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16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEVADA

18 Alicia Alves Da Cruz,

19 Petitioner,

20 v.

21 John Mattos, et al.,

22 Respondents.

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

**Reply in Support of First Amended
Petition**

ARGUMENT

I. Alicio Alves Da Cruz is entitled to a bond hearing in immigration court.

Alicio Alves Da Cruz challenges his prolonged detention in ICE custody without the opportunity to seek release on bond while his immigration case is pending. *Alves Da Cruz has now been detained by Respondents for 526 days: or one year, five months, and eight days.* During this lengthy detention, Alves Da Cruz has not been afforded even the opportunity to seek release on bond. This detention without bond eligibility violates Alves Da Cruz's rights under the Due Process Clause and the Immigration and Nationality Act. Respondents put forth no defenses on the merits of Alves Da Cruz's claims. Instead, they offer only a failing argument that Alves Da Cruz did not administratively exhaust this issue based on a misreading and apparent misunderstanding of precedential caselaw and the statutes governing civil immigration detention. Accordingly, this Court should grant Alves Da Cruz's petition and order that he be afforded a bond hearing before an immigration judge, with the burden on the government to show that he presents a danger or a flight risk.

A. Respondents' exhaustion argument fails because Alves Da Cruz properly exhausted his administrative remedies; the parties otherwise agree that Alves Da Cruz is detained pursuant to 8 U.S.C. § 1226(a), which entitles him to a bond hearing.

Respondents' exhaustion argument is flawed, and the Court should reject it. 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.* Respondents and Alves Da Cruz agree that "during the pendency of

1 his removal proceedings, Petitioner was detained under 8 U.S.C. § 1226(a),”¹ and
2 that he is also presently detained under the same authority.²

3 Eight U.S.C. § 1231(a) governs detention of noncitizens during the “removal
4 period” and beyond. Respondents contend that their detention authority shifted to 8
5 U.S.C. § 1231 when the immigration judge ordered removal and Alves Da Cruz
6 waived his right to appeal on September 19, 2024,³ and then shifted back to
7 § 1226(a) when the Ninth Circuit granted his motion to stay removal on September
8 23, 2025.⁴ Respondents concede that Alves Da Cruz sought a bond hearing in April
9 2025, but they argue that he should have tried again after September 2025.⁵

10 Respondents are wrong. Respondents rely on *Prieto-Romero v. Clark*, 534
11 F.3d 1053 (9th Cir. 2008), but *Prieto-Romero* does not support this authority-
12 shifting scheme. Instead, *Prieto-Romero* holds that, where a petitioner has a
13 properly filed petition for review pending with a judicial circuit court, and that court
14 has stayed the petitioner’s removal, “the removal period begins only after the court
15 denies the petition and withdraws the stay of removal.” *Id.* at 1059. Accordingly,
16 “only if [the Ninth Circuit] enter[s] a final order denying [Alves Da Cruz’s] petition
17 for review will the statutory source of the Attorney General’s detention authority
18 shift from § 1226(a) to § 1231(a).” *Id.* at 1062. Thus, because Alves Da Cruz’s Ninth
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22 ¹ ECF No. 19 at 4.

23 ² ECF No. 19 at 5.

24 ³ While the merits of Alves Da Cruz’s immigration appeal are not especially
25 relevant in these proceedings, a major issue on appeal is whether Alves Da Cruz’s
26 waiver of his appellate rights was knowing and voluntary—the record suggests it
27 was not. His petition for review is properly filed because he first appealed to the
Board of Immigration Appeals, then challenged the affirmance of the removal order
in his judicial appellate proceedings.

⁴ ECF No. 19 at 4–5.

⁵ ECF No. 19 at 6.

1 Circuit proceedings are still pending, and the stay of removal is still in effect, his
2 detention authority has not shifted from § 1226(a) to § 1231(a).

3 Regardless, even if detention authority *did* shift to § 1231(a) after the
4 removal order was entered on September 19, 2024, it would have shifted back to
5 § 1226(a) the day Alves Da Cruz filed his petition for review and motion to stay
6 removal, on December 4, 2024.⁶ That is because the Ninth Circuit stayed Alves Da
7 Cruz's removal that day pursuant to General Order 6.4.⁷

8 Alves Da Cruz's removal has therefore been stayed since December 4, 2024,
9 through the present, and his detention has unquestionably been pursuant to 8
10 U.S.C. § 1226(a) during that time. *Prieto-Romero*, 534 F.3d at 1059. That means
11 that when Alves Da Cruz sought a bond hearing in April 2025,⁸ *four months after*
12 *the Ninth Circuit stayed removal*, Alves Da Cruz was detained pursuant to 8 U.S.C.
13 § 1226(a) and had the right to a bond hearing. As a result, the immigration judge
14 and Board of Immigration Appeals violated the statute when they refused to
15 provide him with an opportunity to seek release on bond.⁹ Accordingly, there are no
16 exhaustion issues, and Alves Da Cruz has properly sought relief in this Court.

17 Because Alves Da Cruz was improperly denied the opportunity to seek
18 release on bond, this Court should order that he be given a bond hearing in
19 immigration court within 30 days, with the burden of proof on the government.
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23 ⁶ See Case No. 24-7301 at Dkt. 1, 2.

24 ⁷ Case No. 24-7301 at Dkt. 2. General Order 6.4(c) states that, "Upon the
25 filing of an initial motion or request for stay of removal or deportation, the order of
26 removal or deportation is temporarily stayed until further order of the Court."
27 Ninth Cir. Gen. Order 6.4(c), available at
https://cdn.ca9.uscourts.gov/datastore/uploads/rules/general_orders/general_orders_20250625.pdf.

⁸ ECF No. 15-4.

⁹ ECF Nos. 15-5, 15-6.

1 **B. The Due Process Clause also demands that Alves Da Cruz**
2 **receive a bond hearing.**

3 Respondents offer no arguments against Alves Da Cruz’s claim that the Due
4 Process Clause also compels a bond hearing, regardless of which statute Alves Da
5 Cruz is detained under. As argued in the first amended petition,¹⁰ Alves Da Cruz
6 should be granted a bond hearing on due process grounds as well as pursuant to the
7 statute.

8 **C. The government itself is responsible for unreasonably**
9 **prolonging Alves Da Cruz’s proceedings and detention.**

10 By granting Alves Da Cruz’s motion to stay removal, the Ninth Circuit
11 acknowledged that he had made a strong showing of likelihood of success on the
12 merits. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). On September 23, 2025, the
13 Ninth Circuit determined that the Certified Administrative Record filed by the
14 government was incomplete and ordered the government to file a supplement or
15 motion to remand within 21 days, which would have been October 14, 2025.¹¹ That
16 deadline was stayed due to the government shutdown.¹² The new deadline should
17 have been December 10, 2025.¹³ As of the date of this filing, the government has
18 still not filed the supplemental record or a motion to remand. The government’s
19 failure to act in the Ninth Circuit case where Alves Da Cruz has shown a likelihood
20 of success is unfairly prolonging his already extraordinarily lengthy detention
21 without a bond hearing and should weigh strongly in favor of granting his petition.

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26 ¹⁰ ECF No. 14 at 9–17.

27 ¹¹ Case No. 24-7301 at Dkt. 16.

¹² Case No. 24-7301 at Dkt. 18.

¹³ *See* Case No. 24-7301 at Dkt. 19.

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CONCLUSION

This Court should grant Alves Da Cruz's first amended petition and order that he 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.

Dated January 5, 2026.

Respectfully submitted,

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