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15 UNITED STATES DISTRICT COURT
16 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
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18 ANGEL G. DUENAS CORDOVA
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20
21 Plaintiff and Petitioner,
22 vs.
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24 CHRISTOPHER LAROSE, Warden of the
25 Otay Mesa Detention Center; GREGORY
26 ARCHAMBEAULT, Director of the San
27 Diego Field Office, United States
28 Immigration and Customs Enforcement;
PAM BONDI, Attorney General, United
States Department of Justice; KRISTI
NOEM, Secretary, United States Department
of Homeland Security; TODD LYONS,
Acting Director of United States Immigration
and Customs Enforcement; and DOES 1-5

Defendants-Respondents

Case No.: '25CV2651 JO B JW

**VERIFIED PETITION FOR
WRITS OF HABEAS CORPUS
AND IMMEDIATE RELEASE
FROM ICE CUSTODY AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**AND REQUEST FOR
TEMPORARY RESTRAINING
ORDER**

JURISDICTION AND VENUE

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER - 1

1 1. This action arises under the Constitution of the United States; the Immigration
2 and Nationality Act, 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration
3 Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208,
4 110 Stat. 1570 [hereinafter ‘INA’]; and Administrative Procedure Act, 5 U.S.C. §§ 701
5 et seq [hereinafter “APA”].
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7 2. This Court has further jurisdiction under 28 U.S.C. § 2241, 2243, art. I § 9,
8 cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. §
9 1331, as Petitioner is presently in custody under color of the authority of the
10 United States based on the service of a Notice to Appear, and such custody is in
11 violation of the Constitution, laws, or treaties of the United States.
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13 3. This Court also may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. §
14 702, and the All Writs Act, 28 U.S.C. § 1651.
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16 4. This court has further remedial authority pursuant to the Declaratory
17 Judgment Act, 28 U.S.C. § 2201 et seq..
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19 5. The use of the Writ of Habeas Corpus to challenge detention by ICE is not
20 foreclosed by the REAL ID Act. The REAL ID Act of 2005, Pub. L. 109-13, 119
21 Stat. 231 (May 11, 2005), Title I, Section 106(c), amending INA §§ 242(a)(2)(A),
22 (B), (C) and § 242(g), only deprives the district court of habeas jurisdiction to
23 review orders of removal, not challenges to detention or the denial of constitutional
24 rights. *See INS v. St. Cyr*, 533 U.S. 289, 364-65 (2001) (“The writ of habeas corpus
25 has always been available to review the legality of executive detention.”).
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1 6. This Court has the ability to enjoin federal officials pursuant to *Ex Parte*
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3 *Young*, 209 U.S. 123 (1908). *See Philadelphia Co. v. Stimson*, 223 U.S. 605, 619–
4
5 21 (1912) (applying *Ex Parte Young* to federal official); *Goltra v. Weeks*, 271 U.S.
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7 536, 545 (1926) (same).

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9 7. Plaintiff-Petitioner has exhausted all administrative remedies to the extent
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11 available and required by law.

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13 8. Venue properly lies within the Southern District of California, because each
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15 named Defendant-Respondent is present in this district and a substantial part of the
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17 events or omissions giving rise to this action occurred and continue to occur in this
18
19 District. *See* 28 U.S.C. §1391(b). Petitioner, ANGEL G. DUENAS CORDOVA
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21 [hereinafter “Petitioner” or “Angel” is currently detained within this district to wit,
22
23 the Otay Mesa Detention Facility located at 7488 Calzada De La Fuente, San
24
25 Diego, CA 92154. Accordingly, the “restraint complained of” is occurring within
26
27 the Court’s territorial jurisdiction. *See* 28 U.S.C. § 2241(a)
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9. No petition for habeas corpus has previously been filed in any court to
review this Plaintiff-Petitioner’ case.

PARTIES

10. Plaintiff-Petitioner ANGEL G. DUENAS CORDOVA is an 18-year-old
national and citizen of Guatemala who was arrested by ICE on or about 25
September 2025. Angel entered the United States without inspection on or about

1 18 December 2024 as an unaccompanied minor aged 17. He was released by
2
3 Office of Refugee Resettlement (ORR) into the custody of his aunt and resided
4
5 with her and his cousin in Attleboro, MA until he was arrested and detained by
6
7 U.S. Immigration and Customs Enforcement (“ICE”) without cause or
8
9 justification. Angel has no criminal or prior immigration history. He was
10
11 transferred to New York, then to Texas, and is now detained at the Otay Mesa
12
13 Detention Center. *See* Exhibit A.
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17 11. The U.S. Department of Homeland Security (“DHS”) is a cabinet
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19 department of the United States federal government with the primary mission of
20
21 securing the United States.
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23 12. ICE is an agency within DHS with the primary mission of arresting,
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25 detaining, and removing non-citizens physically present within the territory of the
26
27 United States. ICE is also responsible for the custody and care of all detained non-
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citizens awaiting resolution of their immigration cases or removal after a final
order of removal had been entered.

13. Defendant Kristi Noem is the Secretary for DHS. In this capacity, Ms. Noem
has responsibility for the administration of immigration laws pursuant to 8 U.S.C.
§1103(a), has authority over ICE and its field offices, and has authority to order the
release of Plaintiff-Petitioner. At all times relevant to this Complaint,
Defendant Noem was acting within the scope and course of her position as the
Secretary for DHS. Defendant Noem is sued in her official capacity.

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
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RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER - 4

1 14. Defendant-Respondent Todd Lyons is the Acting Director and Senior
2 Official Performing the Duties of the Director of ICE. Defendant Lyons is
3 responsible for the implementation of all ICE's policies, practices, and procedures,
4 including those relating to detention of non-citizens. Defendant Lyons is a legal
5 and immediate custodian of Plaintiff. At all times relevant to this Complaint,
6 Defendant Lyons was acting within the scope and course of his position as an ICE
7 official. He is sued in his official capacity.
8

9 15. Defendant-Respondent Gregory Archambeault is the Director of the San
10 Diego Field Office of ICE, which has immediate custody of Plaintiff-Petitioner. He
11 is sued in his official capacity.
12

13 16. Defendant Christopher LaRose is the warden of Otay Mesa Detention
14 Facility in San Diego County, where Plaintiff-Petitioner is currently detained.
15 Defendant LaRose is the immediate, physical custodian of Plaintiff. He is named in
16 his official capacity.
17

18 17. The true names or capacities, whether individual, corporate, associate or
19 otherwise, of the Defendants-Respondents named herein as Does 1 through 5 are
20 unknown to Plaintiff-Petitioner, who therefore sues said Respondents by such
21 fictitious names, and Plaintiff will amend this Complaint to show their true names
22 and capacities when ascertained. Does 1 through 5 are the immediate, physical
23 custodians of Plaintiff
24

25 **FACTS RELEVANT TO ALL CAUSES OF ACTIONS**

26 VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
27 FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
28 RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER - 5

1 18. Angel Duenas is 18-year-old boy, national and citizen of Guatemala, who
2 fled his home country to escape persecution and neglect.
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5 19. He entered the United States without inspection on or about 18 December
6 2024 when was only 17. He was apprehended shortly thereafter by DHS officers
7 near Lukeville, AZ and upon transfer to HSS he was served with a putative Notice
8 to Appear, charging him as present without admission or parole. See Exhibit 2 at
9 page 2-5. On 25 January 2025, two days prior to his 18th birthday, he was released
10 by ORR into his aunt's custody. See Exhibit 2 at page 1. Angel resided with his
11 aunt and cousin in Attleboro, MA since the time of his release until he was arrested
12 and detained by ICE during a work cite raid in Stoughton, MA on 8 September
13 2025.
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23 20. Angel has no criminal or prior immigration record.
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25 21. Upon his arrest Angel was sent to Buffalo, NY, then transferred to TX, and
26 he is currently detained at the Otay Mesa Detention Center, Otay Mesa, CA.
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22. On 1 October 2025 an Immigration Judge ordered Angel released on a
\$3,000 bond, finding jurisdiction to conduct custody determination pursuant to 8
U.S.C. § 1232(c)(2)(B) ("If a minor described in subparagraph (A) reaches 18
years of age and is transferred to the custody of the Secretary of Homeland
Security, the Secretary shall consider placement in the least restrictive setting
available after taking into account the alien's danger to self, danger to the
community, and risk of flight. Such aliens shall be eligible to participate in
alternative to detention programs, utilizing a continuum of alternatives based on

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
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RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER - 6

1 the alien's need for supervision, which may include placement of the alien with an
2 individual or an organizational sponsor, or in a supervised group home."). See
3 Exhibit 3. The presiding immigration judge found that Angel Duenas is not a risk
4 of flight nor a danger to the community.
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9 23. ICE immediately filed a notice of intent to appeal invoking a mandatory stay
10 of the bond. See Exhibit 4.
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13 24. The Petitioner was not allowed to post a bond and remains in custody.
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15 25. The Respondents have refused to release Angel Duenas from custody.
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17 26. There is no order of removal in effect against Petitioner.
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3 **RELEVANT IMMIGRATION STATUTORY SCHEME**
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5 **Immigration Detention**
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7 27. The INA governs the use of immigration detention both pre- and post-final
8 order. Post-final-order immigration detention is governed by 8 U.S.C. § 1231(a);
9 pre-final-order detention by 8 U.S.C. § 1226.
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11 28. In 8 U.S.C. §§ 1226 and 1231 Congress created different, but interrelated,
12 comprehensive frameworks for detaining criminal and non-criminal non-citizens.
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14 29. Section 1226 authorizes the detention of non-citizens during removal
15 proceedings: section 1226(a) controls non-criminal aliens' detentions, while
16 section 1226(c) controls criminal aliens' detentions. *See* 8 U.S.C. § 1226(a)&(c).
17 Once a non-citizen's removal proceedings are completed ICE's detention authority
18 is controlled by section 1231, which also distinguishes between non-criminal and
19 criminal non-citizens. *See* 8 U.S.C. § 1231.
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*Section 1226(a) and Non-Criminal Non-citizens
During Removal Proceedings*

30. The Attorney General has discretion to detain a non-criminal non-citizen
“pending a decision on whether the alien is to be removed from the United States.”
See 8 U.S.C. § 1226(a). The Attorney General may detain the non-citizen for the
duration of the removal proceedings or release him on bond or conditional parole.
See 8 U.S.C. § 1226(a)(1)-(2).

31. In connection with § 1226(a), the DHS promulgated regulations setting out
the process by which a non-criminal non-citizen may obtain release. The

1 regulations provide that, in order to obtain bond or conditional parole, the “alien
2 must demonstrate to the satisfaction of the officer that such release would not pose
3 a danger to property or persons, and that the alien is likely to appear for any future
4 proceeding.” *See* 8 C.F.R. § 1236.1(c)(8).
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9 *Section 1226(c) and Criminal Non-citizens*
10 *During Removal Proceedings*
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12 32. Although the Attorney General has broad discretion to release non-criminal
13 non-citizens during the pendency of their removal proceedings, the INA limits the
14 Attorney General’s discretion in the case of criminal non-citizens. Specifically,
15 section 1226(c) mandates that “[t]he Attorney General shall take into custody any
16 alien who . . . is deportable by reason of having committed [certain specified
17 offenses].” *See* 8 U.S.C. § 1226(c)(1)(B).
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24 33. Section 1226(c) provides that the Attorney General may release a criminal
25 non-citizen “only if” necessary for narrow witness protection purposes. *See* 8
26 U.S.C. § 1226(c)(2). Under § 1226(c), custody is mandatory for criminal non-
27 citizens throughout the entirety of their removal proceedings, and there is no
28 statutory possibility for release on bond.

34. Petitioner was never detained under the authority of section 1226(c) as he
has no criminal record of any kind.

35. When a non-citizen is released on bond or under supervision, the non-citizen
must periodically appear before an immigration officer, obey written restrictions,

1 and comply with other requirements provided for by regulation. *See* 8 U.S.C. §
2 1231(a)(3).
3
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5 **36.** When a non-citizen is released on supervision ICE must issue and serve on
6 the individual a standardized form I-220 which imposes the following conditions
7 on release. Petitioner was not placed on an order of supervision but was released to
8 the custody of his aunt as an unaccompanied immigrant child.
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12 *Detention Pursuant to 8 U.S.C. § 1225(b)(2)*
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15 **37.** Under § 1225(b)(2), “in the case of an alien who is an applicant for
16 admission, if the examining immigration officer determines that an alien seeking
17 admission is not clearly and beyond a doubt entitled to be admitted, the alien shall
18 be detained.” 8 U.S.C. § 1225(b)(2). By contrast, an alien arrested on a warrant
19 issued by the Attorney General “may” be detained but is also eligible for release on
20 bond. 8 U.S.C. § 1226(a). Courts have repeatedly held that § 1225 applies to
21 arriving aliens, while § 1226 governs detention of “aliens already in the country.”
22 *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018). Petitioner is not an arriving alien
23 under § 1225 and in fact charged Petitioner as an “alien present in the United
24 States who has not been admitted or paroled” rather than an “arriving alien.” See
25 Exhibit 5 (stating Petitioner is charged under INA 212(a)(6)(a), codified at 8
26 U.S.C. § 1226(a)(6)(a)). The notice of custody determination also advised the
27 Petitioner that he could request an immigration judge to review of the ICE’s
28 custody determination.

38. The Courts to have addressed the issue have found the Government invocation of the mandatory detention provision under section 1225 unlawful and have ordered release of non-citizens held in detention based of such erroneous reading of the Immigration and Nationality Act and application of § 1225(b) to noncitizens who, like Angel Duenas, are not apprehended upon arrival in the United States. *See Rodriguez Vasquez v. Bostock*, No. 3:25-CV-05240-TMC,---F.Supp.3d---, 2025 WL 1193850 (W.D.Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV- 11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas based on same ground); *Diaz Alartinez v. Hyde*, No. CV 25-11613-BEM,---F.Supp. 3d---2025 WL 2084238, at *9 (D. Mass. July 24, 2025) (ordering release where noncitizen was redetained based on ICE's assertion of detention authority under§ 1225(b)).

39. At the present time, Petitioner is detained pursuant to the automatic-stay provision of 8 C.F.R. § 1003.19(i)(2), not the mandatory detention provision of § 1225 or the discretionary authority under § 1226(a) .

The Automatic Stay Regime under 8 C.F.R. § 1003.19(i)(2)

40. 8 C.F.R. § 1003.19(i)(2) provides:

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

1 within one business day of the order, and, except as otherwise provided in 8
2 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by
3 the Board. The decision whether or not to file Form EOIR-43 is subject to
4 the discretion of the Secretary. 8 C.F.R. § 1003.19(i)(2).
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9 41. The automatic stay lapses after 90 days, absent a BIA decision. *See* 8 C.F.R.
10 § 1003.6(c)(4). However, the government can extend the detention by seeking a
11 discretionary stay from the BIA at the expiration of the stay which automatically
12 extends the stay for an additional 30 days while the BIA decides the request for
13 discretionary stay. 8 C.F.R. § 1003.6(c)(5).
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19 42. If the Board authorizes an alien's release (on bond or otherwise), denies a
20 motion for discretionary stay, or fails to act on such a motion before the automatic
21 stay period expires, the alien's release shall be automatically stayed for five
22 business days. 8 C.F.R. § 1003.6(d). During that period, DHS can choose to refer
23 the bond decision to the Attorney General, which extends the automatic stay for
24 another 15 business days. *See* 8 C.F.R. § 1003.6(d).
25
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28

43. The Attorney General can then extend the stay for the pendency of the
custody proceedings. 8 C.F.R. § 1003.6(d).

44. Due to DHS's invocation of this automatic stay, Petitioner has remained
detained and will remain detained for to foreseeable future.

COUNT ONE

Detention in Violation of the Fifth Amendment (substantive due process) Against all Defendants

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FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER - 12

1 45. Petitioner repeats and incorporates by reference all allegations in paragraphs
2
3 1 to 44 above.
4

5 46. The Fifth Amendment guarantees that no person shall be deprived of liberty
6
7 without due process of law. U.S. Const. Amend. V. “Freedom from
8
9 imprisonment—from government custody, detention, or other forms of physical
10
11 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*,
12
13 533 U.S. 678, 690 (2001).
14

15 47. “Government detention violates the Due Process Clause unless it is ordered
16
17 in a criminal proceeding with adequate procedural safeguards, or in certain special
18
19 and non-punitive circumstances ‘where a special justification, . . . outweighs the
20
21 individual’s constitutionally protected interest in avoiding physical restraint.’”
22
23 *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v.*
24
25 *Hendricks*, 521 U.S. 346, 356 (1997)).
26

27 48. Respondents cannot show any “special justification” or compelling
28
governmental interest which would outweigh Petitioner’s constitutional liberty.

49. An immigration judge has determined upon the examination of the
administrative record, after presentation of evidence, and arguments from
Respondents, that Petitioner is not a danger or flight risk, and imposed a bond of
\$3,000.

50. The governmental interest in the continued detention of these least-
dangerous individuals, in contravention of an order of a neutral fact-finder, does
not and cannot outweigh the liberty interest at stake.

1 51. Respondents' invocation of the automatic stay provision to detain Petitioner
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3 has violated and will continue to violate his substantive due process rights,
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5 requiring his immediate release from detention.
6

7 **COUNT TWO**
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9 **Detention in Violation of the Fifth Amendment**
10 **(procedural due process)**
11 **Against all Defendants**
12

13 52. Petitioner repeats and incorporates by reference all allegations in paragraphs
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15 1 to 44 above.

16 53. To determine whether a civil detention violates a detainee's due process
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18 rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S.
19
20 319, (1976).
21

22 54. Pursuant to *Mathews*, courts weigh the following three factors: (1) "the
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24 private interest that will be affected by the official action"; (2) "the risk of an
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26 erroneous deprivation of such interest through the procedures used, and the
27
28 probable value, if any, of additional or substitute procedural safeguards"; and (3)
"the Government's interest, including the function involved and the fiscal and
administrative burdens that the additional or substitute procedural requirement
would entail." *Mathews*, 424 U.S. at 335.

55. Petitioner has a significant interest at stake: being free from physical
detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S.
507, 529 (2004). Petitioner is being held at a for profit private detention center for
adults in the same conditions as criminal inmates and is far from his family and his

1 immigration counsel. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir.
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3 2020) (finding, in assessing the first *Mathews* factor, that, “The deprivation he
4
5 experienced while incarcerated was, on any calculus, substantial. He was locked up
6
7 in jail. He could not maintain employment or see his family or friends or others
8
9 outside normal visiting hours.”).

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11 56. Second, there is an enormous risk of erroneous deprivation of Petitioner’s
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13 liberty interest through the procedures used in this case. The risk of deprivation is
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15 high because the only individuals subject to the automatic stay are those who, by
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17 definition, prevailed at their bond hearing.

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19 57. In this case, the IJ found Petitioner was not a threat to public safety or a
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21 flight risk and determined a low \$3,000 bond would mitigate any risk of flight.
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23
24 58. Moreover, as an age-out unaccompanied immigrant child Petitioner must be
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26 considered for placement in the least restrictive setting available after taking into
27
28 account the alien's danger to self, danger to the community, and risk of flight. 8

U.S.C. § 1232(c)(2)(B). Such non-citizen “shall be eligible to participate in
alternative to detention programs, utilizing a continuum of alternatives based on
the alien's need for supervision, which may include placement of the alien with an
individual or an organizational sponsor, or in a supervised group home.” *Id.* In fact,
Petitioner was released into the custody of his aunt and he is in the process of
seeking a Special Juvenile Status status.

1 59. Yet, despite clear Congressional Pronouncement and despite a neutral
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3 decision-maker finding a bond was warranted, the automatic stay provision allows
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5 DHS, the party who lost its bond argument, to unliterally deprive Petitioner of his
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7 liberty. *See Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1078 (N.D. Cal. 2004) (“The
8
9 [automatic stay] procedure additionally creates a potential for error because it
10
11 conflates the functions of adjudicator and prosecutor.”).

12
13 60. The Constitutional violation is particularly egregious as applied to this
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15 petitioner because the stay provision does not require DHS to consider or
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17 demonstrate any individualized facts or show a likelihood of success on the merits.
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19 *See* 8 C.F.R. § 1003.19(i)(2) (stating the stay is automatic and the bond “shall be
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21 stayed” upon filing of the form EOIR-43). “[A] stay of an order directing the
22
23 release of a detained individual is an ‘especially’ extraordinary step, because ‘[i]n
24
25 our society liberty is the norm, and detention prior to trial or without trial is the
26
27 carefully limited exception.’” *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM),
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2025 WL 1459154, at *9 (D. Minn. May 21, 2025) (alteration in original) (quoting
United States v. Salerno, 481 U.S. 739, 755 (1987)). By contrast, the automatic
stay regulation “turns these well-established procedural principles on their heads
and carries a significant risk of erroneous deprivation.” *Id.*

61. DHS may request a discretionary emergency stay from the BIA. *See* 8
C.F.R. § 1003.10(i)(1) (granting BIA discretionary stay authority) but has failed to
do so and has an uniform practice to utilize the automatic stay.

62. Third, there is no significant governmental interest at stake in Petitioner's detention pursuant to the automatic stay provision.

63. The burden on the Government for the additional process requested by Petitioner, to wit, that Respondents show that a stay is warranted, an opportunity for non-citizens to respond, and be heard would be minimal.

64. Non-citizens granted bond but subjected to the automatic stay provision have no other judicial venue to challenge their continued detention.

65. Not affording them a judicial forum to challenge the legality of their continued detention despite the grant of a bond, though this habeas corpus proceedings would also violate the Suspension Clause of the U.S. Constitution.

66. Because all three *Mathews* factors favor Petitioner's rights, the automatic stay regulation at 8 C.F.R § 1003.19(i)(2) violates Petitioner's procedural due process rights under the Fifth Amendment both on its face and as applied to the particular circumstances of this case.

COUNT THREE

Detention in violation of statutory rights Against all Defendants

67. The Administrative Procedure Act (APA) forbids agency action that is (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or (D) without observance of procedure required by law. 5 U.S.C. § 706(2)(A). A

1 court reviewing agency action “must assess ... whether the decision was based on
2 a consideration of the relevant factors and whether there has been a clear error of
3 judgment”; it must “examin[e] the reasons for agency decisions— or, as the case
4 may be, the absence of such reasons.” *Judulang v. Holder*, 565 U.S. 42,53 (2011)
5 (quotations omitted).
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11 68. Respondents’ practice of utilizing the automatic stay to prevent non-citizens
12 found by a neutral adjudicator to be eligible for release from detention, without
13 notice, a reasoned explanation, is arbitrary, capricious, and
14 contrary to law, thus in violation of the APA because a discretionary release under
15 1226 on conditions on bond once granted cannot be terminated without
16 first providing a meaningful process.
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21 69. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
22 to noncitizens residing in the United States who are subject to the grounds of
23 inadmissibility much less to age-out unaccompanied immigrant children like
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25
26
27
28 Petitioner.

COUNT FOUR

Non-Statutory Ultra Vires Action/Accardi Doctrine Violation Against all Defendants

70. Petitioner repeats and incorporates by reference all allegations in paragraphs
1 to 44 above.

71. There is no statute, constitutional provision, or other source of law that
authorizes Respondents to detain Petitioner under the circumstances of this case.

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER - 18

1 72. Petitioner has a non-statutory right of action to declare unlawful, set aside,
2
3 and enjoin Respondents' ultra vires actions.
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6 73. Under the Accardi doctrine, Petitioner also has a right to set aside agency
7
8 action that violated agency procedures, rules, or instructions. *See United States ex*
9
10 *rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation
11
12 [that agency failed to follow its rules in a hearing] he should receive a new
13
14 hearing").
15
16

17 74. Petitioner is charged in the NTA under section 1226 and the Statute permits
18
19 the Attorney General to detain or release such noncitizens on bond. See 8 U.S.C. §
20
21 1226(a) & Exhibit 5. Congress has permitted the Attorney General to delegate
22
23 detention determinations to "any other officer, employee, or agency of the
24
25 Department of Justice." 28 U.S.C. § 510.
26
27
28

75. Immigration Judges are quasi-administrative law judges within the DOJ and
are thus properly delegated bond-determination authority. *See* 8 U.S.C. §
1101(b)(4).

76. By contrast, DHS, the party that invoked the automatic stay provision, is not
within the Department of Justice, but is a separate executive department and a
party before the Immigration Judge in the adversary section 240 removal
proceedings against Petitioner. *See* 6 U.S.C. § 111.

1 77. By permitting DHS to unilaterally extend the detention of an individual, in
2
3 contravention of the findings of on duly serving immigration judge who is properly
4
5 delegated the authority to make such a determination, 8 C.F.R § 1003.19(i)(2)
6
7 exceeds the statutory authority Congress gave to the Attorney General. “Because
8
9 this back-ended approach effectively transforms a discretionary decision by the
10
11 immigration judge to a mandatory detention imposed by [DHS], it flouts the
12
13 express intent of Congress and is *ultra vires* to the statute.” *Zavala v. Ridge*, 310 F.
14
15 Supp. 2d 1071, 1079 (N.D. Cal. 2004).
16
17
18
19

20 21 PRAYER FOR RELIEF

22
23 WHEREFORE, Plaintiff-Petitioner prays that this Court grant the following relief:

24 (1) Assume jurisdiction over this matter;

25 (2) Issue a Writ of Habeas Corpus on the ground that Petitioner’s continued
26
27 detention violates the Due Process Clause and order Petitioner’s immediate
28 release;

(3) In the alternative, issue injunctive relief ordering Respondents to
immediately release Petitioner, on the ground that his continued detention
violates his constitutional due process rights, his statutory rights, and
amounts to an *ultra vires* action;

(4) Issue a declaration that 8 C.F.R § 1003.19(i)(2) is unconstitutional and/or
ultra vires.

VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
FROM ICE CUSTODY AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF AND REQUEST FOR TEMPORARY RESTRAINING ORDER - 20

- 1 (5) Issue an injunction ordering Respondents not to arrest and detain any
2 individual charged as inadmissible as being present in the United States
3 without inspection or parole under section 1225(b);
4
5 (6) Issue an injunction ordering Respondents not to transfer Petitioner outside of
6 the jurisdiction of this Court;
7
8 (7) Enter a judgment declaring that Respondents' detention of Petitioner and
9 is and will be unauthorized by statute and contrary to law;
10
11 (8) Award Petitioner reasonable costs and attorney fees.
12

13 Date: 10/5/2025
14

15 Verified and Submitted by
16

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VERIFIED PETITION FOR WRITS OF HABEAS CORPUS AND IMMEDIATE RELEASE
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Providence, RI 02906

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT
7488 CALZADA DE LA FUENTE
SAN DIEGO, CA 92154

EXHIBIT 2

IN THE MATTER OF:

ANGEL G. DUENAS CORDOVA

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IN REMOVAL PROCEEDINGS

IJ: HEESCH

MC: 09/26/2025

ADDITIONAL SUPPORTING DOCUMENTATION

ANGEL G. DUENAS CORDOVA

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TABLE OF CONTENTS

TAB	PAGES
A. Copies of DHS Correspondence.....	1
B. Good Moral Character Letters.....	7
Certificate of Service.....	14