UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

JACIEL CIRRUS ROJAS (A[redacted],	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	Case No. 2:25-cv-01437
SAMUEL OLSON, Field Office Director, Chicago Field Office, Immigration and Customs Enforcement; SCOTT SMITH, Jail Administrator, Dodge County Jail,	)	
	)	
Respondents.	)	

PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF

The Petitioner, JACIEL CIRRUS ROJAS, by and through his own and proper person and through his attorneys, LAUREN E. MCCLURE, of the LAW OFFICES OF KRIEZELMAN BURTON & ASSOCIATES, LLC, petition this Honorable Court to issue a Writ of Habeas Corpus to review his unlawful detention during his pending removal proceedings, in violation of his constitutional and statutory rights.

Introduction

1. Petitioner JACIEL CIRRUS ROJAS is presently being detained by U.S. Immigration and Customs Enforcement ("ICE") at Dodge County Jail in Juneau, Wisconsin.
2. Petitioner is a native and citizen of Mexico. He has been present in the United States since 2018.
3. Petitioner's detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his support.

4. At the time Petitioner was taken into custody, he had been in the United States for approximately 7 years. He had no arrest or criminal history.
5. Petitioner's detention became unlawful on July 15, 2025, when an Immigration Judge ("IJ") granted Petitioner release on bond, but he was not released from custody. Ex. 1, Order of the Immigration Judge (July 15, 2025). His continued detention is an unlawful violation of due process, incorrect interpretation of immigration law, and is *ultra vires*.
6. Petitioner was initially detained by ICE on June 3, 2025, and a warrant for his arrest for immigration violations was authorized under 8 U.S.C. § 1226. Ex. 2, Warrant for Arrest.
7. Petitioner was thereafter placed in removal proceedings and issued a notice of custody determination indicating that he would be detained pursuant to "section 236 of the INA" (8 U.S.C. § 1226) pending a final determination in his case. Ex. 3, NTA; Ex. 4, Notice of Custody Determination.
8. Petitioner is detained at Dodge County Jail located in Juneau, Wisconsin.
9. Petitioner is represented in immigration removal proceedings by counsel. Petitioner has an application for asylum pending before the Immigration Court.
10. Petitioner respectfully asks this Court to issue a temporary restraining order directing Petitioner's release and enjoin Respondent's continued detention of Petitioner to ensure his due process rights.
11. In the alternative, Petitioner 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.

Jurisdiction and Venue

12. The action arises under the Constitution of the United States, the Immigration and Nationality Act of 1952, as amended ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*

13. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241, and Article I, section 9, clause 2 of the United States Constitution (the "Suspension Clause"), as Petitioner is presently subject to immediate detention and custody under color of authority of the United States government, and said custody is in violation of the Constitution, law or treaties of the United States.

14. This action is brought to compel the Respondents, officers of the United States, to accord Petitioner the due process of law to which he is entitled under the Fifth and Fourteenth Amendments of the United States Constitution.

15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgments Act, 28 U.S.C. § 2201 *et seq.*, 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1361 (mandamus), and the All Writs Act, 28 USC § 1651.

16. Venue is proper in the Eastern District of Wisconsin because Petitioner is presently detained by Respondents at Dodge County Jail – which is located within the Eastern District. 28 U.S.C. § 1391(b), (e)(1).

Parties

17. Petitioner JACIEL CIRRUS ROJAS is a native and citizen of Mexico. Petitioner is presently detained at Dodge County Jail located in Juneau, Wisconsin.

18. Respondent SAMUEL OLSON is being sued in his official capacity only, as the Field Office Director of the Chicago Field Office of ICE. As such, he is charged with the

detention and removal of aliens which fall under the jurisdiction of the Chicago Field Office.

19. Respondent SCOTT SMITH is being sued in his official capacity only. As the Jail Administrator of Dodge County Jail, he is the custodian of the jail and all individuals detained therein, where Petitioner is presently being detained. He is, therefore, Petitioner's immediate custodian.

Custody

20. Petitioner JACIEL CIRRUS ROJAS is being unlawfully detained by ICE and he is not likely to be removed in the reasonably foreseeable future.

Factual and Procedural Background

21. Petitioner JACIEL CIRRUS ROJAS is a native and citizen of Mexico. He has been present in the United States for more than 7 years and has no criminal record.

22. Petitioner was recently detained without bond by DHS "[p]ursuant to the authority contained in section 236" of the INA. Ex. 4, Notice of Custody Determination (June 3, 2025). 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.*

23. A warrant was issued for Respondent's arrest on June 3, 2025, which was authorized, according to the notice, by INA section 236 (8 U.S.C. section 1226). Ex. 2, Warrant for Arrest.

24. A custody and bond redetermination hearing was held on July 15, 2025, and counsel for ICE argued that Petitioner was not entitled to bond due to the government's assertion that Petitioner was detained pursuant to 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226, and therefore ineligible for bond. The IJ determined that Petitioner was eligible for

bond under 8 U.S.C. § 1226 and granted Petitioner bond in the amount of $1,500. Ex. 1, Bond Order.

25. Prior to Petitioner's bond hearings, ICE internally released "interim guidance" regarding a change in their longstanding interpretation of which noncitizens are eligible for release on bond. Ex. 5, Interim Guidance (July 8, 2025). Specifically, ICE is arguing that only those already admitted to the U.S. 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. *See id.* This is a reversal of ICE's longstanding practice of treating noncitizens taken into custody while living in the United States as detained pursuant to 8 U.S.C. section 1226(a). *Rocha Rosado v. Figueroa*, 2025 WL 2337099, (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is.").

26. On July 15, 2025, Respondent ICE filed ICE filed a Notice of ICE Intent to Appeal Custody Redetermination ("EOIR-43") of the IJ's order finding Petitioner is eligible for bond and ordering his release from custody on bond on July 15, 2025. Ex. 6, Notice of Intent to Appeal (July 15, 2025). The filing of the EOIR-43 invoked the automatic stay provision of 8 U.S.C. § 1003.19(i)(2), which reflects its reversal of interpretation of bond eligibility.

27. On July 24, 2025, ICE filed a Notice of Appeal from a Decision of an Immigration Judge ("EOIR-26") confirming that their position from the custody hearing and that the basis of

the appeal is ICE's reversal of interpretation and application of 8 U.S.C. section 1225. Ex. 7, Notice of Appeal (July 24, 2025).

28. Despite the IJ's order granting Petitioner bond, Petitioner remains detained. He remains in detention and separated from his family and community.

29. Petitioner's continued detention separates him from his family, prohibits him from being able to financially provide for his family, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence, and afford legal representation, among other related harm.

30. Despite having a reasoned IJ decision ordering Petitioner's release and return to his family and community upon posting bond, he remains detained away from his family, counsel, and support system and continues to be subjected to the aforementioned harms.

31. Because Respondent's removal proceedings remain pending and his next hearing is scheduled until October 29, 2025 at 1:00P.M., there is little likelihood that Petitioner's removal will occur in the reasonably foreseeable future.

Legal Framework

Due Process Clause

32. "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).

33. 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.

34. "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). In this case, to determine the due process to be afforded to Petitioner, the 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.

Detention Provisions under the Immigration and Nationality Act

35. The Immigration and Nationality Act is codified at Title 8 of the United States Code, Section 1221 *et seq.*, and controls the United States Government's authority to detain noncitizens during their removal proceedings.

36. 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).

37. This 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.[1]

38. Following enactment of the IIRIRA, the Executive Office for Immigration Review ("EOIR") 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,

[1] Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

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).

39. For nearly thirty years, the practice of ICE, which operates 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. *Rocha Rosado v. Figueroa*, 2025 WL 2337099, at *9 (D. Arizona August 11, 2025); *see Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 386 (2024) ("[T]he longstanding practice of the government—like any other interpretive aid—can inform [a court's] determination of what the law is."). 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).

40. The legislative history behind § 1226 also demonstrates that it governs noncitizens, like Petitioner, who were deemed inadmissible upon inspection at the border, released into the United States at the border after being placed into removal proceedings, and were present in the United States for a number of years prior to being taken into detention. Before passage of the Immigration Reform and Immigrant Responsibility Act ("IRIRA"), the predecessor statute to § 1226(a) governed deportation proceedings for all noncitizens arrested within the United States, and like § 1226(a), included a provision allowing for discretionary release on

bond. *See* 8 U.S.C. § 1252(a)(1) (1994).[2] After passing the IIRIRA, Congress declared the new § 1226(a) "restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond" a noncitizen "who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229. *See also* H.R. Rep. No. 104-828, at 210. Because noncitizens like Petitioner were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA, the Court should interpret § 1226 to allow for a discretionary release on bond for noncitizens in a situation similar to Petitioner.

41. Yet, 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.

42. As a result, ICE is now ignoring particularities that have been historically relevant in determining 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. *See* Ex. 5. Though no

[2] See 8 U.S.C. § 1252(a)(1) (1994) ("Pending a determination of deportability...any [noncitizen]...may, upon warrant of the Attorney General, be arrested and taken into custody."); Hose v. Immigration & Naturalization Serv., 180 F.3d 992, 994 (9th Cir. 1999)(noting a "deportation hearing" was the "usual means" of proceeding against an alien physically in the United States).

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. *See* Ex. 7 at 4.

43. 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 in agreement 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).

44. 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 she was arrested and detained under § 1226—is meritless. Petitioner was recently detained by ICE based on a DHS filing that clearly identified him 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.). *See* Ex. 2. 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 12 years.

45. The government's position contravenes the plain language of the INA and its regulations and has been consistently rejected by courts. *Sampiao v. Hyde, et al.* No. 1:25-cv-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Alvarez Martinez v. Noem, et al.*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. TX Sept. 8, 2025); *Herrera Torralba v. Knight, et al.*, No. 2:25-cv-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Doe v. Moniz, et al*, No. 1:25-cv-12094-IT, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Gamez Lira v. Noem, et al.*, 1:25-cv-00855-WJ-KK (D. N.M. Sept. 5, 2025); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25-cv-494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *1 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-cv-3051 (ECT/DJF), 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *14 (D. Md. Aug. 24, 2025); *Reynosa Jacinto v. Trump, et al*, 4:25-cv-03161-JFB-RCC (D. Neb. August 19, 2025); *see, e.g., Aguilar Maldonado v. Olson, et al*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025); *Mohammed H. v. Trump*, No. 25-cv-1576 (JWB/DTS), 2025 WL 1334847 (D. Minn. May 5, 2025); *Rocha Rosado*, 2025 WL 2337099; *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).

46. In addition to these recent cases, courts have also historically held that this provision violates a detainee's due process rights. *Zabadi v. Chertoff*, No. 05-CV-01796 (WHA), 2005 WL 1514122 (N.D. Cal. June 17, 2005); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003); *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").

47. 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.

48. The "seeking admission" language, "necessarily implies some sort of present tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M- D-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.").

49. 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.

50. 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.

51. The government's interpretation also renders portions of the newly enacted provisions 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.

52. 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.").

53. 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]." By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

54. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

Regulations to Stay Immigration Judge's Bond Order

55. Bond decisions issued by an IJ can be appealed by DHS or the noncitizen to the Board of Immigration Appeals ("BIA") by filing a Notice of Appeal from a Decision of an Immigration Judge (EOIR-26) within 30 days. DHS can file a motion with the BIA seeking a discretionary stay of the custody decision—whether to release the noncitizen on bond consistent with the IJ's order at any time during the appeal period. 8 C.F.R. § 1003.19(i)(1) (hereinafter "discretionary stay").

56. The discretionary stay requires an individualized analysis by the BIA of the noncitizen's case to determine if staying the IJ's order is appropriate. This analysis considers the individual's criminal history, ties to the community, flight risk, dangerousness, and the likelihood of prevailing in removal proceedings. *See, e.g., Gunaydin v. Trump*, – F.Supp.3d –, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025); *Zavala v. Ridge*, 310 F.Supp.2d 1071 (D. N.D. Cal. 2004); *Bezman v. Ashcroft*, 245 F.Supp.2d 446 (D. Conn. 2003).

57. In contrast, the automatic stay is a unilateral decision by ICE through a boilerplate form (EOIR-43), which does not proffer any evidence or analysis of the noncitizen's status as either a flight risk or a danger to the community. This automatic stay results in ICE, the party that lost the issue in front of the IJ, being able to unilaterally and without any particular grounds, to immediately prevent the execution of the IJ's Order of Release, which is founded on a particularized determination that the noncitizen can safely be released from custody upon posting of bond.

58. There is no congressional authority for ICE, DHS, or any agency within DHS, to unilaterally and automatically stay an IJ's bond decision. In fact, the only congressional authority cuts the other way: Congress determined that the default for

noncitizens detained under Section 1226(a) is discretionary release. *Jennings*, 583 U.S. at 289.

59. The automatic stay is not subject to review by either the IJ or the BIA.

60. "'In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.' . . . **Detention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm.**" *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)) (emphasis added).

61. Petitioner is detained today solely at the unilateral directive of ICE, pursuant to a regulation written by executive agencies, not Congress: 8 C.F.R. § 1003.19(i)(2). This regulation states, in whole:

> Automatic stay in certain cases. In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, **any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43)** with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.
> 8 C.F.R. § 1003.19(i)(2) (emphasis added).

62. The regulations expand on the related procedures in 8 C.F.R. § 1003.6(c). "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." 8 C.F.R. § 100.36(c)(4). However, the regulations provide for DHS's continued power to keep a noncitizen detained even after the automatic stay lapses.

63. "DHS may seek a discretionary stay pursuant to 8 CFR § 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the

custody appeal within the period of the automatic stay." 8 C.F.R. § 1003.6(c)(5). All DHS must do is submit a motion, and "may incorporate by reference the arguments presented in its brief in support of the need for continued detention of the alien during the pendency of the removal proceedings." *Id.*

64. If the BIA has not resolved the custody appeal within 90 days and "[i]f the Board fails to adjudicate a previously-filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary stay." 8 C.F.R. § 1003.6(c)(5).

65. If the BIA rules in a noncitizen's favor, authorizing release on bond, or denying DHS's motion for a discretionary stay, "the alien's release shall be automatically stayed for five business days." 8 C.F.R. § 1003.6(d).

66. This additional five-day automatic stay in the event of the BIA authorizing a noncitizen's release is to provide DHS with another opportunity to keep the person detained despite orders to the contrary. "If, within that five-day [secondary automatic stay] period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 CFR § 1003.1(h)(1), the alien's release shall continue to be stayed pending the Attorney General's consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General." 8 C.F.R. § 1003.6(d).

67. DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General . . . The Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." 8 C.F.R. § 1003.6(d).

68. Thus, even if the BIA upheld the IJ's order, granted the noncitizen's bond, and ordered them released, they would remain in detention for five more days while DHS is given the opportunity to refer the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1). 8 C.F.R. § 1003.6(d). The same additional automatic five-day stay applies if the BIA denies DHS's motion for discretionary stay or fails to act on such a motion before the automatic stay period expires. *Id.* If the case is referred to the Attorney General, that second automatic stay expires 15 business days after referral. *Id.* DHS may thereafter file another motion for discretionary stay. *Id.* Importantly, if a case is referred to the Attorney General, "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." *Id.* There is no time limit for this stay or these decisions.

69. The scheme, plainly designed by the executive branch to give DHS the power to circumvent both IJ and BIA orders, can be summarized as follows:

IJ orders DHS to release noncitizen on bond:

1. DHS files EOIR-43 Notice of Intent to Appeal within one business day, invoking automatic stay. 8 C.F.R. § 1003.19(i)(2).
2. DHS files EOIR-26 Notice of Appeal within ten business days. 8 C.F.R. § 1003.6(c)(1).
3. Automatic stay lapses 90 days after DHS files EOIR-26 Notice of Appeal. 8 C.F.R. § 1003.6(c)(4).
4. DHS may seek discretionary stay before 90 days lapse. 8 C.F.R. §§ 1003.6(c)(5); 1003.19(i)(1).

BIA orders release on bond or denies discretionary stay motion:

5. Release is automatically stayed for an additional five business days. 8 C.F.R. § 1003.6(d).
6. Within that five business day automatic stay, DHS may refer the case to the Attorney General. 8 C.F.R. § 1003.6(d).
7. Automatic stay is extended for 15 business days after DHS refers the case to the Attorney General. 8 C.F.R. § 1003.6(d).
8. DHS may seek a discretionary stay with the Attorney General for the duration of the case. 8 C.F.R. § 1003.6(d).

70. Courts have found that holding a noncitizen pursuant to these regulations is violation

of due process and that the regulations themselves exceed the statutory authority Congress gave to the Attorney General. *See* Ex. 8 *Reynosa Jacinto v. Trump, et al,* 4:25-cv-03161-JFB-RCC (D. Neb. August 19, 2025); *see, e.g., Aguilar Maldonado v. Olson, et al*, No. 25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025).

71. The regulations are written in such a way that it does not matter what either the IJ or BIA orders; if the government disagrees, the government can, through its own actions and according to its regulations, keep the noncitizen detained. And that detention could be, in reality, indefinite.

72. "Indefinite detention of a [noncitizen]" raises "a serious constitutional problem." *Zadvydas*, 533 U.S. at 690. The automatic stay provision detains individuals indefinitely, without a "discernible termination point" (*Ashley*, 288 F.Supp.2d at 672), "definite termination point" (*Zabadi v. Chertoffi*, No. C05- 01796 WHA, 2005 WL 1514122, at *1 (N.D. Cal. 2005)), "finite time frame" (*Id.*), "certain time parameters for final resolution" (*Zavala*, 310 F. Supp.2d at 1075), or "ascertainable end point" (*Bezmen*, 245 F.Supp.2d at 449-50).

73. Even more troubling, the automatic stay does not provide for review by the IJ or BIA–a clear due process violation. A noncitizen subject to DHS's arrest and continued detention in spite of an IJ ordering his release has no method to challenge the automatic stay before the immigration court or BIA. *See Ashley*, 288 F.Supp.2d at 675 ("continued detention of alien without judicial review of the automatic stay of bail determination violated alien's procedural and substantive due process rights").

74. Petitioner's continued detention under the automatic stay will never be reviewed. Her

only option is to wait for the BIA to take up the underlying matter.

Board of Immigration Appeals

75. The BIA's appellate process does not offer a meaningful or timely opportunity to correct Respondent's errors. 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).

76. 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. Should Petitioner be required to wait months for his appellate review, this will deprive him of time with his family, community members, and liberty.

77. Here, Petitioner is incarcerated in jail, forced to sleep in a communal setting, he is receiving inadequate medical care and subjected to other degrading treatment.

78. It is also unlikely that Petitioner will be successful on appeal in light of the Board of Immigration Appeal (BIA)'s recent decision in *Matter of Hurtado*, 29 I&N Dec. 216 (2025).

79. That decision held that any individual who last entered the United States without inspection or admission is ineligible for bond. This decision is despite the numerous district court decisions across the country holding that section 1225 does not apply to individuals who entered without inspection and were detained, years later, within the United States. *Sampiao v. Hyde, et al.* 1:25-cv-11981-JEK (D. Mass. Sept. 9, 2025) (addressing *Matter of Hurtado* and finding that the Board's analysis is

incorrect); *Alvarez Martinez v. Noem, et al.*, 5:25-CV-01007-JKP (W.D. TX Sept. 8, 2025) (vacating the automatic stay of Petitioner's bond, finding section 1225 does not apply); *Carmona-Lorenzo v. Trump*, No. 4:25-cv-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25-cv-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025).

80. Further, this Court is not required, and should not, give deference to the recent Board decision cited in Respondent's brief. In *Loper Bright*, the Supreme Court was clear that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," and indeed "may not defer to an agency interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Rather, this Court can simply look to the Supreme Court's own words in *Jennings* that held that for decades, § 1225 has applied only to noncitizens "seeking admission into the country"—i.e., new arrivals, and that this contrasts with § 1226, which applies to noncitizens "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

The Automatic Stay Violates Due Process

81. The automatic stay "operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied." *Mohammed H. v. Trump*, – F. Supp. 3d –, No. CV 25-1576 (JWB/DTS), 2025 WL 1334847 at *6 (D. Minn. May 5, 2025); *see also* Ex. 8 *Reynosa Jacinto v. Trump, et al,* 4:25-cv-03161-JFB-RCC (D. Neb. August 19, 2025); *see, e.g.*, *Aguilar Maldonado v. Olson, et al*, No. 25-cv-

03142-SRN-SGE, 2025 WL 2374411 (D. Minn. August 18, 2025).

82. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the 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. *Mathews*, 424 U.S. 319 at 335.

83. As to the first *Mathews* factor, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." *Zavala*, 310 F.Supp.2d at 1076; *see also Ashley*, 288 F.Supp.2d at 670-71 (same) (quoting *St. John v. McElroy*, 917 F.Supp. 243, 250 (S.D.N.Y. 1996)). Petitioner has been detained for nearly two months, preventing him from seeing his young child and his wife who are struggling without him, going to work, and participating in his community.

84. As to the second *Mathews* factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards. As explained above, the current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention. Unlike the typical requests for a stay which require a demonstration of the likelihood of success on the merits, the automatic stay provision demands no such showing; in fact, it was enacted precisely to avoid the need for such an individualized determination. An IJ has already determined that

Petitioner is neither a flight risk nor a danger to the community.

85. But that individualized reasoned decision by the IJ was effectively overruled by a unilateral determination by an ICE attorney which "poses a serious risk of error." *Zavala*, 310 F.Supp.2d at 1076. This allows the DHS attorney, "who has by definition failed to persuade a judge in an adversary hearing that detention is justified," to make the stay decision without oversight or review. *Ashley*, 288 F.Supp.2d at 671. This conflates the role of prosecutor and adjudicator, which is impermissible due to the high potential for error. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955).

86. As to the third *Mathews* factor, the government's interest in maintaining the "current" procedure is minimal here. This "policy and procedure" was never officially published by DHS and was only discovered by the press observing an intraoffice memo mere weeks ago on July 8, 2025. *See* Ex. 5. As explained above, the IJ has already made a determination that Petitioner is appropriate to be released on bond, having considered both dangerousness and flight risk. *See* Ex. 1. Further, DHS is still able to seek a discretionary stay before the BIA under 8 C.F.R. § 1003.19(i)(1) which would require some showing of likelihood of success on the merits. *Ashley*, 288 F.Supp.2d at 670-71; *Zavala*, 310 F.Supp.2d at 1079.

87. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if "an alternate result may well have resulted without the violation." *Id.* (citation omitted) (internal quotations omitted). "To show prejudice, [a Petitioner] must present plausible scenarios in

which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).

88. Certainly, if DHS could not invoke the automatic stay, Petitioner would have been released on bond and would be home with his family. This would occur pursuant to the IJ's order that he may be released upon posting of a $1,500 bond which was and is ready to be posted on Petitioner's behalf. His continued detention through the automatic stay unilaterally invoked by ICE as a result of "interim guidance" via interoffice memo despite the IJ's order is actual prejudice.

89. Furthermore, it is entirely plausible that the more elaborate process of the discretionary stay (8 C.F.R. § 1003.19(i)(1)) would have resulted in the BIA not granting a stay of the bond order.

Claims for Relief

FIRST CAUSE OF ACTION

Violation of the Due Process Clause of the Fifth Amendment
of the United States Constitution

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

91. 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.

92. 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.

93. The automatic stay provision keeping Petitioner detained today is unconstitutional as applied to him and in violation of his due process rights. An IJ ordered ICE to release Petitioner on a reasonable bond of $1,500.00, and because ICE disagrees with that order based upon a new and novel "interim guidance," it invoked an automatic stay of the order, rendering Petitioner stuck in detention.

94. The automatic stay regulation rendered Petitioner's bond hearing a charade, because the outcome of the hearing or the validity of the IJ's reasoning did not matter. ICE wants Petitioner detained, and through the automatic stay, it can effectively ignore the IJ's order to the contrary. There is no due process when the government, who lost the argument in court, gets to do what they want anyway.

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

SECOND CAUSE OF ACTION

Violation of the Immigration and Nationality Act

96. Petitioner repeats and incorporates by reference all allegations above as though fully 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. Ex. 4. Despite this, DHS now argues that he is detained subject to 8 U.S.C. § 1225(b)(2) and invoked an automatic stay of the IJ's order granting bond on this basis.

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 Board of Immigration Appeals has issued *Matter of Hurtado*, 29 I&N Dec. 216 (2025) ruling that there no jurisdiction for an Immigration Judge to hear a bond redetermination request for an individual who entered the country without inspection. The text of sections 1225 and 1226, together with binding Supreme Court precedent interpreting those provisions, demonstrate that this decision is unlawful.

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

THIRD CAUSE OF ACTION

Ultra Vires Regulation

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

103. The automatic stay regulation exceeds the authority given to the Attorney General by Congress and unlawfully eliminates IJs' discretionary authority to make custody

determinations. Congress gave the Attorney General discretion to decide whether to release detained noncitizens pending removal proceedings if they have not been convicted of certain criminal offenses and are not linked to terrorist activities. *See* 8 U.S.C. § 1226(a), (c). The Attorney General has delegated this authority to IJs, who have discretion to determine whether to release these noncitizens on bond. 8 C.F.R. §§ 1003.19, 1236.1; *see also* 28 U.S.C. § 510 (permitting the Attorney General to delegate her function to officers or employees within the Department of Justice).

104. Congress has not delegated this authority to DHS. There is no statutory authority for DHS to unilaterally stay an IJ's bond determination. DHS's use of the automatic stay is an unlawful use of the discretionary power granted to the Attorney General and "has the effect of mandatory detention of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention." *Zavala*, 310 F. Supp. 2d at 1079; *see also Ashley*, 288 F. Supp. 2d at 673 ("As Congress exempted aliens like Petitioner from the mandatory detention of § 1226(c), it is unlikely that it would have condoned this back-end approach to detaining aliens like Petitioner through the combined use of § 1226(a) and § 3.19(i)(2).").

105. Here, the IJ determined that upon posting of set bond Petitioner is not a danger to the community or a flight risk and ordered DHS release upon posting of bond.

106. 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. It is unlawful and *ultra vires*.

Prayer for Relief

WHEREFORE, Petitioner respectfully request that this Honorable Court:

A. Accept jurisdiction over this action;

B. Order the immediate release of Petitioner pending these proceedings;

C. Order Respondents not to transfer Petitioner out of the Eastern District of Wisconsin during the pendency of these proceedings to preserve jurisdiction and access to counsel;

D. Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment, violates the Immigration and Nationality Act and is *ultra vires*;

E. 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;

F. Award reasonable attorneys' fees and costs for this action; and

G. Grant such further relief as the Court deems just and proper.

Dated: September 17, 2025

Respectfully Submitted,

/s/ Lauren E. McClure

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