




1           **c) Petitioner has filed a U-Visa into Department of Homeland Security U.S. Citi-**  
2           **zen and Immigration Services (USCIS) due he was subject of Aggravated Assault,**  
3           **Robbery, and Restraining Kidnapping; being stolen from his Passport including**  
4           **the two Visas above described in Charlotte NC.(See Exhibit D: Form I-918 eleven**  
5           **(11) pages and the Police Report three (3) pages) d) The Judge denied the Petitioner**  
6           **the Bond Release because she argument the Petitioner is a risk to the community and a**  
7           **flight risk, as you can see the Petitioner doesn't have aggravated Criminal Records**  
8           **Pursuant to 8 U.S.C.S § 1231(a)(6) and petitioner is not a risk to the community nor a flight**  
9           **risk, this Petitioner only has been in jail for a maximum period of four months during all his**  
10           **life, he doesn't even have criminal records in his native country (See Exhibit E: Crim-**  
11           **inal Records Report sixteen (16) pages) d) Petitioner has gotten in these center**  
12           **several and serious Illnesses described in the Medical Records, Illnesses that need**  
13           **to be treated urgently outside in a hospital (See Exhibit F: Medical Records Re-**  
14           **port, three (3) pages)**

15           **9. Petitioner Jose David Lainez Bueso, was born on  and native from Honduras C.A.**  
16           **who entered in the United States in legal conditions on 08/10/2019, through B-2 Tourist Visa**  
17           **at Fort Lauderdale, Florida as Port of Entry. this Petitioner is seeking for relief of Asylum**  
18           **and/or Withholding Removal and/or Convention against Torture since 02/23/2024, this Peti-**  
19           **tioner also has and hold strong community and family ties. (See Exhibit G: Sponsors sup-**  
20           **port letters, seven (7) pages)**

21           **10. The Zadvydas opinion opened by noting the clear applicability of general due process stan-**  
22           **dards: physical detention requires both a "special justification" that "outweighs the 'individual's**  
23           **constitutionally protected interest in avoiding physical restraint" and "adequate procedural pro-**  
24           **tections." 533 US, at 690, 150, L. Ed 2d 653, 121 S. Ct 2491 (quoting Hendricks at 356, 138 L**  
25           **Ed 2d 501, 117 S Ct 2072).**

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3 **RELIEF REQUESTED**

4 That the Court Order the Petitioner to be released from detention or Respondent to hold an indi-  
5 vidualized bond hearing in front of a neutral adjudicator, due his continued detention without bond hear-  
6 ing has become prolonged and unreasonable.

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8 **Due Process Clause**

9 The fifth amendment provides that “[n]o person shall...be deprived of life, liberty, or property,  
10 without due process of law.” U.S. const. Amend. V. “freedom from imprisonment-from government cus-  
11 tody, detention, or other forms of physical restraint-lies at the heart of the liberty’ that the Due Process  
12 Clause protects. Zadyvas v. Davis, 553 U.S. 678, 690. 121 S. Ct. 2491 150 L. Ed 2d 653 (2001). This pro-  
13 tection applies to “all persons’ within the United States, including aliens, whether their presence here is  
14 lawful, unlawful, temporary, or permanent.” id at 693. “It is well established that the fifth amendment en-  
15 titles aliens to due process of law in deportation proceedings.” Demore, 538 U.S. at 523 (quoting Reno v.  
16 Flores, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed 2d 1 (1993)).

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19 **IMMIGRATION DETENTION STATUTES AND BOND HEARINGS**

20 Congress has enacted a complex statutory scheme governing the detention of non-citizens. “Non-citizens  
21 in the United States are removable if they fall within any of several statutory classes of remov-  
22 able individuals, one of which is non-citizens convicted of certain enumerated criminal of-  
23 fenses.” Avilez v. Garland, 69 F.4th 525, 529 (9th Cir. 2023) (citing 8 U.S.C. § 1227(a)). “Four  
24 statutes grant the Government authority to detain non-citizens who have been placed in removal  
25 proceedings: 8 U.S.C. §§ 1225(b) (‘Section 1225(b)’), 1226(a) (‘Subsection A’), 1226 (c) (‘Sub-

1 portation proceedings.” Demore, 538 U.S. at 523 (quoting Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct.  
2 1439, 123 L. Ed 2d 1 (1993)).

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4 The INA governs the detention and release of non-citizens during and following their re-  
5 moval proceedings. See Johnson v. Guzman Chavez, 141 S. Ct. 2271, 2280 (2021). The general  
6 detention periods are generally referred to as “pre-order” (meaning before entry of a final of re-  
7 moval) and, “post-order” (meaning after the entry of a final order of removal). Compare 8 USC §  
8 1226 (authorizing pre-order detention) with § 1231(a) (authorizing post-order detention). Al-  
9 though the relevant statutory sections refers to the “Attorney General” as having responsibility  
10 for detaining non-citizens, the Homeland Security Act of 2002, Pub. L. No 107-296 § 441(2),  
11 116 Stat. 2135, 2192 (2002), transferred this authority to the Secretary of the Department of  
12 Homeland Security (“DHS”). See also 6 USC §251.

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14 In Zadvydas v. Davis, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2D 653 (2001), the Supreme  
15 Court addressed a challenge to prolonged detention under § 1231(a)(6) by non-citizens who “had  
16 been ordered removed by the government and all administrative and judicial review was ex-  
17 hausted, but their removal could not be effectuated because their designated countries either re-  
18 fused{2023 U.S. Dist. LEXIS 7} to accept them or the United States lacked a repatriation treaty  
19 with the receiving country.” Prieto-Romero, 534 F.3d at 1062 (citing Zavydas, 533 U.S. at 684-  
20 86). The Supreme Court held that § 1231(a)(6) does not authorize indefinite detention and “lim-  
21 its an alien’s post-removal-period detention to a period reasonably necessary to bring about that  
22 alien’s removal from the United States.” Zadvydas, 533 U.S. at 689. Thus, after a presumptively  
23 reasonable detention period of six months, a non-citizen was entitled to release if “it has been de-  
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2 In Jennings v. Rodriguez, 138 S. Ct. 830, 200 L. Ed. 2D 122 (2018), the Supreme Court found  
3 the Ninth Circuit's interpretation that § 1226(c) included "an implicit 6-month time limit on the  
4 length of mandatory detention" fell "far short of a 'plausible statutory construction,'" and held  
5 that the Ninth Circuit misapplied the constitutional avoidance canon to find a statutory{2023  
6 U.S. Dist. Lexis 9} right under 8 U.S.C. § 1226(a) to "periodic bond hearings every six months  
7 in which the Attorney General must prove by clear and convincing evidence that the alien's con-  
8 tinued detention is necessary." Jennings, 138 S. Ct. at 846, 842, 847-48. The case was remanded  
9 to the Ninth Circuit "to consider [the] constitutional arguments on their merits." *id.* At 851. The  
10 Ninth Circuit likewise remanded the case to the district court to consider the constitutional argu-  
11 ments in the first instance but observed that it had "grave doubts that any statute that allows for  
12 arbitrary prolonged detention without any process is constitutional or that those who founded our  
13 democracy precisely to protect against the arbitrary deprivation of liberty would have thought  
14 so." Rodriguez v. Marin, 909 F.3d 252, 255, 256 (9th Cir. 2018).

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17 There has been "a dearth of guidance regarding the point at which an individual's continued  
18 mandatory detention under Section 1226(c) becomes unconstitutional." Gonzalez v. Bonnar, No.  
19 18-cv-05321-JSC, 2019 U.S. Dist. LEXIS 12636, 2019 WL 330906, at \*3 (N.D. Cal. Jan. 25,  
20 2019). See Rodriguez Diaz, 53 F.4th at 1201, 1203 (observing that "it remains undetermined  
21 whether the Due Process Clause requires additional bond procedures under any immigration de-  
22 tention statute," and noting that both the Ninth Circuit "and the Supreme Court have repeatedly  
23 declined to decide constitutional challenges to bond hearing procedures in the immigration de-  
24 tention context"). The Ninth Circuit has yet to take{2023 U.S. Dist LEXIS 10} a position on  
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1 challenges to removal proceeding, “and finding “Mathews remain a flexible test that can and  
2 must account for the heightened government interest in the immigration detention context.” Ro-  
3 driguez Diaz, 53 F.4th at 1193, 1206. Similarly, the dissent “agree{d} that the text developed in  
4 Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 { 1976}, is appropriate legal  
5 framework to determine whether there was a due process violation Rodriguez Diaz, 53 F. 4<sup>th</sup> at  
6 1219 [Wardlaw, J, dissenting}. Some courts looks to whether the petitioner is requesting an ini-  
7 tial bond hearing or a second bond hearing in deciding whether to apply the Mathews test be-  
8 cause “{W}hile the Mathews factors may be well suited to determining whether due process re-  
9 quires a second bond hearing, they are not particularly dis-positive of whether prolonged manda-  
10 tory detention has become unreasonable in particular case. “Firas Djelassi v. Ice Field Office  
11 Dir., 434 F. Supp. 3D 917, 2020 WL 263670, at \*2 {W.D. Wash. 2000} {quoting Banda, 385 F.  
12 Supp. 3D at 1118}. Therefore, given the uncertainty regarding the appropriate test, in an abundance of  
13 caution, Petitioner respectfully ask this Court to apply the Methews test, Lopez test, Bandas test.

#### 14 15 16 17 Applying the Lopez Test

18 Under Lopez. The Court looks to “the total length of detention to date, the likely duration of fu-  
19 ture detention, and the delays in the removal proceedings caused by the Petitioner and the gov-  
20 ernment” to determine whether detention pursuant to 8 U.S.C. § 1226(c) has become unreason-  
21 able. Lopez, 631 F. Supp. 3D at 879. However, all the three factors under Lopez has been cov-  
22 ered Supra under the Martinez test of this instant petition.  
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1 risk. Matter of Patel, 15 I & N Dec. 666 (BIA 1976). National Center for Immigrant Rights v INS,  
2 743 F2d 1365 (9<sup>th</sup> Cir. 1984).

3 Furthermore, the Ninth Circuit has recently issued guidelines regarding the release of aliens  
4 and the jurisdiction of the Immigration Judge and BIA to grant bond in these cases. In particular,  
5 the Ninth Circuit, in an unpublished Order in Bromfield v Mukasey, 07-72319 made the distinction  
6 regarding persons due bond and those who are held under the authority of the Attorney General.  
7 The Ninth Circuit decided that Bromfield was due a bond hearing, and that, even though he was  
8 being held pending the Ninth Circuit's ruling on his Petition for Review, he was entitled to bond,  
9 and the BIA and IJ had authority to grant the bond.

10 The Ninth Circuit on June 6<sup>th</sup>, 2023 issued a decision in a case that had been pending before it.  
11 This precedential case is Avilez v. Garland, 69 F.4th 525 This decisions deliberately discuss the irrec-  
12 oncilable decision in Jennings with Casas-Castrillon conclusion that a § 1226(c) detainee who pursues ju-  
13 dicial review of an order of removal is detained first under § 1226(c) and later under § 1226(a).

14 The U.S Court of Appeals for the Ninth Circuit holds that Jennings abrogates this portion of its  
15 decision in Casa-Castrillon. Thereby, ending the interplay between the statutes governing detention of  
16 non-citizens. The U.S Court of Appeals for the Ninth Circuit also hold in its decision that the govern-  
17 ment's authority to detain a non-citizen under § 1226(c) applies during the administrative and judicial  
18 phases of removal proceedings. To the extend Casas-Castrillon hold otherwise, it no longer is good law.

19 In this case we have a person who is currently being held by the Immigration Services where the  
20 Bond is nonexistent for an ongoing period of 18 months and has become prolonged an unreasonable  
21 given the circumstances that the Petitioner will appear for all future hearings.

22 The Petitioner has equities in the United States and those equities far outweigh any adversities. If  
23 the Petitioner is released he will appear for all hearings and will appear if he is to be removed from the  
24 country.

25 The Petitioner here moves this Court to grant a bond review in this case and to release the Peti-  
tioner upon conditions that is fair and just.

1 In Demore v Kim, 538 U.S. 510; 123 S. Ct. 1708; the Court stated, "While it is true that re-  
2 moval proceedings are unlikely to prove "indefinite and potentially permanent," 533 US. at 696, 150 L Ed  
3 2d 653, 121 S Ct 2491, they are not formally limited to any period, and often extend beyond the time sug-  
4 gested by the Court, that is, "an average time of 47 days" or, for aliens who exercise their right of appeal,  
5 "an average of four months." *Ante*, at 155 L Ed 2d, at 742; see also Case Hearing Report 12 (finding that  
6 the average time from receipt of charging documents by a detained alien to a final decision by the immi-  
7 gration judge was 54 days).

8 Furthermore, the Supreme Court in its decision in Demore found that "it might be unlaw-  
9 ful for a U.S citizen to remain incarcerated for a period of fourteen months or longer, without a  
10 bond hearing." Demore 538 U.S at 511. (Meaning it might also be unlawful for a non-citizen to  
11 remain incarcerated for a period of fourteen months or longer, without a bond hearing).

12 However, the supreme court in Demore "did not resolve the issue of whether... petitioner's  
13 prolonged detention violated due process. ... The court addressed the constitutionality of manda-  
14 tory detention § 1226(c) generally, not whether prolonged detention under § 1226(c) was consti-  
15 tutional." S.C. v. Warden, 2023 U.S. Dist. LEXIS 201024.

16 In Rodriguez Diaz, the Ninth Circuit "assume[d]" that fourteen months of detention without  
17 bond hearing "qualifies as 'prolonged' in a general sense." 53 F.4th at 1207."

18 Moreover, the Ninth Circuit observed that it had "grave doubts that any statute that al-  
19 lows for arbitrary prolonged detention without any process is constitutional or that those who  
20 founded our democracy precisely to protect against the arbitrary deprivation of liberty would  
21 have thought so." Rodriguez v. Marin, 909 F.3d 252, 255, 256 (9th Cir. 2018).

22 "The equal protection component of the fifth amendment protects aliens even whose pres-  
23 ence in this country is unlawful, involuntary, or transitory is entitle to that constitutional protec-  
24 tion." Russian Fleet v. United States, 282, U.S 481, 489.  
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1 *Id.*, at 691, 150 L Ed 2d 653, 121 S Ct 2491. The detention itself was not subject to "stringent time limita-  
2 tions," *Salerno*, 481 U.S., at 747, 95 L Ed 2d 697, 107 S Ct 2095, but was potentially indefinite or even  
3 permanent, *Zadvydas*, 533 U.S., at 691, 150 L Ed 2d 653, 121 S Ct 2491. Finally, although both *Zadvydas*  
4 and *Ma* appeared to be dangerous, this conclusion was undermined by defects in the procedures resulting  
5 in the finding of dangerousness. *Id.*, at 692, 150 L Ed 2d 653, 121 S Ct 2491. The upshot was such serious  
6 doubt about the constitutionality of the detention statute that the Supreme Court construed it as authoriz-  
7 ing continuing detention only when an alien's removal was "reasonably foreseeable." *Id.*, at 699, 150 L Ed  
8 2d 653, 121 S Ct 2491.

9 In this case, the confinement has been ongoing for the period of 18 months in an unsanitary and  
10 unhygienic conditions in violations of the U.S Constitution and inconsistent with "reasonably related to  
11 legitimate governmental objective." This is completely excessive and this Court has jurisdiction to order  
12 the Agency to release the Petitioner or to set a bond for the Petitioner's release or that the Petitioner be re-  
13 leased on conditions. "if a pretrial detainee cannot be punished because they have not been convicted [cit-  
14 ing *Bell*], then civil detainees cannot be subjected to conditions of confinement substantially worse than  
15 they would face upon commitment. *Lynch*, 744 F.2d at 1461

16 Petitioner claims the fact that he is not able to afford a large bond, but may be able to gain assis-  
17 tance from the community in gaining access to a low bond. For the reasons that go before, the Petitioner  
18 urges that the court issues orders that does substantial justice.

### 19 Conclusion

20 Based on the foregoing, the weight of the evidence, authorities, and arguments on the  
21 record. Petitioner respectfully ask this honorable court to do substantial justice by granting Peti-  
22 tioner's petition and order Respondent to release Petitioner on conditional basis within a speci-  
23 fied timeline in which individual factors can be considered towards Petitioner's release from de-  
24 tention because his prolonged detention violates the 5<sup>th</sup> Amendment's due process clause.  
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**PROOF OF SERVICE**  
**&**  
**DECLARATION**

I, Jose David Lainez Bueso, AVER THAT I AM A PARTY TO THIS ACTION DO HEREBY AVER THAT I HAVE PROVIDED A COPY OF THE FOREGOING DOCUMENT:

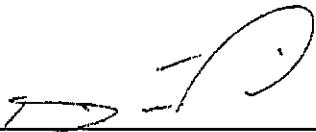
**PETITION FOR WRIT OF HABEAS CORPUS**

**U.S. District Court**  
**Clerk's Office**  
**1717 Pacific Avenue Room 3100**  
**Tacoma, WA 98402**

I WILL TESTIFY UNDER THE PENALTY OF PERJURY THAT THIS IS THE TRUTH.

THE ITEMS WERE MAILED FIRST CLASS MAIL ON THE DATE BELOW.

SUBMITTED ON 09/03/2025

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