UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Elmer OSEGUERA MELGAR, Petitioner-Plaintiff, v. PAM BONDI, United States Attorney General; KRISTI LYNN NOEM, Secretary of the United States Department of Homeland Security; TODD M. LYONS, Director of United States Immigration and Customs Enforcement; SYLVESTER ORTEGA Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, REYNALDO CASTRO, Warden, South Texas Detention Complex; JESSICA L. DICE, Assistant Chief Counsel, ICE Office of Chief Counsel Respondents-Defendants.	Civ. No. 5:25-cv-25-1158 DHS File Number: 241 078 701 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR HABEAS CORPUS

The Petitioner, Elmer Oseguera Melgar ("Mr. Oseguera"), respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner's unlawful detention and attempted removal from the United States by Respondents.

I. INTRODUCTION

1. This lawsuit seeks the immediate release of Plaintiff-Petitioner Elmer Oseguera Melgar ("Petitioner"), age 25, from unlawful detention in violation of his constitutional and statutory rights.
2. Petitioner was detained by Immigration and Customs Enforcement (ICE) on July 15, 2025, in Amarillo, Texas. He has had only one offense, for reckless driving in 2023, Class B, in Potter County, Texas, which resulted in a plea of guilty to the charge of reckless driving, Class B, on December 6, 2023, with sentence of 6 days time served. He hired counsel to seek a bond with the immigration judge (IJ) at the Bluebonnet, Texas detention center, who determined she had jurisdiction and granted him a $5,000 bond on August 12, 2025. DHS invoked its automatic stay procedure the same day, and appealed the IJ's decision on August 25, 2025 to the Board of Immigration Appeals (BIA). Their appeal is pending. Petitioner meanwhile remains in civil detention in the custody of ICE at South Texas Detention Complex at Pearsall, Texas.
3. Petitioner has been in the United States for nearly 5 years and is the spouse of U.S. citizen Ana Rodarte, and is the father of their U.S. citizen child, Elmer Oseguera Jr., age 2. Petitioner is stepfather to Jahziel Montgomery Rodarte, age 7, his wife's child from a previous relationship. He lives with Ana and the children and supports them in Amarillo, Texas. This detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his parental and financial support.

4. Petitioner has one criminal charge that resulted in a guilty plea to Class B reckless driving that occurred in Potter County on January 25, 2023, with sentence of 6 days confinement. He was not put into removal proceedings as a result of that arrest. The instant situation of detention and initiation of removal proceedings began on July 15, 2025, when ICE arrested him in his neighborhood in Amarillo, Texas when it initiated a traffic stop. ICE did not grant him a bond. Instead, he retained counsel and sought a bond with the IJ on August 12, 2025, who granted him a $5000 bond. The next day, August 13, ICE filed a Notice of Intent to Appeal the bond under 8 C.F.R. § 1003.19(i)(2), which had the effect of automatically staying the IJ's decision, along with Petitioner's release from detention, for at least 90 days from ICE's notice of appeal. ICE moved Petitioner to the South Texas Detention Center (STDC) in Pearsall, Texas where he remains detained due to this automatic stay regulation.
5. Petitioner contended before the IJ on August 12, 2025, that he is not lawfully detained under Section 1225(b)(2), as argued by the DHS before the IJ, and now on its appeal at the BIA. The IJ agreed with Petitioner's argument that he is detained pursuant rather to 8 U.S.C. § 1226(a), and specifically found that she had jurisdiction to grant him a bond. Exh. 2, IJ decision granting bond and Exh 3, IJ Memorandum decision granting bond. ICE attorney Jessica Dice then filed Form EOIR-43 (hereinafter "E-43"), Notice of Intent to Appeal Custody Redetermination, on August 13, 2025. Exh. 4, E-43. His own prior counsel, Iris Albizu, received a copy of the Form E-43 via the immigration court's electronic filing system.
6. The DHS then apparently filed its required Notice of Appeal with the BIA, exh. 5, DHS Bond Appeal, with "certification by a legal official that—(i) the official is satisfied that the contentions justifying the continued detention of the alien having evidentiary support, and

the legal arguments are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent…" 8 C.F.R. §1003.6(c)(1). Petitioner writes "apparently" because while he has not seen the DHS's Form EOIR-26, Notice of Appeal, wherein the appealing party is required to provide its legal reasons for the appeal to the BIA. It was not uploaded to his prior counsel's EOIR electronic portal, despite the E-43 having been uploaded. It was in fact not served on him, as required by regulation and by the BIA's own practice manual. BIA Practice Manual, Sec. 3.2, available at https://www.justice.gov/eoir/reference-materials/bia/chapter-3/2. He is unrepresented before the BIA. The DHS uploaded its appeal via EOIR's electronic filing system known as ECAS. The regulations and the manual require that DHS serve him with a copy of its EOIR-26 Notice of Appeal (E-26), which it no doubt attested it did, but which he asserts he has never received, neither by mail, nor in person, nor to prior counsel. The DHS may not serve him via ECAS because he is not an attorney. BIA Practice Manual, Sec. 3.2. Undersigned counsel proceeds with the instant habeas without specific knowledge of the DHS's reasoning on appeal, due to its failure to serve its appeal. However, due to the abrupt nationwide invocation of automatic stays as of July 2025, arguing ICE's new reading of the statutory mandatory detention scheme, see Exh. 1, Todd Lyons Memorandum July 8, 2025, and which policy has been widely reported, he can fairly surmise approximately what the DHS is arguing in its appeal to the BIA for the purposes of this instant petition for release from unlawful detention. Nevertheless, he does ask among his requested relief that this Court order the DHS to provide the DHS E-26 to him or to undersigned counsel, and to explain why it failed to provide it to him previously, and to order the DHS to show cause why its invocation of the regulatory automatic stay at 8 C.F.R. § 1003.6 is not invalid due to the

Notice of Appeal, Form EOIR-26, which it filed on August 26, 2025, lacking a proper certificate of service. He asks the Court to order DHS in future filings in the DHS's bond appeal to similarly ensure the court that it is properly serving its appeal documents on the Petitioner, where he still, three weeks after DHS's appeal, has not received their form stating the reasons for appeal and the DHS Senior legal official certification required by agency regulation.

7. Respondents' invocation of the automatic stay per 8 C.F.R. § 1003.19(i)(2) renders the IJ's custody redetermination order an "empty gesture" absent demonstration of a compelling interest or special circumstance left unanswered by IJ Jessica Miles. As such, the automatic stay results in Petitioner's arbitrary detention violate of Petitioner's substantive due process rights guaranteed by the Fifth Amendment. *Ashley v. Ridge,* 288 F. Supp. 2d 662, 669 (D.N.J. 2003) (holding that "in effect, the automatic stay provision renders the Immigration Judge's bail determination an empty gesture"); *Mohammad H. v. Trump*, Civil Case No. 25-cv-1576, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025) (finding government violated due process rights of petitioner by invoking automatic stay per 8 C.F.R. § 1003.19(i)(2) after IJ granted bond, because continued detention is "rooted in improper purposes and lacks an individualized legal justification"); *Jacinto v. Trump,* Civil Case No. 25-cv-3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025) (finding government violated substantive and procedural due process rights of petitioner, and engaged in *ultra vires* conduct, by invoking automatic stay per 8 C.F.R. § 1003.19(i)(2) after IJ granted bond).

8. Petitioner's detention became unlawful on August 12, 2025, when an Immigration Judge ("IJ") at the Bluebonnet Detention Center in Anson, TX, determined after examining the individual factors of his flight risk and danger that Petitioner should be released on a $5,000

bond, whereupon ICE invoked an automatic stay under 8 C.F.R. § 1003.19(i)(2) because it has asserted that was detained pursuant to 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226.

9. Petitioner is married to a U.S. citizen, Ana Rodarte, and they have filed Form I-130, petition for alien relative, with United States Citizenship and Immigration Service on July 21, 2025. See Exh.7, USCIS I-130 receipt. They are raising two U.S. citizen children in Amarillo, Texas. He is eligible to seek withholding of removal based on harm and fear of future harm in Honduras. He has only one Class B, reckless driving conviction in Potter County in 2023 in Amarillo.

10. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondent's continued detention of Petitioner to ensure his due process rights and his ability to provide care for his wife and their children, who have needs that require Petitioner's presence and support. In the alternative, he respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243. His continued detention is an unlawful violation of due process, incorrect interpretation of immigration law, and is *ultra vires*.

11. Petitioner asks this Court to find the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) to be unconstitutional.

12. In the early 2000s, several federal courts concluded the automatic stay provision violated the due process rights of detainees. *See Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (finding that continued detention pursuant to the automatic stay despite the IJ's decision to grant bond violated procedural and substantive due process rights); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003) (finding the government goal of preventing the release of

noncitizens posing a threat to national security was not served by the petitioner's ongoing detention and was outweighed by the petitioner's Fifth Amendment right to be free from detention); *Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 WL1514122 (N.D. Cal. June 17, 2005) (finding the automatic stay provision unconstitutional); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003) (same).

13. In 2006, the EOIR promulgated the final and current rule, which added the requirement that any decision to invoke the automatic stay must be made by the Secretary of DHS, who must certify that sufficient factual *and* legal bases exist to justify continued detention ("the Certification Requirement"), which was added "to allay possible concerns that in some case the automatic stay might be invoked ... without an adequate factual or legal basis." *See* Executive Office for Immigration Review, *Review of Custody Determination*, 71 Fed. Reg. 57873, 57876 (Oct. 2, 2006); 8 C.F.R. § 1003.6(c). The Rule also imposed some limitations by providing that the automatic stay will lapse 90 days after filing the bond appeal if the BIA has not acted, unless DHS seeks a discretionary stay pursuant 8 C.F.R. § 1003.19(i)(1), which requires approval from the BIA. *See* 8 C.F.R. § 1003.6(c)(4). The regulation also sets forth a procedure by which DHS may request an emergency stay of an IJ's custody determination from the BIA, which initiates expedited preliminary review by the BIA to determine whether a stay is warranted based on the individual circumstances of the detainee and the merits of DHS's appeal. *See* 8 C.F.R. § 1003.19(i)(1).

14. The automatic stay regulation violates the procedural due process rights of noncitizen detainees, both facially and as applied. It lacks any reference to or establishment of any procedure for challenging its invocation. The Court should find that there can be no possible application of this regulation that would satisfy due process where it purports to authorize the

most severe and recognized deprivation of liberty without a hint of a process to challenge such deprivation. In contrast, as the Supreme Court in *Demore* highlighted in upholding the mandatory detention of a noncitizen convicted of a crime under § 1226(c), "process" has been built into that mandatory detention scheme. For example, § 1226(c) applies to detainees whose convictions were generally "obtained following the full procedural protections [the] criminal justice system offers." *Demore v. Kim*, 538 U.S. 510, 513 (2003); *id.* at 525 n.9, (noting that "respondent became 'deportable' under § 1226(c) only following criminal convictions that were secured following full procedural protections"). And if mandatory detention becomes unnecessarily prolonged in that context, the due process' prohibition of arbitrary government detention could entitle a detainee "to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." *Id.* at 532 (Kennedy, J., concurring). Detention pursuant to the automatic stay after the government already failed to establish a justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process.

15. The Court should further find that application of the automatic stay violates due process as applied to the Petitioner in this case. The Petitioner was granted release at a bond hearing where the Government presented no specific evidence of why the respective Petitioner should be detained. The IJ in the Petitioner's hearing found by clear and convincing evidence that release should be granted pursuant to bond conditions. The Government invoked the automatic stay unilaterally without offering a word of justification for their detention after being ordered released, and without offering any procedure for challenging the automatic stay. Where, as here, a noncitizen is detained without any process for challenging that detention, this violates due process. *See e.g., Rodriguez v. Marin*, 909 F.3d 252, 256-57 (9th

Cir. 2018) ("[L]iberty is the norm, and detention prior to trial or without trial is the carefully limited exception.") (quoting *Salerno*, 481 U.S. at 755).

II. JURISDICTION AND VENUE

16. Petitioner is detained in civil immigration custody at Frio County at the South Texas Detention Complex, Pearsall, Texas. He has been detained since or about, July 15, 2025. He has no serious criminal record, only one criminal conviction for Class B, reckless driving, in 2023.

17. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*.

18. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

19. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391, because at least one Defendant is in this District, Petitioner is detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

III. REQUIREMENTS OF 28 U.S.C. § 2243, Writ of Habeas Corpus Issuance, Return, Hearing, and Decision

20. The Court either must grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues an

order to show cause, Respondents must file a response "within three days" unless this Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

21. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978). Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

IV. PARTIES

22. Petitioner is 25 years old. He was born in Honduras in 2000 and came to the United States in 2020. Prior to his detention, he was living with and supporting his U.S. citizen wife and two U.S. citizen children in Amarillo, Texas. Petitioner is the subject of a removal proceeding based upon the charges of being present in the U.S. without being "admitted or paroled, or [having] arrived in the [U.S.] at any time or place other than as designated by the Attorney General" under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i).
23. He has been in civil immigration detention since July 15, 2025.
24. Respondent Pamela Bondi is named in their official capacity as the U.S. She is responsible for the administration and policy of the immigration courts, which resulted in the denying of this noncitizen's attempt to seek a custody redetermination from the U.S. Department of Justice under 8 C.F.R. §1003.19.

25. Respondent Kristi Noem is named in their official capacity as the Secretary of U.S. Department of Homeland Security. DHS is a department of the executive branch of the U.S. government that is tasked with, among other things, administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for the actions of ICE; specifically, they are responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for the Office of the Principle Legal Advisor of ICE, and in any effort to detain and remove the Petitioner and as such is a legal custodian of Petitioner.

26. Respondent Todd M. Lyons is named in their official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States and as such Acting Director Lyons is a legal custodian of Petitioner.

27. Respondent Sylvester Ortega is named in their official capacity as the Field Office Director for the San Antonio Field Office of ICE. Director Ortega is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures. Director Ortega is a legal custodian of Petitioner.

28. Respondent Reynaldo Castro is named in their official capacity as the warden of the South Texas Detention Complex. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

29. Respondent Jessica L. Dice is named in her official capacity as the Assistant Chief Counsel that ICE assigned to Petitioner's bond hearing at the Bluebonnet detention center, in Anson,

Texas. She invoked the automatic stay by filing Form EOIR-43, Notice of Intent to Appeal Custody Redetermination with the with the El Paso Immigration Court, pursuant to 8 C.F.R.§ 1003.19(i)(2), on August 13, 2025.

V. FACTUAL ALLEGATIONS

30. Petitioner was detained near his home by ICE agents on July 15, 2025 in Potter County, Texas. ICE agents presented him with, but did not give him a copy of, a Notice to Appear (NTA), which stated that DHS had initiated removal proceedings against him on the following grounds:

> You are an alien present in the United States who has not been admitted or paroled.
> You entered the United States at or near Phoenix, Arizona on or about November 20, 2020; you were not then admitted or paroled after inspection by an Immigration Officer.
> On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:
>
> 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General."

See Exh. 6, NTA, dated July 15, 2025.

31. ICE has held him without bond. Section 236 of the INA is codified at 8 U.S.C. § 1226 and noncitizens held under its authority have a right to have their custody determination reviewed by an IJ. *See id.*

32. On July 28, 2025, counsel for Petitioner submitted a Motion for Bond Determination Hearing before the IJ, it numbers 145 pages, and it includes evidence regarding his ties to the United States to demonstrate that he is neither a flight risk nor a danger to the community and that he is statutorily eligible to be considered for multiple reliefs from removal.

33. A custody and bond determination hearing was held on August 12, 2025, and counsel for ICE argued that Petitioner was not entitled to bond due to the government's assertion that he was detained pursuant to 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226. The IJ—Jessica Miles—at the El Paso Immigration Court determined that Petitioner was eligible for bond under 8 U.S.C. § 1226(a) and determined she thus had jurisdiction to consider a redetermination of bond, and granted him a bond of $5,000. The next day, ICE Office of Chief Counsel through its attorney, Jessica L. Dice, filed notice of intent to appeal that decision to the Board of Immigration Appeals ("BIA"). It uploaded Form EOIR-43 via the Executive Office of Immigration Review (EOIR)'s web-based electronic filing system known as ECAS. Attorney Dice affirms (but the form is unsigned) that she served the Notice of Intent to Appeal on Petitioner's former bond counsel, Iris Albizu "via ECAS" on "8/12/2025." The single-page form that attorney Iris Albizu is able to see on ECAS is unsigned, both for the line ___(Ice Counsel) for the notice itself, and also for the line _____(signature) for service, both are blank. The date at the top reads "08/13/2025." The form recites that "[T]he stay shall lapse if ICE does not file a notice of appeal along with appropriate certification within ten business days of the issuance of the order of the Immigration Judge, or upon ICE's withdrawal of the notice, or as set forth in 8 C.F.R. §1003.6(c)(1)." ECAS is available only to attorneys. A pro se "civil respondent" like Petitioner here cannot register for ECAS. The BIA Practice Manual provides at section 3.2 "Service" that: "Conversely, when DHS is electronically filing, EOIR will provide a notification to DHS users in the DHS Portal as to whether the opposing party is participating in ECAS or requires separate service outside of the ECAS system." If DHS did receive such notification from the BIA in its portal, it did not serve Petitioner. If it did not receive such

notification, Petitioner asks this Court to order DHS to re-serve Petitioner with copies of all documents filed in its appeal, as required by regulation, and in future not upload documents in its bond appeal to ECAS, where he has no counsel to view them, but instead serve him by mail or in person as required by regulation.

34. The Petitioner's family did try to pay the $5,000 bond on August 27, 2025 and August 28, 2025—not having received any notice of a "notice of appeal along with appropriate certification" filed by ICE "within ten business days of the issuance of the [IJ's order]." ICE's online bond payment system, known as CeBonds, would not accept the payment. Petitioner has never yet received proof in the form of a copy of ICE's notice of appeal apparently filed on August 26, 2025 with the BIA, but did receive an appeal receipt mailed to his former bond counsel, Iris Albizu, indicating that ICE had filed an appeal. Attorney Albizu has not entered her representation form as Petitioner's attorney before the BIA, so it is unclear why the BIA would mail such receipt to her, and not to him. Pursuant to 8 C.F.R. § 1003.19(i)(2), ICE's appeal had the effect of automatically staying the Immigration Judge's decision, along with Petitioner's release from detention, for at least 90 days from ICE's notice of appeal, i.e., at least until November 23, 2025. Petitioner is detained by ICE at the South Texas Detention Center in Pearsall, Texas.

35. Petitioner assert that his ongoing detention under the automatic stay regulation abridges his procedural and substantive due process rights, and that the regulation exceeds statutory authority delegated by Congress. His present detention, pursuant to the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2), does not comport with the Constitutional procedural safeguards of due process of law.

36. It has been widely reported that ICE internally released "interim guidance" regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond; specifically, ICE is now arguing that only those already admitted to the U.S. (typically requiring lengthy legal efforts with representation of counsel, such as adjusting status to a legal permanent resident or refugee) are eligible to be released from custody during their removal proceedings, and that all others are subject to mandatory detention under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only extremely limited parole options *at ICE's discretion*. Exh. 1, Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025). This is a reversal of ICE's established practice of releasing from custody the majority of noncitizens in removal proceedings, who are found not to pose a flight risk or a danger to the community, on bond.

37. This novel interpretation means that potentially millions noncitizens who entered the United States without inspection (who have not already been formally admitted or paroled) that are contacted by ICE in the interior of the U.S. will be treated as if they were an "arriving alien" at the border and subject to mandatory detention, regardless of how long they have been present in the United States or other equities (such as complete lack of criminal history or U.S. citizen family members including dependent children). ICE will now argue all of these noncitizens are not even entitled to a bond hearing by an IJ on the issue of release from custody during the pendency of removal proceedings.

38. On September 5, 2025, after DHS invoked its automatic stay and filed its Notice of Appeal to the Board of Immigration Appeals (BIA), the BIA published a decision, *Matter of Yajure-Hurtado*, affirming ICE's argument regarding the jurisdiction of IJ's to review ICE custody determinations for foreign citizens present without admission in the United States, regardless

of whether they are. 29 I&N Dec. 202 (BIA 2025). This ruling directly overrules IJ Jessica Mile's written reasoning in the instant case granting Petitioner bond of $5,000. *See* Exh. 3. Given the DHS's published decision overruling the very reasoning of IJ Miles, any need to allow the administrative appeal of DHS to play out is foreclosed, and would be futile.

39. Petitioner remains in detention and separated from his family and community. He is experiencing significant and deep emotional and mental trauma from this separation from all those he loves. His wife, Ana Rodarte, and the two minor children are struggling to get ready for school without their father's support. The children are experiencing deprivation of their father figure and source of emotional support since July 2025.

40. In addition, Petitioner is unable to support and provide for his family because he is detained and unable to continue as a breadwinner. His wife can speak to him only via pre-paid phone calls. It is too emotional for the young children to communicate with him on the phone, so they have been entirely separated from contact with him this whole time.

41. Petitioner's continued detention separates him from his family, prohibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence, and afford legal representation, among other related harms. His detention makes it difficult for them to access counsel and prepare for the ongoing removal proceedings.

42. He remains detained over seven hours away from his family in Amarillo, and his support system, and continues to be subjected to the aforementioned harms.

VI. LEGAL FRAMEWORK: Due Process Clause

43. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom 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 v. Davis*, 533 U.S. 678, 690 (2001).

44. Due Process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

45. "The fundamental requirement of due process is the opportunity be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process Petitioner is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

A. Immigration and Nationality Act

46. Title 8 of the United States Code, Section 1221 *et seq.*, controls the United States Government's authority to detain noncitizens during their removal proceedings.

47. The INA authorizes detention for noncitizens under four distinct provisions:

1) **Discretionary Detention. 8 U.S.C. § 1226(a)** generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

2) **Mandatory Detention of "Criminal" Noncitizens. 8 U.S.C. § 1226(c)** generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

3) **Mandatory Detention of "Applicants for Admission." 8 U.S.C. § 1225(b)** generally requires detention for certain noncitizen applicants for admission, such as those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the U.S. and are apprehended soon after crossing the border.

4) **Detention Following Completion of Removal Proceedings. 8 U.S.C. § 1231(a)** generally requires the detention of certain noncitizens who are subject to a final removal order during the 90-day period after the completion of removal proceedings and permits the detention of certain noncitizens beyond that period. *Id.* at § 1231(a)(2), (6).

48. The instant case concerns the detention provisions at §§ 1226(a) and 1225(b). Both detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most

recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

49. Following enactment of the IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 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***") (emphasis added).

50. For nearly thirty years, the practice of the government, specifically ICE and Executive Office for Immigration Review, which operate under DHS, was that most individual noncitizens that were apprehended in the interior of the United States after they had been living in the U.S. for more than two years (as opposed to "arriving" at a point of entry, border crossing, or being apprehended near the border and soon after entering without inspection) received a bond hearing. If determined to not be a danger to the community or a flight risk and, as a result, granted a change in custody status, the individuals were released from detention either on their own recognizance or after paying the bond amount set by the IJ in full. 8 U.S.C. § 1226(a)(2)(A).

51. Recently, ICE has—without warning and without any publicly stated rationale—reversed course and adopted a policy of attempting to treat all individual noncitizens that were not previously admitted to the U.S. that are contacted in the interior of the U.S. at any time after

their entry as "arriving" and ineligible for bond regardless of the particularities of their case. As a result, ICE is now ignoring particularities that have historically been highly relevant to determinations whether a noncitizen such remain or custody or be released—such as: when, why, or how they entered the U.S.; whether they have criminal convictions; whether they present a danger to the community or flight risk; whether they have serious medical conditions requiring ongoing care; whether U.S. citizen family members dependent upon them to provide necessary care; or, whether the noncitizen's detention is in the community's best interest. Though no public announcement of this sweeping new interpretation of these statutes was announced, ICE now reasons, and argued in front of the IJ at Petitioner's bond redetermination hearing, that the mandatory detention provision of § 1225(b)(2)(A) applies to all people who enter without inspection who are alleged to be subject to grounds of inadmissibility at § 1182.

52. On September 5, 2025, the Board issued a published decision in a different case, *Matter of Yajure-Hurado*, affirming ICE's reasoning under the "plain language" of the INA that an immigration judge "[d]id not have authority over the bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." The decision cites *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018), which it finds "[held] that the INA "unequivocally mandates that aliens falling within the scope [of section 235(b)(1) and (2)] 'shall' be detained," and that "[u]nlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement" (quoting *Kingdomware Technologies, Inc. v. United States*, 579 U.S. 162, 171 (2016))). 29 I&N Dec. at 220.

53. As a result of ICE's interpretation and practice change, now affirmed by the BIA in *Yajure*, individual noncitizens, including long-time U.S. community members and noncitizens like Petitioner who have had their particular circumstances reviewed and were ordered to be released upon posting bond by an IJ, continue to be detained by ICE. There are many noncitizens now being held in continued ICE detention, even when the IJ did not agree with ICE's interpretation of the statutes and regulations at hand. "The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see also Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) ("the Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' *Jennings*, 583 U.S. at 289, [Petitioner] may be subject to detention ***only*** as a matter of discretion under § 1226(a)") (emphasis added). Courts thus far to have consider the novel interpretation of ICE and the EOIR of the above detention statutes have uniformly rejected it. *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025); *see also Valdez v. Joyce*, 25 Civ. 4627, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025) (ordering immediate release of unlawfully detained noncitizen); *Ercelik v. Hyde*, No. 1:25-CV-11007-AK, 2025 WL 1361543, at *15–16 (D. Mass. May 8, 2025) (same); *Günaydin v. Trump*, No. 25-CV-01151, 2025 WL 1459154, at *10–11 (D. Minn. May 21, 2025) (same); *Cuevas-Guzman v Andrews et al*, 2025 WL 2617256 at *7 (E.D. Cal. 2025); *Alvarez-Martinez v.*

Noem, 2025 WL 2598379 at *4–5 (W.D. Tx 2025); *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025); *Pizarro Reyes v. Raycraft, et al.*, 2025 WL 2609425, at *3 (E.D.Mich., 2025); *Rosado v. Figueroa et al.*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis et al.*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde, et al.*, No. 1:25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Benitez et al. v. Noem et al.*, No. 5:25-cv-02190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025).

54. The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C. § 1226. The government's assertion that Petitioner is detained under § 1225—even though he was arrested and detained under § 1226—is meritless. Petitioner came to be in immigration proceedings as subject to detention pursuant to the authority contained in section 236; (section 236 of the INA is codified at 8 U.S.C. § 1226.). For decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts with § 1226, which applies to noncitizens "already in the country." *Id.* at 289. Petitioner has been in the United States for over nearly 5 years.

55. This new interpretation is now advanced by the government after decades of consistent use to the contrary. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. See, e.g., *Martinez*, 2025 WL 2084238; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7,

2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025). *See also* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite 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").

56. This new interpretation is inconsistent with the plain language of the INA. First, the government disregards a key phrase in § 1225. "[I]n 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[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Martinez*, 2025 WL 2084238, at *2.

57. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of MD-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes.").

58. In other words, the plain language of § 1225 applies to immigrants currently seeking admission into the United States at the nation's border or another point of entry. It does not apply to noncitizens "already present in the United States"—only § 1226 applies in those cases. *See Jennings*, 583 U.S. at 303.

59. When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal quotation marks and citation omitted). And "the words of the statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

60. Second, the government's interpretation would render newly enacted portions of the INA superfluous. "When Congress amends legislation, courts must presume it intends its amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under § 1226(c)—those already present in the United States who have also been arrested, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's position, these individuals are already subject to mandatory detention under § 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions under § 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12.

61. Additionally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, the court generally presumes that the new provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of agency practice

applying § 1226(a) to immigrants like Petitioner, who are present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

62. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Removal hearings for noncitizens under 1226(a) are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

63. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. This Court should reject the DHS's argument, affirmed by the BIA in *Matter of Yajure-Hurtado*, that "a plain reading" of the statutory language of 1225 and 1226 provides Congress's intent that all persons who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b). 29 I&N Dec. at 228.

64. In *Yajure-Hurtado*, the BIA characterized as a "legal conundrum" the idea that a noncitizen's continued unlawful presence means they are not "seeking admission." This Court, however, that a noncitizen's continued presence does not equate with the term "seeking admission," when that noncitizen never attempted to obtain lawful status. This is especially true in light of § 1225's statutory context. The BIA also argued that § 1225(b)(2)(A) does not render superfluous the Laken Riley Act. *Matter of Yajure-Hurado*, 29 I& Dec. at 221–22. But as Petitioner has shown, considering both §§ 1225(b)(2)(A) and 1226(c)(1)(E) mandate detention for inadmissible citizens, whether one includes additional conditions for such

detention does not alter the redundant impact. This Court should reject the statutory interpretation advanced by the BIA in *Yajure-Hurtado*.

65. The Court is moreover not bound by the BIA's decision in *Yajure-Hurtado*. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024) (citing *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803)). Decades of consistent agency practice also support Petitioner's entitlement to a bond under § 1226(a). The government's longstanding practices can inform this Court's determination of what the law is. *Loper Bright*, 603 U.S. at 386. Additionally, respect for Executive Branch interpretations of statutes may be "especially warranted" when the interpretation "was issued roughly contemporaneously with enactment of the statute and remained consistent over time." *Id.*

66. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner. Thus, the DHS's invocation of the automatic stay procedure so it can attempt to enforce its incorrect view of the INA's bond statutes outside of the normal agency appellate process should be enjoined and declared unlawful. The DHS is not following the binding regulation at 8 C.F.R. § 1003.6(c) regarding automatic stays. It is issuing them as a blanket policy wherever an IJ grants a person who entered the U.S. unlawfully a bond. *See, e.g., "I'm Not Coming Home: Trump Policy Holds People in ICE Custody without Bail,"* Jose Olivares, The Guardian, August 30, 2025, available at https://www.theguardian.com/us-news/2025/aug/30/immigration-custody-bail-trump; "*Immigration judge sides with Nebraska ACLU, grants bond for ICE detainee,*" Phillip Catalfamo, August 19, 2025, Nebraska Breaking News/WOWT, available at https://www.wowt.com/2025/08/19/immigration-judge-sides-with-nebraska-aclu-grants-bond-ice-detainee/; *see also* https://ag.ny.gov/press-release/2025/attorney-general-james-leads-coalition-opposing-federal-ice-detention-policy.

67. The DHS is require by regulation to follow the procedures in 1003.6(c), including "filing with the Notice of Appeal a certification by a senior legal official that—(i) The official has approved the filing of the notice of appeal according to review procedures established by DHS; and (ii) The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent." Petitioner asserts that DHS has not complied with this procedure in the instant case, because he has not been served with such proof as required by regulation, see 8 C.F.R. § 1003.3, Notice of appeal: "The appeal must reflect proof of service of a copy of the appeal and all attachments on the opposing party. An appeal is not properly filed unless it is received at the Board, along with all required documents, fees or fee waiver requests, and proof of service, within the time specified in the governing sections of this chapter."

68. Petitioner's case is ripe for review. His only option is to wait for the BIA to take up the underlying matter of DHS's bond appeal, which he has shown is futile since *Matter of Yajure-Hurtado* has made their decision in this matter a foregone conclusion.

69. Petitioner respectfully asserts that 8 CFR § 1003.19(i)(2), which imposes an automatic stay of an immigration judge's custody redetermination order for up to ten days pending the Department of Homeland Security's (DHS) filing of a Notice of Appeal (Form EOIR-43) to the Board of Immigration Appeals (BIA), is ultra vires and invalid. The Immigration and Nationality Act (INA), particularly 8 U.S.C. § 1226, sets forth the statutory framework for detention and release of noncitizens, including the right to a prompt bond hearing before an immigration judge. Nowhere in the INA does Congress authorize the executive branch to

impose an automatic stay of a custody redetermination order, nor does it provide for a period during which DHS may unilaterally delay a noncitizen's release by merely indicating an intent to appeal. The automatic stay provision in 8 CFR § 1003.19(i)(2) thus creates a substantive restriction on the statutory right to release that is not contemplated by, and is inconsistent with, the INA's text and structure.

70. By promulgating this regulation, the agency has exceeded the authority delegated to it by Congress, effectively rewriting the statutory scheme to permit DHS to prolong detention without judicial determination or individualized findings. This regulatory overreach undermines the statutory guarantee of prompt review and release, and is inconsistent with the principles of separation of powers and the non-delegation doctrine. Accordingly, the Court should find that 8 CFR § 1003.19(i)(2) is ultra vires, and that the automatic stay provision is invalid as applied to petitioner's continued detention.

71. In addition to being ultra vires, the automatic stay provision in 8 CFR § 1003.19(i)(2) violates the due process rights of noncitizens by subjecting them to continued detention solely on the basis of DHS's intent to appeal, without any individualized assessment of flight risk or danger. The regulation allows DHS to unilaterally trigger a mandatory stay of release for up to ten days, and potentially longer if a notice of appeal is filed, irrespective of the immigration judge's determination that the noncitizen is eligible for release on bond. This automatic and prolonged detention deprives noncitizens of their liberty without adequate procedural safeguards, contravening the fundamental requirements of due process under the Fifth Amendment. The Supreme Court has repeatedly recognized that civil detention must be accompanied by meaningful process and individualized findings; yet, 8 CFR § 1003.19(i)(2) permits detention based on agency procedure rather than judicial determination. As a result,

noncitizens are forced to remain in custody for an extended period, suffering significant harm and disruption to their lives, without any statutory or constitutional justification. This regulatory scheme is not only beyond the authority granted by Congress, but also fundamentally unfair and unconstitutional.

B. Board of Immigration Appeals

72. The BIA's appellate process does not offer a meaningful or timely opportunity to correct Respondents' errors. Neither the habeas statute § 2241 nor the relevant sections of the INA require petitioners to exhaust administrative remedies before filing petitions for habeas corpus. *See Liang v. Ashcroft,* 370 F.3d 994, 998 (9th Cir. 2004) (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)).

73. Even if the Court did not invoke prudential exhaustion, awaiting the DHS's appeal result will be futile. The BIA has already decided on September 5, 2025, that persons present in the United States without inspection are "applicants for admission," and its view, "[A] pplicants for admission remains such unless an immigration officer determines that they are "clearly and beyond a doubt entitled to be admitted." INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). Failing to clearly and beyond a doubt demonstrate that they are entitled to admission, such aliens "shall be detained for a proceeding under section 240." Id.; see also *Jennings*, 583 U.S. at 288." *Matter of Yajure-Hurtado*, 29 I&N Dec. at 228.

74. Moreover, delaying to await the BIA's foregone conclusion would severely prejudice. According to the agency's own data, during fiscal year 2024, the BIA's average processing time for a bond appeal was 204 days, approximately seven months. Meaning for an average case where bond was granted in July 2025 it would not be heard until February 2026. *See Vazquez v. Bostock*, 3:25-CV-05240-TMC (D. W.D. Wash. May 2, 2025).

75. The 204 days is only for the average case. Cases can take longer or shorter, meaning that there is no definite timeline for resolution and release.

76. The months a person waits for appellate review deprives them of time with their children, spouses, family and community members, and liberty.

77. Their family and community, who are often U.S. citizens or lawful permanent residents, are similarly deprived of the love, care, financial support, and meaningful contributions the detained person provides.

78. Detained individual noncitizens are often incarcerated in jail, or jail-like, settings. They are forced to sleep in communal spaces, receive inadequate medical care, and subjected to other degrading treatment.

79. Here, the DHS is certain to succeed in its appeal, because the BIA published *Matter of Yajure-Hurtado* as noted above on September 5, 2025. It would be futile to await the BIA's months-long appellate review. The Petitioner if forced to wait would have spent months of unnecessary time in detention and suffered the harm outlined above.

80. Failing to provide timely appellate review of erroneous interpretations of the INA violates the Due Process Clause. Here, moreover, even when the BIA finally gets to review of Petitioner's case, the outcome is a foregone conclusion in light of *Matter of Yajure-Hurtado* because the BIA has affirmed DHS's erroneous reading of the INA's detention framework.

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution

81. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

82. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

83. Mr. Oseguera's continued detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.

84. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that "[n]o person shall…be deprived of life, liberty, or property without due process of law." As a noncitizen who shows well over "two years" physical presence in the United States (indeed he has nearly 5 years), Mr. Oseguera is entitled to Due Process Clause protections against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). Any deprivation of this fundamental liberty interest must be accompanied not only by adequate procedural protections, but also by a "sufficiently strong special justification" to outweigh the significant deprivation of liberty. *Id.* at 690.

85. Respondents have deprived Mr. Oseguera of his liberty interest protected by the Fifth Amendment by invoking the automatic stay under 8 C.F.R. § 1003.19(i).

86. Petitioner is being detained due to the operation of the automatic-stay provision in 8 C.F.R. § 1003.19(i). The regulation in unconstitutional. It cannot exist in concert with the fundamental guarantee of the U.S. Constitution, to be free from government custody. U.S. Const. Amend. V.

87. The automatic stay regulation violates the procedural due process rights of noncitizen detainees, both facially and as applied. It lacks any reference to or establishment of any

procedure for challenging its invocation. The Court should find that there can be no possible application of this regulation that would satisfy due process where it purports to authorize the most severe and recognized deprivation of liberty without a hint of a process to challenge such deprivation. In contrast, as the Supreme Court in *Demore* highlighted in upholding the mandatory detention of a noncitizen convicted of a crime under § 1226(c), "process" has been built into that mandatory detention scheme. For example, § 1226(c) applies to detainees whose convictions were generally "obtained following the full procedural protections [the] criminal justice system offers." *Demore v. Kim*, 538 U.S. 510, 513 (2003); *id.* at 525 n.9, (noting that "respondent became 'deportable' under § 1226(c) only following criminal convictions that were secured following full procedural protections"). And if mandatory detention becomes unnecessarily prolonged in that context, the due process' prohibition of arbitrary government detention could entitle a detainee "to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified." *Id.* at 532 (Kennedy, J., concurring). Detention pursuant to the automatic stay after the government already failed to establish a justification for it, with no process afforded to challenge the detention as arbitrary, is facially violative of procedural due process.

88. The Court should further find that application of the automatic stay violates due process as applied to the Petitioner in this case. The Petitioner was granted release at a bond hearing where the Government presented no specific evidence of why the respective Petitioner should be detained. The IJ in the Petitioner's hearing found by clear and convincing evidence that release should be granted pursuant to bond conditions. The Government invoked the automatic stay unilaterally without offering a word of justification for their detention after being ordered released, and without offering any procedure for challenging the automatic

stay. Where, as here, a noncitizen is detained without any process for challenging that detention, this violates due process. *See e.g., Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018) ("[L]iberty is the norm, and detention prior to trial or without trial is the carefully limited exception.") (quoting *Salerno*, 481 U.S. at 755)..

89. Mr. Oseguera's detention is improper because he has been deprived of his substantive Due Process rights. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "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.' " *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

90. Respondents have not attempted to show any "special justification" or compelling governmental interest which would outweigh Petitioner's constitutional liberty. To the extent the government may contend that continued detention is necessary to secure Petitioner's presence for his immigration proceedings, such a concern is not well-placed. Here, the IJ determined Petitioner was not a danger or flight risk, and imposed a bond and other conditions, including his continued appearance at court dates, as conditions of his bond.

91. Additionally, as explained above, the automatic stay provision applies only in situations like here where an IJ has already determined an individual should be released on bond. The

governmental interest in the continued detention of these least-dangerous individuals, in contravention of the order of a neutral fact-finder, does not outweigh the liberty interest at stake. Accordingly, this Court should find the regulation Respondents' invocation of the automatic stay provision to detain Petitioner has violated his substantive due process right.

92. Here, the DHS, affirmed by the BIA, has determined, improperly, that all persons present in the U.S. who entered without admission are ineligible for bond. *See* Exh. 1. It is thus a foregone conclusion that the BIA will reverse the IJ's decision here, and find Petitioner ineligible for bond. Like the accused in criminal cases, habeas is proper. See *Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458 (1938); *Burns v. Wilson,* 346 U.S. 137, 154 (1953).

93. Respondents' actions in detaining Mr. Oseguera without any legal justification violate the Fifth Amendment.

94. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community and family.

95. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

SECOND CAUSE OF ACTION
Violation of Immigration and Nationality Act

96. Petitioner repeats and incorporates by reference all allegations in the above paragraphs as though set forth fully herein.

97. Petitioner was detained pursuant to authority contained in section 236 of the INA; section 236 is codified at 8 U.S.C. § 1226. Despite this, the IJ and the DHS now find that he is detained subject to 8 U.S.C. § 1225(b)(2)

98. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. Mandatory detention does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

99. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens, such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

100. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

THIRD CAUSE OF ACTION:
ADMINISTRATIVE PROCEDURE ACT

101. Petitioner re-alleges and incorporates by reference the paragraphs above.

102. Respondents' continued efforts to deny him bond violate the INA, Administrative Procedures Act (APA), and the U.S. Constitution.

103. As set forth in Count Two, federal regulations and case law provide the procedure for a respondent in removal proceedings like him to seek a bond redetermination by an IJ. The regulations also provide a procedure that DHS must follow if it wishes to invoke an automatic stay. If the Court determines the regulation is constitutional, it should still find that DHS did not follow the required procedures. It did not provide the BIA with proof of certification by a senior DHS official as required by 8 C.F.R. §1003.6(c). It did not serve him as required by regulation. It did not invoke the stay with any justification or required

review. It is part of its nationwide blanket policy of invoking the stay, which is ultra vires and is contrary to law.

104. In being denied the opportunity to return to his family, and pursue Withholding of Removal in a non-detained court setting where he is free to gather the necessary proof and expert country condition evidence, Mr. Oseguera would be deprived of the right to freedom to lawfully pursue his rights in this civil matter. The Government's "no-review" provisions are a violation of his procedural and substantive due process and without any statutory authority. There is no time-frame or procedure for requesting DHS to itself review its custody decision, and removal proceedings in this case will proceed during that time while Plaintiff remains in custody.

105. The actions by Respondents would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period and would be in violation of the INA and its regulations. These actions by Respondents violate the APA. Under the APA, this Court may hold unlawful and set aside an agency action which is "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of DHS custody decision for arriving aliens in removal proceedings are in violation of substantive and procedural due process as guaranteed by the Fifth Amendment to the United States Constitution. It is *ultra vires* because it exceeds the authority granted ICE by Congress at 8 U.S.C. § 1226(a). In addition, the automatic stay regulation at 1003.19(i)(2) violates substantive and procedural due process, as argued above. For these reasons, this Honorable Court should order the Respondents to release him during the pendency of his

removal proceedings, or to order ICE to honor the IJ's August 12, 2025 decision that he may be released on payment of a $5,000 bond.

FOURTH CAUSE OF ACTION:
STAY OF REMOVAL CLAIM

106. Petitioner re-alleges and incorporates by reference the paragraphs above.

107. The invocation of the automatic stay, disabling his ability to post the IJ's $5000 bond grant, followed by removal of Mr. Oseguera from the United States would cause him irreversible harm and injury because DHS has mis-classified him as subject to mandatory detention, and it is certain based on the BIA's decision in *Matter of Yajure-Hurtado* that the DHS's appeal will be granted, making him unable to post the IJ's $5,000 bond.

108. The Court should grant the stay of Mr. Oseguera's removal to protect his statutory rights under the INA and the APA. In attempting to assert his rights, the Government has railroaded him and deprived him of freedom and liberty to contest his removal while free on the bond that the IJ ordered on August 12, 2025.

FIFTH CAUSE OF ACTION
SUSPENSION CLAUSE CLAIM

109. Petitioner re-alleges and incorporates by reference the paragraphs above.

110. If 8 U.S.C. § 1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. Oseguera the opportunity for meaningful review of the unlawfulness of his detention and removal.

111. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's

entitlement to the writ." *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. Oseguera satisfies these three requirements and may invoke the Suspension Clause.

112. First, although Mr. Oseguera is not a U.S. citizen or resident, he has lived here for nearly 5 years, and he qualifies under the INA to seek Withholding of Removal, because he has no barring criminal convictions, because he will establish a well-founded fear of persecution in Honduras if he were removed there. Mr. Oseguera has significant family connections in the United States, including his wife, Ana Rodarte, who is a U.S. citizen. All of which establishes a substantial legal relationship with the United States.

113. Mr. Oseguera satisfies the second factor because he was apprehended by DHS and remains detained in the United States, without the possibility of bond.

114. Finally, there are no serious, practical obstacles to resolving this present matter. This Court is equipped to deciding whether Mr. Oseguera is entitled to the writ.

115. There is no adequate alternative to a habeas petition. The invocation by ICE of the automatic stay regulation means he is unable to post the IJ's $5,000 bond, such that he may return to his family and pursue withholding of removal relief, deprives him of his constitutional rights. The BIA appeal by the DHS of the $5,000 bond grant is certain to be granted, as shown. There is no other forum to adequately and expeditiously review these issues.

SIXTH CAUSE OF ACTION:
INJUNCTIVE RELIEF

116. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

117. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir.

1989). "To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey,* 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

118. Respondents' actions have caused Petitioner harm that warrants immediate relief. The Respondents have not served him with a copy of their Notice of Appeal to the BIA, Form EOIR-26, nor the senior DHS legal official's certification, contrary to regulation. Respondents now invoke the automatic stay per the Todd Lyons directive of July 8, 2025 to all persons it believes are present without admission without individualized consideration.

VIII. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE's invocation of the automatic stay, the refusal to allow Petitioner to post bond, and his ongoing detention of Mr. Oseguera was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk, because the DHS misreads the statutory bond scheme, and because the automatic stay regulation itself is ultra vires and unconstitutional.

(3) Issue an order directing Respondents to show cause why the writ should not be granted;

(4) Order Respondents to file with the Court a complete copy of the administrative file from the Department of Justice and the Department of Homeland Security, including proper service of documents in its appeal that have not been served, and to show cause why their failure to serve should not result in their appeal's dismissal;

(5) Enjoin ICE from transferring Mr. Oseguera outside of the Western District of Texas while this matter is pending;

(6) Grant the writ of habeas corpus ordering Respondents to release Mr. Oseguera on his own recognizance, parole, or reasonable conditions of supervision, or order the Respondents to immediately accept his posting of the $5,000 bond granted by the IJ on August 12, 2025;

(7) Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, as amended, 28 U.S.C. §2412; undersigned counsel recognizes the Fifth Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. At least two Circuit Courts and two district courts have disagreed with *Barco*. *See Vacchio v. Ashcroft,* 404 F.3d 663, 670-72 (2d Cir. 2005); *In re Petition of Hill,* 775 F.2d 1037, 1040-41 (9th Cir. 1985); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W. D. Penn. 2024): *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (Dist. Colo. 2023). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

(8) Grant any other relief that this Court deems just and proper.

Respectfully submitted on this 15th day of August, 2025

/s/ Stephen O'Connor

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Elmer Oseguera Melgar, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 15th day of September, 2025.

s/ Stephen O'Connor
Stephen O'Connor