UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JACKSANDER CESARIO SOUZA, Petitioner, v. PATRICIA HYDE, *et al.*, Respondents.	No. 25-cv-12461-DJC

RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS (Doc. No. 1)

The Court should deny Petitioner Jacksander Cesario Souza's Petition for a Writ of Habeas Corpus. Doc. No. 1. Petitioner requests immediate release from immigration detention. *Id*. at 15. But U.S. Immigration and Customs Enforcement's ("ICE") position is that Petitioner is subject to mandatory detention under 8 C.F.R. § 1003.19(i)(2).

I. BACKGROUND

Petitioner is 19 years old and fled Brazil in 2021 "after being shot by gang members[.]" Pet. for Writ of Habeas Corpus (Sept. 5, 2025), Doc. No. 1, ¶ 2 ("Pet."). Petitioner "came to the United States with his mother to seek asylum." *Id*. "After entering the United States, he was placed in removal proceedings in the Chelmsford Immigration Court." *Id*. ¶ 21. Petitioner alleges that "he has built a life in the United States" and "worked hard to support himself and his mother, cleaning cars and houses, working in construction, and as a pet groomer." *Id*. ¶ 22.

"On June 12, 2025, [Petitioner] was arrested by ICE outside his home in Milford, Massachusetts." *Id*. ¶ 24. On July 17, 2025, an Immigration Judge held a bond hearing and ordered Petitioner released on bond of $3,000. *Id*. ¶¶ 28–29. Petitioner admits that the U.S. Department of Homeland Security ("DHS") thereafter appealed the Immigration Judge's bond

order such that the order is automatically stayed "during the pendency of the appeal to the" Board of Immigration Appeals ("BIA"). *Id*. ¶¶ 5–6, 30 (citing 8 C.F.R. § 1003.19(i)(2)).

Petitioner alleges that "the government's application of the automatic stay regulation" resulting in his "continued detention" violates his right to due process. *Id*. ¶ 45. The petition asserts claims that the automatic stay violates procedural and substantive due process and is otherwise *ultra vires*. *Id*. ¶¶ 7, 58–59, 61–63, 65–67. Petitioner requests "immediate release . . . from custody in accordance with the bond order" entered by the Immigration Judge. *Id*. at 15.

II. LEGAL STANDARD

Section 2241 of Title 28 of the United States Code provides district courts with jurisdiction to hear federal habeas petitions. It is Petitioner's burden to establish entitlement to a writ of habeas corpus by proving that his custody violates the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) ("The burden of proof of showing deprivation of rights leading to an unlawful detention is on the petitioner.").

III. ARGUMENT

A. Petitioner's Detention Pursuant to the Automatic Stay is Lawful

1. The Automatic Stay Framework

The automatic stay of Petitioner's release will remain in place for 90 days, until October 29, 2025, absent any extensions authorized by applicable regulations.

As background, on July 17, 2025, an Immigration Judge ordered Petitioner released on bond. Pet., Doc. No. 1 at ¶¶ 28–29. The same day, DHS filed a Notice of Intent to Appeal Custody Redetermination. *Id*. ¶ 30; Doc. No. 1-1 at 1. DHS's timely notice of intent to appeal the Immigration Judge's bond decision automatically stayed that decision. Pet., Doc. No. 1, ¶ 5;

see 8 C.F.R. § 1003.19(i)(2).[1] The stay would "lapse" had DHS thereafter failed "to file a notice of appeal with the Board [of Immigration Appeals] within ten business days of the issuance of the order of the Immigration Judge," and failed to file with that notice of appeal a "certification by a senior legal official" regarding the approval of, and basis for, appeal. 8 C.F.R. § 1006.(c)(1). However, DHS timely filed a notice of appeal with the required certification on July 31, 2025, so the automatic stay remains in effect. Pet., Doc. No. 1, ¶ 6; Doc. No. 1-2 at 1–3, 5.

Once the appeal is filed, the BIA "will track the progress of each custody appeal which is subject to an automatic stay in order to avoid unnecessary delays." *Altayar v. Lynch*, No. 16-cv-02479, 2016 WL 7383340, at *3 (D. Ariz. Nov. 23, 2016), *report & recommendation adopted by* 2016 WL 7373353 (D. Ariz. Dec. 20, 2016) (quoting 8 C.F.R. § 1003.6(c)(3)). Likewise, the immigration judge who allowed bond must timely facilitate the appeal (absent "exigent circumstances") by preparing "a written decision explaining the custody determination within five business days after the immigration judge is advised that DHS has filed a notice of appeal[.]" 8 C.F.R. § 1006.3(c)(2). Similarly, the "immigration court shall prepare and submit the record of proceedings without delay." *Id*.

Then, if the BIA "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. § 1003.6(c)(4). Thus, absent intervening

[1] Section 1003.19(i)(2) provides that in "any case in which DHS has determined that an alien should not be released . . . , 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 C.F.R. § 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board [of Immigration Appeals]." 8 C.F.R. § 1003.19(i)(2).

circumstances discussed below, the automatic stay will lapse on October 29, 2025, which is 90 days from when DHS filed its notice of appeal on July 31, 2025.

The automatic stay could extend beyond 90 days only in limited circumstances. For one, "if the [BIA] grants a motion by [Petitioner] for an enlargement of the 21-day briefing schedule . . . , the [BIA's] order shall also toll the 90-day period of the automatic stay for the same number of days. *Id*.

Likewise, the automatic stay of the Immigration Judge's bond order could extend beyond 90 days if DHS moves for a discretionary stay "in the event the [BIA] does not issue a decision on the custody appeal within the period of the automatic stay." 8 C.F.R. § 1003.6(c)(5). "If DHS has submitted such a motion and the [BIA] is unable to resolve the custody appeal within the period of the automatic stay, the [BIA] will issue an order granting or denying a motion for a discretionary stay pending its decision on the custody appeal." *Id*. If the BIA fails to rule on a motion for a discretionary stay by the time the 90-day automatic stay expires, then "the stay will remain in effect (but not more than 30 days) during the time it takes for the [BIA] to decide whether or not to grant a discretionary stay." *Id*.

And the 90-day automatic stay also could extend if the BIA "authorizes [Petitioner's] release (on bond or otherwise), denies a motion for discretionary stay, or fails to act on such a motion before the automatic stay period expires[.]" 8 C.F.R. § 1003.6(d). In any of these scenarios, Petitioner's "release shall be automatically stayed for five business days," or for 15 business days if DHS refers the case to the Attorney General during the initial five-business-day stay. *Id*. And DHS may move "for a discretionary stay in connection with referring the case to the Attorney General." *Id*. Moreover, the "Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the [BIA]." *Id*.

In short, therefore, the automatic stay of the Immigration Judge's bond order will remain in place until October 29, 2025, absent any extensions to the 90-day period set forth above.

2. The Automatic Stay Comports with Procedural and Substantive Due Process

The automatic stay comports with procedural and substantive due process. "In the context of immigration detention, procedural due process requires that a detained alien be afforded only those rights provided by statute and regulations thereunder." *Benito Vasquez v. Moniz*, No. 25-cv-11737, 2025 WL 1737216, at *1 (D. Mass. June 23, 2025) (collecting cases). Here, 8 C.F.R. §§ 1003.19(i)(2) and 1003.6(c)(1) authorize Petitioner's detention through the automatic stay of his release pending appeal. "Petitioner's continued detention therefore does not offend the statutory and regulatory procedure to which the due process clause entitles him." *Id*. at *2.

Neither does Petitioner's detention offend procedural due process if the Court applies the *Matthews* test, which calls for consideration of "(1) 'the private interest that will be affected by the official action'; (2) 'the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards'; and (3) 'the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'" *Hernandez-Lara v. Lyons*, 10 F.4th 19, 28 (1st Cir. 2021) (quoting *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976)).

The "private interest" inherent in Petitioner's detention is concededly serious. *See id*. And some courts have concluded that the automatic stay presents a "high" risk of erroneous deprivation because "the only individuals adversely affected by [the automatic stay] are those detainees who have already prevailed in a judicial hearing." *See Günaydin v. Trump*, No. 25-cv-

01151, 2025 WL 1459154, at *8 (D. Minn. May 21, 2025). On the other hand, the applicable regulations reduce "the risk of an erroneous deprivation" by requiring a DHS "senior legal official" to certify approval of the filing of the appeal triggering the automatic stay, and that the appeal has evidentiary and legal support. *See* 8 C.F.R. § 1003.6(1). Likewise, the regulation authorizing the automatic stay includes safeguards to speed up appeal processing and limit the length of any detention under the automatic stay. *See* 8 C.F.R. § 1003.6(c)(2)–(4).

As to the third prong of the *Matthews* test, the government has an interest in the "purpose of the automatic stay provision," which "is to provide a means for DHS to maintain the status quo in those cases where it chooses to seek an expedited review of the [Immigration Judge's] custody order by the BIA." *See Hussain v. Gonzalez*, 429 F. Supp. 2d 1024, 1031 (E.D. Wisc. May 22, 2017); *see also Altayar*, 2016 WL 7383340, at *4 ("The purpose of the automatic stay is to avoid the necessity of having to decide whether to order a stay on extremely short notice with only the most summary presentation of the issues." (internal quotations omitted)). "An automatic stay of limited duration allows the Government to pursue its appeal before the subject might post bond and flee." *Altayar*, 2016 WL 7383340, at *4. In other words, the Attorney General "has established within the executive branch" a "division of authority" between Immigration Judges and the BIA so as to "exercise his overall authority to determine the custodial status of aliens facing removal proceedings." *Hussain*, 429 F. Supp. 2d at 1032. "It is difficult to see how DHS's exercise of its responsibilities within that system operates as a denial of due process."[2] *Id*.

[2] *But see, e.g.*, *Sampiao v. Hyde*, No. 25-cv-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025) (concluding that petitioner's "detention pursuant to the automatic stay regulation violates his procedural due process rights under the Fifth Amendment").

Nor does the automatic stay offend substantive due process. To be sure, the Supreme Court has "reiterated that the right not to be detained, including for illegal aliens, 'lies at the heart of the liberty' that due process rights protect." *Benito Vasquez*, 2025 WL 1737216, at *3 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2003)). "Consistent with that right, an alien's pre-removal detention cannot be indefinite or unduly prolonged." *Id*.

Nevertheless, the Supreme Court has held repeatedly that "[d]etention during removal proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003); *see also Wong Wing v. U.S.*, 163 U.S. 228, 235 (1896) (holding deportation proceedings "would be vain if those accused could not be held in custody pending the inquiry into their true character."); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 32 (1st Cir. 2021) (recognizing that "prompt execution of removal orders is a legitimate governmental interest which detention may facilitate.") (cleaned up).

Thus, "providing for an automatic stay until the BIA can review the [Immigration Judge's] order for release is not unreasonable" where, as here, the "regulation provides that the automatic stay will lapse 90 days after the filing of the notice of appeal." *Hussain*, 492 F. Supp. 2d at 1032; *see also Altayar*, 2016 WL 7383340, at *5 ("An automatic stay of up to 90 days does not violate due process because it remains in effect until the BIA has an opportunity to review the appeal.").

Moreover, Petitioner's detention now—and throughout the 90-day automatic-stay period—"presumptively comport[] with due process" because it does "not exceed six months." *Benito Vasquez*, 2025 WL 1737216, at *3 (citing *Zadvydas*, 533 U.S. at 701). ICE detained Petitioner on June 12, 2025. Pet., Doc. No. 1, ¶ 24. The 90-day automatic-stay period expires on October 29, 2025, which is less than six months later. Even after six months of detention,

Petitioner would have to "provide[] evidence that there is no significant likelihood of his removal in the reasonably foreseeable future," and "the government must respond with 'evidence sufficient to rebut that showing.'" *Benito Vasquez*, 2025 WL 1737216, at *3 (quoting *Zadvydas*, 533 U.S. at 701). In the interim, Petitioner's detention "continues to serve the statute's basic purpose of assuring that [Petitioner] will be 'present at the time of his removal.'" *Id*. (quoting *Zadvydas*, 533 U.S. at 699).

3. The Automatic Stay is Not *Ultra Vires*

Finally, Petitioner cannot make out a claim that the automatic stay is *ultra vires*. *See* Pet., Doc. No. 1, ¶ 65–67. The "Hail Mary" of an *ultra vires* claim is "unavailable if, as is usually the case, a statutory review scheme provides aggrieved persons 'with a meaningful and adequate opportunity for judicial review,' or if a statutory review scheme forecloses all other forms of judicial review." *Nuclear Reg. Comm'n v. Texas*, 605 U.S. 665, 681–82 (2025) (quoting *Bd. of Governors, FRS v. MCorp Fin., Inc.*, 502 U.S. 32, 43 (1991)). Here, Petitioner seeks non-*ultra-vires* relief by means of his habeas petition challenging the constitutionality of the automatic stay regulation. *See id*. at 682 (rejecting an *ultra vires* claim in light of "an alternative path to judicial review").

IV. CONCLUSION

For the foregoing reasons, the Court should deny the petition (Doc. No. 1).

Dated: September 26, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record by means of the Court's Electronic Case Filing system on September 26, 2025.

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