UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

SEGUNDO ELOY GUAMAN GUASCO

Petitioner,

-against-

BRIAN MCSHANE, in his official capacity as acting Philadelphia Field Office Director for U.S. Immigration and Customs Enforcement, KRISTI NOEM, in her capacity as Secretary for the United States Department of Homeland Security; PAMELA BONDI, in her official capacity as the Attorney General of the United States,
,

Respondents.

Case No. _____

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

PRELIMINARY STATEMENT

1. Petitioner, Segundo Eloy Guaman Guasco ("Petitioner"), brings this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief ("Petition") pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act ("INA") and regulations thereunder; the Administrative Procedure Act ("APA"), 5 U.S.C. § 701, and Article I, Section 9, Clause 2 of the United States Constitution ("Suspension Clause") and the Fifth Amendment of the United States Constitution.
2. On August 18, 2025, the Immigration Judge held that the Petitioner was not a danger to the community or a flight risk. Exhibit A-bond order. He ordered that the Petitioner could be released upon payment of a bond in the amount of $10,000. Then, the Petitioner's family attempted to pay the bond and DHS refused to accept the payment because DHS invoked the

"autostay provision". This constitutes a "severe restraint" on his individual liberty such that Plaintiff is "in custody" of the Respondents in violation of the . . . laws of the United States. *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

3. In general, prior to this year, absent individualized and extraordinary circumstances, when an Immigration Judge granted a non-citizen bond, that person was released from ICE custody once bond was paid even when DHS appealed the bond decision to the BIA. Thus, the automatic stay provision was rarely employed. Now it is being exploited to unlawfully hold non-citizens, like Petitioner, in ICE custody. Automatic Stays are not reviewable by an immigration judge.

4. "'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)) (emphasis added).

5. Petitioner is detained today solely at the unilateral behest of ICE, pursuant to a regulation written by executive agencies, not Congress: 8 C.F.R. § 1003.19(i)(2). This regulation states, in whole:

> 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 (on bond or 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(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary. C.F.R. § 1003.19(i)(2) (emphasis added).

6. 8 C.F.R. § 1003.19(i)(2) expand on the related procedures in 8 C.F.R. § 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 C.F.R. § 100.36(c)(4). However, the regulations provide for DHS's continued power to keep a noncitizen detained even after the automatic stay lapses.
7. "DHS may seek a discretionary stay pursuant to 8 CFR § 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 C.F.R. § 1003.6(c)(5). All DHS must do is submit a motion, and "may incorporate by reference the arguments presented in its brief in support of the need for continued detention of the alien during the pendency of the removal proceedings." *Id.*
8. If the BIA has not resolved the custody appeal within 90 days and "[i]f 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 for the Board to decide whether or not to grant a discretionary stay." 8 C.F.R. § 1003.6(c)(5).
9. If the BIA rules in a noncitizen's favor, authorizing release on bond, or denying DHS's motion for a discretionary stay, "the alien's release shall be automatically stayed for five business days." 8 C.F.R. § 1003.6(d).
10. This additional five-day automatic stay in the event of the BIA authorizing a noncitizen's release is to provide DHS with another opportunity to keep the person detained despite orders to the contrary.
11. "If, 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 § 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 C.F.R. § 1003.6(d).

12. "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 by the Board." 8 C.F.R. § 1003.6(d).
13. Thus, even if the BIA upheld the IJ's order, granted the noncitizen's bond, and ordered them released, they would remain in detention for five more days while DHS is given the opportunity to refer the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1). 8 C.F.R. § 1003.6(d). The same additional automatic five-day stay applies if the BIA denies DHS's motion for discretionary stay or fails to act on such a motion before the automatic stay period expires. *Id.* If the case is referred to the Attorney General, that second automatic stay expires 15 business days after referral. *Id.* DHS may thereafter file another motion for discretionary stay. *Id.* Importantly, if a case is referred to the Attorney General, "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." *Id.* There is no time limit for this stay or these decisions.
14. The regulations are written in such a way that it does not matter what either the IJ or BIA orders; if the government disagrees, the government can, through its own actions and per its own regulations, keep the noncitizen detained. And that detention could be, in reality, indefinite.
15. DHS has subjected Petitioner to unlawful detention after the Immigration Judge initially ordered him release on bond with no end to sight.

16. As such the Automatic Stay provision violates the Petitioner's Due Process rights under the Fifth Amendment and is ultra vires of the authority delegated in the Immigration and Nationality Act.

PARTIES

17. Petitioner is a 32 year old male from Ecuador. He has 3 children. His 6 year old USC child suffers from severe asthma. He started his own company and he has a history of payment of taxes. He has one conviction for Driving while intoxicated. Exhibit C-J.
18. Respondent Brian McShane is named in his official capacity as Field Office Director New York for the U.S. Immigration and Customs Enforcement. In this capacity, he is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); routinely transacts business in the Middle District of Pennsylvania, and is legally responsible for pursuing Petitioner's detention and removal; and as such is the legal custodian of Petitioner. Respondent Joyce's address 114 North 8th Street, Philadelphia, PA 19107
19. Respondent Kristi Noem is named in her capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); routinely transacts business in the Middle District of Pennsylvania, and is legally responsible for pursuing Petitioner's detention and removal; and as such is the legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Washington, District of Columbia 20528.
20. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to INA §

103(g), 8 U.S.C. § 1103(g), routinely transacts business in the Southern District of New York, is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings, and as such is the legal custodian of Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

JURISDICTION AND VENUE

21. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., 8 U.S.C. § 1231; and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

22. This Court has has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C § 701; and for injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

23. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging DHS' conduct. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Federal district courts also have jurisdiction to hear "collateral legal and constitutional challenges to the process by which the government seeks to remove [a noncitizen]." *Fatty v. Nielsen*, No. C17-1535-MJP, 2018 WL 3491278, at *2 (W.D. Wash. Jul. 20, 2018); *see also You v. Nielsen*, 321 F. Supp. 3d 451 (S.D.N.Y. Aug. 2, 2018); *Villavicencio Calderon v. Sessions*, 330 F. Supp. 3d 944, 957-59 (S.D.N.Y. Aug. 1, 2018).

24. Federal courts have jurisdiction to hear habeas petitions, because "absent suspension, the writ of habeas corpus remains available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion of O'Connor, J.); U.S. Const.art. I, § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended . .

."); 28 U.S.C. § 2241(c)(3) (stating federal courts may grant the writ to any person "in custody in violation of the Constitution or laws or treaties of the United States").

25. The Suspension Clause saves this Court's jurisdiction and ability to hear Petitioner's claims. Although the Respondents will likely argue that 8 U.S.C. § 1252 strips the Court of jurisdiction, but, as applied, the statute unconstitutionally suspends the habeas writ by failing to provide an adequate alternative forum for review. *Boumediene v. Bush*, 553 U.S. 723, 736, 771 (2008) (determining first whether the statute "denies the federal courts jurisdiction," and then whether the statute "avoids the Suspension Clause mandate" by providing "adequate substitute procedures for habeas corpus"); *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 575 (2006) (tracing the requirement of an "unmistakably clear statement" at least as far back as *Ex parte Yerger*, 75 U.S. 85, 104-05 (1868)). Thus this Court retains residual habeas jurisdiction as the lack of an adequate alternative forum to meaningfully seek review would amount to a suspension of the writ of habeas corpus, such that the statutes would need to be read to permit Petitioner's claims to avoid a constitutional violation.

26. At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive encroachment on liberty, and it is in that context that its protections have been strongest. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). These protections extend fully to noncitizens subject to an order of removal. *Id.*; see also Gerard L. Neuman, Habeas Corpus, Executive Detention, and the Removal of Aliens, 98 Colum. L. Rev. 961, 1044 (1998) ("[H]istorical precedents beginning shortly after 1787 and reaching to the present confirm the applicability of the writ of habeas corpus to the detention involved in the physical removal of aliens from the United States. These precedents include opinions . . . denying the power of Congress to eliminate judicial inquiry.").

27. The right to seek habeas corpus relief is fundamental to the Constitution's scheme of ordered liberty. Habeas corpus is "a writ employed to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal." *Boumediene*, 553 U.S. at 737 (quoting Black's Law Dictionary 728 (8th ed. 2004)). Blackstone called it "the most celebrated writ in English law," 3 Blackstone's Commentaries 129 (1791), and deemed the Habeas Corpus Act of 1679 "the bulwark of the British Constitution." 4 Blackstone's Commentaries 438 (1791).

28. In the penultimate Federalist Paper, Alexander Hamilton praised the establishment of the writ as a defense against "the favorite and most formidable instruments of tyranny." The Federalist No. 84, p. 251 (R.M. Hutchins ed. 1952). Indeed, the "great writ of liberty", *see Darr v. Burford*, 339 U.S. 200, 225 (1950) (Frankfurter, J., dissenting), is "the only common-law writ to be explicitly mentioned" in the Constitution. *Hamdi*, 542 U.S. at 558 (Scalia, J., dissenting) (citing U.S. Const. Art. I, § 9, cl. 2.).

29. The U.S. Constitution followed its English counterpart in permitting legislative suspension of the writ in extreme circumstances. In England, "the parliament only, or legislative power, whenever it sees proper, [could] authorize the crown, by suspending the habeas corpus act for a short and limited time, to imprison suspected persons without giving any reason for so doing." 1 Blackstone's Commentaries 132 (1791).

30. The United States Constitution, however, does not permit suspension of the writ "whenever [the legislature] sees proper," but rather guarantees in the Suspension Clause that "The Privilege of the Writ of Habeas Corpus shall not be suspended, The Suspension Clause provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, §

9, cl. 2. "[B]ecause of that Clause, some 'judicial intervention in deportation cases' is unquestionably 'required by the Constitution.'" *St. Cyr*, 533 U.S. at 300 (quoting *Heikkila v. Barber*, 345 U.S. 229, 235 (1953)). For a statute to limit the writ, it "must overcome both the strong presumption in favor of judicial review of administrative action and the longstanding rule requiring a clear statement of congressional intent to repeal habeas jurisdiction." *St. Cyr*, 553 U.S. at 298 (footnote omitted). Congress can strip jurisdiction without violating the Suspension Clause only where it provides "a collateral remedy which is neither inadequate nor ineffective to test the legality of a person's detention." *Swain v. Pressley*, 430 U.S. 372, 381 (1977); *see also Boumediene*, 553 U.S. at 779.

31. "[I]f an otherwise acceptable construction of a statute would raise serious constitutional problems, and [ ] an alternative interpretation of the statute is fairly possible, [courts] are obligated to construe the statute to avoid such problems." *St. Cyr*, 533 U.S. at 299-300. "Indeed, it is an elementary rule in construing acts of Congress that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." *Skilling v. United States*, 561 U.S. 358, 406, (2010).

32. Courts have found that the Suspension Clause protects petitioners' rights to habeas relief because of the inadequacy of the motion to reopen process, *See Sean B. v. McAleenan*, 412 F. Supp. 3d 472, 490 (D.N.J. 2019) ("I am most moved here by the constitutional necessity of a stay under the Suspension Clause, see supra, and the likelihood of a violation of Petitioner's procedural and constitutional rights if it is not granted. Petitioner may or may not prevail before the BIA or the Court of Appeals; the Constitution requires, however, that his opportunity to put his case be preserved); *Sukwanputra v. Barr*, No. 19-3965, 2019 U.S. Dist. LEXIS 159558, at *7-8 (E.D. Pa. Sep. 19, 2019); *Compere v. Nielsen*, 2019 DNH 017, 358 F.

Supp. 3d 170, 182, (D.N.H. Jan. 24, 2019); *Siahaan v. Madrigal*, No. PWG-20-02618, 2020 U.S. Dist. LEXIS 184193 (D. Md. Oct. 5, 2020); *Devitri v. Cronen*, 289 F. Supp. 3d 294 (D. Mass. Feb. 1, 2018); *Ibrahim v. Acosta*, No. 17-cv-24574, 2018 WL 582520, at *5-6 (S.D. Fla. Jan. 26, 2018); *Jimenez v. Nielsen*, 334 F.Supp.3d 370, 381-82 (D. Mass. 2018). Other courts have found that it was necessary to apply the canon of constitutional avoidance to avoid ruling on the Suspension Clause issues raised. *S.N.C. v. Sessions*, No. 18 CIV. 7680 (LGS), 2018 WL 6175902, at *3 (S.D.N.Y. Nov. 26, 2018); *Sied v. Nielson*, No. 17-cv-06785, 2018 WL 1142202, at *31-67 (N.D. Cal. Mar. 2, 2018).

33. For "non-core" habeas challenges, courts in this Circuit have relied on a combination of venue and personal jurisdiction principles in deciding whether they have venue. *See S.N.C. v. Sessions*, 325 F. Supp. 3d 401, 408-409 (S.D.N.Y. Aug. 28, 2018) (collecting cases). Under either test, applying "traditional venue considerations," such as the location of "material events," the location of "records and witnesses pertinent to the claim," and the relative "convenience of the forum" for each party or relying on principles of personal jurisdiction have asked whether the respondent can be reached by service of process and whether the respondent falls under the state's long-arm laws, the Middle District of Pennsylvania has venue over Petitioner's claims. His removal proceedings are held in Newark, New Jersey. He is detained at Pike County Correctional Facility which is within the geographic confines of the Middle District of Pennsylvania, efforts to remove him have been coordinated by Respondent McShane within the Middle District of Pennsylvania and Petitioner has been detained in the Middle District of Pennsylvania under the Respondents authority.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

34. No exhaustion requirement applies to the constitutional claims raised in this Petition because no administrative agency exists to entertain Petitioner's constitutional challenges. *See Howell*

v. INS, 72 F.3d 288, 291 (2d Cir. 1995); *Arango–Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994), *see also Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) ("it is settled" that the immigration judge and the BIA cannot decide constitutional questions); *Burns v. Cicchi*, 702 F. Supp. 2d 281, 286 (D.N.J. 2010) (excusing further exhaustion where dispositive issues had been predetermined).

35. Additionally, exhaustion is not required where the Petitioner challenges the constitutionality of the agency procedure itself, "such that the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff's lawsuit." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992) (internal brackets omitted).

36. Moreover, no exhaustion requirement applies to the constitutional claims raised in this Petition because no administrative agency exists to entertain Petitioner's constitutional challenges. *See Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Arango–Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994), *see also Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) ("it is settled" that the immigration judge and the BIA cannot decide constitutional questions); *Burns v. Cicchi*, 702 F. Supp. 2d 281, 286 (D.N.J. 2010) (excusing further exhaustion where dispositive issues had been predetermined).

37. Additionally, exhaustion is not required where the Petitioner challenges the constitutionality of the agency procedure itself, "such that the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff's lawsuit." *McCarthy*, 503 U.S. at 148 (internal brackets omitted).

38. Finally, "courts may waive a judicially created exhaustion requirement where pursuing administrative remedies would be futile," as any would be here. *Brevil v. Jones*, No. 17 CV

1529-LTS-GWG, 2018 WL 5993731, at *2 (S.D.N.Y. Nov. 14, 2018) (quoting *Araujo-Cortes*, 35 F. Supp. 3d at 538-39)).

STATEMENT OF FACTS

39. Petitioner is a native of the country of Ecuador, and he first entered without inspection on July 17, 2014.

40. The Petitioner previously applied for asylum while in removal proceedings. At that time, DHS determined that he was not a priority and deportation proceedings were dismissed. Then, the Petitioner was detained in a random raid. Then, the Immigration Judge set bond and the Respondents are refusing to honor that bond.

LEGAL FRAMEWORK

41. Numerous District Courts have held that the automatic stay provision is a violation of the Petitioner's Due Process right under the Fifth Amendment. *See Gunaydin v. Trump,* 2025 WL 1459154 (D.Minn., 2025); *Maldonado v. Olson et al.*, 2025 WL 237411 (D.Minn., 2025); *Jimenez v. Kramer et al.*, 2025 WL 2374223 (D.Neb., 2025); *Anicasio v. Kramer et al.*, 2025 WL 2374224 (D.Neb., 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 LX 327685 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 LX 326606 (D. Neb. Aug. 19, 2025).

42. To determine whether a civil detention violates a detainee's procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (applying Mathews test to a challenge involving discretionary noncitizen detention). "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process 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 (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

43. Numerous District Courts have found the first factor in favor of the petitioner because the interest in being free from physical detention is the most elemental interest that the Due Process Clause seeks to protect. In *Gunaydin*, the Court found in favor of the petitioner for three reasons. First, Günyadin has a significant interest at stake which is being free from physical detention "is the most elemental of liberty interest. Second, the condition Günyadin was being held was indistinguishable from criminal incarceration. Third, Günyadin identified other significant private interests that were affected like loss of career opportunities, possible forfeiture of semester's tuition, completion of his academic semester, and the loss of privacy while being held in detention. In a factually identical scenario the District could in *Antonia infra,* found in favor of petitioner because the condition of confinement she was being held in was indistinguishable from criminal incarceration. Additionally, petitioner experienced other adverse effects to her private interest based on her separation from her children, one of whom was still a nursing child who depended on his mother for nourishment. Similarly in *Jimenez*, the Court found the conditions of petitioner's detention are indistinguishable from criminal incarceration as she was being held in county jail in the same place as criminal inmates. *See Yanier Garcia Jimenez v. Kramer et al. See also Floribertha May Anicasio v. Kramer et al.* (petitioner is being held at a county jail in the same conditions as criminal inmates and far

from her family, could not maintain employment, or see his friends and family outside of visiting hours).

44. District Courts have found the second factor in favor of petitioners. The Court, in recent cases, found that the automatic stay rule creates a substantial risk of erroneous deprivation of detainee's interest in being free from arbitrary confinement. The risk is high because the rule here only affects detainees who have already prevailed in a judicial hearing. Additionally, the regulation includes no requirement for the agency official to consider any individualized or particularized facts for an action that results in continued detention. Third, the regulation also does not include any standards for the agency to satisfy and more so operates as an appeal of right. There are additional procedural safeguards that are already in the regulation that would mitigate the risk; the regulation sets forth a procedure by which DHS may request an emergency stay of an IJ's custody determination from the BIA which takes into account individual circumstances and merits of the case. This is a more appropriate and less restrictive means for the government to preserve its interests in preventing erroneous releases. *See Gunaydin v. Trump,* 2025 WL 1459154 (D.Minn., 2025) (When weighing the private interests at stake and the risk of erroneous deprivation of those interests against the government's interest in the automatic stay, the court found that the government's interest was not enough. The government did not identify any legitimate purpose served by Günyadin's ongoing detention. The government also does not show that it would be burdensome for the DHS to request an emergency stay from the BIA pending appeal and the court sees little if any additional burden that DHS would face if it were unable to invoke the automatic stay regulation. Respondents' interest in preserving the automatic stay regulation is almost entirely, if not entirely, reduced by the mechanisms already in place for requesting an

emergency stay from the BIA.); *Antonia Aguilar Maldonado v. Olson et al.*, 2025 WL 237411 (D.Minn., 2025) (Court found petitioner was not subject to any mandatory detention or expedited removal); *Yanier Garcia Jimenez v. Kramer et al.*, 2025 WL 2374223 (D.Neb., 2025)(IJ found Petitioner was not a threat to public safety and determined the $15,000 bond would mitigate any risk of flight. In fact, at the hearing before the Court, the government conceded it was not contesting the IJ's findings on flight risk and danger to the community. Nevertheless, despite a neutral decision-maker finding a bond was warranted, the automatic stay provision allowed DHS, the party who lost its bond argument, to unliterally deprive Petitioner of her liberty); *Floribertha May Anicasio v. Kramer et al.*, 2025 WL 2374224 (D.Neb., 2025) (same).

45. Lastly, the third factor of the *Matthews* test weighs heavily in favor of the petitioner. The third factor requires the Court to weigh the private interests at stake and the risk of erroneous deprivation of those interests against the Government's interest in persisting with the automatic stay and the burdens of additional or substitute requirements. District courts have found that there is not a significant governmental interest at stake in Petitioner's detention pursuant to the automatic stay provision. *Mathews*, 424 U.S. at 335. In *Günaydin*, the Court finds that ensuring that persons subject to removal do not commit crimes or evade law enforcement is a significant governmental interest. However, in the above cases, the government failed to show that there is a significant governmental interest at state in the petitioner's detention pursuant to the automatic stay provision. *See Gunaydin v. Trump*, 2025 WL 1459154 (D.Minn., 2025)(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...

Thus, given the absence of an argument to the contrary, and in light of the infrequent invocation of the automatic stay regulation, the Court is compelled to conclude that Respondents' interest in preserving the automatic stay regulation is almost entirely, if not entirely, reduced by the mechanisms already in place for requesting an emergency stay from the BIA.); *Antonia Aguilar Maldonado v. Olson et al.*, 2025 WL 237411 (D.Minn., 2025)("There is no showing here that public safety or ensuring Ms. Aguilar Maldonado's attendance at future proceedings requires a stay of the order releasing her on bond."); *Yanier Garcia Jimenez v. Kramer et al.*, 2025 WL 2374223 (D.Neb., 2025)(Petitioner is not a danger to the community nor a flight risk. The court considered the government interest to be vague and minimal especially in contrast to the significant liberty interest at stake for the petitioner); *Floribertha May Anicasio v. Kramer et al.*, 2025 WL 2374224 (D.Neb., 2025)(same).

46. The Courts in the above cases have found that the automatic stay provision violates Petitioner's Substantive Due Process and Procedural Due Process. The automatic stay provision violates the Petitioner's Substantial Due Process Rights because the government has not shown any special justification or compelling governmental interest that would outweigh the Petitioner's constitutional liberty. The automatic stay only applies in situations where the IJ has already determined the petitioner to be released on bond. The government's interest in the continued detention of such "least dangerous" individuals does not outweigh the interest to be free from detention. S*ee Jimenez v. Kramer* (The court found that the government failed to show any "special justification" or compelling interest that would outweigh Petitioner's constitutional liberty interest, particularly since an IJ had already determined she was not a danger or flight risk); *Anicasio v. Kramer* (same); *see also*

Gunaydin v. Trump, 2025 WL 1459154 (D.Minn., 2025) (In light of its decision supra concerning the *Mathews* factors, the Court need not also analyze this independent substantive due process argument. Nevertheless, the Court is concerned that the automatic stay provision violates Günaydin's substantive due process rights, and Respondents advance no justification for Günaydin's ongoing detention past the termination of his removal proceedings. Other district courts have found that the automatic stay provision also violates detainees' substantive due process rights. *See, e.g., Kambo v. Poppell*, No. SA-07-CV-800-XR, 2007 U.S. Dist. LEXIS 77857, 2007 WL 3051601, at *20 (W.D. Tex. Oct. 18, 2007); *Zavala*, 310 F. Supp. 2d at 1077; *Ashley*, 288 F. Supp. 2d at 669.)

47. It is clear that the Petitioner's continued detention is egregious. The Respondents cannot continue to detain the Petitioner pursuant to the auto stay provision. Any arguments regarding continued detention were properly addressed before the Immigration Court.

The Proper Remedy is Immediate Release

48. The proper remedy for Respondents' unilateral invocation of the automatic stay provision, overruling the reasoned decisions of the Immigration Judge for the second time, is to order Petitioner's release.

49. "It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (ordering release where detention became unlawful once condition release date had passed); *see also Munaf*, 553 U.S. at 693.

50. Release is the only appropriate remedy for Respondents' shocking disregard for Petitioner's fundamental due process rights.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF PROCEDURAL DUE PROCESS

U.S. Const. amend. V

51. Petitioner realleges and incorporates by reference each and every allegation contained above.
52. DHS has unilaterally overruled an Immigration Judge's individualized determination that Petitioner does not present a risk to public safety or a risk of flight to impose indefinite detention on Petitioner. This merging of the prosecutorial and adjudicatory role creates an unacceptable risk of erroneous deprivation of Petitioner's most fundamental liberty interests.
53. The government's interest here is easily protected through an existing regulation that allows DHS to make an emergency request that the BIA stay an immigration judge's custody determination.
54. Petitioner's detention pursuant to the automatic stay provision therefore deprives him of his right to procedural due process, and he is entitled to immediate release.

COUNT TWO

VIOLATION OF SUBSTANTIVE DUE PROCESS

U.S. Const. amend. V

55. Petitioner realleges and incorporates by reference each and every allegation contained above.
56. The Due Process Clause of the Fifth Amendment protects the substantive right of all persons in the United States, including noncitizens, to be free from unjustified deprivations of physical liberty. U.S. CONST. amend. V; *see generally Reno v. Flores*, 507 U.S. 292 (1993). "[G]overnment detention violates the [Due Process Clause] unless the detention is ordered in

a criminal proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (quotation marks and citations omitted).

57. Petitioner's detention does not serve the special justifications for immigration detention: mitigating flight risk and mitigating risk to the community. An Immigration Judge made an individualized determination that Petitioner met his burden to prove he was neither a danger to the community nor a flight risk. That Judge ordered Petitioner's release on bond and the BIA agreed that release on bond was appropriate.

58. Respondents' insistence on invoking the automatic stay provision to force Petitioner to remain in indefinite detention despite these judicial decisions is therefore arbitrary as it does not serve a legitimate government interest.

59. Petitioner's detention is not narrowly tailored to serve any other compelling state interest.

60. Petitioner's detention therefore deprives him of his right to substantive due process, and he is entitled to immediate release.

COUNT THREE
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
8 U.S.C. § 1254a

61. Petitioner realleges and incorporates by reference each and every allegation contained above.

62. Section 1226(a) of Title 8 of the U.S. Code grants immigration judges the authority to re-determine custody status unless mandatory detention applies. The INA also empowers the BIA to review immigration judges' custody redeterminations.

63. Petitioner has been properly granted bond twice by an Immigration Judge.

64. Accordingly, DHS's mandate that Petitioner must be held without bond in violation of the orders of the Immigration Judge is ultra vires to the INA. DHS's actions eliminate the discretionary authority of immigration judges to determine whether an individual may be released, thereby exceeding the authority bestowed upon the agency by Congress.

65. Thus, Petitioner's detention violates Section 1226(a), and he is entitled to immediate release from custody.

COUNT FOUR
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 706(2)

66. Petitioner realleges and incorporates by reference each and every allegation contained above.

67. The Administrative Procedure Act ("APA") enables courts to "hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law." 5 U.S.C. § 706(2).

68. The Respondents' use of the automatic stay provision is arbitrary and capricious, in violation of the constitutional right to due process, in excess of statutory jurisdiction, and without observance of procedure required by law.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the Pennsylvania Field Office and the Middle District of Pennsylvania pending the resolution of this case;
3. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
5. Declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. § 1226(a);
6. Declare that Petitioner's detention violates the Administrative Procedure Act;
7. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody on his own recognizance or under parole, bond, or reasonable conditions of supervision;
8. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
9. Grant such further relief as this Court deems just and proper.

Dated: New York, NY
September 3, 2025

Respectfully submitted,

By: /s/ Paul Grotas
Paul B. Grotas, Esq
THE GROTAS FIRM, P.C.
499 Seventh Avenue, Suite 23N
New York, NY 10018
917-436-4444

Awaiting pro hac viche admission

By: /s/ Matthew J. Archambeault
Matthew J. Archambeault (he/him)
Law Office of Matthew J. Archambeault
New Jersey Office
216 Haddon Avenue, Suite 402
Haddon Township, NJ 08108-2812
215-599-2189

COUNSELS FOR PETITIONER

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner's legal team the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Dated: New York, NY
September 3, 2025

By: /s/ Paul Grotas
Paul B. Grotas, Esq
COUNSEL FOR PETITIONER