UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IZZEDDIN AHMED ABDULGHAFFAR DAGHRA,

Petitioner,

v.

KEVIN RAYCRAFT, Acting Field Office Director, Detroit Field Office, Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; TODD BLANCHE, Acting U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.
_____________________________________/

Case No. 1:26-cv-01429

Hon. Hala Y. Jarbou
Chief District Judge

Hon. Maarten Vermaat
U.S. Magistrate Judge

## RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

## INTRODUCTION

Petitioner is a noncitizen who was not lawfully admitted to the United States and has no lawful immigration status. He asks this Court to invalidate U.S. Department of Homeland Security's (DHS) automatic stay of an Immigration Judge's (IJ) bond order and to order his immediate release from custody. That request exceeds this Court's jurisdiction. Congress has expressly foreclosed judicial review of discretionary immigration custody determinations and has channeled challenges to bond procedures through the administrative immigration system. See 8 U.S.C. § 1226(e). The automatic stay is a regulatory component of that custody framework, and any attempt to override it would require this Court to second-guess an ongoing administrative bond determination—precisely the type of review Congress has prohibited. Because Petitioner's claim seeks relief that this Court lacks statutory authority to grant, it must be dismissed for lack of jurisdiction. Finally, only a detainee's immediate custodian—the acting Detroit ICE Field Office Director—is the proper respondent in this habeas case and Secretary Noem and Attorney General Bondi should be dismissed.

Accordingly, the Court should decline to issue a writ of habeas corpus to Petitioner.

## FACTUAL BACKGROUND

Petitioner is a citizen of Palestine. He was admitted into the United States on December 24, 2024, pursuant to a B2 nonimmigrant visa, which expired on June 23, 2025. (I-94, PageID.18.) Immigration officials encountered Petitioner on January 14, 2026, when Petitioner traveled to the border with Canda. (Notice to Appear, PageID.20-22.) He was issued a Notice to Appear under 8 U.S.C. § 1182(a)(1)(B), as an alien admitted to the United States, but removable because he remained in the United States beyond June 23, 2025, without authorization from DHS. (*Id.*)

Petitioner requested and received a bond determination custody hearing. (Pet., PageID.2.) On February 11, 2026, an immigration judge granted Petitioner bond of $35,000. (*Id.*; Bond Order, PageID.24-27.) The Department of Homeland Security (DHS) filed a Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge. (Notice of Appeal, PageID.29-36.) As part of the notice of appeal, DHS invoked the automatic stay provision before the immigration court. (*Id.* at PageID.30.)

Petitioner is currently detained at the Calhoun Country Jail in Battle Creek, Michigan.

Petitioner filed a petition in federal court seeking a writ of habeas corpus asking the Court to order Respondents to release Petitioner.

## STATUTORY FRAMEWORK

### I. The Pre-IIRIRA Framework Gave Preferential Treatment to Aliens Unlawfully Present in the United States.

The Immigration and Nationality Act (INA), as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the government is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA "provided for two types of removal proceedings: deportation hearing and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). An alien who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Hurtado*, 29 I. & N. Dec. at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, an alien who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Aliens in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)).

The INA's prior framework distinguishing between aliens based on physical "entry" had

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection . . . were subject to mandatory custody.

*Hurtado*, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v . Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

## II. IIRARA Eliminated the Preferential Treatment of Aliens Unlawfully Present in the United States and Mandated Detention of all "Applicants for Admission."

Congress discarded the prior regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, the statute had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc).

To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum v. Holder*, 602 F.3d at 1100 (similar). IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into "removal proceedings." *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified 8 U.S.C. § 1225:

**Section 1225(a):** Section 1225(a) codifies Congress's decision to make lawful "admission," rather than physical entry, the touchstone. That provision states that an alien "present in the United States who has not been admitted or who arrives in the United States" "shall be deemed . . . an applicant 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.

8 U.S.C. § 1225(a)(1) (emphasis added). "All aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" are required to "be inspected by [an] immigration officer." *Id.* § 1225(a)(3). The inspection by the immigration officer is designed to determine whether the alien may be lawfully "admitted" to the country or, instead, must be referred to removal proceedings.

**Section 1225(b):** IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited "Section 240" proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for so-called "expedited removal proceedings." *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020). Expedited removal proceedings potentially can be applied to a subset of aliens—those who (1) are "arriving in the United States," or who (2) have "not been admitted or paroled into the United States" and have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). As to these aliens, the immigration officer shall "order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." *Id.* § 1225(b)(1)(A)(i). In that event, the alien "shall be detained pending a final determination of credible fear or persecution and, if found not to have such fear, until removed." *Id.* § 1225(b)(1)(B)(iii)(IV); *see also* 8 C.F.R. § 235.5(b)(4)(ii). An alien processed for expedited removal who does not indicate an intent to apply for a form of relief from removal is likewise detained until removed. 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV); *see* 8 C.F.R. § 235.3(b)(2)(iii).

Section 1225(b)(2) is a "catchall provision that applies to all applicants for admission not covered by" subsection (b)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending § 240 removal proceedings:

> 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 [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring § 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that § 1225(b)(2) "mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin").

While § 1225(b)(2) does not allow for aliens to be released on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). Parole, however, "shall not be regarded as admission of the alien." *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that "the purposes of such parole . . . been served," the "alien shall . . . be returned to the custody from which he was paroled" and be "dealt with in the same manner as that of any other applicant for admission to the United States." 8 U.S.C. § 1182(d)(5)(A).

**Section 1226:** IIRIRA also created a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of aliens who, for example, lawfully enter the country but overstay or otherwise violate the terms of their visas, or are later determined to have been improperly admitted. The statute provides that "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General "may" either "continue to detain the arrested alien" or release the alien on bond or conditional parole. *Id.* § 1226(a)(1)-(2).

That "default rule," however, does not apply to certain criminal aliens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c). Section 1226(c) provides that "[t]he Attorney General shall take into custody" certain classes of criminal aliens—those who are inadmissible or deportable because the alien (1) "committed" certain offenses delineated in 8 U.S.C. §§ 1182 and 1227; or (2) engaged in terrorism-related activities. 8 U.S.C. § 1226(c)(1). The government must detain these aliens "when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned against for the same offense." *Id.*

Congress recently amended § 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are "charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of" certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

For many years after Congress enacted IIRIRA, immigration judges treated aliens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6.

However, on September 5, 2025, the Board of Immigration Appeals issued a published decision in *Hurtado*. The Board concluded that § 1225(b)(2)'s mandatory detention regime applies to *all* aliens who entered the United States without inspection and admission:

> Aliens . . . who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United State for a lengthy period of time following entry without inspection, by itself, does not constitute an "admission."

29 I. & N. Dec. at 228; *see also id.* at 225 ("Immigration Judges lack authority to hear bond requests or to grant bond to aliens . . . who are present in the United States without admission").

## ARGUMENT

### I. This Court Lacks jurisdiction to review or overturn the automatic stay in immigration court and order his release from detention.

Congress has unequivocally barred judicial review of discretionary immigration custody decisions. Section 1226(e) provides that "[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review." 8 U.S.C. § 1226(e). Federal courts, therefore, may not review the merits of bond determinations, including findings regarding flight risk or danger to the community. *See Patel v. Garland*, 596 U.S. 328, 333 (2022) (Federal courts lack jurisdiction to review facts found as part of any judgment relating to the granting of discretionary relief in immigration proceedings under 8 U.S.C. § 1252(a)(2)(B)(i)); *Martinez v.*

*Clark*, 2022 WL 17934177 (9th Cir. Dec. 15, 2022) (holding that federal courts are without jurisdiction to review a "discretionary judgment regarding" the decision to detain or release an alien under INA § 1226(e), emphasized that discretionary custody decisions — such as those about detention or bond — are barred from review because they involve subjective judgments of immigration officials that courts cannot second guess); *Monroy Villalta v. Greene*, --- F. Supp. 3d ---, 2025 WL 2472886, at *2 (N.D. Ohio Aug. 5, 2025). Similarly, in *Ly v. Hansen*, the court explained that while habeas may lie to test the statutory authority to detain, it does not authorize review of discretionary decisions denying bond. 351 F.3d 263, 268–69 (6th Cir. 2003). More recently, the Sixth Circuit has reiterated that § 1226(e) bars challenges that "ask the court to reweigh the evidence underlying a bond decision or second-guess the Immigration Judge's discretionary judgment." *See Taylor v. Hott*, 724 F. App'x 387, 392 (6th Cir. 2018) (district court lacked jurisdiction to review IJ's bond denial where petitioner challenged flight-risk determination); accord *Prieto-Romero v. Clark*, 534 F.3d 1053, 1058–59 (9th Cir. 2008) (distinguishing permissible challenges to detention authority from impermissible challenges to discretionary bond decisions).

Although Petitioner styles the claim as a constitutional challenge to the automatic stay regulation, the relief sought—immediate release notwithstanding DHS's appeal—would require this Court to second-guess the operation of the bond framework and override an ongoing administrative custody determination. Courts consistently reject such attempts to recast bond disputes as constitutional claims in order to obtain habeas review. See, e.g., *Jennings v. Rodriguez*, 583 U.S. 281, 301–02 (2018) (Section 1226(e) bars review of discretionary custody determinations, even when framed as legal challenges). Because Petitioner's claim directly implicates the mechanics of bond and continued detention, it falls squarely within the jurisdictional bar of § 1226(e).

**II. The proper avenue for challenging a bond denial is administrative appeal, not collateral review.**

Even if jurisdiction were not barred, the claim is independently foreclosed by Petitioner's failure to exhaust administrative remedies. Congress established a comprehensive administrative scheme for reviewing custody determinations, including appeal to the Board of Immigration Appeals. See 8 C.F.R. §§ 1003.1(b), 1236.1(d). Federal district courts are not an alternative forum for dissatisfied bond applicants.

Here, DHS appealed the IJ's bond decision pursuant to 8 C.F.R. § 1003.19(i)(20, triggering an automatic stay. The appropriate remedy for Petitioner is to seek relief from the BIA—by opposing the appeal, requesting expedited consideration, or seeking interim relief—not to bypass the administrative process through habeas. See *Theodoropoulos v. INS*, 358 F.3d 162, 171 (2d Cir. 2004) (exhaustion required where agency provides an adequate mechanism for relief). Because the BIA has not yet completed its review, Petitioner's claim is premature.

**III. This is not a cognizable habeas claim.**

Habeas jurisdiction exists only for challenges to the fact or duration of detention that cannot be addressed through the immigration courts. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner does not allege indefinite or unreasonably prolonged detention. Rather, Petitioner challenges the validity of a regulation governing custody during an ongoing administrative appeal. Such a claim is not a true habeas claim. It is a procedural objection to the bond system itself—precisely the type of claim that must be resolved within the administrative scheme Congress created. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1062 (9th Cir. 2008) (detention pending administrative immigration appeals is lawful and reviewable through agency process).

## IV. The automatic stay of the IJ's bond order does not violate due process.

The Fifth Amendment's Due Process Clause protects against the deprivation of life, liberty, or property "without due process of law." U.S. const. amend. V. That includes freedom from government detention unless "adequate procedural protections" are applied. *Zadvydas*, 533 U.S. at 690.

In the immigration context, the Supreme Court has held that the process due under the constitution is coextensive with the removal procedures provided by Congress. *Thuraissigiam*, 591 U.S. at 138-40. It has confirmed that statutory provisions denying bond during administrative removal proceedings do not violate the due process clause. *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process."). And it has held that even after a noncitizen is ordered removed, detention for up to six months is presumptively valid under the due process clause. *Zadvydas*, 533 U.S. at 701.

Petitioner's claim that DHS's automatic stay of the Immigration Judge's bond order violates due process fails as a matter of law. The governing regulation, 8 C.F.R. § 1003.19(i)(2), expressly provides that when DHS appeals a bond decision, "the appeal shall stay the Immigration Judge's order." This regulatory framework is constitutionally permissible and consistent with longstanding principles governing civil immigration detention. In a similar habeas case, this court found that the automatic stay provision did not violate petitioner's due process rights. Order, *Gill v. Raycraft*, No. 1:26-cv-184 (April 7, 2026), PageID.58.

First, due process requires only that a noncitizen receive notice and a meaningful opportunity to be heard, not immediate release. Here, Petitioner received a full bond hearing before an Immigration Judge, including the opportunity to present evidence and argument. That hearing satisfies the core procedural protections required by the Fifth Amendment. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

Second, continued detention pending administrative appeal is constitutionally permissible. Civil detention in the immigration context does not violate due process so long as it is reasonably related to legitimate governmental objectives, including ensuring appearance at proceedings and protecting the community. *Demore v. Kim*, 538 U.S. 510, 531 (2003). Detention during DHS's appeal is temporary and tethered to a defined appellate process before the Board of Immigration Appeals, which itself constitutes an additional procedural safeguard.

Third, Petitioner has no constitutional right to release while the government exercises its statutory and regulatory right to appellate review. Courts have consistently upheld detention during administrative review as consistent with due process. *See Prieto-Romero*, 534 F.3d at 1062–63 (detention pending immigration appeals does not violate due process.

Finally, the automatic stay does not result in indefinite detention. The stay remains in effect only while the BIA adjudicates DHS's appeal, and the BIA has authority to affirm, reverse, or modify the bond determination. Absent extraordinary or unjustified delay—which is not alleged here—detention during this limited appellate period is constitutionally reasonable.

Because Petitioner received a full bond hearing, because detention pending administrative appeal serves legitimate governmental interests, and because there is no constitutional right to immediate release upon an IJ's bond grant, the DHS automatic stay does not violate due process.

## V. The Detroit ICE Field Office Director is the only proper respondent.

A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Except in extraordinary circumstances, the only proper respondent in a habeas corpus case is the detainee's immediate custodian. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). In the immigration context, that is the ICE Field Office Director. *Id.*

Here, the petition names the ICE Field Office Director, but also names Secretary Noem and Attorney General Bondi, who are not a proper respondents to this habeas action. *See Roman*, 340 F.3d at 322 (reasoning that "adopting a broader definition of 'custodian'" that encompasses any official with control over an alien's detention and release "would complicate and extend the duration of habeas corpus proceedings"). The acting Detroit ICE Field Office Director is the only proper respondent in this case and Secretary Noem and Attorney General Bondi should be dismissed.

## CONCLUSION

The government respondents respectfully request that the Court deny the petition for a writ of habeas corpus because Petitioner is not detained in violation of federal law or the Constitution.

Respectfully submitted,

TIMOTHY VERHEY
United States Attorney

Dated: May 7, 2026

/s/ Carolyn A. Almassian
CAROLYN A. ALMASSIAN (P63229)
Assistant United States Attorney
Post Office Box 208
Grand Rapids, Michigan 49501
(616) 456-2404
Carolyn.Almassian@usdoj.gov
Attorney for Federal Respondents