UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PAULO CESAR MENDONCA, Plaintiff-Petitioner, **v.** **DONALD J. TRUMP,** in their official capacity as President of the United States; **KRISTI NOEM,** in their official capacity as Secretary of the United States Department of Homeland Security; **MARCO RUBIO,** in their official capacity as Secretary of State of the United States, **PAMELA BONDI,** in their official capacity as Attorney General of the United States; **TODD M. LYONS,** in their official capacity as Acting Director of the United States Immigration and Customs Enforcement; **JOHN TSOUKARIS,** in their official capacity as Newark Field Office Director for Enforcement and Removal Operations, United States Immigration and Customs Enforcement; **WARDEN, DELANEY HALL,** in their official capacity as Warden of Delaney Hall Detention Center Defendant-Respondent	Case No. ____ **<u>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; PETITION FOR HABEAS CORPUS</u>**

INTRODUCTION

1. This lawsuit seeks the immediate release of Plaintiff-Petitioner Paulo Cesar Mendonca ("Petitioner") from unlawful detention in violation of his constitutional and statutory rights.

2. Petitioner was detained on July 21, 2025, and remains in civil detention in the custody of the Department of Homeland Security ("DHS") Immigration and Customs Enforcement ("ICE") at Delaney Hall Detention Center in Newark, New Jersey.

3. Petitioner is a native and citizen of Brazil. Petitioner entered the U.S. on November 4, 2005, through the Texas–Mexico border without inspection and has remained here since then. Petitioner has a common-law partner with DACA status and two U.S.-born children aged 10 and 14. Petitioner is the sole breadwinner of the family. This detention is a substantial deprivation and burden that puts Petitioner and his family at risk of eviction from their residence without his financial and parental support.

4. [redacted]

5. Petitioner was placed in removal proceedings on July 21, 2025, by DHS and was issued a Notice to Appear ("NTA") charging him as removable under INA § 212(a)(6)(A)(i) and for not being in possession of a valid entry document at the time of his application for admission under INA § 212(a)(7)(A)(i)(I).

6. On August 6, the Immigration Court conducted a bond hearing and granted Petitioner's

request for a change in custody status. The Immigration Judge found that since Petitioner was already in custody, he is detained under INA § 236 and assumed jurisdiction. The court found Petitioner met his burden of establishing he did not pose a danger to the community and was not a flight risk, setting bond at $3,500.

7. DHS filed an appeal arguing that Petitioner is detained under INA § 235(b)(2)(A), which deprives the Immigration Judge of jurisdiction to set bond. DHS also argued that Petitioner has not met the burden of proving that he is neither a danger to the community nor a flight risk.

8. DHS filed a Notice of ICE Intent to Appeal Custody Redetermination on August 7, 2025.

9. DHS also invoked the automatic stay of the Immigration Judge's decision.

10. Petitioner's detention became unlawful on August 6, 2025, when Petitioner was granted release on bond by an Immigration Judge (IJ), but was not released from custody. His continued detention is an unlawful violation of due process and is ultra vires.

11. Petitioner is represented in immigration proceedings by counsel and is statutorily eligible for relief from removal in the form of non-LPR cancellation of removal pursuant to 8 U.S.C. § 1229b(b)(1). He has been physically present in the United States for at least 10 years and has been a person of good moral character during that period. He has qualifying relatives in his U.S.-citizen children upon whom his removal would cause exceptional and extremely unusual hardship.

12. Petitioner respectfully requests this Court grant the instant petition for a writ of habeas corpus under 28 U.S.C. § 2241 and enjoin Respondents' continued detention of Petitioner

to ensure his due process rights. In the alternative, he respectfully requests the Court order Respondents to show cause why this Petition should not be granted within three days.

JURISDICTION AND VENUE

13. Petitioner is detained in civil immigration custody at Delaney Hall Detention Center in Newark, New Jersey. He has been detained since on or about July 21, 2025.

14. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

15. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and, where applicable, Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All-Writs Act, 28 U.S.C. § 1651.

16. Venue is proper in the District of New Jersey under 28 U.S.C. § 1391 because at least one Defendant is in this District, Petitioner is detained in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. Venue is also proper under 28 U.S.C. § 2243 because the immediate custodians of Petitioner reside in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

Writ of Habeas Corpus: Issuance, Return, Hearing, and Decision

17. The Court must either grant the instant petition for writ of habeas corpus or issue an order to show cause to Respondents, unless Petitioner is not entitled to relief. If the Court issues

an order to show cause, Respondents must file a response "within three days" unless this Court permits additional time for good cause, which is not to exceed twenty days. 28 U.S.C. § 2243.

18. Habeas corpus is "perhaps the most important writ known to the constitutional law … affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963). "The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time." Jones v. Shell, 572 F.2d 1278, 1280 (8th Cir. 1978).

19. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in this case as necessary and practicable for justice.

PARTIES

20. Petitioner was born in Brazil and came to the United States in November 2005. Prior to his detention, he was living with and supporting his common-law partner and two U.S.-citizen children. Petitioner is the subject of a removal proceeding based upon the charges of being present in the U.S. in violation of INA § 212(a)(6)(A)(i) and INA § 212(a)(7)(A)(i)(I). He has been in civil immigration detention since July 21, 2025.

21. Respondent Donald J. Trump is named in his official capacity as President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of State and the Department of Homeland Security.

22. Respondent Marco Rubio is named in his official capacity as the U.S. Secretary of State. In this capacity, among other things, he has the authority to determine, based on

"reasonable" grounds, that the "presence or activities" of a noncitizen "would have serious adverse foreign policy consequences for the United States."

23. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). DHS is a department of the executive branch of the U.S. government tasked with, among other things, administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for the actions of ICE; specifically, she is responsible for the administration of the immigration laws pursuant to INA § 103(a), 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for any effort to detain and remove the Petitioner and as such is a legal custodian of Petitioner.

24. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). ICE is the agency within DHS specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States, and Acting Director Lyons is a legal custodian of Petitioner.

25. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. Attorney General Bondi is responsible for continuing a custody case against a noncitizen under 8 C.F.R. § 1003.6(d)

26. Respondent John Tsoukaris is named in his official capacity as the Field Office Director for the Newark office of ICE. Director Tsoukaris is responsible for the enforcement of the

immigration laws within this District, and for ensuring that ICE officials follow the agency's policies and procedures. Director Tsoukaris is a legal custodian of Petitioner.

27. Respondent Warden, Delaney Hall Detention Facility, is named in their official capacity as the Warden of Delaney Hall Detention Center. They have immediate physical custody of Petitioner pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of Petitioner.

FACTUAL ALLEGATIONS

28. Petitioner is a native and citizen of Brazil.

29. Petitioner entered the U.S. without inspection on November 4, 2005, through the Texas–Mexico border.

30. Petitioner has been living with his common-law partner, who is a Deferred Action for Childhood Arrivals ("DACA") recipient, and with his two U.S.-born children aged 10 and 14. [See Ex. A – Copies of documentation of Petitioner's partner's DACA status; birth certificates of Petitioner's children.]

31. [redacted]

32. Petitioner was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") on July 21, 2025.

33. Petitioner remains in ICE custody. [See Ex. C – Copy of Petitioner's information from ICE Detainee Locator website.]

34. On July 29, 2025, Immigration Counsel for Petitioner submitted a Motion for Bond Determination Hearing before the Immigration Judge and submitted information regarding his ties to the United States to demonstrate that he is not a flight risk or a danger and is statutorily eligible to be considered for relief, namely cancellation of removal. [See Ex. D – Motion for Bond Determination.]

35. A custody and bond determination hearing was held on August 6, 2025, and counsel for ICE argued that Petitioner was not entitled to bond due to ICE's assertion that he fell under 8 U.S.C. § 1225, rather than 8 U.S.C. § 1226. The IJ determined that Petitioner was eligible for bond under INA § 236 and ordered that Petitioner should be released upon posting bond in the amount of $3,500. [See Ex. E – Copy of Immigration Judge's Bond Order.]

36. ICE filed a Notice of ICE Intent to Appeal Custody Redetermination (EOIR-43) on August 7, 2025, which invoked the automatic stay provision of 8 C.F.R. § 1003.19(i)(2), reflecting its reversal of interpretation of bond eligibility. [See Ex. F – Notice of Intent to Appeal Custody Redetermination (EOIR-43).]

37. The Notice of Appeal from a Decision of an Immigration Judge (EOIR-26) filed by ICE confirms that their position at the custody hearing and the basis of their appeal is ICE's application of 8 U.S.C. § 1225 instead of 8 U.S.C. § 1226. [See Ex. G – Notice of Appeal (EOIR-26).]

38. On August 6, 2025, the IJ filed a written Bond Decision outlining ICE's argument that Petitioner is ineligible for bond. [See Ex. H – IJ Bond Memorandum.]

39. Petitioner is separated from his family and community. [redacted]

40. In addition, Petitioner is unable to support and provide for his family because he is detained. He is the primary breadwinner for his children. His daughter is only able to communicate with her father via phone calls.

41. Petitioner's continued detention separates him from his children, prohibits him from providing important support for his family, and inhibits his removal defense in many ways, including by making it difficult to communicate with witnesses, gather evidence, and afford a lawyer, among other related harms.

42. Despite having a reasoned IJ decision that he should be returned to his family and community upon posting bond, he remains detained and subjected to the aforementioned harms.

LEGAL FRAMEWORK

Due Process Clause

43. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." Demore v. Kim, 538 U.S. 510, 523 (2003) (quoting Reno v. Flores, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

44. Due process requires that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement outweighs the "individual's constitutionally protected interest in avoiding physical restraint." Id. at 690 (quoting Kansas v. Hendricks, 521 U.S. 346, 356 (1997)). In the immigration context, the Supreme Court recognizes only two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. Zadvydas, 533 U.S. at 690; Demore, 538 U.S. at 528. A noncitizen may be detained based on these two justifications only if they are otherwise statutorily eligible for bond. Zadvydas, 533 U.S. at 690.

45. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976). To determine what process Petitioner is due, this Court should consider (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of that private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. Id. at 335.

Immigration and Nationality Act

46. Title 8 of the United States Code, § 1221 et seq., of the Immigration and Nationality Act ("INA") controls the United States Government's authority to detain noncitizens during their removal proceedings.

47. The INA authorizes detention for noncitizens under four distinct provisions:

1. **Discretionary Detention. 8 U.S.C. § 1226(a)** generally allows for the detention of noncitizens who are in regular, non-expedited removal proceedings; however, it permits those noncitizens who are not subject to mandatory detention to be released on bond or on their own recognizance.

2. **Mandatory Detention of "Criminal" Noncitizens. 8 U.S.C. § 1226(c)** generally requires the mandatory detention of noncitizens who are removable because of certain criminal or terrorist-related activity after they have been released from criminal incarceration.

3. **Mandatory Detention of "Applicants for Admission." 8 U.S.C. § 1225(b)** generally requires detention for noncitizen applicants for admission, such as those arriving in the U.S. at a port of entry or other noncitizens who have not been admitted or paroled into the U.S. and appear subject to removal.

4. **Detention Following Completion of Removal Proceedings. 8 U.S.C. § 1231(a)** generally requires detention for noncitizens who are subject to a final removal order during the 90-day period after completion of removal proceedings and permits the detention of certain noncitizens beyond that period. Id. § 1231(a)(2), (6).

48. The instant case concerns the detention provisions at §§ 1226(a) and 1225(b).

49. Both detention provisions, § 1226(a) and § 1225(b), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

50. Following enactment of IIRIRA, the Executive Office for Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225(b) and that they were instead detained under § 1226(a) after an arrest warrant was issued by the Attorney General. See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

51. For nearly thirty years, the practice of the government, specifically ICE and EOIR which operate under DHS, was that most individuals apprehended in the interior of the United States after they had been present in the U.S. for more than two years (as opposed to "arriving" at a port of entry, border crossing, or being apprehended near the border soon after entering without inspection) received a bond hearing. If determined to be neither a danger to the community nor a flight risk and, as a result, granted a change in custody status, the individuals were released from detention on their own recognizance or after paying the IJ-determined bond in full. 8 U.S.C. § 1226(a)(2)(A).

52. Recently, ICE has -without warning and without any publicly stated rationale- reversed course and adopted a policy of attempting to treat all individuals who were not previously admitted to the U.S. and who are contacted in the interior at any time after entry as "arriving," regardless of the particularities of their case. These particularities now being ignored- all of which have historically been highly relevant to DHS and Immigration

Courts- such as: when, why, or how they entered the U.S.; whether they have criminal convictions; whether they present a danger to the community or flight risk; whether they have serious medical conditions requiring ongoing care; whether U.S.-citizen family members depend upon them to provide necessary care; or whether detention is in the community's best interest. Though no public announcement of this sweeping new interpretation was ever announced, ICE now reasons, and argued in front of the IJ at Petitioner's bond redetermination hearing, that the mandatory detention provision of § 1225(b)(2)(A) applies to all people who enter without inspection who are alleged to be subject to grounds of inadmissibility at § 1182.

53. As a result of ICE's interpretation and practice change, individual noncitizens, including long-time U.S. community members—even those who have had their particular circumstances reviewed and were ordered to be released upon posting bond by an IJ, continue to be detained by ICE and subjected to automatic stay provisions. To be clear, Petitioner and other noncitizens are being held in continued ICE detention even when IJs do not agree with ICE's interpretation of the statutes and regulations at hand.

54. "The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system." Martinez v. Hyde, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025) (citing Jennings v. Rodriguez, 583 U.S. 281, 289 (2018).

55. The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C. § 1226.

56. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." Removal hearings for noncitizens under § 1226(a) are held under § 1229a, which "decid[e] the inadmissibility or deportability of a [noncitizen]."

57. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States.

58. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner.

Staying Immigration Judge's Bond Order

59. Bond decisions issued by an IJ can be appealed by DHS or the noncitizen to the Board of Immigration Appeals ("BIA") by filing a Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) within 30 days.

60. DHS can file a motion with the BIA seeking a discretionary stay of the custody decision—whether to release the noncitizen on bond consistent with the IJ's order—at any time during the appeal period. 8 C.F.R. § 1003.19(i)(1) (hereinafter "discretionary stay").

61. In cases where the bond issued is greater than $10,000 or "DHS has determined" that the noncitizen should not be released, a stay of custody order is issued automatically upon filing a simple one-page form—the Notice of Service of Intent to Appeal Custody Redetermination (Form EOIR-43)—preventing the release of the noncitizen on bond. See 8 C.F.R. § 1003.19(i)(2) (hereinafter "automatic stay").

62. The discretionary stay requires an individualized analysis by the BIA of the noncitizen's

case to determine if staying the IJ's order is appropriate. This analysis considers the individual's criminal history, ties to the community, flight risk, dangerousness, and the likelihood of prevailing in removal proceedings. See, e.g., Gunaydin, 2025 WL 1459154 (D. Minn. May 21, 2025); Zavala v. Ridge, 310 F. Supp. 2d 1071 (N.D. Cal. 2004); Bezmen v. Ashcroft, 245 F. Supp. 2d 446 (D. Conn. 2003).

63. In contrast, the automatic stay is a unilateral decision by ICE through a boilerplate form (EOIR-43), which does not proffer any evidence or analysis of the noncitizen's status as either a flight risk or a danger to the community. This automatic stay results in ICE—the party that lost before the IJ—being able unilaterally, and without any grounds, to immediately prevent execution of the IJ's Order of Release, which is founded on a particularized determination that the noncitizen can safely be released from custody upon posting of bond.

64. The automatic stay is not subject to review by either the IJ or the BIA.

65. **"'In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.' … Detention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm**." Ashley v. Ridge, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) (quoting United States v. Salerno, 481 U.S. 739, 755 (1987)).

66. Petitioner is detained today solely at the unilateral behest of ICE, pursuant to a regulation written by executive agencies, not Congress: 8 C.F.R. § 1003.19(i)(2). This regulation states, in whole:

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.R. § 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.

§ 1003.19(i)(2) (emphasis added),

67. The regulations expand on the related procedures in 8 C.F.R. § 1003.6(c). "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." 8 C.F.R. § 1003.6(c)(4).

68. However, the regulations provide for DHS's continued power to keep a noncitizen detained even after the automatic stay lapses.

69. "DHS may seek a discretionary stay pursuant to 8 C.F.R. § 1003.19(i)(1) to stay the immigration judge's order in the event the Board does not issue a decision on the custody appeal within the period of the automatic stay." 8 C.F.R. § 1003.6(c)(5). All DHS must do is submit a motion and "may incorporate by reference the arguments presented in its brief in support of the need for continued detention of the alien during the pendency of the removal proceedings." Id.

70. If the BIA has not resolved the custody appeal within 90 days and "if the Board fails to adjudicate a previously filed stay motion by the end of the 90-day period, the stay will remain in effect (but not more than 30 days) during the time it takes for the Board to decide whether or not to grant a discretionary stay." 8 C.F.R. § 1003.6(c)(5).

71. If the BIA rules in a noncitizen's favor, authorizing release on bond or denying DHS's

motion for a discretionary stay, "the alien's release shall be automatically stayed for five business days." 8 C.F.R. § 1003.6(d).

72. This additional five-day automatic stay in the event of the BIA authorizing a noncitizen's release is to provide DHS with another opportunity to keep the person detained despite orders to the contrary.

73. "If, within that five-day [secondary automatic stay] period, the Secretary of Homeland Security or other designated official refers the custody case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1), the alien's release shall continue to be stayed pending the Attorney General's consideration of the case. The automatic stay will expire 15 business days after the case is referred to the Attorney General." 8 C.F.R. § 1003.6(d).

74. "DHS may submit a motion and proposed order for a discretionary stay in connection with referring the case to the Attorney General ... The Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." 8 C.F.R. § 1003.6(d).

75. Thus, even if the BIA upheld the IJ's order, granted the noncitizen's bond, and ordered release, the person would remain in detention for five more days while DHS is given the opportunity to refer the case to the Attorney General pursuant to 8 C.F.R. § 1003.1(h)(1). 8 C.F.R. § 1003.6(d). The same additional automatic five-day stay applies if the BIA denies DHS's motion for discretionary stay or fails to act on such a motion before the automatic stay period expires. Id. If the case is referred to the Attorney General, that second automatic stay expires 15 business days after referral. Id. DHS may thereafter file another motion for

discretionary stay. Id. Importantly, if a case is referred to the Attorney General, "[t]he Attorney General may order a discretionary stay pending the disposition of any custody case by the Attorney General or by the Board." Id. There is no time limit for this stay or these decisions.

76. The scheme, plainly designed by the executive branch to give DHS the power to circumvent both IJ and BIA orders, can be summarized as follows:

- Immigration Judge orders DHS to release noncitizen on bond.

  - DHS files Form EOIR-43 Notice of Intent to Appeal within one business day, invoking automatic stay. 8 C.F.R. § 1003.19(i)(2).
  - DHS files Form EOIR-26 Notice of Appeal within ten business days. 8 C.F.R. § 1003.6(c)(1).
  - Automatic stay lapses 90 days after DHS files EOIR-26 notice of appeal. 8 C.F.R. § 1003.6(c)(4).
  - DHS may seek discretionary stay before 90 days lapse. 8 C.F.R. §§ 1003.6(c)(5), 1003.19(i)(1).

- BIA orders release on bond or denies discretionary stay motion

  - Release is automatically stayed for an additional five business days. 8 C.F.R. § 1003.6(d).
  - Within that five-business-day automatic stay, DHS may refer the case to the Attorney General. 8 C.F.R. § 1003.6(d).
  - Automatic stay is extended for 15 business days after DHS refers the case to the Attorney General. 8 C.F.R. § 1003.6(d).
  - DHS may seek a discretionary stay with the Attorney General for the duration of the case. 8 C.F.R. § 1003.6(d).

77. The regulations are written such that it does not matter what either the IJ or BIA orders; if the government disagrees, the government can, through its own actions and regulations, keep the noncitizen detained, and that detention could be, in reality, indefinite

78. "Indefinite detention of a [noncitizen]" raises "a serious constitutional problem." Zadvydas, 533

U.S. at 690. The automatic stay provision detains individuals indefinitely, without a "discernible termination point" (Ashley, 288 F. Supp. 2d at 672), "definite termination point" (Zabadi v. Chertoff, No. C05-01796 WHA, 2005 WL 1514122, at *1 (N.D. Cal. 2005) (unpublished)), "finite time frame," "certain time parameters for final resolution" (Zavala, 310 F. Supp. 2d at 1075), or "ascertainable end point" (Bezmen, 245 F. Supp. 2d at 449–50).

79. Even more troubling, the automatic stay does not provide for review by the IJ or BIA—a clear due process violation. A noncitizen subject to DHS's arrest and continued detention in spite of an IJ ordering release has no method to challenge the automatic stay before the immigration court or BIA. See Ashley, 288 F. Supp. 2d at 675 ("continued detention of alien without judicial review of the automatic stay of bail determination violated alien's procedural and substantive due process rights").

80. Petitioner's continued detention under the automatic stay will never be reviewed. His only option is to wait for the BIA to take up the underlying matter.

Board of Immigration Appeals

81. However, the BIA's appellate process does not offer a meaningful or timely opportunity to correct Respondents' errors.

82. According to the agency's own data, during fiscal year 2024, the BIA's average processing time for a bond appeal was 204 days—approximately seven months. Meaning for an average case where bond was granted in July 2025, it would not be heard until February 2026. See Vazquez v. Bostock, No. 3:25-cv-05240-TMC (W.D. Wash. May 2, 2025).

83. The 204 days is only for the average case. Cases can take longer or shorter, meaning there is no

definite timeline for resolution and release.

84. The months a person waits for appellate review deprive them of time with their spouses, children, family and community members, and liberty. Their family and community—often U.S. citizens or lawful permanent residents—are similarly deprived of the love, care, financial support, and meaningful contributions the detained person provides.

85. Detained noncitizens are often incarcerated in jail, or jail-like, settings. They are forced to sleep in communal spaces, receive inadequate medical care, and are subjected to other degrading treatment.

86. While not all noncitizens succeed in their appeals, some do. The BIA's months-long appellate review means that for those individuals, they have spent months of unnecessary time in detention and suffered the harms outlined above.

87. Failing to provide timely appellate review of erroneous interpretations of the INA violates the Due Process Clause.

The Automatic Stay Violates Due Process

88. The automatic stay "operates by fiat and has the effect of prolonging detention even after a judicial officer has determined that release on bond is appropriate. That mechanism's operation here—in the absence of any individualized justification—renders the continued detention arbitrary as applied." Mohammed H. v. Trump, No. 25-1576 (JWB/DTS), 2025 WL 1334847, at *6 (D. Minn. May 5, 2025).

89. In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an

erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. Mathews, 424 U.S. at 335.

90. As to the first Mathews factor—the private interest affected by the government action—"Petitioner's liberty interest in remaining free from governmental restraint is of the highest constitutional import." Zavala, 310 F. Supp. 2d at 1076; see also Ashley, 288 F. Supp. 2d at 670–71 (same) (quoting St. John v. McElroy, 917 F. Supp. 243, 250 (S.D.N.Y. 1996)). Petitioner has been detained for over a month, preventing him from seeing his children, going to work, and participating in his community.

91. As to the second Mathews factor, the current procedures cause an erroneous deprivation of Petitioner's liberty interest in remaining free from detention. Unlike typical requests for a stay, which require a demonstration of the likelihood of success on the merits, the automatic stay provision demands no such showing; in fact, it was enacted precisely to avoid the need for such an individualized determination. An IJ has already determined that Petitioner is neither a flight risk nor a danger to the community.

92. But that individualized, reasoned decision by the IJ was effectively overruled by a unilateral determination by a DHS attorney, which "poses a serious risk of error." Zavala, 310 F. Supp. 2d at 1076. This allows the DHS attorney, "who has by definition failed to persuade a judge in an adversary hearing that detention is justified", to make the stay decision without oversight or review. Ashley, 288 F. Supp. 2d at 671. This conflates the role of prosecutor and adjudicator, which is impermissible due to the high potential for error. See Marcello v. Bonds, 349 U.S. 302,

305–06 (1955).

93. As to the third Mathews factor, the government's interest in maintaining the "current" procedure is minimal here. This "policy and procedure" was never officially published by DHS and was only discovered by the press observing an intra-office memo mere weeks ago on July 8, 2025. As explained above, the IJ has already made a determination that Petitioner is appropriate to be released on bond, having considered both dangerousness and flight risk. Further, DHS is still able to seek a discretionary stay before the BIA under 8 C.F.R. § 1003.19(i)(1), which would require some showing of likelihood of success on the merits. Ashley, 288 F. Supp. 2d at 670–71; Zavala, 310 F. Supp. 2d at 1079.

94. In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." Puc-Ruiz v. Holder, 629 F.3d 771, 782 (8th Cir. 2010). Actual prejudice occurs if "an alternate result may well have resulted without the violation." Id. "To show prejudice, [a petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." Tamayo-Tamayo v. Holder, 486 F.3d 484, 495 (9th Cir. 2007).

95. Certainly, if DHS could not invoke the automatic stay, Petitioner would have been released on bond and would be home with his children and able to support his household. This would occur pursuant to the IJ's order that he may be released upon posting of a $3,500 bond—which was and is ready to be paid on Petitioner's behalf. His continued detention through the automatic stay despite that order is actual prejudice.

96. Furthermore, it is entirely plausible that the more elaborate process of the discretionary stay (8

C.F.R. § 1003.19(i)(1)) would have resulted in the BIA not granting a stay of the bond order. This is because DHS is unable to show a likelihood of success on the merits, and Petitioner would be permitted to reply in opposition to the stay, arguing the same grounds as the IJ's reasoning for granting release upon bond.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

97. Petitioner repeats and incorporates by reference all allegations above as though set forth fully herein.

98. The Due Process Clause asks whether the government's deprivation of a person's life, liberty, or property is justified by a sufficient purpose. Here, there is no question that the government has deprived Petitioner of his liberty.

99. The government's detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. See Zadvydas, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community.

100. The automatic stay provision keeping Petitioner detained today is unconstitutional as applied to him and in violation of his due process rights. An IJ ordered ICE to release Petitioner on a reasonable bond of $3,500, and because ICE disagrees with that order, it invoked an automatic stay of the order, leaving Petitioner stuck in detention.

101. The automatic stay regulation rendered Petitioner's bond hearing a charade, because the

outcome of the hearing or the validity of the IJ's reasoning did not matter. ICE wants Petitioner detained, and through the automatic stay, it can effectively ignore the IJ's order to the contrary. There is no due process when the government, having lost the argument in court, gets to do what it wants anyway.

102. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment. See Jacinto v. Trump, No. 4:25-cv-3161, 2025 WL 326606 (D. Neb. Aug. 6, 2025).

SECOND CAUSE OF ACTION
U*ltra Vires* Regulation

103. Petitioner repeats and incorporates by reference all allegations in paragraphs 1–96 as though set forth fully herein.

104. The automatic stay regulation exceeds the authority given to the Attorney General by Congress and unlawfully eliminates IJs' discretionary authority to make custody determinations.

105. Congress gave the Attorney General discretion to decide whether to release detained noncitizens pending removal proceedings if they have not been convicted of certain criminal offenses and are not linked to terrorist activities. See 8 U.S.C. § 1226(a), (c). The Attorney General has delegated this authority to IJs, who have discretion to determine whether to release these noncitizens on bond. 8 C.F.R. §§ 1003.19, 1236.1; see also 28 U.S.C. § 510 (permitting the Attorney General to delegate her functions to officers or employees within the Department of Justice).

106. Congress has not delegated this authority to DHS. There is no statutory authority for DHS to unilaterally stay an IJ's bond determination. DHS's use of the automatic stay is an unlawful use of the discretionary power granted to the Attorney General and "has the effect of mandatory

detention of a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention." Zavala, 310 F. Supp. 2d at 1079; see also Ashley, 288 F. Supp. 2d at 673 ("As Congress exempted aliens like Petitioner from the mandatory detention of § 1226(c), it is unlikely that it would have condoned this back-end approach to detaining aliens like Petitioner through the combined use of § 1226(a) and § 1003.19(i)(2).").

107. Here, the IJ determined that upon posting of set bond Petitioner is not a danger to the community or a sufficient flight risk and ordered DHS to release him on bond.

108. The automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), purports to give DHS the authority to unilaterally override the IJ's decision. It is unlawful and ultra vires.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests that this Court grant the following relief:

1) Assume jurisdiction over this matter;
2) Order the immediate release of Petitioner pending these proceedings;
3) Order Respondents not to transfer Petitioner out of the District of New Jersey during the pendency of these proceedings to preserve jurisdiction and access to counsel;
4) Declare that Respondents' actions to detain Petitioner violate the Due Process Clause of the Fifth Amendment and are ultra vires;
5) Issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and order Respondents to immediately release Petitioner from custody in accordance with the IJ's bond order, or, in the alternative, order Respondents to show cause why this Petition should not be granted

within three days;

6) Award reasonable attorneys' fees and costs for this action; and

7) Grant such further relief as the Court deems just and proper.

Dated: October 3, 2025
Respectfully submitted,

Paulo Cesar Mendona,
Petitioner.

By: ______________________

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