

Christopher Vizcardo (Utah Bar No. 19107)
TRUJILLO | ACOSTA LAW
1258 West South Jordan Pkwy Suite 303
South Jordan, UT 84095
Tel: (801) 590-9139
Fax: (801) 931-2009
chris@tagteamlaw.com
Attorneys for Petitioner

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DEIBY DANIEL ORIAS BRACHO,

Petitioner,

v.

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

Defendants.

**PETITION FOR WRIT OF HABEAS
CORPUS**


Case No. 2:25-cv-02531

Judge:

Petitioner, DEIBY DANIEL ORIAS BRACHO (“Mr. Orias”), by and through counsel, complain of the Defendants, Brian Henke, in his official capacity as Las Vegas/Salt Lake City Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); John Mattos, in his official capacity as Warden of the Nevada Southern Detention Center; Kristi Noem in her official capacity as Secretary of Homeland

Security, United States Department of Homeland Security; Pamela Bondi in her official capacity as Attorney General of the United States; Executive Office for Immigration Review (“EOIR”), as follows:

I. INTRODUCTION

1. Counsel is an attorney that practices exclusively immigration law and is licensed to practice in and resides in Utah. Counsel has complied with LR IA 11-2 and the verified petition to allow counsel to represent the parties in this case has been filed.
2. Petitioner, by and through above-named counsel of record, submits this Petition for Writ of Habeas Corpus against the above-named Respondents for unlawful detention. Mr. Orias’s immigration alien number is .
3. Mr. Orias is an alien detained by Immigration & Customs Enforcement (“ICE”) at the Nevada Southern Detention Center. He faces unlawful detention because the Department of Homeland Security (DHS) has concluded, based on novel arguments, that he is subject to mandatory detention. These novel arguments contradict decades of established law.
4. Mr. Orias is a 26-year-old native and citizen of Venezuela who has resided in the U.S. since September 2023. He entered the United States without admission or inspection and is currently in removal proceedings before EOIR.
5. He is the main financial support for his two daughters and their mother residing in Venezuela.

6. Mr. Orias was detained by ICE on December 6, 2025, while on his way home from work around 1 a.m. He was stopped by ICE officers without any explanation and forced out of his vehicle.

7. ICE refused to issue him a bond based on a new ICE policy interpreting detention statute that is unsupported by the law, its history and precedent as discussed below.

8. Further, according to the Board of Immigration Appeal's (the "BIA") decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), immigration judges lack authority to hear bond requests or to grant bond to "aliens who are present in the United States without admission." This has left Petitioner without any mechanism to review the lawfulness of his detention and request release on bond or otherwise.

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

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

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

12. Accordingly, Petitioner respectfully requests that this Court issue an order directing EOIR to schedule a bond hearing without further delay, permitting Petitioner to post bond in accordance with the Court's determination.

13. Additionally, Petitioner requests that the Court expressly prohibit DHS from effectuating an automatic stay of any bond through the use of Form EOIR-43 or any similar administrative mechanism, ensuring that Petitioner's right to release on bond is not unduly obstructed.

II. JURISDICTION

14. Mr. Orias is in the physical custody of Defendants. Petitioner is detained at the Nevada Southern Detention Center in Pahrump, Nevada.

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

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

III. VENUE

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

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

IV. REQUIREMENTS OF 28 U.S.C. § 2243

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

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

V. PARTIES

21. Petitioner is a native and citizen of Venezuela who has been in immigration detention since December 5, 2025. After arresting Petitioner in Kearns, Utah, ICE did not set bond and Petitioner has been unable to request a bond hearing before the IJ because of the BIA’s decision under *Yajure Hurtado*, 29 I&N Dec. 216.

22. Respondent Brian Henke is the Director of the Las Vegas Field Office of ICE’s Enforcement and Removal Operations division. As such, Mr. Henke is Petitioner’s immediate

custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

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

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

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

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

VI. LEGAL FRAMEWORK

28. The court is familiar with the Respondents' novel interpretation of 8 U.S.C. §§ 1225 and 1226 and has granted similar relief in other cases. This case is one of a rapidly growing number

before this court challenging the federal government’s new policy of mandatory detention for all aliens similarly situated as Petitioner.¹

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

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

¹ This Court has already granted similar petitioners relief—both preliminary and on the merits—in twenty-three similar challenges. *See Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY 2025 WL 3205356 (D. Nev. Nov. 17, 2025); *see also Herrera v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156 (D. Nev. Oct. 10, 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Perez Sanchez v. Bernacke*, No. 2:25-CV-01921-RFB-MDC (D. Nev. Oct. 17, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025 WL 2998098 (D. Nev. Oct. 23, 2025); *Dominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025 WL 2998094 (D. Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, 2:25-CV-01987-RFB-BNW (D. Nev. Oct. 27, 2025); *Arce-Cervera v. Noem*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025); *Alvarado Gonzalez v. Mattos*, No. 2:25-CV-01599-RFB-NJK (D. Nev. Oct. 30, 2025); *Rodriguez Cabrera v. Mattos*, No. 2:25-cv-01551-RFB-EJY, 2025 WL 3072687 (D. Nev. Nov. 3, 2025); *Berto Mendez v. Noem*, No. 2:25-cv-02602-RFB-MDC, 2025 WL 3124285 (D. Nev. Nov. 7, 2025); *Cornejo-Mejia v. Bernacke*, No. 2:25-cv-02139-RFB-BNW, 2025 WL 3222482 (D. Nev. Nov. 18, 2025); *Lucero Ortiz v. Bernacke*, No. 2:25-cv-01833-RFB-NJK, 2025 WL 3237291 (D. Nev. Nov. 19, 2025); *Perez Sales v. Mattos*, No. 2:25-cv-01819-RFB-BNW, 2025 WL 3237366 (D. Nev. Nov. 19, 2025); *Hernandez Duran v. Bernacke*, No. 2:25-cv-02105-RFB-EJY, 2025 WL 3237451 (D. Nev. Nov. 19, 2025); *Cabrera-Cortes v. Knight*, No. 2:25-cv-01976-RFB-MDC, 2025 WL 3240971 (D. Nev. Nov. 20, 2025); *Jacobo Ramirez v. Noem*, No. 2:25-cv-02136-RFB-MDC, 2025 WL 3270137 (D. Nev. Nov. 24, 2025); *Garcia-Arauz v. Noem*, No. 2:25-cv-02117-RFB-EJY, 2025 WL 3470902 (D. Nev. Dec. 3, 2025); *Silva Hernandez v. Noem*, No. 2:25-cv-02304-RFB-EJY (D. Nev. Dec. 3, 2025); *Reyes Cristobal v. Bernacke*, No. 2:25-cv-02231-RFB-EJY (D. Nev. Dec. 4, 2025), *Carrillo Fernandez v. Knight*, No. 2:25-cv-02221-RFB-BNW (D. Nev. Dec. 4, 2025).

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

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

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

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

35. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

36. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which all aliens who were not apprehended “arriving” at the border were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); see also

H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

37. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.²

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

39. ICE has adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to aliens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803

² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>. Also available at <https://perma.cc/4Q6X-GAZC>.

(S.D.N.Y. Aug. 8, 2025); *Diaz Martinez v. Hyde, et al.*, No. CV 25-11613-BEM, 2025 WL 204238, at *2–3 (D. Mass. July 24, 2025).

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

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

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

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

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

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

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

47. A recent decision from the United States District Court for the District of Massachusetts, *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 WL [Docket Number Pending] (D. Mass. Sept. 9, 2025), provides significant persuasive authority for this matter. In *Sampiao*, the court addressed a situation strikingly similar to Petitioner's: an alien from Brazil entered the United States without inspection in October 2021, was arrested on a warrant under 8 U.S.C. § 1226, released on an Order of Recognizance, resided in the United States for over three years, and was later re-detained by ICE in July 2025. Like Petitioner, Sampiao was subjected to ICE's assertion that § 1225(b)(2)(A) mandated his detention, despite his initial detention and release under § 1226(a). The court held that Sampiao's detention was governed by § 1226(a)'s

discretionary framework, not § 1225(b)(2)(A), due to his arrest on a § 1226 warrant and subsequent release, aligning with the INA’s plain text and decades of practice. This holding reinforces the argument that Petitioner, who was similarly detained, released on recognizance, and later re-detained, remains subject to § 1226(a).

VII. DUE PROCESS VIOLATIONS

A. Petitioner’s Detention Violates the Fifth Amendment’s Guarantees of Procedural and Substantive Due Process

48. Alternatively, even if Respondents’ novel interpretation of §1225(b)(2) was correct, it would still run afoul of Petitioner’s Fifth Amendment rights to procedural and substantive due process under the Constitution.

49. The Constitution guarantees every person in the United States due process of law, including persons who are not United States citizens. *E.g.*, *Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) (“The Supreme Court has long recognized that deportable aliens are entitled to constitutional protections of due process.” (citing *Yamataya v. Fisher*, 189 U.S. 86, 100–01, 23 S.Ct. 611, 47 L.Ed. 721 (1903))); *see also, e.g.*, *Trump v. J.G.G.*, 604 U. S. —, —, 145 S. Ct. 1003, 1006, — L.Ed.2d — (2025) (per curiam) (“It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.” (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993))); *Zadvydas v. Davis*, 533 U.S. 678, (2001) (“[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”).

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

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

52. The first *Mathews* factor considers the private interest affected by the government's ongoing detention of Petitioner without ability for release on bond. See *Mathews*, 424 U.S. at 335. Here, that is Petitioner’s interest in being free from imprisonment, “the most elemental of liberty interests.” *Hamdi v. Runsfeld*, 542 U.S. 507, 529. In this country, liberty is the norm and detention “is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987); see also *Rodriguez Diaz*, 53 F.4th At 1207 (“An individual's private interest in freedom from prolonged detention is unquestionably substantial.”) (citations omitted).

53. Petitioner is being held at the Nevada Southern Detention Center and experiencing the loss of contact with family and friends, loss of income and inability to provide for his family in

Venezuela, lack of privacy and lack of freedom. He is not being held in his home state of Utah where he at least could be visited regularly by his extended family and friends.

54. Additionally, Petitioner's liberty interest is not diminished by on-going removal proceedings against or the availability of any existing process to challenge Respondents' decision to detain him without bond. *Cf. id.* at 1208 (holding the habeas petitioner's liberty interest was diminished by the fact that he was subject to a final order of removal, had already been afforded an individualized bond hearing where bond was denied after presentation of the evidence, and had additional process available to him through a further bonding hearing before an IJ upon a showing of materially changed circumstances). Thus, the first *Mathews* factor also weighs heavily in favor of granting Petitioner recognition of his procedural protections under § 1226(a).

55. The second *Mathews* factor considers "the risk of an erroneous deprivation of [Petitioner's] interest through the procedures used, and the probable value, if any, of additional procedures." 424 U.S. at 335. There are no existing procedures whatsoever for Petitioner to challenge his detention pending the conclusion of his removal proceedings without the opportunity for release on bond under the government's policy. The risk of erroneous deprivation is extraordinarily high where ICE and DHS agency officials have sole, unguided, and unreviewable discretion to detain Petitioner without any individualized showing of why his detention is warranted, nor any process for Petitioner to challenge the exercise of that discretion.

56. A bond hearing in this case would simply be a recognition of, and respect for, existing procedures under § 1226(a), which include an individualized custody redetermination by an

immigration judge. These procedures substantially mitigate the risk of erroneous deprivation of Petitioner's liberty, because those procedures require the government to establish that Petitioner presents a flight risk or danger to the community to continue his detention for the pendency of removal proceedings. This would account for the constitutional requirement that "once the flight risk justification evaporates, the only special circumstance [] present is the alien's removable status itself, which bears no relation to a detainee's dangerousness." *Zadvydas*, 553 U.S. at 691-92. As such, the second *Mathews* factor also weighs heavily in favor of granting Petitioner recognition of his procedural protections under § 1226(a).

57. The third and final *Mathews* factor considers the "Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335. Petitioner acknowledges that the government's interests in enforcing immigration laws, including "protecting the public from dangerous criminal aliens" and "securing an alien's ultimate removal," are "interests of the highest order." *Rodriguez Diaz*, 53 F.4th at 1188-89. These interests are in fact served by respecting an individualized determination by an immigration judge, based on a review of evidence presented by the government and the noncitizen, as to whether an individual is dangerous or at risk of fleeing removal proceedings, under existing, well-established procedures.

58. In failing to articulate any individualized reason why detaining Petitioner is necessary to enforce immigration law, the question arises "whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other

reasons.” *Demore*, 538 U.S. at 532-33 (Kennedy, J. concurring). And the government has no interest in the unjustified deprivation of a person's liberty.

59. In sum, the *Mathews* factors weigh heavily in favor of Petitioner, and therefore, his detention without the ability for release on bond violates his procedural due process rights.

60. As to substantive due process, Immigration detention violates the Due Process Clause 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 interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690.

61. Respondents have so far failed to articulate any individualized justification to continue to deprive Petitioner of his physical liberty outside their novel interpretation of §1225(b)(2). Therefore, his detention is in violation of his substantive due process rights.

B. DHS's Use of EOIR-43 and the Automatic Stay Regulation Violates Due Process

62. Further, it is the pattern and practice of DHS to continued to detain aliens under a unilateral authority to stay the immigration court's bond under 8 C.F.R. §1003.19(f) even after they are granted bond in custody redetermination proceedings. The potential application of this regulation to Petitioner would violate his procedural and substantive due process.

63. The regulation violates substantive due process because it is not authorized by statute and provides the jailer with unfettered authority which implicates the fundamental right to be free from detention and is not narrowly tailored to meet the compelling government interest of protecting public safety.

64. Prior to 2001, detainees subject to discretionary detention under 8 U.S.C. § 1226(a) who were then granted bond by an immigration judge remained detained only if the BIA granted a request to stay the bond order. 8 C.F.R. § 3.19(i)(2) (1998) (permitting the use of automatic stays only where the alien was subject to a mandatory detention statute).

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

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

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

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

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

70. In 2006, the EOIR promulgated the final rule with some notable changes. *See Executive Office for Immigration Review; Review of Custody Determination*, 71 Fed. Reg. 57873 (Oct. 2, 2006). The final rule added the requirement that any decision to invoke the automatic stay must be made by the Secretary of DHS and a senior legal official who must certify that sufficient

factual and legal bases exist to justify continued detention. *Id.* at 57876. The rule also imposed some limitations by providing that the stay will lapse 90 days after filing the bond appeal unless DHS sought a discretionary stay. 8 C.F.R. § 1003.6(c) (2006).

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

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

73. An analysis of the Mathews factors as applicable to a potential use of EOIR-43 against Respondent weight heavily in favor of Petitioner.

74. The first *Mathews* factor, Petitioner private interest of being free from physical detention is identical to that already previously considered on ¶¶ 52-54 *supra*.

75. The second *Mathews* factor is whether the challenged procedure creates a risk of erroneous deprivation of individual rights and whether there are alternative procedures that could

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

76. Other courts have agreed that a rule permitting a non-prevailing party to stay a judgment permitting release creates a risk of erroneous deprivation. *See e.g., Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, at 1078 (N.D. Cal. 2004) (noting that the automatic stay procedure “creates a potential for error because it conflates the functions of adjudicator and prosecutor”); *Ashley*, 288 F. Supp. 2d at 671 (concluding that the regulation creates a “patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified” (quotation omitted)); *Mohammed H. v. Trump*, --- F.Supp.3d ---- (2025) 2025 WL 1692739 (alien's Fifth Amendment right to due process was violated by government's invocation of automatic-stay provision of immigration regulations to keep alien in custody despite an immigration judge's (IJ) order that he be released on bond).

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

78. The automatic stay does not include any standards for the agency official to satisfy and operates as an appeal of right rather than being an extraordinary remedy. The official need not introduce any proof, and it can effectively overrule the bond decision and keeps Petitioner detained indefinitely. In so doing, the automatic stay renders the continued detention arbitrary and would give Petitioner no chance to contest the case for detention even if he were to prevail at the bond hearing before the IJ. *Mathews*, 424 U.S. at 348–49, 96 S.Ct. 893 (“The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and opportunity to meet it.”).

79. The regulation provides alternative procedural safeguards. Section 1003.19(i)(1) sets forth a procedure by which DHS may request an emergency stay of the immigration judge's custody determination from the BIA. The BIA then conducts an expedited preliminary review to determine whether a stay is warranted based on the individual circumstances and merits of the case. This process ameliorates the due process issues of § 1003.19(i)(2) while preserving the

government's interest in preventing an erroneous release. *See Zavala*, 310 F. Supp. 2d at 1077 (concluding that 8 C.F.R. § 1003.19(i)(1) provides “an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner’s liberty interest”); *see also Bezmen*, 245 F. Supp. 2d at 451; *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025) (reaching same conclusion).

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

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

82. The *Sampiao* decision further analyzed the application of 8 C.F.R. § 1003.19(i)(2), the automatic stay regulation, which stayed the IJ’s bond order pending ICE’s appeal. The court found this regulation unconstitutional as applied to *Sampiao*, a alien with established U.S. residency under § 1226(a), due to its deprivation of procedural due process without

individualized review. This analysis is directly applicable to Petitioner's situation, where the automatic stay may similarly override the IJ's bond determination, suggesting that *Sampiao's* reasoning could persuade this Court to invalidate the stay in Petitioner's case. Given the factual parallels—initial § 1226 detention, release on recognizance, re-detention after residency, and an IJ bond order stayed by ICE—*Sampiao* serves as highly persuasive precedent supporting Petitioner's entitlement to release under § 1226(a) and due process protections.

VIII. FACTS

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

84. He was then released on or about September 23, 2023, on his own recognizance under 8 USC § 1226. Notice of Custody Determination Attached as Exhibit A. He was simultaneously placed in removal proceedings and issued a Notice to Appear under 8 U.S.C. § 1229a.

85. Petitioner came to the United States seeking asylum from persecution and torture at the hands of the Venezuelan Government. Over the next two years, he settled in Utah, filed an asylum application with the Salt Lake City Immigration Court on September 9, 2024, and integrated into his community.

86. Before being taken into custody, he resided in West Jordan, Utah. While here in the United States, he is the main breadwinner for his two daughters (6 and 3 years old) and their mother which reside in Venezuela.

87. Mr. Orias was detained by ICE agents on Saturday December 5, 2025, on his way home from work. He had stopped at a local restaurant in Kearns, Utah to purchase food around 1 a.m. when undercover vehicles surrounded his vehicle. He was then forced off his car and transferred hundreds of miles away to a detention facility in Nevada.

88. His sole criminal record is three encounters with law enforcement in traffic-related stops in which he was charge with four infractions. Utah Court Docket Sheets Attached as Exhibit B.

89. Because of the BIA’s decision in *Yajure Hurtado*, Petitioner is unable to petition the IJ for a bond hearing and has no other venue to challenge his detention other than this court.

90. Thus, Petitioner remains separated from his home state and is unable to provide for his family in Venezuela.

IX. EXHAUSTION OF ADMINISTRATIVE REMEDIES

91. Any suggestion that Petitioner must first seek a bond redetermination before the Immigration Court is misplaced, because such a request would be categorically futile. In *Yajure Hurtado*, 29 I&N Dec. 216, the BIA adopted ICE’s novel interpretation of 8 U.S.C. § 1225 and held that individuals DHS designates as “applicants for admission” fall under § 1225(b)’s mandatory-detention scheme, leaving IJs with no jurisdiction to consider bond. Petitioner is classified by DHS as an “applicant for admission” under their interpretation; therefore, the Immigration Court is legally barred at the outset from granting him a custody redetermination hearing.

92. Because the Immigration Court lacks authority to adjudicate any bond request, the administrative process provides no meaningful avenue for relief, and exhaustion is not required

where resort to such a process would be futile. With no statutory or regulatory mechanism permitting an individualized custody determination, habeas corpus is the only available means through which Petitioner can challenge the legality of his continued detention. The district court thus retains jurisdiction to consider the petition without requiring a procedurally empty step that agency precedent has already rendered impossible.

X. CLAIMS FOR RELIEF

COUNT I

(Violation of the Immigration and Naturalization Act)

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

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

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

COUNT II

(Violation of Due Process)

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

97. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,

detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678 (2001).

98. The Ninth Circuit has held that “[r]emaining confined in jail when one should otherwise be free is an Article III injury plain and simple[.]” *Gonzalez v. United States Immigr. & Customs Enft*, 975 F.3d 788, 804 (9th Cir. 2020) (quoting *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).

99. Petitioner has a fundamental interest in liberty and being free from official restraint.

100. The government’s continued detention of Petitioner without bond violates his right to procedural due process as applied to this case.

101. Accordingly, this Court’s intervention is needed.

XI. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this action;
2. Issue a writ of habeas corpus requiring that Respondents grant Petitioner a custody redetermination hearing before an IJ immediately;
3. Prohibit DHS from effectuating an automatic stay of any bond through the use of Form EOIR-43 or any similar administrative mechanism, ensuring that Petitioner’s right to release on bond is not unduly obstructed.
4. Grant the attorney’s fees and costs of court to the Petitioner under the Equal Access to Justice Act (“EAJA”), and on any other basis justified under law; and
5. Award such further relief as the Court deems necessary or proper.

RESPECTFULLY SUBMITTED this December 18, 2025.

TRUJILLO | ACOSTA LAW

/s/ Christopher Vizcardo

Christopher Vizcardo

Attorney for Petitioner

EXHIBITS LIST

- A. Notice of Custody Determination and other relevant border documents
- B. Utah Court Docket Sheets