

1 Rene L. Valladares
2 Federal Public Defender
3 Nevada State Bar No. 11479
4 *Laura Barrera
5 Assistant Federal Public Defender
6 Michigan State Bar No. P80957
7 *Shelly Richter
8 Assistant Federal Public Defender
9 California State Bar No. 343104
10 411 E. Bonneville Ave., Ste. 250
11 Las Vegas, Nevada 89101
12 (702) 388-6577
13 Laura_Barrera@fd.org
14 Shelly_Richter@fd.org

15 *Attorneys for Petitioner Alicia Alves Da Cruz

16
17
18
19
20
21
22
23
24
25
26
27
UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

28 Alicia Alves Da Cruz,

29 Petitioner,

30 Case No. 2:25-cv-01340-JAD-EJY

31 v.
32 John Mattos, Michael Bernacke, Todd
33 Lyons, Kristi Noem, and Pam Bondi,
34 Respondents.

35 First Amended 28 U.S.C. § 2241
36 Petition

Contents

1	Introduction	1
2	Jurisdiction and Venue.....	1
3	Parties	1
4	Procedural History.....	2
5	Grounds for Relief.....	4
6	Ground One: Denying Alves Da Cruz an opportunity to seek release on bond violates the INA and his due process rights because he is entitled to a bond hearing under 8 U.S.C. § 1226(a).....	4
7	A. The statutory framework for the detention of noncitizens supports granting a bond hearing.....	4
8	1. A noncitizen detained under 8 U.S.C. § 1226(a) may be released on bond, and this provision continues to govern when there is an administratively final removal order that has been stayed by a court of appeals.....	4
9	2. Once a court of appeals issues a final order on the petition for review, the authority to detain a noncitizen shifts to 8 U.S.C. § 1231(a).....	4
10	B. Applying the statutory framework for the detention of noncitizens, Alves Da Cruz is entitled to a bond hearing	5
11	Ground Two: Alves Da Cruz's prolonged detention without a bond hearing violates his right to due process under the Fifth Amendment of the United States Constitution.....	6
12	A. Alves Da Cruz's continued detention without a bond hearing violates his due process rights pursuant to <i>Mathews v. Eldridge</i>	8
13	1. The first <i>Mathews</i> factor weighs heavily in Alves Da Cruz's favor because his liberty interest is substantial.	9
14	2. The second <i>Mathews</i> factor weighs in favor of Alves Da Cruz: because he has not received any bond hearing, and because he has been detained since July 2024, there is a high risk that he is being erroneously deprived of his liberty, and additional procedures would be valuable.	11
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		

1	3. The third <i>Mathews</i> factor weighs in favor of Alves Da Cruz 2 because the administrative and fiscal burden of conducting a 3 bond hearing is not significant and neither is the 4 government's interest in detaining Alves Da Cruz without a 5 bond hearing.	13
6	B. This Court should order Respondents to release Alves Da Cruz or 7 provide a constitutionally adequate hearing to seek release on 8 bond.....	14
9	Prayer for Relief.....	15
10	Declaration Under Penalty Of Perjury	16
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		

INTRODUCTION

Alicio Alves Da Cruz, a citizen of Brazil, came to the United States on a tourist visa. He was detained by Immigration and Customs Enforcement (ICE) and placed into removal proceedings on July 29, 2024, and ordered removed on September 19, 2024. He has a petition for review of his removal order pending before the Ninth Circuit, which also recently granted Alves Da Cruz's motion to stay his removal pending the resolution of that case.

Alves Da Cruz has never had a bond hearing during his 14 months of immigration detention. His prolonged detention without a bond hearing violates his due process rights under the Fifth Amendment of the United States Constitution.

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to 28 U.S.C. § 2241, which grants federal courts the authority to issue writs of habeas corpus to individuals in custody if that custody violates “the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *see also Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (holding § 2241 is the proper vehicle through which to challenge the constitutionality of a noncitizen’s detention without bail); *Jennings v. Rodriguez*, 583 U.S. 281, 294–296 (2018) (holding that neither 8 U.S.C. § 1226(e) nor § 1252(b)(9) bar review of constitutional challenges to prolonged immigration detention).

Venue is proper in the District of Nevada under 28 U.S.C. § 1391(e) because Alves Da Cruz is detained in this district and a substantial part of the events or omissions giving rise to Alves Da Cruz's claim occurred in this district.

PARTIES

Petitioner

Petitioner Alicia Alves Da Cruz is a citizen of Brazil who is currently detained by ICE at the Nevada Southern Detention Center in Pahrump, Nevada.

Respondents

Respondent John Mattos is the warden of the Nevada Southern Detention Center.¹ Mattos is the immediate custodian of Alves Da Cruz.

Respondent Michael Bernacke is the Field Office Director for the Salt Lake City Field Office of ICE Enforcement and Removal Operations, which has jurisdiction over Alves Da Cruz. He is named in his official capacity and is a legal custodian of Alves Da Cruz.

Respondent Todd Lyons is the Acting Director of ICE. He is named in his official capacity. As the leader of ICE, the agency responsible for detaining and removing noncitizens, Lyons is a legal custodian of Alves Da Cruz.

Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is named in her official capacity. As the Secretary of DHS, Noem is responsible for the administration of immigration laws. *See* 8 U.S.C. § 1103(a). Noem is a legal custodian of Alves Da Cruz.

Respondent Pam Bondi is the Attorney General of the United States and the most senior official in the U.S. Department of Justice. Bondi is named in her official capacity. The Attorney General delegates her authority to interpret the immigration laws and adjudicate removal cases to the Executive Office of Immigration Review (EOIR), which includes the immigration courts and the Board of Immigration Appeals. Bondi is a legal custodian of Alves Da Cruz.

PROCEDURAL HISTORY

Alicio Alves Da Cruz was admitted to the United States on a tourist visa; he was later detained by ICE on July 29, 2024, and placed in removal proceedings. He

¹ Alves Da Cruz adds Mattos as a respondent in this matter pursuant to the Ninth Circuit’s recent holding in *Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024), requiring a petitioner challenging their detention in immigration custody to name the warden of the detention facility.

was ordered removed just over a month later, on September 19, 2024.² Alves Da Cruz timely appealed to the Board of Immigration Appeals, but the appeal was dismissed because Alves Da Cruz had unknowingly waived his right to appeal.³

Alves Da Cruz then filed a petition for review and a motion to stay removal in the Ninth Circuit Court of Appeals on or around December 4, 2024.⁴ That court granted the motion to stay removal over the government's objection on September 23, 2025.⁵ Accordingly, Alves Da Cruz cannot be removed during the pendency of the Ninth Circuit case. In the order granting a stay of removal, the court also pointed out that the certified administrative record filed by the government was incomplete.⁶ The court ordered the government to file the complete record and stayed briefing until it is filed.⁷

Meanwhile, Alves Da Cruz filed a motion for custody redetermination seeking a bond hearing in immigration court on or around April 30, 2025.⁸ The immigration court denied the request for a bond hearing, citing its lack of jurisdiction due to Alves Da Cruz's final order of removal.⁹ See 8 C.F.R. § 1236.1(d).

11

11

2 Ex. 1.

³ Exs. 2, 3.

⁴ See Case No. 24-7301 at Dkt. Nos. 1, 2.

⁵ Case No. 24-7301 at Dkt. No. 16.1.

⁶ Case No. 24-7301 at Dkt. No. 16.1.

⁷ Case No. 24-7301 at Dkt. No. 16.1.

8 Ex. 4.

⁹ Ex. 5.

GROUND FOR RELIEF

Ground One: Denying Alves Da Cruz an opportunity to seek release on bond violates the INA and his due process rights because he is entitled to a bond hearing under 8 U.S.C. § 1226(a).

A. The statutory framework for the detention of noncitizens supports granting a bond hearing.

A variety of statutes authorize the detention of noncitizens. The two that are most relevant to Alves Da Cruz's case are 8 U.S.C. § 1226(a) and 8 U.S.C. § 1231(a).

1. A noncitizen detained under 8 U.S.C. § 1226(a) may be released on bond, and this provision continues to govern when there is an administratively final removal order that has been stayed by a court of appeals.

Eight U.S.C. § 1226(a) provides authority to arrest and detain a noncitizen “pending a decision on whether the [noncitizen] is to be removed from the United States. 8 U.S.C. § 1226(a). Such a noncitizen may be released on bond during removal proceedings. *Id.* This provision applies generally to noncitizens who are not subject to mandatory detention under another provision of the INA, such as under § 1226(b), which requires mandatory detention for certain criminal reasons, or under 8 U.S.C. § 1225(b) as an “arriving alien” or applicant for admission. In other words, a noncitizen who is not subject to mandatory detention and is detained pursuant to 8 U.S.C. § 1226(a) may be released on bond. Where a noncitizen is detained under § 1226(a), that provision continues to provide the authority for detention for an individual with an *administratively final* removal order, “but whose removal has been stayed by a court of appeals pending its disposition of his petition for review.” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008).

2. Once a court of appeals issues a final order on the petition for review, the authority to detain a noncitizen shifts to 8 U.S.C. § 1231(a).

Eight U.S.C. § 1231(a) governs detention of noncitizens during the “removal period” and beyond. This is the period during which a removal order is final, and

the noncitizen can be lawfully removed. For an individual who has filed a petition for review with a court of appeals, and for whom that court has stayed removal, the removal period does not commence until that court issues a final order on the petition. 8 U.S.C. § 1231(a)(1)(B)(ii). Accordingly, the authority to detain a noncitizen who was initially detained pursuant to 8 U.S.C. § 1226(a) does not shift to § 1231(a), depriving the immigration court of statutory jurisdiction to grant bond, until the judicial review process is complete, and the court of appeals enters a final order denying the petition for review. *Prieto-Romero*, 534 F.3d at 1062.

B. Applying the statutory framework for the detention of noncitizens, Alves Da Cruz is entitled to a bond hearing.

Alves Da Cruz was admitted to the United States as a tourist and later detained and put into removal proceedings for overstaying his tourist visa. Alves Da Cruz's detention during removal proceedings and judicial review of those proceedings should be governed by 8 U.S.C. § 1226(a). Under that statute, detention is discretionary, which means Alves Da Cruz is entitled to the opportunity to seek release on bond. Despite this authority, when Alves Da Cruz sought a bond hearing on April 30, 2025, the immigration judge denied his request, saying the immigration court did not have jurisdiction to grant a bond hearing because "there is a final administrative order of removal."¹⁰ Alves Da Cruz appealed that decision to the Board of Immigration Appeals, which affirmed the immigration judge's determination that the court lacked authority to grant bond because of the removal order.¹¹

Alves Da Cruz filed his petition for review and motion to stay removal in the Ninth Circuit Court of Appeals on December 4, 2024.¹² A temporary stay of removal

10 Exs. 4, 5.

11 Ex. 6.

¹² Case No. 24-7301 at Dkt. Nos. 1, 2.

1 was entered upon the filing of the motion to stay removal.¹³ Accordingly, since at
2 least December 4, 2024, the authority under which Alves Da Cruz was detained
3 would have been 8 U.S.C. § 1226(a), making him entitled to a bond hearing. *See*
4 *Prieto-Romero*, 534 F.3d at 1062 (holding that the authority to detain a noncitizen
5 who was initially detained pursuant to 8 U.S.C. § 1226(a) does not shift to § 1231(a)
6 until the judicial review process is complete and the court of appeals enters a final
7 order denying the petition for review).¹⁴ The Board of Immigration Appeals and the
8 immigration court, therefore, violated Alves Da Cruz's due process rights and their
9 obligations under the INA by denying him a bond hearing.

10 This Court should grant the writ and order that Alves Da Cruz receive the
11 bond hearing he is entitled to by statute.

12

13 **Ground Two: Alves Da Cruz's prolonged detention without a bond hearing**
14 **violates his right to due process under the Fifth Amendment of the United**
States Constitution.

15 As stated in Ground One, Alves Da Cruz believes he is being erroneously
16 denied the opportunity for a bond hearing because the Board of Immigration
17 Appeals and the immigration court mistakenly assumed he was detained pursuant
18 to 8 U.S.C. § 1231(a). To the extent this Court disagrees and finds Alves Da Cruz
19 was properly denied a bond hearing because the immigration court lacks
20 jurisdiction, his prolonged detention without a bond hearing violates his due process
21 rights.

22

23

24 ¹³ Case No. 24-7301 at Dkt. No. 2. The motion to stay removal was granted on
25 September 23, 2025 (Dkt. No. 16).

26 ¹⁴ *See also Avilez v. Garland*, 69 F.4th 525, 537 (9th Cir. 2023) (“Under
27 *Prieto-Romero*, the statutory phrase ‘pending a decision on whether the alien is to
be removed from the United States,’ 8 U.S.C. § 1226(a), encompasses ‘the judicial
review of a removal order,’ a holding that “remains good law.”).

1 “The Fifth Amendment’s Due Process Clause forbids the Government to
2 ‘depriv[e] any ‘person . . . of . . . liberty . . . without due process of law.’ Freedom
3 from imprisonment—from government custody, detention, or other forms of physical
4 restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*,
5 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).
6 “Arbitrary civil detention is not a feature of our American government. ‘[L]iberty is
7 the norm, and detention prior to trial or without trial is the carefully limited
8 exception.’” *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018) (quoting
9 *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

10 In considering the issue of prolonged detention in ICE custody pursuant to
11 mandatory detention, the Ninth Circuit has expressed “grave doubts that any
12 statute that allows for arbitrary prolonged detention without any process is
13 constitutional or that those who founded our democracy precisely to protect against
14 the government’s arbitrary deprivation of liberty would have thought so.”
15 *Rodriguez*, 909 F.3d at 256. Addressing a similar issue, Justice Kennedy, concurring
16 in *Demore v. Kim*, 538 U.S. 510, 532 (2003), pronounced that “since the Due Process
17 Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien
18 such as respondent could be entitled to an individualized determination as to his
19 risk of flight and dangerousness if the continued detention became unreasonable or
20 unjustified.” Other circuits have similarly determined that unreasonably prolonged
21 detention violates a noncitizen’s due process rights. *See Black v. Decker*, 103 F.4th
22 133 (2d Cir. 2024); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021).

23 Alves Da Cruz’s continued mandatory detention without a bond hearing is
24 the type of arbitrary deprivation of liberty the Due Process Clause of the
25 Constitution protects against. *See Rodriguez*, 909 F.3d at 257 (“The Fifth
26 Amendment says that ‘[n]o person shall be . . . deprived of life, liberty, or property
27 without due process of law.’ An alien is a ‘person.’ To hold him without bail is to

1 deprive him of bodily ‘liberty.’ And, where there is no bail proceeding, there has
2 been no bail-related ‘process’ at all. The Due Process Clause—itself reflecting the
3 language of the Magna Carta—prevents arbitrary detention.” (quoting *Jennings v.*
4 *Rodriguez*, 583 U.S. 281, 330 (2018) (Breyer, J., dissenting) (internal citations
5 omitted)).

6 There is no precedent from the Supreme Court or the Ninth Circuit on the
7 question of when prolonged mandatory detention in immigration custody becomes
8 unconstitutional. However, as outlined above, both the Supreme Court and the
9 Ninth Circuit have suggested that, at some point, continued detention during
10 removal proceedings without a bond hearing will run afoul of the due process
11 guarantee of the Constitution. Furthermore, “[n]early all district courts that have
12 considered the issue agree that prolonged mandatory detention pending removal
13 proceedings, without a bond hearing, will—at some point—violate the right to due
14 process.” *Vargas v. Wolf*, No. 2:19-cv-02135-KJD-DJA, 2020 WL 1929842, at *7 (D.
15 Nev. Apr. 21, 2020) (quoting *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D.
16 Wash. 2019), *appeal dismissed*, 2019 WL 5885047 (9th Cir. Oct. 9, 2019)); *see also*
17 *De Leon v. Mayorkas*, No. 2:23-cv-02073-GMN-VCF, 2024 WL 343437 (D. Nev. Jan.
18 29, 2024); *Ortiz-Castillo v. United States*, No. 2:23-cv-01485-RFB-MDC, 2024 WL
19 756075 (D. Nev. Feb. 23, 2024); *Arechiga v. Archambeault*, No. 2:23-cv-00600-CDS-
20 VCF, 2023 WL 5207589 (D. Nev. Aug. 11, 2023) (acknowledging that prolonged
21 mandatory detention in immigration custody without a bond hearing can violate the
22 Due Process Clause).

23 **A. Alves Da Cruz’s continued detention without a bond hearing
24 violates his due process rights pursuant to *Mathews v.
25 Eldridge*.**

26 Courts in this circuit have used various legal tests to determine whether due
27 process compels a bond hearing in a particular case. Many courts, including in the
District of Nevada, have used the test from *Mathews v. Eldridge*, 424 U.S. 319

1 (1976), to evaluate whether an ICE detainee's continued detention without a bond
2 hearing has become unconstitutional. *See, e.g., De Leon*, 2024 WL 343437.
3 Recognizing that "due process is flexible and calls for such procedural protections as
4 the particular situation demands," *Mathews* lays out a three-factor test to analyze
5 whether a claimant has been provided with adequate due process. *Ortiz-Castillo*,
6 2024 WL 756075, at *2 (citing *Mathews*, 424 U.S. at 333). These familiar factors
7 are: (1) "the private interest that will be affected by the official action"; (2) "the risk
8 of erroneous deprivation of such interest through the procedures used, and probable
9 value, if any, of additional or substitute procedural safeguards"; and (3) "the
10 Government's interest, including the function involved and the fiscal and
11 administrative burdens that the additional or substitute procedural requirements
12 would entail." *Mathews*, 424 U.S. at 334–35.

13 The *Mathews* factors provide an appropriate framework to analyze the
14 constitutionality of Alves Da Cruz's continued detention. As applied to his case, the
15 factors this Court should consider are: (1) Alves Da Cruz's liberty interest; (2) the
16 risk that Alves Da Cruz is erroneously deprived of his liberty due to his continued
17 mandatory detention without a bond hearing, and the probable value of a bond
18 hearing in ensuring that he is not erroneously deprived of his liberty; and (3) the
19 government's interest in detaining Alves Da Cruz without affording him a bond
20 hearing, and the fiscal and administrative burdens that affording him a bond
21 hearing would entail.

22 **1. The first *Mathews* factor weighs heavily in Alves Da
23 Cruz's favor because his liberty interest is substantial.**

24 Alves Da Cruz, detained since July 2024 without a bond hearing, has been
25 subjected to prolonged detention. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189,
26 1207 (9th Cir. 2022) (finding that detention of 14 months after first bond hearing
27 qualifies as "prolonged"); *see also Lopez v. Garland*, 631 F. Supp. 3d 870, 880 (E.D.

1 Cal. 2022) (finding detention of approximately one year without a bond hearing to
2 be unreasonable and listing cases in which detention of less than a year without a
3 bond hearing was deemed unreasonable). His private interest in being free from
4 such prolonged detention is clearly substantial. *See Singh v. Holder*, 638 F.3d 1196,
5 1208 (9th Cir. 2011) (“The private interest here—freedom from prolonged
6 detention—is unquestionably substantial.”). Therefore, this factor weighs strongly
7 in Alves Da Cruz’s favor.

8 Some courts have noted that the interest in being free from prolonged
9 detention may be diminished where a petitioner plays a role in his prolonged
10 detention by his decision to challenge his removal order. *See Rodriguez Diaz*, 53
11 F.4th at 1207–08; *but see Jimenez v. Wolf*, No. 19-CV-07996-NC, 2020 WL 510347,
12 at *3 (N.D. Cal. Jan. 30, 2020) (“Jimenez cannot be faulted, however, for his
13 decision to accept the assistance of counsel, his decision to appeal, or his
14 unfortunate history of schizophrenia.”). However, here, Alves Da Cruz has raised
15 substantial and legitimate challenges to his removal. This is evident because the
16 Ninth Circuit recently granted his motion to stay removal, which requires a strong
17 showing of a likelihood of success on the merits that is more than a mere possibility
18 that relief will be granted. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

19 Alves Da Cruz’s liberty interest should not be diminished as a result of the
20 exercise of his appellate rights, especially where his challenges may be meritorious.
21 Regardless, if this Court finds his liberty interest is diminished by his actions, it
22 should be to a minimal degree. *See Ortiz-Castillo*, 2024 WL 756075, at *3
23 (determining that petitioner’s liberty interest was only minimally diminished by his
24 challenges to his removal where he raised legitimate collateral challenges to his
25 removal order and made use of the statutorily permitted appeals process).!

26 All told, the first *Mathews* factor supports granting relief.
27

1 2. The second *Mathews* factor weighs in favor of Alves Da
2 Cruz: because he has not received any bond hearing, and
3 because he has been detained since July 2024, there is a
4 high risk that he is being erroneously deprived of his
5 liberty, and additional procedures would be valuable.

6 “The second *Mathews* factor is ‘the risk of an erroneous deprivation of [Alves
7 Da Cruz’s liberty] interest through the procedures used, and the probable value, if
8 any, of additional or substitute procedural safeguards.’” *Rodriguez Diaz*, 53 F.4th at
9 1209 (quoting *Mathews*, 424 U.S. at 335). In this analysis, the Court looks at “the
10 existing agency procedures” and whether they sufficiently protect the petitioner’s
11 liberty interest and mitigate the risk of erroneous deprivation. *Id.* For example, in
12 evaluating the risk of erroneous deprivation in the context of noncitizen detention,
13 the Ninth Circuit has looked to whether the detainee has a statutory right to
14 procedural protections, such as individualized custody determinations and the right
15 to seek additional bond hearings throughout detention. *See id.* at 1209–10 (finding a
16 small risk of erroneous deprivation where petitioner was detained under a different
17 provision and thus received numerous procedural protections, including
18 individualized custody determinations and right to seek additional bond hearings).

19 As in all procedural due process analyses, the Court looks at the “risk of error
20 inherent” in the processes used, “as applied to the generality of cases.” *Mathews*,
21 424 U.S. at 344; *see, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) (finding
22 additional process was needed because the written-submission process provided was
23 “an unrealistic option for most recipients, who lack the educational attainment
24 necessary to write effectively and who cannot obtain professional assistance”).

25 Here, the risk of an erroneous deprivation of Alves Da Cruz’s liberty interest
26 is high where he has not received any bond or custody determination hearing, and
27 where he has been detained since July 2024. That point cannot fairly be disputed,
as demonstrated by numerous United States District Courts and magistrate judges

1 coming to that conclusion under similar circumstances. For example, courts have
2 noted that where a petitioner was “provided virtually no procedural safeguards at
3 all,” and was detained for over a year, the risk of erroneous deprivation was high.
4 *A.E. v. Andrews*, No. 1:25-CV-00107-KES-SKO (HC), 2025 WL 1424382, at *5 (E.D.
5 Cal. May 16, 2025), *report and recommendation adopted*, 2025 WL 1808676; *see*
6 *also, e.g., Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679,
7 at *7 (E.D. Cal. July 11, 2025); *Doe v. Becerra*, 697 F. Supp. 3d 937, 946 (N.D. Cal.
8 2023), *appeal dismissed*, 2025 WL 252476 (9th Cir. Jan. 15, 2025); *Jimenez v. Wolf*,
9 2020 WL 510347, at *3; *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3
10 (N.D. Cal. Jan. 8, 2020). As one court aptly put it, there is “immense benefit to be
11 gleaned—protection against arbitrary and prolonged detention during removal
12 proceedings—in exchange for the minimal fiscal and administrative burden of a
13 bond hearing.” *Hong v. Mayorkas*, No. 20-CV-01784-LK, 2022 WL 1078627, at *5
14 (W.D. Wash. Apr. 11, 2022).

15 Because Alves Da Cruz has not received *any* bond or custody determination
16 hearing and because he has been detained without process since July 2024, the risk
17 of erroneous deprivation of liberty is high. “Thus, the probable value of additional
18 procedural safeguards, i.e., a bond hearing, is [also] high, because Respondents
19 have provided virtually no procedural safeguards at all.” *A.E. v. Andrews*, 2025 WL
20 1424382, at *5. To comport with due process, Alves Da Cruz should be afforded a
21 bond hearing before an immigration judge where the government must prove that
22 he presents a flight risk or danger by clear and convincing evidence to justify
23 continued detention.

24 //
25 //

3. The third *Mathews* factor weighs in favor of Alves Da Cruz because the administrative and fiscal burden of conducting a bond hearing is not significant and neither is the government's interest in detaining Alves Da Cruz without a bond hearing.

The third and final *Mathews* factor also weighs in Alves Da Cruz's favor.

While it may be true that the government “has a strong interest in preventing aliens from ‘remain[ing] in the United States in violation of our law’” and “has an obvious interest in ‘protecting the public from dangerous criminal aliens,’” those interests are not the ones implicated by this petition. *See Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518, 515). “It is important to stress that the government interest at stake here is not the continued detention of Petitioner, but the government’s ability to detain him without a bond hearing. *Singh v. Garland*, No. 1:23-CV-01043-EPG-HC, 2023 WL 5836048, at *6 (E.D. Cal. Sept. 8, 2023) (internal quotations omitted); *see also Henriquez v. Garland*, No. 5:22-cv-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022) (“Although the Government has a strong interest in enforcing the immigration laws and in ensuring that lawfully issued removal orders are promptly executed, the Government’s interest in detaining Petitioner without providing an individualized bond hearing is low.”).

The government’s interest in continuing to detain Alves Da Cruz without a bond hearing is minimal, especially because “[c]ourts generally have found that the cost of providing a bond hearing is relatively minimal.” *Eliazar G.C. v. Wofford*, No. 1:24-CV-01032-EPG-HC, 2025 WL 711190, at *8 (E.D. Cal. Mar. 5, 2025); *see also Singh v. Barr*, 400 F. Supp. 3d 1005, 1021–22 (S.D. Cal. 2019) (“Here, given the ‘minimal cost of conducting a bond hearing, and the ability of the IJ to adjudicate the ultimate legal issue as to whether [petitioner’s] continued detention is justified, the Court concludes that the government’s interest is not as weighty as [petitioner’s].’”). As a result, the third factor weighs in Alves Da Cruz’s favor.

1 **B. This Court should order Respondents to release Alves Da Cruz
2 or provide a constitutionally adequate hearing to seek release
3 on bond.**

4 Alves Da Cruz's continued detention violates his rights under the Due
5 Process Clause of the United States Constitution. Accordingly, he must be given a
6 constitutionally adequate hearing in which he can seek release on bond, with the
7 burden on the government to prove that he should continue to be detained. If Alves
8 Da Cruz is not granted such a hearing, he must be released from his
9 unconstitutional detention. *See, e.g., Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762,
10 778 (N.D. Cal. 2019) (granting relief and ordering the government to either hold a
11 timely bond hearing or release the petitioner); *Singh v. Barr*, 400 F. Supp. at 1022
12 (granting relief and ordering the government to hold a new custody hearing with
13 the burden on the government within 15 days or release the petitioner); *Ortiz-*
14 *Castillo*, 2024 WL 756075 (granting petition and ordering respondents to provide
15 petitioner with a bond hearing before an immigration judge with the burden on the
16 government within 30 days); *Arechiga*, 2023 WL 5207589 (ordering respondents to
17 provide a bond hearing in front of an immigration judge with the burden on the
18 government within 21 days, and that failure to do so may result in release of the
19 petitioner).

20 Given Alves Da Cruz's prolonged detention, the Court should order his
21 release, if Respondents fail to schedule a bond hearing before an immigration judge
22 within 30 days, with the burden on the government.

23 //

24

25

26

27

PRAYER FOR RELIEF

Accordingly, Alicia Alves Da Cruz respectfully requests that this Court:

1. Issue a writ of habeas corpus to have Alicio Alves Da Cruz brought before the Court so that he may be discharged from his unconstitutional confinement within 30 days unless Respondents schedule a bond hearing before an immigration judge at which the judge must order the release of Alicio Alves Da Cruz unless ICE can establish by clear and convincing evidence that he presents a risk of flight or danger to the community.

2. Grant such other and further relief as, in the interests of justice, may be appropriate.

Dated October 22, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Laura Barrera
Laura Barrera
Assistant Federal Public Defender

/s/ Shelly Richter
Shelly Richter
Assistant Federal Public Defender

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the facts alleged in this petition are true and correct to the best of counsel's knowledge, information, and belief.

Dated October 22, 2025.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Laura Barrera
Laura Barrera
Assistant Federal Public Defender