

PETITION FOR WRIT OF HABEAS CORPUS

Alicio Alves Da Cruz
ALIEN No. [REDACTED]
PETITIONER, PRO SE
CUSTODY STATUS: DETAINED

☒ FILED	☐ RECEIVED
☐ ENTERED	☐ SERVED ON
COUNSEL/PARTIES OF RECORD	
JUL 23 2025	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	<u>MAN</u> DEPUTY

Alicio Alves Da Cruz

Alien No. 

Nevada Southern Detention Center

2190 East Mesquite Avenue

Pahrump, Nevada 89060

2:25-cv-01340-JAD-EJY

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Alicio Alves Da Cruz,

) Case No.

-Petitioner, *Pro Se*,

) INS No. A 

v.

)

THE UNITED STATES OF AMERICA,

) Custody Status: **DETAINED**

Michael BERNACKE, in his Official Capacity,
Field Office Director, Salt Lake City Field Office,
U.S. Immigration and Customs Enforcement,

)

)

)

Patrick J. LECHLEITNER, in his Official Capacity,
Acting Director, Immigration & Customs Enforcement,

)

)

Kerri Ann QUIHUIS, in her Official Capacity,
ICE Field Office Director, Detention and Removal,
Las Vegas, Nevada (ICE Local)

) **Petition for Writ of Habeas**

) **Corpus Pursuant to**

) **28 U.S.C. § 2241**

Kristi NOEM, in her Official Capacity,
Secretary of the Department of Homeland Security

)

)

Pamela J. BONDI, in her Official Capacity,
Attorney General, Department of Justice,

)

)

-Respondents.

)

)

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

1 COMES NOW ALICIO ALVES DA CRUZ, as the Petitioner in this present matter,
2 appearing *Pro Se*, and hereby respectfully petitions this Honorable District Court for a Writ of
3 Habeas Corpus.

4 The Petition of Alicio Alves Da Cruz respectfully shows:

5 **INTRODUCTION**

- 6 1. Petitioner is currently being physically detained under the full custody of the
7 Department of Homeland Security, Immigration and Customs Enforcement
8 (“DHS/ICE”) at the Nevada Southern Detention Center (“NSDC”) in Pahrump,
9 Nevada. Petitioner entered the United States and sought asylum and CAT protection.
- 10 2. A Notice to Appear (“NTA”) was issued charging Petitioner with removability.
- 11 3. Petitioner sought relief in the form of Asylum, Withholding of Removal, Deferral of
12 removal and protection under Convention Against Torture (“CAT”). However, the
13 Immigration Judge (“IJ”) denied all forms of relief.
- 14 4. Currently, a Petition for Review was timely filed with the U.S. Court of Appeals for
15 the Ninth Circuit. That Petition for Review is still pending with the Court. *See* Ninth
16 Circuit Case No. 24-7301.
- 17 5. Petitioner has been detained in “DHS/ICE” custody for well-over one (“1”) year, about
18 twelve (“12”) months to the present day.
- 19 6. Petitioner requested a custody redetermination pursuant to 8 C.F.R. § 1236 where the
20 Immigration Court held a bond hearing in Las Vegas, Nevada and denied bond.
- 21 7. Interestingly, Petitioner’s bond proceeding case is meritorious as it presents a highly
22 likelihood of success on the merits because he has significant favorable factors.
23 However, the Honorable Immigration Judge lacked jurisdiction and denied bond.

1 8. As such, Petitioner was not afforded a fair bond hearing wherein the government must
2 establish by a constitutional, due process, standard of *clear and convincing* evidence
3 that Petitioner presents a risk of flight or danger to the community.

4 9. Petitioner therefore respectfully requests that this Court issue a Writ of Habeas Corpus,
5 and determine that Petitioner's indefinite detention is not justified because the
6 government has not established by *clear and convincing* evidence that Petitioner
7 presents a risk of flight or danger in light of reasonable available alternatives to
8 detention, and order Petitioner's release, with appropriate conditions of supervision if
9 necessary, taking into account Petitioner's ability to pay a bond.

10 10. In the alternative, Petitioner respectfully requests that this Court issue a Writ of Habeas
11 Corpus and order Petitioner's release within twenty ("20") days unless Respondent's
12 schedule a hearing before immigration judge where it has proper jurisdiction and
13 where: (1) to continue detention, the government must establish by *clear and*
14 *convincing* evidence that Petitioner present a risk of flight or public danger, even after
15 consideration of alternatives to detention that could mitigate any risk that Petitioner's
16 release would present; and (2) if the government cannot meet its heavy burden, the
17 immigration judge orders Petitioner's release on appropriate conditions of supervision,
18 taking into account Petitioner's ability to pay a reasonable bond.

19 **PARTIES**

20 11. Petitioner, Alicito Alves Da Cruz, is a native and citizen of Brazil. Petitioner came to
21 the United States and sought political asylum motivated by a well-founded fear of
22 persecution and torture. Petitioner has never departed the United States since his initial
23 and sole entry.

1 **12.** Respondent, UNITED STATES OF AMERICA, issued pursuant to 5 U.S.C. § 703, in
2 which the Administrative Procedures Act provides “[i]f no special statutory review
3 proceeding is applicable, the action for judicial review may be brought against the
4 United States, the agency by its official title, or the appropriate officer.”

5 **13.** Respondent, Michael BERNACKE is the Field Office Director responsible for the Salt
6 Lake City Field Office of ICE Enforcement and Removal Operations, which has
7 administrative jurisdiction over Petitioner’s case. He is a legal custodian of Mr. Alicio
8 Alves Da Cruz and is named in his official capacity.

9 **14.** Respondent, Patrick J. LECHLEITNER is Acting Director of ICE. As the head of ICE,
10 an agency within the U.S. Department of Homeland Security that detains and removes
11 certain noncitizens, Respondent LECHLEITNER is a legal custodian of Mr. Alicio
12 Alves Da Cruz. He is named in his official capacity.

13 **15.** Respondent Kristi NOEM is sued in her official capacity as the Secretary of the
14 Department of Homeland Security (herein after referred to as “DHS”). In her capacity
15 she has the responsibility for administration and enforcement of the immigration laws
16 pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. 296, 116
17 Stat. 2135 (Nov. 25, 2002). *See Armentero v. INS*, 340 F.3d 1058 (9th Cir. 2003).

18 **16.** Respondent Pamela J. BONDI is sued in her official capacity as the Attorney General
19 of the United States. She has responsibility for the administration and enforcement of
20 the immigration laws pursuant to 8 U.S.C. § 1103, and Immigration and Nationality
21 Act § 103. As the “INA” has not been amended to reflect the designation of the
22 Secretary of the DHS as the administrator and enforcer of the immigration laws.
23 Respondent Pamela J. BONDI is sued in her official capacity to the extent that 8 U.S.C.
24 § 1102 gives her the authority to detain Petitioner. *See Armentero v. INS*, *supra*.

1 17. Respondent Kerri Ann QUIHUIS is sued in her official capacity as ICE Field Office
2 Director, Detention and Removal, DHS at Las Vegas, Nevada (ICE Local), who is
3 responsible for the day to day operation of detaining and removing aliens in Las Vegas,
4 Nevada.

5 JURISDICTION

6 18. This action arises under the United States Constitution, the Immigration & Nationality
7 Act of 1952, as amended (herein after referred to as "INA") 8 U.S.C. § 1101 et. seq.,
8 and the Administrative Procedures Act (herein after referred to as "APA"), 5 U.S.C. §§
9 701 et. seq. This Court has Habeas Corpus jurisdiction pursuant to 28 U.S.C. §§ 2241
10 et. seq.; Article 1, Clause 2 of the United States Constitution (hereinafter referred to as
11 "Suspension Clause"); and the Common Law. This Court may also exercise jurisdiction
12 pursuant to 28 U.S.C. § 1331 and may grant relief pursuant to the Declaratory
13 Judgement Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. § 1651.

14 VENUE

15 19. Venue is proper with this Court pursuant to 28 U.S.C. § 1391(c) because the
16 Respondents are employees or officers of the United States, acting in their official
17 capacity, and an agency of the United States. Venue is additionally proper in this Court
18 because the Petitioner is detained in this District, and pursuant to *Braden v. 30th Judicial*
19 *Circuit Court of Kentucky*, 410 U.S. 484, 493-500(1973). Also, a substantial part of the
20 events giving rise to the claims in this action took place within this District.

21 STATEMENT OF THE FACTS

22 20. Petitioner, Mr. Alicia Alves Da Cruz, is a native, citizen and national of Brazil and has
23 been in physical detention for about a year without a bond hearing where the burden is
24 on the Department ("DHS") and the Immigration Judge holds proper jurisdiction.

1 21. Petitioner entered the United States and during removal proceedings he pursued
2 political asylum and protection from Brazil due to the worsening country and political
3 conditions. Petitioner seeks to remain in the United States in a lawful manner.

4 22. Petitioner submitted a motion for a bond hearing which resulted in the Immigration
5 Court denying bond on the sole basis that it lacked jurisdiction.

6 **CRIMINAL HISTORY**

7 23. In this special case, Petitioner does not have an extensive or violent criminal history,
8 or anything close to relevant here in the United States. In Brazil, Petitioner is being
9 accused of alleged crimes, which he did not commit. Petitioner is a responsible family
10 man without any involvement in any illegal activity.

11 24. Importantly, Petitioner does not exhibit any history of violent behavior or violent
12 criminal history. Conversely, he has demonstrated excellent behavior while detained
13 and does not have any disciplinary actions against him.

14 25. Additionally, Petitioner has shown commendable willingness to reintegrate to day-to-
15 day society once released. It is important to stress out that Petitioner lacks criminal
16 convictions of any aggravating felonies in the United States.

17 26. The following positive factors are also important to consider. Petitioner is not a threat
18 to national security, has no history of such activity and presents no danger to public
19 safety. Here, Petitioner does not have any pending criminal charges or any "aggravated
20 felony" convictions. Finally, Petitioner has not participated in a criminal street gang
21 and does not have any gang related conviction as defined under in 18 U.S.C. § 521(a).

22 27. Based on the totality of these compelling mitigating factors, it demonstrates that
23 Petitioner, Mr. Alicio Alves Da Cruz merits, at the very least, a fair and impartial bond
24 hearing where the immigration court has proper jurisdiction.

ARGUMENT

28. “It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause included protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“both removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious”).

29. Due process therefore requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690. Civil commitment for *any* purpose constitutes a significant deprivation of liberty. *Addington v. Texas*, 441 U.S. 418, 425 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

30. While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based upon the petitioner’s concession of deportability and the Court’s understanding that detentions under Section 1226(c) are typically “brief”. *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a

1 prolonged period or is pursuing a substantial defense to removal or claim to relief, due
2 process requires an individualized determination that such a significant deprivation of
3 liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) (“individualized
4 determination as to his risk of flight and dangerousness” may be warranted “if the
5 continued detention became unreasonable or unjustified”). *See also, Jackson v.*
6 *Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the “initial commitment” requires
7 additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972)
8 (“lesser safeguards may be appropriate” for “short term confinement”); *Hutto v.*
9 *Finney*, 437 U.S. 678, 685-86 (1978) (in Eighth Amendment context, “the length of
10 confinement cannot be ignored in deciding whether [a] confinement meets
11 constitutional standards”).

12 **31.** Detention without a proper bond hearing is unconstitutional when it exceeds six
13 months. *See Demore*, 538 U.S. at 529-30 (upholding only “brief” detention under
14 Section 1226(c), which last “roughly a month and a half in the vast majority of cases
15 in which it is invoked, and about five months in the minority of cases in which the alien
16 chooses to appeal”); *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the
17 constitutionality of detention for more than six months”).

18 **32.** The recognition that six months is a substantial period of confinement— and is the time
19 after which additional process is required to support continued incarceration—is deeply
20 rooted in our legal tradition. With few exceptions, “in the late 18th century in America
21 crimes triable without a jury were for the most part punishable by no more than a six-
22 month prison term . . .” *Duncan v. State of La.*, 391 U.S. 145, 161 & n.34 (1968).

23 **33.** Consistent with this tradition, the Supreme Court has found six months to be the limit
24 of confinement for a criminal offense that a Federal Court may impose without the

1 protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966)
2 (plurality opinion). The Court has also looked to six months as a benchmark in other
3 contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245,
4 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without
5 individualized inquiry for civil commitment). The Court has likewise recognized the
6 need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*,
7 559, U.S. 98, 110 (2010) (14 days for re-interrogation following invocation of Miranda
8 rights); *Cty. Of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (48 hours for
9 probable cause hearing).

10 **34.** Even if a bond hearing is not required after six months in every case, at a minimum,
11 due process requires a bond hearing after detention has become unreasonably
12 prolonged. *See Diop*, 656 F.3d at 234. Courts that apply a reasonableness test have
13 considered three main factors in determining whether detention is reasonableness. First,
14 courts have evaluated whether the noncitizen has raised a “good faith” challenge to
15 removal—that is, the challenge is “legitimately raised” and presents “real issues”.
16 *Chavez-Alvarez v. Wardern York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015).
17 Petitioner’s detention is prolonged, well-over twenty-six (26) months, without an
18 impartial and fair bond hearing that guarantees fundamental Due Process of Law. Any
19 delay has occurred as a result of litigating favorable and substantive issues affecting
20 removal.

21 **35.** Second, reasonableness is a “function of the length of the detention,” with detention
22 presumptively unreasonable if it lasts six months to a year. *Id.* at 477-78; *accord Sopo*,
23 825 F.3d at 1217-18. Third, courts have considered the likelihood that detention will
24 continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding

1 detention unreasonable after nine months of detention, when the parties could “have
2 reasonably predicted that *Chavez-Alvarez’s* appeal would take a substantial amount of
3 time, making his already lengthy detention considerably longer”); *Sopo*, 825 F.3d at
4 128; *Reid*, 819 F.3d at 500.

5 **36.** At a proper bond hearing, due process requires certain minimal protections to ensure
6 that a noncitizen’s detention is warranted: the *government* must bear the burden of
7 proof by *clear and convincing* evidence to justify continued detention, taking into
8 consideration available alternatives to detention; and if the government cannot meet its
9 burden, the noncitizen’s ability to pay a bond must be considered in determining the
10 appropriate conditions of release.

11 **37.** To justify immigration detention, the government must bear the burden of proof by
12 *clear and convincing* evidence that the noncitizen is a danger or flight risk. *See Singh*
13 *v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011). Where the Supreme Court has
14 permitted civil detention in other contexts, it has relied on the fact that the Government
15 bore the burden of proof at least by *clear and convincing evidence*. *See United States*
16 *v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where “full-
17 blown adversary hearing,” requiring “clear and convincing evidence” and “neutral
18 decisionmaker”) *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil
19 detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692
20 (finding post-final-order custody review procedures deficient because, *inter alia*, they
21 placed burden on detainee).

22 **38.** The Ninth Circuit Court of Appeals confirmed that *Jennings v. Rodriguez*, 138 S. Ct.
23 830 (2018) did not invalidate the holding in *Singh* and *Rodriguez v. Robbins* (Rodriguez
24 III), 804 F.3d 1060 (9th Cir. 2015), which required that the Government justify a non-

1 citizen's detention by *clear and convincing* evidence. *Aleman Gonzalez v. Barr*, ---
2 F.3d ---, 2020 WL 1684034 (9th Cir. Apr. 7, 2020).

3 39. Further, three ("3") honorable district court judges in this Court have concluded that
4 fundamental due process requires the government at any Bond proceedings to prove by
5 the legal standard of *clear and convincing* evidence that a noncitizen is a *flight risk or*
6 *danger to the community* to justify the denial of bond. *Vargas v. Wolf*, 2020 WL
7 1929842 (D. Nev. 2020)); *Fuentes Reyes v. Wolf*, 2020 WL 2308075 (D. Nev. 2020);
8 *De la Cruz v. United States*, 2021 WL 66402 (D. Nev. Jan. 7, 2021).

9 40. In *Fuentes Reyes v. Wolf*, U.S. District Court Judge Gloria M. Navarro reaffirmed
10 *Vargas v. Wolf* in its entirety by imposing the same constitutional standard for Bond
11 Hearings where the government must meet the Burden of Proof of dangerousness and
12 flight risk by *clear and convincing evidence* standard.

13 41. In *De la Cruz v. Wolf*, U.S. District Judge Andrew P. Gordon determined that the
14 government was unable to show cause why he should deviate from following *Vargas*
15 and reaffirmed *Vargas* by holding that the government has the burden of proof by *clear*
16 *and convincing evidence* that a detainee is a flight risk of a danger to the community
17 and thus, if the government is unable to meet this heightened burden of proof, a detainee
18 must be released.

19 42. The Fifth Amendment requires that, before depriving a person of his liberty, the
20 government allow that person to be heard at a meaningful time and in a meaningful
21 manner. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The determination of whether
22 particular government conduct violates this procedural due process balances (1) the
23 private interest affected by the official action; (2) the risk of erroneous deprivation of
24 the interest and value (if any) of additional or substitute procedural safeguards; and (3)

1 the government's interest, including the burden that additional or substitute procedural
2 requirements would impose. *Id.* at 335.

3 43. To conform to the requirements of due process, such a hearing must take place before
4 an independent and impartial adjudicator. *Id.* at 334-35. The requirement that the
5 government bear the burden of proof by *clear and convincing* evidence is also
6 supported by application of the three-factor balancing test from *Mathews v. Eldridge*,
7 424 U.S. 319, 335 (1976). First, prolonged incarceration deprives noncitizens of a
8 "profound" liberty interest. *See Diouf II*, 634 F.3d at 1091-92 (9th Cir. 2011). Second,
9 the risk of error is heavily great where the government is represented by trained and
10 qualified attorneys and detained noncitizens, as it is in this present case, are often
11 unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455
12 U.S. 745, 763 (1982) (requiring clear and convincing evidence at parental termination
13 proceedings because "numerous factors combine to magnify the risk of erroneous
14 factfinding" including that "parents subject to termination proceedings are often poor,
15 uneducated, or members of minority groups" and "[t]he State's attorney usually will be
16 expert on the issues contested"). Moreover, detainees are incarcerated in prison-like
17 conditions that severely hamper their ability to obtain legal assistance, gather evidence,
18 and prepare for a bond hearing. *See, infra*.

19 44. Third, placing the burden on the government imposes minimal cost or inconvenience,
20 as the government has access to the noncitizen's immigration records and other
21 information that it can use to make its case for continued detention.

22 45. Due process also requires consideration of non-punitive alternatives to detention. The
23 primary purpose of immigration detention is to ensure a noncitizen's appearance during
24 removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related

1 to this purpose if there are alternative conditions of release that could mitigate risk of
2 flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention
3 program – the Intensive Supervision Appearance Program (“ISAP”) – has achieved
4 extraordinary success in ensuring appearance at removal proceedings, reaching
5 compliance rates close to 100 percent. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th
6 Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings
7 and a 95% attendance rate at final hearings”). It follows that alternatives to detention
8 must be considered in determining whether prolonged incarceration is warranted.

9 46. While detention pending removal proceedings is constitutionally permissible, it must
10 comport with due process. Among other requirements, the government must justify
11 prolonged detention with clear and convincing evidence that the noncitizen presents a
12 current flight risk or danger to the community. *Dangerousness cannot be based on*
13 *criminal history alone*; the severity and recency of the criminal conduct must be taken
14 into account. The “IJ” also must consider *changes in circumstances that would make*
15 *recidivism less likely*. Finally, although the Court cannot review the “IJ’s” discretionary
16 judgement, it may review the record for constitutional claims and legal error and to
17 ensure that the clear and convincing evidence standard is met as a matter of law.
18 *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 2033 n.8 (W.D. Wash. 2019).
19 Petitioner argues that, should he be granted a bond hearing, the Government should be
20 required to prove by clear and convincing evidence that his continued detention is
21 justified, and the immigration judge should consider Petitioner's ability to pay a bond
22 and alternative conditions of release when setting a bond. The Court agrees.

23 47. A bond hearing must include certain safeguards and meet certain standards for it to
24 provide meaningful due process for an individual subject to prolonged detention. “It is

1 particularly important that the Government be held to the ‘clear and convincing’ burden
2 of proof in the immigration detention context because civil removal proceedings, unlike
3 criminal proceedings, are ‘nonpunitive in purpose and effect.’” *Argueta Anariba v.*
4 *Shanahan*, No. 16 Civ. 1928, 2017 U.S. Dist. LEXIS 205781, 2017 WL 6397752, at
5 *2 (S.D.N.Y. Dec. 14, 2017). “The overwhelming majority of courts have concluded,
6 post-*Jennings*, that when unreviewed detention has become unreasonable, the
7 government must bear the burden of proof at a bond hearing by clear and convincing
8 evidence, to ensure the preservation of the detainees’ fundamental liberty interests.”
9 *Joseph v. Decker*, No. 18 Civ. 2640, 2018 U.S. Dist. LEXIS 198781, 2018 WL
10 6075067, at *12 (S.D.N.Y. Nov. 21, 2018) (collecting cases) (cleaned up). In *Velasco*
11 *Lopez*, the Second Circuit agreed that “a clear and convincing standard was
12 appropriate” in the petitioner’s new bond hearing because a standard of proof “serves
13 to allocate the risk of error between the litigants and must reflect the relative importance
14 attached to the ultimate decision.” *Velasco Lopez*, 978 F.3d at 855-56 (internal
15 quotation marks omitted).

16 **48.** Consideration of alternative conditions of release, as well as Petitioner’s ability to pay
17 a bond, is similarly consistent with due process. A bond determination that does not
18 include a consideration of financial circumstances and alternative release conditions is
19 unlikely to result in a bond amount that is reasonably related to the government’s
20 legitimate interests. Courts in this circuit have required immigration judges to consider
21 alternatives to detention while holding constitutionally-adequate bond hearings. *See,*
22 *e.g., Coronel v. Decker*, 449 F. Supp. 3d 274, 286 (S.D.N.Y. 2020); *Arana v. Barr*, 451
23 F. Supp. 3d 271, 276 (S.D.N.Y. 2020); *Graham v. Decker*, No. 20 Civ. 3168, 2020 U.S.
24 Dist. LEXIS 107520, 2020 WL 3317728, at *8 (S.D.N.Y. June 18, 2020).

1 **49.** The Government opposes the procedural requirements and may argue that the Court
2 lacks jurisdiction to grant such relief. The Government may rely and cite 8 U.S.C. §
3 1252(a)(2)(B)(ii), which states that “no court shall have jurisdiction to review . . . any
4 other decision or action of the Attorney General or the Secretary of Homeland Security
5 the authority for which is specified under this subchapter to be in the discretion of the
6 Attorney General or the Secretary of Homeland Security.” Because § 1231(a)(6) uses
7 the word “may,” it involves discretion. Therefore, the Government may argue, the
8 Court does not have jurisdiction to dictate what factors an immigration judge must
9 consider in a bond hearing. The argument is unavailing. Since the above constitutional
10 analysis compels the requirement of a bond hearing, the Government’s invocation of 8
11 U.S.C. § 1252(a)(2)(B)(ii), which specifically permits jurisdiction over challenges to
12 “the extent of the [agency’s] authority under the post-removal period detention statute,”
13 *Zadvydas*, 533 U.S. at 688, and “constitutional claims and questions of law,” *Patel v.*
14 *Garland*, 142 S. Ct. 1614, 1623, 212 L. Ed. 2d 685 (2022), is inapposite. Whether the
15 Supreme Court has ruled that these particular considerations are constitutionally
16 required in immigration bond hearings does not change the nature of the inquiry, which
17 is fundamentally constitutional—a bond hearing required by due process, without
18 proper procedural safeguards, ensures no due process at all.

19 **50.** The following facts establish the government will not meet its Burden of Proof i.e.,
20 “*clear and convincing*” evidence of dangerousness as a matter of law:

21 **51.** Petitioner does not pose a danger to persons or property. He lacks misdemeanors,
22 citations, traffic violations and felony convictions and is not under any criminal
23 proceedings. Petitioner is not under any form of probation by the Department of Parole
24 and Probation.

1 **52.** Petitioner’s compelling circumstances serve as sufficient demonstration that he is not
 2 a flight risk and does not present current public danger. More importantly, Petitioner
 3 has a strong family support system in the United States to ensure he reintegrates into
 4 his community successfully.

5 **53.** In turn, Due Process likewise requires consideration of a noncitizen’s ability to pay a
 6 bond. “Detention of an indigent ‘for inability to post money bail’ is impermissible if
 7 the individual’s ‘appearance at trial could reasonably be assured by one of the alternate
 8 forms of release.’” *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th
 9 Cir. 1978) (en banc). It follows that—in determining the appropriate conditions of
 10 release for immigration detainees—due process requires “consideration of financial
 11 circumstances and alternative conditions of release” to prevent against detention based
 12 on poverty. *Id.* At the present time Petitioner has limited finances to post a bond
 13 because of his continued detention for about a year.

14 **CLAIMS FOR RELIEF**

15 **FIRST CLAIM FOR RELIEF IN VIOLATION OF DUE PROCESS CLAUSE OF THE** 16 **FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

17 **54.** All persons, including aliens, residing in the United States are protected by the Due
 18 Process Clause of the Fifth Amendment to the United States Constitution. *See Zadvydas*
 19 *v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Due
 20 Process Clause of the Fifth Amendment provides that “[n]o person shall be ... deprived
 21 of life, liberty, or property, without due process of law.” *U.S. Const., amend. V.*
 22 “Freedom from imprisonment—from government custody, detention, or other forms of
 23 physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533
 24 U.S. at 690. Petitioner re-alleges and incorporates by reference the paragraphs above.

1 **55.** Detention by the Respondents puts at risk Petitioner's protected liberty interest. The
2 Due Process Clause of the Fifth Amendment forbids the government from depriving
3 any "person" of liberty "without due process of law." *See U.S. Const. amen. V.*

4 **56.** To justify Petitioner's ongoing prolonged detention, due process requires that the
5 Government establish, at an individual hearing before a neutral decisionmaker, that
6 Petitioner's detention is justified by clear and convincing evidence of flight risk or
7 danger, even after consideration whether alternatives to detention could sufficiently
8 mitigate that risk. Petitioner re-alleges and incorporates by reference the paragraphs
9 above.

10 **57.** Based on the laws and facts, Petitioner's ongoing detention without such a fair and
11 impartial hearing where the government shoulders the burden of proof and where the
12 IJ has proper jurisdiction violates due process. Petitioner re-alleges and incorporates by
13 reference the paragraphs above.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Petitioner respectfully requests and prays for this Court to:

16 **58.** Assume jurisdiction over this matter;

17 **59.** Issue a Writ of Habeas Corpus; hold a hearing before this Court if warranted; determine
18 that Petitioner's detention is not justified because the government has not established
19 by *clear and convincing evidence* that Petitioner presents a risk of flight or *danger* in
20 light of available alternatives to detention; and order Petitioner's release, with
21 appropriate conditions of supervision if necessary, taking into account Petitioner's
22 ability to pay a bond;

23 **60.** In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release within
24 twenty ("20") days, unless the Respondents schedule a hearing before an immigration

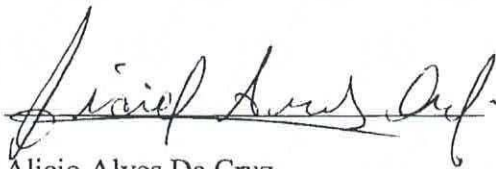
1 judge where it has proper jurisdiction and where: (1) to continue detention, the
2 government must establish by clear and convincing evidence that Petitioner presents a
3 risk of flight or danger, even after consideration of alternatives to detention that could
4 mitigate any risk that Petitioner's release would present; and (2) if the government
5 cannot meet its burden, the immigration judge order Petitioner's release on appropriate
6 conditions of supervision, taking into consideration Petitioner's ability to pay a bond.

7 **61. Issue a declaration that Petitioner's ongoing detention violates the Due Process Clause**
8 **of the Fifth Amendment and the Eighth Amendment;**

9 **62. Award Petitioner his costs in this action as provided for by the Equal Access to Justice**
10 **Act, 28 U.S.C. § 2412, or any other statute; and**

11 **63. Grant such further relief as this Court deems just and proper.**

12
13 **Respectfully submitted on this 17th day of July, 2025.**

14
15
16 

17 Alicia Alves Da Cruz

18 Alien No. 

19 Nevada Southern Detention Center

20 2190 East Mesquite Avenue

21 Pahrump, NV 89060

22 / / /

23 / / /

24 / / /

1 / / /

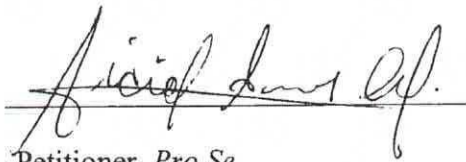
2 / / /

3 / / /

4 **ACKNOWLEDGEMENT AND VERIFICATION**

5 Under penalty of perjury, the undersigned declares that he is the named Petitioner in the
6 foregoing petition. I have read the foregoing petition and its contents. The statements in the
7 petition are true and correct to the best of my knowledge, except as to any statements alleged
8 on information and belief, and as to those statements, I believe them to be true.

9
10 **DATED this 17th day of July, 2025.**

11
12 
13

14 -Petitioner, *Pro Se*

15 Alicio Alves Da Cruz

16 Alien No. 

17 Nevada Southern Detention Center

18 2190 East Mesquite Avenue

19 Pahrump, NV 89060

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /