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11 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA (Las Vegas)

13 **ALEXIS ENRIQUE SILVA HERNANDEZ**
14 *Petitioner,*
15 v.
16 **KRISTI NOEM,**
in her official capacity as
17 Secretary, U.S. Department of
Homeland Security; 245 Murray Lane
18 SW, Washington, DC 20528;
19 **U.S. DEPARTMENT OF HOMELAND**
SECURITY;
20 **PAMELA J. BONDI,**
in her official capacity as
21 Attorney General of the United States,
22 950 Pennsylvania Avenue, NW,
Washington, DC, 20530;
23 **U.S. DEPARTMENT OF JUSTICE;**

Case No.:
Agency No: 

PETITION FOR A
WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241

1 **TODD LYONS,**

2 in his official capacity as Acting
3 Director and Senior Official Performing
4 the Duties of the Director for U.S.
5 Immigration and Customs
6 Enforcement, 500 12th Street, SW,
7 Washington, DC 20536;

6 **JASON KNIGHT,**

7 in his official capacity as Acting Field
8 Office Director, Salt Lake City Field
9 Office Director, U.S. Immigration &
0 Customs Enforcement, 2975 Decker
1 Lake Drive Suite 100, West Valley
2 City, UT 84119-6096

9 **U.S. IMMIGRATION AND CUSTOMS**
10 **ENFORCEMENT;** and

11 **JOHN MATTOS,**

12 in his official capacity as Warden,
13 Nevada Southern Detention Facility,
14 2190 E. Mesquite Ave.
15 Pahrump, NV 89060

14 *Respondents.*

15 **INTRODUCTION**

16 1. Petitioner Alexis Enrique Silva Hernandez is a 30-year-old resident of Utah. *See*
17 Declaration of Petitioner (“**Ex. A**”) at 002. He is currently detained at the Nevada Southern
18 Detention Center in Pahrump, Nevada. Despite an immigration judge’s order on August 14,
19 2025 that Petitioner be released on bond, he remains in detention solely because Respondent
20 triggered the automatic stay under 8 C.F.R. § 1003.19(i)(2). *See* Immigration Judge’s Bond
21 Order (“**Ex. B**”) at 004–006.

22 2. This Court has already held in *Herrera Torralba v. Knight* that the automatic
23 stay—which allows DHS to unilaterally and without a hearing extend detention regardless of a

1 duly appointed IJ's bond order—violates constitutional due process. *Herrera Torralba v.*

2 *Knight*, No. 2:25-cv-1366-RFB-DJA, Order (D. Nev. Sept. 5, 2025) (Boulware, J.).

3 Accordingly, Petitioner respectfully requests that he be allowed to post bond as ordered and be

4 released immediately pursuant to the IJ's bond order.

5 3. On or about September 11, 2023, Petitioner entered the United States without
6 inspection through Eagle Pass, Texas. Ex. A at 002. DHS charged Petitioner as removable under
7 8 U.S.C. § 1182(a)(6)(A)(i) as an “alien present in the United States who has not been admitted
8 or paroled.” See Notice to Appear (“**Ex. C**”) at 008. Accordingly, he is subject to removal
9 proceedings under § 1226(a).

10 4. Petitioner moved for a custody redetermination hearing in accordance with 8
11 C.F.R. § 1003.19(e) pending his removal proceedings. Ex. B at 005. Immigration Judge Baker
12 heard the motion on August 14, 2025, and after finding that Petitioner is eligible for bond under
13 8 U.S.C. § 1226(a) found that he is neither a danger nor flight risk, granted bond in the amount
14 of \$5,000. *Id.* at 006.

15 5. The next day, Respondent DHS invoked the automatic stay of the IJ's bond order
16 under 8 C.F.R. § 1003.19(i)(2) by filing a notice of intent to appeal. See EOIR 43 Notice of
17 Intent to Appeal (“**Ex. G**”) at 022–023. Respondent filed its actual appeal with the BIA on
18 August 21, 2025. See Filing Receipt for Appeal (“**Ex. H**”) at 000; see also BIA Receipt Notice
19 (“**Ex. I**”) at 000. BIA cases can take 10 months or more to resolve. See *Herrera Torralba*, No.
20 2:25-cv-1366-RFB-DJA at *13.

21 6. Meanwhile, Petitioner remains in continued detention in violation of his
22 procedural and substantive due process rights. He has been detained since May 2025, for a total
23 of six months. He has been detained past his bond order for a total of three months.

1 7. Petitioner does not ask this Court to adjudicate his removability. He merely seeks
2 release on bond while Respondent's appeal is pending, as is his right consistent with this
3 Court's decision in *Herrera Torralba* and constitutional due process.

4 **JURISDICTION AND VENUE**

5 8. Petitioner is in the custody of Respondents. Petitioner is detained at the Nevada
6 Southern Detention Center, 2190 E Mesquite Ave, Pahrump, NV 89060. NSDC is a private
7 detention center operated by CoreCivic, Inc., under contract with ICE.

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

11 10. This Court may grant relief in accordance with 28 U.S.C. § 2241, the Declaratory
12 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

13 11. Venue is proper in this District under 28 U.S.C. § 2241; 28 U.S.C. § 1391(b); and
14 28 U.S.C. § 1391(e)(1) because this petition was filed when Petitioner was detained within the
15 geographic jurisdiction of the District of Nevada (Las Vegas).

16 12. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are
17 employees, officers, and agencies of the United States, and a substantial part of the events or
18 omissions giving rise to these claims occurred in this district. *See* 28 U.S.C. § 1391(e).

19 **REQUIREMENTS OF 28 U.S.C. § 2243**

20 13. The Court must grant the petition for a writ of habeas corpus or order
21 Respondents to show cause "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. §
22 2243. If an order to show cause is issued, Respondents must file a return "within three days
23 unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

1 14. Habeas corpus is “perhaps the most important writ known to the constitutional
2 law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or
3 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963). “The application for the writ usurps the
4 attention and displaces the calendar of the judge or justice who entertains it and receives prompt
5 action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120
6 (9th Cir. 2000) (citation omitted).

7 **PARTIES**

8 15. Petitioner is a 30-year-old native of Venezuela who has resided in the United
9 States since September 2023.

10 16. Respondent Kristi Noem is the Secretary of the Department of Homeland
11 Security. She is responsible for the implementation and enforcement of the Immigration and
12 Nationality Act, and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem
13 has ultimate custodial authority over Petitioner and is sued in her official capacity.

14 17. Respondent Department of Homeland Security is the federal agency responsible
15 for implementing and enforcing the INA, including the detention and removal of noncitizens.
16 Respondent DHS is a legal custodian of Petitioner.

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

21 19. Respondent Department of Justice is the federal agency responsible for
22 adjudicating removal and related bond cases. EOIR, and its components the immigration courts
23 and Board of Immigration Appeals is a division of DOJ.

1 20. Respondent Todd Lyons is the Acting Director and Senior Officer Performing the
2 Duties of the Director of ICE. Respondent Lyons is responsible for ICE’s policies, practices,
3 and procedures, including those relating to the detention of immigrants during their removal
4 procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in
5 his official capacity.

6 21. Respondent ICE is the subagency of DHS that is responsible for carrying out
7 removal orders and overseeing immigration detention. Respondent ICE is a legal custodian of
8 Petitioner.

9 22. Respondent Jason Knight is the Acting Director of the Salt Lake City Field Office
10 of ICE Enforcement and Removal Operations, a federal law enforcement agency within the
11 Department of Homeland Security. ERO is a directorate within ICE whose responsibilities
12 include operating the immigration detention system. In his capacity as ICE ERO Salt Lake City,
13 Acting Field Office Director, Respondent Knight exercises control over and is a custodian of
14 immigration detainees held at NSDC. At all times relevant to this Complaint, Respondent
15 Knight was acting within the scope and course of his employment with ICE. He is sued in his
16 official capacity.

17 23. Respondent John Mattos is the Warden of NSDC which detains individuals
18 suspected of civil immigration violations pursuant to a contract with ICE. Respondent Mattos
19 exercises physical control over immigration detainees held at NSDC. Respondent Mattos is
20 sued in his official capacity.

21 24. Respondents individually and collectively will be referred to as
22 (“Respondent(s)”).
23

FACTS

1
2 25. Petitioner Alexis Enrique Silva Hernandez is a 30-year-old resident of Utah. Ex.
3 A at 002. He is currently detained at the Nevada Southern Detention Center in Pahrump,
4 Nevada.

5 26. On or about September 11, 2023, Petitioner entered the United States without
6 inspection through Eagle Pass, Texas. *Id.* Customs and Border Patrol (CBP) detained Petitioner
7 for four days then released him after scheduling a hearing in the San Antonio, Texas
8 Immigration Court for September 27, 2024. *Id.*

9 27. DHS served Petitioner a Notice to Appear (NTA) on September 28, 2023, which
10 does not designate him as an arriving alien under 8 U.S.C. § 1225(b)(2) nor in expedited
11 removal proceedings under § 1225(b)(1). Ex. C at 008. DHS explicitly failed to designate him
12 as an arriving alien under 8 U.S.C. § 1225(b)(2) and in expedited removal proceedings under
13 § 1225(b)(1). Additionally, Petitioner does not have a criminal history that subjects him to §
14 1226(c). Accordingly, he is subject to removal proceedings under § 1226(a).

15 28. On or around the September 27, 2024 hearing, the San Antonio Immigration
16 Court administratively closed Petitioner's § 240 removal proceedings. Ex. A at 003. On May
17 27, 2025, Respondent moved to recalendar Petitioner's hearings, and on June 9, 2025, the
18 Immigration Judge granted Respondent's motion. *See* Order, dated June 9, 2025
19 (Recalendaring) ("Ex. D") at 011–015. Petitioner timely appealed the IJ's decision to recalendar
20 on July 8, 2025. *See* Filing Receipt for Appeal, dated July 10, 2025 ("Ex. F") at 020.

21 29. While awaiting the BIA's decision, Petitioner moved for a custody
22 redetermination hearing in accordance with 8 C.F.R. § 1003.19(e). Ex. B at 005. Immigration
23 Judge Baker heard the motion on August 14, 2025. After finding that Petitioner is eligible for

1 bond under § 1226(a) and is neither a danger nor flight risk, he granted bond in the amount of
2 \$5,000. *Id.* at 006.

3 30. In the Order Granting Bond, IJ Baker noted concerns regarding Petitioner's
4 criminal history, but acknowledged that only one offense was indicative of dangerous behavior.
5 *Id.* at 005–006. The rest consisted of traffic citations which were either paid and resolved, or
6 pending. *Id.* Additionally, the evidence of Petitioner's fixed address, ties in the U.S., sponsor,
7 and steady employment supported the conclusion that Petitioner will appear at future
8 immigration hearings on a \$5,000 bond. *Id.*

9 31. The next day, Respondent unilaterally and unlawfully invoked an automatic stay
10 of the IJ's bond order under 8 C.F.R. § 1003.19(i)(2) by filing an EOIR-43 Notice of Intent to
11 Appeal. Ex. G at 022–023. Respondent filed its appeal with the BIA on August 21, 2025. Ex. H
12 at 025; Ex. I at 029. BIA cases can take 10 months or more to resolve. *See Herrera Torralba*,
13 No. 2:25-cv-1366-RFB-DJA at *13. Meanwhile, Petitioner remains separated from his
14 girlfriend, friends, and family, is unable to work and obtain income, and lacks access to critical
15 resources to assist him with his removal proceedings, all the while being stripped of
16 constitutional due process.

17 32. Two cases from the U.S. District Court for the District of Nevada are dispositive
18 of the issues presented. First, this Court's decision in *Herrera Torralba v. Knight* makes clear
19 that the automatic stay after a duly appointed IJ grants bond is a procedural and substantive due
20 process violation. *Herrera Torralba*, Case No. 2:25-cv-1366-RFB-DJA at *22. Second, the
21 *Maldonado Vasquez v. Feeley*, and many other subsequent decisions, reaffirm that Petitioner is
22 eligible for bond under § 1226(a) despite having entered without inspection. *Maldonado*
23 *Vasquez v. Feeley*, Case No. 2:25-cv-01542-RFB-EJY, Order (D. Nev. Sept. 17, 2025)

1 (Boulware, J.). Based on this Court’s holding in *Herrera Torralba* and *Maldonado Vasquez*,
2 Respondent’s invocation of the automatic stay is a clear deprivation of Petitioner’s due process,
3 warranting his immediate release from detention pursuant to the IJ’s bond order.

4 LEGAL FRAMEWORK

5 **Discretionary and Mandatory Detention**

6 33. The Immigration and Nationality Act, codified at Title 8 of the United States
7 Code, prescribes three basic forms of detention for noncitizens in removal proceedings—
8 discretionary detention under § 1226(a), mandatory detention under § 1226(c), and mandatory
9 detention under § 1225. *See* 8 U.S.C. § 1229(a).

10 34. The Supreme Court describes § 1226 detention as relating to people “inside the
11 United States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89
12 (2018).

13 35. Under § 1226(a), the Department of Homeland Security (“DHS”) may detain
14 noncitizens who are placed in removal proceedings, but such detention is discretionary. *See* 8
15 U.S.C. § 1226(a). These individuals are entitled to a custody redetermination (or “bond
16 hearing”) before an immigration judge who determines whether they should be released on
17 bond. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). Bond must be at least \$1,500 and is subject to
18 any other conditions imposed by the Attorney General. *See* 8 U.S.C. § 1226(a)(2).

19 36. In contrast to § 1226(a), noncitizens who have been convicted of certain criminal
20 convictions are subject to mandatory detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510,
21 513 (2003). Congress added this provision through passing the Illegal Immigration Reform and
22 Immigrant Responsibility Act of 1996 (“IIRIRA”) to address concerns that criminal
23 noncitizens frequently failed to appear at their removal proceedings. *Velasco Lopez v. Decker*,

1 978 F.3d 842, 848 (2d Cir. 2020). Relying on legislative findings that individuals with certain
2 convictions posed elevated risks of danger and flight, Congress mandated detention for
3 noncitizens convicted of serious crimes such as aggravated felonies, drug trafficking, and
4 crimes involving moral turpitude. *Demore*, 538 U.S. at 518–20.

5 37. In January 2025, Congress passed the Laken Riley Act, which amended the INA
6 to add a new category of noncitizens subject to mandatory detention. Laken Riley Act, Pub. L.
7 No. 119-1, 139 Stat. 3 (2025). Under the new provision § 1226(c)(1)(E), detention is required
8 if: (1) the noncitizen is inadmissible under paragraph (6)(A), (6)(C), or (7) or § 1182(a) of Title
9 8,¹ and (2) the noncitizen is *charged with, arrested for, or convicted of* acts which constitute
10 the essential elements of burglary, theft, larceny, and shoplifting. *See* 8 U.S.C. § 1226(c)(1)(E).
11 Unlike the IIRIRA amendments, however, the LRA provides no exception for mistaken arrests,
12 dismissed charges, or acquittals. *See id.* Nor did Congress cite any data linking mere arrests or
13 charges for these offenses with higher risks of flight or danger. *See id.*

14 38. Lastly, 8 U.S.C. § 1225(b) provides mandatory detention for two categories of
15 noncitizens: (1) noncitizens subject to expedited removal under § 1225(b)(1); and (2)
16 noncitizens “seeking admission” at the border under § 1225(b)(2). *See Jennings*, 583 U.S. at
17 287 (2018) (noting that this process generally begins at the Nation’s borders and ports of
18 entry).

19 \\\

20 \\\

21 _____
22 ¹ These grounds of inadmissibility are, generally: presence in the United States without being
23 admitted or paroled. 8 U.S.C. § 1182(a)(6)(A)(i); seeking to procure a visa, other documentation,
or admission into the United States by fraud or misrepresentation. § 1182(a)(6)(C)(i); and failure
to possess a valid immigrant visa, reentry permit, border crossing identification card, or other
valid entry document required by this chapter. § 1182(a)(7)(A)(i)(I).

Entry Without Inspection

1
2 39. After Congress passed IIRIRA, the Executive Office of Immigration Review
3 (“EOIR”) drafted new regulations explaining that, generally, people who entered the country
4 without inspection (known as “EWIs”) were not considered detained under § 1225 and were
5 instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention
6 and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg.
7 10312, 10323 (Mar. 6, 1997).

8 40. Accordingly, in the decades after IIRIRA, most EWIs were placed in standard
9 removal proceedings and received bond hearings, unless their criminal history rendered them
10 ineligible for bond.

11 41. However, on July 8, 2025, ICE, “in coordination with” the Department of Justice
12 (“DOJ”), announced a new policy that reversed decades of well-established practice and
13 understanding of the statutory framework.

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

20 43. On September 5, 2025, the BIA published a new decision holding that IJs lack
21 jurisdiction to grant bond to individuals present in the U.S. without admission. *Matter of*

22
23 ² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 *Jonathan Javier Yajure Hurtado*, 29 I&N 216 (BIA 2025).³ The BIA held that all persons who
2 entered the U.S. without inspection are considered “applicants for admission” under 8 U.S.C. §
3 1225(a)(1) and are therefore subject to mandatory detention under § 1225(b)(2)(A), rendering
4 them ineligible for bond hearings before an IJ.

5 44. The BIA’s interpretation defies the INA. Section 1226(a) applies by default to all
6 persons “pending a decision on whether the [noncitizen] is to be removed from the United
7 States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or
8 deportability of a[] [noncitizen].”

9 45. The text of § 1226 also explicitly applies to people charged as being inadmissible,
10 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
11 (E)’s reference to such people makes clear that, by default, such people are afforded a bond
12 hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people
13 who face charges of being inadmissible to the United States, including those who are present
14 without admission or parole.

15 46. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
16 recently entered the United States. The statute’s entire framework is premised on inspections at
17 the border of people who are “seeking admission” to the United States. 8 U.S.C.
18 § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention
19 scheme applies “at the Nation’s borders and ports of entry, where the Government must
20 determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings*, 583
21 U.S. at 287.

22
23

³ Available at <https://www.justice.gov/eoir/media/1413311/dl?inline>.

1 47. The BIA’s novel interpretation of § 1225(b)(2)(A) would deem the LRA
2 meaningless and duplicative. The LRA specifically targets individuals who are inadmissible
3 under § 1182(a)(6)(A) for entering without inspection, but *only* when they also face the
4 criminal liabilities enumerated in the LRA. If § 1225(b)(2)(A) already required mandatory
5 detention for all who entered without inspection—as the BIA now claims—the LRA would add
6 nothing new. Congress would not have created mandatory detention rules for a group already
7 swept in, leaving the LRA without any independent effect. Courts reject such interpretations
8 because they render statutes superfluous. *See Duncan v. Walker*, 533 U.S. 167, 174 (2001).

9 48. The statutory text is plain. The LRA carved out a narrow group for mandatory
10 detention—not *all* who entered without inspection. The BIA’s new interpretation erases much
11 of § 1226, contradicts the LRA, and departs from the government’s own position held until
12 July 2025. No statutory amendment changed the text of either § 1225 or § 1226. The only
13 change is the BIA’s sudden reinterpretation. That shift confirms the interpretation is plainly
14 wrong.

15 49. To the extent that the INA’s text is ambiguous, this Court should resolve it in
16 favor of liberty. The Supreme Court has long applied the rule of lenity in criminal cases,
17 holding that “ambiguity concerning the ambit of criminal statutes should be resolved in favor
18 of lenity.” *United States v. Bass*, 404 U.S. 336, 347 (1971) (internal citations omitted). Under
19 the rule of lenity, “any reasonable doubt about the application of a penal law must be resolved
20 in the favor of liberty.” *Wooden v. United States*, 595 U.S. 360, 388 (2022) (Kavanaugh, J.,
21 concurring).

22 50. That same principle applies here, as the Supreme Court has recognized that the
23 rule of lenity applies in the immigration context. *See Clark v. Martinez*, 543 U.S. 371, 380

1 (2005) (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 11–12, n. 8 (2004)); *INS v. Cardoza-Fonseca*,
2 480 U.S. 421, 449 (1987).

3 51. Further, courts are guided “by the general rule to resolve any ambiguities in a
4 jurisdiction stripping statute in favor of the narrower interpretation and by the strong
5 presumption in favor of judicial review.” *Arce v. United States*, 899 F. 3d 796, 801 (9th Cir.
6 2018) (*per curiam*) (internal quotations and citations omitted). Adopting the DHS’
7 interpretation of the INA would strip this court of jurisdiction to adjudicate the instant petition.
8 This directly contradict the strong presumption in favor of judicial review when interpreting
9 INA provisions.

10 52. Notably, this Court—along with many other district courts, at least 9 of which are
11 in the Ninth Circuit—have acknowledged that § 1225(b)(2)(A) cannot be read to apply
12 indefinitely to all noncitizens who enter without inspection. *Maldonado Vazquez*, No. 2:25-cv-
13 01542-RFB-EJY at *28. This Court reasoned that the plain language of the statute, legislative
14 history, and longstanding agency practice support this conclusion. *Id.* **First**, the plain meaning
15 of the statute, including its title which indicates that it concerns “inspection by immigration
16 officers,” and “expedited removal of inadmissible arriving aliens” indicates that § 1225 is
17 limited in temporal scope, and applies only to “noncitizens entering, attempting to enter, or
18 who have recently entered the U.S.” *Id.* at *23. **Second**, in enacting IIRIRA, Congress
19 specified that § 1226(a) simply restated the discretionary detention authority applicable to all
20 noncitizens *present* in the U.S. pending deportability proceedings, formerly codified at 8
21 U.S.C. § 1252(a) (1994). *Id.* at *26. Plus, Congress enacted IIRIRA under the backdrop that
22 noncitizens who have never entered the country have less due process protections than those
23 present in the U.S. *Id.*; see *Zadvydas v. Davis*, 533 U.S. 678, 693–94 (2001) (collecting cases

1 setting forth this longstanding distinction). *Third*, the BIA’s reading is undermined by the fact
2 that it vests immensely broad detention authority in DHS—a shift of “vast economic and
3 political significance”—while contradicting decades of agency practice. *Id.* at *27; *See e.g.*,
4 *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (When an agency claims to discover in
5 a long-extant statute an unheralded power. . . [the courts] typically greet its announcement with
6 a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an
7 agency decisions of vast economic and political significance.”) (citations omitted). Given these
8 factors, this Court concluded that it is highly improbable that § 1225(b)(2)(A) applies to *all*
9 noncitizens, namely, those who are already present in the U.S.

10 53. Here, Petitioner has lived in the U.S. for at least two years, is not currently
11 seeking admission, and DHS did not designate him as an individual “seeking admission” into
12 the U.S. Ex. A at 002; Ex. C at 008. To the contrary, DHS charged him under § 212(a)(6)(A)(i)
13 of the INA, designating him as an “alien present in the United States without being admitted or
14 paroled.” (*emphasis added*). *Id.* Because § 1225(b) governs the detention of noncitizens
15 seeking admission, and § 1226 applies to noncitizens present in the United States, Petitioner is
16 subject to § 1226. And since Petitioner has no criminal record that triggers mandatory
17 detention under § 1226(c), he is detained under § 1226(a).

18 **Automatic Stay Under 8 C.F.R. § 1003.19(f)**

19 54. Under C.F.R. § 1003.19(f), DHS has the unilateral authority to stay an
20 immigration judge’s bond order.

21 55. Before 2001, detainees subject to discretionary detention under 8 U.S.C.
22 § 1226(a) who were then granted bond by an IJ remained detained *only if* the BIA granted a
23

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

3 56. In response to the September 11, 2001 terrorist attacks, the Immigration and
4 Naturalization Service (INS) (now “DHS”) implemented an interim rule expanding its
5 authority to issue automatic stays to prevent the effectuation of immigration judges’ custody
6 decisions pending their appeal. *See Executive Office for Immigration Review; Review of*
7 *Custody Determination*, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001).

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

16 58. From its inception, the new rule raised due process concerns. *Id.*

17 59. A former INS General Counsel testified about his concerns regarding the
18 agency’s use of auto stays because it was being used routinely and without careful calculation
19 of the merits in each bond case and in cases that involved nonviolent offenders. *See David A.*
20 *Martin, Preventive Detention: Immigration Law Lessons for the Enemy Combatant Debate,*
21 *Testimony Before the National Commission on Terrorist Attacks Upon the United States,*
22 December 8, 2003, 18 Geo. Immigr. L.J. 305 (2004).

1 60. After the 9/11 attacks, several federal courts concluded that the auto stay
2 provisions violated detainees' due process rights. *Ashley v. Ridge*, 288 F. Supp. 2d 662, 673
3 (D.N.J. 2003) (finding that continued detention on the automatic stay despite the IJ's decision
4 to grant bond violated procedural and substantive due process rights); *Bezmen v. Ashcroft*, 245
5 F. Supp. 2d 446 (D. Conn. 2003) (finding the government goal of preventing the release of
6 noncitizens posing a threat to national security was not served by the petitioner's ongoing
7 detention and was outweighed by the petitioner's Fifth Amendment right to be free from
8 detention); *See, e.g., Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 WL1514122 (N.D.
9 Cal. 15 Case 2:25-cv-01366-RFB-DJA) (June 17, 2005) (finding the automatic stay provision
10 unconstitutional); *Zavala y. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (same); *Uritsky v.*
11 *Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003).

12 61. In 2006, the EOIR promulgated the final rule with some notable changes. *See*
13 *Executive Office for Immigration Review; Review of Custody Determination*, 71 Fed. Reg.
14 57873 (Oct. 2, 2006). The EOIR added the requirement that any decision to invoke the
15 automatic stay must be made by the Secretary of DHS and a senior legal official, who must
16 then certify that continued detention is based on sufficient factual and legal bases. *Id.* at 57876.
17 The EOIR also imposed limitations, providing that the stay will lapse 90 days after filing the
18 bond appeal unless DHS sought a discretionary stay. 8 C.F.R. § 1003.6(c) (2006).

19 62. The automatic stay regulation is a very rare and somewhat exceptional action in
20 the first place. *See Executive Office for Immigration Review; Review of Custody Determination*,
21 66 Fed. Reg. 54909 (Oct. 31, 2001) (describing the automatic stay as a "limited measure"); *See*
22 also Stacy L. Brustin, *A Civil Shame: The Failure to Protect Due Process in Discretionary*
23 *Immigration Custody & Bond Redetermination Hearings*, 88 Brook. L. Rev. 163, 225 n.231

1 (2022) (providing data yielded from a DHS FOIA request showing considerable variance but
2 revealing that, on average, DHS invoked an automatic stay twenty-six times per year over the
3 last seven years).

4 63. Yet now it is being invoked categorically to stay an IJ's bond order that conflicts
5 with ICE's new policy of subjecting all noncitizens who entered without inspection to
6 mandatory detention under § 1225(b)(2)(A)—regardless of their length of residence in the
7 United States, lack of criminal history, or even DHS's own designation of the individual as
8 subject to detention under § 1226(a).

9 64. This Court in *Herrera Torralba v. Knight* held that DHS's invocation of the
10 automatic stay under 8 C.F.R. § 1003.19(i)(2) is a procedural due process violation both
11 facially and as-applied to the three petitioners in the case, as well as a substantive due process
12 violation as-applied. *See Herrera Torralba*, Case No. 2:25-cv-1366-RFB-DJA at *14-19. The
13 three *Herrera Torralba* petitioners were all residents of Utah who were recently arrested by
14 ICE and moved to NSDC; charged with entering the U.S. without inspection and removable
15 under 8 U.S.C. § 1182(a)(6)(A)(i); and had not been issued a removal order. *Id.* at *2. They
16 each sought custody redetermination in Immigration Court, was granted bond by an IJ, but
17 remained in detention due to the Respondent's invocation of the auto stay.

18 65. Over the past twenty years, numerous federal courts across the country have
19 found that the automatic stay provision likely violates the due process rights of detainees. *See*
20 *Martinez v. Sec'y of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8,
21 2025) (finding that all three *Mathews* factors favor the petitioner and that he is therefore likely
22 to succeed on his procedural due process claim); *Jacinto v. Trump*, No. 4:25-CV-03161, 2025
23 WL 2402271 (D. Neb. Aug. 19, 2025) (finding that the automatic-stay regulation violates

1 procedural and substantive due process and is ultra vires because it exceeds the Attorney
2 General's statutory authority); *Maldonado v. Olson*, No. 25-CV-03142 (SRN/SGE), 2025 WL
3 2374411 (D. Minn. Aug. 15, 2025) (concluding that ICE suffers no cognizable harm by
4 permitting the immigration process to continue following an IJ's bond order); *Anicasio v.*
5 *Kramer*, No. 4:25-CV-03158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (holding that the
6 automatic stay is both a due process violation and ultra vires, rendering detention on that basis
7 unlawful); *Garcia Jimenez v. Kramer*, No. 4:25-CV-03162, 2025 WL 2374223 (D. Neb. Aug.
8 14, 2025) (same); *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739
9 (D. Minn. June 17, 2025) (finding that the automatic stay effectively permits the government to
10 override an IJ's bond determination without demonstrating dangerousness, flight risk, or any
11 other legitimate basis for detention, rendering the petitioner's continued detention arbitrary and
12 unlawful); *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn.
13 May 21, 2025) (finding that the automatic stay violates procedural due process under the
14 *Mathews* test); *Zabadi v. Chertoff*, No. 05-CV-01796 (WHA), 2005 WL 1514122 (N.D. Cal.
15 June 17, 2005) (rejecting multiple arguments by the government and concluding that the
16 automatic stay is both unconstitutional and ultra vires); *Zavala v. Ridge*, 310 F. Supp. 2d 1071
17 (N.D. Cal. 2004) (emphasizing that the overriding purpose of the regulation—to protect the
18 public from noncitizens who pose a national security or public safety threat—is not served
19 where an IJ has already found that the noncitizen is neither a danger nor flight risk);
20 and *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003) (finding that the absence of any
21 time limits for resolving the appeal results in indefinite detention and that the regulation's
22 goals are not furthered where the petitioner is not a threat).

1 66. While some courts have upheld the regulation, several did so based on the
2 mistaken belief that the automatic stay provides a definite termination point by providing a
3 deadline by which the BIA must resolve the case. *See Pisciotta v. Ashcroft*, 311 F.Supp.2d 445
4 (D.N.J.2004) (mistakenly construing the 90-or 180-day period in 8 C.F.R. § 1003.1(e)(8) in
5 which the BIA must resolve a case as a *deadline* rather than a *guideline*); *Marin v.*
6 *Ashcroft*, No. 04-CV-675 (D.N.J. Mar. 17, 2004) (same); and *Alameh v. Ashcroft*, No. 03-6205
7 (D.N.J. Jan. 6, 2004) (same). Other courts found the regulation constitutional based on the
8 erroneous premise that noncitizens lack any constitutional right to release during removal
9 proceedings. *See Perez-Cortez v. Maurer*, No. 03-2244 (D.Colo. Nov. 20, 2003) (finding that
10 the petitioner has *no* constitutional right to release while removal proceedings are
11 underway); *Inthathirath v. Maurer*, No. 03-2245 (D.Colo. Nov. 20, 2003) (same).

12 67. In finding a procedural due process violation, the *Herrera Torralba* Court
13 considered the *Mathews v. Eldridge* factors: (1) the detainees' private interest; (2) the risk of
14 erroneous deprivation; and (3) the government's interest and burden of additional process. 424
15 U.S. 319, 335 (1976). **First**, the detainees' private interest in being free from imprisonment is
16 at stake. *See Herrera Torralba*, Case No. 2:25-cv-1366-RFB-DJA at *16. The automatic stay
17 necessarily always infringes on a noncitizen's right to freedom from government detention,
18 exacerbates individualized harms attendant to incarceration—such as being separated from
19 families, employment, and ability to earn income, and hinders the detainees' ability to access
20 counsel and prepare for their ongoing removal proceedings. *Id.* at *17. **Second**, the risk of
21 erroneous deprivation of a noncitizen's liberty is “extraordinarily high” because the autostay
22 requires no identifiable standard for *any* due process procedure, thereby creating a likelihood
23 of arbitrary and capricious application. *Id.* **Third**, while the government has an interest in

1 protecting the public from dangerous noncitizens and securing their removal, these interests are
2 already protected by the mandatory detention authority under § 1225 and the individualized
3 determination by an IJ when deciding whether an individual should be granted bond under
4 § 1226. *Id.* at *19.

5 68. Additionally, the Court found that DHS's invocation of the automatic stay,
6 without asserting any special justification that outweighs the detainees' constitutionally
7 protected liberty interests, is an as applied⁴ substantive due process violation. *Id.* at *21.
8 Indeed, DHS failed to articulate *any* interest—let alone a compelling interest—to justify the
9 petitioners' detention. *Id.*

10 69. Based on these constitutional violations, the IJ ordered the detainees' immediate
11 release from detention pursuant to the bond order. *Id.* at *22.

12 70. Here, like the detainees in *Herrera Torralba*, Petitioner is subject to detention
13 based solely on Respondent's automatic stay which is not supported by due process. Petitioner
14 was initially detained under ICE's authority to detain individuals based on their removability.
15 However, after Petitioner exercised his right under 8 C.F.R. § 1003.19(e) and was granted
16 bond, ICE provided no authority for Petitioner's continued detention. Thus, Petitioner's
17 detention violates due process.

18 **CLAIMS FOR RELIEF**

19 **Count 1 – Violation of Due Process**

20

21 ⁴ Because C.F.R. § 1003.6(c) requires the Secretary of DHS to certify that factual and legal
22 circumstances exist to justify continued detention, the Court could not find that there is *no* set of
23 circumstances where the Respondent might have a special justification to stay an IJ's bond order
substantive due process is limited to the *Herrera Torralba* petitioners, but nonetheless provides
guidance on whether a substantive due process violation exists here.

1 71. Petitioner repeats, re-alleges, and incorporates by reference each and every
2 allegation in the preceding paragraphs as if fully set forth herein.

3 72. The government may not deprive a person of life, liberty, or property without due
4 process of law. U.S. Const. amend. V. Due process applies to *all*, including noncitizens. *See*
5 *Zadvydas*, 533 U.S. at 679 (due process applies whether one’s presence is lawful, unlawful,
6 temporary, or permanent); U.S. Const. amend. V.

7 73. Petitioner’s fundamental liberty interest is at stake. “Freedom from
8 imprisonment—from government custody, detention, or other forms of physical restraint—lies
9 at the heart of the liberty interest that the Clause protects.” *Zadvydas*, 533 U.S. at 690. The
10 Ninth Circuit has held that “[r]emaining confined in jail when one should otherwise be free is
11 an Article III injury plain and simple[.]” *Gonzalez v. United States Immigr. & Customs Enf’t*,
12 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir.
13 2014)).

14 74. Respondent’s continued detention of Petitioner by filing the automatic stay of the
15 IJ’s bond order violates his procedural due process as applied to this case. This is a second
16 detention that requires additional justification, but Petitioner’s detention occurred
17 automatically and without a hearing. Accordingly, Petitioner is deprived of his fundamental
18 liberty interest in being free from government restraint.

19 75. Moreover, the autostay regulation facially and as applied violates substantive due
20 process because it permits Respondent to exercise unfettered discretion in unilaterally
21 detaining noncitizens—who have already been granted bond by a duly appointed IJ—without a
22 case-by-case determination.

1 76. This Court’s holdings in *Herrera Torralba v. Knight* and *Maldonado Vasquez v.*
2 *Feeley* directly prohibits Respondent’s continued detention of Petitioner at the expense of
3 Petitioner’s fundamental due process rights.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 6 a. Assume jurisdiction over this matter;
- 7 b. Enjoin respondents from transferring Petitioner outside the District of Nevada;
- 8 c. Issue a writ of habeas corpus requiring that Respondents release Petitioner
9 immediately on the terms of the bond granted by the Immigration Judge on
August 14, 2025;
- 10 d. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act
11 (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other basis justified under
law; and
- 12 e. Grant any other and further relief that this Court deems just and proper.

13 DATED this 19th day of November, 2025.

14 Respectfully Submitted,
15 /s/Michael Kagan
Michael Kagan
Nevada Bar. No. 12318C

16 /s/Drianna Dimatulac
17 Drianna Dimatulac
18 /s/Yilu Song
Yilu Song
19 Student Attorneys Practicing
Under Nevada Supreme Court Rule 49.3

20 **UNLV IMMIGRATION CLINIC**
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1
2
3 **LOCAL RULE IA 11-5 STATEMENT**
4 **REGARDING LAW STUDENT APPEARANCE**

5 Petitioner in this matter is co-represented by third-year law students who are certified student
6 attorneys under Nevada Supreme Court Rule 49.3. They are students in the UNLV Immigration
7 Clinic, part of the Thomas & Mack Legal Clinic at the William S. Boyd School of Law.

8 I am a member of the faculty at the William S. Boyd School of Law and Director of the UNLV
9 Immigration Clinic. I have been a licensed attorney since 2000, and I am the supervising attorney
10 of the student attorneys in this case.

11
12 I hereby certify that I have and will ensure full compliance with all requirements of LR IA 11-5
13 governing appearance by law students in this court.

14
15
16 /s/ Michael Kagan
17 Michael Kagan
18 Nevada Bar. No. 12318C

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EXHIBIT LIST

Exhibit	Document	Page
A	Declaration of Petitioner	001–003
B	Immigration Judge’s Bond Order, filed on August 14, 2025	004–006
C	Notice to Appear, filed on September 14, 2024	007–010
D	Order, dated June 9, 2025 (Recalendaring)	011–015
E	Order, dated June 9, 2025 (Dismissal)	016–018
F	Filing Receipt for Appeal, dated July 10, 2025	019–021
G	EOIR 43 – Notice of Intent to Appeal, filed on August 15, 2025	022–023
H	Filing Receipt for Appeal, dated August 28, 2025	024–027
I	BIA Receipt Notice, dated August 28, 2025	028–030