

1 he has been in the United States for nearly ten (10) years and has never been charged with
2 any criminal acts in the United States.

3 3. Moreover, Petitioner is not a flight risk: he has a United States Citizen daughter and a United
4 States Citizen son, and has built a successful commercial trucking business employing
5 numerous people in the United States.

6 4. Petitioner's prolonged detention without a finding that he poses a danger to the community
7 or a flight risk violates the Due Process Clause of the Fifth Amendment and the Eighth
8 Amendment's Excessive Bail Clause.

9 5. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus,
10 determine that Petitioner's detention is not justified because the government has not
11 established by clear and convincing evidence that Petitioner presents a risk of flight or
12 danger in light of available alternatives to detention, and order Petitioner's release, with
13 appropriate conditions of supervision if necessary, taking into account Petitioner's ability
14 to pay a bond.

15 6. In the alternative, Petitioner requests that this Court issue a writ of habeas corpus and order
16 Petitioner's release within 30 days unless Defendants schedule a hearing before an
17 immigration judge in which: (1) the government must establish by clear and convincing
18 evidence that Petitioner presents a risk of flight or danger, even after consideration of
19 alternatives to detention that could mitigate any risk that Petitioner's release would present
20 in order for the government to continue his detention; and (2) if the government cannot meet
21 its burden, then the immigration judge must order Petitioner's release and specify any
22 appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.
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26 **JURISDICTION**

27 7. Petitioner is in the physical custody of Respondents and Immigration and
28 Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS).

1 He is detained at the California City Corrections Center, and is under the direct control of
2 Respondents and their agents.

3 8. This action arises under the Constitution of the United States and the Immigration
4 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

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

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

10 11. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§
11 1252(b)(9), (f)(1), or 1226(e). Congress has preserved judicial review of challenges to
12 prolonged immigration detention. *See Jennings v Rodriguez*, 138 S. Ct. 830, 839-41 (2018)
13 (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to
14 prolonged immigration detention).
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17 **VENUE**

18 12. Venue is proper in this District under 28 U.S.C. § 1391 because at least one Defendant is in
19 this District, the Petitioner is detained in this District, and a substantial part of the events giving
20 rise to the claims in this action took place in this District.
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22 **PARTIES**

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25 13. Petitioner, HARJEET SINGH, is a noncitizen currently detained by Respondents pending
26 removal proceedings.
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28 14. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security

1 (“DHS”), an agency of the United States. She is responsible for the administration of the
2 immigration laws. 8 U.S.C. § 1103(a). Secretary Noem is a legal custodian of Petitioner. She is
3 named in her official capacity.

4 15. Respondent PAMELA BONDI is the Attorney General of the United States and the most
5 senior official in the U.S. Department of Justice (“DOJ”). She has the authority to interpret the
6 immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility
7 to the Executive Office for Immigration Review (“EOIR”), which administers the immigration
8 courts and the Board of Immigration Appeals (“BIA”). She is named in her official capacity.
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10 16. Respondent ERNESTO M. SANTACRUZ, JR. is the Acting Field Office Director
11 responsible for the Field Office of ICE with administrative jurisdiction over Petitioner’s case. He
12 is a legal custodian of Petitioner and is named in his official capacity.

13 17. Respondent CHRISTOPHER CHESTNUT is the warden of the facility where Petitioner is
14 held. He is a legal custodian of Petitioner and is named in his official capacity.
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17 **STATEMENT OF FACTS**
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21 18. Petitioner is a noncitizen currently detained by Respondents pending asylum proceedings.

22 19. Petitioner is requesting relief from removal in the form of Asylum, Withholding of
23 Removal, and protection under the Convention Against Torture.
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25 20. Petitioner came to the United States on May 10, 2016 in order to seek asylum following the
26 persecution he suffered in India. Specifically, Petitioner was and remains a supporter of a free and
27 independent state of Punjab - known as Khalistan - and because of this he was persecuted, assaulted,
28 and driven from his home country.

1 21. Petitioner entered the United States and was subsequently detained some time later by an I-
2 200 warrant. Petitioner was then placed in custody specifically under INA § 1226. He then sought
3 and was granted bond on or about June 27th, 2016. His court date, originally scheduled in
4 Maryland on or about August of 2016 was then transferred to Los Angeles as he entered a motion
5 to change venue.

6 22. From that time to the present, Petitioner has done everything he can to follow the law. He
7 is now married to a United States Citizen and the couple have a United States Citizen daughter. He
8 has appeared at all court hearings and filed his asylum application on March 21, 2017.

9 23. Petitioner was then unjustly arrested on or about July 15, 2025 for a criminal incident solely
10 related to another individual with whom he was traveling. Notably the District Attorney has not
11 filed charges against Petitioner, to date, despite charging another individual in relation to the same
12 incident. Petitioner was then released from criminal custody, but subsequently arrested by an ICE
13 officer. He has now been placed in immigration detention pending the conclusion of his removal
14 proceedings.

15 24. Petitioner has been detained in DHS custody since July 23, 2025.

16 25. Petitioner has been detained by ICE for more than four (4) months, yet has not been
17 provided a bond hearing before a neutral decisionmaker to determine whether his prolonged
18 detention is justified based on danger or flight risk.

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21 **LEGAL BACKGROUND**
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25 26. “It is well established that the Fifth Amendment entitles aliens to due process of law in
26 deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (internal quotation omitted).
27 “Freedom from imprisonment—from government custody, detention, or other forms of physical
28 restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*,

1 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due
2 Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”).
3 This fundamental due process protection applies to all noncitizens, including both removable and
4 inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“both removable and
5 inadmissible aliens are entitled to be free from detention that is arbitrary or capricious”).

6 27. Due process therefore requires “adequate procedural protections” to ensure that the
7 government’s asserted justification for physical confinement “outweighs the individual’s
8 constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal quotation
9 marks omitted). In the immigration context, the Supreme Court has recognized only two valid
10 purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight.
11 *Id.*; *Demore*, 538 U.S. at 528.

13 28. The INA envisions three basic forms of detention for noncitizens in removal proceedings.
14 First is detention for noncitizens in regular, non expedited removal proceedings. *See* 8 U.S.C. §
15 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their
16 detention, while noncitizens who have committed certain crimes are subject to mandatory
17 detention. *See id.* § 1226(c) The INA also provides for mandatory detention for noncitizens in
18 expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose
19 immigration cases are completed, *id.* § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d
20 1099, 1111-13 (W.D. Wash. 2019) (providing overview of INA’s detention authorities).

22 29. Under § 1226(a), the “default rule,” *id.*, a noncitizen “may be arrested and detained” “[o]n
23 a warrant issued by the Attorney General” if their removal proceedings are pending, 8 U.S.C. §
24 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with,
25 arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the government
26 has discretion to release them on “bond of at least \$1,500 with security approved by, and containing
27 conditions prescribed by, the Attorney General; or ... conditional parole.” *Id.* at § 1226(a)(2)(A)–
28

1 (B).

2 30. Until this year, DHS has applied § 1226(a) and its discretionary release and review
3 of detention “to the vast majority of noncitizens allegedly in this country without
4 valid documentation”—a practice codified by regulation. *Salcedo Aceros*, 2025 WL 2737503, at
5 *3.

6 31. The Government now contends that mandatory detention under § 1225 is the
7 appropriate detention authority for noncitizens, such as petitioner, who have not been admitted
8 or paroled. *See Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499
9 (W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

11 32. Since the Supreme Court’s *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision, the Ninth
12 Circuit has expressed “grave doubt” that “any statute that allows for arbitrary prolonged detention
13 without any process is constitutional or that those who founded our democracy precisely to protect
14 against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v.*
15 *Marin*, 909 F.3d 252, 256 (9th Cir. 2018). To guarantee against such arbitrary detention and to
16 guarantee the right to liberty, due process requires “adequate procedural protections” that ensure
17 the government’s asserted justification for a noncitizen’s physical confinement “outweighs the
18 individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S.
19 at 690 (internal quotation marks omitted).

21 33. To protect against such arbitrary detention and to guarantee the right to liberty, due process
22 requires “adequate procedural protections” that ensure the government’s asserted justification for
23 a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest
24 in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

26 34. In the immigration context, the Supreme Court has recognized only two valid purposes for
27 civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*,
28 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other

1 justification.

2 35. As a result, where the government detains a noncitizen for a prolonged period or where the
3 noncitizen pursues a substantial defense to removal or claim to relief, due process requires an
4 individualized hearing before a neutral decision maker to determine whether detention remains
5 reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that
6 an “individualized determination as to [a noncitizen’s] risk of flight and dangerousness” may be
7 warranted “if the continued detention became unreasonable or unjustified”); cf. *Jackson v. Indiana*,
8 406 U.S. 715, 733 (1972) (detention beyond the “initial commitment” requires additional
9 safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249- 50 (1972) (noting that “lesser
10 safeguards may be appropriate” for “short-term confinement”); *Hutto v. Finney*, 437 U.S. 678,
11 685-86 (1978) (observing, in Eighth Amendment context, that “the length of confinement cannot
12 be ignored in deciding whether [a] confinement meets constitutional standards”).

14 36. Courts have found that automatic detention pending appeal “after a judicial officer
15 has determined that release [] is appropriate,” where the government has made no “showing of
16 dangerousness or flight risk,” “renders the continued detention arbitrary” and “raises a substantial
17 Fifth Amendment claim.” *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025).
18 Whilst this case is in the context of the automated stay of bond on appeal, the same reasoning
19 applies here: “... no special justification exists that outweighs the individual’s constitutionally
20 protected interest in avoiding physical restraint . . .” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077
21 (N.D. Cal. 2004).

23 37. Courts that apply a reasonableness test have considered three main factors in
24 determining whether prolonged detention is reasonable. First, courts have evaluated whether
25 the noncitizen has raised a “good faith” challenge to removal—that is, the challenge
26 is “legitimately raised” and presents “real issues.” *Chavez-Alvarez v. Warden York Cty. Prison*,
27 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a “function of the length of the
28

1 detention,” with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-
2 78; *accord Sopo*, 825 F.3d at 1217-18. Third, courts consider the likelihood that detention will
3 continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention
4 unreasonable after ninth months of detention, when the parties could “have reasonably predicted
5 that Chavez-Alvarez’s appeal would take a substantial amount of time, making his already lengthy
6 detention considerably longer”); *Sopo*, 825 F.3d at 128; *Reid*, 819 F.3d at 500.

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8 38. Due process also requires certain minimal procedures at bond hearings. First,
9 the government must bear the burden of proof by clear and convincing evidence to
10 justify continued detention. Second, the decisionmaker must consider available alternatives
11 to detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a
12 noncitizen’s ability to pay a bond when determining the appropriate conditions of release.

13 39. To justify immigration detention, the government must bear the burden of proof by clear
14 and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638
15 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court
16 has permitted civil detention; in those cases, the Court has relied on the fact that the government
17 bore the burden of proof at least by clear and convincing evidence. *See United States v. Salerno*,
18 481 U.S. 739, 750, 752 (1987) (upholding pre trial detention where the detainee was afforded a
19 “full-blown adversary hearing,” requiring “clear and convincing evidence” before a “neutral
20 decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention
21 scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order
22 custody review procedures deficient because, *inter alia*, they placed burden on detainee); see
23 also *Padilla v. Immigration & Customs Enf’t*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (requiring
24 the government to bear the burden of proof for class members who receive bond hearings after
25 being found to have a credible fear of persecution or torture); *Banda v. McAleenan*, 385 F. Supp.
26 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof to justify
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1 continued detention after noncitizen had been detained for more than 18 months).

2 40. The requirement that the government bear the burden of proof by clear and convincing
3 evidence is also supported by application of the three-factor balancing test from *Mathews v.*
4 *Eldridge*, 424 U.S. 319, 335 (1976).

5 41. First, incarceration deprives noncitizens of a “profound” liberty interest—one that
6 always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; *see also*
7 *Foucha*, 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant
8 deprivation of liberty that requires due process protection.” (citation omitted)).

9 42. Second, the risk of error is great where the government is represented by trained attorneys
10 and detained noncitizens are often unrepresented and frequently lack English proficiency. *See*
11 *Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at
12 parental termination proceedings because “numerous factors combine to magnify the risk of
13 erroneous factfinding” including that “parents subject to termination proceedings are often poor,
14 uneducated, or members of minority groups” and “[t]he State’s attorney usually will be expert on
15 the issues contested”). Moreover, Respondents detain noncitizens in prison-like conditions that
16 severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond
17 hearing. *See infra* ¶ 66.

18 43. Third, placing the burden on the government imposes minimal cost or inconvenience, as the
19 government has access to the noncitizen’s immigration records and other information that it can
20 use to make its case for continued detention.

21 44. In light of these considerations, “[t]he overwhelming majority of courts to consider
22 the question . . . have concluded that imposing a clear and convincing standard would be most
23 consistent with due process.” *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at
24 *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

25 45. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly

1 favors Petitioner. His interest in liberty and family unity is paramount; the Government's blanket
2 detention policy under *Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025) for all entrants without
3 inspection creates an extreme risk of erroneous deprivation by denying him any opportunity to
4 demonstrate eligibility for release; and the Government's interest in ensuring appearance can be
5 served by far less restrictive means.

6 46. Here, the arrest that ultimately led to Petitioner's eventual detention by ICE did not result
7 in any charges against Petitioner. Nor does Petitioner have any criminal history whatsoever, let
8 alone one which would render him a danger to the public or to property.

10 47. Moreover, Petitioner has been awaiting an immigration proceeding for approximately ten
11 years since his entry on March 10, 2016. He has a United States Citizen son and a United States
12 Citizen daughter, and his cousin, Jaskaranbeer Singh, is a lawful permanent resident. Moreover,
13 the facts of his case indicate that he has a strong claim for relief from removal, and the government
14 can identify no reason to believe he would constitute a flight risk.

15 48. To be found inadmissible for a criminal conviction, an applicant must have either A) have
16 committed a crime of moral turpitude" with a maximum penalty greater than one year or B) have
17 committed multiple criminal convictions for which the aggregate sentence was more than five
18 years. INA § 212(a)(2)).

20 49. In the case at bar, Petitioner demonstrates no criminal history which would fall into either
21 of these categories. Therefore, he has no convictions which could render him inadmissible. *See*
22 INA § 212(a)(2).

23 50. Additionally, Petitioner has no criminal history which would render him deportable under
24 INA § 237(a). As a result, Petitioner does not meet the category for deportability any more than he
25 meets the standard for inadmissibility. INA § 237(a)(2). According to INA § 237(a)(2), a
26 respondent is deportable if he or she 1) Has committed a crime of moral turpitude with a maximum
27 sentence of more than a year, 2) Has committed two or more crimes of moral turpitude, 3) was
28

1 convicted of an aggravated felony, 4) was convicted of a controlled substance crime or, 5) was
2 convicted of a firearm offense.

3 51. As shown above, Petitioner has no crime of moral turpitude with sentence greater than one
4 year. Furthermore, he has no convictions and has neither an aggravated felony, nor a drug offense
5 nor a firearms offense. Therefore, Petitioner does not fall into any category for mandatory detention
6 outlined in INA § 236(c).

7 52. Because Petitioner is not inadmissible and does not meet mandatory detention criteria, and
8 has strong family ties and roots in the community, Petitioner would not be a flight risk. This further
9 weighs the factors in *Mathews* in Petitioner's favor. Accordingly, due process requires an
10 individualized bond hearing under INA § 236(a).

11 53. Due process also requires that a neutral decisionmaker consider available alternatives to
12 detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance
13 during removal proceedings. Detention is not reasonably related to this purpose if there are
14 alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520,
15 538 (1979). ICE's alternatives to detention —the Intensive Supervision Appearance Program
16 (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings,
17 reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th
18 Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95%
19 attendance rate at final hearings”). It follows that alternatives to detention must be considered in
20 determining whether prolonged incarceration is warranted.

21 54. Due process likewise requires consideration of a noncitizen's ability to pay a
22 bond. “Detention of an indigent ‘for inability to post money bail’ is impermissible if the
23 individual's ‘appearance at trial could reasonably be assured by one of the alternate forms of
24 release.’” *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (*en banc*)).
25 As a result, in determining the appropriate conditions of release for immigration detainees, due
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1 process requires “consideration of financial circumstances and alternative conditions of release” to
2 prevent detentions based on poverty. *Id.* 45. Evidence about immigration detention and the
3 adjudication of removal cases provide further support for the due process right to a bond hearing in
4 cases of prolonged detention.

5 55. Immigration detainees face severe hardships while incarcerated. Immigration detainees are
6 held in lock-down facilities, with limited freedom of movement and access to their families: “the
7 circumstances of their detention are similar, so far as we can tell, to those in many prisons and
8 jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez*, 783 F.3d at 478;
9 *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. “And in some
10 cases[,] the conditions of their confinement are inappropriately poor.” *Jennings*, 138 S. Ct. at 861
11 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General
12 (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention
13 Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment,
14 e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the
15 case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).
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18 56. These conditions and obstacles only further underscore the serious due process concerns
19 that prolonged immigration detention pose for noncitizens like the Petitioner and reflect the need
20 for a decision before a neutral decisionmaker regarding continued detention.

21 57. Here, the Respondents can neither show that the continued detention of petitioner following
22 his detention is reasonably related to the original purpose and the *Mathews* tests are satisfied.
23 Similarly, no procedural safeguards are offered to those who remain in custody pending an appeal
24 of a decision asylum proceedings.
25

26 58. In recent weeks, several district courts have held that the Government’s new, and more
27 expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect
28 on the basis that this reading of the statute would render 1226(c) inoperable or moot. *See*, e.g.,

1 *Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept.
2 30, 2025).

3 59. Courts have also ruled that automatically stayed release from detention is a violation of the
4 Fifth Amendment. *See Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025) (finding
5 that it “does not require any showing of dangerousness or flight risk. Nor is it subject to immediate
6 review by an immigration judge. It operates by fiat and has the effect of prolonging detention even
7 after a judicial officer has determined that release on bond is appropriate. That mechanism's
8 operation here—in the absence of any individualized justification—renders the continued detention
9 arbitrary as applied. Cf. *Zadvydas*, 533 U.S. at 699–700, 121 S.Ct. 2491 (recognizing that removal
10 must be reasonably foreseeable for continued post-removal detention to remain reasonable);
11 *Bridges*, 326 U.S. 135, 152–53, 65 S.Ct. 1443 (administrative rules are designed to afford due
12 process and to serve as “safeguards against essentially unfair procedures”). Without introducing
13 evidence, the Government has wholly deprived Petitioner of notice and the chance to rebut its case
14 for continued detention. *Mathews*, 424 U.S. at 348–49, 96 S.Ct. 893 (“The essence of due process
15 is the requirement that a person in jeopardy of serious loss (be given) notice of the case against him
16 and opportunity to meet it.”).

19 EXHAUSTION

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21 60. Petitioner argues any appeal to the BIA would be futile considering a September 5, 2025,
22 BIA decision where the BIA adopted DHS’ interpretation of the INA as mandating detention
23 without bond for millions of noncitizens who reside in the U.S. *See Matter of Yajure Hurtado*, 29
24 I&N Dec. 216 (BIA 2025). The BIA's decision held that immigration judges lack jurisdiction to
25 hold bond hearings or grant bond to all individuals charged with entering the country without
26 inspection. *Id.*

27
28 61. The Court should find administrative exhaustion would be futile. *See Vasquez- Rodriguez*

1 *v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“where the agency's position appears already set and
 2 recourse to administrative remedies is very likely futile, exhaustion is not required.”). BIA
 3 decisions are binding on immigration judges, and *Hurtado* thus precludes an IJ from finding
 4 jurisdiction over noncitizens like petitioner to hold a custody redetermination hearing. Therefore,
 5 judicial intervention enjoining Respondents from preventing Petitioner from having a bond hearing
 6 pursuant to the holding in *Hurtado* is necessary to enable petitioner to avail himself of his
 7 administrative remedies. Therefore, the Court should consider the merits of the Petition.
 8

9 **CLAIMS FOR RELIEF FIRST CLAIM FOR RELIEF**

10 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE**
 11 **U.S. CONSTITUTION**

12 62. Petitioner re-alleges and incorporates by reference the paragraphs above.

13 63. The Due Process Clause of the Fifth Amendment forbids the government from depriving
 14 any “person” of liberty “without due process of law.” U.S. Const. amend. V.

15 64. To justify Petitioner’s ongoing prolonged detention, due process requires that the
 16 government establish, at an individualized hearing before a neutral decisionmaker, that Petitioner’s
 17 detention is justified by clear and convincing evidence of flight risk or danger, even after
 18 consideration whether alternatives to detention could sufficiently mitigate that risk.
 19

20 65. For these reasons, Petitioner’s ongoing prolonged detention without a hearing violates due
 21 process.
 22

23 **SECOND CLAIM FOR RELIEF**

24 **VIOLATION OF THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION**

25 66. Petitioner re-alleges and incorporates by reference the paragraphs above.

26 67. The Eighth Amendment prohibits “[e]xcessive bail.” U.S. Const. amend. VIII.

27 68. The government’s categorical denial of bail to certain noncitizens violates the right to bail
 28 encompassed by the Eighth Amendment. *See Jennings*, 2018 WL 1054878 at *29 (Breyer, J,

dissenting).

69. For these reasons, Petitioner's ongoing prolonged detention without a bond hearing violates the Eighth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
 2. Issue a Writ of Habeas Corpus; hold a hearing before this Court if warranted; determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available alternatives to detention; and order Petitioner's release, with appropriate conditions of supervision if necessary, taking into account Petitioner's ability to pay a bond.
 3. In the alternative, issue a *Writ of Habeas Corpus* and order Petitioner's release within 30 days unless Defendants schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if the government cannot meet its burden, the immigration judge order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.
 4. Issue a declaration that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and the Eighth Amendment;
 5. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, other statute; and
 6. Grant such further relief as the Court deems just and proper.
71. The Eighth Amendment prohibits "[e]xcessive bail." U.S. Const. amend. VIII.
72. The government's categorical denial of bail to certain noncitizens violates the right to bail

1 encompassed by the Eighth Amendment. *See Jennings*, 2018 WL 1054878 at *29 (Breyer, J,
2 dissenting).

3 73. For these reasons, Petitioner's ongoing prolonged detention without a bond hearing violates
4 the Eighth Amendment.

5
6 Dated: 12/18/2025

/s/ Nikhil Bhatnagar /s/

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8 Nikhil Bhatnagar
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