

**UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-3062-GPG

JAVIER DE DOMINGO CAMPOS,
Petitioner

v.

JUAN BALTASAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado,
in his official capacity,

ROBERT GAUDIAN, Field Office Director, Denver Field Office, U.S. Immigration and
Customs Enforcement, in his official capacity,

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official
capacity,

TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official
capacity,

PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,
Respondents

**PETITIONER-PLAINTIFF'S REPLY TO RESPONDENTS-DEFENDANTS' RESPONSE
TO PETITION FOR HABEAS RELIEF (ECF 21)**

This Court should join the chorus of federal courts across the country to grant *habeas* relief to Plaintiff-Petitioner (“Plaintiff”) finding Defendants-Respondents’ (“Defendants”) new interpretation of the Immigration and Nationality Act (INA)’s detention provisions illegal. Upon doing so, it should allow Plaintiff to pay bond and be released.

I. Introduction

Before Plaintiff filed this case, federal courts overwhelmingly agreed that Defendants’ policy of excluding people who entered without inspection from bond is unlawful. ECF 10, n. 2. The emphatic judicial consensus rejecting Defendants’ position continues nationwide.¹ It includes the Western District of Washington’s recent grant of

¹ *E.g.*, *Guerrero Orellana v. Moniz*, 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, 25-cv-12620-IT, 2025 WL 28233324 (D. Mass. Oct. 3, 2025); *Echevarria v. Bondi*, 25-cv-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Artiga v. Genalo*, 25-cv-5208, 2025 WL 2829434 (E.D.N.Y Oct. 5, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Ledesma Gonzalez v. Bostock*, 2:25-cv-01401, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Buenrostro-Mendez v. Bondi*, H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Mena Torres v. Wamsley*, C25-5772-TSZ, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025); *B.D.V.S. v. Forestal*, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson et al.*, 25-cv-3381 (JWB/DJF), 2025 WL 2886729 (D.Minn. Oct. 8, 2025); *Eliseo v. Olson*, 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (D. Minn. Oct. 11, 2025); *E.C. v. Noem et al.*, 2:25-cv-01789-RFB-BNW (D. Nev. Oct. 14, 2025); *Garcia Domingo v. Castro*, --- F.Supp.3d ---, 2025 WL 2941217 (D.N.M. Oct. 25, 2025); *Teyim v. Perry et al.*, 1:25-cv-01615-MSN-WEF, 2025 WL 2950183 (E.D. Va. Oct. 15, 2025); *Perez Pina v. Stamper*, 2:25-cv-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Gonzalez v. Joyce*, 25-cv-8250 (AT), 2025 WL 2961626 (W.D.N.Y. Oct. 19, 2025); *Sanchez Alvarez v. Noem et al.*, 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Polo v. Chestnut et al.*, 1:25-cv-01342 JLT HBK, 2025 WL 2959346 (E.D. Ca. Oct. 17, 2025); *Chavez v. Director of Detroit Field Office et al.*, 4:25-cv-02061-SL, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *HGVU v. Smith et al.*, 25-cv-10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2025) *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL 269163 (D. Mass. Oct. 21, 2025); *Buestan v. Chu*, No. 25-16034 (MEF), 2025 WL 2972252 (D. N.J. Oct. 21, 2025); *Maldonado v. Baker*, No. 25-3084-TDC (D. Md. Oct. 21, 2025); *Gonzalez Martinez v. Noem*, EP-25-cv-

summary judgement to a class of incarcerated noncitizens presenting the same arguments Plaintiff does here. *Rodriguez Vazquez v. Bostock*, 3:25-cv-05240, --- F.Supp.3d.---, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). It also includes multiple decisions from this District.² Plaintiff is therefore likely to succeed on the merits and this Court should join the “tsunami” of decisions finding Defendants’ position unlawful. *Roa*, 2025 WL 2732923, at *1 (citation omitted).

II. This Court has Jurisdiction to Grant the Requested Relief.

Supreme Court precedent is clear: the INA’s jurisdictional bars do not apply when a noncitizen “challenges the statutory framework that permits his detention without bail.” *Demore v. Kim*, 538 U.S. 510, 517 (2003). The Court reaffirmed in *Jennings v. Rodriguez*, that it would be “absurd” to deprive district courts of jurisdiction over detention-related claims as that effectively renders them “unreviewable.” 583 U.S. 281, 293 (2018). A proper “narrow reading” of the jurisdiction stripping provisions, see *Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 487 (1999), confirms this Court retains jurisdiction over Plaintiff’s claims related to his *detention* without bond.

Defendants’ reliance on 8 U.S.C. § 1252(b)(9) is without merit. That statute limits judicial review to “a final order” of “any action taken or proceeding brought to remove a [noncitizen].” The Supreme Court held § 1252(b)(9) does not prevent hearing detention-

430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Miguel v. Noem*, 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025);

² *Mendoza Gutierrez v. Baltasar et al.*, 1:25-cv-02720-RMR (D. Colo. Oct. 17, 2025), ECF 33; *Moya Pineda v. Baltasar et al.*, 1:25-cv-02955-GPG-TPO (D. Colo. Oct. 20, 2025), ECF 21; *Loa Caballero v. Baltasar et al.*, 1:25-cv-03120-NYW (D. Colo. Oct. 22, 2025), ECF 18; *Hernandez Vazquez v. Baltasar et al.*, 1:25-cv-03049-GPG-TPO (D. Colo. Oct. 23, 2025), ECF 22; *Nava Hernandez v. Baltasar et al.*, 1:25-cv-03094-CNS (D. Colo. Oct. 24, 2025), ECF 26; See *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS, 2025 WL 2652880 (D. Colo. Sept. 16, 2025).

related claims: when noncitizens “are not asking for review of an order of removal” but instead are “challenging the decision to ... deny them bond hearings,” “§ 1252(b)(9) does not present a jurisdictional bar.” *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (citing *Jennings*, 583 U.S. 281, cleaned up). Indeed, when Congress added § 1252(b)(9) to the INA, it stated “nothing in the amendment would preclude habeas review over challenges to detention” – which is precisely the claim here. *Kong v. U.S.*, 62 F.4th 608, 614 (1st Cir. 2023) (citing H.R. Rep. No. 109-72, at 175 (2005) (Conf. Rep.), cleaned up). Relatedly, 8 U.S.C. § 1252(a)(5) also does not limit any “habeas corpus provision.” *Id.* It only governs a final “order of removal.” *Id.* Plaintiff seeks review of his detention, not any removal order. *Ferry v. Gonzales*, 457 F.3d 1117, 1131 (10th Cir. 2006). The litany of cases rejecting Defendants’ position, including several in this District, agree that District Courts have jurisdiction to hear detention-related claims.

Defendants’ argument regarding the Supreme Court’s jurisdictional analyses in *Jennings* and *Nielsen* misconstrues those cases and Plaintiff’s claim. With respect to the former, the Court is clear: § 1252(b)(9) does not bar jurisdiction when noncitizens are

not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal [*as opposed to the decision to deny them bond hearings*]; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances, . . . § 1252(b)(9) does not present a jurisdictional bar.

Nielsen, 586 U.S. at 402 (alteration in original, emphasis added) (citing *Jennings*, 583 U.S. at 294–95). The Court is explicit: § 1252(b)(9) does not bar claims regarding the agency’s decision to “deny them bond hearings” *Id.* That is precisely Plaintiff’s claim here. Plaintiff argues that Defendants’ authority to detain him is pursuant to § 1226 rather than § 1225. Neither statute is a basis for removal and neither involves the process to

determine whether removability is established. Section § 1252(b)(9) does not bar this Court's review. *Id*; *Eliseo Jose Alejandro*, 2025 WL 2896348, at *3.

Defendants' argument that § 1252(g) strips this Court of jurisdiction is also wrong. Section 1252(g) only strips federal courts of jurisdiction over claims "arising from the decision ... to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders." None of these apply in this case. Courts consistently hold this language does not limit their ability to hear detention claims either. The First Circuit in *Kong* explained "illegal detention [claims] are plainly collateral to ICE's prosecutorial decision[making]," which § 1252(g) insulates, and thus § 1252(g) "does not bar judicial review of [petitioner's] challenge to the lawfulness of his detention." 62 F.4th at 617. Other courts agree.³ Defendants' argument that the statutory basis for "commenc[ing]" removal proceedings includes a discretionary choice between §§ 1225 and 1226 is irrelevant here because that is actually a choice between *detention* (not *removal*) provisions. Even the Eleventh Circuit in *Alvarez v. ICE* – cited by *Defendants* (ECF 21, p. 11) – held district courts can review whether "the agency had no statutory ground on which to detain [noncitizens]." 818 F.3d 1194, 1205 (11th Cir. 2016). That is precisely the review Plaintiff requests here.

This Court has jurisdiction to consider the merits of Plaintiff's petition. It should thereafter join "almost every district court to consider this issue" and conclude that "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades supports finding that § 1226 applies to these circumstances." *Buenrostro-Mendez*, 2025 WL 2886346, at *3.

³ *E.g.*, *Ozturk v. Hyde*, 136 F.4th 382, 400 (2nd Cir. 2025); *Arce v. U.S.*, 899 F.3d 796 (9th Cir. 2018); *Madu v. Att'y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006); *Garcia v. Att'y Gen.*, 553 F.3d 724, 729 (3d Cir. 2009).

III. Defendants' Position Violates the Statute.

Defendants' interpretation of § 1225 makes large parts of the code meaningless and "fails to take account of the entirety of the statutory scheme." *Echevarria*, 2025 WL 2821282, at *9. "In ascertaining the plain meaning of a statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted).

A statute's title is "especially valuable where it reinforces what the text's nouns and verbs independently suggest." *Yates v. U.S.*, 574 U.S. 528, 552 (2015) (Alito, J., concurring). The title of § 1225 includes "arriving" "indicat[ing] that the statute governs 'arriving' noncitizens, not those present already." *Barrera v. Tindall*, 3:25-cv-541-RGJ, 2025 WL 2690565, at *4 (W.D.Ky Sept. 19, 2025) (citation omitted). The remaining text, focused on crewman or stowaways, further "reinforces the interpretation that [§] 1225 is much more limited in scope than the [government] asserts." *Id.* Defendants' improper reading relies on the broad definition of "application for admission" at § 1225(a)(1). ECF 21 pp. 5, 12–14. This definition, however, does not control for § 1225(b)(2), which does not apply to *all* applicants for admission, but only those actively "seeking admission" at the border. *See* 8 U.S.C. § 1225. *See also* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996) (purpose of § 1225 regarding noncitizens arriving at the border).

Contrary to Defendants' claim, § 1225(b)(1)(A)(iii)(II) does not support their reading. That section concerning mandatory detention of noncitizens in the interior subject to expedited removal supports Plaintiff's position under the *expressio unius est exclusio alterius* doctrine. "[W]here Congress includes particular language in one section of a statute but omits it in another section . . . , it is generally presumed that Congress acts

intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. U.S.*, 464 U.S. 16, 23 (1983). Congress’ explicit language to limit mandatory detention to noncitizens who have been in the U.S. for *less than two years* when Defendants jail them in the interior shows Congress knew when to apply § 1225 mandatory detention to people ICE jails inside the United States. *Id.* It chose not to for people like Plaintiff who have resided here for decades. *Id.*

Also contrary to Defendants’ assertion, acknowledging § 1225(b)(2)(A)’s limited application to noncitizens *arriving* to the U.S. does not incorrectly restrict its breadth.

[Section] 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other than 8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7) (which are the grounds that put an arriving noncitizen on the track for expedited removal). The statute governing inadmissibility lists ten grounds for inadmissibility, many of which have distinct sub-grounds. See 8 U.S.C. § 1182(a)(1)-(10). There are thus arriving noncitizens inadmissible on these other bases who would fall under Section 1225(b)(2), as opposed to Section 1225(b)(1).

Salcedo Aceros v. Kaiser, 25-cv-3637503, 2025 WL 2637503, at *11 (N.D. Cal. Sept. 12, 2025). That also includes lawful permanent residents “seeking admission” who fall within the six categories of 8 U.S.C. § 1101(a)(13)(C)(i)–(vi). Section 1225(b)(2) plays many roles, but detaining Plaintiff without bond is not one.

Defendants’ argument that § 1225(b)(2)(A) is more specific than § 1226 and any redundancy between §§ 1225(b)(2)(A) and 1226(c)(1)(E) does not render the latter superfluous misses the mark. Defendants ignore that “[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect,” *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995), and “[i]f § 1225(b)(2) already mandated detention of any [noncitizen] 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.” *Barrera*, 2025 WL

2690565, *4 (cleaned up). Congress' recent enactment of the Laken Riley Act's (LRA) new detention provisions would be utterly meaningless under Defendants' interpretation.

Under Plaintiff's interpretation, however, there is no redundancy because the LRA's amendment to § 1226(c)(1) was designed to address a set of people to whom § 1225 does not apply. *Lopez-Campos v. Raycraft*, --- F.Supp.3d ----, No. 2:25-cv-12486, 2025 WL 2496379, *8 (E.D. Mich. Aug. 29, 2025) (If "Congress had intended for [§] 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently" enacted new mandatory detention provisions); *Cordero Pelico*, 2025 WL 2822876, at *14 (finding "no need to" pass the LRA if Defendants' § 1225(b)(2) interpretation were correct); *Lopez Benitez*, 2025 WL 2371588, at *4 (finding that §§ 1225(b)(2) & 1226 are "mutually exclusive"). Defendants also ignore that while limited redundancy may occur, it is a "cardinal rule of statutory interpretation that no provision should be construed to be *entirely* redundant," as Defendants attempt to do here. *Kungys v. U.S.*, 485 U.S. 759, 778 (1988) (emphasis added).

In addition to avoiding these canons of statutory construction and the chorus of decisions against them, Defendants' response mischaracterizes *Jennings*' analysis of the relevant statutes. ECF 21 pp. 4 – 5, 19. *Jennings* begins with a discussion of our "*Nation's borders and ports of entry*, where the Government must determine whether a [noncitizen] *seeking to enter* the country is admissible." *Jennings*, 583 U.S. at 287 (emphasis added). The Court notes that §§ 1225(a) and 1225(b) are relevant for this determination. *Id.* 287–88. It concludes that the latter is for noncitizens who "shall be detained for a removal proceeding if an immigration officer determines that they are not clearly and beyond a

doubt entitled to be admitted *into the country*.” *Id.* at 288 (emphasis added and cleaned up) (citing § 1225(b)(2)).

The Court then transitions to discuss that “*once inside the United States*, [noncitizens] do not have an absolute right to remain here[,]” *id.* (emphasis added), concluding that “U.S. immigration law authorizes the Government to detain certain [noncitizens] *already in the country* . . . under § 1226(a) and (c).” *Id.* at 289 (emphasis added). The Court concludes its discussion of the statutory scheme by stating

In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission *into the country* under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under § 1226(a) and (c).

Id. (emphasis added). Defendants’ response arguing otherwise is wrong.

In sum, Defendants’ interpretation of the statute is wrong. Countless district courts across the country, including this one, the Supreme Court, and canons of statutory construction support Plaintiff’s bond eligibility.

IV. The Binding Regulations—in Place for Decades—Align with the Statute Authorizing Plaintiff Bond.

The implementing regulations further support Plaintiff: § 1225(b)(2)(A) applies to noncitizens arriving in the United States. 8 C.F.R. § 235.3(c)(1) (§1225(b) applies to “any *arriving* [noncitizen] who appears to the inspection officer to be inadmissible”) (emphasis added). “The regulation thus contemplates that ‘applicants *seeking admission*’ are a subset of applicants ‘roughly interchangeable’ with ‘arriving [noncitizens].’” *Salcedo*, 2025 WL 2637503, at *10 (quoting *Martinez v. Hyde*, --- F.Supp.3d ----, No. 25-11613, 2025 WL 2084238, *6 (D. Mass. July 24, 2025), emphasis in original). *See also* 8 C.F.R. § 1.2 (defining “arriving [noncitizen]” as applicant for admission “coming or attempting to come

into the [U.S.] at a port-of-entry”). This is consistent with EOIR’s statement promulgating the regulations, which have not been amended since: “[i]nadmissible [noncitizens], ... have available to them bond redetermination hearings ..., while arriving [noncitizens] do not.” *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Compare 8 C.F.R. § 1003.19(h)(2) with *Procedures for the Detention and Release of Criminal Aliens*, 63 Fed. Reg. 27441, 27448 (May 18, 1998). Indeed, the current regulations do not restrict jurisdiction for noncitizens who entered without inspection that ICE jails in the interior. 8 C.F.R. § 1003.19(h)(2). The regulations do, however, explicitly strip IJ’s of jurisdiction to review bond requests by “arriving [noncitizens]”, further supporting Plaintiff’s position. 8 C.F.R. § 1003.19(h)(2)(B) (emphasis added).

Defendants’ argument that the agency’s interpretation should be given minimal weight because it did not include robust analysis is incorrect. After the IIRIRA’s passage, then-Attorney General Janet Reno proposed a rule that all “[i]nadmissible [noncitizens] in removal proceedings” be ineligible for bond. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, General Reno deleted that proposed provision and replaced it with one applying only to “[a]rriving [noncitizens], as described in § 1.1(q) of this chapter.” 62 Fed. Reg. 10312, 10361 (March 6, 1997). As she explained, “[t]he effect of this change is that inadmissible [noncitizens], ... have available to them bond hearings ..., while arriving [noncitizens] do not.” *Id.* at 10323. Defendants’ response, ECF 21, p. 18, that the agency did not comprehensively consider its decision to permit bond hearings for noncitizens who entered without inspection is wrong and repudiated by the agency’s own rulemaking history.

V. The Automatic Stay Preventing Plaintiff from Paying Bond Unlawful.

Much like its position denying Plaintiff his liberty interest pursuant to the wrong statute, Courts resoundingly reject Respondents' use of the automatic stay regulation.⁴

Respondents' use of the automatic stay is unlawful and its position that the Constitution's Due Process Clause does not apply to Plaintiff incorrect. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Trump v. J.G.G.*, 604

⁴ *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025); *Mohammed H. v. Trump*, 786F.Supp.3d 1149 (D. Minn. 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, --- F.Supp.3d ---, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Leal-Hernandez v. Noem*, --- F.Supp.3d ---, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Perez v. Berg*, --- F.Supp.3d ---, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Herrera v. Knight*, --- F.Supp.3d ---, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Martinez v. Sec'y of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Sampiao v. Hyde*, --- F.Supp.3d, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Carlton v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, --- F.Supp.3d ---, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Campos Leon v. Forestal*, No. 1:25-CV-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Quispe v. Crawford*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Silva v. Larose*, No. 25-CV-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sept. 29, 2025); *Alves da Silva v. U.S. Immigr. & Customs Enft*, --- F.Supp.3d ---, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *B.D.V.S. v. Forestal*, No. 1:25-CV-01968-SEB-TAB, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Arcos v. Noem*, No. 4:25-CV-04599, 2025 WL 2856558 (S.D. Tex. Oct. 8, 2025); *Eliseo A.A. v. Olson*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Aguilar Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Maza v. Hyde*, --- F.Supp.3d ---, 2025 WL 2951922 (D. Mass. Oct. 20, 2025).

U.S. 670, 673 (2025) (same); *Golicov v. Lynch*, 837 F.3d 1065, 1068 (10th Cir. 2016) (same). Respondents' mischaracterization of *Thuraissigiam* to argue otherwise misses the mark. ECF 21, p. 21. There, the Court stated that

[w]hile [noncitizens] who have *established connections* in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for a [noncitizen's] lawful entry into this country and that, as a result, a [noncitizen] at the *threshold of initial entry* cannot claim any greater rights under the Due Process Clause. Respondent attempted to enter the country illegally *and was apprehended just 25 yards from the border*. He therefore has no entitlement to procedural rights other than those afforded by statute.

Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 107 (2020) (emphasis added). Moreover, the Court did not review Thuraissigiam's incarceration as he did not "dispute that confinement during the pendency of expedited asylum review process . . . is lawful." *Id.* at 118. Rather, Thuraissigiam sought the "vacatur of his 'removal order' and 'an order directing [the Department] to provide him with a new . . . opportunity to apply for asylum and other relief from removal.'" *Id.* at 117–18.

In other words, *Thuraissigiam* supports Plaintiff's position that he merits Fifth Amendment due process protections. Plaintiff has resided in the United States for years and Defendants jailed him in the interior of the United States. District Courts have therefore correctly found that *Thuraissigiam* is inapposite, e.g., *Sampiao*, 2025 WL 2607924, at *9; *Lopez-Arevelo*, 2025 WL 2691828, and Circuit Courts continue to agree that the Constitution's Due Process Clause protects noncitizens' right to combat unlawful restrictions on their liberty, e.g., *Black v. Decker*, 103 F.4th 133, 138 (2d Cir. 2024); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 208 (3d Cir. 2020).

Perhaps due to Defendants' erroneous position that Plaintiff does not have due process rights beyond what Congress provides by statute, its response does not address the overwhelming consensus that Defendants' invocation of the automatic stay violates substantive and procedural due process. It violates both.

A. Procedural Due Process

Defendants' position—that BIA review alone satisfies due process—ignores decades of precedent holding that procedural due process requires a meaningful opportunity to be heard before the deprivation of liberty occurs. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Hamdi v. Rumsfeld*, 542 U.S. at 529. Across the country, courts have rejected identical government arguments and found that the automatic stay violates procedural due process because it permits DHS to nullify an immigration judge's individualized release order through a purely administrative act. See, n. 4, *supra*. A review of the *Mathews* factors makes this plain.

First, "Plaintiff has a significant interest at stake. Being free from physical detention by one's own government 'is the most elemental of liberty interests.'" *Carmona-Lorenzo*, 2025 WL 2531521, at *3 (quoting *Hamdi*, 542 U.S. at 529).

Second, "[t]he risk of deprivation is high because the only individuals subject to the automatic stay are those who, by definition, prevailed at their bond hearing" at which an IJ determined they are neither a risk of flight nor a danger to the community. *Id.* The risk of error is significant as the automatic stay "procedure . . . creates a potential for error because it conflates the functions of adjudicator and prosecutor." *Zavala v. Ridge*, 310 F.Supp.3d 1071, 1078 (N.D. Cal. 2004). Indeed "[t]he automatic stay thus presents a conflict of interest in conferring unreviewable discretionary authority in the same

prosecuting agency official that makes erroneous deprivation not just a risk, but *likely*.” *Vazquez*, 2025 WL 2676082, at *19 (emphasis added) (citation omitted); *Gunaydin*, 2025 WL 1459154, at *8 (“the challenged regulation permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge’s decisions . . . [and] is anomalous in our legal system”).

Third, “[w]ith regards to the probable value of additional procedure, it is not difficult to conclude that *any* additional procedure is valuable where, as here, the only procedure required for continued detention appears to be an agency official checking a box and filing a form.” *Vazquez*, 2025 WL 2676082, at *20 (emphasis in original).

Mathews thus confirms the automatic stay violates procedural due process. Courts nationwide agree that such automatic detention, imposed after an IJ’s release order, violates procedural due process. *See* n. 4, *supra*.

B. Substantive Due Process

”Government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances ‘where a special justification . . . outweighs the individual’s constitutionally protected interests in avoiding physical restraint.’” *Vazquez*, 2025 WL 2676082, at *21 (quoting *Zadvydas*, 533 U.S. at 690). Here, the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), permits the government to unilaterally detain Plaintiff despite a neutral adjudicator having already determined he is eligible for release on bond. Defendants offered no “special justification” or compelling interest outweighing Plaintiff’s weighty interest in liberty. Indeed, the only purported reason for the automatic stay is Defendants’ misapplication of § 1225. Moreover, the IJ’s bond determination already satisfies the

government's legitimate interest in ensuring Petitioner appears for future proceedings. *Leal-Hernandez*, 2025 WL 2430025, at *13. By suspending the IJ's individualized bond determination, the automatic stay renders it an "empty gesture," converting what should be a reasoned, case-by-case evaluation into a meaningless formality. *Id.*; *Herrera Torralba*, 2025 WL 2581792, at *13. Plaintiff's continued incarceration therefore does not serve a legitimate purpose and violates substantive due process.

VI. The Automatic Stay Regulation is Ultra Vires and DHS Has Exceeded Its Statutory Authority

Defendants' claim that 8 C.F.R. § 1003.19(i)(2) validly delegates authority to DHS misreads the INA. Under 8 U.S.C. § 1226(a), Congress vested detention and bond authority in the Attorney General, who may delegate it only within DOJ. IJs lawfully exercise that delegation, but DHS, a separate agency, has no statutory authority to override IJ determinations. By invoking § 1003.19(i)(2) to nullify an IJ's bond order, DHS usurps authority Congress assigned exclusively to the Attorney General—an ultra vires act. *Quispe*, 2025 WL 2783799, at *9; *Campos Leon*, 2025 WL 2694763, at *4; *B.D.V.S.*, 2025 WL 2855743, at *3–5.

"Congress did not grant DHS authority to determine whether bond should be granted." *B.D.V.S.*, 2025 WL 2855743, at *2. Plaintiff only remains in custody "because another agency, DHS, refuses to honor the bond determination. And DHS's only source of authority for that refusal is a regulation promulgated by DOJ without Congress's approval." *Id.* Plaintiff's continued detention is therefore only lawful if "DOJ could lawfully delegate its authority over bond determinations to DHS." *Id.*

"It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." *Bowen v. Georgetown Univ.*

Hosp., 488 U.S. 204, 208 (1988). There is no Congressional authority delegated to DOJ or DHS for DHS to override the IJ's bond decision here. *B.D.V.S.*, 2025 WL 2855743, at *3. "Congress set up a system for administering the removal of certain [noncitizens]. If it wished for DHS to have unilateral authority in that process, Congress could have created that system." *Id.* It did not. *Id.*; *Campos Leon*, 2025 WL 2694763, at *4.⁵

The automatic stay therefore transforms an IJ's discretionary bond decision into de facto mandatory detention imposed by DHS—rewriting § 1226(a) and allowing an agency outside DOJ to veto judicial authority. *Leal-Hernandez*, 2025 WL 2430025, at *15.

Respondents' reliance on *Nuclear Regulatory Comm'n v. Texas*, 605 U.S. 665 (2025), is misplaced. That case did not involve fundamental liberty interests. Here, DHS' use of the automatic stay violates the statute and restricts liberty. Because the automatic stay strips IJ authority before BIA review, the injury is immediate and concrete. *Campos Leon*, 2025 WL 2694763, at *4; *B.D.V.S.*, 2025 WL 2855743, at *3. The automatic stay exceeds statutory authority, conflicts with the INA, and unlawfully permits DHS to nullify DOJ's delegated bond authority.

VII. Conclusion

The Court should order Defendants to immediately release Petitioner on the \$10,000 bond previously set by the IJ, or, in the alternative, provide a new bond hearing under 8 U.S.C. § 1226(a) within seven days.

⁵ Defendants' reliance on *Hussain v. Gonzales*, 492 F.Supp.2d 1024 (E.D. Wis. 2007) is unavailing as the court there failed to consider whether the DOJ's potential delegation of authority to DHS in the automatic stay regulation was lawful in the first instance. The *Hussain* court's failure to consider the illegality of that potential transfer is fatal to its persuasiveness.

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Respectfully submitted,

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ATTORNEYS FOR PETITIONER-PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

/s/ Conor T. Gleason
Conor T. Gleason