

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

TOBIAS NAJARRO ZUNIGA,

Petitioner,

v.

JEFFREY CRAWFORD, *in his official capacity as Detention Director of Farmville Detention Center*; JOSEPH SIMON, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office*; KRISTI NOEM, *in her official capacity as Secretary of Homeland Security*; and PAM BONDI, *in her official capacity as Attorney General of the United States,*

Respondents.

**PETITION FOR A WRIT OF
HABEAS CORPUS**

Case No.

INTRODUCTION

1. Petitioner Tobias Najarro Zuniga petitions this Court for a writ of habeas corpus ordering his immediate release from immigration custody. Mr. Zuniga—a Special Immigrant Juvenile Status (SIJS) recipient with deferred action—has been in detention since August 1, 2025. Despite being ordered released on bond by an Immigration Judge (IJ) on August 19, he remains unlawfully detained at Farmville Detention Center away from his family, including his three-year-old U.S. citizen son. Because of his over four-month detention, Mr. Zuniga is unable to support his family and is experiencing depression and anxiety.

2. Immigration and Customs Enforcement (ICE) has refused to release Mr. Zuniga because of its invocation of an automatic stay under 8 C.F.R. § 1003.19(i)(2) (“the automatic stay

provision”), while it appeals the IJ’s bond decision to the Board of Immigration Appeals (BIA). Under its new and unprecedented interpretation of the Immigration and Nationality Act (INA), the Government contends that the IJ lacked jurisdiction to release Mr. Zuniga on bond because, as a noncitizen who entered without admission or inspection, he is detained pursuant to 8 U.S.C. § 1225(b) rather than § 1226(a). This change in policy is an abrupt and drastic departure from decades of agency policy and practice and lacks legal support.

3. Indeed, this Court and numerous others across the country have rejected the legality of the automatic stay provision and ICE’s new interpretation of § 1225(b) countless times over. *See, e.g., Hasan v. Crawford*, No. 1:25-CV-1408-LMB-IDD, 2025 WL 2682255, *5-*13 (E.D. Va. Sept. 19, 2025) (rejecting Government’s designation of all noncitizens who enter without inspection as ineligible for bond and ruling that automatic stay provision violated due process); *Quispe v. Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799, *4-*9 (E.D. Va. Sept. 29, 2025) (same and also ruling that stay is ultravires); *Arevalo Paniagua v. Simon*, No. 1:25-cv-1714-RDA-LRV, ECF No. 10 at 3-4 n.1 (E.D. Va. Oct. 29, 2025) (ruling that noncitizens who enter without inspection and are already in the country when apprehended are detained under § 1226 and citing 14 other decisions from this Court in support).

4. Just yesterday, this Court affirmed that noncitizens like Mr. Zuniga, who have been granted SIJS, are detained under 8 U.S.C. § 1226(a) and eligible for bond. *Lopez Sarmiento v. Perry*, Civ. Action No. 1:25-cv-01644-AJT-WBP, 2025 WL 3091140, *3 (E.D. Va. Nov. 5, 2025) (granting habeas petition in purported class action and recognizing that “the grant of SIJ status . . . only strengthens Petitioners’ arguments” that they are eligible for bond); *see also Rodriguez v. Perry*, 747 F. Supp. 3d 911, 916 (E.D. Va. 2024) (holding that “SIJ status . . . converted [petitioner]

from being an arriving alien to an alien present in the United States” thus “entitl[ing] [him] to a bond hearing . . . under § 1226(a)”).

5. Accordingly, Mr. Zuniga seeks a writ of habeas corpus finding his continued detention pursuant to the automatic stay provision and Respondents’ erroneous interpretation of § 1225(b) unconstitutional and in violation of the INA. He asks that this Court order his immediate release pursuant to the IJ’s bond order and enjoin Respondents from redetaining him in the future on the basis that he is ineligible for bond under § 1225(b).

JURISDICTION & VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); and 28 U.S.C. § 1331 (federal question jurisdiction).

7. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Zuniga is detained in Farmville, Virginia.

PARTIES

8. Petitioner Tobias Najarro Zuniga is a 23-year-old citizen of Guatemala who has been in immigration detention at Farmville since August 1, 2025. Mr. Zuniga has resided in the United States since 2019, when he entered as an unaccompanied child. He was granted SIJS status and deferred action in 2023 and has a three-year old U.S. citizen son.

9. Respondent Jeffrey Crawford is the Detention Director of Farmville. Respondent Crawford is responsible for overseeing the administration and management of Farmville. Though Respondent Crawford does not have the legal authority to release Mr. Zuniga without ICE’s

permission, he is nominally considered Mr. Zuniga's immediate custodian. Respondent Crawford is sued in his official capacity.

10. Respondent Joseph Simon is the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Washington Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Virginia, including Farmville, and has the authority to make custody determinations regarding individuals detained there. Respondent Simon is a legal custodian of Mr. Zuniga. Respondent Simon is sued in his official capacity.

11. Respondent Kristi Noem is the Secretary of Homeland Security. As the head of the Department of Homeland Security (DHS), she supervises ICE, an agency within DHS that is responsible for the administration and enforcement of immigration laws. She has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Secretary Noem is the ultimate legal custodian of Mr. Zuniga. Respondent Noem is sued in her official capacity.

12. Respondent Pam Bondi is the Attorney General of the United States. As the Attorney General and head of the Department of Justice (DOJ), she oversees the Executive Office for Immigration Review (EOIR), including the IJs and BIA, which conduct and review bond determinations. Respondent Bondi is sued in her official capacity.

FACTS

13. Mr. Zuniga was born in Guatemala in 2002. Exh. A, Tobias Najarro Zuniga Decl.

¶ 1. In Guatemala, his father, [REDACTED]

[REDACTED] *Id.* ¶ 2. This drove Mr. Zuniga to leave home and escape to the U.S.

Id.

14. Mr. Zuniga entered the U.S. without a parent or guardian in March 2019, when he was 17 years old. *Id.* ¶ 3. He was taken into custody after crossing into the U.S. and was designated as an unaccompanied child and placed into Office of Refugee Resettlement (ORR) custody. *Id.*

15. On April 4, 2019, DHS issued Mr. Zuniga a Notice to Appear (NTA) charging him with being removable as being present in the U.S. without being admitted or paroled under 8 U.S.C. § 1182(a)(6)(A)(i). Exh. B, April 4, 2019 NTA. DHS later filed the NTA with the Harlingen Immigration Court, placing him removal proceedings. Exh. C, New Court Location Notice.

16. On June 22, 2019, Mr. Zuniga was released from ORR custody to live with his brother in Hyattsville, Maryland. Exh. D, ORR Verification of Release. As a result, DHS filed a notice with the immigration court, informing it that Mr. Zuniga had been released under an “Order of Supervision or [on his] Own Recognizance (Form I-220A).” Exh. E, June 26, 2019 Notice to EOIR: Alien Address. Mr. Zuniga’s case was later transferred to Baltimore Immigration Court and then Hyattsville Immigration Court. Exh. A ¶ 4.

17. Mr. Zuniga applied for SIJS with U.S. Citizenship and Immigration Services (USCIS) in March 2023 based on the abuse he suffered from his father. Exh. F, SIJS Receipt Notice. An IJ at the Hyattsville Immigration Court administratively closed his removal proceedings on June 13, 2023, based on his pending SIJS petition. Exh. G, IJ Administrative Closure Order; Exh. H, Motion for Admin Closure. DHS consented to dismissal. Exhs. G, H.

18. On August 8, 2023, USCIS approved Mr. Zuniga’s I-360 petition and granted him SIJS. Exh. I, Approved SIJS I-360 Notice. While SIJS status allows noncitizens to apply for lawful permanent residence, they must wait until a visa is available to do so. Because a visa was not currently available, USCIS also granted Mr. Zuniga deferred action, which supposedly protected him from deportation for four years until 2027. *Id.*

19. Prior to his detention, Mr. Zuniga lived in Maryland and Virginia and worked in landscaping and construction. Exh. A ¶ 7. He paid taxes each year, financially supported his former partner and their three-year old U.S. citizen son, and also sent money to relatives in Guatemala. *Id.* ¶¶ 7, 8. Mr. Zuniga and his son are close and spent weekends together. *Id.* ¶ 8.

20. On July 31, 2025, Mr. Zuniga attended a hearing in Virginia state court regarding his alleged failure to pay child support. *Id.* ¶ 9; Exh. J, Virginia Failure to Appear Docket. He arrived to court with evidence of his child support payments.¹ Exh. A ¶ 9. The hearing was at 10 am but he was mistaken as to the time and appeared 30 minutes later. *Id.*; Exh. J. In court, he was arrested for failure to appear and put in jail. Exh. A ¶ 9. The next day, the state court judge ordered his release but he was kept in jail because ICE had placed a detainer on him. *Id.* Mr. Zuniga's failure to appear charge was later dismissed. Exh. J.

21. ICE picked Mr. Zuniga up from jail on August 3, 2025, and transferred him to Farmville, where he remains detained. Exh. A ¶ 10. ICE issued him a new NTA that day, again charging him again as being present in the U.S. without being admitted and paroled under 8 U.S.C. § 1182(a)(6)(A)(i). Exh. K, Aug. 3, 2025 NTA. Mr. Zuniga was placed into removal proceedings again in Annandale Immigration Court. *Id.*

22. An IJ granted Mr. Zuniga a \$6,000 bond on August 19, 2025, ruling that he was not a danger or flight risk and that she had jurisdiction to consider bond. Exh. L, IJ Bond Order; Exh. M, IJ Written Bond Decision. DHS reserved appeal. Exh. L. Mr. Zuniga's family unsuccessfully attempted to pay the bond to secure his release several times over multiple days. Exh. A ¶ 12. They ultimately learned that he would not be released because ICE had filed a Notice of Intent to Appeal

¹ These documents showing child support payments were later submitted to immigration court in support of Mr. Zuniga's bond motion.

Custody Redetermination, which automatically stayed the IJ's bond decision under 8 C.F.R. § 1003.19(i)(2). *Id.*; Exh. N, Notice of Intent to Appeal Custody Redetermination.

23. DHS filed a Notice of Appeal on September 2, 2025, attaching a memorandum arguing that the IJ lacked jurisdiction to grant Mr. Zuniga bond because he is detained under 8 U.S.C. § 1225(b). Exh. O, DHS Notice of Appeal. The BIA subsequently issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), ruling that all noncitizens who enter without inspection under 8 U.S.C. § 1182(a)(6)(A)(i) are detained pursuant to § 1225(b) rather than § 1226 and thus ineligible for bond. The bond appeal remains pending at the BIA with the parties' briefs due on November 13, 2025. Exh. P, BIA Briefing Notice. In light of DHS's appeal, the IJ issued a written decision acknowledging that *Yajure Hurtado* was an intervening decision but stating that she was applying the precedent at the time of the hearing. Exh. M.

24. Mr. Zuniga and his family have had difficulty finding counsel for his removal proceedings because they put their limited resources towards hiring an attorney for bond. Exh. A ¶ 11. He is currently pro se in his removal proceedings and his next hearing is scheduled for November 12, 2025. *Id.* He plans on applying for relief in immigration court but the process of collecting evidence has been difficult from detention and without an attorney. *Id.* Amica Center for Immigrant Rights staff are currently pro se assisting Mr. Zuniga with putting together applications for relief. *Id.*

25. The over four months of ICE detention has weighed on Mr. Zuniga, who feels depressed and anxious. *Id.* ¶ 13. Because of his detention, he has been unable to support his family financially. *Id.* Mr. Zuniga especially misses his three-year-old son, whom he has not seen since being detained by ICE. *Id.*

LEGAL FRAMEWORK

I. Special Immigrant Juvenile Status

26. SIJS is a form of immigration relief that provides vulnerable children with a path to legal permanent residency in the United States. Congress established SIJS in 1990 “to protect abused, neglected or abandoned children who . . . illegally entered the United States . . .” *Osorio-Martinez v. Attorney General*, 893 F.3d 153, 163 (3d Cir. 2018) (internal quotation marks and citations omitted). In doing so, Congress exempted SIJS recipients from several grounds of removability from the United States. *See* 8 U.S.C. § 1227(c). Thus, “although a juvenile with SIJ status can be removed on certain grounds, such as having been convicted of a serious criminal offense, he cannot be removed for having entered the country illegally.” *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 917 (E.D. Va. 2024).

27. To be eligible for SIJS, a noncitizen minor must: (1) be physically present in the United States; (2) be under 21 on the date of filing the SIJS petition; (3) remain unmarried throughout the adjudication of the SIJS petition and adjustment of status application; (4) receive a qualifying juvenile court order; and (5) obtain USCIS’s consent to the grant of SIJS. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

28. SIJS affords a recipient the ability to obtain deferred action and work authorization to live and work in the United States.² *See* 8 U.S.C. § 1101(a)(27)(J)(iii) (describing SIJ as “status”); 8 C.F.R. § 204.11(b) (same); 8 U.S.C. § 1255(h) (listing rights); *Perez v. Cuccinelli*, 949

² On June 6, 2025, DHS rescinded its longstanding policy of categorially considering deferred action for SIJS recipients with an approved I-360. USCIS Policy Alert, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf>. However, noncitizens like Mr. Zuniga “with current deferred action based on their SIJ classification will generally retain this deferred action, as well as retain their current employment authorization provided based on this deferred action, until the current validity periods expire.” *Id.* at 2.

F.3d 865, 865 (4th Cir. 2020) (describing SIJS as a status); *Rodriguez*, 747 F. Supp. 3d at 919 (recognizing SIJS as “accord[ing] significant benefits and procedural protections that put [petitioner] a hair’s breadth from being able to adjust [his] status”) (internal quotation marks omitted).

29. SIJS recipients can adjust their status to that of lawful permanent resident even if they previously entered without inspection or admission. *See* 8 U.S.C. §§ 1255(a); 1255(h)(1); 8 C.F.R. § 245.1(e)(i). For a noncitizen with SIJS to adjust status, a visa number must be available. *See* 8 U.S.C. § 1153(b)(4). Because the number of noncitizens with SIJS who can adjust their status each year is limited, together with the loss of visa numbers and USCIS processing delays, it can take years for a noncitizen with SIJS to complete the adjustment of status process.

II. Detention During Removal Proceedings

30. 8 U.S.C. § 1229a (Section 240 of the INA) describes the primary process through which the government seek to remove noncitizens from the United States. It specifies that “[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States.” 8 U.S.C. § 1229a(a)(3).

31. To initiate removal proceedings against a noncitizen under Section 1229a, the Government must issue the noncitizen an NTA. 8 U.S.C. § 1229(a)(1). Most noncitizens go through removal proceedings from outside detention. But ICE is increasingly detaining noncitizens during their removal proceedings.

32. Section 1226 of Title 8 of the U.S. Code (Section 236 of the INA) is the default provision that governs the arrest and detention of noncitizens pending removal proceedings. It states that “on a warrant issued by the Attorney General, a[] [noncitizen] may be arrested and

detained pending a decision on whether the [noncitizen] is to be removed from the United States” 8 U.S.C. § 1226(a). Noncitizens arrested upon a warrant and in ongoing removal proceedings are eligible to seek bond from an IJ. *Id.* § 1226(a)(2).

33. A separate provision governs the detention of people who seek admission to the United States at the border. It states that “in the case of a [noncitizen] who is an applicant for admission, if the examining immigration officer determines that a [noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, the noncitizen shall be detained for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A). IJs lack jurisdiction to grant bond for such “applicant[s] for admission,” though DHS retains the discretion to release such noncitizens on a specific type of parole “for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).

III. The Government’s New and Unprecedented Expansion of Detention Without Bond

34. For decades, the Government’s practice was to afford § 1226(a) discretionary bond hearings to individuals who entered without inspection and were encountered neither at a port of entry nor while seeking admission into the United States, unless their criminal history rendered them bond-ineligible under 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

35. On July 8, 2025, DHS, in coordination with DOJ, announced a new policy that rejected the well-established understanding of this statutory framework and reversed decades of practice. The new policy, titled “Interim Guidance Regarding Detention Authority for Applicants

for Admission,” claims that *all* persons who entered the U.S. without inspection are subject to § 1225(b)(2)(A)’s mandatory detention provision. ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, *available at* <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>. On September 5, 2025, the BIA adopted this same position in a precedential decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all noncitizens who entered the United States without inspection, regardless of how long they have resided in the U.S., are now subject to detention under § 1225(b)(2)(A) and ineligible for bond. *Id.*

36. In the past months, dozens of federal courts have rejected Respondents’ new interpretation of the INA’s detention provisions. Indeed, as the District Court for the District of Washington noted, “Every district court to address this question has concluded that the government’s position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.” *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499, *1 n.3 (W.D. Wash. Sept. 30, 2025); *see also Arevalo Paniagua*, No. 1:25-cv-1714-RDA/LRV, ECF No. 10 at 3-4 n.1 (E.D. Va. Oct. 29, 2025) (citing 14 other decisions from this Court ruling the same).

IV. The Automatic Stay Provision

37. When an IJ issues a decision granting bond, ICE can appeal that decision to the BIA within 30 days. 8 C.F.R. § 1003.19(f). In normal circumstances, ICE’s appeal does not stay the IJ’s decision, and the noncitizen is released once they post bond. Prior to 1998, the only way ICE could prevent a noncitizen’s release on an IJ-ordered bond was to file, brief, and win a stay motion at the BIA. This option remains available to ICE in a similar form today. 8 C.F.R. § 1003.19(i)(1).

38. In response to the September 11 terrorist attacks, DOJ issued an interim rule establishing a new procedure through which ICE could unilaterally and automatically stay an IJ's bond order, expanding a previous version from 1998. Executive Office for Immigration Review; Review of Custody Determination, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001). This new procedure was specifically designed to prevent the immediate release of noncitizens "whom the government believed posed a national security threat." Stacy L. Brustin, *A Civil Shame: The Failure to Protect Due Process in Discretionary Immigration Custody & Bond Redetermination Hearings*, 88 Brook. L. Rev. 163, 197 (2022).

39. A body of caselaw quickly emerged finding the new automatic stay provision unconstitutional or otherwise unlawful. *See, e.g., Ashley v. Ridge*, 288 F. Supp. 2d 662 (D. N.J. 2003). In 2006, DOJ issued the final rule, with a few modest changes. *See* Executive Office for Immigration Review; Review of Custody Determination, 71 Fed. Reg. 57873 (Oct. 2, 2006); 8 C.F.R. § 1003.19(i)(2). The regulation currently in place requires a "senior legal official" to certify that the stay has proper legal and evidentiary support. 8 C.F.R. § 1003.6(c)(1). It does not require the official to articulate the evidence upon which the certification is based. The regulation also provides that the stay will generally lapse after 90 days but gives ICE several options for extending the stay, which in turn trigger additional stay periods to give the BIA or the Attorney General time to weigh in. *Id.* § 1003.6(c)(4)-(5), (d).

40. The automatic stay provision was utilized rather sparingly from 2006 until the first Trump Administration. Then, from 2017 to 2020, ICE invoked the automatic stay approximately 171 times. Brustin, *supra*, at 197 n.231. In the last few months, ICE's invocation of the automatic stay regulation has expanded even further, to the point where it has become the norm rather than the exception. ICE is now using these stays not for noncitizens who it claims to be particularly

dangerous, but rather for cases where ICE believes the IJ lacks jurisdiction to grant bond pursuant to its new, unsupported interpretation of § 1225(b). On information and belief, ICE is invoking the stay in every such case where an IJ rejects its jurisdictional arguments and grants bond.

41. This Court has joined numerous others across the country in ruling that the automatic stay provision is unlawful. *Hasan*, 2025 WL 2682255 at *5-*13 (holding automatic stay violated substantive and procedural due process); *Quispe*, 2025 WL 2783799, *4-*9 (ruling that automatic stay violated substantive and procedural due process and is ultra vires); *see also Lopez Sarmiento*, 2025 WL 3091140, *3 (ordering bond hearings for noncitizens with SIJS and enjoining Government “from invoking the automatic stay provision” if bond is granted).

ARGUMENT

42. Respondents’ unilateral invocation of an automatic stay to prevent Mr. Zuniga’s release on a court-ordered bond violates his substantive and procedural due process rights and is ultra vires. Additionally, Mr. Zuniga is statutorily entitled to bond under 8 U.S.C. § 1226(a) given that he was and is not actively seeking admission and independently because of his SIJS status.

I. Respondents’ Unilateral and Automatic Stay of Mr. Zuniga’s Bond Grant is Unlawful.

A. The Automatic Stay Provision Violates Mr. Zuniga’s Procedural and Substantive Due Process Rights.

43. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. The Supreme Court has made clear that there are only two legitimate purposes for immigration detention: (1) ensuring a noncitizen’s appearance at his removal proceedings and (2) preventing danger to the community. *Id.* If immigration detention is not reasonably related to one of these purposes, it is essentially punitive and violative of the Due Process Clause. *See id.*

44. Here, an IJ—who routinely hears bond cases and has significant experience evaluating the appropriateness of immigration detention—has already found that Mr. Zuniga is not a danger to the community or a flight risk. Indeed, because noncitizens bear the burden of proof at immigration court bond hearings, the IJ necessarily found that Mr. Zuniga proved he was not a danger or flight risk. *See Matter of R-A-V-P*, 27 I&N Dec. 803, 804 (BIA 2020) (“[W]e have clearly held that section 236(a) places the burden of proof on the [noncitizen] to show that he merits release on bond”).

45. Where the IJ has already made this determination regarding Mr. Zuniga’s individual circumstances, continuing his detention violates his substantive due process rights. *See Hasan*, 2025 WL 2682255, at *10 (“Any interest that the federal respondents may have in securing [petitioner]’s presence at immigration proceedings has been accounted for by the IJ’s imposition of bond.”). That is especially the case here, where “there is nothing to suggest a compelling or special circumstance that would warrant vacating the immigration judge’s decision to release Petitioner on bond.” *Quispe*, 2025 WL 2783799 at *7 (internal quotation marks omitted). “If enforced by the Court, the automatic stay regulation would destroy [substantive] due process by permitting unilateral governmental detention, even after an IJ made an individualized finding that a person did not pose a threat to the safety of others or a risk of flight.” *Hasan*, 2025 WL 2682255, at *11.

46. Respondents’ invocation of the automatic stay also violates Mr. Zuniga’s procedural due process rights under *Mathews v. Eldridge*, 424 U.S. 319 (1976). This test evaluates three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and

administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335.

47. First, Mr. Zuniga’s liberty interest is undoubtedly substantial. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. And as an SIJS recipient, Mr. Zuniga enjoys enhanced due process rights. *See Rodriguez*, 2024 WL 4024047, at *5.

48. “[W]hen assessing the first *Mathews* factor, courts also consider the conditions under which detainees are currently held, including whether the detainee is held in conditions indistinguishable from criminal incarceration.” *Hasan*, 2025 WL 2682255 at *11 (internal quotation marks omitted). Here, Mr. Zuniga has being held for over four months in prison-like conditions at Farmville, away from his community and family, including his three-year old son who relies on him for support. Exh. A ¶¶ 8, 13. He is experiencing anxiety and depression as a result of being detained. *Id.* ¶ 13.

49. Second, the automatic stay provision employed against Mr. Zuniga poses an extremely high risk of erroneous deprivation of his liberty. The regulation, 8 C.F.R. § 1003.19(i)(2), creates a fundamentally unfair power imbalance between ICE and the noncitizen. *See Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025) (“The regulation only confers on agency officials the right to invoke an automatic stay and, presumably, agency officials would not act to stay favorable decisions” and “is anomalous in our legal system.”).

50. Moreover, “invocation of the automatic stay fails to account for any individualized facts.” *Quispe*, 2025 WL 2783799 at *8 (citing *Hasan*, 2025 WL 2682255 at *12). This is particularly problematic in Mr. Zuniga’s case, which does not involve unique circumstances warranting a stay. Mr. Zuniga is 23 years old, was granted SIJS, and has no significant or violent

convictions. He has attended all his immigration court hearings. Mr. Zuniga is far from the alleged terrorist for which this regulation was originally created. *See* Brustin, *supra* pg. 7, at 197. Rather, his case is just one of many in which ICE indiscriminately invokes the automatic stay to vindictively advance its baseless jurisdictional arguments. *See, e.g., Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *4 (D. Md. Aug. 24, 2025) (agreeing with petitioner that “the Government has contorted the automatic stay from its many years’ long (and intended) use as the exception to the rule such that it is now the rule -- to be applied reflexively in every circumstance in which DHS disagrees with an IJ on custody”).

51. On the third *Mathews* factor, Respondents have little to no legitimate interest in detaining someone like Mr. Zuniga, who an IJ has already found is not a danger or flight risk. *See Quispe*, 2025 WL 2783799 at *9 (“Respondents do not explain why [their] interests would not be adequately protected by the individualized determination of an immigration judge as to whether an individual should be released on bond under section 1226(a) or their ability to have that release decision reviewed under the existing regulations.”); *Hasan*, 2025 WL 2682255 at *12 (Respondents’ interest in protecting public and ensuring noncitizens appear for removal “are adequately protected . . . by the individualized determination of an IJ as to whether an individual should be released on bond under § 1226(a).”). Accordingly, Respondents’ use of an automatic stay to keep Mr. Zuniga detained violates his substantive and procedural due process rights.

B. The Automatic Stay Regulation is *Ultra Vires*.

52. In addition to violating Mr. Zuniga’s due process rights, the automatic stay regulation is *ultra vires* in that it is plainly inconsistent with the statutory scheme.

53. A federal regulation is *ultra vires* when it exceeds the authority delegated by Congress to the agency implementing it. *See City of Arlington v. F.C.C.*, 569 U.S. 290, 297 (2013)

(“Both [agencies’] power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly . . . what they do is *ultra vires*”).³

54. Here, the relevant statute is 8 U.S.C. § 1226(a)(2), which provides that “the Attorney General . . . may release the [noncitizen] on . . . bond of at least \$1,500.” Functionally, ICE makes an initial determination on whether to release the noncitizen, which “may be reviewed by an Immigration Judge” through what is typically called a “bond redetermination.” 8 C.F.R. § 1003.19(a)-(b).

55. Yet the automatic stay regulation purports to give ICE the authority to override the IJ’s redetermination of its initial custody decision and continue the detention of a noncitizen whom the IJ deems worthy of release. “In allowing DHS to extend Petitioner’s detention unilaterally, in direct contravention of the immigration judge’s determination that he be released on bond, the automatic stay provision pursuant to 8 C.F.R. § 1003.19(i)(2) exceeds the statutory authority conferred upon DHS and is, therefore, *ultra vires*.” *Quispe*, 2025 WL 2783799 at *9.

56. ICE now appears to be invoking the automatic stay every time an IJ rejects its new and unfounded interpretation of the INA and grants bond, keeping noncitizens detained despite the IJ’s determinations. Not even DOJ, when it promulgated the 2006 final rule, seems to have intended such widespread use of the automatic stay. *See Executive Office for Immigration Review; Review of Custody Determination*, 71 Fed. Reg. 57873, 57882 (Oct. 2, 2006) (stating that “DHS does not invoke the automatic stay in every case” and that “DHS will inevitably be obligated to consider such competing priorities and limited resources in each case in deciding whether or not

³ Following *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), federal agencies are no longer owed any deference in matters of statutory interpretation. With *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) overruled, this Court need not determine whether the relevant statute is ambiguous; it need only ask whether DOJ exceeded or contradicted its statutory authority in implementing 8 C.F.R. § 1003.19(i)(2).

to pursue an appeal . . .”). Nor could it be what Congress envisioned when it enacted § 1226(a)’s bond provisions. Thus, the automatic stay provision is further unlawful because it is *ultra vires*.

II. Mr. Zuniga is Detained Pursuant to 8 U.S.C. § 1226(a) and Eligible for Bond.

57. Mr. Zuniga is also statutorily eligible for bond. Contrary to the DHS’s assertions, Mr. Zuniga—who was apprehended after he crossed into the U.S. rather than while seeking admission at the border—is detained pursuant to 8 U.S.C. § 1226(a) rather than § 1226(b). The fact that he has SIJS status further underscores his eligibility for bond. *See Lopez Sarmiento*, 2025 WL 3091140, at *3; *Rodriguez*, 747 F. Supp. 3d at 916.

58. First, as this Court has held many times in recent months, under “the plain text and statutory scheme of the INA, . . . section 1225(b)(2)(A)’s scope extends only to those individuals actively seeking admission into the country, and not those that have already entered the country (albeit unlawfully).” *See, e.g., Lopez Sarmiento*, 2025 WL 3091140, at *2. Instead, these latter individuals “fall in the . . . category of aliens already in the country subject to the discretionary detention provisions in section 1226(a).” *Id.* “As the Supreme Court held in *Jennings*, section 1226(a) is the ‘default rule,’ which governs ‘aliens already in the country’ who are subject to removal proceedings, whereas section 1225(b) governs ‘aliens seeking admission into the country.’” *Id.* (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018)).

59. Because Mr. Zuniga was apprehended after he had entered the country, rather than while seeking admission at the border, he is properly categorized as detained under section § 1226(a) and eligible for bond. Indeed, ICE charged Mr. Zuniga in April 2019 and August 2025 as a noncitizen present in the U.S. without being admitted or paroled pursuant to 8 U.S.C. § 1182(a)(6)(A), rather than as an “arriving alien.” *See* Exhs. B, K. ICE also stated in 2019 that Mr. Zuniga was released from Government custody on an order of supervision or his own

recognizance under Form I-220A, rather than parole. Exh. E. This demonstrates that until very recently, Respondents too viewed Mr. Zuniga's detention as pursuant to 8 U.S.C. § 1226(a) rather than § 1226(b). *See Hasan*, No. 2025 WL 2682255, *7 (E.D. Va. Sept. 19, 2025) (“[F]ederal respondents’ treatment of Hasan since he arrived in the United States unequivocally demonstrates he is detained pursuant to § 1226(a).”); *Rodriguez*, 747 F. Supp. 3d at 916 (concluding that “ICE’s records, which clearly state that Petitioner is subject to removal as an alien present under INA § 212(a)(6)(A)(i), and not as an arriving alien under § 212(a)(7)(A)(i)(I)” further underscores his § 1226 detention).

60. Mr. Zuniga’s SIJS status also provides an independent basis for his § 1226(a) detention. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens who entered the country, were designated as unaccompanied minors, placed in the custody of ORR, released to sponsors, and were granted SIJS. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

61. Individuals designated as unaccompanied minors are not “applicants for admission” as defined by 8 U.S.C. § 1225 because they must be placed in standard removal proceedings under 8 U.S.C. § 1229a, 8 U.S.C. § 1232(a)(5)(D), and cannot be paroled under 8 U.S.C. § 1182(d)(5)(A). The release of unaccompanied minors from ORR custody is authorized only by the Director of the Office of Refugee Resettlement pursuant to 6 U.S.C. § 279.

62. Further, because “the INA defines a ‘special immigrant’ as ‘an immigrant who is present in the United States,’” once a noncitizen obtains SIJS status, they are “an ‘alien present’ in the United States and was entitled to a bond hearing under § 1226(a).” *Rodriguez*, 747 F. Supp. 3d at 916 (citing 8 U.S.C. § 1101(a)(27)(j)); *see also Quipse*, 2025 WL 3091140 at *3

(“Petitioners’ . . . SIJ status requires that they be afforded a bond hearing under section 1226(a).”).

Thus, regardless of his prior status, because he has been granted SIJS, Mr. Zuniga is detained pursuant to § 1226(a) and independently entitled to a bond hearing on this basis.

63. Given that *Yajure Hurtado* is binding on the BIA, Mr. Zuniga anticipates that the BIA will sustain ICE’s bond appeal and rule that he is ineligible for bond under 8 U.S.C. § 1225(b) as it has done in similar cases. Thus, in addition to finding the automatic stay provision unlawful and ordering him released, he asks that this Court enjoin ICE from redetaining him or refusing to release him on the basis that he is detained under § 1225(b) and ineligible for bond.

CLAIMS FOR RELIEF

COUNT I

Violation of the Fifth Amendment of the U.S. Constitution Substantive Due Process *Automatic Stay Provision*

64. Mr. Zuniga incorporates the preceding paragraphs by reference.

65. The Supreme Court has found that the “Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 682.

66. Immigration detention must always “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003). Because an IJ has determined that Mr. Zuniga is not a danger or flight risk, his detention pursuant to ICE’s invocation of the automatic stay provision is not reasonably related to the Government’s interest in preventing danger and flight risk and thereby violates his substantive due process rights.

COUNT II

Violation of the Fifth Amendment of the U.S. Constitution Procedural Due Process *Automatic Stay Provision*

67. Mr. Zuniga incorporates the preceding paragraphs by reference.

68. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate whether adjudicatory procedures sufficiently protect an individual's due process rights.

69. The automatic stay regulation, as applied to Mr. Zuniga, violates his procedural due process rights under *Mathews* because his liberty interest, and the risk of erroneous deprivation of his liberty posed by the automatic stay provision, outweigh the Government's interest in utilizing the stay.

COUNT III
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)
Automatic Stay Provision as Ultra Vires

70. Mr. Zuniga incorporates the preceding paragraphs by reference.

71. An agency regulation is *ultra vires* when it exceeds Congressionally delegated authority. *See City of Arlington*, 569 U.S. at 297.

72. The automatic stay provision at 8 C.F.R. § 1003.19(i)(2) is *ultra vires* because it allows DHS to effectively nullify the IJ's decision to release a noncitizen on bond, for which the IJ is delegated the authority under 8 U.S.C. § 1226(a).

COUNT IV
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond

73. Mr. Zuniga incorporates the preceding paragraphs by reference.

74. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the U.S. who are present without having been admitted or paroled. By its very terms, it applies only to noncitizens who are apprehended while seeking admission near the border or at a port of entry. Noncitizens who entered the country prior to being apprehended and

placed in removal proceedings are instead detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

75. Because Mr. Zuniga is detained pursuant to 8 U.S.C. § 1226(a), rather than § 1225(b)(2), Respondents lack authority to detain him without bond.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Order that Respondents show cause within three days as to why the petition should not be granted;
- c. Order that Respondents not transfer Petitioner outside of the jurisdiction of this District during the pendency of this petition;
- b. Declare that Respondents' invocation of the automatic stay provision violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution and the Immigration and Nationality Act;
- c. Declare that Mr. Zuniga is detained pursuant to 8 U.S.C. § 1226(a) and thus eligible for bond under the Immigration and Nationality Act;
- c. Order that Respondents release Petitioner from custody immediately upon posting bond and enjoin Respondents from interfering with efforts to post bond;
- d. Order that Respondents are enjoined from denying Mr. Zuniga bond in the future on the basis that he is statutorily ineligible under 8 U.S.C. § 1225(b); and
- e. Grant any other further relief this Court deems just and proper.

Dated: November 6, 2025

Respectfully submitted,

/s/ Samantha Hsieh

Samantha Hsieh

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Pro Bono Counsel for Petitioner

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I or my colleagues have discussed with the Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 6, 2025

Respectfully submitted,

/s/ Samantha Hsieh
Samantha Hsieh
Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

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Dated: November 6, 2025

Respectfully submitted,

/s/ Samantha Hsieh
Samantha Hsieh

Pro Bono Counsel for Petitioner