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. 1:25-cv-01650-KMN

MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION- ON NOTICE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

This case is about the continued unconstitutional detention of Petitioner Segundo Eloy Guaman Guasco ("Segundo" or "Petitioner"). He remains imprisoned today because Respondents unilaterally invoked an unconstitutional and ultra vires automatic stay after an immigration judge ("IJ") heard his bond application—and granted him a $10,000 bond. In light of the BIA's September 5, 2025 published decision in *Hurtado*, absent this Court's intervention, Segundo has nowhere to turn to vindicate the due process rights of the automatic stay provision—8 C.F.R. §1003.19(i)(2)—flouts. "Invocation of the automatic stay per 8 C.F.R. §1003.19(i)(2) renders the IJ's custody redetermination order an 'empty gesture' absent demonstration of a compelling interest or special circumstance left unanswered by the IJ." *Leal-Hernandez v. Noem,* 2025 WL 2430025, at *13 (D. Md. Aug. 24, 2025); *id.* ("The Government's discretion in matters of immigration is deep and wide, but surely its chop does not overcome the banks of due process enshrined in the Constitution"). Additionally, invocation of the Automatic Stay provision by Respondents is ultra vires because it unilaterally eliminates the discretionary authority of IJs to make custody determinations absent any form of judicial review.

Segundo satisfies the four elements necessary for granting a temporary restraining order ("TRO"). First, he is likely to succeed on the merits of his claims concerning Respondents' unlawful invocation of the automatic stay provision.

Second, his unconstitutional detention satisfies the irreparable harm threshold. Third, the balance of the equities tilt in his favor because his release will not harm Respondents' ability to remove him in any way. Finally, the public interest is satisfied by his release (not his detention) because no basis at law exists for his continued detention. Against this backdrop, granting a TRO in his favor—ordering release—is appropriate.

STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

This Court is well aware of the facts relating to Petitioner's unlawful detention as this matter is fully briefed. Segundo demonstrates numerous positive attributes throughout his life, showcasing his dedication, integrity, and strong work ethic. An Immigration Judge has already determined that he should be released on bond, but ICE has unilaterally and without explanation overruled that determination. ICE's decision failed to take into account his numerous ailments which are being untreated while he is incarcerated. The Petitioner detailed the fact that he is suffering from numerous undiagnosed and untreated medical issues. The Petitioner reports swelling in his stomach and his finger. He is also experiencing sores in his mouth. The Petitioner underwent an X-ray but has not received a diagnosis or explanation regarding these symptoms. The Petitioner's counsel attempted to arrange a telephone call in order to document this conversation in a declaration but attempts have been ignored by the detention facility. Exhibit A. The

Petitioner's wife has provided a declaration confirming his medical issues. Exhibit B.

The Immigration Judge's decision was based upon an individualized determination and a factual record detailed at ECF No.1-2. The Petitioner has consistently paid taxes since 2017, reflecting his commitment to contributing to society. Petitioner is the owner of a Roof Company, Smart Exteriors Solutions Corporation. ECF NO.1-2 at p.152. Petitioner has positively impacted the local economy. His hard work and determination have enabled him to achieve the American Dream. He has resided in the USA since 2014 at a fixed address. If released, he can return to live at that address. ECF No. 1-2.

Petitioner has 2 USC children. His son, Dioriver Sneijder Guaman Chimborazo, who is 7 years old, suffers from severe asthma, requiring regular medical attention. He visits the doctor once a month for ongoing monitoring and treatment. During asthma attacks, he uses his inhaler as needed and also takes allergy medication to help manage his symptoms. At times, when his breathing becomes especially difficult, he is placed on an oxygen machine to help stabilize his condition. ECF No.1-2 at p.132-141. His son, Diover, is doing very well at school. ECF No.1-2 at p.142-144. He has numerous letters of support from the community. ECF No.1-2 at p.233-243. They describe his good nature and the detrimental impact his continued incarceration has on this family man.

If released Petitioner can return to live with his family and return to work at

his corporation and continue paying taxes. ECF No.1-2 at p.158-232. He has a religious based asylum claim which is incredibly strong.

Petitioner now separately seeks a TRO to enjoin Respondents from detaining him.

LEGAL STANDARD

Courts grant preliminary injunctive relief, including a TRO, where the moving party can show: "(1) a substantial likelihood [a] cause will succeed on the merits, (2) a substantial threat of irreparable injury if the injunction is not granted, (3) the threatened injury outweighs the threatened harm the injunction may do to the opposing party, and (4) granting the injunction will not disserve the public interest." *Hope v. Warden York County Prison,* 956 F.3d 156, 160 (3d Cir. 2020). In cases against the government, the third and fourth prongs merge. *Schrader v. DA of York Cty.*, 74 F.4th 120 (3d Cir. 2023) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

ARGUMENT

I. Segundo Is Likely to Succeed on the Merits of His Claims.

The Fifth Amendment guarantees that no person in the United States shall be deprived of liberty without due process. U.S. Const. amend. V. These substantive and procedural protections apply to all people, including noncitizens, regardless of their immigration status. *Trump v. J.G.G.*, 604 U. S. __, 145 S. Ct. 1003, 1006 (2025) (*per curiam*) ("'It is well established that the Fifth Amendment entitles

aliens to due process of law' in the context of removal proceedings." (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). As outlined in Segundo's Amended Petition, and below, Segundo has a substantial likelihood of succeeding on the merits of his claims. *See* ECF No. 9.

Segundo's Procedural Due Process Claim Is Likely to Survive. To withstand scrutiny, the automatic stay must satisfy the guarantees of procedural due process. It does not. Instead, the automatic stay "operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied." *Mohammed H. v. Trump*, — F. Supp. 3d —, 2025 WL 1334847, at *6 (D. Minn. May 5, 2025).

Procedural due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In determining whether due process has been violated, the Court should weigh: (1) the private interest affected 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 governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews*, 424 U.S. 319 at 335;

Rodriguez Diaz v. Garland, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, "when considering due process challenges to [discretionary noncitizen detention] other circuits . . . have applied the *Mathews* test"). Each of these factors weigh in Segundo's favor.

First, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint[,] is of the highest constitutional import." *Zavala*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004); *see also Ashley v. Ridge*, 288 F. Supp. 2d 662, 670-71 (D.N.J. 2003) (same). Indeed, "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Segundo has been detained since around July 18, 2025, when ICE agents arrested him without any notice or warning during a targeted enforcement operation conducted in Williamsport, PA. He was then detained at Pike County Correctional Facility where he remains confined today. *See* ECF No.13-2 . He easily satisfies the first *Mathews* factor.

Second, the current procedure—the automatic stay—causes an erroneous deprivation of Segundo's liberty interest in remaining free from detention. Unlike the typical requests for a stay that require a demonstration of the likelihood of success on the merits, the automatic stay provision demands no such showing; in fact, it was enacted precisely to avoid the need for such an individualized determination. *See* Am. Pet. at 2. An IJ here has already determined that Segundo

is neither a flight risk nor a danger to the community. *Id.* at 1. But that individualized reasoned decision by the IJ was effectively overruled by a unilateral determination by a DHS attorney that "poses a serious risk of error." *Zavala*, 310 F. Supp. 2d at 1076.[1] The due process requirement this Court imposed on Respondents was effectively nullified by a stay procedure containing no safeguards—invoked not by a neutral arbiter, but by the non-prevailing party.[2] Moreover, stay requests typically require that a party demonstrate likelihood of success on the merits and a balancing of interests favoring one party. *See Nken*, 556 U.S. at 418. The lack of any such requirement here, and the automatic nature of the stay, results in an unacceptably high risk of an erroneous deprivation of liberty. *See Ashley*, 288 F. Supp. at 670– 71. While the Immigration Judge carefully considered and then ordered a remedy to protect Segundo's due process rights, in seeking the automatic stay, Respondents converted his detention back to one that is at the discretion of the jailer and lacks individualized considerations. Against this backdrop, Segundo satisfies the second *Mathews* factor.

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[1] *See also Günaydın v. Trump*, 2025 WL 1459154, at *8 (D. Minn. May 21, 2025) (explaining automatic stay is "anomalous in our legal system" because "a non-prevailing party" is granted the authority "to unilaterally override" a judge's decision).

[2] *See Sampiao v. Hyde*, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025) ("By flipping the traditional rules governing requests to stay pending appeal, the automatic stay regulation invites significant risk of error in decisions that deprive individuals of their liberty"); *Ashley*, 288 F. Supp. 2d at 671 ("[T]he risk of the erroneous deprivation of liberty is substantial, as the application of the automatic stay provision here was the result of a unilateral determination made by [ICE]."). This conflates the role of prosecutor and adjudicator, which is impermissible due to the high potential for error. *See Marcello v. Bonds*, 349 U.S. 302, 305–06 (1955).

Finally, the government's interest in maintaining the "current" procedure is minimal. Courts have found that "little, if any, additional burden" would befall Respondents "if they were unable to invoke the automatic stay regulation." *Günaydın*, 2025 WL 1459154, at *10. Indeed, the automatic stay is meant to be a "limited measure." *Id.* (quoting 66 Fed. Reg. 54909 (Oct. 31, 2001)). Although DHS may have an interest in detaining noncitizens it deems to be a danger or a flight risk, the IJ already determined that DHS did not meet its burden to show that Segundo fell under either of those categories. Thus, the IJ correctly decided that Segundo is an appropriate candidate for bond. *See Leal-Hernandez,* 2025 WL 2430025, at *14 ("[T]he court has no earthly idea what governmental interest could be served by Petitioner's continued detention should he satisfy the bond order."). Accordingly, the interest in keeping Segundo incarcerated during the course of his removal proceedings (in short, subject to mandatory detention) is hollow because it is unlawful—according to both the Supreme Court and this Court. *See Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018); *Kostak*, 2025 WL 2472136, at *3. The third *Mathews* factor is satisfied.

Because Segundo squarely meets all prongs of the *Mathews* test, he is more than likely to succeed on the merits of her procedural due process claim.

Segundo's Substantive Due Process Claim Is Likely to Survive. Due process requires any deprivations of Segundo's liberty to be narrowly tailored to serve a compelling government interest. *Dep't of State v. Munoz*, 602 U.S 899, 910

(2024). Government detention violates due process in civil proceedings except in "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 (internal quotations marks and citations omitted). The stated purpose of the automatic stay is to protect the public and "enhance agencies' ability to effect removal should that be the final order in a given case." 71 Fed. Reg. 57873, 57874 (Oct. 2, 2006). The IJ here ordered Segundo's release after hearing evidence and arguments from both parties. "[I]n this case, as in all instances in which the automatic stay is invoked by the Service, there has already been a determination by an [IJ] that the [noncitizen] is not a danger to the public or a significant flight risk." *Zavala*, 310 F. Supp. 2d at 1076. To the extent the government has safety or flight concerns, they have already been addressed by the IJ's bond determination. As such, Respondents have no special or compelling justification to continue detaining Segundo, and certainly not an interest that outweighs his own in avoiding a restraint on his liberty. *See id.* at 1077 ("The regulation, which permits unilateral government detention of individuals without a case-by-case determination after a reasoned finding that they do not pose a threat to safety or a risk of flight, violates the Due Process Clause because no special justification exists that outweighs the individual's constitutionally protected interest in avoiding physical restraint."); *Ashley*, 288 F.Supp. 2d at 669 (similar). Segundo is thus likely to succeed on the merits of his substantive due process

claim.

Segundo's Claim That The Automatic Stay Is Ultra Vires Is Likely to Survive. Even if the automatic stay satisfied the requirements of the due process clause (and it does not), Segundo would still be entitled to habeas relief because the automatic stay regulation violates federal law. 28 U.S.C. § 2241(c)(3). The automatic stay regulation, exercised solely by DHS here, exceeds the authority granted by the Immigration National Act ("INA") to the Attorney General. "Agency actions beyond delegated authority are 'ultra vires,' and courts must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998) (citation omitted). While the Attorney General may delegate detention determinations to "any other officer, employee, or agency of the Department of Justice," 28 U.S.C. 510, including IJs, 8 U.S.C. § 1101(b)(4), DHS officers are not delegated this authority, 6 U.S.C. § 111.

The automatic stay provision violates the statutory scheme because it allows DHS—an entity that has not been delegated with the authority to make detention determinations after an IJ has done so—with the unilateral power to continue detaining a noncitizen. In so doing, it also allows DHS to create a new class of noncitizens subject to mandatory detention, outside the framework of the INA. By attempting to redelegate its own authority to DHS, the Attorney General has empowered the same agency officials who prosecuted—and lost—before the IJ to stay the IJ's order, effectively nullifying the entire proceeding. *Günaydin,* 2025 WL

1459154, *at* *5 n.7 (expressing "concern that agency officials have exceeded the authority delegated to the agency by Congress" in part because "the same agency officials who have unilaterally invoked the automatic stay provision were themselves parties appearing in the adversarial process before the [IJ]"). "Because this back-end approach effectively transforms a discretionary decision by the [IJ] to a mandatory detention imposed by [DHS], it flouts the express intent of Congress and is ultra vires to the statute." *Zavala*, 310 F. Supp. 2d at 1079; *Mayo Anicasio v. Kramer*, 2025 WL 2374224, at *3–4 (D. Neb. Aug. 14, 2025).

II. The Petitioner's Continued Detention Will Cause Him Irreparable Harm.

Segundo will suffer irreparable harm in the absence of a TRO. "Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." *Continental Group, Inc. v. Amoco Chems. Corp.*, 614 F.2d 351, 356 (3d Cir. 1980). The Third Circuit has defined irreparable injury as "potential harm which cannot be redressed by a legal or equitable remedy following a trial." *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). A court may not grant preliminary injunctive relief unless "[t]he preliminary injunction [is] the only way of protecting the plaintiff from harm." *Id.* The relevant inquiry is whether the party moving for the injunctive relief is in danger of suffering the irreparable harm at the time the

preliminary injunctive relief is to be issued. *Id.* Generally, irreparable harm must be harm that cannot be remedied by a legal or equitable remedy following trial, and must be actual and imminent, and not speculative or remote. *See Angstadt ex rel. Angstadt v. Midd-West Sch.*, 182 F. Supp. 2d 435, 437 (M.D. Pa. 2002); *see also Dice v. Clinicorp, Inc.*, 887 F. Supp. 803, 809 (W.D. Pa. 1995).

Furthermore, courts—including this Court—have found that "the unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm." *Kostak*, 2025 WL 2472136, at *3; *see also Arias Gudino v. Lowe,* 785 F.Supp.3d 27 (M.D.Pa., 2025). The Attorney General has made no such determination. As a practical matter, that means Respondents still *have not* determined that Segundo should be detained; indeed, they only argue that they are entitled to continue detaining him, even though an IJ found he is not a flight risk or danger. ECF No. 13. Respondents' inability to show any reason why Segundo should be detained militates in favor of finding that his detention—which wrongly commenced on or around July 18, 2025 and has been running ever since—constitutes irreparable harm.

The Petitioner detailed the fact that he is suffering from numerous undiagnosed and untreated medical issues. The Petitioner reports swelling in his stomach and his finger. He is also experiencing sores in his mouth. Petitioner underwent an X-ray but has not received a diagnosis or explanation regarding these symptoms. Exhibit B. The Petitioner's counsel attempted to arrange a telephone

call in order to document this conversation in a declaration but all attempts have been ignored by the detention facility. Exhibit A. The Petitioner's wife has provided a declaration confirming his medical issues. The lack of medical treatment is causing Petitioner serious medical issues which constitutes irreparable harm.

III. The Balance of Equities and the Public Interest Tilt Sharply in Segundo's Favor.

Segundo will likewise succeed on the third and fourth TRO factors. Indeed, the balance of equities—between continued unlawful detention and requiring compliance with the law—tips sharply in Segundo's favor. *See Kostak*, 2025 WL 2472136, at *4. Granting the TRO would also serve the public interest in that "it will require the Government to ensure compliance with its own laws." *Id.* It will also serve "the public's interest in seeing that individuals who need not be jailed are not incarcerated [. . .]." *Velasco Lopez v. Decker*, 978 F.3d 842, 857 (2d Cir. 2020). Importantly, by virtue of being granted a $10,000 bond, Segundo has been deemed not to be a flight risk or danger. ECF No. 1-1. In the end, Respondents have "no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to h[er] community." *Velasco Lopez*, 978 F.3d at 857.

IV. The Court Should Not Require Security Prior to the Issuing of a TRO.

Rule 65(c) requires a movant to provide [*31] security "in an amount that

the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). However, the Court has discretion to waive the bond requirement when there is no risk of monetary loss to Defendants and the balance of equities weighs in its favor. *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010). Because Respondents will not incur any costs or damages if the requested relief is granted, Segundo asks the Court to not require him to post security.

CONCLUSION

Segundo asks this Court to grant his motion and enjoin Respondents from detaining him.

Dated: New York, NY
November 21, 2025

Respectfully submitted,

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COUNSELS FOR PETITIONER

CERTIFICATE OF NON-CONCURRENCE

Petitioner's Counsel has contacted opposing counsel on their position on this Motion on November 17, 2025. Opposing counsel did not concur.

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CERTIFICATE OF SERVICE

I hereby certify November 21, 2025 I electronically filed the foregoing document, supporting memorandum, and proposed order with the Clerk of the Court using the CM/ECF system.

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WORD COUNT CERTIFICATION

I hereby certify that the foregoing brief complies with the word-count limit set forth in LR 7.8(b). Based on the word count feature of the word-processing system used to prepare this brief, I certify that it contains 4190 words.

Dated: New York, NY

November 21, 2025

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