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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Gildardo Rogelio ESCOBAR Salgado, Juan José MENA Vargas, and Alejandro REYES López Petitioners, v. John MATTOS, Warden, Nevada Southern Center; Jason KNIGHT, Acting Las Vegas/Salt Lake City Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); Kristi NOEM, Secretary, United States Department of Homeland Security, Pamela BONDI Attorney General of the United States, Roman CHABAN, Acting Deputy Director, Executive Office for Immigration Review Respondents.	AMENDED PETITION FOR WRIT OF HABEAS CORPUS Case No. 2:25-cv-01872-RFB-EJY Agency Case Numbers: A[redacted]; A[redacted]; A[redacted]

I. INTRODUCTION

1. Utah Counsel are licensed to practice in and reside in Utah. Both Utah counsel will be seeking pro hac vice admission in this matter.

2. Petitioners are all foreign nationals and residents of Utah.

3. Petitioner Escobar-Salgado has been a resident of Utah for more than 20 years.

4. Petitioner Mena-Vargas has been a resident of Utah for nearly 30 years.

5. Petitioner Reyes-Lopez has been a resident of Utah for over three years.

6. All three Petitioners were detained in Utah by officials of Defendant Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) in August and early September 2025.

7. All three Petitioners are a presently detained by ICE at the Nevada Southern Detention Center, in violation of the constitution and laws of the United States.

8. None of these petitioners has ever been convicted of any crime.

9. Petitioner Escobar-Salgado has been granted a clear order from an Immigration Judge that he be allowed to post a bond and released. Defendants and their officers and employees are actively refusing to allow him to post that bond.

10. After Petitioner Escobar-Salgado was granted bond the Executive Office for Immigration Review announced a precedent decision, governing all the nation's immigration judges, wherein they stated that it is now their express policy, based on a novel interpretation of the nearly thirty year old statutory language that all three Petitioners are subject to mandatory detention without bond.

11. Petitioners submit this Petition for Writ of Habeas Corpus and request for an immediate order to show cause against the above-named Respondents because Petitioners are being unlawfully detained—held without bond—in contravention of the laws, regulations, and constitution of the United States.

12. Petitioners' continued detention without bond is an unlawful violation of due process, an incorrect interpretation of immigration law, a violation of the applicable regulations and is ultra vires to DHS' statutory authority.

II. JURISDICTION

13. Petitioners are in the physical custody of Respondents, detained at the Nevada Southern Detention Center in Pahrump, Nevada.

14. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United Sates Constitution (the Suspension Clause).

15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*, 5 U.S.C. § 706 and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

16. Pursuant to *Burden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court of Nevada, the judicial district in which Petitioners are currently detained. Thus, residents of Utah and attorneys who reside in Utah are forced to file this action in Nevada solely because ICE moved the Petitioners from Utah to Nevada.

17. Venue is also properly 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 Nevada.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

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

19. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative relief in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

V. PARTIES

20. Petitioner ESCOBAR-Salgado is a citizen of Mexico. He has been a resident of Utah for more than 20 years. He has resided in the United States since approximately 1989. (Exhibits Section I: A).

21. Petitioner ESCOBAR-Salgado has not left the United States since 2003, when he last entered without inspection. (Exhibits Section I: A; C;).

22. Petitioner ESCOBAR-Salgado has six U.S. Citizen children, ages 8 to 20. Petitioner has lived in a domestic relationship with Tammy Staples, a U.S. Citizen, for over fourteen years. (Exhibits Section I: B).

23. Petitioner ESCOBAR-Salgado has no criminal convictions. (Exhibits Section I: C).

24. Petitioner Juan Jose MENA-Vargas has been a resident of Utah since 1997. He has two U.S. Citizen children and his parents are both legal permanent residents. (Exhibits Section II: A; B;).

25. Petitioner MENA-Vargas has lived with HIV for over twenty five years. His HIV viral load is managed by regular, consistent, anti-viral medication. (Exhibits Section II: A; C;).

26. Petitioner MENA-Vargas has no criminal convictions. (Exhibits Section II: A; F).

27. Both Petitioner ESCOBAR-Salgado and Petitioner MENA-Vargas were stopped and questioned by officials with USICE while those officials were actively seeking other individuals. (Exhibits Section I: C and Section II B).

28. USICE officials did not have warrants for their arrest, nor does it appear that warrants for their arrest have been issued, inasmuch as no warrants have been provided to their counsel.

29. Petitioner Alejandro REYES López has resided in the state of Utah since approximately May 2022. (Exhibits Section III: A).

30. Petitioner REYES-Lopez is married to Leslie Justo, a U.S. Citizen. They have one U.S. Citizen child and Ms. Justo is currently in the second trimester of a high risk pregnancy. (Exhibits Section III: B, C, D, E).

31. Petitioner REYES-Lopez has no criminal convictions. (Exhibits Section III: A).

32. Petitioner REYES-Lopez was arrested by ICE officials outside his home in early September, 2025, apparently due to a citation he received for allegedly racing. (Exhibits Section III: A)

33. Respondent John Mattos is employed by CoreCivic as Warden of the Nevada Southern Detention Center, where Petitioners are detained. Mr. Mattos has immediate physical custody of Petitioners. He is sued in his official capacity.

34. Respondent Jason Knight is the Acting Director of the Las Vegas Field Office of ICE's Enforcement and Removal Operations Division. As such, Mr. Knight is Petitioners' immediate custodian and is responsible for Petitioners detention and removal. He is named in his official capacity.

35. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees ICE, which is responsible for Petitioners' detention. Ms. Noem has ultimate custodial authority over Petitioners and is sued in her official capacity.

36. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department Justice, of which the Executive Office for Immigration Review (EOIR) (the immigration courts) is a component agency. She is sued in her official capacity.

37. The position of Director of the Executive Office for Immigration Review (EOIR), is empty at this time. EOIR is the federal agency with the Department of Justice responsible for implementing and enforcing the INA in removal proceedings, including for custody redetermination in bond hearings and appellate review of Immigration Judge decisions.

38. Based on published Policy Memorandum 25-51 and 25-52, Roman CHABAN is presently Acting Deputy Director of EOIR. He is sued in his official capacity.

VI. SUMMARY OF PRIOR PROCEEDINGS

39. Petitioner Escobar Salgado was initially stopped by ICE/ERO officers in Utah on August 4, 2025. The officers were conducting surveillance in search of another individual.

40. Petitioner Escobar Salgado was detained without bond and transferred to the Nevada Southern Detention Center.

41. Petitioner Escobar Salgado thereafter requested a bond hearing, which he was granted on August 28, 2025. The Immigration Judge (IJ) granted Petitioner Escobar Salgado a bond in the amount of $2,000.00. (Exhibits Section I: D-F).

42. DHS filed an Automatic Stay barring Petitioner Escobar Salgado from posting the bond. (Exhibits Section I: G).

43. DHS thereafter Appealed the IJ's Bond Order. (Exhibits Section I: H).

44. On or around September 5, 2025, Petitioner Alejandro Reyes Lopez was detained by ICE/ERO. He had been accused of racing with another vehicle. He was detained without bond and transferred to the Nevada Southern Detention Center.

45. On September 5, 2025, the Board of Immigration Appeals (BIA), the appellate branch of defendant Executive Office for Immigration Review (EOIR) issued a precedent decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). (Exhibits Section V.)

46. In *Yajure* the BIA ignored the U.S. constitution, the statutory language, the record of Congressional intent, the regulations implementing IRRIRA, and more than two decades of BIA precedent, including a precedent decision issued June 30, 2025, (*Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025)), to hold that EOIR employee Immigration Judges do not have statutory authority to consider bond requests or to grant bonds to any foreign national who entered without inspection, regardless of length of residence or ties to the U.S.

47. On September 9, 2025, the IJ who had granted the $2,000 bond to Petitioner Escobar Salgado issued a Bond Memorandum, wherein he explicitly stated that "The authority of the Immigration Judge to set bond has been superseded by the decision of the Board of Immigration Appeals in *Matter of Yasjure Hurtado* [sic], 29 I&N Dec. 216 (BIA 2025)." (Exhibits Section I: J).

48. On September 10, 2025, ICE/ERO arrested Petitioner Juan Jose Mena-Vargas, after having confused him with another individual with the same name. He was detained without bond and thereafter transferred to the Nevada Southern Detention Center.

49. Since the *Yajure Hurtado* decision, immigration judges across the U.S. are instructing immigration counsel not to "waste the IJ's time" requesting a bond hearing where the foreign national entered without inspection, regardless of the length of the foreign national's presence in the United States, or the foreign national's ties to the United States.

50. As applied to these Petitioners, the agency's ruling in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is an unconstitutional violation of their right to due process of law.

51. The agency's conclusion in *Yajure,* holding that all foreign nationals present in the United States without being admitted are subject to mandatory detention without bond, contradicts the statutory language, the expressed Congressional intent, the agency's own prior precedents, as well as U.S. Supreme Court and Federal Court precedent.

VII. LEGAL FRAMEWORK

A. CIVIL DETENTION PROVISIONS OF THE INA[1]

52. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

53. This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V.

54. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." Zadvydas v. Davis, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

55. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. Zadvydas, 533 U.S. at 678.

56. The Supreme Court, thus, "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); see also *Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

57. In 1996, acting within the recognized constraints of constitutional due process, Congress rebalanced and codified three explicit detention regimes for noncitizens. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. 1., No. 104-208, Div. C. §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

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[1] Petitioners are indebted throughout this section to the thorough history and analysis set out by Judge Boulware in his Order in *Maldonado-Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY, 6-8, (D. Nev. Sep 17, 2025).

58. First, as found in 8 U.S.C. § 1225, the statute provides for detention without bond of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other arriving aliens.

59. Second, 8 U.S.C. § 1226 authorizes the issuance of administrative warrants for the detention of noncitizens for standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a.

60. Finally, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

61. This case concerns the detention provisions at §§ 1225 and 1226.

62. The detention provisions at § 1225 and § 1226 were enacted in 1996 as part of IIRIRA.

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

64. Following enactment of IIRIRA, EOIR drafted new regulations establishing that, in general, people who entered the country without inspection were not subject to the border detention regime of § 1225 and that they were instead subject to the detention provisions of § 1226. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

65. Individuals arrested and detained pursuant to the procedures of § 1226 are presumed to be entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes, in which case they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

66. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) were consistent with the constitutionally reviewed procedures of decades of prior practice, in which noncitizens present in the U.S.—noncitizens who were not "arriving aliens" as defined at 8 C.F.R. § 1001.1(q)—were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see* also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1251(a)).

67. Those regulations are consistent with the record of Congressional intent, as documented in the Report of the Committee on the Judiciary on H.R. 2202, Report No. 104-469, Part I (March 4, 1996) and in the Report of the Conference Committee, Report No. 104-828 (September 24, 1996).

68. The Congressional record shows that Congress was very aware during the drafting of IIRIRA of the constitutional parameters within which they were working. That includes the robust precedent establishing that persons present in the U.S., regardless of their manner of entry, are constitutionally entitled to due process of law, including when they are subject to civil detention. See, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356, (1886); *Yamataya v. Fisher*, 189 U.S. 86 (1903); *Plyler v. Doe*, 102 S. Ct. 2382 (1982).

69. The Congressional knowledge and recognition that applying the provisions of 8 U.S.C. § 1225 to undocumented immigrations found within the continental U.S. would violate constitutional due process is further documented in the Comments on the Proposed Regulations filed by Lamar Smith, the Chairman of the House Judiciary Committee Subcommittee on Immigration and Claims. *See* Exhibit Section IV, attached.

70. As explicitly set out in the implementing regulations, individuals (like the three Petitioners) arrested and detained in the interior of the United States after months, years or decades of physical presence in the U.S., are presumed to be entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes, in which case they are subject to mandatory detention, see 8 U.S.C. § 1226(c).

71. The regulations published at 63 Fed. Reg. 10312, 10323 (Mar. 6, 1997) are consistent with the constitutionally reviewed procedures of decades of prior practice, in which noncitizens present in the U.S.—noncitizens who were not "arriving aliens" as defined at 8 C.F.R. § 1001.1(q)—were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1251(a)).

72. In the decades that followed implementation of IIRIRA, the common understanding of the law was that 8 U.S.C. § 1226 applied to nearly everyone who entered the United States without inspection.

73. As a result, individuals like the Petitioners, detained after years of physical presence in the United States, were routinely placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible.

74. That practice was consistent with many more decades of prior practice, in which noncitizens who were not "arriving aliens" as defined at 8 C.F.R. § 1001.1(q) were entitled to a custody hearing before an Immigration Judge or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1251(a)).

75. Following those regulations, in the nearly three decades since IIRIRA, persons such as the three Petitioners in this case—noncitizens present in the United States who have never applied for admission or presented themselves for inspection (the class of persons who 'entered without inspection' or EWI's as they are routinely labeled)—were routinely arrested based on the warrant and other procedures set out in § 1226.

76. Despite the regulations and the nearly three decades of practical implementation, DHS, on July 8, 2025, published a notice titled "Interim Guidance Regarding Detention Authority for Applicants for Admission." The notice was disseminated internally, to all ICE employees.

77. As noted in *Vasquez v. Feeley, supra, note 1* ftnt 2: "The memo was leaked to the American Immigration Lawyers Association ("AILA"). *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA Doc. No. 25071607 (July 8, 2025), *https://www.aila.org/library/ice-memo-interim-guidance-regardingdetention-authority-for-applications-for-admission [https://perma.cc/5GKM-JYGX]*. (Exhibit V: A).

78. Judge Boulware describes the contents of this notice as follows:

> The Notice indicated that DHS, in coordination with the DOJ, 'revisited its legal Position' on the INA and determined that § 1225(b)(2), rather than § 1226, is the applicable immigration authority for any alien present in the U.S. 'who has not been admitted. . . whether or not at a designated port of arrival.' Accordingly, 'it is the position of DHS that such aliens are subject to [mandatory] detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.' The Notice further provides '[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated.'

Vasquez v. Feeley, supra note 1, pp 8-9; Exhibit V: A.

79. As Judge Boulware also noted in *Vasquez*, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision, *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025). In that precedent decision, the Board of Immigration Appeals formally agreed with the statutory interpretation as laid out in the July 8, 2025, ICE memo.

80. In other words, as of September 5, 2025, despite the conflicting regulatory language, express Congressional intent and long-standing constitutional due process requirements, it is now the explicit legal position of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) that all non-citizens present within the United States who have not been lawfully admitted are subject to mandatory detention without bond, regardless of the length of their physical presence or their ties to the United States.

81. All three Petitioners are presently detained without bond, based on this new government policy and legal interpretation of 8 U.S.C. § 1225(b)(2)(A) mandating that all non-citizens present within the United States without lawful admission be detained without bond.

82. As Judge Boulware noted in *Vasquez* at 10-11, "since the July 8, 2025 DHS Guidance Memo, Petitioner asserts most IJs in Las Vegas have rejected DHS' new interpretation of 1225(b)(2), and instead found jurisdiction under 1226(a)" *Id.* at 10-11.

83. That was the experience of Petitioner Escobar Salgado, who applied for and was granted a $2,000 bond by Immigration Judge Baker on August 28, 2025.

84. As was the DHS/ICE/OPLA practice, DHS filed a Notice of Automatic Stay and appealed IJ Baker's Bond order in Petitioner Escobar Salgado's case.

85. Judge Boulware, along with judges in many other courts across the U.S., have held that both the regulation at 8 C.F.R. § 1003.19(i)(2) and ICE's use of the automatic stay provision authorized by that regulation are unconstitutional.

86. As laid out above, after the BIA issued *Matter of Yajure Hurtado, supra,* IJ Baker issued a Memorandum Decision in Petitioner Escobar Salgado's case explicitly recognizing that he no longer had jurisdiction to issue a bond, due to that decision.

87. Petitioners Mena-Vargas and Reyes-Lopez have not sought a bond redetermination hearing from the Immigration Judges handling their cases, because it has become clear (as IJ Baker explicitly recognizes in his Memorandum Decision in Petitioner Escobar Salgado's case) that the Immigration Judges, following the BIA decision in *Yajure*

Hurtado, are no longer authorized by their superiors within EOIR to grant bonds to individuals in Petitioners' factual circumstances.

B. DHS' AUTOMATIC STAY REGULATION AT 8 C.F.R. § 1003.19(i)(2)

88. On July 22, 2025, DHS filed form EOIR-43, "Notice of ICE Intent to Appeal Custody Redetermination" of the IJ's order finding Petitioner Escobar Salgado is eligible for bond. (Exhibit M: EOIR-43.)

89. Despite its name, the purpose of that form is not notification. By reserving their right to appeal DHS has notified Petitioner Escobar Salgado of that intent in the hearing itself. Nor is this an actual Notice of Appeal. Rather, the sole purpose of the EOIR-43 form is to invoke the "Automatic stay" authority of 8 C.F.R. § 1003.19(i)(2).

90. Multiple federal courts, including the Federal District Court of Nevada, in *Herrera-Torralba v. Knight* 2:25-cv-01366-RFB-DJA (D. Nev. Sep 05, 2025); *Maldonado-Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY (D. Nev. Sep 17, 2025); *Zavala v. Ridge*, 310 F.Supp.2d 1071 (N.D. Cal. 2004); *Bezmen v. Ashcroft,* 245 F.Supp.2d 446 (D. Conn. 2003); *Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 WL1514122 (N.D. Cal. June 17, 2005); *Uritsky v. Ridge,* 286 F.Supp.2d 842 (E.D. Mich. 2003) have held that the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) is ultra vires, lacking any statutory authority, and a violation of the constitution.

91. As invoked pursuant to 8 C.F.R. § 1003.19(i)(2), 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.

92. This automatic stay results in ICE, the party that lost the issue in front of the IJ, being able to unilaterally 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.

93. That is, ICE is allowed to overrule the Immigration Judge's ruling without any legal review or authority. As multiple federal courts have concluded, this is both ultra vires and unconstitutional, because it eliminates the discretionary authority of immigration judges and exceeds the authority granted to ICE by Congress.

94. The violation of Petitioner Escobar Salgado's constitutional right to due process of law is particularly egregious when ICE knows that by forcing the noncitizens to wait several

months for a decision by the BIA on the appeal, they will effectively coerce a high percentage of noncitizens into abandoning their cases.

95. 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.

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

97. "'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).

98. Petitioner Escobar-Salgado is detained today solely at the unilateral behest 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).

99. 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.
- DHS files EOIR-43 Notice of Intent to Appeal within one business day, invoking automatic stay. 8 C.F.R. § 1003.19(i)(2).
- DHS files EOIR-26 Notice of Appeal within ten business days. 8 C.F.R. § 1003.6(c)(1).
- Automatic stay lapses 90 days after DHS files EOIR-26 Notice of Appeal. 8 C.F.R. § 1003.6(c)(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:
    - Release is automatically stayed for an additional five business days. 8 C.F.R. § 1003.6(d).
    - Within that five business day automatic stay, DHS may refer the case to the Attorney General. 8 C.F.R. § 1003.6(d).
    - Automatic stay is extended for 15 business days after DHS refers the case to the Attorney General. 8 C.F.R. § 1003.6(d).
    - DHS may seek a discretionary stay with the Attorney General for the duration of the case. 8 C.F.R. § 1003.6(d).

100. 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 per its own regulations, keep the noncitizen detained. And that detention could be, in reality, indefinite.

101. "Indefinite detention of a [noncitizen]" raises "a serious constitutional problem." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The automatic stay provision detains individuals indefinitely, without a "discernible termination point" (*Ashley*, 288 F.Supp.2d at 672), "definite termination point" (*Zabadi v. Chertoff*, No. C05-01796 WHA, 2005 WL 1514122, at *1 (N.D. Cal. 2005)), "finite time frame" (*Id.*), "certain time parameters for final resolution" (*Zavala v. Ridge*, 310 F. Supp.2d 1071, 1075 (D. N.D. Cal. 2004), or "ascertainable end point" (*Bezmen v. Ashcroft*, 245 F.Supp.2d 446, 449-50 (D. Conn. 2003).

102. 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.

103. *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").

104. 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).

C. CONSTITUTIONAL DUE PROCESS

105. 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 v. Eldridge*, 424 U.S. 319, 335 (1976).

106. 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)).

107. These long term residents of the United States—each with U.S. Citizen children, spouses and parents who are legal residents and U.S. Citizens--have been detained without bond.

108. None of them have any criminal record. All of them have been prevented from supporting their children and their spouses and other family members.

109. As an immunosuppressed individual living with HIV, Petitioner Mena-Vargas has had his health placed a risk, due to exposure to tuberculosis in the Nevada Southern Detention Center, which recently suffered an outbreak.

110. 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 the interest of these three Petitioners in remaining at liberty, free from detention.

111. With regard to the application to Petitioner Escobar-Salgado, and the Respondents' exercise of the automatic stay provision, unlike normal 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.

112. The IJ has determined that Petitioner Escobar Salgado was neither a flight risk nor a danger to the community.

113. DHS has offered no evidence to contradict the IJ's individualized assessment and ruling made on August 28, 2025.

114. But that individualized, reasoned, decision and order from the IJ was effectively overruled by a unilateral determination by an ICE attorney. That unilateral determination "poses a serious risk of error." *Zavala*, 310 F.Supp.2d at 1076.

115. The unilateral nature of the automatic stay provision 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.

116. 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).

117. As to the third *Mathews* factor, the government's interest in maintaining the "current" procedure is minimal here. The sole interest of the government is in spending all the resources Congress has granted it to detain all immigrants, regardless of lack of danger, regardless of ties to the U.S., regardless of length of stay, regardless of the requirements of constitutional due process.

118. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show prejudice. "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).

119. Until September 5, 2025, all three Petitioners would have been eligible for a bond hearing before an Immigration Judge.

120. Respondents' novel legal theory, reinterpreting statutory language after nearly thirty years in violation of the implementing regulations, the express intent of the Congressional Record and the fundamental principles of constitutional due process, is a completely new and unnecessary termination of a prior procedure that protected the constitutional due process rights of these Petitioners and other similarly situated non-citizens.

121. Certainly, if DHS could not invoke the automatic stay, Petitioner Escobar Salgado would have been released on bond by the end of August or early September would now be home with his children and his partner, able to support his household.

122. Similarly, if the Defendants had permitted the Immigration Judges to exercise the same authority they have exercised on these facts for over sixty years, each of the other Petitioners would also have been granted bond, posted it, and been home with their families by now.

123. The continued detention of these Petitioners based on DHS' abuse of the unconstitutional "automatic stay" and based on the BIA's equally unconstitutional decision in *Yajure-Hurtado*, constitutes actual prejudice.

124. Petitioners have no other forum in which to seek judicial review of the constitutional and legal issues raised by their continued detention on the basis of Defendants' actions, memos, and decisions.

125. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas* at 690.

126. Accordingly, Petitioner Escobar Salgado seeks a writ of habeas corpus requiring that he be allowed to pay the $2,000 bond and be released immediately.

127. Accordingly, Petitioners Mena-Vargas and Reyes Lopez seek a writ of habeas corpus requiring that they be immediately provided with a bond hearing before an Immigration Judge, and that they thereafter be allowed to pay the bonds granted by the Immigration Judges and to be released.

VIII. CLAIMS FOR RELIEF

COUNT I

Violation of the INA and Governing Regulations

128. Petitioners incorporate by reference the facts and law set forth in the preceding paragraphs.

129. Petitioners each entered the United States without inspection. They have all been present within the United States for more than two years; they each have U.S. Citizen children and spouses or parents who are either legal residents or U.S. citizens.

130. Petitioners have all been issued Notices to Appear in removal proceedings pursuant to 8 U.S.C. § 1229a.

131. Respondents' novel interpretation of 8 U.S.C. § 1225(b)(2)(A) as authority for detaining Petitioners without bond violates the regulations and is an unconstitutional interpretation of the statutory language, without basis in prior precedent or the record of Congressional intent.

COUNT II

Violation of Fifth Amendment Right to Due Process of Law

132. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

133. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d. 653 (2001).

134. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

135. The Ninth Circuit has also held that "[r]emaining confined in jail when one should otherwise be free is an Article III injury plain and simple[.]" *Gonzalez v United States Immigr. & Custome Enf't.* 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).

136. Petitioners have a fundamental interest in liberty and being free from official restraint.

137. The Government's continued detention of Petitioners, without bond, is a clear violation of their constitutional right to due process under the law.

138. The Government's continued detention of Petitioner Escobar-Salgado, even after an Immigration Judge has granted him bond, finding that he is neither a flight risk nor a danger to others, is a clear violation of his constitutional right to due process.

139. 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 Petitioners of their liberty.

140. Respondents' continued detention of Petitioners is unjustified. Respondents have not demonstrated that Petitioners need 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).

141. There is no credible argument that these Petitioners—who have no criminal records despite years and even decades residing in the United States—cannot be safely released back to their communities and families.

142. The automatic stay provision keeping Petitioner Escobar Salgado detained today is unconstitutional as applied to him, and a violation of his due process rights. An IJ ordered ICE to release Petitioner Escobar Salgado on a reasonable bond of $2,000.00, and because ICE disagrees with that order based upon a new and novel "interim guidance," it invoked an unreviewable, automatic stay of the order, leaving Petitioner Escobar Salgado stuck in detention.

143. The automatic stay regulation rendered Petitioner Escobar Salgado's bond hearing a charade, because the outcome of the hearing or the validity of the IJ's reasoning was completely irrelevant. 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 it wants regardless of the IJ's order.

144. For these reasons, continued detention of these three Petitioners violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

a. Assume jurisdiction over this matter.

b. Issue an Order prohibiting the Respondents from transferring Petitioners from the district without the court's approval.

c. Issue an immediate Order to Respondents to Show Cause regarding any constitutional or statutory justification for why these Petitioners are being held without bond.

d. Issue a writ of habeas corpus requiring that Respondents release Petitioner Escobar Salgado immediately on bond as ordered by the Immigration Judge.

e. Issue writs of habeas corpus requiring that Respondents immediately provide Petitioners Mena-Vargas and Reyes-Lopez with bond hearings, and that Petitioners be allowed to post the bonds and be released.

f. Declare that the Petitioners continued detention without bond or any individualized determination of danger or flight risk violates the Due Process Clause of the Fifth Amendment;

g. Award Petitioners attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under the law;

and

h. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 1st day of October, 2025.

STOWELL CRAYK PLLC

/s/ Marti L. Jones
Attorney for Petitioner

EXHIBIT LIST

I. Documents of Petitioner Escobar-Salgado.
   A. Affidavit of Petitioner's Partner
   B. Birth Certificates of Petitioner's Four Children with Ms. Staples
   C. Form I-213: Record of Deportable/Inadmissible Alien
   D. Request for Custody Redetermination
   E. Notice of Custody Redetermination Hearing
   F. Immigration Judge Baker's order granting $2,000 bond
   G. Form EOIR-43: Notice of ICE Intent to Appeal Custody Redetermination and Automatic Stay of Release
   H. Notice of Appeal of the Immigration Judge's Decision Setting a Bond to the Board of Immigration Appeals by the Department of Homeland

Security

I. Immigration Judge Baker's Bond Memorandum

II. Documents of Petitioner Mena-Vargas.

A. Affidavit of Petitioner's Sister
B. Text from ICE official re: mistaken arrest
C. Birth Certificates of Petitioner's children
D. Legal Permanent Resident Cards of Petitioner's parents
E. Letter from Treating physician regarding Petitioner's HIV.
F. I-213 Evidence of no criminal history

III. Documents of Petitioner Reyes-Lopez.

A. Affidavit of Petitioner's wife
B. Birth Certificate of Petitioner's wife
C. Birth Certificate of Petitioner's daughter.
D. Marriage Certificate
E. Medical record regarding Petitioner's wife's high risk pregnancy.

IV. Documents regarding Congressional Intent and IRRIRA.

A. Comments on the IRRIRA Proposed Regulations submitted by Congressman Lamar Smith, 1996-1998 chair of the House Judiciary Subcommittee on Immigration and Claims.

V. Documents establishing current DHS policy.

A. Screen shot of July 8, Memo.
B. Copy of *Matter of Yajure Hurtado.*

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