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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 David Hoyos Amado,
12 *Petitioner,*
13 v.

Case No. 25-cv-2687-LL(DDL)

14 **UNITED STATES DEPARTMENT OF JUSTICE,**
15 **Et. Al.**

16 *Respondents*

17
18 **PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR**
19 **TEMPORARY RESTRAINING ORDER**

20
21 **INTRODUCTION**

22 Petitioner David Hoyos Amado respectfully submits this Reply to Respondents'
23 Opposition (ECF No. 11). The government's position rests on a rigid and outdated
24 interpretation of 8 U.S.C. § 1225(b)(2)(A) that conflicts with constitutional guarantees
25 and evolving jurisprudence protecting liberty and due process from arbitrary civil
26 detention. Respondents incorrectly classify Mr. Hoyos as an "arriving alien" subject to
27

1 mandatory detention without judicial review, disregarding the procedural posture of his
2 case and the constitutional limitations on indefinite and punitive civil detention.

3 The Constitution does not tolerate unreviewable executive detention. Nor does it
4 allow the deprivation of liberty without due process of law, principles that have defined
5 the American constitutional order since its founding. For the reasons set forth below, this
6 Court should reject Respondents' arguments, grant the writ, and order a bond hearing or
7 immediate release.
8

9 **1. The Government's Discretionary Act of Placing Petitioner in Section 1229a**
10 **Proceedings Fundamentally Alters the Nature of His Detention.**

11 Respondents correctly state that the government has the discretion to place a
12 noncitizen initially subject to expedited removal under § 1225(b)(1) into full removal
13 proceedings under § 1229a. *Flores v. Barr*, 934 F.3d 910, 916–17 (9th Cir. 2019);
14 However, Respondents fail to acknowledge the legal implications of this discretionary act.
15

16 The mandatory detention statute, § 1225(b)(2)(A), mandates detention "for [removal]
17 proceedings." The proceedings Petitioner is now in are fundamentally different from those
18 he faced initially. The Ninth Circuit has recognized that the context of detention matters.
19 In *Prieto-Romero v. Clark*, 534 F.3d 1053, 1062–63 (9th Cir. 2008), the court, analyzing a
20 different detention statute, held that the purpose of detention is to assure presence at
21 removal, and prolonged detention can become unreasonable.
22

23 *Because § 1231(a) authorizes detention only "[d]uring the removal*
24 *period," § 1231(a)(2), and "beyond the removal period," § 1231(a)(6), it*
25 *clearly does not provide any authority before the removal period.*
26 *Therefore, the plain language of § 1231(a) provides no authority to detain*
27 *aliens such as Prieto-Romero whose removal order is administratively-but*
28

1 *not judicially-final. See Wang v. Ashcroft, 320 F.3d 130, 147 (2d Cir.2003);*
2 *Bejjani v. INS, 271 F.3d 670, 689 (6th Cir.2001), abrogated on other*
3 *grounds by Fernandez-Vargas v. Gonzales, 548 U.S. 30, 126 S.Ct. 2422, 165*
4 *L.Ed.2d 323 (2006).*

5
6
7 *The government attempts to elide the obvious implication of § 1231(a)'s*
8 *silence on detention authority before the removal period has begun-that no*
9 *such authority exists-by pointing to § 1252(b)(8), which provides:*

10
11 *This subsection [establishing a petition for review as the exclusive means*
12 *for judicial review of an order of removal] . does not prevent the Attorney*
13 *General, after a final order of removal has been issued, from detaining the*
14 *alien under section 1231(a) of this title.*

15
16
17 *(Emphasis added.) We reject the government's assertion that the statutory*
18 *cross-reference to § 1231(a) implicitly authorizes the detention of any alien*
19 *whose removal order is administratively final, even when the alien is not*
20 *subject to the Attorney General's detention authority "[d]uring" and*
21 *"beyond" the removal period. Cf. § 1231(a)(2), (a)(6). Section*
22 *1252(b)(8) merely clarifies that a pending petition for review does not, by*
23 *itself, detract from the detention authority otherwise conferred by §*
24 *1231(a)(2) and (a)(6). For instance, when an alien files a petition for*
25 *review of his removal order and we decline to grant a stay of removal, see §*
26 *1252(b)(3)(B), the removal period commences immediately, see §*
27
28

1 1231(a)(1)(B)(ii), “[d]uring” which time the alien may be detained under §
2 1231(a)(2). When the court of appeals has issued a stay, however, the alien
3 may not be detained under any subsection of § 1231(a) unless and until the
4 court finally denies the alien's petition for review

5
6 And regarding the prolonged detention the Court states:

7 “Section 1226(a) on its face authorizes the detention of aliens during the
8 removal order review process. Prieto-Romero contends, however, that
9 Congress did not intend to authorize prolonged and indefinite detention
10 under that statute, and therefore that the principle of constitutional avoidance
11 requires us to read an implicit limitation into the Attorney General's
12 detention authority. Prieto-Romero's more than three-year detention
13 certainly qualifies as prolonged by any measure. We conclude, however,
14 that it is not an indefinite one. We hold that he faces a significant likelihood
15 of removal in the reasonably foreseeable future because the government can
16 repatriate him to Mexico if his pending bid for judicial relief from his
17 administratively final removal order proves unsuccessful. Therefore, his
18 continued detention remains statutorily authorized by § 1226(a).”

19
20 By analogy to *prieto-romero v. clark*, Petitioner's continued detention lacks clear
21 statutory authority and violates due process.

22
23 Even if the Respondents contend that Petitioner's custody arises under § 1225(b), the
24 statutory framework offers no clear authority for his prolonged detention while his
25 immigration proceedings remain pending without a final, executable order of removal. The
26 Ninth Circuit's reasoning in *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008),
27 although addressing detention under § 1231(a), applies by analogy. In *Prieto-Romero*, the
28

1 court held that § 1231(a), which authorizes detention only “[d]uring the removal period,” §
2 1231(a)(2), and “beyond the removal period,” § 1231(a)(6) provides no authority to detain
3 an individual whose removal order is “administratively but not judicially final.” Id. at 1061–
4 62. The court rejected the government’s attempt to stretch detention authority to periods not
5 expressly covered by statute, reasoning that the Attorney General’s power to detain “must be
6 grounded in specific congressional authorization.” Id. at 1062–63.

7
8 The same constitutional principle applies here. Petitioner has been detained for over 13
9 months, and his immigration case is pending before the Board of Immigration Appeals. His
10 removal is not reasonably foreseeable, and the statutory basis for his continued detention is,
11 at best, uncertain. As *Prieto-Romero* makes clear, statutory silence does not confer detention
12 authority.

13
14 Therefore, even if Petitioner were deemed subject to § 1225(b), his ongoing
15 confinement without individualized review exceeds the bounds of any express statutory
16 authorization and violates the Fifth Amendment’s guarantee that no person shall be
17 deprived of liberty without due process of law. See *Zadvydas v. Davis*, 533 U.S. 678,
18 690–91 (2001). In light of these principles, this Court should hold that Petitioner’s
19 continued detention constitutes unlawful restraint and warrants an order requiring an
20 individualized custody hearing or release under reasonable conditions.

21
22 Respondents heavily rely on *Department of Homeland Security v. Thuraissigiam*,
23 591 U.S. 103 (2020), for the proposition that arriving aliens have no constitutional due
24 process rights beyond what Congress provides. However, *Thuraissigiam* involved a
25 noncitizen who was *never* admitted to the United States and was subject *only* to expedited
26 removal. 591 U.S. at 113.

1 *In Thuraissigiam*, 591 U.S. 103 (2020) the Court has stated “*This Court has long*
2 *held that an alien seeking initial admission to the United States requests a privilege and*
3 *has no constitutional rights regarding his application, for the power to admit or exclude*
4 *aliens is a sovereign prerogative”.*

5 Respondents correctly cite the long-standing precedent that an arriving alien "has no
6 constitutional rights regarding his application" for admission. *Thuraissigiam*, 591 U.S. at
7 138. However, this principle pertains to the substantive decision of whether to grant or
8 deny admission.

9 This doctrine does not, however, grant the government an unchecked power
10 to indefinitely detain an individual while that admission decision is being made or after it
11 has been made. The right to exclude is not synonymous with a right to detain
12 permanently. The Supreme Court itself has implicitly recognized this distinction. Even in
13 the foundational case of *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953),
14 which upheld the exclusion and detention of a noncitizen, the Court noted that indefinite
15 detention might raise a "constitutional issue of a different order," though it found it not
16 present on the facts of that case. *Id.* at 215.

17 *Asserting unlawful confinement on Ellis Island, he sought relief through a series*
18 *of habeas corpus proceedings. After four unsuccessful efforts on Defendants's*
19 *part, the United States District Court for the Southern District of New York, on*
20 *November 9, 1951, sustained the writ. The District Judge, vexed by the problem of*
21 *"an alien who has no place to go," did not question the validity of the exclusion*
22 *order, but deemed further "detention" after 21 months excessive and justifiable*
23 *only by affirmative proof of Defendants's danger to the public safety. When the*
24

1 *Government declined to divulge such evidence, even in camera, the District Court*
2 *directed Defendants's conditional parole on bond.*

3 The cases cited by Respondents, including *Thuraissigiam*, address the alien's interest in
4 *the privilege of admission*. That interest is a statutory creation, and Congress has broad
5 discretion to define the procedures for its grant or denial.

6 In contrast, the interest at stake here is not the "privilege of admission," but the "core of
7 the liberty protected by the Due Process Clause" the right to be free from physical
8 restraint. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

9 *"In our society liberty is the norm, and detention prior to trial or without trial is the*
10 *carefully limited exception."* *United States v. Salerno, supra*, at 755.

11 While the government may have broad authority to deny or grant admission, its
12 authority to physically deprive a person of their liberty for a prolonged period is constrained
13 by the Fifth Amendment. As the Ninth Circuit has held, " *Evaluating Plaintiffs' likelihood of*
14 *success on the merits, we began with the premise that "[f]reedom from imprisonment—from*
15 *government custody, detention, or other forms of physical restraint—lies at the heart of the*
16 *liberty that [the Due Process] Clause protects."* *Id.* at 1134 (alterations in original)
17 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). ." *Rodriguez v. Robbins (Jennings*
18 *II)*, 804 F.3d 1060, 1074 (9th Cir. 2015)

19 Prior to Jennings, both the Ninth Circuit and the Second Circuit adopted a brightline
20 approach to hold that detention becomes prolonged at six months. See *Rodriguez v.*
21 *Robbins*, 715 F.3d 1127, 1139 (9th Cir. 2013); *Lora v. Shanahan*, 804 F.3d 601, 614 (2d Cir.
22 2015).

23 Jennings did not alter the constitutional analysis. While Jennings rejected the
24 application of the constitutional avoidance canon to Sections 1226(c) and 1225(b), the Court
25 26 27 28

1 found that “the Court of Appeals . . . had no occasion to consider [the] constitutional
2 arguments on their merits,” and remanded the case for further development. 138 S. Ct. at
3 851.

4 The Ninth Circuit in turn remanded Jennings to the district court, but noted, “We have
5 grave doubts that any statute that allows for arbitrary prolonged detention without any
6 process is constitutional . . .” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018)
7

8 Even under the most restrictive view of an arriving alien's rights, the constitutionality of
9 detention is not a static question. Its justification diminishes as detention becomes
10 prolonged. The Supreme Court in *Zadvydas*, while dealing with a different statute,
11 established a critical principle: “*A statute permitting indefinite detention of an alien would*
12 *raise a serious constitutional problem.*” 533 U.S. at 690. To avoid this problem, the Court
13 read a reasonableness limitation into the post-removal-period detention statute.
14

15 On the matter above the Supreme Court has held:

16 “*The application of the “reasonable time” limitation is subject to federal-*
17 *court review. The basic federal habeas statute grants the federal courts*
18 *authority to determine whether post-removal-period detention is pursuant to*
19 *statutory authority. In answering that question, the court must ask whether*
20 *the detention exceeds a period reasonably necessary to secure removal. It*
21 *should measure reasonableness primarily in terms of the statute's purpose of*
22 *assuring the alien's presence at the moment of removal. Thus, if removal is*
23 *not reasonably foreseeable, the court should hold continued detention*
24 *unreasonable and no longer authorized. If it is foreseeable, the court should*
25 *consider the risk of the alien's committing further crimes as a factor*
26 *potentially justifying continued confinement. Without abdicating their*
27
28

1 *responsibility to review the detention's lawfulness, the courts can take*
2 *appropriate account of such matters as the Executive Branch's greater*
3 *immigration related expertise, the Immigration and Naturalization Service's*
4 *administrative needs and concerns, and the Nation's need to speak with one*
5 *voice on immigration. In order to limit the occasions when courts will need to*
6 *make the difficult judgments called for by the recognition of this necessary*
7 *Executive leeway, it is practically necessary to recognize a presumptively*
8 *reasonable period of detention. It is unlikely that Congress believed that all*
9 *reasonably foreseeable removals could be accomplished in 90 days, but there*
10 *is reason to believe that it doubted the constitutionality of more than six*
11 *months' detention. Thus, for the sake of uniform administration in the federal*
12 *courts, six months is the appropriate period. After the 6-month period, once*
13 *an alien provides good reason to believe that there is no significant likelihood*
14 *of removal in the reasonably foreseeable future, the Government must furnish*
15 *evidence sufficient to rebut that showing."*

16 While *Zadvydas* interpreted 8 U.S.C. § 1231(a)(6), its reasoning was driven by a
17 foundational constitutional concern: "*A statute permitting indefinite detention of an alien*
18 *would raise a serious constitutional problem.*" 533 U.S. at 690. To avoid this problem, the
19 Court read an implicit "reasonable time" limitation into the statute.

20 This constitutional logic is not confined to the post-removal-order context. The
21 fundamental liberty interest protected by the Due Process Clause; freedom from
22 indefinite imprisonment by the government, is the same whether the detention occurs
23 before or after a removal order is final. The gravity of this interest requires a
24 proportionality review between the government's purpose and the duration of detention.

1 Petitioner David Hoyos Amado has been detained since on or about **September 14,**
2 **2024.** As of the filing of this response, his detention has exceeded **thirteen months.**
3 This duration far surpasses the "presumptively reasonable period of detention" of six
4 months that the Supreme Court found appropriate to adopt in *Zadvydas*. 533 U.S. at
5 701.

6
7 *"It is unlikely that Congress believed that all reasonably foreseeable removals*
8 *could be accomplished in 90 days, but there is reason to believe that it doubted*
9 *the constitutionality of more than six months' detention. Thus, for the sake of*
10 *uniform administration in the federal courts, six months is the appropriate period.*
11 *After the 6-month period, once an alien provides good reason to believe that there*
12 *is no significant likelihood of removal in the reasonably foreseeable future, the*
13 *Government must furnish evidence sufficient to rebut that showing."*
14

15 Crucially, his removal is not "reasonably foreseeable."

- 16 • His removal order is not final. He has a timely appeal pending before the Board of
17 Immigration Appeals (BIA).
18 • The timeline for a BIA decision is uncertain and can take many months, if not years.
19 This appeal is a formal, legal process that directly prevents his removal.
20 • Therefore, the "purpose of assuring the alien's presence at the moment of
21 removal," *Zadvydas*, 533 U.S. at 699, is currently inoperative. There is no "moment
22 of removal" in the reasonably foreseeable future because the legality of his removal
23 is still being contested.
24

25 Following the *Zadvydas* framework, this Court has the authority and duty to review
26 the lawfulness of the detention. The question is whether Petitioner's continued detention
27 "exceeds a period reasonably necessary to secure removal." *Id.* By analogy, the question
28

1 here is whether it exceeds a period reasonably necessary to secure his presence for his
2 removal proceedings.

3 Considering that:

- 4
- 5 • Petitioner has already been detained for over 13 months;
 - 6 • The end of his proceedings is not in sight due to the pending BIA appeal; and
 - 7 • Petitioner has not been found to be a flight risk or a danger to the community in an
8 individualized hearing.

9 Therefore, the government's categorical denial of a bond hearing is unreasonable.
10 The government's interest in assuring his appearance can be served by less restrictive
11 means than indefinite detention, such as a bond hearing where conditions of release can
12 be set.

13
14 Petitioner's situation is precisely the type the *Zadvydas* Court sought to prevent
15 potentially endless detention based on a statutory interpretation that ignores constitutional
16 liberty interests. By applying the "reasonable time" limitation by analogy, this Court
17 should hold that Petitioner's detention, now exceeding thirteen months without a bond
18 hearing and with no end in sight due to his pending BIA appeal, has become
19 unreasonably prolonged. The government must now provide an individualized
20 justification for his continued detention in a bond hearing, or the Court must order his
21 immediate release.

22
23 This logic applies with equal force here. While the initial detention under § 1225(b)
24 may be authorized and constitutional, its continuation for months or years without an
25 individualized determination of necessity transforms it from a brief holding to a
26 prolonged deprivation of liberty. At that point, the government's interest in ensuring
27

1 appearance must be balanced against the individual's profound interest in freedom. This
2 constitutional concern exists independently of the alien's right to be admitted.

3 Petitioner's situation is materially distinct. He is no longer an alien "at the threshold
4 of initial entry" facing a summary determination. *Id.* at 107. He has been placed into the
5 full administrative adjudicatory machinery of the Immigration and Nationality Act. He
6 has applied for relief from removal, had a merits hearing before an Immigration Judge,
7 and now has a direct appeal pending before the BIA. This extensive integration into the
8 U.S. legal system weakens the government's claim that he should be treated as though he
9 is merely at the border for due process purposes.

11 Federal courts have been skeptical of applying the strictest entry-fiction doctrines to
12 noncitizens who have been in the country for a period of time and are engaged in
13 complex removal proceedings. *See, e.g., Rodriguez v. Robbins (Jennings II)*, 804 F.3d
14 1060, 1074 (9th Cir. 2015) (distinguishing between "arriving aliens" and those who have
15 entered the country, even if unlawfully, for the purposes of detention under § 1226

17 *Although in dissent, Justice Kennedy, joined by Chief Justice Rehnquist, disagreed*
18 *with the majority's application of the canon of constitutional avoidance and argued that*
19 *the holding would improperly interfere with international repatriation negotiations,*
20 *Justice Kennedy recognized that "both removable and inadmissible aliens are entitled to*
21 *be free from detention that is arbitrary or capricious."* *Jennings v. Rodriguez*, 583 U.S.
22 281 (2018).

24 While the Supreme Court in *Jennings* reversed the Ninth Circuit's statutory interpretation,
25 it did not disturb the underlying constitutional premise that prolonged detention without a
26 bond hearing may violate due process. *Jennings*, 583 U.S. at 303 (noting that the Court was
27 not deciding the constitutional question).

1 Petitioners does not categorically deny that his detention originated under § 1225(b).
2 Rather, he contends that the government's discretionary decision to place him into full §
3 1229a proceedings, coupled with the resulting prolonged duration of his confinement, takes
4 his case outside the core application of § 1225(b)(2)(A) as envisioned
5 in *Thuraissigiam* and *Jennings*. To read the statute as creating a blanket rule of mandatory
6 detention without end, regardless of the procedural path the government itself chooses, raises
7 serious constitutional doubts under the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S.
8 678, 690 (2001) (interpreting a statute to avoid serious constitutional problems). Therefore,
9 his detention must be subject to constitutional limitations, including a hearing to determine if
10 continued detention is justified.

11
12 In the matter of *Rajesh v. Barr et al*, No. 6:2019cv06415 - Document 11 (W.D.N.Y.
13 2019)

14
15 Where the district court granted a habeas corpus, the Cort held:

16 *The Due Process Clause of the Fifth Amendment forbids the Government from*
17 *“depriving” any “person . . . of . . . liberty . . . without due process of law.”*
18 *U.S.CONST., amend. V. The Supreme Court has emphasized that “[f]reedom from*
19 *imprisonment—from government custody, detention, or other forms of physical*
20 *restraint—lies at the heart of the liberty that Clause protects.”* *Zadvydas v. Davis*,
21 533 U.S. 678, 690 (2001). *Longstanding Supreme Court precedent has*
22 *underscored the principle that “civil commitment for any purpose constitutes a*
23 *significant deprivation of liberty that requires due process protection.”* *Addington*
24 *v. Texas*, 441 U.S. 418, 425 (1979). *That an individual may not be a United States*
25 *citizen or may not be in this country legally does not divest them of all protections*
26 *enshrined in the Due Process Clause. See Zadvydas*, 533 U.S. at 693 (“[T]he Due
27
28

1 *Process Clause applies to all ‘persons’ within the United States, including aliens,*
2 *whether their presence here is lawful, unlawful, temporary, or permanent.”);*
3 *Reno v. Flores, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth*
4 *Amendment entitles aliens to due process of law in deportation proceedings.”).*
5 *The question that has continued to vex courts is the nature of the process due, for*
6 *the Supreme Court “has recognized detention during deportation proceedings as*
7 *a constitutionally valid aspect of the deportation process.” Demore, 538 U.S. at*
8 *523 (citations omitted).*

10 **II. PETITIONER’S DETENTION HAS BECOME ARBITRARY AND VIOLATES**
11 **DUE PROCESS**

12 Even if § 1225(b)(2)(A) applied initially, detention under that provision must remain
13 **reasonable** in duration and purpose. The Supreme Court has long held that civil detention
14 must bear a reasonable relation to its stated purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690
15 (2001). When detention becomes “indefinite and potentially permanent,” it violates the Due
16 Process Clause. *Id.* at 690–91.

18 Here, Petitioner has been detained for more than 13 months with no foreseeable removal,
19 while his appeal before the Board of Immigration Appeals remains pending. The
20 government’s reliance on *Demore v. Kim*, 538 U.S. 510 (2003), is misplaced due to *Demore*
21 involved a brief, finite detention (approximately six months) during streamlined removal
22 proceedings. The Supreme Court expressly noted that prolonged detention “would raise
23 serious constitutional concerns.” *Id.* at 532–33.

25 In the Ninth Circuit, prolonged civil immigration detention without individualized review
26 violates due process. *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011); *Rodriguez*
27 *v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018).

1 *The Petitioner ultimately filed a habeas petition, arguing that “his prolonged*
2 *detention without a meaningful opportunity to contest the necessity of*
3 *continued detention violated his right to procedural due process. ° Id. We*
4 *determined that his habeas petition had merit. First, we concluded that in*
5 *the context of civil immigration proceedings, “prolonged detention without*
6 *adequate procedural protections would raise serious constitutional*
7 *concerns. ° Id. at 950. Second, applying the canon of constitutional*
8 *avoidance to address those concerns, we held as a matter of statutory*
9 *interpretation that § 1226(a) requires the Attorney General to provide*
10 *aliens with a bond hearing before an immigration judge to determine the*
11 *necessity of their ongoing detention. See id. at 950-52.7 We concluded that*
12 *“an alien is entitled to release on bond unless the government establishes*
13 *that he is a flight risk or will be a danger to the community.’ [Emphasis*
14 *added] Diouf v. Napolitano, (9th Cir. 2011);*

15
16
17 After six months without a bond hearing, detention becomes unconstitutionally
18 prolonged. See *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011) (“*Diouf II*”)
19 (“*When detention crosses the six-month threshold and release or removal is not imminent,*
20 *the private interests at stake are profound.*”)

21
22 Courts have consistently required a bond hearing once detention extends beyond a
23 reasonable period and ceases to serve its original purpose. The government’s blanket
24 invocation of “mandatory detention” cannot override these constitutional imperatives.

25 **III. PETITIONER IS ENTITLED TO CONSTITUTIONAL PROTECTIONS OF**
26 **LIBERTY AND DUE PROCESS**

1 Respondents' assertion that Petitioner "has only those rights provided by statute"
2 under *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020),
3 misstates both the scope of that decision and the foundations of American constitutional
4 law. *Thuraissigiam* addressed the limited scope of habeas review in expedited removal
5 proceedings or aliens who are seeking admission or not, not prolonged, noncriminal
6 detention pending administrative appeal. The Supreme Court explicitly distinguished
7 such cases from challenges to detention conditions or duration.
8

9 The Due Process Clause of the Fifth Amendment applies to "*all persons within the*
10 *United States*," regardless of immigration status. *Zadvydas*, 533 U.S. at 693. "*Once an*
11 *alien enters the country, the legal circumstance changes, for the Due Process Clause*
12 *applies to all persons within the United States, including aliens, whether their presence is*
13 *lawful, unlawful, temporary, or permanent.*"
14

15 Even those who entered unlawfully are entitled to constitutional protection against
16 arbitrary confinement. See *Boumediene v. Bush*, 553 U.S. 723, 739 (2008) (the writ of
17 habeas corpus is "a vital instrument for the protection of individual liberty").

18 *The Framers viewed freedom from unlawful restraint as a fundamental precept of*
19 *liberty, and they understood the writ of habeas corpus as a vital instrument to*
20 *secure that freedom. Experience taught, however, that the common-law writ all*
21 *too often had been insufficient to guard against the abuse of monarchical power.*
22 *That history counseled the necessity for specific language in the Constitution to*
23 *secure the writ and ensure its place in our legal system.*
24

25 *Magna Carta decreed that no man would be imprisoned contrary to the law of*
26 *the land. Art. 39, in Sources of Our Liberties 17 (R. Perry & J. Cooper eds. 1959)*
27 *("No free man shall be taken or imprisoned or dispossessed, or outlawed, or*
28

1 *banished, or in any way destroyed, nor will we go upon him, nor send upon him,*
2 *except by the legal judgment of his peers or by the law of the land”)*

3 The right to liberty and due process stands as a cornerstone of the American Republic,
4 rooted in centuries of struggle against arbitrary detention. From the Magna Carta of 1215
5 declaring that “no free man shall be imprisoned... save by the lawful judgment of his peers or by
6 the law of the land” to the adoption of the Fifth Amendment, the United States inherited and
7 expanded a legal tradition where the government’s power to detain is checked by the rule of law.
8

9 The framers of the Constitution designed a government limited by law and accountable to
10 judicial oversight. As Chief Justice Marshall affirmed, “*The very essence of civil liberty certainly*
11 *consists in the right of every individual to claim the protection of the laws whenever he receives*
12 *an injury.*” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).
13

14 This commitment to liberty is not contingent upon citizenship but upon personhood, a principle
15 reaffirmed throughout the nation’s constitutional history. See *Yick Wo v. Hopkins*, 118 U.S. 356,
16 369 (1886) *The guarantees of protection contained in the Fourteenth Amendment to the*
17 *Constitution extend to all persons within the territorial jurisdiction of the United States, without*
18 *regard to differences of race, of color, or of nationality.*

19 In this context, Respondents’ suggestion that Petitioner lacks constitutional rights¹ is
20 contrary to the very principles that define the United States as a constitutional democracy
21 founded on due process and equal protection under law. The issue here is not whether
22 Petitioner has a statutory entitlement to a bond hearing; rather, it is whether the
23 government may deprive a person of liberty without the fundamental safeguards of due
24 process of law. The Constitution’s Due Process Clause is not a procedural luxury, but a
25

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28 ¹ The Defendants has stated in his opposition to the TRO that: “Petitioner does not have a constitutional right to a bond hearing.”

1 structural guarantee that restrains all exercises of governmental power, especially those
2 that result in physical detention.

3 The Supreme Court has long recognized that the Fifth Amendment's Due Process
4 Clause "applies to all 'persons' within the United States, including aliens, whether their
5 presence here is lawful, unlawful, temporary, or permanent"). Thus, even noncitizens
6 physically present in the United States fall within the protection of the Constitution's
7 guarantees of fairness, reason, and judicial oversight.

9 The right to liberty protected by due process is inseparable from the right to judicial review
10 and due process; the power of the courts to examine the legality of executive detention. As Chief
11 Justice Marshall declared in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803),

12 *"It is emphatically the province and duty of the Judicial Department to say what the law is.*
13 *Those who apply the rule to particular cases must, of necessity, expound and interpret that rule.*
14 *If two laws conflict with each other, the Courts must decide on the operation of each."*

16 This principle ensures that no person's freedom can be curtailed solely at the will of the
17 Executive. The availability of habeas corpus review, reaffirmed in *Boumediene v. Bush*, 553 U.S.
18 723, 765 (2008), reflects that the Constitution forbids "the exercise of arbitrary power... to
19 imprison at will."

21 Doctrinally, this structure reflects what Hans Kelsen described as the "hierarchical system of
22 norms", a legal order in which the validity of every governmental act depends on its conformity
23 with a higher norm, culminating in the Constitution as the supreme legal standard. (*Hans Kelsen,*
24 *Pure Theory of Law* [1934], trans. Max Knight, 1967).

25 In the American system, this Kelsenian hierarchy is embodied in the Supremacy Clause,
26 U.S. Const. art. VI, cl. 2, which makes the Constitution the "supreme Law of the Land."

- 27 • *Clause 2 Supremacy Clause*
28

1 *This Constitution, and the Laws of the United States which shall be*
2 *made in Pursuance thereof; and all Treaties made, or which shall be made,*
3 *under the Authority of the United States, shall be the supreme Law of the*
4 *Land; and the Judges in every State shall be bound thereby, any Thing in the*
5 *Constitution or Laws of any State to the Contrary notwithstanding.*

6
7 All statutes, including those governing immigration, derive their legitimacy only insofar as
8 they are consistent with the Constitution.

9 Accordingly, when statutory detention provisions are applied in a manner that effectively
10 eliminates judicial review or results in indefinite imprisonment without individualized
11 justification, such application violates the very norm at the top of the legal hierarchy, the
12 Constitution itself. As the Supreme Court observed in *Zadvydas*, “A statute permitting indefinite
13 detention of an alien would raise a serious constitutional problem.” 533 U.S. at 690. The Court
14 therefore construed the immigration laws “to avoid a serious constitutional threat to liberty,”
15 reaffirming that “*freedom from physical restraint lies at the heart of the liberty protected by the*
16 *Due Process Clause.*”

17
18 To suggest that Petitioner, merely because he is an asylum seeker, stands outside the reach
19 of these protections is incompatible with both the text and the spirit of the Constitution. The
20 United States was founded upon the rejection of arbitrary power and the affirmation that liberty
21 may be curtailed only by lawful judgment, not executive discretion. The Constitution, not
22 administrative convenience, governs the treatment of all persons within U.S. jurisdiction. Thus,
23 Respondents’ position that Petitioner lacks constitutional rights is not only legally unsound but
24 fundamentally inconsistent with the philosophical and structural premises of the American
25 constitutional democracy.
26
27
28

1 Substantive due process is a constitutional doctrine that extends the protections of the due
2 process clauses in the Fifth and Fourteenth Amendments beyond mere procedural rights. It is
3 primarily used by the U.S. Supreme Court to define and safeguard fundamental rights, including
4 personal liberties and privacy. The concept gained prominence in the late 19th century, with
5 cases like *Allgeyer v. Louisiana* recognizing rights such as the freedom to contract. Over time,
6 substantive due process has been critical in landmark decisions like *Griswold v. Connecticut* and
7 *Roe v. Wade*, which established rights to marital privacy and abortion, respectively.
8

9 The Fifth Amendment's Due Process Clause not only guarantees fair procedures; it also
10 protects against arbitrary governmental action that infringes upon fundamental rights. This is the
11 essence of substantive due process, a doctrine deeply rooted in American constitutional law. As
12 the Supreme Court has held, the Due Process Clause "*The Court's established method of*
13 *substantive-due-process analysis has two primary features: First, the Court has regularly*
14 *observed that the Clause specially protects those fundamental rights and liberties which are,*
15 *objectively, deeply rooted in this Nation's history and tradition. E. g., Moore v. East*
16 *Cleveland, 431 U. S. 494, 503 (plurality opinion). Second, the Court has required a "careful*
17 *description" of the asserted fundamental liberty interest..*" *Washington v. Glucksberg*, 521 U.S.
18 702, 721 (1997). Among those interests, freedom from physical restraint stands at the core of
19 constitutional protection.
20

21 Even when a statute purports to authorize detention, that statute must yield when its
22 application produces arbitrary or disproportionate deprivation of liberty. The Constitution, not
23 the statute, defines the limits of governmental power. As Chief Justice Marshall made clear in
24 *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), "It is emphatically the province and
25 duty of the judicial department to say what the law is." In this constitutional framework, it is for
26
27
28

1 the courts to determine when the deprivation of liberty ceases to be lawful, particularly when
2 detention becomes prolonged and detached from its regulatory purpose.

3 This principle resonates beyond the United States. In comparative constitutional law,
4 systems such as those of Colombia, Germany, France and Spain have developed what
5 constitutional scholars call the principle of proportionality (or balancing); a doctrine requiring
6 that when two rights or norms conflict, courts must weigh their relative constitutional value to
7 ensure that restrictions on liberty are neither excessive nor arbitrary. The Colombian
8 Constitutional Court, for instance, has consistently held that even when statutory law authorizes
9 detention, it must pass the test of proportionality in light of the fundamental right to freedom.
10 Likewise, the German Federal Constitutional Court (*Bundesverfassungsgericht*) has emphasized
11 that the rule of law (*Rechtsstaat*) requires that deprivation of liberty remain strictly necessary and
12 proportionate to its purpose and is the principle of Constitutional Supremacy.
13

14
15 In this comparative perspective, the U.S. constitutional structure (though grounded in its
16 own jurisprudence) reflects the same underlying commitment: that statutory power must always
17 yield when it collides with the higher value of personal liberty. Substantive due process thus
18 functions as a form of constitutional balancing, ensuring that executive detention, even if
19 nominally authorized, does not transgress the fundamental boundaries set by the Constitution.
20

21 This understanding is also reinforced by international commitments that the United
22 States has voluntarily undertaken. Under Article 31(2) of the 1951 Convention Relating
23 to the Status of Refugees, to which the United States acceded through the 1967 Protocol
24 Relating to the Status of Refugees, States must not impose penalties or unnecessary
25 restrictions on the movement of refugees who enter their territory seeking protection. The
26 U.N. High Commissioner for Refugees (UNHCR) has interpreted this provision to mean
27 that detention of asylum seekers should be an exceptional measure, justified only by
28

1 necessity, proportionality, and individual assessment. (*UNHCR Detention Guidelines*,
2 2012)². Prolonged, automatic detention of asylum seekers as in Petitioner’s case, stands at
3 odds with these principles and undermines the humanitarian obligations that form part of
4 the United States’ international legal identity.

5
6 Thus, the question before this Court transcends the binary of “mandatory versus
7 discretionary” detention. The true issue is whether the government may, consistent with
8 the Constitution, deprive a person of liberty indefinitely and without individualized
9 justification. Substantive due process, comparative constitutional reasoning, and
10 international refugee law converge on a single answer: the right to liberty cannot be
11 sacrificed to administrative expediency.

12
13 Why, then, should one refuse to review an administrative act issued by an authority
14 of the Executive Branch, which is clearly arbitrary and capricious, solely for the sake of
15 maintaining the principle of separation of powers, when such arbitrary and capricious acts
16 compromise and affect fundamental rights enshrined in the Constitution, rights that are
17 safeguarded through the guarantee of judicial review? It would be unthinkable to
18 approach it this way, as it would effectively discard of one of the most brilliant rulings in
19 U.S. history.

20
21 In this sense, judicial review seems to imply the supremacy of the judiciary, because
22 a judge could not invalidate a law without their interpretation of the Constitution carrying
23 more weight than the one being invalidated. In a way, through judicial review, the Court
24 interprets what the Constitution means for the legislature, as the legislature cannot
25 disregard the judicial interpretation of the Constitution.

26 In this context, it is easy to understand what then-Governor Hughes meant in 1907:
27

28 ² <https://www.unhcr.org/il/wp-content/uploads/sites/6/2020/11/UNHCR-Detention-Guidelines-English.pdf>

1 *"We are under a Constitution, but the Constitution is what the judges say it is"*
2 *(Hughes ; 1908, p. 139).*

3 Inevitably, the Constitution means what the judges say it means. The normative and
4 supreme nature of the Constitution entails the power of judges to declare the definitive
5 meaning of the Constitution. In other words, the decisions of the Court are like laws, given
6 their general and binding effect. The clearest expression of this consequence comes from
7 the Court itself in the *Cooper v. Aaron (1958)* decision.

9 **A. The "block of constitutionality," the bill of rights, and the principle of balancing of**
10 **interests**

11 Respondents' position disregards one of the most basic concepts in the legal tradition
12 of constitutional democracies: the "block of constitutionality and balancing of interests."
13 These idea refers to the set of supreme norms that define and limit the exercise of all
14 governmental power and the balance of interests is a legal principle that is applied in
15 decision-making processes to weigh the various interests of the parties involved. It is an
16 important tool in law. Balancing interests is a comprehensive and complex task that
17 considers both legal and ethical questions. The goal is to find a fair and reasonable solution
18 for all parties involved. In the American system, that block is composed not only of the
19 Constitution's text but also of its interpretive core: the Bill of Rights and the jurisprudence
20 that gives those amendments life. These provisions; particularly the Fifth Amendment's
21 Due Process Clause and the Eighth Amendment's (Excessive bail shall not be required, nor
22 excessive fines imposed, nor cruel and unusual punishments inflicted.) protection against
23 excessive punishment, form the constitutional foundation that no statute, regulation, or
24 administrative practice may override.

1 In this case, Respondents have treated the immigration statute as if it existed in
2 isolation, detached from this constitutional hierarchy. That view is incompatible with the
3 principle of constitutional supremacy, codified in Article VI of the Constitution. As the
4 Supreme Court has repeatedly affirmed, "*Certainly all those who have framed written*
5 *Constitutions contemplate them as forming the fundamental and paramount law of the*
6 *nation, and consequently the theory of every such government must be that an act of the*
7 *Legislature repugnant to the Constitution is void. This theory is essentially attached to a*
8 *written Constitution, and is consequently to be considered by this Court as one of the*
9 *fundamental principles of our society. It is not, therefore, to be lost sight of in the further*
10 *consideration of this subject..*" *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).
11
12 When a statutory scheme produces outcomes that contravene constitutional rights, it is
13 the duty of the judiciary to interpret or limit that statute to preserve the higher law.
14

15 The principle that governs this task is the balancing of constitutional interests. U.S.
16 courts have long employed this balancing approach when constitutional rights come into
17 tension with governmental interests. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)
18 *Procedural due process must be evaluated by using a balancing test that accounts for the*
19 *interests of the affected individual, the interest of the government in limiting procedural*
20 *burdens, and the risk of erroneously curtailing individual interests under the existing*
21 *procedures, as well as how much additional procedures would help reduce the risk of*
22 *error.*). Under this test, liberty occupies the highest constitutional rank; it is never to be
23 abridged lightly or for administrative convenience. See also *Shelton v. Tucker*, 364 U.S.
24 479, 488 (1960)
25

26 *In a series of decisions, this Court has held that, even though the governmental*
27 *purpose be legitimate and substantial, that purpose cannot be pursued by means*
28

1 *that broadly stifle fundamental personal liberties when the end can be more*
2 *narrowly achieved. The breadth of legislative abridgment must be viewed in the*
3 *light of less drastic means for achieving the same basic purpose*

4 Applying that principle here, the deprivation of Petitioner's freedom cannot be
5 justified by statutory rigidity or administrative inertia. The government's interest in
6 detention for immigration processing cannot outweigh the fundamental right to liberty
7 that lies at the heart of both the Fifth Amendment and the international human rights
8 commitments of the United States.

9
10 As a young physician who fled his country under credible threats from a member of
11 Congress, Petitioner embodies the very person whom international refugee law seeks to
12 protect. Detaining him for more than thirteen months, without judicial review, without
13 crime, and without end, inflicts irreparable harm not only to his mental and emotional
14 health but to the very constitutional values that define this nation.

15
16 If the "block of constitutionality" means anything in the American legal tradition, it
17 means that the Constitution and the Bill of Rights set limits that no statute may cross. And
18 when the government's exercise of power collides with those fundamental guarantees, the
19 courts must consistent with the iconic idea "say what the law is". To deny that power, or to
20 subordinate it to executive convenience, would be to abandon the rule of law itself. Liberty
21 is not an administrative privilege; it is a constitutional command.

22
23
24 **V. PETITIONER SATISFIES THE REQUIREMENTS FOR A TEMPORARY**
25 **RESTRAINING ORDER**

26 Respondents contend that Petitioner has failed to demonstrate irreparable harm. That
27 argument disregards both established precedent and the human reality of this case.

1 Freedom from imprisonment lies at the heart of the liberty protected by the Due Process
2 Clause see also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)

3 How could the deprivation of liberty for more than thirteen months without any
4 individualized review be anything other than irreparable harm? How could a young man,
5 only twenty-five years old, a physician with aspirations to rebuild his life in safety, not
6 suffer lasting injury from indefinite confinement? How could anyone who fled his home
7 under credible threats from a powerful congressman, fearing for his life, not endure
8 profound psychological and emotional harm when placed behind bars as if he were a
9 criminal?
10

11 Petitioner has never committed a crime. He came to the United States seeking
12 protection, exercising a right recognized under both domestic and international law. Yet
13 he has spent over a year in a detention facility, isolated from his family, his mother and
14 brother, the only relatives he has left. How can Respondents seriously argue that such
15 conditions inflict no irreparable damage? Every day he remains detained deepens the
16 psychological trauma that forced him to flee in the first place and revictimizes in a severe
17 way.
18

19 Courts have consistently recognized that “The loss of First Amendment freedoms, for even
20 minimal periods of time, unquestionably constitutes irreparable injury.” And *First Amendment*
21 *interests were either threatened or being impaired. Thus, irreparable injury was shown, and*
22 *since Defendants demonstrated a probability of success on the merits, the issuance of the*
23 *injunction was properly directed by the Court of Appeals* *Elrod v. Burns*, 427 U.S. 347, 373
24 (1976)
25

26 Nor is this a speculative concern. Prolonged civil detention inflicts measurable
27 psychological suffering. In *Rodriguez v. Marin*, the Ninth Circuit court remanded to the
28

1 district court for it to consider “the minimum requirements of due process to be accorded
2 to [noncitizens who were subject to prolonged detention pursuant to statute] that will
3 ensure a meaningful time and manner of opportunity to be heard” 909 F.3d 252, 257
4 (9th Cir. 2018) (order) (on remand from the Supreme Court). While leaving the
5 constitutional question to the district court to address in the first instance, the court noted:

6
7 We have grave doubts that any statute that allows for arbitrary prolonged detention
8 without any process is constitutional or that those who founded our democracy precisely
9 to protect against the government’s arbitrary deprivation of liberty would have thought
10 so. Arbitrary civil detention is not a feature of our American government. “[L]iberty is
11 the norm, and detention prior to trial or without trial is the carefully limited
12 exception.” *United States v. Salerno*, [481 U.S. 739, 755] (1987). Civil detention
13 violates due process outside of “*A statute permitting indefinite detention would raise*
14 *serious constitutional questions. Freedom from imprisonment lies at the heart of the*
15 *liberty protected by the Due Process Clause. Government detention violates the Clause*
16 *unless it is ordered in a criminal proceeding with adequate procedural safeguards or a*
17 *special justification outweighs the individual’s liberty interest. The instant proceedings*
18 *are civil and assumed to be nonpunitive, and the Government proffers no sufficiently*
19 *strong justification for indefinite civil detention under this statute”* *Zadvydas v. Davis*,
20 [533 U.S. 678, 690] (2001)
21

22
23 Respondents’ argument reduces constitutional liberty to an abstraction, ignoring that
24 due process protects living persons, not statistics. The irreparable harm here is not
25 hypothetical, it is immediate, concrete, and ongoing. Every additional day of detention
26 without judicial oversight violates the very core of the Due Process Clause and deepens an
27
28

1 injury that no later remedy can repair. If this does not constitute irreparable harm, then it is
2 difficult to imagine what would.

3
4 **CONCLUSION**

5 For these reasons, Petitioner respectfully requests that this Court:

- 6 1. Grant the Temporary Restraining Order;
7 2. Order Petitioner's immediate release or, in the alternative, an individualized bond hearing
8 within seven (7) days; and
9 3. Grant any further relief the Court deems just and proper.
10 4. In the event the Court denies Petitioner's request for a Temporary Restraining Order,
11 Petitioner respectfully requests that the Court construe this motion as one for a
12 Preliminary Injunction
13

14
15 Respectfully,

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17 
18

19 Martin Quiroz, Esq.

20 Counsel for Petitioner
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