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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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XAVIER FRANCISCO CARRILLO  
FERNANDEZ,

Plaintiff,

v.

Jason KNIGHT, Acting Las Vegas/Salt Lake  
City Field Office Director, Enforcement and  
Removal Operations, United States  
Immigration and Customs Enforcement (ICE);  
John MATTOS, Warden, Nevada Southern  
Detention Center; Kristi NOEM, Secretary,  
United States Department of Homeland  
Security; Pamela BONDI, Attorney General of  
the United States; Executive Office for  
Immigration Review,

Defendants.

**PETITION FOR WRIT OF HABEAS  
CORPUS**

Case No.

Judge:

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Plaintiff, XAVIER FRANCISCO CARRILLO FERNANDEZ (“Mr. Carrillo”), by and through counsel, complain of the Defendants, Jason Knight, in his official capacity as Acting Las Vegas/Salt Lake City Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); John Mattos, in his official capacity as Warden of

the Nevada Southern Detention Center; Kristi Noem in her official capacity as Secretary of Homeland Security, United States Department of Homeland Security; Pamela Bondi in her official capacity as Attorney General of the United States; Executive Office for Immigration Review, as follows:

### **I. INTRODUCTION**

1. Counsel is an attorney that practices exclusively immigration law and is licensed to practice in and resides in Utah. Counsel has complied with LR IA 11-2 and the verified petition to allow counsel to represent the parties in this case has been filed.
2. Plaintiff, Mr. Carrillo, by and through above-named counsel of record, submits this Petition for Writ of Habeas Corpus against the above-named Respondents for unlawful detention. Mr. Carrillo's immigration alien number is 249-183-291.
3. Mr. Carrillo is an alien detained by Immigration & Customs Enforcement ("ICE") at the Nevada Southern Detention Center. He faces unlawful detention because the Department of Homeland Security (DHS) has concluded based on novel arguments that he is subject to mandatory detention even though an immigration judge ordered his release on bond. These novel arguments contradict decades of established law.
4. Mr. Carrillo is a 40-year-old native and citizen of Venezuela who has resided in the U.S. since 2023. He is the main breadwinner for his wife and stepdaughter who reside in Midvale, Utah as well as for his only daughter residing in Venezuela.

5. Mr. Carrillo was detained by ICE on July 31, 2025, while on his way to work. ICE refused to issue him a bond based on a new ICE policy interpreting detention statute that is unsupported by the law, its history and precedent as discussed below.

6. Mr. Carrillo then sought and was granted a bond redetermination hearing by the Immigration Judge (“IJ”)-Executive Office for Immigration Review (“EOIR”).

7. DHS argued Mr. Carrillo is an “applicant for admission” who is “seeking admission” and subject to mandatory detention under 8 USC § 1225(b)(2)(A). Under recent instructions by the current administration, DHS is apparently making similar arguments in every similar bond hearing around the country.

8. On August 14, 2025, the IJ agreed with Mr. Carrillo that he was not subject to mandatory detention and granted a bond of \$2,500.

9. DHS reserved appeal and then filed EOIR-43 invoking an automatic stay to his release on bond for the duration of the appeal with the Board of Immigration Appeals (“BIA”) which can take 10 or more months to resolve.

10. Mr. Carrillo’s detention on this basis violates the plain language of the Immigration and Nationality Act (“INA”) and due process. 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Plaintiff who were previously detained at the border, released on their own recognizance, and then were re-detained by ICE.

11. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like the petitioners, are charged as inadmissible for having entered the United States without inspection.

12. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Plaintiff.

13. In addition, the unilateral automatic stay of the IJ decisions granting bond filed on from EOIR-43, violates Mr. Carrillo's right to both procedural and substantive due process.

14. Accordingly, Mr. Carrillo seeks a writ of habeas corpus requiring that he be allowed to pay the bond granted by the Immigration Judge and be released immediately while the bond is on appeal.

## **II. JURISDICTION**

15. Mr. Carrillo is in the physical custody of Defendants. Plaintiff is detained at the Nevada Southern Detention Center in Pahrump, Nevada.

16. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

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

## **III. VENUE**

18. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for Nevada, the judicial district in which Plaintiff is currently detained. Thus, Plaintiff, a resident of Utah, and his attorney, who also resides in Utah are forced to file this action in Nevada solely because ICE moved Plaintiff from Utah to Nevada.

19. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in Nevada.

#### IV. REQUIREMENTS OF 28 U.S.C. § 2243

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

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

#### V. PARTIES

22. Plaintiff is a native and citizen of Venezuela who has been in immigration detention since July 31, 2025. After arresting Plaintiff in Midvale, Utah, ICE did not set bond and Petitioner requested review of his custody by an IJ. On August 14, 2025, Petitioner was granted a \$2,500 bond by an IJ at the Las Vegas Immigration Court over the opposition of DHS that argued that he was an “applicant for admission.” IJ Bond Order and Bond Memorandum Attached as Exhibit A.

23. Respondent Jason Knight is the Acting Director of the Las Vegas Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Knight is Petitioners' immediate custodian and is responsible for Petitioners' detention and removal. He is named in his official capacity.

24. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

25. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of aliens.

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

27. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings and appeals thereof.

28. Respondent John Mattos is employed by CoreCivic as Warden of the Nevada Southern Detention Center, where Petitioners are detained. He has immediate physical custody of Petitioners. He is sued in his official capacity.

## **VI. LEGAL FRAMEWORK**

29. The INA prescribes three basic forms of detention for the vast majority of aliens in removal proceedings.

30. First, 8 U.S.C. § 1226 authorizes the detention of aliens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes and then they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

33. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

34. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

35. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited

Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

36. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which all aliens who were not apprehended “arriving” at the border were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

37. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.<sup>1</sup>

38. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

39. ICE has adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped

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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>. Also available at <https://perma.cc/4Q6X-GAZC>.

providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to aliens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Diaz Martinez v. Hyde, et al.*, No. CV 25-11613-BEM, 2025 WL 204238, at \*2–3 (D. Mass. July 24, 2025).

40. Further, on September 5, 2025, the Board of Immigration Appeals (the “BIA”) under EOIR recently made ICE’s novel interpretation binding precedent under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA held that “under a plain language reading of ... 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens ... who are present in the United States without admission.” *Id.* at 225.

41. DHS’s interpretation, now binding precedent for all IJs under *Yajure Hurtado*, defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Plaintiff.

42. Section 1226(a) applies by default to all persons “pending a decision on whether the alien is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of an alien.”

43. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at \*12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

44. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

45. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

46. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Mr. Carrillo, who were previously detained at the border, released on their own recognizance, and then were re-detained by ICE.

47. A recent decision from the United States District Court for the District of Massachusetts, *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL [Docket Number Pending]

(D. Mass. Sept. 9, 2025), provides significant persuasive authority for this matter. In *Sampiao*, the court addressed a situation strikingly similar to Plaintiff's: a alien from Brazil entered the United States without inspection in October 2021, was arrested on a warrant under 8 U.S.C. § 1226, released on an Order of Recognizance, resided in the United States for over three years, and was later re-detained by ICE in July 2025. Like Plaintiff, Sampiao was subjected to ICE's assertion that § 1225(b)(2)(A) mandated his detention, despite his initial detention and release under § 1226(a). The court held that Sampiao's detention was governed by § 1226(a)'s discretionary framework, not § 1225(b)(2)(A), due to his arrest on a § 1226 warrant and subsequent release, aligning with the INA's plain text and decades of practice. This holding reinforces the argument that Plaintiff, who was similarly detained, released on recognizance, and later re-detained, remains subject to § 1226(a)

## **VII. DUE PROCESS VIOLATIONS**

48. DHS has continued to detain Plaintiff under a unilateral authority to stay the immigration court's bond under 8 C.F.R. §1003.19(f). First, the application of this regulation to the petitioners violates due process.

49. Second, Plaintiff contends that the regulation also facially violates substantive due process because it is not authorized by statute and provides the jailer with unfettered authority which implicates the fundamental right to be free from detention and is not narrowly tailored to meet the compelling government interest of protecting public safety.

50. Prior to 2001, detainees subject to discretionary detention under 8 U.S.C. § 1226(a) who were then granted bond by an immigration judge remained detained only if the BIA granted a

request to stay the bond order. 8 C.F.R. § 3.19(i)(2) (1998) (permitting the use of automatic stays only where the alien was subject to a mandatory detention statute).

51. In response to the terrorist attacks of September 11, 2001, the Immigration and Naturalization Service (INS) (now DHS) implemented an interim rule to expand its authority to issue automatic stays to prevent the effectuation of immigration judges' custody decisions pending their appeal. See Executive Office for Immigration Review; Review of Custody Determination, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001).

52. Although INS was previously required to seek an emergency stay from the BIA to prevent the immigration judge's order for release on bond, the new rule allowed the INS to unilaterally invoke an emergency stay at its own discretion to prevent the detainee's release. *Id.* Notes in the Federal Register explained that this revision would “allow the Service to maintain the status quo while it seeks review by the Board, and thereby avoid the necessity for a case-by-case determination of whether a stay should be granted[.]” *Id.* The INS emphasized that the stay was “a limited measure,” to be used only “where the Service determines that it is necessary to invoke the special stay procedure pending appeal.” *Id.*

53. The new rule raised due process concerns from its inception. Comments to the rule expressed strong opposition arguing that it violated the Fifth Amendment's Due Process Clause. *Id.*

54. A former INS General Counsel testified about his concerns regarding the agency's use of automatic stays because it was being used routinely and without careful calculation by the agencies of the merits of each bond case and in cases that involved nonviolent offenders. *See*

*David A. Martin, Preventive Detention: Immigration Law Lessons for the Enemy Combatant Debate, Testimony Before the National Commission on Terrorist Attacks Upon the United States, December 8, 2003*, 18 Geo. Immigr. L.J. 305 (2004).

55. Federal courts during that period of time following the 9/11 attacks concluded that the automatic stay provisions violated the due process rights of detainees. *Ashley v. Ridge*, 288 F. Supp. 2d 662, 673 (D.N.J. 2003) (finding that continued detention on the automatic stay despite the IJ's decision to grant bond violated procedural and substantive due process rights); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003) (finding the government goal of preventing the release of aliens posing a threat to national security was not served by the petitioner's ongoing detention and was outweighed by the petitioner's Fifth Amendment right to be free from detention); *See, e.g., Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 WL1514122 (N.D. Cal. June 17, 2005) (finding the automatic stay provision unconstitutional); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (same); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003).

56. In 2006, the EOIR promulgated the final rule with some notable changes. *See Executive Office for Immigration Review; Review of Custody Determination*, 71 Fed. Reg. 57873 (Oct. 2, 2006). The final rule added the requirement that any decision to invoke the automatic stay must be made by the Secretary of DHS and a senior legal official who must certify that sufficient factual and legal bases exist to justify continued detention. *Id.* at 57876. The rule also imposed some limitations by providing that the stay will lapse 90 days after filing the bond appeal unless DHS sought a discretionary stay. 8 C.F.R. § 1003.6(c) (2006).

57. The automatic stay regulation is a very rare and somewhat exceptional action in the first place. *See Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909 (Oct. 31, 2001) (describing the automatic stay as a “limited measure”); *See also Stacy L. Brustin, A Civil Shame: The Failure to Protect Due Process in Discretionary Immigration Custody & Bond Redetermination Hearings*, 88 Brook. L. Rev. 163, 225 n. 231 (2022) (providing data yielded from a DHS FOIA request showing considerable variance but revealing that, on average, DHS invoked an automatic stay twenty-six times per year over the last seven years).

58. Yet now it is being invoked categorically to stay an IJ bond decision that is contrary to ICE’s new policy, subjecting all persons who entered without inspection to mandatory detention under § 1225(b)(2)(A), regardless of whether they have been residing for years in this country without any criminal history.

59. The Constitution guarantees every person in the United States due process of law, including persons who are not United States citizens. *E.g., Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) (“The Supreme Court has long recognized that deportable aliens are entitled to constitutional protections of due process.” (citing *Yamataya v. Fisher*, 189 U.S. 86, 100–01, 23 S.Ct. 611, 47 L.Ed. 721 (1903))); *see also, e.g., Trump v. J.G.G.*, 604 U. S. —, —, 145 S. Ct. 1003, 1006, — L.Ed.2d — (2025) (per curiam) (“‘It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993))); *Zadvydas v. Davis*, 533 U.S. 678, (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.”).

60. To determine whether a civil detention violates a detainee's due process rights, courts apply a three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, “when considering due process challenges to [discretionary alien detention] other circuits ... have applied the *Mathews* test”).

61. Under *Mathews*, courts weigh the following three factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.

62. The private interest in this case is significant; being free from physical detention. The Supreme Court has found this to be “the most elemental of liberty interests.” *Hamdi v. Runsfeld*, 542 U.S. 507 at 529, 531, 124 S.Ct. 2633 (directing courts, when assessing the first *Mathews* factor, to consider only the petitioner's interests at stake in ongoing detention without consideration of the respondents' justifications for the detention (quotation omitted)); see also *Zadvydas v. Davis*, 533 U.S. 678, 690 (advising that an individual's interest in being free from detention “lies at the heart of the liberty that [the Due Process] Clause protects”).

63. Plaintiff is being held at the Nevada Southern Detention Center and experiencing the loss of contact with family and friends, loss of income and inability to provide for his family in the United States and in Venezuela, lack of privacy and lack of freedom. He is not being held in his home state of Utah where he at least could be visited regularly by his family.

64. The second *Mathews* factor is whether the challenged procedure creates a risk of erroneous deprivation of individual rights and whether there are alternative procedures that could ameliorate these risks. In these cases, the risk of deprivation is very high because Plaintiff and any other adversely affected individuals by the automatic stay are those who have already prevailed in a bond hearing before an immigration judge. The challenged regulation permits an agency official who is involved in the adversarial process and the non-prevailing party to unilaterally override the immigration judge's decision. This represents a conflict of interest disapproved by courts in other contexts. *See, e.g.*, 5 U.S.C. § 554(d)(2) (prohibiting agency employees engaged in prosecuting functions from participating in the adjudicatory decision); *Marcello v. Bonds*, 349 U.S. 302, 305–06 (1955) (holding that the special inquiry officer adjudicating over an immigration case cannot also undertake the functions of prosecutor in the same matter).

65. Other courts have agreed that a rule permitting a non-prevailing party to stay a judgment permitting release creates a risk of erroneous deprivation. *See e.g.*, *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, at 1078 (N.D. Cal. 2004) (noting that the automatic stay procedure “creates a potential for error because it conflates the functions of adjudicator and prosecutor”); *Ashley*, 288

F. Supp. 2d at 671 (concluding that the regulation creates a “patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified” (quotation omitted)); *Mohammed H. v. Trump*, --- F.Supp.3d ---- (2025) 2025 WL 1692739 (alien's Fifth Amendment right to due process was violated by government's invocation of automatic-stay provision of immigration regulations to keep alien in custody despite an immigration judge's (IJ) order that he be released on bond).

66. Further, the risk of erroneous deprivation of rights is increased because the automatic stay regulation does not require an agency official consider the facts of the case or make any case-by-case determinations. As noted above, the procedure additionally creates a potential for error because it conflates the functions of adjudicator and prosecutor. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 75 S.Ct. 757 (1955); *see also Ashley v. Ridge*, 288 F.Supp.2d at 662, 671 (It produces a patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversarial hearing that detention is justified.) In these cases, the same prosecutor who lost before the immigration judge in the bond hearing effectively overruled his decision as the adjudicator by invoking the automatic stay.

67. When considering a bond redetermination request and immigration judge must consider whether the applicant is a danger to society, a threat to national security or poses a flight risk. 8 U.S.C. § 1226(a) (2018); *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *see also Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112 (BIA

1999); 8 C.F.R. § 1236.1(c)(8). The IJ in this considered these factors carefully, reviewed all of the evidence and found that a low bond was appropriate. However, when invoking a stay of the bond, the agency official need not make any individualized review of the case or consider any of the factors.

68. The automatic stay does not include any standards for the agency official to satisfy and operates as an appeal of right rather than being an extraordinary remedy. The official need not introduce any proof, and it can effectively overrule the bond decision and keeps Plaintiff detained indefinitely. In so doing, the automatic stay rendered the continued detention arbitrary and gave Plaintiff no chance to contest the case for detention even though he had prevailed at the bond hearing before the IJ. *Mathews*, 424 U.S. at 348–49, 96 S.Ct. 893 (“The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.”) Invoking the automatic stay as the Government did here contorts § 1003.19(i)(2) into an unfair procedure. *Cf. Bridges*, 326 U.S. 135, 152–53, (administrative rules are designed to afford due process and to serve as “safeguards against essentially unfair procedures”).

69. Moreover, a stay of an order directing the release of a detained individual is an “especially” extraordinary step, because “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739 (1987). This is contrary to any other stay while on appeal or a stay of a court order in any other context where the party must make a strong showing that they are likely to ultimately prevail and

address the risk of irreparable injury and the balance of interests in order to obtain a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). No such requirements apply to the automatic stay regulation.

70. The regulation provides alternative procedural safeguards. Section 1003.19(i)(1) sets forth a procedure by which DHS may request an emergency stay of the immigration judge's custody determination from the BIA. The BIA then conducts an expedited preliminary review to determine whether a stay is warranted based on the individual circumstances and merits of the case. This process ameliorates the due process issues of § 1003.19(i)(2) while preserving the government's interest in preventing an erroneous release. *See Zavala*, 310 F. Supp. 2d at 1077 (concluding that 8 C.F.R. § 1003.19(i)(1) provides “an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner’s liberty interest”); *see also Bezmen*, 245 F. Supp. 2d at 451; *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025) (reaching same conclusion).

71. In the third step of the *Mathews* test, the court must weigh the private interests at stake and the risk of erroneous deprivation against the government’s interest in persisting with the regulation, including the fiscal and administrative burdens of a substitute procedural requirement. Given that the petitioners satisfy all the requirements for release on bond, it is difficult to see any legitimate purpose for continued detention. The process by which an immigration judge issues a bond redetermination accounts for the government’s safety and flight concerns.

72. If the purpose of the detention is not to facilitate deportation, protect against the risk of flight or danger to the community, then it must be solely for the purpose of incarceration and in this administration, motivated largely by politics.

73. Any government interest can be addressed by the regulation which provides a process to request a stay from the BIA pending appeal of the immigration judge's bond decision. 8 C.F.R. § 1003.19(i)(1). The government can do this in any case in which it believes that the IJ's decision was erroneous.

74. In this case, Plaintiff availed himself of the procedural safeguards by requesting a bond redetermination with evidence that he was not a flight risk, not a danger to the community and should be granted bond. The bond hearing was resolved entirely in his favor by the IJ granting a low bond. See 8 U.S.C § 1226. However, DHS unilaterally invoked a rarely used form EOIR-43 to stay the bond decision, without any individualized review of the cases instead of availing itself of the less punitive alternative procedure proscribed by the same regulation. The regulation on its face and its application to this case contain no risk factors of release violates due process.

75. The *Sampiao* decision further analyzed the application of 8 C.F.R. § 1003.19(i)(2), the automatic stay regulation, which stayed the IJ's bond order pending ICE's appeal. The court found this regulation unconstitutional as applied to *Sampiao*, a alien with established U.S. residency under § 1226(a), due to its deprivation of procedural due process without individualized review. This analysis is directly applicable to Plaintiff's situation, where the automatic stay similarly overrides the IJ's bond determination, suggesting that *Sampiao's* reasoning could persuade this Court to invalidate the stay in Plaintiff's case. Given the factual

parallels—initial § 1226 detention, release on recognizance, re-detention after residency, and an IJ bond order stayed by ICE—*Sampiao* serves as highly persuasive precedent supporting Plaintiff’s entitlement to release under § 1226(a) and due process protections.

### VIII. FACTS

76. Plaintiff is a native and citizen of Venezuela. He entered the United States without admission or parole on or about December 21, 2023. An immigration officer determined he was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), for entering without inspection.

77. He was then released on or about December 26, 2023, on his own recognizance under 8 USC § 1226. Notice of Custody Determination Attached as Exhibit B. He was simultaneously placed in removal proceedings and issued a Notice to Appear under 8 U.S.C. § 1229a.

78. Plaintiff came to the United States seeking asylum from persecution and torture at the hands of the Venezuelan Government. Over the next year and a half, he settled in Utah, filed an asylum application with the Salt Lake City Immigration Court on October 23, 2024, and integrated into his community.

79. Before being taken into custody, he resided in Midvale, Utah with his wife and his stepdaughter.

80. Mr. Carrillo was detained by undercover ICE agents on Thursday July 31, 2025, near his home in Midvale, UT while on his way to work. He was then transferred away from his family to the detention facility in Nevada.

81. His sole criminal record is three encounters with law enforcement in traffic-related stops.

82. Plaintiff promptly requested a custody redetermination hearing to seek release on bond, citing that he is not a risk to the community or at risk of fleeing as well as his family ties and long-term presence.

83. On August 14, 2025, the IJ held a hearing and granted Respondent's request, concluding that the court had jurisdiction to hear the case because Respondent "was charged under section 236(a) of the [INA]" and because Respondent "is a recent entrant to the United States within the past two years." IJ Bond Order and Bond Memorandum Attached as Exhibit A. The IJ found that Respondent "does not appear to be a danger to the community based on the record that he has committed traffic offenses" and that "his appearance at future proceedings may be ensured by a reasonable bond" of \$2,500. *Id.*

84. DHS promptly filed Form EOIR-43 on August 14, 2025, automatically staying Plaintiff's release from custody under 8 CFR § 1003.19(i)(2), and then a Notice of Appeal with the BIA on August 21, 2025. EOIR-43 form filed by ICE Attached as Exhibit C.

85. The bond appeal has been fully briefed by the parties and awaits a decision by the Board of Immigration Appeal. Following the BIA's decision on *Matter of Yajure Hurtado*, it is practically certain that the BIA will dismiss Plaintiff's appeal.

86. Meanwhile, the IJ held a final hearing on the merits of Plaintiff's asylum application on October 1, 2025. The IJ denied Plaintiff's asylum application and ordered him removed but then withheld his removal indefinitely under 8 U.S.C. § 1231(b)(3). For a grant of withholding of removal, an applicant has the burden of demonstrating that it is more likely than not that they will face persecution on account of a protected ground if returned to his country of origin, a

much higher standard than asylum. *INS v. Stevic*, 467 U.S. 407 (1984). The IJ held that Plaintiff had met such burden.

87. Mr. Carrillo has appealed against the IJ’s decision regarding his denied asylum application to the BIA. The BIA has not issued any briefing deadlines or scheduling orders for Plaintiff’s asylum appeal of the filing of this petition. While the case appeal is pending, the IJ’s removal decision is not yet final. 8 CFR 1241.1(a) (“An order of removal made by the immigration judge at the conclusion of proceedings under [8 U.S.C. § 1229a] shall become final [u]pon dismissal of an appeal by the Board of Immigration Appeals”).

88. While ICE’s unilateral stay remains in place, Plaintiff remains separated from his home state, his family, and is unable to provide for his family in the United States and in Venezuela.

#### **IX. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

89. Any appeal to the BIA of Plaintiff’s bond decision is futile and the Plaintiff could not appeal the decision because it was in his favor. DHS’ new policy was issued “in coordination with DOJ” which oversees the immigration courts. Based on the BIA’s decision in *Yajure Hurtado*, EOIR agrees with DHS’ arguments and has set their novel interpretation as precedent for all IJs stripping them of the ability of hearing bond cases for any persons present in the United States without admission. Further, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

**X. CLAIMS FOR RELIEF**

COUNT I

(Violation of the Immigration and Naturalization Act)

90. All the foregoing allegations are repeated and realleged as though fully set forth herein.

91. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all aliens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who were previously released under § 1226(a) and then re-apprehended by Defendants. Such aliens remain detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

92. The application of § 1225(b)(2) to Plaintiff unlawfully mandates his continued detention and violates the INA.

COUNT II

(Violation of Due Process)

93. All the foregoing allegations are repeated and re-alleged as though fully set forth herein.

94. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678 (2001).

95. The Ninth Circuit has held that “[r]emaining confined in jail when one should otherwise be free is an Article III injury plain and simple[.]” *Gonzalez v. United States Immigr. & Customs*

*Enft*, 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).

96. Plaintiff has a fundamental interest in liberty and being free from official restraint.

97. The government's continued detention of Plaintiff and the filing of the automatic stay of the bond after an IJ has granted a bond after making individualized findings that he is neither a flight risk nor a danger to others violates his right to procedural due process as applied to this case.

98. The automatic stay regulation also facially violates substantive due process because it applies only to situations in which an IJ has already determined the applicant is not a danger or flight risk and ordered him released. The regulation permits unilateral detention of individuals without a case-by-case determination at the unfettered discretion of the arresting agency. As such it violates the Due Process Clause.

99. Accordingly, this Court's intervention is needed.

#### **XI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Assume jurisdiction over this action;
2. Issue a writ of habeas corpus requiring that Respondents release Petitioners immediately;
3. Grant the attorney's fees and costs of court to the Plaintiff under the Equal Access to Justice Act ("EAJA"), and on any other basis justified under law; and
4. Award such further relief as the Court deems necessary or proper.

RESPECTFULLY SUBMITTED this November 11, 2025.

**TRUJILLO | ACOSTA LAW**

/s/ Christopher Vizcardo  
Christopher Vizcardo  
*Attorney for Plaintiff*

**EXHIBITS LIST**

- A. IJ Bond Order and Bond Memorandum
- B. Notice of Custody Determination and other relevant border documents
- C. EOIR-43 form filed by ICE to stay the bond for Plaintiff