



5. Department of Homeland Security (“DHS”) Enforcement and Removal Operations (“ERO”) detained him on August 20, 2025, during a raid at his place of employment, and he was taken to the Delaney Hall Detention Center in Newark, New Jersey.
6. He has been unlawfully detained there since August 20, 2025.
7. Because of his clean criminal record and strong community ties, an immigration judge (IJ) ordered Mr. Cesar Galo Colindres release on a \$7,500 bond. Ex. 1, Order of the Immigration Judge (September 4, 2025); Ex. 2, Bond Memorandum of the Immigration Judge (October 22, 2025), however, DHS reserved appeal of the immigration judge’s decision and then invoked a regulation authorizing DHS to unilaterally overrule the judgement of the immigration judge and obtain an automatic stay of the bond order during further review before the Board of Immigration Appeals (“BIA”). Under that “automatic stay” regulation, 8 C.F.R. § 1003.19(i)(2), if DHS disagrees with an IJ’s custody determination, DHS can file a boilerplate notice of intent to appeal that automatically stays the IJ’s order. In other words, the prosecuting officials who failed to convince the IJ to keep Mr. Cesar Galo Colindres detained in the first place can unilaterally block the IJ’s order and force continued detention. That decision is still pending with the BIA.
8. Mr. Cesar Galo Colindres now languishes in jail for the duration of the bond appeal, or even longer, despite a valid order mandating his release. As applied to this case, the government’s use of the automatic stay regulation is an unconstitutional deprivation of due process and *ultra vires*.
9. While in detention, Mr. Cesar Galo Colindres filed application for cancellation of removal and adjustment of status for certain nonpermanent residents, however this application was denied by the Immigration Judge, and Mr. Cesar Galo Colindres

appealed this decision, and that appeal is currently pending judgment.

10. Mr. Galo Colindres does not have any active warrants or negative criminal history that would change the circumstances.
11. In addition, Mr. Galo Colindres has a pending I-130 family petition, filed by his United States Citizens spouse with U.S. Citizenship and Immigration Services (“USCIS”), and it is currently pending approval.
12. On July 8, 2025, DHS issued a new policy memorandum to all employees of Immigration and Customs Enforcement (Hereinafter “ICE”) stating that “[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter “DOJ”), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” Memorandum, U.S. Immigration & Customs Enforcement, *Interim Guidance Regarding Detention Authority for Applications for Admission (July 8, 2025)*, available at AILA Doc. No. 25071607, <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.
13. Petitioner’s detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an “applicant for admission” who is “seeking admission.” Rather, he should be detained pursuant to 8 U.S.C. § 1226(a) and eligible for a bond hearing.

14. Through this petition, Mr. Galo Colindres respectfully requests that the Court find his detention unlawful and unconstitutional and issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 ordering Respondents to immediately release her from custody.

### **JURISDICTION & VENUE**

15. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*
16. Venue is proper because the Petitioner is detained at the Delaney Hall Detention Center, 451 Doremus Ave, Newark, New Jersey. *See* ICE Detainee Locator in Ex. 3; *See also generally Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, “[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States,” he must file the petition in the district of confinement and name his immediate custodian as the respondent).

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

17. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.
18. If an order to show cause is issued, Respondents must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
19. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or

justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

20. Mr. Cesar Galo Colindres requests the Court issue an Order to Show Cause, and direct Respondents to file a response within three days, in light of the significant restraint on Mr. Cesar Galo Colindres’s liberty.

### **PARTIES**

21. Petitioner Mr. Galo Colindres is a forty-nine-year-old citizen and national of Honduras. Prior to his detention, he resided with his United States Citizen wife and their United States Citizen minor son in Elizabeth, NJ. He has been in ICE custody for over three months at the Delaney Hall Detention Facility.
22. Respondent Jonathan Florentino is named in his official capacity as the Acting Director of the Newark, NJ Field Office of Enforcement and Removal Operations (“ERO”), U.S. Immigration and Customs Enforcement (“ICE”). Respondent Florentino is a legal custodian of the Petitioner and has the authority to release him.
23. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of New Jersey, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner.
24. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); routinely transacts business in the

District of New Jersey; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner.

**STATEMENT OF THE FACTS**

25. Mr. Cesar Galo Colindres is a forty-nine-year-old male with no criminal history.
26. Mr. Galo Colindres entered the United States on February 10, 2007, after he fled Honduras to escape gang violence targeted against him and his family.
27. Mr. Galo Colindres has been present in the United States for over eighteen years. Has worked hard, paid taxes, and contributed to his community.
28. Mr. Galo Colindres was not placed into removal proceedings until August 20, 2025, when he was arrested, and issued an NTA.
29. DHS detained him on August 20, 2025, during a raid at his place of employment, and he was taken to the Delaney Hall Detention Center in Newark, New Jersey.
30. At a bond redetermination hearing on September 4, 2025, the IJ heard evidence and arguments from Mr. Cesar Galo Colindres and the government. Mr. Cesar Galo Colindres emphasized his strong ties to the community and submitted multiple letters of support from family and friends. DHS argued for the first time that Mr. Cesar Galo Colindres is subject to mandatory detention under a different provision, 8 U.S.C. § 1225(b)(2)(A), which governs the inspection process for noncitizen “applicants for admission”—new arrivals to the country.
31. In accordance with decades of practice, the IJ rejected DHS’s novel argument that Mr. Cesar Galo Colindres is subject to mandatory detention. The IJ also made specific findings of fact that Mr. Cesar Galo Colindres is not a danger or substantial flight risk and ordered Mr. Cesar Galo Colindres be released on a \$7,500.00 bond. Mr. Cesar Galo Colindres family attempted to post bond the same day, but they were

unsuccessful because DHS did not accept the bond and instead filed a Form EOIR-43 “Notice of Intent to Appeal the Custody Redetermination,” unilaterally and automatically staying the IJ’s decision while DHS pursued appeal.

32. In other words, DHS—the prosecutor—is not bound by the IJ’s determination. The prosecutor disagreed with the IJ’s decision and unilaterally overrode the order by filing a simple Form EOIR-43.

33. Mr. Cesar Galo Colindres now remains in custody in contravention of the IJ’s order. DHS’s appeal to the BIA can take months. And as explained more fully below, even resolution of the appeal may not immediately end the automatic stay.

### **LEGAL BACKGROUND**

#### **DETENTION AND BOND HEARINGS**

34. Congress has granted the Attorney General discretion to decide whether to detain or release certain noncitizens pending a removal decision. See 8 U.S.C. § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19, 1236.1. The discretionary detention provision, 8 U.S.C. § 1226(a), applies only to noncitizens without serious criminal convictions. It contrasts with the mandatory detention provision, 8 U.S.C. § 1226(c), which applies to noncitizens convicted of certain criminal offenses or involved in terrorist activities and requires continued detention. This is the “default” detention authority, *see Jennings v. Rodriguez*, 582 U.S. 281 (2018), and for decades has been applied to people apprehended in the interior, rather than at or near the border or a port of entry.

35. Second, the INA provides for *mandatory* detention of noncitizens subject to an expedited removal order imposed pursuant to § 1225(b)(1) and for other noncitizen

“applicants for admission” who are “seeking admission” to the U.S. who are apprehended at the border or port of entry, *see* 8 U.S.C. § 1225(b)(2).

36. Section 1225 focuses on noncitizens “arriv[ing]” “whether or not at a designated port of arrival,” and plainly applies to people like those who were “interdicted in international or United State waters” (§ 1225(a)(1)), are “stowaways” (§ 1225(a)(2)), and who are otherwise “applicants for admission” into the U.S. (§ 1225(a)(3)). In contrast to § 1226, § 1225 discusses matters such as “screening” “claims for asylum” (§ 1225(b)(1)(A)(i)-(ii)) at the border, “inspection” to determine if a noncitizen “is ... clearly and beyond a doubt entitled to be admitted” (§ 1225(b)(2) & (d)), and “removal” of “an arriving [noncitizen]” (§ 1225(c)(1)).
37. Finally, the INA provides for detention of noncitizens who have been ordered removed. *See* 8 U.S.C. § 1231(a). As Mr. Cesar Galo Colindres and hundreds of others like him are not yet subject to a final removal order, this provision is not relevant here.
38. This case concerns the discretionary detention provisions at 8 U.S.C. § 1226(a) and the mandatory detention provisions at § 1225(b)(2).
39. The Supreme Court summarizes the interplay between §§ 1226 and 1225 as follows: “In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission *into* the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c).” *Jennings*, 582 U.S. at 289 (emphasis added).

40. 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, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582, & 3009-585. Section 1226 was most recently amended earlier in 2025 by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).
41. Following enactment of the IIRIRA, EOIR wrote new regulations explaining that, in general, people who entered the country without inspection were *not* detainable under § 1225 and that they were instead could only be detained under § 1226 – and thus able to access bond. *See* Inspection and Expediated Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)
42. Thus, in the following decades, most people who entered without inspection, were later apprehended in the interior, and were then placed in standard § 1229a removal proceedings (like Mr. Cesar Galo Colindres), could receive bond hearings under § 1226 before IJs (unless their criminal history rendered them ineligible under § 1226(c)). That practice was consistent with additional decades of pre-IIRIRA practice, in which noncitizens who were not “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 the new § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
43. However, over the last several months, the government has adopted an entirely new interpretation of the statute.

44. On or about July 8, 2025, ICE, “in coordination with the Department of Justice (DOJ),” announced a new policy that rejected this decades-long framework, and the well-settled understanding of the statutory basis for detention.
45. The new ICE/DOJ policy, titled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” claims that all noncitizens present within the U.S. who entered without inspection – no matter how long ago – are deemed “applicants for admission” who are “seeking admission” under 8 U.S.C. § 1225, and thus subject to mandatory detention under § 1225(b)(2)(A). The new policy applies regardless of when and where a person was apprehended and primarily affects people who have resided in the U.S. for months, years, and even – like Mr. Cesar Galo Colindres – decades.
46. Respondents continue to take this position even though nearly every federal court considering this issue has rejected their position and granted *habeas* or other preliminary relief to detained immigrants who were held without bond. *Rodriguez-Vazquez v. Bostock*, 779 F.Supp.3d 1239 (W.D. Wash. 2025) (granting preliminary relief); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, \*8 (D. Mass. July 7, 2025) (granting individual *habeas* relief); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, \*9 (D. Mass. July 24, 2025) (denying reconsideration of individual *habeas* relief); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, \*13 (C.D. Cal. July 28, 2025) (granting preliminary relief); *Escalante v. Bondi*, No. 25-cv-3051, 2025 WL 2212104 (D. Minn. July 31, 2025) (report and recommendation to grant preliminary relief, adopted *sub nom* *O.E. v. Bondi*, 2025 WL 2235056 (D. Minn. Aug. 4, 2025)); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (granting

individual *habeas* relief); *de Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and recommendation to grant *habeas* relief, adopted without objection at 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (granting *habeas* relief); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug 15, 2025) (same); *Romero v. Hyde*, -- F.Supp.3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (same); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (same); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Kostak v. Trump*, No. 3:25-dcv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025) (same); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, Doc. 14 (E.D. Mich. Aug. 29, 2025) (granting *habeas* relief).

47. It is estimated that this novel and incorrect interpretation of the INA would require a person's detention any time that immigration authorities arrest one of the millions of undocumented immigrants residing in the U.S. who entered without inspection and who have not since been admitted or paroled.<sup>1</sup>
48. Pursuant to its July 8, 2025 policy, DHS is now asserting that all person who entered without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

---

<sup>1</sup> Maria Sacchetti & Carol D. Leonnig, *ICE declares millions of undocumented immigrants ineligible for bond hearings*, WASHINGTON POST (July 14, 2025), <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/> [<https://perma.cc/5ZTR-EN4B>].

49. Simply, DHS, DOJ, EOIR, and ICE’s interpretation defies the plain language of the INA, its long-extant implementing regulations, and canons of statutory construction. And now over a dozen federal court orders.
50. Instead, the INA’s plain text demonstrates § 1226(a) – *not* § 1225(b) – applies to people like Mr. Cesar Galo Colindres. Section 1226(a) is the “default rule” applying to all persons “pending a decision on whether the [noncitizen] is to be removed.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1246 & *Jennings*, 582 U.S. at 281.
51. Other portions of the text of § 1226 also explicitly apply to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible individuals makes clear that, by default, inadmissible individuals not subject to subparagraph (E)(ii) are entitled to a bond hearing under subsection (a). “When Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1256-57 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).
52. Thus, § 1226 leaves no doubt that it applies to noncitizens like Mr. Cesar Galo Colindres who are present without admission and who face charges of removal proceedings of being inadmissible to the U.S.
53. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who very recently entered the U.S. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the U.S. 8 U.S.C. § 1225(b)(2)(A). *See also Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, \*9 (D. Mass. July 24, 2025) (“Our immigration laws have long made a distinction between those [noncitizens] who have come to our

shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality.”) (cleaned up, citing *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is inadmissible.” *Jennings*, 583 U.S. at 287.

#### **AUTOMATIC AND DISCRETIONARY STAY REGULATIONS**

54. The relevant regulations provide two distinct mechanisms for staying an IJ’s custody order while the government appeals the decision: (1) discretionary stays from the BIA, and (2) automatic stays like the one used here.
55. Under the first mechanism—discretionary stay—DHS files a motion and must persuade the BIA that a stay is warranted. 8 C.F.R. § 1003.19(i)(1). The BIA serves as a neutral adjudicator and weighs the merits of DHS’s position. The BIA ultimately makes the decision about whether to grant the stay. DHS could have used that mechanism in this case but did not.
56. Instead, DHS used the second mechanism: the automatic stay. This mechanism involves no neutral adjudicator considering the merits. Rather, it allows the prosecutor—who lost before the IJ—to unilaterally stay the IJ’s decision.
57. The automatic stay regulation was originally enacted in October 2001, in response to the September 11 terrorist attacks, without any opportunity for public comment.
58. Its enactment marked a drastic change in practice. Before the automatic stay, there was only one route to stay an IJ’s custody determination: a discretionary stay from the BIA. The Immigration and Nationality Service (DHS’s predecessor) was required to demonstrate to the BIA that it was likely to succeed on the merits and would suffer

irreparable harm in the interim. The automatic stay provided a second, much easier route: simply filing a short Form EOIR-43, without any need for an adjudicator to weigh in.

59. The purported purpose of the automatic stay is to protect the public and “enhance agencies’ ability to effect removal should that be the ultimate final order in a given case.” Executive Office of Immigration Review; Review of Custody Determination, 71 Fed. Reg. 57873, 57874 (Oct. 2, 2006).

60. Regulations provide that DHS’s automatic stay will lapse in 90 days absent a BIA decision on the appeal. 8 C.F.R. § 100.36(c)(4). But there are multiple avenues for extension. For example, if the BIA does not issue a decision in the 90-day window, DHS can then seek an additional discretionary stay from the BIA. 8 C.F.R. § 1003.6(c)(5). The automatic stay remains in effect for another 30 days while the BIA decides whether to grant a discretionary stay. *Id.*

61. Likewise, even if the BIA rules in favor of Mr. Cesar Galo Colindres on appeal and authorizes his release on bond, that release is automatically stayed for five more business days to give DHS a chance to refer the case to the Attorney General. 8 C.F.R. § 1003.6(d). Then, if DHS refers the case to the Attorney General, the automatic stay is extended for another 15 days. *Id.* The Attorney General may then stay the noncitizen’s release for the pendency of the case. *Id.* There is no prescribed time limit for final resolution of the custody determination, meaning an individual may remain in detention indefinitely.

62. In sum, Mr. Cesar Galo Colindres has no way of knowing how long this automatic stay will last and has no opportunity to challenge the stay. In practice, the automatic stay regulation renders the IJ’s custody decisions ineffectual: If DHS disagrees with a

custody decision, it can keep Mr. Cesar Galo Colindres detained for a minimum of 90 days, without a truly discernable end point.

63. Meanwhile, Mr. Cesar Galo Colindres is in custody, and his conditions of confinement are indistinguishable from criminal incarceration: He is separated from family, housed in a facility with criminal defendants, and subject to Delaney Hall's detention rules.

### *ULTRA VIRES*

64. The automatic stay regulation exceeds the authority given to the Attorney General by Congress and unlawfully eliminates IJs' discretionary authority to make custody determinations.
65. Congress gave the Attorney General discretion to decide whether to release detained noncitizens pending removal proceedings if they have not been convicted of certain criminal offenses and are not linked to terrorist activities. See 8 U.S.C. § 1226(a), (c). The Attorney General has delegated this authority to 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).
66. 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 is an unlawful use of the discretionary power granted to the Attorney General and "has the effect of mandatory detention of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention." *Zavala*, 310 F. Supp. 2d at 1079; see also *Ashley*, 288 F. Supp. 2d at 673 ("As Congress specifically exempted aliens like Petitioner from the mandatory detention of § 1226(c), it is

unlikely that it would have condoned this back-end approach to detaining aliens like Petitioner through the combined use of § 1226(a) and § 3.19(i)(2).”).

67. Here, the IJ determined that Mr. Cesar Galo Colindres is not a danger to the community or a sufficient flight risk and ordered DHS release him on bond.

### **SUBSTANTIVE DUE PROCESS**

68. The Due Process Clause of the Fifth Amendment guarantees that no person in the United States shall be deprived of liberty without due process. U.S. Const. amend. V. These substantive and procedural due process protections apply to all people, including noncitizens, regardless of their immigration status. *Trump v. J.G.G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (per curiam) (“It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993))).

69. The Due Process Clause provides heightened protection against government interference with certain fundamental rights—and freedom from detention lies at the heart of the Due Process Clause’s protections. Detention by the government violates due process in civil proceedings unless “a special justification . . . outweigh[s] the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, (2001).

### **PROCEDURAL DUE PROCESS**

70. Due process also requires an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976).

71. To determine whether government conduct violates procedural due process, the Court weighs three factors: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the 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. *Id.* at 335.
72. This practice of providing people like Mr. Cesar Galo Colindres bond hearings – both pre- and post-enactment of the IIRIRA – is consistent with the fact that noncitizens present in the U.S. have constitutional rights. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

### **CLAIM FOR RELIEF**

#### **I. VIOLATION OF THE INA**

##### **Request for Relief Pursuant to *Maldonado Bautista*, 5:25-cv-1873 (C.D. Cal.)**

73. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
74. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’ proposed nationwide Bond Eligible Class, incorporating and

extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

75. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11.

76. As a member of the Bond Eligible Class in *Maldonado Bautista*, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

77. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

78. The order granting class certification in *Maldonado Bautista* further orders that “[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”

79. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

80. By asserting that the Petitioner is subject to mandatory detention, under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

## **II. VIOLATION OF 8 U.S.C. § 1226(a), Unlawful denial of release on bond**

81. Petitioner incorporates and realleges all paragraphs as if fully set forth here.

82. On August 20, 2025, about eighteen years after initial arrival, Mr. Cesar Galo Colindres was arrested, detained and issued a Notice to Appear.

83. DHS subjected him to detention under § 1225, stating that he is subject to mandatory detention.

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

85. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Mr. Cesar Galo Colindres because he was present and residing in the U.S., and has been placed under a § 1229a removal proceeding, and charged with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). Simply, § 1225 does not apply to people like Mr. Cesar Galo Colindres who previously entered the country and have been present and residing in the U.S. prior to being detained and placed in removal proceedings by Respondents. Such noncitizens may only be detained pursuant to § 1226(a), unless (unlike Mr. Cesar Galo Colindres) they are subject to mandatory detention under § 1226(c), or § 1231. And detention under § 1226(a) requires access to bond.

86. The unlawful application of § 1225(b)(2) to Mr. Cesar Galo Colindres unlawfully mandates his continued detention and violates the INA.

### **III. VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, Failure to Observe Required Procedures**

87. Petitioner incorporates all prior paragraphs as though restated here.

88. Under the APA, a court must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

89. Respondents’ detention of Mr. Cesar Galo Colindres pursuant to § 1225 is arbitrary and capricious, and in violation of the Fifth Amendment of the U.S. Constitution.

Respondents do not have statutory authority under § 1225 to detain Mr. Cesar Galo Colindres.

90. Respondents' detention of Mr. Cesar Galo Colindres without access to bond is arbitrary, capricious, an abuse of discretion, violative of the U.S. Constitution, and without statutory authority, all in violation of 5 U.S.C. § 706(2).

**IV. VIOLATION OF THE PETITIONER'S FIFTH AMENDMENT DUE PROCESS CLAUSE; Challenge to Mandatory Detention**

91. Petitioner incorporates all prior paragraphs as though restated here.

92. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

93. "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 [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

94. Mr. Cesar Galo Colindres' detention violates his Fifth Amendment rights for at least three related reasons.

95. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).

96. Whereas here, the court has granted bond, the continued detention is not reasonably related to its purpose.

97. Second, the Due Process Clause requires that any deprivation of Mr. Cesar Galo Colindres's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what

process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”); *Demore*, 538 U.S. at 528 (applying less rigorous standard for “deportable aliens”).

98. Petitioner’s ongoing imprisonment does not satisfy that rigorous standard, as he did not commit any crime, was granted bond by the court, and has forms of relief.

99. Third, “the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.” *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).

100. The continued detention of Mr. Cesar Galo Colindres was arbitrary because he was granted bond, has forms of relief, and has no criminal arrests or convictions.

## V. *ULTRA VIRES* REGULATION

101. Petitioner incorporates all prior paragraphs as though restated here.

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

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

## VI. VIOLATION OF THE PETITIONER’S FIFTH AMENDMENT DUE PROCESS CLAUSE; Challenge to Auto-Stay

104. In Mr. Cesar Galo Colindres’s case, DHS did not present any evidence or argument that he is a flight risk or danger to the community. After a full hearing, the IJ determined that Mr. Cesar Galo Colindres is not a danger or substantial flight risk. To the extent the government has concerns about safety or flight, the IJ already addressed

them.

105. The government has no special or compelling justification to continue detaining Mr. Cesar Galo Colindres, and certainly not an interest that outweighs Mr. Cesar Galo Colindres's interest in avoiding government restraint. See *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004) ("The regulation, which permits unilateral government detention of individuals without a case-by-case determination after a reasoned finding that they do not pose threat to safety or a risk of flight, violates the Due Process Clause because no special justification exists that outweighs the individual's constitutionally protected interest in avoiding physical restraint."); *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003) ("[T]he Government has not shown that any 'special justification' exists which outweighs Petitioner's constitutional liberties so as to justify his continued detention without bail.").

106. Finally, a less-restrictive means exists through which DHS can obtain a stay: the discretionary stay regulation requiring DHS to seek an emergency stay from the BIA. 8 C.F.R. § 1003.19(i)(1). That regulation protects DHS's interest in obtaining a stay without unduly infringing on Mr. Cesar Galo Colindres' liberty. See, e.g., *Dep't of State v. Munoz*, 602 U.S 899, 910 (2024) ("When a fundamental right is at stake, the government can act only by narrowly tailored means that serve a compelling state interest.").

107. The government's application of the automatic stay regulation and continued detention of Mr. Cesar Galo Colindres violates his substantive due process rights.

**PRAYER FOR RELIEF**

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

- A. Assume jurisdiction over this matter;
- B. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately; pending these proceedings.
- C. Order Respondents to Show Cause why this Petition should not be granted within seventy-two hours;
- D. If Petitioner is not immediately released, order Respondents not to transfer Petitioner out of this District during the pendency of these proceedings, to preserve jurisdiction;
- C. Issue an Order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard;
- D. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, and is *ultra vires*;
- E. Declare that the Petitioner's detention violates the Immigration and Nationality Act;
- F. Issue a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody in accordance with the bond order, or, in the alternative, order Respondents to conduct a bond hearing at which the government bears the burden of proof;
- G. Declare that DHS' practice of using EOIR-43 to subject detainees to detention after an IJ sets a bond violates both the constitution and the Immigration and Nationality Act., and its implementing regulations.

- H. Award Petitioner reasonable attorneys' fees and costs; and
- I. Grant any further relief the Court deems just and proper.

Dated: December 3, 2025

Respectfully Submitted,

/s/ Rebecca Robles  
REBECCA ROBLES, ESQ.  
New Jersey State Bar No. 263242019  
Law office of Rebecca Robles, PC.  
Rebecca Robles, Esq.  
63 Smith Street  
Perth Amboy, NJ 08861  
Telephone: 732-697-1111  
E: [rebeccaroblesesq@gmail.com](mailto:rebeccaroblesesq@gmail.com)

*Attorney for Petitioner*