IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

JOSUE DAVID SARAVIA SARAVIA,
A# [redacted]
c/o La Salle County Regional Detention Ctr.,
832 East Texas HWY 44,
Encinal, TX 78019;

Petitioner,
vs.

HECTOR C. RAMIREZ,
Sheriff of La Salle County Texas,
101 Courthouse Square,
Cotulla, TX 78014;

WARDEN PERRY GARCIA,
La Salle County Regional Detention Center,
832 East Texas HWY 44, Encinal, TX 78019;

MIGUEL VERGARA, Field Office Director,
Enforcement and Removal Operations,
U.S. Immigration and Customs Enforcement,
1777 NE Loop 410, Suite 1500,
San Antonio, TX 78217;

TODD LYONS, Director of the
Immigration and Customs Enforcement,
500 12th Street, S.W.,
Washington, DC 20536;

KRISTI NOEM, Secretary of
the Department of Homeland Security,
Washington, D.C. 20528;

PAMELA JO BONDI, U.S.A.G,
950 Pennsylvania Ave., NW,
Washington, D.C. 20530;

Respondents.

Case No. 5:25-cv-184

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner, Mr. Josue David Saravia Saravia ("Mr. Saravia"), is a native and citizen of El Salvador who came to the United States in July of 2005, who was arrested on February 27, 2018, in Baltimore, Maryland, by Respondents, chiefly the Department of Homeland Security ("DHS"), on a DHS warrant and detained explicitly pursuant to the Immigration and Nationality Act ("INA") § 236 (8 U.S.C.§ 1226), see Exhibit A, whereafter Respondents refused to set any bond, but then was released on a $5000 bond that was granted by the Honorable Elizabeth A. Kessler in the Baltimore, Maryland Immigration Court on March 23, 2018, and despite the fact that Mr. Saravia has had NO brushes with law enforcement of any kind since that time, on May 30, 2025, Mr. Saravia was arbitrarily re-arrested by Respondents in Baltimore, Maryland, for no reason, and forced him to seek another bond, which was granted by the Honorable Kevin Terrill, in the Pearsall, Texas Immigration Court, in the amount of $3000 on July 24, 2025.
2. Despite having no reason to re-arrest Mr. Saravia, and despite the fact that the Honorable Kevin Terrill granted Mr. Saravia a $3000 bond, on July 24, 2025, Respondents invoked the automatic stay provision provided at 8 C.F.R. § 1003.19(i)(2) by filing a handwritten EOIR-43 Notice of ICE Intent to Appeal Custody Redetermination with the Board of Immigration Appeals ("BIA") to keep Mr. Saravia detained while it appealed the Immigration Judge's decision to the BIA.

3. With a flick of a pen, the DHS was permitted to keep Mr. Saravia detained despite the bond order by the Honorable Kevin Terrill.
4. In general, prior to this year, absent individualized and extraordinary circumstances, when an Immigration Judge granted a noncitizen bond, that person was released from ICE custody once bond was paid even where DHS appealed the bond decision to the BIA. In general, the automatic stay provision was rarely employed. Now, it is being employed with without exception to every bond decision that is adverse to Respondents' current detention policies.
5. In its notice of appeal, filed on August 5, 2025, DHS asserted that Mr. Saravia was not eligible for a bond because he entered the United States illegally and thus he was subject to mandatory detention pursuant to INA § 235 (8 U.S.C. § 1225), despite the fact that on February 27, 2018, the DHS arrested Mr. Saravia under a DHS warrant issued pursuant to INA § 236 (8 U.S.C. § 1226), which would allow a bond redetermination by an immigration judge. (Exhibit A.) The DHS cannot change their theory of detention now after having already arrested Mr. Saravia pursuant to INA § 236 (8 U.S.C. § 1226) in 2018. (Exhibit A.)
6. Mr. Saravia has now been unlawfully detained by Respondents for more than four months since he was first illegally rearrested and nearly three months since the Honorable Kevin Terrill ordered him released on bond, a severe and ongoing deprivation of his core interest in liberty from arbitrary physical restraint.
7. Mr. Saravia brings this petition pursuant to remedy violations of the Due Process Clause of the Fifth Amendment and the INA, and respectfully requests that this Court

issue a writ of habeas corpus ordering Respondents to release him from custody.

CUSTODY

8. Mr. Saravia is in the physical custody of Respondents as he is being detained at the La Salle County Regional Detention Center, 832 East Texas HWY 44, Encinal, TX 78019, at the behest of Respondents. Mr. Saravia is under the direct control of Respondents and their agents.

JURISDICTION

9. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment, U.S. CONST. amend. V; and the Suspension Clause, U.S. CONST. art. I, § 9.
10. The Court has jurisdiction in equity to order Petitioner's immediate release from unlawful custody. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (holding that "[t]he typical remedy [for unlawful detention] is, of course, release.") (citation omitted).
11. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, see 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by the Respondents. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

12. Venue is proper in the Southern District of Texas under 28 U.S.C. § 1391 and 28

U.S.C. § 2242 because at least two Respondents are located in this District, Mr. Saravia is detained in this District, Mr. Saravia's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over the petitioner.'") (citing 28 U.S.C. § 2242).

PARTIES

13. Mr. Saravia is currently detained by Respondents at the La Salle County Regional Detention Center, at the behest of Respondents. He has been in Respondents' custody since May 30, 2025, when he was arbitrarily arrested in Baltimore, Maryland.

14. Respondent Hector C. Ramirez is the Sheriff of La Salle County, Texas, and acts as the warden of the La Salle County Regional Detention Center ("La Salle County RDC"), where Petitioner is currently detained. In his capacity as Warden, he oversees the administration and management of La Salle County RDC. He is a legal custodian of Mr. Saravia and is being sued in his official capacity.

15. Respondent Perry Garcia is the Warden of the La Salle County RDC, where Petitioner is currently detained. In his capacity as Warden, he oversees the administration and management of La Salle County RDC. He is a legal custodian of Mr. Saravia and is being sued in his official capacity.

16. Respondent Miguel Vergara is the Field Office Director of the San Antonio Office for Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations ("ERO"), within the DHS. In this capacity, Mr. Vergara is responsible for

the administration of immigration laws and execution of detention and removal determinations and, as such, is an immediate custodian of Mr. Saravia. Mr. Vergara is being sued in his official capacity.

17. Respondent Todd M. Lyons is the Director of ICE. Mr. Lyons is a legal custodian of Petitioner and he is being sued in his official capacity. In this capacity, Mr. Lyons is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), he routinely transacts business in the Southern District of Texas, he supervises Respondent Vergara, and he is legally responsible for Petitioner's detention.

18. Defendant Kristi Noem is the Secretary of the DHS and she is being sued in her official capacity. In this capacity, Ms. Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), she routinely transacts business in the Southern District of Texas, she supervises Respondents Lyons and Vergara, and she is legally responsible for Petitioner's detention.

19. Respondent Pam Jo Bondi is being sued in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). Ms. Bondi routinely transacts business in the Southern District of Texas and is legally responsible for administering Petitioner's custody redetermination proceedings and the standards used in those proceedings.

FACTS

20. Mr. Saravia is a native and citizen of El Salvador who came to the United States in July of 2005 and eventually went to live in Baltimore, Maryland, where his brother lived.

21. In the early morning hours of February 27, 2018, the DHS arrived at Mr. Saravia's residence at [redacted] MD 21221, looking for someone else, but ended up arresting Mr. Saravia because he did not have any status.

22. On February 27, 2018, DHS explicitly arrested Mr. Saravia under INA § 236 (8 U.S.C. § 1226). (Exhibit A.) The DHS performed a custody determination pursuant to INA § 236 (8 U.S.C. § 1226), but ultimately refused to set a bond for Mr. Saravia. (Exhibit A.) Mr. Saravia requested a bond redetermination by an immigration judge. (Exhibit A.)

23. On March 23, 2018, the Honorable Elizabeth A. Kessler in the Baltimore Immigration Court granted Mr. Saravia a bond of $5000.

24. On the same day, on March 23, 2018, Mr. Saravia's family posted a bond and Mr. Saravia was released from DHS detention.

25. Subsequently, on April 9, 2018, in his removal proceedings in the Baltimore, Maryland Immigration Court, Mr. Saravia submitted his application for cancellation of removal for certain nonpermanent residents pursuant to INA § 204A(b)(1) ("cancellation") (8 U.S.C. § 1229b(b)(1)), through prior counsel.

26. On October 16, 2019, a hearing was held in the Baltimore Immigration Court, but neither Mr. Saravia nor his prior counsel appeared. Mr. Saravia was ordered removed

in absentia.

27. Mr. Saravia had no advance knowledge of the hearing. However, he did receive the removal order in the mail. Mr. Saravia contacted prior counsel who filed a motion to reopen on December 12, 2019, but the motion was denied on August 12, 2020.

28. On April 29, 2021, the DHS sent a Notice to Obligor to Deliver Alien to Mr. Saravia's family on June 7, 2021.

29. On June 7, 2021, Mr. Saravia appeared at DHS/ICE/ERO headquarters at 31 Hopkins Plaza, Baltimore, Maryland and he was placed on an order of supervision and released on his own recognizance.

30. On June 10, 2021, the DHS cancelled Mr. Saravia's bond.

31. On May 10, 2023, Mr. Saravia, through undersigned counsel, submitted a motion to reopen to the Baltimore Immigration Court, asserting, among other things, ineffective assistance of counsel from Mr. Saravia's prior counsel. On May 23, 2023, the motion was granted and Mr. Saravia's removal proceedings were reopened.

32. Soon afterwards, Mr. Saravia was scheduled for a merits hearing on his cancellation application for April 24, 2025 in the Baltimore Immigration Court. But, right before his merits hearing date, the Baltimore Immigration Court unexpectedly postponed Mr. Saravia's hearing until 2026.

33. On May 40, 2025, Mr. Saravia and his wife, Elsy Del Carmen Hernandez Rodriguez ("Ms. Hernandez Rodriguez"), were arrested by DHS agents in Baltimore, Maryland.

34. Unfortunately, Ms. Hernandez Rodriguez, who had no criminal record but had a prior order of removal, was quickly physically deported to El Salvador. Meanwhile, the

DHS whisked Mr. Saravia off to Texas, far from what was left of his family. Mr. Saravia is presently detained at the La Salle County RDC. Mr. Saravia's 13-year-old U.S. citizen son was de facto orphaned by Mr. Saravia's arrest and detention and his mother's physical deportation and he is currently in the care of Mr. Saravia's brother.

35. As for Mr. Saravia, the DHS refused to release him, despite the fact that he was previously released on a $5000 bond that was granted by the Honorable Elizabeth A. Kessler in the Baltimore Immigration Court on March 23, 2018, and despite the fact that he has had NO brushes with law enforcement of any kind since that time.

36. Having no other recourse, Mr. Saravia motioned for a bond redetermination hearing before the immigration judge at the Pearsall, Texas Immigration Court. On July 24, 2025, the Honorable Kevin Terrill granted Mr. Saravia a bond in the amount of $3000.

37. On the same day, on July 24, 2025, Respondents invoked the automatic stay provision provided at 8 C.F.R. § 1003.19(i)(2) by filing a handwritten EOIR-43 Notice of ICE Intent to Appeal Custody Redetermination with the Board of Immigration Appeals ("BIA") to keep Mr. Saravia detained while it appealed the Immigration Judge's decision to the BIA.

38. On August 5, 2025, DHS filed its EOIR-26 notice of appeal asserting that Mr. Saravia was not eligible for a bond because he entered the United States illegally and thus he was subject to mandatory detention pursuant to INA § 235 (8 U.S.C. § 1225), despite the fact that on February 27, 2018, the DHS arrested Mr. Saravia under a DHS warrant issued pursuant to INA § 236 (8 U.S.C. § 1226), which would allow a bond

redetermination by an immigration judge. (Exhibit A.)

39. Mr. Saravia has now been unlawfully detained by Respondents for more than four months since he was first illegally rearrested and for nearly three months since the Honorable Kevin Terrill ordered his release on a $3000 bond, a severe and ongoing deprivation of his core interest in liberty from arbitrary physical restraint.

LEGAL FRAMEWORK FOR IMMIGRATION-RELATED DETENTION

40. The INA prescribes three basic forms of detention for noncitizens in removal proceedings.

41. First, INA § 236 (8 U.S.C. § 1226) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Noncitizens in INA § 236(a) (8 U.S.C. § 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* INA § 236(c) (8 U.S.C. § 1226(c)).

42. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under INA § 235(b)(1) (8 U.S.C. § 1225(b)(1)) and for other recent arrivals seeking admission referred to under INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)).

43. Last, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* INA § 241(a)-(b) (8 U.S.C. § 1231(a)–(b)).

44. The detention provisions at INA § 236(a) (8 U.S.C. § 1226(a)) and INA § 235(b)(2) (8 U.S.C. § 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. INA §236(a) (8 U.S.C. § 1226(a)) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

45. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under INA § 235 (8 U.S.C. § 1225) and that they were instead detained under INA § 236(a) (8 U.S.C. § 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).

46. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that 8 U.S.C. § 1226(a) simply "restates" the detention authority previously found at 8 U.S.C. § 1252(a)).

47. In the early spring of 2025, Respondents quietly implemented a new policy that turns this well-established understanding on its head and violates the statutory scheme.

48. This new legal theory that noncitizens who entered the United States without admission or parole are ineligible for bond hearings was rejected by a District

Court in the Western District of Washington, finding that such individuals are entitled to bond redetermination hearings before immigration judges, and rejecting the application of INA § 235(b)(2) (8 U.S.C. §1225(b)(2)) to such cases. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

49. Undeterred, the Respondents continued to assert this new theory and in a May 22, 2025 unpublished BIA decision confirms that EOIR is taking this same position that noncitizens who entered the United States without admission or parole are ineligible for immigration judge bond hearings.

50. This new immigration detention policy was finally officially confirmed on July 8, 2025, when the Director of Immigration and Customs Enforcement, Todd Lyons, issue a policy memo entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission." The Lyons Memo directed ICE to apply INA § 235 to *any* noncitizen who entered the United States without admission, regardless of when noncitizen entered the United States, even if it was decades ago or where the noncitizen was encountered, such as in the interior of the United States.

51. On September 5, 2025, the BIA issued its decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting the position announced in the Lyons Memo that noncitizens who entered the United States without admission or parole are ineligible for bond hearings before an immigration judge. The immigration courts and the BIA are part of the EOIR, which in turn are part of the Department of Justice, which is

controlled by the U.S. Attorney General, Pamela Jo Bondi.

52. This interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Mr. Saravia.

53. The text of INA § 236 (8 U.S.C. § 1226) explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). INA § 236 (8 U.S.C. § 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. INA § 236(a) (8 U.S.C. § 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 INA § 240 (8 U.S.C. § 1229a), which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

54. By contrast, INA § 235 (8 U.S.C. § 1225(b)) 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).

55. The federal courts have overwhelmingly rejected the DHS' legal position in the Lyons Memo and in the BIA's decision in *Matter of Yajure Hurtado*. *See, e.g*, *BDVS v. Forestal*, No. 25-1968 (S.D. In. Oct. 8, 2025) (Evans Barker, J.); Eliseo v. Olson, No. 25-3381, (D. Mn. Oct. 8, 2025) (Blackwell, J.); *Buenrostro-Mendez v. Bondi,* No. 25-3726, (S.D. Tx. Oct. 7, 2025) (Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252, 2025

LX 492534 (D. Ariz. Oct. 3, 2025); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Mn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tx. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tx. Sept 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425

(E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025) (Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Rubin, J.); *Romero v. Hyde*, No. 25-11631, __ F.Supp.3d __, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.); *Diaz Martinez v. Hyde*, No. 25-11613, __ F.Supp.3d __, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.).

56. Mr. Saravia asserts the issue of whether he is detained under INA § 236 (8 U.S.C. § 1226) versus INA § 235 (8 U.S.C. § 1226) is moot because on February 27, 2018, DHS explicitly arrested Mr. Saravia under INA § 236 (8 U.S.C. § 1226). (Exhibit A.) The DHS performed a custody determination pursuant to INA § 236 (8 U.S.C. § 1226), but ultimately refused to set a bond for Mr. Saravia. (Exhibit A.) Mr. Saravia requested a bond redetermination by an immigration judge. (Exhibit A.) As such,

DHS cannot change its position now and say that Mr. Saravia was arrested pursuant to INA § 235 (8 U.S.C. § 1225), because that position is clearly false. *See e.g.*, *Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800, at *6 (holding, among other things, that a prior release under INA § 236(a) (8 U.S.C. § 1226(a)) is controlling).

57. Nor can the DHS compound its error by filing an appeal and invoking the unilateral automatic stay provisions promulgated at 8 C.F.R. § 1003.19(i)(2) to keep Mr. Saravia detained.

LEGAL FRAMEWORK OF THE AUTOMATIC STAY PROVISIONS

58. Section 236(a) of the INA (codified as 8 U.S.C. § 1226(a)) confers discretion to the Attorney General and DHS to make decisions in some circumstances as to the detention and bond of people charged with removal actions while they await removal decisions.

59. The INA grants people detained pursuant to 8 U.S.C. § 1226(a) the right to seek review of the initial custody determination before an immigration judge at any time. 8 U.S.C. §§ 1226(a)(1), (c)(1); 8 C.F.R. § 1003.19(a). If an immigration judge finds that a detainee is eligible for bond, namely that the detainee is not a danger to the community or a flight risk, DHS may appeal the decision of the immigration judge to the BIA. 8 C.F.R. § 1003.19(f). The regulations also provide DHS the unilateral authority to automatically stay an immigration judge's bond order and keep the person who was granted bond detained pending DHS's appeal to the BIA. 8 C.F.R. § 1003.19(i)(2).

60. 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).

61. On October 31, 2001, following the terrorist attacks of September 11, 2001, the Immigration and Naturalization Service ("INS")—an agency whose functions now fall under DHS's purview—implemented an interim rule to expand its authority to issue automatic stays to prevent immigration judges' custody decisions from being implemented pending appeal. Executive Office for Immigration Review; Review of Custody Determination, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001). For circumstances in which the INS was previously required to seek an emergency stay from the BIA to prevent the effectuation of an 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 in any case where it determined that a detainee should not be released or when bond had been set in the amount of $10,000 or more. *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.*

62. The new automatic stay regulation raised due process concerns from its inception. For example, a former General Counsel of INS, David Martin, provided testimony in 2003 to the National Commission on Terrorist Attacks in which he voiced his concern

regarding the agency's use of automatic stays. *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). He stated that "there are indications that the automatic stay mechanism is now being used routinely and without careful calculation by the enforcement agencies of the individual merits that led the [immigration judge] to reduce the bond in the first place." *Id.* at 313. He urged the agency to repeal the automatic stay provision and revert to the old process of seeking emergency stays from the BIA, which, he believed, would provide "sufficient safeguards, both of public safety and of the core interest in liberty." *Id.*

63. During this same period, several federal district courts concluded that the automatic stay provision violated the due process rights of detainees. In *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003), for example, the court vacated the automatic stay on a detainee's petition for a writ of habeas corpus, finding that "the continued detention of Petitioner without judicial review of the automatic stay of the bail determination, despite the Immigration Judge's decision that he be released on bond, violates Petitioner's procedural and substantive due process constitutional rights." *Id.* at 675; *see, e.g., Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003)(finding the automatic stay provision unconstitutional); *Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 WL 1514122 (N.D. Cal. June 17, 2005) (same); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (same).

64. In 2006, the Department of Justice promulgated its final rule. *See* Executive Office

for Immigration Review; Review of Custody Determination, 71 Fed. Reg. 57873 (Oct. 2, 2006). The final rule included the language of the interim rule, with some notable changes. First, "to allay possible concerns that in some case the automatic stay might be invoked . . . without an adequate factual or legal basis," the final rule added a requirement that the decision to invoke an automatic stay "is subject to the discretion of the Secretary [of DHS]," and a senior legal official at DHS must certify "there is factual and legal support justifying the continued detention." *Id.* at 57874.

65. Second, the final rule imposed some time limitations. The final rule provides that DHS's order of automatic stay will lapse ninety days after the filing of the notice of appeal if the BIA has not acted on the custody appeal. 8 C.F.R. § 1003.6(c)(4) (2006).

66. However, the rule actually allows for continued detention well beyond ninety days. DHS may seek an additional discretionary stay from the BIA to prevent the stay from lapsing if the BIA has not yet acted on the appeal. To do so, DHS can submit a motion to the BIA asking for a discretionary stay pending the BIA's decision on the custody appeal. The automatic stay would then remain in place for up to thirty additional days to permit the BIA time to rule on the stay motion. 8 C.F.R. § 1003.6(c)(5). If the BIA denies the discretionary stay, fails to act upon it within the requisite period, or issues a decision upholding the immigration judge's custody ruling, then the automatic stay would remain in place for an additional five business days (potentially 7 calendar days) to permit the Secretary or a designated DHS official to decide whether to refer the decision for the Attorney General's review. 8 C.F.R. §

1003.6(d). If the agency decides to refer the decision, then the automatic stay would remain in place for an additional fifteen business days (potentially nineteen calendar days) to permit the Attorney General time to consider the merits of the referred decision and decide whether to act on the referred decision. *Id.* Therefore, although DHS's automatic stay order could lapse after ninety days without action from the BIA, DHS could also maintain the automatic stay for a total of 140-146 days without judicial review of any kind.

67. Additionally, nothing in the regulations prevents DHS from invoking the automatic stay provision and appealing the immigration judge's bond decision to the BIA multiple times in a row which would result in indefinite civil detention.

CLAIMS OF RELIEF

COUNT ONE

VIOLATION OF PROCEDURAL DUE PROCESS
U.S. Const. amend. V

68. Mr. Saravia realleges and incorporates by reference each and every allegation contained above.

69. As the Supreme Court has repeatedly instructed, freedom "from government custody, detention, or other forms of physical restraint" is at "the heart" of what the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. at 690 (2001); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action"). This is particularly true in the context of civil detention. *See,*

e.g., Addington v. Texas, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection"); *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997) (requiring "strict procedural safeguards" to justify involuntary civil commitment of certain sex offenders); *Foucha*, 504 U.S. at 81-82, 86 (holding unconstitutional a state civil commitment "statute that place[d] the burden on the detainee to prove that he is not dangerous").

70. To determine whether a civil detention violates a detainee's procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Hernandez v. Cremer*, 913 F.2d 230, 238 (5th Cir. 1990).

71. Pursuant to *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 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; *Hernandez v. Cremer*, 913 F.2d at 238.

72. The first *Mathews* factor requires consideration of the private interest affected by Respondents' invocation of the automatic stay provision. This factor weighs heavily in Mr. Saravia's favor because his interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

73. The second *Mathews* factor requires courts to assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks. The automatic stay provision of § 1003.19(i)(2) creates a substantial risk of erroneous deprivation of Petitioner's interest in being free from arbitrary confinement because the only people adversely effected by DHS's automatic stay are people who have already prevailed at a judicial bond hearing. DHS does not invoke this provision to stay decisions that are favorable to it. Indeed, recently the U.S. District Court for the District of Minnesota held that "the challenged regulation permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge's decisions . . . [s]uch a rule is anomalous in our legal system, and Respondents direct the Court to no other instance in any context in which a non-prevailing party is granted such authority." *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. May 21, 2025).

74. Regarding the value of additional safeguards, there is a clear alternative to the automatic stay set forth in § 1003.19(i)(1) which provides an alternative process by which DHS can request an emergency stay of an immigration judge's custody determination from the BIA. Requesting a stay from an appellate court is the appropriate procedure because "a stay of an order directing the release of a detained individual is an especially extraordinary step" and such a decision should not be in the hands of the prosecutorial agency. *Gunaydin v. Trump*, 784 F. Supp. 3d at 1187.

75. The third *Mathews* factor, the government's interest, also weighs in favor of granting

this petition. The government here, DHS, only has one legitimate interest at stake, which is ensuring that noncitizens facing removal do not endanger the public or abscond during the pendency of their removal cases. Notably here, two different immigration judges concluded that Mr. Saravia was neither a flight risk nor a danger to the community and released him on minimal bonds. In addition, as discussed above, this interest is already protected by DHS's ability to seek an emergency stay from the BIA pursuant to § 1003.19(i)(1) of an immigration judge's bond decision.

76. Indeed, a case law search did not reveal a single court that has upheld DHS implementation of the automatic stay provision at § 1003.19(i)(2). Rather, the case law reveals that each court to reach this issue has ruled that the automatic stay provision at § 1003.19(i)(2) violates due process. *See, e.g.*, *Francisco Javier Platas Arcos, v .Kristi Noem, et al.*, No. 4:25-CV-04599, 2025 WL 2856558, at *3 (S.D. Tex. Oct. 8, 2025); *B.D.V.S. v. Kerry J. Forestal, et al.,* No. 1:25-CV-01968-SEB-TAB, 2025 WL 2855743, at *3 (S.D. Ind. Oct. 8, 2025) (same); *Eliseo A.A., v. Samuel J. Olson, et al.*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729, at *7 (D. Minn. Oct. 8, 2025) (same); Carlos Hubert Quispe-Ardiles, *et al., v. Kristi Noem, et al.*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800, at *10 (E.D. Va. Sept. 30, 2025) (same); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *13 (E.D. Va. Sept. 19, 2025) (same); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025) (same); *Herrera v. Knight,* No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792, at *13 (D. Nev. Sept. 5, 2025) (same); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *13 (D. Md.

Aug. 24, 2025) (same); *Garcia Jimenez v. Kramer,* No. 4:25CV3162, 2025 WL 2374223, at *5 (D. Neb. Aug. 14, 2025) (same); *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1190 (D. Minn. 2025) (same).

77. Mr. Saravia's detention pursuant to the automatic stay provision therefore deprives him of his right to procedural due process, and he is entitled to immediate release.

COUNT TWO

VIOLATION OF SUBSTANTIVE DUE PROCESS
U.S. Const. amend. V

78. Mr. Saravia realleges and incorporates by reference each and every allegation contained above.

79. 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.

80. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

81. At a bare minimum, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting) (emphasis added).

82. To meet the strictures of due process, Mr. Saravia's detention must "bear[] a reasonable relation to [the] purpose[s]" of civil immigration detention, which the Supreme Court has identified as mitigating flight risk and mitigating danger to the community. *See Zadvydas*, 533 U.S. at 690 (quoting *Jackson v. Indiana*, 406 U.S.

715 (1972)) (quotation marks omitted).

83. "Government detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections or, in certain special and 'narrow' nonpunitive 'circumstances' where a special justification...outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Zadvydas*, 533 U.S. at 690 (emphasis in original) (internal citations omitted).

84. No such "special justification" exist here in this matter. Notably, two different immigration judges have concluded that Mr. Saravia was neither a flight risk nor a danger to the community and released him on minimal bonds. During these proceedings, the DHS has made no effort to explain what "special justification" exists to deny Mr. Saravia the liberty the immigration judges ordered subject to bond. As a result, DHS' invocation of the automatic stay per 8 C.F.R. § 1003.19(i)(2) renders the immigration judges' custody redetermination orders empty gestures absent any demonstration of a compelling interest or special circumstance.

85. Mr. Saravia's continued detention does not serve the special justifications for immigration detention: mitigating flight risk and mitigating risk to the community. Two immigration judges made individualized determinations that Mr. Saravia met his burden to prove he was neither a danger to the community nor a flight risk. Respondents' insistence on invoking the automatic stay provision to force Mr. Saravia to remain in indefinite detention despite these judicial decisions is therefore arbitrary, and ultimately unlawful, as it does not serve a legitimate government interest.

86. Mr. Saravia's detention is not narrowly tailored to serve any other compelling state

interest.

87. Mr. Saravia's detention therefore deprives him of his right to substantive due process, and he is entitled to immediate release.

COUNT THREE
VIOLATION OF THE INA

88. Mr. Saravia realleges and incorporates by reference each and every allegation contained above.

89. INA § 236(a) (8 U.S.C. § 1226(a)) grants immigration judges the authority to re-determine custody status unless mandatory detention applies. The INA also empowers the BIA to review immigration judges' custody redeterminations.

90. Mr. Saravia has been properly granted bond *twice* by two separate immigration judges.

91. Accordingly, DHS's mandate that Petitioner must be held without bond in violation of the orders of both the immigration judges is *ultra vires* to the INA as it exceeds the authority conferred by Congress though the INA by rewriting the INA and effectively creating a new class of noncitizens subject to mandatory detention, depriving them of the right to a bond hearing that Congress expressly provided they should receive and because it eliminates the discretionary authority of immigration judges to determine whether an individual may be released, thereby exceeding the authority bestowed upon the DHS by Congress under INA § 236(a) (8 U.S.C. § 1226(a)).

92. Thus, Mr. Saravia's detention violates Section 1226(a), and he is entitled to immediate release from custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the San Antonio Field Office and the Southern District of Texas pending the resolution of this case;

(3) Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;

(4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

(5) Declare that Petitioner's detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. § 1226(a);

(6) Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody on his own recognizance or under parole, bond, or reasonable conditions of supervision;

(7) Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and,

(8) Grant any other and further relief which this Court deems necessary and proper.

Respectfully submitted,

JOSUE DAVID SARAVIA SARAVIA,
Petitioner

By: /s/ Timothy W. Davis

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