UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

GARCIA-ROSALES, Alejandro, **Petitioner,** v. **KRISTI NOEM**, Secretary of the United States Department of Homeland Security, in her official capacity; **U.S. Department of Homeland Security**; **TODD LYONS**, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **U.S. Immigration and Customs Enforcement**; **JOHN CANTU**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Phoenix, Arizona Field Office, in his official capacity; **LUIS ROSA, JR.,** Warden of the Central Arizona Florence Correctional Complex, in his official capacity; **SIRCE OWEN**, Acting Director of EOIR, in her official capacity; **Executive Office for Immigration Review**, Respondents.	**Case No.** **Agency No.** [redacted] **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

The federal government is unlawfully detaining Petitioner Alejandro Garcia-Rosales in Florence, Arizona, despite an Immigration Judge (IJ) ordering him released on 7/11/2025 upon the posting of a $10,000 bond.[1] DHS invoked the automatic stay under 8 C.F.R. § 1003.19(i)(2)[2] and appealed.[3] Petitioner

[1] *See,* Exhibit 1, Order Granting Bond.
[2] *See,* Exhibit 2, Notice of ICE Intent to Appeal (Automatic Stay).
[3] *See,* Exhibit 3, Notice of Appeal.

separately moved to lift the automatic stay.[4]

Mr. Garcia-Rosales has been living in the United States continually since 2006, when he entered from Mexico at the age of three.[5] DHS argued he was subject to "mandatory detention" under 8 U.S.C. § 1225 (b)(2)(A)[6] by virtue of being an "applicant for admission" under § 1225 (a)(1), pursuant to a 7/8/2025 change in policy.[7] In essence, Respondents now argue that ***any*** noncitizen not previously admitted to the United States is subject to mandatory detention, without the possibility of a bond hearing. [8]

But such a reading ignores the plain statutory language of both § 1225 and § 1226, violates rules of statutory construction, and is contrary to a number of federal court rulings that have rejected this exact conclusion. *See, Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025) [9] (holding that statutory construction and existing federal caselaw mandate the conclusion that an "applicant for admission" is different than a noncitizen already residing in the country); *Lazaro Maldonado Bautista et al. v. Kristi Noem, Secretary, Department of Homeland Security, et al.*, U.S. District Court for the Central District of California, Case No. 5:25-cv-01873-SSS-BFM[10] (Temporary Restraining Order

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[4] *See,* Exhibit 4, Motion To Lift Automatic Stay Imposed Under 8 C.F.R. § 1003.19(i)(2).

[5] *See,* Exhibit 5, Petitioner's Bond Hearing Exhibits.

[6] *See,* Exhibit 3, Notice of Appeal at page 5.

[7] *See,* Exhibit 6, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025).

[8] *See,* Exhibit 5, DHS Brief on Appeal.

[9] *See,* Exhibit 7, *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025) (holding that statutory construction and existing federal caselaw mandate that an "applicant for admission" is different than a noncitizen already in the country).

[10] *See* Exhibit 8, Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et al. v. Santacruz, Jr., on behalf of themselves and others similarly situated, et al.*, Plaintiffs-Petitioners, v. *Kristi Noem, Secretary, Department of Homeland Security, et al.*, Defendants-Respondents, U.S. District Court for the Central District of California, Eastern Division, Case No. 5:25-cv-01873-SSS-BFM.

entered 7/28/2025 because "Respondents fail to articulate any valid justification, legal or otherwise, for the application of § 1225 to Petitioners as 'applicants for admission'"); *Francisco T. v. Bondi, et al.,* U.S. District Court for the District of Minnesota Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], [11] (Preliminary Injunction entered 8/29/2025 because "[n]oncitizens who have been residing in the United States but who entered without inspection have not, historically, been considered to still be "arriving" under section 1225(b)"); *Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer, Lincoln County Sheriff, in his official capacity, et al.,* Case No. 4:-cv-031580JFB-RCC [CM/ECF Doc. 34 at 1, 3][12] (August 14, 2025 Memorandum and Order granting the Petitioner's immediate release and her writ of habeas corpus on the ground "permitting DHS to unliterally extend the detention of an individual, in contravention of the findings of an agent (the IJ) properly delegated the authority to make such a determination, 8 C.F.R § 1003.19(i)(2) exceeds the statutory authority Congress gave to the Attorney General. 'Because this back-ended approach effectively transforms a discretionary decision by the immigration judge to a mandatory detention imposed by [DHS], it flouts the express intent of Congress and is ultra vires to the statute.' Zavala v. Ridge, 310 F. Supp. 2d 1071, 1079 (N.D. Cal. 2004)."); *Romero v. Hyde, et al.,* U.S. District Court for the District of Massachusetts Case No. 1:25-cv-11631-BEM[13] (Order entered 8/19/2025 granting petition for writ of habeas corpus "[O]nce an alien enters the country, the legal

circumstance changes, for the Due Process Clause applies to all 'persons' within the United States,

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[11] *See* Exhibit 9, Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.,* Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota.

[12] *See* Exhibit 10, Memorandum and Order entered 8/14/2025 in *Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer, Lincoln County Sheriff, in his official capacity, et al.,* Case No. 4:-cv-031580JFB-RCC [CM/ECF Doc. 34 at 1, 3].

[13] *See* Exhibit 11, Order entered 8/19/2025 in *Romero v. Hyde, et al.,* Case No. 1:25-cv-11631-BEM [CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts.

including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to read these statutes "against [that] backdrop." *See Hewitt v. United States*, 605 U.S. —, 145 S. Ct. 2165, 2173 (2025).").

The Bureau of Immigration Appeals, perhaps recognizing the increasing swell of adverse decisions, recently issued Interim Decision #4125, affirming an IJ's determination that he did not have authority to issue a bond because noncitizens present in the United States without admission are "applicants for admission" as defined under section § 1225(b)(2)(A), and must therefore be detained for the duration of their removal proceedings. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).[14]

The Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) made clear that federal courts must independently interpret statutes and no longer defer to an Executive Branch agency's legal interpretations. *See Loper Bright*, 603 U.S. at 412-13. In expressly overruling deference to agency interpretations under *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984), federal judges are restored to their Judicial Branch role of "us[ing] every tool at [their] disposal to determine the best reading of the statute." *Loper Bright*, 603 U.S. at 400.

This Court is in the best position to determine that Mr. Garcia-Rosales was properly granted release on bond and that DHS improperly DHS invoked the automatic stay under 8 C.F.R. § 1003.19(i)(2).[15] The petition for writ of habeas corpus should be granted.

JURISDICTION & CUSTODY

1. Petitioner Alejandro Garcia-Rosales is in the physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security.

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[14] See, Exhibit 2, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

[15] *See*, Exhibit 2, Notice of ICE Intent to Appeal (Automatic Stay).

2. Petitioner is currently detained in Florence, Arizona and is under the direct control of Respondents and their agents.

3. This action arises under the Constitution of the United States and 8 U.S.C. § 1101 et seq.

4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, and the common law. 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.

5. Congress has preserved judicial review of challenges to immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged immigration detention).

6. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

7. The Court has inherent power to release the petitioner pending review of his petition. *See Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986).

VENUE

8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in this Court, the federal judicial district in which Petitioner is currently is in custody.

9. Venue is also properly in this Court pursuant to 18 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States.

PARTIES

10. Petitioner Alejandro Garcia-Rosales was born on [redacted] in Mexico and he is currently detained by ICE in Florence, Arizona.

11. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, Respondent Noem is a legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

12. Respondent DHS is a federal executive agency responsible for, among other things, enforcing federal immigration laws and overseeing lawful immigration to the United States. Respondent DHS is a legal custodian of Petitioner.

13. Respondent Todd M. Lyons is Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement ("ICE"). Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his official capacity.

14. Respondent ICE is a federal law enforcement agency within DHS. Respondent ICE is responsible for the enforcement of immigration laws, including the detention and removal of immigrants. Respondent ICE is a legal custodian of Petitioner.

15. Respondent John Cantu is Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Phoenix, Arizona Field Office. Respondent Cantu is a legal custodian of Petitioner. Respondent Cantu is sued in his official capacity.

16. Respondent Luis Rosa Jr. is the Warden of the Central Arizona Florence Correctional Complex. Respondent Rosa is a legal custodian of Petitioner. Respondent Rosa is sued in his official capacity.

17. Respondent EOIR is a federal agency within the U.S. Department of Justice. Respondent EOIR is responsible for the administration of immigration courts, and acceptance of forms and petitions related to adjudication of immigration claims, as well as motions for bond.

STATEMENT OF FACTS

18. Petitioner Alejandro Garcia-Rosales was born on [redacted] and he crossed into the United States from Mexico when he was three years old.[16]

19. In July of 2021 he filed a Consideration of Deferred Action for Childhood Arrivals (DACA), Form I821D, with the U.S. Citizenship and Immigration Services (USCIS), which remains pending. [17]

20. Respondent has no criminal record; no gang affiliations; and no health issues.[18]

21. DHS encountered the respondent on June 26, 2025, following a traffic stop, and took him into custody that same day. [19]

22. Respondents detained Petitioner at the Florence Detention Center in Arizona after his arrest where he remains in custody. [20]

23. On July 11, 2025, a custody redetermination hearing was held in Florence, Arizona, where Petitioner submitted evidence, including a copy of his Mexican Birth Certificate, his two sisters' American Birth Certificates, his U.S. elementary and high school diplomas, vaccination reports, a personal statement, and 24 good character letters from friends. [21]

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[16] *See,* Exhibit 7, Petitioner's Bond Hearing Exhibits.
[17] *See,* Exhibit 7, Petitioner's Bond Hearing Exhibits.
[18] *See,* Exhibit 8, Respondent's Bond Hearing Exhibits.
[19] *See,* Exhibit 8, Respondent's Bond Hearing Exhibits.
[20] *See,* Exhibit 8, Respondent's Bond Hearing Exhibits.
[21] *See,* Exhibit 7, Petitioner's Bond Hearing Exhibits.

24. DHS submitted its evidence,[22] which included a Form I-213, Record of Inadmissible/Deportable Alien, which contained the respondent's prior immigration history.

25. The IJ issued a preliminary order on July 11, 2025 granting release upon the posting of a $10,000.00 bond.[23]

26. In the written order the IJ specifically found that Petitioner posed no danger to property or persons if released and held that a $10,0000.00 bond would mitigate any flight risk. [24]

27. DHS filed a Form EOIR43 Notice of Intent to Appeal, also known as an Automatic Stay of Release, on July 11, 2025 in order to keep Petitioner from being released.[25]

28. DHS filed its Notice of Appeal to BIA on July 21, 2025.[26]

29. DHS filed its Brief on Appeal at the BIA on August 15, 2025.[27]

30. Petitioner filed a Motion To Lift Automatic Stay Imposed Under 8 C.F.R. § 1003.19(i)(2) at the BIA on August 21, 2025.[28]

31. Petitioner filed his Response Brief on Appeal at the BIA on August 19, 2025.[29]

32. Briefing is now complete at the BIA.

33. Petitioner has exhausted any and all administrative remedies to the extent feasible.

LEGAL FRAMEWORK

34. "'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

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[22] *See*, Exhibit 8, Respondent's Bond Hearing Exhibits.
[23] *See*, Exhibit 1, Order Granting Bond.
[24] *See*, Exhibit 1, Order Granting Bond.
[25] *See*, Exhibit 2, Notice of ICE Intent to Appeal (Automatic Stay).
[26] *See*, Exhibit 5 - Notice of Appeal to BIA.
[27] *See*, Exhibit 5, DHS Brief on Appeal.
[28] *See*, Exhibit 4, Motion To Lift Automatic Stay Imposed Under 8 C.F.R. § 1003.19(i)(2).
[29] *See*, Exhibit 9, Petitioner's Response Brief on Appeal.

custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects in immigration cases. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

35. Due process thus requires "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." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

36. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.; Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification.

37. Congress has granted the Attorney General discretion to decide whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C. § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19, 1236.1.

38. The "automatic stay" provision of 8 C.F.R. § 1003.19(i)(2) prevents noncitizens from posting bond and being released even where IJs have rejected DHS's unlawful reinterpretation of § 1225(b)(2) and have granted bond.

39. On 7/8/2025 DHS adopted this new position on mandatory detention for noncitizens who have been residing in the United States, [30] despite several federal courts having rejected this exact conclusion. For example, on July 28, 2025, the U.S. District Court for the Central District of California, Eastern Division, issued a Temporary Restraining Order (TRO) enjoining DHS from categorically denying initial § 236(a) bond hearings to respondents in § 240 proceedings under

[30] *See,* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025).

DHS's July 8, 2025 7/8/25 DHS Guidance Notice. *See, Lazaro Maldonado Bautista et al. v. Santacruz, Jr., et al.*[31]

40. On August 29, 2025, the U.S. District Court for the District of Minnesota, issued an Order for Injunctive Relief against four of the same Respondents named in this case, enjoining them from denying that petitioner – who had been present in the U.S. for ten years - a bond hearing. That Court found that he "more clearly falls under a plain text reading of section 1226(a). As other courts have observed, "[t]aken together these two statutes principally govern the detention of non-citizens pending removal proceedings—section 1225 governs detention of noncitizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'" *Francisco T. v. Bondi, et al.*, Case No. 0:25-cv-03219-JMB-DTS [CM/ECF Doc. 17] Filed 08/29/25, Page 7-8. [32]

41. On August 14, 2025, the U.S. District Court for the District of Nebraska issued a Memorandum and Order granting the Petitioner's immediate release and her writ of habeas corpus on the ground "the government is unlawfully detaining Petitioner in violation of her Due Process rights by invoking a unliteral automatic stay of the bond a duly appointed Immigration Judge determined was appropriate." [33] *See, Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer,*

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[31] *See* Exhibit 10, Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et al. v. Santacruz, Jr., on behalf of themselves and others similarly situated, et al.*, Plaintiffs-Petitioners, v. *Kristi Noem, Secretary, Department of Homeland Security, et al.*, Defendants-Respondents, U.S. District Court for the Central District of California, Eastern Division, Case No. 5:25-cv-01873-SSS-BFM.

[32] *See* Exhibit 11, Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.*, Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota.

[33] *See* Exhibit 12, Memorandum and Order entered 8/14/2025 in *Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer, Lincoln County Sheriff, in his official capacity, et al.*, Case No. 4:-cv-031580JFB-RCC [CM/ECF Doc. 34 at 1, 3].

Lincoln County Sheriff, in his official capacity, et al., Case No. 4:-cv-031580JFB-RCC [CM/ECF Doc. 34 at 1, 3].

42. Also, in the Tacoma, Washington, immigration court, IJs previously stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, reasoning such people are subject to mandatory detention under § 1225(b)(2)(A). There, in granting preliminary injunctive relief, the U.S. District Court for the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025).[34]

43. DHS's interpretation defies the INA. As the *Rodriguez Vazquez* court and other courts explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to persons who have resided in the United States for more than 2 years – like Petitioner.

44. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Just this year, Congress enacted subparagraph (E) in the Laken Riley Act to exclude certain noncitizens who entered without inspection from § 1226(a)'s default bond provision. Subparagraph (E)'s reference to persons inadmissible under § 1182(6)(A), i.e., persons inadmissible for entering without inspection, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez*

[34] *See* Exhibit 13, Order entered 8/19/2025 in *Romero v. Hyde, et al.,* Case No. 1:25-cv-11631-BEM [CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts.

Vazquez, 2025 WL 1193850, at *12 (*citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

45. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A); *see also Diaz Martinez*, 2025 WL 2084238, at *8 ("'[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.'" (*quoting Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958))). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 at 287.

46. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. Because Petitioner has no criminal record, he was arrested and detained under Section 1226(a).

47. Indeed, in 1997, after Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that:

> Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.

62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection ***were*** eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

48. Here, DHS actually charged Petitioner under Section 1226(a), as set forth in DHS's NTA.[35]

49. DHS initially detained Petitioner without bond, but Petitioner then requested a bond redetermination hearing in front of an IJ.[36]

50. Petitioner emphasized his strong ties to the community and submitted multiple letters of support from family and friends.[37]

51. DHS did not argue that Petitioner is a flight risk nor danger to the community; rather DHS argued for the first time that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), which governs the inspection process for noncitizen "applicants for admission"—new arrivals to the country.

52. In accordance with decades of practice, the IJ rejected DHS's novel argument that Petitioner is subject to mandatory detention. The IJ also made specific findings of fact that Petitioner is not a danger or substantial flight risk and ordered Petitioner be released on $10,000.00 bond. $10,000 bond.[38]

53. DHS immediately filed a Form EOIR-43 "Notice of Intent to Appeal the Custody Redetermination," unilaterally triggering the automatic stay provision of 8 C.F.R. § 1003.19(i)(2). [39]

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[35] *See,* Exhibit 6, Notice to Appear (NTA).
[36] *See,* Exhibit 7, Petitioner's Bond Hearing Exhibits.
[37] *See,* Exhibit 7, Petitioner's Bond Hearing Exhibits.
[38] *See,* Exhibit 1, Order Granting Bond.
[39] *See,* Exhibit 2, Notice of ICE Intent to Appeal (Automatic Stay).

54. Filing that form blocked the IJ's order, at least for the pendency of the appeal to the BIA.

55. In other words, DHS—the prosecutor—believes it is not bound by the IJ's determination. The prosecutor disagreed with the IJ's decision and unilaterally overrode the order by filing a simple Form EOIR-43.

56. Petitioner now remains in custody in contravention of the IJ's order. DHS's appeal to the BIA will take months. And although regulations provide that the automatic stay will lapse in 90 days absent a BIA decision on the appeal, 8 C.F.R. § 100.36(c)(4), there are multiple avenues for extension. For example, if the BIA does not issue a decision in the 90-day window, DHS can then seek an additional discretionary stay from the BIA. 8 C.F.R. § 1003.6(c)(5). The automatic stay remains in effect for another 30 days while the BIA decides whether to grant a discretionary stay. Id.

57. Meanwhile, Petitioner remains in custody and his conditions of confinement are indistinguishable from criminal incarceration: He is separated from family, housed in a facility with criminal defendants, and subject to the Florence Detention Center's detention rules.

58. Respondent's use of the automatic stay regulation is also an ultra vires regulation that unlawfully grants authority to DHS that Congress has delegated only to the Attorney General.

59. Here, an IJ has already determined that Petitioner does not pose a danger to persons or property if released and that a bond of $10,000.00 was sufficient to mitigate any risk of flight.

60. Nonetheless, DHS appealed and invoked the automatic stay to prevent Petitioner's release on bond.

CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF
Violation of Fifth Amendment – Substantive Due Process

61. Petitioner realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

62. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law," including noncitizens. U.S. Const. amend. V.

63. Substantive due process asks whether a person's life, liberty, or property is deprived without sufficient purpose. There is no question that Petitioner has been deprived of his liberty in this case.

64. The government's continued detention of Petitioner is not supported by any special interest or compelling justification that outweighs his liberty interest.

65. Petitioner's ongoing detention - when he has already been found by an IJ not to be a danger to persons or property and that a bond will mitigate any flight risk - constitutes prolonged detention and violates his substantive due process rights.

SECOND CLAIM FOR RELIEF
Violation of Fifth Amendment Right - Procedural Due Process

66. Petitioner realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

67. The Due Process Clause of the Fifth Amendment guarantees Petitioner the right to procedural due process in seeking a bond redetermination and the government may not unreasonably restrict this right.

68. The government's knowing misclassification of Petitioner as an "applicant for admission" under § 1225 in order to justify its argument for mandatory detention is not supported by any special interest or compelling justification that outweighs Petitioner's liberty interest.

69. The government's invocation of the of the "automatic stay" set forth in 8 C.F.R. § 1003.19(i)(2) in order to detain Petitioner after an IJ specifically found after an evidentiary hearing that he was not a danger to persons or property and that he could be released upon posting a $10,000 bond violates Petitioner's rights to procedural due process.

70. The continued detention of Petitioner is not supported by any special interest or compelling justification that outweighs his liberty interest.

THIRD CAUSE OF ACTION
Ultra Vires Regulation

71. Petitioner realleges and incorporates herein the allegations contained in the preceding paragraphs of the petition as if fully set forth herein.

72. Congress gave the Attorney General authority to detain or release noncitizens, pending their removal proceedings. The Attorney General has delegated that authority to IJs.

73. The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), purports to give DHS the authority to unilaterally override the IJ's decision on bond determinations. It is unlawful and ultra vires.

PRAYER FOR RELIEF

WHEREFORE Petitioner Alejandro Garcia-Rosales respectfully requests that the Court grant the following relief:

1) Assume jurisdiction over this matter;
2) Order the immediate release of Petitioner pending these proceedings, pursuant to the Court's inherent powers;

3) If Petitioner is not immediately released, order Respondents not to transfer Petitioner out of this District during the pendency of these proceedings, to preserve jurisdiction;
4) Declare that Petitioner's detention violates the Fifth Amendment and is ultra vires;
5) Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody in accordance with the bond order from the IJ, or, in the alternative, order Respondents to show cause why this Petition should not be granted within three days;
6) Award Petitioner reasonable attorneys' fees and costs; and
7) Grant any further relief the Court deems just and proper.

RESPECTFULLY SUBMITTED this 16th Day of September, 2025.

By: */s/ Nera Shefer*
Nera Shefer, Esq.
Shefer Law Firm, P.A.
800 SE 4th. Ave #803
Hallandale Beach, Florida 33009
Florida Bar# 0814121

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

I represent Petitioner, Alejandro Garcia-Rosales, 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 9th day of September, 2025.

By: */s/ Nera Shefer*
Nera Shefer, Esq.

LIST OF EXHIBITS	
Exhibit 1	Order Granting Bond.
Exhibit 2	ICE Notice of Intent to Appeal
Exhibit 3	Notice of Appeal to BIA
Exhibit 4	Motion To Lift Automatic Stay Imposed Under 8 C.F.R. § 1003.19(i)(2).
Exhibit 5	Petitioner's Bond Hearing Exhibits
Exhibit 6	ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025).
Exhibit 7	*Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025)
Exhibit 8	Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et al. v Kristi Noem, Secretary, Department of Homeland Security, et al.*, U.S. District Court for the Central District of California, Eastern Division, Case No. 5:25-cv-01873-SSS-BFM.
Exhibit 9	Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.*, Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota.
Exhibit 10	Memorandum and Order entered 8/14/2025 in *Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer, Lincoln County Sheriff, in his official capacity, et al.*, Case No. 4:-cv-031580JFB-RCC [CM/ECF Doc. 34 at 1, 3].
Exhibit 11	Order entered 8/19/2025 in *Romero v. Hyde, et al.*, Case No. 1:25-cv-11631-BEM [CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts.
Exhibit 12	*Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).
Exhibit 13	DHS Brief on Appeal
Exhibit 14	Notice to Appear (NTA)
Exhibit 15	Respondent's Bond Hearing Exhibits
Exhibit 16	Petitioner's Response Brief on Appeal.