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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSE DAIN ALVEAR CARCAMO, Petitioner, v. KRISTI NOEM, *Secretary, United States Department of Homeland Security;* PAMELA JO BONDI, *Attorney General of the United States; Executive Office for Immigration Review;* TODD LYONS, *Acting Director, United States Enforcement and Removal Operations;* BRIAN HENKEY, *Las Vegas/Salt Lake City Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE)*; JOHN MATTOS, *Warden, Nevada Southern Detention Center;* Respondents.	**PETITION FOR WRIT OF HABEAS CORPUS** Case No.

INTRODUCTION

1. This Petition for a Writ of Habeas Corpus challenges the continued unlawful detention of Petitioner by U.S. Immigration and Customs Enforcement (ICE) at the Nevada Southern Detention Center, Nevada without an opportunity for an individualized bond hearing because the Executive Office of Immigration Review, Immigration Judges throughout the country have determined they do not have jurisdiction to hear bond requests or to grant bond to aliens present in the United States without admission pursuant to *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (BIA 2025).

2. Petitioner resided in Utah prior to detention and retained counsel for immigration matters after having been arrested and moved by Immigration & Customs Enforcement (ICE) to Nevada for detention because ICE does not have a detention facility in Utah. Mr. Alvear's immigration case number is A [redacted]

3. Mr. Alvear is a is a 28-year-old non-citizen who has resided in the U.S. since 2023 and has a United States citizen wife and stepchild under the age of 18 years old. . Petitioner, who has resided in the United States for years, was previously released on an Order of Release on Recognizance (OREC). Mr. Alvear's criminal history is an open charge for Assault but his United States spouse has written a letter regarding the incident which shows that he is not a danger to the community, nor is he flight risk because ICE has his address and arrested Mr. Alvear on his way to work.

4. The petitioner is charged with, inter alia, having entered the United States without inspection. 8 U.S.C. § 1182(a)(6)(A)(i).

5. ICE refused to issue a bond to all the petitioners based on a new ICE

policy interpreting detention statute that is unsupported by the law, its history and precedent as discussed below.

6. Petitioner has not filed a bond motion in immigration court in the Las Vegas Immigration Court because immigration judges held that they have no jurisdiction to hear bond redetermination requests pursuant to *Matter of Hurtado*. Thus, any attempt to file a bond redetermination motion with the immigration judge would be futile.

7. The petitioner's detention violates the plain language of the Immigration and Nationality Act ("INA") and due process. 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like the petitioners who previously entered the United States years ago, were detained by ICE recently and have been residing in the United States for many years.

8. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like the petitioners, are charged as inadmissible for having entered the United States without inspection.

9. The new legal interpretation is plainly contrary to the statutory framework and contrary to decades of practice applying § 1226(a) to people like Petitioners.

10. Accordingly, Petitioner seeks a writ of habeas corpus requiring that they be allowed a bond hearing by the Immigration Judge within 5 days of the order or be released immediately.

JURISDICTION

11. Petitioner is in physical custody of Respondents. Petitioner is detained at the Nevada Southern Detention Center in Pahrump, Nevada.

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

13. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All-Writs Act, 28 U.S.C. § 1651.

14. The Court has the authority to grant a writ of habeas corpus to a petitioner who demonstrates that he is being held in custody in violation of federal law. 28 U.S.C. § 2241(a), (c)(3); *see INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[T]he writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."); *Zadvydas v. Davis,* 533 U.S. 678, 687 (2001) (noting that § 2241 habeas corpus proceedings are available to challenge the lawfulness of immigration-related detention).

15. Petitioner does not seek review of a discretionary decision by the Attorney General or the Secretary of Homeland Security (8 U.S.C. § 1252(a)(2)(B)(ii)); does not challenge a final order of removal (8 U.S.C. § 1252(a)(2)(C)); nor is he seeking judicial review of a legal or factual question arising from removal proceedings, the decision to commence removal proceedings, the adjudication of his removal case, or the execution of a removal order (8 U.S.C. §§ 1252(b)(9) and 1252(g)). *See Jennings v. Rodriguez*, 583 U.S. 281, 292 (2018) (Alito, J., joined by Roberts, C.J. and Kennedy, J.); *id.* at 355 (Breyer, J., joined by Ginsburg and Sotomayor, J.J., dissenting) (finding that § 1252(b)(9) did not bar judicial review of a detention order); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471,

482 (1999) (concluding that § 1252(g) applies to "three discrete actions": commencing removal proceedings, adjudicating removal cases and executing removal orders).

VENUE

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for Nevada, the judicial district in which Petitioner is currently detained. Thus, a resident of Utah is forced to file this action in Nevada solely because ICE moved him from Utah to Nevada.

17. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in Nevada.

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

19. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

20. Petitioner Jose Dain Alvear Carcamo is a citizen of Colombia who has been in immigration detention since February, 2026. After arresting Petitioner in Utah, ICE did not set bond. Mr. Alvear has not requested a bond redetermination before the Immigration Judge because it would be futile based on the Board of Immigration Appeals decision in *Matter of Yajure Hurtado,* 29 I. & N. Dec. 216, 216 (BIA 2025). Mr. Alvear has resided in the United States since 2023.

21. Respondent Brian Henkey is the Director of the Las Vegas Field Office of ICE's Enforcement and Removal Operations Division. As such, Mr. Henkey is Petitioners' immediate custodian and is responsible for Petitioners' detention and removal. He is named in his official capacity.

22. Respondent TODD M LYONS is the Acting Director for U.S. Immigration and Customs Enforcement. As such, Mr. Lyons is responsible for Petitioners' detention and removal. He is named in his official capacity.

23. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

24. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

25. Respondent John Mattos is employed by CoreCivic- as Warden of the Nevada Southern Detention Center, where Petitioners are detained. He has immediate physical custody of Petitioners. He is sued in his official capacity.

LEGAL FRAMEWORK

26. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested, charged with, or convicted of certain crimes and then they are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

28. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

29. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

30. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

32. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

33. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which all noncitizens who were not apprehended "arriving" at the border 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)).

34. Specifically, § 1225 is titled: Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.

> (a) Inspection
>
> (1) Aliens treated as applicants for admission
>
> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.
>
> . . .
>
> (3) All aliens (including alien crewman) who are applicants for admission or

> otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.
>
> (b) Inspection of applicants for admission
>
> . . .
>
> (2) Inspection of other aliens
>
> (A) In general
>
> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.

35. Thus, § 1225 covers "inadmissible arriving aliens" who are "applicants for admission" "present in the United States who [have] not been admitted." *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025) (alteration in original; citation and footnote call number omitted).

36. Section 1225(a)(3) requires all applicants for admission, including those "seeking admission," to be inspected by an immigration officer, *see* 8 U.S.C. § 1225(a)(3); and certain applicants for admission may be subject to removal proceedings under section 1225(b). 8 U.S.C. § 1225(a) – (b); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108–09 (2020) (citations omitted).

37. Relevant here, § 1225(b)(2) applies where an arriving alien is "seeking admission" into the United States, and that provision mandates detention for aliens who are "applicants for admission." 8 U.S.C. § 1225(b)(2)(A). "Because Section 1225 is mandatory, a

'noncitizen detained under Section 1225(b)(2) may be released only if he is paroled for urgent humanitarian reasons or significant public benefit.' " *Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565, at *2 (W.D. Ky. Sept. 19, 2025) (*quoting Gomes,* 2025 WL 1869299, at *1).

38. On the other hand, § 1226 has historically "authorize[d] the Government to detain certain aliens already in the country pending the outcome of removal proceedings[.]" *Jennings*, 583 U.S. at 289 (emphasis and alteration added). Section 1226(a) sets out a discretionary detention framework for noncitizens arrested and detained "[o]n a warrant issued by the Attorney General."2 8 U.S.C. § 1226(a). Section 1226(a) authorizes the Attorney General to "continue to detain the arrested alien[,]" release him on a "bond of at least $1,500[,]" or release him on "conditional parole[,]" id. § 1226(a)(1) – (2) (alterations added). While the arresting immigration officer makes an initial custody determination, noncitizens detained under § 1226(a) may appeal that determination in a bond hearing before an immigration judge. *See* 8 C.F.R. §§ 1236.1(c)(8), (d)(1). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings,* 583 U.S. at 306 (alteration added) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)); *see also Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2371588, at *13 (S.D.N.Y. Aug. 13, 2025) ("To be sure, a noncitizen detained under § 1226(a) is undoubtedly entitled to a bond hearing before an immigration judge."). In sum, if Petitioner is subject to § 1225(b)(2), his detention is mandatory; if Petitioner is subject to § 1226(a), his detention is discretionary, and he is entitled to a bond hearing.

39. Until mid-2025, DHS applied "§ 1226(a) and its discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation." *Ortiz Donis v. Chestnut*, No. 1:25-CV-01228, 2025 WL 2879514, at *5

(E.D. Cal. Oct. 9, 2025); *E.C. v. Noem*, No. 2:25-CV-01789, 2025 WL 2916264, at *1 (D. Nev. Oct. 14, 2025) (noting that, until recently, "millions of noncitizens had been informed that they could participate in removal proceedings, which can take months or years, out of custody, so long as they could establish they were neither a flight risk nor danger to the community.") (emphasis in original).

40. However, on July 8, 2025, DHS issued an internal memorandum to all ICE employees stating that DHS was changing its approach to how it treated foreign nationals "alleged to be present in the country without admission and who would have previously been detained by DHS under 8 U.S.C. § 1226 and offered a bond hearing unless subject to criminal detention[.]" *Ortiz Donis*, 2025 WL 2879514, at *1. The memo stated that DHS would now categorize any such foreign national as "an 'applicant for admission' and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)," regardless of whether the foreign national was detained at a port of entry. Doc. 15-3.

41. ICE has adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not §1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Diaz Martinez v. Hyde, et al.*, No. CV 25-11613-BEM, 2025 WL 204238, at *2–3 (D. Mass. July 24, 2025).

42. On September 5, 2025, the BIA issued its *Yajure Hurtado* opinion. In *Yajure*

Hurtado, the BIA held that IJs lack jurisdiction to hear bond requests of noncitizens who are present in the United States without inspection and admission because those individuals are properly classified under 8 U.S.C. § 1225(b)(2), subject to mandatory detention, and ineligible for a bond hearing. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (BIA 2025). As a result of these shifts in interpretation of § 1225, Petitioner has been detained despite his long-term presence in the United States.

43. However, after *Yajure Hurtado* the Board of Immigration Appeals issued a published decision in *Matter of Akhmedov* 29 I&N 29 I&N Dec. 166 (BIA 2025). While the issue in the instant petition is not the main holding in the case as it does not deal with the jurisdictional argument, the BIA noted in that case that the respondent's custody determination is governed by the provisions of section 1226(a), even though he entered unlawfully. *Id.*

44. This new interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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

46. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that

absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

47. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

48. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

49. Furthermore, the BIA's decision in *Yajure Hurtado* "conflicts with the implementing regulation for § 1225(b)" by adopting a more expansive interpretation of § 1225(b) than the regulation. *Ortiz Donis,* 2025 WL 2879514, at *8; *Martinez,* 2025 WL 2084238, at *6. "The BIA's novel interpretation that any alien present in the United States is 'seeking admission' distorts the plain meaning of the statute." J.A.M., 2025 WL 3050094, at *4. *Yajure Hurtado* also ignores § 1226 and fundamental canons of statutory interpretation that require consideration of the relevant context within which the statute exists. *Merino v. Ripa*, No. 25-23845-CIV, 2025 WL 2941609 (S.D. Fla. Oct. 15, 2025). Dozens of district court decisions have rejected the BIA's expansive interpretation of §1225(b) in *Yajure Hurtado*, and their analyses are persuasive. *See, e.g., Garcia v. Noem, et. al.*, No. 1:25-CV-

1271, 2025 WL 3017200, at *4 (W.D. Mich. Oct. 29, 2025); *Diaz v. Olson*, et. al., No. 25 CV 12141, 2025 WL 3022170, at *5 (N.D. Ill. Oct. 29, 2025); *Rodriguez v. Noem*, et. al., No. 1:25-CV-1196, 2025 WL 3022212, at *6 (W.D. Mich. Oct. 29, 2025); *Puga,* 2025 WL 2938369; *Lopez-Campos*, 2025 WL 2496379, at *8; *see also Rodriguez,* 779 F. Supp. 3d at 1256–61; *Singh v. Lewis,* No. 4:25-cv-96, 2025 WL 2699219, at *3–5 (W.D. Ky. Sept. 22, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337, 2025 WL 2691828, at *7–12 (W.D. Tex. Sept. 22, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-1774, 2025 WL 2694763, at *2–5 (S.D. Ind. Sept. 22, 2025); *Hasan v. Crawford*, No. 1:25-cv-1408, 2025 WL 2682255, at *5–9 (E.D. Va. Sept. 19, 2025); *Garcia Cortes v. Noem*, No. 1:25-cv-2677-CNS, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093, 2025 WL 2472136, at *2–4 (W.D. La. Aug. 27, 2025); *Romero*, 2025 WL 2403827, at *8–13 (D. Mass. Aug. 19, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142, 2025 WL 2374411, at *9–16 (D. Minn. Aug. 15, 2025); *dos Santos v. Noem*, No. 1:25-cv-12052, 2025 WL 2370988, at *6–9 (D. Mass. Aug. 14, 2025); *Lopez Benitez*, 2025 WL 2371588, at *3–9; *Rosado*, 2025 WL 2337099, at *6–11, report and recommendation adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Gomes*, 2025 WL 1869299, at *6–8.

50. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like the Petitioners, who have already entered and were residing in the United States at the time they were apprehended.

DUE PROCESS VIOLATIONS

51. Petitioner's detention violates due process. Petitioner has a cognizable private interest in being freed from continual—possibly illegal—detention; there is a severe risk of erroneous deprivation.

52. Prior to 2001, detainees subject to discretionary detention under 8 U.S.C. § 1226(a) who were then granted bond by an immigration judge remained detained only if the BIA granted a request to stay the bond order. 8 C.F.R. § 3.19(i)(2) (1998) (permitting the use of automatic stays only where the noncitizen was subject to a mandatory detention statute).

53. In response to the terrorist attacks of September 11, 2001 the Immigration and Naturalization Service (INS) (now DHS) implemented an interim rule to expand its authority to issue automatic stays to prevent the effectuation of immigration judges' custody decisions pending their appeal. *See Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909, 54910 (Oct. 31, 2001).

54. Although INS was previously required to seek an emergency stay from the BIA to prevent the immigration judge's order for release on bond, the new rule allowed the INS to unilaterally invoke an emergency stay at its own discretion to prevent the detainee's release. *Id.* Notes in the Federal Register explained that this revision would "allow the Service to maintain the status quo while it seeks review by the Board, and thereby avoid the necessity for a case-by- case determination of whether a stay should be granted[.]" *Id.* The INS emphasized that the stay was "a limited measure," to be used only "where the Service determines that it is necessary to invoke the special stay procedure pending appeal." *Id.*

55. The new rule raised due process concerns from its inception. Comments to the rule expressed strong opposition arguing that it violated the Fifth Amendment's Due Process Clause. *Id.*

56. A former INS General Counsel testified about his concerns regarding the agency's use of automatic stays because it was being used routinely and without careful calculation by the agencies of the merits of each bond case and in cases that involved

nonviolent offenders. *See David A. Martin, Preventive Detention: Immigration Law Lessons for the Enemy Combatant Debate, Testimony Before the National Commission on Terrorist Attacks Upon the United States, December 8, 2003*, 18 Geo. Immigr. L.J. 305 (2004).

57. Federal courts during that period of time following the 9/11 attacks concluded that the automatic stay provisions violated the due process rights of detainees. *Ashley v. Ridge*, 288 F. Supp. 2d 662, 673 (D.N.J. 2003) (finding that continued detention on the automatic stay despite the IJ's decision to grant bond violated procedural and substantive due process rights); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446 (D. Conn. 2003) (finding the government goal of preventing the release of noncitizens posing a threat to national security was not served by the petitioner's ongoing detention and was outweighed by the petitioner's Fifth Amendment right to be free from detention); *See,e.g., Zabadi v. Chertoff*, No. 05-CV-1796 (WHA), 2005 WL1514122 (N.D. Cal. June 17, 2005) (finding the automatic stay provision unconstitutional); *Zavala v. Ridge*, 310 F. Supp. 2d 1071 (N.D. Cal. 2004) (same); *Uritsky v. Ridge*, 286 F. Supp. 2d 842 (E.D. Mich.
2003).

58. In 2006, the EOIR promulgated the final rule with some notable changes. *See Executive Office for Immigration Review; Review of Custody Determination*, 71 Fed. Reg. 57873 (Oct. 2, 2006). The final rule added the requirement that any decision to invoke the automatic stay must be made by the Secretary of DHS and a senior legal official who must certify that sufficient factual and legal bases exist to justify continued detention. *Id.* at 57876. The rule also imposed some limitations by providing that the stay will lapse 90 days after filing the bond appeal unless DHS sought a discretionary stay. 8 C.F.R. § 1003.6(c)(2006).

59. The automatic stay regulation is a very rare and somewhat exceptional action

in the first place. *See Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909 (Oct. 31, 2001) (describing the automatic stay as a "limited measure"); *See also* Stacy L. Brustin, *A Civil Shame: The Failure to Protect Due Process in Discretionary Immigration Custody & Bond Redetermination Hearings*, 88 Brook. L. Rev. 163, 225 n.231 (2022) (providing data yielded from a DHS FOIA request showing considerable variance but revealing that, on average, DHS invoked an automatic stay twenty-six times per year over the last seven years). In fact, counsel has never seen it invoked in her 29 years of immigration practice.

60. The Constitution guarantees every person in the United States due process of law, including persons who are not United States citizens. *E.g., Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) ("The Supreme Court has long recognized that deportable aliens are entitled to constitutional protections of due process." (*citing Yamataya v. Fisher*, 189 U.S. 86, 100–01, 23 S.Ct. 611, 47 L.Ed. 721 (1903))); *see also, e.g., Trump v. J.G.G.*, 604 U. S. ——, ——, 145 S. Ct. 1003, 1006, —— L.Ed.2d —— (2025) (*per curiam*) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993))); *Zadvydas v. Davis*, 533 U.S. 678, 695, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) ("[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

61. To determine whether a civil detention violates a detainee's due process rights, courts apply a three-part test set forth in *Mathews v. Eldridge,* 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, "when considering due process challenges to

[discretionary noncitizen detention] other circuits ... have applied the Mathews test").

62. Under *Mathews*, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.

63. The private interest in this case is significant; being free from physical detention. The Supreme Court has found this to be "the most elemental of liberty interests." *Hamdi v. Runsfeld*, 542 U.S. 507 at 529, 531, 124 S.Ct. 2633 (directing courts, when assessing the first Mathews factor, to consider only the petitioner's interests at stake in ongoing detention without consideration of the respondents' justifications for the detention (quotation omitted)); *see also Zadvydas v. Davis,533 U.S. 678, 690* (advising that an individual's interest in being free from detention "lies at the heart of the liberty that [the Due Process] Clause protects").

64. The petitioner is being held at the Nevada Southern Detention Center and experiencing the loss of contact with family and friends, loss of income and inability to provide for his family, lack of privacy and lack of freedom. He is not held in his home state of Utah where at least he could be visited regularly by family members.

65. The second *Mathews* factor is whether the challenged procedure creates a risk of erroneous deprivation of individual rights and whether there are alternative procedures that could ameliorate these risks. In these cases, the risk of deprivation is very high because the petitioners and any other adversely affected individuals by the automatic

stay are those who have already prevailed in a bond hearing before an immigration judge. The challenged regulation permits an agency official who is involved in the adversarial process and the non-prevailing party to unilaterally override the immigration judge's decision. This represents a conflict of interest disapproved by courts in other contexts. *See, e.g.*, 5 U.S.C. § 554(d)(2) (prohibiting agency employees engaged in prosecuting functions from participating in the adjudicatory decision); *Marcello v. Bonds*, 349 U.S. 302, 305–06 (1955) (holding that the special inquiry officer adjudicating over an immigration case cannot also undertake the functions of prosecutor in the same matter).

66. Other courts have agreed that a rule permitting a non-prevailing party to stay a judgment permitting release creates a risk of erroneous deprivation. *See e.g., Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025); *Zavala v. Ridge*, 310 F. Supp. 2d 1071, at 1078 (N.D. Cal. 2004) (noting that the automatic stay procedure "creates a potential for error because it conflates the functions of adjudicator and prosecutor"); *Ashley*, 288 F. Supp. 2d at 671 (concluding that the regulation creates a "patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified" (quotation omitted)).; *Mohammed H. v. Trump*, --- F.Supp.3d (2025) 2025 WL 1692739 (noncitizen's Fifth Amendment right to due process was violated by government's invocation of automatic-stay provision of immigration regulations to keep noncitizen in custody despite an immigration judge's (IJ) order that he be released on bond).

67. Further, the risk of erroneous deprivation of rights is increased because the automatic stay regulation does not require an agency official to consider the facts of the case or make any case-by-case determinations. As noted above, the procedure additionally creates a

potential for error because it conflates the functions of adjudicator and prosecutor. *See Marcello v. Bonds*, 349 U.S. 302, 305-06 75 S.Ct. 757 (1955); *see also Ashley v. Ridge*, 288 F.Supp.2d at 662, 671 (It produces a patently unfair situation by taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversarial hearing that detention is justified.) In these cases, the same prosecutor who lost before the immigration judge in the bond hearing effectively overruled his decision as the adjudicator by invoking the automatic stay.

68. When considering a bond redetermination request and immigration judge must consider whether the applicant is a danger to society, a threat to national security or poses a flight risk. 8 U.S.C. § 1226(a) (2018); *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *see also Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112 (BIA 1999); 8 C.F.R. § 1236.1(c)(8). The immigration judge determined it lacked jurisdiction in the case of Mr. Marquez before the analysis could be made. Given the immigration court's decisions on bond redeterminations throughout the country, it would be futile for Mr. Plancarte to request a bond redetermination.

69. The automatic stay does not include any standards for the agency official to satisfy and operates as an appeal of right rather than being an extraordinary remedy. The official need not introduce any proof, and it can effectively overrule the bond decision and keep the petitioner detained indefinitely. In so doing, the automatic stay rendered the continued detention, arbitrary and gave the petitioner's no chance to contest the case for detention even though they had prevailed at the bond hearing before the immigration judge. *Mathews*, 424 U.S. at 348–49, 96 S.Ct. 893 ("The essence of due process is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him and

opportunity to meet it.") Invoking the automatic stay as the Government did here contorts § 1003.19(i)(2) into an unfair procedure. *Cf. Bridges*, 326 U.S. 135, 152–53, 65 S.Ct. 1443 (administrative rules are designed to afford due process and to serve as "safeguards against essentially unfair procedures").

70. Moreover, a stay of an order directing the release of a detained individual is an "especially" extraordinary step, because "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987). This is contrary to any other stay while on appeal or a stay of a court order in any other context where the party must make a strong showing that they are likely to ultimately prevail and address the risk of irreparable injury and the balance of interests in order to obtain a stay. *Nken v. Holder*, 556 U.S. 418, 434 (2009). No such requirements apply to the automatic stay regulation.

71. The regulation provides alternative procedural safeguards. Section 1003.19(i)(1) sets forth a procedure by which DHS may request an emergency stay of the immigration judge's custody determination from the BIA. The BIA then conducts an expedited preliminary review to determine whether a stay is warranted based on the individual circumstances and merits of the case. This process ameliorates the due process issues of § 1003.19(i) (2) while preserving the government's interest in preventing an erroneous release. *See Zavala*, 310 F. Supp. 2d at 1077 (concluding that 8 C.F.R. § 1003.19(i)(1) provides "an appropriate and less restrictive means whereby the government's interest in seeking a stay of the custody redetermination may be protected without unduly infringing upon Petitioner's liberty interest"); see also *Bezmen*, 245 F. Supp. 2d at 451; *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154 (D.

Minn. May 21, 2025) (reaching same conclusion).

72. In the third step of the *Mathews* test, the court must weigh the private interests at stake and the risk of erroneous deprivation against the government's interest in persisting with the regulation, including the fiscal and administrative burdens of a substitute procedural requirement. Given that the petitioners satisfy all the requirements for release on bond, it is difficult to see any legitimate purpose for continued detention. The process by which an immigration judge issues a bond redetermination accounts for the government's safety and flight concerns.

73. If the purpose of the detention is not to facilitate deportation, protect against the risk of flight or danger to the community, then it must be solely for the purpose of incarceration and in this administration, motivated largely by politics.

74. Any government interest can be addressed by the regulation which provides a process to request a stay from the BIA pending appeal of the immigration judge's bond decision. 8 C.F.R. § 1003.19(i)(1). The government can do this in any case in which it believes that the IJ's decision was erroneous.

75. In this case, Mr. Alvear did not request a bond redetermination hearing because such a request would be futile given the immigration court's decisions on all bond determination requests throughout the country.

FACTS

76. Petitioner Alvear has resided in the U.S. without departure since 2023, and was residing in Utah before detention in Las Vegas, Nevada.

77. Mr. Alvear is a 28-year-old non-citizen who has resided in the U.S. since 2023 under an Order of Supervision. He was detained by ICE on his way to work and

transported to Nevada detention facility He is neither a flight risk nor a danger to the community.

72. ICE placed Mr. Alvear in removal proceedings pursuant to 8 U.S.C. § 1229a and charged him with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. Mr. Alvear has not filed a bond redetermination request because it would be futile given the Board of Immigration Appeals decision in *Matter of Yajure Hurtado.*

73. Petitioner has a pending I-589 Application for Asylum, Withholding of Removal and Protection pursuant to Convention Against Torture.

74. Any bond redetermination request to the Immigration Judge and appeal to the BIA is futile. DHS's new policy was issued "in coordination with DOJ," which oversees the immigration courts. Further, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission.2 Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

CLAIMS FOR

RELIEF <u>COUNT I</u>

Violation of the INA

75. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

76. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to

all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

77. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II

Violation of Due Process

78. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

79. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

80. The Ninth Circuit has held that "[r]emaining confined in jail when one should otherwise befree is an Article III injury plain and simple[.]" *Gonzalez v. United States Immigr. & Customs Enf't,* 975 F.3d788, 804 (9th Cir. 2020) (*quoting Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014)).

81. Petitioner has a fundamental interest in liberty and being free from official restraint.

82. The government's continued detention of Petitioner violates his right to

procedural due process as applied to this case.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief. Petitioner respectfully requests expedited consideration of this Petition due to the ongoing deprivation of liberty and irreparable harm: :

(1) **Grant the Petition for Writ of Habeas Corpus** and, pursuant to its authority under 28 U.S.C. § 2243, order Respondents to **immediately and unconditionally release** Petitioner from custody, because his detention is unlawful *ab initio* under both 8 U.S.C. § 1225 (misclassification as an "arriving alien") and 8 U.S.C. § 1226(a) (failure to obtain the statutorily required warrant for an interior arrest), and rests solely on agency actions that are contrary to the INA, ultra vires, arbitrary and capricious, and adopted and applied in violation of the Accardi doctrine, as set forth in the APA/Accardi claim.

(2) **Order** that Petitioner be released under his current Order of Release on Recognizance (or previous one unlawfully revoked) and not be taken into ICE custody absent full compliance with statutory and regulatory due process protections.

(3) **Enjoin** Respondents from re-detaining Petitioner or revoking his Order of Release on Recognizance absent strict compliance with all governing regulations, including a showing of specific, individualized changed circumstances making his removal significantly likely in the reasonably foreseeable future, supported by a written decision from a duly authorized official;

(4) **In the alternative**, should the Court decline to order immediate unconditional release, issue an order directing Respondents to provide Petitioner with a bond hearing

before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) and its implementing regulations at 8 C.F.R. §§ 236.1 and 1236.1 within forty-eight (48) hours of the Court's order, and further specifying that at any such hearing: (a) the **government bears the burden** of proving that Petitioner is either a flight risk or a danger to the community; and (b) the government must satisfy that burden by **clear and convincing evidence**, consistent with *J.G. v. Warden, Irwin Cty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341 (M.D. Ga. 2020), which followed circuit precedent adopting this standard in the immigration bond context (including *Singh* and *Lopez*), in order to prevent the recurring problem of perfunctory bond denials based on unsupported assertions of risk rather than actual evidence;

(5) **Enjoining Respondents**, upon Petitioner's release, from subjecting Petitioner to any form of electronic monitoring, GPS ankle bracelet, ISAP enrollment, or other alternative-to-detention program that functions as a custody-like restraint, absent prior leave of this Court. Respondents shall be prohibited from imposing such conditions unless, at least five (5) days in advance, they file notice with this Court and demonstrate—based on a new, particularized assessment of significantly changed circumstances and a concrete, evidence-based showing of flight risk or danger—that such conditions are necessary, and the Court expressly authorizes them pursuant to its authority under 28 U.S.C. § 2243 to dispose of the matter as law and justice require.

(6) **Issue an Order to Show Cause** directing Respondents to file a return within three (3) days, pursuant to 28 U.S.C. § 2243, justifying in fact and law why the writ should not be granted;

(7) **ENJOIN** Respondents from re-detaining Petitioner in the future under 8 U.S.C. §

1225 or the DHS policy vacated by the *Maldonado Bautista* court;

(8) **Award** Petitioner reasonable attorney's fees and costs; and

(9) **Grant** such other and further relief as this Court deems just, proper or equitable under the circumstances.

RESPECTFULLY SUBMITTED this 20th day of February, 2026.

FILLMORE SPENCER LLC

/s/ T Laura Lui
Attorneys for Petitioner

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with Petitioner's family members and have reviewed various documents for Petitioner. On the basis of those discussions, I hereby verify that I have reviewed the foregoing Petition and that the facts and statements made in this Petition and Complaint are true and correct to the best of my knowledge or belief pursuant to 28 USC § 2242.

DATED: This 20th Day of February, 2026.

/s/ T Laura Lui

Laura Lui (NV Bar 5535)
FILLMORE SPENCER LLC
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Reno, NV 89523
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Exhibit 1 – Letter from United States citizen wife

From: Savanna Stubbs
To: Laura Lui
Subject: My Letter for Jose Alvear Carcamo
Date: Tuesday, February 17, 2026 1:34:12 PM

My name is Savanna Alvear, I'm writing in regards to what happened 08/25/25. That evening I had been drinking, my husband and I had a disagreement and he was trying to talk to me about the situation. He followed me into the kitchen and I got very upset about him following me and wanting to talk to me. I began to yell at him and he laughed at me so I hit him with my skateboard. One of my friends that I was on the phone with called the police. When I talked to the police I told them that he hit me because I was mad at him and I was drunk. They cited both of us with domestic violence and I left the house because they put a no contact order in place.

Since this incident happened Jose and I have grown a lot in our relationship. We have learned to communicate more effectively and we have been able to talk about things. Our family has since then started going to church and become a part of the church family by getting more involved. As a whole we spend a lot more time together as a family. My husband has agreed to stop working long hours away from home so that we can do more family oriented activities. We have stopped drinking entirely and spend our weekends barbecuing and visiting family instead.

My husband is the soul provider for our family, and in that I mean financially, emotionally and by being here with his family. I have a little girl and he has always provided love for her that she has never known from a father figure. He has stepped up and become an amazing part of her growth and stability.

Thank you for taking the time to read my letter and I ask that the prosecutors for my husbands case would consider dropping any charges all together.

Savanna Alvear
[redacted]
savannastubbs8@gmail.com