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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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PETITION FOR WRIT OF HABEAS CORPUS

Harold Herrera-Ramirez
ALIEN No. 
PETITIONER, PRO SE
CUSTODY STATUS: DETAINED

Harold Herrera-Ramirez

Alien No. [REDACTED]

Nevada Southern Detention Center

2190 East Mesquite Avenue

Pahrump, Nevada 89060

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

HAROLD HERRERA-RAMIREZ,

2:25-cv-01749-MMD-EJY

-Petitioner, *Pro Se*,

) INS No. A [REDACTED]

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 HAROLD HERRERA-RAMIREZ, as the Petitioner in this present
2 matter, appearing *Pro Se*, and hereby respectfully petitions this Honorable District Court for a
3 Writ of Habeas Corpus.

4 The Petition of Harold Herrera-Ramirez 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. Petitioner, appealed to the Board of Immigration Appeal where the appeal was
15 dismissed.
16 5. Subsequently, a Petition for Review was timely filed with the U.S. Court of Appeals
17 for the Ninth Circuit. That Petition for Review is still pending with the Court. *See* Ninth
18 Circuit Case No. 25-4313.
19 6. Petitioner has been detained in “DHS/ICE” custody for well-over since December 3,
20 2024, about nine (“9”) months to the present day.
21 7. Petitioner requested a custody redetermination pursuant to 8 C.F.R. § 1236 where the
22 Immigration Court held a bond hearing in Las Vegas, Nevada and denied bond finding
23 Petitioner a danger to the public. Yet, Petitioner has no criminal history in the United
24 States. Thus, the IJ relied on pure speculations and unsupported assertions.

8. Here, Petitioner's bond proceeding case is meritorious as it presents a highly likelihood of success on the merits because he has significant favorable factors. However, the II denied bond solely based on mere speculations and pure unsupported assertions to justify detention. *Rodriguez v. Robbins*, 804 F.3d 1060, 1074 (9th Cir. 2015).

9. As such, Petitioner was not afforded a fair bond hearing wherein the government (“DHS”) must establish by a constitutional, due process, standard of *clear and convincing* evidence that Petitioner presents a risk of flight or danger to the community.

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

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

PARTIES

12. Petitioner, Harold Herrera-Ramirez, is a native and citizen of Colombia. Petitioner came to the United States and sought political asylum motivated by a well-founded fear of persecution and torture on account of his proposed social group status.

1 **13.** Petitioner has never departed the United States since his initial and sole entry.

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

6 **15.** Respondent, Michael BERNACKE is the Field Office Director responsible for the Salt
7 Lake City Field Office of ICE Enforcement and Removal Operations, which has
8 administrative jurisdiction over Petitioner’s case. He is a legal custodian of Mr. Harold
9 Herrera-Ramirez and is named in his official capacity.

10 **16.** Respondent, Patrick J. LECHLEITNER is Acting Director of ICE. As the head of ICE,
11 an agency within the U.S. Department of Homeland Security that detains and removes
12 certain noncitizens, Respondent LECHLEITNER is a legal custodian of Mr. Harold
13 Herrera-Ramirez. He is named in his official capacity.

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

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

1 19. Respondent Pamela J. BONDI is sued in her official capacity to the extent that 8 U.S.C.
2 § 1102 gives her the authority to detain Petitioner. *See Armentero v. INS*, supra.

3 20. Respondent Kerri Ann QUIHUIS is sued in her official capacity as ICE Field Office
4 Director, Detention and Removal, DHS at Las Vegas, Nevada (ICE Local Office), who
5 is responsible for the day-to-day operations of detaining and removing non-citizens in
6 Las Vegas, Nevada.

7 **JURISDICTION**

8 21. This action arises under the United States Constitution, the Immigration & Nationality
9 Act of 1952, as amended (herein after referred to as "INA") 8 U.S.C. § 1101 et. seq.,
10 and the Administrative Procedures Act (herein after referred to as "APA"), 5 U.S.C. §§
11 701 et. seq.

12 22. This Court has Habeas Corpus jurisdiction pursuant to 28 U.S.C. §§ 2241 et. seq.;
13 Article 1, Clause 2 of the United States Constitution (hereinafter referred to as
14 "Suspension Clause"); and the Common Law.

15 23. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 and may grant
16 relief pursuant to the Declaratory Judgement Act, 28 U.S.C. § 2201 et. seq., and the All
17 Writs Act, 28 U.S.C. § 1651.

18 **VENUE**

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

STATEMENT OF THE FACTS

25. Petitioner, Mr. Harold Herrera-Ramirez, is a native, citizen and national of Colombia and has been in physical detention for about nine months without a bond hearing where the Department ("DHS") shoulders the burden of proof under the correct legal standard.

26. Petitioner entered the United States and during removal proceedings he pursued political asylum and CAT protection from Colombia due to the worsening country and political conditions. Petitioner seeks to remain lawfully in the United States.

27. Petitioner submitted a motion for a bond hearing which resulted in the IJ denying bond on an erroneous finding that Petitioner presents a danger to the community. Yet, these findings are not supported by facts or correct legal analysis, but rather by speculations, hypotheticals and unsupported assertions to justify Petitioner's detention.

CRIMINAL HISTORY

28. In this case, Petitioner does not have a criminal history and does not exhibit violent behavior or anything close to relevant here in the United States. Petitioner is a responsible family man without any involvement in any illegal activity.

29. Petitioner has no history of violent conduct or criminal activity that would render him removable under INA § 237(a)(2)(A)(iii). To the contrary, Petitioner has consistently demonstrated good conduct, which is support by the absence of convictions in the US and good behavior while in detention and has not incurred any disciplinary actions.

30. Additionally, Petitioner has shown a commendable willingness to reintegrate into daily life upon release, and it is important to emphasize that he has no criminal convictions for any offense that would qualify as an "aggravated felony" under INA § 101(a)(43).

31. It is important to stress out that Petitioner lacks criminal convictions of any offenses, misdemeanors and aggravating felonies in the United States.

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

6 33. Based on the totality of these compelling mitigating factors, it demonstrates that
 7 Petitioner, Mr. Harold Herrera-Ramirez merits, at the very least, a fair and impartial
 8 bond hearing where the IJ applies the correct legal standard and analysis.

9 ARGUMENT

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

21 35. Due process therefore requires “adequate procedural protections” to ensure that the
 22 government’s asserted justification for physical confinement “outweighs the
 23 individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at
 24 690. Civil commitment for *any* purpose constitutes a significant deprivation of liberty.

1 *Addington v. Texas*, 441 U.S. 418, 425 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979). In the
2 immigration context, the Supreme Court has recognized only two valid purposes for
3 civil detention—to mitigate the risks of danger to the community and to prevent flight.
4 *Id.*; *Demore*, 538 U.S. at 528.

5 36. While the Supreme Court upheld the mandatory detention of a noncitizen under Section
6 1226(c) in *Demore*, it did so based upon the petitioner’s concession of deportability
7 and the Court’s understanding that detentions under Section 1226(c) are typically
8 “brief”. *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a
9 prolonged period or is pursuing a substantial defense to removal or claim to relief, due
10 process requires an individualized determination that such a significant deprivation of
11 liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) (“individualized
12 determination as to his risk of flight and dangerousness” may be warranted “if the
13 continued detention became unreasonable or unjustified”). *See also*, *Jackson v.*
14 *Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the “initial commitment” requires
15 additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972)
16 (“lesser safeguards may be appropriate” for “short term confinement”); *Hutto v.*
17 *Finney*, 437 U.S. 678, 685-86 (1978) (in Eighth Amendment context, “the length of
18 confinement cannot be ignored in deciding whether [a] confinement meets
19 constitutional standards”).

20 37. Detention without a proper bond hearing is unconstitutional when it exceeds six
21 months. *See Demore*, 538 U.S. at 529-30 (upholding only “brief” detention under
22 Section 1226(c), which last “roughly a month and a half in the vast majority of cases
23 in which it is invoked, and about five months in the minority of cases in which the alien

1 chooses to appeal”); *Zadydas*, 533 U.S. at 701 (“Congress previously doubted the
2 constitutionality of detention for more than six months”).

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

8 **39.** Consistent with this tradition, the Supreme Court has found six months to be the limit
9 of confinement for a criminal offense that a Federal Court may impose without the
10 protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966)
11 (plurality opinion). The Court has also looked to six months as a benchmark in other
12 contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245,
13 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without
14 individualized inquiry for civil commitment). The Court has likewise recognized the
15 need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*,
16 559, U.S. 98, 110 (2010) (14 days for re-interrogation following invocation of Miranda
17 rights); *Cty. Of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (48 hours for
18 probable cause hearing). Petitioner has been detained without proper justification.

19 **40.** Even if a bond hearing is not required after six months in every case, at a minimum,
20 due process requires a bond hearing after detention has become unreasonably
21 prolonged. *See Diop*, 656 F.3d at 234. Courts that apply a reasonableness test have
22 considered three main factors in determining whether detention is reasonableness. First,
23 courts have evaluated whether the noncitizen has raised a “good faith” challenge to
24 removal—that is, the challenge is “legitimately raised” and presents “real issues”.

1 *Chavez-Alvarez v. Wardern York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015).
2 Petitioner's detention is prolonged, well-over twenty-six (26) months, without an
3 impartial and fair bond hearing that guarantees fundamental Due Process of Law. Any
4 delay has occurred as a result of litigating favorable and substantive issues affecting
5 removal.

6 41. Second, reasonableness is a "function of the length of the detention," with detention
7 presumptively unreasonable if it lasts six months to a year. *Id.* at 477-78; *accord Sopo*,
8 825 F.3d at 1217-18. Third, courts have considered the likelihood that detention will
9 continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding
10 detention unreasonable after nine months of detention, when the parties could "have
11 reasonably predicted that *Chavez-Alvarez's* appeal would take a substantial amount of
12 time, making his already lengthy detention considerably longer"); *Sopo*, 825 F.3d at
13 128; *Reid*, 819 F.3d at 500.

14 42. At a proper bond hearing, due process requires certain minimal protections to ensure
15 that a noncitizen's detention is warranted: the *government* must bear the burden of
16 proof by *clear and convincing* evidence to justify continued detention, taking into
17 consideration available alternatives to detention; and if the government cannot meet its
18 burden, the noncitizen's ability to pay a bond must be considered in determining the
19 appropriate conditions of release.

20 43. To justify immigration detention, the government must bear the burden of proof by
21 *clear and convincing* evidence that the noncitizen is a danger or flight risk. *See Singh*
22 *v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011). Where the Supreme Court has
23 permitted civil detention in other contexts, it has relied on the fact that the Government
24 bore the burden of proof at least by *clear and convincing evidence*. *See United States*

1 *v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where “full-
2 blown adversary hearing,” requiring “clear and convincing evidence” and “neutral
3 decisionmaker”) *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil
4 detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692
5 (finding post-final-order custody review procedures deficient because, inter alia, they
6 placed burden on detainee).

7 44. The Ninth Circuit Court of Appeals confirmed that *Jennings v. Rodriguez*, 138 S. Ct.
8 830 (2018) did not invalidate the holding in *Singh and Rodriguez v. Robbins* (Rodriguez
9 III), 804 F.3d 1060 (9th Cir. 2015), which required that the Government justify a non-
10 citizen’s detention by *clear and convincing* evidence. *Aleman Gonzalez v. Barr*, ---
11 F.3d ---, 2020 WL 1684034 (9th Cir. Apr. 7, 2020).

12 45. Further, three (“3”) honorable district court judges in this Court have concluded that
13 fundamental due process requires the government at any Bond proceedings to prove by
14 the legal standard of *clear and convincing* evidence that a noncitizen is a *flight risk or*
15 *danger to the community* to justify the denial of bond. *Vargas v. Wolf*, 2020 WL
16 1929842 (D. Nev. 2020)); *Fuentes Reyes v. Wolf*, 2020 WL 2308075 (D. Nev. 2020);
17 *De la Cruz v. United States*, 2021 WL 66402 (D. Nev. Jan. 7, 2021).

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

22 47. In *De la Cruz v. Wolf*, U.S. District Judge Andrew P. Gordon determined that the
23 government was unable to show cause why he should deviate from following *Vargas*
24 and reaffirmed *Vargas* by holding that the government has the burden of proof by *clear*

1 *and convincing evidence* that a detainee is a flight risk of a danger to the community
2 and thus, if the government is unable to meet this heightened burden of proof, a detainee
3 must be released.

4 **48.** The Fifth Amendment requires that, before depriving a person of his liberty, the
5 government allow that person to be heard at a meaningful time and in a meaningful
6 manner. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The determination of whether
7 particular government conduct violates this procedural due process balances (1) the
8 private interest affected by the official action; (2) the risk of erroneous deprivation of
9 the interest and value (if any) of additional or substitute procedural safeguards; and (3)
10 the government's interest, including the burden that additional or substitute procedural
11 requirements would impose. *Id.* at 335.

12 **49.** To conform to the requirements of due process, such a hearing must take place before
13 an independent and impartial adjudicator. *Id.* at 334-35. The requirement that the
14 government bear the burden of proof by *clear and convincing* evidence is also
15 supported by application of the three-factor balancing test from *Mathews v. Eldridge*,
16 424 U.S. 319, 335 (1976).

17 **50.** First, prolonged incarceration deprives noncitizens of a “profound” liberty interest. *See*
18 *Diouf II*, 634 F.3d at 1091–92 (9th Cir. 2011).

19 **51.** Second, the risk of error is heavily great where the government is represented by trained
20 and qualified attorneys and detained noncitizens, as it is in this present case, are often
21 unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455
22 U.S. 745, 763 (1982) (requiring clear and convincing evidence at parental termination
23 proceedings because “numerous factors combine to magnify the risk of erroneous
24 factfinding” including that “parents subject to termination proceedings are often poor,

1 uneducated, or members of minority groups” and “[t]he State’s attorney usually will be
2 expert on the issues contested”).

3 **52.** Moreover, detainees like Mr. Harold Herrera-Ramirez are incarcerated in prison-like
4 conditions that severely hamper their ability to obtain legal assistance, gather evidence,
5 and prepare for a bond hearing. *See, infra*.

6 **53.** Third, placing the burden on the government imposes minimal cost or inconvenience,
7 as the government has access to the noncitizen’s immigration records and other
8 information that it can use to make its case for continued detention.

9 **54.** Due process also requires consideration of non-punitive alternatives to detention. The
10 primary purpose of immigration detention is to ensure a noncitizen’s appearance during
11 removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related
12 to this purpose if there are alternative conditions of release that could mitigate risk of
13 flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

14 **55.** ICE’s alternatives to detention program—the Intensive Supervision Appearance
15 Program (“ISAP”)—has achieved extraordinary success in ensuring appearance at
16 removal proceedings, reaching compliance rates close to 100 percent. *Hernandez v.*
17 *Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99%
18 attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It
19 reveals that alternatives to detention must be considered in determining whether
20 prolonged incarceration is warranted.

21 **56.** While detention pending removal proceedings is constitutionally permissible, it must
22 comport with due process. Among other requirements, the government must justify
23 prolonged detention with clear and convincing evidence that the noncitizen presents a
24 current flight risk or danger to the community.

1 **57.** It is important to stress out that *dangerousness cannot be based on criminal history*
2 *alone*; the severity and recency of the criminal conduct must be taken into account.

3 **58.** The “IJ” also must consider *changes in circumstances that would make recidivism less*
4 *likely*.

5 **59.** Finally, although the Court cannot review the “IJ’s” discretionary judgement, it may
6 review the record for constitutional claims and legal error and to ensure that the clear
7 and convincing evidence standard is met as a matter of law. *Calderon-Rodriguez v.*
8 *Wilcox*, 374 F. Supp. 3d 1024, 2033 n.8 (W.D. Wash. 2019).

9 **60.** Petitioner argues that, should he be granted a bond hearing, the Government should be
10 required to prove by clear and convincing evidence that his continued detention is
11 justified, and the immigration judge should consider Petitioner’s ability to pay a bond
12 and alternative conditions of release when setting a bond. The Court agrees.

13 **61.** A bond hearing must include certain safeguards and meet certain standards for it to
14 provide meaningful due process for an individual subject to prolonged detention. “It is
15 particularly important that the Government be held to the ‘clear and convincing’ burden
16 of proof in the immigration detention context because civil removal proceedings, unlike
17 criminal proceedings, are ‘nonpunitive in purpose and effect’.” *Argueta Anariba v.*
18 *Shanahan*, No. 16 Civ. 1928, 2017 U.S. Dist. LEXIS 205781, 2017 WL 6397752, at
19 *2 (S.D.N.Y. Dec. 14, 2017). “The overwhelming majority of courts have concluded,
20 post-*Jennings*, that when unreviewed detention has become unreasonable, the
21 government must bear the burden of proof at a bond hearing by clear and convincing
22 evidence, to ensure the preservation of the detainees’ fundamental liberty interests.”
23 *Joseph v. Decker*, No. 18 Civ. 2640, 2018 U.S. Dist. LEXIS 198781, 2018 WL
24 6075067, at *12 (S.D.N.Y. Nov. 21, 2018) (collecting cases) (cleaned up). In *Velasco*

Lopez, the Second Circuit agreed that “a clear and convincing standard was appropriate” in the petitioner’s new bond hearing because a standard of proof “serves to allocate the risk of error between the litigants and must reflect the relative importance attached to the ultimate decision.” *Velasco Lopez*, 978 F.3d at 855-56 (internal quotation marks omitted).

62. Consideration of alternative conditions of release, as well as Petitioner’s ability to pay a bond, is similarly consistent with due process. A bond determination that does not include a consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government’s legitimate interests.

63. Courts in this circuit have required immigration judges to consider alternatives to detention while holding constitutionally-adequate bond hearings. *See, e.g., Coronel v. Decker*, 449 F. Supp. 3d 274, 286 (S.D.N.Y. 2020); *Arana v. Barr*, 451 F. Supp. 3d 271, 276 (S.D.N.Y. 2020); *Graham v. Decker*, No. 20 Civ. 3168, 2020 U.S. Dist. LEXIS 107520, 2020 WL 3317728, at *8 (S.D.N.Y. June 18, 2020).

64. The Government opposes the procedural requirements and may argue that the Court lacks jurisdiction to grant such relief. The Government may rely and cite 8 U.S.C. § 1252(a)(2)(B)(ii), which states that “no court shall have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security.”

65. Because § 1231(a)(6) uses the word “may,” it involves discretion. Therefore, the Government may argue, the Court does not have jurisdiction to dictate what factors an immigration judge must consider in a bond hearing. The argument is unavailing.

1 66. Since the above constitutional analysis compels the requirement of a bond hearing, the
2 Government's invocation of 8 U.S.C. § 1252(a)(2)(B)(ii), which specifically permits
3 jurisdiction over challenges to "the extent of the [agency's] authority under the post-
4 removal period detention statute," *Zadvydas*, 533 U.S. at 688, and "constitutional
5 claims and questions of law," *Patel v. Garland*, 142 S. Ct. 1614, 1623, 212 L. Ed. 2d
6 685 (2022), is inapposite.

7 67. Whether the Supreme Court has ruled that these particular considerations are
8 constitutionally required in immigration bond hearings does not change the nature of
9 the inquiry, which is fundamentally constitutional—a bond hearing required by due
10 process, without proper procedural safeguards, ensures no due process at all.

11 68. The following facts establish the government will not meet its Burden of Proof i.e.,
12 "*clear and convincing*" evidence of dangerousness as a matter of law:

13 69. Petitioner does not pose a danger to persons or property. He lacks misdemeanors, and
14 felony convictions and is not under any criminal proceedings. Petitioner is not under
15 any form of probation by the Department of Parole and Probation.

16 **A. The Bond Denial Violated Due Process**

17 70. The denial of bond was erroneous and the IJ did not apply the correct legal standard or
18 analysis. The IJ erred in finding Petitioner a danger to the community. Petitioner has
19 no criminal history, no felony convictions, and no evidence of violent conduct. Without
20 evidence, the finding of danger was purely speculative and constitutionally defective.

21 **B. DHS Must Bear the Burden of Proof by Clear and Convincing Evidence.**

22 71. The Ninth Circuit is clear: DHS must prove danger or flight risk by clear and
23 convincing evidence. *Singh*, 638 F.3d at 1203–04. At Petitioner's prior hearing, DHS
24 did not meet this standard, yet Petitioner was denied bond.

C. Petitioner Warrants Release on Bond

72. The record reflects that Petitioner has no criminal record in the United States; full compliance with all court appearances; no indication of flight risk; and strong equities in the United States. Under the correct legal standard, nothing in the record, supports a finding that Petitioner presents public danger or a national threat.

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

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

CLAIMS FOR RELIEF

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

75. All persons, including aliens, residing in the United States are protected by the Due Process Clause of the Fifth Amendment to the United States Constitution. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The Due

1 Process Clause of the Fifth Amendment provides that “[n]o person shall be ... deprived
2 of life, liberty, or property, without due process of law.” *U.S. Const., amend. V*.
3 “Freedom from imprisonment—from government custody, detention, or other forms of
4 physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533
5 U.S. at 690. Petitioner re-alleges and incorporates by reference the paragraphs above.

6 **76.** Detention by the Respondents puts at risk Petitioner’s protected liberty interest. The
7 Due Process Clause of the Fifth Amendment forbids the government from depriving
8 any “person” of liberty “without due process of law.” *See U.S. Const. amen. V*.

9 **77.** To justify Petitioner’s ongoing prolonged detention, due process requires that the
10 Government establish, at an individual hearing before a neutral decisionmaker, that
11 Petitioner’s detention is justified by *clear and convincing evidence* of flight risk or
12 danger, even after consideration whether alternatives to detention could sufficiently
13 mitigate that risk.

14 **78.** Based on the laws and facts, Petitioner’s ongoing detention without such a fair and
15 impartial hearing where the government shoulders the burden of proof and where the
16 IJ has proper jurisdiction violates due process. Petitioner re-alleges and incorporates by
17 reference the paragraphs above.

18 **PRAYER FOR RELIEF**

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

20 **79.** Assume jurisdiction over this matter;

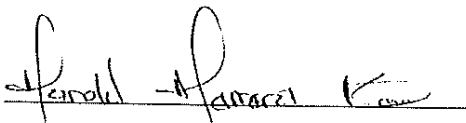
21 **80.** Order that Petitioner receive a new, impartial bond hearing before an Immigration
22 Judge; Require DHS to bear the heavy burden of proof of demonstrating danger or
23 flight risk by clear and convincing evidence;
24

- 1 **81.** Direct the Immigration Judge to give full consideration of Petitioner's lack of criminal
2 history, lack of felony convictions, and consistent compliance with court proceedings
- 3 **82.** Issue a Writ of Habeas Corpus; hold a hearing before this Court if warranted; determine
4 that Petitioner's detention is not justified because the government has not established
5 by *clear and convincing evidence* that Petitioner presents a risk of flight or *danger* in
6 light of available alternatives to detention; and order Petitioner's release, with
7 appropriate conditions of supervision if necessary, taking into account Petitioner's
8 ability to pay a bond;
- 9 **83.** Issue a declaration that Petitioner's ongoing detention violates the Due Process Clause
10 of the Fifth Amendment and the Eighth Amendment;
- 11 **84.** Award Petitioner his costs in this action as provided for by the Equal Access to Justice
12 Act, 28 U.S.C. § 2412, or any other statute; and
- 13 **85.** Grant such further relief as this Court deems just and proper.

14

15 **Respectfully submitted on this 4th day of September, 2025.**

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18

19 Harold Herrera-Ramirez

20 Alien No. 

21 Nevada Southern Detention Center

22 2190 East Mesquite Avenue

23 Pahrump, NV 89060

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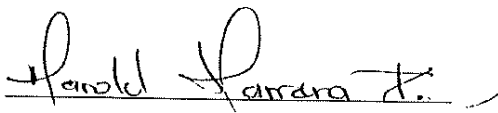
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6 **ACKNOWLEDGEMENT AND VERIFICATION**

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

11
12 **DATED this 4th day of September, 2025.**

13
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15 

16 -Petitioner, *Pro Se*

17 Harold Herrera-Ramirez

18 Alien No. 

19 Nevada Southern Detention Center

20 2190 East Mesquite Avenue

21 Pahrump, NV 89060

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