UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BAYRON LOJA GRANDA,

Petitioner,

v. Case No. 1:25-cv-01156-JLS

JOSEPH FREDEN, *in his official capacity as Field Office Director, Buffalo Field Office, U.S. Immigration and Customs Enforcement*, and KRISTI NOEM, *in her official capacity as Secretary of Homeland Security,*

Respondents.

AMENDED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Bayron Loja Granda ("Petitioner" or "Bayron") is an 18-year-old boy from Ecuador with an approved Special Immigrant Juvenile Status (SIJS) petition, no criminal record, and no prior order of removal. He has been living lawfully in the United States with his sister and her husband in Worcester, Massachusetts since February 23, 2023, and he recently graduated from high school. After Bayron arrived in the United States as an unaccompanied child, he filed an application for SIJS, which was approved in June 2025, with a visa priority date of January 24, 2025. In approving that application, U.S. Citizenship and Immigration Services (USCIS) determined that Bayron was neglected by his parents and that it was in his best interest not to return to his home country. Bayron is now waiting in line for an EB-4 visa to become available so that he can apply for lawful permanent resident status (a "green card").

2. On July 22, 2025, while visiting his uncle in Buffalo, New York, Bayron was arrested by U.S. Immigration and Customs Enforcement (ICE) without probable cause and has been unlawfully detained at the Buffalo Federal Detention Facility (BFDF) in Batavia, New York ever since.

3. SIJS provides "immigration relief for foreign-born children living in the United States who have been abused, neglected, abandoned, or similarly mistreated by a parent" and for whom a state of administrative court has determined it would not be in their best interest to be returned to their home country or prior country of residence. *See* 8 U.S.C. § 1101(a)(27)(J). The Immigration and Nationality Act (INA) renders SIJS recipients eligible for a green card. 8 U.S.C. § 1153(b)(4). Petitioner is eligible to apply for this adjustment of status because a Massachusetts court found that he had been neglected by his parents, and that it was not in his interest to return to Ecuador. Due to the current backlog of available visas, Petitioner must wait until a visa number becomes available to apply for a green card.

4. On or about August 28, 2025, an Immigration Judge (IJ) determined that Petitioner was detained under INA § 236(a) (8 U.S.C. § 1226(a)) and ordered him released from custody under a $5,500.00 bond, having found that Bayron was neither a danger nor a flight risk based on his SIJS status and complete lack of criminal history. When Petitioner's family tried to pay the bond, DHS refused to accept the payment, invoking the automatic-stay provision of 8 C.F.R. § 1003.19(i)(2), which unilaterally stayed the IJ's bond decision and has kept Bayron incarcerated while DHS pursues an appeal to the Board of Immigration Appeals (BIA). DHS's stay required no showing of likelihood of success or public-safety need and provided Bayron no meaningful opportunity to be heard.

5. DHS based its appeal on the theory that Petitioner's custody was not governed by INA § 236(a) (8 U.S.C. § 1226(a)), but instead fell under INA § 235 (8 U.S.C. § 1225(b)), which requires detention unless DHS grants the individual parole. 8 U.S.C. § 1225(b) also precludes the IJ from redetermining custody decisions by DHS and releasing individuals on bond.

6. In its brief to the BIA, DHS also relied on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), issued by the BIA on September 5, 2025, after the IJ had granted bond. This decision stated that those who are classified as having "entered 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 apprehended near the border and have been in the United States for an extended period of time. Historically, these individuals have been subject to the detention provisions of 8 U.S.C. § 1226(a), which permitted them to seek a custody redetermination (apply for a bond) before an IJ.

7. Bayron's continued detention is unlawful. He has no criminal record; he is neither a danger nor a flight risk; and as an SIJS beneficiary living with family in Massachusetts since February 2023, his detention and release are governed by 8 U.S.C. § 1226(a), and he is entitled to the constitutional protections it provides.

8. Prolonged civil detention of a young person whom an IJ has already deemed safe and reliable serves no legitimate purpose. The automatic-stay mechanism, as applied here, deprives Bayron of liberty without due process and exceeds any authority conferred by Congress on DHS.

9. Accordingly, by this Petition, the Court should order Petitioner's immediate release.

JURISDICTION

10. This action arises under the Constitution of the United States 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. Release "is the very essence of habeas relief." *J.M.P. v. Arteta*, 25 Civ. 4987 (DEH), 2025 WL 2984913, at *12 (S.D.N.Y. Oct. 23, 2025) (quoting *Phifer v. Warden, U.S. Penitentiary, Terre Haute, Ind.*, 53 F.3d 859, 864 (7th Cir. 1995)).

VENUE

13. Venue is proper because Petitioner is detained at the BFDF in Batavia, New York, which is within the jurisdiction of this District.

14. Venue is proper because Respondents are officers, employees, or agencies of the United States, and a substantial part of the events or omissions giving rise to Petitioner's claims occurred 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 to Respondents "forthwith," unless 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 20 days, is allowed." *Id.*

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).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. 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 WL 9349141, at *2-3 (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. *Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, any attempt to seek relief through the agency would be futile.

PARTIES

18. Petitioner Bayron Loja Granda is an 18-year-old boy who recently graduated from high school. He has no criminal history. USCIS has approved his application for SIJS. He resides with his family in Worcester, Massachusetts and was arrested while visiting his uncle in Buffalo, New York. Petitioner is currently detained by DHS 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 Petitioner's immediate custodian.

20. Respondent Kristi Noem is sued in her official capacity as Secretary of DHS. In this capacity, Secretary Noem is responsible for the implementation and enforcement of the INA and oversees ICE, the component agency responsible for Petitioner's detention and custody. Secretary Noem is a legal custodian of Petitioner.

STATEMENT OF FACTS

21. Petitioner is a citizen of Ecuador and was born on [redacted], in Suscal, Ecuador. Declaration of Bayron Loja Granda ("Granda Decl.," filed herewith as Exhibit 1). Bayron turned 18-years-old in May 2025. He entered the United States as an unaccompanied child as defined at 6 U.S.C. § 279(g)(2) on or about February 7, 2023, near Hidalgo, Texas. After entry, he was briefly detained by U.S. Customs and Border Protection (CBP) and was served with a Warrant for Arrest of Alien, issued under INA § 236. Granda Decl. ¶ 3 and Ex. 2.

22. Bayron was transferred to the custody of the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services (HHS) as required by 8 C.F.R. § 236.3. Granda Decl. ¶ 3. On February 23, 2023, ORR released Bayron to his sister, Ines Isabel Loja Granda, pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"). Ex. 3.

23. Since being released, Bayron has remained physically present in the United States. Living with his sister, he spent his after-school time doing homework, helping care for his 12-year-old niece, and studying English. Granda Decl. ¶ 6. On December 12, 2024, the Commonwealth of Massachusetts Trial Court Probate and Family Court Department found that Bayron "is dependent upon this Court for his health, safety,

and welfare," and that "reunification with his parents is not viable due to the neglect as defined under the laws of the Commonwealth of Massachusetts." Ex. 4. The court found that Bayron's "parents have neglected him," and that "it is in Bayron's best interest to remain in the United States in the custody and care of his sister, Ines Loja Granda." *Id.*

24. On June 6, 2025, Bayron graduated from North High School in Worcester, Massachusetts, becoming the first in his family to do so. Granda Decl. ¶ 7.

25. Bayron's SIJ classification was approved by USCIS in June 2025, with a priority date of January 24, 2025. Ex. 5. According to the USCIS approval notice, this "indicates that the person the petition is for is in the United States and will apply for adjustment of status." *Id.* Because Bayron has been approved for SIJS, and he is neither a danger nor flight risk, he is living in the United States lawfully while he waits for a visa to become available — which Congress specifically contemplated given the long backlog for employment-based fourth preference special immigrant category vias ("EB-4 visas" — the visa category designated for SIJS-approved individuals). 8 U.S.C. § 1153(b)(4).

A. Petitioner's Arrest in New York

26. On or about July 8, 2025, Bayron traveled to Buffalo, New York to visit his uncle, a family member with whom Bayron is close, and upon information and belief has no known criminal record. Granda Decl. ¶ 8.

27. On July 22, 2025, while Bayron was riding in the back seat of his uncle's truck, four unmarked vehicles suddenly surrounded the truck and prevented it from moving. *Id.* at ¶ 10. Nine officers wearing vests and carrying firearms exited the vehicles. *Id.*; Ex. 6 (Record of Deportable/Inadmissible Alien, listing nine officers). The officers forcibly removed the driver, passenger, and Bayron from the vehicle. Granda Decl. ¶ 11.

28. Bayron attempted to show the officers a photo of his SIJS approval on his phone, but the ICE officers refused to look at it and confiscated the phone without viewing the document. *Id.* at ¶ 12. The officers searched Bayron, handcuffed him, photographed him, and placed him in a vehicle without explanation. *Id.* at ¶ 13. Bayron was processed in a local center that day, where he was given no explanation for his arrest other than the fact that he is an immigrant, despite his SIJS approval. *Id.* at ¶ 14.

29. That afternoon, officers transported Bayron to the BFDF, where he has remained ever since. *Id.* at ¶ 15.

B. Petitioner's Detention and Bond Hearing

30. For nearly four months, Bayron has lived in a cell he describes as a small two-person cell, with limited daily out-of-cell time. Granda Decl. ¶ 16. Five days per week, his only time out of his cell is when he performs kitchen work from 1:00 p.m. to 6:00 p.m. for $1 per day. *Id.* He has had little to no access to the few available electronic tablets. *Id.* at ¶¶ 16, 20. Bayron reports that guards have used derogatory language against him, and that he keeps to himself to avoid conflict with the adult detainees detained with him. *Id.* at ¶¶ 18-19. Bayron believes that, except for one 19-year-old detainee, all of the immigrants detained with him are in their mid-twenties or older. *Id.* at ¶ 19. He has witnessed multiple fights by detainees around him and worries about his safety as he tries to avoid violence. *Id.*

31. After his arrest, Bayron sought release through the aid of his immigration counsel. At the August 28, 2025, bond hearing, the IJ held that Bayron's custody was governed by INA § 236(a), rejecting DHS's argument based on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) that he was an "applicant for admission" subject to mandatory detention under INA § 235. Ex. 7. The IJ found that *Matter of Q. Li* did not apply because,

unlike the petitioner in that case who had been promptly intercepted near the border and remained in applicant-for-admission status, Bayron had been living in the interior for years, residing stably with his sister and her family, and therefore his detention is governed by INA § 236(a). Ex. 7. The IJ further found that Bayron was not a danger and did not pose a flight risk, citing his youth, single address since arrival, and family support. *Id.* The IJ set bond at $5,500.00. *Id.*

C. Petitioner's Continued Detention After Bond Was Ordered

32. After the IJ set bond, Bayron's sister worked to raise funds for the bond amount, receiving help from her neighbors to pay the bond and secure Bayron's release. Granda Decl. ¶ 18. However, DHS refused to accept the bond and release him. *Id.*

33. On August 28, 2025, DHS filed a Notice of Service Intent to Appeal Custody Redetermination (EOIR-43), staying the IJ's custody redetermination under 8 C.F.R. 10003.19(i)(2), while the appeal is pending. Ex. 8.

34. On September 12, 2025, DHS filed a BIA bond appeal brief arguing that the IJ lacked jurisdiction because, under INA § 235(b)(2)(A) and *Hurtado*, 29 I&N Dec. 216 (BIA 2025), a noncitizen present without admission or parole in § 240 proceedings "shall be detained" and is not entitled to IJ bond review. Ex. 9. DHS also argued, alternatively, that Bayron was a flight risk. *Id.* Bayron's immigration counsel responded on October 21, 2025, that Bayron had been detained and processed under INA § 236(a), had lived in the interior for over two years, and — most importantly — had SIJS that statutorily deems him paroled under 8 U.S.C. § 1255(h), making the *Hurtado* mandatory detention theory inapplicable. Ex. 10.

D. Petitioner's Motion to Terminate Was Granted

35. On October 7, 2025, the IJ rescinded the former Denial of Motion to Terminate Bayron's removal proceedings and terminated Bayron's removal proceedings without prejudice. Ex. 11. The IJ reasoned that Bayron had been approved by USCIS for SIJS and, therefore USCIS was the proper forum to seek adjustment of status to that of a lawful permanent resident, as Bayron will be eligible for a green card once a visa becomes available. Ex. 11. DHS recently notified Bayron's sister that it has filed an appeal challenging the IJ's termination of the proceedings. Ex. 12.

36. Bayron has suffered both physically and emotionally during the months he has been detained and separated from his family and support system. He reports distress upon waking up, together with difficulty being separated from his caretakers, his adult sister and her husband, and his young niece. Granda Decl. ¶¶ 22-23. He is losing weight, shedding hair, and developing painful pustular acne due to prolonged stress and inadequate nutrition; he is also growing physically weaker because he receives minimal time outside his small cell and lacks access to heathy food. *Id.* at ¶¶ 19, 21. Upon information and belief, he is currently the youngest immigrant detained at the BFDF. *Id.* at ¶ 19.

37. On November 20, 2025, in *Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal.), the United States District Court for the Central District of California granted partial summary judgment in favor of petitioners, holding that petitioners were detained under 8 U.S.C. § 1226(a). Ex. 13 at 14.

38. On November 25, 2025, the same court granted class certification to other similarly situated individuals. Ex. 14. The class consists of the following individuals, who are now bond eligible:

> **Bond Eligible Class:** All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Id. at 15. As Petitioner falls in this class, he is eligible for a bond hearing. As he has already had a bond hearing and received a bond, the Court should remove the automatic stay and allow him to pay the bond.

ARGUMENT

39. The Due Process Clause of the Fifth Amendment to the United States Constitution guarantees that no person in the United States shall be deprived of liberty without due process. As an SIJS beneficiary who has resided continuously in the country for almost three years and is subject to discretionary detention under 8 U.S.C. § 1226(a), Bayron is entitled to full due process protections. *Zadvydas v. Davis*, 553 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"); *see also Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 WL 3085032, at *10 (W.D.N.Y. Nov. 4, 2025) (holding that noncitizens who entered without authorization and have been physically present in the United States are detained under § 1226(a) and are therefore entitled to the procedural and constitutional protections attendant to that provision).

40. Bayron, a minor with approved SIJS, was arrested without cause and has been detained in violation of his constitutional and statutory rights.

41. Bayron should be released because the automatic stay of his release violates his rights to substantive and procedural due process. The automatic stay regulation

is also an *ultra vires* regulation that unlawfully grants authority to DHS that Congress has delegated only to the Attorney General. The basis of DHS's appeal triggering the automatic stay — that Bayron is detained under section 1225 and that Bayron poses a danger or flight risk — is invalid.

I. PETITIONER'S ARREST WAS UNLAWFUL.

42. Petitioner's arrest was unlawful because when he was arrested, there was no reason to believe that he was "in the United States in violation of any such law or regulation and [was] likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357. The INA provides that immigration officers "may briefly detain" an individual "for questioning" if they have "a reasonable suspicion, based on specific articulable facts, that the person being questioned is an alien illegally in the United States." 8 C.F.R. § 287.8(b)(2); 8 U.S.C. § 1357(a)(1); *see United States v. Quinanilla-Chevez*, SA-25-CR-388-XR, 2025 WL 2982191, at *12 (W.D. Tex. Oct. 20, 2025). An officer "must have a reasonable suspicion" to justify briefly stopping individuals to question them "about their citizenship and immigration status;" any further detention "must be based on . . . probable cause." *Quinanilla-Chavez*, 2025 WL 2982191, at *12 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 881-82 (1975) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). "Importantly, reasonable suspicion means only that immigration officers may briefly stop the individual and inquire about immigration status. If the person is a U.S. citizen or otherwise lawfully in the United States, that individual will be free to go after the brief encounter. Only if the person is illegally in the United States may the stop lead to further immigration proceedings." *Noem v. Vasquez Perdomo*, No. 25A169, 2025 WL 2585637 (Mem), at *3 (U.S. Sept. 8, 2025) (Kavanaugh, J., concurring).

43. Here, ICE officers had no basis to stop the truck Bayron was riding in with his uncle, and a simple look at his phone would have provided evidence of his lawful presence in the United States. On the morning of July 22, 2025, Bayron was riding in the back seat of his uncle's truck when, without warning, officers surrounded the car, dragged him out by force, and shackled his feet and his hands. Granda Decl. ¶¶ 10-11, 13. After being randomly pulled over and dragged out of the car, an officer asked if he had any documents or proof. *Id.* at ¶ 12. Bayron told the officer that he did have evidence on his phone, but the officer refused to look at it and instead seized his phone. *Id.* at ¶¶ 12-13. Officers cannot justify their belief of unlawful presence by simply choosing not to look at evidence to the contrary. Further, even if there was sufficient reason, there was no reason to believe that Petitioner would likely escape before a warrant could be issued.

44. Officers did not articulate any basis or produce a warrant before seizing Petitioner. He was not engaging in illegal activity; he had no criminal history; he did not pose a flight risk; and, as DHS's own documents — together with unambiguous precedent from this Court and others — make clear, he is not subject to section 1225's mandatory detention provision. *See* Ex. 2 and Section III, *infra*. After being released by HHS, Bayron attended all of his appointments and properly applied for status, and he is lawfully in the United States awaiting his green card pursuant to his approved SIJS visa petition. *See* Exs. 3, 5.

II. PETITIONER IS SUBJECT TO 8 U.S.C. § 1232(c)(2)(B), WHICH REQUIRES PLACEMENT IN THE LEAST RESTRICTIVE SETTING AVAILABLE.

45. Minors who arrive in the United States without a parent or other legal guardian are designated "unaccompanied alien children" and receive special treatment

under the immigration laws because of their vulnerable status. *See* 6 U.S.C. § 279; 8 U.S.C. § 1232. Specifically, HHS is responsible for their care. *Id.* Additionally, the Trafficking Victims and Protection Reauthorization Act (TVPRA) states that if DHS wishes to commence removal proceedings against an unaccompanied child, it must do so through standard removal proceedings, in which the minor is provided counsel and may apply for relief at no cost. 8 U.S.C. § 1232(a)(5)(D). Accordingly, unaccompanied children are not subject to expedited removal. *Id.*

46. The language of 8 U.S.C. § 1232(c)(2)(B) orders that unaccompanied children who reach the age of 18 and are in DHS custody be place in "the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight." To find that an unaccompanied child, after turning 18, could become an applicant for admission and thereby subject to mandatory detention would render the statute at 8 U.S.C. § 12132(c)(2)(B) void, contrary to principles of statutory interpretation. *See, e.g., Lopez v. Sessions*, No. 18-cv-4189 RWS, 2018 WL 29322726, at *10, 13 (S.D.N.Y. June 12, 2018). This statutory and regulatory framework clearly placed Bayron's custody outside of the realm of mandatory detention under 8 U.S.C. § 1225(b).

III. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a) AND NOT UNDER 8 U.S.C. § 1225(b).

47. Respondents have attempted to justify Petitioner's continued detention by claiming he is subject to mandatory detention under 8 U.S.C. § 1225(b).

48. Two statutory provisions govern the detention of non-citizens present in the United States pending the outcome of their removal proceedings. Broadly speaking, 8 U.S.C. § 1225 governs the detention of non-citizens arriving in the United States. 8 U.S.C. § 1226 governs the detention of noncitizens already physically present in the United States.

DHS and the BIA claim that Petitioner is detained under 8 U.S.C. § 1225(b)(2). This is incorrect.

49. 8 U.S.C. § 1225(b)(2) states in relevant part 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 for a proceeding under" 8 U.S.C. § 1229a. 8 U.S.C. § 1225(a)(1) defines "an applicant for admission" as "[a]n alien 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 . . .)."

50. 8 U.S.C. 1226(a) states that "[o]n a warrant issued by the Attorney General, an alien may be detained pending a decision on whether the alien is to be removed from the United States." After that arrest, the Attorney General "may continue to detain the arrested alien" or release the alien on a bond with conditions or on conditional parole. 8 U.S.C. § 1226(a)(1)-(2).

51. In July 2025, DHS took the position that anyone who is an applicant for admission is no longer detained under 8 U.S.C. § 1226(a) and is instead an applicant for admission seeking admission under 8 U.S.C. § 1225(b). The BIA later adopted this position in *Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, all individuals who were once eligible for bond under 8 U.S.C. § 1226(a) were now detained under 8 U.S.C. § 1225(b) and were no longer eligible for bond. However, as demonstrated *infra*, this interpretation is not supported by the plain language of the detention provisions, the legislative history, past practice, and DHS's treatment of this Petitioner.

52. Petitioner has been in the United States since February 2023, does not meet the criteria for expedited removal, and therefore he cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(1).[1]

53. DHS contends that "Bayron is an applicant for admission in INA § 240 removal proceedings and is thus subject to detention under INA § 235(b)(2)(A) [section 1225]," emphasizing that the statute dictates that applicants for admission in INA § 240 removal proceedings "shall be detained," and therefore may only be released from detention if DHS invokes its discretionary parole authority under INA § 212(d)(5)," and was never eligible for a bond hearing. Ex. 9 at 1, 8, 18.

54. However, 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. *Alvarez Ortiz*, 2025 WL 3085032, at *10.

55. When Petitioner was "seeking admission" to the United States, DHS designated him an unaccompanied child, and therefore his detention was governed by 8 U.S.C. § 1232 and 8 C.F.R. § 236.3(f), which mandated that his custody be transferred from DHS to that of HHS. Ex. 2. DHS then released him. He has since resided in the United States, attended school in the United States, built a life in the United States, and the United States Government has approved his SIJS visa petition. Respondents now attempt to assert

[1] Until January 2025, expedited removal was used in certain situations when an individual had been in the country under 14 days. In January, DHS asserted that it would expand the expedited removal timeframe to two years. Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139; 8 C.F.R. § 235.3(b)(ii). This designation is currently stayed. *Make the Road New York v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025). As Bayron has been in the United States for over two years, he could not be subject to expedited removal even under the expanded designation.

that Petitioner has not yet entered the country, despite DHS's determination that he was already in the country with the approval of his SIJS petition (which requires applicants to be "in the United States").[2] *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (stating that section 1225(b) authorized detention for certain noncitizens "seeking admission" and that section 1226(a) and (c) authorized detention for certain noncitizens "already in the country"); *Alvarez Ortiz*, 2025 WL 3085032, at *10.

56. Upon information and belief, Petitioner was not, at the time of his 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) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason as well.

57. Among the several reasons Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), he has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14 (2003). As a person arrested inside the United States and held in civil immigration detention, Petitioner is subject to detention, if at all, pursuant to 8 U.S.C. § 1226(a). As such, he is entitled to a bond hearing, where the government bears the burden of proof to show that detention is justified by clear and convincing evidence that the noncitizen is a danger to society or a flight risk. *Aparicio-Larin v. Barr*, No. 6:19-cv-06293-MAT, at *6 (W.D.N.Y. Jul. 20, 2019).

58. At Bayron's bond hearing, the IJ found that the Immigration Court had jurisdiction to redetermine Bayron's custody because he was subject to discretionary

[2] USCIS: Special Immigrant Juveniles, https://www.uscis.gov/working-in-US/eb4/SIJ.

detention under 8 U.S.C. § 1226(a). Ex. 7. The IJ further found that Bayron was not a danger nor a flight risk and ordered his release. *Id.*

59. In its appeal, DHS relies on *Hurtado* to argue that Bayron "is properly detained pursuant to INA § 235(b)(2)(A) such that the [IJ] lacked authority to redetermine Bayron's custody." 29 I&N Dec. 216 at 225. However, in *Alvarez Ortiz*, the Western District of New York "join[ed] the majority of courts" in rejecting the BIA's reasoning in [*Hurtado*], explaining that DHS's new view — that "those who have entered the United States and those who have never entered the United States are one and the same" and thus all fall under 8 U.S.C. § 1225(b) — "is contrary to the agency's own implementing regulations, its published guidance, the decisions of its immigration judges (until very recently), decades of practice, the Supreme Court's gloss on the statutory scheme, and the overall logic of our immigration system." 2025 WL 3085032, at *1-2 (quoting *Romero v. Hyde*, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025)). Judge Vilardo found that section 1225(b)(2) "applies only to noncitizens already 'seeking admission' at or near the border or who have been paroled," and that noncitizens physically present in the United States but not admitted are instead detained under § 1226(a) and may seek bond. *Alvarez Ortiz*, 2025 WL 3085032, at *10.

60. On November 20, 2025, in *Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal.), the United States District Court for the Central District of California granted partial summary judgment in favor of petitioners, holding that petitioners were detained under 8 U.S.C. § 1226(a). Ex. 13 at 14.

61. On November 25, 2025, the same court granted class certification to other similarly situated individuals. Ex. 14. The class consists of the following individuals, who are now bond eligible:

> **Bond Eligible Class:** All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Id. at 15. As Petitioner falls in this class, he is eligible for a bond hearing. As he has already had a bond hearing and received a bond, the Court should remove the automatic stay and allow him to pay the bond. "When considering this determination with the [motion for summary judgment] Order, the Court extend[ed] the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *See id.* at 14.

IV. PETITIONER'S ONGOING DETENTION PURSUANT TO THE AUTOMATIC STAY IS UNCONSTITUTIONAL.

62. Bayron should have been released from custody upon posting bond shortly after the IJ adjudicated him eligible for release on bond on August 28, 2025. Almost three months later, DHS continues to detain him, invoking an "automatic stay" under 8 C.F.R. 10003.19(i)(2) during the pendency of its appeal of the bond decision before the BIA.[3]

[3] The automatic stay regulation was intended for significant safety threats and is not applicable to individuals such as Bayron. It was originally enacted in October 2001 in response to the September 11th terrorist attacks. The purported purpose of the automatic stay is to protect the public and "enhance agencies' ability to effect removal should that be the ultimate final order in a given case." Executive Office of Immigration Review; Review of Custody Determination, 71 Fed. Reg. 57873, 57874 (Oct. 2, 2006).

A. *The Automatic Stay is* Ultra Vires *Because Congress Never Authorized DHS to Override IJ Bond Orders.*

63. Congress granted the Attorney General discretion to decide whether to release detained noncitizens pending removal proceedings if they have not been convicted of certain criminal offenses and are not linked to terrorist activities. *See* 8 U.S.C. § 1226(a), (c). The Attorney General has delegated this authority to immigration judges, who have discretion to determine whether to release these noncitizens on bond. 8 C.F.R. §§ 1003.19, 1236.1; *see also* 28 U.S.C. § 510 (permitting the Attorney General to delegate her function to officers or employees within the Department of Justice).

64. Congress has *not* delegated this authority to DHS. There is no statutory authority for DHS to unilaterally stay an immigration judge's bond determination. DHS's use of the automatic stay is an unlawful use of the discretionary power granted to the Attorney General and "has the effect of mandatory detention of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention." *Zavala v. Ridge*, 310 F. Supp.2d 1071, 1079 (N.D. Cal. 2004); *see also Ashley v. Ridge*, 288 F. Supp.2d 662, 673 (D.N.J. 2003) ("As Congress specifically exempted aliens like the Petitioner from the mandatory detention of § 1226(c), it is unlikely that it would have condoned this back-end approach to detaining aliens like the Petitioner through the combined use of § 1226(a) and § 3.19(i)(2).").

B. The Automatic Stay Violates Petitioner's Constitutional Rights.

65. The automatic stay, which has been used to justify the majority of Bayron's months-long detention, is a violation of his due process rights. Courts around the

country have decided that continued detention pursuant to the automatic stay deprives individuals of liberty without due process of law.[4]

66. Courts have also taken issue with the conclusion that this automatic stay allows the losing party to unilaterally override the decision of an immigration judge and keep noncitizens detained without having to show any need for a stay or a likelihood of

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[4] *See J.M.P. v. Arteta*, 25 Civ. 4987 (DEH), 2025 WL 2984913, at *13 (S.D.N.Y. Oct. 23, 2025); *Vargas Lopez v. Trump*, No. 8:25 Civ. 526, 2025 WL 2780351, at *10 (D. Neb. Sept. 30, 2025) ("Indeed, no district court has concluded in 2025 — that is, since what appears to have been a change within the DHS over application of 8 C.F.R. § 1003.19(i)(2) — that the regulation comports with due process."); *Carlon v. Kramer*, No. 4:25 Civ. 3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Palma v. Trump*, No. 4:25 Civ. 3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25 Civ. 3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25 Civ. 11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Martinez v. Noem*, No. 5:25 Civ. 1007, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera v. Knight*, No. 2:25 Civ. 1366, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25 Civ. 3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25 Civ. 506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25 Civ. 494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Leal-Hernandez v. Noem*, No. 1:25 Civ. 2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25 Civ. 3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, No. 25 Civ. 3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Anicasio v. Kramer*, No. 4:25 Civ. 3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Garcia Jimenez v. Kramer*, No. 4:25 Civ. 3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, 786 F. Supp.3d 1149 (D. Minn. 2025); *Günaydin v. Trump*, 784 F. Supp.3d 1175 (D. Minn. 2025); *Maza v. Hyde*, No. 1:25 Civ. 12407, 2025 WL 2951922 (D. Mass. Oct. 20, 2025); *Merino v. Ripa*, No. 25 Civ. 23845, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Carlos v. Noem*, No. 2:25 Civ. 1900, 2025 WL 2896156 (D. Nev. Oct. 10, 2025); *Arcos v. Noem*, 4:25 Civ. 4599, 2025 WL 2856558 (S.D. Tex. Oct. 8, 2025); *Casun v. Hyde*, No. 25 Civ. 427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Quispe-Ardiles v. Noem*, No. 1:25 Civ. 1382, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *Luna Quispe v. Crawford*, No. 1:25 Civ. 1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Alves da Silva v. ICE*, No. 25 Civ. 284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Silva v. Larose*, No. 25 Civ. 2329, 2025 WL 2770639 (S.D. Cal. Sept. 29, 2025); *Singh v. Lewis*, No. 4:25 Civ. 96, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Hasan v. Crawford*, No. 1:25 Civ. 1408, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Barrera v. Tindall*, No. 3:25 Civ. 541, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Arce v. Trump*, No. 8:25 Civ. 520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25 Civ. 1542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *cf. Campos Leon v. Forestal*, No. 1:25 Civ. 1774, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025) (holding that automatic stay regulation exceeds congressional delegation of authority to DHS); *B.D.V.S. v. Forestal*, No. 1:25 Civ. 1968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025) (same).

success on appeal. *See, e.g., Sampiao v. Hyde*, 1:25-cv-11981-JEK at 22; *Günaydin v. Trump*, 784 F. Supp.3d 1175, 1187 (D. Minn. 2025); *Vazquez v. Feeley*, No. 2:25 Civ. 1542, 2025 WL 2676082, at *19 (D. Nev. Sept. 17, 2025). Courts have concluded that the erroneous deprivation of a noncitizen's liberty interest is "extraordinarily high" when DHS invokes the automatic stay. *Vazquez*, 2025 WL 2676082, at *19.

1. A *Mathews v. Eldridge* analysis requires Petitioner's release.

67. Respondents use of the automatic stay violates Petitioner's due process rights under the Fifth Amendment, according to the *Mathews v. Eldridge* analysis. 424 U.S. 319 (1976). Under that test, a court must weigh the following three factors: (1) the private liberty interest affected, (2) the risk of erroneous deprivation of that interest and the probable value of additional procedural safeguards, and (3) the Government's interest, including the function involved and the burdens that additional procedural requirements would create. *J.M.P. v. Arteta*, 25 Civ. 4987 (DEH), 2025 WL 2984913, at *15 (S.D.N.Y. Oct. 23, 2025) (citing *Black v. Decker*, 103 F.4th 133, 141, 151 (2d Cir. 2024)); *Alvarez Ortiz*, 2025 WL 3085032, at *13.

a. The Private Interest

68. Here, "the private interest affected by the official action is the most significant liberty interest there is — the interest in being free from imprisonment." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "Case after case instructs us that in this country liberty is the norm and detention 'is the carefully limited exception.'" *Id.* at 851 (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). While detention without an initial bond determination is permissible for a

limited period under 8 U.S.C. § 1226(c), where, as here, a petitioner has been "detained for far longer," his liberty interests are "more seriously infringed." *Black*, 103 F.4th at 141, 151.

69. Bayron has already been detained for four months. He faces indefinite detention during the pendency of the appeal. In assessing the first *Mathews* factor, courts also consider the conditions of confinement, including whether they are indistinguishable from criminal incarceration. *See Velasco Lopez*, 978 F.3d at 852 (noting that a noncitizen was incarcerated in conditions identical to those imposed on criminal defendants convicted of "violent felonies and other serious crimes"). During this time, Bayron has been confined in a tiny cell that he shares with one other person, with a toilet, little space to move — "about the size of a bathroom." Granda Decl. ¶¶ 15-16. Guards scream at him for minor, uncontrollable details such as the length of his pants — he tucks them into his socks to keep them clean — or the way he ties his long hair, and he reports officers use vulgar English insults directed at immigrants. *Id.* at ¶ 17.

b. Risk of Erroneous Deprivation

70. "The second *Mathews* factor is 'the risk of an erroneous deprivation of such [private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.'" *Black*, 103 F.4th at 152 (alteration in original) (quoting *Mathews*, 424 U.S. at 335). "The only interest to be considered at this part of the *Mathews* analysis is that of the detained individuals — not the government." *Id.* (citing *Hamdi*, 542 U.S. at 530).

71. There is a high risk of erroneous deprivation where there has already been an adversarial hearing and individualized consideration and determination, where a judge determined the government did not meet its burden of proof and ordered Bayron's

release. Ex. 7. This is especially high where Respondents do not need to make any showing or likelihood of success on the merits or the risk of irreparable injury. The automatic stay "is effectively a unilateral automatic stay pending appeal as of right to the losing party." *Herrera*, 2025 WL 2581792, at *10. By "conferring unreviewable discretionary authority in the [ ] prosecuting agency official," the automatic stay creates a "conflict of interest . . . that makes erroneous deprivation not just a risk, but likely." *Id.* at 11. Courts have further noted that this automatic stay "creates an 'extraordinarily high' risk of erroneous deprivation of a noncitizen's liberty interest because 'the text of the regulation provides no identifiable standard,'" and the regulation "provides no discernable process to guide the relevant agency official's decision, other than it must be invoked pursuant to undefined DHS review procedures, and the vague requirement that an official must certify that the stay has evidentiary and legal support." *Vazquez*, 2025 WL 2676082, at *19, *see also, e.g., Günaydin*, 784 F. Supp.3d at 1188.

c. Government Interest

72. The final *Mathews* factor considers the government's interest and any administrative or financial burdens associated with alternative procedures. *See* 424 U.S. at 335. The government has a valid interest in ensuring appearance at removal proceedings and preventing harms to the community. Certainly, there could be cases where an immigration judge made a mistake, and a stay was needed for valid reasons. Here, Respondents have no special or compelling justification to continue detaining Bayron (nor have they had to articulate any), and certainly not an interest that outweighs his interest in avoiding government restraint. *Velasco Lopez*, 978 F.3d at 854 (noting government's failure to state a valid interest "in the prolonged detention of noncitizens who are neither

dangerous nor a risk of flight"). Bayron poses no harm to the community. His future proceedings have been terminated. To the extent he may have future proceedings, he has significant interest in attending any future immigration hearings and maintaining his eligibility for lawful permanent resident status. He has attended all his hearings to date. Additionally, continued detention imposes significant costs on the government. Public interest likewise favors Petitioner, public interest favors keeping him with his religious community, and his family where he plays an important role in the day-to-day activities supporting his aunt and uncle with household tasks, as well as taking care of his niece.

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1226(a) and Associated Regulations

73. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

74. Petitioner may only be detained, if at all, pursuant to 8 U.S.C. § 1226(a).

75. Under section 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) and 1003.19(a)-(f).

76. Petitioner has had a bond hearing, an immigration judge has ordered bond, and Petitioner has not been released as required by law.

77. Petitioner's continued detention is therefore unlawful.

COUNT TWO

Violation of Fifth Amendment Right to Due Process
(Failure to Release Petitioner After An Individualized Bond Hearing)

78. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

79. The Due Process Clause of the Fifth Amendment specifically forbids the Government to "deprive[ ]" any "person . . . of . . . liberty . . . without due process of law."

80. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"); *cf. DHS v. Thuraissigiam*, 591 U.S. 103, 139-40 (2020) (holding noncitizens due process rights were limited where the person was not residing in the United States, but rather had been arrested 25 yards into U.S. territory, apparently moments after he crossed the border while still "on the threshold").

81. "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. 678 at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

82. It is undisputed that Bayron has a right not to be detained arbitrarily. *See Velasco Lopez v. Decker*, 979 F.3d 842, 849-50 (2d Cir. 2020) (recognizing that prolonged civil immigration detention triggers due process concerns: "Case after case instructs us that

in this country liberty is the norm and detention is the carefully limited exception") (internal quotation and citation omitted).

83. Petitioner was arrested inside the United States and is being held despite an immigration judge ordering his release on bond.

84. The Court should find that 8 C.F.R. § 1003.19(i)(2) is unconstitutional as applied to Bayron, who is neither a danger to the community nor a flight risk. *J.M.P. v. Arteta*, 2025 WL 2984913, at *24 (granting section 2241 habeas where DHS used 8 C.F.R. § 1003.19(i)(2) and a same-day BIA "discretionary" stay to nullify an IJ's bond order because "the Court has been presented with no governmental interest that justifies J.M.P.'s continued detention in spite of the IJ's decision, given the significant private liberty interest at stake and the high risk of error associated with the particular stay procedures employed by DHS here"); *Günaydin*, 784 F. Supp.3d at 1190 ("In conclusion, all three *Mathews* factors favor [the Petitioner's] position, and the Court concludes the automatic stay regulation at § 1003.19(i)(2) violates [the Petitioner's] procedural due process rights under the Fifth Amendment.").

85. Petitioner's continued detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT THREE

Violation of Fifth Amendment Right to Due Process (Substantive Due Process)

86. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

87. Even though Petitioner has been provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that

immigration detention bears a "reasonable relation" to the purposes of immigration detention (*i.e.*, the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. 532-33 (Kennedy, J., concurring).

88. In issuing an automatic stay, Respondents transformed a reasoned custody determination into a formality. *J.M.P. v. Arteta*, 2025 WL 2984913, at *24 (holding that DHS's use of an automatic stay "nullified the IJ's bond determination . . . rendering the bond hearing a mere formality").

89. The government's continued detention of Bayron is not supported by any special interest or compelling justification that outweighs his liberty interest. The application of the automatic stay violates Bayron's substantive due process rights.

90. Petitioner's detention is therefore unlawful, regardless of which statute might apply to purportedly authorize such detention.

COUNT FOUR

Violation of Fourth Amendment (Unreasonable Seizures)

91. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

92. The Fourth Amendment guarantees that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . . the persons of things to be seized."

93. Except at the border and its functional equivalents, the Fourth Amendment prohibits Respondents from conducting a detentive stop to question a person without reasonable suspicion that a person is a noncitizen unlawfully in the United States.

United States v. Brigoni-Ponce, 422 U.S. 873, 884 (1975) ("Except at the border and its functional equivalents, patrolling officers may stop vehicles only if they are aware of specific articulable facts, together with rational inferences therefrom, reasonably warranting suspicion that the vehicles contain aliens who may be illegally in the country.").

94. There was no probable cause to arrest Bayron without a warrant.

COUNT FIVE

Violation of 8 U.S.C. § 1357(a)(2)
(Warrantless Arrest Without Probable Cause of Flight Risk)

95. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

96. 8 U.S.C. § 1357(a)(2) requires that arrests without a warrant be accompanied by "reason to believe" that an individual is "likely to escape before a warrant can be obtained for his arrest."

97. There was no probable cause to arrest Bayron without a warrant and, given his approved SIJS and strong interest in obtaining lawful permanent resident status, there was no reason to believe that he was likely to escape before a warrant for his arrest was obtained.

COUNT SIX

***Ultra Vires* Regulation**

98. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

99. Congress gave the Attorney General authority to detain or release noncitizens, pending their removal proceedings. The Attorney General has delegated that authority to IJs.

100. The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), purports to give DHS the authority to unilaterally override the IJ's decision. It is unlawful and *ultra vires*.

PRAYER FOR RELIEF

Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;

2. Order, on an emergency basis, that Petitioner shall not be transferred outside the Western District of New York until further notice from this Court;

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 as void or, in the alternative, orders that Petitioner can pay the bond notwithstanding the discretionary stay issued by the BIA; (3) declares that the automatic stay under 8 C.F.R. § 1003.19(i)(2) is unconstitutional and unlawful; and (4) lifts the automatic stay so that Petitioner can pay the bond issued by the IJ and be released from detention.

6. Issue a Writ of Habeas Corpus directing Respondents to immediately release the Petitioner;

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

8. Order any further relief this Court deems just and proper.

Dated: Buffalo, New York
November 26, 2025

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I submit this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I verify that the statements made in this Amended Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: Buffalo, New York
November 26, 2025

PHILLIPS LYTLE LLP

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