UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HUMBERTO LUNA DELGADO,

Petitioner,

Case No.: 6:25-cv-06612-MAV

v.

JOSEPH E. FREDEN, in his official capacity as ICE Deputy Field Office Director; KRISTI NOEM, in her official capacity as Secretary of Homeland Security, and TODD M. LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement, and PAMELA BONDI, In her official capacity as Attorney General of the United States,

Respondents.

AMENDED VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Humberto Luna Delgado is a 49-year-old native and citizen of Mexico who entered the United States without inspection on or about December 1, 2010, and has not left the United States since then.

2. Mr. Luna Delgado is currently in removal proceedings and has filed a fear-based application for relief.

3. On or about August 28, 2025, an Immigration Judge ("IJ") determined that Mr. Luna Delgado was detained at the Buffalo Federal Detention Facility ("BFDF") under 8 U.S.C. § 1226(a) and granted him a bond of $10,000.

4. Almost immediately, the Department of Homeland Security ("DHS") gave notice to the immigration court that it intended to appeal that decision and invoked 8 C.F.R. §

1003.19(i)(2), which automatically stays the IJ's bond decision.

5. DHS based its appeal on the theory that Mr. Luna Delgado did not fall under 8 U.S.C. § 1226(a) but instead fell under 8 U.S.C. § 1225(b), which requires detention unless DHS grants the individual parole. 8 U.S.C. § 1225(b) also precludes IJs from issuing bonds.

6. In its substantive brief to the Board of Immigration Appeals, DHS also relied on a Board of Immigration Appeals decision called *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), issued by the Board on September 5, 2025, after the IJ had granted bond. This decision said that those who are classified as "entry without inspection" are now "applicants for admission" under 8 U.S.C. § 1225(b) and not eligible to apply for bond in front of an IJ, even if they are not caught near the border and have been in the United States for an extended period of time. Historically, these individuals were subject to the detention rules under 8 U.S.C. § 1226(a), which permitted them to apply for a bond before an IJ.

7. When DHS issued Mr. Luna Delgado, who has been in the United States since 2010, his Notice to Appear on or about July 9, 2025, they designated him as falling under 8 U.S.C. 1226(a) by marking the box on his NTA that reads, "You are an alien present in the United States who has not been admitted or paroled."

8. Mr. Luna Delgado, who would otherwise be eligible to apply for a bond in front of an IJ, is now not eligible for any bond and must stay detained for the duration of his immigration court proceedings, including any appeal if he loses.

9. For these reasons, Mr. Luna Delgado requests that the Court declare that Mr. Luna Delgado is detained under 8 U.S.C. § 1226(a). He further requests that the Court reinstate his prior bond amount, as he is prepared to pay it.

JURISDICTION

10. This action arises under the Constitution of the United States, the APA, and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

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

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

13. Venue is proper because Petitioner is detained at the Buffalo Federal Detention Facility ("BFDF") in Buffalo, New York, which is within the jurisdiction of this District.

14. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States, a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, and Petitioner resides in this District. There is no real property involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id. (emphasis added).

16. Courts have long recognized the significance of the habeas statute in protecting

individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. To the extent required, Petitioner has exhausted his administrative remedies as required by law, and his only remedy is by way of this judicial action. *Mathon v. Feeley*, No. 20 CV-07105-FPG, 2021 U.S. Dist. LEXIS 260853, at *6-7 (W.D.N.Y. Oct. 13, 2021). In addition, the administrative agency has already predetermined that Petitioner is not eligible for any relief through the agency. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, any attempt to seek relief through the agency would be futile.

PARTIES

18. Petitioner is currently detained by the Department of Homeland Security at the BFDF.

19. Respondent, Joseph E. Freden, is the ICE Deputy Field Office Director and is the senior ICE officer in charge of the BFDF in Batavia, New York. He is Chavez-Chilel's immediate custodian, and, upon information and belief, resides in the Western District of New York.

20. Respondent Todd Lyons is sued in his official capacity as Acting Director of the United States Immigration and Customs Enforcement. In this capacity, Respondent Lyons oversees all detention of noncitizens in ICE custody and is the legal custodian of Petitioner, with the authority to release him.

21. Respondent Kristi Noem is sued in her official capacity as Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for

the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

22. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals.

STATEMENT OF FACTS

23. Petitioner is a native and citizen of Mexico.

24. On or about July 9, 2025, DHS issued Petitioner a Notice to Appear ("NTA"). A true and accurate copy of the NTA is attached as **Exhibit A**.

25. In the NTA, DHS alleges that Petitioner entered the United States without inspection on or about December 1, 2010, and charges him with violating Immigration and Nationality Act § 212(a)(6)(i), i.e., that he is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

26. In the NTA, DHS designated his status as falling under 8 U.S.C. § 1226(a) by checking the box that states, "You are an alien present in the United States who has not been admitted or paroled."

27. On or about August 28, 2025, an IJ issued an order declaring that Petitioner fell under 8 U.S.C. § 1226(a) and granted him a bond of $10,000. A true and accurate copy of the bond order is attached as **Exhibit B**.

28. In her written order dated September 25, 2025, the IJ explained that her decision to grant this bond was based on the facts that Petitioner has lived in the United States continuously for over fourteen years, had a job since 2011, and had filed taxes. The IJ also noted that Petitioner "has been married to a Lawful Permanent Resident since March 8, 2022, and is the caregiver to his United States citizen three-year-old granddaughter." A true and accurate copy of the written decision, dated September 25, 2025, is attached as **Exhibit C**.

29. On or about August 28, 2025, DHS filed Form EOIR-43 entitled Notice of ICE Intent to Appeal Custody Redetermination. A true and accurate copy of this form is attached as **Exhibit D**.

30. This form triggers an automatic stay of the IJ's custody redetermination decision under 8 C.F.R. § 1003.19(i)(2). *See* **Exhibit D**.

31. On or about September 12, 2025, DHS filed its notice of appeal and brief with the Board of Immigration Appeals. A true and accurate copy of the notice of appeal, EOIR-43 Senior Legal Official Certification, and accompanying brief is attached as **Exhibit E**.

32. DHS based its appeal on the claim that Petitioner was detained under 8 U.S.C. § 1225(b), which precludes an IJ from issuing a bond, instead of 8 U.S.C. § 1226(a).

33. On November 4, 2025, DHS filed a separate application to the Board of Immigration Appeals for an emergency discretionary stay, arguing that the IJ erred in concluding that Petitioner was detained under 8 U.S.C. § 1226(a) based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). A true and accurate copy of DHS's motion papers is attached as **Exhibit F**.

34. On November 5, 2025, Appellate IJ Montante granted DHS's application for an emergency stay based on "consideration of all information . . . ." A true and accurate copy of the Board's decision is attached as **Exhibit G.**

35. With this decision, two independent stays are now preventing Petitioner from paying his bond.

36. The discretionary stay is based on the Board's intermediate conclusion that *Yajure Hurtado* applies to Petitioner.

37. The automatic stay was invoked unilaterally by DHS with no review, but DHS invoked it based on the same theory.

38. The appeal to the Board is also based on *Yajure Hurtado*.

39. Upon information and belief, Petitioner does not have a criminal record.

40. Upon information and belief, DHS has not claimed either in its appeal or in other settings that he is a danger to persons or property or a flight risk. The entire basis for the discretionary stay, the automatic stay appealing this case, is that it contends that Petitioner should be classified under 8 U.S.C. § 1225(b) and not 8 U.S.C. § 1226(a).

LEGAL BACKGROUND

PETITIONER'S DETENTION VIOLATES PETITIONER'S DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION.

I. This Court has jurisdiction to hear this matter.

41. As noted above, "Federal courts have jurisdiction to review habeas petitions filed by immigration detainees who assert that they are 'in custody in violation of the Constitution or laws or treaties of the United States.'" *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 U.S. Dist. LEXIS 196847, at *8 (E.D.N.Y. Oct. 5, 2025), quoting 28 U.S.C. § 2241(c)(3). Therefore, this Court has jurisdiction to hear this matter.

II. Petitioner is not required to exhaust his administrative remedies.

42. Petitioner is not required to exhaust his administrative remedies by seeking a bond

or requesting discretionary parole.

43. While courts generally require exhaustion of administrative remedies before detainees may challenge their detention in court via a petition for a writ of habeas corpus, exhaustion is a prudential matter, not a statutory requirement. *Artiga*, 2025 U.S. Dist. LEXIS 196847, at *8-9.

44. Exhaustion of administrative remedies in certain circumstances, including when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) citing *Able v. U.S.*, 88 F.3d 1280, 1288 (2d Cir. 1996).

45. Here, two of these exceptions apply. First, any attempt to seek an administrative remedy will be futile. In *Matter of Yajure Hurtado*, the Board of Immigration Appeals (the "Board") ruled for the first time that anyone who is classified as an "inadmissible alien who establishes that he or she has been present in the United States for over 2 years" can be detained under 8 U.S.C. § 1225(b)(2) and "shall be detained for a proceeding under section 240." *Id.* at 219-220. The consequence of this decision is that individuals who were historically classified as entry without inspection or EWI and eligible to apply for a bond before an IJ under 8 U.S.C. 1226(a) are now ineligible for an IJ-issued bond. Therefore, any attempt to pay an already-issued bond or seek relief before the EOIR would be futile.

46. Second, this petition raises a substantial constitutional question, i.e., whether DHS has violated his due process rights under the U.S. Constitution in continuing to detain him even though an IJ has issued him a bond. Therefore, Petitioner should not be required to exhaust his

administrative remedies.

III. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a).

47. The next issue is to determine what section of the Immigration and Nationality Act ("INA") governs Petitioner's detention.

48. Petitioner's detention is governed by 8 U.S.C. § 1226(a).

A. Background of 8 U.S.C. §§ 1225 and 1226.

49. Two sections of the Immigration and Nationality Act govern the detention of non-citizens who have not received a final order of removal: 8 U.S.C. § 1225 and 8 U.S.C. § 1226.

50. 8 U.S.C. § 1225 governs those who are considered "applicants for admission." 8 U.S.C. § 1225(a)(1). This section states that "[a]n alien present in the United States who has not been admitted or who arrives in the United States. . . shall be deemed for purposes of this chapter an applicant for admission." Applicants for admission under 8 U.S.C. § 1225 are divided into two categories: those covered by 8 U.S.C. § 1225(b)(1) and those covered by 8 U.S.C. § 1225(b)(2).

51. 8 U.S.C. § 1225(b)(1) generally applies to those noncitizens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." This section also applies to other aliens who receive a special designation by the Attorney General of the United States. 8 U.S.C. § 1225(b)(1)(A)(iii). This is commonly known as "expedited removal."

52. Noncitizens who fall under 8 U.S.C. § 1225(b)(1) are subject to immediate removal unless they make a fear-based claim. Upon making that claim, if they pass a credible fear interview, they are put into removal proceedings where their fear-based application is considered. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Noncitizens who either do not make a fear-based claim or do not make a credible fear-based claim are detained until removal. 8 U.S.C. §§ 1225(b)(1)(A)(ii), (B)(iii)(IV). Those who make a fear-based claim are detained while an

immigration court considers the non-citizen's claim. *Jennings*, 583 U.S. at 287, citing 8 U.S.C. § 1225(b)(1)(B)(ii).

53. 8 U.S.C. § 1225(b)(2) is a general "'catchall provision' that applies to all other applicants." *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 U.S. Dist. LEXIS 191630, at *12 (E.D.N.Y. Sep. 29, 2025), quoting *Jennings*, 583 U.S. at 285. Those detained under this section are commonly known as "arriving aliens."

54. 8 U.S.C. § 1225(b)(2)(A) provides that: "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained" while the non-citizen is in removal proceedings under 8 U.S.C. § 1229a.

55. Detention is mandatory under 8 U.S.C. § 1225. But DHS may grant anyone who falls under 8 U.S.C. § 1225(b)(2) temporary parole on a case-by-case and individualized basis. But when the purposes of the parole have been accomplished and/or its terms have concluded, the individual is returned to detention. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *13-14. Those designated as applicants for admission are not eligible to apply for a bond before an IJ.

56. Noncitizens who fall under 8 U.S.C. § 1226 fall under one of two subsections here as well: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1226(c).

57. "Section 1226(a) governs a separate non-mandatory detention scheme and provides for the 'default rule' for detaining and removing aliens 'already present in the United States.'" *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *14 quoting *Jennings*, 583 U.S. at 303.

58. This section provides that "on a warrant issued by the Attorney General, an alien 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).

59. While that decision is pending, the Attorney General may "continue to detain the arrested alien," "release the alien on bond of at least $1,500," or "release the alien on conditional parole." 8 U.S.C. § 1226(a)(1)-(2).

60. Finally, 8 U.S.C. § 1226(c) contains several "exceptions for persons 'who fall[ ] into one of the enumerated categories involving criminal offenses and terrorist activities.'" *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *14 quoting *Jennings*, 583 U.S. at 303. Detention is mandatory for those who fall under 8 U.S.C. § 1226(c).

61. But even those detained under 8 U.S.C. § 1226(c) are entitled to a bond hearing under the Due Process Clause of the Fifth Amendment to the U.S. Constitution after the individual has experienced prolonged detention. *See Black v. Dir. Thomas Decker*, 103 F.4th 133 (2d Cir. 2024); *Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

62. An NTA issued by the DHS can indicate the non-citizen's detention status. The NTA has specific boxes for those who fall under 8 U.S.C. § 1225(b)(1) and (b)(2). Those under 8 U.S.C. § 1225(b)(1) fall under the box that states, "Section 235(b)(1) order was vacated pursuant to: [ ] 8 CFR 208.30 [ ] 8 CFR 235.3(b)(5)(iv)." Those under 8 U.S.C. 1225(b)(2) fall under the box that states, "You are an arriving alien." Finally, those who fall under 8 U.S.C. § 1226(a) fall under the box entitled "You are an alien present in the United States who has not been admitted or paroled."

B. Petitioner is detained pursuant to 8 U.S.C. § 1226(a).

63. Petitioner is detained pursuant to 8 U.S.C. § 1226(a) for several reasons.

64. First, Petitioner has been in the United States since 2010. He was given an NTA on or about July 9, 2025, with the box marked "You are an alien present in the United States who has not been admitted or paroled." *See J.U.*, 2025 U.S. Dist. LEXIS 191630, at *2-3 (noting that this

is evidence of classification under 8 U.S.C. 1226(a)).

65. In addition, the NTA charges him with removal under INA § 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i). *See J.U.*, 2025 U.S. Dist. LEXIS 191630, at *2-3 (noting that this is evidence of classification under 8 U.S.C. 1226(a)).

66. In addition, Petitioner does not have a criminal record. Therefore, he cannot be detained pursuant to 8 U.S.C. § 1226(c). Therefore, pursuant to DHS's own determination, he is detained under 8 U.S.C. § 1226(a). *See J.U.*, 2025 U.S. Dist. LEXIS 191630, at *19 citing *Mahamudul Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 2025 U.S. Dist. LEXIS 184734, 2025 WL 2682255, at *8 (Ed. Va. Sept. 19, 2025) ("Given the significant distinction between being paroled into the United States under § 1182(d)(5)(A) and being released on recognizance under § 1226(a)(2)(B), DHS's consistent citations to § 1226(a) on [petitioner's] paperwork does not support the argument that the federal respondents actually intended for him to be paroled into the United States pursuant to § 1182(d)(5)(A).").

67. In addition, Petitioner does not fall into any other category.

68. DHS makes no allegation that he ever was under expedited removal under 8 U.S.C. § 1225(b)(1), which is referred to generally as "expedited removal." In addition, since he arrived in 2010, he cannot be subject to expedited removal, as a noncitizen must have been in the country for less than 2 years to qualify. *See Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

69. In addition, Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2), including because, as a person already present in the United States, Petitioner is not presently "seeking admission" to the United States. *See Materano v. Arteta*, 2025 U.S. Dist. LEXIS 179608, at *30-31 (S.D.N.Y. Sep. 9, 2025) (explaining that the terms "arriving" and "seeking

admission" are present-tense words and do not apply to an individuals who have been in the country for several years) citing *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214, at *21-23 (S.D.N.Y. Aug. 8, 2025) (also holding that expanding detention under 1225(b) would greatly expand mandatory detention beyond what how DHS has traditionally treated this statute and that enforcing it this way would negate 8 U.S.C § 1226(a)).

70. Respondent argues that Petitioner is detained under 8 U.S.C. § 1225(b)(2) as an applicant for admission pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and, therefore, ineligible for bond. But this argument fails.

71. In *Yajure Hurtado*, the Board of Immigration Appeals (the "Board") held that anyone who is classified as an "inadmissible alien who establishes that he or she has been present in the United States for over 2 years" can be detained under 8 U.S.C. § 1225(b)(2) and "shall be detained for a proceeding under section 240." *Id.* at 219-220. The consequence of this decision is that individuals who were historically classified as entry without inspection or EWI and eligible to apply for a bond before an IJ under 8 U.S.C. 1226(a) are now ineligible for an IJ-issued bond. But the Board's reversal and newly revised interpretation of the detention statutes are not entitled to any deference. *See Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024). Numerous courts around the country, including courts in this district, have rejected the reasoning in *Yajure Hurtado* and held that those who are detained who are already in the United States are detained under 8 U.S.C. § 1226(a). *Rezende v. Bondi*, Case No. 6:25-cv-6538, Docket Item 19 (W.D.N.Y. Oct. 29, 2025); *Barbosa Da Cunha v. Moniz*, Case No. 6:25-cv-6532, Docket Item 25 (W.D.N.Y. Oct. 20, 2025); *Andrade Lozano v. Hyde*, Case No. 6:25-cv-6528, Docket Item 20 (W.D.N.Y. Oct. 17, 2025); *Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 U.S. Dist. LEXIS 217654, at *3 (W.D.N.Y. Nov. 4, 2025) (ruling against Yajure Hurtado and collecting cases of other courts that have done

the same); *Artiga*, 2025 U.S. Dist. LEXIS 196847, at *15-24; and *Orellana v. Moniz*, Civil Action No. 25-cv-12664-PBS, 2025 U.S. Dist. LEXIS 196282, at *13-14 (D. Mass. Oct. 3, 2025) (collecting cases);

72. Furthermore, the government's policy in *Yajure Hurtado* renders other statutes, e.g., the Laken Riley Act, superfluous. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *22-24.

73. Upon information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and, therefore, Petitioner could not "be returned" under that provision to mandatory custody under 8 U.S.C. § 1225(b). Petitioner is thus not subject to mandatory detention under § 1225.

74. In addition, Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

75. Accordingly, Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a) based on Respondents' treatment of Petitioner and the plain text of the statute.

76. Petitioner received a bond hearing and a bond by an IJ as someone detained under 8 U.S.C. § 1226(a). Petitioner should be allowed to pay this bond to secure his release from custody.

77. If the Court determines that Petitioner is detained under 8 U.S.C. § 1226(a), this will effectively nullify the discretionary stay that is in place on the intermediate determination that he is detained under 8 U.S.C. § 1225(b)(2).

IV. THE AUTOMATIC STAY UNDER 8 C.F.R. § 1003.19(i)(2) VIOLATES THE PETITIONER'S PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION AND IS UNCONSTITUTIONAL BOTH FACIALLY AND AS APPLIED.

78. 8 C.F.R. § 1003.19(i)(2) provides that:

> Automatic stay in certain cases. In any case in which DHS has determined that an alien should not be released or has set a bond of $ 10,000 or more, any order of the IJ authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

79. This regulation has been constitutionally problematic since its inception as an interim regulation and continues to be.[1]

80. With respect to the automatic stay, there are two separate detentions at issue.

81. Due process requirements must be satisfied for both detentions.

82. The first detention was based on ICE's initial detention of Petitioner, which was conducted under 8 U.S.C. § 1226(a).

83. Petitioner received due process by receiving a bond hearing from an IJ. The IJ gave Petitioner a $10,000 bond.

84. The second detention took place when ICE invoked 8 C.F.R. § 1003.19(i)(2), which automatically stayed the IJ's decision.

85. Under this regulation, the decision to invoke the automatic stay provision is left solely to the discretion of the Secretary of Homeland Security based solely on his or her

[1] A history of this regulation can be found at *Günaydin v. Trump*, 2025 U.S. Dist. LEXIS 99237, at *8-14 (D. Minn. 2025) and *Torralba v. Knight*, No. 2:25-cv-01366-RFB-DJA, 2025 U.S. Dist. LEXIS 173272, at *8 (D. Nev. Sep. 5, 2025)

determination that the alien should not be released or where the IJ has set a bond of $10,000 or more.

86. The regulation contains no requirement for DHS to apply for a discretionary stay with the Board. The regulation contains no provision that allows Petitioner any review of this determination by the Secretary. The regulation also includes no requirement that the Secretary and/or his designee justify his or her decision or meet any meaningful standard to invoke this automatic stay provision.

87. This violates Petitioner's procedural and substantive due process rights because it allows an agency official to unilaterally detain a person after an IJ has granted a bond with no check on that agency official.

A. Petitioner's detention and the application of the automatic stay violate his procedural due process rights under *Mathews v. Eldridge.*

88. The Due Process Clause of the Fifth Amendment of the U.S. Constitution prevents the "Government from depriving any person of 'life liberty or property, without due process of law.'" *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *27. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

89. It is well-established that the Due Process clause "applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

90. The Second Circuit applies the *Mathews v. Eldridge* three-factor balancing test to determine whether there is adequate due process in civil immigration confinement. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This test requires courts to consider (1) the private interest that will be affected by the government

action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the government's interest. *Mathews*, 424 U.S. at 335.

91. With respect to the first factor, "the most significant liberty interest there is, is the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.

92. Petitioner has been in the United States for almost 15 years. Per the NTA issued to him on or about July 9, 2025, DHS determined that he was detained under 8 U.S.C. § 1226(a). He correctly requested a bond hearing before an IJ. The IJ agreed with his claim that he was detained under 8 U.S.C. § 1226(a) and properly issued a bond for $10,000.

93. For its part, DHS argued that Petitioner was detained under 8 U.S.C. § 1225(b) based on a dramatic reinterpretation of 8 U.S.C. § 1225(b)(2), one rejected by the IJ.

94. While DHS has the right to appeal against that decision, Mr. Luna Delgado has not been allowed to post that bond because of 8 C.F.R. § 1003.19(i)(2). Based on a unilateral decision by DHS, the IJ's decision was stayed, and Petitioner's liberty interest was directly impacted with no remedy.

95. In addition to the broader impact against Petitioner, he has a strong personal liberty interest. The IJ found that he was a caregiver to his three-year-old granddaughter. **Exhibit C**.

96. Therefore, Petitioner has established his liberty interest, and this factor weighs heavily in favor of Petitioner.

97. The second factor concerns erroneous deprivation of Petitioner's "interest through the procedures used, and the probable value, if any, of additional or substitute and probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335.

98. The "automatic stay provision creates an extreme risk of erroneous and arbitrary confinement." *Torralba v. Knight*, No. 2:25-cv-01366-RFB-DJA, 2025 U.S. Dist. LEXIS 173272,

at *29 (D. Nev. Sep. 5, 2025). Both facially and as applied, there is an extraordinarily high risk of "erroneous deprivation of a noncitizen's liberty interest when DHS invokes the automatic stay." *Id.* at 29-30.

99. First, the regulation gives no identifiable standard "that would guide any purported due process procedures." *Id.* at 30. "Such an undefined and subjective standard clearly creates a likelihood of arbitrary and capricious application." *Id.*

100. Second, the likelihood of erroneous deprivation is also very high because the automatic stay is usually only invoked after the IJ has already issued a bond after the non-citizen has had to establish by clear and convincing evidence that he or she is not a danger to persons or property and not a flight risk. "As such, the stay is effectively a unilateral automatic stay pending appeal as of right afforded to the losing party—the agency official who has just failed to present evidence or argument sufficient to convince a neutral decisionmaker that detention is warranted." *Id.*

101. The automatic stay amounts to an unchecked power vested in DHS to "prolong an individual's detention" and "cannot . . . be a carefully limited exception to an individual's right to liberty" required by the Due Process Clause. *Id.*

102. This regulation outlines no discernible process or standard that the Agency must follow "other than a vague requirement that the stay be warranted under the facts and law." *Id.* at 30-31.

103. The automatic stay is very different from other types of stays filed to challenge a judge's order. In most cases, the applicant is required to show a likelihood of success on the merits and irreparable harm to receive a stay. *Id.* at 31.

104. In addition, there is a problematic conflict of interest with the automatic stay. DHS

constitutes both the "unreviewable discretionary authority" deciding to invoke the automatic stay and the prosecuting authority appealing the IJ's decision. *Id.* This makes "erroneous deprivation not just a risk, but likely." *Id.*

105. There is a process in the regulation that allows DHS to seek an emergency stay from the Board on an emergency basis that can preserve the government's interest in preventing an erroneous release." *Id.* at 32.

106. Therefore, the second *Mathews* factor also weighs heavily in favor of the Petitioner.

107. With respect to the third factor, the government's interest and burden of additional process, this also favors the Petitioner.

108. Indeed, the government has a broad interest in applying a consistent enforcement of immigration laws, protecting the public from dangerous criminal aliens, and securing an alien's ultimate removal if it comes to that point. *Id* at 33.

109. But an IJ has already found that he is not a danger to persons or property and not a flight risk.

110. Indeed, the only basis DHS has asserted for appealing the IJ's decision is that it believes that Petitioner should be detained under 8 U.S.C. § 1225(b) instead of 8 U.S.C. § 1226(a). It has made no allegation that Petitioner is either a danger or a flight risk.

111. As demonstrated above, Petitioner argued, and the IJ agreed, that he is detained pursuant to 8 U.S.C. § 1226(a).

112. Therefore, the third factor heavily favors the Petitioner.

113. As all three factors favor Petitioner, the Court should hold that the implementation of the automatic stay as against the Petitioner violates his procedural due process rights.

B. The application of the automatic stay violates the substantive due process rights of Petitioner.

114. The application of the automatic stay violates Petitioner's substantive due process rights for two reasons.

115. First, the Fifth Amendment states that no person shall be deprived of liberty without due process of law.

116. While the government can detain individuals, there must be "adequate procedural safeguards" in criminal detention and, in non-criminal detentions, some special justification that "outweighs an individual's constitutionally protected interest in avoiding physical restraint." *Fernandez v. Lyons*, No. 8:25CV506, 2025 U.S. Dist. LEXIS 171020, at *10 (D. Neb. Sep. 3, 2025).

117. DHS cannot provide any special justification for applying the automatic stay in this case. Its only argument is that Petitioner should be subject to mandatory detention under 8 U.S.C. § 1225(b) rather than under 8 U.S.C. § 1226(a). There is no allegation that Petitioner is either a danger or a flight risk.

118. In addition, as noted above, numerous federal courts have already rejected this theory. And even if they had not, Petitioner is being held under the automatic stay at this juncture after a neutral factfinder ordered a bond. "Respondents' interest in securing his presence via detention 'in contravention of the order of a neutral fact-finder[] does not outweigh the liberty interest at stake.'" *Maza v. Hyde*, Civil Action No. 1:25-cv-12407-IT, 2025 U.S. Dist. LEXIS 205956, at *15 (D. Mass. Oct. 20, 2025), quoting *Jacinto v. Trump*, 2025 U.S. Dist. LEXIS 160314, 2025 WL 2402271, at *4 (D. Neb. Aug. 19, 2025).

121. Therefore, the automatic stay also violates Petitioner's substantive due process rights.

V. THE AUTOMATIC STAY IS ULTRA VIRES AND VIOLATES THE IMMIGRATION AND NATIONALITY ACT.

122. 8 U.S.C. § 1226(a) gives the Attorney General authority to detain or release non-citizens. The Attorney General may delegate that authority to another officer, employee, or agency of the Department of Justice, e.g., an IJ. *Maza*, 2025 U.S. Dist. LEXIS 205956, at *16.

123. The automatic stay gives DHS authority to override an IJ's decision by simply submitting a form.

124. But DHS is not a part of the U.S. Department of Justice. It is a separate executive agency.

125. This enables DHS to usurp the Department of Justice's authority to make detention and bond determinations.

126. Therefore, this regulation exceeds Congressional authority. *Id.*

127. The proper remedy here is to declare that Petitioner is detained under 8 U.S.C. § 1226(a) and lift the automatic stay so that Petitioner can pay his bond.

VI. THE DISCRETIONARY STAY VIOLATES THE PETITIONER'S PROCEDURAL DUE PROCESS UNDER THE FIFTH AMENDMENT, INSOFAR AS IT PREVENTS PETITIONER FROM PAYING HIS BOND IF HE IS DETAINED UNDER 8 U.S.C. § 1226(a).

128. The sole basis for DHS's appeal of the IJ's bond order to the Board of Immigration Appeals is that DHS contends that, pursuant to Yajure Hurtado, Petitioner is detained under 8 U.S.C. § 1225(b) instead of 8 U.S.C. § 1226(a) and, therefore, subject to mandatory detention.

129. If this Court holds that Petitioner is detained under 8 U.S.C. § 1226(a), then to the extent that the discretionary stay issued by the Board on November 5, 2025, prevents him from posting the bond already issued by an IJ, this violates Petitioner's due process rights under the Fifth Amendment of the U.S. Constitution.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act
(Petitioner is detained under 8 U.S.C. § 1226(a)).

130. Petitioner alleges and incorporates all prior paragraphs above.

131. DHS claims that Petitioner is detained under 8 U.S.C. § 1225(b).

132. DHS is appealing the IJ's bond decision that he is detained under 8 U.S.C. § 1226(a) based on *Yajure Hurtado* and continuing his detention under the automatic stay on that basis.

133. Therefore, Petitioner requests that the Court declare him detained under 8 U.S.C. § 1226(a), which will effectively nullify the discretionary stay, so that he can pay his IJ-issued bond and be released from detention.

COUNT TWO

Violation of Fifth Amendment Right to Due Process
(DISCRETIONARY STAY)

134. Petitioner alleges and incorporates all prior paragraphs above.

135. The sole basis for DHS's appeal of the IJ's bond order to the Board of Immigration Appeals is that DHS contends that, pursuant to *Yajure Hurtado*, Petitioner is detained under 8 U.S.C. § 1225(b) instead of 8 U.S.C. § 1226(a) and, therefore, subject to mandatory detention.

136. If this Court holds that Petitioner is detained under 8 U.S.C. § 1226(a), then to the extent that the discretionary stay issued by the Board on November 5, 2025, prevents him from posting the bond already issued by an IJ, this violates Petitioner's due process rights under the Fifth Amendment of the U.S. Constitution.

137. Therefore, if this Court holds that Petitioner is detained under 8 U.S.C. § 1226(a), Petitioner requests an order either nullifying the discretionary stay issued by the Board or, in the

alternative, an order allowing Petitioner to pay the bond already issued by the IJ, notwithstanding the discretionary stay.

COUNT THREE

Violation of Fifth Amendment Right to Procedural Due Process
(8 C.F.R. § 1003.19(i)(2) violates Petitioner's Procedural Due Process Rights.)

138. Petitioner alleges and incorporates all prior paragraphs above.

139. The automatic stay violates Petitioner's procedural due process rights because, in part, there is no review of DHS's decision to invoke the automatic stay, no standard that DHS must meet or explanation DHS must give to invoke the automatic stay, and it contravenes an IJ's decision to grant bond.

140. Petitioner can demonstrate under the Mathews test that the automatic stay has violated his procedural due process rights.

141. Therefore, Petitioner requests that the Court declare it unconstitutional as applied to Petitioner and lift it to allow Petitioner to pay his bond.

COUNT FOUR

Violation of Fifth Amendment Right to Substantive Due Process
(8 C.F.R. § 1003.19(i)(2) violates Petitioner's Procedural Due Process Rights.)

142. Petitioner alleges and incorporates all prior paragraphs above.

143. The automatic stay violates Petitioner's substantive due process rights because DHS is overruling a neutral decision maker regarding Petitioner's detention and can provide no special justification for implementing the automatic stay, especially since DHS has other avenues of relief, e.g., normal or emergency requests for stay to the Board.

144. Therefore, Petitioner requests that the Court declare it unconstitutional and lift it to allow Petitioner to pay his bond.

COUNT FIVE

The Automatic Stay under 8 C.F.R. § 1003.19(i)(2) constitutes an Ultra Vires action by DHS under the Immigration and Nationality Act

145. Petitioner alleges and incorporates all prior paragraphs above.

146. The automatic stay constitutes an ultra vires action by DHS in that the INA gives the Attorney General the power to determine bond and detention.

147. DHS is not part of the DOJ, and, because the automatic stay grants DHS unilateral authority to stay an IJ's decision to grant bond, this regulation contravenes Congressional authority and is, therefore, ultra vires.

148. Therefore, Petitioner requests that the Court declare it void as ultra vires.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;

2. Order that Petitioner shall not be transferred outside this District during the pendency of this action;

3. Adjudicate this petition pursuant to 28 U.S.C. § 1657, which requires that the Court expedite consideration of any action brought under 28 U.S.C. Chapter 153, which governs habeas petitions.

4. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days pursuant to 28 U.S.C. § 2243.

5. Issue an order that does the following: (1) declares that Petitioner is detained under 8 U.S.C. § 1226(a); (2) lifts the discretionary stay void or, in the alternative, orders that Petitioner can pay the bond notwithstanding the discretionary stay issued by the Board; (3) declares that the automatic stay under 8 C.F.R. § 1003.19(i)(2) is unconstitutional and unlawful; and (3) lifts the

automatic stay so that Petitioner can pay the bond issued by the IJ and get released from detention, (4) orders that Petitioner be allowed to pay the bond already issued by an IJ.

6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

7. Grant any further relief this Court deems just and proper.

DATED: November 7, 2025
Batavia, New York

Respectfully submitted,

s/ Aaron J. Aisen

Aaron J. Aisen
Attorney for Petitioner
ECBA Volunteer Lawyers Project, Inc.
45 Ellicott Street, Suite 1
Batavia, New York 14020
Phone: (585) 524-1778
Fax: (585) 524-4552
aaisen@ecbavlp.com

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

I represent Petitioner, Arturo Luna Delgado, 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 7, 2025.

s/ Aaron J. Aisen
Aaron J. Aisen