UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1: 26-cv-00442-SKC

LEOBARDO BALDERAS RIVAS,

Plaintiff-Petitioner,

v.

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

Defendants-Respondents.

PETITIONER-PLAINTIFF'S REPLY TO RESPONDENT-DEFENDANTS' RESPONSE (ECF No. 13)

The dispositive questions before this Court are not new. Defendants-Respondents' ("Defendants") erroneously claim that their authority to jail Plaintiff-Petitioner ("Plaintiff") is pursuant to 8 U.S.C. § 1225(b)(2) because he entered the United States without inspection ("EWI") years ago. An immigration judge ("IJ") on January 13, 2026, disagreed and granted Plaintiff released on $5,000 bond. ECF 4-1. Undeterred, Defendants unilaterally invoked the automatic stay pursuant to 8 C.F.R. § 1003.19(i)(2) to ensure Plaintiff remains illegally detained while Defendants argue before the Board of Immigration Appeals ("BIA") that Plaintiff is jailed pursuant to § 1225(b)(2).

In their response, Defendants concede that "[t]hese issues are not materially different from the issues this Court has resolved [against Defendants] in prior rulings in other cases." ECF 13, at *2 (citing *Perez Zepeda v. Hagan, et al.*, No. 1:25-cv-03789-SKC, ECF No. 18 (D. Colo.) (attached as Exh. 1); *Merchan-Pacheo v. Noem*, No. 1:25-CV-03860-SBP, 2026 WL 88526 (D. Colo. Jan. 12, 2026)). Defendants' response provides no basis upon which this Court should change course.

I. Plaintiff's Incarceration is Pursuant to § 1226 and Defendants' Use of the Automatic Stay to Pursue its Erroneous Position Otherwise is Illegal.

Defendants' response largely ignores the weight of authority rejecting their position, including this Court's ruling, *e.g.*, *Perez Zepeda,* 1:25-cv-03789-SKC; and this District's unanimous rulings, *Ugarte Hernandez v. Baltazar et al.*, 1:25-cv-04066-RBJ, at *4 (D. Colo. Jan. 15, 2026), ECF 16 (attached as Exh. 2)., finding Defendants' authority to jail Plaintiff pursuant to § 1226(a). This Court should continue to be part

of the "tsunami" of decisions finding Defendants' position unlawful and grant Plaintiff relief. *Roa v. Albarran, et al.*, 25-cv-07802-RS, 2025 WL 2732923, *1 (citation omitted). In fact, Defendants' contrary position "has been rejected in more than 1,500 district court decisions." *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, at *2 (D. Colo. Feb. 3, 2026).

a. This Court was Correct to Acknowledge that *Merchan-Pacheo* is Thoughtful and Persuasive; Defendants Cannot Jail Plaintiff under § 1225(b)(2).

Instead of distinguishing this Court's prior ruling in *Perez Zepeda* or *Merchan Pacheo*, Defendants present a "selective" reading of *Jennings*. *Ugarte*, 1:25-cv-04066-RBJ, at *13. Looking at *Jennings* in its entirety, Defendants' "focus on the 'catchall' language in *Jennings* is misplaced." *Id.* at *14. Indeed, the Court's analysis in *Jennings* "fatally contradict[s]" Defendants' position. *Id.*

Beyond its selective reading of *Jennings*, Defendants cite without analysis the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, ---F.4th---, 2026 WL 323330, at *5–10 (5th Cir. Feb. 5, 2025) and a single decision that falls in the significant minority of district courts adopting their erroneous position, *Montoya v. Holt*, No. CVI-25-01231-JD, 2025 WL 3733303 (W.D. Okla. Dec. 26, 2025). ECF 13, at *3. The unanimous consensus in this District disagreeing with Defendants is more persuasive. Indeed, even district courts in the Fifth Circuit continue to find that people Defendants claim are subject to mandatory detention under § 1225(b) are entitled procedural due process and merit bond hearings. *E.g.*, *Hassen v. Noem, et al.*,

EP-26-CV0048-DB (W.D. Tex. Feb. 9, 2026) (attached as Exh. 3); *Duran Aguila v. Warden, et al.*, EP-26-CV-241-KC (W.D. Tex. Feb. 9, 2026) (attached as Exh. 4).

b. Under any Analysis, Defendants' Use of the Autostay is Illegal and the *Merchan-Pacheo* Analysis Finding the Same is Correct.

Much like its position denying Plaintiff his liberty interest by applying the wrong statute, Courts resoundingly reject Defendants' use of the automatic stay regulation to do the same. *M.P.L. v. Arteta*, 25-cv-5307-VSB, 2025 WL 3288354, *7 (S.D.N.Y. Nov. 25, 2025) ("At least 50 district court decisions across the United States in the last 6 months alone" have found "DHS's application of the automatic stay . . . violates . . . due process under the Fifth Amendment"). Defendants are not using the automatic stay "within the bounds of its intended authority. . . ." *Merchan-Pacheo,* 2026 WL 88526, at *17 n. 7.

i. Plaintiff is Entitled to Constitutionally Protected Due Process.

"It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (same); *Golicov v. Lynch*, 837 F.3d 1065, 1068 (10th Cir. 2016) (same). Defendants' mischaracterization of *Thuraissigiam* in its *Merchan-Pacheo* response (ECF 13-3) to argue otherwise proves the point. In *Thuraissigiam*, the Court stated that

> [w]hile [noncitizens] who have *established connections* in this country have due process rights in deportation proceedings, the Court long ago held that Congress is entitled to set the conditions for a [noncitizen's] lawful entry into this country and that, as a result, a [noncitizen] at the *threshold of initial entry* cannot claim any greater rights under the Due Process Clause. Respondent attempted to enter the country illegally *and*

> *was apprehended just 25 yards from the border*. He therefore has no entitlement to procedural rights other than those afforded by statute.

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

Defendants' reliance on *Demore* to deny Plaintiff constitutionally protected due process is similarly unavailing. To begin with, "*Demore* involved a very different set of circumstances from those alleged here," *Merchan-Pacheo*, 2026 WL 88526, at *4. Indeed, "the principles that the Supreme Court relies upon in *Demore* to rule against the petitioners are understandably not fully applicable in this context, because in *Demore* the parties did not dispute that the petitioners were subject to § 1226(c), which mandates detention of 'criminal' noncitizens." *Id.* at *5. "Here, in contrast, [the immigration judge] has held that [Plaintiff's] detention is not mandatory, and there is no indication that Plaintiff has ever been accused or convicted of a crime." *Id.*

(emphasis in original). Moreover, *Demore* admits that the "Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings," *Demore v. Kim*, 538 U.S. 510, 523 (2003) (citation omitted), but that due process was not violated because the noncitizen was detained under the correct statute for a finite period, *Id.*, at 529. Therefore, it would "not be appropriate to extend *Demore's* holding wholesale to a discretionary detention context where Congress has not installed prohibitions on obtaining bail." *Merchan-Pacheo*, 2026 WL 88526, at *6 (emphasis in original). Here, Defendants jail Plaintiff under the wrong statute, and the correct statute of detention mandates access to bond. 8 U.S.C. § 1226(a); *Id.* at *12. Defendants' use of the autostay denies Plaintiff his constitutionally protected due process rights

ii. The *Mathews* Factors Apply.

Defendants assert that the *Mathews* factors do not apply to Plaintiff's due process claims because the Supreme Court has not explicitly applied *Mathews* in irrelevant contexts. (ECF 13 Fn. 2) As discussed supra, *Demore* and *Thuraissigiam* are factually distinct. Neither *Demore* nor *Thuraissigiam* questioned whether they were subject to mandatory detention, nor was the government there applying the wrong statutory authority to jail them. *See* Section I(b)(i), *supra*. Likewise, *Zadvydas* resolved a question of statutory interpretation, not what process the Constitution requires, and therefore had no occasion to apply *Mathews*. 533 U.S. 678, 699 (2001). None of these cases involved discretionary detention under § 1226(a), let alone the use of an automatic stay to override a bond in favor of continued confinement.

Furthermore, Courts, including courts within this District, routinely look to the *Mathews* factors when evaluating whether detention of noncitizens comports with

due process. *See, e.g., L.G. v. Choate*, 744 F. Supp. 3d 1172, 1181 (D. Colo. 2024) (applying Mathews in a similar context and stating that "Tenth Circuit precedent demonstrates that the *Mathews* test is appropriate when determining what process is constitutionally due."); *Vizguerra-Ramirez v. Baltazar*, No. 25-cv-00881-NYW, 2025 WL 3653158, at *13 (D. Colo. Dec. 17, 2025) (applying *Mathews* in a similar context); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that "when considering due process challenges to [discretionary noncitizen detention,] other circuits...have applied the *Mathews* test"). Thus, the *Mathews* factors apply and weigh decisively in Plaintiff's favor.

iii. The Mathews Factors Weigh Heavily in Plaintiff's Favor.

Pursuant to *Mathews*, courts weigh the following three factors in evaluating due process claims: (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." 424 U.S. 319, 335 (1976).

With regards to the first *Mathews* factor, Defendants' contention that Plaintiff's liberty interest is "limited" is mistaken. As *Merchan-Pacheo* emphasized, the Plaintiff's private liberty interest in physical freedom is significant and "the most elemental of liberty interests." 2026 WL 88526, at *14 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Vizguerra-Ramirez*, 2025 WL 3653158, at *13; *Carlon v. Kramer*, 4:25-cv-3178, 2025 WL 2624386, *3 (D. Neb. Sept. 11, 2025); *Gunayadin v.*

Trump, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025); *Zadvydas*, 533 U.S. at 690). The first *Mathews* factor weighs strongly in Plaintiff's favor.

Regarding the second Mathews factor—the "concern for accuracy," *City of Los Angeles v. David*, 538 U.S. 715, 718 (2003)—Defendants argue that the automatic stay enhances accuracy because it preserves the status quo while DHS seeks review of the IJ's custody decision. They rely on the Federal Register's assertion that the stay allows DHS to present arguments to the Board before being required to release a noncitizen and does not render the IJ's decision "meaningless." 71 Fed. Reg. 57881. That characterization is incorrect. The relevant constitutional question is not whether DHS may appeal, but whether the procedure used to maintain detention pending appeal creates a substantial risk of erroneous deprivation. It does.

There is a large risk of erroneous deprivation, because the automatic stay applies only to individuals who have already prevailed at a bond hearing before a neutral adjudicator. *Merchan-Pacheo*, 2026 WL 88526, at *15, *see also Carlon*, 2025 WL 2624386, at *3. In other words, "the automatic stay regulation empowers ICE—the losing party in the bond hearing—to unilaterally override the decision of the [IJ] and keep the noncitizen detained pending appeal. Such a rule allows the government to . . . usurp the role of the [IJ]." *Menchan*, 2026 WL 88526, at *15 (quotation omitted). Moreover, "[t]he automatic say regulation also inverts the traditional burdens and standards governing requests for stays pending appeal." *Id.* DHS need not show any individualized facts or show a likelihood of success on the merits to unilaterally extend the noncitizen's incarceration. *See* 8 C.F.R. § 1003.19(i)(2) ("shall be stayed").

As a result, courts conclude that the automatic stay "carries a significant risk of erroneous deprivation." *Merchan-Pacheo*, 2026 WL 88526, at *15. The second *Mathews* factor strongly favors Plaintiff.

As to the third Mathews factor, Defendants rely on the Federal Register notice to argue that the automatic stay serves a strong governmental interest, including preventing flight risk and preserving the status quo during appellate review. 71 Fed. Reg. 57878–80, 57882. The court in *Merchan-Pacheo* noted that maintaining detention pending appeal does not reflect a compelling interest where the status quo protects the detention of an individual whom an IJ already determined poses neither a risk of flight nor danger. 2026 WL 88526, at *16. This reasoning aligns with other authorities recognizing that the government's interest in preserving detention via the automatic stay is limited, especially where bond has been set to ensure appearance. *See Maza v. Hyde*, No. 1:25-cv-12407-IT, 2025 WL 2951922, at *4 (D. Mass. Oct. 20, 2025); *Sampiao*, 799 F. Supp. 3d at 33–34. Moreover, the public interest favors the Plaintiff. Unnecessary detention "imposes substantial societal costs as it separates families and removes from the community breadwinners, caregivers, parents, siblings, and employees." *Merchan-Pacheo*, 2026 WL 88526, at *16;. This factor weighs in Plaintiff's favor.

iv. Defendant's Jail Plaintiff in Violation of Substantive Due Process.

Government detention violates substantive due process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances 'where a special justification . . . outweighs the individual's

constitutionally protected interests in avoiding physical restraint.'" *Maldonado Vazquez v. Feeley*, 805 F.Supp.3d 1112, 2025 WL 2676082, at *21 (D. Nev. 2025) (quoting *Zadvydas*, 533 U.S. at 690). Here, the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), permits the government to unilaterally detain Plaintiff despite a neutral adjudicator having already determined he is eligible for release on bond. Defendants offered no "special justification" or compelling interest outweighing Plaintiff's weighty interest in liberty. Indeed, Defendants only alleged interest is their misapplication of § 1225. Moreover, the IJ's bond determination already satisfies the government's legitimate interest in ensuring Plaintiff appears for future proceedings. *Leal-Hernandez v. Noem*, 803 F.Supp.3d 409, 2025 WL 2430025, at *13 (D. Md. 2025); 2026 WL 88526, at *16. Plaintiff's continued incarceration therefore does not serve a legitimate purpose and violates substantive due process. *Merchan-Pacheo,* 2026 WL 88526, at *16.

v. The Disputed Regulation is Ultra Vires.

By invoking § 1003.19(i)(2) to nullify an IJ's bond order, DHS usurps authority Congress assigned exclusively to the Attorney General—an ultra vires act. *Quispe v. Crawford*, 1:25-cv-1471-AJT-LRV, 2025 WL 2783799, *9 (E.D. Va. Sept. 29, 2025); *Campos Leon v. Forestal*, 1:25-cv-01774-SEB-MJD, 2025 WL 2694763, *4 (S.D. Ind. Sept. 22, 2025). "Congress did not grant DHS authority to determine whether bond should be granted." *B.D.V.S. v. Forestal*, 1:25-cv-01968-SEB-TAB, 2025 WL 2855743, *2 (S.D. Ind. Oct. 8, 2025). Plaintiff only remains in custody "because another agency, DHS, refuses to honor the bond determination. And DHS's only source of authority

for that refusal is a regulation promulgated by DOJ without Congress's approval." *Id.*, *3. Plaintiff's continued detention is therefore only lawful if "DOJ could lawfully delegate its authority over bond determinations to DHS." *Id.*

"It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). There is no Congressional authority delegated to DOJ or DHS for DHS to override the IJ's bond decision here. *B.D.V.S.*, 2025 WL 2855743, at *3. "Congress set up a system for administering the removal of certain [noncitizens]. If it wished for DHS to have unilateral authority in that process, Congress could have created that system." *Id.* It did not. *Id.*; *Campos Leon*, 2025 WL 2694763, at *4.

The automatic stay transforms an IJ's discretionary bond decision into de facto mandatory detention—rewriting § 1226(a) and allowing an agency outside DOJ to veto judicial authority. *Leal-Hernandez*, 2025 WL 2430025, at *15. The automatic stay exceeds statutory authority, conflicts with the INA, and unlawfully permits DHS to nullify DOJ's delegated bond authority.

II. Conclusion

Based on the foregoing, this Court should grant Plaintiff's Petition (ECF 1) and end Defendant's illegal incarceration of Plaintiff expeditiously.

Dated: February 16, 2026

Respectfully submitted,

/s/ Conor T. Gleason
Conor T. Gleason, Esq.

Hans Meyer, Esq.
Anahi Quezada-Villa, Esq.
The Meyer Law Office, PC
1547 Gaylord St.
Denver, CO 8020
(303) 831 0817
conor@themeyerlawoffice.com
hans@themeyerlawoffice.com
anahi@themeyerlawoffice.com

Attorneys for Plaintiff-Petitioner

AI CERTIFICATION

Pursuant to the Court's Standing Order regarding the use of Generative Artificial Intelligence ("AI") in court filings, undersigned counsel certifies that AI was not used to draft this filing.

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

/s/ Conor Gleason
Conor T. Gleason, Esq.