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Pro Hac Vice Application to be filed

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF NEVADA

REYES CABRERA-CORTES Petitioner, vs. Jason Knight, Acting Las Vegas/Salt Lake City Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); John Mattos, Warden, Nevada Southern Detention Center; Kristi NOEM, Secretary, United States Department of Homeland Security; Pamela **BONDI**, Attorney General of the United States; Executive Office for Immigration Review Respondents.	PETITION FOR WRIT OF HABEAS CORPUS Case No. Honorable Judge:

EXHIBIT LIST

A. IJ Bond Order for Petitioner

B. Bond Memorandum by Immigration Judge in Petitioner's case

C. Notice of EOIR-43 form filed by ICE to stay the bond of Petitioner

D. Respondent's Notice to Appear (NTA) and subsequent additional charging document

2124 Pages

I. INTRODUCTION

Counsel is an attorney who practices criminal and immigration law and is licensed to practice in and resides in Utah. Counsel has complied with LR IA 11-2, and the verified petition to allow counsel to represent the petitioner in this case has been filed and granted.

Petitioner is filing this Habeas Petition at the request of the District Court. Petitioner resides in Utah and had retained counsel for immigration matters before being arrested and transferred by Immigration & Customs Enforcement (ICE) to Nevada for detention, as ICE does not have a detention facility in Utah.

Petitioner, Reyes Cabrera-Cortes, by and through attorney Mari Alvarado, Esq., submits this Petition for Writ of Habeas Corpus against the above-named Respondents for unlawful detention. Petitioner's immigration case number is A#[redacted]

Petitioner is a noncitizen detained by Immigration & Customs Enforcement ("ICE") at the Nevada Southern Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) has concluded, based on novel arguments, that he is subject to mandatory detention even though an immigration judge ordered his release on bond. These novel arguments contradict decades of established law.

Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act ("INA") and due process. 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered years ago, were detained by ICE recently, and have been residing in the United States for many years. Instead, individuals like Petitioner are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on

conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

In addition, the unilateral automatic stay of the IJ decisions granting bond, filed on Form EOIR-43, violates the Petitioner's right to both procedural and substantive due process.

Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be allowed to pay the bond granted by the Immigration Judge and be released immediately while the bond is on appeal.

II. FACTS

Petitioner, Reyes Cabrera-Cortes, is a native and citizen of Puebla, Mexico. He has resided in the United States for over 20 years and is the husband of Caritina Zarate. Together, they have four children: Araceli Cabrera Zarate, born October 25, 2002 (22 years old); Edith Abigail Cabrera Zarate, born December 18, 2004 (20 years old); J[redacted] C[redacted] Zarate, born [redacted] 2008 (17 years old, U.S. citizen); B[redacted] C[redacted] Zarate, born [redacted] 2012 (13 years old, U.S. citizen).

Petitioner is a devoted husband and father who has been the primary financial provider for his family. Petitioner has no criminal record. He has consistently worked to support his family and has been a law-abiding member of his community. On Friday, August 1, 2025, Mr. Cabrera-Cortes was driving to work when he was stopped by police in Orem, Utah, but not for any driving offense or traffic violation. Following this stop, he was taken into immigration custody and promptly transferred to the Southern Nevada Detention

Center, where he remains detained. ICE did not set bond and indicated that he was under mandatory detention and ineligible for bond. Petitioner's detention has caused and continues to cause severe hardship to his wife and children. His youngest two children, J[redacted] and B[redacted] are U.S. citizens who depend on their father emotionally and financially, and both have active medical needs due to their asthma. His absence places the family in a precarious situation, as his wife now struggles to maintain stability for the children without his support.

The Department of Homeland Security makes the following allegations regarding Respondent:

1. That Respondent is not a citizen and national of the United States;
2. That Respondent is a native of Mexico and a citizen of Mexico;
3. That Respondent entered the United States at or near an unknown place, on or about an unknown date;
4. That Respondent was not then admitted or paroled after inspection by an Immigration Officer.

Respondent is being charged with being subject to removal under section 212 (a)(6)(A)(i) of the Immigration and Nationality Act (INA), as amended, in that Respondent, is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. ***(See* Exhibit D)**

Additionally Responding is being charged with being subject to removal under 212(a)(7)(A)(i)(I) of the immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry

document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act. ***(See* Exhibit D)**

Petitioner then sought and was granted a bond redetermination hearing on August 14, 2025, by the Immigration Judge ("IJ") Executive Office for Immigration Review ("EOIR"), Glen Baker. DHS failed to present any evidence for the bond hearing in Petitioner's case but argued that, notwithstanding his 20 years ofresidence in the United States, he is nevertheless an "applicant for admission" who is "seeking admission" and subject to mandatory detention under§ 1225(b)(2)(A). DHS is currently making the same argument in every similar bond hearing around the country. This new ICE policy, interpreting detention statutes, is unsupported by the law or precedent, as discussed below. On August 14, 2025 the IJ found that Respondent met his burden to show he is not subject to mandatory detention and is eligible for bond, and granted bond of $1500, the lowest bond an **1J** can grant. ***(See* Exhibit A)** ***(See* Exhibit B)**

DHS then reserved appeal and then filed form EOIR-43, invoking an automatic stay to Petitioner's release on bond for the duration of the appeal with the Board of Immigration Appeals ("BIA"), which can take 10 or more months to resolve. ***(See* Exhibit C)**

III. JURISDICTION

Petitioner is in the physical custody of Respondents. Petitioner is detained at the Nevada Southern Detention Center in Pahrump, Nevada.

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

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

IV. VENUE

Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for Nevada, the judicial district in which Petitioner is currently detained. Thus, Petitioner, a resident of Utah and an attorney residing in Utah, is required to file this action in Nevada solely because ICE relocated Petitioner from Utah to Nevada.

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.

V. REQUIREMENTS OF 28 U.S.C. § 2243

The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless 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.* 32.

Habeas corpus is "perhaps the most important writ known to the constitutional law... affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

VI. PARTIES

Petitioner is a citizen of Mexico. On Friday, August 1, 2025, Mr. Cabrera-Cortes was driving to work when he was stopped by police in Orem, Utah. Although no traffic citation or any driving violation was cited, immediately following this stop, he was taken into immigration custody and transferred to the Southern Nevada Detention Center, where he has remained detained. ICE did not set bond and indicated that he was under mandatory detention and ineligible for bond. Petitioner, through counsel, requested review of *his* custody by an IJ. On August 14, 2025, Petitioner was granted a $1,500 bond by an IJ Glen Baker at the Las Vegas Immigration Court over the opposition of DHS that argued that he was an "applicant for admission.". Petitioner has resided in the United States since 2005.

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 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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 Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration

Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings and appeals thereof.

Respondent John Mattos is employed by Core Civic- as Warden of the Nevada Southern Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

VII. LEGAL FRAMEWORK

The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in§ 1226(a) detention are generally 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 and then they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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 § 1225(b)(2).

Last, 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).

This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

The detention provisions at §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, 1 IO Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

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

Thus, in the decades :hat followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of practice, in which all noncitizens who were not apprehended "arriving" at the border 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§ 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore, are subject to mandatory detention provision under § 1225(b)(2)(A). The policy

applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

ICE has adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that§ 1226(a), not §1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Diaz Martinez v. Hyde*, et al., No. CV 25-11613-BEM, 2025 WL 204238, at *2-3 (D. Mass. July 24, 2025).

Finally, the Board of Immigration Appeals issued a published decision in *Matter of Akhmedov* 29 I&N 29 I&N Dec. 166 (BIA 2025). While the issue in the instant petition is not the central holding in the case, as it does not deal with the jurisdictional argument, the BIA noted in that case that the respondent's custody determination is governed by the provisions of section 1226(a), even though he entered unlawfully. *Id.* 54.

DHS's interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that§ 1226(a), not§ 1225(b), applies to people like Petitioner.

Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under§ 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

The text of§ 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(l)(E). Subparagraph 12 (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

By contrast, §1225(6) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Accordingly, the mandatory detention provision of§ 1225(b)(2) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

VIII. DUE PROCESS VIOLATIONS

DHS has continued to detain Petitioner under a unilateral authority to stay the immigration court's bond under 8 C.F.R. §I003.19(£). First, the application of this regulation to Petitioner violates due process.

Second, Petitioner contends that the regulation also facially violates substantive due process because it is not authorized by statute and provides the jailer with unfettered authority which implicates the fundamental right to be free from detention and is not narrowly tailored to meet the compelling government interest of protecting public safety. Prior to 2001, detainees subject to discretionary detention under 8 U.S.C. § 1226(a) who were then granted bond by an immigration judge remained detained only if the BIA granted a request to stay the bond order. 8 C.F.R. § 3.19(i)(2) (1998) (permitting the use of automatic stays only where the noncitizen was subject to a mandatory detention statute).

In response to the terrorist attacks of September 11, 2001 the Immigration and Naturalization Service (INS) (now DRS) implemented an interim rule to expand its authority to issue automatic stays to prevent the effectuation of immigration judges' custody decisions pending their appeal. *See* Executive Office for Immigration Review; Review of Custody Determination, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001).

Although INS was previously required to seek an emergency stay from the BIA to prevent the immigration judge's order for release on bond, the new rule allowed the INS to unilaterally invoke an emergency stay at its own discretion to prevent the detainee's release.

Id. Notes in the Federal Register explained that this revision would "allow the Service to maintain the status quo while it seeks review by the Board, and thereby avoid the necessity for a case-by case determination of whether a stay should be granted[.]" *Id.* The INS emphasized that the stay was "a limited measure," to be used only "where the Service determines that it is necessary to invoke the special stay procedure pending appeal." *Id.*

The new rule raised due process concerns from its inception. Comments to the rule expressed strong opposition arguing that it violated the Fifth Amendment's Due Process Clause. *Id.*

A former INS General Counsel testified about his concerns regarding the agency's use of automatic stays because it was being used routinely and without careful calculation by the agencies of the merits of each bond case and in cases that involved nonviolent offenders. *See* David A. Martin, Preventive Detention: Immigration Law Lessons for the Enemy Combatant Debate, Testimony Before the National Commission on Terrorist Attacks Upon the United States, December 8, 2003. 18 Geo. Immigr. L.J. 305 (2004).

Federal courts during that period following the 9/11 attacks concluded that the automatic stay provisions violated the due process rights of detainees. *Ashley v. Ridge*, 288 F. Supp. 2d 662, 673 (D.N.J. 2003) (finding that continued detention on the automatic stay despite the IJ's decision to grant bond violated procedural and substantive due process rights); *Bezmen v. Ashcrofi*, 245 F. Supp. 2d 446 (D. Conn. 2003) (finding the government goal of preventing the release of noncitizens posing a threat to national security was not served by the petitioner's ongoing detention and was outweighed by the petitioner's Fifth Amendment right to be free from detention); *See.e.g., Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 WL1514122 (N.D. Cal. 15 June 17, 2005) (finding the automatic stay

provision unconstitutional); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (same); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003).

In 2006, the EOIR promulgated the final rule with some notable changes. *See* Executive Office for Immigration Review; Review of Custody Determination, 71 Fed. Reg. 57873 (Oct. 2, 2006). The final rule added the requirement that any decision to invoke the automatic stay must be made by the Secretary of DHS and a senior legal official who must certify that sufficient factual and legal bases exist to justify continued detention. *Id.* at 57876. The rule also imposed some limitations by providing that the stay will lapse 90 days after filing the bond appeal unless DHS sought a discretionary stay. 8 C.F.R. § 1003.6(c)(2006).

The automatic stay regulation is a very rare and exceptional action in the first place. *See* Executive Office for Immigration Review; Review of Custody Determination, 66 Fed. Reg. 54909 (Oct. 31, 2001) (describing the automatic stay as a "limited measure"); *See also* Stacy L. Brustin, A Civil Shame: The Failure to Protect Due Process in Discretionary Immigration Custody & Bond Redetermination Hearings, 88 Brook. L. Rev. 163,225 n.231 (2022) (providing data yielded from a DHS FOIA request showing considerable variance but revealing that, on average, DHS invoked an automatic stay twenty-six times per year over the last seven years). In fact, counsel has never seen it invoked in her 10 years of immigration practice.

Yet now it is being invoked categorically to stay an IJ bond decision that is contrary to ICE's new policy, subjecting all persons who entered without inspection to mandatory detention under§ 1225(b)(2)(A), regardless of whether they have been residing for years in this country without any criminal history.

The Constitution guarantees every person in the United States due process of law, including persons who are not United States citizens. *E.g., Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) ("The Supreme Court has long recognized that deportable aliens are entitled to constitutional protections of due process." (citing *Yamataya v. Fisher*, 189 U.S. 86, 100-01, 23 S.Ct. 611, 47 L.Ed. 721 (1903))); *see also, e.g., Zadvydas v. Davis*, 533 U.S. 678,695, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) ("[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

To determine whether a civil detention violates a detainee's due process rights, courts apply a three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, "when considering due process challenges to [discretionary noncitizen detention] other circuits ... have applied the Mathews test").

Under Mathews, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute 17 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, 96 S.Ct. 893.

The private interest in this case is significant, being free from physical detention. The Supreme Court has found this to be "the most elemental of liberty interests." *Hamdi v. Runsfeld*, 542 U.S. 507 at 529, 531, 124 S.Ct. 2633 (directing courts, when assessing the first *Mathews* factor, to consider only the petitioner's interests at stake in ongoing detention

without consideration of the respondents' justifications for the detention (quotation omitted)); *see also Zadvydas v. Davis,533* U.S. 678, 690 (advising that an individual's interest in being free from detention "lies at the heart of the liberty that [the Due Process] Clause protects").

Petitioner is being held at the Nevada Southern Detention Center and experiencing the loss of contact with family and friends, loss of income and inability to provide for their families, lack of privacy and lack of freedom. He is not held in his home state of Utah where at least he could be visited regularly by family members.

The second *Mathews* factor is whether the challenged procedure creates a risk of erroneous deprivation of individual rights and whether there are alternative procedures that could ameliorate these risks. In this case, the risk of deprivation is very high because Petitioner and any other adversely affected individuals by the automatic stay are those who have already prevailed in a bond hearing before an immigration judge. The challenged regulation permits an agency official who is involved in the adversarial process and the non-prevailing party to unilaterally override the immigration judge's decision. This represents a conflict of interest disapproved by courts in other contexts. *See,* e.g., 5 U.S.C. § 554(d)(2) (prohibiting agency employees engaged in prosecuting functions from participating in the adjudicatory decision); *Marcello v. Bonds,* 349 U.S. 302, 305-06 (1955) (holding that the special inquiry officer adjudicating over an immigration case cannot also undertake the functions of prosecutor in the same matter).

Other courts have agreed that a rule permitting a non-prevailing party to stay a judgment permitting release creates a risk of erroneous deprivation. *See e.g., Gunaydin v. Trump,* No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025);

Zavala v. Ridge, 310 F. Supp. 2d 1071, at 1078 (N.D. Cal. 2004) (noting that the automatic stay procedure "creates a potential for error because it conflates the functions of adjudicator and prosecutor"); *Ashley*, 283 F. Supp. 2d at 671 (concluding that the regulation creates a "patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified" (quotation omitted)).; *Mohammed H v. Trump*, --- F.Supp.3d -----(2025) 2025 WL 1692739 (noncitizen's Fifth Amendment right to due process was violated by government's invocation of automatic-stay provision of immigration regulations to keep noncitizen in custody despite an immigration judge's (IJ) order that he be released on bond).

Furthermore, the risk of erroneous deprivation of rights is increased because the automatic stay regulation does not require agency officials to consider the facts of the case or make any case-by-case determinations. As noted above the procedure additionally creates a potential for error because it conflates the functions of adjudicator and prosecutor. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 75 S.Ct. 757 (1955); *see also Ashley v. Ridge*, 288 F.Supp.2d at 662,671 (It produces a patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversarial hearing that detention is justified.) In this case, the same prosecutor who lost before the immigration judge in the bond hearing effectively overruled his decision as the adjudicator by invoking the automatic stay.

When considering a bond redetermination request, an immigration judge must consider whether the applicant is a danger to society, a threat to national security or poses a flight risk. 8 U.S.C. § 1226(a) (2018); *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006);

see also Matter of D-J-, 23 I&N Dec. 572, 576 (A.G. 2003); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112 (BIA 1999); 8 C.F.R. § 1236.1(c)(8). The immigration judge in this case carefully considered these factors, reviewed all the evidence, and determined that a low bond was appropriate. However, when invoking a stay of the bond, the agency official need not make any individualized review of the case or consider any of the factors.

The automatic stay does not impose any standards for the agency official to satisfy, and it operates as an appeal of right rather than an extraordinary remedy. The official need not introduce any proof, and it can effectively overrule the bond decision, keeping Petitioner detained indefinitely. In so doing, the automatic stay rendered the continued detention arbitrary. It gave Petitioner no chance to contest the case for detention, even though he had prevailed at the bond hearing before the immigration judge. *Mathews*, 424 U.S. at 348-49, 96 S.Ct. 893 ("The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.") Invoking the automatic stay as the Government did here contorts § 1003.19(i)(2) into an unfair procedure. *Cf Bridges*, 326 U.S. 135, 152-53, 65 S.Ct. 1443 (administrative rules are designed to afford due process and to serve as "safeguards against essentially unfair procedures").

Moreover, a stay of an order directing the release of a detained individual is an "especially" extraordinary step, because "[i]n 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, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). This is contrary to any other stay while on appeal or a stay of a court order in any other context where the party must make a strong showing that they are likely to ultimately prevail, and address the risk of irreparable

injury and the balance of interests to obtain a stay. *Nken v. Holder*, 556 U.S. 418,434 (2009). No such requirements apply to the automatic stay regulation.

The regulation provides alternative procedural safeguards. Section 1003.19(i)(l) sets forth a procedure by which DHS may request an emergency stay of the immigration judge's custody determination from the BIA. The BIA then conducts an expedited preliminary review to determine whether a stay is warranted based on the individual circumstances and merits of the case. This process ameliorates the due process issues of§ 1003.19(i) (2) while preserving the government's interest in preventing an erroneous release. *See Zavala*, 310 F. Supp. 2d at 1077 (concluding that 8 C.F.R. § 1003.19(i)(l) provides "an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner's liberty interest"); *see also Bezmen*, 245 F. Supp. 2d at 451; *Gumaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025) (reaching same conclusion).

In the third step of the Mathews test, the court must weigh the private interests at stake and the risk of erroneous deprivation against the government's interest in persisting with the regulation, including the fiscal and administrative burdens of a substitute procedural requirement. Given that Petitioner satisfies all the criteria for release on bond, it is difficult to see any legitimate purpose for continued detention. The process by which an immigration judge issues a bond redetermination takes into account the government's safety and flight concerns.

Suppose the purpose of the detention is not to facilitate deportation, protect against the risk of-flight, or danger to the community. In that case, it must be solely for incarceration, and in this administration, it is primarily motivated by politics.

Any government interest can be addressed through the regulation, which provides a process for requesting a stay from the BIA pending appeal of the immigration judge's bond decision. 8 C.F.R. § 1003.19(i)(l). The government can do this in any case in which it believes that the IJ's decision was erroneous.

In this case, the Petitioner availed themselves of the procedural safeguards by requesting a bond redetermination, providing evidence that they were not a flight risk and posed no danger to the community and should therefore be granted bond. The bond hearing was resolved entirely in their favor by the IJ, granting the lowest bond available by law. *See* 8 U.S.C § 1226. However, DHS unilaterally invoked a rarely used form, EOIR-43, to stay the bond decision, rather than availing itself of the less punitive alternative procedure prescribed by the same regulation. The regulation, on its face and its application to this case, containing no risk factors of release, violates due process.

CLAIMS FOR RELIEF

COUNT I- Violation of the INA

Petitioner incorporates by reference the allegations of fact outlined in the preceding paragraphs.

The mandatory detention provision at 8 U.S.C. § 1225(6)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States before being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under§ 1226(a), unless they are subject to § 1225(6)(1), § 1226(c), or§ 1231.

The application of§ 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II- Violation of Due Process

Petitioner repeats, re-alleges, and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein. 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).

The Ninth Circuit has 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. & Customs Enft, 975 F.3d788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, I012 (9th Cir. 2014)). Petitioner has a fundamental interest in liberty and being free from official restraint.

The government's continued detention of Petitioner and the filing of the automatic stay of the bond after an IJ has granted a bond after making individualized findings that he is neither a flight risk nor a danger to others violates his right to procedural due process as applied to this case.

The automatic stay regulation also facially violates substantive due process because it applies only to situations in which an IJ has already determined the applicant is not a danger or flight risk and ordered him released. The regulation permits the unilateral detention of individuals without a case-by-case determination at the unfettered discretion of the arresting agency; as such, it violates the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately;

c. Award Petitioner 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 law; and

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

RESPECTFULLY SUBMITTED this 15th day of October, 2025.

Gary S. Fink, Esq.
Attorney for Petitioner

Mari Alvarado, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system, which sent notification of such filing to the following:

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