UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO

Civil Action No. 1:26-cv-271

MIREYA SOTELO RAMOS,
Petitioner

v.

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

VERIFIED PETITION FOR WRIT OF *HABEAS CORPUS*

INTRODUCTION

1. Petitioner, Mireya Ramos Sotelo ("Petitioner"), has resided in the United States since 1997 and lived in the same home for twenty years. She is the mother to five children, two of whom are U.S. citizens, one is a Lawful Permanent Resident ("LPR"), and two are Deferred Action for Childhood Arrivals ("DACA") recipients. She has no contact with the criminal legal system outside of minor traffic violations not involving alcohol. After Immigration and Customs Enforcement ("ICE") jailed her to seek her removal, an immigration judge ("IJ") ordered her release upon payment of $5,000 bond. Nevertheless, she remains jailed and unable to pay bond due to ICE's lawlessness.

2. Petitioner brings this Verified Petition for Writ of Habeas Corpus due to Respondents' refusal to let Petitioner pay bond through its invocation of 8 C.F.R. § 1003.19(i)(2) to pursue its illegal interpretation of the Immigration and Nationality Act ("INA"). This Court should join the "near unanimity" of district courts around the country finding Respondents' use of 8 C.F.R. § 1003.19(i)(2)—colloquially known as the autostay or automatic stay—unlawful. *M.P.L. v. Arteta*, 25-cv-5307 (VSB), 2025 WL 3288354, *7 (S.D.N.Y. Nov. 25, 2025). Respondent's use of the autostay "renders the Immigration Judge's bail determination an empty gesture" and "creates a patently unfair situation" by shifting adjudicatory power to the prosecutor. *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1188 (D. Minn. 2025). In other words, "the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), violates Petitioner's procedural due process rights under the Fifth Amendment." *Merchan-Pacheo v. Noem, et al.*, 1:25-cv-03860-SBP, 2026 WL 88526, *16 (D. Colo. Jan. 12, 2026).

3. Despite this overwhelming consensus in support of Petitioner's release, Petitioner will remain incarcerated at the Immigration and Customs Enforcement ("ICE") Denver Contract Detention Facility ("Aurora Facility")[1] without this Court's expeditious intervention.

PARTIES

Petitioner

4. ICE jails Petitioner at the Aurora Facility in Aurora, Colorado. Petitioner has lived in the United States for nearly thirty years. Petitioner has no criminal contacts that subject her to mandatory detention under 8 U.S.C. § 1226(c) and has five children, all of whom are lawfully present in the United States. On January 13, 2026, an IJ in the Aurora Facility found that she is neither a risk of flight nor a danger to the community, ordering her release on a $5,000 bond. ICE however refuses to let her pay that bond. Instead, ICE invoked the automatic stay to keep her jailed while it pursues its unlawful interpretation of § 1225(b) with the Board of Immigration Appeals ("BIA").

Respondents

5. Juan Baltazar is the Warden of the Aurora Facility where ICE jails Petitioner, and is an employee of the GEO Group, the for-profit prison company that operates the facility. Mr. Baltazar is a legal custodian of Petitioner. He is sued in his official capacity.

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[1] This Petition does not refer to the Aurora Facility or Petitioner's loss of liberty as detention because it does not accurately reflect the conditions at the Aurora Facility. *E.g.*, *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. of Colo. 2024) (citation omitted) (acknowledging that the District of Colorado found that the GEO Facility is "more akin to incarceration than civil confinement"). Indeed, the conditions in the Aurora Facility are "abhorrent." *Arostegui-Maldonado v. Baltazar*, --- F.Supp.3d ----, 2025 WL 2280357, *7 (D. Colo. Aug. 8, 2025).

6. Robert Hagan is the ICE Field Office Director of the Denver ICE Field Office and is sued in his official capacity. Mr. Hagan is the immediate custodian of Petitioner and is responsible for Petitioner's detention and removal.

7. Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). Ms. Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA"). DHS is the parent agency of ICE, and thus Ms. Noem also oversees ICE, which is responsible for Petitioner's illegal detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

8. Todd M. Lyons is the Acting Director of U.S. ICE and is sued in his official capacity. Mr. Lyons is responsible for Petitioner's illegal detention and has custodial authority over him.

9. Pamela Bondi is the Attorney General of the United States. She is responsible for the actions of the Department of Justice ("DOJ"). The Executive Office for Immigration Review ("EOIR") and the immigration court system it operates are a component agency of DOJ. Ms. Bondi is sued in her official capacity

JURISDICTION AND VENUE

10. Respondents incarcerate Petitioner at the Aurora Facility in Aurora, Colorado. Petitioner is currently imprisoned in this District and is under the control of Respondents and their agents.

11. Petitioner brings this action under 28 U.S.C. § 2241, the INA and its implementing regulations, the Administrative Procedures Act (5 §§ U.S.C. 500-596, 701-706), the All-Writs Act (8 U.S.C. § 1651), the Declaratory Judgment Act, 28 U.S.C. § 2201, and the U.S. Constitution. District courts have jurisdiction under 28 U.S.C. § 2241 to hear *habeas corpus* actions by noncitizens challenging the lawfulness and constitutionality of their civil immigration detention.

12. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the U.S.

13. Venue is proper under 28 U.S.C. § 1391 because Respondents imprison Petitioner in Aurora, Colorado, within the jurisdiction of this Court. Likewise, Petitioner is a resident of this District, his counsel is in this District, and a substantial part of the events giving rise to the claims in this action took place within this District.

PROCEDURAL HISTORY

14. Petitioner has resided in the United States for nearly thirty years. She has lived in the same home for approximately twenty years and has five children. Two of her children are U.S. citizens; one of her children is an LPR; two of her children are DACA recipients. Petitioner's mother is an 88-year-old LPR. Petitioner lives with type 2 diabetes and high blood pressure. She has no contact with the criminal legal system outside of traffic violations not involving alcohol, her most recent of which involved a malfunctioning taillight. After stopping her in her hometown for the taillight, local law enforcement transferred her into ICE custody.

15. On January 8, 2026, Petitioner moved for a bond hearing as a member of the Bond Eligible Class in *Maldonado Bautista v. Santacruz*, ---F.Supp.3.---, 2025 WL 3713987, *22 (C.D. Cal. 2025). The IJ conducted that hearing on January 13, 2026 and found that she is neither a risk of flight nor a danger to the community and ordered her release upon payment of $5,000 bond.

16. ICE however filed an E-43, invoking the automatic stay regulation preventing Petitioner from paying bond while ICE argues its erroneous position to the BIA that Petitioner is subject to § 1225(b) incarceration. She remains jailed solely due to ICE's invocation of the automatic stay.

ARGUMENT

17. This case involves Respondents' unlawful use of the automatic stay regulation at 8 C.F.R. § 1003.19(i)(2) and Respondents erroneous interpretation of §§ 1225(b)(2) and 1226(a). Respondents incorrectly insist that the former requires Petitioner's incarceration. Respondents are so adamant that § 1225(b)(2) applies that on January 14, 2026 they invoked the automatic stay after an IJ ordered Petitioner's release on January 13, 2026 upon payment of $5,000 bond. ICE wants to be judge and jailer.

18. The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), violates procedural due process, substantive due process, the Administrative Procedures Act ("APA"), and is *ultra vires*.

19. The autostay provision unlawfully prolongs detention, automatically extending incarceration at least 90 days during BIA review and potentially longer via extensions or Attorney General ("AG") referral. *See* 8 C.F.R. §§ 1003.6(c)(4)–(5), 1003.6(d). Unlike an IJ's bond order, it requires no individualized findings or limits on DHS' discretion. *See Günaydin*, 784 F. Supp. 3d at 1187. Courts have repeatedly found DHS' use of the autostay illegal.[2] This District recently joined the consensus. *Merchan-Pacheo*, 2026 WL 88526, *16.

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[2] *See e.g.*, *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025); *Mohammed H. v. Trump*, 786F.Supp.3d 1149 (D. Minn. 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Jacinto v. Trump*, --- F.Supp.3d ---, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Leal-Hernandez v. Noem,* --- F.Supp.3d ---, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Perez v. Berg*, --- F.Supp.3d ---, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025; *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Herrera v. Knight*, --- F.Supp.3d ---, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Martinez v. Sec'y of Noem,* No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Sampiao v. Hyde*, --- F.Supp.3d, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025*); Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Barrera v. Tindall*, No. 3:25-CV-541-

20. Courts across the country have similarly rejected Respondents use of § 1225(b) to jail people like Petitioner who entered the United States unlawfully years ago.[3] That includes a

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RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Hasan v. Crawford*, --- F.Supp.3d ---, 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-CV-96-RGJ, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Campos Leon v. Forestal*, No. 1:25-CV-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Quispe v. Crawford*, No. 1:25-CV-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *Silva v. Larose*, No. 25-CV-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sept. 29, 2025); *Alves da Silva v. U.S. Immigr. & Customs Enf't*, --- F.Supp.3d ---, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Quispe-Ardiles v. Noem*, No. 1:25-CV-01382-MSN-WEF, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025); *B.D.V.S. v. Forestal*, No. 1:25-CV-01968-SEB-TAB, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Arcos v. Noem*, No. 4:25-CV-04599, 2025 WL 2856558 (S.D. Tex. Oct. 8, 2025); *Eliseo A.A. v. Olson*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729 (D. Minn. Oct. 8, 2025); *Aguilar Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025); *Maza v. Hyde*, --- F.Supp.3d ---, 2025 WL 2951922 (D. Mass. Oct. 20, 2025); *J.M.P. v. Arteta*, ---F.Supp.3d---, 2025 WL 2984913 (S.D.N.Y. Oct. 23, 2025); *Otilio B.F. v. Andrews*, ---F.Supp.3d---, 2025 WL 3152480 (E.D. Cal. Nov. 11, 2025); *M.P.L.*, 2025 WL 3288354; *Merchan-Pacheo*, 2026 WL 88526.

[3] *Lepe v. Andrews*, --- F.Supp.3d ----, No. 1:25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Hernandez Lopez v. Hardin*, 1:25-cv-830, (M.D. Fla. Sept. 25, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923, at *1 (N.D. Cal. Sept. 25, 2025); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496 (D. N.J. Sept. 26, 2025); *Savane v. Francis*, 1:25-cv-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Luna Quispe v. Crawford*, 1:25-cv-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025); *da Silva v. ICE*, 1:25-cv-00284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025); *Santiago Helbrum v. Williams*, 4:25-cv-00349, WL (S.D Iowa, Sept. 30, 2025); *Belsai D.S. v. Bondi*, 0:25-cv-3682, 2025 WL 2802947 (D.Min.. Oct. 1, 2025); *Rocha v. Hyde*, 25-cv-12584, 2025 WL 2807692 (D.Mass. Oct. 2, 2025); *Guzman Alfaro v. Wamsley*, 2:25-cv-01706, 2025 WL 2822113 (W.D. Wash. Oct. 2, 2025); *Ayala Casun v. Hyde*, 25-cv-427, 2025 WL 2806769 (D.R.I. Oct. 2, 2025); *Guerrero Orellana v. Moniz*, 25-cv-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Elias Escobar v. Hyde*, 25-cv-12620-IT, 2025 WL 28233324 (D. Mass. Oct. 3, 2025); *Echevarria v. Bondi*, 25-cv-03252, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Cordero Pelico v. Kaiser*, 25-cv-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025); *Artiga v. Genalo*, 25-cv-5208, 2025 WL 2829434 (E.D.N.Y Oct. 5, 2025); *S.D.B.B. v. Johnson*, 1:25-cv-882, 2025 WL 2845170 (M.D.N.C. Oct. 7, 2025); *Ledesma Gonzalez v. Bostock*, 2:25-cv-01401, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); *Mena Torres v. Wamsley*, C25-5772-TSZ, 2025 WL 2855739 (W.D. Wash. Oct. 8, 2025); *B.D.V.S. v. Forestal*, 25-cv-01968, 2025 WL 2855743 (S.D. Ind. Oct. 8, 2025); *Eliseo A.A. v. Olson et al.*, 25-cv-3381 (JWB/DJF), 2025 WL 2886729 (D.Minn. Oct. 8, 2025); *Ortiz Donis v. Chestnut*, 1:25-cv-01228, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); *Mugliza Castillo v. Lyons*, 25-cv-16219, 2025 WL 2940990 (D. N.J. October 10, 2025); *Alejandro v. Olson,* 1:25-cv-02027, 2025 WL 2896348 (S.D. Ind.); *Singh v. Lyons*, 1:25-cv-01606, 2025 WL 2932635 (E.D. Va. Oct. 14, 2025); *Teyim v. Perry*, 1:25-cv-01615, 2025 WL 2950183 (E.D. Va. Oct. 15, 2025); *Hernandez Hernandez v. Crawford*, 1:25-cv-01565-AJT-WBP, 2025 WL 2940702 (E.D. Va. Oct. 16, 2025); *Menjivar Sanchez v. Wofford*, 2025 WL 2959274

decision by the only Circuit Court of Appeals to address the issue, *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025), and every judge to rule on the issue in this District, *Ugarte Hernandez v. Baltazar, et al.*, 1:25-cv-04066-RBJ, *4 (D. Colo. Jan. 15, 2026), ECF 16 (collecting cases and acknowledging the District's unanimity).[4]

Respondents' Invocation of the Autostay is Illegally Extending Petitioner's Already Unlawful Incarceration

I. Respondents Use of the Autostay Violates Procedural Due Process.

21. Pursuant to *Maldonado Bautista*, Respondents EOIR correctly provided Petitioner a §1226(a) bond hearing and an IJ granted her bond on January 13, 2026. ICE however refuses to

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(C.D. Cal. Oct. 17, 2025); *Gonzalez v. Joyce*, 25-cv-8250 (AT), 2025 WL 2961626 (W.D.N.Y. Oct. 19, 2025);*Sanchez Alvarez v. Noem et al.*, 1:25-cv-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Polo v. Chestnut et al.*, 1:25-cv-01342 JLT HBK, 2025 WL 2959346 (E.D. Ca. Oct.17, 2025); *Chavez v. Director of Detroit Field Office et al.*, 4:25-cv-02061-SL, 2025 WL 2959617 (N.D. Ohio Oct. 20, 2025); *HGVU v. Smith et al.*, 25-cv-10931, 2025 WL2962610 (N.D. Ill. Oct. 20, 2025) *Da Silva v. Bondi*, No. 25-cv-12672-DJC, 2025 WL269163 (D. Mass. Oct. 21, 2025*); Buestan v. Chu,* No. 25-16034 (MEF), 2025 WL2972252 (D. N.J. Oct. 21, 2025); *Maldonado v. Baker,* No. 25-3084-TDC (D. Md. Oct. 21,2025); *Gonzalez Martinez v. Noem*, EP-25-cv- 430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Miguel v. Noem*, 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120 2025, WL 2977650 (D. Colo Oct. 22, 2025); *Lopez Lopez v. Soto*, 2:25-cv-16303, 2025 WL 2987485 (D.N.J. Oct. 23, 2025).

[4] *E.g.*, *Mendoza Gutierrez v. Baltasar et al.,* 1:25-cv-2720, 2025 WL 2962908 (D. Colo. Oct. 17, 2025); *Moya Pineda v. Baltasar et al.*, 1:25-cv-2966, 2025 WL 3516291 (D. Colo. Oct. 20, 2025); *Loa Caballero v. Baltazar et al.*, 25-cv-03120, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Hernandez Vazquez v. Baltasar et al.,* 1:25-cv-3049 (D. Colo. Oct. 23, 2025); *Nava Hernandez v. Baltazar et al.*, 1:25-cv-03094, 2025 WL 2996643 (D. Colo. Oct. 24, 2025); *Artola Aruaz v. Baltazar, et al.*, 1:25-cv-03260-CNS, 2025 WL 3041840 (D. Colo. Oct. 31, 2025); *Cervantes Arredondo v. Baltazar, et al.*, 1:25-cv-03040-RBJ (D. Colo. Oct. 31, 2025); *De Domingo Campos v. Baltazar*, 25-cv-3062 (D. Colo. Nov. 13, 2025); *Ortiz Rosales v. Baltazar, et al.*, 25-cv-03275-GPG (D. Colo. Nov. 16, 2025); *Espinoza Ruiz v. Baltazar, et al.*, 1:25-cv-03642-CNS, 2025 WL 3294762 (D. Colo. Nov. 26, 2025); *Velasquez de Leon v. Baltazar et al.*, 1:25-cv-03805-RBJ, *5 n.4 (D. Colo. Dec. 22, 2025), ECF 19 (collecting cases); *Florez Marin v. Baltazar, et al.*, 25-cv-03697-PAB, 2025 WL 3677019 (D. Colo. Dec. 18, 2025); *Alfaro Orellana v. Noem et al.*, 25-cv-03976-PAB, 2025 WL 3706417 (D. Colo. Dec. 22, 2025); *Navas Medina v. Batazar et al.*, 1:25-cv-03919-RMR (D. Colo. Dec. 29, 2025); *Rodriguez Rodriguez v. Baltasar et al.*, 1:25-cv-03961-GPG (D. Colo. Dec. 30, 2025).

release her because it exercised the autostay provision. That provision, 8 C.F.R. § 1003.19(i)(2), violates procedural due process.

22. The Supreme Court has long established that noncitizens are afforded due process. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Under *Mathews v. Eldridge*, procedural due process requires balancing: (1) the private interest affected; (2) the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional of substitute procedural safeguards; and (3) the government's interest, including fiscal and administrative burdens that the additional or substitute procedural requirement would entail. 424 U.S. 319, 335 (1976).

23. The first *Mathews* factor requires consideration of the private interest affected. "Plaintiff has a significant interest at stake. Being free from physical detention by one's own government 'is the most elemental of liberty interests.'" *Carmona-Lorenzo*, 2025 WL 2531521, *3 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Civil commitment or detention "for any purpose constitutes a significant deprivation of liberty that requires due process protections." *Addington v. Texas*, 441 U.S. 418, 425 (1979). Petitioner has a significant liberty interest in release. This factor therefore weighs heavily in Petitioner' favor.

24. The second *Mathews* factor concerns the risk of erroneous deprivation of Petitioner's liberty interest under the current procedures and the degree to which alternative procedures may ameliorate that risk. *Mathews*, 424 U.S. at 335. This factor, too, weighs heavily in Petitioner' favor. "The risk of deprivation is high because the only individuals subject to the automatic stay are those who, by definition, prevailed at their bond hearing." *Carmona-Lorenzo*, 2025 WL 2531521, *3. "The automatic stay thus presents a conflict of interest in conferring unreviewable discretionary authority in the same prosecuting agency official that makes erroneous deprivation not just a risk, but likely." *Vazquez*, 2025 WL 2676082, *19 (citation omitted); *Gunaydin*, 2025 WL 1459154, at

*8 ("the challenged regulation permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge's decisions . . . [and] is anomalous in our legal system").

25. Courts recognize that the autostay therefore deprives individuals of liberty without neutral oversight and unconstitutionally conflates prosecutorial and adjudicatory functions. *See Leal-Hernandez v. Noem*, 2025 WL 2430025, *14 (automatic stay "permits DHS—the losing party—to automatically stay an IJ's bond order without individualized review"); *Zavala v. Ridge*, 310 F. Supp.3d 1071, 1078 (N.D. Cal. 2004) (noting conflation of adjudicator and prosecutor roles). Even the DHS certification required under 8 C.F.R. § 1003.6(c)(1)(ii) provides little protection, as it comes from the same agency aligned with ICE's interests. *Sampiao*, 2025 WL 2374223, *11.

26. Moreover, unlike ordinary stays that require showing likely success and irreparable harm on appeal, the automatic stay lets ICE obtain one as of right. *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). Courts have observed that this "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *Günaydın*, 784 F. Supp. 3d. at 1189.

27. Finally, less burdensome alternatives exist, such as DHS requesting a discretionary emergency stay under 8 C.F.R. § 1003.19(i)(1), which considers the case's individual circumstances and merits. This mechanism "mitigates the concern about DHS usurping the neutral adjudicatory role and provides additional safeguards that the automatic stay provision lacks." *Jimenez*, 2025 WL 2374223, *4; *see also Günaydın*, 784 F. Supp. 3d at 1190. Accordingly, the second *Mathews* factor strongly supports Petitioner's claim.

28. Under the third *Mathews* factor, the government cannot demonstrate any legitimate interest in detaining individuals who a neutral adjudicator already found poses neither a risk of flight nor danger to the community. *Merchan-Pacheo*, 2026 WL 88526, *16.

29. Moreover, continued incarceration despite an IJ ordering release on bond raises the question of whether Petitioner's loss of liberty is truly "to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Herrera Torralba*, 2025 WL 2581792, *11 (quotation omitted); *see also Mayo Anicasio*, 2025 WL 2374224, *4. Pursuit of its unlawful interpretation of § 1225 is not a valid reason. *Merchan-Pacheo*, 2026 WL 88526, *16 ("[W]hether the agency's new mandatory detention policies reflect a proper reading of the INA is not a compelling consideration in a due process context"). The government has no substantial interest in keeping Petitioner detained; the IJ's decision finding her neither a risk of flight nor danger addresses any interest.

30. Finally, "[w]ith regards to the probable value of additional procedure, it is not difficult to conclude that *any* additional procedure is valuable where, as here, the only procedure required for condition detention appears to be an agency official check a box and filing a form." *Vazquez*, 2025 WL 2676082, *20 (emphasis in original). The third *Mathews* factor weighs heavily in Petitioner's favor.

31. Balancing the factors, Petitioner's substantial liberty interest and the extreme risk of erroneous detention far outweigh the minimal government interests, which are already addressed by existing procedures. District courts agree nearly unanimously, *M.P.L.*, 2025 WL 3288354, *7; *supra* n. 2; the District of Colorado included, *Merchan-Pacheo*, 2026 WL 88526.

II. Respondents' Use of the Autostay Violates Substantive Due Process.

32. Petitioner is entitled to substantive due process under the Fifth Amendment. Government detention violates substantive due process unless it occurs in a criminal proceeding with adequate procedural safeguards or in narrow, nonpunitive circumstances where a special justification outweighs the individual's liberty interest. *Zadvydas v. Davis*, 533 U.S. 378, 690 (2001); *Leal-Hernandez*, 2025 WL 2430025, *12–13.

33. Here, 8 C.F.R. § 1003.19(i)(2) allows DHS to jail Petitioner despite an IJ's bond grant without any special justification or individualized assessment. The IJ's decision that Petitioner should be released on bond satisfies DHS' legitimate interest in ensuring that Petitioner appears for future court dates. *See Leal-Hernandez*, 2025 WL 2430025, *13. The automatic state regulation however renders "the IJ's custody redetermination order an 'empty gesture'" *Günaydin*, 784 F. Supp. 3d at 1188. ICE jails Petitioner in violation of substantive due process.

III. The Autostay is Ultra Vires and violates the APA.

34. The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), is ultra vires because it purports to grant DHS authority that Congress vested in the AG—and, where appropriate, only to officers and adjudicators within the Department of Justice ("DOJ"). Under the APA, courts must hold unlawful and set aside agency action that exceeds statutory authority. 5 U.S.C. § 706(2)(C); *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998) ("Agency actions beyond delegated authority are 'ultra vires'"); *see also Romero v. INS*, 39 F.3d 977, 980 (9th Cir. 1994) (invalidating an immigration regulation inconsistent with the statutory scheme).

35. First, the INA vests bond-and-detention decision-making in the AG, who may delegate that authority to DOJ officers. *See* 8 U.S.C. § 1226(a) (authorizing the AG to arrest and detain or release on bond); 28 U.S.C. § 510 (permitting the AG to delegate to "any other officer, employee, or

agency of the Department of Justice"). IJs are DOJ appointees and therefore properly exercise delegated authority on behalf of the AG. *See* 8 U.S.C. § 1101(b)(4). By contrast, DHS is a separate agency, statutorily distinct from DOJ. *See* 6 U.S.C. § 111. The INA nowhere authorizes DHS to usurp the AG's delegated bond authority.

36. Second, § 1003.19(i)(2) impermissibly derails the statutory bond scheme. By invoking the automatic stay, DHS transforms an IJ's discretionary bond grant into mandatory detention, effectively rewriting § 1226(a) and usurping authority Congress gave the AG. Courts have held such overreach ultra vires. *See Zavala*, 310 F. Supp. 2d. at 1079 (regulation that converts IJ's discretionary release into mandatory detention "flouts the express intent of Congress and is ultra vires to the statute"); *see also Mayo Anicasio*, 2025 WL 2374224; *Jacinto*, 2025 WL 2402271; *Leal-Hernandez*, 2025 WL 2430025; *Carmona-Lorenzo*, 2025 WL 2531521.

37. Third, the regulation contravenes the INA's delegation scheme, which centralizes bond authority in DOJ adjudicators, by letting DHS nullify IJ decisions it seeks to appeal. In sum, § 1003.19(i)(2) exceeds statutory authority and is invalid. *See Romero*, 39 F.3d at 980; *O'Keefe*, 132 F.3d at 1257. Accepting Respondents' claimed authority allows ICE to void every IJ bond grant it does not like. That is unlawful.

Defendants Cannot Use § 1225(b) to Jail Petitioner

38. Respondents cannot rely on their erroneous interpretation of §§ 1226(a) and 1225(b)(2) to keep Petitioner incarcerated. Courts across the country, *supra* n. 3, and every judge in this District to consider the issue have found Respondents' use of § 1225(b)(2) for people like Petitioner unlawful, *Ugarte Hernandez*, 1:25-cv-04066-RBJ, *4.

IV. The Text of § 1226(a) and Canons of Statutory Construction Demonstrate Petitioner is Entitled to a Bond Hearing.

39. Application of § 1226(a) does not turn on whether a person was previously admitted to the country. The plain text of 8 U.S.C. § 1226(a) includes people who entered the United States without inspection. 8 U.S.C. § 1226(c)(1)(A), (D), (E). Section 1226(a), the INA's "default" detention authority, *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018), applies to people detained "pending a decision on whether the [noncitizen] is to be removed," 8 U.S.C. § 1226(a). As the statute provides, this language includes both (1) people like Petitioner who entered without inspection and thus are charged as "inadmissible" under § 1182(a)(6)(A)(i), and (2) people who were admitted and are charged as "deportable." *See id.* § 1229a(a)(3) (removal proceedings "determine[e] whether a [noncitizen] may be admitted to the [U.S.] or, if the [noncitizen] has been so admitted, removed from the [U.S.]") (emphasis added).

40. The statute's structure makes this clear. Subsection 1226(a) provides the right to bond. Subsection 1226(c) then carves out discrete categories of noncitizens subject to mandatory detention due to criminal contacts. *See, e.g., id.* §§ 1226(c)(1)(A), (D), (E). These carve-outs include noncitizens inadmissible for entering without inspection and who meet certain crime-related criteria. *See id.* §§ 1226(c)(1)(A), (D), (E). Because § 1226(c)'s exception expressly applies to people who entered without inspection, it reinforces the default rule: § 1226(a)'s general detention authority otherwise applies to Petitioner. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010). Recent statutory amendments do the same.

41. Congress made significant changes to § 1226 in January 2025. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (LRA). These amendments make people charged under § 1182(a)(6)(A)(i) for entering without inspection and who have had certain criminal encounters subject to mandatory detention under § 1226(c). 8 U.S.C. § 1226(c)(1)(E). By including such

individuals under § 1226(c), Congress reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6)(A). "[W]hen 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 (quoting *Shady Grove*, 559 U.S. at 400).

42. Several canons of interpretation reinforce this understanding. First, is the canon against rendering statutory language superfluous. *See, e.g., Clark v. Rameker*, 573 U.S. 122, 131 (2014) ("a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous," internal citations omitted). Defendants' position does just that. As the *Rodriguez Vazquez* court explained, this is so because if "Section 1225 … and its mandatory detention provisions apply to all noncitizens who have not been admitted, then it would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens." *Rodriguez Vazquez*, 779 F.Supp.3d at 1258 (citation modified). This Court agrees. *See Mendoza Gutierrez*, 2025 WL 2962908, *7 (same).

43. Second, "when Congress amends legislation, courts must presume it intends the change to have real and substantial effect." *Estrada v. Smart*, 107 F.4th 1254, 1268 (10th Cir. 2024) (cleaned up). That presumption applies here, given LRA's amendments to § 1226. *See Rodriguez Vazquez*, 779 F.Supp.3d at 1259 (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). LRA's amendments explicitly provide that § 1226(a) covers people like Petitioner. This is because the "specific exceptions [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention." *Id.* 1259 (emphasis in original, citation modified). *See also, e.g., Diaz Martinez*, 2025 WL 2084238, at *7 ("if, as the Government argue[s], … a non-citizen's inadmissibility were alone already sufficient to mandate detention

under section 1225(b)(2)(A), then the 2025 [LRA] amendment would have no effect"); *Mendoza Gutierrez*, 2025 WL 2962908, *7 (same).

44. Finally, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction," courts "generally presume[] the new provision should have been understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified). This canon also supports Petitioner's position because "Congress adopted the new amendments to Section 1226(c) against the backdrop of decades of post-IIRIRA agency practice applying discretionary detention under Section 1226(a) to inadmissible noncitizens such as [Petitioner]." *Rodriguez Vazquez*, 779 F.Supp.3d, at 1259.

V. The Statutory Structure of § 1225(b)(2), the Textual Limitations of § 1225(b)(2), and the Canon Against Superfluity Further Demonstrate that § 1226(a), not § 1225(b)(2), Applies to Petitioner.

45. Section § 1225's structure also supports § 1226(a) applying to Petitioner. "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (citations omitted); *see also Biden v. Tex.*, 597 U.S. 785, 799-800 (2022) (interpreting INA).

46. The Supreme Court has described the structure of § 1226 and § 1225 as distinguishing between the two basic groups of noncitizens. Section 1226(a) applies to those who are "already in the country" and are detained "pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289. By contrast, § 1225(b)(2) mandatory detention applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Id.* at 287. The whole purpose of § 1225 is to define how DHS inspects, processes, and detains people at the border. *See id.* at 297 ("[Section] 1225(b) applies primarily to

[noncitizens] seeking entry into the [U.S.] …"). *See also* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29 (explaining the purpose of § 1225).

47. Section 1225's text reinforces its limited temporal scope. To begin, § 1225 concerns the "inspection" and "expedited removal of inadmissible arriving [noncitizens]." 8 U.S.C. § 1225. For example, § 1225(b)(1) encompasses only "inspection" of certain "arriving" noncitizens, and only those who are "inadmissible" for having misrepresented information or lacking entry documents.

48. Section 1225(b)(2) is similarly limited to people applying for admission on arrival, but whom (b)(1) does not cover. The title explains that it addresses "[i]nspection of other [noncitizens]." The subsection further specifies it applies only to "applicants for admission" (defined at § 1225(a)(1)) who "seek[] admission." By stating § 1225(b)(2) applies only to those "seeking admission," Congress confirmed it did not intend to sweep up those who previously entered and began residing in the United States. A commonsense example clarifies the point:

> [S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not describe them as 'seeking admission' (or 'seeking' 'lawful entry') at that point – one would say they had entered unlawfully but now seek a lawful means of remaining there.

Lopez Benitez, 2025 WL 2267803, *7; *See also* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29; H.R. Rep. No. 104-828, at 209. *Diaz Martinez*, 2025 WL 2084238, at **6-7 (emphasis in original). "This active construction of the phrase 'seeking admission'" accords with the plain language in § 1225(b)(2)(A) by requiring that a person be an "applicant for admission" and "also [be] *doing* something" to obtain authorized entry. *Diaz Martinez*, 2025 WL 2084238, at **6-7 (emphasis in original); *Lopez Benitez*, 2025 WL 2267803, at *7 (this is the "plain, ordinary meaning" of "seeking admission"). The statute's temporal focus on people "arriving" is evident in other

respects too. Section 1225(b)(2)(C) addresses "[t]reatment of [noncitizens] *arriving* from contiguous territory" (emphases added). Section § 1225's focus is on people entering the U.S.; once again, this Court agrees. *Mendoza Gutierrez*, 2025 WL 2962908, *5.

49. Defendants reading of § 1225 would also render significant portions of § 1225 meaningless. Several requirements must be met for § 1225(b)(2)'s mandatory detention regime to apply; namely, (1) an "examining immigration officer" (2) must conclude during an "inspection" (3) of an "applicant for admission" (4) who is also "seeking admission" (5) that the person "is not clearly and beyond a doubt entitled to be admitted." § 1225(b)(2)(A). Defendants' interpretation of § 1225 reads out three of those five requirements.

50. First, it makes superfluous the requirements that the "examining immigration officer" conduct an "inspection." *Jimenez*, 2025 WL 2639390 at *7. "[E]xamination is not an unbound concept. Rather, it is the specific legal process one undergoes while trying to enter the country." *Id.* (citations omitted). The regulations make that plain. 8 C.F.R. § 235.1(a) (noting that "scope of examination" occurs while on seeks to "enter the United States" "at a U.S. port-of-entry . . ."). Nor is the inspection requirement untethered to entry to the United States. See 8 U.S.C. § 1225(a)(3) ("All [noncitizens] who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers") (emphasis added). Defendants' interpretation renders both the examination officer and inspection requirements superfluous.

51. Second, it renders superfluous §1225(b)(2)(A)'s requirement that the noncitizen be "seeking admission." *Jimenez*, 2025 WL 2639390, at *8. The statute defines admission to mean "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). "While an applicant for

admission has not been 'admitted' to the United States, it does not follow that an applicant for admission continues to be actively seeking . . . lawful entry." *Jimenez*, 2025 WL 2639390, at *8 (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 the provision" in § 1225(b)(2)(A). *Salcedo Aceros*, 2025 WL 2637503, at *10. Defendants' position would similarly "read the word 'entry' out of the definitions of 'admitted' and 'admission.'" *Chafla*, 2025 WL 2688541, at *6.

52. The implementing regulation for § 1225(b) supports Petitioner's reading, noting that §1225(b) applies to "any arriving [noncitizen] who appears to the inspection officer to be inadmissible." 8 C.F.R. § 235.3 (emphasis added). "The regulation thus contemplates that 'applicants seeking admission' are a subset of applicants 'roughly interchangeable' with "arriving [noncitizens]." *Salcedo Aceros*, 2025 WL 2637503, at *10 (quoting *Martinez*, 2025 WL 2084238, at *6); *See* 8 C.F.R. § 1.2 (defining an arriving noncitizen as an applicant for admission "coming or attempting to come into the United States at a port-of-entry").

53. While Petitioner is not lawfully admitted, he is not actively "seeking admission i.e., seeking lawful entry . . . into the United States after inspection and authorization by an immigration officer." *Jimenez*, 2025 WL 2639390, *8. Defendants' reading of the statute is incorrect.

VI. The Legislative History Further Supports Petitioner's Argument.

54. IIRIRA's legislative history also supports the conclusion that § 1226(a) applies to Petitioner. In the IIRIRA, Congress focused on recent arrivals who lacked documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157-58, 228-29. Notably, Congress said nothing about subjecting all people present in the U.S. to mandatory detention.

55. Before the IIRIRA, people like Petitioner were not subject to mandatory detention under any theory. *See* 8 U.S.C. § 1252(a) (1994). Had Congress intended a monumental shift in immigration law, it would have clearly said so. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (finding "implausible that Congress would give to the [agency] through these modest words [such] power"). In fact, Congress said the opposite: the new § 1226(a) just "restates the current provisions … regarding the authority … to arrest, detain, and release on bond a[] [noncitizen]." H.R. Rep. No. 104-469, pt. 1, at 229. "Because noncitizens like [Petitioner] were entitled to discretionary detention under [§] 1226(a)'s predecessor statute and Congress declared its scope unchanged … this background supports [Petitioner's] position that he too is subject to discretionary detention." *Rodriguez Vazquez*, 779 F.Supp.3d at 1260; *Mendoza Gutierrez*, 2025 WL 2962908, *8.

VII. Respondents' Policies Violate Longstanding EOIR Regulations.

56. Defendants' view violates EOIR's regulations. Following the IIRIRA, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted ... will be eligible for bond." 62 Fed. Reg. at 10323. In the following decades, the relevant regulations remained unchanged. Compare 63 Fed. Reg. 27441, 27448 (May 19, 1998), with 8 C.F.R. § 1003.19(h)(2). The regulation governing IJs' bond jurisdiction still only limits an IJ's bond jurisdiction to noncitizens subject to § certain conditions irrelevant here 8 C.F.R. § 1003.19(h)(2). Regulatory "guidance and the agency's subsequent years of unchanged practice is persuasive." *Rodriguez Vazquez*, 779 F.Supp.3d at 1261. "When an agency claims to discover in a long-extant statute an unheralded power … [courts] greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 574 U.S. 302, 324 (2014).

II. Conclusion

57. For the foregoing reasons and considering the repeated and significant due process concerns presented, Petitioner respectfully requests that this Court order Respondents' use of the autostay regulation unlawful, find Respondents' authority to jail Petitioner to be pursuant to § 1226(a), and order Petitioner's immediate release from all forms of ICE custody; or in the alternative, immediate release from all forms of ICE custody upon payment of the IJ-ordered $5,000 bond.

CLAIMS FOR RELIEF

Count I

FIFTH AMENDMENT DUE PROCESS VIOLATION
(Procedural Due Process)

58. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

59. 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. The Supreme Court has long established that noncitizens are afforded due process rights. *Reno v. Flores*, 507 U.S. at 306. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty . . . ." *Mathews*, 424 U.S. at 332 (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified). The "touchstone" of due process is protecting people against arbitrary government action, whether from "denial of a fundamental procedural fairness, or the exercise of power without any reasonable justification in the service of a legitimate government objection." *Cty. of Sacremento v. Lewis*, 532 U.S. 833, 845–46 (1998).

60. Whether government action violates procedural due process is determined by the three-factor balancing test in *Mathews*. *Mathews*, 424 U.S. at 335. The test requires the Court to balance (1) "the private interest that will be affected by the official action"; (2) "the risk of 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." *Id.*

61. Petitioner has a significant liberty interest in release from detention, especially where an IJ, after a full hearing, found she is neither a danger nor a risk of flight. Despite this determination, she remains in custody.

62. The autostay regulation creates a substantial risk of erroneous deprivation by nullifying the IJ's individualized bond determination and mandating detention solely on ICE's notice of appeal.

63. The government has no legitimate interest in continued detention where an IJ already found Petitioner is not a flight risk or danger.

64. Less burdensome alternatives exist. Under 8 C.F.R. § 1003.19(i)(1), DHS may request a discretionary stay pending appeal, which requires consideration of the individual circumstances.

65. By incarcerating Petitioner under the autostay provision, Respondents violate her procedural due process rights under the Fifth Amendment.

Count II

FIFTH AMENDMENT DUE PROCESS VIOLATION
(Substantive Due Process)

66. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

67. Due process "applies to all 'persons' within the United States, including [noncitizens] whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

68. Petitioner has lived in the United States for years and has significant ties to this country. After a full hearing pursuant to *Maldonado Bautista*,, an IJ property determined that Petitioner is subject to 8 U.S.C. § 1226(a) and granted her release on bond.

69. Respondents appeal that decision based on their illegal interpretation of 8 U.S.C. § 1225(b)(2), unilaterally invoked the autostay provision, and subject Petitioner to continued, unlawful incarceration. Petitioner has no meaningful way to challenge her continued loss of liberty following the order granting release on bond.

70. Petitioner's continued incarceration after an independent adjudicator found that she is neither a risk of flight nor a danger to the community does not serve a compelling governmental interest.

71. Respondents' violate Petitioner's substantive due process rights.

Count III

VIOLATION OF THE APA
(Ultra Vires Agency Action)

72. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

73. The APA requires courts to hold unlawful and set aside agency action found to be "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

74. Under § 1226(a) and its implementing regulations, IJs have discretionary authority to release noncitizens pending a decision on removal. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d).

75. The autostay provision in 8 C.F.R. §§ 1003.19(i)(2) and 1003.6 exceed the statutory detention framework in 8 U.S.C. § 1226(a) and eliminate IJs' discretionary authority to release noncitizens subject to discretionary detention under § 1226(a).

76. Respondents' reliance on these regulatory provisions to continue jailing Petitioner after an IJ's favorable bond determination exceeds authority Congress granted under § 1226(a) and effectively imposes mandatory incarceration on Petitioner where § 1226(a) does not.

77. The autostay provisions and Respondents' reliance on them subject Petitioner to continued and unwarranted detention in violation of the APA.

Count IV

Violation of 8 U.S.C. § 1226(a)

78. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

79. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner because she was present and residing in the U.S., has been placed in § 1229a removal proceedings, and charged with inadmissibility pursuant to 8 U.S.C. § 1182. Simply, § 1225 does not apply to people like Petitioner who previously entered the country and reside in the U.S. prior to being detained and placed in removal proceedings. The statute also applies to people like Petitioner regardless of whether ICE conducts an initial custody determination. Such noncitizens may only be detained pursuant to § 1226(a), unless they are subject to mandatory detention provisions irrelevant here. Detention under § 1226(a) requires access to bond.

80. Applying § 1225 to Petitioner unlawfully mandates his continued detention without a bond hearing and violates 8 U.S.C. § 1226(a).

Count V

Violation of INA Bond Regulations (8 C.F.R. §§ 236.1, 1236.1, & 1003.19)

81. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

82. Respondent EOIR and the then Immigration and Naturalization Service issued a rule to interpret and apply the IIRIRA under the heading "Apprehension, Custody, and Detention of [Noncitizens]," which explained: "Despite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond.*" 62 Fed. Reg. at 10323 (emphasis added). Respondents thus long-ago made clear that people like Petitioner who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and the implementing regulations.

83. Nonetheless, Respondents here deemed Petitioner subject to mandatory detention under § 1225, which unlawfully mandates his continued detention.

84. Respondents' application of § 1225(b)(2) to Petitioner unlawfully requires his continued detention in violation of 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

Count VI

Violation of Administrative Procedures Act (5 U.S.C. § 706(2))

85. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

86. 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).

87. Respondents' detention of Petitioner 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 Petitioner.

88. Respondents' detention of Petitioner without access to bond is arbitrary, capricious, an abuse of discretion, violative of the U.S. Constitution, the statute, the implementing regulations and therefore in violation of 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

Petitioner respectfully asks the Court take jurisdiction over this matter and grant the following relief:

1) Assume jurisdiction over this matter;
2) Enjoin respondents from transferring Petitioner outside the jurisdiction of the District of Colorado pending resolution of this case;
3) Declare Petitioner's continued incarceration a violation of the APA and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
4) Issue a writ of habeas corpus directing Respondents to immediately release Petitioner or in the alternative, order her released on a bond of $5,000 that the IJ previously set where, under either circumstance, ICE cannot unilaterally keep Petitioner in custody through alternatives to detention like 24/7 GPS monitoring, in-person check-ins, or restrictions on movement;
5) Issue injunctive and declaratory relief declaring that Respondents' authority to jail Petitioner is solely pursuant to 8 U.S.C. § 1226(a);

6) Issue injunctive and declaratory relief declaring that the autostay regulation, 8 C.F.R. § 1003.19(i)(2), cannot be used to prevent or delay Petitioner's release and enjoin respondents from relying on the autostay to override the IJ's custody determination;
7) Enjoin Respondents from unilaterally imposing additional forms of custody like 24/7 GPS monitoring, reporting requirements, or restrictions on movement not explicitly ordered by the IJ in the original Bond Order;
8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA") as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law.
9) Grant such further relief as the Court deems just and proper.

Dated: January 22, 205

Respectfully submitted,

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VERIFICATION

I, Conor T. Gleason, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief and a review of the record, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

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CERTIFICATE OF SERVICE

I, Conor T. Gleason, hereby certify that on January 22, 2026, I filed the foregoing with the Clerk of Court using the CM/ECF system. I, Jackie Alderete, hereby certify that I will mail a hard copy of the document to the individuals identified below pursuant to Fed.R.Civ.P. 4 via certified mail within 72 hours of filing or pursuant to any forthcoming Court order requiring something else. Kevin Traskos of the U.S. Attorney's Office agreed to accept service on behalf of all Respondents.

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