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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Edgar Rodriguez-Garcia, Petitioner, v. John Cantu, Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement; Kristi Noem, Secretary, U.S. Department of Homeland Security; Pamela Bondi, U.S. Attorney General; Christopher Howard, Acting Warden of Eloy Detention Center; Todd Lyons, Acting Director, Immigration and Customs Enforcement and Removal Operations. Respondents.	Case No. TBD **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. An immigration judge has concluded that Petitioner, Edgar Rodriguez Garcia is incompetent to participate in his removal proceedings due to severe psychiatric conditions and developmental delays that have plagued him since infancy. The immigration judge further concluded that adequate safeguards were not available and ordered that Petitioner's removal proceedings be administratively closed. Similarly, a federal judge in this judicial district recently dismissed criminal charges against Petitioner following a competency motion. Nonetheless, Immigration and Customs Enforcement (ICE) has refused to release Petitioner so as to permit him to receive the psychiatric treatment he requires to permit his removal proceedings to continue. As such, in these particular circumstances, Petitioner's detention is unconstitutionally prolonged and potentially indefinite, with no end in sight.

2. Furthermore, since at least the passage of the Immigration and Nationality Act of 1952, noncitizens who entered the country illegally could generally be released on bond while their removal proceedings were pending. Yet earlier this year, ICE "revisited" its position and determined that all noncitizens who are present without admission are subject to mandatory detention while in removal proceedings. The Board of Immigration Appeals (BIA) recently reached the same conclusion in a precedential decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), holding for the first time that all noncitizens who entered the country without admission are categorically ineligible for bond regardless of how long they have lived in the United States.

3. Over 100 federal judges have already found the government's novel interpretation incompatible with the INA. *See infra* nn. 6, 7. The provision on which the Board relies in *Matter of Yajure-Hurtado* states that noncitizens who are "seeking admission" are subject to mandatory

detention while in removal proceedings. 8 U.S.C. § 1225(b)(2)(A). Congress defined "admission" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Thus, by its plain terms, the provision only applies to noncitizens who present themselves at a port of entry. And in addition to disregarding the plain text of § 1225(b)(2)(A), the government's contrary interpretation renders superfluous other provisions of the INA that require the mandatory detention of noncitizens who have engaged in criminal activity—including a provision, § 1226(c)(1)(E), enacted this year in the Laken Riley Act.

4. As a result of the government's new interpretation, every noncitizen who entered the country without being admitted is subject to mandatory detention for the duration of their removal proceedings. One of those noncitizens is Petitioner, a native and citizen of Colombia who entered the United States most recently on June 29, 2025. *See* Exhibit A (Notice to Appear). Petitioner is 37 years old, and his mother, sister, and stepfather live in California. *See* Exhibit A; Exhibit B (Declaration of Raul Ernesto Quijada Gomez). Petitioner has suffered from significant developmental delays since infancy, and as an adult he was diagnosed with schizophrenia and depression. *See* Exhibit B. He requires an extensive medication regimen to treat his mental health conditions, and if he is released, his mother and stepfather are prepared to ensure that he receives the medical care, psychiatric supervision, and family support that he needs. *See* Exhibit B, Exhibit C (medical records from Colombia, with translation).

5. Petitioner was detained by Customs and Border Protection near Douglas, Arizona, on June 29, 2025, and DHS initially determined that it would process him for reinstatement of a prior removal order under 8 U.S.C. § 1241(a)(5). Exhibit D (Form I-213). However, DHS did not initiate reinstatement proceedings. Instead, Petitioner was referred to the custody of the U.S.

Marshals and charged in the United States District Court for the District of Arizona with illegal re-entry into the United States in violation of 8 U.S.C. § 1326. Exhibit D, Exhibit E (Copy of Criminal Complaint). He had previously been removed from the United States on December 19, 2011. *See id.* Petitioner was transferred to the Eloy Detention Center in Eloy, Arizona, after his criminal complaint was dismissed on July 17, 2025, following a motion to determine competency. *See* Exhibit F (Copy of Motion to Determine Competency); Exhibit G (Copy of Order of Dismissal).

6. After the conclusion of his criminal case, Petitioner was placed into removal proceedings under 8 U.S.C. § 1229a upon filing of a Notice to Appear (NTA), which alleges that he entered the United States without inspection as recounted above. Exhibit A. The NTA does not allege that Petitioner is an arriving alien, and the box for such designation on that form remains unchecked. *See id.* However, the immigration judge administratively closed his removal proceedings on October 8, 2025, after finding that Petitioner is "incompetent" and that legal counsel alone is not a sufficient safeguard to allow proceedings to continue. *See* Exhibit H (October 8, 2025 Order of the Immigration Judge). The Department of Homeland Security (DHS) filed an interlocutory appeal of the Immigration Judge's order granting administrative closure on October 8, 2025, which remains pending with no briefing deadline. *See* Exhibit I (Printout of Executive Office for Immigration Review, Automated Case Information System screen).

7. On September 3, 2025, Petitioner sought parole from the DHS pursuant to 8 C.F.R. § 212.5(b), in light of his significant mental health issues and needs, but DHS denied his request on September 6, 2025. *See* Exhibit J (Copy of email exchange between Petitioner's counsel in removal proceedings and DHS staff); Exhibit K (Copy of letter submitted to DHS along with

parole request). Petitioner renewed his parole request on October 9, 2025, but DHS again denied the request on the same day. *See* Exhibit J.

8. Petitioner's efforts to obtain release from the Immigration Court were equally unavailing. On December 8, 2025, an immigration judge denied Petitioner's request for bond with no finding about whether he presented a flight risk or a danger to the community, in a three-word order stating "Court lacks jurisdiction." *See* Exhibit L (Immigration Judge Bond Order).

9. Absent this Court's intervention, Mr. Rodriguez Garcia will remain detained for an unknown and potentially prolonged period of time. He is not competent to participate meaningfully in his removal proceedings, and as long as he is in custody he will continue to receive insufficient treatment for his serious mental health and developmental conditions. Specifically, so long as he continues to be detained, he will remain hundreds of miles from the members of his family and community who have committed to ensuring that he receives the care he needs to participate meaningfully in his proceedings. *See* Exhibit B.

JURISDICTION

10. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Eloy Detention Center in Eloy, Arizona.

11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

13. The "zipper clause" at 8 U.S.C. § 1252(b)(9), which channels "[j]udicial review of all questions of law . . . including interpretation and application of constitutional and statutory

provisions, arising from any action taken . . . to remove an alien from the United States" to the appropriate federal court of appeals, does not apply because that section applies only to review of removal orders, and Petitioner does not seek review of an order of removal but of custody. *Maldonado Bautista et al. v. Santacruz, et al.,* No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

14. The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to hear "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." The Supreme Court previously characterized § 1252(g) as a narrow provision, applying "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). In doing so, the Supreme Court found it "implausible that the mention of *three discrete events* along the road to deportation was a shorthand way to referring to *all claims arising from* deportation proceedings." *Id.* (emphasis added). Petitioner's challenge to his detention does not fall within these discrete actions. *Maldonado Bautista et al. v. Santacruz, et al.,* No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

15. Subsection 2 of 8 U.S.C. § 1252(a), titled "Judicial Review of Orders of Removal," contains four subsections, which outline categories of claims that are not subject to judicial review. § 1252(a)(2)(A)–(D). None of these subsections precluding judicial review apply to this matter, as the specified statutory provisions do not cite § 1225(b)(2)(A) or § 1226(a), which are the two provisions Petitioner challenges. Thus, no part of § 1252 deprives this Court of jurisdiction. *Maldonado Bautista et al. v. Santacruz, et al.,* No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28,

2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6. As such, the Court has jurisdiction over Petitioner's challenge to his detention.

VENUE

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for Arizona, the judicial district in which Petitioner currently is detained.

17. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the District of Arizona.

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

19. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

20. Petitioner Edgar Rodriguez Garcia is a native and citizen of Colombia who entered the United States most recently on June 29, 2025. *See* Exhibit A. Petitioner is 37 years old, and his

mother, sister, and stepfather live in California. *See* Exhibits A, B. ICE has charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I) as a noncitizen present in the United States without being admitted or paroled, and as an immigrant who, at the time of application for admission, was not in possession of a valid visa or entry document. Exhibit A. Mr. Rodriguez Garcia is presently detained at the Eloy Detention Center in Eloy, Arizona.

21. Respondent, Christopher D. McGregor, is the Acting Director of the Phoenix Field Office of ICE's Enforcement and Removal Operations division, which oversees operations at the Eloy Detention Center. As such, Mr. McGregor is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He named in his official capacity.

22. Respondent Kristi NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

23. Respondent Pamela BONDI is the United States Attorney General. She is responsible for the Executive Office for Immigration Review (EOIR), which is the component of the U.S. Department of Justice that is responsible for implementing and enforcing the INA in removal proceedings, including for custody redetermination in bond hearings.

24. Respondent Christopher Howard is employed as the Warden of the Eloy Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

25. Respondent Todd LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement

of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

LEGAL FRAMEWORK

Immigration and Nationality Act and Federal Regulations

26. The INA prescribes three basic forms of detention for the vast majority of noncitizens who are alleged or found to be removable from the United States.

27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have engaged in specified criminal and terrorist activity are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

28. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other noncitizens seeking admission under § 1225(b)(2). Inadmissible individuals who have been physically present in the United States for less than two years may be subjected to expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(iii)(I)-(II).

29. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

30. This case concerns the detention provisions at §§ 1226(a), 1225(b)(1)(A), and 1225(b)(2).

31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section

1225(b)(2)(A) states that if an "examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings]." The IIRIRA also defined "admission" in 8 U.S.C. § 1101(a)(13)(A) as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." § 301, 110 Stat. 3009-575.

32. Consistent with these statutory provisions, federal regulations preclude immigration judges from granting bond to "arriving aliens," 8 C.F.R. § 1003.19(h)(1)(B)(ii), a phrase defined in relevant part as "applicant[s] for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1001.1(q). The decision to preclude immigration judges from granting bond to arriving aliens—as distinct from all noncitizens who entered without admission—was the product of notice and comment rulemaking in early 1997 following the enactment of the IIRIRA.

33. As the regulations were initially proposed, all "[i]nadmissible aliens in removal proceedings" would have been ineligible for bond. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, however, the Attorney General deleted the proposed provision and replaced it with one that would apply only to "[a]rriving aliens."[1] *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10361 (March 6, 1997). As the Attorney General explained, "[t]he effect of this change [was] that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not." *Id.* at 10323.

[1] This provision was originally promulgated as 8 C.F.R. § 236.1(c)(5)(i) and was later transferred to 8 C.F.R. § 1003.19(h)(2)(i)(B).

In other words, "aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." *Id.*

34. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

35. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress provided that noncitizens who entered the country without being admitted are subject to mandatory detention if they were thereafter charged with, arrested for, convicted of, or admitted committing various offenses. 8 U.S.C. § 1226(c)(1)(E). As may be apparent, this provision would be superfluous if all noncitizens who were present without admission were already subject to mandatory detention under § 1225(b)(2)(A).

36. Noncitizens who have prior orders of removal may be processed for reinstatement of their prior orders if they re-enter the United States without authorization. 8 U.S.C. § 1231(a)(5). A noncitizen may be subject to expedited removal if he or she is inadmissible, has not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility" and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal. 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(I)-(II).

For individuals not processed under § 1231(a)(5) and not processed for expedited removal under 8 U.S.C § 1225(b), the proper statutory basis for detention is under 8 U.S.C. § 1226(a).

Exhaustion and Futility

37. Exhaustion of administrative remedies is required "[w]here Congress specifically mandates." *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). But where, as here "Congress has not clearly required exhaustion, sound judicial discretion governs." *Id.* (citations omitted). Under these principles, prudential exhaustion is not required where a request for relief before the agency would be futile because the agency has "predetermined the issue before it." *Id.* at 148. Furthermore, "a court may waive the prudential exhaustion requirement if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.'" *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

38. At a bond hearing on December 8, 2025, an immigration judge denied bond based on a three-word finding that the "Court lacks jurisdiction," without citation to caselaw or statute. Exhibit L. Nonetheless, the BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, renders prudential exhaustion futile in bond cases involving individuals who entered the United States without inspection. *Zaragoza Mosqueda, et al. v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025). The BIA's decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), similarly renders prudential exhaustion futile in bond cases involving individuals who were detained shortly after entry into the United States without inspection. Prudential exhaustion is therefore unnecessary, and the Court should take jurisdiction over Petitioner's case.

39. A motion to reconsider has been filed in *Matter of Yajure Hurtado*. The motion challenges the Board's statutory analysis and asks it to withdraw its decision because (a) the underlying removal proceedings had concluded by the time the Board issued its decision, making the case moot, and (b) the decision conflicts with longstanding regulations issued by the Attorney General.[2]

Indefinite or Unreasonably Prolonged Detention in Immigration Custody

40. While detention of a noncitizen "during" removal proceedings is permissible, DHS may not hold individuals in immigration custody indefinitely, without any chance of release. *Jennings v. Rodriguez*, 583 U.S. 281, 301-02 (2018); *see also Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) (holding that immigration detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which is to effectuate removal or to prevent danger or flight risk).

41. Even where a statute renders detention mandatory during removal proceedings, unreasonably prolonged detention under such a statute may impermissibly violate an individual's due process rights on an as-applied basis. *See Black v. Dir. Thomas Decker*, 103 F.4th 133, 138 (2d Cir. 2024); *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (expressing "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional"); *Doe v. Chestnut*, No. 24-0943, 2025 U.S. Dist. LEXIS 228839, *10-*11 (E.D. Cal. Nov. 20, 2025) (distinguishing *Jennings*, 583 U.S. at 312, because claim of unreasonably prolonged detention during pending removal proceedings in *Doe* was constitutional, not statutory as in *Jennings*); *Diaz*

[2] The Board's Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it contravenes the statutory language and legislative history, and it deviates from longstanding agency practice and regulations. *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025).

v. Genalo, No. 22-3063, 2024 WL 4124756 *13-*14 (S.D.N.Y. Sep. 9, 2024) (ordering bond hearing with burden on government as to danger and flight risk, for noncitizen subject to mandatory detention under 1226(c), but detained for three years while suffering from severe mental illness); *see also Abdulraimov v. Andrews*, No. 25-0843, 2025 WL 2912307, *12-*13 (E.D. Cal. Oct. 14, 2025) (rejecting argument "that 'noncitizens subject to mandatory detention like Petitioner, who were not admitted or paroled into the country, nor physically present for at least two years on the date of inspection — as a class — lack any liberty interest in avoiding removal or to certain additional procedures'").

42. Courts addressing as-applied constitutional challenges to prolonged pre-order detention have frequently applied a six-factor, "case-specific" test "to determine whether Petitioner's detention violates due process." *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. WA 2019).[3] The six *Banda* factors are: "(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal." *Id.* (quoting *Jamal A. v. Whitaker*, 385 F. Supp. 3d 853, 858-59 (D. Minn. 2019)).

43. As to the first factor, Petitioner was apprehended by Customs and Border Protection on June 29, 2025, and he has been detained ever since, his criminal proceedings having lasted less

[3] *See, e.g., Hamideh Sadeqi v. Larose*, No. 25-2587, 2025 WL 3154520 (S.D. Cal. Nov. 25, 2025) (applying *Banda* factors and granting habeas petition of arriving alien detained during credible fear proceedings); *Amado v. DOJ*, No. 25-2687, 2025 WL 3079052 (S.D. Cal. Nov. 4, 2025) (applying *Banda* factors and granting habeas petition of arriving alien placed in removal proceedings under section 1229a); *Kadir v. Larose*, No. 25-1045, 2025 U.S. Dist. LEXIS 203614 (S.D. Cal. Oct. 15, 2025) (same); *Cardozo v. Bostock*, 25-0871, 2025 WL 2592275 (W.D. WA Sep. 8, 2025) (same); *Arechiga v. Archambeault*, No. 23-0600, 2023 WL 5207589 (D. Nev. Aug. 11, 2023) (same).

than one month. Exhibits E, F, G. As to the second factor, the likely duration of his future detention is indefinite and potentially permanent, because he cannot meaningfully participate in his removal proceedings while he is incompetent, and he cannot be rendered competent while he is detained. *See* Exhibits B, F, G, H. Thus, as long as Petitioner is detained, his removal proceedings have no likely termination point, but will remain in limbo indefinitely. Accordingly, while the first *Banda* factor does not render Petitioner's detention presumptively unreasonable, the second factor weighs heavily in his favor.

44. As to the third factor, conditions for Petitioner in detention are severely detrimental to his health and do not permit him to obtain adequate treatment for his serious psychiatric and developmental ailments. While in immigration detention, Petitioner "has gone days without sleeping. His behavior has become increasingly unstable, and other detainees have expressed concern because he appears distressed at night." Exhibit B. "These are clear signs that he urgently needs specialized psychiatric intervention," but in detention, Petitioner "lacks the proper professional support that his condition requires." *Id.* ICE has failed to provide adequate treatment even though Petitioner, through counsel, proffered extensive documentation of his medical and psychiatric conditions and treatment needs, dating back many years, including information about an incident in Colombia where he disappeared for one week and was with "no clothing and no shoes," experiencing symptoms of schizophrenia. Exhibits C, K.

45. As to the fourth and fifth factors, Petitioner has not caused the delays in his removal proceedings, which are instead attributable to ICE or to circumstances beyond his control. Petitioner's incompetence is no fault of his own, but is instead attributable to conditions from which he has suffered since infancy. Exhibits B, C. ICE has long been aware of Petitioner's incompetency and has had ample time to provide adequate treatment for Petitioner's conditions.

Petitioner's criminal case was dismissed five months ago following a competency motion, and it has been two months since an immigration judge found that Petitioner is not competent to participate in his removal proceedings. Exhibits F, G, H. Petitioner has provided DHS with detailed documentation of his psychiatric and developmental challenges, and of his family's willingness and ability to ensure his treatment, over the course of two requests for parole. Exhibits J, K. Despite having all the necessary information presented to it cogently and promptly, DHS has delayed Petitioner's proceedings by failing to provide proper treatment or release Petitioner to the family members who have promised to do so. *See id.*; *see also* Exhibit B. Thus, the fourth and fifth factors weigh heavily in Petitioner's favor.

46. Finally, as to the sixth factor, it is unlikely that the proceedings will result in a final order of removal. The immigration judge administratively closed the proceedings because Petitioner is not competent to participate meaningfully, and adequate safeguards could not be provided. Exhibit H. While DHS has filed an interlocutory appeal of this order, adjudication of that appeal promises to be protracted, because the Board of Immigration Appeals has not set a briefing deadline despite Petitioner's continued detention. *See* Exhibit I. Furthermore, given the criminal court's dismissal of Petitioner's case following the competency motion, DHS's interlocutory appeal is unlikely to succeed. *See* Exhibit H. Petitioner further intends to seek relief from removal, *see* Exhibit J, but he would need to be restored to competency or provided with adequate safeguards in order to do so in a manner consistent with BIA precedent – which is not possible in ICE custody. *See Campos Mejia v. Sessions*, 868 F.3d 1118, 1121 (9th Cir. 2018). Thus, the sixth and final factor favors Petitioner.

47. On balance, the six *Banda* factors favor a grant of this petition, with an order that Petitioner should receive a hearing at which the government bears the burden to prove that he

poses a danger to the community or a risk of flight. *See Hamideh Sadeqi*, 2025 WL 3154520 (ordering bond hearing with burden allocated to the government); *Amado*, 2025 WL 3079052 (same); *Kadir*, 2025 U.S. Dist. LEXIS 203614 (same); *Cardozo*, 2025 WL 2592275 (same); *Arechiga*, 2023 WL 5207589 (same).[4]

48. The six-factor *Banda* test is most appropriate for consideration of this petition, because "a balancing test focusing on '*additional or substitute* procedural safeguards . . . does not resolve the more fundamental issue of whether *any* procedure—such as a bond hearing—must be provided.'" *Hong v. Mayorkas*, No. 20-1784, 2022 WL 1078627, *10 (W.D. WA Apr. 11, 2022) (quoting *Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917, 920 (W.D. WA 2020)). However, Petitioner's circumstances also satisfy the requirements of the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which some courts have applied.[5]

49. The *Mathews v. Eldridge* test involves balancing of three factors: "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

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[4] Petitioner has not yet received an individualized bond hearing at which his risk of flight or danger to the community were considered. Instead, the immigration judge denied his request for bond with a three-word conclusion: "Court lacks jurisdiction." Exhibit L.

[5] *See, e.g., Idiev v. Warden, Golden State Annex Detention Facility*, No. 25-1030, 2025 U.S. Dist. LEXIS 218271 (S.D. Cal. Nov. 5, 2025) (collecting cases; applying balancing test under *Mathews v. Eldridge*, 424 U.S. 319, to claim of unreasonably prolonged pre-order mandatory detention under § 1225(b)(1); and concluding that bond hearing was required with burden of proof on the government as to danger and flight risk); *Tonoyan v. Andrews*, No. 25-0815, 2025 WL 3013684 (E.D. Cal. Oct. 27, 2025) (same); *Maksim v. Warden, Golden State Annex Detention Facility*, No. 25-00955, 2025 WL 2879328 (E.D. Cal. Oct. 9, 2025) (same).

50. As to the first factor, in *Tonoyan*, the petitioner was detained for nearly 11 months, but approximately five months of this detention period was attributable to his own request for continuances of his removal proceedings to prepare applications for relief and switch attorneys. 2025 WL 3013684 at *4, *11. The Court in *Tonoyan* found that under these circumstances, Petitioner's "private interest in being free from prolonged detention" was a factor that weighed in his favor. *Id.* at *11. Just as the petitioner in *Tonoyan* was detained for approximately six months that were not attributable to his own actions, Petitioner has been detained for nearly six months due to factors outside his control, as described above. While a detention period of six months is "presumptively" reasonable, there is no "categorical prohibition on claims challenging detention less than six months." *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020); *see also Uzzhina v. Chestnut*, No. 25-1594, 2025 WL 3458787, *6, n.3 (E.D. Cal. Dec. 2, 2025) ("[t]he fact that a noncitizen has been held in-custody less than six months does not foreclose a claim that his or her detention is unlawful"). As explained above, DHS has twice denied Petitioner's parole requests and has filed an interlocutory appeal of the immigration judge's order finding him incompetent, despite the order of a federal district judge dismissing his criminal proceedings following a competency motion. Under these unique circumstances, there is no indication that Petitioner's detention has any foreseeable end point. Thus, the first factor under *Mathews v. Eldridge* favors Petitioner.

51. As to the second factor, "the probable value of additional procedural safeguards" in the form of a bond hearing "is high" when a petitioner has not received an individualized bond hearing and "it is not clear when detention will end." *Idiev*, 2025 U.S. Dist. LEXIS 218271, *15. Petitioner has not received a bond hearing that provided any meaningful procedural safeguards, because the immigration judge made no findings about danger or flight risk. Exhibit L. DHS did

not address the competency issues raised by Petitioner in either of its conclusory statements denying his amply documented requests for parole, and it has not provided adequate treatment for his psychiatric conditions in detention. Exhibits B, J, K. Ultimately, it is not clear when (or if) Petitioner's detention will end, and he has received no meaningful procedural safeguards. Thus, the risk of erroneous deprivation weighs in favor of granting a bond hearing.

52. Finally, as to the third factor, the government has an interest in "effecting removal" and "in protecting the public from danger," but not in continued detention of a petitioner without a bond hearing. *Idiev*, 2025 U.S. Dist. LEXIS 218271, *15. A petitioner's degree of dangerousness or flight risk is neither presumed nor established by speculation; instead, the purpose of a bond hearing is "to inquire whether the alien represents a flight risk or danger to the community." *Id.* (citing *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006)). Additionally, in Petitioner's circumstances, any interest the government ultimately acquires in effecting removal would be facilitated, not hindered, by his release, because his mother and stepfather are able to ensure that he receives the treatment he needs to permit removal proceedings to continue. Exhibit B. Under these circumstances, the *Mathews v. Eldrige* factors, on balance, favor a grant of this petition.

53. Finally, even following the approach of courts that have declined to apply any type of multi-factor balancing test, Petitioner's detention is unconstitutional because it is potentially permanent and has no "definite termination point." *Gevorg v. Warden, Golden State Annex Detention Facility*, No. 25-0992, 2025 U.S. Dist. LEXIS 251666, *20 (E.D. Cal. Dec. 5, 2025) (concluding that in "the absence of binding authority on the issue" in the Ninth Circuit, "the threshold question in considering Petitioner's claims of unreasonably prolonged detention under § 1225(b) without a bond hearing is whether Petitioner's continued detention serves the purported immigration purpose and has a definite termination point"); *see also Doe v. Andrews*, No. 25-0333,

2025 WL 3280777, *35-*36 (E.D. Cal. Nov. 25, 2025) (same, recommending dismissal of petition because petitioner presented "no evidence that his detention is indefinite or potentially permanent," and concluding that the dismissal in these circumstances "does not foreclose the possibility of a due process violation and bond hearing for a § 1225(b)(1) detainee where circumstances evince that detention is indefinite or for some other non-immigration purpose") (emphasis in original).

54. In *Gevorg*, the petitioner's proceedings were "still actively 'pending a final determination of credible fear of persecution,'" and a final hearing before an immigration judge was scheduled within weeks of the habeas filing. *Id.* at 20. By contrast, an immigration judge has administratively closed Petitioner's removal proceedings upon a conclusion that they cannot proceed while he is incompetent to participate meaningfully in them. *See Matter of M-A-M-*, 25 I. & N. Dec. 474. And as previously explained, Petitioner cannot be rendered competent while in detention. The circumstances of this case therefore evince that Petitioner's detention is indefinite and potentially permanent, and as such, his continued detention without an individualized bond hearing violates due process.

Federal Court Decisions Regarding Detention of Individuals Who Are Present Without Admission

55. To date, over 100 federal district judges have either outright rejected the government's novel interpretation of § 1225(b)(2)(A),[6] or found that noncitizens challenging the

[6] *Martinez v. Raycraft*, No. 25-1504, 2025 U.S. Dist. LEXIS 253165 (W.D. MI Dec. 8, 2025) (Jonker, J.); *Patel v. O'Neil*, No. 25-2185, 2025 U.S. Dist. LEXIS 252347 (W.D. Pa. Dec. 8, 2025) (Mariani, J.); *Silvestre Mendoza v. Noem*, No. 25-3206, 2025 U.S. Dist. LEXIS 253317 (S.D. Cal. Dec. 8, 2025) (Bermudez Montenegro, J.); *Esperanza v. Francis*, No. 25-8727, 2025 U.S. Dist. LEXIS 253384 (S.D.N.Y. Dec. 8, 2025) (Abrams, J.); *Pereira v. O'Neill*, No. 25-6543, 2025 U.S. Dist. LEXIS 252833 (E.D. Pa. Dec. 8, 2025) (Spencer Marston, J.); *Ramirez v. Larose*, No. 25-3253, 2025 U.S. Dist. LEXIS 251625 (S.D. Cal. Dec. 5, 2025) (Simmons, J.); *Sislema v. Soto*, No. 25-17204, 2025 U.S. Dist. LEXIS 251281 (D. N.J. Dec. 5, 2025) (Martinotti, J.); *Conde v. Jamison*, No. 25-6551, 2025 U.S. Dist. LEXIS 251052 (E.D. Pa. Dec. 5, 2025) (Brody, J.); *Ramirez-Ramirez v. Beuter*, 25-185, 2025 U.S. Dist. LEXIS 251111 (D. Iowa Dec. 5, 2025) (Williams, C.J.); *Patel*

v. Warden, Folkston ICE Processing Facility, No. 25-146, 2025 U.S. Dist. LEXIS 168696 (S.D. Ga. Dec. 3, 2025) (Godbey Wood, J.); *Gonzalez v. Olson*, No. 25-13439, 2025 U.S. Dist. LEXIS 227990 (N.D. Ill. Nov. 19, 2025) (Harjani, J.); *Pastor v. Raycraft*, No. 25-1301, 2025 U.S. Dist. LEXIS 227892 (W.D. Mich. Nov. 19, 2025) (Jarbou, J.); *Martinez v. Lynch*, No. 25-1353, 2025 U.S. Dist. LEXIS 227890 (W.D. MI Nov. 19, 2205) (Beckering, J.); *Lobera v. Noem*, No. 25-13593, 2025 U.S. Dist. LEXIS 227578 (N.D. Ill. Nov. 19, 2025) (Tharp, J.); *Ndiaye v. Jamison*, No. 25-6007, 2025 U.S. Dist. LEXIS 227253 (E.D. Pa. Nov. 19, 2025) (Sanchez, J.); *Torres v. Bondi*, No. 25-2457, 2025 U.S. Dist. LEXIS 226975 (S.D. Cal. Nov. 18, 2025) (Bashant, J.); *Aparicio Sanchez v. Noem*, No. 25-3068, 2025 U.S. Dist. LEXIS 226977 (S.D. Cal. Nov. 18, 2025) (Sammartino, J.); *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 U.S. Dist. LEXIS 226877 (E.D. Pa. Nov. 18, 2025) (Diamond, J.); *Lopez v. Olson*, No. 25-654, 2025 U.S. Dist. LEXIS 226574 (W.D. Ky. Nov. 18, 2025) (Hale, C.J.); *Guerrero v. Noem*, No. 25-5881, 2025 U.S. Dist. LEXIS 226952 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.); *Villegas ex rel. Andujar v. Francis*, 25-9199, 2025 U.S. Dist. LEXIS 228053 (S.D.N.Y. Nov. 18, 2025) (Rochon, J.); *Garcia v. Sam Olson Field Off. Dir. Of Enf.*, No. 25-13621, 2025 U.S. Dist. LEXIS 225438 (N.D. Ill. Nov. 17, 2025) (Kendall, J.); *Guaita-Quinapanta v. Bondi*, No. 25-795, 2025 U.S. Dist. LEXIS 233351 (W.D. WI Nov. 12, 2025) (Conley, J.); *Guartazaca Sumba v. Crowley*, No. 25-13034, 2025 U.S. Dist. LEXIS 220641 (N.D. Ill. Nov. 9, 2025) (Chang, J.); *Morales-Martinez v. Raycraft*, No. 25-13303, 2025 U.S. Dist. LEXIS 220596 (E.D. Mich. Nov. 7, 2025) (Behm, J.); *Diaz Garcia v. Noem*, No. 25-1712, 2025 U.S. Dist. LEXIS 219436 (E.D. Va. Nov. 6, 2025) (Giles, J.); *Arizmendi v. Noem*, No. 25-13041, 2025 U.S. Dist. LEXIS 218000 (N.D. Ill. Nov. 5, 2025) (Pallmyer, J.); *Elias v. Hyde*, No. 25-540, 2025 LX 210971 (D. R.I. Oct. 27, 2025); *Carmona v. Noem*, No. 25-1131, 2025 LX 209629 (W.D. Mich. Oct. 23, 2025) (Maloney, J.); *Del Cid v. Bondi*, No. 25-0304, 2025 LX 209136 (W.D. Pa. Oct. 23, 2025) (Haines, J.); *Avila v. Bondi*, No. 25-3741, 2025 LX 206789 (D. Minn. Oct. 21, 2025) (Tunheim, J.); *Miguel v. Noem*, No. 25-C-11137, 2025 LX 206990 (N.D. Ill. Oct. 21, 2025) (Alonso, J.); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 LX 207581 (D. Md. Oct. 21, 2025) (Chuang, J.); *Buestan v. Cory Chu*, No. 225-16034, 2025 LX 211879 (D. N.J. Oct. 21, 2025) (Fabiarz, J.); *Benitez-Cornejo v. Cantu*, No. 25-3672 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Torres v. Wamsley*, 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968 (S.D. Ind. Oct. 8, 2025) (Evans Barker, J.); *Eliseo v. Olson,* No. 25-3381, Oct. 8, 2025) (Blackwell, J.); *Buenrostro-Mendez v. Bondi,* No. 25-3726, (S.D. Tex. Oct. 7, 2025) (Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025) (Joun, J.); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Minn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tex. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 25-1382, 2025 WL 2783799 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tex. Sept 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22,

government's interpretation were substantially likely to prevail on the merits.[7] It is not difficult to understand why federal district courts have rejected the government's novel interpretation. By its

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2025) (Jennings, J.); *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025) (Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Rubin, J.); *Romero v. Hyde*, No. 25-11631, __ F.Supp.3d __, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.); *Diaz Martinez v. Hyde*, No. 25-11613, __ F.Supp.3d __, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.); *see also Mairena-Munguia v. Arnott*, No. 25-3318, 2025 U.S. Dist. LEXIS 227477 (Nov. 19, 2025) (Harpool, J.) (further concluding that contrary position advanced by Respondents was not substantially justified, for purposes of awarding fees under Equal Access to Justice Act).

[7] *Vasquez v. Noem*, No. 25-3087, 2025 U.S. Dist. LEXIS 228034 (C.D. Cal. Nov. 19, 2025) (Slaughter, J.); *Mendoza Gutierrez v. Baltasar*, No. 25-CV-02720, 2025 LX 208448 (D. Colo. Oct. 17, 2025); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith* No. 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025) (Beeler, J.) *Flores v. Noem*, No. 25-2490, 2025 LX 444718 (C.D. Cal. Sept. 29, 2025) (Birotte, J.); *Roa v. Albarran*, No. 25-7802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025) (*Seeborg*, J.); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek, J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Cal. Sept. 23, 2025) (Sherriff, J.); *Aceros v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Guzman v. Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.); *Mosqueda v. Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.); *Nieves v. Kaiser*, No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.); *Garcia v. Noem*, No. 25-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw. J.); *Garcia v. Kaiser*, No. 25-06916, 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.); *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.); *Maldonado v. Olson*, No. 25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.); *Maldonado*

terms, 8 U.S.C. 1225(b)(2)(A) only applies to noncitizens who are "seeking admission," and Congress defined "admission" as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people who enter the United States without inspection but are not seeking admission. As importantly, if "the [BIA was] correct that § 1225(b)'s mandatory detention provisions apply to all persons who have not been admitted into the United States, that would render superfluous those provisions of § 1226 that apply to certain categories of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E)." *Hasan v. Crawford*, __ F. Supp. 3d __, 2025 WL 268225 at *22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.).

56. Furthermore, the plain text of section 1226(a) permits the release of noncitizens who are detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). While section 1226(a) provides the right to seek release, section 1226(c) carves out specific categories of noncitizens—including certain categories of noncitizens who are inadmissible under 8 U.S.C. § 1182(a)—and subjects them instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C). If § 1226(a) could never apply to inadmissible noncitizens, there would be no reason to specify that section 1226(c) governs certain persons who are inadmissible; instead, section 1226(c) would only have needed to address people who are deportable for certain offenses under 8 U.S.C. § 1227(a).

57. Recent amendments to § 1226 dramatically reinforce that this section covers people whom DHS alleges to be present without admission. Specifically, the Laken Riley Act added

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Bautista v. Santacruz, No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC (S.D. Cal. Sep. 24, 2025) (denying temporary restraining order).

language to section 1226 that directly references those who are inadmissible under section 1182(a)(6) because they are present without admission or under § 1182(a)(7) because of the lack of valid documentation. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c) and carving them out of § 1226(a) if they have been arrested, charged with, or convicted of certain crimes, Congress reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). *See Aceros v. Kaiser*, 2025 WL 2637503 at *28 (N.D. Cal. Sept. 12, 2025) (concluding that the BIA's interpretation would also "render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it"); *Rodriguez Vazquez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025) (explaining that "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention."); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government argue[s], . . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect"); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).[8]

[8] The BIA acknowledged that its interpretation rendered superfluous multiple provisions of 8 U.S.C. 1226(c), including one recently enacted in the Laken Riley Act, Pub. L. No. 119-1, but it stated that "redundancies are common in statutory drafting." 29 I&N Dec. at 221-22 (quoting *Barton v. Barr*, 590 U.S. 222 (2020)).

58. Unlike 8 U.S.C. § 1226, 8 U.S.C. § 1225(b)(2)(A) applies only to individuals who are "seeking admission" to the United States.[9] *See Benitez-Cornejo v. Cantu, et al.*, 2:25-CV-03672-JJT-ESW, 2025 LX (D. Ariz. Oct. 17, 2025) (rejecting argument that all "individuals who have never been admitted are 'seeking admission'"); *Echevarria v. Bondi, et al.*, 2:25-CV-03252-DWL-ESW, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025) (reasoning that to argue all applicants for admission "are necessarily (and continuously) 'seeking admission,' so long as they continue to exist in the United States" is "an obvious violation of the rule against surplusage" and "goes against the plain, ordinary meaning of the words 'seeking' and 'admission'"); *Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (similar).

59. 8 U.S.C. § 1225 further defines its scope by reference to "inspections"—a term not defined in the INA, but which typically connotes an examination upon or soon after physical entry. *See* 8 U.S.C. § 1225 (titled "Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); §§ 1225(b)(1)–(2) (referring to "inspections" in their titles); § 1225(b)(2)(A), (b)(4) (referring to "examining immigration officers'); § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States"); *see also Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute). Many statutory provisions, various regulations, and agency precedent also discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 1225

[9] 8 U.S.C. § 1225(b)(1) concerns "expedited removal of inadmissible arriving [noncitizens]," including those who present themselves for inspection upon "arriving" and other individuals designated by the Attorney General who have been present in the United States for less than two years, and who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1)(A)(i). Subsection (b)(1) does not require Petitioner's detention because he did not present himself for inspection.

has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

60. The Board in *Matter of Yajure Hurtado* ignored the "seeking admission" requirement and instead focused solely on whether an individual who enters the United States without inspection is "applicant for admission," as § 1225(b)(2)(A) also requires. But as the Ninth Circuit has explained, "when deciding whether language is plain, [courts] must read the words in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). In context, the differential phrasing of "applicant for admission" and "seeking admission" in the same statutory subsection is significant, because "applicant for admission" is a term of art that has been analyzed as such by both the Supreme Court and the Ninth Circuit Court of Appeals. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020); *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018); *see also Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (an individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States."). By contrast, an individual who has not presented at a port of entry and has not filed any affirmative application for immigration benefits is not "seeking" anything under the plain meaning of the word. *See* Merriam Webster's Dictionary (2025) (defining "seek" as, inter alia, "to go in search of" or "to try to acquire or gain"). Thus, regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission," a noncitizen's status as an "applicant for admission" is not sufficient to render him or her subject to

mandatory detention under § 1225(b)(2). The "applicant for admission" must *also* be "seeking admission," and that is clearly not the case for Petitioner.

61. In sum, the mandatory detention provision of section 1225 addressed in *Matter of Yajure-Hurtado* applies only to individuals arriving in the United States and seeking admission as specified in the statute. To the extent the immigration judge based his jurisdictional determination on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, that decision is legally erroneous.

FACTS

62. Petitioner is a 37-year-old native and citizen of Colombia who entered the United States most recently on June 29, 2025. *See* Exhibits A, B. His mother, sister, and stepfather live in California. *See* Exhibit B. Petitioner has suffered from significant developmental delays since infancy, and as an adult he was diagnosed with schizophrenia and depression. *See* Exhibit B. He requires an extensive medication regimen to treat his mental health conditions, and if he is released, his mother and stepfather are prepared to ensure that he receives the medical care, psychiatric supervision, and family support that he needs. *See* Exhibits B, C.

63. Petitioner was detained by Customs and Border Protection near Douglas, Arizona, on June 29, 2025, and DHS initially determined that it would process him for reinstatement of a prior removal order under 8 U.S.C. § 1241(a)(5), but it did not initiate reinstatement proceedings. Exhibit D. Instead, Petitioner was referred to the custody of the U.S. Marshals and charged in the United States District Court for the District of Arizona with illegal re-entry into the United States in violation of 8 U.S.C. § 1326. Exhibits D, E. He had previously been removed from the United States on December 19, 2011. *See id.* Petitioner was transferred to the Eloy Detention Center in Eloy, Arizona, after his criminal complaint was dismissed on July 17, 2025, following a motion to determine competency. *See* Exhibits F, G.

64. After the conclusion of his criminal case, Petitioner was placed into removal proceedings under 8 U.S.C. § 1229a upon filing of a Notice to Appear (NTA), which alleges that he entered the United States without inspection as recounted above. Exhibit A. The NTA does not allege that Petitioner is an arriving alien, and the box for such designation on that form remains unchecked. *See id.* However, the immigration judge administratively closed his removal proceedings on October 8, 2025, after finding that Petitioner is "incompetent" and that legal counsel alone is not a sufficient safeguard to allow proceedings to continue. *See* Exhibit H. The DHS filed an interlocutory appeal of the Immigration Judge's order granting administrative closure on October 8, 2025. *See* Exhibit I.

65. On September 3, 2025, Petitioner sought parole from the DHS pursuant to 8 C.F.R. § 212.5(b), in light of his significant mental health issues and needs, but DHS denied his request on September 6, 2025. *See* Exhibits J, K. Petitioner renewed his parole request on October 9, 2025, but DHS again denied the request on the same day. *See* Exhibit J.

66. Petitioner's efforts to obtain release from the Immigration Court were equally unavailing. On December 8, 2025, an immigration judge denied Petitioner's request for bond with no finding about whether he presented a flight risk or a danger to the community, in a three-word order stating "Court lacks jurisdiction." *See* Exhibit L.

67. Petitioner is not competent to participate meaningfully in his removal proceedings, and as long as he is in custody he will continue to receive insufficient treatment for his serious mental health and developmental conditions. Specifically, so long as he continues to be detained, he will remain hundreds of miles from the members of his family and community who have committed to ensuring that he receives the care he needs to participate meaningfully in his proceedings. *See* Exhibit B.

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

68. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

69. The mandatory detention provision at 8 U.S.C. § 1225(b)(2)(A) does not apply to all noncitizens residing in the United States who entered the country without being admitted. By its terms, § 1225(b)(2)(A) only applies to noncitizens who are "seeking admission." The term "admission" is defined to require a "lawful entry" following "inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Accordingly, § 1225(b)(2)(A) does not apply to noncitizens like Petitioner who evade inspection and are apprehended outside a port of entry. Nor was Petitioner processed for reinstatement of removal under § 1231(a)(5), or for expedited removal under § 1225(b)(1).

70. Any application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention and violates the INA by precluding him from obtaining an individualized hearing on the questions of danger and flight risk.

71. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

72. Under 8 C.F.R. § 1236.1(d)(1), immigration judges may grant bond to any noncitizen in removal proceedings who is not subject to a final order or to any of the exceptions in 8 C.F.R. § 1003.19. None of the exceptions in § 1003.19 preclude immigration judges from granting bond to noncitizens simply for being present without admission.

73. As relevant here, the regulations only preclude immigration judges from granting bond to noncitizens who qualify as "arriving aliens," § 1003.19(h)(1)(B)(ii), *i.e.*, those who

presented themselves for inspection at a port of entry. When these regulations were initially promulgated, the Justice Department explained that "inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge." 62 Fed. Reg. 10312, 10323 (March 6, 1997). The Justice Department thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. 1226 and its implementing regulations.

74. Notwithstanding these regulations, the BIA held in *Matter of Yajure Hurtado* that all noncitizens who are present without admission are ineligible to receive a bond from immigration judges. Application of this decision to Petitioner unlawfully mandates his continued detention without permitting him to secure release, in violation of §§ 1236.1 and 1003.19.

COUNT III
Violation of Due Process

75. Petitioner repeats, re-alleges, and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.

76. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

77. Petitioner has a fundamental interest in liberty and being free from official restraint. Petitioner has been deemed incompetent by an immigration judge, and criminal proceedings against him were dismissed by a federal judge in this district following a motion to determine competency. Nonetheless, he remains in immigration custody and has not received adequate treatment for his severe medical and psychiatric conditions, including developmental delays and schizophrenia.

78. The government's unreasonably prolonged and potentially permanent detention of Petitioner with no end in sight violates his right to due process.

79. The government's detention of Petitioner and its issuance of a precedential decision precluding his release violates his right to due process.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Set this matter for expedited consideration;

c. Declare that Petitioner's continued detention without an individualized bond hearing is unconstitutional because it is unreasonably prolonged and potentially indefinite;

d. Issue a Writ of Habeas Corpus and order that Petitioner promptly receive an individualized bond hearing before an immigration judge at which the government bears the burden to prove by clear and convincing evidence that he is a danger to the community or that he poses a risk of flight, or in the alternative, release Petitioner on appropriate conditions of supervision;

e. Order that Respondents be prohibited from transferring Petitioner outside the Court's District or otherwise changing his immediate custodian without prior leave of Court while this action is pending, and that Respondents not prevent Petitioner from traveling within the United States following his release;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

DATED this 15th day of December, 2025.

/s/ Gregory P. Fay

Gregory P. Fay
AZ Bar: 035534

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Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this 15th day of December, 2025 in Tempe, Arizona.

/s/ Gregory P. Fay

Gregory P. Fay
Attorney for Petitioner