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9 UNITED STATES DISTRICT COURT
10
11 FOR THE DISTRICT OF NEVADA
12

13 Jorge Armando CARLOS,

14 Petitioner-Plaintiff,

15 v.

16 Kristi NOEM, in her Official Capacity, Secretary,
17 U.S. Department of Homeland Security;

18 Pam BONDI, in her Official Capacity, Attorney
19 General of the United States;

20 Todd M. LYONS, Acting Director, Immigration and
21 Customs Enforcement, U.S. Department of Homeland
22 Security;

23 Jason KNIGHT, Salt Lake City Field Office Director
24 for Detention and Removal, U.S. Immigration and
25 Customs Enforcement, Department of Homeland
26 Security; and

27 John MATTOS, Warden, Nevada Southern Detention
28 Center.

Respondents-Defendants.

Agency No.

A 220-986-602

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful
Incarceration Under Color of
Immigration Detention Statutes;
Request for Declaratory and
Injunctive Relief

INTRODUCTION

1
2 1. Petitioner Jorge Armando Carlos ("Mr. Carlos"), Agency Number [REDACTED] by and
3 through his undersigned counsel, respectfully submits this petition for a writ of habeas corpus and
4 a complaint for declaratory and injunctive relief to stop the U.S. Department of Homeland
5 Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) from unlawfully
6 detaining him in immigration custody while his removal proceedings are pending.

7 2. Petitioner requests his immediate release from custody at the Nevada Southern Detention
8 Center, where ICE is unlawfully detaining him after an Immigration Judge found him not to pose
9 a flight risk or danger to the community. Alternatively, he seeks his bond to be reinstated.

10 3. By way of background, Mr. Carlos has been in custody since July 18, 2025. ICE first
11 encountered him while he was held at the Washoe County Jail ("WCJ") following an arrest for
12 domestic battery. Subsequently, ICE formally took him into custody and transferred him to the
13 ERO Salt Lake City – Reno Sub Office for processing. He was subsequently housed at the Nevada
14 Southern Detention Center, where he remains today.

15 4. A bond hearing was held on August 12, 2025, during which the Immigration Judge heard
16 arguments from both Mr. Carlos and the Department of Homeland Security. After considering
17 both sides, the Judge determined that Mr. Carlos did not pose a flight risk or a danger to the
18 community and accordingly set bond at \$6,000.

19 5. The Department of Homeland Security reserved the right to appeal and contended that
20 Mr. Carlos was ineligible for bond on the grounds that he was an applicant for admission and thus
21 subject to mandatory detention. The Department of Homeland Security subsequently filed Form
22 EOIR-43, which triggered an automatic stay of the Immigration Judge's bond decision. As a
23 result, Mr. Carlos was unable to post bond despite the Judge's order permitting his release.

24 6. Following the hearing, the Department of Homeland Security filed an appeal. However,
25 on September 5, 2025, the Board of Immigration Appeals issued its decision in *Matter of Yajure*
26 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). This decision held that Immigration Judges lack
27 jurisdiction to grant bond or hear bond redetermination requests for individuals who entered the
28

1 United States without inspection (i.e., “applicants for admission”). Thus, this decision would
2 render Mr. Carlos arguments in the Department’s appeal futile.

3 7. Mr. Carlos’s prolonged detention violates the Due Process Clause of the Fifth
4 Amendment, as DHS has failed to establish, by clear and convincing evidence, that Mr. Carlos is
5 either a danger to the community or a flight risk. Furthermore, Mr. Carlos is not subject to
6 mandatory detention and therefore entitled to bond.

7 8. Mr. Carlos respectfully seeks immediate release from detention, or in the
8 alternative, that his bond be reinstated.

9 JURISDICTION

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

12 10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 2241
13 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201 *et seq.*
14 (Declaratory Judgment Act), the All Writs Act, 28 U.S.C. § 1651, Article I, Section 9, Clause 2
15 of the U.S. Constitution (the Suspension Clause), Article III of the U.S. Constitution, and under
16 the common law.

17 VENUE

18 11. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the Respondents are
19 officers or employees of the United States acting in their official capacities.

20 12. Mr. Carlos is currently under the supervision of the ERO Salt Lake City – Las
21 Vegas Sub Office, which falls within the jurisdiction of this District. This action does not involve
22 any real property.

23 REQUIREMENTS OF 28 U.S.C. § 2241, 2243

24 13. The Court must grant the petition for writ of habeas corpus or issue an order to show
25 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.
26 § 2243. If an order to show cause is issued, the Court must require Respondents to file a return
27 “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.”
28 *Id.* (emphasis added).

1 14. Courts have long recognized the significance of the habeas statute in protecting
2 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
3 important writ known to the constitutional law of England, affording as it does a *swift* and
4 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
5 400 (1963) (emphasis added).

6 15. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs
7 courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious
8 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
9 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
10 more concerned with efficient trial management than with the vindication of constitutional
11 rights.” *Id.*

12 16. Mr. Carlos is currently in custody of ICE at the Nevada Southern Detention
13 Center in Pahrump, Nevada. Mr. Carlos is therefore in “‘custody’ of [the DHS] within the
14 meaning of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

15 PARTIES

16
17 17. Mr. Carlos is a citizen and national of Mexico who entered the United States
18 in February 2005 and has continuously resided in the country since that time. He is a resident of
19 Reno, Nevada, and is currently detained and under the direct custody and control of Respondents
20 and their agents.

21 18. Respondent John MATTOS is the Warden of the Nevada Southern Detention Center,
22 where Petitioner is currently held. He has immediate physical custody of Petitioner pursuant to
23 the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and,
24 as such, serves as one of Petitioner’s legal custodians.

25 19. Respondent Jason KNIGHT is sued in his official capacity as the Acting Director of the
26 Salt Lake City Field Office of U.S. Immigration and Customs Enforcement. Respondent
27 KNIGHT is a legal custodian of Petition and has authority to release him.
28

1 20. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official
2 capacity. Among other things, ICE is responsible for the administration and enforcement of the
3 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
4 he is the legal custodian of Mr. Carlos.

5 21. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity.
6 DHS is the federal agency encompassing ICE, which is responsible for the administration and
7 enforcement of the INA and all other laws relating to the immigration of noncitizens. In her
8 capacity as Secretary, Respondent Noem has responsibility for the administration and
9 enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland
10 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
11 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Carlos.

12 22. Respondent Pam BONDY is the Attorney General of the United States and the most senior
13 official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the
14 authority to interpret immigration laws and adjudicate removal cases. The Attorney General
15 delegates this responsibility to the Executive Office for Immigration Review (EOIR), which
16 administers the immigration courts and the BIA.

17 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18
19 23. In the context of habeas corpus claims, exhaustion of administrative remedies is a
20 *prudential* requirement rather than a *jurisdictional* one, as it is not explicitly required by statute.
21 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Courts have discretion to waive
22 prudential exhaustion where administrative remedies are inadequate or ineffective, when
23 pursuing them would be futile, when irreparable harm would result, or where the administrative
24 process would be void. *Id.* (citing *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). The
25 burden is on the party seeking waiver of prudential exhaustion to demonstrate that at least one of
26 the *Laing* factors applies. *Aden v. Nielsen*, 2019 WL 5802013, at 2 (W.D. Wash. Nov. 7, 2019).
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28

1 24. In this case, any appeal to the Board is futile in light of *Matter of Yajure Hurtado*, 29
2 I&N Dec. 216 (BIA 2025)." The Ninth Circuit has made clear that exhaustion is not required
3 where administrative recourse would be futile—such as when the agency's position on the
4 relevant issue is already established and the outcome of the appeal is certain. *El Rescate Legal*
5 *Servs., Inc. v. Exec. Off. of Imm. Rev.*, 959 F.2d 742, 747 (9th Cir. 1992).
6

7 25. The *Matter of Yajure Hurtado* was issued as a precedential decision by the BIA. Under 8
8 C.F.R. § 1003.1(g)(1), such decisions are binding in all cases involving the same issue(s); *see*
9 also 8 C.F.R. § 1003.1(d)(1)(i). Because the BIA has already exercised its expertise and reached
10 a conclusive determination in *Yajure Hurtado*, further exhaustion is unnecessary. The decision
11 establishes that individuals found inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—that is, those
12 present in the U.S. without being admitted or paroled—are subject to mandatory detention
13 without bond under 8 U.S.C. § 1225(b)(2) upon BIA review.
14

15 26. BIA decisions are binding on immigration judges, and *Hurtado* thus precludes an IJ from
16 finding jurisdiction over noncitizens like Mr. Carlos to hold a custody redetermination hearing.
17 Therefore, judicial intervention enjoining Respondents from preventing Mr. Carlos from having
18 a bond hearing pursuant to the holding in *Hurtado* is necessary to enable him to avail himself of
19 his administrative remedies.
20

21 27. Therefore, Mr. Carlos respectfully requests that the Court waive the prudential
22 exhaustion requirement on grounds of futility. As established in *Aden*, 2019 WL 5802013, at 2,
23 satisfying just one of the *Laing* factors is sufficient; therefore, analysis of the remaining factors is
24 unnecessary.
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STATEMENT OF FACTS AND PROCEDURAL HISTORY

Mr. Carlos is a 51-year-old native and citizen of Mexico who entered the United States without inspection in or around February 2005. Since his entry, he has continuously resided in the United States and has not departed. Over the course of approximately twenty years, Mr. Carlos has developed significant and lasting ties to the United States, which he considers his home.

He is married to Ma Guadalupe Martinez Puentes. The couple were married in Reno, Nevada on November 21, 2015. They share one biological child, Johnney, age 19, who is currently serving in the United States Marine Corps. Mr. Carlos has also raised Ms. Martinez Puentes's older son, Jonathan, age 22, as his own. Jonathan is a United States citizen and the stepson of Mr. Carlos.

Since his arrival, Mr. Carlos has served as the primary financial provider for his family. He has maintained consistent employment in the construction industry and is regarded by employers and colleagues as a reliable and hardworking individual. He has filed federal income tax returns each year since entering the country, including returns filed using an Individual Taxpayer Identification Number (ITIN), demonstrating his ongoing compliance with U.S. tax laws.

Mr. Carlos continues to receive the full support of his immediate family, all of whom reside in the United States. His son, Johnney, has submitted a parole in place application on his father's behalf. If granted, this could provide Mr. Carlos with a potential avenue to adjust his immigration status to that of a lawful permanent resident. In addition, his stepson Jonathan has filed a Form I-130, Petition for Alien Relative, in support of Mr. Carlos's immigration case.

On July 18, 2025, the Department of Homeland Security (DHS) initiated removal proceedings against Mr. Carlos by filing a Notice to Appear (NTA), charging him as removable pursuant to INA § 212(a)(6)(A) for being present in the United States without admission or parole. He was additionally charged as removable pursuant to INA § (a)(7)(A)(i)(I). The NTA stated:

1. You are not a citizen or national of the United States;
2. You are a native of Mexico and a citizen of Mexico;
3. You entered the United States at or near UNKNOWN, on or about unknown date;

1 4. You were not then admitted or paroled after inspection by an Immigration Officer.

2 5. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry
3 permit, border crossing card, or other valid entry document required by the
4 Immigration and Nationality Act; and/or

5 6. You are an immigrant not in possession of a valid unexpired passport, or other suitable
6 travel document, or document of identity and nationality.

7 The NTA further charged him as being an alien present in the United States who has not
8 been admitted or paroled.

9 Mr. Carlos was taken into custody by U.S. Immigration and Customs Enforcement (ICE)
10 following his arrest in Reno, Nevada, on July 16, 2025, for a charge of domestic battery. On July
11 17, 2025, ICE made contact with Mr. Carlos and assumed custody. At the time of his transfer to
12 ICE custody, the criminal charge remained pending, and no conviction had been entered.

13 After detaining Mr. Carlos, ICE did not initially set a bond. On July 31, 2025, Mr. Carlos
14 filed a request for a bond redetermination hearing before the Immigration Court in Las Vegas,
15 Nevada. In support of his request, he submitted evidence demonstrating that he did not pose a
16 danger to the community or a flight risk. This included a letter from his wife attesting to his good
17 character and community ties, as well as documentation confirming that his son is actively serving
18 in the United States Armed Forces.

19 The bond hearing was held on August 12, 2025, before Immigration Judge Lindsay
20 Roberts. During the hearing, the Department of Homeland Security (DHS) argued that Mr. Carlos
21 was subject to mandatory detention under 8 U.S.C. § 1225(b). However, Judge Roberts rejected
22 this argument, finding that Mr. Carlos had not been designated as an “arriving alien,” had not
23 been placed in expedited removal proceedings, did not appear to have entered the United States
24 within the last two years, and was not apprehended near the U.S.-Mexico border. Accordingly,
25 the Court found that § 1226(a), not § 1225(b)(2), governed his detention, and therefore the Court
26 retained jurisdiction to consider his bond eligibility.

1 After considering the evidence presented, Judge Roberts found by clear and convincing
2 evidence that Mr. Carlos did not present a danger to the community or a flight risk, and ordered
3 his release on a \$6,000 bond, with alternatives to detention at the discretion of DHS.

4 Within 24 hours of the issuance of the Immigration Judge's bond order, DHS filed Form
5 EOIR-43, thereby triggering an automatic stay of the release order pending its appeal to the Board
6 of Immigration Appeals (BIA), pursuant to 8 C.F.R. § 1003.19(i)(2). On August 25, 2025, within
7 the ten-day deadline required by regulation, the Office of the Principal Legal Advisor (OPLA)
8 filed a notice of appeal with the BIA. The appeal was based solely on a legal argument that Mr.
9 Carlos's detention was governed by 8 U.S.C. § 1225, rather than § 1226. As a result of the
10 automatic stay, Mr. Carlos has remained detained in ICE custody despite the Immigration Judge's
11 order granting his release on bond.

12 Mr. Carlos's continued detention has caused significant hardship to his family. His wife
13 has been left to manage the household and all related expenses on her own. His detention has also
14 interfered with his ability to effectively participate in his removal proceedings, limiting his access
15 to legal counsel, documents, witnesses, and other necessary evidence. Mr. Carlos has experienced
16 mental and emotional distress as a result of his separation from his family, particularly knowing
17 the difficulties they are facing during his absence. His son, who is currently deployed with the
18 U.S. Marine Corps, has struggled to focus on his duties due to concerns over his father's detention
19 and the burden placed on his mother.

20 Additionally, Mr. Carlos's continued custody jeopardizes his ability to obtain parole in
21 place, a process that, if granted, would allow him to pursue adjustment of status. His eligibility
22 for adjustment is therefore directly affected by his detention. Counsel is currently representing
23 Mr. Carlos on a pro bono basis in connection with this habeas petition due to the financial
24 hardships this family is facing.

25 **LEGAL FRAMEWORK**

26 **A. Right to Liberty and Due Process**

27 The Fifth Amendment of the U.S. Constitution guarantees that "[no] person shall... be
28

1 deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.
2 Importantly, the supreme court has clarified that this protection extends to noncitizens, stating:
3 “Once an alien enters the country, the legal circumstances change, for the Due Process clause
4 applies to all ‘persons’ within the United States. *Zadvydas v. Davis*, 533 U.S. 678, 699–701
5 (2001).

6 Civil immigration detention is meant to serve limited regulatory purposes: ensuring
7 appearance at proceedings and protecting the community. The Supreme Court in *Demore v. Kim*,
8 538 U.S. 510 (2003), emphasized that detention may only last for the “brief period necessary
9 for... removal proceedings” and cannot be punitive.

10 Where detention extends beyond those limited purposes or rests on mere allegations, it
11 violates due process. As the Court stressed in *Zadvydas*: “freedom from imprisonment – from
12 government custody, detention, or other forms of physical restraint – lies at the heart of the liberty
13 that the Clause protects.” 533 U.S. at 690.

14 **B. Civil Nature of Immigration Detention**

15 The Supreme Court has repeatedly held that immigration detention is civil, not punitive. In
16 *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), the Court explained: “If a restriction or condition is not
17 reasonably related to a legitimate governmental objective, it amounts to punishment.”

18 **C. Statutory Framework.**

19 The Immigration and Nationality Act (INA) establishes three primary forms of civil
20 immigration detention for noncitizens involved in removal proceedings.

21 First, under 8 U.S.C. § 1226, noncitizens who are arrested “on a warrant” may be
22 detained during the pendency of their removal proceedings before an Immigration Judge (IJ). See
23 8 U.S.C. § 1229(a). Most individuals detained under § 1226(a) are eligible for release on bond or
24 conditional parole, unless they fall within the mandatory detention provisions of § 1226(c),
25 which apply to those arrested, charged, or convicted of certain specified offenses. See 8 U.S.C. §
26 1226(a)(1); 8 C.F.R. § 236.1(c)(8). If ICE declines to release a detainee under § 1226(a), the
27 individual may request a custody redetermination hearing before an IJ. See 8 C.F.R. §§
28 1003.19(a), 1236.1(d). At such a hearing, the noncitizen may present evidence to establish that

1 they are not a danger to the community or a flight risk and should therefore be released. See
 2 generally *Matter of Guerra*, 24 I. & N. Dec. 37, 50 (BIA 2006).

3 Second, the INA requires mandatory detention under 8 U.S.C. § 1225(b) for two
 4 categories of individuals: (1) those subject to expedited removal under § 1225(b)(1), and (2)
 5 those seeking admission who, in the view of the examining immigration officer, have not clearly
 6 and beyond doubt demonstrated admissibility under § 1225(b)(2). Individuals detained under §
 7 1225(b) are not entitled to bond hearings. See 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV), and
 8 1225(b)(2)(A). Their release is permitted only under humanitarian parole at the discretion of
 9 ICE. See *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); 8 U.S.C. § 1182(d)(5).

10 Third, the INA provides for the detention of noncitizens who are subject to a final order
 11 of removal, pursuant to 8 U.S.C. §§ 1231(a)–(b).

12 The present case involves the legal distinction between the discretionary detention
 13 authority under § 1226(a) and the mandatory detention provisions of § 1225(b)(2). Both statutes
 14 were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of
 15 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-
 16 583, 3009-585. Section 1226 was most recently amended by the Laken Riley Act, Pub. L. No.
 17 119-1, 139 Stat. 3 (2025).

18 In this context, Respondents interpret § 1225(b)(2) to require mandatory detention for
 19 any individual who entered the United States without inspection, even where the individual was
 20 not apprehended at the time of entry or shortly thereafter.

21 **a. 8 U.S.C. § 1225**

22 Section 1225 applies to "applies to 'applicants for admission,' who are, as relevant here,
 23 noncitizens 'present in the United States who [have] not been admitted.'" *Gomes v. Hyde*, 2025
 24 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at 2 (D. Mass. July 7, 2025) (quoting 8 U.S.C. §
 25 1225(a)(1)). Under this Section, all applicants must be inspected by an immigration officer. 8
 26 U.S.C. § 1225(a)(3). Under subsection (b), certain applicants for admission may be subject to
 27 removal proceedings. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09, 140 S. Ct.
 28 1959, 207 L. Ed. 2d 427 (2020). Because Section 1225 is mandatory, a "noncitizen detained

1 under Section 1225(b)(2) may be released only if he is paroled 'for urgent humanitarian reasons
 2 or significant public benefit.'" Gomes, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at 1
 3 (emphasis added). However, Section 1225(b) only "authorizes the Government to detain certain
 4 aliens seeking admission into the country." 8 U.S.C. § 1225(b). (emphasis added).

5 **b. 8 U.S.C. § 1226**

6 While section 1225 "authorizes the Government to detain certain aliens seeking
 7 admission into the country," section 1226 "authorizes the Government to detain certain aliens
 8 already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583
 9 U.S. 281, 289, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018) (emphasis added). Section 1226(a) sets
 10 out the "default rule" for noncitizens already present in the country. *Id.* at 288. It provides:

11
 12 On a warrant issued by the Attorney General, an alien may be arrested and
 13 detained pending a decision on whether the alien is to be removed from the
 14 United States. . . [T]he Attorney General--(1) may continue to detain the arrested
 15 alien; and (2) may release the alien on--(A) bond . . . ; or (B) conditional parole . .

16 8 U.S.C. § 1226(a). "Section 1226(a), therefore, establishes a discretionary detention
 17 framework." *Lopez Benitez*, 2025 WL 2371588, at 3 (*internal citations omitted*). An immigration
 18 officer makes the initial determination to either detain or release the noncitizen, but after that
 19 decision has been made, the noncitizen may request a bond hearing before an immigration judge.
 20 8 C.F.R. § 1236.1(c)(8), (d)(1). At any such bond hearing, "the burden is on the non-citizen to
 21 'establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger
 22 to persons or property, is not a threat to the national security, and does not pose a risk of flight.'" *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017) (*citing In re Guerra*, 24 I. & N. Dec.
 23 37, 38 (BIA 2006)).
 24

25
 26 Recently, Congress amended 8 U.S.C. § 1226. While Section 1226(a) is a discretionary
 27 framework, Congress added two new mandatory detentions to Section 1226 codified in Section
 28 1226(c) through the Laken Riley Act. Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025). Added as a

1 two-step process, the Attorney General must detain a noncitizen if (1) they are inadmissible
2 because they are in the United States without being admitted or paroled, obtained documents or
3 admission through misrepresentation or fraud, or lacks valid documentation and (2) "is charged
4 with, is arrested for, is convicted of, admits having committed, or admits committing acts which
5 constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law
6 enforcement officer offense, or any crime that results in death or serious bodily injury to another
7 person." U.S.C. §§ 1226(c)(1)(E)(i)-(ii).

9 "Summarizing the relevant distinctions. . . noncitizens detained under Section 1225(b)(2)
10 must remain in custody for the duration of their removal proceedings, while those detained under
11 Section 1226(a) are entitled to a bond hearing before an [immigration judge] at any time before
12 entry of a final removal order." *Vazquez v. Bostock*, 779 F. Supp.3d 1239, 1247 (W.D. Wash.
13 2025). In other words, Section 1225(b) "supplement[s] § 1226's detention scheme." *Rodriguez*
14 *Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022).

16 **c. The Automatic Stay Under 8 C.F.R. §1003.19(i)(2)**

17
18 Prior to 2001, noncitizens subject to discretionary detention under 8 U.S.C. § 1226(a)
19 who were granted bond by an Immigration Judge would remain detained only if the Board of
20 Immigration Appeals affirmatively granted a stay of the bond order. Under the regulation in
21 effect at the time, 8 C.F.R. § 1003.19(i)(2) (1998), the automatic stay provision applied solely to
22 individuals subject to mandatory detention statutes.

23
24 In 2001, the Immigration and Naturalization Service (INS)—now the Department of
25 Homeland Security—issued an interim rule expanding the use of automatic stays to custody
26 decisions issued under § 1226(a). *See* Review of Custody Determination, 66 Fed. Reg. 54909,
27 54910 (Oct. 31, 2001). The INS described the revised rule as a "limited measure" to be invoked
28

1 only “where the Service determines that it is necessary to invoke the special stay procedure
2 pending appeal.” *Id.*

3 Following the implementation of the interim rule, multiple federal courts held that the
4 automatic stay provision, as applied, violated the due process rights of noncitizens. *See, e.g.,*
5 *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (finding that detention under an
6 automatic stay following an IJ’s bond order violated both procedural and substantive due
7 process); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003) (holding that the
8 government’s interest in national security was not furthered by continued detention and was
9 outweighed by the petitioner’s Fifth Amendment rights); *Zabadi v. Chertoff*, No. 05-CV-1796
10 (WHA), 2005 WL 1514122, 2005 U.S. Dist. LEXIS 50670 (N.D. Cal. June 17, 2005); *Uritsky v.*
11 *Ridge*, 286 F. Supp. 2d 842 (E.D. Mich. 2003) (finding the automatic stay provision
12 unconstitutional).
13
14

15 In response to these due process concerns, the Executive Office for Immigration Review
16 (EOIR) issued a final rule in 2006 establishing additional procedural safeguards. *See Review of*
17 *Custody Determination*, 71 Fed. Reg. 57873 (Oct. 2, 2006). Under the revised regulation, DHS
18 must file, along with the notice of appeal, a written certification from a senior legal official
19 stating: (i) that the official approved the appeal pursuant to DHS’s internal review procedures;
20 and (ii) that the official is satisfied the continued detention is supported by evidence and that the
21 legal arguments are warranted by existing law or constitute a non-frivolous argument for
22 extending, modifying, or reversing current precedent. 8 C.F.R. § 1003.6(c). This requirement
23 was adopted explicitly to address concerns about the use of automatic stays without sufficient
24 factual or legal basis. *Id.* at 57876.
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1 Additionally, the regulation provides a separate mechanism for DHS to seek an
 2 emergency stay directly from the BIA, which triggers expedited preliminary review to assess
 3 whether a stay is justified based on the facts of the case and the merits of DHS's appeal. See 8
 4 C.F.R. § 1003.19(i)(1).

5 FIRST CAUSE OF ACTION

6 I. Procedural Due Process

7 Under the Due Process Clause of the Fifth Amendment to the United States Constitution,
 8 no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const.
 9 amend. V. That interest is particularly weighty when government detention is at issue. "Freedom
 10 from imprisonment—from government custody, detention, or other forms of physical restraint—
 11 lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533
 12 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).

13 These due process rights apply to noncitizens residing in the United States. The Supreme
 14 Court has firmly established that "the Due Process Clause applies to all 'persons' within the
 15 United States, including aliens, whether their presence here is lawful, unlawful, temporary, or
 16 permanent." *Zadvydas*, 533 U.S. at 693; *see also Trump v. J.G.G.*, 604 U.S. 670, 673, 145 S. Ct.
 17 1003, 221 L. Ed. 2d 529 (2025) ("It is well established that the Fifth Amendment entitles aliens
 18 to due process of law in the context of removal proceedings." (*citation omitted*)). Indeed, once a
 19 noncitizen is present in the United States, they have a "weighty" liberty interest in remaining in
 20 the United States, as they stand to lose rights to "stay and live and work" in the country and "to
 21 rejoin [their] immediate family." *Landon v. Plasencia*, 459 U.S. 21, 34, 103 S. Ct. 321, 74 L. Ed.
 22 2d 21 (1982) (*citation omitted*). This is true "regardless of how someone entered the country:
 23 '[O]nce passed through our gates, even illegally,' noncitizens 'may be expelled only after
 24 proceedings conforming to traditional standards of fairness encompassed in due process of law.'"
 25 *Make the Rd.*, 2025 WL 2494908, at 10 (*quoting Shaughnessy v. United States ex rel. Mezei*, 345
 26 U.S. 206, 212, 73 S. Ct. 625, 97 L. Ed. 956 (1953)).
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 28

1 Mr. Carlos here argues that the Department of Homeland Security erred in concluding
2 that he was mandatorily detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Mr. Carlos re-alleges
3 and incorporates by reference all preceding paragraphs.

4
5 **a. Section 1225(b)(2)(A) Does Not Apply to Mr. Carlos.**

6 Here, the government contends that Mr. Carlos is properly detained under Section 1225
7 because he is "seeking admission" into the United States, even though he has been in the United
8 States for the last twenty years. The Respondents erroneously concluded that because petitioner
9 is an "applicant for admission" Section 1225(b)(2)(A) applies.

10
11 The text of Section 1225 reads as, an "applicant for admission" is "an alien present in the
12 United States who has not been admitted or who arrives in the United States." 8 U.S.C. §
13 1225(a)(1). "Admission" and "admitted" are defined as "the lawful entry of the alien into the
14 United States after inspection and authorization by an immigration officer." 8 U.S.C. §
15 1101(a)(13). Section 1226 more broadly states that a noncitizen can be detained on "a warrant
16 issued by the Attorney General." 8 U.S.C. § 1226(a).

17
18 The question before the Court is whether "an alien present in the United States who has
19 not been admitted" includes someone like Mr. Carlos, who is not presently seeking admission
20 and has been in the United States for the last seventeen years without inspection or authorization.
21 In other words, present without admittance.

22
23 Section 1225 is titled "*Inspection by immigration officers; expedited removal of*
24 *inadmissible arriving aliens; referral for hearing.*" and the inclusion of the term "*arriving*"
25 indicates that the statute applies specifically to noncitizens who are arriving at the border, rather
26 than those already present in the United States. *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767,
27 2025 WL 2609425, at 5. This interpretation is supported by the statutory text, which centers on
28

1 inspection procedures for individuals entering as “crewmen” or “stowaways.” 8 U.S.C. §
2 1225(b)(2). These narrow and specific categories of entry suggest that § 1225 applies only to
3 noncitizens at the border or a port of entry who are actively seeking admission to the United
4 States. *See Pizarro Reyes*, 2025 WL 2609425, at 5 (citing *Dubin v. United States*, 599 U.S. 110,
5 118, 143 S. Ct. 1557, 216 L. Ed. 2d 136 (2023)). This analysis supports a more limited
6 interpretation of § 1225. *Id.*

8 Beyond its title, the placement and context of Section 1225 within the broader statutory
9 framework offer further interpretive guidance. Courts are instructed to interpret statutes as a
10 whole, not as isolated provisions. *King v. Burwell*, 576 U.S. 473, 486, 135 S. Ct. 2480, 192 L.
11 Ed. 2d 483 (2015). In this context, the Supreme Court has identified Section 1226 as the “default
12 rule” governing the detention of noncitizens who are already physically present in the United
13 States. *Jennings v. Rodriguez*, 583 U.S. 281, 288, 301, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018).
14 As noted in *Pizarro Reyes*, the structure of the statute suggests that Congress intentionally placed
15 the broader, catchall provision of Section 1226 after the more specific and narrowly focused
16 Section 1225 to encompass noncitizens who do not fall within the categories defined in Section
17 1225. *Pizarro Reyes*, 2025 U.S. Dist. LEXIS 175767, 2025 WL 2609425, at 5; *see also Vazquez*,
18 779 F. Supp. 3d at 1258.

21 Recent Congressional amendments must also be taken into account—specifically, the
22 Laken Riley Act, which modified Section 1226, as discussed above. As the Supreme Court has
23 recognized, “when Congress acts to amend a statute, we presume it intends the amendment to
24 have real and substantive effect.” *Stone v. I.N.S.*, 514 U.S. 386, 397, 115 S. Ct. 1537, 131 L. Ed.
25 2d 465 (1995). The Laken Riley Act introduced a new subsection under Section 1226(c),
26 imposing mandatory detention for certain individuals, within an otherwise discretionary
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1 detention framework. As other courts have observed, this amendment reflects Congress's intent
2 to expand specific mandatory detention provisions without altering the default applicability of
3 Section 1226 to noncitizens already present in the United States.

4 If § 1225(b)(2) already mandated detention of any alien who has not been
5 admitted, regardless of how long they have been here, then adding §
6 1226(c)(1)(E) to the statutory scheme was pointless' and this Court, too, 'will not
7 find that Congress passed the Laken Riley Act to 'perform the same work' that
8 was already covered by § 1225(b)(2).

9 *Lopez-Campos v. Raycraft*, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 at 8 (E.D.
10 Mich. Aug. 29, 2025) (*quoting Maldonado v. Olsen*, 2025 U.S. Dist. LEXIS 158321, 2025 WL
11 2374411, at 12 (D. Minn. Aug. 15, 2025)). If "Congress had intended for Section 1225 to govern
12 all noncitizens present in the country, who had not been admitted, then it would not have recently
13 adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from
14 the discretionary bond framework."

15 Respondents' position is primarily based on a policy issued by the Department of
16 Homeland Security (DHS) on July 8, 2025. On that date, DHS circulated a notice titled "*Interim*
17 *Guidance Regarding Detention Authority for Applicants for Admission*" to all ICE personnel.
18 The notice stated that, in coordination with the Department of Justice (DOJ), DHS had "revisited
19 its legal position" concerning the interpretation of the Immigration and Nationality Act (INA).
20 As a result, DHS concluded that 8 U.S.C. § 1225(b)(2), rather than § 1226, governs the detention
21 of any noncitizen present in the United States who has not been formally admitted—regardless of
22 whether their entry occurred at a designated port of arrival.

23 This revised interpretation was subsequently adopted by the Board of Immigration
24 Appeals (BIA) in its recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
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1 In that case, the BIA described it as a "legal conundrum" for an individual to be
2 physically present in the United States without having been admitted, yet no longer considered
3 "seeking admission." *Id.* at 221. The BIA concluded that such individuals fall under Section
4 1225 because they fail to cite any legal authority establishing that, after residing unlawfully in
5 the interior for an unspecified period, they are no longer applicants for admission. *Id.*

6
7 We respectfully urge this Court to reject that interpretation for several reasons. First,
8 courts are not required to defer to agency interpretations of law simply because a statute is
9 ambiguous. As the Supreme Court recently held in *Loper Bright Enterprises v. Raimondo*, 603
10 U.S. 369, 412–13, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), "[c]ourts must exercise their
11 independent judgment in deciding whether an agency has acted lawfully," and under the
12 Administrative Procedure Act, deference is not warranted solely due to statutory ambiguity.

13
14 Second, the structure and context of the Immigration and Nationality Act make it difficult
15 to classify a noncitizen as "seeking admission" when they have never presented themselves at a
16 port of entry or made any affirmative attempt to enter. Interpreting the statute to cover
17 individuals who have lived in the interior for years without lawful status stretches the meaning of
18 "seeking admission" beyond recognition.

19
20 Third, while the BIA in *Yajure Hurtado* maintained that its reading of Section 1225(b)
21 does not render the Laken Riley Act superfluous, *id.* at 222, this position is unconvincing. As
22 discussed above, if the BIA's interpretation were adopted, it would effectively nullify the recent
23 statutory amendments enacted through the Laken Riley Act—contrary to the principle that
24 congressional amendments are presumed to have meaningful effect. *See Lopez-Campos*, 2025
25 U.S. Dist. LEXIS 169423, 2025 WL 2496379, at 8.

1 The government's position that section 1225(b)(2)(A) applies to all noncitizens present in
2 the United States without admission is erroneous as the interpretation of the statute (1) disregards
3 the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections
4 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is
5 inconsistent with decades of prior statutory interpretation and practice.

6 Other district courts have reached a similar conclusion. *See, e.g., Lopez Benitez v.*
7 *Francis*, No. 25-Civ-5937, 2025 U.S. Dist. LEXIS 153952, 2025 WL 2267803 (S.D.N.Y. Aug.
8 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at 9 (D. Mass. July 24,
9 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL
10 1869299, at 8 (D. Mass. July 7, 2025); *Vasquez Garcia v. Noem*, 2025 U.S. Dist. LEXIS 171714,
11 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486,
12 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v.*
13 *Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025); Doc. 11, *Benitez v. Noem*,
14 No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-
15 JRR, 2025 U.S. Dist. LEXIS 165015, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v.*
16 *Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, 2025 WL 2403827 (D. Mass. Aug.
17 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal.
18 Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn.
19 Aug. 15, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 U.S. Dist. LEXIS 157488,
20 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157,
21 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted 2025 U.S.
22 Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); Doc. 11, *Maldonado Bautista*
23 *v. Santacruz*, No. 5:25-cv-01874-SSS-BFM, (C.D. Cal. July 28, 2025).

1 The Respondents do not identify any authority, other than the new policy and the Board
2 of Immigration Appeals' recent decision in *Matter of Yajure Hurtado*, finding that noncitizens
3 such as Petitioner who have been present in the United States for many years are subject to
4 section 1225(b)(2)(A).

5 SECOND CAUSE OF ACTION

6 **II. Substantive Due Process**

7 Substantive due process forbids arbitrary or punitive detention. As the Supreme Court has
8 emphasized, "Freedom from imprisonment—from government custody, detention, or other forms
9 of physical restraint—lies at the heart of the liberty that the Due Process Clause protects."
10 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the context of civil immigration proceedings,
11 the government's authority to detain is limited to two legitimate purposes: (1) protecting the public
12 from danger, and (2) ensuring the individual's appearance at future proceedings. *Demore v. Kim*,
13 538 U.S. 510, 518–19 (2003). Detention that does not serve either purpose amounts to
14 unconstitutional punishment.

15 Here, Petitioner's initial detention was authorized under ICE's statutory authority to arrest and
16 detain individuals it determines to be unlawfully present in the United States. See 8 U.S.C. §§
17 1226, 1225, 1229a. Following this initial detention, however, Petitioner exercised his right to
18 request a custody redetermination under 8 C.F.R. § 1003.19(e). The Immigration Judge granted
19 that request, concluded that 8 U.S.C. § 1226(a) governed Petitioner's detention, and ordered his
20 release on bond with specified conditions.

21 Before Petitioner could be released, ICE initiated a second, independent act of detention by
22 invoking the automatic stay provision set forth in 8 C.F.R. § 1003.19(i)(2). The invocation of the
23 automatic stay constitutes a separate and additional deprivation of liberty that must independently
24 comply with the requirements of due process. Accordingly, the constitutionality of Petitioner's
25 continued detention pursuant to the automatic stay—constituting a second, distinct act of
26 detention—must be assessed under the procedural due process framework set forth in *Mathews*
27 *v. Eldridge*, 424 U.S. 319 (1976).
28

1 As the Supreme Court held in *Bell v. Wolfish*, 441 U.S. 520, 535 (1979), “[i]f a restriction or
2 condition is not reasonably related to a legitimate governmental objective, it amounts to
3 punishment.” Petitioner’s continued detention—based on speculation rather than evidence—
4 bears no reasonable relation to a lawful objective and is therefore punitive and unconstitutional.

5 **a. Application of the *Mathews v. Eldridge* Balancing Test**
6

7 To determine whether a civil detention violates a detainee’s due process rights, courts apply
8 the three-part balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.
9 Ed. 2d 18 (1976). The Court must weigh: (1) the private interest that will be affected by the official
10 action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and
11 the probable value, if any, of additional or substitute procedural safeguards; and (3) the United
12 States’ interest, including the function involved and the fiscal and administrative burdens that the
13 additional or substitute procedural requirement would entail. *Id.* at 335.

14 ***Private Interest***

15 The first factor under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), examines the private
16 interest impacted by the government’s action—in this case, the Department of Homeland
17 Security’s invocation of the automatic stay provision. Here, the interest at stake is the Petitioner’s
18 fundamental right to be free from physical restraint, a liberty interest the Supreme Court has
19 described as “the most elemental” of all freedoms. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

20 As firmly established in our constitutional tradition, liberty is the norm, and detention is “the
21 carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Courts have
22 consistently recognized the weight of this liberty interest in the immigration context. See, e.g.,
23 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (“An individual’s private interest
24 in freedom from prolonged detention is unquestionably substantial.”).

25 The automatic stay provision, by its nature, results in continued detention—often after an
26 Immigration Judge has already determined that release is warranted. As such, its invocation
27 necessarily implicates and infringes upon a noncitizen’s core liberty interest. This factor therefore
28

1 weighs heavily against the Government in every instance where the automatic stay is used to
2 prolong detention without additional individualized review.

3 In Petitioner's case, the private harms caused by continued detention are particularly acute.
4 He has been separated from his wife and children, depriving his family of emotional support and
5 their primary financial provider. His incarceration has disrupted his ability to work and maintain
6 his livelihood, causing financial hardship for his household. He has suffered significant mental
7 and emotional distress as a result of being confined, knowing his family is struggling in his
8 absence. In addition, his ability to assist counsel, gather evidence, and prepare his defense in
9 ongoing removal proceedings has been severely hindered by his detention.

10 These individualized and tangible consequences further underscore the severity of the liberty
11 interest at stake and support the conclusion that the first *Mathews* factor strongly favors Petitioner.

12 ***Risk of Erroneous Deprivation***

13 The second factor under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), considers "the risk
14 of an erroneous deprivation of the [Petitioner's] interest through the procedures used, and the
15 probable value, if any, of additional or substitute procedural safeguards."

16 The automatic stay provision set forth in 8 C.F.R. § 1003.19(i)(2) poses a significant risk of
17 erroneous and arbitrary deprivation of liberty. As recognized in *Günaydin v. Trump*, No. 25-
18 CV-01151 (JMB/DLM), 2025 U.S. Dist. LEXIS 99237, 2025 WL 1459154 (D. Minn. May 21,
19 2025), this provision creates a substantial risk of unjustified confinement by allowing continued
20 detention without individualized review.

21 Several factors contribute to this risk. First, the regulation lacks any clear or objective standard
22 governing its application. It permits invocation of the automatic stay in "any case in which DHS
23 has determined that an alien should not be released or has set a bond of \$10,000 or more." 8
24 C.F.R. § 1003.19(i)(2). This vague and subjective standard opens the door to arbitrary
25 enforcement and fails to provide meaningful procedural protections.

26 Further, the certification requirement under 8 C.F.R. § 1003.6(c) is similarly deficient.
27 Although the regulation mandates that a senior DHS official certify that continued detention is
28 supported by evidence and law or a non-frivolous legal argument, it imposes no meaningful

1 mechanism for verifying or reviewing that certification. There is no process for challenging the
2 accuracy or sufficiency of the certification, nor any consequence for DHS's failure to comply
3 with the requirement. Indeed, in the present case, the record contains no evidence that DHS
4 satisfied the certification requirement prior to invoking the automatic stay against Petitioner.
5 Second, the risk of erroneous detention is heightened by the fact that the automatic stay is
6 typically invoked *after* an Immigration Judge has already determined—based on clear and
7 convincing evidence—that the noncitizen is neither a danger to the community nor a flight risk.
8 The regulation effectively grants DHS unilateral authority to override the IJ's bond order and
9 prolong detention, despite having failed to prevail in the adversarial hearing. This one-sided
10 procedure affords the prosecuting agency an automatic appeal-like mechanism without judicial
11 review or balancing of interests, in direct conflict with the due process principles articulated in
12 *United States v. Salerno*, 481 U.S. 739, 755 (1987), which requires that any deprivation of
13 liberty be narrowly tailored and carefully limited.

14 Moreover, this structure creates an inherent conflict of interest, as it vests unchecked
15 authority in the same agency responsible for prosecution. As multiple courts have observed, this
16 conflation of prosecutorial and adjudicative functions increases the likelihood of arbitrary
17 detention. See, e.g., *Günaydin*, 2025 U.S. Dist. LEXIS 99237, 2025 WL 1459154, at 8
18 (describing the regulation as anomalous in permitting a party to unilaterally nullify a judge's
19 decision); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1078 (N.D. Cal. 2004) (noting the risk of
20 error where prosecutorial and adjudicative roles are merged); *Ashley v. Ridge*, 288 F. Supp. 2d
21 662, 670–71 (D.N.J. 2003) (criticizing the regulation for allowing detention regardless of the
22 government's appeal merit). See also *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC,
23 2025 U.S. Dist. LEXIS 160314, at *7 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-
24 CV-3142 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn.
25 Aug. 15, 2025) (same).

26 As for the probable value of additional procedural safeguards, the answer is evident. When
27 the current procedure requires nothing more than the submission of a form by a DHS official,
28 any additional safeguard would provide meaningful value. Notably, the existing regulatory

1 framework already offers an alternative, more balanced approach under 8 C.F.R. §
2 1003.19(i)(1), which allows DHS to request an emergency stay from the BIA. Under that
3 process, the BIA conducts a preliminary review based on the individual's circumstances and the
4 merits of the government's appeal. Courts have found this alternative to be sufficient to protect
5 the government's interest in preventing erroneous release while addressing due process
6 concerns. See *Günaydin*, 2025 U.S. Dist. LEXIS 99237, 2025 WL 1459154, at *9; *Reynosa*
7 *Jacinto*, 2025 U.S. Dist. LEXIS 160314, at *7.

8 ***Government's Interest***

9 The third and final *Mathews* factor considers "the Government's interest, including the
10 function involved and the fiscal and administrative burdens that the additional or substitute
11 procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

12 The Government's interests in ensuring public safety and securing compliance with removal
13 orders are significant. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1190 (9th Cir. 2022).
14 However, these interests are safeguarded through the individualized bond determination made
15 by an Immigration Judge under 8 U.S.C. § 1226. As the Ninth Circuit has held, "the
16 government has no legitimate interest in detaining individuals who have been determined not to
17 be a danger to the community and whose appearance at future immigration proceedings can be
18 reasonably ensured by a lesser bond or alternative conditions." *Hernandez v. Sessions*, 872 F.3d
19 976, 994 (9th Cir. 2017).

20 Here, the Government has offered no specific justification for continuing to detain
21 individuals—such as Petitioner—who have already prevailed at a bond hearing. In such cases,
22 detention begins to resemble incarceration for purposes other than removal, raising
23 constitutional concerns. See *Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J.,
24 concurring) (noting that where detention is not justified by flight risk or danger, it may become
25 constitutionally impermissible).

26 The BIA is not vested with authority to adjudicate constitutional claims. That responsibility
27 lies with the judiciary. As recently reaffirmed by the Supreme Court, interpretation of the
28 Immigration and Nationality Act and protection of constitutional rights are "the proper and

1 peculiar province of the courts,” reflecting the Framers’ intent to insulate judicial decision-
2 making from political influence. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 370, 385
3 (2024) (quoting *The Federalist No. 37* (Madison)).

4 With regard to the administrative burden of additional procedural safeguards, the
5 Government already has existing mechanisms in place that could serve as less constitutionally
6 problematic alternatives. For example, DHS may request an emergency stay of an IJ’s custody
7 determination under 8 C.F.R. § 1003.19(i)(1), which requires expedited review by the BIA
8 based on the specific facts and legal merits of the case. Utilizing these preexisting processes
9 does not impose any significant additional fiscal or administrative burden. Indeed, the cost of
10 continued detention far exceeds that of supervised release. See *Hernandez*, 872 F.3d at 996
11 (noting that in 2017, immigration detention cost approximately \$158 per day per detainee, while
12 supervised release programs cost between 17 cents and \$17 per day).

13 Thus, the third *Mathews* factor also weighs against the Government. Continued reliance on
14 the automatic stay, which operates without individualized review or procedural safeguards,
15 imposes severe liberty deprivations without serving any legitimate administrative or fiscal
16 purpose.

17 In sum, the automatic stay regulation is facially unconstitutional because it authorizes
18 prolonged detention without providing any procedure to challenge its invocation. Unlike §
19 1226(c)—which the Supreme Court upheld only in the context of detention following criminal
20 convictions secured through full procedural protections—§ 1003.19(i)(2) lacks any process for
21 review or rebuttal. See *Demore*, 538 U.S. at 513, 525 n.9, 532 (Kennedy, J., concurring). As
22 applied to Petitioner, who was granted release on bond following an individualized
23 determination by an IJ, but remains detained solely because DHS invoked the automatic stay
24 without meaningful procedural safeguards, the continued detention violates his right to due
25 process.

26 Where no mechanism exists to contest the deprivation of liberty—even after a neutral
27 decision-maker has found detention unjustified—such confinement is arbitrary and unlawful.
28 See *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018) (“[L]iberty is the norm, and

detention prior to trial or without trial is the carefully limited exception.”) (quoting *Salerno*, 481 U.S. at 755). Accordingly, it is the Petitioner’s position that the facial application of the automatic stay regulation and its use in this case violate the Due Process Clause of the Fifth Amendment.

Conclusion on Causes of Action

Mr. Carlos’s continued detention violates both procedural and substantive due process. The Immigration Judge denied his liberty based on a misapplication of the law, and DHS failed to carry its burden of proving that Mr. Carlos poses a flight risk or danger to the community. Despite this, his detention persists without any lawful or evidentiary basis.

Accordingly, the Constitution requires either Petitioner’s immediate release or, at minimum, a custody redetermination hearing that fully complies with due process.

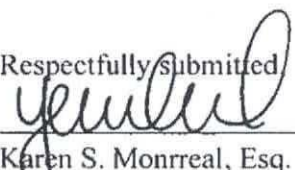
PRAYER FOR RELIEF

WHEREFORE, Mr. Carlos prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Declare that the government’s stay was an unlawful exercise of authority;
- (3) Order ICE to immediately release Mr. Carlos from his unlawful detention;
- (4) Declare that Mr. Carlos cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence;
- (5) Award reasonable costs and attorney fees; and
- (6) Grant such further relief as the Court deems just and proper.

Dated: October 06, 2025

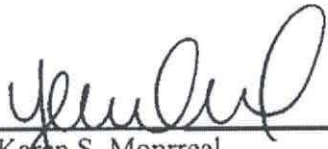
Respectfully submitted


Karen S. Monreal, Esq.
Attorney for Mr. Carlos

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this October 04th, 2025 in Reno, NV.



Karen S. Monrreal
Attorney for Petitioner Carlos