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**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

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|---|---|
| CESAR AUGUSTO LOPEZ LOPEZ,<br><br>*Petitioner*,<br><br>v.<br><br>LUIS SOTO, Director of Delaney Hall; TODD LYONS, Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States.<br><br>*Respondents*. | Docket No. 25-16303<br><br>**VERIFIED PETITION FOR HABEAS CORPUS** |

## INTRODUCTION

1. Petitioner, Cesar Augusto Lopez Lopez, is being unlawfully detained by Respondents and deprived of release on bond. Petitioner was born in Guatemala and entered the United States in approximately 2000. He entered the U.S. without inspection and was never encountered or detained by the Department of Homeland Security ("DHS") or Immigration and Customs Enforcement ("ICE") prior to his recent arrest and detention. Petitioner is the father of a seven and eight year old sons and is the owner of a construction company in New Jersey.

2. On July 22, 2025, Petitioner was arrested by ICE without a warrant and transferred to Delaney Hall. Petitioner was served with a Notice to Appear ("NTA") initiating removal proceedings, designating him as an "alien present in the United States who has not been admitted or paroled," and charging him with removability from the United States.

3. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a). Noncitizens detained under section 1226(a) are subject to discretionary detention and can request a change in custody redetermination (i.e. bond hearing) with an Immigration Judge ("IJ").

4. Petitioner filed a motion for custody redetermination. On August 11, 2025, the Immigration Judge ("IJ")—after considering the evidence and DHS' position—found that Petitioner had met his burden of demonstrating that he was not a danger to the community or a risk of flight. The IJ granted release on bond in the amount of $8,500.

5. On August 11, 2025, DHS filed a Form EOIR-43 to automatically stay Petitioner's release from detention and filed an appeal of the IJ's decision. On August 21, 2025, DHS filed an appeal of the IJ's bond decision with the Board of Immigration Appeals ("BIA").

6. Respondents' continued detention of Petitioner violates his procedural and substantive due process rights in two ways.

7. First, the automatic stay provision under 8 C.F.R. § 1003.19(i)(2) that allowed DHS to unilaterally override the IJ's bond determination without individualized consideration violated Petitioner's procedural and substantive due process rights and was ultra vires because it exceeds authority conferred by Congress through the Immigration and Nationality Act ("INA").

8. Second, Petitioner is detained pursuant to section 1226(a) and should be released on bond. DHS' contention that he is subject to mandatory detention under 8 U.S.C. § 1225(b) is

baseless. DHS' Policy has upended decades of DHS' own interpretation of bond eligibility under sections 1226(a) and 1225(b). Nearly every district court that has addressed this issue (including at least one in this district) has rejected DHS' and found that it violates noncitizens' due process rights.

9. For the foregoing reasons, the Court should grant habeas relief and direct Respondents to release Petitioner.

## JURISDICTION

10. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

## VENUE

13. Venue is proper because Petitioner is detained at Delaney Hall in Newark, New Jersey, which is within the jurisdiction of this District. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. § 1391(e).

## PARTIES

14. Respondent Luis Soto is sued in his official capacity as Director of Delaney Hall. Respondent Soto is the physical custodian of Petitioner.

15. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

16. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

17. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

## STATEMENT OF FACTS

18. Petitioner entered the United States in approximately 2000. He was never detained at the border and was not inspected or admitted.

19. Petitioner has continuously resided in the United States and is the father of seven and eight year old sons.

20. On November 1, 2003, Petitioner was arrested in Mamaroneck, New York on the charges of operating a vehicle while under the influence of alcohol (New York Vehicle & Traffic ("VAT") 1192 02 and 03). *See* Ex. A, Certificate of Disposition.

21. On January 13, 2004, the charges were dismissed and Petitioner was fined $300. *See id.*

22. Petitioner has had no other arrests or criminal history.

23. On November 30, 2022, Petitioner's U.S. citizen sibling filed a Form I-130, Petition for Alien Relative ("I-130") on behalf of Petitioner. *See* Ex. B, I-130 Receipt Notice. That application remains pending.

24. On July 22, 2025, Petitioner was arrested by Immigration and Customs Enforcement ("ICE") agents without a warrant. *See* Ex. C, Form I-213 Record of Deportable/Inadmissible Aliens.

25. Petitioner was served with a Notice To Appear ("NTA") categorizing him as a "alien present in the United States who has not been admitted or paroled" and charging him with removability from the U.S. pursuant to section 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the INA. *See* Ex. D, Notice to Appear.

26. On August 1, 2025, Petitioner filed a request for a custody redetermination hearing (i.e. a bond hearing) before an IJ. On August 11, 2025, the IJ considered Petitioner's evidence and DHS' arguments opposing bond. DHS argued that the IJ did not have jurisdiction to issue release on bond because Petitioner was subject to mandatory detention under 8 U.S.C. § 1225. On July 8, 2025, DHS issued an internal Interim Guidance ("Policy") that took the baseless position that—contrary to statutory principles and governing case law—noncitizens like Petitioner who entered the United States without permission or parole are subject to mandatory detention under 8 U.S.C. § 1225(b) instead of discretionary detention under section 1226(a).

27. At the conclusion of the hearing, the IJ found that he did have jurisdiction to release Petitioner on bond because he was detained under section 1226(a) instead of 1225(b). The IJ also found that Petitioner satisfied his burden of demonstrating that he was not a danger to the

community or a risk of flight and ordered release on bond in the amount of $8,500. *See* Ex. E, August 11, 2025 Bond Order.

28. On the same date, DHS filed the EOIR-43 invoking an automatic stay on release from detention pursuant to 8 C.F.R. § 1003.19(i)(2). *See* Ex. F, EOIR-43 Notice of ICE Intent to Appeal Custody Redetermination.

29. On August 21, 2025, DHS filed an appeal of the IJ's decision with the BIA. *See* Ex. G, BIA Appeal Receipt Notice.

30. On August 25, 2025, Petitioner filed an EOIR-42B application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents ("Cancellation of Removal") as relief from removal from the United States.

31. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

32. DHS' appeal of the IJ's decision remains pending. However, since the decision in *Matter of Yajure Hurtado*, the BIA and IJs are now obligated to find that they do not have jurisdiction to entertain bond requests from noncitizens who entered without inspection and have not been admitted or paroled like Petitioner. *See* Board of Immigration Appeals, https://www.justice.gov/eoir/board-of-immigration-appeals (last visited September 27, 2025) ("BIA decisions are binding on all DHS officers and Immigration Judges unless modified or overruled by the Attorney General or a federal court.").

33. The immigration court has scheduled an individual hearing on the merits of Petitioner's Cancellation of Removal application for October 28, 2025.

## LEGAL FRAMEWORK

**Statutory Detention Authority**

34. The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

35. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2).

36. Finally, the INA also provides for detention of noncitizens who are subject to final orders of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

37. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most recently amended earlier this year by the Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3 (2025).

38. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section 1225 and that they were instead detained under section

1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior to the enactment of the IIRIRA, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ 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 section 1226(a) simply "restates" the detention authority previously found at section 1252(a)).

39. On July 8, 2025, DHS issued a memo to all employees of ICE stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226], is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." The memo further stated DHS' new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1) [8 U.S.C. § 1225(a)(1)]. **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) parole**. These 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. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with**

**deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].**

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

*See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last accessed August 4, 2025) (emphasis original).

40. As a result, DHS now considers *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, to be subject to mandatory detention under section 1225(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

41. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

**EOIR-43 Automatic Stays**

42. 8 C.F.R. § 1003.19(i)(2) provides:

Automatic stay in certain cases. In any case in which [the U.S. Department of Homeland Security ("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. On September 5, 2025, the BIA issued a decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.
>
> 8 C.F.R. § 1003.19(i)(2).

43. "Following an iterative process and consideration of criticism that the automatic stay provision (in its interim rule form) would be invoked absent factual foundation or appropriate individualized case review, the Department of Justice ('DOJ') issued its final rule, as quoted above." *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 LX 327685, at *5-6 (D. Md. Aug. 24, 2025).

44. Speaking to these concerns, 8 C.F.R. § 1003.6(c)(1) provides in relevant part:

> To preserve the automatic stay, the attorney for DHS shall file with the notice of appeal a certification by a senior legal official that— (i) The official has approved the filing of the notice of appeal according to review procedures established by DHS; and (ii) The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent.

45. On October 2, 2006, the Department of Justice published the final rule and set forth the following context for changes implemented to the final rule following public comment on the interim rule:

> First, in order to allay possible concerns that in some case the automatic stay might be invoked by low-level employees of DHS without supervisory review, or might be invoked without an adequate factual or legal basis, this rule makes two changes in the process for invoking the automatic stay. The final rule provides that the decision to file the Form EOIR-43 (which must be done within one business day of the immigration judge's custody decision) will be subject to the discretion of the Secretary. Under the provisions of the automatic stay rule which are not changed by this final rule, the automatic stay will lapse 10 business days after the issuance of the immigration judge's

> decision unless DHS files within that time a notice of appeal with the Board presenting DHS's arguments for reversal or modification of the immigration judge's custody decision. This rule adds a new requirement that, in order to preserve the automatic stay, a senior legal official of DHS must certify that the official has approved the filing of the notice of appeal to the Board and that there is factual and legal support justifying the continued detention of the alien.
>
> . . . .
>
> Past experience shows that DHS has invoked the automatic stay in only a select number of custody cases. For example, the EOIR statistics indicate that, in FY 2004, the immigration judges conducted some 33,000 custody hearings and the Board adjudicated 1,373 custody appeals. Yet, DHS sought an automatic stay only with respect to 273 aliens in FY 2004—and only 43 aliens in FY 2005.
>
> 71 Fed. Reg. 57874, 57878 (Oct. 2, 2006).

## CLAIMS FOR RELIEF

### COUNT ONE

### Violation of Fifth Amendment Right to Substantive Due Process

46. The allegations in the above paragraphs are realleged and incorporated herein.

47. Petitioner is challenging DHS' unlawful custody determination that Petitioner is subject to detention under 8 U.S.C. § 1225(b) and is ineligible for bond and his continued detention under the automatic stay provision at 8 C.F.R. § 1003.19(i)(2), which violates Petitioner's right to substantive due process of law afforded him through the Fifth Amendment to the United States Constitution.

48. The Fifth Amendment provides in pertinent part: "No person shall be . . . deprived 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 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

49. Petitioner is clearly detained pursuant to 8 U.S.C. § 1226(a) and is eligible for release on bond. *See Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *23 (D.N.J. Sep. 26, 2025). Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b). Respondents have violated Petitioner's due process rights under the Fifth Amendment by detaining him without the possibility of release on bond.

50. In addition, "invocation of the automatic stay per 8 C.F.R. § 1003.19(i)(2) renders the IJ's custody redetermination order an 'empty gesture' absent demonstration of a compelling interest or special circumstance . . . . As such, the automatic stay results in Petitioner's arbitrary detention violative of Petitioner's substantive due process rights guaranteed by the Fifth Amendment." *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 LX 327685, at *33 (D. Md. Aug. 24, 2025)

51. As a remedy, the Court should order him released from detention, or alternatively direct that an IJ hold a constitutionally adequate bond hearing.

## COUNT TWO

### Violation of Petitioner's Procedural Due Process Rights

52. The allegations in the above paragraphs are realleged and incorporated herein.

53. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in determining if government action deprives an individual's Fifth Amendment right to procedural due process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The *Mathews* factors are as follows: First, the private interest that will be affected by the official action; [S]econd, 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; [Third], the Government's interest, including the function involved and the fiscal and

administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

54. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner "has perhaps the most acute private interest known to personkind short of life itself: bodily freedom." *Leal-Hernandez*, 2025 LX 327685, at *34.

55. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk. Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims. *See Zumba,* 2025 LX 482036. Moreover, the automatic stay prevents his release from detention without any semblance of procedural due process. *See id.* ("[t]he automatic stay is a violent distortion of proper, legitimate process whereby the Government, as though by talisman, renders itself at once prosecutor and adjudicator); *Mohammed H. v. Trump*, No. 25-1576 (JWB/DTS), 2025 LX 172297, at *14-15 (D. Minn. June 17, 2025) ("[a]lthough the Immigration Judge had ordered Petitioner to be released on bond, the Government stayed that order without making any showing of dangerousness, flight risk, or any other factor justifying detention. Simply by fiat—without introducing any proof and without immediate judicial review—the Government effectively overruled the bond decision and kept Petitioner detained. In doing so, the automatic stay rendered Petitioner's continued detention arbitrary and gave him no chance to contest the Government's case for detention.").

56. As to the third factor, there is no significant governmental interest in continuing to hold Petitioner in custody, particularly because an IJ has already found that Petitioner has satisfied his burden that he is not a danger to the community or risk of flight.

## COUNT THREE

**Violation of the Immigration and Nationality Act ("INA")**

57. The allegations in the above paragraphs are realleged and incorporated herein.

58. Application of 8 U.S.C. § 1225(b) to Petitioner is a violation of the INA because he is instead subject to discretionary detention under 8 U.S.C. § 1226(a).

59. Moreover, the automatic stay set forth at 8 C.F.R. § 1003.19(i)(2) is *ultra vires* because it exceeds authority conferred by Congress through the INA, and rewrites the INA and creates a new class of noncitizens subject to mandatory detention. This deprives noncitizens like Petitioner of the right to a bond hearing that they are statutorily eligible for and eliminates the authority of the IJ to determine who can be released on bond.

## PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Petitioner during the pendency of the instant action;

(3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a); and/or the Fifth Amendment to the U.S. Constitution;

(4) Order Petitioner released from detention;

(5) Grant Equal Access to Justice Act ("EAJA") fees and costs; and

(6) Grant any other further relief this Court deems just and proper.

**Onal Gallant Bayram & Amin**
By: */s/ Enes Hajdarpasic*
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*Attorney for Petitioner*

Dated: October 6, 2025

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

I represent Petitioner, and I submit this verification on his behalf. Because Petitioner is detained at Delaney Hall and immediate relief is sought, counsel verifies this petition on his behalf pursuant to 28 U.S.C. § 2242. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 6th day of October, 2025.

s/*Enes Hajdarpasic*
Enes Hajdarpasic