UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Petitioner
Ahoka Isaac Lokombe

Case No. 1:26-cv-00053

v.

Respondent
U.S. Immigration and Customs Enforcement and Removal Operations, Field Office Director
other
David Wesling

Respondent
U.S. Immigration and Customs Enforcement, Acting Director
other
Todd Lyons

Respondent
U.S. Department of Homeland Security, Secretary
other
Kristi Noem

Respondent
U.S. Attorney General
other
Pamela Bondi

Respondent
Strafford County Department of Corrections, Superintendent
other
Christopher Brackett

MOTION FOR RECONSIDERATION

Petitioner Ahoka Isaac Lokombe respectfully moves this Court to reconsider its February 11, 2026, order directing a new bond hearing pursuant to D.N.H. L.R. 7.2(d). On February 10, 2026, this Court granted partial relief on the Petition for Writ of Habeas Corpus [ECF 1] and ordered a bond hearing before an Immigration Judge. *See* Summary Order for Bond Hearing, Feb. 10, 2026, ECF No. 9. On February 17, 2026, Immigration Judge Natalie Smith denied bond. *See* Order of the Immigration Judge, ECF No. 10-1 ("Bond Denial").

This Court should reconsider its remedy because the proper legal remedy for a noncitizen in Petitioner's position—held by an automatic stay despite a grant of bond, continuously held despite the automatic stay expiring, and then held due to an appeal vacating his bond based on now vacated case law—is enforcement of the original bond order, not a second bond hearing that afforded the government another opportunity to justify unlawful detention. Therefore, Petitioner respectfully asks that this Court reconsider its February 10, 2026, decision and order Petitioner's release under the terms of the original August 14, 2025, bond order.

ARGUMENT

Although the Federal Rules of Civil Procedure lack a "specific rule applicable to non-final judgments, district courts retain an 'inherent power' to reconsider and amend prior orders 'at any time' before the entry of final judgment." *Mazza v. City of Boston*, 780 F. Supp. 3d 325, 329 (D. Mass 2025) (citing *Fernandez-Vargaz v. Pfizer*, 522 F.3d 55, 61 n. 2 (1st Cir. 2008)). The Supreme Court has long affirmed the Court's power to reconsider its own decisions, stating "[a] court has the power to revisit prior decisions of its own or of a coordinate court in any circumstance." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988). Although the Supreme Court warned that "courts should be loathe to do so in the absence of extraordinary

circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.'" *Id.* (citing *Arizona v. California*, 460 U.S. 605, 618 n. 8 (1983)). Here, Petitioner sets forth that the Court's February 10 2026 order works a manifest injustice by promoting the continued violation of Petitioner's constitutional rights by allowing *post hoc* rationalization of his prolonged civil detention. Additionally, District Judge Sunshine Sykes of the Central District of California ruled that *Matter of Yajure Hurtado* is vacated as a violation of the Administrative Procedures Act, thus rendering the basis for the BIA's appeal decision invalid. *See* (In Chambers) Order Granting Plaintiff Petitioners' Motion to Enforce Judgment [DKT. NO. 107], *Maldonado Bautista v. Santacruz Jr.*, 5:25-cv-01873-SSS-BFM, 2026 U.S. Dist. LEXIS 34057 (C.D. Cal. Feb. 18, 2026) ("*Maldonado Bautista* Enforcement Order").

I. *Post Hoc* Rationalization Cannot Justify the Department of Homeland Security's Unconstitutional Actions.

The Supreme Court has held: "The basic rule here is clear: An agency must defend its actions based on the reasons it gave when it acted. This is not the case for cutting corners to allow DHS to rely upon reasons absent from its original decision." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020). At the time that Petitioner continued to be detained after the Immigration Judge granted him bond, the sole justification provided by DHS was that Petitioner should be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See* Ex. F, DHS Appeal, ECF No. 1-6.

As previously argued, because the only constitutional rationale for detaining a noncitizen is that they either pose a flight risk or danger to the community, DHS's continued detention of Petitioner after an Immigration Judge found that he was not a danger to the community and that any flight risk was ameliorated by a bond of $7,500 was unconstitutional. *See* Petition for Writ of Habeas Corpus at ¶ 40-54, Jan. 30, 2026, ECF No. 1 ("Petition"); *see also* Ex. D, Bond Order.

Petitioner also alleged that the automatic stay provision, which kept him detained despite a bond grant, is *ultra vires* and his detention pursuant to the provision is improper. *See* Petition at ¶ 55-58. Although the Respondents dispute that Petitioner was held pursuant to the automatic stay at the time of the filing of the Petition, they noted that "Petitioner is no longer being held pursuant to the automatic stay, because the stay expired when the BIA issued its order sustaining DHS' appeal." Response to Petition for Writ of Habeas Corpus, Feb. 9, 2026, ECF No. 6 ("Response").

Respondents' statement that "Petitioner *is no longer being held pursuant to the automatic stay*" indicates that his detention after August 14, 2025, was due to the automatic stay provision, not a discretionary stay. *See id.* Therefore, this Court should find that from August 14, 2025, to November 25, 2025, Petitioner was detained pursuant to the automatic stay provision. *See* Ex. E, Form EOIR-43, Notice of Intent to Appeal Custody Redetermination. A week after the automatic stay lapsed on November 25, 2025, the Board of Immigration Appeals ("BIA") issued its decision sustaining the DHS's appeal and finding that Petitioner was subject to mandatory detention because of *Matter of Yajure Hurtado*. *See* Ex. A, Ahoka Isaac Lokombe, AXXX-XXX-155 (BIA Dec. 2, 2025) (hereinafter "Appeal Decision"). Because the BIA had issued its Appeal Decision, Respondents chose to not address any of Petitioner's arguments regarding the automatic stay being unconstitutional and *ultra vires*. *See* Response at 4 (considering the issues presented in the case "once the auto stay provision is removed from the analysis."). Even if, assuming *in arguendo*, that the *post hoc* rationalization stands and is allowed to justify continued, Respondents held Petitioner for over three months in violation of his constitutional rights. To avoid unnecessary repetition, Petitioner provides only a summary of the arguments presented in the Petition and incorporates his detailed arguments by reference.

Procedural Due Process. This Court should find that the automatic stay provision fails the *Mathews* procedural due process test: (1) Petitioner's private interest in being free from government detention is at the core of liberty interests, especially as he is detained civilly; (2) Petitioner's was erroneously deprived of his right to release based on a widely rejected interpretation of the detention statutes; and (3) Respondents' interests were sufficiently protected at the bond hearing. *See* Petition at ¶ 43-51. The risk of erroneous deprivation of Petitioner's rights is not only high, but this Court should find that Petitioner was unquestionably erroneously deprived of his rights where this Court found that Petitioner was indeed subject to 8 U.S.C. § 1226(a) and the reasoning that formed the basis of DHS's invocation of the automatic stay was vacated in *Maldonado Bautista*.

Substantive Due Process. This Court should also find that the automatic stay provision violates substantive due process, because Respondents have failed to demonstrate a "sufficiently strong justification for indefinite civil detention." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see* Petition at ¶ 52-54. The issue of indefinite civil detention is especially concerning where Petitioner's detention is and always was properly governed by 8 U.S.C. § 1226(a), but an Immigration Judge has found him ineligible for release after over six months of detention with only a conclusory statement that "Respondent poses a flight risk by a preponderance of the evidence and there is no bond amount or condition of bond that would assure the court of the Respondent's participation in the proceedings." *See* Ex. A, Bond Denial. While there is no publicly available data tracking the exact length of time for a merits appeal before the BIA, the District Court for the Eastern District of California recently noted that the government has previously sought to downplay the length of time noncitizens remain in detention with cases on appeal. *See Lebedev v. Warden of the Golden State Annex Det. Facility*, 1:25-cv-01391-KES-

SAB-HC, 2026 U.S. Dist. LEXIS 35410 at * 6 n 4 (E.D. Cal. Feb. 20, 2026) ("Although the 'Supreme Court had inferred from the government's brief in *Demore* that in cases in which the alien appeals, the time of detention was "about five months,"' the government's 2016 letter clarified that for years 1999-2001, the 'length of detention in cases where the alien appealed [was] 382 days, or a little more than a year.'"). *Demore* is distinct from the current situation because it pertains to noncitizens subject to mandatory detention under 8 U.S.C. § 1226(c). *See Demore v. Kim*, 538 U.S. 510 (2003). However, the Court should find it greatly concerning that Petitioner, who is not subject to mandatory detention under 8 U.S.C. § 1225 or 1226(c), Petitioner has already been detained more than the five months incorrectly assumed by the Supreme Court.

Ultra Vires. Finally, the automatic stay provision is *ultra vires* because it allowed DHS to act beyond their jurisdiction. *See* Petition at ¶ 55-58. Although most Courts have granted release to noncitizens detained by the automatic stay provision for constitutional reasons, several courts have also noted that the provision is *ultra vires*. *See, e.g.*, *Mohammed H. v. Trump*, 786 F. Supp. 3d 1149, 1158 (D. Minn. 2025); *Zabadi v. Chertoff*, No. C 05-01796, 2005 WL 1514122, 2005 U.S. Dist. LEXIS 50670 at *2 (N.D. Cal. June 17, 2005).

Precedent is clear: "*post hoc* rationalizations of the agency . . . cannot serve as a sufficient predicate for agency action." *American Textile Mfrs. Institute, Inc. v. Donovan*, 452 U. S. 490, 539 (1981). Based on the foregoing, the proper remedy for a violation of Petitioner's constitutional rights and months long detention due to an *ultra vires* regulation is ordering his immediate release on the previous bond order. Where a habeas is brought to challenge unlawful detention, the Supreme Court has recognized for nearly two decades that "[t]he typical remedy for such detention is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Months of

unlawful detention despite a court order cannot be remedied by providing Respondents with a second chance to argue that he should be detained. As seen in the outcome of Petitioner's second bond hearing, this merely provided Respondents further opportunities to deny Petitioner release.

II. Intervening Law Negates the BIA's Bond Appeal Decision

While incorporating their legal arguments from *Loja* and preserving their appeal rights, Respondents submitted that the Court had previously decided that the proper statute governing detention for similar noncitizens was 8 U.S.C. § 1226(a). *See* Response at 4. In their arguments, Respondents cite *Matter of Yajure Hurtado*, the BIA decision that began the significant wave of habeas petitions being filed with the district courts across the country. *See id.* at 3. This same case provided the sole basis for the BIA's decision to sustain DHS's appeal and vacate Petitioner's bond. *See* Ex. A, Appeal Decision at 2-3.

On February 18, 2026, District Judge Sunshine Sykes issued the *Maldonado Bautista* Enforcement Order, wherein the Court vacated the *Matter of Yajure Hurtado* under the Administrative Procedure Act ("APA"). *See Maldonado Bautista* Enforcement Order, 5:25-cv-01873-SSS-BFM, 2026 U.S. Dist. LEXIS 34057 at * 30. This decision is binding not only on DHS and ICE, who are both Respondents in this action, but is also binding on EOIR. *See id.* at *17. EOIR, or the Executive Office for Immigration Review, includes the Immigration Court and the Board of Immigration Appeals. *See* Attached Ex. K, Executive Office for Immigration Review Organization Chart. As District Judge Sykes noted, the original decision on December 18, 2025, did not vacate *Maldonado Bautista* under the APA as "an act of judicial restraint: a formality." *Maldonado Bautista* Enforcement Order 5:25-cv-01873-SSS-BFM, 2026 U.S. Dist. LEXIS 34057 at * 30. However, after months of noncompliance with the Court's final judgment, District Judge Sykes then found it necessary to grant vacatur of *Matter of Yajure Hurtado* under

the APA in order to "protect due process and the principles of separation of powers." *Id.* at * 33. Therefore, as the **sole justification** both for DHS holding Petitioner after a bond grant and for the BIA vacating the bond grant was vacated in the *Maldonado Bautista* Enforcement Order, this Court should find that Petitioner's detention under the automatic stay regulation and pursuant to the BIA's Appeal Decision is unlawful and order his immediate release.

CONCLUSION

Based upon the foregoing reasons, Petitioner respectfully requests that the Court find that it has the authority to order that Petitioner is immediately released.

Date: February 24, 2026

Respectfully Submitted,

/s/ Hillary S. Cheng
Hillary S. Cheng
26611 La Roda
Mission Viejo, California 92691
Cell: 603-546-8452
Email: hillary.s.cheng@gmail.com

/s/ Amelia L. Ritenour
Amelia L. Ritenour, Esq.
Haven Immigration Law, LLC
132 Spring St, Floor 1
Portland, ME 04101
ar@im.law
+1 207 383 1898
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record by means of the Court's Electronic Case Filing system on February 24, 2026.

/s/ Amelia L. Ritenour
Amelia L. Ritenour, Esq.
Counsel for Petitioner