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

EDVIN ADOLFO LOPEZ-SANABRIA ([redacted]), Petitioner, v. **PAMELA BONDI**, et al. Respondents.	Case No.: 1:25-cv-01511-MSN-WBP

PETITIONER'S REPLY MEMORANDUM IN SUPPORT OF PETITION FOR HABEAS CORPUS

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INTRODUCTION

Respondents' memorandum, and evidence filed in support thereof, attempts to justify the unlawful detention of the Petitioner under the guise that he is an "applicant for admission" who is "seeking admission" and detained under 8 U.S.C. § 1225(b)(2) of the Immigration and Nationality Act (the "INA") and is not entitled to full constitutional rights. Respondents attempt to sanitize their unlawful detention of the Petitioner as being commanded by law. But Respondents' arguments are unpersuasive as they are completely unsupported by the Respondents' own choices in detaining Petitioner twice under 8 U.S.C. § 1226(a) and Respondents' actions preventing the release of the Petitioner despite being afforded bond by an immigration judge under 8 U.S.C. § 1226(a). The Petitioner is entitled to full constitution rights in his challenge to his unlawful detention as he is not subject to the constitutional limitations outlined by the Supreme Court for individuals detained under 8 U.S.C. § 1225(b)(2).

The Respondents further argue that this Court has no jurisdiction to hear the Petitioner's challenge to his unlawful detention by asserting that the unlawful detention of Petitioner is somehow related to the legal discretionary authority of the Attorney General with respect to removal proceedings. Respondents further assert that Petitioner's claims regarding the Respondents' violations of the INA and the Administrative Procedures Act (the "APA") are not properly before the Court in habeas proceedings. The Respondents' jurisdictional arguments are unpersuasive as Petitioner is challenging the underlying legal basis by which he continues to be detained by the Respondents, not the validity of the underlying removal proceedings. Furthermore, Petitioner's challenge to his continued detention is based on the unconstitutional and unlawful actions of the Respondents, which are at the core of habeas proceedings.

ARGUMENT

I. JURISDICTION OF THE COURT

A. This Action is Properly Brought Under 8 U.S.C. § 2241

A federal court may issue a writ of habeas corpus when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States. See 28 U.S.C. § 2241(c)(3). The Petitioner has filed a Petition for a writ of habeas corpus as this "…has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." See INS v. St. Cyr, 533 U. S. 289, 301 (2001) (footnote and citations omitted); accord Boumediene v. Bush, 553 U.S. 723, 783 (2008) ("Where a person is detained by executive order, rather than, say, after being tried and convicted in a court, the need for collateral review is most pressing.").

The Supreme Court has noted that "The common-law habeas court's role was most extensive in cases of pretrial and non-criminal detention, where there had been little or no previous judicial review of the cause for detention. Boumediene, 553 U.S. at 779–80. "Habeas corpus is a collateral process that exists, in Justice Holmes' words, to 'cu[t] through all forms and g[o] to the very tissue of the structure. It comes in from the outside, not in subordination to the proceedings, and although every form may have been preserved opens the inquiry whether they have been more than an empty shell.' " Id., at 785 (citation omitted) (alteration in original).

In this case, the Petitioner's claims of continued unlawful detention by the Respondents are rooted in the violation of the U.S. Constitution and duly enacted laws of the United States. ECF-1 at 6-11. These claims, whether rooted in the U.S. Constitution or statute, are at the heart of all habeas proceedings, which is "…to attack…the legality of that custody, and…to secure release from illegal custody." Department of Homeland Security v. Thuraissigiam, 591 U.S. 103, 117 (cleaned up). Respondents' assertion that this Court lacks jurisdiction to adjudicate

Petitioner's challenge to his detention under the INA and the APA runs contrary to the Supreme Court's understanding that "[t]he scope and flexibility of the writ—its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers." See Harris v. Nelson, 394 U. S. 286, 291 (1969).

B. 8 U.S.C. § 1259(b)(9) Does Not Bar this Action

Respondents also contend that the Court has no jurisdiction to hear Petitioner's claims under 8 U.S.C. § 1252(b)(9). The statute provides:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2242 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

Congress intended section 1252(b)(9) to consolidate "all questions of law and fact" that "arise from" either an "action" or a "proceeding" brought in connection with the removal of an alien. The statute gives federal court jurisdiction over "such questions of law and fact" to the courts of appeals and explicitly bars all other methods of judicial review over removal proceedings, including habeas, over such questions of law and fact.

But section 1252(b)(9) does not deprive this Court over jurisdiction in habeas proceedings where the claims relate to the unlawful detention of an individual in removal proceedings. The Supreme Court has squarely held that § 1252(b)(9) does not deprive federal courts of jurisdiction over cases challenging whether or when bond hearings are required in removal proceedings. See Jennings, 583 U.S. at 292–95; see also Nielsen v. Preap, 586 U.S. 392,

402 (2019) (holding that § 1252(b)(9) did not prohibit judicial review of claims against federal officials for detaining aliens without bond). Holding otherwise would run the risk of "mak[ing] claims of prolonged detention [in removal proceedings] effectively unreviewable." Jennings, 583 U.S. at 293. Petitioner's claims are directly related to the Respondents' circumvention of the constitutional and legal protections of his liberty interest in order to continue his unlawful detention. Petitioner is not challenging any question of law or fact relating to his removal proceedings nor is there any final order to challenge.

Under regulations established by Respondents, bond proceedings before the immigration court are considered completely separate and apart from removal proceedings. See 8 C.F.R. 1003.19(d) ("Consideration by the Immigration Judge of an application or request of a respondent regarding custody or bond under this section shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding.") The separation of removal proceedings from the question of the detention of individuals in removal proceedings is due to the constitutional and legal protections of the liberty interests of such individuals. Respondents' continued detention of the Petitioner cannot be said to be directly relating to the pending removal proceedings since immigration detention is legal so long as the detention's use is reasonably related to the goals of the underlying process. See Lynch v. Baxley, 744 F. 2d 1452, 1463 (CA11 1984) ("If a restriction is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court may infer that the purpose of the government action is punishment.") (citing Bell v. Wolfish, 441 U. S. 520, 539 (1979)). Otherwise, such detention would be unconstitutionally punitive.

This Court has jurisdiction to determine the constitutionality and legality of the continued detention of the Petitioner, namely whether the restriction on his liberty currently being imposed is arbitrary and purposeless. See Jennings v. Rodriguez, 583 U.S. 281, 291–96 (2018) (analyzing

habeas jurisdiction to challenge detention without an individualized bond hearing). The Petitioner's claims are exactly this – that his continued detention is arbitrary and purposeless.

C. **8 U.S.C. § 1252(g) Does Not Bar this Action**

The United States Supreme Court held that section 1252(g) relates to "three discrete actions that the Attorney General may take: the 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'"See Reno v. Am.- Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999). "By its explicit terms, § 1252(g) strips courts of subject-matter jurisdiction to review claims 'arising from' a decision or action to execute a removal order against an alien." See Westley v. Harper, No. 25-cv-229, 2025 WL 592788, at *4 (E.D. La. 2025) (citation modified). However, as all-encompassing as section 1252(g) may seem, the statute has its limitations. See Reno, 525 U.S. at 482 (noting that statute does not "cover the universe of deportation claims."). Beyond the three discrete actions that the statute protects, "[t]here are of course many other decisions or actions that may be part of the deportation process—" and outside of the statute's purview. Id.

The statute's purpose is to "protect from judicial intervention the Attorney General's long-established discretion to decide whether and when to prosecute or adjudicate removal proceedings or to execute removal orders." See Alvidres-Reyes v. Reno, 180 F.3d 199, 201 (5th Cir. 1999). The statute, however, "does not bar courts from reviewing an alien detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to execute removal orders." See Cardoso v. Reno, 216 F.3d 512, 516 (5th Cir. 2000) (citation modified).

Respondents' argument that this Court is deprived of jurisdiction under section 1252(g) fails because the Petitioner is not challenging any of the enumerated discretionary decisions of the Attorney General relating to removal proceedings insulated by Congress from judicial

review. Petitioner does not contest the (i) initiation of removal proceedings; (ii) adjudication of his case in such removal proceedings; or (iii) execution of a currently non-existent removal order. Petitioner is challenging his continued detention by Respondents after he was granted bond by a neutral arbiter, the immigration judge, because he was neither a flight risk nor a danger to the community. ECF 1-2.

Petitioner argues that he should be allowed to pay the bond he was granted by the immigration judge and that he is being prevented from being released from custody by the Respondents' unlawful actions in violation of his constitutional and statutory rights. Petitioner is asking this Court to enforce his constitutional right to due process with respect to his substantial liberty interest, not the legitimacy of the removal proceedings or a removal order. Therefore, section 1252(g) does not limit the Court's jurisdiction in the present case.[1]

II. THE RESPONDENTS' CONTINUED DETENTION OF PETITIONER IS IN VIOLATION OF HIS CONSTITUTIONAL AND STATUTORY RIGHTS

The central question in this case is whether Respondents can invoke section 1225(b)(2) as the legal basis to detain the Petitioner after he was detained (i) on a warrant and released by Respondents under section 1226 upon his initial entry to the United States; and (ii) on a warrant under section 1226 inside the United States over six years after his initial release.

Respondents' core argument in opposition to Petitioner's claims is that Petitioner is not entitled to full rights under the U.S. Constitution as he is an "applicant for admission" that is "seeking admission" to the United States and is thus being detained under section 1225(b)(2) of the INA. As applied to the facts of Petitioner's case, this argument leads to the conclusion that Respondents have the choice to detain and release an individual encountered at the border under

[1] Other courts have reached similar conclusions regarding Respondent's jurisdictional assertions. See, e.g., Hasan v. Crawford, 2025 WL 2682255, at *3–4 (E.D. Va. Sept. 19, 2025); Maldonado v. Olson, 2025 WL 2374411, at *5–8 (D. Minn. Aug. 15, 2025); Aditya W.H. v. Trump, 782 F. Supp. 3d 691, 705–06 (D. Minn. 2025).

section 1226(a) and subsequently ignore the legal provision for re-detaining such individual, section 1226(b), by invoking section 1225 without substantiation. On the one hand, Respondents are asserting the unfettered right to provide an individual full due process rights under section 1226, and on the other hand, they claim the unfettered power to unilaterally strip away those due process rights by mere invocation, without documentary evidence, of section 1225.

The legal alchemy proposed by Respondents is not allowed under the U.S. Constitution as it would lead to anarchy in determining the laws by which the Executive is detaining individuals such as Petitioner. The Petitioner was legally detained twice by the Respondents under a specific provision of law, section 1226(a), and there is specific documentary evidence in the record of the basis of these detentions. Petitioner was vested with certain constitutional and statutory rights as a result of being detained under section 1226(a) by Respondents. Respondents now attempt to undue their own choices by ignoring and disregarding their previous actions. In doing so, the Respondents are violating the Petitioner's legal rights and his liberty interest, by ignoring the well-understood meaning of the INA provisions at issue and using an *ultra vires* regulatory power to prevent Petitioner from asserting his rights.

A. Petitioner is Entitled to Full Constitutional Protection as He is Detained Under 8 U.S.C. § 1226(a)

Section 1226(a) "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." See Jennings, 583 U.S. at 289. Section 1226(a) sets out the "default rule" for noncitizens already present in the country. Id. at 288. It provides:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. [T]he Attorney General--
> (1) may continue to detain the arrested alien; and
> (2) may release the alien on--
> (A) bond ; or

(B) conditional parole . . . .
8 U.S.C. § 1226(a).

Section 1226(a) clearly and unequivocally "...authorizes detention only '[o]n a warrant issued' by the Attorney General," See Jennings, 583 U.S. at 302.[2] An immigration officer makes the discretionary initial determination to either detain or release the noncitizen.[3] The noncitizen may be released on conditional parole under section 1226(b) or continue detention subject to either no bond or a set amount of bond. After a no bond decision or bond amount being set, the noncitizen may request a bond redetermination hearing before an immigration judge to either establish a set amount of bond or to reduce the initial bond amount. See 8 C.F.R. § 1236.1(c)(8), (d)(1). At a bond hearing, "the burden is on the non-citizen to 'establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.'" In re Guerra, 24 I. & N. Dec. 37, 38 (BIA 2006). The purpose of section 1226(a) is to protect the liberty interests of individuals detained by the Respondents.

1. All of the documentary evidence in the record shows that Respondents detained Petitioner under 8 U.S.C. § 1226(a)

Petitioner's two detentions by DHS on a warrant issued under section 1226(a) is fatal to Respondents' argument that Petitioner is detained under section 1225(b)(2)(A). The plain text of section 1226(a) states the aliens subject to its provisions are those arrested and detained pursuant to a warrant. Section 1226(a) would carry no meaning if individuals such as Petitioner that are arrested on a warrant are not subject to its provisions. The documentary evidence in this case shows that it was (i) Respondents *themselves* who determined that the Petitioner was in custody under section 1226(a) when he was detained on January 1, 2019; (ii) Respondents *themselves*

[2] The decision to arrest an individual on a warrant is memorialized on Form I-200 Warrant for Arrest of Alien.
[3] The decision of the immigration officer with respect to custody is memorialized on Form I-286 Notice of Custody Determination.

who determined that the Petitioner was once again detained under section 1226(a) of the INA when he was detained on August 19, 2025 in Washington D.C.; and (iii) Respondents *themselves* who determined that the Petitioner was detained under section 1226(a) when the immigration judge granted bond on September 2, 2025.

The Respondents provided Petitioner with four documents clearly establishing that they had detained him under section 1226(a) when he first entered the United States on January 1, 2019. The first document is Form I-200 Warrant for Arrest of Alien and it informs the Petitioner that he was being detained under section 1226(a). ECF 1-4. The second document is Form I-286 Notice of Custody Determination which informs the Petitioner that he was being detained under section 1226(a). Reply Ex 2. The third document is a Notice to Appear that designates the Petitioner as an alien present without admission or parole, not an arriving alien, and places the Petitioner in removal proceedings. Reply Ex 3. The final document is an Order of Release on Recognizance under section 1226(b), reversing the previous custody determination, and specifying the conditions of Petitioner's release. Reply Ex 4. The Respondents never invoked any provisions of section 1225 as the basis for detaining Petitioner in any of these documents that are all duly executed by agents of the Respondent.

The Respondents provided Petitioner with two documents based on his arrest on August 19, 2025 that demonstrate, contrary to Respondents' assertions, that he was detained under section 1226(a). The first document is a Form I-213, dated August 21, 2025, that states that Respondents had processed the Petitioner for detention on a "Warrant for Arrest / Notice to Appear". Reply Ex 5. The document does not contain any facts that would support the legal determination that he was being detained under section 1225. Id. The second document is a Notice to Appear, dated August 21, 2025, that designates the Petitioner as an alien present without admission or parole, not an arriving alien, and places the Petitioner in removal

proceedings. ECF 6-2. The Respondents have not provided Petitioner with the Form I-200 or Form I-286 from the August 19, 2025 arrest. Regardless, the Form I-213 standing on its own shows that the detention was carried out under section 1226(a). The Respondents never invoked any provisions of section 1225 as the basis for detaining Petitioner in any of these documents that are all duly executed by agents of the Respondent.

Finally, the immigration judge herself found that the Petitioner was detained under section 1226(a) when she granted Petitioner bond in the amount of $1,500 on September 2, 2025. ECF 1-2. The Respondents raised an objection to the jurisdiction of immigration judge by claiming that they had detained Petitioner under Section 1225. ECF 6-4 at 6. The immigration judge, contrary to Respondents' assertion in their opposition, considered the jurisdictional objection and found that Petitioner was being detained under section 1226(a). Id. ("At the bond hearing on September 2, 2025, the Immigration Judge determined that they had jurisdiction for bond and granted bond in the amount of $1,500").

2. There is no documentary evidence in the record that Respondent detained Petitioner under 8 U.S.C. § 1225

The Respondents argue that the Petitioner is being detained under section 1225 because the law commands such detention. Section 1225 applies "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." See Jennings, 583 U.S. at 287. The title of section 1225 is "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." 8 U.S.C. § 1225. "Inspection" is a process that occurs at the border or other ports of entry. See Posos-Sanchez v. Garland, 3 F.4th 1176, 1183 (9th Cir. 2021) (explaining that "inspection and authorization" must "take place at a 'port of entry'" for one to be considered to have "lawfully entered"); 8 C.F.R § 235.1(a) ("Application to lawfully enter the United States shall be made in

person to an immigration officer at a U.S. port-of-entry when the port is open for inspection."). As relevant here, section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." See 8 U.S.C. § 1225(b)(2)(A).

The only evidence proffered by the Respondents that references section 1225 as the basis for Petitioner's detention is a sworn declaration by an ICE official without any actual documentary corroboration. ECF 6-1. This sworn declaration is deficient in detail and corroboration and actually supports the Petitioner's contention that he is unlawfully detained by Respondents. The declaration states that Respondents placed Petitioner under arrest after establishing his identity and only makes the assertion that he was an applicant for admission and is seeking admission. ECF 6-1 at 4. But Respondents have not presented one shred of documentary evidence that they detained the Petitioner under section 1225 on August 19, 2025.

The sworn declaration is not a contemporaneous account of the arrest of Petitioner and does not provide any documents in support of the assertion that Petitioner was detained under section 1225. More importantly, the declaration does not specify any details of the administrative process undertaken by Respondents for two days, from August 19, 2025 to August 21, 2025, or any of the documents produced during such time. The declaration also does not explain why the Form I-213 that was executed by Respondents states that the disposition of the arrest was "Warrant for Arrest / Notice to Appear".

Respondents first argued that Petitioner was detained under section 1225 during bond proceedings when they argued that the immigration judge did not have jurisdiction to grant Petitioner bond. But Respondents presented no evidence during the bond hearing that they had in fact detained Petitioner under Section 1225. The only evidence presented by Respondents, the

Form I-213, provided a short and simple narrative that described the Petitioners detention in the middle of Washington, D.C. over six years after his initial entry into the United States. Reply Ex 5. The Form I-213 presented by Respondents did not provide any facts that would support the legal determination that he was being detained under section 1225 and was rejected by the immigration judge. Id. The first written document that claims the detention of Petitioner is under section 1225 was the EOIR-43 Notice of ICE Intent to Appeal Custody Determination. ECF 6-3.

Petitioner concedes that Respondents could have exercised their discretion to detain him under section 1225 when he was first detained by Respondents on January 1, 2019. But Respondents themselves chose otherwise and detained him under section 1226(a). Respondents now deny that their most recent detention of Petitioner was under section 1226(a), but that is the only provision that could have applied under the plain terms of the statute as Petitioner was previously detained under section 1226(a). See also Jennings, 583 U.S. at 281 (explaining that section 1226(a) applies to those "already in the country).

Additionally, Respondents could only legally detain Petitioner on August 19, 2025 under 8 U.S.C. § 1126(b) which states that Respondents are only allowed to "...revoke a bond or parole authorized under subsection (a) of this section, re-arrest the alien under the original warrant, and detain the alien." See U.S.C. § 1126(b). Thus, Respondents could only detain the Petitioner's by re-arresting him under the original warrant under 8 U.S.C. § 1226. The Form I-213 from the August 19, 2025 arrest by Respondents supports this conclusion as it lists the disposition of the arrest of Petitioner by Respondents as "Arrest on Warrant / Notice to Appear". Reply Ex 5. Thus, Respondents uncorroborated assertions that they detained Petitioner under section 1225(b)(2) unsupported by both evidence and law.

3. Respondents' arguments that 8 U.S.C. § 1225 applies to the Petitioner is legally incorrect

Congress intended to establish a discretionary, rather than mandatory, detention framework for noncitizens arrested on a warrant. The plain text of section 1226(a) provides that, following a noncitizen's arrest on a "warrant," the Attorney General "may" detain the noncitizen, "may" release him on bond, or "may" release him on conditional parole. See Jennings, 583 U.S. at 300 (" 'the word "may" ... implies discretion,' " whereas " 'the word "shall" usually connotes a requirement' ").

Section 1226(a) expressly carves out certain "criminal" noncitizens from its discretionary framework, but it does not similarly carve out noncitizens who would be subject to mandatory detention under Section 1225(b)(2). See 8 U.S.C. § 1226(a) ("Except as provided in subsection (c) ..., the Attorney General ... may ...."). "That express exception" to section 1226(a)'s discretionary framework "implies that there are no other circumstances under which" detention is mandated for noncitizens who are subject to Section 1226(a). See Jennings, 583 U.S. at 300, citing A. Scalia & B. Garner, Reading Law 107 (2012). Interpreting section 1225(b)(2) to mandate Petitioner's detention in these circumstances would contravene Congress's intent that section 1226(a)'s discretionary detention framework apply to all noncitizens arrested on a warrant except those subject to section 1226(c)'s carve out. See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010) ("that Congress has created specific exceptions" to the applicability of a statute or rule "proves" that the statute or rule generally applies absent those exceptions).

Considering section 1225 alongside section 1226 shows that the most natural interpretation of section 1225 is that it applies to noncitizens encountered as they are attempting to enter the United States or shortly after they gained entry without inspection. Section 1225 repeatedly refers to aliens entering the country. See 8 U.S.C. § 1225(b)(1)(A)(i) (screenings for aliens "arriving in the United States"); Id. § 1225(b)(2)(C) (aliens "arriving on land . . . from a

foreign territory contiguous to the United States" may be returned to that territory pending removal proceedings); Id. § 1225(d)(1) (immigration officers authorized to inspect "any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States"). The statute further explicitly addresses "crewm[e]n" and "stowaway[s]" in § 1225(b)(2), reflecting that Congress envisions applicants for admission as being arriving aliens.

Additionally, courts must construe statutes "so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." See Corley v. United States, 556 U.S. 303, 314 (2009). Congress recently enacted the Laken Riley Act to amend § 1226(c) and include more classes of aliens who are ineligible for bond under § 1226(a). Laken Riley Act, Pub. L. No. 119-1, sec. 236, § 2, 139 Stat. 3, 3 (2025). One of those new classes of aliens ineligible for bond are those not admitted into the United States who were charged with specific crimes. See 8 U.S.C. § 1226(c)(1)(E) (citing Id. § 1182(a)(6)(A)). Under the Government's expansive interpretation of § 1225, the amendment would have no purpose.

Finally, the Respondents' proposed interpretation of section 1225 ignores the plain meaning of the phrase "seeking admission." "Seeking" means "asking for" or "trying to acquire or gain." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/seeking. And the use of a present participle, "seeking," "necessarily implies some sort of present-tense action." The term "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." See 8 U.S.C. § 1101(a)(13)(A). And "entry" has long been understood to mean "a crossing into the territorial limits of the United States." See Hing Sum v. Holder, 602 F.3d 1092, 1100–01 (9th Cir. 2010) (quoting Matter of Pierre, 14 I & N Dec. 467, 468 (1973)). To piece this together, the phrase "seeking admission"

means that one must be actively "seeking" "lawful entry." However, Petitioner is not actively "seeking" "lawful entry" because he already entered the United States over six years ago.

B. Respondents Have Violated Petitioner's Constitutional Right to Due Process

Respondents have used the supposed applicability of section 1225 to unlawfully detain the Petitioner through various mechanisms. First, Respondents have used an *ultra vires* regulatory provision, 8 C.F.R. § 1003.19(i)(2), to overrule the determination of the immigration judge that Petitioner was being detained under section 1226(a) and warranted release on bond. Respondents have subsequently used a re-interpretation of the applicability of section 1225(b)(2) to appeal the immigration judge's bond determination and overrule the grant of bond to the Petitioner.[4] Both of these actions by Respondents are unlawful in their own specific way but accomplish the same goal of depriving Petitioner of his constitutional rights.

1. Respondents have violated the Petitioner's Substantive Due Process Rights

Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances "where a special justification...outweighs the individual's constitutionally protected interest in avoiding physical restraint." See Kansas v. Hendricks, 521 U.S. 346, 356 (1997); Zadvydas, 533 U.S. at 690. The government may detain aliens during their removal proceedings only to the extent such detention is related to flight risk or public safety concerns.

Respondents are wielding 8 C.F.R. § 1003.19(i)(2) as a sword to interfere with Petitioner's right to be free from restraint after he has already demonstrated to the immigration

[4] Respondents argue before this Court, and the BIA in their appeal of the immigration judge bond order, that Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025) applies to Petitioner's case. But this case has no authority over this Court's legal interpretation of the statutes in question. The BIA, however, can use Matter of Yajure Hurtado to continue to deprive Petitioner of his liberty unlawfully in the future by revoking the immigration judge bond order. Petitioner has included this argument to preserve it in the future if it is used as the basis for his continued detention.

judge that he is neither a flight risk or a risk to public safety. Thus, 8 C.F.R. § 1003.19(i)(2) violates substantive due process because it implicates the fundamental right to be free from physical restraint and Respondents continued to detain the Petitioner after a reasoned finding that he does not pose threat to safety or a risk of flight. No special justification exists that outweighs the Petitioner's constitutionally protected interest in avoiding physical restraint. See Zadvydas, 533 U.S. at 690. Notably, 8 C.F.R. § 1003.19(i)(2) was actually implemented on an interim basis with public safety concerns immediately after September 11, 2001 and the final implementing regulation also cites these public safety concerns.[5] Petitioner was found to not be a public safety concern, one of the primary justifications for the implementation of 8 C.F.R. § 1003.19(i)(2).

2. Respondents have violated Petitioner's Procedural Due Process Rights

The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), does not comport with the Fifth Amendment. Courts apply a three-part balancing test to determine whether a form of civil detention violates a detainee's due process rights under the Fifth Amendment. See Mathews v. Eldridge, 424 U.S. 319 (1976). A court must weigh the following three factors: (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." See Mathews, 424 U.S. at 335.

i. Private Interest

[5] This regulation was initially implemented immediately on an interim basis without prior public comment in 66 Fed.Reg. 54909-54912 (October 31, 2001) on the basis of (i) preventing the release of dangerous aliens; (ii) avoiding case-by-case determinations in which bail was either denied or in excess of $10,000; and (iii) avoiding the release of dangerous aliens due to time zone differences and the closure of the BIA. The final implementing regulation also cited the public safety concerns of release of dangerous aliens as articulated in Matter of Joseph, 22 I&N Dec. 660 (BIA 1999). 71 Fed. Reg. 57873-57885.

A person's interest in freedom from physical detention is "the most elemental of liberty interests." See Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004); see also Zadvydas, 533 U.S. at 690. For that reason, "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections." See Addington v. Texas, 441 U.S. 418, 425 (1979).

Petitioner is experiencing all the deprivations that come with incarceration, including separation from his wife and US citizen son, who is one-year-old, and the inability to work to support his family. Petitioner also faces the prospect of a lengthy detention under the automatic stay regulation. That regulation became the basis for his detention on September 3, 2025, when ICE filed its notice of intent to appeal the immigration judge's bond order. See 8 C.F.R. §§ 1003.19(i)(2), 1003.6(c)(1). When ICE filed its notice of appeal on September 15, 2025, the next phase of detention under the regulation began, lasting ninety days, or until December 24, 2025, pending a BIA decision. See Id. §§ 1003.19(i)(2), 1003.6(c)(4). ICE can seek a discretionary stay for an additional thirty days and unilaterally extend his detention after these ninety days. Id. § 1003.6(c)(5). If the BIA authorizes a release, denies the discretionary stay, or fails to act, the stay is extended by five business days. Id. § 1003.6(d). If the Secretary of Homeland Security or another designated official refers the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1), the stay is extended by fifteen business days. Id. The Attorney General can extend the stay indefinitely by ordering a discretionary stay pending disposition of the case. Id. § 1003.6(d). Petitioner thus faces the possibility of a months- or years-long detention under the automatic stay regulation.

ii. Risk of Error

The second Mathews factor concerns the risk of the erroneous deprivation of Petitioner's liberty interest by virtue of the automatic stay regulation's procedures and the degree to which alternative procedures may ameliorate that risk. See Mathews, 424 U.S. at 335. This factor

weighs heavily in Petitioner's favor as the regulation's procedures are likely to erroneously deprive him of his liberty because he has already demonstrated his entitlement to release from detention before a neutral arbiter. ECF 1-2. The immigration judge granted bond after an adversarial hearing and individualized consideration of the law and evidence. Id.; Reply Ex 6. Petitioner provided voluminous evidence of lack of flight risk or danger to the community in the form of letters from his employer, friends and church members and documents showing his financial and economic ties to the United States. Id. But Respondents unilaterally overrode the decision of the immigration judge to keep Petitioner detained pending appeal. The automatic stay regulation has allowed Respondents to bypass its burden of proof at bond hearings and usurp the role of the immigration judge unilaterally by overriding the decision of the immigration judge to release Petitioner and keep him detained pending appeal.[6] The risk of error is compounded by the fact that Respondents have invoked the automatic stay to advance a legal argument that was rejected by the immigration judge and numerous district courts across the United States.[7]

iii. Government Interest

The final Mathews factor concerns the government's interest in the procedure it has adopted, as well as any administrative or financial burdens associated with alternative procedures. See Mathews, 424 U.S. at 335. The automatic stay regulation was initially

[6] See, e.g., Günaydın v. Trump, 2025 WL 1459154, at *8 (D. Minn. May 21, 2025); Zavala v. Ridge, 310 F. Supp. 2d 1071, 1078 (N.D. Cal. 2004) (automatic stay regulation "creates a potential for error because it conflates the functions of adjudicator and prosecutor"); Ashley v. Ridge, 288 F. Supp. 2d 662, 668, 671 (D.N.J. 2003) (automatic stay regulation produces a "patently unfair situation by 'tak[ing] the stay decision out of the hands of the judges altogether and giv[ing] it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified' " and "renders the Immigration Judge's bail determination an empty gesture").

[7] See, e.g., Doe v. Moniz, No. 25-cv-12094-IT, 2025 WL 2576819, at *4-5 (D. Mass. Sept. 5, 2025); Encarnacion v. Moniz, No. 25-cv-12237-LTS, at 5-6 (D. Mass. Sept. 5, 2025); Sicha v. Bernal, No. 25-cv-00418-SDN, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025); Lopez-Campos v. Raycraft, 2025 WL 2496379, at *5-8 (E.D. Mich. Aug. 29, 2025); Ramirez Clavijo v. Kaiser, No. 25-cv-06248-BLF, 2025 WL 2419263, at *3-4 (N.D. Cal. Aug. 21, 2025); Romero v. Hyde, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025); Maldonado v. Olson, 2025 WL 2374411, at *11-13 (D. Minn. Aug. 15, 2025); Lopez Benitez v. Francis, 2025 WL 2371588, at *3-9 (S.D.N.Y. Aug. 13, 2025); Rosado v. Figueroa, No. 25-cv-02157, 2025 WL 2337099, at *6-11 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Martinez v. Hyde, 2025 WL 2084238, at *2-8 (D. Mass. July 24, 2025).

implemented immediately on an interim basis without prior public comment in 66 Fed.Reg. 54909-54912 (October 31, 2001) on the basis of (i) preventing the release of dangerous aliens; (ii) avoiding case-by-case determinations in which bail was either denied or in excess of $10,000; and (iii) avoiding the release of dangerous aliens due to time zone differences and the closure of the BIA. The final implementing regulation also cited the public safety concerns of release of dangerous aliens as articulated in Matter of Joseph, 22 I&N Dec. 660 (BIA 1999). 71 Fed. Reg. 57873-57885.

Respondent does not have an interest in maintaining the status quo in this cases, nor does it argue that Petitioner is an undue flight risk or danger to public safety. While Respondents have a legitimate interest in ensuring noncitizens' appearance at removal proceedings and preventing harms to the community but Petitioner was deemed to not pose such risks. Implementing the immigration judge's bond order pending would not impose administrative or financial costs.

C. The Use of 8 C.F.R. 1003(i)(2) is Ultra Vire to the INA and as such the Continued Detention of the Petitioner on this Basis is Unlawful

1. Congress did not grant DHS the authority to determine whether bond should be granted

Section 1226(a)(2) grants the authority over bond determinations to the attorney general, who has delegated that authority to immigration judges. But the Department of Justice ("DOJ") promulgated the automatic stay regulation under 8 C.F.R. 1003.19(i)(2) in a manner which re-delegates some of its authority to determine whether a noncitizen can be released on bond to the Department of Homeland Security ("DHS"). See 71 Fed. Reg. 57873 (October 2, 2006); 66 Fed.Reg. 54909 (Oct. 31, 2001).

"[W]hen a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect that delegation, while ensuring that the agency acts

within it." See Loper Bright Enterprises v. Raimondo, 603 U.S. 369, 413 (2024). In this case, the statute governing bond determinations delegates this authority to the DOJ. Immigration judges, as agents of that department, exercise their authority to consider granting bond and releasing a noncitizen. Petitioner remains in custody solely due to the fact that DHS has exercised the automatic stay authority of 8 C.F.R. 1003.19(i)(2), not because the DOJ has reconsidered the bond determination. DHS, through its actions, refuses to honor the bond granted by the immigration judge to Petitioner and it bases its actions solely on 8 C.F.R. 1003.19(i)(2).

The reason that the invocation by DHS of the automatic stay under 8 C.F.R. 1003.19(i)(2) is unlawful is because DOJ cannot lawfully delegate such authority to DHS. Congress alone has the power to delegate authority to the DOJ and there are no statutory provisions authorizing the DOJ to delegate any of its lawful authority to DHS. DOJ does have the power to delegate its authority to "...subordinate officials." See 5 U.S.C. § 302(b). But DHS is a separate agency from DOJ and it does not have the authority to usurp powers legally assigned to the DOJ. In fact, numerous district courts, including this Court, continue to reach this same conclusion.[8]

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition, issue a Writ of Habeas Corpus and grant such other relief as it may deem proper.

[8] See Hasan v. Crawford, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); Arce v. Trump, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); Vazquez v. Feeley, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); Palma v. Trump, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); Carlon v. Kramer, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); Perez v. Kramer, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); Sampiao v. Hyde, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); Martinez v. Secretary of Noem, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); Herrera Torralba v. Knight, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); Carmona-Lorenzo v. Trump, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); Fernandez v. Lyons, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); Perez v. Berg, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); Leal-Hernandez v. Noem, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); Jacinto v. Trump, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); Garcia Jimenez v. Kramer, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); Anicasio v. Kramer, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); Mohammed H. v. Trump, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5–6 (D. Minn. June 17, 2025); Günaydin v. Trump, 784 F. Supp. 3d 1175 (D. Minn. 2025).

Respectfully submitted,

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