

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA**

LOPEZ ZAVALA, Edgar Benjamin

Agency # A 
Petitioner-Plaintiff

Civ. No. _____

v.

DONALD J. TRUMP, President of the
United States;

KRISTI NOEM,)

Secretary, United States Department of
Homeland Security; PAMELA BONDI,

Attorney General of the United States;

TODD M. LYONS, Acting Director, United
States Immigration and Customs

Enforcement;

NICK ANNAN, Director, United States

Immigration and Customs Enforcement
Atlanta Field Office;

DIANE MCCARTHY, Warden of Stewart
Detention Center

in their official capacities,

Respondents.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF;
PETITION FOR WRIT
OF HABEAS CORPUS

INTRODUCTION

Petitioner, Edgar Benjamin Lopez Zavala, was stopped in Bartow County, Georgia for having a brake light out. He was taken to jail because he was not in possession of a driver's license. Edgar Lopez Zavala has lived in Georgia for nineteen years and poses no danger to the public.

Because he has resided in Georgia for nineteen years and has never

before this incident been arrested or charged with any crime, and because of a number of character affidavits swearing TO Mr. Lopez Zavala's exemplary moral character, an immigration judge granted him a \$5000 bond. Ex 1, Order of the Immigration Judge (August 8, 2025).¹ The immigration judge found that Mr. Lopez Zavala poses no flight risk or danger to the community. Consistent with the bond order, Mr. Lopez Zavala attempted to post bond on August 14, 2025, August 22, 2025, and August 26, 2025. Ex 2, CE Bonds notices claiming Mr. Lopez Zavala is ineligible for bond due to an automatic stay.

The day after Ms. Lopez Zavala was granted bond, the Department of Homeland Security ("DHS") filed a Form EOIR-43, asserting its intent to appeal. Ex. 3, Form EOIR-43. Under DHS's interpretation of 8 C.F.R. § 1003.19(i)(2), this filing automatically stayed the IJ's order of release. The form states the decision is stayed for *ten business days* from the date of the bond order in order for DHS to appeal. *Id.*, See also, 8 CFR Section 1003.19(i)(2)(ii)(c). Ten business days would have expired on Thursday, August 21, 2025.

Undersigned counsel telephoned the Board of Immigration Appeals ("BIA") on Monday, August 25, 2025. The BIA stated no appeal had been

¹ Note that the references to the Respondent's lack of criminal history and the affidavits submitted regarding his high moral character were made orally by the Immigration Judge during the bond hearing, but not noted in the written decision.

filed, counsel asked if there was any filing pending in the electronic filing system that had not been accepted, and the BIA stated that there was not. Likewise undersigned counsel was not served with any copy of any appeal in this case, and there is nothing showing online either in the electronic case system (“ECAS”) or on the EOIR case lookup site. Exh. 4. Undersigned counsel emailed the ICE Office, the Duty Attorney Email for the Office of Chief Counsel at Stewart Detention Center, and the CE Bonds helpdesk to ask why the bond payment requests continued to be denied. Only the CE Bonds helpdesk responded to state that ICE was denying the requests, not their company. Exh. 5. At a master calendar hearing for Mr. Lopez Zavala on August 27, 2025, undersigned counsel asked the assistant ICE chief counsel if DHS had appealed the bond, and she stated she did not know, but sometimes there are delays with the BIA accepting the filing, but as far as she knew Assistant Chief Counsel Christopher Crowley *intended* to pursue an appeal.²

Mr. Lopez Zavala remains detained at Stewart Detention Center in Lumpkin, Georgia due not only to the invocation of the automatic stay regulation, but also due to DHS’ failure to file its own regulation. The

² There have been claims of the BIA not logging documents in timely to ECAS, but to date, there is still nothing in ECAS or showing on the EOIR case lookup site to indicate an appeal, and the DHS has not provided any response or information to state if they did in fact appeal, despite counsel’s attempts to call ICE, email them, and inquire in court.

automatic-stay regulation exceeds any authority Congress conferred in the Immigration and Nationality Act (“INA”) and violates the Fifth Amendment’s Due Process Clause. Even if DHS were to perfect or continue with its appeal, detention under § 1003.19(i)(2) would remain unlawful. Further, DHS does not even appear to be filing its own likely unconstitutional regulations. Mr. Lopez Zavala therefore seeks a writ of habeas corpus and injunctive relief so that he may be released immediately.

CUSTODY

1. Respondents are detaining Mr. Edgar Benjamin Lopez Zavala at the Stewart Detention Center at 146 CCA Road, Lumpkin, Georgia. Mr. Lopez Zavala is detained pursuant to an alleged automatic stay of his order of the immigration judge granting bond, which has now expired; however, his bond payment requests continue to be denied.

JURISDICTION AND VENUE

2. This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.* This Court has jurisdiction under 28 U.S.C. § 2241(c)(1) & (3), art I. § 9, cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. § 1331, as Petitioner subject to imminent custody under

color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States.

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

3. The Seventh Circuit has recognized district courts' jurisdiction to entertain habeas petitions raising colorable constitutional claims—including those alleging deprivation of liberty without due process, arbitrary or indefinite detention, and agency action contrary to law. *See, e.g., Al-Siddiqi v. Achim*, 531 F.3d 490, 494 (7th Cir. 2008) (finding its jurisdiction “remains intact” to review the petitioners claim in a habeas action that DHS’s refusal to honor an immigration judge’s bond order was without legal justification and violated his due process rights); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1013-21 (7th Cir. 2004) (assessing a petitioner’s due process challenge to his mandatory detention). Moreover, 8 U.S.C. § 1252(a)(2)(D) expressly preserves judicial review for “constitutional claims or questions of law” raised in removal proceedings, ensuring that federal courts may address bona fide due process violations even where other jurisdictional bars might apply. The Seventh Circuit has held that this

provision “restores jurisdiction to review constitutional claims and questions of law, including colorable legal and constitutional claims.”

Boadi v. Holder, 706 F.3d 854, 857 (7th Cir. 2013).

4. In this case, Petitioner asserts substantial constitutional violations—including deprivation of liberty without due process. These claims fall squarely within the scope of habeas review preserved by statute and recognized by controlling precedent. Accordingly, this Court has both the authority and the obligation to adjudicate the constitutional and statutory claims presented in this Petition and to grant appropriate relief to remedy ongoing violations of Petitioner’s rights.
5. In *I.N.S. v. St. Cyr*, the Supreme Court held that federal courts retain *habeas corpus* jurisdiction under 28 USC § 2241, despite restrictions on judicial review enacted under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). 533 U.S. 289 (2001). Consequently, section 2241 habeas review remains available to Petitioner.
6. Venue lies in the United States District Court for the Middle District of Georgia, the judicial district in which Respondents are detaining the Petitioner. 28 U.S.C. § 1391(e). *see Rumsfeld v. Padilla et. al.*,

542 U.S. 426 (2004).

REQUIREMENTS OF 28 USC SECTION 2243

Writ of Habeas Corpus Issuance, Return, Hearing, and Decision

7. The Court either must grant the instant petition for writ of habeas or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an order to show cause, Respondent must file a response “within three days” unless the Court permits additional time for good cause, which is not to exceed twenty days. 28 USC Section 2243.
8. 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 and confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time.” *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

PARTIES

9. Petitioner, Mr. Edgar Benjamin Lopez Zavala (A# ) is a native and citizen of Honduras and a resident of Atlanta, Georgia. He was born on  He entered the United States without

inspection in June 2006. He has no criminal record in the United States except pending charges that led to his detention for no drivers' license and a brake light being out in Bartow County, Georgia. This occurred in July 2025 and led to his current detention. He lives with a child and a grandchild of his sister, who are US citizens and have been under his care since his sister was deported. He has obtained guardianship and raised his sister's three children; two are US citizens, and one has an approved special immigrant juvenile petition which he sponsored. Ex. 6. Mr. Lopez Zavala has taken on the care of his sister's grandson, who has special needs, and was his primary caregiver until his detention. Ex. 7. Mr. Lopez Zavala has maintained the same employment as a construction subcontractor and master carpenter since 2015. His employer provided an affidavit and affidavits of their customers attesting to Mr. Lopez Zavala's character, detailing complete trust in him, and giving examples of how he went above and beyond to help them during times of illness and emergency. Ex 8.

10. Respondent Trump is named in his official capacity as president of the United States. In this capacity, the president is responsible for the policies and actions of the executive branch, including the Department

of Homeland Security.

11. Respondent Bondi, as the Attorney General of the United States, continues to exercise unique power over the affairs of aliens, especially when it comes to apprehension, detention, removal, and deportation. (*See* 8 U.S.C. §1103(a)(1); 8 U.S.C. §1222(a); 8 U.S.C. §1226(a) and (c); 8 U.S.C. §§1231(a)(2) and (6)).
12. Respondent, Noem, Department of Homeland Security (“DHS”), has authority for all components of DHS. DHS routinely does and transacts business in Georgia, and is responsible for Petitioner’s arrest, detention and current attempted deportation and responsibility for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.
13. Respondent Lyons is named in his official capacity as the Acting Director of US Immigration and Customs Enforcement (“ICE”). ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of the Petitioner.
14. Respondent Annan is the Field Office Director, Immigration &

Customs Enforcement, a subdivision of the Department of Homeland Security, for the Atlanta District, the office having authority over the location where Petitioner is detained. Respondent Annan has direct and continuing control over Petitioner, and has ordered and authorized his detention in Lumpkin, Georgia.

15. Respondent McCarthy is the warden at Stewart Detention Center, where Plaintiff is detained. He is the party responsible for her physical custody.

EXHAUSTION OF REMEDIES

16. No statutory exhaustion requirement applies. Moreover, DHS's filing of a Form EOIR-43 to invoke an automatic stay of the Immigration Judge's bond order leaves no administrative avenue to secure release; additional agency steps would be futile. Counsel for Petitioner contacted ICE on multiple occasions trying to secure his release to no avail. However, even if there were any available remedies, the habeas statute does not require the Petitioner to exhaust them.

17. Furthermore, even if applied, the doctrine of exhaustion of administrative remedies would have been futile on claim attacking constitutionality of regulation automatically staying grant of bail pending removal proceedings due to Board of Immigration Appeal's

(BIA's) limited appellate jurisdiction over bond determinations. It would be futile to await further administrative hearings when those proceedings cannot in any way address the constitutional claims at issue in this case.

18. Mr. Lopez Zavala has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

STATEMENT OF FACTS

19. Mr. Lopez Zavala is a forty-year-old native and citizen of Honduras born in 1985. He entered the United States in June of 2006 without inspection. He remained in the United States and never left.

20. Mr. Lopez Zavala's has lived in Atlanta, Georgia 30341 for about ten years, and lives with his niece, E.L., age eighteen, whose mother was deported and of whom he has guardianship and his great nephew, J. L., age six. He is their primary caregiver, and they are both US citizens.

21. Mr. Lopez Zavala was arrested in Bartow County, Georgia in July 2025 after he was stopped for having a brake light out and did not have a valid driver's license. He was taken to Bartow County jail, and he was then transferred to ICE custody at Stewart Detention Center

and served with a notice to appear (“NTA”) dated July 11, 2025. Ex.

9.

22. ICE declined to set a bond for Mr. Lopez Zavala. Mr. Lopez Zavala filed for a bond redetermination hearing. On August 8, 2025, IJ Steven Fuller granted Mr. Lopez Zavala a bond in the amount of \$5000, finding him eligible for release, and finding that he was neither a flight risk, nor a danger to the community. Ex. 1.

23. The following day, DHS filed a Form EOIR-43 Notice of Intent to Appeal Custody Redetermination, which by regulation imposed an automatic stay of ten business days on the IJ’s bond order. See 8 CFR Section 1003.19(i)(2)(ii)(c). Ex 3

24. The Petitioner has attempted to post bond on August 14, 2025, August 22, 2025, and August 26, 2025. Each time the bond request was denied due to the automatic stay. Ex 2. Due to this, Petitioner was never able to successfully post the bond. He remains detained.

25. The automatic stay, according to regulation, lapses if no appeal is filed within ten business days of the IJ’s bond decision. 8 CFR Section 1003.19(i)(2)(ii)(c). Undersigned counsel called the BIA on August 25, 2025 after checking the ECAS system and the EOIR website and seeing no appeal listed. The BIA stated there was no

appeal received, and that nothing was pending in the ECAS system.

The chief's counsel's office and ICE office did not answer the telephone or respond to Petitioner's counsel's email inquiries about releasing the bond. The CE Bonds helpdesk responded and stated that ICE controls whether or not a bond is accepted. Ex. 5.

26. As of the filing of this Petition, Mr. Lopez Zavala remains in ICE custody at Stewart, confined solely because of DHS' invocation of the automatic stay regulation.

LEGAL FRAMEWORK

Due Process Clause

27. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v Flores*, 507 U.S. 292, 306(1993)). "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of liberty that [the Due Process] Clause protects." *Zadvydas v Davis*, 533 U.S. 678, 690 (2001).

28. Due process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's

constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (quoting *Kansas v Hendricks*, 521 U.S. 346, 356 (1997)). For immigration, the Supreme Court only recognizes two purposes for civil detention: preventing risk and mitigating the risks of danger to the community. *Zadvydas* at 690; *Demore* at 528. A noncitizen may only be detained for one of these two reasons if they are otherwise statutorily eligible for bond. *Zadvydas* at 690.

29. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Matthews v Eldridge*, 424 U.S. 319, 333 (1976). To determine what process a petitioner is due, this Court should consider 1) the private interest affected by the government action, 2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards, and 4) the government’s interests in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirements would entail. *Id.* at 335.

Immigration Nationality Act

30. Under the Immigration Nationality Act (“INA”), 8 USC Section 1221 controls the US government’s authority to detain noncitizens in removal proceedings.

31. The INA authorizes detention of noncitizens as follows:

- a. Discretionary Detention 8 USC Section 1226(a) generally allows noncitizens in regular removal proceedings to be detained; however, it permits noncitizens not subject to mandatory detention to be released on bond or on their recognizance.
- b. Mandatory Detention of “Applicants for Admission” 8 USC Section 1225(b) generally requires detention for noncitizen applicants for admission, such as noncitizens arriving at port of entry to the US.
- c. Detention Following Completion of Removal Proceedings 8 USC Section 1231(a) generally requires the detention for noncitizens who are subject to a final removal order during the ninety-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period.

32. This case concerns the detention provisions Section 1226(a) and 1225(b). Both detention provisions Section 1226(a) and Section 1226(b) were enacted as part of the Illegal Immigration Reform and Responsibility Act (“IIRIRA”) of 1996, Pub. Law No. 104-208, Div. C, Section 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

33. Following enactment of the IIRIRA, the Executive Office for Immigration Review (“EOIR”) drafted regulations explaining that, in general, individuals who entered the US without inspection were not considered detained under Section 1225(b); they were instead detained under Section 1226(a) after an arrest warrant was issued by the Attorney General. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

34. For nearly thirty years, the practice of DHS, ICE, and EOIR was that most individual noncitizens apprehended in the interior of the United States after being present in the US for over two years (as opposed to “arriving” at the port of entry or being apprehended near the border soon after they entered without inspection) were eligible for bond and

if a bond was not granted by DHS, they were eligible to have a bond set by an immigration judge at a bond redetermination hearing. If either DHS or the immigration court determined they were neither a danger to the community or a flight risk, and granted a change in custody status, the detained person was normally released either after paying the bond that was set or by being released on their recognizance. 8 USC Section 1226(a)(2)(A).

35. Recently, ICE has without warning, reversed course, and adopted a policy of attempting to treat all noncitizens not previously inspected and admitted to the US by an immigration officer as “arriving aliens,” regardless of their situation. Currently, the push to detain everyone in this category ignores factors like how long person has been in the US, whether or not they have ever been convicted of a crime, whether they have community ties, whether they are a danger or a flight risk, whether they have a serious medical condition, whether they have US citizen dependent family members, or whether their detention is in the best interest of the community. Now, ICE is arguing that all individuals who enter without inspection at any time are mandatory detained under Section 1225(b)(2)(A) and inadmissible under Section 1182. This departure from practice and precedent is not supported by

case law and goes against the recent BIA decision in *Matter of Q Li*, which squarely addresses this issue. See *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) which explicitly limits the scope of INA §235 detention. *Q. Li* holds that mandatory detention under INA §235(b)(2)(A) applies to a specific subset of individuals who are 1. Applicants for admission 2. arrested and detained without a warrant while “arriving” in the United States, and 3. subsequently placed in removal proceedings. *Id.* at 66. The BIA further clarified on page 68 that “arriving” refers to noncitizens apprehended just inside the southern border—not at a port of entry—and on the same day they entered the United States. *Id.* at 68.

36. Regardless, ICE already argued this issue before the immigration court, the immigration judge was not convinced, and granted a bond to the Petitioner. Now, ICE will not allow the petitioner to pay the bond set by the immigration judge or to be released.

Staying Immigration Judge’s Bond Order

37. Bond decisions issued by an IJ can be appealed to the BIA by either DHS or the immigrant filed a notice to appeal to the BIA on form EOIR-26 within 30 days.

38. DHS can file a motion to the BIA for a discretionary stay of release

under 8 CFR Section 1003.19(i)(1) (hereinafter “discretionary stay”).

39. In cases where the bond issued is greater than \$10,000 or “DHS has determined” that the noncitizen should not be released, a stay of custody order is issued automatically preventing the release of the noncitizen on bond upon filing of a simple one-page form, the Notice of Service of Intent to Appeal Custody Redetermination (Form EOIR-43). See 8 CFR Section 1003.19(i)(2) (hereinafter “automatic stay”).

40. The discretionary stay involves a case-by-case analysis by the BIA to determine whether the release from custody should be stayed. It considers the individual’s criminal history, ties to the community, flight risk, danger to the community, and likelihood of prevailing in removal proceedings.” See, e.g., *Gunaydin*, 2025 WL 1459154 (D. Minn. May 21, 2025); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004); *Bezman v. Ashcroft*, 245 F.Supp.2d 446 (D. Conn. 2003).

41. The automatic stay is a unilateral decision by ICE through a one-page form EOIR 43 which does not provide any reason, evidence, argument, or analysis of why the noncitizen should remain in custody. This results in ICE, the party whose argument failed in the immigration court, being able to unilaterally, without any articulated reason, immediately prevent the execution of the IJ’s Order of

Release, which is founded on an individualized analysis that the noncitizen can be safely returned to the community.

42. The automatic stay is not subject to review or appeal. However, “the stay lapses if DHS fails to file a notice of appeal with the Board within ten business days of the issuance of the order of the immigration judge.” 8 CFR Section 1003.19(i)(2)(ii)(c). That appears to be what has happened here. In case DHS did in fact file an appeal that was not served on petitioner or his counsel, we will continue with the legal framework to explain why the regulation is inconstititutional. Either way, the petitioner’s detention is unconstitutional.

43. “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.’... Detention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm.” *Ashley v. Ridge*, 288 F. Supp 2d 662, 675 (D.N.J. 2003) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

44. Petitioner is detained today solely because ICE made a unilateral decision not to release him., due to a regulation written by executive agencies, not Congress 8 CFR Section 1003.19(i)(2) which fully states:

Automatic stay in certain cases. In any case in which DHS has determined that an alien should not be released or has set a bond of \$10,000 or more, any order of the immigration judge authorizing release (or bond otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6©, shall remain in abeyance pending decision of the appeal by the Board. The decisions wither or not to file Form EOIR-43 is subject to the discretion of the secretary.

45.The regulations expand on the related procedures in 8 CFR Section

1003.6(c). “If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal.” 8 CFR Section 100.36(c)(4).

46.However, the regulations provide for DHS's continued power to keep a noncitizen detained even after an automatic stay lapses.

47.“DHS may seek a discretionary stay pursuant to 8 CFR Section 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay.” 8 CFR Section 1003.6(c)(5). DHS only needs to submit a motion and incorporate its legal arguments. *Id.*

48.If the BIA has not resolved the custody issue within 90 days and if “the Board fails to adjudicate a previously filed stay motion by the

end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes the Board to decide whether or not to grant a discretionary stay.” 8 CFR Section 1003.6(c)(5).

49.If the BIA rules in a noncitizen’s favor either to authorize release on bond or to rule against a discretionary stay, “the alien’s release shall be automatically stayed for five business days.” 8 CFR Section 1003.6(d).

50.This additional five-day automatic stay provides DHS with another opportunity to keep the person detained.

51.Additionally, “[i]f, within that five-day [secondary automatic stay] period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 CFR Section 1003.1(h)(1), the alien’s release shall continue to be stayed pending the Attorney General’s consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General.” 8 CFR 1003.6(d).

52.“DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General...The Attorney General may order a discretionary stay

pending the disposition of any custody case by the Attorney General or the Board.” 8 CFR Section 1003.6(d).

53. There is therefore an unlimited framework of discretionary and automatic stays to keep a noncitizen detained

54. It is designed to circumvent the IJ and BIA release orders, and can be summarized as follows:

1. Immigration judge orders release on bond

2. DHS files EOIR -43 notice of intent to appeal within one business day, invoking the automatic stay under 8 CFR 1003.19(i)(2)
3. DHS files form EOIR-26 notice of appeal within 10 business days 8 CFR Section 1003.6(c)(1)
4. Automatic stay lapses after 90 days 8 CFR 1003.19(i)(1)

5. BIA orders release on bond

6. Release is automatically stayed for five additional business days 8 CFR Section 1003.6(d)
7. During the 5 business day stay, DHS refers the case to the Attorney General 8 CFR Section 1003.6(d)
8. Automatic stay is extended for 15 business days after DHS refers the case to the Attorney General 8 CFR Section 1003.6(d)

9. DHS may seek a discretionary stay with the Attorney General for the duration of the case. 8 CFR Section 1003.6(d).

55. It should also be noted that detained cases are pushed through the immigration court very quickly, and detained individuals are often located far from their homes, their witnesses, and their support systems, and they can be moved all around the country. They do not have the same ability to obtain proof for their cases, earn money to pay for representation or expert witnesses, and fully prepare for and present their case. Because their cases are pushed through the system so quickly, this regulatory framework of bond stay after bond stay means there is no meaningful way for most applications to fairly peruse their case, whether they have meritorious claim for relief or not.

56. When the DHS disagrees with an IJ or the BIA, they can simply circumvent the decision and keep the person detained while their removal proceedings continue.

57. The automatic stay detains people without “certain time parameters for resolution” (Zavala, 310 F. Supp 2d at 1075) or “ascertainable end point” (*Bezmen*, 245 F. Supp.2d at 449-50).

58. It also does not provide for review by the IJ or BIA, which is a due

process violation. A noncitizen subject to DHS arrest and detention despite an IJ ordering his release has no way to challenge the automatic stay in the framework of the EOIR system.

59. Petitioner's continued detention under this automatic stay will never be reviewed. His only options is to wait for the BIA to take up his case.

The Board of Immigration Appeals

60. However, the BIA's appellate process does not offer a meaningful or timely opportunity for the petitioner.

61. According to EOIR data, during fiscal year 2024, the average processing time for a bond appeal at the BIA was 204 days, approximately seven months. *See Vazquez v. Bostock* 3:25cv-05240-TMC (D.WD. Wash. May 2, 2025).

62. 204 days is only an average time, meaning cases can take more time or less time than 204 days. These months in detention deprive the noncitizen of time with family, community members, and liberty. There family is often in lawful status as US citizens or permanent residents.

63. Detained individuals are often incarcerated in a jail setting which often includes inadequate medical care, degrading treatment, and in

some cases, inadequate food.

64. Failing to provide timely and meaningful review violates the due process clause.

65. According to the United States Government Accountability Office analysis, the median time from case start to completion for a detained case with EOIR was 47 days in fiscal year 2023.³ This means the bond appeal would take longer than the removal proceeding which proceeds collateral to the appeal. Therefore, if a noncitizen wins or loses their case before the bond appeal is decided, the bond appeal becomes moot.

66. It can also be extremely difficult for noncitizens to pursue their case while detained. They are taken to remote rural locations not in their communities. They have very limited ability to communicate with friends and family, they cannot gather evidence, and it is often a financial hardship when the family member is detained and not able to work, making it very difficult to pay for legal representation and expert witnesses. It also makes it difficult to obtain documents to support the case. Documents can be located outside the US and detainees may not be able to call internationally or pay to have them

³ https://tracreports.org/tracker/dynadata/2025_01/gao-25-106867.pdf?utm_source=chatgpt.com

shipped. Often financial records or character reference letters for a case such as cancellation of removal can only be obtained by that person. Other issues cannot be resolved from detention, such as correcting a tax filing. Detained individuals and their family can experience severe financial and emotional hardship, especially if the person is a longtime resident of the community. Noncitizens in detention can also become demoralized by detention conditions and decide to give up their case at the prospect of remaining in detention for many months, regardless of whether or not their underlying case is meritorious.

67. In determining whether due process has been violated the Court should consider 1) the private interest affected by the government action, 2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards, and 4) the government's interests in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirements would entail. *Mathews*, 424 US 319 at 335.

68. For first *Mathews* factor, whether private interest are affected by the

government action, “Petitioner’s liberty interest in remaining free from governmental restraint is of the highest constitutional import.” *Zavala* at 1076 (quoting *St. John v McElroy*, 917 F. Supp. 243, 250 (SDNY 1996)). Petitioner has been detained for close to two months, preventing him from seeing the children who under his care, going to work, supporting his family, and participating in his community.

69. For the second factor, the Court must assess the risk the current procedures will cause an erroneous deprivation of the private interest, and then extent to which that risk could be reduced by additional safeguards. The automatic stay does not require any showing that the government will succeed on the merits. An IJ has already determined the petitioner is not a flight risk or a danger to the community.

70. An ICE attorney who has failed to prove his case in front of an IJ can now make a decision to invoke a stay without oversight or review. *See Ashley*, 288 F. Supp. 2d at 671. This mixes the role of the prosecutor with the role of the adjudicator. *See Marcello v. Bonds*, 349 US 302, 205-06 (1955).

71. For the third factor, the government interest in maintaining the current procedure is minimal. This policy and procedure shift was never officially published by DHS. DHS has departed from procedure of many

years and is now taking the position that no individual who entered without inspection is eligible for bond, even someone like the petitioner, who has been here for over nineteen years and has never set a foot wrong. Further, it is invoking the automatic stay far more frequently, even when the person does not have a criminal record, is not a flight risk, and is not a danger to the community.

72. To prevail on a due process claim, the petitioner must show actual prejudice. *Puc-Ruiz v Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). This occurs when “an alternate result may well have occurred without the violation.” *Id.*

73. In this case, prejudice is obvious. If DHS had not filed the automatic stay, the Petitioner would have been released shortly after the judge’s August 8, 2025 grant of a \$5000 bond. As shown, petitioner tried on three occasions to post bond, but it was rejected due to the automatic stay.

74. If DHS has followed the more elaborate process of seeking a discretionary stay under 8 CFR 1003.19(i)(1), the outcome here is not known. The BIA could have declined to grant a stay.

75. CLAIM FOR RELIEF

76. Petitioner repeats and incorporates by reference all allegations above

as though set forth fully herein.

77. Respondents' continued detention of Petitioner is in violation of law and violates Petitioner's right to substantive and procedural due process by depriving him of his liberty.

78. There is no credible argument that petitioner cannot be safely released back to his community. He has been in the US for nineteen years, and has only been arrested one time for driving without a license. He also submitted numerous character affidavits from the community.

79. The automatic stay renders petitioner's bond hearing moot. He cannot effectively be released. The government can block his release even after losing its case in court.

80. Further, it appears the automatic stay has expired, and there is no information available showing that ICE timely appealed to keep the stay in place. Therefore, if there is no stay, there is no justification at all for petitioner's continued detention.

81. The regulation is also ultra vires because it exceeds the authority of the Attorney General and unlawfully eliminates the Immigration Court's authority to determine custody.

82. Congress granted the Attorney General the discretion to determine custody for those not guilty of certain offenses. *See* 8 USC Section

1226(a),(c). The Attorney General delegated this to immigration judges. 8 CFR Section 1003.19, 1236.1.

83. Congress has not delegated this authority to the Department of Homeland Security. The DHS is effectively trying to create “a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention.” *Zavala*, 310 F. Supp 2d at 1079.

84. The automatic stay regulation is unlawful and *ultra vires*.

PRAYER FOR RELIEF

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

- (1) Assume Jurisdiction.
- (2) Order petitioner released pending these proceedings.
- (3) Order the Respondents not to transfer the Petitioner out of the Middle District of Georgia during the pendency of these proceedings to preserve jurisdiction and access to counsel;
- (4) Issue a Writ of Habeas Corpus pursuant to 28 UC Section 2241 and order Respondents to Immediately release Petitioner from Custody in accordance with the bond order from the IJ, or order

the Respondents to show cause why this petition should not be granted within 3 days;

- (5) Award Petitioner's reasonable costs and attorneys' fees; and
- (6) Grant any other and further relief which this Honorable Court deems just and proper.

Exhibit List

Exhibit 1 Bond Order of the Immigration Judge dated August 8, 2025

Exhibit 2 Printouts from ICE Bonds Website Showing Petitioner tried to post bond 3 times and his requests were denied

Exhibit 3 Form EOIR-43 filed by ICE

Exhibit 4 ECAS EOIR Case lookup showing there is no pending appeal

Exhibit 5 Emails to ICE and CE Bonds Helpdesk, and response from CE helpdesk

Exhibit 6 Birth Certificates of the petitioner's US citizen nieces and nephew that he cares for/ has guardianship of (redacted)

Exhibit 7 School records of petitioner's grand nephew (redacted)

Exhibit 8 Affidavits from the community

Exhibit 9 Notice to Appear

VERIFICATION

Pursuant to 28 USC § 2242, the undersigned certifies under penalty of perjury that she has reviewed the foregoing petition and that the facts state therein concerning Petitioner are true and correct based on her knowledge or belief.

Dated: August 30, 2025.

Respectfully submitted,

By:

_____/s/ Rachel Effron Sharma

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ATTORNEY FOR
PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of August, 2025, I electronically the foregoing PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF with the clerk of court for the United States District Court for the Middle District of Georgia using the CM/ECF system which automatically serves

Assistant United States Attorney
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/s/ Rachel Effron Sharma

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