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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEVADA**

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| Fernando PEREZ SALES,<br>*Petitioner*,<br><br>v.<br><br>Thomas E. FEELEY, Field Office Director, Salt Lake City Field Office, U.S. Immigration and Custom Enforcement, Enforcement and Removal Operations Division;<br><br>John MATTOS, Warden, Nevada Southern Detention Center;<br><br>Kristi NOEM, Secretary, United States Department of Homeland Security;<br><br>Pamela BONDI, Attorney General of the United States,<br>*Respondents*. | Case No.<br><br>**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** |

## INTRODUCTION

1. Petitioner, Fernando Perez Sales, is a 23-year-old young man from Guatemala who entered the United States as an unaccompanied child in 2019. He has been detained in the custody of the Department of Homeland Security (DHS) since June 2025.

2. Prior to his detention, DHS had approved Mr. Perez Sales's petition for Special Immigrant Juvenile Status (SIJS)—a benefit that grants him a path to permanent residence in the United States— based on the abuse, abandonment, and neglect he experienced in Guatemala by his mother. DHS also granted Mr. Perez Sales deferred action purportedly protecting him from removal until he can apply for permanent residence. Mr. Perez Sales retains deferred action status in the present.

3. On August 26, 2025, an immigration judge (IJ) found that Mr. Perez Sales presents neither a flight risk nor a danger to the community that can justify his ongoing detention and issued a statutory minimal bond of $1,500. Despite the IJ's order, Respondents have prevented Mr. Perez Sales from posting bond and instead invoked a regulatory automatic stay mechanism that purportedly allows them to continue detaining Mr. Perez Sales pending adjudication of DHS's appeal of the IJ's decision without any judicial findings that a stay is warranted. This Court has already held that this mechanism violates due process. *Herrera v. Knight*, --- F. Supp. 3d ----, 2025 WL 2581792, at *3 (D. Nev. 2025); *see also Maldonado Vazquez v. Feeley,* No. 25-cv-1542, 2025 WL 2676082, at *21 (D. Nev. Sept. 17, 2025) (granting a preliminary injunction based on petitioner's likelihood of success on the merits of this argument).

4. Mr. Perez Sales asks this Court to hold that his continued detention under the regulatory automatic stay is unlawful as a matter of statutory interpretation and due process.

Respondents cannot thus justify Mr. Perez Sales's present detention and hold him in contravention of law.

5. Accordingly, Mr. Perez Sales respectfully asks this Court to grant his petition and issue a writ of habeas corpus or, in the alternative, to order Respondents to show cause *within three days*, providing their reasons, if any, as to why his detention is lawful. 28 U.S.C. § 2243. Because Respondents cannot justify Mr. Perez Sales's ongoing detention, he urges this Court to grant his petition and order Respondents to immediately release him. 28 U.S.C. § 2241.

**JURISDICTION**

6. Respondents currently detain Mr. Perez Sales at the Nevada Southern Detention Center (NSDC) in Pahrump, Nevada.

7. This action arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101–1537 and the Due Process Clause of the Fifth Amendment of the Constitution of the United States.

8. This Court has jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (general grant of habeas authority to district courts); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act).

9. The federal habeas statute establishes this Court's power to decide the legality of Mr. Perez Sales's detention and directs courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *see also Hilton v. Braunskill*, 481 U.S. 775 (1987) (explaining that as far back as the nineteenth century, "the Court interpreted the predecessor of [the habeas statute] as vesting a federal court with the largest power

to control and direct the form of judgment to be entered in cases brought up before it on habeas corpus") (internal quotation marks and citation omitted).

10. The Supreme Court, moreover, has held that the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). The Court has reiterated federal court jurisdiction over habeas claims brought by petitioners in immigration custody. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–41 (2018).

11. This Court may grant further relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

12. Venue is proper under 28 U.S.C. § 1391(e) because Respondents detain Mr. Perez Sales in Pahrump, Nevada, within the jurisdiction of this Court. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973); *see* 28 U.S.C. § 2241(d).

13. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Nevada.

**REQUIREMENTS OF 28 U.S.C. § 2243**

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Mr. Perez Sales 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." *Id.* "[F]or good cause[,] additional time, not exceeding twenty days, is allowed." *Id.*

15. 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 application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

**PARTIES**

16. Petitioner Fernando Perez Sales is a citizen of Guatemala who entered the United States as an unaccompanied child and has resided in the United States since 2019. Although DHS granted Mr. Perez Sales SIJS and deferred action, ICE detained him and placed him in removal proceedings in June 2025. ICE currently detains him at the Nevada Southern Detention Center in Pahrump, Nevada. An immigration judge ordered Mr. Perez Sales's release on the statutory minimum bond, $1,500, on August 26, 2025. Respondents continue detaining him pursuant to a regulatory, unilateral automatic stay filed by DHS with the Board of Immigration Appeals (BIA).

17. Respondent Thomas E. Feeley, is sued in his official capacity as the Field Office Director, Salt Lake City Field Office, U.S. Immigration and Custom Enforcement, Enforcement and Removal Operations Division (ERO) for U.S. Immigration and Customs Enforcement (ICE). Respondent Feeley oversees the ICE Nevada Field Office and is responsible for Mr. Perez Sales's detention and removal.

18. Respondent John Mattos is sued in his official capacity as warden of the Nevada Southern Detention Center. He is an employee of CoreCivic, which contracts with ICE to hold noncitizens in its custody at Nevada Southern. He has immediate physical custody of Mr. Perez Sales.

19. Respondent Kristi Noem is sued in her official capacity as the Secretary of DHS. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Mr. Perez Sales's detention. Ms. Noem has ultimate custodial authority.

20. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. She is responsible for the Department of Justice (DOJ) and oversees the Executive Office for Immigration Review (EOIR) and the immigration court system.

## FACTUAL ALLEGATIONS

21. Mr. Perez Sales was born in Guatemala. Ex. A at 2. He is of Mayan ethnicity and his first language is Mam, a Mayan language. *Id.*; *see also* Ex. B at 7; Ex. C at 13. Mr. Perez Sales entered the United States in 2019 as an unaccompanied child, fleeing abuse and neglect by his mother. Ex. A at 2; Ex. C at 13. As a California state court found, Mr. Perez Sales's mother regularly beat him with sticks, belts, shoes, or her bare hands. Ex. C at 13. When Mr. Perez Sales lived with his mother, she failed to provide even the most basic necessities, and he lived in a home without electricity, running water or indoor plumbing. *Id.* Having no resources and no one to protect him, Mr. Perez Sales traveled alone to the United States as a child to reunify with his father. Ex. A at 2; Ex. B at 7; Ex. C at 13.

22. Based on these facts, the California Superior Court for Alameda County granted custody of Mr. Perez Sales to his father concluding that "[a] forced return to Guatemala and separation from his father poses serious risk to [Mr. Perez Sales's] health, safety, and welfare." Ex. C at 13.

23. Given the state court's findings, Mr. Perez Sales applied for SIJS in August 2022. Ex. B at 7; 8 U.S.C. § 1101(a(27)(J). U.S. Citizenship and Immigration Services (USCIS), a

component of DHS, approved that petition and granted him SIJS and deferred action. *Id.*; U.S. Citizenship and Immigration Services, *Policy Alert: Special Immigrant Juvenile Classification and Deferred Action ("USCIS Deferred Action Policy Alert")*, PA-2022-10 (March 7, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf (outlining USCIS deferred action policy for noncitizens granted SIJS).

24. Individuals granted SIJS can apply for lawful permanent residence but must await the availability of a specially designated visa. *See id.* There is a current backlog for these visas to become available. *Id.*; Ex. B at 7. Once a visa becomes available, Mr. Perez Sales will be eligible to apply to become a lawful permanent resident. Ex. B at 7; *see also* 8 U.S.C. § 1255(h); 8 C.F.R. § 245.1(a).

25. For this reason, USCIS has granted deferred action to individuals like Mr. Perez Sales, who have been granted SIJS but do not visa is not immediately available to apply for lawful permanent residence. Ex. B at 7. Deferred action formally shields a noncitizen from deportation as an exercise of prosecutorial discretion. *See USCIS Deferred Action Policy Alert*, PA-2022-10.

26. Mr. Perez Sales has also filed an asylum application before USCIS, as permitted by the Trafficking Victims Protection Reauthorization Act (TVPRA), which confers initial jurisdiction to USCIS over asylum claims filed by unaccompanied children. 8 U.S.C. § 1158(b)(3)(C); Ex. B at 8.

27. Noncitizens may apply for asylum affirmatively before USCIS, or as a defense in removal proceedings before the immigration court. USCIS has initial jurisdiction over asylum applications filed by unaccompanied children. 8 U.S.C. § 1158(b)(3)(C).

28. The term unaccompanied child refers to a child who has no lawful immigration status, is under the age of eighteen, and with respect to whom "no parent or legal guardian in the United States is available to provide care and physical." 6 U.S.C. § 279(g)(2).

29. Pursuant to a class settlement, individuals deemed unaccompanied children at the time of apprehension by immigration officials are entitled to have their asylum applications adjudicated by USCIS, even if they no longer meet the legal definition of an unaccompanied child. *JOP v. DHS*, 19-cv-1944 at 7-8 (D. Md. filed July 30, 2024) *see also* John Lafferty, Chief, USCIS Asylum Division, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children and Implementation of the J.O.P. Settlement Agreement*, (signed January 30, 2025 but issued on February 24, 2025), https://www.uscis.gov/sites/default/files/document/memos/JOP_UAC_Procedures_Memo_1.30.25.pdf. Ex. E. at 13-45. Mr. Perez Sales is a *JOP v. DHS* class member.

30. In June 2025, local authorities in Douglas County, Nevada arrested Mr. Perez Sales for selling fruit in a Walmart parking lot without a business license. Ex. A at 3; Ex. D at 23. On June 10, 2025, the Justice Court of East Fork Township, Douglas County convicted Mr. Perez Sales of misdemeanor No Traveling Merchant Permit pursuant to Douglas County Code (DCC) §§ 5.24.170 and sentenced him to 10 days jail in jail (suspended) and a $740 fine. Ex. D at 27-28.

31. Prior to this incident, local authorities arrested Mr. Perez Sales in Merced County, California on or around May 29, 2025, for an alleged driving-related offense. Ex. A at 2-3. No charges have been filed to date for that alleged offense. Ex. D at 29.

32. Following Mr. Perez Sales's release from Douglas County custody and despite having granted him deferred action, DHS arrested Mr. Perez Sales and placed him in removal proceedings. Ex. F at 56. Although Mr. Perez Sales has filed an asylum application with the

immigration court in his removal proceedings, the immigration judge has held that application in abeyance given Mr. Perez Sales's membership in the *JOP v. DHS* class settlement and his pending asylum application with USCIS. Ex. B at 8.

33. Mr. Perez Sales has now waited more than three months in detention for USCIS to schedule an interview to adjudicate his asylum application. *Id.* at 8. Finally, on September 18, 2025, USCIS scheduled Mr. Perez Sales for an asylum interview. *Id.* However, the USCIS asylum officer was unable to conduct the interview given technological difficulties. *Id.* at 9. Both the asylum officer as well as the Mam interpreter were unable to hear Mr. Perez Sales clearly. Mr. Perez Sales's audio sounded as if "he was under water." *Id.*

34. Given the issues with audio, the asylum officer ended the interview and informed Mr. Perez Sales and counsel that the interview would be re-scheduled. *Id.* To date, USCIS has not re-scheduled Mr. Perez Sales's asylum interview. *Id.*

35. Because Mr. Perez Sales is eligible to be released from immigration custody, his counsel requested a bond hearing before the immigration court. Ex. F at 49-53. On August 26, 2025, the IJ held a bond hearing at which Mr. Perez Sales presented evidence that Mr. Perez Sales is neither a flight risk nor a danger to the community. Ex. F at 54-96. Mr. Perez Sales's evidence included ample community support, confirmation of a sponsor and a dedicated re-integration team committed to connecting him to resources in the community and to meet with him regularly to monitor his progress. *Id.* at 83-96. Mr. Perez Sales also presented evidence of his only criminal conviction. *Id.* at 79-80.

36. At the end of the hearing, the IJ ordered Mr. Perez Sales's release on $1,500 bond, the minimum statutory amount. Ex. G; 8 U.S.C. § 1226(a)(2)(A). In doing so, the IJ concluded

that Mr. Perez Sales is not subject to "mandatory detention" under 8 U.S.C. § 1225(b)(2), given that Mr. Perez Sales entered as an unaccompanied child. *Id.* at 98.

37. The same day, DHS filed a Notice of Intent to Appeal the IJ's bond decision. Ex. H at 100. Pursuant to 8 C.F.R. § 1003.19(i)(1), such filing invokes an automatic stay of the IJ's bond decision for 10 business days. Because of this stay, Mr. Perez Sales was unable to post bond.

38. On September 5, 2025—10 days after the IJ granted Mr. Perez Sales's bond request—the Board of Immigration Appeals (BIA) issued a precedential decision overturning decades of well-settled statutory interpretation and practice to hold that noncitizens who entered without inspection are subject to mandatory detention regardless of their length of residence in the United States. *See Matter of Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The decision appears to incorporate the arguments DHS previously made in Mr. Perez Sales's bond proceedings, which it raised anew in its appeal of the IJ's bond decision. Ex. I at 107-21.

39. On September 8, 2025, DHS purported to perfect its appeal and secure an auto stay by filing an appeal, with an addendum brief and certification by a DHS official. *Id.*

40. On September 11, 2025, a second IJ issued a two-sentence *post hoc* memorandum decision. Ex. J at 132. The new IJ's memorandum summarily indicated that the previous bond decision "has been superseded" by the BIA's decision in *Matter of Hurtado*, 29 I. & N. Dec. at 216. *Id.*

41. Meanwhile, Mr. Perez Sales's access to counsel has been extremely limited while in detention. Counsel for Mr. Perez Sales has faced delayed responses to her requests for legal calls and has faced challenging delays in the availability of legal calls. Ex. B at 8. Counsel has repeatedly had to wait between eight to nine days for a legal call with Mr. Perez Sales. *Id.*

42. In addition to challenges in accessing counsel and proceeding in his asylum interview, Mr. Perez Sales's ongoing detention has caused him significant physical and emotional harm. He recently reported to Ms. Annand that he was vomiting blood. *Id.* Although he requested a medical appointment, medical staff at NSDC were unable to help him. *Id.* at 8-9. Detention has also had a grave impact on Mr. Perez Sales' mental and emotional health. As Mr. Perez Sales expressed to Ms. Annand, he is constantly sad and his "heart hurts." *Id.* at 9.

## LEGAL FRAMEWORK

**Statutory Framework for Detention**

43. Generally, removable noncitizens are subject to detention under one of three statutory provisions under the Immigration and Nationality Act (INA), depending on the context in which they are arrested and deemed removable.

44. First, 8 U.S.C. § 1225 "applies primarily to [noncitizens] seeking entry into the United States" (applicants for admission) and "mandate[s] detention" of these noncitizens "until certain proceedings have concluded." *Jennings*, 583 U.S. 281 at 297. As the Supreme Court has clarified, this provision applies "at the Nation's borders and points of entry." *Id.* at 287.

45. Conversely, 8 U.S.C. § 1226 "applies to [noncitizens] already present in the United States." *Id.* at 303. § 1226(a) "creates a default rule" permitting detention of removable noncitizens. *Id.* Noncitizens detained under § 1226(a) qualify for release on bond. *Id.* § 1226(c) operates as an exception to § 1226(a)'s general rule in that it mandates detention of noncitizens who "fall[] into one of the enumerated categories involving criminal offenses and terrorist activities." *Id.* Noncitizens who fall under this mandatory detention provision do not qualify for bond.

46. Last, 8 U.S.C. § 1231 governs detention procedures for individuals with administratively final removal orders. *Maldonado Vazquez*, 2025 WL 2676082, at *4.

47. Beyond the INA detention provisions, the TVPRA provides for a separate detention scheme for noncitizens who enter the United States as unaccompanied children. Unlike arriving applicants for admission, unaccompanied children must be "promptly placed in the least restrictive [detention] setting," which may include outright release without bond to "a suitable family member." 8 U.S.C. § 1232 (c)(2)(A).

48. Moreover, unlike applicants for admission, unaccompanied children must be placed directly into removal proceedings. *Compare* 8 U.S.C. § 1232 (a)(5)(D)(i) *with* 8 U.S.C. § 1225(b)(1)(A) (providing for the expedited removal of applicants for admission absent a showing of a credible fear of persecution).

**Recent Agency Interpretation of Statutory Detention Provisions**

49. In July 2025, the BIA issued a decision holding that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States" is subject to mandatory detention under 8 U.S.C. § 1225(b)(1), regardless of whether the noncitizen was arrested at the border or shortly after crossing into the United States. *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025).

50. In doing so, the BIA acknowledged the Supreme Court's characterization of § 1225 as applying to noncitizens "'seeking entry into the United States" and arrested "without a warrant at the border.'" *Id.* at 70 (quoting *Jennings*, 583 U.S. at 303). Conversely, the BIA acknowledged that § 1226 "'applies to [noncitizens] already present in the United States and arrested on a warrant.'" *Id.* (quoting *Jennings*, 583 U.S. at 302-03).

51. On September 5, 2025, the BIA issued another decision further broadening the classes of noncitizens subject to mandatory detention than the narrower interpretation it had reached two months prior. *Matter of Hurtado*, 29 I. & N. Dec. at 228.

52. "Historically, noncitizens who resided in the United States, but who had previously entered without inspection, were not deemed 'arriving aliens' under § 1225(b), but were instead subject to § 1226(a)." *Aguilar Maldonado v. Olson*, --- F. Supp. 3d ----, 2025 WL 2374411, at *11 (D. Minn. Aug. 15, 2025). As such, "[n]oncitizens already residing in the county . . . were placed in standard removal proceedings and received bond hearings, unless their criminal histories rendered them ineligible under § 1226(c)." *Id.; Maldonado Vazquez*, 2025 WL 2676082, at *4.

53. In *Matter of Hurtado*, the BIA reversed decades of well-settled law and procedure, holding that any noncitizen who was not formally admitted into the United States—such as noncitizens who entered without inspection or arriving noncitizens who were arrested at the border and released on parole—are applicants for admission subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of how long they have resided in the United States. *Matter of Hurtado*, 29 I. & N. Dec. at 228.

**Automatic Stays of IJ Bond Grants**

54. Federal regulations purportedly allow DHS to seek an automatic stay of an IJ's bond order by "filing a notice of intent to appeal the custody redetermination . . . within one business day of the order." 8 C.F.R. § 1003.19(i)(2) ("the automatic stay regulation").

55. To preserve the stay, DHS must file an appeal with the BIA within 10 business days of the IJ order. 8 C.F.R. § 1003.6(c). In doing so, DHS must provide a certification by a senior official "that sufficient factual *and* legal bases exist to justify continued detention ('the Certification Requirement')." *Herrera*, 2025 WL 2581792, at *3 (emphasis in the original); 8

C.F.R. § 1003.6(c). If DHS perfects the stay requirements, the IJ's release order is automatically stayed for the pendency of the appeal or 90 days after filing of the appeal, whichever comes first.

56. "Several courts," including this Court, have "concluded the automatic stay provision violate[s] the due process rights of detainees." *Herrera*, 2025 WL 2581792, at *3 (collecting cases); *see, e.g., Sampiao v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2607924, at *2 (D. Mass. Sept. 9, 2025); *Aguilar Maldonado*, 2025 WL 2374411, at *13; *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1190 (D. Minn. 2025).

**EXHAUSTION**

57. Administrative exhaustion of Mr. Perez Sales's due process claims challenging his continued detention pursuant to an automatic stay is not required by the INA nor the habeas statute. *Herrera*, 2025 WL 2581792, at *10.

58. Exhaustion is also not required as a prudential matter. Prudential exhaustion may be required if "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). None of these factors weigh in favor of requiring exhaustion.

59. First, the agency has already considered Mr. Perez Sales's claims for release. He sought a bond from an IJ who granted release on a statutory minimal bond. Mr. Perez Sales remains detained, however, due to the agency's reliance on regulatory automatic stays and the BIA's erroneous statutory interpretation in *Matter of Hurtado*.

60. For the same reasons, addressing Mr. Perez Sales's challenge would not encourage bypassing the administrative proceedings. Here, the agency has predetermined the legal issue

underlying his eligibility for bond, after reversing decades of statutory interpretation and practice. *Maldonado Vazquez*, 2025 WL 2676082, at *10.

61. Similarly, because the agency is bound by the automatic stay regulations and BIA precedent, individualized administrative review of Mr. Perez Sales's claims is effectively foreclosed. As such, exhaustion would be futile. *Herrera*, 2025 WL 2581792, *8; *Maldonado Vazquez,* 2025 WL 2676082, at *10.

62. Moreover, as this Court concluded in *Herrera*, Mr. Perez Sales has "exhausted [his] administrative remedies" because he "sought review of their custody from IJs pursuant to the procedural protections they are afforded under § 1226(a) and successfully established by clear and convincing evidence that they should be released on bond." *Herrera*, 2025 WL 2581792, at *8. Mr. Perez Sales "simply asks this Court to enforce the IJ's bond order." *Id.*

## ARGUMENT

### A. Mr. Perez Sales's continued detention based on the BIA's erroneous interpretation of § 1225(b)(2) is facially unlawful.

63. As a threshold matter, this Court must consider both the lawfulness of the automatic stay provision as well as Mr. Perez Sales's statutory violation arguments.

64. Although DHS's appeal of the IJ's bond decision remains pending, the *post hoc* IJ decisional memorandum makes clear the agency's position that Mr. Perez Sales's bond grant is superseded by *Matter of Hurtado*. *See* Ex. J at 132. As such, even if this Court orders Mr. Perez Sales released based on a finding that the automatic stay regulation violates his due process rights, Mr. Perez Sales would remain vulnerable to impending re-detention based on the agency's erroneous statutory interpretation. As another court in this District has recently opined on an analogous case, this Court must address both issues to give Mr. Perez Sales full relief and safeguard judicial resources and efficiency. *Maldonado Vazquez,* 2025 WL 2676082 at *11.

65. As the Supreme Court held, "[w]hen the meaning of a statute [is] at issue, the judicial role [is] to interpret the act of Congress, in order to ascertain the rights of the parties." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (internal quotation marks and citation omitted). Accordingly, "[a] district court may grant a writ of habeas corpus to any person who demonstrates he is in custody in violation of the Constitution or laws of the United States." *Maldonado Vazquez*, 2025 WL 2676082, at *4 (citing 28 U.S.C. § 2241(c)(3)). Because the BIA's sweeping interpretation of 8 U.S.C. § 1225(b)(2)(A) is legally erroneous, this Court must order Mr. Perez Sales released.

66. After an IJ rejected DHS's argument that Mr. Perez Sales is subject to mandatory detention under § 1225, the BIA issued a precedential decision addressing this very issue in *Matter of Hurtado,* which holds that all noncitizens who have not been formally admitted into the United States ("applicants for admission") are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) regardless of how long they have lived in the United States. 29 I. & N. Dec. at 228. This holding contradicts the clear language of the statute, judicial precedent, legislative history, and longstanding agency practice demonstrate. The BIA's erroneous interpretation of § 1225(b)(2) cannot support Mr. Perez Sales's continued detention.

67. As the Supreme Court has explained, immigration screening and enforcement can be separated into two broad categories: border-related enforcement and interior enforcement. *See Jennings*, 583 U.S. at 287-89.

68. Immigration enforcement "generally begins at the Nation's borders and points of entry." *Id.* at 287. § 1225 governs enforcement actions at the border, where the government determines whether to admit noncitizens who are arriving into the United States or are present but have not been admitted (applicants for admission). *See id.* (quoting 8 U.S.C. § 1225(a)(1)).

Noncitizens subject to § 1225 must be detained without the opportunity for a bond hearing for the duration of their proceedings. 8 U.S.C. § 1225(b).

69. There are two broad classes of noncitizens subject to § 1225 mandatory detention. First, § 1225(b)(1), the expedited removal provision, pertains to "arriving" noncitizens and noncitizens who have not been admitted and cannot demonstrate that they have been present in the United States for at least two years. Unless they raise a fear of return to their home country, these noncitizens can be administratively removed without being placed in removal proceedings. *See* 8 U.S.C. § 1225(b)(1). § 1225(b)(2) on the other hand pertains to "applicant[s] for admission" who are "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2).

70. Conversely, § 1226 "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 303. § 1226(a) "creates a default rule" permitting detention of removable noncitizens. *Id.* Noncitizens detained under § 1226(a) qualify for release on bond. *Id.* § 1226(c) operates as an exception to 1226(a)'s general rule in that it mandates detention of noncitizens who "fall[] into one of the enumerated categories involving criminal offenses and terrorist activities." *Id.* Noncitizens who fall under this mandatory detention provision do not qualify for bond.

71. Notably, § 1226(c) mandates detention for noncitizens based on crime-based inadmissibility grounds, which apply to noncitizens who have not been formally admitted into the United States, as well as deportability grounds, which apply to noncitizens who have been previously admitted but are nonetheless removable. *See* 8 U.S.C. § 1226(c)(1). In fact, Congress recently enacted a new ground for mandatory detention under § 1226(c) under the Laken Riley Act, which mandates detention for noncitizens who are *inter alia* present in the United States without being admitted or paroled, 8 U.S.C. § 1182(a)(6)(A), and who have been charged, arrested, convicted or who admit to having committed certain enumerated crimes. 8 U.S.C. § 1226(c)(1)(E).

72. *Matter of Hurtado*, however, holds that § 1226 applies only to deportable noncitizens—i.e. those who have been admitted— and that § 1225(b)(2)(A) applies to all noncitizens who have not been properly admitted, regardless of how long they have lived in the United States. *Matter of Hurtado*, 29 I. & N. Dec. at 220-21. The plain language of the statute makes it clear that the BIA's sweeping interpretation of § 1225(b)(2) is erroneous.

73. First, the references to inadmissibility grounds, which *only* apply to noncitizens who have not been admitted—"applicants for admission" as the BIA describes them—in § 1226(c) necessarily mean that noncitizens who are present in the United States without admission and have no disqualifying criminal history are subject to discretionary detention under § 1226(a).

74. The BIA's interpretation in *Matter of Hurtado*, however, ignores the forest for the trees, focusing on the term "applicant for admission" in § 1225 as the only term that could possibly be used to describe a person who has not been admitted and, in doing so, ignoring the full language of the statute. The BIA justified its sweeping interpretation of Section 1225(b) by reasoning that interpreting § 1226 as pertaining to noncitizens residing in the United States who have not been formally admitted would "leave unanswered which applicants for admission would be covered by § [1225](b)(2)(A)" and create an improbable third category of noncitizens who are neither applicant's for admission nor admitted. *Matter of Hurtado*, 29 I. & N. Dec. at 221.

75. However, this reasoning demonstrates the BIA's myopic assessment of the statute. By focusing too narrowly on the applicant for admission language, the BIA fails to contend with the narrowing clause in § 1225(b)(2), which clarifies that it pertains to applicants for admission who are "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). Justice Breyer provides a reasonable interpretation that dissipates this purported tension, explaining that § 1225(b)(2):

> [C]onsists of persons who are neither (1) clearly eligible for admission, nor (2) clearly ineligible. A clearly eligible person is, of course, immediately admitted. A clearly ineligible person—someone who lacks the required documents, or provides fraudulent ones—is "removed ... without further hearing or review." But where the matter is not clear, i.e., where the immigration officer determines that an alien "is not clearly and beyond a doubt entitled to be admitted," he is detained for a removal proceeding. *Jennings*, 583 U.S. 281 at 353 (Breyer, J. dissenting) (internal citations omitted).

Unlike the Board's lack of explanation in *Matter of Hurtado*, this interpretation contends with the full text of § 1225(b)(2).

76. Accordingly, accepting the BIA's sweeping interpretation of § 1225(b)(2) as pertaining to all noncitizens who have not been admitted into the United States would violate "one of the most basic interpretive canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotations omitted). As the District of Minnesota reasoned on this issue,

> Here, the presumption against superfluity is at its strongest because the Court is interpreting two parts of the same statutory scheme, and Congress even amended the statutory scheme this year when it passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), adding Sub§ (c)(1)(E) to § 1226. The Government's novel interpretation of § 1225(b)(2) runs headlong into that new addition. If § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding § 1226(c)(1)(E) to the statutory scheme was pointless.

*Aguilar Maldonado*, 2025 WL 2374411, at *12.

77. The legislative history further supports a narrow interpretation of § 1225 as inapplicable to noncitizens who reside in the United States but are present without admission.

78. Before the enactment of IIRIRA, "immigration law provided for two types of removal proceedings: deportation hearings and exclusion hearings. A deportation hearing was the "usual means of proceeding against an alien already physically in the United States," while an exclusion hearing was the "usual means of proceeding against an alien outside the United States

seeking admission." *Hose v. INS,* 180 F.3d 992, 994 (9th Cir. 1999) (internal citations omitted). Like § 1226(a), the pre-IIRIRA statute allowed for "discretionary release on bond." *Rodriguez v. Boystock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (citing 8 U.S.C. § 1252(a)(1) (1994)).

79. In enacting IIRIRA, Congress was explicit in its intent to "restate" the prior statute's provisions regarding arrest, detention, and discretionary release on bond for unlawfully present noncitizens. *Id.* (quoting H.R. Rep. No. 104-469, pt. 1, at 229). As such, Congress sought to preserve the longstanding practice of providing removable noncitizens residing in the United States with discretionary bond hearings.

80. Lastly, it is important to note that the longstanding practice of the government until the last few months had been to treat "noncitizens arrested while living in the United States, including those who entered without inspection, as detained under § 1226(a)." *Id.* at 1260. This "longstanding practice of the government . . . can inform [a court's] determination of what the law is." *Loper Bright*, 603 U.S. at 386.

**B. Mr. Perez Sales's continued detention based on the BIA's erroneous interpretation of § 1225(b) is unlawful as applied to him.**

81. Even if this Court concludes that the BIA's interpretation that § 1225(b)(2) mandates detention of all noncitizens who have not been admitted into the United States, Mr. Perez Sales's continued detention is nonetheless unlawful as that interpretation is inapplicable to him because he entered as an unaccompanied child subject to a separate detention and release statutory scheme under the TVPRA.

82. Under the TVPRA, unaccompanied children entering the United States are not subject to mandatory detention under § 1225. Instead, the TVPRA places UCs in the care of the Secretary of Health and Human Services (HHS), which in turn must "promptly place [the UC] in the least restrictive setting that is in the best interest of the child," which may include outright

release without bond to "a suitable family member." 8 U.S.C. § 1232(b)(1), (c)(2)(A). HHS can only place an unaccompanied child in a "secure facility" if it determines that "the child poses a danger to self or others or has been charged with having committed a criminal offense." 8 U.S.C. § 1232(c)(2)(A). The mandate to detain unaccompanied children in the least restrictive setting available continues even if the unaccompanied child is turned over from HHS to DHS after turning 18. 8 U.S.C. § 1232(c)(2)(B).

83. Similarly, the TVPRA bypasses the expedited removal provision, requiring that unaccompanied children be placed directly into removal proceedings. *Compare* 8 U.S.C. § 1232 (a)(5)(D)(i) *with* 8 U.S.C. § 1225 (providing for the expedited removal of applicants for admission absent a showing of a credible fear of persecution). However, although unaccompanied children must be placed directly into removal proceedings, USCIS has initial jurisdiction over their asylum claims. 8 U.S.C. § 1158(b)(3)(C).

84. A noncitizen designated as an unaccompanied child may no longer meet the definition once he turns 18 or is reunited with a parent. However, nothing in the TVPRA or INA indicates that, at that point, a noncitizen who entered the United States as a child, was released from HHS custody, and has resided in the United States since can then be subjected to § 1225 mandatory detention.

85. In fact, "[i]f [unaccompanied children] become 'arriving aliens' on the day they turn eighteen, subjecting them to rearrest and near-indefinite detention, then § 1232(c)(2)(B) of the TVPRA would lose the force of law." *Lopez v. Sessions*, No. 18-cv-4189, 2018 WL 2932726, at *13 (S.D.N.Y. June 12, 2018) (ordering release of formerly designated UC who was deemed subject to § 1225); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

86. Congress enacted a completely separate detention and release scheme for unaccompanied children entering the United States *precisely* to distinguish them from noncitizens subject to § 1225. Even if *Matter of Hurtado*'s interpretation can stand, it does not speak and cannot extend to Mr. Perez Sales.

**C. Mr. Perez Sales's continued detention violates his due process rights.**

87. "[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." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).

88. As this Court has recognized, DHS's unilateral and automatic authority to continue Mr. Perez Sales's detention despite the IJ's order granting him release on bond violates substantive and procedural due process guarantees both facially and as applied. *Herrera*, 2025 WL 2581792, at *9-13. Mr. Perez Sales presents the same challenge here.

**i. Automatic stays pursuant to 8 C.F.R. 1003.19(i)((2) violate procedural due process.**

89. Courts apply *Mathews*'s three-prong test to determine whether a noncitizen's detention violates procedural due process. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). That is, courts must weigh (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* Each of these factors weighs in favor of Mr. Perez Sales.

90. ***Private Interest.*** First, Mr. Perez Sales's private interest in "freedom from prolonged detention is unquestionably substantial." *Rodriguez Diaz v. Garland*, 53 F.4th 1189,

1207 (9th Cir. 2022) (internal quotations omitted). As this Court reasoned in *Herrera*, "the automatic stay necessarily always infringes on a noncitizen's fundamental right to freedom from Government detention, and therefore, in terms of both the facial and as applied procedural due process challenge, this factor weighs heavily against the Government." *Herrera*, 2025 WL 2581792, at *10.

91. Mr. Perez Sales's substantial freedom interest is bolstered by the conditions of his detention. *Id.* First, Mr. Perez Sales's detention has severely impacted his access to his longstanding counsel. *See* Ex. B at 8. The detention center's extremely limited availability for confidential legal calls, coupled with his need for a Mam interpreter during legal calls, has severely limited his access to counsel and ability to adequately prepare for his upcoming asylum interview before USCIS. *Id.* Had Mr. Perez Sales been released when the IJ ordered his release, he would have had the opportunity to attend his asylum interview in person with full access to his long-standing counsel and an interpreter. As it stands, Mr. Perez Sales had to appear at his initial interview while detained with limited opportunity to prepare. *Id.* Further, his asylum interview had to be rescheduled due to audio difficulties, which made it difficult for the asylum officer and an interpreter in the Mam language to communicate with him for purposes of his asylum interview. *Id.* at 9.

92. Moreover, Mr. Perez Sales has now been detained for more than three months away from his family and community. Mr. Perez Sales has lived in Oakland, California, since he came to the United States in 2019. Ex. A at 2; Ex. B at 7. His family, community, and counsel are in the Oakland area. *See* Ex. F at 84-96. Further, Mr. Perez Sales's physical and mental health have been adversely impacted by his detention. Ex. B at 9. Mr. Perez Sales recently began vomiting blood at the NSDC. *Id.* While he requested medical attention, the medical staff at NSDC did not help him.

*Id.* Emotionally, Mr. Perez Sales has expressed his state of mind to counsel by conveying that his "heart hurts." *Id.*

93. As such, the first *Mathews* prong weighs heavily in Mr. Perez Sales's favor.

94. ***Risk of Erroneous Deprivation.*** Similarly, the risk of erroneous deprivation resulting from the automatic stay substantially weighs in Mr. Perez Sales's favor. As this Court concluded in *Herrera*, "the automatic stay provision creates an extreme risk of erroneous and arbitrary confinement" because it "provides no discernable process or standard to guide the relevant agency official's decision to enact the automatic stay, other than the vague requirement that the stay be warranted under the facts and law." *Herrera*, 2025 WL 2581792, at *10; *see also Maldonado Vazquez*, 2025 WL 2676082, at *19 ("Such an undefined and subjective standard clearly creates a likelihood of arbitrary and capricious application.").

95. Moreover, notwithstanding that the regulation governing automatic stays requires certification by an agency official to justify invocation of an automatic stay, "there are no processes to review an official's certification that the stay is warranted, or even to enforce the certification requirement in the first place." *Id.* As such, DHS's automatic stay procedures amount to a "unilateral" action devoid of procedural safeguards. *Id.*

96. The automatic stay process contravenes the well-established test for adjudicating stays in the immigration context that incorporates the traditional criteria by which a stay can issue. *Id.* As the Supreme Court has recognized, "[a] stay is not a matter of right." *Nken v. Holder,* 556 U.S. 418, 433 (2009). It requires "considered judgment" from a court to determine whether the requesting party can meet its burden to show that the circumstances justify an exercise of that discretion." *Id.* at 427, 434. Most critically, the requesting party must demonstrate a likelihood of success on the merits and irreparable harm absent a stay. *Id.* at 434. By affording DHS unilateral

power to stay an IJ's release order, however, the automatic stay provision turns these well-established principles on their head.

97. While the *Nken* test is grounded on judicial prudence "guided by sound legal principles," *Id.* at 434 (internal quotations omitted), the automatic stay regulation gives "the agency official who has just failed to present evidence or argument sufficient to convince a neutral decisionmaker that detention is warranted" unilateral authority to stay that decision. *Herrera*, 2025 WL 2581792, at *10.

98. The lack of legal standards and procedural safeguards including neutral review that characterize the automatic stay regulatory framework more than establish the requisite risk that Mr. Perez Sales faces erroneous deprivation of liberty in these circumstances.

99. ***Government's Interest.*** Lastly, the government's interest and burden resulting from additional process also weighs in favor of Mr. Perez Sales. While the government may have an interest in detaining dangerous noncitizens or securing a noncitizen's removal, Mr. Perez Sales falls under neither of these categories. The government's interests are broadly safeguarded by the statutory mandatory detention scheme and the IJs authority to make discretionary bond determinations based on a review of the circumstances of the case against sound legal principles. *Maldonado Vazquez*, 2025 WL 2676082, at *21. Once a noncitizen has "been determined not to be a danger to the community" nor a flight risk, "'the government has no legitimate interest in detaining'" him. *Id.* at *20 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)).

100. In any event, it is "always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002)); *see Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) (holding that the government "suffers no harm from an

injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented").

**ii. Automatic stays pursuant to 8 C.F.R. 1003.19(i)((2) violate substantive due process.**

101. Substantive due process protects individuals from government action that unduly interferes with their fundamental rights. *Regino v. Staley*, 133 F.4th 951, 960 (9th Cir. 2025). When a fundamental right is at risk, due process requires the government to have a compelling state interest and to tailor its actions narrowly to serve that interest. *Id.*

102. It is well-established that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas,* 533 U.S. 678 at 690. As such, freedom is the norm and the government must justify a noncitizen's detention by a compelling interest and narrowly tailored means.

103. Generally, the government justifies its detention of noncitizens based on its interest in preventing danger to the community and minimizing flight risk of removable noncitizens. *See id.* However, the INA's mandatory detention provisions and individualized bond adjudications by IJs adequately protect those interests. Automatic stays, however, require such little justification that they can hardly be said to be tailored at all. As such, they facially violate due process guarantees.

104. Mr. Perez Sales's continued detention due to DHS's invocation of an automatic stay similarly violates due process as applied to him. An IJ already held that Mr. Perez Sales is neither a flight risk nor a danger to the community. Importantly, DHS had the opportunity to argue its position that Mr. Perez Sales is subject to mandatory detention, and the IJ ruled on that argument. The government's broad disagreement with the IJ's decision is not in itself a compelling

interest and unilaterally staying the IJ's decision is not narrowly tailored to any discernible compelling interest.

## CLAIMS FOR RELIEF

### Count I

### Violation of 8 U.S.C. § 1226(a)
### Unlawful Detention Pursuant to Agency's Erroneous Interpretation

105. Mr. Perez Sales re-alleges and incorporates by reference the paragraphs above.

106. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United Stated who are charged as inadmissible because they entered the United States without inspection. Absent disqualifying criminal convictions, those noncitizens are detained under Section 1226(a) and thus eligible for bond hearings.

107. Accordingly, Mr. Perez Sales's continued detention based on the BIA's unlawful interpretation of Section 1225(b)(2) in *Matter of Hurtado* is unlawful. Mr. Perez Sales thus must be immediately released pursuant to the IJ's August 26, 2025, bond order.

### Count II

### Violation of 8 U.S.C. §1232
### Unlawful Detention Pursuant to Agency's Erroneous Interpretation of the TVPRA

108. Mr. Perez Sales re-alleges and incorporates by reference the paragraphs above.

109. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who entered the United States as unaccompanied children subject to 8 U.S.C. § 1232.

110. Accordingly, Mr. Perez Sales's continued detention based on the BIA's unlawful interpretation of Section 1225(b)(2) in *Matter of Hurtado* is unlawful. Mr. Perez Sales thus must be immediately released pursuant to the IJ's August 26, 2025, bond order.

**Count III**

**Unlawful Detention Pursuant to Violation of Due Process under Fifth Amendment of U.S. Constitution**

111. Mr. Perez Sales re-alleges and incorporates by reference the paragraphs above.

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

113. Mr. Perez Sales's ongoing detention despite an IJ's order of release on bond pursuant solely to an automatic stay by DHS violates Mr. Perez Sales's due process rights both facially and as applied.

114. The government's use of a unilaterally-issued automatic stay to continue detaining Mr. Perez Sales despite an IJ's order of release on bond infringes on Mr. Perez Sales's fundamental liberty right. Because the government cannot demonstrate it has a compelling interest to detain Mr. Perez Sales despite the IJ's finding that he is neither a flight risk nor a danger to the community and has not narrowly tailored its actions to serve any compelling interest, the government's use of automatic stays violates substantive due process both facially and as applied.

115. Accordingly, the Due Process Clause requires Mr. Perez Sales's immediate release from detention pursuant to the IJ's August 26, 2025, custody redetermination order.

**PRAYER FOR RELIEF**

Mr. Perez Sales respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Grant a writ of habeas corpus and order Respondents to immediately release Mr. Perez Sales;

c. Award reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

d. Grant any other and further relief as the Court deems just and proper.

DATED this 25th day of September, 2025.

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* Will comply with LR IA 11-2 within 7 days for *pro hac vice* admission

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