

UNITED STATES DISTRICT COURT
for the

Southern District of California ▼

David Hoyos Amado A# 

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Petitioner

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UNITED STATES DEPARTMENT OF JUSTICE, Todd
Lyons, Immigration and Customs Enforcement,
Christopher J. LaRose, et al.*Respondent*

(name of warden or authorized person having custody of petitioner)

Case No. **'25CV2687 LL DDL***(Supplied by Clerk of Court)***PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241****Personal Information**

1. (a) Your full name: David Hoyos Amado
- (b) Other names you have used: _____
2. Place of confinement:
 - (a) Name of institution: Otay Mesa Detention Center, San Diego, California
 - (b) Address: 7488 Calzada De La Fuente, San Diego, CA, 92154
3. (c) Your identification number: 
4. Are you currently being held on orders by:

Federal authorities State authorities Other - explain: _____
5. Are you currently:

A pretrial detainee (waiting for trial on criminal charges)

Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

 - (a) Name and location of court that sentenced you: _____
 - (b) Docket number of criminal case: _____
 - (c) Date of sentencing: _____

Being held on an immigration charge

Other (explain): Immigration detention by ICE. Petitioner is subject to a final order of removal issued by an Immigration Judge, which is currently on appeal before the Board of Immigration Appeals (BIA)

Decision or Action You Are Challenging

5. What are you challenging in this petition:

How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

Pretrial detention

Immigration detention

Detainer

The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

Disciplinary proceedings

Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: San Diego Immigration Court, California
U.S. Immigration and Customs Enforcement (ICE), San Diego Field Office

(b) Docket number, case number, or opinion number: 

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Petitioner challenges his ongoing immigration detention at Otay Mesa Detention Center. An Immigration Judge ordered removal, but Petitioner has filed an appeal with the Board of Immigration Appeals (BIA).

Despite the pending appeal, Petitioner remains in prolonged detention without bond or meaningful custody review

(d) Date of the decision or action: 09/24/2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not appeal: _____

8. Second appeal

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. Third appeal

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: _____

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

Yes No

If "Yes," provide:

(a) Date you were taken into immigration custody: 09/14/2024

(b) Date of the removal or reinstatement order: 09/24/2025

(c) Did you file an appeal with the Board of Immigration Appeals?

Yes No

If "Yes," provide:

(1) Date of filing: 10/04/2025

(2) Case number: Pending – BIA case number not yet assigned.

(3) Result: Pending

(4) Date of result: _____

(5) Issues raised: _____

(d) Did you appeal the decision to the United States Court of Appeals?

Yes No

If "Yes," provide:

(1) Name of court: _____

(2) Date of filing: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Prolonged immigration detention pending appeal before the BIA

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

Petitioner has been detained by ICE at Otay Mesa Detention Center since 09/14/2024. An Immigration Judge ordered removal on 09/24/2025, and Petitioner has filed an appeal with the Board of Immigration Appeals (BIA). Because the appeal is pending, the removal order is not final and cannot be executed.

Despite this, Petitioner remains in custody without a bond hearing or meaningful custody review, which violates due process under the Fifth Amendment.

(b) Did you present Ground One in all appeals that were available to you?

Yes No

GROUND TWO:

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Two in all appeals that were available to you?

Yes No

GROUND THREE:

(a) Supporting facts (Be brief. Do not cite cases or law.):

(b) Did you present Ground Three in all appeals that were available to you?

Yes No

GROUND FOUR:

(a) Supporting facts (Be brief. Do not cite cases or law.):

(b) Did you present Ground Four in all appeals that were available to you?

Yes No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Petitioner respectfully requests that this Court:

1. Grant the writ of habeas corpus;
2. Order a prompt and individualized bond hearing before an Immigration Judge.
3. Provide any other relief the Court deems just and proper.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 10/09/2025

Signature of Petitioner



Signature of Attorney or other authorized person, if any

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Instructions

1. **Who Should Use This Form.** You should use this form if
 - you are a federal prisoner and you wish to challenge the way your sentence is being carried out (*for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits*);
 - you are in federal or state custody because of something other than a judgment of conviction (*for example, you are in pretrial detention or are awaiting extradition*); or
 - you are alleging that you are illegally detained in immigration custody.
2. **Who Should Not Use This Form.** You should not use this form if
 - you are challenging the validity of a federal judgment of conviction and sentence (*these challenges are generally raised in a motion under 28 U.S.C. § 2255*);
 - you are challenging the validity of a state judgment of conviction and sentence (*these challenges are generally raised in a petition under 28 U.S.C. § 2254*); or
 - you are challenging a final order of removal in an immigration case (*these challenges are generally raised in a petition for review directly with a United States Court of Appeals*).
3. **Preparing the Petition.** The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. **A false statement may lead to prosecution.**

All questions must be answered clearly and concisely in the space on the form. If needed, you may attach additional pages or file a memorandum in support of the petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. Note that some courts have page limitations. All filings must be submitted on paper sized 8½ by 11 inches. **Do not use the back of any page.**

4. **Supporting Documents.** In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.
5. **Required Filing Fee.** You must include the \$5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.
6. **Submitting Documents to the Court.** Mail your petition and ____ copies to the clerk of the United States District Court for the district and division in which you are confined. For a list of districts and divisions, see 28 U.S.C. §§ 81-131. All copies must be identical to the original. Copies may be legibly handwritten.

If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

7. **Change of Address.** You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.

O. MARTIN QUIROZ, (SBN 313895)
Martin@QuiroLawFirm.com
QUIROZ LAW FIRM, APC
333 South Grand Avenue, Suite 3310
Los Angeles, CA 90071
Telephone: (213) 340-0010
Attorney For Plaintiff

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

David Hoyos Amado,
Plaintiff,
v.

UNITED STATES DEPARTMENT OF JUSTICE,
Todd Lyons,
Immigration and Customs Enforcement,
Christopher J. LaRose, Senior Warden of Otay
Mesa Detention Center; and
PAM BONDI, Attorney General.,
Defendants

COMPLAINT
Case No: To be assigned

'25CV2687 LL DDL

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner David Hoyos Amado, currently detained at the Otay Mesa Detention Center in San Diego, California, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner seeks immediate release from custody or, in the alternative, an expedited bond hearing, on the grounds that his prolonged detention for over 13 months without meaningful review violates the Due Process Clause of the Fifth

1 Amendment to the United States Constitution, established principles of international law
2 incorporated into jurisprudence, and binding precedents from the Supreme Court and
3 federal courts. This petition is grounded in the factual circumstances of Petitioner's entry
4 into the United States on September 14, 2024, his subsequent detention, and the ongoing
5 appeal of a removal order issued following in absentia proceedings conducted while he
6 was in custody. As detailed below, the Immigration and Customs Enforcement (ICE) has
7 failed to meet its evidentiary burden to justify continued detention, thereby infringing upon
8 Petitioner's fundamental rights to liberty, due process, and protection from arbitrary
9 deprivation of freedom.

10
11 Mr. David Hoyos Amado is not a flight risk or a danger to the community and has not
12 committed any crimes in Colombia or the United States that could consider him dangerous
13 to the community. His prolonged detention is no longer justified under the Constitution or
14 the Immigration and Nationality Act (INA).

15
16 **CUSTODY**

17 1. Mr. David Hoyos Amado is in the physical custody of Respondent XXX, Field
18 Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement
19 (ICE), the Department of Homeland Security (DHS), and Respondent XXX, Warden of the
20 Otay Mesa Detention Center. At the time of the filing of this petition, Petitioner is detained
21 at the OMDC. The OTMDC contracts with the DHS to detain aliens such as Petitioner.
22
23 Mr. David Hoyos Amado is under the direct control of Respondents and their agents.

24
25 **JURISDICTION**

26 This Court has jurisdiction over this petition under 28 U.S.C. § 2241(a), as Petitioner
27 is in custody within this district at the Otay Mesa Detention Center, a federal immigration
28 detention facility. Venue is proper pursuant to 28 U.S.C. § 2241(d), as the custody is

1 maintained in the Southern District of California. The petition challenges the legality of
2 Petitioner's detention under the Fifth Amendment and federal immigration statutes,
3 including 8 U.S.C. § 1226, which governs detention pending removal proceedings. See
4 *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (affirming habeas jurisdiction to review
5 prolonged immigration detention for constitutional violations). Respondents are sued in
6 their official capacities as the officials responsible for Petitioner's custody. See **Rumsfeld**
7 **v. Padilla**, 542 U.S. 426, 447 (2004) (proper respondent is the immediate custodian).
8

9 *The federal habeas statute straightforwardly provides that the proper*
10 *respondent to a habeas petition is “the person who has custody over [the*
11 *petitioner].” 28 U. S. C. §2242; see also §2243 (“The writ, or order to show*
12 *cause shall be directed to the person having custody of the person detained”).*
13
14 *The consistent use of the definite article in reference to the custodian*
15 *indicates that there is generally only one proper respondent to a given*
16 *prisoner’s habeas petition. This custodian, moreover, is “the person” with*
17 *the ability to produce the prisoner’s body before the habeas court. Ibid. We*
18 *summed up the plain language of the habeas statute over 100 years ago in*
19 *this way: “[T]hese provisions contemplate a proceeding against some person*
20 *who has the immediate custody of the party detained, with the power to*
21 *produce the body of such party before the court or judge, that he may be*
22 *liberated if no sufficient reason is shown to the*
23 *contrary.” *Wales v. Whitney*, 114 U. S. 564, 574 (1885) (emphasis added);*
24 *see also Braden v. 30th Judicial Circuit Court of Ky.*, 410 U. S. 484, 494–495
25 *(1973) (“The writ of habeas corpus” acts upon “the person who holds [the*
26 *detainee] in what is alleged to be unlawful custody,” citing *Wales*, *supra*, at*
27

574); Braden, *supra*, at 495 (“ ‘[T]his writ ... is directed to ... [the] jailer,’ ” quoting *In the Matter of Jackson*, 15 Mich. 417, 439–440 (1867)).

This action arises under the Constitution of the United States, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction under 28 U.S.C. 2241, art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

Venue lies in the United States District Court for the Southern of California, the judicial district in which Petitioner is detained. 28 U.S.C. § 1391(e).

PARTIES

Petitioner David Hoyos Amado is a national of Colombia who entered the United States without inspection on September 14, 2024, at San Diego, California, fleeing credible threats of persecution. He has been continuously detained at Otay Mesa since his apprehension upon entry.

Respondent Todd Lyins os the agent of ICE, Christopher J. LaRose is the senior warden of Otay Mesa Detention Center whi has custody over Petitioner. Respondent Pam Bondi is the Attorney General, responsible for the execution of immigration laws under 8 U.S.C. § 1103.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Mr. David Hoyos Amado has exhausted his administrative remedies to the extent required by law.

He has fully cooperated with Respondents and has not delayed or obstructed his detention.

Mr. David Hoyos Amado 's only remedy is by way of this judicial action.

REQUIREMENTS OF 28 U.S.C. § 2243

#. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

#. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On September 14, 2024, Petitioner crossed the United States-Mexico border near San Diego, California, without inspection, accompanied by his family, to escape imminent persecution in Colombia. Petitioner and his family faced targeted threats from Sergio Marín, a former commander of the Revolutionary Armed Forces of Colombia (FARC) who, as of 2025, serves as a congressman in Colombia's National Congress following the 2016 peace accords. Marín's history as a FARC leader implicates him in ongoing networks

1 of violence, and Petitioner's fear of persecution stems from personal encounters and
2 familial ties that placed them in Marín's crosshairs, consistent with documented patterns of
3 post-conflict reprisals against perceived adversaries in Colombia. See Relevant news:
4 Colombia (detailing persistent threats from former FARC dissidents and political figures).
5

6 Upon apprehension, ICE immediately detained Petitioner under 8 U.S.C. § 1226(c),
7 classifying him as subject to mandatory detention as an arriving alien without valid entry
8 documents. Petitioner's immigration proceedings were promptly initiated thereafter, and he
9 has been represented throughout Jason A. Roni, Esq. initially and after by throughout by
10 undersigned counsel. Petitioner's counsel submitted extensive evidentiary material in
11 support of his applications for asylum, withholding of removal under the Convention
12 Against Torture (CAT), and related relief, including affidavits detailing the threats from
13 Marín, country condition reports, analyses on FARC-related violence in Colombia, legal
14 briefs and corroborating documentation of familial persecution risks. The Petitioner
15 remained in detention throughout the merits phase.

16 The proceedings culminated in an individual hearing before Immigration Judge
17 Eugene Robinson, with a continuation granted to allow full consideration of the evidence.
18 On September 24, 2025, following the continuation of the final hearing, Judge Robinson
19 issued a decision denying Petitioner's claims for relief, that contains several factual errors;
20 such as mischaracterizing the nature, timing and immediacy of threats from Marín.
21

22 Specifically, the Court appears to have misapprehended the chronology of events and
23 drew improper inferences from the absence of subsequent incidents of persecution,
24 overlooking the fact that Petitioner and his family fled the country immediately after
25 making the initial report to the authorities. The Judge's conclusion that the absence of
26 continued harm undermines credibility disregards this critical context and the evidence
27
28

1 demonstrating that departure from the country was a direct and reasonable response to
2 ongoing threats.

3 And interpretive errors, including an overly narrow application of the fear of
4 persecution standard under 8 U.S.C. § 1158(b)(1)(B) and failure to adequately weigh CAT
5 protections against acquiescence by Colombian authorities. The Court minimized the
6 gravity of the threats and failed to recognize that persecution does not require physical
7 harm but may be established through credible threats of violence, intimidation, or other
8 severe forms of coercion. In particular, the Judge disregarded critical contextual evidence
9 demonstrating that the individual responsible for the threats—a sitting congressman—was
10 a former member of the FARC with ongoing ties to dissident groups. This background
11 amplifies both the credibility and the seriousness of the threats, revealing a clear nexus
12 between Petitioner's political opinions and the persecutor's motives. There is no final order
13 of removal at this time, as Petitioner's counsel timely filed a notice of appeal to the Board
14 of Immigration Appeals (BIA) on October 3, 2025, challenging the Immigration Judge's
15 errors of fact and law. The appeal remains pending as of the filing of this petition, with no
16 briefing schedule yet issued, rendering Petitioner's removal non-final and his detention
17 indefinite pending resolution.

18 Petitioner has now been detained for over 13 months without a bond hearing or
19 individualized determination of flight risk or danger to the community. ICE has provided
20 no evidence beyond boilerplate assertions of Petitioner's status as an "arriving alien,"
21 failing to adduce specific proof justifying prolonged custody despite the extensive proffer
22 of non-dangerous, community-tied evidence by Petitioner's counsel. Petitioner has no
23 criminal history in the United States or abroad, strong community ties through family
24 members who entered with him, and a credible claim for relief under CAT and asylum

provisions, given the Colombian government's inability or unwillingness to protect against threats from high-level political figures like Marín.

LEGAL ARGUMENT

A. The Government's Failure to Meet Its Evidentiary Burden Under 8 U.S.C. § 1226 Justifies Immediate Habeas Relief

The Immigration and Nationality Act (INA) authorize detention of noncitizens pending removal proceedings under 8 U.S.C. § 1226, but such detention is not absolute and must comport with constitutional limits. For arriving aliens like Petitioner, ICE bears the burden of establishing by clear and convincing evidence that detention is necessary to prevent flight or danger, particularly where proceedings have extended beyond a reasonable period.

See, e.g., *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021)

(holding that respondent, who was detained for ten months, was entitled to a new bond hearing in which the government bears the burden of proof);

Velasco Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020)

(affirming district court's order that due process required a new bond hearing where the government must establish dangerousness and flight risk by clear and convincing evidence after respondent had been detained for fifteen months);

Marroquin Ambriz v. Barr, 420 F. Supp. 3d 953 (N.D. Cal. 2019)

(concluding that because respondent had been subjected to prolonged detention under section 236(a), due process required a bond hearing where the government must establish flight risk or dangerousness by clear and convincing evidence).

1 Here, ICE has utterly failed to meet this burden. From the outset, ICE's custody
2 determination relied solely on Petitioner's manner of entry (without inspection) without
3 any investigation into his asylum claim or the validity of his persecution fears, even after
4 counsel's submission of extensive evidence demonstrating low flight risk and no danger.
5 No evidence of criminal activity, prior violations, or risk factors has been presented;
6 instead, ICE's periodic custody reviews consist of form notices reciting statutory authority
7 without substantive analysis.

8 This evidentiary shortfall violates due process, as prolonged detention without proof of
9 necessity presumptively becomes punitive. In *Demore v. Kim*, 538 U.S. 510, 528 (2003),
10 the Supreme Court upheld mandatory detention under § 1226(c) only for the "brief period
11 necessary" for removal proceedings, emphasizing that detention must be reasonably related
12 to a legitimate governmental interest. Petitioner's ten-month detention far exceeds this,
13 especially given the pending BIA appeal, which could take months or years to resolve.
14 Lower courts have consistently granted habeas relief in analogous cases where ICE fails to
15 justify extended custody. For instance, in *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th
16 Cir. 2017), the Ninth Circuit held that detention under § 1226(c) triggers due process
17 protections after six months, requiring the government to prove by clear and convincing
18 evidence that release would pose a danger or flight risk.
19

20 The Court has stated:
21

22 *"The Due Process Clause of the Fifth Amendment prohibits the
23 Government from depriving individuals of their life, liberty, or property,
24 without due process of law. U.S. Const. amend. V. In particular, "[f]reedom
25 from imprisonment—from government custody, detention, or other forms of
26 physical restraint—lies at the heart of the liberty that Clause
27*

protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). These protections "appl[y] to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent," and to immigration detention as well as criminal detention. *Id.* at 693, 121 S.Ct. 2491.¹⁷

In the context of immigration detention, it is well-settled that "due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." Singh , 638 F.3d at 1203 (quoting Casas-Castrillon , 535 F.3d at 950). The government has legitimate interests in protecting the public and in ensuring that noncitizens in removal proceedings appear for hearings, but any detention incidental to removal must "bear[] [a] reasonable relation to [its] purpose." Zadvydas , 533 U.S. at 690, 121 S.Ct. 2491 (quoting Jackson v. Indiana , 406 U.S. 715, 738, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972)); see also Tijani v. Willis , 430 F.3d 1241, 1249 (9th Cir. 2005) (Tashima, J., concurring). 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." Pugh v. Rainwater , 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc).

"In the same sense the has stated:

In re Guerra, 24 I. & N. Dec. at 40.

1 ⁸ Under our precedent, the government may not detain a non-citizen under §
2 1226(a) for "a prolonged period without providing him a neutral forum in
3 which to contest the necessity of his continued detention." Casas-Castrillon,
4 535 F.3d at 949. Therefore, we have held that the government "must provide
5 periodic bond hearings every six months so that noncitizens may challenge
6 their continued detention as the period of ... confinement grows." Rodriguez
7 v. Robbins, 804 F.3d 1060, 1089 (9th Cir. 2015) (Rodriguez III), cert.
8 granted sub nom. Jennings v. Rodriguez, — U.S. —, 136 S.Ct. 2489,
9 195 L.Ed.2d 821 (2016) (internal citation omitted). At these
10 "Rodriguez hearings," unlike at the initial bond determination, "the
11 government must prove by clear and convincing evidence that an alien is a
12 flight risk or a danger to the community to justify denial of
13 bond." Rodriguez III, 804 F.3d at 1087.

14 The Supreme Court granted the government's petition for writ of certiorari
15 in Rodriguez III, and on June 26, 2017, the Supreme Court
16 restored Jennings v. Rodriguez, to the calendar for reargument during the
17 October 2017 term. The primary issue in the Supreme Court's review
18 of Rodriguez III is whether the non-citizens are entitled to the recurring
19 hearings at all; by contrast, the parties agree that the initial hearings at
20 issue in this case are required by statute. Moreover, the Supreme Court's
21 review of our holding in Rodriguez III that noncitizens are entitled to
22 certain unrelated additional procedural protections during the recurring
23 bond hearings after prolonged detention does not affect our consideration
24 of the petition for writ of habeas corpus.

1 *of the lesser constitutional procedural protections sought at the initial bond*
2 *hearings in this case.*

3

4 ICE's reliance on Petitioner's entry status alone does not suffice; as the court in *Singh*
5 *v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011), ruled, boilerplate justifications without
6 individualized evidence render detention unconstitutional.

7

8 However, the statutory scheme does not authorize indefinite detention. As the
9 Supreme Court clarified in *Demore v. Kim*, 538 U.S. 510, 528 (2003), mandatory detention
10 under § 1226(c) is permissible only for the "brief period necessary" to complete removal
11 proceedings, typically estimated at a median of four months. Prolonged detention beyond
12 this period implicates constitutional limits, as affirmed in *Zadvydas v. Davis*, 533 U.S. 678,
13 690 (2001), which imposed a presumptive six-month limit on post-removal-order detention
14 under § 1226(a) to avoid due process violations. For pre-removal detention like
15 Petitioner's, courts have extended analogous protections, requiring the government to
16 justify continued custody through individualized hearings.

17 The provided excerpt from Ninth Circuit precedent highlights this tension, noting that
18 under § 1226(a), prolonged detention without a "neutral forum" to contest necessity
19 violates due process (*Casas-Castrillon*, 535 F.3d at 949). It further mandates "periodic
20 bond hearings every six months" where the government bears the burden of proof by clear
21 and convincing evidence (*Rodriguez III*, 804 F.3d at 1087, 1089). Although the excerpt
22 predates the Supreme Court's review in *Jennings*, it remains instructive for constitutional
23 analysis, as *Jennings* resolved only statutory interpretation (holding that the INA does not
24 require periodic bond hearings (583 U.S. at 290-301) while remanding for consideration of
25 due process claims (id. at 308-09)).

1 On remand, the Ninth Circuit reaffirmed constitutional protections for prolonged §
2 1226(a) detention (*Rodriguez v. Barr*, 978 F.3d 1262, 1276-88 (9th Cir. 2020) ("Rodriguez
3 IV")), and extended similar logic to § 1226(c) cases where detention exceeds six months
4 without justification (see, e.g., *Singh v. Barr*, 946 F.3d 1032, 1042 (9th Cir. 2020) (due
5 process requires bond hearing for § 1226(c) detainees after six months, with government
6 proving necessity)).
7

8 In Petitioner's case, the § 1226(c) classification does not immunize ICE from these
9 requirements. As an arriving asylum seeker with a credible fear claim (bolstered by
10 extensive evidence submitted by counsel), Petitioner's detention has evolved from "brief"
11 to prolonged, especially with the BIA appeal pending, which averages 12-18 months for
12 resolution per Executive Office for Immigration Review (EOIR) data as of 2024. Absent a
13 bond hearing, this detention presumptively violates due process.
14

15 Moreover, international treaties ratified by the United States reinforce this burden on
16 the government. The United Nations Convention Relating to the Status of Refugees (1967
17 Protocol, incorporated into U.S. law via the Refugee Act of 1980, 8 U.S.C. § 1158) and the
18 Convention Against Torture (ratified 1994, implemented via 8 C.F.R. § 208.16(c)) prohibit
19 detention of asylum seekers except as a measure of last resort, with the detaining authority
20 bearing the burden of demonstrating necessity. See U.N. High Comm'r for Refugees,
21 Guidelines on International Protection No. 1: The Application of Article 1A(2) of the 1951
22 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of
23 Trafficking and Persons at Risk of Being Trafficked ¶ 24 (2006) (detention must be non-
24 arbitrary and based on individualized assessment). As of 2025, these obligations remain
25 binding, with the U.S. Department of Justice's Executive Office for Immigration Review
26 continuing to apply CAT protections in removal proceedings. ICE's failure to adduce
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1 evidence such as; flight risk assessments or danger evaluations, thus not only contravenes
2 the INA but also implicates U.S. treaty commitments, warranting habeas intervention to
3 prevent indefinite limbo.

4 **B. Petitioner's Detention Violates Fundamental Due Process Rights Under the**
5 **Fifth Amendment**

6 The Fifth Amendment's Due Process Clause provides that no person shall be deprived
7 of liberty without due process of law, a protection that extends to all persons within U.S.
8 territory, regardless of immigration status. See *Zadvydas v. Davis*, 533 U.S. at 693
9 (holding that "the Due Process Clause applies to all 'persons' within the United States,
10 including aliens, whether their presence here is lawful, unlawful, temporary, or
11 permanent").

12 The Court has stated:

13 *A statute permitting indefinite detention would raise serious constitutional
14 questions. Freedom from imprisonment lies at the heart of the liberty
15 protected by the Due Process Clause. Government detention violates the
16 Clause unless it is ordered in a criminal proceeding with adequate
17 procedural safeguards or a special justification outweighs the individual's
18 liberty interest. The instant proceedings are civil and assumed to be
19 nonpunitive, and the Government proffers no sufficiently strong justification
20 for indefinite civil detention under this statute. The first justification-
21 preventing flight-is weak or nonexistent where removal seems a remote
22 possibility. Preventive detention based on the second justification-protecting
23 the community-has been upheld only when limited to specially dangerous
24 individuals and subject to strong procedural protections.*

1 *Once an alien enters the country, the legal circumstance changes, for the*
2 *Due Process Clause applies to all persons within the United States,*
3 *including aliens, whether their presence is lawful, unlawful, temporary, or*
4 *permanent. Nor do cases holding that, because Congress has plenary power*
5 *to create immigration law, the Judicial Branch must defer to Executive and*
6 *Legislative Branch decisionmaking in that area help the Government,*
7 *because that power is subject to constitutional limits. Finally, the aliens'*
8 *liberty interest is not diminished by their lack of a legal right to live at*
9 *large, for the choice at issue here is between imprisonment and supervision*
10 *under release conditions that may not be violated and their liberty interest*
11 *is strong enough to raise a serious constitutional problem with indefinite*
12 *detention. Pp. 692-696. (Emphasis added)*

15 Petitioner's detention, imposed and maintained without a hearing on bond or release,
16 constitutes an arbitrary deprivation of liberty, as his merits proceedings (though conducted
17 with representation) resulted in a denial laden with errors, and he now awaits appeal
18 without opportunity for release pending resolution.

19 This violation is exacerbated by the lack of procedural safeguards. Under longstanding
20 doctrine, immigration detention triggers Mathews v. Eldridge balancing; requiring notice,
21 an opportunity to be heard, and a neutral decisionmaker. 424 U.S. 319, 335 (1976).
22 Petitioner received a hearing on the merits but no bond determination; ICE's mandatory
23 detention under § 1226(c) for arriving aliens has been interpreted by the Board of
24 Immigration Appeals to preclude bond hearings absent exceptional circumstances, a
25 position rejected by federal courts in the Ninth Circuit. See Casas-Castrillon v. Dep't of
26 Homeland Sec., 535 F.3d 942, 951 (9th Cir. 2008) (mandatory detention does not eliminate
27
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1 due process right to bond hearing after prolonged custody). As of 2025, **Jennings v.**
2 **Rodriguez, 583 U.S. 281 (2018)**, clarified that the INA does not mandate periodic
3 bond hearings but left intact constitutional claims, leading district courts to order
4 hearings where detention exceeds six months without justification.

5 Furthermore, the Eighth Amendment's prohibition on excessive bail, incorporated via
6 the Fifth Amendment for pretrial detainees, underscores the arbitrariness here. See **Carlson**
7 **v. Green, 446 U.S. 14, 17 n.1 (1980)** (Eighth Amendment applies to federal pretrial
8 detention). Petitioner's clean record and asylum claim demonstrate he is not a flight risk,
9 yet ICE denies bail without evidence, mirroring the unconstitutional practices struck down
10 in **Stack v. Boyle, 342 U.S. 1, 5 (1951)** (bail must be individualized to ensure appearance).
11 Doctrinally, this implicates the liberty interest in freedom from physical restraint, a
12 cornerstone of American jurisprudence since **Ex parte Milligan, 71 U.S. 2, 123 (1866)**,
13 where the Court affirmed that "*But the judge is not free to make the sky the limit, because*
14 *the Eighth Amendment to the Constitution says: "Excessive bail shall not be required. . .*"

17 **C. The Inalienable Rights of the Human Person Demand Protection from**
18 **Prolonged Detention**

19 At the heart of this petition lies the recognition of inalienable human rights, enshrined
20 in the U.S. Constitution and echoed in international law, which prohibit the state from
21 subjecting any individual to indefinite or punitive detention without just cause. The
22 Declaration of Independence proclaims that all persons are endowed with unalienable
23 rights, including life, liberty, and the pursuit of happiness; rights that the Framers
24 embedded in the Bill of Rights to safeguard against tyrannical overreach. Liberty, as a
25 fundamental right, is not forfeited upon crossing a border; as the Supreme Court has
26 repeatedly affirmed, "*freedom from imprisonment—from government custody, detention, or*

1 *other forms of physical restraint—lies at the heart of the liberty that Clause protects."*
2 Foucha v. Louisiana, 504 U.S. 71, 80 (1992). For Petitioner, a human being fleeing
3 persecution, this right is not merely statutory but intrinsic to human dignity, impervious to
4 erosion by administrative fiat.

5 This principle finds robust support in U.S. constitutional doctrine and international
6 commitments. The Fifth Amendment's Due Process Clause, rooted in English common law
7 and Magna Carta's protections against arbitrary arrest (Clause 39), mandates that
8 deprivations of liberty occur only through fair procedures tailored to the individual. See
9 Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004) (even enemy combatants entitled to notice
10 and opportunity to rebut detention). Petitioner's case exemplifies the peril of unchecked
11 executive power: detained upon arrival for seeking refuge, represented in flawed
12 proceedings that ignored substantial evidence, and held in limbo during appeal, all without
13 evidence of wrongdoing. Such treatment dehumanizes the individual, reducing him to a
14 category "arriving alien" devoid of the presumption of innocence or humanity that due
15 process demands.

16 Internationally, the United States' ratification of key treaties amplifies these
17 inalienable rights. The International Covenant on Civil and Political Rights (ICCPR,
18 ratified 1992 with reservations, but Article 9 on arbitrary detention remains influential),
19 prohibits arbitrary arrest or detention, requiring prompt judicial review. See U.N. Human
20 Rights Comm., General Comment No. 35, ¶ 41 (2014) (detention must be lawful,
21 necessary, and proportionate). Similarly, the American Declaration of the Rights and
22 Duties of Man (1948), incorporated into U.S. practice via the Ninth Circuit's application in
23 immigration contexts, affirms in Article 18 that "every person may resort to the courts to
24 ensure respect for his legal rights" and in Article 25 that "every person has the right to
25 28

protection against arbitrary interference with his privacy and family." As of 2025, these norms inform federal jurisprudence, as seen in the BIA's recognition of non-refoulement under CAT, which bars return to torture and implicitly limits pre-removal detention. See *Matter of J-E-*, 23 I. & N. Dec. 291, 300 (BIA 2002) (CAT claims trigger due process in detention contexts).

*The corollary of that principle is that removal of an individual to a country where he or she would be tortured can never be justified. See 8 C.F.R. § 208.17(a); David Weissbrodt & Isabel Hortreiter, *The Principle of Non-refoulement: Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the NonRefoulement Provisions of Other International Human Rights Treaties*, 5 Buff. Hum. Rts. L. Rev. 1, 16 (1999) (pointing out that "no exceptional circumstances justify expelling a person to a country where he or she would be in danger of being subjected to torture," and that the drafters of Article 3 of the Convention Against Torture deliberately did not adopt the limitations on nonrefoulement included in other treaties, such as the "particularly serious crime" limitation on nonrefoulement included in Article 33(1) of the 1951 Convention Relating to the Status of Refugees).*

The jurisprudence underscores that human rights are not relinquished at the border. In *INS v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987), the Court emphasized that asylum seekers merit protections akin to refugees under international law, rejecting mechanical detention. More recently, in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), while limiting certain procedural claims, the Court reaffirmed that constitutional due process applies to all within U.S. jurisdiction.

Petitioner's prolonged isolation at Otay Mesa, without visitation rights fully exercised due to family separation fears, and amid reports of substandard conditions in ICE facilities (see ACLU v. ICE, No. 19-cv-00409 (S.D. Cal. 2021), ongoing as of 2025), offends these inalienable entitlements. Humans possess an inherent right to liberty, not as a privilege granted by the state but as a birthright, defended by courts against encroachments that echo the very oppressions from which Petitioner fled. To deny this is to undermine the foundational ethos of the Constitution, which views the individual as sovereign over his freedom.

D. IRREPARABLE HARM FROM PROLONGED DETENTION WARRANTS

IMMEDIATE RELEASE OR BOND HEARING

Prolonged detention inflicts irreparable harm on detainees, particularly in the absence of individualized review or meaningful procedural safeguards. Courts have recognized that extended confinement in immigration detention centers can cause severe psychological distress, including anxiety, depression, post-traumatic stress disorder (PTSD), and other mental health conditions. See *Rodriguez v. Robbins*, 804 F.3d 1060, 1080 (9th Cir. 2015)

Petitioner David Hoyos Amado is a young man with a professional background as a medical doctor, a fact that underscores both his capacity to contribute positively to society and the heightened risk that prolonged detention poses to his mental well-being. The stress and uncertainty of indefinite detention, compounded by separation from family and the trauma of fleeing persecution, place Petitioner at significant risk of psychological injury. Scientific studies and expert testimony in analogous cases have documented that such detention exacerbates anxiety, depression, and other mental health disorders, which may have lasting effects even after release.

1 The irreparable nature of this harm is well established in habeas corpus jurisprudence,
2 where courts have granted relief to prevent ongoing mental and emotional injury. The
3 Supreme Court has emphasized that liberty deprivation is not solely a physical restraint but
4 also encompasses the psychological and emotional burdens imposed by detention.
5 Moreover, the Due Process Clause requires that the government not subject individuals to
6 conditions or durations of confinement that cause such harm without adequate justification
7 and procedural protections. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)

Given Petitioner's youth, professional qualifications, and the documented risks of mental health deterioration from prolonged detention, the continued denial of release or a bond hearing constitutes irreparable harm. This harm cannot be remedied by monetary damages or later release, as the psychological effects may be permanent. Therefore, immediate provisional relief—either release on bond or an expedited bond hearing—is necessary to prevent further injury and to uphold constitutional protections.

16 In sum, the irreparable mental and emotional harm caused by Petitioner's prolonged
17 detention, combined with the absence of individualized review, mandates that this Court
18 grant relief without delay. This approach aligns with both constitutional due process
19 principles and humanitarian considerations recognized in federal immigration law and
20 jurisprudence.

CLAIMS FOR RELIEF

COUNT ONE

CONSTITUTIONAL CLAIM

25 Petitioners' detention violates his right to substantive and procedural due process
26 guaranteed by the Fifth Amendment to the U.S. Constitution.

1 **COUNT TWO STATUTORY CLAIMS**

2 Petitioner's continued detention violates the Immigration and Nationality Act and the
3 U.S. Constitution.

4 **COUNT THREE**

5 If he prevails, Petitioner requests attorney's fees and costs under the Equal Access to
6 Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE, Petitioner prays that this Court grant the following relief:**

- 9 1. Assume jurisdiction over this matter;
- 10 2. Issue a writ of habeas corpus directing Respondents to show cause why Petitioner
11 should not be released;
- 12 3. In the alternative, order an immediate bond hearing before an Immigration Judge;
- 13 4. Declare Petitioner's detention unconstitutional under the Fifth Amendment;
- 14 5. Issue a writ of habeas corpus ordering Respondents to release Mr. David Hoyos
15 Amado on his own recognizance or under parole, a low bond or reasonable conditions
16 of supervision show
- 17 6. Grant such other relief as the Court deems just, including attorney's fees under the
18 Equal Access to Justice Act, 28 U.S.C. § 2412.

19
20 Respectfully submitted,

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25 O. Martin Quiroz, Esq.

26 Attorney for Plaintiff