

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1: 25-cv-03980-RMR

EZEQUIEL ALCARAZ BARRIENTOS,

Plaintiff-Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado,
in his official capacity,
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and
Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her
official capacity;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his
official capacity;
PAMELA BONDI, Attorney General of the United States, in her official capacity;

Defendants-Respondents.

**PETITIONER-PLAINTIFF'S REPLY TO RESPONDENT-DEFENDANTS' RESPONSE
(ECF 20)**

The dispositive question before this Court is not new. Defendants-Respondents' ("Defendants") erroneously claim that their authority to jail Plaintiff-Petitioner ("Plaintiff") is pursuant to 8 U.S.C. § 1225(b)(2) because he entered the United States without inspection ("EWI") years ago. *See generally* ECF 20. On January 7, 2025, an immigration judge ("IJ") disagreed, finding Plaintiff a member of the Bond Eligible Class in *Maldonado Bautista v. Santacruz*, ---F.Supp.3d---, 2025 WL 3713987, *2 (C.D. Cal. 2025) and granted Plaintiff released on \$5,000 bond, Exh. 1, IJ Bond Order. Undeterred, Defendants unilaterally invoked the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) to ensure Plaintiff remains illegally detained while Defendants argue before the Board of Immigration Appeals ("BIA") that Plaintiff is jailed pursuant to § 1225(b)(2).

This Court should remain part of the chorus of federal courts across the country granting *habeas* relief finding Defendants interpretation of the statute and Defendants' invocation of the automatic stay illegal. Since Plaintiff filed this case, "the chorus has only grown louder." *Velazquez de Leon v. Baltazar, et al.*, 1:25-cv-03805-RBJ, *5 (D. Colo. Dec. 22, 2025), EFC 19 (attached as Exh. 2).

I. Introduction¹

Before filing his Amended Petition, federal courts overwhelmingly agreed that Defendants' policy of excluding people who entered without inspection (EWIs) from bond is unlawful. ECF 19, ¶ 24 n.4. Defendants' response ignores those decisions, this Court's multiple rulings, *e.g.*, *Mendoza Gutierrez v. Baltasar et al.*, 25-cv-2720-RMR, 2025 WL

¹ There are two motions pending before this Court. First, the parties filed a proposed motion for a briefing schedule to address the material change in facts requiring Plaintiff to file an amended petition. ECF 18. The parties have obliged by the proposed briefing schedule, and this Reply concludes all proposed briefing. *Id.* Second, Plaintiff filed an unopposed motion to exceed page limits. ECF 21. Plaintiff files this 15-page reply with the hope that the Court grants that motion.

2962908, (D. Colo. Oct. 17, 2025), and decisions from “every court in this District” finding Defendants’ authority to jail Plaintiff pursuant to § 1226(a) not § 1225. *Ugarte Hernandez v. Baltazar et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (attached as Exh. 3).² Defendants instead present a “strained reading” of *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and fail “to distinguish the authority rejecting their arguments.” *Espinoza Ruiz v. Baltazar*, 25-cv-03642-CNS, 2025 WL 3294762, *2 (D. Colo. Nov. 26, 2025), ECF 18. This Court should continue to be part of the “tsunami” of decisions finding Defendants’ position unlawful and grant Plaintiff relief. *Roa v. Albarran, et al.*, 25-cv-07802-RS, 2025 WL 2732923, *1 (citation omitted).

II. Plaintiff’s Incarceration is Pursuant to § 1226.

a. A Proper Reading of *Jennings* Supports Plaintiff’s Position.

Jennings begins with a discussion of our “Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. 281 at 287 (emphasis added). The Court notes that §§ 1225(a) and 1225(b) are relevant for this determination, *id.* 287–88, and concludes that the latter is for noncitizens who “shall be detained for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted *into the country*,” *id.* at 288 (emphasis added) (citing § 1225(b)(2)). The Court

² Defendants unconvincingly provide a string cite to a few cases that are extreme outliers to the national consensus that people like Plaintiff are subject to § 1226(a). Compare ECF 20, **20–21 (citing eight cases finding in Defendants’ favor) with Exh. 4 (list of 294 cases finding in Plaintiff’s favor) and *Ugarte Hernandez*, 1:25-cv-04066-RBJ, *4 (noting that this District unanimously agrees with Plaintiff). Defendants thereafter only cite one of those cases, *Rojas*, to support their erroneous position. See generally ECF 20. Courts have found *Rojas* contrary to several canons of statutory construction. E.g., *Edahi v. Lewis*, 4:25-cv-129-RGJ, 2025 WL 3466682, **10–11 (W.D. Ky. Nov. 27, 2025). This Court should continue to follow its reasoning in *Mendoza Gutierrez*, 2025 WL 2962908.

then transitions to discuss that “*once inside the United States*, [noncitizens] do not have an absolute right to remain here[.]” *id.* (emphasis added), concluding that “U.S. immigration law authorizes the Government to detain certain [noncitizens] *already in the country* . . . under § 1226(a) and (c).” *Id.* at 289 (emphasis added). *Accord Castanon-Nava v. U.S. Dep’t Homeland Sec. et al.*, 161 F.4th 1048, 1061 (7th Cir. 2025).

While Defendants suggest that *Jennings* applied § 1226 only to “admitted” people, *Jennings* did the opposite when noting that “U.S. immigration law authorizes . . . [detention] . . . of certain [noncitizens] *already in the country* . . . under § 1226(c)[.]” *Jennings*, 583 U.S. at 289 (emphasis added). Because § 1226(c) explicitly applies to people who were not admitted, 8 U.S.C. § 1226(c)(1)(A), (D), (E), Defendants’ “attempt to twist the Supreme Court’s decision in *Jennings* . . . does not help their cause,” *Espinoza Ruiz*, 2025 WL 3294762, *2; *See Mendoza*, 2025 WL 2962908, *6. Indeed, Defendants’ “reading of *Jennings* . . . is selective.” *Ugarte Hernandez*, 1:25-cv-04066-RBJ, *13.

b. Defendants’ Position Cannot be Squared with the Plain Language of § 1225(b)(2)

“[A] proper understanding of the relevant statutes . . . compels the conclusion that § 1225’s provision for mandatory detention of noncitizens ‘seeking admission’ does not apply to [noncitizens], who ha[ve] been residing in the [U.S.]” *Mendoza Gutierrez*, 2025 WL 2962908, *5 (citation omitted). “If as the Government argues, all applicants for admission are deemed to be ‘seeking admission’ for as long as they remain applicants, then the phrase ‘seeking admission’ would add nothing to” § 1225(b)(2)(A). *Salcedo Aceros v. Kaiser*, 25-cv-6924, 2025 WL 2637503, *10 (N.D. Cal. Sept. 12, 2025); *Velazquez de Leon*, 1:25-cv-03805-RBJ, *6.

But Defendants still argue that § 1225(a)(1) defines “applicants for admission” to

include individuals present in the U.S. without admission. Fatally for Defendants, however, Congress did not define applicants for admission as necessarily seeking admission. As the Seventh Circuit recently concluded:

[I]t is Congress's prerogative to define a term however it wishes, and it has chosen to limit the definition of an "applicant for admission" to "a [noncitizen] present in the [U.S.] who has not been admitted or who arrives in the [U.S.]." 8 U.S.C. § 1225(a)(1). It could easily have included noncitizens who are "seeking admission" within the definition but elected not to do so.

Castanon-Nava, 161 F. 4th at 1061. This plain reading is reinforced by the definition of admission: "the lawful entry of the [noncitizen] into the [U.S.] after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). A person present in the U.S. after entering unlawfully is not "seeking" – in the sense of "asking for" or "try[ing] to acquire or gain"³ – lawful entry. Defendants do not account for this ordinary meaning and their interpretation of the statute "would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous" *Castanon-Nava*, 161 F.4th at 1061.

Defendants attempt to avoid this reality by pointing to § 1225(a)(3)'s use of the phrase "or otherwise" to argue all applicants for admission are seeking admission. ECF 20, *6. But Defendants overlook that the ordinary use of the term "or" is "almost always disjunctive, that is, the words it connects are to be given separate meanings," and "otherwise" means "something or anything else." *J.G.O. v. Francis*, 25-cv-7233, 2025 WL 3040142, *3 (S.D. N.Y. Oct. 28, 2025). "Taken together, 'or otherwise' is used to refer to something that is different from something already mentioned." *Id.* (quoting MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (10d. 2001)). In other words, "seeking admission" in § 1225(b)(2)(A) refers to "something that is different from" the previously mentioned term

³ "Seeking," Merriam-Webster.com, permalink: <https://perma.cc/P9ZJ-J6EF>.

“applicant for admission.” *See id.*; *see also Castanon-Nava*, 161 F.4th at 1061; *Ugarte Hernandez*, 1:25-cv-04066-RBJ, ** 8–9.⁴

c. Defendants’ Position Cannot be Squared with § 1226.

Defendants cannot reconcile their interpretation of the detention statutes with 8 U.S.C. § 1226. Congress recently reaffirmed in the Laken Riley Act (“LRA”) that people who entered the U.S. without inspection are eligible for bond under § 1226(a) because the LRA specifically excludes a new subset of EWIs from bond based on criminal history. *See* 8 U.S.C. § 1226(a); *see also id.* §§ 1226(c)(A), (D) (E) (excluding certain EWIs from bond). “If 8 U.S.C. § 1225 already mandates detention for noncitizens ‘already in the country’ . . . , it would have been superfluous for Congress to pass the Laken Riley Act” *Mendoza Gutierrez*, 2025 WL 2962908, *7 (citation omitted). In fact, Defendants “endorse an interpretation of § 1225 that effectively removes § 1226 from existence.” *Maldonado Bautista*, 2025 WL 3713987, *11. If § 1226(a) did *not* generally provide bond to EWIs – as Defendants insist – Congress would not have needed to specifically exclude certain EWIs from bond in the LRA. *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995) (“When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect”).

Defendants offer no real response to this argument, and this Court already rejected their assertion that any redundancy between § 1225 and § 1226 is acceptable because

⁴ Defendants also ignore the rest of § 1225(a)(3) and fail to explain why “applicants for admission” are a subset of those “seeking admission” when the provision also refers to people who are “otherwise seeking . . . readmission to or transit through the [U.S.] . . .” 8 U.S.C. § 1225(a)(3). *See Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 625 (D.C. Cir. 2020) (“a basic rule of statutory construction is to ‘[r]ead on’”). Applicants for admission are undisputedly not subsets of *those* actions. Thus, at most the actions that follow the phrase “or otherwise” *might* describe certain applicants for admission where they engage in one of those actions, but they do not somehow encompass *all* applicants for admission.

the former is more specific. *Mendoza Gutierrez*, 2025 WL 2962908, *7. And with good reason. “[T]he language in § 1225 and § 1226 is not redundant but contradictory” because when “Congress has created specific exceptions to a rule, it ‘proves’ the general applicability of that rule, absent those exceptions.” *Romero v. Hyde*, 795 F.Supp.3d 271, 287 (D. Mass. 2025) (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

Here, Congress explicitly created a rule that EWIs are bond eligible absent certain criminal contact. 8 U.S.C. § 1226(c)(1)(A), (D), (E). Defendants’ view of the alleged redundancy swallows the rule, *Barrera v. Tindall*, 3:25-cv-541-RGJ, 2025 WL 2690565, *4 (W.D.Ky Sept. 19, 2025), while Plaintiff’s position of the statutes aligns with Congress’s intent in § 1226 to address a set of people to whom § 1225 did not apply, *Lopez-Campos v. Raycraft*, --- F.Supp.3d ---, 2025 WL 2496379, *8 (E.D. Mich. Aug. 29, 2025) (If “Congress had intended for [§] 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently” enacted the LRA); *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 485 (S.D.N.Y. Aug. 2025) (§§ 1225(b)(2) & 1226 are “mutually exclusive”).⁵ The Seventh Circuit, *Castanon-Nava*, 161 F.4th at 1061, and this Court agree, *Mendoza Gutierrez*, 2025 WL 2962908, *7.

d. Defendants Mischaracterize Congress’s Intent when Enacting the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”).

Defendants’ reliance on IIRIRA’s change to the “entry doctrine” is misplaced. The IIRIRA “legislative history suggests that Congress did not intend to alter the detention authority for noncitizens who entered unlawfully.” *Guerrero Orellana v. Moniz*, ---

⁵ Defendants’ position also violates the “cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant.” *Kungys v. U.S.*, 485 U.S. 759, 778 (1988) (emphasis added).

F.Supp.3d ----, 2025 WL 2809996, *9 (D. Mass. Oct. 3, 2025). Congress amended § 1226(a) to omit references to the § 1227 grounds of deportability to ensure EWIs were eligible for bond. See 8 U.S.C. § 1226(a).⁶

Congress' concern [in the IIRIRA] about adjusting the law in some respects to reduce inequities in the removal process did not mean Congress intended to entirely up-end the existing detention regime by subjecting all inadmissible noncitizens to mandatory detention, a seismic shift in the established policy and practice of allowing discretionary release under Section 1226(a) – the scope of which Congress did not alter.

Salcedo Aceros, 2025 WL 2637503, *12 (quoting H.R. Rep. 104-469, 229); see also *Mendoza Gutierrez*, 2025 WL 2962908, *8. The broader context confirms this: Congress expanded crime-based mandatory detention by enacting § 1226(c) and gave the government two years to expand detention capacity by 9,000 beds to do so. H.R. Rep. 123–24; M.H. Taylor, *The 1996 Immigration Act: Detention and Related Issues*, 74 INTERREL 209, 216–17 (1997). Defendants' suggestion that Congress simultaneously required detaining another *two million plus people* in silence is implausible and cannot be squared with the record. It also violates the principle that “Congress . . . does not alter fundamental details of a regulatory scheme in vague terms or ancillary provision – it does not, one might say, hide elephants in mouseholes.” *Whiteman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457 (2001); *Ugarte Hernandez*, 1:25-cv-04066-RBJ, *18.

Furthermore, Congress had good reasons to keep the pre-IIRIRA scheme affording EWIs bond. Detention implicates a fundamental liberty interest, and “once [a noncitizen] enters the country, the legal circumstances change, for the Due Process Clause applies to all ‘persons’ within the [U.S.], including [noncitizens], whether their

⁶ The pre-IIRIRA scheme permitted noncitizens who entered unlawfully and were subject to the grounds of deportability access to bond. 8 U.S.C. § 1252(a)(1) (1994).

presence is lawful, [or] unlawful ..." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Congress did not intend to radically alter detention statutes such to raise serious constitutional concerns. See *Clark v. Martinez*, 543 U.S. 371, 381 (2005).

Defendants' past explicit rejection of excluding people who entered without inspection from bond eligibility supports Plaintiff's petition. After the IIRIRA's passage, then-Attorney General Janet Reno proposed a rule that all "[i]nadmissible [noncitizens] in removal proceedings" be ineligible for bond. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, General Reno deleted that proposed provision and replaced it with one applying only to "[a]rriving [noncitizens], as described in § 1.1(q) of this chapter." 62 Fed. Reg. 10312, 10361 (March 6, 1997). As she explained, "[t]he effect of this change is that inadmissible [noncitizens], ... have available to them bond hearings ..., while arriving [noncitizens] do not." *Id.* at 10323. The agency's implementing regulations continue to make this distinction plain. *E.g.*, 8 C.F.R. § 1003.19(h)(2)(i).

III. The Automatic Stay Requiring Plaintiff's Ongoing Incarceration is Illegal.

Much like its position denying Plaintiff his liberty interest by applying the wrong statute, Courts resoundingly reject Defendants' use of the automatic stay regulation to do the same. *M.P.L. v. Arteta*, 25-cv-5307-VSB, 2025 WL 3288354, *7 (S.D.N.Y. Nov. 25, 2025) ("At least 50 district court decisions across the United States in the last 6 months alone" have found "DHS's application of the automatic stay . . . violates . . . due process under the Fifth Amendment"). Defendants are not using the automatic stay "within the bounds of its intended authority in recent months" *Merchan-Pacheo v. Noem, et al.*, 1:25-cv-03860-SBP, *17 n. 7 (D. Colo. Jan. 12, 2025), ECF 14 (filed as ECF 19-1).

a. Plaintiff is Entitled Constitutionally Protected Due Process.

Defendants' position that the Constitution's Due Process Clause does not apply to Plaintiff wrong. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (same); *Golicov v. Lynch*, 837 F.3d 1065, 1068 (10th Cir. 2016) (same). Defendants' mischaracterization of *Thuraissigiam* to argue otherwise proves the point. There, the Court stated that

[w]hile [noncitizens] who have *established connections* in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for a [noncitizen's] lawful entry into this country and that, as a result, a [noncitizen] at the *threshold of initial entry* cannot claim any greater rights under the Due Process Clause. Respondent attempted to enter the country illegally *and was apprehended just 25 yards from the border*. He therefore has no entitlement to procedural rights other than those afforded by statute.

Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 107 (2020) (emphasis added). Moreover, the Court did not review Thuraissigiam's incarceration; he did not "dispute that confinement during the pendency of expedited asylum review process . . . is lawful." *Id.* at 118. Rather, Thuraissigiam sought the "vacatur of his 'removal order' and 'an order directing [the Department] to provide him with a new . . . opportunity to apply for asylum and other relief from removal.'" *Id.* at 117–18. District Courts have therefore correctly found *Thuraissigiam* inapposite, e.g., *Sampiao v. Hyde*, 799 F.Supp.3d 14, 30 (D. Mass 2025); *Lopez-Arevelo v. Ripa*, 801 F.Supp.3d 668, 682–83 (W.D. Tex. 2025), and Circuit Courts continue to agree that the Constitution's Due Process Clause protects noncitizens' right to combat unlawful restrictions on their liberty, e.g., *Black v. Decker*, 103 F.4th 133, 138 (2d Cir. 2024); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 208 (3d Cir. 2020).

Defendants' reliance on *Demore* to deny Plaintiff constitutional due process is similarly unavailing. To begin, "*Demore* involved a very different set of circumstances from those alleged here." *Merchan-Pacheo*, 1:25-cv-03860-SBP, *8. "[T]he principles that the Supreme Court relies upon in *Demore* to rule against the petitioners are understandably not fully applicable in this context, because in *Demore* the parties did not dispute that the petitioners were subject to § 1226(c), which mandates detention of 'criminal' noncitizens." *Id.*,*11. "Here, in contrast, [the immigration judge] has held that [Plaintiff's] detention is *not* mandatory, and there is no indication that Plaintiff has ever been accused or convicted of a crime." *Id.*, *12 (emphasis in original). Notably, *Demore* even admits that the "Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings," *Demore v. Kim*, 538 U.S. 510, 523 (2003) (citation omitted), but that due process was not violated there because the noncitizen was detained under the correct statute which required detention for a finite period, *id.*, at 529. Therefore it would "*not* be appropriate to extend *Demore's* holding wholesale to a discretionary detention context where Congress has not installed prohibitions on obtaining bail." *Merchan-Pacheo*, 1:25-cv-03860-SBP, *13 n. 7 (emphasis in original). Here, Defendants jail Plaintiff under the wrong statute, and the correct statute of detention mandates access to bond. 8 U.S.C. § 1226(a); See Section II, *supra*. Defendants' use of the autostay denies Plaintiff his constitutionally protected due process rights.

b. The Mathews Factors Apply and Weigh Heavily in Plaintiff's Favor.

Defendants once again erroneously rely on irrelevant Supreme Court cases to deny Plaintiff due process. As discussed *supra*, *Demore* and *Thuraissigiam* are factually distinct. Neither *Demore* nor *Thuraissigiam* questioned whether they were subject to

mandatory detention, nor was the government there applying the wrong statutory authority to jail them. See Section III(a), *supra*. Moreover, this Court already correctly recognized that “Tenth Circuit precedent demonstrates that the *Mathews* test is appropriate when determining what process is constitutionally due.” *L.G. v. Choate*, 744 F.Supp.3d 1172, 1181 (D. Colo. 2024).

As for *Zadvydas*, the Court there addressed whether the statute—not due process—permitted indefinite detention. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (“Consequently, *interpreting the statute* to avoid a serious constitutional threat, we conclude that . . . continued detention is no longer authorized *by statute*”) (emphasis added). In other words, the Court had no reason to apply the *Mathews* factor because the Court conducted a statutory analysis. *Id.* Here, Plaintiff challenges Defendants’ use of the autostay regulation and asks the Court to hold its use here unconstitutional. As such, the *Mathews* factors apply, *L.G.*, 744 F.Supp.3d at 1181, and they weigh heavily in Plaintiff’s favor.

First, Plaintiff’s interest in physical freedom “is the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). This Court already found that “[e]ven if [Plaintiff] is a noncitizen in removal proceedings, that does not mean that he does not have a strong private interest in being free from civil detention” that is “more akin to incarceration than civil confinement.” *L.G.*, 744 F.Supp.3d at 1182. This factor weighs in Plaintiff’s favor.

Second, the risk of erroneous deprivation of that interest is high because “the only individuals subject to the automatic stay are those who, by definition, prevailed at their bond hearing.” *Carlton v. Kramer*, 4:25-cv-3178, 2025 WL 2624386, *3 (D. Neb. Sept. 11,

2025). In other words, “the automatic stay regulation empowers ICE—the losing party in the bond hearing—to unilaterally override the decision of the [immigration] judge and keep the noncitizen detained pending appeal. Such a rule allows the government to . . . usurp the role of the Immigration Judge.” *Sampiao*, 799 F.Supp.3d at 32. Moreover, “[t]he automatic stay regulation also inverts the traditional burdens and standards governing requests for stays pending appeal.” *Id.* DHS need not show any individualized facts or show a likelihood of success on the merits to unilaterally extend the noncitizen’s incarceration. See 8 C.F.R. § 1003.19(i)(2) (“shall be stayed”). Courts conclude therefore that autostay “carries a significant risk of erroneous deprivation.” *Gunayadin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025); *Simpiao*, 799 F.Supp.3d at 33 (same). This factor weighs in Plaintiff’s favor.

Finally, the Government’s interest in maintaining Plaintiff jailed “is not a strong one where the ‘status quo’ that ICE seeks to protect [via the stay] is the detention of an individual who an Immigration Judge has determined does not pose a public safety threat or risk of flight sufficient to warrant continued confinement.” *Maza v. Hyde*, ---F.Supp.3d---, 2025 WL 2951922, *4 (D. Mass. 2025). In other words, Defendants’ interests “in contravention of the order of a neutral fact-finder [] does not outweigh the liberty interest at stake.” *Jacinto v. Trump*, 796 F.Supp.3d 584, 592 (D. Nev. 2025). That is particularly true where, as here, Defendants have failed “to articulate any reason why detaining [Plaintiff] who . . . prevailed at a bond hearing is necessary to enforcing immigration law” *Maldonado Vazquez v. Feeley*, ---F.Supp.3d---, 2025 WL 2676082, *20 (D. Nev. 2025). It therefore begs the question “whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons”

in violation of substantive due process. *Id.* (citation omitted). This factor weighs in Plaintiff's favor.

c. Defendants Jail Plaintiff in Violation of Substantive Due Process.

"Government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances 'where a special justification . . . outweighs the individual's constitutionally protected interests in avoiding physical restraint.'" *Maldonado Vazquez v. Feeley*, --- F.Supp.3d---, 2025 WL 2676082, at *21 (D. Nev. 2025) (quoting *Zadvydas*, 533 U.S. at 690). Here, the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), permits the government to unilaterally detain Plaintiff despite a neutral adjudicator having already determined he is eligible for release on bond. Defendants offered no "special justification" or compelling interest outweighing Plaintiff's weighty interest in liberty. Indeed, Defendants have not alleged any interest beyond their misapplication of § 1225. Moreover, the IJ's bond determination already satisfies the government's legitimate interest in ensuring Petitioner appears for future proceedings. *Leal-Hernandez v. Noem*, ---F.Supp.3d---, 2025 WL 2430025, at *13 (D. Md. 2025). By suspending the IJ's individualized bond determination, the automatic stay renders it an "empty gesture," converting what should be a reasoned, case-by-case evaluation into a meaningless formality. *Id.* Plaintiff's continued incarceration therefore does not serve a legitimate purpose and violates substantive due process. *Id.*

d. The Disputed Regulation is *Ultra Vires*.

Defendants' claim that 8 C.F.R. § 1003.19(i)(2) validly delegates authority to DHS misreads the INA. Under 8 U.S.C. § 1226(a), Congress vested detention and bond

authority in the Attorney General, who may delegate it only within DOJ. IJs lawfully exercise that delegation, but DHS, a separate agency, has no statutory authority to override IJ determinations. By invoking § 1003.19(i)(2) to nullify an IJ's bond order, DHS usurps authority Congress assigned exclusively to the Attorney General—an ultra vires act. *Quispe v. Crawford*, 1:25-cv-1471-AJT-LRV, 2025 WL 2783799, *9 (E.D. Va. Sept. 29, 2025); *Campos Leon v. Forestal*, 1:25-cv-01774-SEB-MJD, 2025 WL 2694763, *4 (S.D. Ind. Sept. 22, 2025).

“Congress did not grant DHS authority to determine whether bond should be granted.” *B.D.V.S. v. Forestal*, 1:25-cv-01968-SEB-TAB, 2025 WL 2855743, *2 (S.D. Ind. Oct. 8, 2025). Plaintiff only remains in custody “because another agency, DHS, refuses to honor the bond determination. And DHS’s only source of authority for that refusal is a regulation promulgated by DOJ without Congress’s approval.” *Id.*, *3. Plaintiff’s continued detention is therefore only lawful if “DOJ could lawfully delegate its authority over bond determinations to DHS.” *Id.*

“It is axiomatic that an administrative agency’s power to promulgate legislative regulations is limited to the authority delegated by Congress.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). There is no Congressional authority delegated to DOJ or DHS for DHS to override the IJ’s bond decision here. *B.D.V.S.*, 2025 WL 2855743, at *3. “Congress set up a system for administering the removal of certain [noncitizens]. If it wished for DHS to have unilateral authority in that process, Congress could have created that system.” *Id.* It did not. *Id.*; *Campos Leon*, 2025 WL 2694763, at *4. The automatic stay therefore transforms an IJ’s discretionary bond decision into de facto mandatory detention imposed by DHS—rewriting § 1226(a) and allowing an agency outside DOJ to

veto judicial authority. *Leal-Hernandez*, 2025 WL 2430025, at *15.

Respondents' reliance on *Nuclear Regulatory Comm'n v. Texas*, 605 U.S. 665 (2025), is misplaced. That case did not involve fundamental liberty interests. Here, DHS' use of the automatic stay violates the statute and restricts liberty. Because the automatic stay strips IJ authority before BIA review, the injury is immediate and concrete. *Campos Leon*, 2025 WL 2694763, *4; *B.D.V.S.*, 2025 WL 2855743, *3. The automatic stay exceeds statutory authority, conflicts with the INA, and unlawfully permits DHS to nullify DOJ's delegated bond authority.

e. The Court has Jurisdiction Pursuant to the Administrative Procedures Act.

Defendants' claim that this Court lacks jurisdiction to consider his APA claim is without merit. "APA and habeas review may coexist." *R.I.L-R v. Johnson*, 80 F.Supp.3d 164, 185 (D. D.C. 2015); *J.G.G. v. Trump*, 722 F.Supp.3d 18, 31 (D.D.C. 2025) (noting that APA has "long been available to plaintiffs . . . even in immigration challenges where habeas is also available"). "The Supreme Court has long construed the 'adequate remedy' limitation on APA review narrowly, emphasizing that it 'should not be construed to defeat the central purpose of providing a broad spectrum of judicial review of agency action.'" *R.I.L-R*, 80 F.Supp.3d at 185 (quoting *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988)). The APA remains an adequate remedy.

IV. Conclusion

Based on the foregoing, this Court should grant Plaintiff's Amended Petition (ECF 19) and end Defendants' illegal incarceration of Plaintiff expeditiously.

Dated: January 20, 2026

Respectfully submitted,

/s/ Conor T. Gleason

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

/s/ Conor T. Gleason
Conor T. Gleason