


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

SARWAN SINGH (A ) )  
)  
*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; JEFFREY CRAWFORD, )  
Warden of Farmville Detention Center, in )  
his official capacity )  
*Respondents* )

Case No. 1:25-cv-01525

REPLY IN SUPPORT OF PETITION FOR  
WRIT OF HABEAS CORPUS UNDER  
28 U.S.C. § 2241

INTRODUCTION

For decades it has been universally understood that individuals like Mr. Singh who have entered the United States, even unlawfully, are entitled to seek release on bond absent past criminal convictions that would subject them to mandatory detention. Yet on July 8, 2025, the government abruptly reversed this statutory interpretation it embraced for decades, choosing to interpret the Immigration and Nationality Act (INA) to mandate the detention of anyone who entered without inspection pending their removal, regardless of how long they have resided in this country. The Department of Homeland Security (DHS) took this position at Mr. Singh's July 29, 2025, bond hearing. When the immigration judge (IJ) disagreed and set bond, DHS invoked a regulation automatically staying the bond order, effectively overruling the IJ.

Mr. Singh filed a petition for a writ of habeas corpus on September 11, 2025, challenging the invocation of the automatic stay on constitutional and statutory grounds. Specifically, the

automatic stay violates Mr. Singh's substantive due process right to remain free from arbitrary detention that serves no compelling government interest. The automatic stay also violates procedural due process by impermissibly merging the role of adjudicator and prosecutor in bond hearings. And finally, the automatic stay violates the INA it renders the discretionary nature of Mr. Singh's detention and the IJ's authority under 8 U.S.C. § 1226(a) illusory.

Accordingly, the Court should grant the petition, lift the automatic stay, and join the groundswell of district courts that have repeatedly and consistently declared the automatic stay unlawful.

## **ARGUMENT**

### **I. This Court Has Jurisdiction.**

Respondents begin by arguing that 8 U.S.C. § 1252(b)(9) and 8 U.S.C. § 1252(g) strip this Court of jurisdiction to hear Mr. Singh's claims. Yet Respondents' arguments are foreclosed by Supreme Court precedent and have been repeatedly and roundly rejected by courts that have considered the issue. This Court should do the same.

Section 1252(b)(9) works in conjunction with 8 U.S.C. § 1252(a)(5) to channel review of "questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" through a petition for review of a final order of removal filed with an appropriate court of appeals. 8 U.S.C. §§ 1252(a)(5), (b)(9); *see Aguilar v. U.S. Immigr. & Customs Enforcement*, 510 F.3d 1, 11 (1st Cir. 2007) (describing § 1252(b)(9) as "a judicial channeling provision, not a claim-barring one"). Yet it does not bar review of collateral or "now-or-never" claims that "seek relief that courts cannot meaningfully provide alongside review of a final order of removal." *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020). These include challenges to detention. *See Aguilar*, 510 U.S. at 11 ("Congress stated

unequivocally that the channeling provisions of section 1252(b)(9) should not be read to preclude ‘habeas review over challenges to detention’”) (quoting H.R. Rep. No. 109-72, at 175, *as reprinted in 2005 U.S.C.C.A.N.* at 300).

Mr. Singh raises a “now-or-never” challenge to his detention that cannot be channeled through a petition for review of a removal order and therefore lies beyond the scope of § 1252(b)(9). Once a final order of removal is entered, Respondents’ detention authority shifts to 8 U.S.C. § 1231 governing post-order detention, thereby mooted any claims challenging the lawfulness of pre-order detention statutes and regulations to Mr. Singh. *See Guidel Polanco v. Garland*, 839 F. App’x 804, 805 (4th Cir. 2021) (dismissing a petition for review challenging a request for release on bond because “challenges to a[ noncitizen’s] detention must be brought pursuant to a habeas corpus petition”) (citing, *inter alia*, *Hosh v. Lucero*, 680 F.3d 375, 378 (4th Cir. 2012)).

Further, as Mr. Singh challenges his detention and not his removal, § 1252(b)(9) does not apply. Indeed, the Supreme Court squarely rejected the expansive reading of § 1252(b)(9) that Respondents advance here. In *Jennings v. Rodriguez* the Court “assume[d] for the sake of argument” that the denial of bond hearings to noncitizens “constitute[d] ‘action[s] taken to remove [them] from the United States.’” 583 U.S. 281, 292-93. But it held that the legal questions concerning their entitlement to bond hearings did not “arise from” the actions taken to remove them. *Id.* As the Court noted, “[i]n past cases, when confronted with capacious phrases like ‘arising from,’ [the Court has] eschewed ‘uncritical literalism’ leading to results that ‘no sensible person could have intended.’” *Id.* at 293-94 (quoting *Gobeille v. Liberty Mut. Ins. Co.*, 577 U. S. 312, 319 (2016)). Recognizing the “staggering results” that would flow from an interpretation of § 1252(b)(9) that encompasses any claim that could arguably be traced back to the noncitizen’s initial

detention and the absurdity of “cramming judicial review of those questions into the review of final orders of removal,” the Court held that § 1252(b)(9) did not bar petitioners’ claim that they had been unlawfully denied a bond hearing. *Id.* at 293. It follows that § 1252(b)(9) does not bar Mr. Singh’s similar claim challenging Respondents’ the ability to unilaterally overrule an immigration judge’s bond order.

As with § 1252(b)(9), the Supreme Court long ago rejected the broad reading of § 1252(g) offered by Respondents here. Section 1252(g) bars “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g). Consistent with the plain statutory language, the Supreme Court has adopted a “narrow reading” of 1252(g), holding that “the provision applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination*, 525 U.S. 471, 482, 487 (1999) (emphasis in original). Mr. Singh does not challenge any of those three discrete decisions or actions. He does not challenge or claim that the Government does not have the right to place him in removal proceedings. He does not claim that Respondents may not adjudicate his case. And he has no removal order to execute. Mr. Singh merely challenges the Government’s authority to continue detaining him pursuant to Respondents’ unlawful, automatic stay of a bond order entered by a neutral immigration judge. *See Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (holding that § 1252(g) does not bar claims that challenge “detention while the administrative process lasts.”).

Respondents counter that Mr. Singh’s Fifth Amendment claim is akin to the First and Fourth Amendment claims raised in *AADC*, where the Court held that the statute barred noncitizens from challenging the government’s decision to commence removal proceedings. 525 U.S. at 487-

92. Yet the underlying basis of the claim has no bearing on whether the statute applies. Instead, the Court must look to the discrete governmental decision or action being challenged. *AADC* held that § 1252(g) bars review of the decision to commence removal proceedings, even on constitutional grounds. It does not stand for the proposition that any constitutional claim brought by a noncitizen in removal proceedings is likewise barred. *Jennings* is again instructive. Mr. Singh, like the petitioners in *Jennings*, challenges the adequacy and lawfulness of bond procedures governing his detention. The Court held that § 1252(g) did not apply, reaffirming that it “did not interpret th[e] statutory] language to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, [it] read the language to refer to *just those three specific actions themselves*.” 583 U.S. at 294 (citing *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 482-483) (emphasis added). This Court should reject Respondents’ argument which extends the scope of 8 U.S.C. § 1252(g) beyond the limits set by the Supreme Court and the statute’s plain language.

Finally, Respondents seek dismissal of Mr. Singh’s statutory claim, arguing that it is “a civil claim [that] is not cognizable in the habeas context.” Opp. 12. Yet Respondents cite no authority that even suggests that Mr. Singh cannot petition for a writ of habeas corpus to challenge the lawfulness of his detention on statutory grounds. In fact, Respondents admit that habeas proceedings are appropriate when a noncitizen “expressly challenges his civil detention” as Mr. Singh does here. Opp. 11; *see also* 28 U.S.C. § 2241(c)(3) (extending the writ of habeas corpus to individuals “in custody in violation of the Constitution *or laws* or treaties of the United States.”) (emphasis added). Instead, Respondents rely on an inapposite and unpublished Tenth Circuit decision holding that a pro se inmate’s challenge to mail monitoring as “not in accordance with” the Administrative Procedure Act (APA) was not a “recognizable habeas corpus claim.” Opp. 12

(citing *Mesina v. Wiley*, 352 F. App'x 240, 242 (10th Cir. 2009)). Yet it does not follow from the Tenth Circuit's decision barring a challenge to the *conditions* of an inmate's detention through habeas that Mr. Singh cannot challenge the *fact* of his detention through a habeas petition. Indeed, *Mesina* distinguished between conditions claims related to "administrative segregation, exclusion from prison programs, or suspension of privileges" from challenges to convictions or actions that require the petitioner to remain in custody because in the former category of cases "a favorable resolution of the action would not automatically entitle the prisoner to release." 352 F. App'x at 242. Mr. Singh brings the latter.

Respondents also cite *Obando-Segura v. Garland*, 999 F.3d 190 (4th Cir. 2021), which held that a habeas suit is not a "civil action" as defined in the Equal Access to Justice Act and therefore the petitioner could not recover attorneys' fees. Opp. 12. But whether Mr. Singh is entitled to attorneys' fees under EAJA has no bearing on whether he may, through a habeas petition, challenge his continued detention pursuant to an automatic stay of his bond on statutory grounds. *Obando-Segura* does not limit habeas petitions solely to constitutional claims. Nor could it as the Supreme Court has repeatedly reviewed habeas claims challenging the statutory basis of detention without even a suggestion that such claims must be brought through the APA. See, e.g., *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydus v. Davis*, 533 U.S. 678 (2001).<sup>1</sup>

## **II. Mr. Singh's is Subject to Detention Under 8 U.S.C. § 1226(a), not § 1225(b)(2).**

District courts across the country, including this one, have almost universally concluded that noncitizens like Mr. Singh who have entered the United States without inspection and have

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<sup>1</sup> Further, requiring Mr. Singh to bring a separate suit to argue that his detention exceeds ICE's statutory authority would subject the claim to potential dismissal for claim preclusion. If the Court were to hold that the automatic stay did not violate due process, he would be barred from bringing a separate, statutory claim arising from the "same transaction or series of transactions, or the same core of operative facts." *Duckett v. Fuller*, 819 F.3d 740, 744 (4th Cir. 2016).

continued residing in the United States for years after entry are subject to detention under 8 U.S.C. § 1226(a), not mandatory detention under 8 U.S.C. § 1225(b)(2) as Respondents assert. *See Hasan*, 2025 WL 2682255, at \*5-9; *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Sampiao v. Hyde*, -- F. Supp. 3d --, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Lopez Santos v. Noem*, No. 3:25-cv-1193-TAD-KDM (W.D. La. Sept. 11, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at \*3 n.4 (E.D. Cal. Sept. 9, 2025); *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-cv-94-RGE-WPK (S.D. Iowa Sept. 10, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Calderon v. Kaiser*, 2025 U.S. Dist. LEXIS 163975 (N.D. Cal. Aug. 22, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Jacinto v. Trump*, -- F. Supp. 3d --, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Arrazola-Gonzales v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, -- F. Supp. 3d --, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14,

2025); *Arostegui Castellon v. Kaiser*, 2025 WL 2373425 (E.D. Cal. Aug. 14, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Benitez*, --- F. Supp. 3d ----, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Martinez*, 2025 WL 2084238; *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025). Because he is detained under § 1226(a), he is entitled to a bond hearing before an immigration judge. The plain text of the INA and Supreme Court precedent should compel this Court to reach the same conclusion.

Immigration law has long 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). 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. This distinction is reflected in the INA. As numerous courts have held, Section 1225 governs the detention and procedures available to arriving aliens and recent arrivals while § 1226 “‘sets forth the default rule’ for detaining and removing aliens ‘already present in the United States.’” *Hasan*, 2025 WL 2682255, at \*6 (quoting *Jennings*, 538 U.S. at 303).

Respondents ask the Court to deviate from *Jennings* and the overwhelming weight of authority and conclude that 8 U.S.C. § 1225(b)(2) mandates the detention of *all* applicants for admission as defined at 8 U.S.C. § 1225(a)(1), notwithstanding the plain text limiting its scope to

applicants for admission who are “seeking admission.” Respondents’ rely heavily on dicta that the Fourth Circuit offered in a footnote addressing a question that it acknowledged “[wa]s beyond the scope of th[e] appeal” before it. *Jimenez-Rodriguez*, 996 F.3d at 194. To start, this dicta is not binding on the Court. See *United States v. Norman* (“[A]n unchallenged and untested assumption is simply not a holding that binds future courts.”). Moreover, the Fourth Circuit interpreted the phrase “seeking admission” in § 1182(d)(3)(A)(ii)—a wholly separate statute governing inadmissibility waivers—to apply to a noncitizen who was never lawfully admitted. *Id.* at 194 n.2. Respondents make a consistent usage argument that the phrase “seeking admission” must be interpreted in the same manner in § 1182(d)(3)(A)(ii) and § 1225(b)(2). Yet while canons of interpretation may aid in statutory analysis, no canon is absolute, and the Supreme Court has singled out the consistent usage canon as “particularly defeasible by context.” *Feliciano v. DOT*, 145 S. Ct. 1284, 1304-05 (2025) (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 170-71 (2012)). Here, prior Supreme Court case law, context, and competing canons of statutory interpretation overcome Respondents’ consistent usage argument.

First, regardless of how the Fourth Circuit interpreted the phrase “seeking admission” in dicta interpreting § 1182(d)(3)(A)(ii), the Supreme Court in a case squarely addressing the bounds of Respondents’ detention authority affirmed that § 1226(a) rather than § 1225(b)(2) “applies to aliens already present in the United States.” *Jennings*, 583 U.S. at 303. The Court acknowledged that “once inside the United States, aliens do not have an absolute right to remain here . . . , includ[ing] aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission,” but explained that “Section 1226 generally governs the process of arresting and detaining *that group of aliens* pending their removal.” *Jennings*, 583 U.S. at 288

(emphasis added). Mr. Singh belongs to “that group of aliens” and his detention is governed by § 1226(a).<sup>2</sup>

Moreover, the INA 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). And § 1225(b)(2) limits mandatory detention to applicants for admission who are “seeking admission.” 8 U.S.C. § 1225(b)(2). To read the statute as applying to all applicants for admission reads the phrase “seeking admission” out of the statute. *See Martinez*, 2025 WL 2084238, at \*6. And as numerous courts have concluded, individuals like Mr. Singh who have resided continuously in the United States for years cannot reasonably be described as “seeking admission.” *See id.*; *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 153952, at \*16 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizen who has been residing in the United States for more than two years cannot be classified as an “alien seeking admission”).

Respondents’ interpretation also would nullify recent amendments to the INA in the Laken Riley Act, now codified at 8 U.S.C. § 1226(c). *See Hasan*, 2025 WL 2682255, at \*8. Among other things, the Laken Riley Act mandates detention for noncitizens who are subject to certain inadmissibility grounds *and* meet certain criminal criteria. 8 U.S.C. § 1226(c)(1). Such a statute would be entirely redundant if a noncitizen’s inadmissibility alone rendered him subject to mandatory detention under § 1225(b)(2)(A). *See id.*; *Benitez*, 2025 U.S. Dist. LEXIS 153952, at

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<sup>2</sup> Respondents argue that *Jennings* “distinguished applicants for admission subject to mandatory detention with those who are ‘within one or more . . . classes of *deportable* aliens’ and thus fall under § 1226 detention.” Opp. 19 (emphasis in original) (quoting *Jennings*, 583 U.S. at 288). Yet Respondents conveniently omit the phrase “for example” when quoting *Jennings*. That phrase makes clear that these “classes of deportable aliens” are *among* those subject to § 1226, not the *only* noncitizens subject to § 1226 as Respondents argue. *See* Opp. 19 (arguing that because Mr. Singh is not deportable under § 1227 but rather inadmissible under § 1182 he cannot be detained under § 1226).

\*22. Respondents counter that the Laken Riley Act “is *not* limited to those who are applications for admission,” noting that “lawful permanent residents who are inadmissible at the time of their initial entry to the U.S. or time of adjustment.” Opp. 17-18 (emphasis in original). Yet this argument ignores the statute’s use of the present tense. Section 1226(c)(1) does not mandate detention of a noncitizen who *was* inadmissible at the time of their initial entry or at some point in the past. Rather it applies to a noncitizen who *is* inadmissible—*i.e.*, a noncitizen Respondents claim is already subject to mandatory detention under § 1225(b)(2). *See* 8 U.S.C. § 1226(c)(1).

Finally, Respondents argue that the “specific mandatory language” in § 1225(b)(2)” should govern rather than “§ 1226(a)’s general discretionary and permissive language.” Opp. 18. “But the differences between § 1225 and § 1226 do not indicate the former should prevail over the latter—rather, they indicate that Congress intended for different classes of noncitizens to be subject to each provision, *i.e.*, mandatory versus discretionary detention.” *Vasquez v. Feeley*, No. 2025 WI 2676082, at \*14 (D. Nev. Sept. 17, 2025). Indeed, the statutory provisions are not irreconcilable such that one must prevail over the other; rather they are mutually exclusive such that a noncitizen must be subject to either one or the other. *See id.* For the reasons outlined above, Mr. Singh is subject to § 1226(a).

### **III. The Automatic Stay Violates Mr. Singh’s Substantive and Procedural Due Process Rights.**

Respondents’ invocation of the automatic stay provision denies Mr. Singh’s procedural and substantive due process rights by impermissibly merging the functions of adjudicator and prosecutor at his bond proceeding and subjecting him to arbitrary detention that is unnecessary to achieve any legitimate governmental interest.

Respondents contend that Mr. Singh, despite being present in the United States for over three years, has no right to any process beyond those created by Congress. True, that for

noncitizens on “the threshold of initial *entry*,” “whatever the procedure authorized by Congress is, it is due process as far as a[ noncitizen denied entry is concerned.” *United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). Yet Mr. Singh is not at “the threshold of *entry*.” He has not been “denied *entry*.” He entered the United States over three years ago and has continuously resided here ever since. As the Supreme Court has stressed, once Mr. Singh “enter[s] the country, [his] legal circumstances change[], 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; *Mezei*, 345 U.S. at 212 (holding that noncitizens who have “once passed through our gates, even illegally . . . may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”); *see also Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (distinguishing noncitizens arriving at our shores from those “who have never been naturalized, *nor acquired any domicil or residence within the United States*) (emphasis added).

The cases cited by Respondents are entirely consistent with this distinction as they all involve arriving aliens who were stopped at the threshold of initial entry or released shortly after being stopped at the threshold of entry. *See, e.g., Dep’t of Homeland Sec. v. Thuraissigiam* 591 U.S. 103, 139 (2020) (noting petitioner was apprehended 25 yards into U.S. territory); *Nishimura Ekiu v. United States*, 142 U.S. 651, 658 (1892) (addressing whether arriving alien should be permitted to land in the United States); *Pipa Aquise v. Bondi*, No. 1:25-cv-1094, 2025 WL 2490657, at \*1 (E.D. Va. Aug. 5, 2025) (petitioner stopped near border and subject to expedited removal under 8 U.S.C. § 1225(b)(1)); *Olaya Rodriguez v. Bondi*, No. 1:25-cv-791, 2025 WL 2490670, at \*1 (E.D. Va. June 24, 2025) (same); *Aslanturk v. Hott*, 459 F. Supp. 3d 681, 693 (E.D. Va. 2020) (addressing due process claim brought by “a self-described ‘arriving alien’”). Nothing

in these cases suggest that the general constitutional principle governing the due process rights of those denied *entry* should be extended to those like Mr. Singh who have resided in the United States for years but have not yet obtained legal status. As Mr. Singh has “passed through our gates,” the statutory and regulatory procedures governing his detention must comply with due process.

Respondents’ remaining arguments flow from the false premise that Mr. Singh is an arriving alien and rely on mischaracterizations of Supreme Court precedent. Respondents first observe that *Jenning* found that “nothing in the statutory text imposes any limit on the length of detention . . . [a]nd neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.” Opp. 21 (citing *Jennings*, 583 U.S. at 291, 297). But as explained above, Mr. Singh is subject to detention under § 1226(a). Further, this statutory holding has no bearing on Mr. Singh’s constitutional arguments as the Supreme Court left unanswered the question of whether extra-statutory bond hearings were needed to satisfy due process. *Jennings*, 583 U.S. at 312. It certainly offers no constitutional analysis of the issue presented in this case—whether upon *receiving* a hearing and a bond order from a neutral IJ, Respondents may, automatically stay that bond order and keep Mr. Singh detained without violating due process. They may not.

*a. Substantive Due Process*

The automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) allows DHS to unilaterally overrule a neutral IJ’s determination that continued detention is unnecessary, keeping noncitizens detained, potentially indefinitely, without any special justification. The application of this regulation to Mr. Singh violates his substantive due process right to be free from arbitrary detention. *Zadvydas*, 533 U.S. at 693 (holding the guarantee of substantive due process “applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent”). “Government detention violates that Clause unless the

detention is ordered in a *criminal* proceeding with adequate procedural protections or, in certain special and ‘narrow’ nonpunitive ‘circumstances’ where a special justification . . . outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Zadvydas*, 533 U.S. at 690 (emphasis in original) (internal citations omitted). As special justification for its invocation of an automatic stay, Respondents note that Congress “considers immigration enforcement . . . to be a vital public interest.” Opp. 24 (quoting *Miranda v. Garland*, 34 F.4th 338, 364 (4th Cir. 2022)). It also alludes to the government’s “substantial interest in ensuring a noncitizen’s appearance at immigration hearings.” *Id.* (quoting *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 918 (E.D. Va. 2024)). Yet neither interest outweighs Mr. Singh’s constitutionally protected interest in avoiding physical restraint, particularly where the immigration judge’s bond decision took into account the government’s interest in protecting the community and ensuring Mr. Singh’s appearance at his immigration hearings. *See Hasan*, 2025 WL 2682255, at \*10 (“Any interest that the federal respondents may have in securing Hasan’s presence at immigration proceedings has been accounted for by the IJ’s imposition of bond.”); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at \*13 (D. Md. Aug. 24, 2025) (“Invocation of the automatic stay . . . renders the IJ’s custody redetermination order an empty gesture absent demonstration of a compelling interest or special circumstance left unanswered by [the IJ]. As such, the automatic stay results in Petitioner’s arbitrary detention violative of Petitioner’s substantive due process rights guaranteed by the Fifth Amendment.”).

*b. Procedural Due Process.*

The application of the automatic stay provision to Mr. Singh likewise violates his procedural due process right. “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). Allowing a party to an adversarial bond hearing to unilaterally overrule the determination of a neutral decisionmaker through the invocation of an automatic stay collapses the distinction between prosecutor and adjudicator and denies noncitizens like Mr. Singh the opportunity to be heard in a “meaningful manner.” *Id.*

“[A procedural] 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). All three factors weigh in Mr. Singh’s favor.

Mr. Singh has a strong private interest in remaining free from detention as “[f]reedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects. *Zadvydas*, 533 U.S. at 690. Moreover, he is being “held in conditions indistinguishable from criminal incarceration,” which further bolsters his private liberty interest. *Hasan*, 2025 WL 2682255, at \*11. Respondents attempt to diminish Mr. Singh’s liberty interest, citing to *U.S. v. Guzman*, for the proposition that “an alien who has not been admitted ‘does not have the same status for due process purposes as an alien who has ‘effected entry.’” Opp. 25 (quoting *U.S. v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021)). This distorts the holding of *Guzman*, which involved an arriving alien stopped near the border and placed in expedited removal. *Guzman*, 998 F.3d at 565. Thus, *Guzman* merely reflects the distinction drawn in *Mezei* between the due process rights afforded individuals like Mr. Guzman who are stopped at the threshold of initial entry and those, like Mr. Singh, who have effected an entry. *See id.* at 569 (distinguishing between “an alien who has already effected an entry in the United States” and “alien who tries to *enter the country* illegally”).

Respondents add that Mr. Singh's private interest is further diminished because the Attorney General has discretion to grant or deny bond. But in this case bond was granted. A neutral immigration judge determined that Mr. Singh's continued detention is not necessary to serve the government's interest in protecting the community or ensuring his appearance for removal proceedings. Thus Mr. Singh's liberty interest is not diminished by the Attorney General's discretion when an immigration judge, applying that discretion, decided that Mr. Singh could be and should be released on bond. Accordingly, the first *Mathews* factor weighs in Mr. Singh's favor

The second *Mathews* factor also tilts heavily in Mr. Singh's favor. Indeed, the automatic stay "creates a substantial risk of erroneous deprivation of [Mr. Singh]'s interest in being free from arbitrary confinement because invocation of the automatic stay fails to account for any individualized facts." *Hasan*, 2025 WL 2682255, at \*12. As one court aptly described it, "the automatic stay is a violent distortion or proper legitimate process whereby the Government, as though by talisman, renders itself at once prosecutor and adjudicator." *Leal-Hernandez*, 2025 WL 2430025, at \*14. Respondents counter that the "[r]egulations specify that the BIA will hear [the bond] appeal and even if it does not act on the appeal, the Petitioner *shall* be released." Opp. 27. Yet Respondents themselves acknowledge that "[w]hat may happen in the future is . . . immaterial to this proceeding." Opp. 27. Thus, the mere fact that detention may mercifully end at some point in the distant future does nothing to change the fact that Mr. Singh is currently being held in conditions akin to incarceration after a neutral IJ held that such detention was unnecessary to serve any legitimate government interest in protecting the community or ensuring his appearance for removal proceedings.

Finally, Mr. Singh acknowledges that the government has a legitimate interest in ensuring his appearance at removal proceedings and protecting the community. But the bond procedures set

forth at § 1226(a) adequately protect those interests, and the IJ took those interests into consideration when setting Mr. Singh's bond. Thus, the third factor also weighs in Mr. Singh's favor.

In sum, the *Mathews* factors tilt in Mr. Singh's favor and the Court should lift the automatic stay that has been unconstitutionally applied to his bond order.

*c. The Automatic Stay Provision is Ultra Vires.*

Finally, the automatic stay provision set forth at 8 C.F.R. § 1003.19(i)(2) is *ultra vires*, as it exceeds the authority conferred by Congress through the INA by rewriting the statute to effectively create a new class of noncitizens subject to mandatory detention, depriving them of the right to a bond hearing that Congress expressly provided them, and eliminating the discretionary authority of immigration judges to determine whether an individual may be released. "Where [Mr. Singh's] detention is discretionary and subject to bond redetermination pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R. § 1236, respectively, and the IJ has exercised his discretion to issue bond pursuant to his authority as an appointee of the Attorney General, the automatic stay of 8 C.F.R. § 1003.19(i)(2) renders both the discretionary nature of Petitioner's detention and the IJ's authority a nullity." *Leal-Hernandez*, 2025 WL 2430025, at \*15.

## CONCLUSION

For the foregoing reasons, the application of the automatic stay to Mr. Singh is unlawful. Mr. Singh respectfully asks the Court to grant his petition for a writ of habeas corpus, lift the stay, and order his release on the bond set by the immigration judge.

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Respectfully submitted,

/s/ Eileen Blessinger  
EILEEN BLESSINGER  
Blessinger Legal PLLC  
7389 Lee Highway  
Suite 320  
Falls Church, VA 22042  
Tel: (703) 738-4248  
Email: [eileen@blessingerlegal.com](mailto:eileen@blessingerlegal.com)

/s/ Kevin Hirst (pro hac vice)  
KEVIN HIRST  
MSB 1812110173  
Blessinger Legal, PLLC  
7389 Lee Highway, Suite 320  
Falls Church, VA 22042  
Tel: (703) 738-4248  
Email: [khirst@blessingerlegal.com](mailto:khirst@blessingerlegal.com)

*Counsel for Petitioner*