hasan'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 (1987), such circumstances do not exist here. DHS never argued that Mr. Hasan poses a danger to the community, nor have they articulated any specific threat to the community that requires an automatic stay of his release without any judicial review and casting aside the statutorily mandated process of IJ review.

84. Under the Automatic Stay Regulation, there is a virtually 100% chance of an erroneous deprivation of Mr. Hasan's interest in freedom from confinement. The provision allows a solitary ICE official, who already had the opportunity to convince the IJ to deny Mr. Hasan bond and failed, to unilaterally keep Mr. Hasan detained. To do so, the ICE official submits a one-page form with the detainee's

name and A number, bond amount, date, and signature. DHS is not required to explain its reasoning for staying the noncitizen's release on the form.

85. 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. The automatic stay provision allows the prosecutor to become the judge and simply pronounce that noncitizens will continue being detained. The process strips noncitizens of any opportunity to be meaningfully heard and respond to this pronouncement, thereby violating procedural due process. *Mathews*, 424 U.S. at 333.

86. Here, the IJ conducted a thorough, meaningful review of whether Mr. Hasan was subject to mandatory detention. She then carefully assessed whether he posed a danger or flight risk and determined that he did not and ordered him released. Yet Mr. Hasan's due process rights were nonetheless rendered meaningless by DHS' use of the automatic stay provision, to his injury.

COUNT IV

Violation of the INA & APA – Improper Characterization as “Applicant for Admission”

87. Mr. Hasan incorporates the preceding paragraphs by reference.

88. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to people like Mr. Hasan who

entered without inspection, were arrested with a warrant, and were never categorized as “arriving aliens.” Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

89. Mr. Hasan is not detained under § 1226(c), because he has no criminal history whatsoever. He is not detained under § 1231, because he has never been ordered removed. The government’s own documents note that Mr. Hasan’s custody is governed by § 1226(a). First, the NTA marks him *not* as an “arriving alien” but as someone who entered without inspection or parole. And his order of release on recognizance states that he was released pursuant to § 1226(a). He therefore cannot be detained under § 1226(b).

90. Mr. Hasan is not subject to *Matter of Q. Li* by its own terms because of the existence of a warrant. However, to the extent that DHS asserts that *Matter of Q. Li* nevertheless requires his mandatory detention, the BIA’s interpretation in that case is *ultra vires* and in conflict with the careful balance of factors clearly established in the INA in regard to bond eligibility, and not subject to deference. *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

91. The application of § 1225(b) to Mr. Hasan unlawfully mandates his continued detention and violates the INA.

COUNT V
Violation of Due Process - Improper Characterization as “Applicant for Admission”

92. Mr. Hasan incorporates the preceding paragraphs by reference.

93. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas*, 533 U.S. at 690.

94. Mr. Hasan has a fundamental interest in liberty and being free from official restraint. Based on the factors considered by *Mathews*, 424 U.S. at 335, categorically denying Mr. Hasan bond based on *Matter of Q. Li* would violate procedural due process for several reasons, including but not limited to:

95. The burden on the Government is low, as until DHS’s very abrupt re-interpretation of the INA position and *Matter of Q. Li*, bond hearings like the one in this case were conducted regularly, and IJs were given the opportunity to weigh individualized risks appropriately as required by the INA. The Government’s burden to do what it has always done does not justify any additional weight given to this factor.

- a. The risk of erroneous deprivation of liberty is extremely high, as the very purpose of the new interpretation is to categorically deprive people

such as Mr. Hasan from the opportunity to prove, as required by the INA, that bond is appropriate.

96. The Government's continued detention of Mr. Hasan despite the fact that an IJ has determined after a bond hearing that he is neither a flight risk nor danger to others violates his right to due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 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 this Court during the pendency of this petition;
- C. Declare that no statute or regulation permits Petitioner's continued detention;
- D. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately;
- E. Issue appropriate injunctive relief; and
- F. Grant any other and further relief that this Court deems just and proper.

DATED this 27th day of August, 2025.

HASAN MAHAMUDUL, Petitioner

By: /s/ Alex Kornya
Alexander Vincent Kornya, (VSB#100878)
THE LEGAL AID JUSTICE CENTER
1000 Preston Ave, Suite A
Charlottesville, VA 22902
(434) 367-6068
alexkornya@justice4all.org

Elizabeth Schmelzel (*pro hac vice pending*)
THE LEGAL AID JUSTICE CENTER
Arlington Blvd, Suite 1130
Falls Church, VA 22042
(434) 422-0754
eschmelzel@justice4all.org

/s/ F. Evan Benz
F. Evan Benz (*pro hac vice pending*)
NC Bar No. 49077
Amica Center for Immigrant Rights
1025 Connecticut Ave NW Ste. 701
Washington, DC 20036
Phone: (202) 869-3984
evan@amicacenter.org

PRO BONO COUNSEL FOR PETITIONER

**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 27, 2025

Respectfully submitted,

/s/

Elizabeth Schmelzel (*pro hac vice pending*)
Counsel for Petitioner