

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ROGER MARTINEZ ARGUETA, 

Petitioner,

v.

KRISTI NOEM,
Secretary, U.S. Department of Homeland
Security;

PAMELA BONDI,
U.S. Attorney General;

RUSSELL HOTT,
Field Office Director of Enforcement and
Removal Operations, Washington, D.C. Field
Office, Immigration and Customs
Enforcement; and

JEFF CRAWFORD,
Warden of Farmville Detention Center,

Respondents.

Case No. 1:25-CV-1842

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

INTRODUCTION

1. Petitioner Roger Martinez Argueta (“Mr. Martinez”) is a noncitizen who entered the United States around twenty-six years ago and has resided continuously in this country ever since. Immigration agents encountered Mr. Martinez in July 2025 and, despite his long residence, lack of significant criminal history, and no evidence of flight risk, Respondents consider him subject to mandatory detention.

2. Indeed, Mr. Martinez requested release on bond while his removal proceedings are resolved. On July 21, 2025, an immigration judge granted Mr. Martinez’s bond request and ordered

him to be released on bond of \$1,500, concluding that he did not present a flight risk and would not endanger the community. Exh. A.

3. Yet Mr. Martinez remains detained. Counsel for the Department of Homeland Security (“DHS”) reserved appeal of the immigration judge’s decision and then invoked a regulation authorizing DHS to unilaterally overrule the judgement of the immigration judge and obtain an automatic stay of the bond order during further review before the Board of Immigration Appeals (“Board”). Exh. B.

4. As this Court recently held, and as numerous courts around the country have also held, this automatic stay provision violates Mr. Martinez’s due process rights. *See Quispe-Ardiles v. Noem*, No. 1:25-cv-1382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *accord Ortiz-Ventura et al. v. Noem, et al.*, No. 1_25-cv-1429-MSN-WEP (E.D. Va. Oct. 2, 2025); *Sampiao*, -- F. Supp. 3d --, 2025 WL 2607924; *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Leal Hernandez*, 2025 WL 2430025, *14 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, -- F. Supp. 3d --, 2025 WL 2374411 (D. Minn. Aug. 15, 2025). This is because the automatic stay provision impermissibly merges the functions of adjudicator and prosecutor, permitting Respondents to detain Mr. Martinez without any showing that detention is justified, even after an immigration judge’s decision that detention without bond is unjustified. This regulation is also *ultra vires* as it exceeds Immigration and Customs Enforcement’s (“ICE”) statutory authority under the Immigration and Nationality Act (“INA”) and eliminates the immigration judge’s discretionary authority to determine whether a noncitizen should be released.

5. Additionally, although Mr. Martinez has no significant criminal history, and despite his actual arrival in the United States around twenty-six years ago, DHS and the Executive Office of

Immigration Review (“EOIR”) have concluded that individuals like him, who entered the United States without being inspected and admitted, are subject to mandatory immigration detention because they should be deemed to be “applicants for admission” who are in the process of “seeking admission” to the United States, despite the fact that their actual entry into the United States occurred decades ago.

6. The DHS and EOIR position on this issue is pursuant to a new policy shift, changing the government’s decades-long practice. Respondents’ insistence that individuals like Mr. Martinez are subject to mandatory detention is not only a significant shift from past practice but is contrary to the plain language of the INA and is also in violation of Mr. Martinez’s constitutional rights.

7. This Court should therefore intervene and grant Mr. Martinez’s petition for a writ of habeas corpus, lift the stay of his bond order, and order his release from immigration custody immediately upon payment of his bond. Additionally, this Court should also order that Respondents shall not remove Mr. Martinez from this district while this petition is pending because his counsel principally operate from a Virginia law office, and because of the likelihood that Mr. Martinez will be ordered to appear at a bond hearing (due to the overwhelming jurisprudence on this issue) and then subsequently be released to reside at his fixed address in Virginia..

JURISDICTION AND VENUE

8. Mr. Martinez is detained at the Farmville Detention Center in Farmville, Virginia, and is in physical custody of Respondents. *See* Exh. C.

9. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 2201-02 (declaratory relief). Mr. Martinez’s detention by Respondents is a “severe restraint” on his individual liberty “in custody in violation of the . . . laws . . . of the United States.” *See Hensley v. Municipal Court, San Jose-Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973).

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

11. Venue lies in the United States District Court for the Eastern District of Virginia, the judicial district in which Mr. Martinez was detained at the time the petition was filed. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 434, 447 (2004).

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

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

14. Mr. Martinez requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on Mr. Martinez’s liberty and clear Constitutional violations in this case.

TRANSFER OUTSIDE THE DISTRICT; ALL WRITS ACT

15. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”
16. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the “judicial district unless and until the Court issues a contrary order. *Garcia*

Guardado v. Lyons, et al., 1:25-cv-1741-MSN-WBP (E.D. Va. Oct. 15, 2025) (citing 28 U.S.C. § 1651; *FTC v. Dean Foods Co.*, 384 U.S. 597,603 (1966) (“The All Writs Act, 28 U.S.C. § 1651 (a), empowers the federal courts to ‘issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.’”); *see also Guevara Gomez v. Crawford*, 1:25-cv-1781-PTG-LRV (E.D. Va. Oct. 16, 2025).

17. Mr. Martinez requests that this Court invoke the All Writs Act to prevent any transfer out of the Eastern District of Virginia during the pendency of his habeas action, given the likelihood that he will be ordered to appear at a bond hearing shortly after this Court rules upon the habeas petition. His counsel’s law firm operates primarily out of Virginia, he will need to participate in the preparation for and attendance at his bond hearing, and he will incur additional, unnecessary expenses and difficulty in returning to his residence in Virginia should he be granted bond hearing after he is transferred out of state. *See* <https://www.tsa.gov/travel/security-screening/identification> (listing documents required to board an airplane, which does not include ICE release paperwork); *see also Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending “facilitate[s]” the petitioner’s “ability to work with [his or] her attorneys, coordinate the appearance of witnesses,” and generally present claims related to detention); *Suri v. Trump*, -- F. Supp. 3d --, 2025 WL 1310745, *13 (E.D. Va. May 6, 2025).

PARTIES

18. Petitioner Roger Martinez Argueta is a native and citizen of Honduras who has been in immigration custody since on or about July 5, 2025. Mr. Martinez is detained in ICE custody at Farmville Detention Center in Farmville, Virginia.

19. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act

(INA), and oversees ICE, which is responsible for Mr. Martinez's detention. Secretary Noem has ultimate custodial authority over Mr. Martinez and is sued in her official capacity.

20. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

21. Respondent Russell Hott is the Director of the Washington, D.C. Field Office of ICE's Enforcement and Removal Operations division. As such, he is Mr. Martinez's immediate custodian and is responsible for his detention and removal. Mr. Hott is sued in his official capacity.

22. Respondent Jeff Crawford is employed as Warden of the Farmville Detention Center, where Mr. Martinez is detained. He has immediate physical custody of Mr. Martinez. He is sued in his official capacity.

EXHAUSTION

23. The failure to exhaust administrative remedies does not bar Mr. Martinez's claim unless "Congress specifically mandates" exhaustion. *Miranda v. Garland*, 34 F.4th 338, 351 (4th Cir. 2022) (1993) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)).

24. Moreover, because Mr. Martinez's continued detention violates his right to due process—a constitutional right—administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

25. Although the Court may impose exhaustion requirements as a prudential matter, it should not do so in this case because further administrative exhaustion would be futile. Critically, as part of a recent policy shift, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), concluding that noncitizens who entered the United States without inspection at any point are forever after considered to be "arriving aliens" who are "seeking

admission” and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Even though, as discussed below, this decision is legally erroneous, all immigration judges—including Appellate Immigration Judges at the Board—are obligated to apply published Board precedent. 8 C.F.R. § 103.10(b). Thus, waiting for the resolution of DHS’s appeal to the Board with respect to a bond request would be futile because the result is foreclosed.

STATEMENT OF FACTS

26. Mr. Martinez entered the United States around twenty-six years ago, crossing from Mexico into Texas without inspection. Prior to his detention, he lived in Roanoke, Virginia with his wife and three U.S. citizen children. Mr. Martinez has been an active church member since 2016 at the Iglesia Pentecostal Rios de Agua Viva in Roanoke, Virginia, where he serves as a church van driver. His friends and family describe him as devoted father and a hardworking and respectful individual with a genuinely good heart. He is neither a flight risk nor a danger to the community.

27. Mr. Martinez was detained in immigration custody on or about July 5, 2025. He subsequently submitted an application for relief or protection from removal before the immigration court.

28. DHS has asserted in a Notice to Appear dated that Mr. Martinez is removable under 8 U.S.C. § 1182(a)(6)(A)(i), in that he is inadmissible as a noncitizen present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. See Exh. D.

29. Mr. Martinez filed a motion for custody redetermination on July 11, 2025.

30. The immigration judge granted Mr. Martinez’s motion on July 21, 2025, setting bond at \$1,500. Exh. A.

31. DHS automatically stayed the immigration judge's decision that same day, July 21, 2025, by filing a Notice of ICE Intent to Appeal Custody Redetermination (Form EOIR-43). Exh. B. DHS subsequently filed a notice of appeal of the bond determination.

32. As a result, Mr. Martinez remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

LEGAL BACKGROUND

33. The INA provides for the detention of noncitizens during the pendency of standard removal proceedings under 8 U.S.C. § 1229a. The default detention provision is 8 U.S.C. § 1226(a), which provides that a noncitizen "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). After an arrest, the noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least \$1,500. *Id.*

34. Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

The Automatic Stay Provision

35. In 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Pub. L. 104-208. Among other things, IIRIRA mandated the detention of only certain classes of criminal noncitizens pending removal proceedings, making them generally ineligible for bond or release under 8 U.S.C. § 1226(c). *See* Pub. L. 104-208, Div. C, § 303(a) (codified at 8 U.S.C. § 1226(c)).

36. Recognizing that existing resources might be insufficient to support immediate compliance, IIRIRA allowed for a one-year transition period with less stringent custody rules if the Attorney General notified Congress within ten days of IIRIRA's enactment "that there [wa]s insufficient detention space and . . . personnel available" to comply with the mandatory detention provisions of § 1226(c). *See* Pub. L. 104-208, Div. C, § 303(b)(2). The transition period could be extended by the Attorney General if there was still insufficient bed space and personnel after the first year.

37. The former Immigration and Naturalization Service ("INS") made the requisite notifications to Congress on October 9, 1996, and again on September 29, 1997, thereby triggering the Transition Period Custody Rules.

38. IIRIRA's Transition Period Custody Rules gave the Attorney General the discretion to release certain noncitizens covered by the mandatory detention provision at § 1226(c). Pursuant to that discretionary authority, the Department of Justice ("DOJ") issued regulations identifying classes of noncitizens who could be considered for release, using the bond procedures set forth at § 1226(a), despite being described in the mandatory detention provision at § 1226(c). *See* 63 Fed. Reg. 27441 (May 19, 1998).

39. Recognizing that the Transition Period Custody Rules allowed for the release of noncitizens Congress deemed subject to mandatory detention, the implementing regulation allowed the legacy INS to invoke an automatic stay and appeal an immigration judge's decision overturning an initial custody determination denying bond or setting it at \$10,000 or more. 63 Fed. Reg. at 27448-49.

40. In implementing the automatic stay provision, the DOJ dismissed commenters' concerns that the automatic stay encroaches on the authority of immigration judges, noting that "custody appeals are themselves unusual, undertaken *only in compelling cases*, and subject to review by

responsible senior officials within [INS].” 63 Fed. Reg. at 27447 (emphasis added). DOJ added that “[i]t is expected that such appeals will remain exceptional” and that INS “district directors will continue to set custody conditions according to their best assessment of the bail risk presented in each case.” *Id.*

41. On October 31, 2001, DOJ issued an interim rule extending the automatic stay provisions beyond noncitizens subject to mandatory detention under § 1226(c) to allow INS to invoke the automatic stay in other cases in which INS’s decision to deny bond or set it at \$10,000 or higher was reversed or amended by an immigration judge. 66 Fed. Reg. 54909 (Oct. 31, 2001).

42. DOJ later finalized the rule with several modifications. *See* 71 Fed. Reg. 57873 (Oct. 2, 2006). First, to allay concerns that “the automatic stay might be invoked by low-level employees of DHS without supervisory review, or might be invoked without an adequate factual or legal basis,” the final rule requires DHS to appeal the immigration judge’s custody determination to the Board within ten business days and requires a senior legal official to approve the filing of the appeal and to certify that there is factual and legal support justifying . . . continued detention.” 71 Fed. Reg. at 57874; 8 C.F.R. § 1003.6(c)(1).

43. Second, the final rule provided that the automatic stay would lapse 90 days after the notice of appeal is filed. 8 C.F.R. § 1003.6(c)(4). Yet it does not preclude DHS from then seeking a discretionary stay under the neighboring provision, 8 C.F.R. § 1003.19(i)(1). *See* 71 Fed. Reg. at 57874.

44. Third, the regulation provides specific timelines to extend the automatic stay so that DHS can seek input from the Attorney General even if the Board has authorized release. 8 C.F.R. 1003.6(d). However, the regulation does not limit the Attorney General’s discretion to extend the stay further. *Id.* Thus, under the current regulations, a noncitizen could be subjected to potentially

indefinite detention even if an immigration judge and the Board determine that he should be released.

45. Responding to public comments expressing concerns with the regulation's constitutionality and the potential for abuse, DOJ again emphasized that DHS "invoke[s] the automatic stay in only a select number of custody cases"—just 273 times in Fiscal Year 2004 and only 43 times in Fiscal Year 2005. 71 Fed. Reg. 57873, 57878 (Oct. 2, 2006).

46. However, DHS has abandoned the selective nature of the automatic stay and has invoked it numerous times, without the requisite individualized determination, in the past several months. In response, courts across the country have concluded that the automatic stay provision violates the INA and/or Constitutional due process. *See, e.g., Lopez-Sanabria v. Bondi*, No. 1:25-cv-01511-MSN-WBP (E.D. Va. Oct. 3, 2025); *Ortiz Ventura v. Noem*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF, 2025 WL 2783880 (E.D. Va. Sept. 30, 2025); *Leal Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 25-cv-3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1157-59 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1189 (D. Minn. May 21, 2025); *Zabadi v. Chertoff*, No. 05-cv-01796, 2005 WL 1514122, at *1-2 (N.D. Cal. June 17, 2005) (listing cases).

Immigration Detention Authority (8 U.S.C. §§ 1225 and 1226)

47. In addition to the changes described above, IIRIRA set forth separate procedures for the removal and detention of arriving or recently arrived noncitizens and those who have entered and established a presence in the United States, even those who have done so in violation of the immigration laws. *Compare* 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing"), *with* 8 U.S.C. §§ 1226 ("Apprehension and detention of aliens"), 1229a ("Removal proceedings"). For those individuals

with an established presence in the United States, the INA mandates that “an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen].” 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) “shall be the sole and exclusive procedure from the United States” unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3).

48. During the pendency of standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. While § 1226(c) mandates the detention of certain classes of criminal noncitizens, § 1226(a) sets forth the rule for noncitizens subject to discretionary detention under § 1226. Under 8 U.S.C. § 1226(a), a noncitizen “may be arrested and detained pending a decision on whether the alien is to be removed from the United States[.]” 8 U.S.C. § 1226(a). After an arrest, the noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least \$1,500. *Id.*

49. Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. §§ 1003.19(a), 1236.1(d). The noncitizen may have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

50. As part of IIRIRA, Congress created an expedited removal process for certain “applicants for admission” deemed to be “arriving aliens.” 8 U.S.C. § 1225(b). The INA defines an applicant for admission as a noncitizen “present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including a [noncitizen] who is brought to the United States after having been interdicted in international or United States waters).” 8 U.S.C. § 1225(a)(1). The INA further clarifies that the term “application for admission” has “reference to the application for admission *into* the United States,” making

clear that the term applies to those applying to enter into the United States. 8 U.S.C. § 1101(a)(4) (emphasis added). Notably, individuals subject to expedited removal are not eligible for bond pending completion of their removal hearings. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see id.* at 303 (distinguishing individuals subject to § 1225(b) from those “already present in the United States”).

51. Critically, expedited removal proceedings do not apply to all “applicants for admission.” Instead, they may be applied only to: (1) individuals who are arriving in the United States at a port of entry without valid documents; and (2) those without valid documents who have been in the United States for less than two years and have not been admitted or paroled. 8 U.S.C. § 1225(b)(1)(A)(iii)(II); *see Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Further, this second subset of individuals—noncitizens who have been in the United States for less than two years and have not been admitted or paroled—only become subject to expedited removal if so designated by DHS. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(I) (granting discretionary authority to apply expedited removal to any or all noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II)); *See* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: noncitizens “determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for if so designated by DHS.”).

52. Noncitizens placed in expedited removal proceedings are referred to standard removal proceedings under § 1229a if they establish a credible fear of persecution if removed. *See* 8 U.S.C. § 1225(b). Otherwise, the noncitizen is ordered removed “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(B)(iii). Further, any noncitizen “subject to the procedures under [8 U.S.C. §

1225(b)] shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” 8 U.S.C. § 1225(b)(1)(B)(iv).

53. Finally, § 1225(b)(2) mandates the detention of certain “applicants for admission” not covered by § 1225(b)(1). Yet in keeping with the statute’s focus on arriving aliens, the statute does not mandate detention for all applicants for admission. Instead, § 1225(b)(2)(A) only mandates the detention of “an applicant for admission” when “the examining immigration officer determines” that the noncitizen who “seeking admission is not clearly and beyond a doubt entitled to be admitted.”

54. Courts and the U.S. Government have consistently taken the position that noncitizens who have entered without inspection and are encountered in the United States years after their initial entry are entitled to removal proceedings under § 1229a and subject to detention under § 1226. *See, e.g., Jennings*, 583 U.S. at 303 (“While the language of §§ 1225(b)(1) and (b)(2) is quite clear, § 1226(c) is even clearer. As noted, § 1226 applies to aliens *already present in the United States*.”) (emphasis added); IIRIRA Implementing Regulation, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.”). This is because these individuals are not “seeking admission.” *See Lopez Benitez v. Francis*, -- F. Supp. 3d --, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an “alien seeking admission”); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *see also* Exh. E.

55. Indeed, nearly 30 years of agency interpretation of the law would have provided Petitioners with an opportunity to seek review of their custody through a hearing before an immigration judge under 8 U.S.C. § 1226(a).

56. Yet in July 2025, the Government abruptly rejected the reading of 8 U.S.C. § 1226(a) it had embraced when IIRIRA was first enacted and over three decades since. In a complete reversal, “DHS, in coordination with the Department of Justice (DOJ) . . . revisited its legal position on detention and release authorities,” and issued guidance instructing all ICE employees that 8 U.S.C. § 1225 rather than § 1226 “is the applicable immigration detention authority for all applicants for admission.” Exh. F.

57. And in September 2025, the Board of Immigration Appeals adopted DHS’s novel statutory reading of 8 U.S.C. § 1225(b)(2)(A) in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board found no distinction between the statutory terms “applicant for admission” and “seeking admission,” and concluded that § 1225(b)(2) must be read to include all noncitizens who have not been inspected and admitted at any point. *Id.* at 221-22. Further, the Board asserted that legislative history supported its construction, although it did not cite any legislative history addressing the detention statutes.¹ *Id.* at 223-25.

58. Legislative history actually contradicts the Board’s analysis. In February 1997, Congressman Lamar Smith, then Chair of the House Subcommittee on Immigration and Claims for the Committee on the Judiciary, wrote to the former Immigration and Naturalization Service (INS) in response to the INS’s proposed rulemaking to implement the provisions of IIRIRA. *See* Exh. E. In his comment on the proposed regulation, he explained the legislative intent behind several provisions of IIRIRA that focused on “prompt apprehension, adjudication, and removal of aliens who are not lawfully present in the United States.” *Id.* at 4. Specifically, he discussed

¹ This decision represents a complete change in statutory interpretation. In fact, just weeks prior to *Matter of Yajure Hurtado*, the Attorney General designated for publication a decision recognizing that a noncitizen arrested in the interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a is detained under 8 U.S.C. § 1226(a) and eligible for release on bond. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025).

expedited removal, the concept of “arriving alien, limitations on relief, changes to proceedings before an immigration judge, and limitations of appeals. *See generally id.* Relevant here, Congressman Smith explained that the definition of “arriving alien” should be limited, and noted that the legislation used the term “arriving alien” “to distinguish aliens at the border of the United States from those who have made a substantial physical entry into the United States.” *Id.* at 5-6. Congressman Smith thus recommended the regulations adopt a temporally limited limitation to who is considered “arriving,” because “[c]riteria based on time are preferable [and] would embrace both those who remain close to the border as well as those who escape shortly after having made an entry.” *Id.* at 6. Congressman Smith continued, “[b]riefly put, if the alien is caught on the day he or she arrives, the alien is an ‘arriving’ alien, but not otherwise. This is a common sense approach that should be easy for INS officials to understand and implement.” *Id.*

59. As the Supreme Court recognized in *Jennings*, § 1225(b) focuses on individuals arriving at the border and ports of entry and thus are in the process of “seeking admission.” *Jennings*, 583 U.S. at 297, 303; *see also* 8 C.F.R. § 1.2 (addressing “arriving” noncitizens who are geographically “coming or attempting to come into the United States.”). Conversely, § 1226(a) focuses on individuals who are in the United States and the Government is seeking to remove through removal proceedings. *Jennings*, 583 U.S. at 303. The INA further clarifies that the term “application for admission” has “reference to the application for admission into the United States,” making clear that the term applies to those applying to enter into the United States physically. 8 U.S.C. § 1101(a)(4).

60. In fact, courts that have reviewed this issue have almost universally rejected Respondents’ new reading of the statute. *See, e.g., Ortiz Ventura v. Noem*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Mendoza Gutierrez*, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Lopez Benitez v. Francis*,

--- F. Supp. 3d ----, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an “alien seeking admission”); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Hasan v. Crawford*, No. 1:25-cv-01408-LMB-IDD, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *4 (W.D. Tex., Sept. 8, 2025).

61. Notwithstanding the resounding rejection of DHS and DOJ’s policy, Respondents continue to defend the policy, as well as the practice of invoking the automatic stay in cases involving this issue. Yet this policy deprives Mr. Martinez of any process by subjecting him—without significant criminal history and with many years’ residence in the United States—to the same mandatory detention provisions as applicants at the border seeking to initially enter the United States.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Substantive Due Process; Automatic Stay of Bond Grant

62. Mr. Martinez realleges and incorporates by reference the paragraphs above.

63. The automatic stay of Mr. Martinez’s bond grant violates his substantive due process rights. As a person living within the United States for many years, Mr. Martinez is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

64. The “Fifth and Fourteenth Amendments’ guarantee of ‘due process of law’ [] include[s] a substantive component, which forbids the government to infringe certain ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 301-02 (1993). Substantive due process “prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty.” *United States v. Salerno*, 481 U.S.

739, 746 (1987).

65. “In effect, the automatic stay provision renders the Immigration Judge’s bail determination an empty gesture.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003). The government need not provide that “any ‘special justification’ exists which outweighs Petitioner’s constitutional liberties so as to justify his continued detention without bail.” *Id.* at 669; *accord Leal Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025, at *12-13 (D. Md. Aug. 24, 2025). This Court should similarly conclude that it “cannot characterize Petitioner’s continued confinement as anything but arbitrary” and “in violation of substantive due process.” *Ashley*, 288 F. Supp. 2d at 669 (internal citation omitted); *see also Mohammed H.*, 786 F. Supp. 3d at 1158-59 (“At its foundation, due process prohibits detaining an individual without justification. Petitioner has established, and the Government has not sufficiently rebutted, that his detention is rooted in improper purposes and lacks an individualized legal justification.”); *Lopez-Sanabria v. Bondi*, No. 1:25-cv-01511-MSN-WBP (E.D. Va. Oct. 3, 2025); *Ortiz Ventura*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Jacinto*, 2025 WL 2402271; *Günaydin*, 784 F. Supp. 3d at 1189; *Zabadi*, 2005 WL 1514122, at *1-2 (listing cases).

66. The national policy adopted by DHS of automatically invoking a stay for all noncitizens who entered without inspection without any individualized analysis reflects an improper use of immigration detention by punishing individuals for exercising their rights to apply for relief from removal and arbitrarily keeping them detained, rather than merely ensuring future appearances or protecting the community generally. *See Zadvydas*, 533 U.S. at 690. This policy, and its application to Mr. Martinez to detain him without the opportunity to pay bond despite an immigration judge’s order, deprives him of substantive due process. *Leal Hernandez*, 2025 WL 2430025, at *12-13; *Lopez-Sanabria v. Bondi*, No. 1:25-cv-01511-MSN-WBP (E.D. Va. Oct. 3,

2025); *Ortiz Ventura*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Jacinto*, 2025 WL 2402271; *Mohammed H.*, 786 F. Supp. 3d at 1157-59; *Günaydin*, 784 F. Supp. 3d at 1189; *Zabadi*, 2005 WL 1514122, at *1-2 (listing cases).

COUNT TWO

Violation of Procedural Due Process; Automatic Stay of Bond Grant

67. Mr. Martinez realleges and incorporates by reference the paragraphs above.

68. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

69. “[A] due process challenge is governed by a three-factor balancing test, weighing (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation with the procedures presently used; and (3) the government’s interest.” *United States v. White*, 927 F.3d 257, 264 (4th Cir. 2019) (citing *Mathews*, 424 U.S. at 335).

70. Each of these factors weigh in Mr. Martinez’s favor and support a finding that the automatic stay provision violates his procedural due process rights.

71. First, Mr. Martinez has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed even for noncitizens, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

72. Second, the Supreme Court, recognizing the strong private interest in remaining free from detention, has affirmed that “detention violates th[e Due Process] Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual’s constitutionally protected interest in avoiding physical

restraint.” *Id.* (internal citations omitted).

73. While the government has interests in ensuring Mr. Martinez’s appearance at his removal proceedings and protecting the community, *see id.*, the automatic stay provision, particularly under the blanket policy employed by Respondents, serves neither interest here. In fact, the existing bond procedures are sufficient to protect the government’s interests. Mr. Martinez does not have a criminal history and has established deep ties to the community over the many years he has lived and worked in the United States. Critically, a neutral arbiter has already determined, after hearing argument from both parties, that release on bond would not hinder either interest, finding the ordered bond sufficient to ensure Mr. Martinez’s future appearance.

74. Third, the risk of erroneous deprivation is high. To start, the automatic stay provision impermissibly merges the function of prosecutor and adjudicator as the DHS counsel who argued in Mr. Martinez’s bond proceeding that he should be detained then determined that his bond order should be stayed.

75. Further, upon information and belief, DHS has implemented a policy requiring its attorneys to invoke the automatic stay in all cases in which an immigration judge granted bond to an individual who was not inspected and admitted when he or she entered the United States. Thus, there is no longer any individualized assessment of flight risk or danger preceding a decision to invoke the automatic stay, as was contemplated when the regulations were introduced. *See* 63 Fed. Reg. at 27447; 71 Fed. Reg. at 57874, 57878. Rather, “[s]imply by fiat—without introducing any proof and without immediate judicial review—the Government effectively overruled the bond decision and kept Petitioner detained. In doing so, the automatic stay rendered Petitioner’s continued detention arbitrary and gave him no chance to contest the Government’s case for detention.” *Mohammed H.*, 786 F. Supp. 3d at 1158.

76. The automatic stay may potentially be extended indefinitely while the immigration judge's custody determination makes its way through additional layers of administrative review, leading to even further arbitrary detention without any procedural protections.

77. Thus, as numerous courts have held, the automatic stay provision and the decision by Respondents to invoke the provision in every case like this one absent any individualized determination violates the Due Process Clause and the Court should direct DHS to accept the payment of Mr. Martinez's bond order so that he may be released from custody. *See, e.g., Lopez-Sanabria v. Bondi*, No. 1:25-cv-01511-MSN-WBP (E.D. Va. Oct. 3, 2025); *Ortiz Ventura*, No. 1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Leal Hernandez*, 2025 WL 2430025; *Jacinto*, 2025 WL 2402271; *Mohammed H.*, 786 F. Supp. 3d at 1157-59; *Günaydin*, 784 F. Supp. 3d at 1189; *Zabadi*, 2005 WL 1514122, at *1-2 (listing cases).

COUNT THREE

Violation of the Immigration and Nationality Act; Automatic Stay of Bond Grant

78. Mr. Martinez realleges and incorporates by reference the paragraphs above.

79. The automatic stay provision is *ultra vires* and exceeds ICE's statutory authority under the INA. *See* 71 Fed. Reg. 57873.

80. When it enacted IIRIRA, Congress specifically identified which noncitizens should be subject to mandatory detention while their removal proceedings are pending and which noncitizens would be entitled to release on bond.

81. As discussed above, DHS has implemented a new policy of universally invoking the automatic stay provision in cases where bond is granted by an immigration judge to practically overrule the judges without any justification.

82. Through this new policy, DHS usurps Congress's authority to rewrite the INA and effectively create 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. *See* Pub. L. 104-208, Div. C, § 303(a) (codified at 8 U.S.C. § 1226(c)).

83. The regulation as applied to Mr. Martinez and the DHS policy "eliminates the discretionary authority of immigration judges to determine whether an individual may be released, thereby exceeding the authority bestowed upon [ICE] by Congress under [8 U.S.C. § 1226(a)]." *Zabadi*, 2005 WL 1514122, at *1; *Leal Hernandez*, 2025 WL 2430025, at *14-15.

COUNT FOUR

Violation of Substantive Due Process; 8 U.S.C. §§ 1225 and 1226

84. Mr. Martinez realleges and incorporates by reference the paragraphs above.

85. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas*, 533 U.S. at 690. Indeed, the liberty interest in freedom from detention "is the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

86. Mr. Martinez has a fundamental interest in liberty and being free from official restraint, and the government's new, erroneous classification of Mr. Martinez as an "arriving alien" who is "seeking admission" to the United States and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), even after a bond redetermination hearing before a neutral arbiter who determined that he was neither a flight risk nor a danger to others, violates his substantive right to due process.

87. Respondents' insistence that Mr. Martinez remain in immigration custody pursuant to these policies is a violation of Mr. Martinez's due process rights.

COUNT FIVE

Violation of Procedural Due Process; 8 U.S.C. §§ 1225 and 1226

88. Mr. Martinez realleges and incorporates by reference the paragraphs above.

89. The Supreme Court has been clear that for noncitizens “on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (emphasis added). However, Mr. Martinez—after many years in the United States—is clearly not on the threshold of initial entry. Indeed, it is well established that noncitizens like Mr. Martinez who “once passed through our gates, even illegally” are entitled to greater constitutional protections. *Id.*; *Miranda*, 34 F.4th at 346-47 (recognizing due process rights for those who have entered without inspection); *see also Zadvydas*, 553 U.S. at 693 (“It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders.”). Thus, even if the Government were to argue that Mr. Martinez is properly detained under § 1225(b)(2)—which he is not—his detention does not comply with due process.

90. In Respondents’ contrasting version of the INA, as espoused in *Matter of Yajure Hurtado*, Mr. Martinez may be stripped of any mechanism to require the government to justify his detention. Such a lack of *any* process, necessarily leading to an erroneous deprivation of liberty, cannot be supported by the Constitution.

COUNT SIX

Violation of the Immigration and Nationality Act; 8 U.S.C. §§ 1225 and 1226

91. Mr. Martinez realleges and incorporates by reference the paragraphs above.

92. This Court should rule that Mr. Martinez is subject to detention under § 1226(a). Respondents’ contrary reading of the statute has been overwhelmingly rejected in more than one hundred district courts decisions that have ruled on the issue. *See, e.g., Ortiz Ventura v. Noem*, No.

1:25-cv-01429-MSN-WBP (E.D. Va. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-cv-01382-MSN-WEF (E.D. Va. Sept. 30, 2025); *Mendoza Gutierrez*, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Lopez Benitez v. Francis*, --- F. Supp. 3d ----, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025) (holding that a noncitizens who has been residing in the United States for more than two years cannot be classified as an “alien seeking admission”); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Hasan v. Crawford*, No. 1:25-cv-01408-LMB-IDD, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Singh v. Lyons*, No. 1:25-cv-1606, 205 WL 2932635 (E.D. Va. Oct. 14, 2025); *S.D.B.B. v. Johnson*, No. 1:25-cv-882 (M.D.N.C. Oct. 7, 2025); *Leal-Hernandez*, No. 1:25-cv-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Mendoza Gutierrez v. Baltasar*, No. 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Sampiao v. Hyde*, -- F. Supp. 3d --, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Gomes v. Hyde*, -- F. Supp. 3d --, 2025 1869299 (D. Mass. July 7, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Alvarez-Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *4 (W.D. Tex., Sept. 8, 2025).

93. The plain language of the INA is clear: § 1225(b)(2) “authorizes the Government to detain aliens *seeking admission into the country*,” and § 1226(a) “authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings.” *Jennings*, 583 U.S. at 289; accord *Mendoza Gutierrez*, 2025 WL 2962908, at *5; *Sampiao*, 2025 WL 2607924, at *8; *Gomes*, 2025 WL 1869299, at *5. The titles of the two statutory sections make this distinction clear. Compare 8 U.S.C. § 1225 (titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing”), with 8 U.S.C. § 1226 (“Apprehension and detention of aliens”).

94. Furthermore, to equate the term “applicant for admission” with “seeking admission,” as EOIR has concluded in *Matter of Yajure Hurtado*, would render the phrase “seeking admission” superfluous because it violates principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings.” *Lopez Benitez*, 2025 WL 2371588, at *6; *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“[N]o clause, sentence, or word shall be superfluous, void, or insignificant.”); *accord Martinez*, 2025 WL 2084238, at *2; *Mendoza Gutierrez*, 2025 WL 2962908, at *7. Section 1225’s mandatory detention regime applies to noncitizens who meet three criteria; first, the noncitizen must be “an ‘applicant for admission’ (a ‘term of art’ in the INA that includes noncitizens who ‘arrive[] in the United States,’ as well as those already ‘present in the United States who ha[ve] not been admitted,’” second, the noncitizen must be “actively ‘seeking admission’ to the country,” and third, the noncitizen must be “one whom an examining immigration officer determines ‘is not clearly and beyond a doubt entitled to be admitted.’” *Lopez Benitez*, 2025 WL 2371588, at *6 (quoting *Martinez*, 2025 WL 2084238, at *2).

95. In addition, “Respondents’ reading of § 1225(b)(2)(A) ‘negates the plain meaning of the text.’” *Id.* (quoting *Martinez*, 2025 WL 2084238, at *6). The phrase “seeking admission,” is in the present tense, connoting a current action. Yet, Mr. Martinez was not *actively* seeking admission when DHS apprehended him and placed him in custody; he “ha[d] already ‘entered’ the country (albeit unlawfully).” *Id.*

96. Similarly, the ordinary meaning of the terms “seeking” and “admission” do not apply to noncitizens, like Mr. Martinez, who are not actively seeking inspection to enter the United States but instead have been residing in the country for many years. *Lopez Benitez*, 2025 WL 2371588; *Jose Alejandro v. Olson*, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025).

97. Additionally, applying § 1225(b)(2) to all noncitizens except those who have been admitted could not have been Congress's intent because it would render other mandatory detention provisions, such as § 1226(c)(1)(E), unnecessary. *Sampiao*, 2025 WL 2607924, at *8; *Rodriguez Vasquez*, 779 F. Supp. 3d at 1259; *Gomes*, 2025 WL 1869299, at *7. Section 1225(c) requires mandatory detention for individuals who are present in the United States without being admitted or paroled and who are subject to specific criminal conduct criteria. *Sampiao*, 2025 WL 2607924, at *8. If all noncitizens who are inadmissible are subject to mandatory detention, there would be no reason for Congress to have enumerated which inadmissible noncitizens are subject to mandatory detention under § 1226(c). *Id.* If Congress intended § 1225(b) detention to extend to all noncitizens who have not been admitted, the recent amendments would be surplusage. *Sampiao*, 2025 WL 2607924, at *8 (citing the *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.")).

98. For these reasons, the plain language of § 1225(b)(2)(A) demonstrate that an individual, such as Mr. Martinez, is not an "applicant for admission" who is "seeking admission" to the United States.

99. Thus, this Court must find that to subject Mr. Martinez to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) would be a clear violation of the INA.

PRAYER FOR RELIEF

Based on the foregoing, Petitioner requests that this Court:

- a. Assume jurisdiction over the matter;
- b. Order under the All Writs Act that Petitioner not be removed from this District while this petition is pending;
- c. Declare that the automatic stay regulation violates Petitioner's due process rights;
- d. Declare that the automatic stay regulation is *ultra vires*;
- e. Declare that 8 U.S.C. § 1226(a) governs Petitioner's detention by U.S. immigration authorities;
- f. Order that Petitioner be released from immigration custody on the bond that the immigration judge set; and
- g. Grant any other and further relief this Court deems just and proper.

Dated: October 23, 2025

Respectfully submitted,

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Counsel for Petitioner

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I or my legal assistants have discussed with Petitioner and/or his family the events described in this Petition. Based on those discussions and documents Petitioner's family has provided to me, I hereby verify that the statements made in this Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: October 23, 2025

Respectfully submitted,

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