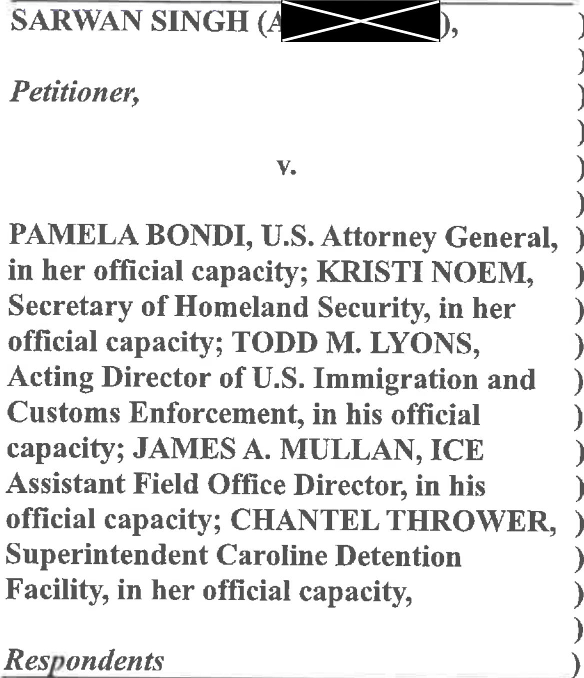
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA


SARWAN SINGH (A[redacted]),

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General, in her official capacity; KRISTI NOEM, Secretary of Homeland Security, in her official capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; JAMES A. MULLAN, ICE Assistant Field Office Director, in his official capacity; CHANTEL THROWER, Superintendent Caroline Detention Facility, in her official capacity,

Respondents

Case No. 1:25-cv-1525

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Sarwan Singh ("Mr. Singh"), is a native and citizen of India, who has resided in the United States since he first entered the country over three years. After Immigration and Customs Enforcement ("ICE") detained him in July, an immigration judge ordered his release on $7,500 bond. Nevertheless, he remains in ICE custody pursuant to ICE's invocation of a regulatory (and one-sided) automatic stay of the bond order.

2. On July 8, 2025, the Department of Homeland Security ("DHS") issued policy guidance requiring its employees to break from three decades of agency practice, Supreme Court precedent, and the plain text of the Immigration and Nationality Act ("INA") and treat all noncitizens who enter the United States without inspection, regardless of how long they have resided in the United States, as subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Pursuant to this policy, DHS argued at Mr. Singh's bond hearing that he was ineligible for bond

and must be detained pending his removal proceedings under § 1225(b)(2). When the immigration judge rejected that argument, DHS effectively overruled the decision by invoking a regulation automatically staying the bond order.

3. DHS's new statutory interpretation and the invocation of the automatic stay provision to overrule the conclusions of neutral immigration judges who reject it places Mr. Singh and others like him in an impossible situation and violates his due process rights by impermissibly merging the functions of adjudicator and prosecutor.

4. Further, the regulation is ultra vires as it exceeds ICE's statutory authority under the INA and eliminates the immigration judge's discretionary authority to determine whether a noncitizen may be released. The Court should therefore grant this petition, lift the stay of Mr. Singh's bond order, and order him released on the bond set by the immigration judge.

JURISDICTION AND VENUE

5. This action arises under the Due Process Clause of the Fifth Amendment and the INA, 8 U.S.C. § 1101 et seq.

6. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. §§ 2201-02 (declaratory relief), as Mr. Singh is presently held in custody under or by color of the authority of the United States. Respondents' detention of Mr. Singh is a "severe restraint" on his individual liberty "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

7. In addition to the habeas protections in the Constitution and Immigration and Nationality Act ("INA"), federal district courts have subject matter jurisdiction under 28 U.S.C. § 1331 (federal questions) to hear claims by individuals challenging the lawfulness of federal agency action.

8. Mr. Singh is unlawfully detained at Caroline Detention Facility, which is located within this district. Thus, venue is proper in this District because a "substantial part of the events or omissions giving rise to the claim" occurred in this District, and at least one of the Respondents—Mr. Singh's immediate custodian Chantel Thrower—is located in this District. *See* 28 U.S.C. § 1391(e)(1).

PARTIES

9. Petitioner Sarwan Singh is a native and citizen of India. ICE is currently holding Mr. Singh at Caroline Detention Facility. *See* Ex. A, ICE Detainee Locator Printout.

10. Respondent Kristi Noem is the Secretary of Homeland Security, and in that capacity is responsible for the Department of Homeland Security and all sub-cabinet agencies of DHS, including ICE. She is sued in her official capacity.

11. Respondent Todd M. Lyons is the Acting Director of ICE, responsible for its detention and removal operations and all its other functions. He is sued in his official capacity.

12. Respondent James A. Mullan is the Assistant Field Office Director for ICE's Washington, DC Field Office and is responsible for ICE operations in the Commonwealth of Virginia. He is sued in his official capacity.

13. Respondent Chantel Thrower is the Superintendent of Caroline Detention Facility responsible for the facility's daily operations. She is Mr. Singh's immediate custodian and is sued in her official capacity.

EXHAUSTION

14. DHS's decision to invoke an automatic stay of the immigration judge's order granting Mr. Singh release on bond is subject to challenge through a petition for a writ of habeas corpus, and he need not exhaust any administrative remedies which might be available to him before

seeking this Court's review. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (holding that failure to exhaust administrative remedies does not bar claims unless "Congress specifically mandates") (quoting *McCarthy v. Madigan*, 503. U.S. 140, 144 (1992).

15. Moreover, because Mr. Singh's continued detention violates his right to due process—a constitutional right—administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

STATEMENT OF FACTS

16. Mr. Singh is a native and citizen of India. He entered the United States without inspection in or around March 2022.

17. Immigration authorities initially apprehended Mr. Singh near San Luis, Arizona. They issued a warrant for his arrest at the time of his apprehension but ultimately released him on an Order of Recognizance.

18. After being released, Mr. Singh filed a Form I-589, Application for Asylum and Withholding of Removal, expressing his fear of persecution if removed to his native India.

19. After an asylum interview, Mr. Singh's Form I-589 was referred to immigration court on February 7, 2025. On February 14, 2025, DHS issued a Notice to Appear placing him in standard removal proceedings under 8 U.S.C. § 1229a.

20. At a master calendar hearing on July 9, 2025, DHS moved to dismiss proceedings so that Mr. Singh could be placed in expedited removal. The immigration judge denied the motion, concluding that Mr. Singh was not subject to expedited removal because he has been in the United States for three and a half years. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (excluding noncitizens physically present in the United States for more than two years from expedited

removal); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). ICE then took Mr. Singh into custody.

21. After ICE denied release on bond or parole, Mr. Singh moved for a custody redetermination before the immigration court. At his July 29, 2025 bond hearing, DHS argued that Mr. Singh was subject to mandatory detention under 8 U.S.C. § 1225(b) and therefore ineligible for release on bond under § 1226(a). The immigration judge rejected this argument and granted Mr. Singh's release on $7,500 bond.

22. Counsel for DHS immediately obtained an automatic stay of the bond order under 8 C.F.R. § 1003.19(i)(2), effectively overruling the immigration judge unless and until the Board of Immigration Appeals can render a decision on Mr. Singh's continued detention.

23. On information and belief, rather than making an individualized determination whether to invoke the automatic stay provision, DHS instituted a blanket policy and practice, on or around July 8, 2025, requiring its counsel to invoke the stay in all cases where an immigration judge rejects DHS's argument that a noncitizen is subject to mandatory detention under § 1225(b)(2).

LEGAL BACKGROUND

24. For decades, the Supreme Court has recognized a clear distinction between noncitizens who are stopped at our borders and those who have entered the United States, even illegally. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *United States* v. *Verdugo Urquidez,* 494 U. S. 259, 269 (1990) (Fifth Amendment's protections do not extend to noncitizens outside the territorial boundaries); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953).

25. Accordingly, "[i]t is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders." *Zadvydas*, 533 U.S. at 693. For noncitizens "on the threshold of initial entry," "[w]hatever the

procedure authorized by Congress is, it is due process as far as a[noncitizen] denied entry is concerned." *Mezei*, 345 U.S. at 212. But for noncitizens who have "once passed through our gates, even illegally," they "may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Id.*

26. Indeed, the Supreme Court has stressed that once noncitizens "enter the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas*, 533 U.S. at 693.

27. Consistent with that distinction, the INA establishes separates procedures for the removal and detention of arriving or recently arrived noncitizens and those who have entered and established a presence in the United States, even those who have done so in violation of the immigration laws.

28. For the latter, the INA mandates that "an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen]." 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) "shall be the sole and exclusive procedure from the United States" unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

29. For noncitizens in standard removal proceedings under § 1229a (§ 240 of the INA), the INA mandates detention pending proceedings for certain classes of criminal noncitizens. *See* 8 U.S.C. § 1226(c). For all others, the noncitizen "may be arrested and detained" pending removal "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a).

30. For noncitizens held under § 1226(a), DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least $1,500. *See* 8 U.S.C. § 1226(a). The noncitizen may,

upon request, have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board of Immigration Appeals ("BIA"), *see* 8 C.F.R. § 1236.1(d)(3).

31. Congress created separate, expedited procedures for "arriving aliens"[1] and certain "applicants for admission." 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a [noncitizen] who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

32. The INA further clarifies that the term "application for admission" has "reference to the application for admission *into* the United States," making clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added).

33. Critically, expedited removal proceedings do not apply to all "applicants for admission." Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to

[1] "Arriving alien" is a term of art defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port of entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to designated port of entry and regardless of the means of transport." 8 C.F.R. § 1.2.

expedited removal if so designated by DHS.[2] *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *Thuraissigiam*, 591 U.S. at 109; *United States v. Texas*, 144 F.4th 632 (5th Cir. 2025).

34. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed "without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii).

35. Further, any noncitizen "subject to the procedures under [8 U.S.C. § 1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iv).

36. Finally, § 1225(b)(2) includes a provision mandating the detention of certain "applicants for admission" not covered by § 1225(b)(1). Yet in keeping with the statute's focus on arriving aliens, the statute does not mandate detention for all applicants for admission but only those who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2).

37. Courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226.

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[2] On January 24, 2025, DHS issued a notice designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: noncitizens "determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility." Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025). Yet, the District Court for the District of Columbia recently stayed this designation in *Make the Road New York v. Noem*, No. 25-cv-190, 2025 WL 2494908 (D.D.C. Aug. 29, 2025).

See, e.g., *Jennings v. Rodriguez*, 538 U.S. 281, 303 (2018) ("While the language of §§1225(b)(1) and (b)(2) is quite clear, §1226(c) is even clearer. As noted, §1226 applies to *aliens already present in the United States.*") (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination."); *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 153952, at *16 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an "alien seeking admission"); *Martinez v. Hyde,* No. 25-cv-11613, 2025 U.S. Dist. LEXIS 141724, at *2 (D. Mass. Aug. 14, 2025).

38. Yet on July 8, 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it had employed for decades. In a complete reversal, "DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities," and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 "is the applicable immigration detention authority for all applicants for admission." Ex. B, Interim Guidance Regarding Detention Authority for Applicants for Admission. This reading of the statute has been overwhelmingly rejected by district courts that have considered the issue. *See, e.g., Lopez Santos v. Noem*, No. 3:25-cv-1193-TAD-KDM (W.D. La. Sept. 11, 2025) (attached as Ex. C); *Hernandez Marcelo v. Trump*, No. 3:25-cv-94-RGE-WPK (S.D. Iowa Sept. 10, 2025) (attached as Ex. D); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 U.S. Dist. LEXIS 165015, at *25 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25-cv-3161, 2025 U.S. Dist. LEXIS 160314, at *5 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-cv-3142, 2025 U.S. Dist. LEXIS 158321, at *30-32 (D. Minn. Aug. 15, 2025); *Jimenez v. Kramer*, No.

4:25-cv-3162, 2025 U.S. Dist. LEXIS 157245, at *5 (D. Neb. Aug. 14, 2025); *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025 U.S. Dist. LEXIS 163975, at *7 (N.D. Cal. Aug. 22, 2025): *Arostegui Castellon v. Kaiser*, No. 1:25-cv-00968 JLT EPG, 2025 WL 2373425, at *9 (E.D. Cal. Aug. 14, 2025); *Romero v. Hyde*, No. 25-cv-11631-BEM, 2025 U.S. Dist. LEXIS 160622, at *24-25 (D. Mass. Aug. 19, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488, at *17 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. 25-cv-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *21-22 (D. Ariz. Aug. 11, 2025).

Automatic Stay Regulations

39. Consistent with its July 8, 2025 policy guidance, DHS counsel has taken the position at subsequent bond hearings that any noncitizen who entered without inspection is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and ineligible for bond under § 1226(a). On information and belief, DHS has a policy and practice of invoking an automatic stay of bond orders under 8 C.F.R. § 1003.19(i)(2) in cases where the immigration judge rejects the novel statutory interpretations set forth in DHS's July 8, 2025 memorandum.

40. The automatic stay regulation was initially implemented following the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208 in 1996. Among other things, IIRIRA mandated the detention of only certain classes of criminal noncitizens pending removal proceedings, making them generally ineligible for bond or release under 8 U.S.C. § 1226(c). *See* Pub. L. 104-208, Div. C, § 303(a) (codified at 8 U.S.C. § 1226(c)).

41. Recognizing that existing resources might be insufficient to support immediate compliance, IIRIRA allowed for a one-year transition period with less stringent custody rules if the Attorney

General notified Congress within ten days of IIRIRA's enactment "that there [wa]s insufficient detention space and . . . personnel available" to comply with the mandatory detention provisions of 1226(c). *See* Pub. L. 104-208, Div. C, § 303(b)(2). The transition period could be extended by the Attorney General if there was still insufficient bed space and personnel after the first year.

42. INS made the requisite notifications to Congress on October 9, 1996, and again on September 29, 1997, thereby triggering the Transition Period Custody Rules.

43. IIRIRA's Transition Period Custody Rules gave the Attorney General the discretion to release certain noncitizens covered by the mandatory detention provision at § 1226(c). Pursuant to that discretionary authority, the Department of Justice issued regulations identifying classes of noncitizens who could be considered for release, using the bond procedures set forth at § 1226(a), despite being described in the mandatory detention provision at § 1226(c). *See* 63 Fed. Reg 27441 (May 19, 1998).

44. Recognizing that the Transition Period Custody Rules allowed for the release of noncitizens Congress deemed subject to mandatory detention, the implementing regulation allowed the legacy Immigration and Naturalization Service ("INS") to invoke an automatic stay and appeal an immigration judge's decision overturning an initial custody determination denying bond or setting it at $10,000 or more. 63 Fed. Reg. at 27448-49.

45. In implementing the automatic stay provision, DOJ dismissed commenters' concerns that the automatic stay encroaches on the authority of immigration judges, noting that "custody appeals are themselves unusual, undertaken only in compelling cases, and subject to review by responsible senior officials within [INS]." 63 Fed. Reg. at 27447. It added that "[i]t is expected that such appeals will remain exceptional" and that INS "district directors will continue to set

custody conditions according to their best assessment of the bail risk presented in each case." *Id.*

46. On October 31, 2001, the DOJ issued an interim rule extending the automatic stay provisions beyond noncitizens subject to mandatory detention under § 1226(c) to allow INS to invoke the automatic stay in other cases in which INS's decision to deny bond or set it at $10,000 or higher was reversed or amended by an immigration judge. 66 Fed. Reg. 54909 (Oct. 31, 2001).

47. DOJ finalized the rule four years later with several modifications. *See* 71 Fed. Reg. 57873 (Oct. 2, 2006). First, to allay concerns that "the automatic stay might be invoked by low-level employees of DHS without supervisory review, or might be invoked without an adequate factual or legal basis," the final rule requires DHS to appeal the immigration judge's custody determination to the Board within 10 business days and requires a senior legal official to approve the filing of the appeal and to certify that there is factual and legal support justifying . . . continued detention." 71 Fed. Reg. at 57874; 8 C.F.R. § 1003.6(c)(1).

48. Second, the final rule provides that the automatic stay will lapse 90 days after the notice of appeal is filed. 8 C.F.R. § 1003.6(c)(4). Yet it does not preclude DHS from then seeking a discretionary stay under the neighboring provision, 8 C.F.R. § 1003.19(i)(1). *See* 71 Fed. Reg. at 57874.

49. Third, the regulation extends an automatic stay for five business days if the Board authorizes release or the Board denies or fails to act on an application for a *discretionary* stay before the automatic stay lapses. 8 C.F.R. § 1003.6(d). This was intended to provide DHS time to decide whether to refer a custody decision to the Attorney General. If the decision is referred within five business days, the automatic stay is extended for fifteen business days after the case is referred to allow for the Attorney General's review. *Id.*; 71 Fed. Reg. at 57875-76. However,

the regulation does not limit the Attorney General's discretion to extend the stay further. *Id.* Thus, under the current regulations, a noncitizen could be subjected to potentially indefinite detention even if an immigration judge and the Board of Immigration Appeals determines that he should be released.

50. Responding to public comments expressing concerns with the regulation's constitutionality and the potential for abuse, DOJ again emphasized that DHS "invoke[s] the automatic stay in only a select number of custody cases"—just 273 times in Fiscal Year 2004 and only 43 times in Fiscal Year 2005. 71 Fed. Reg. 57873, 57878 (Oct. 2, 2006).

51. On information and belief, DHS has invoked the stay in almost all cases where an immigration judge has issued bond to a noncitizen who has entered the United States without inspection, without supervisory review or an individualized assessment of the factual and legal support justifying continued detention.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Substantive Due Process

52. As an individual living within the United States for over three years, Petitioner is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

53. The "Fifth and Fourteenth Amendments' guarantee of 'due process of law' [] include[s] a substantive component, which forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (emphasis in original). Substantive due process "prevents the government from engaging in conduct that

shocks the conscience, or interferes with rights implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987).

54. The substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings, and indeed even those who have already been ordered removed from the U.S. on account of past criminal violations. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where "special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.").

55. The right to release on bond or bail—in both criminal and immigration contexts—is a longstanding part of both detention systems. *See Wansley v. Wilkerson*, 263 F. Supp. 54, 56 (W.D. Va. 1967) ("It has been established that an accused detained by the state may test by habeas corpus the propriety of both his detention without bail and the setting of excessive bail." (citing *In re Johnson*, 72 S. Ct. 1028, 1030 (1952))); *Zadvydas*, 533 U.S. at 690.

56. "In effect, the automatic stay provision renders the Immigration Judge's bail determination an empty gesture." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003). Here, as in *Ashley*, due to the automatic stay provision, the government need not provide "any 'special justification' . . . which outweighs Petitioner's constitutional liberties so as to justify his continued detention without bail." *Id.* at 669; *accord Leal Hernandez*, 2025 U.S. Dist. LEXIS 165015, at *31-32. This Court should similarly conclude that it "cannot characterize Petitioner's continued confinement as anything but arbitrary" and "in violation of substantive due process." *Ashley*, 288 F. Supp. 2d at 669 (internal citation omitted); *see also Mohammad H. v. Trump*, No. 25-CV-1576, 2025 U.S. Dist. LEXIS 117197 at *15 (D. Minn. Jun. 17, 2025) ("At its foundation, due process prohibits detaining an individual without justification.

Petitioner has established, and the Government has not sufficiently rebutted, that his detention is rooted in improper purposes and lacks an individualized legal justification.").

57. The policy adopted by DHS in early July 2025 reflects an unconstitutional and arbitrary use of immigration detention that punishes individuals for exercising their right to apply for relief from removal with no consideration of whether detention is necessary to ensure future appearances or protect the community generally. *See Zadvydas*, 533 U.S. at 690. DHS's application of this policy to Mr. Singh, allowing it to arrogate for itself the authority to overrule a neutral immigration judge's determination that Mr. Singh's continued detention is unnecessary to ensure his appearance or protect the community, deprives Mr. Singh of substantive due process. *Leal Hernandez*, 2025 U.S. Dist. LEXIS 165015, at *32-33.

COUNT TWO
Violation of Procedural Due Process

58. Mr. Singh reallege and incorporate by reference the paragraphs above.

59. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

60. "[A] due process challenge is governed by a three-factor balancing test, weighing (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation with the procedures presently used; and (3) the government's interest." *United States v. White*, 927 F.3d 257, 264 (4th Cir. 2019) (citing *Mathews*, 424 U.S. at 335).

61. Each of these factors weighs in Mr. Singh's favor and supports a finding that the automatic stay provision violates his due process rights.

62. First, Mr. Singh has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed even for noncitizens, "[f]reedom from imprisonment -- from

government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

63. Second, the Supreme Court, recognizing the strong private interest in remaining free from detention, has affirmed "that detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (cleaned up).

64. While the government has interests in ensuring Mr. Singh's appearance at his removal proceedings and protecting the community, *see id.*, the automatic stay provision, particularly under the new blanket policy employed by Respondents, serves neither interest here. In fact, the existing bond procedures are sufficient to protect the government's interests. Further, Mr. Singh has no criminal history and critically, a neutral immigration judge has already determined, after hearing argument from both sides in each bond hearing, that release on bond does not hinder either interest, finding the ordered bond sufficient to ensure his future appearance.

65. Third, the risk of erroneous deprivation is high. To start, the automatic stay provision impermissibly merges the function of prosecutor and adjudicator as the DHS counsel who argued in Mr. Singh's bond proceeding that he should be detained is the same individual who determined that Mr. Singh's bond order should be stayed.

66. Further, upon information and belief, DHS has implemented a policy requiring its attorneys to invoke the automatic stay in all cases where bond is granted to a noncitizen who has entered without inspection. Thus, there is no individualized assessment of flight risk or danger

preceding a decision to invoke the automatic stay, as was contemplated when the regulation was introduced. *See* 63 Fed. Reg. at 27447; 71 Fed. Reg. at 57874, 57878.

67. Rather, "[s]imply by fiat—without introducing any proof and without immediate judicial review—the Government effectively overruled the bond decision and kept Petitioner[s] detained. In doing so, the automatic stay rendered Petitioner's continued detention arbitrary and gave him no chance to contest the Government's case for detention." *Mohammad H.*, 2025 U.S. Dist. LEXIS 117197 at *14-15.

68. Finally, the automatic stay may potentially be extended indefinitely while the immigration judge's custody determination makes its way through additional layers of administrative review, leading to even further arbitrary detention without any procedural protections.

69. Thus, as numerous courts have held, the automatic stay provision and the decision by Respondents to invoke the provision in every case absent any individualized determination violates the Due Process Clause and the Court should lift the stay of Mr. Singh's bond order so that he may be released from custody. *See Leal Hernandez*, 2025 U.S. Dist. LEXIS 165015, at *33-37; *Jacinto v. Trump*, No. 25-cv-3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Hoque v. Trump*, 0:25-cv-1576, 2025 U.S. Dist. LEXIS 117197, at *14-16 (D. Minn. June 17, 2025); *Gunaydin v. Trump*, No. 25-cv-01151, 2025 U.S. Dist. LEXIS 99237, at *14-22 (D. Minn. May 21, 2025); *Zabadi v. Chertoff*, No. 05-cv-01796, 2005 U.S. Dist. LEXIS 50670, at *1-2 (N.D. Cal. June 17, 2005) (listing cases).

COUNT THREE
Violation of the Immigration and Nationality Act

70. Mr. Singh realleges and incorporates by reference the paragraphs above.

71. The automatic stay provision is *ultra vires* and exceeds ICE's statutory authority under the INA.

72. When it enacted IIRIRA, Congress specifically identified which noncitizens should be subject to mandatory detention while their removal proceedings are pending and which noncitizens would be entitled to release on bond.

73. In the nearly three decades since Congress passed IIRIRA, it has been universally understood that noncitizens who enter without inspection, except for certain classes of criminal noncitizens, are entitled to a bond hearing under 8 U.S.C. § 1226(a). *See, e.g.*, *Jennings*, 281 U.S. at 303.

74. After issuing new policy guidance "revisiting" its own, long-held interpretation of its detention authority, DHS, on information and belief, implemented a policy of invoking the automatic stay provision in cases where an immigration judge grants bond to any noncitizen who has entered the United States without inspection, allowing DHS to essentially overrule the immigration judge absent any justification.

75. Through this new policy, DHS usurps Congress's authority to rewrite the INA and effectively creates a new class of noncitizens subject to mandatory detention, depriving them of the right to a bond hearing that Congress expressly provided they should receive. *See* Pub. L. 104-208, Div. C, § 303(a) (codified at 8 U.S.C. § 1226(c)).

76. Further, the regulation as applied to each Petitioner and the DHS policy "eliminates the discretionary authority of immigration judges to determine whether an individual may be released, thereby exceeding the authority bestowed upon [ICE] by Congress under [8 U.S.C. § 1226(a)]." *Zabadi*, 2005 U.S. Dist. LEXIS 50670, at *2; *Leal Hernandez*, 2025 U.S. Dist. LEXIS 165015, at *37-38.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Singh requests that this Court:

a. Assume jurisdiction over the matter;

b. Declare that Mr. Singh's detention is governed by 8 U.S.C. § 1226(a).

c. Declare that the automatic stay of Mr. Singh's bond order violates the INA and the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

d. Lift the automatic stay of Mr. Singh's bond so he may be released from custody on the bond set by the immigration judge; and

e. Grant any other and further relief this Court deems just and proper.

Dated: September 11, 2025

Respectfully submitted,

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