UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

PARAMJIT SINGH, Petitioner, v. **KRISTI NOEM**, in her official capacity as Secretary of the Department of Homeland Security; **PAMELA BONDI**, in her official capacity as Attorney General of the United States; **TODD LYONS**, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement; **SAMUEL OLSON**, in his official capacity as Field Office Director for U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; **MARC FIELDS**, in his official capacity as County Jailer of Kenton County Detention Center, *Respondents*.	Case No. 2:25-cv-00161-SCM **PETITIONER'S REPLY TO RESPONDENTS**

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Respondents' opposition confirms that Petitioner Paramjit Singh's ("Mr. Singh") continued detention is unlawful. They do not dispute that Mr. Singh – a lawful permanent resident for over 30 years, with a U.S. citizen wife and two kids, and no criminal record beyond a 2000 misdemeanor – was granted bond by an Immigration Judge ("IJ") upon proving he is neither a flight risk nor a danger. Instead, Respondents rely on hyper-technical jurisdictional bars, procedural mishaps, and a mischaracterization of Mr. Singh as an "arriving alien" to justify keeping him detained indefinitely. These arguments fail.

The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not prevent this Court from reviewing a detention challenge unrelated to any final removal order, as the Supreme Court and other courts have clarified. On the merits, DHS has failed to meet its burden to show that Mr. Singh's decades-old, now-misdemeanor conviction makes him an applicant for admission subject to mandatory detention. Even if § 1225(b) did apply, the automatic stay of the IJ's bond order – invoked here based on a patently erroneous assertion of a nonexistent conviction—violates due process and the Immigration and Nationality Act ("INA"). Federal courts nationwide, including courts within this Circuit, have recently enjoined this exact practice as an "empty gesture" that arbitrarily nullifies bond decisions[1]. Respondents' attempt to defend the automatic stay by ignoring the absence of any individualized showing and by overlooking the IJ's unlawful *sua sponte* bond revocation, which left Mr. Singh in administrative limbo, is unavailing.

This Court should reject Respondents' arguments, exercise jurisdiction, and grant habeas relief, either by outright release or by enforcing the previous $10,000 bond.

I. SECTION 1252 DOES NOT STRIP THIS COURT OF JURISDICTION OVER PETITIONER'S CLAIMS

[1] *See*, e.g., *Martinez-Elvir v. Olson*, No. 3:25-cv-00589-CHB, slip op. at 24–27 (W.D. Ky. Oct. 27, 2025) (granting habeas; holding DHS's use of 8 C.F.R. § 1003.19(i)(2) violates due process and explaining the automatic stay targets only those who prevailed at bond and "permits the United States to 'usurp' the IJ's role") *Martinez-Elvir v. Olson*, Document 17; *Ashley v. Ridge*, 288 F. Supp. 2d 662, 668, 671 (D.N.J. 2003) (the automatic stay "renders the Immigration Judge's bail determination an empty gesture" and creates a "patently unfair" process); *Garcia Jimenez v. Kramer*, No. 4:25-cv-3162, slip op. at 2–5 (D. Neb. Aug. 14, 2025) (granting § 2241 and ordering immediate release where DHS invoked the automatic stay to nullify an IJ's bond), Memorandum and Order; *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382, slip op. at 15–18 (E.D. Va. Sept. 30, 2025) (holding § 1226(a) governs and describing the automatic-stay regime as rendering the IJ's bond determination "an empty gesture"). *See* also *SAMPIAO v. HYDE*, No. 1:25-cv-10964, 2025 WL 2607924, at *10 (D. Mass. July 10, 2025) (collecting cases and explaining why the automatic stay heightens the risk of erroneous deprivation).

Respondents' reliance on 8 U.S.C. §§ 1252(g) and 1252(b)(9) is misplaced. Section 1252(g) is "much narrower" than they suggest; it "applies only to three discrete actions" by the Executive— "commence proceedings, adjudicate cases, or execute removal orders"—and does not sweep in collateral challenges to detention procedures during ongoing proceedings. *See Reno v. American-Arab Anti-Discrimination Comm.* (AADC), 525 U.S. 471, 482–87 (1999) ("applies only to three discrete actions").

Nor does § 1252(b)(9)—the so-called "zipper clause"—divest this Court of jurisdiction over a detention-only habeas claim unconnected to any final order of removal. In *Jennings v. Rodriguez*, the Supreme Court explained that § 1252(b)(9) does not bar claims that are independent of a removal order, warning against an "overly expansive" reading of the statute and making clear that detention-related claims like the one here may proceed outside the petition-for-review channel, *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 & n.3 (2018). Mr. Singh is not asking this Court to review a removal order, to second-guess the decision to initiate removal, or to interfere with how removability will be adjudicated; he challenges only the statutory authority and procedures under which he is being held. That sort of collateral detention challenge falls outside §§ 1252(g) and 1252(b)(9), and within the Court's habeas jurisdiction.

A. 8 U.S.C. § 1252(g) – "Commencement of Proceedings" – Does Not Apply to Petitioner's Detention Challenge

Section 1252(g) provides that no court shall have jurisdiction over any claim "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." The Supreme Court in *Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*") stressed that § 1252(g) is narrowly aimed at protecting the government's discretionary decisions whether to initiate or terminate removal proceedings. It "applies only"

to those "three discrete actions" and was not meant as a catch-all precluding any claim tangentially related to removal. *Id.* 525 U.S. 471, 482–83 (1999). The Court explicitly rejected an "overly expansive" reading of § 1252(g), cautioning that interpreting it to cover every claim that "can be said to result from" deportation proceedings "cannot be what § 1252(g) was meant to say." *Id.* at 486–87. In other words, Congress did not intend to bar judicial review of collateral issues – for example, claims of unlawful detention conditions or due process violations during proceedings – merely because they occur in the course of removal. Such issues do not attack the prosecutorial discretion decisions that § 1252(g) protects.

Respondents nevertheless argue that Mr. Singh's detention "arises from" the commencement of removal proceedings because he was detained when DHS issued the Notice to Appear at the airport and therefore falls under § 1252(g). This argument misreads the law. Detention is not one of the "three discrete actions" identified in § 1252(g), and courts consistently allow challenges to the legality or conditions of immigration detention to proceed notwithstanding that removal proceedings are pending. *See Alvarez v. U.S. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (explaining § 1252(g) bars review of the Government's discretionary decisions to commence removal, not claims contesting the decision to take an individual into custody and detain him during proceedings); *Sissoko v. Rocha*, 509 F.3d 947, 949–50 (9th Cir. 2007) (applying § 1252(g) only where the claim is, in substance, an attack on the decision to commence expedited removal; distinguishing collateral claims); *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (district courts may hear detention challenges that are independent of any removal order); *Khan v. Holder*, 608 F.3d 325, 329–30 (7th Cir. 2010) (§ 1252(g) does not bar a petition asserting detention is unauthorized by statute). The Sixth Circuit likewise hews to *AADC*'s narrow construction, reserving § 1252(g) for attempts to enjoin the commencement,

adjudication, or execution of removal itself—not collateral detention claims. *See Hamama v. Adducci*, 912 F.3d 869, 873–75 (6th Cir. 2018) (holding § 1252(g) barred jurisdiction over petitioners' bid to halt the execution of their removal orders, but acknowledging the district court's jurisdiction over separate detention claims as "independent").

Mr. Singh's petition does not challenge any decision to commence removal proceedings, nor does it seek to enjoin the Government from adjudicating his case or executing any eventual removal order. He is not asserting selective enforcement or any claim that he should not have been placed in proceedings at all. Rather, he accepts that removal proceedings are pending and contends only that his continued detention during those proceedings—under the particular statutory and regulatory posture DHS has chosen—is unlawful. That detention-only claim is independent of the "commence proceedings" decision for purposes of § 1252(g). Put simply, challenging the legality of detention is not the same as challenging the prosecution itself. The Fifth Amendment requires that all persons in U.S. custody (including deportable or inadmissible noncitizens) be detained only in accordance with due process of law; when that constitutional line is crossed, habeas corpus is available. The Supreme Court's narrow construction of § 1252(g) ensures that such fundamental liberty claims are not swept away. *See AADC*, 525 U.S. at 482 (Section 1252(g) "seems designed" to preclude only attempts to stall removal by challenging prosecutorial discretion, and was not a bar to review of "unrelated" claims like inhumane detention conditions or *Bivens* claims that happen to occur during removal).

Respondents' reliance on *Humphries v. Various Fed. USINS Employees*, 164 F.3d 936 (5th Cir. 1999), is misplaced. *Humphries* involved a challenge to the Government's exercise of prosecutorial discretion—*i.e.*, a selective-enforcement claim that squarely targeted the decision to commence and pursue removal, the very type of discretionary action § 1252(g) was designed

to shield. *See id.* at 943–45. Mr. Singh's case is different in kind. He does not contest DHS's choice to initiate or adjudicate removal; he challenges only the legality of his ongoing civil detention and the procedures used to prolong it during those proceedings. That detention-only claim is collateral to the commencement, adjudication, or execution of removal and therefore falls outside § 1252(g)'s narrow bar. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–87 (1999) (construing § 1252(g) to apply only to three discrete executive actions); *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 & n.3 (2018) (cautioning against "overly expansive" readings that sweep in collateral detention claims). If any ambiguity remained, the canon of constitutional avoidance would compel a narrow construction: adopting Respondents' view would effectively insulate from judicial review even egregiously unlawful detentions so long as removal proceedings are pending, raising serious Suspension Clause concerns. This Court should reject that overbroad interpretation of § 1252(g) and hold that it has jurisdiction to consider Mr. Singh's detention claims.

B. 8 U.S.C. § 1252(b)(9) Does Not Bar This Pre-Removal Detention Habeas Petition

Respondents next invoke 8 U.S.C. § 1252(b)(9), often called the "zipper clause," which channels judicial review of "all questions of law and fact arising from any action taken or proceeding brought to remove an alien" into the petition-for-review process upon a final order of removal. They argue that because Mr. Singh's claims require interpreting immigration statutes and constitutional provisions "arising from" actions in his removal case, he must await the outcome of removal and raise these issues only before the court of appeals. This argument, too, has been squarely rejected by the Supreme Court and is inapposite to the circumstances here.

The Supreme Court has squarely rejected the "overly expansive" interpretation Respondents urge. In *Jennings v. Rodriguez*, the Court held that § 1252(b)(9) "does not present a jurisdictional bar" where detainees are "not asking for review of an order of removal," "not challenging the decision to seek removal," and "not even challenging any part of the process by which their removability will be determined" *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 & n.3 (2018). *Jennings* emphasized that reading § 1252(b)(9) to sweep in any claim that happens to arise during removal proceedings would lead to "staggering results," such as delaying judicial review of detention-conditions claims or assaults in custody until after removal—an interpretation the Court refused to adopt *id.* at 295 n.3. The Court has since reiterated that § 1252(b)(9) is a "consolidation" provision tied to final-order review, not a jurisdictional bar to collateral claims like those challenging detention procedures. *See Department of Homeland Security v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22–23 (2020) (holding § 1252(b)(9) inapplicable where plaintiffs did not seek review of removal orders); *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020) (describing § 1252(b)(9) as channeling issues "arising from any action taken or proceeding brought to remove an alien" into the petition for review of the final order).

That reasoning governs here. Mr. Singh's claims do not seek "judicial review of an order of removal," nor do they challenge DHS's charging decisions or the conduct of the removal hearing. He accepts that removal proceedings are pending and challenges only (1) which detention statute applies (INA § 236 vs. § 235) and (2) whether due process permits DHS to nullify a granted bond via an automatic stay and a post-appeal, *ultra vires* rescission. Those are classic detention questions cognizable in habeas that can be resolved without disturbing the merits or conduct of the removal case. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing jurisdiction over LPR's habeas challenge to mandatory detention under § 1226(c)

during removal proceedings); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (habeas lies to review post-order detention; general immigration jurisdiction bars did not repeal § 2241 for such claims). The fact that resolving Mr. Singh's claims may involve "questions of law and fact" related to the immigration statutes does not trigger § 1252(b)(9), because those questions are not inextricably bound up with the final order of removal. They can be addressed now without disrupting the eventual removal determination. If anything, waiting until a final removal order to address them would deprive Mr. Singh of any meaningful remedy – he would either already have been released (making the issue moot), or worse, he could spend many extra months in detention only to win on a point that should have been resolved at the outset. Congress did not intend § 1252(b)(9) to produce such Kafkaesque outcomes.

Respondents suggest that Mr. Singh is effectively "challenging the decision to detain [him] in the first place" (which some Justices in Jennings noted could fall within § 1252(b)(9)). But that mischaracterizes his petition. He does not claim DHS lacked authority to make an initial arrest or that the initiation of custody was unlawful *ab initio* – he was initially detained pursuant to 8 U.S.C. § 1226(a), which permits arrest pending removal. His challenge is to the continuation of detention without bond and to the regulatory maneuver —the automatic stay — that nullified the IJ's bond grant. That is not a "decision to seek removal" or a review of the removability process; it is a challenge to the terms and legality of detention during the process. Numerous courts have held that such claims fall outside the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 295 (majority op. in part) (rejecting Government's argument that § 1252(b)(9) bars challenges to detention authority; noting that at most the provision would bar claims challenging a final order or the overall removal proceeding itself, which the plaintiffs did not); *id.* at 317 (Thomas, J., concurring in part) (even under a broad view, § 1252(b)(9) would cover "detaining

an alien" only as part of removing that alien, not conditions claims)[2]. In short, Mr. Singh's due process and statutory challenges to his detention can be heard now in habeas without offending § 1252(b)(9). Conversely, suppose Respondents were correct that § 1252(b)(9) funnels these claims into the removal-review process. In that case, Mr. Singh might have no avenue at all for timely relief, which again would raise serious constitutional concerns. *See Jennings*, 583 U.S. at 295 (majority) (cautioning that an interpretation of § 1252(b)(9) that forecloses all judicial review of certain claims would invite a Suspension Clause issue if those claims are of the type historically cognizable in habeas). The far more sensible reading is that Congress did not intend § 1252(b)(9) to bar detention challenges like this one, and this Court therefore retains jurisdiction.

II. PETITIONER IS NOT PROPERLY TREATED AS AN "ARRIVING ALIEN" SUBJECT TO MANDATORY DETENTION UNDER § 1225(b)

On the merits, Respondents argue that Mr. Singh was correctly categorized as an "arriving alien" seeking admission due to his 2000 theft conviction, making him ineligible for bond under 8 U.S.C. § 1225(b). This argument fails both factually and legally. Factually, DHS has not proven that Mr. Singh's conviction falls within the narrow exception that would render a returning LPR an applicant for admission. Legally, multiple courts (including one in this Circuit) have rejected DHS's expansive view that longstanding lawful residents like Mr. Singh

[2] *See Hoang Minh Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003) (recognizing district-court habeas jurisdiction and granting relief where pre-removal detention had become unreasonably prolonged under 8 U.S.C. § 1226; explaining that detention must remain reasonably related to its purposes and cannot continue indefinitely) *Ly v. Hansen; see also Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) (en banc) (affirming habeas relief from prolonged immigration detention under 8 U.S.C. § 1231(a)(6), applying *Zadvydas*' constitutional-avoidance construction to prohibit potentially indefinite civil confinement and ordering supervised release) *Rosales-Garcia v. Holland*.

can be summarily stripped of LPR status and bond eligibility upon return from travel based on minor, old convictions.

As a starting point, the INA draws a fundamental distinction between ordinary applicants for admission (e.g., first-time entrants or others with no prior status) and lawful permanent residents who are returning from a trip abroad. Unlike other aliens, LPRs are "not regarded as seeking an admission" when they come back to the United States – unless one of a limited set of exceptions applies. 8 U.S.C. § 1101(a)(13)(C). Congress enacted this protection to ensure that LPRs, who have made the U.S. their home, are not lightly treated as outsiders every time they travel. *See Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (recognizing that a returning LPR's ties "give rise to an expectation of continued residence" not easily disrupted) (*Id.*, 459 U.S. at 32). One such statutory exception is if the LPR "has committed an offense identified in section 1182(a)(2)" – i.e., certain crimes involving moral turpitude ("CIMT"s) or controlled substance offenses – unless the LPR has received a waiver or other relief for that offense. 8 U.S.C. § 1101(a)(13)(C)(v). In other words, an LPR's past conviction can put him in applicant-for-admission status only if it clearly falls within an INA § 212(a)(2) inadmissibility ground and has not been waived or mitigated by statutory relief.

DHS therefore bears the burden of showing that Mr. Singh's case squarely fits within § 1101(a)(13)(C)(v). Specifically, the Government must prove that (1) Mr. Singh's 2000 Indiana theft conviction is indeed a qualifying offense under INA § 212(a)(2), and (2) he has no applicable waiver or exception (such as the petty-offense exception or a § 212(h) waiver) that would save him from inadmissibility. If DHS fails to establish those points by the required standard of proof, Mr. Singh remains an LPR "not seeking admission" and is entitled to the normal bond process available under 8 U.S.C. § 1226(a). *See Matter of Rivens*, 25 I. & N. Dec.

623, 627 (BIA 2011) (holding that a returning LPR may not be treated as seeking admission unless DHS establishes a § 1101(a)(13)(C) exception applies, and placing the burden on DHS. *See Woodby v. INS*, 385 U.S. 276, 286 (1966) (the Government must prove removability, including any facts that trigger inadmissibility, by "clear, unequivocal, and convincing evidence")[3]; *Moncrieffe v. Holder*, 569 U.S. 184, 190–91 (2013) (ambiguous circumstances or records must be resolved in the noncitizen's favor in determining deportability or inadmissibility). Respondents have not come close to meeting that burden here.

First, the sole conviction at issue was for a minor theft offense in 2000 – making telephone calls from a payphone without paying – which Indiana later reclassified as a misdemeanor and for which Mr. Singh received only a suspended sentence and probation. Respondents simply assume this offense is a CIMT under immigration law, but they offer no analysis to support that assumption. Not all theft offenses are CIMTs; it depends on the statute's elements (e.g., whether it requires an intent to permanently deprive the owner of the property). If the offense is not clearly a CIMT under the categorical approach, then the INA § 212(a)(2) inadmissibility trigger does not apply, and the returning LPR is not treated as seeking admission. *See Moncrieffe v. Holder*, 569 U.S. 184, 190–91 (2013) (ambiguities in whether a conviction falls within an INA removability ground must be resolved in the noncitizen's favor). Here, serious ambiguity exists as to whether Mr. Singh's misdemeanor theft qualifies as a CIMT. Indiana's theft statute criminalizes exerting unauthorized control over another's property "with intent to deprive [the owner] of any part of its value or use," Ind. Code § 35-43-4-2 – a formulation broader than the classic CIMT definition (which requires an intent to permanently or substantially deprive an

[3] *See Woodby v. INS*, 385 U.S. 276, 286 (1966) (establishing the government's obligation to prove deportability by "clear, unequivocal, and convincing" evidence), now codified at 8 U.S.C. § 1229a(c)(3)(A). Consistent with that allocation, DHS bears the burden to establish that a returning LPR falls within a § 101(a)(13)(C) exception before treating him as an applicant for admission. *Matter of Rivens*, 25 I. & N. Dec. 623, 625–27 (BIA 2011)

owner of property). Respondents offer no categorical analysis demonstrating that Mr. Singh's conviction meets the federal CIMT criteria. Absent such a showing, DHS cannot treat him as inadmissible under § 212(a)(2). Respondents' silence on this point is telling: they have presumed Mr. Singh is an arriving alien without proving it, as the law requires. Indeed, nothing in the record shows that any immigration judge or the BIA ever found that the 2000 conviction was a disqualifying CIMT or that Mr. Singh fell within INA § 101(a)(13)(C)(v). To the contrary, the IJ proceeded under § 1226(a) and granted bond – implicitly rejecting the notion that Mr. Singh was an arriving alien subject to mandatory detention. Only on appeal did DHS, for the first time, assert that § 1225(b) 's mandatory detention applied, and it did so by mistakenly citing a nonexistent 2008 forgery conviction. (DHS has since conceded the "forgery" was an error and now relies solely on the 2000 theft conviction.) In short, Respondents have not carried their burden to show that Mr. Singh's 2000 offense renders him inadmissible. This Court should not simply defer to DHS's unsubstantiated assertion to the contrary.

Second, even setting aside the particulars of the conviction, Respondents' absolutist position – that any LPR with a § 1182(a)(2) offense in their past must be treated as an arriving alien upon return – is not compelled by law and has been criticized by the courts. Congress expressly provided that returning LPRs are "not regarded as seeking an admission" unless DHS proves a specific exception under INA § 101(a)(13)(C) applies; the default rule protects long-term residents from being reclassified as first-time applicants at the border after brief travel. 8 U.S.C. § 1101(a)(13)(C)[4]; *Landon v. Plasencia*, 459 U.S. 21, 32–34 (1982) (returning LPRs may

[4] *Beltran-Barrera v. Tindall* rejects DHS's expansive reading of § 1225, emphasizing that "the term 'seeking' implies action" and that it is "difficult to find that an individual is 'seeking admission' when that noncitizen never attempted to do so," Slip op. at 9 (W.D. Ky. Sept. 19, 2025) Doc. 14. In other words, the court refused to allow DHS to retroactively label someone as "seeking admission" absent a clear statutory mandate. Although that case involved a non-LPR who had been present many years, the court contrasted its view with the BIA's more rigid

invoke due process upon return, and their constitutional posture differs from first-time entrants). The Supreme Court has likewise cautioned against imposing new or collateral entry-related disabilities on brief trips by LPRs absent a clear congressional command. See *Vartelas v. Holder*, 566 U.S. 257, 268–73 (2012) (rejecting retroactive application that would penalize a short, innocent trip abroad).

DHS's theory also fails on the record and procedural posture here. The NTA itself checks the box that Mr. Singh "has been admitted to the United States," and DHS initially exercised custody under § 1226 by issuing a § 236 custody determination and a § 236/§ 287 arrest warrant. Consistent with that posture, the IJ exercised § 1226(a) bond jurisdiction and granted release—an outcome that would have been jurisdictionally unavailable if Mr. Singh were truly an "arriving alien." *See* § 1003.19 Custody/bond. (IJs lack bond jurisdiction over arriving aliens). Only after losing the bond hearing did DHS attempt to recast Mr. Singh as subject to § 1225(b), relying in its BIA filing on a non-existent 2008 forgery conviction it later conceded was an error. *Post-hoc* litigation positions cannot substitute for the threshold showing that § 101(a)(13)(C)(v) actually applies. *See Matter of Rivens*, 25 I. & N. Dec. 623, 625–27 (BIA 2011) (DHS bears the burden to establish that a returning LPR falls within § 101(a)(13)(C) before treating the person as an applicant for admission).

Nor does § 101(a)(13)(C)(v) itself impose the sweeping rule Respondents urge. That provision is a narrow trigger keyed to the commission of an offense "identified in" § 212(a)(2).

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reading in *Matter of Y-L-H-* (*Yajure Hurtado*), 29 I. & N. Dec. 216 (BIA 2025), and pointedly chose the interpretation more favorable to the noncitizen. Likewise, here, Mr. Singh has been an LPR since 1994 and has lived in the United States for decades without incident. When he departed for a short trip and returned on July 30, 2025, he did so as a seasoned permanent resident, not as a stranger knocking at the door. Yet DHS treated him as if he were any other applicant for admission. The absurdity of this is highlighted by the fact that Mr. Singh was allowed to board a plane and travel on his LPR card – a tacit acknowledgment of his right to return – only to be arrested on arrival based on a 25-year-old conviction.

It does not authorize DHS to disregard the statutory default for all LPRs with any historical brush with § 212(a)(2), irrespective of statutory elements, exceptions, or the government's proof. Read together with *Plasencia* and *Vartelas*, § 101(a)(13)(C)(v) must be applied narrowly and based on the elements of the offense under the categorical approach, not on generalized assumptions about criminal labels. *See Moncrieffe v. Holder*, 569 U.S. 184, 190–92 (2013) (categorical approach; ambiguity resolved in the noncitizen's favor); *Matter of Silva-Trevino*, 26 I. & N. Dec. 826, 831–32 (BIA 2016) (categorical framework governs CIMT analysis). Because DHS has not carried its threshold burden to show that § 101(a)(13)(C)(v) applies to Mr. Singh, he remains a returning LPR "not seeking admission," and § 1226(a)—with its bond process—governs his custody.

Two additional points reinforce this conclusion. First, DHS's attempted reclassification at a custody hearing cannot retroactively extinguish the IJ's bond authority where the agency never properly amended charges or established the § 101(a)(13)(C) trigger in proceedings on the merits. *See* § 1003.30 Additional charges in deportation or removal hearings. (Charge amendments are made in removal proceedings before the IJ, not by collateral assertions in a bond appeal.) Second, the IJ's original bond ruling indicates that Mr. Singh made a *prima facie* showing he was not properly in § 1225(b) custody. DHS never rebutted that with any evidence at the bond hearing – it introduced no argument that the 2000 conviction was a CIMT. Instead, DHS waited until after losing the bond hearing to assert a new legal theory on appeal. Even then, as noted, DHS's sole basis was a legal one (the applicability of § 1225), not any factual challenge to Mr. Singh's eligibility for release. In fact, DHS did not contest the IJ's underlying findings that Mr. Singh is not dangerous and not a flight risk. The "sole reason" for DHS's appeal was its view that the IJ lacked jurisdiction because Mr. Singh was an arriving alien

subject to § 1225. Thus, by DHS's own admission, there is no public safety or flight concern justifying Mr. Singh's detention – only a disputed legal label. This underscores that Mr. Singh's continued lock-up is not tethered to any legitimate immigration purpose, but is merely the product of DHS's litigation tactics. Such detention – detention for its own sake or for leverage – is precisely what due process forbids, as discussed next.

III. THE AUTOMATIC STAY OF PETITIONER'S BOND IS UNCONSTITUTIONAL AND VIOLATES THE INA

Even if the Court were to find that § 1225(b) governs Mr. Singh's detention (which it should not, for the reasons above), Respondents still cannot avoid the fundamental due process problems with his continued custody. Mr. Singh was ordered released on bond by a neutral IJ after a full hearing. Yet, DHS's invocation of an automatic stay (8 C.F.R. § 1003.19(i)(2)) has kept him in jail without any individualized review of that decision by a higher court. In effect, DHS unilaterally overrode the IJ's judgment – and then the IJ, acting without jurisdiction, reversed himself to align with DHS's position. This Kafkaesque sequence violated Mr. Singh's Fifth Amendment right to be free from arbitrary detention. It also flouted the INA's procedural structure for bond redeterminations. Respondents' defense of the automatic stay relies on outdated case law and ignores a growing consensus of courts that this mechanism, as applied, offends due process.

A. The Automatic Stay Renders Bond Hearings an "Empty Gesture" and Violates Substantive Due Process

The Due Process Clause protects every "person" in the United States—citizen or alien, lawful or not—from deprivation of liberty without due process of law. U.S. Const. amend. V; Zadvydas v. Davis, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from

government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects."). In immigration detention, as in other civil detention contexts, due process has a substantive component (the Government may not engage in arbitrary jailing unrelated to a legitimate purpose) and a procedural component (fair procedures must ensure detention is justified). See Foucha v. Louisiana, 504 U.S. 71, 80 (1992).

Here, the substantive due process problem is glaring. By invoking the automatic stay, DHS transformed the IJ's bond order into an empty piece of paper. Mr. Singh remained confined without any new evidence or finding that would justify overriding the IJ's decision. Indeed, DHS sought the stay not because of any urgent safety concern – it presented none – but simply to litigate a legal technicality (arriving alien status) on appeal. In other words, the stay was used as a tactical tool to preempt a lawful bond order, not as an emergency measure to prevent harm. Courts have condemned this use of the automatic stay because it effectively lets the prosecutor overrule the judge and turns the bond hearing into an "empty gesture." *See Ashley v. Ridge*, 288 F. Supp. 2d 662, 668, 671 (D.N.J. 2003) (describing the regulation as "patently unfair" because it removes the stay decision from judges and gives it to the prosecutor); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1078–79 (N.D. Cal. 2004) (automatic stay "conflates the functions of adjudicator and prosecutor," rendering IJ bond orders ineffectual). Here, DHS failed to persuade the IJ that Mr. Singh needed to be detained, so it resorted to the automatic stay to achieve detention by fiat. In so doing, DHS made a mockery of the bond hearing – converting it into an exercise in futility[5].

[5] Substantive due process does not permit civil confinement that is excessive in relation to legitimate goals. *See United States v. Salerno*, 481 U.S. 739, 747, 755 (1987). The Supreme Court upheld mandatory detention in *Demore v. Kim* only because Congress authorized a narrow, time-limited detention tied to preventing flight and danger, and even then, the Court stressed those limits. 538 U.S. 510, 528–33 (2003). Mr. Singh's continued incarceration—after a neutral IJ found he is neither dangerous nor a flight risk and set a monetary bond—serves

DHS's own conduct further demonstrates the arbitrariness of this practice. As noted, DHS did not dispute the IJ's assessment that Mr. Singh poses no danger or flight risk. Thus, by DHS's logic, even a model immigrant who indisputably merits release must nevertheless stay behind bars if the Government can conjure a colorable legal argument on appeal. This is detention for detention's sake – essentially punitive, not administrative. The Supreme Court has never sanctioned such a regime. To the contrary, in *Demore v. Kim* the Court upheld mandatory detention under § 1226(c) only after emphasizing its narrow scope and limited duration, and Congress's specific interest in preventing flight and crime for a defined class of criminal aliens. 538 U.S. 510, 528–30 (2003). Mr. Singh's custody does not fit that mold. He is not detained under § 1226(c)'s categorical, time-limited mandate; he is confined under a regulatory mechanism, 8 C.F.R. § 1003.19(i)(2), that allows DHS to block an IJ's bond order even where, as here, DHS does not contest the absence of danger or flight risk. That is a far cry from the carefully circumscribed detention Demore considered. *See* also *United States v. Salerno*, 481 U.S. 739, 747, 755 (1987) (liberty is the norm; preventive detention is the carefully limited exception). Mr. Singh—an LPR with a stable family and business whom an IJ found releasable on a bond—derives no legitimate regulatory purpose from continued incarceration. It neither enhances public safety nor improves assurance of appearance beyond what the bond already secures. The only remaining rationale is to preserve Government leverage and an appellate forum to press a legal position—interests that do not justify the physical imprisonment of a person already found suitable for release.

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no valid regulatory purpose. It does not increase public safety or appearance beyond what the bond already secures; it merely preserves the Government's leverage to press a legal theory. That is arbitrarily punitive, not administrative, and violates substantive due process.

Respondents cite a 2016 district court decision, *Altayar v. Lynch*, which opined that an automatic stay of up to 90 days can be "narrowly tailored" to allow the Government to seek BIA review of an IJ's bond decision *Altayar v. Lynch*, No. CV-16-02479-PHX-GMS (JZB), 2016 WL 7383340, at 4–6 (D. Ariz. Nov. 23, 2016) (R. & R.) (concluding that an automatic stay of up to 90 days under 8 C.F.R. § 1003.19(i)(2) is narrowly tailored and does not violate due process). Whatever force that reasoning once had, recent decisions have recognized how the current regulatory scheme and practice convert the 90-day "limit" into prolonged detention by layering additional stay mechanisms and delays. Courts have found that the automatic stay "does not have a foreseeable end date" and permits the Government to "usurp the role of an impartial adjudicator" by keeping a person jailed despite a favorable IJ ruling. *See Sampaio v. Hyde*, No. 25-cv-11592, 2025 WL 2607924, at *9–12 (D. Mass. June 30, 2025) (granting habeas; describing 8 C.F.R. § 1003.6(c)–(d) extensions) *Sampaio v. Hyde*; *see* also *Martinez-Elvir v. Olson*, No. 3:25-cv-00589, slip op. at 24–27 (W.D. Ky. Oct. 27, 2025) (holding the automatic-stay regime violates due process and ordering release on the IJ-set bond) *Martinez-Elvir v. Olson*, Document 17. Those decisions echo earlier rulings condemning the regulation as "patently unfair" because it removes the stay decision from judges and hands it to the prosecutor, rendering the IJ's bond ruling an "empty gesture." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 668, 671 (D.N.J. 2003). Here, DHS never argued Mr. Singh would flee or pose danger – and indeed withdrew its appeal after getting the IJ to capitulate with false and misleading information, meaning the BIA never reviewed any facts at all. The upshot is that Mr. Singh has been jailed purely by executive edict, not by adjudicative decision. This is the hallmark of arbitrary detention.

In substantive due process terms, the automatic stay as applied to Mr. Singh is arbitrary and excessive in relation to any legitimate regulatory goal. Substantive due process does not permit civil confinement that is punitive or otherwise not reasonably related to valid objectives; "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, 747, 755 (1987) (internal quotation marks omitted). The Government's interest in detaining this Petitioner is negligible: a neutral IJ, after a hearing, found that Mr. Singh is neither dangerous nor a flight risk, and DHS did not contest those findings. Against that, Mr. Singh's interest in freedom is "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (plurality); *see* also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (detention must remain reasonably related to its purpose). The balance is not close. DHS cannot manufacture a "compelling" interest by invoking generalities about appearance and public safety where an IJ has already applied those factors and set financial conditions to mitigate any risk. The governing regulation likewise recognizes that release on bond is appropriate where the individual is not a danger and is likely to appear. *See* 8 C.F.R. § 1236.1(c)(8) (authorizing release, in the officer's discretion, if the alien "would not pose a danger" and "is likely to appear") 8 C.F.R. § 1236.1; accord 8 C.F.R. § 236.1(c)(1), (c)(8) (DHS counterpart) 8 C.F.R. § 236.1.

By automatically staying the bond, DHS disregarded the individualized calculus and substituted a blanket presumption tied to its litigation position about "arriving alien" status. That is the essence of arbitrariness. Nor is the automatic stay narrowly tailored: DHS had less-restrictive alternatives, including requesting a discretionary/emergency stay from the BIA, supported by specific reasons rather than a false one. *See* 8 C.F.R. § 1003.6(b), (c) 8 C.F.R. §

1003.6. Substantive due process cannot countenance continuing to jail a person whom a judge has found eligible for release, absent any new basis or neutral review, merely because the Government disagrees with the bond ruling. *See Ashley v. Ridge*, 288 F. Supp. 2d 662, 668, 671 (D.N.J. 2003) (automatic stay "patently unfair" and renders the IJ's bond ruling an "empty gesture").

B. The Automatic Stay Deprived Petitioner of Procedural Due Process

Even if one views the issue through a procedural due process lens, the result is the same: Mr. Singh has been denied any meaningful opportunity to be heard in a timely manner on his right to liberty, in violation of the Fifth Amendment. To evaluate a procedural due process claim, courts apply the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976): (1) the private interest affected, (2) the risk of erroneous deprivation under the current procedures and the probable value of additional safeguards, and (3) the Government's interest, including burdens of additional procedures. *Id.* at 335. All three *Mathews* factors here point decisively in Mr. Singh's favor.

1. Private Interest. Mr. Singh's interest in freedom from bodily restraint is fundamental. The Supreme Court has repeatedly recognized that "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by due process. *Zadvydas*, 533 U.S. at 678, 690 (2001); *see* also *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (plurality) (describing freedom from physical detention by one's own government as "the most elemental of liberty interests"), and *United States v. Salerno*, 481 U.S. 739, 747, 755 (1987) ("liberty is the norm, and detention prior to trial or without trial is the carefully limited exception"). Mr. Singh is not merely facing a monetary loss or a brief administrative delay; he is

suffering the severe physical and emotional hardship of incarceration, which separates him from his United States wife and children, unable to manage his business, and coping with a documented pituitary tumor and chronic pain. This factor unequivocally favors Mr. Singh.

2. Risk of Erroneous Deprivation & Value of Additional Safeguards. The current procedure – or lack thereof – carries an unacceptably high risk of wrongfully depriving individuals of liberty, and modest additional safeguards would have significant value. Under the automatic stay mechanism, once DHS files a piece of paper (Form EOIR-43) within one business day of a bond decision, the IJ's order is suspended and the detainee remains in custody "pending decision of the appeal by the Board" without any interim assessment by a neutral decision-maker. *See* 8 C.F.R. § 1003.19(i)(2) (automatic stay upon timely EOIR-43 filing). DHS is not required to present evidence of danger or flight risk to invoke the stay. Although the regulations require that "a senior legal official" certify, with the notice of appeal, that the appeal has been approved under DHS review procedures and that the justifications for continued detention have evidentiary support and legally warranted arguments, that certification is not a substitute for neutral review—and it failed here. *See* 8 C.F.R. § 1003.6(c)(1)(i)–(ii) (certification to preserve the automatic stay) 8 C.F.R. § 1003.6(c)(1).

    a. Mr. Singh's case demonstrates how hollow that safeguard is in practice. DHS's Notice of Appeal in his case falsely asserted that Mr. Singh had a 2008 forgery conviction. A senior official apparently certified that contention as having "evidentiary support" and being "warranted by existing law or a non-frivolous argument." Yet the contention was utterly baseless – no such conviction exists.

DHS eventually admitted the error, but not before the automatic stay had done its damage. Thus, the sole procedural "check" failed at the very moment it mattered, leaving Mr. Singh jailed for months with no immediate opportunity to refute the error before an impartial arbiter—precisely the kind of erroneous deprivation the Due Process Clause forbids. *See*, e.g., *Ashley v. Ridge*, 288 F. Supp. 2d 662, 668, 671 (D.N.J. 2003) (automatic-stay regime is "patently unfair," removes the stay decision from judges, and renders an IJ's bond ruling an "empty gesture"); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1078–79 (N.D. Cal. 2004) (automatic stay "conflates the functions of adjudicator and prosecutor," nullifying IJ bond decisions). Readily available alternatives—such as requiring DHS to seek a discretionary or emergency stay from the BIA supported by specific reasons—would substantially reduce the risk of error at minimal burden to the Government. *See* 8 C.F.R. § 1003.19(i)(1); § 1003.6(b) § 1003.19 § 1003.6.

The subsequent events only compounded the lack of process. The IJ's *sua sponte* bond reversal on September 29, 2025, occurred without any hearing or submissions by Mr. Singh – indeed, without even a motion from DHS. The IJ considered no new evidence or argument; he simply issued a one-paragraph "Memorandum" reversing his prior order in light of DHS's legal position. Mr. Singh had no notice that the IJ was reconsidering the bond, nor any chance to respond. Worse, by that date, the IJ arguably lacked jurisdiction over the bond (the case was before the BIA on appeal), rendering the reconsideration *ultra vires*. *See* 8 C.F.R. § 1003.6(a) (appeal "vests jurisdiction" in the Board) and § 1003.23(b)(1) (IJ may not reopen or reconsider "when jurisdiction is

vested with the Board) (together confirming loss of IJ authority once the appeal was noticed) (8 C.F.R. § 1003.6(a); 8 C.F.R. § 1003.23(b)(1). DHS then moved to withdraw its appeal, leaving Mr. Singh in a procedural black hole: there is now no pending bond appeal and no valid bond order – effectively, no forum at all for Mr. Singh to seek release. Respondents' suggestion that Mr. Singh could "move to reconsider" before the BIA ignores that the Board's reconsideration power generally applies to "cases in which [the Board] has rendered a decision," which did not occur here because the appeal was withdrawn and dismissed without a merits ruling. *See* 8 C.F.R. § 1003.2(a). The BIA might reason that because DHS's appeal was withdrawn, the IJ's last bond ruling (finding no jurisdiction) stands; yet that IJ ruling was itself void for lack of jurisdiction. The regulations offer no guidance for this bizarre scenario. In essence, the combination of the automatic stay and the IJ's improper reconsideration has left Mr. Singh "stuck in administrative limbo", with no administrative pathway to secure his release. This is a textbook denial of procedural due process: Mr. Singh won at the only hearing he was given, and then, through no fault of his own, that victory was stripped away by an *ex parte* process. He has never received an adversarial hearing on the issues DHS raised on appeal (notably, whether his conviction triggers § 1225(b) detention). Nor has any neutral body ever found him to be a danger or flight risk warranting denial of bond. Yet he remains jailed. The risk of error – detaining someone who should not be detained – under this regime is intolerable.

The probable value of additional or alternative safeguards is very high. At minimum, DHS should be required to seek an emergency, discretionary stay from the BIA (or, if necessary, from a federal court), where a neutral adjudicator would evaluate

the traditional stay factors—including likelihood of success and whether release poses an unacceptable risk—before overriding an IJ's bond order (*see Nken v. Holder*, 556 U.S. 418, 426, 434 (2009). Such a process already exists in the regulations: DHS may request a discretionary stay from the BIA in a custody appeal, to be decided by a Board Member on a short timeframe (*see* 8 C.F.R. § 1003.19(i)(1) 8 C.F.R. § 1003.19; 8 C.F.R. § 1003.6(b), (c) 8 C.F.R. § 1003.6; and, if the automatic stay period lapses without a Board decision, DHS may seek a discretionary stay under § 1003.6(c)(5) 8 C.F.R. § 1003.6(c). The Western District of Kentucky has identified this as a "simple alternative" that avoids the "usurping nature" of the automatic stay (*Singh v. Lewis*, No. 4:25-cv-00096-RGJ, slip op. at 7–8 (W.D. Ky. Sept. 22, 2025). Had DHS been required to proceed that way here, Mr. Singh could have opposed the stay request, the BIA would have been promptly apprised of DHS's factual misstatements, and—given the absence of any public-safety rationale—a stay likely would have been denied or limited with expedited briefing.

Another obvious safeguard is to impose a prompt timeline for BIA bond appeals (*e.g.*, a decision within 10 or 30 days) to limit detention while an appeal is pending. DOJ's rulemaking recognized that the automatic stay was intended as a short-term measure and that the Board should "avoid unnecessary delays" in adjudicating custody appeals (*see* 8 C.F.R. § 1003.6(c)(3) 8 C.F.R. § 1003.6; Procedures Relating to Detained Aliens, 71 Fed. Reg. 57,873, 57,875–78 (Oct. 2, 2006) Federal Register notice. Those safeguards failed—or were disregarded—here. Imposing neutral judicial oversight (via a discretionary-stay motion) or reasonable time limits would materially reduce the risk of erroneous deprivations with minimal additional burden on DHS, which already

prepares a notice of appeal and could file a concise stay motion. Courts have therefore concluded that, because DHS can obtain a tailored stay from the BIA in individual cases, a blanket automatic stay is unnecessary (*see Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 WL 327685, at *35 (D. Md. Aug. 24, 2025); *Singh v. Lewis*, at 7–8 (W.D. Ky. Sept. 22, 2025).

3. Government's Interest. The Government's interests do not outweigh the considerations above. To be sure, the Government has a general interest in ensuring that noncitizens appear for removal hearings and in protecting the public. But in Mr. Singh's case, an IJ has already found—and DHS has not refuted—that these interests can be satisfied by releasing Mr. Singh on bond. That finding significantly diminishes any governmental interest in his continued detention. At this point, the Government's interest is essentially reduced to an interest in the uniform application of immigration law (*i.e.*, treating him as an arriving alien) and possibly an interest in avoiding the administrative inconvenience of re-arresting him if the bond decision is overturned. The latter is hardly compelling: if DHS prevails on appeal, it can simply re-detain Mr. Singh (IJs routinely advise bonded aliens that their bond may be canceled if circumstances change). Meanwhile, the Government's interest must be weighed against Mr. Singh's 30-year lawful residence and close family ties, which align with the public interest in avoiding needlessly detaining contributing members of the community. As one court observed, "existing statutory and regulatory safeguards adequately serve the governmental interest in promoting public safety" where an IJ has determined the individual poses no such risk. *See*, e.g., 8 C.F.R. § 1236.1(c), (d) (authority to release on bond and to revoke release/cancel bond). The Government's administrative interest in ease or efficiency

cannot justify a procedure that omits any neutral check on detention. Indeed, "there is a substantial public interest in having governmental agencies abide by the federal laws that govern their operations." *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Here, the INA provides for bond hearings to balance liberty and risk; the Government's interests are served by following that scheme, not by circumventing it.

Finally, the public interest—which merges with the Government's interest when the Government is a party —strongly favors relief. The public is not served by the needless incarceration of a long-term LPR, breadwinner, and employer at taxpayer expense, especially when continued detention defies the judgment of a neutral IJ who heard the evidence. By contrast, the public is served by upholding constitutional due process values and ensuring that agencies do not overreach their authority. In short, under the *Mathews v. Eldridge* test, Mr. Singh's detention under the automatic stay fails on every factor. His liberty interest is paramount; the risk of wrongful detention under the current process is extreme (indeed, it materialized here); and requiring DHS to use case-by-case stay procedures or other neutral checks would impose only a minimal burden while greatly protecting individual rights. The automatic stay has thus deprived Mr. Singh of procedural due process. The proper remedy is to grant the writ or, at a minimum, to order a prompt enforcement of the original bond order, or, in the alternative, a new bond hearing. *See Hernandez v. Garland*, 50 F.4th 929, 937–38 (9th Cir. 2022) (when due process is violated in the immigration bond context, courts may order new bond hearings with specified procedural protections).

C. The IJ's Sua Sponte Reversal of Bond Was Ultra Vires and Further Denied Petitioner Due Process

Respondents largely ignore the irregular manner in which the IJ's bond rescission occurred, but this Court should not. After DHS filed its bond appeal and invoked the automatic stay, jurisdiction over the custody matter vested in the BIA. *See* 8 C.F.R. § 1003.19(e) (appeal of an IJ's custody decision lies to the BIA) and § 1003.6(a) (an appeal "vests jurisdiction" in the Board and stays execution of the IJ's order) (8 C.F.R. § 1003.19; 8 C.F.R. § 1003.6. At that point, the IJ had no authority to revisit his bond decision. The regulations are explicit: an IJ "may reconsider any case in which he or she has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals." 8 C.F.R. § 1003.23(b)(1) (emphasis added).

Nevertheless, IJ Brendan Curran did so on his own initiative, issuing a memorandum on September 29, 2025 reversing his prior bond grant. He cited no regulation permitting this, and indeed none exists—the governing regulations flatly prohibited his action. The IJ's decision was thus *ultra vires* and a legal nullity. Respondents claim that because the IJ reversed himself, DHS then "withdrew" its appeal as moot. This procedural sleight-of-hand cannot be used to cure an illegal step. The IJ's lack of jurisdiction means his reversal should be deemed void or without effect. Yet DHS acted as though it were valid, and the BIA, by granting withdrawal, left Mr. Singh with no avenue to challenge the IJ's error within the agency. This scenario exemplifies a due process violation. Mr. Singh was in a worse position after litigating (having a bond revoked with no process) than if he had never sought bond at all. And absent *habeas* review, he has no way to contest the misapplication of the law, because the usual administrative process, a BIA appeal, was short-circuited. *See Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954) (agency must follow its own regulations; failure to do so violates basic due process principles). The Court should reject Respondents' suggestion that Mr. Singh bear the burden of filing a motion to the BIA to unscramble this mess; the Constitution does not require a detainee

to remain jailed while chasing his tail through an administrative maze that the Government itself unlawfully constructed.

The far simpler and just remedy is for this Court to grant relief now, by enforcing the IJ's original bond order or, at minimum, ordering a prompt, constitutionally adequate bond hearing before a different IJ with the proper allocation of burdens and consideration of current evidence. *See Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001) (recognizing courts' authority to order conditional release in immigration detention cases); *Ly v. Hansen*, 351 F.3d 263, 272–73 (6th Cir. 2003) (granting habeas relief where detention was not authorized under the governing statute).

IV. THE AUTOMATIC STAY REGULATION IS *ULTRA VIRES* AND CONTRARY TO THE INA (APA CLAIM)

Beyond the constitutional infirmities, the automatic stay mechanism as applied here is also not in accordance with law and in excess of statutory authority, in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A), (C). Congress has carefully delineated which classes of aliens are subject to mandatory detention (e.g., certain criminal aliens under 8 U.S.C. § 1226(c), applicants for admission under § 1225(b) pending initial proceedings, and those with final orders under § 1231). All other aliens in removal proceedings are entitled by statute to seek release on bond under § 1226(a), which authorizes detention or release on bond after an individualized determination. *See Jennings v. Rodriguez*, 583 U.S. 281, 295–301 (2018); *Nielsen v. Preap*, 139 S. Ct. 954, 962–66 (2019); *Demore v. Kim*, 538 U.S. 510, 518–31 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 690–96 (2001).

The automatic stay regulation upsets this statutory scheme by allowing DHS to unilaterally impose *de facto* mandatory detention on any § 1226(a) detainee who wins bond, at least for the

duration of an appeal, often months. In practical effect, it creates a shadow category of mandatory detention not authorized by Congress. As one court put it, the regulation "rewrites the INA and creates a new class of noncitizens subject to mandatory detention", depriving them of the bond hearings Congress provided. This is *ultra vires*. The APA commands that courts "shall… hold unlawful and set aside" agency rules that are "not in accordance with law" or "in excess of statutory… authority." 5 U.S.C. § 706(2)(A), (C). Section 1003.19(i)(2)'s automatic stay, as currently written and used, conflicts with the INA's structure by allowing DHS to effectively negate an IJ's bond grant (made under § 1226(a) authority) without any statutory basis for doing so. Nothing in § 1226 or any other provision authorizes such a self-help mechanism for the Government. Indeed, Congress knows how to authorize automatic stays in immigration – for example, certain immigration judge decisions are automatically stayed by statute in specific contexts, *see*, e.g., 8 U.S.C. § 1226a(a)(3) (special national security detention cases) – but Congress provided no automatic stay for ordinary bond decisions; DOJ created it by regulation. When an agency "fills a gap," its rule must still be a reasonable and permissible interpretation of the statute. An agency may not rewrite or expand a statute to create consequences Congress did not authorize. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 327 (2014) ("agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate"); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–33 (2000) (agency action invalid where it "fundamentally contradicts" the statutory scheme); *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2262–64 (2024) (courts exercise independent judgment in determining statutory meaning); *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415–18 (2019) (rejecting agency readings inconsistent with text and structure). Here, effectively eliminating bond for potentially long periods despite an IJ's finding that release is warranted contradicts the

INA's framework, which balances governmental interests with individual liberty through individualized hearings. *See Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1087–88 (9th Cir. 2020) (agency action unlawful if it "carries consequences that Congress did not intend"), vacated as moot, 141 S. Ct. 2842 (2021).

Respondents argue that § 1225(b) mandates detention of arriving aliens and that the Attorney General's discretionary parole authority under 8 U.S.C. § 1182(d)(5) is the only route to release in such cases. But this presumes Mr. Singh is properly considered an "arriving alien" in the first place—a premise we have shown is likely incorrect. More fundamentally, even for true § 1225(b) detainees, the automatic stay is *ultra vires*. If an alien is genuinely an "applicant for admission" under § 1225(b)(2)(A), then the IJ has no jurisdiction to offer bond at all (by law, those aliens "shall be detained"). DHS doesn't need an automatic stay to keep such aliens detained; the statute itself ensures that. The very notion of an IJ bond hearing (and subsequent stay) implies the person was being treated under § 1226(a). So, by using the automatic stay, DHS effectively converted Mr. Singh from a § 1226(a) detainee (bond-eligible by statute) into a § 1225(b) detainee (bond-ineligible) on its own initiative, after an IJ ruled he was under § 1226(a). That is a legislative act beyond DHS's authority. The INA does not permit the agency to shuffle noncitizens between statutory detention schemes at will. *See De Ming Wang v. Kovacic*, 442 F. Supp. 3d 664, 672 (E.D. Va. 2020) (agencies may not use regulations to "alter the statutory classification and treatment" that Congress has established for different categories of aliens).

To the extent Respondents suggest that the Attorney General's broad detention authority in § 1226(a) implicitly authorizes an automatic stay, that argument also fails. Section 1226(a) grants the Attorney General (now DHS and DOJ by delegation) the discretion to arrest and

detain an alien "pending a decision on whether the alien is to be removed," and permits release on bond or conditional parole. It says nothing about the process for making bond decisions or about who within the agency may exercise that discretion in the first instance. DOJ's regulations delegate bond authority to Immigration Judges, with appellate review by the BIA. *See* 8 C.F.R. §§ 1003.19, 1236.1(d). Those regulations further allow DHS to appeal an IJ's bond ruling and, via § 1003.19(i)(2), to automatically stay the IJ's order in certain cases. But while the Attorney General has leeway to structure the decision-making process, he cannot do so in a way that contradicts the statute's core commands or the Constitution. The automatic stay regulation, especially as applied here, does just that. It upends the normal process (where an IJ's custody determination stands unless reversed by the BIA upon review of a record) and instead keeps a person jailed even though no neutral Court has ordered such detention. This procedural manipulation is inconsistent with the intent of § 1226(a), which contemplates case-by-case assessments of the need for detention. It's telling that until recently, the automatic stay was "rarely used"; it was meant as a safety valve for exceptional cases, not a routine tool. Its current blanket use indicates a rule being applied beyond its reasonable scope, in tension with the statute's design.

Finally, Respondents argue that Petitioner's APA claim is somehow improper or waived because it overlaps with his habeas claim. This is wrong. Petitioners routinely plead statutory and constitutional claims in the alternative. *See* Fed. R. Civ. P. 8(d)(2). Mr. Singh's Count III invokes the APA to ensure that, if the Court prefers not to reach the constitutional issues, it can still grant relief by finding the agency's actions contrary to law or arbitrary and capricious. *See* 5 U.S.C. § 706(2)(A), (C); also *see Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The record here—DHS's baseless invocation of the stay, the IJ's

violation of his own jurisdictional limits, the agency's effective stalemate of Petitioner's bond – is the definition of "arbitrary and capricious" agency action and an abuse of discretion warranting relief under 5 U.S.C. § 706. Respondents' attempt to evade judicial review entirely (first by claiming jurisdictional bars, then by claiming APA is an improper vehicle because *habeas* is available) would, if accepted, leave Petitioner with no review at all, a result courts avoid unless Congress has spoken clearly (and it has not, *see* §§ 1252(g), (b)(9) discussion supra). In truth, this Court has the power under both § 2241 and § 706 to remedy the wrong here. And because Mr. Singh's ultimate relief sought is release from custody (a quintessential *habeas* remedy), there is nothing incongruous about considering APA arguments in this *habeas* action. *See Truong v. I.N.S.*, 634 F. Supp. 2d 1096, 1103–04 (W.D. Wash. 2009) (holding that even after the REAL ID Act, district courts retain jurisdiction under § 2241 to hear APA claims related to bond eligibility during removal proceedings, as they are not challenges to a removal order). The Court should therefore reach the merits of Petitioner's statutory and APA claims and hold that the automatic stay regulation, as implemented against him, is unlawful. This holding would not only resolve Mr. Singh's case but also reinforce the important principle that agencies must operate within the bounds set by Congress and the Constitution.

V. RESPONDENTS NOEM AND BONDI ARE PROPER PARTIES TO THIS ACTION

Respondents ask the Court to dismiss DHS Secretary Kristi Noem and Attorney General Pamela Bondi as improper respondents, arguing that only the local ICE Field Office Director (or immediate custodian) should be named. The Court should decline to drop them. It is true that in a simple *habeas* case challenging physical confinement, the default rule is to name the immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004). However, *Padilla* also

recognized that this rule may not be appropriate in more complex immigration detention cases, especially where the petitioner seeks broader injunctive relief or where the immediate custodian's authority is constrained by higher officials. *Id.* at 435–36, 447(Kennedy, J., concurring) (noting unique considerations in immigration detention and transfer scenarios); *Braden v. 30th Jud. Cir. Ct.*, 410 U.S. 484, 494–95 (1973) (permitting habeas naming a non-immediate custodian when the legal custodian controls the challenged custody).

Several circuits, including the Sixth Circuit, have permitted or assumed the propriety of naming high-level officials in immigration *habeas* petitions, particularly when those officials are legal custodians responsible for the policy or action being challenged. *See Roman v. Ashcroft*, 340 F.3d 314, 321–22 (6th Cir. 2003) (recognizing the immediate-custodian rule but acknowledging that proper respondents include officials with day-to-day control; case predating *Padilla*); *Demore v. Kim*, 538 U.S. 510, 515 n.1 (2003) (case styled *Kim v. Ziglar*, naming the INS Commissioner, without objection to respondent identity). Here, Petitioner appropriately named multiple respondents, including local (Field Office Director Olson, jailer Fields) and high-level officials (Noem and Bondi). This was prudent because Petitioner seeks not only release from the local jail but also declaratory and injunctive relief against the enforcement of the automatic stay and related policies emanating from DHS and DOJ leadership. Secretary Noem (as head of DHS/ICE) and Attorney General Bondi (as head of DOJ/EOIR) are "legal custodians" in the sense that they have the authority to direct Petitioner's detention or release on a policy level and to ensure compliance with any court order granting relief. For instance, if this Court orders a new bond hearing or enjoins the future use of the automatic stay against Mr. Singh, those directives must be implemented by policy decisions at the top, not just by the jail warden. In addition, the involvement of the Attorney General is essential because the

immigration courts and the BIA (which fall under DOJ) are part of the story here—the IJ and BIA's jurisdictional interplay is at issue. It is well-established that in suits seeking to enjoin unlawful government action, the head of the relevant agency is a proper defendant. *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (courts may enjoin executive officials, up to the highest level, responsible for the challenged action); *Ex parte Young*, 209 U.S. 123, 157 (1908) (allowing suits against responsible officials for prospective relief to halt unlawful executive action). This principle applies equally in *habeas*-equivalent immigration actions seeking forward-looking relief (*e.g.*, prohibiting use of the automatic stay against Mr. Singh or directing a new bond hearing).

Respondents cite *Murthy v. Missouri*, 603 U.S. 43 (2024), to argue that a petitioner must show standing as to each defendant and each form of relief. Petitioner easily meets that test[6]. The injury here—unlawful detention—is directly traceable both to DHS (which keeps him in custody) and DOJ (which, through its EOIR component and regulations, has prevented his release), and an order directed at each of those agency heads would redress[7] the injury by ensuring he is released or given a proper hearing. In contrast, leaving only the local jailer or ICE field director could risk incomplete relief; for example, the Court's judgment might be obeyed by the local jail, but DHS HQ could simply re-arrest Petitioner or continue applying the same automatic stay policy to him in a different jurisdiction.

Moreover, there is no prejudice to Respondents in keeping the high officials in the case – the Department of Justice is representing all federal respondents, and the arguments do not

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[6] Also *see Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017) (a plaintiff "must demonstrate standing for each claim he seeks to press and for each form of relief that is sought"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (injury in fact, traceability, and redressability are required).

[7] *See Gill v. Whitford*, 585 U.S. 250, 262–63 (2018) (relief must redress the plaintiff's injury, not merely condemn unlawful conduct in the abstract).

differ materially between them. Dismissing Noem and Bondi would serve only to potentially hamstring the Court's ability to issue full relief (such as nationwide injunctive relief, if ever warranted, or declaratory relief binding on the agencies). Given the complex context of immigration detention and the overlap of DHS and DOJ responsibilities, it is proper that both the cabinet secretary and the attorney general remain as respondents who can ensure compliance with any court order. Therefore, the motion to dismiss them should be denied.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the writ of habeas corpus and order his immediate release from DHS custody under 28 U.S.C. § 2241. In the alternative, reinstate the $10,000 bond set by the IJ on August 25, 2025, so that Petitioner may be released under those conditions, or the Court should order Respondents to promptly provide Petitioner with a constitutionally adequate bond hearing, with DHS bearing the burden of proof. At a minimum, the Court should declare that Petitioner's continued detention without bond violates the INA and the Due Process Clause, and enjoin any further use of the automatic stay to hold Petitioner in custody. Petitioner also requests that the Court enjoin Respondents from transferring him out of this District during the pendency of this action (to preserve jurisdiction), and grant any other relief the Court deems just and proper, including reasonable attorneys' fees and costs as allowed by the Equal Access to Justice Act, 28 U.S.C. § 2412.

Dated: November 12, 2025

Respectfully Submitted,

/S/ Luis Angeles

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

I represent Petitioner, PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 12, 2025

/s/Luis Angeles
Luis Angeles

CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2025, I filed the foregoing petition for PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/Luis Angeles
Luis Angeles