IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01200-PAB

MARIA TERESA RODRIGUEZ ALFARO,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Denver Contract Detention Facility,
GEORGE VALDEZ, in his official capacity as Acting Field Office Director, Denver Field Office of U.S. Immigration and Customs Enforcement,
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement,
MARKWAYNE MULLIN, in his official capacity as Secretary of U.S. Department of Homeland Security,
PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

Respondents hereby respond to the Court's Order to Show Cause, ECF No. 4, why Petitioner's petition for a writ of habeas corpus (ECF No. 1) should not be granted.

BACKGROUND

Petitioner entered the United States in 1992 without inspection. ECF No. 1 ¶ 21. She was detained by the Department of Homeland Security ("DHS") in Colorado on or about July 29, 2025. *Id.* ¶ 23. At that time, she was placed in removal proceedings before an Immigration Judge ("IJ"). *Id.* at Att. A. She is currently detained at the Denver Contract Detention Facility. *Id.* ¶ 15.

On January 26, 2026, after a custody hearing, the IJ granted Petitioner bond in the amount of $1500. *See id.* ¶ 31. DHS filed an appeal with the Board of Immigration Appeals ("Board"), invoking the automatic stay provision at 8 C.F.R. § 1003.19(i). *See id.* On February 22, 2026, the IJ *sua sponte* issued an amended bond order, leaving the bond amount unchanged, and finding that Petitioner is a member of the class certified in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. 2025). *Id.* at Att. E. On February 23, 2026, DHS filed a Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination. *Id.* ¶ 33 and Att. F.

ARGUMENT

For the reasons explained below, the court should decline to grant the relief requested. Petitioner argues that the automatic stay of the IJ's bond order violates the INA (Claim 1), substantive due process (Claim 2), and procedural due process (Claim 3). ECF No. 1 at 10-15. Not so. The automatic stay is merely a component of the process whereby the Attorney General ultimately arrives at a final decision whether to allow bond under § 1226(a)(2). It does not violate the INA or Fifth Amendment due process, and Petitioner's claims should thus be denied.

A. The automatic stay provision is simply one part of the agency's process for arriving at a final decision regarding bond.

Petitioner essentially argues that DHS's invocation of the automatic stay provision is contrary to 8 U.S.C. § 1226(a). *See* ECF No. 1 ¶¶ 48-54. But simply because an IJ has set a bond amount does not mean that a final, operative decision on bond has been reached by the Attorney General. Rather, as explained below, the IJ's ruling has not yet become operative because DHS has appealed to the BIA.

As a general matter, § 1226(a) gives the Attorney General discretion to release certain aliens on bond. It provides that the "Attorney General . . . (2) may release the alien on—(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole . . . ." By regulation, an alien may seek release on bond by making such a request to an immigration judge. 8 C.F.R. §§ 1236.1(d)(1), 1003.19.

But the IJ's decision at a bond hearing is not immediately operative. The Department of Justice regulations that govern immigration judges and the BIA provide that "the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first." 8 C.F.R. § 1003.39 (in 8 C.F.R. Part 1003, Subpart C (Immigration Court—Rules of Procedure)).

Where DHS elects to appeal to the BIA, however, the IJ's ruling on bond is stayed, and thus does not become operative:

> (i) Stay of custody order pending appeal by the government—
> * * *

> (2) Automatic stay in certain cases. In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR–43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 C.F.F. § 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR–43 is subject to the discretion of the Secretary.

8 C.F.R. § 1003.19(i)(2).

This longstanding rule was adopted by the Department of Justice in interim form in 1998 and finalized in 2006. *See* Final Rule: Review of Custody Determinations, 71 Fed. Reg. 57,873, 57,873 (Oct. 2, 2006). The rule is essentially a rule of judicial procedure, as it governs the proceedings before the quasi-judicial Department of Justice officials—the immigration judges and the BIA—that preside over immigration proceedings. In other words, it is not a rule adopted by DHS, which is a party in those proceedings; it is a rule of the Attorney General, who presides over those proceedings through those subordinate Department of Justice officials.

The notice of final rulemaking accompanying the final rule explains that a bond ruling of an immigration judge is merely an "initial decision" that does not take effect if DHS files an appeal:

> In sum, the automatic stay rule establishes a process, well within the discretion of the Attorney General, to regulate the workings of the decision-making process and provide for the opportunity for review not only by the immigration judge but also by the Board in certain cases or even by the Attorney General personally before an alien is released from custody. It is the Attorney General's prerogative to establish a process to reconcile opposing decisions by DHS and an immigration judge with respect to whether an alien should be released prior to a decision by the Board on review. There is nothing in the Due Process Clause requiring

> that an alien must be released from custody immediately upon the issuance of an initial decision by an immigration judge.

See Final Rule: Review of Custody Determinations, 71 Fed. Reg. 57,873, 57,881 (Oct. 2, 2006). So pursuant to the rules of the administrative tribunal, an immigration judge's grant of bond is not operative if the DHS timely appeals the decision.

In adopting the rule designating a bond decision of a subordinate official—here, an immigration judge—as non-final, the Attorney General did not violate ordinary rules of agency practice. Rather, the Attorney General acted in accordance with well-established rules of agency practice.

Congress has expressly authorized federal agencies to specify, by rule, that an interim ruling is inoperative until an internal agency appeal is completed. In the Administrative Procedure Act, Congress specified that an agency decision would be become final "unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority." 5 U.S.C. § 704. As the Supreme Court has explained, this provision permits an agency to provide for an initial decision to be "inoperative" during any intra-agency appeal:

> In its report on the APA, the Senate Judiciary Committee explained that [this provision means that] an initial decision made by a hearing officer becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. . . . [A]n agency may permit an examiner to make the initial decision in a case, which becomes the agency's decision in the absence of an appeal to or review by the agency. If there is such review or appeal, the examiner's initial decision becomes inoperative until the agency determines the matter. . . . .
>
> The purpose of § 10(c) was to permit agencies to require an appeal to 'superior agency authority' before an examiner's initial decision became final. . . . Agencies may avoid the finality of an initial decision, first, by

> adopting a rule that an agency appeal be taken before judicial review is available, and, second, by providing that the initial decision would be 'inoperative' pending appeal."

Darby v. Cisneros, 509 U.S. 137, 147-152 (1993) (internal citations omitted).

The automatic-stay provision creates precisely the procedure the Supreme Court blessed in *Darby*. In accordance with the APA, it ensures that the Attorney General's decision on bond under 8 U.S.C. § 1226(a) is not operative where bond has been set by an immigration judge but has been timely appealed to the BIA.

This process accords with "the general rule that an agency action is not final until the agency has completed its decision-making process." *Farrell-Cooper Mining Co. v. U.S. Dep't of Interior*, 864 F.3d 1105, 1114 (10th Cir. 2017); *see also Kewayfati v. Bondi*, 165 F.4th 342, 350 (5th Cir. 2026) (explaining, in the context of asylum applications, that an immigration judge "renders a decision subject to review by the BIA, which affords a greater chance to discover and correct ... errors before any judicial intervention," which is part of a "integrated administrative process that culminates with a BIA decision that speaks with final authority for the executive branch. . . . Until that point, the executive branch has not completed its decisionmaking").

Because the automatic stay regulation comports with § 704 and *Darby*, application of the automatic stay does not constitute an ultra vires provision.

B. The automatic stay provision does not violate substantive due process.

Petitioner also argues that application of the automatic stay provision violates substantive due process. ECF No. 1 ¶¶ 55-70. But because Petitioner is in removal proceedings, her substantive due process challenge to her detention fails.

The Supreme Court "has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). The Court in *Demore* relied on a broad principle: the Court's "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings. . . ." *Id.* at 526. Later, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Court observed that in *Demore,* the Court, in rejecting the due process challenge, had relied on the principle that the detention during removal proceedings "has a definite termination point: the conclusion of removal proceedings." 583 U.S. at 304 (internal marks omitted).

Here, under *Demore*, Petitioner has not shown that her detention is unconstitutional. She is detained during her removal proceedings, which will have a definite end point.

C. The automatic stay provision does not violate procedural due process.

Finally, Petitioner argues that the automatic stay provision violates Fifth Amendment procedural due process. ECF No. 1 ¶¶ 71-84. But, where immigration detainees are concerned, the Supreme Court recently clarified that "detainees are entitled to notice and opportunity to be heard 'appropriate to the nature of the case.'" *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). As described above, Petitioner is being given, in accordance with the regulatory process, notice and an opportunity to be heard on whether she should be released on bond.

The process for evaluating bond for aliens—the very process currently playing out before the BIA here—provides the requisite notice. *Miranda v. Garland*, 34 F.4th 338, 362, 364 (4th Cir. 2022) (holding that the regulatory process for evaluating bond for noncitizens gives them the "fundamental features of due process—notice and an opportunity to be heard" because the noncitizens has multiple "separate opportunities to make their case concerning bond"). Petitioner has not shown that she is not receiving notice and opportunity to be heard as to bond, and has thus not made out a procedural due process violation.

Instead of applying the "notice and opportunity to be heard" test, Petitioner argues that the court should apply a test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). ECF No. 1 ¶¶ 71-84. Under that test, courts evaluate procedural due process claims by considering (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 . . . ." *Id.* at 335.

The *Eldridge* test does not apply here. The Supreme Court has never used the framework set forth in *Eldridge* to evaluate due process for noncitizens. Rather, the Court has suggested that the procedural due process analysis for noncitizens is deferential. In considering procedural due process, "it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). "After all, in the exercise of its broad power over immigration and

naturalization, Congress regularly makes rules that would be unacceptable if applied to citizens.'" *Demore v. Kim*, 538 U.S. 510, 521 (2003).

But even if the *Eldridge* test did apply, the three factors do not show a violation of procedural due process.

Liberty interest. Petitioner has a recognizable liberty interest in connection with her detention. But because Petitioner is a noncitizen in removal proceedings, "that liberty interest is limited." *Rojas v. Olson*, No. 25-cv-1437-BHL, 2025 WL 3033967, at *13 (E.D. Wis. Oct. 30, 2025) (rejecting a due process challenge to the automatic stay provision of 8 C.F.R. § 1003.19(i)(2)).

Moreover, the liberty interest at issue here is the length of time from when the immigration judge ruled on bond until when the BIA rules. That duration is not likely to greatly exceed 90 days. *See* 8 C.F.R. § 1003.6(c)(4) (providing that the automatic stay expires after 90 days if the BIA has not yet ruled), (d) (providing for five additional days after expiration for DHS to seek a further stay from the Attorney General). The mere "potential" for prolonged detention is not enough to show a strong liberty interest. *Cf. United States v. Dominguez*, 509 F. App'x 28, 30 (2d Cir. 2013) (holding that a "potential" 14 -month detention period "does not, per se, constitute a violation of a defendant's due process rights" but the individual "is free to raise the argument in the future").

Risk of erroneous deprivation. The second *Eldridge* factor is the risk of an erroneous determination, which reflects a concern for accuracy. *See City of Los Angeles v. David*, 538 U.S. 715, 718 (2003) (referring to the "second *Eldridge* factor" as

reflecting a "concern for accuracy"). Here, further review by the BIA will *enhance*, not reduce, the accuracy of a bond decision, and this factor thus does not weigh in favor of a due process violation.

The government's interest. The government has a legitimate interest in maintaining custody over Petitioner while her custody is being reviewed because release could render the review process illusory. The Department of Justice extensively justified its interest in the stay rule. For example, it provided statistics about the difficulties of removing aliens who were not detained, establishing a strong interest in preventing flight risks:

> Given that over 52,000 aliens who had been released from custody—45% of the total number of respondents who were released on bond or on their own recognizance—failed to show up for their scheduled removal hearings in just the past 4 years, the Attorney General has very good reason to provide a special process for prompt review by the Board of initial decisions by the immigration judges in certain cases.

See Final Rule: Review of Custody Determinations, 71 Fed. Reg. 57,873, 57,878 (Oct. 2, 2006).

In sum, even if the *Eldridge* factors controlled, they do not establish a violation of procedural due process.

CONCLUSION

For the foregoing reasons, the court should deny the relief requested.

Dated: April 2, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system. All participants in that system will receive service via e-mail.

s/ Elizabeth E. Puskar
Elizabeth E. Puskar
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