

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

E.M.M.,

Petitioner,

v.

Judith ALMODOVAR, Acting Director, New York City Field Office, U.S. Immigration and Customs Enforcement; Paul ARTETA, Director of the Orange County Correctional Facility; Teresa L. RILEY, Acting Chief Immigration Judge, Executive Office of Immigration Review; Daren K. MARGOLIN, Director, Executive Office of Immigration Review; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Case No. 1:25-cv-9592

AMENDED VERIFIED PETITION
FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT REQUESTED

PRELIMINARY STATEMENT

1. Petitioner E.M.M. is detained in Immigration and Customs Enforcement (“ICE”) custody despite an immigration judge’s (“IJ”) order to release him on bond, which was automatically and unilaterally stayed and was then vacated solely based on agency precedent in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

2. E.M.M. is a 36-year-old man who has lived in New York for about 18 years. E.M.M. is the father of an  son. He worked in landscaping and cleaning swimming pools. He faithfully attended a Catholic Church near his home, relying on his faith community as he grieved the recent loss of his brother.

3. But E.M.M.'s life was completely upended on May 19, 2025, when armed ICE officers entered a friend's home where he had spent the night and held him at gunpoint in the bed where he was sleeping. The ICE officers proceeded to handcuff him and take him away without any explanation.

4. E.M.M.'s detention, spanning over six months, has become prolonged. Notwithstanding the IJ's findings that E.M.M. does not pose a danger or a flight risk to prevent release on bond, Respondents have condoned ICE's ongoing detention by, first, unilaterally applying automatic stay provisions in DHS's favor and then, on November 20, 2025, holding that the IJ is entirely stripped of authority to grant E.M.M. bond based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which applies a novel and illogical reading of the statute since rejected by numerous federal courts across the country. *See infra* at Section II, note 3.

5. As such, E.M.M. requests this Court to remedy his unlawful detention by ordering his immediate release in accordance with the IJ's bond order.

PARTIES

6. Petitioner E.M.M. is currently detained at the Orange County Correctional Facility, also known as the "Orange County Jail," in Goshen, New York. *See* ICE, "Orange County Jail," <https://www.ice.gov/detain/detention-facilities/orange-county-jail> (last accessed Nov. 14, 2025). He has been in ICE custody for nearly six months since May 19, 2025, when ICE officers entered a friend's residence in Huntington Station, New York and detained him.

7. Respondent JUDITH ALMODOVAR is named in her official capacity as the Acting Field Office Director for ICE's New York City Field Office. She is responsible for the administration of immigration laws and the execution of detention warrants and removal orders.

8. Respondent PAUL ARTETA is named in his official capacity as the Sheriff of Orange County and the Director of the Orange County Correctional Facility.

9. Respondent TERESA L. RILEY is named in her official capacity as the Acting Chief Immigration Judge for the Executive Office of Immigration Review (“EOIR”), the sub-agency within the Department of Justice (“DOJ”) that administers the nation’s immigration courts and the BIA. She is responsible for oversight of the Varick Street Immigration Court and presides over removal and bond proceedings.

10. Respondent DAREN K. MARGOLIN is named in his official capacity as the Director of EOIR. He is responsible for the policies and operations of the immigration courts.

11. Respondent PAMELA BONDI is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the DOJ.

12. Respondent KRISTI NOEM is named in her official capacity as the Secretary of the Department of Homeland Security (“DHS”). She directs each of the component agencies within DHS, including ICE.

13. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws.

JURISDICTION & VENUE

14. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. § 2201 (Declaratory Judgment). The Court has jurisdiction in equity to order Petitioner’s immediate

release from unlawful custody. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“The typical remedy [for unlawful detention] is, of course, release.”) (citation omitted).

15. Venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. E.M.M. is incarcerated within this District; his underlying immigration proceedings are venued here; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this District.

STATEMENT OF FACTS

16. E.M.M. is a 36-year-old man who has lived in New York for 18 years of his life before he was detained by Respondents. *See* Declaration of E.M.M. (“E.M.M. Decl.”) ¶ 2, ECF No. 1-2.

17. E.M.M. has close relationships with family, his partner, and friends during the many years he has lived in New York. *Id.* ¶¶ 21-23. His 11-year-old-son lives in New York, and E.M.M. supports him emotionally and financially. *Id.* ¶ 22.

18. While living in New York, E.M.M. has worked hard to support himself and his family. *Id.* ¶ 24. Most recently, he worked in landscaping and cleaning swimming pools. *Id.* He also was self-employed for many years working in construction. *Id.*

E.M.M.’s Detention by ICE

19. On the morning of May 19, 2025, armed ICE agents entered E.M.M.’s friend’s home in Huntington Station, New York without permission and without explanation. *Id.* ¶¶ 7-8.

20. E.M.M. had stayed the prior night at his friend’s home and awoke the morning of May 19, 2025 to loud banging on the exterior apartment door. *Id.* ¶ 7.

21. Seconds later, armed ICE agents entered the apartment yelling “police.” *Id.* ¶¶ 8-9. E.M.M.’s friend opened the bedroom door and the armed ICE agents grabbed E.M.M.’s friend and pushed him against the wall. *Id.* ¶ 10.

22. The ICE agents proceeded to point their guns at E.M.M. who was still in bed and told him to put his hands in the air. *Id.* ¶ 11. E.M.M. felt extreme fear that the agents would shoot him, and he felt he had no other choice than to follow their instructions. *Id.*

23. The ICE agents then forcefully handcuffed E.M.M.—still half-clothed having been abruptly taken from where he had been sleeping— and brought E.M.M. outside the apartment to an unmarked vehicle. *Id.* ¶¶ 14, 16. E.M.M. was not shown or served a warrant when he was arrested. *Id.* ¶ 12.

24. E.M.M. was taken in the unmarked vehicle to another location in Long Island, New York and then to a location in Manhattan. *Id.* ¶¶ 18-19. The ICE agents did not permit E.M.M. to call any of his loved ones at these locations to inform them that he had been taken away. *Id.* ¶ 19.

25. Then, the ICE agents put E.M.M. in a van bound for the Orange County Jail, where he currently remains detained. *Id.* ¶ 20.

26. DHS generated a Form I-200 administrative warrant, dated May 19, 2025, which states it was issued pursuant to INA § 236, 8 U.S.C. § 1226. *See* Exh.D, Form I-200, ECF No. 1-5. On the Form I-200, DHS failed to check the relevant box to note what, if any, probable cause justified E.M.M.’s arrest. *Id.*

Immigration Court Custody Proceedings

27. On August 11, 2025, E.M.M. appeared for a custody redetermination hearing before the Varick Street Immigration Court. Declaration of Irma Calderon (“Calderon Decl.”) ¶

19, ECF No. 1-1. Both parties had the opportunity to submit evidence into the record for the IJ's consideration. *Id.* at ¶ 16; *see also* 8 U.S.C. § 1003.19(d). E.M.M. submitted both legal briefing and evidence in support of his request for release on bond. *Id.* at ¶ 17. DHS did not present any submission to the immigration court prior to or during the hearing. *Id.* at ¶ 18.

28. On August 11, 2025, the IJ conducted the custody redetermination hearing, at which E.M.M. bore the burden of proving he was not a danger to the community or a flight risk. Exh. B, IJ Bond Order, ECF No. 1-3; Exh. C, Memorandum & Orders of the Immigration Judge ("IJ Bond Memo"), ECF No. 1-4.

29. After the hearing on August 11, 2025, the IJ issued a decision,¹ including two significant findings. *See* Exh. C, IJ Bond Memo, ECF No. 1-4. First, the IJ concluded that E.M.M. was detained pursuant to 8 U.S.C. § 1226(a) rather than pursuant to 8 U.S.C. § 1225(b). *Id.* at 2-4. Second, the IJ concluded that E.M.M. met his burden that he does not represent a danger to the community and a minimal flight risk is mitigated by a bond of \$7,500. *Id.* at 3-4.

30. The IJ's decision ordered as follows:

IT IS HEREBY ORDERED that the Respondent's request for a change in custody status be **GRANTED**; and
IT IS FURTHER ORDERED that the Respondent post bond in the amount of **\$7,500**.

Id. at 4.

¹ On August 11, 2025, the IJ issued a short order granting E.M.M. release on bond. *See* Exh. B, IJ Bond Order, ECF No. 1-3. Then, on August 29, 2025, following DHS's appeal of the IJ's custody decision, the IJ issued a written memorandum in support of the bond order. *See* Exh. C, IJ Bond Memo, ECF No. 1-4.

DHS's Automatic Stay

31. The same day of the bond hearing, on August 11, 2025, DHS filed a Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination, with the IJ. *See* Exh. E, Form EOIR-43, ECF No. 1-6.

32. On August 21, 2025, DHS filed its appeal of the IJ's custody order, attaching a "EOIR-43 Senior Legal Official Certification." Calderon Decl. ¶ 22, ECF No. 1-1. This certification listed E.M.M.'s A-number, but appeared to be a template form, containing no individualized assessment of E.M.M.'s case. *Id.*

33. The BIA issued a filing receipt for the appeal filed by DHS. *See* Exh. E, BIA Receipt for Appeal, ECF No. 1-7. The receipt contained generic language regarding "Autostay Bond Appeals." *Id.* at 2. The receipt stated that the automatic stay would expire 90 days from the date of receipt of DHS's appeal, and if the BIA granted a request for additional briefing time, then the 90-day automatic stay period would be tolled for the same number of days. *Id.*

34. On September 15, 2025, E.M.M. requested an extension of the bond appeal briefing schedule, which the BIA granted until October 23, 2025. Calderon Decl. ¶ 25, ECF No. 1-1.

35. On October 22, 2025, E.M.M. submitted his brief in opposition to DHS's appeal of the IJ bond order. *Id.* ¶ 26.

BIA's Decision Vacating the IJ's Bond Order

36. On November 20, 2025, the BIA granted DHS's custody appeal and vacated the IJ's bond order solely based on its intervening precedential decision in *Matter of Yajure Hurtado*, asserting that E.M.M. is detained under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for bond. *See* Joint Letter, ECF No. 8-1 (citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 226

(BIA 2025). The BIA’s order did not revisit the IJ’s findings regarding flight risk and danger, even in the alternative. *Id.*

LEGAL BACKGROUND

I. Due Process Clause

37. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

38. Due Process requires that there be “adequate procedural protections” to ensure that the government’s asserted justification for a noncitizen’s physical confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing danger to the community and mitigating the risks of flight. *Id.*; *Demore*, 538 U.S. at 528. A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

39. “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To determine what process is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government’s interest in maintaining the current procedures, including the

governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Id.* at 335.

II. Detention Authority under the Immigration and Nationality Act

40. Title 8 of the United States Code, Section 1221 et seq., of the Immigration and Nationality Act (“INA”), controls the U.S. government’s authority to detain noncitizens during their removal proceedings.

41. The INA authorizes detention for noncitizens under four distinct provisions: 8 U.S.C. § 1226(a) (authorizing discretionary detention pending removal proceedings); 8 U.S.C. § 1226(c) (mandating detention of certain noncitizens removable for certain criminal or terrorist-related activity); 8 U.S.C. § 1225(b) (authorizing detention of noncitizens seeking admission at or near the border); and 8 U.S.C. § 1231(a) (authorizing detention following an order of removal).

42. First, under 8 U.S.C. § 1226(a), individuals who are taken into immigration custody pending a decision on whether they are to be removed can be detained but are generally entitled to seek release on bond. The bond may be set by ICE itself as part of an initial custody determination, *see* 8 C.F.R. § 1236.1(c)(8), and/or the individual may seek a bond hearing in immigration court, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Section 1226(a) is the statute that, for decades, has been applied to people like E.M.M who have been living in the United States and are charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i).

43. Second, while 8 U.S.C. § 1226(a) provides the general right to seek release on bond, 8 U.S.C. § 1226(c) carves out discrete categories of noncitizens from being released—including certain noncitizens inadmissible for criminal or terrorist-related activity—and subjects them instead to mandatory detention. *See, e.g.*, 8 U.S.C. §§ 1226(c)(1)(A), (C).

44. Third, the INA provides for no-bond detention of certain recently arrived noncitizens, namely those subject to expedited removal under 8 U.S.C. § 1225(b)(1), and other recent arrivals seeking admission under § 1225(b)(2). *See Jennings*, 583 U.S. at 287, 289 (explaining that § 1225(b)(2)’s mandatory detention scheme applies “at the Nation’s borders and ports of entry” to noncitizens “seeking admission into the United States.”). Section 1225(b)(2) is the statute that DHS argued before the immigration court was applicable to E.M.M. as to his custody.

45. Fourth, the INA also provides for detention of noncitizens who have already been ordered removed, *see* 8 U.S.C. § 1231. Section 1231 is not relevant here.

46. Here, the discretionary detention provisions at 8 U.S.C. § 1226(a) apply to E.M.M.’s case contrary to Respondents’ assertions that 8 U.S.C. § 1225(b)(2) applies to E.M.M. Notably, when DHS detained E.M.M. on May 19, 2025, its own documentation noted that his detention was pursuant to 8 U.S.C. § 1226(a). *See* Exh. D, Form I-200, ECF No. 1-5.

47. 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, 582–583, 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).

48. In the three decades that followed IIRIRA, people who entered without inspection and were subsequently placed in removal proceedings received bond hearings if ICE chose to detain them, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” 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)); *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 n.6. (BIA 2025) (“We acknowledge that for years Immigration Judges have conducted [§ 1226(a)] bond hearings for [noncitizens] who entered the United States without inspection.”).

49. In decision after decision, federal courts—both nationwide and here in the Southern District of New York—have rejected Respondents’ reinterpretation of the statutory scheme as to individuals like E.M.M., and have held that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended while seeking admission to the United States.²

² *Villegas ex rel. Guzman Andujar v. Francis*, No. 1:25-CV-09199 (JLR), 2025 WL 3215597 (S.D.N.Y. Nov. 18, 2025); *Guzman Cardenas v. Almodovar*, No. 25-CV-9169 (JMF), 2025 WL 3215573 (S.D.N.Y. Nov. 18, 2025); *Rueda Torres v. Francis*, No. 25 CIV. 8408 (DEH), 2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025); *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142 (S.D.N.Y. Oct. 28, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Lopez Benitez v. Francis et al.*, No. 1:25 cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *see also* Order Granting Emergency TRO, *Mendoza Gutierrez v. Baltazar*, No. 1:25-cv-02720-RMR (D. Colo. Oct. 17, 2025), ECF No. 33; *Alvarez v. Noem*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Hernandez v. Crawford*, No. 1:25-CV-01565-AJT-WBP, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025); *J.S.H.M. v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025 WL 2938808 (E.D. Cal. Oct. 16, 2025); *Ochoa v. Noem*, No. 5-CV-10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025); *Puga v. Asst. Field Office Dir.*, No. R25-24535-CIV, 2025 WL 2938369 (S.D. Fla. Oct. 15, 2025); *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Sequen v. Albarran*, No. 25-CV-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Singh v. Lyons*, No. 1:25-CV-01606-AJT-WBP, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Alejandro v. Olson*, No. 1:25-CV-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind. Oct. 11, 2025); *Castillo v. Lyons*, No. 25-CV-16219 (MEF), 2025 WL 2940990 (D.N.J. Oct. 10, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156 (D. Nev. Oct. 10, 2025); *Ballestros v. Noem*, No. 3:25-CV-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Chavez v. Kaiser*, No. 25-CV-06984-LB, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025); *Donis v. Chestnut*, No. 1:25-CV-01228 JLT SAB, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Eliseo A.A. v. Olson*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *S.D.B.B. v. Johnson*, No. 1:25-CV-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-CV 5208 (OEM), 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025);

50. As court after court has explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like E.M.M. who are present in the United States. Section 1225(b)(2)(A) requires several conditions, including that the individual is “seeking admission,” which requires that an individual “*continue[s]* to want to go *into* the country.” *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (emphasis in original); *see also Tumba Huamani v. Francis*, No. 25-CV-8110 (LJL), 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025). As such, this language would not apply to a person already inside the United States. This plain text reading is buttressed by the context of § 1225, which applies to individuals arriving in the country rather than a person already present in the United States. *Id.* (noting title of § 1225(b)(2) relating to *inspection* of noncitizens and its provisions listing classes of excludable noncitizens like crewman and stowaways).

51. Accordingly, the no-bond detention provision of 8 U.S.C. § 1225(b)(2) does not apply to people like E.M.M. who have already entered and were residing in the United States

Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Barrios v. Shepley*, No. 1:25-CV-00406-JAW, 2025 WL 2772579 (D. Me. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Roa v. Albarran*, No. 25-CV-07802-RS, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Barrajas v. Noem*, No. 4:25-CV-00322-SHL-HCA, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Choglló Chafila v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541 (D. Me. Sept. 22, 2025); *Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Pizzaro Reyes v. Raycraft*, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025).

(and here, for well over a decade) at the time they were apprehended by immigration authorities and detained.

III. The Automatic Stay Regulation is Unconstitutional

52. The automatic stay provision, formerly only invoked in limited, exceptional circumstances, is now being invoked indiscriminately by DHS. *See generally J.M.P. v. Arteta*, No. 25 CIV. 4987 (DEH), 2025 WL 2984913, at *11 (S.D.N.Y. Oct. 23, 2025). A clear consensus has emerged across the country that the automatic stay is unlawful. In 2025, dozens of decisions have examined the automatic stay scheme and in each of these cases, the district courts have found its use unconstitutional.³ In many of these cases, such as the instant case, DHS's use of this extraordinary measure to unilaterally prevent an IJ-issued release order from going into

³ *See J.M.P.*, 2025 WL 2984913, at *24; *Souza v. Hyde*, No. 25-CV-12461-DJC, 2025 WL 2997670 (D. Mass. Oct. 24, 2025); *Maza v. Hyde*, No. 1:25-CV-12407-IT, 2025 WL 2951922 (D. Mass. Oct. 20, 2025); *Carlos*, 2025 WL 2896156, at *5; *Arcos v. Noem*, No. 4:25-CV-04599, 2025 WL 2856558, at *3 (S.D. Tex. Oct. 8, 2025); *B.D.V.S. v. Forestal*, No. 1:25-CV-01968-SEB-TAB, 2025 WL 2855743, at *3 (S.D. Ind. Oct. 8, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800, at *8, 10 (E.D. Va. Sept. 30, 2025); *Silva v. Larose*, No. 25-CV-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sept. 29, 2025); *Alves da Silva v. U.S. Immigr. & Customs Enft, et al.*, No. 25-CV-284-LM-TSM, 2025 WL 2778083, at *6 (D.N.H. Sept. 29, 2025); *Luna Quispe v. Crawford*, No. 1:25-CV-1471-AJT LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Campos Leon v. Forestal*, No. 1:25-CV 01774-SEB-MJD, 2025 WL 2694763, at *5 (S.D. Ind. Sept. 22, 2025); *Singh*, 2025 WL 2699219, at *5; *Hasan*, 2025 WL 2682255; *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Maldonado Vazquez*, 2025 WL 2676082; *Carlton v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao*, 2025 WL 2607924; *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera*, 2025 WL 2581792; *Carmona-Lorenzo v. Trump*, No. 4:25-CV-3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25-CV-506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25-CV-494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Leal-Hernandez*, 2025 WL 2430025; *Jacinto*, 2025 WL 2402271; *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Anicasio v. Kramer*, No. 4:25-CV 3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-CV-3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, No. 25-cv-1576, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025); *Gunaydin*, 784 F. Supp. 3d at 1187.

effect appears to bear no relationship to any legitimate governmental objectives, as DHS continues to target noncitizens with no criminal convictions, like E.M.M.

A. History of the Automatic Stay Provisions

53. Enacted just one month after the events of September 11, 2001, the 2001 automatic stay regulation was a drastic change, which passed without public comment. In authorizing publication of the rule, then Attorney General John Ashcroft called the notice and comment process “impracticable, unnecessary, and contrary to the public interest.” 66 Fed. Reg. 54909, 54911 (Oct. 31, 2001) (internal quotation marks omitted).

54. “The Attorney General articulated several bases for the necessity of the automatic stay provision: (1) a concern that with the passage of time, there would be an increased risk that a dangerous [noncitizen] may be released; (2) the need to avoid a case-by-case determination of whether a stay should be granted in cases in which the Service had already determined that the [noncitizen] should be kept without bail or with bail in excess of \$10,000; and, (3) a concern that the time difference between the east and west coast would permit the release of a dangerous [noncitizen] after the Board had closed for the day, effectively eliminating the opportunity for an emergency appeal of the immigration judge’s release order.” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076–77 (N.D. Cal. 2004) (citing 66 Fed. Reg. at 54910).

55. To be perfectly clear: “the purpose for the automatic stay provision is to prevent the [noncitizen] from fleeing and to protect the public from harm.” *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003). And where, as here, the IJ has already made a determination as to a noncitizen’s danger and flight risk, the purpose of the automatic stay provision is fulfilled or assuaged. The court in *Zavala* found exactly that: “The Immigration Judge, after a full hearing, including the presentation of evidence and a full opportunity for cross-examination, determined

that Petitioner did not pose a danger to the community nor a significant flight risk, and released him on a \$5,500 bail. The bond determination by the Immigration Judge already addressed the government's stated safety concerns." *Zavala*, 310 F. Supp. 2d at 1076–77.

56. In fact, in any situation in which the automatic stay is invoked, an IJ and/or the BIA necessarily already decided that the noncitizen is neither a flight risk nor a danger to the community and therefore has also addressed DHS's concerns that formulate the purpose of the automatic stay itself. And "where detention's goal is no longer practically attainable, detention no longer bears a reasonable relation to the purpose for which the individual was committed." *Zadvydas*, 533 U.S. at 690.

B. Mechanics of the Automatic Stay Scheme

57. *Automatic stay extending detention by 10 days and then 90 days.* In cases where DHS has initially determined that a noncitizen should not be released or DHS has set a bond of \$10,000 or more, DHS may file a simple one-page form, Notice of Service of Intent to Appeal Custody Redetermination (Form EOIR-43), that automatically stays an IJ's custody order and prevents a noncitizen's release on bond. *See* 8 C.F.R. § 1003.19(i)(2) ("automatic stay"). The IJ's order is initially automatically stayed for 10 business days during which DHS may file its Notice of Appeal from a Decision of an Immigration Judge on Form EOIR-26 with the BIA. 8 C.F.R. § 1003.6(c)(1). Then, after the filing of the EOIR-26, the automatic stay remains in place for up to 90 days while the BIA decides the appeal. 8 C.F.R. § 1003.6(c)(4). The automatic stay may be additionally extended to match an extended briefing schedule requested by the detained noncitizen. 8 C.F.R. § 1003.6(c)(4).

58. *Automatic stay extending detention by up to 30 days.* If the 90-day automatic stay lapses prior to the BIA's decision on the custody appeal, DHS may request a discretionary

stay pursuant to 8 C.F.R. § 1003.19(i)(1). If the BIA fails to adjudicate this discretionary stay motion before the automatic stay lapses, the automatic stay extends up to 30 more days while the BIA decides DHS's discretionary stay request. 8 C.F.R. § 1003.6(c)(5).

59. *Automatic stay extending detention by 5 additional days.* If the BIA authorizes the release of the person who was granted bond, denies a motion for a discretionary stay, or fails to act on the discretionary stay motion before the expiration date, another automatic stay of 5 business days (and potentially 7 calendar days) applies. 8 C.F.R. § 1003.6(d). During this 5-day period, the detained noncitizen may not be released on bond. *Id.* And the Secretary of Homeland Security or other designated official may refer the case to the Attorney General. *Id.*

60. *Automatic stay extending detention indefinitely.* If a referral by DHS to the Attorney General occurs, the person's release "shall continue to be stayed pending the Attorney General's consideration of the case." 8 C.F.R. § 1003.6(d). At this stage, the stay takes the form of either an automatic stay or discretionary stay. *Id.* At first, a 15-business day (and potentially a 21-calendar day) automatic stay applies after DHS refers the case to the Attorney General. *Id.* And then, DHS may submit a discretionary stay request to the Attorney General. *Id.* Furthermore, the use of "shall" in the plain text of regulations suggests a mandatory and potentially permanent stay, since the regulations set no time limits by which the Attorney General must decide the case.

61. As such, the stay may remain in place indefinitely. *See Arce*, 2025 WL 2675934, at *4 ("Once such a referral is made, the Attorney General can extend the stay indefinitely by ordering a discretionary stay pending disposition of the case. . . . The petitioner's detention, then, could last for months or years under the automatic stay regulation, notwithstanding his significant interest in freedom from physical confinement."); *Singh*, 2025 WL 2699219, at *4

(“The matter can also be referred to the Attorney General, who can stay the case indefinitely pending disposition. . . . As a result, [the petitioner] faces the possibility of months, or years, under the automatic stay.”); *Barrera*, 2025 WL 2690565, at *6 (finding that the automatic stay does not have a foreseeable end date); *see also Luna Quispe*, 2025 WL 2783799, at *8, n.15 (rejecting the government’s argument that detention cannot be indefinite because “the fact that Respondents may be required in the future to release Petitioner does not cure the procedural defect of invoking an automatic stay in contravention of the immigration judge’s release decision”).

62. In sum, viewed as a whole, the automatic stay scheme incrementally adds to a person’s length of detention at every stage and unilaterally in DHS’s favor. Under the automatic stay scheme (without considering detention per a discretionary stay), the length of potential detention may result in between 154 to 179 days after an IJ has already determined that an individual is neither a flight risk nor a danger to the society and thus detention is not justified.⁴ However, if the case is referred to the Attorney General, the detention period is indefinite.

C. The Automatic Stay Scheme Violated Due Process on Its Face and As Applied to E.M.M.

63. The application of the automatic stay in E.M.M.’s case violated due process and unlawfully prolonged his detention. As the Supreme Court has repeatedly instructed, freedom “from government custody, detention, or other forms of physical restraint” is at “the heart” of

⁴ This calculation considers: 10 days from the time DHS files its Form E-43 until filing its Notice of Appeal, 90 days after DHS files its Notice of Appeal, 30 days if DHS seeks a discretionary stay with the BIA, 5 business days or up to 7 calendar days during with DHS can refer the case to the Attorney General, and 15 business days or up to 21 calendar days after DHS refers the case to the Attorney General. 8 C.F.R. § 1003.19; 8 C.F.R. § 1003.6. Separately, a routine 21-day briefing extension from the BIA as requested by the detained noncitizen will also extend the auto-stay. 8 C.F.R. § 1003.6(c)(4).

what the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690; *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.”). This is particularly true in the context of civil detention. *See, e.g., Addington v. Texas*, 441 U.S. 418, 425 (1979) (“This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.”); *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997) (requiring “strict procedural safeguards” to justify involuntary civil commitment of certain sex offenders); *Foucha*, 504 U.S. at 81–82 (holding unconstitutional a state civil commitment “statute that place[d] the burden on the detainee to prove that he is not dangerous”).

64. E.M.M. has suffered due process violations because of DHS’s unilateral automatic stay, detaining him contrary to the IJ’s decision that he be released on bond.

1. The Automatic Stay Scheme Violated Procedural Due Process

65. To determine whether civil immigration detention violates a detained noncitizen’s procedural due process rights, courts in the Second Circuit apply the three-part test set forth in *Mathews*, 424 U.S. at 335. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (applying *Mathews* test to a challenge involving discretionary noncitizen detention).

66. Many district courts across the country have held that the automatic stay provision violates procedural due process under the *Mathews* three-part test. *See J.M.P.*, 2025 WL 2984913, at *11; *Leal-Hernandez*, 2025 WL 2430025, at *13; *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio*, 2025 WL 2374224, at *4;

Maldonado, 2025 WL 2374411, at *14; *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1186 (D. Minn. 2025).

67. The **first Mathews factor** requires consideration of the private interest affected by Respondents' invocation of the automatic stay provision. *Mathews*, 424 U.S. at 335. This factor weighs heavily in E.M.M.'s favor because E.M.M.'s interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

68. Additionally, the conditions of E.M.M.'s detention add weight to his private interest. When assessing this factor, courts consider the conditions under which detainees are currently held, including whether a detainee is held in conditions indistinguishable from criminal incarceration. *See Velasco Lopez*, 978 F.3d at 850 (noting that a noncitizen was incarcerated in conditions identical to those imposed on criminal defendants after being convicted of "violent felonies and other serious crimes"). E.M.M. is being detained in the Orange County Jail, a facility that houses not only civil detainees in the immigration context, but also pre-trial criminal arrestees and incarcerated prisoners serving criminal sentences. E.M.M. Decl. ¶ 31, ECF No. 1-2; *see also J.M.P.*, 2025 WL 2984913, at *16. The facility has been the subject of complaints for its treatment of ICE detainees, including allegations of medical neglect, lack of access to unspoiled food, and abuse, harassment, and retaliation by jail personnel. *J.M.P.*, 2025 WL 2984913, at *16 (citing *Ortiz et al. v. Orange Cnty., N.Y. et al.*, No. 23 Civ. 2802, ECF No. 81 (S.D.N.Y. filed Apr. 4, 2023)). E.M.M. is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income, lack of privacy, and lack of freedom of movement. E.M.M. Decl. ¶ 24, 31, ECF No. 1-2.

69. The **second *Mathews* factor** requires courts to assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks. To start, the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) creates a substantial risk of erroneous deprivation of E.M.M.'s interest in being free from arbitrary confinement because the only individuals adversely affected by this regulation are noncitizens who have already prevailed in an administrative custody proceeding, where the adjudicator found the noncitizen's detention not justified. *See J.M.P.*, 2025 WL 2984913, at *17; *Jacinto*, 2025 WL 2402271, at *3; *Garcia Jimenez*, 2025 WL 2374223, at *3; *Maldonado*, 2025 WL 2374411, at *13; *Gunaydin*, 784 F. Supp. 3d at 1187.

70. Additionally, the risk of deprivation is high because the regulation takes the stay decision out of the hands of a judge and gives it to the agency official who failed to persuade the judge in an adversarial hearing that detention is justified. *See Singh*, 2025 WL 2699219, at *4; *Arce*, 2025 WL 2675934, at *5; *Sampiao*, 2025 WL 2607924, at *10; *Gunaydin*, 784 F. Supp. 3d at 1187; *Jacinto*, 2025 WL 2402271, at *3. The automatic stay "permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge's decisions, a procedure that is anomalous in our legal system." *J.M.P. v. Arteta*, No. 25 CIV. 4987 (DEH), 2025 WL 2984913, at *15 (S.D.N.Y. Oct. 23, 2025) (citing *Gunaydin*, 784 F. Supp. 3d at 1187) (internal citations omitted).

71. Moreover, the risk of deprivation is high because the automatic stay regulation does not require the agency official invoking the stay to consider any individualized facts nor apply any set standards. *See J.M.P.*, 2025 WL 2984913, at *18; *Maldonado Vazquez*, 2025 WL 2676082, at *19; *Jacinto*, 2025 WL 2402271, at *3; *Garcia*, 2025 WL 2374223, at *3; *Maldonado* 2025 WL 2374411, at *13; *Gunaydin*, 784 F. Supp. 3d at, 1188.

72. The **third *Mathews* factor**, the government’s interest, also weighs in E.M.M.’s favor. The government’s only legitimate interest at stake is its interest in ensuring that people facing removal do not endanger the public or abscond during the pendency of their removal cases. Here, the IJ has decided that E.M.M. does not pose any danger or flight risk that would prevent release on bond. *See Jacinto*, 2025 WL 2402271, at *4 (holding that the IJ’s bond order that found petitioner neither a danger nor a flight risk already satisfied the government’s interest in ensuring petitioner’s availability for her immigration case). And following the IJ’s decision, DHS did not justify the use of the automatic stay with any new evidence that would cut against the decision.

73. Moreover, the compelling public interests in preserving due process and avoiding unnecessary detention as well as the administrative costs of detention overwhelmingly favor E.M.M. *See Hasan*, 2025 WL 2682255, at *13 (finding an “extremely compelling public interest in protecting the fundamental principles of due process”); *Velasco Lopez*, 978 F.3d at 855 (holding public interest considerations include societal costs such as separating families and removing from the community breadwinners, caregivers, parents, siblings, and employees); *Sampiao*, 2025 WL 2607924, at *12; *Maldonado Vazquez*, 2025 WL 2676082, at *21 (holding “the administrative costs of allowing noncitizens to be released on bond are far lower than keeping them in detention”).

2. The Automatic Stay Scheme Violated Substantive Due Process

74. There must be a sufficiently compelling governmental interest to justify detention, either a punitive interest in imprisoning a person convicted of a crime or a regulatory interest that outweighs the individual’s constitutionally protected interest in avoiding physical restraint. *See, e.g., Zadvydas*, 533 U.S. at 690 (finding no sufficiently strong special justification for indefinite

detention under 8 C.F.R. § 1231(a)(6)). Detention during removal proceedings is civil, not criminal. Therefore, the detention must be supported by an adequate regulatory interest. Two regulatory interests generally support detention during removal proceedings: ensuring a noncitizen's availability for removal if and when a final order of removal is issued and protecting the public from potential harm if a noncitizen is released.

75. Respondents advanced no justification for E.M.M.'s ongoing detention in applying the automatic stay, which extended his detention by several months. The automatic stay requires no showing of dangerousness or flight risk, is unreviewable by an IJ, and may be applied even once a neutral arbiter has issued findings regarding dangerousness and flight risk. *See Mohammed H. v. Trump*, No. 25-1576, 2025 WL 1334847, at *6 (D. Minn. 2025) (noting a substantial Fifth Amendment claim based on the government's use of the automatic stay).

76. Notably, several district courts have found that the automatic stay provision violates noncitizen detainees' substantive due process rights. *See, e.g., Maza*, 2025 WL 2951922, at *5; *Jacinto*, 2025 WL 2402271, at *4; *Garcia Jimenez*, 2025 WL 2374223, at *4; *Anicasio*, 2025 WL 2374224, at *4; *Kambo v. Poppell*, 2007 WL 3051601 at *20 (W.D. Tex. Oct. 18, 2007); *Zavala*, 310 F. Supp. 2d at 1077; *Ashley*, 288 F. Supp. 2d at 669.⁵

IV. The Automatic Stay Is *Ultra Vires* to the INA.

77. Under the Administrative Procedure Act ("APA"), a reviewing court must "hold unlawful and set aside agency action" for certain specified reasons, including whenever such action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law";

⁵ The prior version of the 8 C.F.R. § 1003.19(i) regulation did not proscribe a 90-day limit for the automatic stay. However, the courts' reasoning in *Zavala v. Ridge* and *Ashley v. Ridge* is still persuasive as the regulations as written today allow for essentially indefinite detention via DHS's filing of motions for referrals to the Attorney General. *Zavala*, 310 F. Supp. 2d at 1077; *Ashley*, 288 F. Supp. 2d at 669.

“contrary to constitutional right”; or “in excess of statutory jurisdiction, authority, or limitations.” 5 U.S.C. § 706(2)(A), (B), (C).

78. 8 U.S.C. § 1226(a) permits the Attorney General to detain or release noncitizens on bond. Congress has permitted the Attorney General to delegate detention determinations to “any other officer, employee, or agency of the Department of Justice.” 28 U.S.C. § 510. IJs are administrative law judges within the Department of Justice and are thus properly delegated bond determination authority. *See* 8 U.S.C. § 1101(b)(4). By contrast, DHS, the party that invoked the automatic stay provision, is not within the Department of Justice, but is a separate executive department. *See* 6 U.S.C. § 111.

79. By permitting DHS to unilaterally extend the detention of an individual, in contravention of the findings of an agent (i.e., the IJ) properly delegated the authority to make such a determination, 8 C.F.R. § 1003.19(i)(2) exceeds the statutory authority Congress gave to the Attorney General. *Fernandez*, 2025 WL 2531539, at *5. “Because this back-ended approach effectively transforms a discretionary decision by the immigration judge to a mandatory detention imposed by [DHS], it flouts the express intent of Congress and is ultra vires to the statute.” *Zavala*, 310 F. Supp. 2d at 1079; *see also Maza*, 2025 WL 2951922, at *5; *Campos Leon*, 2025 WL 2694763, at *4; *Leal-Hernandez*, 2025 WL 2430025, at *14–15; *B.D.V.S.*, 2025 WL 2855743, at *3; *Carmona-Lorenzo*, 2025 WL 2531521, at *5; *Jacinto*, 2025 WL 2402271, at *5; *Garcia Jimenez*, 2025 WL 2374223, at *5; *Anicasio*, 2025 WL 2374224, at *5; *Perez*, 2025 WL 2531566, at *5.

V. E.M.M.’s Prolonged Detention Violates Due Process and Warrants Heightened Procedural Protections.

80. In *Velasco Lopez v. Decker*, the Second Circuit cautioned that “detention under § 1226(a) is frequently prolonged because it continues until all proceedings and appeals are

concluded.” *Velasco Lopez*, 978 F.3d at 852. The Second Circuit highlighted that Mr. Velasco Lopez’s detention had far exceeded the average length of detention under § 1226(c) contemplated in the Supreme Court’s decision in *Demore v. Kim*—1.5 months. *Id.* (citing *Demore*, 538 U.S. at 529).

81. If the Court agrees with E.M.M. that § 1226(a) applies, *Velasco Lopez* requires this Court to apply the *Mathews* framework to assess whether E.M.M.’s prolonged detention violates due process. *Velasco Lopez*, 978 F.3d at 850. But even if the Court finds E.M.M. subject to § 1225(b)(2)(A), the same *Mathews* test—also prescribed for individuals subject to mandatory detention under § 1226(c)—should apply. *See Black v. Decker*, 103 F.4th 133, 147 (2d Cir. 2024); *Al-Thuraya v. Warden*, No. 25-CV-2582 (AS), 2025 WL 2858422, at *5 (S.D.N.Y. Oct. 9, 2025) (applying the due-process framework recognized by the Second Circuit in *Black* to a petitioner detained under 8 U.S.C. § 1225(b)).⁶

82. The *Mathews* three-part test favors E.M.M. The first *Mathews* factor clearly weighs in E.M.M.’s favor as he has a fundamental liberty interest in remaining free from physical restraint—an interest long recognized as deserving of the highest constitutional protection. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Velasco Lopez*, 978 F.3d at 851; *Black*, 103 F.4th at 151. The penal-like conditions of E.M.M.’s detention add further weight to his private interest. *Velasco Lopez*, 978 F.3d at 852.

⁶ The vast majority of courts to address whether individuals detained under § 1225(b) for a prolonged period without an individualized bond hearing may assert a constitutional right to due process have reached an affirmative conclusion. *See Al-Thuraya*, 2025 WL 2858422, at *5 (compiling cases); *see also Maksin v. Warden, Golden State Annex*, No. 1:25-CV-00955-SKO (HC), 2025 WL 2879328, at *3 (E.D. Cal. Oct. 9, 2025) (“Several courts including the Third, Sixth, and Ninth Circuit, as well as numerous district courts, have found that unreasonably long detention periods may violate the due process clause.” (collecting cases)).

83. The second *Mathews* factor also weighs in E.M.M.'s favor because the procedures followed in his case have created a substantial risk of erroneous deprivation of E.M.M.'s interests in being free from arbitrary confinement. DHS first applied an unlawful automatic stay for several months even though E.M.M. prevailed before the IJ, resulting in an order of release. Then, the Respondents applied the wrong statute of detention—namely, 8 U.S.C. 1225(b)(2)(A)—to E.M.M. to bar his release, which also constitutes an erroneous deprivation. And under § 1225(b)(2)(A), there are even fewer “procedural safeguards” in place to determine whether E.M.M.'s detention has become unreasonable than under § 1226(a); indeed, the only option for release for § 1225(b) in the INA is discretionary parole by DHS under § 1182(d)(5), which includes no hearing, formal record, or opportunity for appeal. *Cf. Al-Thuraya*, 2025 WL 2858422, at *6; *see also Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 849 (E.D. Va. 2020) (finding the parole process constitutionally deficient and lacking features of an individualized bond hearing).

84. Finally, the third *Mathews* factor weighs in E.M.M.'s favor. The only permissible purpose for the civil immigration detention of individuals, whether under either § 1226(a), § 1226(c), or § 1225(b), is to prevent danger to the community or flight. *Cf. Al-Thuraya*, 2025 WL 2858422, at *5. Here, the IJ held that E.M.M. posed neither a danger nor a flight risk to prevent release on bond following an individualized bond hearing. As such, Respondents' interests have already been addressed. Additionally, there are compelling public interests in preserving due process and avoiding unnecessary detention as well as the administrative costs of detention. *See Velasco Lopez*, 978 F.3d at 855; *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *13 (E.D. Va. Sept. 19, 2025); *Vazquez v. Feeley*, No. 2:25- CV-01542-RFB-EJY, 2025 WL 2676082, at *21 (D. Nev. Sept. 17, 2025).

85. E.M.M. has been detained for over six months, and his detention continues indefinitely, as the BIA’s most recent decision finds him ineligible for bond and his merits appeal remains pending before the BIA—which may result in either remand for further proceedings or a petition for review by E.M.M. to the Second Circuit. Under Second Circuit case law, his detention has passed the point where heightened procedural protections are usually necessary. *Velasco Lopez*, 978 F.3d at 855 n.13 (noting that “a presumptively constitutional period of detention does not exceed six months” (citing *Zadvydas*, 533 U.S. at 701)).

86. Here, the remedy must fit the particular circumstances of E.M.M.’s case, which require his release pursuant to the IJ’s bond order. *See Jennings*, 583 U.S. at 314 (holding that due process “calls for such procedural protections as the particular situation demands”). In *Velasco Lopez* and *Black*, in which Respondents either denied petitioners bond or foreclosed them from pursuing bond over a prolonged period, respectively, the Second Circuit determined that a proper remedy constituted a bond hearing with a shifted burden on the government to show by clear and convincing evidence that the petitioner was either a flight risk or a danger to the community. *Velasco Lopez*, 978 F.3d at 855; *Black*, 103 F.4th at 138. E.M.M.’s case calls for a different, individualized remedy from *Velasco Lopez* and *Black* because here, in the ordinary bond process, the IJ has already concluded that E.M.M. does not pose a danger nor a flight risk that would prevent release on bond. And E.M.M. prevailed in his bond hearing before the IJ even where he bore the burden of proof, contrary to what is required for a constitutionally adequate bond hearing.⁷ As such, the clearest remedy to ameliorate the constitutional deficiencies

⁷ E.M.M. prevailed despite the constitutional deficiency of the initial bond hearing in requiring E.M.M. to bear the burden of proof. *See Banegas v. Decker*, No. 21-cv-2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. June 7, 2021) (noting “‘overwhelming consensus’ of courts in this District that the Due Process Clause of the Fifth Amendment requires the Government to bear the

resulting in E.M.M.'s continued prolonged detention is immediate release pursuant to the IJ's bond order.

CLAIMS FOR RELIEF

FIRST CLAIM:

VIOLATION OF PROCEDURAL DUE PROCESS UNDER THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

87. All the foregoing allegations are repeated and realleged as if fully set forth herein.

88. The Due Process Clause of the Fifth Amendment provides in relevant part that:

“No person shall be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend.V.

89. Respondents' application of an automatic stay to E.M.M.'s case denied him meaningful procedural protections to challenge his detention.

90. The automatic stay regulations on their face violated procedural due process as they conflated prosecutorial and adjudicatory functions and functionally overrule the factfinder's custody decision while barring any opportunity for the noncitizen to be heard or present evidence.

91. E.M.M. had no contact with any DHS officials and lived in New York for over 18 years before being detained. Such an individual may only be subject to discretionary detention under 8 U.S.C. § 1226, which provides procedures for release on bond. Despite issuing Petitioner a Form I-200 warrant under 8 U.S.C. § 1226 and an IJ ordering his release on bond, Respondents now erroneously detain E.M.M. under 8 U.S.C. § 1225(b)(2).

burden to justify continued detention of a noncitizen who is detained pursuant to § 1226(a), even absent 'prolonged detention'”) (quoting *Quintanilla v. Decker*, No. 21-cv-417 (GBD), 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021).

92. Respondents have detained E.M.M. without appropriately placing the burden of proof on the government to justify continued detention by clear and convincing evidence during E.M.M.'s bond proceedings. And DHS has not proven by clear and convincing evidence that E.M.M. is a danger or flight risk.

93. Respondents' conduct violates E.M.M.'s Fifth Amendment right to procedural due process.

**SECOND CLAIM:
VIOLATION OF SUBSTANTIVE DUE PROCESS UNDER
THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

94. All the foregoing allegations are repeated and realleged as if fully set forth herein.

95. The Due Process Clause of the Fifth Amendment protects the substantive right of all persons in the United States, including noncitizens, to be free from unjustified deprivations of physical liberty. U.S. Const. amend. V; *see generally Reno*, 507 U.S. at 292. "[G]overnment detention violates the [Due Process Clause] unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks and citations omitted).

96. E.M.M.'s detention does not serve the special justifications for immigration detention: mitigating flight risk and mitigating danger to the community. An IJ made an individualized determination that E.M.M. proved that he was neither a danger to the community nor a flight risk. There is no credible argument that E.M.M. cannot be safely released back to his community.

97. The application of the automatic stay to keep E.M.M. in indefinite detention despite the IJ's individualized custody decision was arbitrary and did not serve a legitimate government interest.

98. Similarly, Respondents' abrupt change as to its asserted statute of detention from 8 U.S.C. § 1226(a) to 8 U.S.C. § 1225(b)(2)(A) for individuals like E.M.M. undermines its credibility in asserting that E.M.M.'s detention serves a compelling state interest.

99. E.M.M.'s detention therefore deprives him of his right to substantive due process, and he is entitled to immediate release.

**THIRD CLAIM:
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
8 U.S.C. § 1226(a)**

100. All the foregoing allegations are repeated and realleged as if fully set forth herein.

101. The automatic stay regulation exceeded the authority given to the Attorney General by Congress and unlawfully eliminated the IJs' discretionary authority to make custody determinations.

102. Congress gave the Attorney General discretion to decide whether to release detained noncitizens pending removal proceedings in accordance with 8 U.S.C. § 1226(a). The Attorney General has delegated this authority to IJs, 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).

103. Congress has not delegated this authority to DHS. There is no statutory authority for DHS to unilaterally stay an IJ's bond determination. DHS's use of the automatic stay was an unlawful use of the discretionary power granted to the Attorney General.

104. Here, the IJ determined that E.M.M. is not a danger to the community or a flight risk preventing release on bond.

105. 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. As such, the automatic stay regulation is unlawful and *ultra vires*.

106. Moreover, Respondents are unlawfully detaining E.M.M. without bond pursuant to the no-bond detention provision at 8 U.S.C. § 1225(b)(2)(A). Instead, E.M.M. should be subject to the detention provisions of 8 U.S.C. § 1226(a). Accordingly, Respondents' continued detention of E.M.M. without bond despite the individualized bond order is *ultra vires* to the INA.

**FOURTH CLAIM:
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 706(2)**

107. All the foregoing allegations are repeated and realleged as if fully set forth herein.

108. The APA enables courts to "hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law." 5 U.S.C. § 706(2).

109. DHS's invocation of the automatic stay provisions after the IJ ordered release on bond was arbitrary and capricious, in violation of constitutional rights to due process, in excess of statutory jurisdiction, and without observance of procedure required by law, in violation of the APA.

110. Respondents acted arbitrarily and capriciously in abruptly changing the asserted statute of detention authority in E.M.M.'s case by applying *Matter of Yajure Hurtado*, 29 I&N

Dec. 216 (BIA 2025), which held that all noncitizens who entered the United States without admission or parole are ineligible for bond hearings before an IJ and upended long-standing agency practice and precedent.

111. Respondents' actions are arbitrary and capricious and contrary to law in violation of the APA.

PRAYER FOR RELIEF

WHEREFORE, E.M.M. respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Order Respondents not to transfer E.M.M. outside the jurisdiction of the U.S. District Court for the Southern District of New York pending the resolution of this case;
- 3) Declare that 8 U.S.C. § 1226(a)—and not 8 U.S.C. § 1225(b)(2)(A)—is the appropriate statutory provision that governs E.M.M.'s detention and eligibility for bond;
- 4) Enjoin Respondents from denying E.M.M.'s release on bond on the basis that he is subject to detention pursuant to 8 U.S.C. § 1225(b)(2)(A);
- 5) Declare that E.M.M.'s detention violates the Due Process Clause of the Fifth Amendment;
- 6) Declare that E.M.M.'s detention violates the Immigration and Nationality Act, and specifically 8 U.S.C. § 1226(a);
- 7) Declare that E.M.M.'s detention violates the Administrative Procedure Act;
- 8) Grant a writ of habeas corpus ordering Respondents to immediately release E.M.M. from custody in accordance with the IJ's bond order and with no additional conditions beyond those imposed by the IJ's bond order;

- 9) Award E.M.M. his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- 10) Grant such further relief as the Court deems just and proper.

Dated: November 20, 2025
New York, NY

Respectfully submitted,

/s/ Natalie Maust
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Counsel for Petitioner

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

I am submitting this verification on behalf of E.M.M. because I am one of his attorneys at The Legal Aid Society and have communicated with the other attorneys and with E.M.M. on his case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 20, 2025
New York, NY

Respectfully submitted,

/s/ Natalie Maust
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