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7 *Attorney for Petitioner*

8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF NEVADA**

10 **GIOVANNY CRUZ-OLVERA,** )  
11  )

12 *Petitioner,* )

13 v. )

14 **BRIAN HENKEY, Director of Enforcement and** )  
15 **Removal Operations, Salt Lake City, United** )  
16 **States Immigration and Customs Enforcement** )  
17 **Field Office, in his official capacity;** )

18 **MICHAEL BERNACKE, Acting Director, Las** )  
19 **Vegas, Nevada United States Immigration and** )  
20 **Customs Enforcement Field Sub-Office, in his** )  
21 **official capacity;** )

22 **PAMELA BONDI, Attorney General, United** )  
**States Department of Justice, in her official** )  
**capacity;** )

**KRISTI NOEM, Secretary, United States** )  
**Department of Homeland Security, in her** )  
**official capacity;** )

**TODD LYONS, Director, United States** )  
**Immigration and Customs Enforcement, in his** )  
**official capacity; and** )

**JOHN MATTOS, Warden of Nevada Southern** )  
**Detention Center, in his official capacity as well** )  
**as his successors and assigns;** )

*Respondents.*

**CIVIL ACTION NO.:**



**PETITION FOR WRIT OF HABEAS**  
**CORPUS PURSUANT TO 28 U.S.C. §**  
**2241 AND COMPLAINT FOR**  
**DECLATORY AND INJUNCTIVE**  
**RELIEF**

**IMMIGRATION HABEAS CASE**

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

1  
2 1. COMES NOW, Petitioner, Giovanni Cruz-Olvera (“Petitioner”) by and through the  
3 undersigned counsel, hereby files this Complaint against Respondents Pam Bondi, Attorney  
4 General, United States Department of Justice (“DOJ”), Kristi Noem, Secretary, United States  
5 Department of Homeland Security (“DHS”); Todd Lyons, Director, United States Immigration  
6 and Customs Enforcement, Brian Henkey, Field Office Director of Enforcement and Removal  
7 Operations, Salt Lake City, United States Immigration and Customs Enforcement Field Office;  
8 Michael Bernacke, Acting Director of the Las Vegas, Nevada United States Immigration and  
9 Customs Enforcement Field Sub-Office; and John Mattos, Warden of Nevada Southern Detention  
10 Center, and alleges as follows:

11 INTRODUCTION

12 2. Petitioner Giovanni Cruz-Olvera is a twenty-nine-year-old (29) native and citizen of  
13 Mexico who most recently arrived in the United States in 2020 seeking protection from the   
14  in Mexico who—prior to Petitioner’s narrow escape and arrival in the United States—had

15   
16 

17 3. On March 31, 2025, Petitioner was apprehended and detained by U.S. Immigration and  
18 Customs Enforcement (“ICE”) and charged under 8 C.F.R. § 241.8 (241(a)(5) of the Immigration  
19 and Nationality Act (“INA”) with entering the United States without status, triggering a reinstated  
20 removal order from 2017. *See* 8 U.S.C. § 1231(a). Petitioner was initially detained in the  
21 Henderson Detention Center, before being transferred to the Nevada Southern Detention Center  
22 on November 18, 2025, where he remains to date. During Petitioner’s lengthy, **ten months** in

1 detention, he has suffered an unprovoked attack by another detainee and has been denied release  
2 from custody, despite being detained for over 180-days with no likely removal or release in sight.

3 4. On April 8, 2025, Petitioner attended a Reasonable Fear Interview with U.S. Citizenship  
4 and Immigration Services (“USCIS”), who found Petitioner credible and that he faced a  
5 “reasonable possibility of future torture” should he ever return to Mexico. *See Exhibit 1*. On June  
6 6, 2025, nearly two-months after Petitioner’s credible fear finding was approved by USCIS, DHS  
7 filed Form I-863, Notice of Referral to Immigration Judge, with the Las Vegas Immigration Court.  
8 Petitioner then filed a Form I-589, Application for Withholding of Removal and protection under  
9 the Convention Against Torture (“CAT Protection”), and attended an individual hearing on July  
10 28, 2025. On August 25, 2025, the Immigration Judge issued an oral denial of Petitioner’s  
11 Applications for withholding under the INA and CAT Protection.

12 5. Petitioner challenged the Immigration Judge’s denial via an appeal to the BIA, which  
13 remains pending at the date of this petition. Petitioner also has a pending Form I-918A, Petition  
14 for Qualifying Family Member of a U-1 Visa Recipient, based on the issuance of a signed Form  
15 I-918B, Nonimmigrant Status Certification on behalf of his wife, Mrs. Wendy Karina Ortiz  
16 Membreno. *See Exhibit 2*. Further, Petitioner does not have a violent or felonious criminal history,  
17 has a wife and children who reside in Las Vegas, Nevada, where he (prior to his ongoing,  
18 prolonged detention) also held steady employment. *See Exhibit 3*.

19 6. Despite Petitioner’s ongoing immigration proceedings, lack of a felonious or violent  
20 criminal history, and significant family ties, ICE denied Petitioner release from custody on  
21 September 12, 2025, and on November 3, 2025, Petitioner attended a Custody Redetermination  
22 Hearing before the Immigration Judge (“IJ”), in which he challenged his prolonged detention,  
presented extensive evidence supporting a positive exercise of discretion, and explained that his

1 ongoing withholding of removal and CAT appeal before the BIA as well as his derivative U-1 visa  
2 application meant that his removal was not likely in the reasonably foreseeable future. *See*  
3 *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001).

4 7. In a two-sentence decision, the IJ denied Petitioner release on bond, holding, without any  
5 explanation, that Petitioner “is a danger to the community and is a flight risk.” *See Exhibit 4*.

6 8. The Supreme Court has held that the INA’s post-removal period detention provision does  
7 not permit indefinite detention of a noncitizen beyond the 90-day removal period but rather  
8 contains implicit limitation of detention period that is reasonably necessary to bring about removal.  
9 533 U.S. at 697. The provision stating that the Attorney General “may” continue to detain a  
10 noncitizen who is a “risk to the community or unlikely to comply with the order of removal” is not  
11 grant of limited discretion and once removal is no longer reasonably foreseeable, continued  
12 detention is no longer authorized under the INA. *Id.*; *see also* U.S.C.A. Const. Amend. 5; INA §  
13 241(a)(6); 8 U.S.C. §1236(a)(6).

14 9. Petitioner’s prolonged civil detention for **10-months** without release on bond when release  
15 is not likely in the foreseeable future is considered unreasonable under *Zadvydas* and violates the  
16 Due Process Clause of the Fifth Amendment, especially considering his substantial arguments  
17 against removal on appellate review and his current derivative U-1 visa application before USCIS.  
18 *See Gomez v. Chestnut*, No. 25-cv-0097, 2025 WL 1695359, at \*2 (D. Nev. June 17, 2025) (citing  
19 *Zadvydas* and holding that “[w]hen a removable alien is detained beyond this reasonable time and  
20 ‘removal is not reasonably foreseeable, the court should hold continued detention  
21 unreasonable.’”); *Zareh Tanahan, v. U.S.A., et al.*, No. 25-cv-02075, 2026 WL 161761, at \*3 (D.  
22 Nev. Jan. 21, 2026) (“The Supreme Court also held that six months is a presumptively reasonable  
period of time to deport a non-citizen ... this means that DHS can presumptively detain a non-

1 citizen for up to ‘*six months* after a final order of removal—that is *three months* after the statutory  
2 removal period has ended.’”) (citing *Zadvydas*, 533 U.S. at 700–701) (quoting *Kim Ho Ma v.*  
3 *Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001)).

4 10. ICE has exceeded the scope of its limited authority to deprive Mr. Cruz-Olvera of his  
5 physical liberty and the bond proceeding he was afforded, where the IJ gave no explanation to  
6 support his finding and seemingly ignored extensive evidence submitted by Petitioner, was  
7 constitutionally deficient.

8 11. Accordingly, Petitioner brings this Petition for Writ of Habeas Corpus to challenge his  
9 continued prolonged detention. Petitioner respectfully requests that this Court issue a writ of  
10 habeas corpus and determine that his continued detention is not justified under the Fifth  
11 Amendment of the U.S. Constitution.

### 12 JURISDICTION

13 12. This action arises under the Constitution of the United States and the INA. This Court has  
14 jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §1331 (federal question  
15 jurisdiction) as well as jurisdiction pursuant to Article I, § 9, cl. 2 of the United States Constitution  
16 (Suspension Clause).

17 13. Federal district courts have jurisdiction to hear habeas corpus claims by noncitizens  
18 challenging the lawfulness or constitutionality of their detention by DHS. *Jennings v. Rodriguez*,  
19 583 U.S. 281, 294-95 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas*, 533 U.S.  
20 678, 687 (2001).

21 14. This Court has jurisdiction to grant writs of habeas corpus to noncitizens who are being  
22 detained “in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. §  
2241(c)(3); *see also Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (clarifying that an immigration

1 detainee’s challenge to their confinement, and removal, falls “within the ‘core’ of the writ of  
2 habeas corpus”) (per curium); *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020)  
3 (“[D]istrict courts retain jurisdiction under 28 U.S.C. § 2241 to consider habeas challenges to  
4 immigration detention ....”).

5 15. Federal courts also have federal question jurisdiction, through the APA, to “hold unlawful  
6 and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not  
7 in accordance with law.” 5 U.S.C. § 706(2)(A). *See also* 5 U.S.C. § 703 (providing that judicial  
8 review of agency action under the APA may proceed by “any applicable form of legal action,  
9 including actions for declaratory judgments or writs of prohibitory or mandatory injunction or  
10 habeas corpus”). The APA affords a right of review to a person who is “adversely affected or  
11 aggrieved by agency action.” 5 U.S.C. § 702. Defendant’s continued detention of Petitioner for a  
12 period of approximately **10-months**—with no release likely in the foreseeable future—has  
13 adversely and severely affected Petitioner’s liberty and freedom.

#### 14 ADMINISTRATIVE EXHAUSTION

15 16. Neither the habeas statute, 8 U.S.C. § 2241, nor the relevant statutory provisions of the  
16 INA require petitioners to exhaust administrative remedies before filing petitions  
17 for habeas corpus. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001); *accord Maldonado*  
18 *Vazquez v. Feeley*, 2025 WL 2676082, at \*9 (D. Nev. Sept. 17, 2025).

19 17. As to prudential exhaustion, courts may waive the requirement if “administrative remedies  
20 are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture,  
21 irreparable injury will result, or the administrative proceedings would be void.” *Laing v. Ashcroft*,  
22 370 F.3d 994, 1000 (9th Cir. 2004) (quoting *SEC v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 (9th  
Cir. 1981)).

1 18. Here, prudential exhaustion would be futile. On September 5, 2025, the BIA issued a  
2 precedential decision adopting a new interpretation of the government’s detention authority under  
3 the INA. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218-20 (BIA 2025) (“*Matter of*  
4 *Hurtado*” or “*Hurtado*”). Following *Hurtado*, immigration judges no longer have authority to hear  
5 bond requests or grant bond to noncitizens who, like Petitioner, are present in the U.S. after  
6 entering without inspection. *Id.*

7 19. Of note, the overwhelming majority of district courts across the country, including this  
8 Court, that have considered the government’s new statutory interpretation found it incorrect and  
9 unlawful. *See Escobar Salgado v. Mattos*, -- F.Supp.3d --, No. 25-CV-01872, 2025 WL 3205356,  
10 at \*17, \*22 (D. Nev. Nov. 17, 2025) (finding “that the plain meaning of the relevant statutory  
11 provisions, when interpreted according to fundamental canons of statutory construction,” as well  
12 as the legislative history and decades of consistent agency practice establish “that the government's  
13 new interpretation and policy under [§ 1225(b)(2)(A)] is unlawful.”); *see also Barco Mercado v.*  
14 *Francis*, -- F.Supp. --, No. 25-CV-6852, 2025 WL 3295903, at \*4, \*9-10 (S.D.N.Y. Nov. 26, 2025)  
15 (collecting “350 . . . cases decided by over 160 different judges sitting in about fifty different  
16 courts spread across the United States,” and finding the application of Section 1225(b)(2)(A) to  
17 noncitizens residing in the United States unlawful).

18 20. A nationwide class has also been certified, and declaratory relief granted to all class  
19 members holding that they are being detained without a bond hearing unlawfully. *See Bautista v.*  
20 *Santacruz*, No. 25-CV-01873, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Bautista v. Santacruz*,  
21 No. 25-CV-01873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).

22 21. Petitioner, a noncitizen who entered without inspection into the United States, falls  
squarely under the class of noncitizens described in *Hurtado*. Although the IJ did not cite a lack of

1 jurisdiction to hear Petitioner’s custody redetermination in its two-sentence denial, it is evident  
2 that any administrative appeal would be futile based on both the BIA’s *Hurtado* holding and a  
3 recent January 13, 2026 email from Chief Immigration Judge, Teresea L. Riley, informing all  
4 immigration judges that despite the certified nationwide class and nationwide challenges,  
5 “Immigration judges are instructed to follow the BIA’s decision in *Mater of Yajure Hurtado* as  
6 building precedent.”<sup>1</sup>

7 22. Accordingly, the BIA would rapidly reject any appeal of Petitioner’s custody  
8 redetermination and petition for release on bond under *Hurtado*, which rescinded immigration  
9 judges’ authority to hear bond requests or grant bond to noncitizens—like Petitioner—present in  
10 the U.S. who entered without inspection.

11 23. Further, even if the BIA were to somehow act in contradiction to its recent holding and  
12 remand Petitioner’s custody redetermination back to the IJ, the most recent January 13, 2026 email  
13 from the Chief Immigration Judge forecloses any possibility that the IJ could or would consider  
14 granting bond for a noncitizen detained under 8 C.F.R. § 241.8 (INA Section 241(a)(5)) and  
15 charged with entering the U.S. without status.

16 24. Accordingly, this Court retains jurisdiction over Petitioner’s challenge to his prolonged  
17 detention and constitutionally deficient custody determination under 28 U.S.C. § 2241. *See*  
18 *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“We will excuse a failure to  
19 exhaust if it is very likely what [the BIA’s] result would have been. Thus, where the agency’s  
20 position appears already set and recourse to administrative remedies is very likely futile,  
21 exhaustion is not required.”) (internal citations and quotations omitted); *see also Mosqueda v.*  
22

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<sup>1</sup> *See Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, American Immigration Lawyers Association (January 16, 2026) ([www.aila.org/library/practice-alert-oir-issues-nationwide-guidance-on-maldonado-bautista](http://www.aila.org/library/practice-alert-oir-issues-nationwide-guidance-on-maldonado-bautista)).

1 *Noem*, No. 25-CV-02304, 2025 WL 2591530, at \*7 (C.D. Cal. Sept. 8, 2025) (waiving exhaustion  
2 as futile because “the most recent BIA decision on this issue has adopted the legal interpretation  
3 of the new DHS policy that petitioners challenge.”) (citing *Hurtado*); accord *Rodriguez Cabrera*  
4 *v. Mattos*, -- F.Supp. --, 25-cv-01551, 2025 WL 3072687, at \*9 (D. Nev. Nov. 3, 2025) (holding  
5 “[p]etitioner’s constitutional challenge to his detention [a]s necessarily beyond the scope of the  
6 BIA’s review, [where] the BIA has already adopted DHS’ new interpretation ... and awaiting the  
7 BIA’s decision would result in irreparable harm to [p]etitioner, prudential administrative  
8 exhaustion ... is excused as futile.”).

#### 9 VENUE

10 25. Venue is properly in this District, pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C.  
11 §1391(b)(2), (e)(1), because the Petitioner is detained within this District at the Nevada Southern  
12 Detention Center (and previously in the Henderson Detention Center) which are both in Nevada.  
13 Furthermore, Petitioner was arrested by ICE in this District and Petitioner is a resident of Las  
14 Vegas, within this District.

#### 15 PARTIES

16 26. Petitioner Giovanni Cruz-Olvera is a native and citizen of Mexico who most recently  
17 entered the United States in 2020, after fleeing Mexico in an effort to save his life. The Petitioner  
18 was apprehended and placed into ICE custody where he has been detained under the direct control  
19 of the Respondents since March 31, 2025.

20 27. Respondent Brian Henkey is the Field Office Director of Enforcement and Removal  
21 Operations, Salt Lake City, U.S. Immigration and Customs Enforcement Field Office and oversees  
22 both the Henderson Detention Center and Nevada Southern Detention Center, located in this  
District. Respondent has legal custody of the Petitioner. Respondent is sued in his official capacity.

1 28. Respondent Michael Bernacke is the Acting Director of the Las Vegas, Nevada U.S.  
2 Immigration and Customs Enforcement Field Sub-Office. As such, Mr. Bernacke is also  
3 Petitioner's custodian and is responsible for Petitioner's detention and removal. He is named in his  
4 official capacity.

5 29. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official  
6 Performing the Duties of the Director of ICE, he is responsible for the administration and  
7 enforcement of the immigration laws of the United States; routinely transacts business in this  
8 District; and is legally responsible for pursuing any effort to detain and remove Mr. Cruz-Olvera.  
9 Respondent Lyons is sued in his official capacity.

10 30. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate authority  
11 over DHS. In that capacity and through her agents, Respondent Noem has broad authority over  
12 and responsibility for the operation and enforcement of the immigration laws; routinely transacts  
13 business in this District; and is legally responsible for pursuing any effort to detain and remove  
14 Mr. Cruz-Olvera. Respondent Noem is sued in her official capacity.

15 31. Respondent Pamela Bondi is the Attorney General of the United States and the most senior  
16 official at the Department of Justice. In that capacity and through her agents, she is responsible for  
17 overseeing the implementation and enforcement of the federal immigration laws. The Attorney  
18 General delegates this responsibility to the Executive Office for Immigration Review, which  
19 administers the immigration courts and the BIA. Respondent Bondi is sued in her official capacity.

20 32. Respondent John Mattos is the Warden of Nevada Southern Detention Center, where  
21 Petitioner is currently being detained. As such, Mr. Mattos is also Petitioner's custodian and is  
22 responsible for Petitioner's detention and removal. He is named in his official capacity as well as  
his successors and assigns.

**BACKGROUND**

1  
2 33. Petitioner Giovanni Cruz-Olvera is a twenty-nine-year-old (29) native of Mexico who first  
3 entered the United States in 2012 when he was fifteen-years old and remained in the United States  
4 until October 2019, when he was removed to Mexico. Petitioner most recently entered the United  
5 States in 2020, following a terrifying [REDACTED] and a [REDACTED]  
6 [REDACTED]  
7 between the [REDACTED] and the [REDACTED].

8 34. On March 31, 2025, Petitioner was apprehended and detained at the Henderson Detention  
9 Center by U.S. Immigration and Customs Enforcement (“ICE”) and charged under 8 C.F.R. §  
10 241.8 (241(a)(5) of the Immigration and Nationality Act (“INA”) with entering the United States  
11 without status, triggering a reinstated removal order from 2017. *See* 8 U.S.C. § 1231(a). On  
12 November 18, 2025, Mr. Cruz-Olvera was moved to the Nevada Southern Detention Center. *See*  
13 **Exhibit 5**. He has remained in detention for **approximately 10 months** without any hope of  
14 release.

15 35. On March 31, 2025, Petitioner attended a Reasonable Fear Interview with USCIS, who  
16 found Petitioner credible and that he faced a “reasonable possibility of future torture” should he  
17 ever return to Mexico. *See Exhibit 1*. On June 6, 2025, nearly two-months after USCIS approved  
18 Petitioner’s credible fear finding, DHS filed Form I-863, Notice of Referral to Immigration Judge,  
19 with the Las Vegas Immigration Court.

20 36. Following the issuance of a signed Form I-918B, Nonimmigrant Status Certification for  
21 Petitioner’s wife, Mrs. Wendy Karina Ortiz Membreno (“Mrs. Ortiz Membreno”), Petitioner  
22 became eligible to file Form I-918A, Petition for Qualifying Family Member of a U-1 Recipient

1 (“Form I-918A”), which he submitted on April 26, 2025 (Application ID: [REDACTED]),  
2 thereby pursuing an alternative pathway to lawful immigration status. *See Exhibit 2.*

3 37. USCIS’s current processing times show that 80% of Form I-918 are completed within 19.5  
4 months.<sup>2</sup> Accordingly, as USCIS received Petitioner’s Petition on April 28, 2025 (*see Exhibit 2*),  
5 Mr. Cruz-Olvera’s Petition will likely be adjudicated around December 2026—which, without this  
6 Court’s intervention—would place him in detention for almost 2 years.

7 38. On June 10, 2025, Petitioner submitted Form I-589, Application for Withholding of  
8 Removal and CAT Protection. On July 21, 2025, Petitioner submitted a Prehearing Statement and  
9 Brief in Support of Withholding for Removal and CAT. *See Exhibit 7.*

10 39. In Petitioner’s Prehearing Statement and Brief, he submitted testimony to the Immigration  
11 Court describing the severe persecution that he suffered at the hands of the [REDACTED], which  
12 included [REDACTED]. Petitioner  
13 testified that the [REDACTED] targeted him because they believed he possessed knowledge regarding  
14 missing drugs and refused to accept his innocence. Throughout his captivity, Petitioner witnessed  
15 [REDACTED]. He testified that almost every  
16 night he saw police officers arrive at the house where he was held and receive payments from [REDACTED]  
17 [REDACTED] and conversing as close friends. He also heard [REDACTED]  
18 [REDACTED] to immediately alert them if they saw Petitioner on the  
19 [REDACTED] explicitly stating that Petitioner [REDACTED] not to be found “walking free” and to inform [REDACTED]  
20 [REDACTED] immediately should Petitioner be seen. [REDACTED] finally testified that he was only able  
21 [REDACTED]  
22 [REDACTED] which provided him with a brief window to flee. *See Exhibit 7.*

<sup>2</sup> [www.egov.usics.gov/processing-times/](http://www.egov.usics.gov/processing-times/).

1 40. On July 28, 2025, Petitioner attended an individual hearing. On August 25, 2025, the IJ  
2 issued an oral decision and denied Petitioner's Applications for Withholding of Removal and  
3 withholding of removal under CAT. *See Exhibit 8.*

4 41. On September 10, 2025, Petitioner appealed the IJ's decision to the Board of Immigration  
5 Appeals ("BIA"). On January 20, 2026, the BIA returned the record to the Immigration Court to  
6 provide a complete transcript of the August 25, 2025 hearing and the IJ's oral decision. *See Exhibit*  
7 *2.*

8 42. On September 12, 2025, Petitioner attended an interview for review of custody status at  
9 the Las Vegas ICE Office, where his request for release was denied.

10 43. On October 31, 2025, Petitioner submitted a brief and documents in support of custody  
11 review determination. *See Exhibit 6.* Petitioner requested that the IJ grant Petitioner a low-cash  
12 bond of \$1,500 to secure his release from custody as provided under Immigration and Nationality  
13 Act ("INA") § 236(a)(2)(A). Petitioner explained that his lack of a felonious criminal history,  
14 pending appeal before the BIA, pending I-918A (derivative U-Visa Application) before United  
15 States Citizenship and Immigration Services ("USCIS"), behavior while in custody, and close  
16 family ties (with his wife and children residing in Las Vegas, Nevada) supported his release. *Id.*

17 44. On November 3, 2025, the IJ denied Petitioner's custody redetermination pursuant to 8  
18 C.F.R. § 1236. The IJ's entire reasoning consisted of two sentences, in which she stated, without  
19 explanation, that: "The respondent is in custody pending an appeal of the denial of his withholding  
20 for removal applications, following a reinstated removal order. The respondent is a danger to the  
21 community and is a flight risk." *See Exhibit 4.*

22 45. To date, Petitioner has been detained for a period of approximately **10-months** without any  
release from custody likely in the reasonable future.

1 46. Despite Petitioner’s lack of a felonious criminal history, pending immigration proceedings,  
2 and clear ties to the United States—including a wife and children who reside in Las Vegas, Nevada  
3 and employment with Universal Laundry & Linen in Las Vegas, Nevada—Petitioner remains in a  
4 seemingly indefinite detention with no hope of a future release. This is not only harmful to  
5 Petitioner’s family, who rely on him for emotional and economic support, but also places Petitioner  
6 in continued danger—as he was the victim of an unprovoked attack on August 8, 2025 at the  
7 Henderson Detention Center, and is at risk of future harm while he remains in custody.

### 8 LEGAL FRAMEWORK

9 47. “Writs of habeas corpus may be granted by ... the district courts ... within their  
10 respective jurisdictions.” 28 U.S.C. § 2241(a). A habeas petitioner must prove by the  
11 preponderance of the evidence that he is “in custody in violation of the Constitution or laws or  
12 treaties of the United States.” *Davis v. Woodford*, 384 F.3d 628, 638 (9th Cir. 2004); 28 U.S.C. §  
13 2241(c).

14 48. ““It is well established that the Fifth Amendment entitles [noncitizens] to due process of  
15 law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*  
16 *Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody,  
17 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process]  
18 Clause protects. *Zadvydas*, 533 U.S. at 690.

#### 19 **I. Expedited Removal and the 90-Day Removal Period**

20 49. Petitioner is detained pursuant to 8 U.S.C. §1231, which governs detention following the  
21 entry of a final order of removal. When Petitioner was detained on March 31, 2025, his prior 2017  
22 removal order was reinstated pursuant to INA § 241(a)(5) and 8 C.F.R. § 241.8, accordingly, that

1 order became final by operation of law. *See* 8 C.F.R. §241.8; *Morales-Izquierdo v. Gonzales*, 486  
2 F.3d 484, 90-91 (9th Cir. 2007) (en banc).

3 50. Under 8 U.S.C. § 1231(a), “Congress has created an ‘expedited removal process’ for  
4 noncitizens who reenter the United States unlawfully after having previously been removed.” *G.P.*  
5 *v. Garland*, 103 F.4th 898, 900 (1st Cir. 2024) (citing *Johnson v. Guzman Chavez*, 594 U.S. 523,  
6 529-30 (2021)). Specifically, this provision of the INA authorizes DHS to reinstate a prior order  
7 of removal against a noncitizen who has been found to have “reentered the United States illegally  
8 after having been removed or having departed voluntarily, under an order of removal.” 8 U.S.C. §  
9 1231(a)(5). This decision is not subject to being reopened or reviewed. *Id.* Once the prior order  
10 has been reinstated, “DHS *must*” remove the noncitizen within a 90-day “removal period.”<sup>3</sup>  
11 *Guzman Chavez*, 594 U.S. at 528 (citing 8 U.S.C. § 1231(a)(1)(A) (emphasis added). Noncitizens  
12 are subject to mandatory detention during this period. *Id.* (citing 8 U.S.C. § 1231(a)(2)).

13 51. While Section 1231(a) bars noncitizens from pursuing “nearly all avenues of relief from  
14 removal,” they may still seek other forms of protection through withholding of removal, 8 U.S.C.  
15 § 1231(b)(3), or relief under CAT, 8 C.F.R. §§ 238.1(f)(3), 241.8(e). *G.P.*, 103 F.4th at 900 (citing  
16 *Guzman Chavez*, 594 U.S. at 530-32). These protections prevent a noncitizen’s deportation to a  
17 particular country where they demonstrate a “reasonable fear of persecution or torture.” 8 U.S.C.  
18 1231(b)(3)(A); *see also Guzman Chavez*, 594 U.S. at 530-31. If a noncitizen makes this showing,  
19 then they are placed in “withholding-only proceedings” before an IJ, who ultimately determines  
20 whether they are entitled to these protections. *See* 8 C.F.R. §§ 208.31(b), (e); 8 C.F.R. §

21  
22 <sup>3</sup> This “removal period” begins on the latest of three dates: “(1) the date the order of removal becomes ‘administratively final,’ (2) the date of the final order of any court that entered a stay of removal, or (3) the date on which the [noncitizen] is released from non-immigration detention or confinement.” *Guzman Chavez*, 594 U.S. at 528 (quoting 8 U.S.C. § 1231(a)(1)(B)).

1 1208.2(c)(3)(i). The IJ’s decision as to withholding can be appealed to the BIA and then to the  
2 relevant circuit court of appeals. *Guzman Chavez*, 594 U.S. at 531 (citing 8 C.F.R. §§ 208.31(e),  
3 1208.31(e)).

4 52. If an IJ grants withholding of removal, then DHS is prohibited from removing the  
5 noncitizen to the specific country as to which the noncitizen has demonstrated a likelihood of  
6 persecution or torture. *Guzman Chavez*, 594 U.S. at 536.

7 **II. 8 U.S.C. § 1231(a)(6) and the Post 90-Day Removal Period**

8 53. If the 90-day removal period has elapsed and the noncitizen has not yet been removed, then  
9 they are only subject to discretionary detention, meaning they “‘may be detained’ or may be  
10 released under terms of supervision.” *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 575 (2022).  
11 (quoting 8 U.S.C. § 1231(a)(6)).

12 54. Unlike other provisions of the INA, however, Section 1231(a) does not require the  
13 Government to provide a noncitizen with a bond hearing before an IJ. Instead, if ICE wishes to  
14 continue detaining a noncitizen held under Section 1231(a) beyond the 90-day removal period,  
15 then ICE will conduct a “custody review.” *See* 8 C.F.R. § 241.4. As part of this review, ICE must  
16 follow certain agency procedures codified at 8 C.F.R. § 241.4. These procedures are intended to  
17 provide the noncitizen with fundamental due process protections that courts have found to be  
18 constitutionally required, such as the right to notice and an opportunity to be heard. *Id.*

19 55. When ICE fails to follow these procedures, an Immigration Court may conduct the custody  
20 review itself and order the noncitizen released. *Khalafala v. Kane*, 836 F.Supp. 2d 944, 948 (D.  
21 Ariz. 2011), *aff’d* (July 11, 2012) (citing *Diouf v. Napolitano*, 634 F.3d 1081, 1086-87 (9th Cir.  
22 2011)) (“[A]liens who are denied release in their 180–day [post-removal order] reviews must be

1 afforded the opportunity to challenge their continued detention in a hearing before  
2 an immigration judge.”).

### 3 III. *Zadvydas* and the “Presumptively Reasonable” 6-Month Period

4 56. Although Section 1231(a)(6) permits post-order detention in certain circumstances, that  
5 authority is constrained by the Fifth Amendment’s Due Process Clause. In *Zadvydas*, the Supreme  
6 Court held that due process prohibits the government from detaining an individual indefinitely  
7 after the 90-day removal period has expired. 533 U.S. at 689 (specifically stating that § 1231(a)(6)  
8 “does not permit indefinite detention”). Instead, detention is limited to the period reasonably  
9 necessary to bring about the removal. *Id.* Therefore, “once removal is no longer reasonably  
10 foreseeable, continued detention is no longer authorized.” *Id.* at 699.

11 57. This fundamental due process protection applies to all noncitizens, including both  
12 removable and inadmissible noncitizens. *See id.* at 721 (“[B]oth removable and inadmissible  
13 [noncitizens] are entitled to be free from detention that is arbitrary or capricious”). It also protects  
14 noncitizens who have been ordered removed from the United States and who face continuing  
15 detention, *Diouf*, 634 F.3d at 1086-87, as well as those noncitizens deemed “arriving” under the  
16 INA. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (stating that “arriving” noncitizens  
17 enjoy due process protections against prolonged detention because they are “are held within the  
18 territory of the United States at an immigration detention facility” (citing *Wong Wing v. United*  
19 *States*, 163 U.S. 228, 238 (1896)).

20 58. In *Zadvydas*, the Supreme Court construed Section 1231(a)(6) to contain an implicit  
21 temporal limitation. 533 U.S. at 701. Detention is presumptively reasonable for six months. *Id.*  
22 The Court held that the government must demonstrate that a noncitizen’s **removal is reasonably**  
**likely to occur in the reasonably foreseeable future** if the noncitizen remains detained for six

1 months after the removal period specified in 8 U.S.C. § 1231(a)(6). *Id.* In doing so, the Court  
2 recognized a presumption that detention longer than six months following a noncitizen’s removal  
3 period violates that noncitizen’s due process right to liberty. *Id.*

4 59. Reasonableness is measured by looking to the statute’s basic purpose, which is assuring  
5 the noncitizen’s presence at the moment of removal. 533 U.S. at 699. After the six months are up,  
6 if the noncitizen “provides good reason to believe that there is no significant likelihood of removal  
7 in the reasonably foreseeable future,” the Government must either rebut that showing or release  
8 the noncitizen. *Guzman Chavez*, 594 U.S. at 529 (quoting *Zadvydas*, 553 U.S. at 699-700).

9 60. The Ninth Circuit has likewise recognized that prolonged detention under Section  
10 1231(a)(6) raises grave due process concerns. *See Diouf*, 634 F.3d at 1086-87 (“The more  
11 prolonged the detention, the greater the infringement on liberty.”). Although the Supreme Court’s  
12 decision in *Jennings* foreclosed statutory bond claims, it expressly preserved as-applied  
13 constitutional challenges to prolonged detention. 583 U.S. at 289. Accordingly, even where  
14 detention is authorized by statute, it violates due process when it becomes prolonged, indefinite,  
15 or untethered from actual removal. *Id.*

16 **IV. Bond and Custody Determination Procedure Under 8 U.S.C. § 1231(a)(6)**

17 61. The Ninth Circuit has affirmed that, under Section 1231(a)(6), the government is required  
18 to show by clear and convincing evidence that detention is necessary to prevent flight and danger.  
19 *See Flores Tejada v. Godfrey*, 954 F.3d 1245, 1249 (9th Cir. 2020).

20 62. In *Jennings*, the Supreme Court underlined that, in contrast to the other general  
21 immigration detention statutes, Section 1231(a)(6) may be construed to limit prolonged detention,  
22 as the Ninth Circuit did in *Diouf*. *See* 583 U.S. at 289; *see also Ramos v. Sessions* (“Ramos II”),  
293 F.Supp.3d 1021, 1026 (N.D. Cal. 2018) (“*Jennings* ... left untouched the Ninth Circuit’s

1 requirement of such hearings for immigrants detained under Section 1231(a)(6).”). Accordingly,  
2 under Ninth Circuit precedent, individuals subject to prolonged detention under Section 1231(a)(6)  
3 should *continue* to receive custody hearings. *See Vidal v. U.S. Immigration & Customs Enf’t*, 2021  
4 WL 3573716, at \*2 (D. Nev. July 12, 2021).

5 63. Where detention under 8 U.S.C. § 1231(a)(6) has become prolonged, removal is not likely  
6 in the reasonably foreseeable future, custody determinations have been constitutionally deficient  
7 and/or no administrative remedies remain available to challenge continued detention without  
8 release on bond, then the detention violates the Due Process Clause of the Fifth Amendment. *See*  
9 *Zadvydas*, 533 U.S. at 699-601; *Diouf II*, 634 F.3d at 1086-87.

10 **V. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)**

11 64. In September 2025, the Attorney General attempted to single-handedly rewrite the INA  
12 by alleging that noncitizens “who surreptitiously cross into the United States remain applicants for  
13 admission until and unless they are lawfully inspected and admitted by an immigration  
14 officer.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 228 (BIA 2025) (“*Matter of Hurtado*”).

15 65. Under the Attorney General’s newly-minted interpretation of the INA, noncitizens who  
16 entered without inspection and considered deportable under INA § 241(a) and should now be  
17 “subject to the inspection detention and removal procedures of section 235(b) of the INA, 8 U.S.C.  
18 § 1225(b).” *Matter of Yajure Hurtado*, 29 I&N Dec. at 224. *Matter of Hurtado* additionally held  
19 that regardless of whether a noncitizen is classified as inadmissible under 1225 or 1226, they are  
20 subject to mandatory detention. *Id.* at 219, 228.

21 66. Thus, according to the Attorney General, a noncitizen “who establishes that he or she has  
22 been present in the United States for over 2 years,” or 5 years, in Petitioner’s case, “shall be  
detained.” 29 I&N Dec. at 219.

1 67. Following *Matter Hurtado*, Immigration Courts across the country began determining that  
2 they lacked jurisdiction to consider custody redetermination requests for noncitizens who are  
3 classified as inadmissible under sections 1225 or 1226 because they entered the United States  
4 without inspection, and were arrested within the boundaries of the United States.

5 68. Accordingly prior to *Matter of Hurtado*, noncitizens held in custody under 8 U.S.C.  
6 1231(a)(6) who were dissatisfied with the IJ's bond determination, could file an administrative  
7 appeal so that “the necessity of detention can be reviewed by ... the [Board of Immigration  
8 Appeals] (BIA).” *Prieto–Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008); see 8 C.F.R.  
9 236.1(d)(3) (before order of removal); 1236.1(d)(3) (after order of removal noncitizen may appeal  
10 to the BIA an IJ’s custody and bond determination). Thereafter, if the noncitizen remained  
11 dissatisfied, they could file a petition for habeas corpus in the district court. See, e.g., *Leonardo v.*  
12 *Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (holding that the noncitizen must pursue habeas  
13 review of the IJ’s adverse bond determination by appealing to the BIA before asking the federal  
14 district court to review the IJ's decision).

15 69. But following *Hurtado*, exhaustion to the BIA before petitioning the district court would  
16 be futile. Petitioner, a noncitizen who entered the U.S. without inspection, falls squarely under the  
17 class of noncitizens described in *Hurtado*. Although the IJ did not cite a lack of jurisdiction to hear  
18 Petitioner’s custody redetermination in its 2-sentence decision, it’s clear that any administrative  
19 appeal would be squarely denied based on both the BIA’s *Hurtado* holding and a recent January  
20 13, 2026 email from Chief Immigration Judge, Teresea L. Riley stating that, “Immigration judges  
21 are instructed to follow the BIA’s decision in *Mater of Yajure Hurtado* as building precedent.”<sup>4</sup>

22  

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<sup>4</sup> See *Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, American Immigration Lawyers Association (January 16, 2026) ([www.aila.org/library/practice-alert-oir-issues-nationwide-guidance-on-maldonado-bautista](http://www.aila.org/library/practice-alert-oir-issues-nationwide-guidance-on-maldonado-bautista)).

1 70. Accordingly, as Petitioner is without an administrative avenue to challenge his  
2 impermissibly prolonged detention and constitutionally deficient bond hearing, the only available  
3 remedy is a petition for habeas corpus before this Court.

4 71. Finally, of note, an overwhelming majority of district courts across the country, including  
5 this Court, that have considered the government's new statutory interpretation in *Matter of Hurtado*  
6 and have found it incorrect and unlawful. See *Maldonado Vazquez v. Feeley*, 25-CV-01542-RFB-  
7 EJY, -- F.Supp.3d --, 2025 WL 2676082 (D. Nev. Sept. 17, 2025) (finding the statutory text and  
8 “canons of statutory interpretation, including the legislative history, regulations, and long history  
9 of consistent agency practice, as well as the doctrine of constitutional avoidance” demonstrate the  
10 government's new reading of § 1225(b)(2)(A) is likely unlawful); see also, e.g., *Rodriguez v.*  
11 *Bostock*, 802 F.Supp. 3d 1297, 1318 (W.D. Wash. 2025) (“Every district court to address this  
12 question has concluded that the government’s position belies the statutory text of the INA, canons  
13 of statutory interpretation, legislative history, and longstanding agency practice.”); accord *Escobar*  
14 *Salgado v. Mattos*, -- F.Supp.3d --, No. 25-cv-01872, 2025 WL 3205356, at \*2 (D. Nev. Nov. 17,  
15 2025).

## 16 CAUSES OF ACTION

### 17 COUNT I:

#### 18 **Constitutionally Prolonged Detention in Violation of the Fifth Amendment** 19 **(Substantive Due Process)**

20 72. The Petitioner re-alleges and incorporates by reference the paragraphs above.

21 73. The Due Process Clause of the Fifth Amendment forbids the government from depriving  
22 any “person” of liberty “without due process of law,” unless such detention is reasonably related  
to its purpose. *Demore*, 538 U.S. at 513 (2003); *Zadvydas*, 533 U.S. at 690–91. Moreover, as  
detention becomes prolonged, the Due Process Clause requires a “sufficiently strong justification”

1 to outweigh the significant deprivation of liberty, as well as strong procedural protections.  
2 *Zadvydas*, 533 U.S. at 679.

3 74. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including  
4 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693. For  
5 this reason, even “removable and inadmissible aliens are entitled to be free from detention that is  
6 arbitrary and capricious,” *Id.* at 721 (Kennedy, J., dissenting). And the government’s authority to  
7 make rules for “admission” that regulate the immigration status of noncitizens does not affect this  
8 constitutional protection. *See* 8 U.S.C. § 1101(a)(13)(A) (defining admission as “the lawful entry  
9 of the alien”).

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

14 76. Noncitizens held in custody under 8 U.S.C. 1231(a)(6) who are dissatisfied with the IJ’s  
15 bond determination, can file an administrative appeal so that “the necessity of detention can be  
16 reviewed by ... the [Board of Immigration Appeals] (BIA).” *Prieto–Romero*, 534 F.3d at 1059; *see*  
17 8 C.F.R. 236.1(d)(3) (before order of removal); 1236.1(d)(3) (after order of removal) (noncitizen  
18 may appeal to the BIA an IJ’s custody and bond determination). If they remained dissatisfied, they  
19 can file a petition for habeas corpus in the district court. *See, e.g., Crawford*, 646 F.3d at 1160.

20 77. The BIA’s holding in *Matter of Hurtado* has now deprived all immigration judges from  
21 possessing the jurisdiction to hear bond requests or grant bond to aliens who are present in the  
22 United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

1 78. Accordingly, despite submitting a brief along with over 30 pages of evidence  
2 demonstrating his lack of violent or felonious criminal history and strong ties to the U.S., Petitioner  
3 was denied release on bond in a 2-sentence decision by the Immigration Judge with no explanation  
4 as to why Petitioner was deemed a flight risk or danger to the community. *See Exhibits 4, 6.*

5 79. Petitioner has a pending appeal before the BIA as well as a pending I-918A Petition before  
6 USCIS, which—according to their current processing times—won’t be completed until December  
7 2026.<sup>5</sup> *See Exhibit 2.* Accordingly, Petitioner, who has currently been in custody for  
8 approximately 10-months is potentially facing an additional 11-months of continued detention (if  
9 not longer) with no avenue for release, or at minimum, no avenue for an additional custody hearing  
10 before an IJ.

11 80. Petitioner’s ongoing detention and the BIA’s newfound “inability” to review the IJ’s bond  
12 determination constitutes a clear and ongoing violation of Petitioner’s constitutional due process  
13 rights. “Where these procedural mechanisms are not adopted, any continued detention is  
14 unlawful.” *See* 28 U.S.C. § 2241.

15 81. Finally, regardless of the BIA's recent decision in *Hurtado*, the task of resolving statutory  
16 questions belongs to the independent judgment of the courts without deference to agency  
17 interpretation. *See Escobar Salgado v. Mattos*, -- F.Supp.3d --, No. 25-cv-01872, 2025 WL  
18 3205356, at \*12 (D. Nev. Nov. 17, 2025) (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 359,  
19 403 (2024)) (“the Framers crafted the Constitution to ensure that federal judges could exercise  
20 judgment free from the influence of the political branches.”); *Loper Bright Enters.*, 603 U.S. at  
21 403-04 (“Courts interpret statutes, no matter the context, based on the traditional tools of statutory  
22

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<sup>5</sup> [www.egov.usics.gov/processing-times/](http://www.egov.usics.gov/processing-times/).

1 construction, not individual policy preferences”); *id.* at 412-13 (“Courts must exercise their  
2 independent judgment in deciding whether an agency has acted within its statutory authority”).

3 82. For these reasons, Petitioner’s ongoing prolonged detention without an individualized  
4 hearing to review his continued custody violates due process.

5 83. Petitioner respectfully requests that the Court declare Petitioner a member of the Bond  
6 Denial Class pursuant to the parameters established in *Maldonado Vazquez v. Feeley*, 25-CV-  
7 01542, -- F.Supp.3d--, 2025 WL 2676082 (D. Nev. Sept. 17, 2025), as well as numerous other  
8 cases before this court following *Matter of Hurtado*. *See e.g., Escobar Salgado v. Mattos*, --  
9 F.Supp.3d --, No. 25-CV-01872, 2025 WL 3205356, at \*2 (D. Nev. Nov. 17, 2025); *Roman v.*  
10 *Noem*, 25-CV-01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Vazquez v. Feeley*, No. 25-cv-  
11 01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025).

12 84. Petitioner further requests this Court declare the BIA’s holding stripping the IJ of  
13 jurisdiction over any future bond hearings for Petitioner as unlawful.

14 85. Petitioner finally requests this Court declare Petitioner’s immediate release under  
15 supervision in accordance with the \$1,500 bond established in 8 C.F.R. §1226, or, at minimum,  
16 order a new custody hearing before the IJ where the government bears the burden of proof. *See*  
17 *Rodriguez Diaz v. Garland*, 83 F.4th 1177, 1181 (9th Cir. 2023) (Once a district court determines  
18 that a noncitizen’s detention had become prolonged, due process demands a bond hearing at which  
19 the government was required to justify his ongoing detention by clear and convincing evidence.);  
20 *see, also, Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005) (“Federal courts have a fair amount  
21 of flexibility in fashioning specific habeas relief.”).

**COUNT II:**  
**Deficient Custody Determination in Violation of the Fifth Amendment**  
**(Procedural Due Process)**

1  
2  
3 86. The Petitioner re-alleges and incorporates by reference the paragraphs above.

4 87. The Fifth Amendment provides that “[n]o person shall be ... deprived of life, liberty, or  
5 property, without due process of law.” U.S. Const. amend. V. The Due Process Clause applies to  
6 all persons in the United States regardless of citizenship status. *Zadvydas*, 533 U.S. at 693.

7 88. In *Mathews v. Eldridge*, the Supreme Court instructed courts to balance three factors to  
8 determine whether procedural due process is satisfied:

9 (1) the private interest that will be affected by the official action; (2) the risk of an  
10 erroneous deprivation of such interest through the procedures used, and probable  
11 value, if any, of additional procedural safeguards; and (3) the Government’s  
interest, including the fiscal and administrative burdens that the additional or  
substitute procedures would entail.

12 *See* 424 U.S. 319, 333 (1976).

13 89. The first factor, the private interest at issue, favors Petitioner. 424 U.S. at 333. “Freedom  
14 from imprisonment—from government custody, detention, or other forms of physical restraint—  
15 lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.”  
16 *Zadvydas*, 533 U.S. 678, 690; *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (holding that  
17 a noncitizen has a strong private interest in “the most elemental of liberty interests—the interest in  
18 being free from physical detention by [the] government.”). “‘In our society liberty is the norm,’  
19 and detention ... ‘is the carefully limited exception.’” *Rumsfeld*, 542 U.S. at 529 (quoting *United*  
20 *States v. Salerno*, 481 U.S. 739, 755 (1987)). Courts have been careful not to “‘minimize the  
21 importance and fundamental nature’ of the individual’s right to liberty.” *Id.* at 529-30 (quoting  
22 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). In the same vein, “[i]t is clear that commitment for  
any purpose constitutes a significant deprivation of liberty that requires due process protection.”  
*Id.* at 530 (quoting *Jones v. United States*, 463 U.S. 354, 361 (1983)).

1 90. Petitioner has been detained for well-over six months: well-beyond mandatory 90-day  
2 removal period laid out in Section 1231, *see Guzman Chavez*, 594 U.S. at 528 (citing 8 U.S.C. §  
3 1231(a)(2)), and well-beyond the presumptively reasonable period contemplated in *Zadvydas*. *See*  
4 533 U.S. at 701. During this time, Mr. Cruz-Olvera has been separated from his wife and children  
5 and has been unable to see them and support them. *See Exhibits 3, 6*. Instead, he finds himself  
6 confined alongside felons and violent criminal offenders, even though he himself has not been  
7 convicted of a felonious or violent offense—a finding that clearly weighs the first *Mathews* factor  
8 heavily in Petitioner’s favor. *Mathews*, 424 U.S. at 333.

9 91. The second factor, the risk of erroneous deprivation of liberty and the probable value of  
10 procedural safeguards, favors Petitioner. 424 U.S. at 333. Here, numerous district courts around  
11 the country, including this Court, that have considered the government's new statutory  
12 interpretation revoking the IJ’s jurisdiction to consider release on bond have found it incorrect and  
13 unlawful. *See Escobar Salgado v. Mattos*, -- F.Supp.3d --, No. 25-CV-01872, No. 25-CV-01872,  
14 2025 WL 3205356 (D. Nev. Nov. 17, 2025) (finding “that the plain meaning of the relevant  
15 statutory provisions, when interpreted according to fundamental canons of statutory construction,”  
16 as well as the legislative history and decades of consistent agency practice establish “that the  
17 government’s new interpretation and policy under [§ 1225(b)(2)(A)] is unlawful.”); *see also Barco*  
18 *Mercado v. Francis*, No. 25-CV-06852, at \*9-10 (S.D.N.Y. Nov. 26, 2025) (collecting over 350  
19 decisions by over 160 different district judges finding the application of Section 1225(b)(2)(A) to  
20 noncitizens residing in the United States unlawful).

21 92. Further, a nationwide class has also been certified, and declaratory relief granted to all class  
22 members holding that they are being detained without a bond hearing unlawfully. *See Bautista v.*

1 *Santacruz*, No. 25-CV-01873, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Bautista v. Santacruz*,  
2 No. 25-CV-01873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).

3 93. Accordingly, allowing Petitioner to remain in detention with no reasonably foreseeable  
4 release on bond is a clear deprivation of his liberty and rights under the Fifth Amendment of the  
5 U.S. Constitution. Requiring Respondents to either release Petitioner from detention under  
6 supervision (as allowed under 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 1226) would reduce the  
7 probability of continued needless detention of a person, like Petitioner, who is neither dangerous  
8 nor a flight risk.

9 94. The third factor, the government's interest, also favors Petitioner. 424 U.S. at 333. When  
10 the government ignores law that ensures a noncitizen with the administrative pathways to  
11 challenge a constitutionally deficient custody judgement and where the record evidence clearly  
12 supports a finding that Petitioner is neither a flight risk, nor a danger to the community, it is more  
13 likely to waste limited financial and administrative resources on unnecessary detention and the  
14 litigation of subsequent habeas petitions for individuals who are neither flight risks nor dangerous.  
15 This waste drags down the efficiency of the entire immigration system. And because the  
16 government must also spend resources defending against a habeas corpus petition in federal court  
17 to compel Respondents to comply with law, requiring Respondents to instead provide Petitioner  
18 with either a new custody redetermination hearing or simply ordering that Respondents release  
19 Petitioner on bond, reduces fiscal and administrative burdens on the government.

20 95. For these reasons, the IJ's denial of Petitioner's release from custody, without explanation  
21 to support their finding that Petitioner is a flight risk and danger and without any administrative  
22 pathway for reversal, effectively ensures Petitioner's indefinite detention in violation of  
Petitioner's due process under the Fifth Amendment to the U.S. Constitution.

**COUNT III**

**Declaratory Relief under 28 U.S.C. § 2201**

1  
2  
3 96. The Petitioner re-alleges and incorporates by reference the paragraphs above.

4 97. An actual controversy exists regarding the BIA's holding in *Matter of Hurtado* and the  
5 Chief Immigration Judge's subsequent declaration, stripping all IJs of jurisdiction over Petitioner's  
6 custody redetermination hearing as mandated under 8 U.S.C. section 1231(a)(6) and in violation  
7 of the INA. *Maldonado Vazquez v. Feeley*, 25-CV-01542, – F.Supp.3d –, 2025 WL 2676082 (D.  
8 Nev. Sept. 17, 2025); *Vazquez v. Feeley*, No. 25–cv–01542, 2025 WL 2676082 (D. Nev. Sept. 17,  
9 2025); *Roman v. Noem*, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Escobar Salgado v. Mattos*,  
10 -- F.Supp.3d --, No. 25-CV-01872, 2025 WL 3205356, at \*2 (D. Nev. Nov. 17, 2025); and *Reyes*  
11 *v. Henkey*, 2025 WL 3563297, at \*1 (D. Nev. Dec. 12, 2025).

12 98. As a Bond Denial Class member, Petitioner is categorically “detained under 8 U.S.C. §  
13 1225(b)(1), (2)” see *Matter of Hurtado*, 29 I&N Dec. at 224; therefore, the Immigration Court's  
14 new practice of denying bond redetermination hearings to Bond Denial Class members on the basis  
15 of § 1225(b)(1), (2) violates the Immigration and Nationality Act. *Maldonado Vazquez v. Feeley*,  
16 25-CV-01542, – F.Supp.3d –, 2025 WL 2676082 (D. Nev. Sept. 17, 2025).

17 99. Petitioner is therefore entitled to a declaration that the Las Vegas Immigration Court  
18 maintains jurisdiction over Petitioner's custody redetermination proceedings and maintains  
19 authority to release Petitioner on bond.

20 100. Petitioner respectfully requests that the Court issue a declaration that:

21 (1) As a noncitizen who entered without inspection and triggered a reinstated removal  
22 order, Petitioner's removal proceedings are governed by 8 U.S.C. § 1231(a)(6) and any  
custody determination hearing is held pursuant to 8 C.F.R. § 1226.

1 (2) Pursuant to 8 U.S.C. § 1231(a)(6), the Las Vegas Immigration Court is vested with  
2 jurisdiction over Petitioner's custody redetermination and has authority to release  
3 Petitioner on bond; and

4 (3) Petitioner is entitled to a new custody redetermination hearing where he has the  
5 opportunity to challenge the IJ's constitutionally deficient judgement and where the  
6 government bears the burden of proof.

7 **Count IV**

8 **Injunctive Relief**

9 101. The Petitioner re-alleges and incorporates by reference the paragraphs above.

10 102. Absent immediate intervention by this Court, Petitioner faces imminent and irreparable  
11 harm in the form of unlawful and continued detention, in violation of his due process and this  
12 country's immigration laws. The harm Petitioner faces is not speculative; it is concrete and  
13 irreparable, as the Las Vegas Immigration Court has already been instructed by the Chief  
14 Immigration Judge to follow the BIA's holding in *Matter of Hurtado* and decline  
15 jurisdiction over any of Petitioner's custody redetermination requests, and has thus continued to  
16 subject him to mandatory detention with no release in the reasonably foreseeable future.

17 **RELIEF REQUESTED**

18 WHEREFORE, Petitioner demands judgment against Respondents and requests the following  
19 injunctive and declarative relief:

- 20 1. Assume jurisdiction over this matter;
- 21 2. Declare that the Petitioner is being unlawfully held in custody.
- 22 3. HABEAS CORPUS. Issue a writ of habeas corpus under 28 U.S.C. § 2241  
directing Respondents to immediately release Petitioner from ICE custody or at minimum order

1 that Respondents provide Petitioner with a new custody redetermination hearing where the  
2 government bears the burden of proof.

3 4. DECLARATORY JUDGMENT. Pursuant to 28 U.S.C. § 2201, declare:

- 4 a. The US Department of Justice's policy refusing to recognize jurisdiction over  
5 Petitioner's custody redetermination is unlawful.
- 6 b. Petitioner's immediate release under supervision in accordance with the \$1,500  
7 bond established in 8 C.F.R. § 1226 or, at minimum, a new custody hearing where  
8 the government bears the burden of proof.
- 9 c. Petitioner is not subject to 8 U.S.C. section 1225's mandatory detention  
10 requirements without release on bond.
- 11 d. Any continued detention for the purpose of effectuating the Attorney  
12 General's decision in *Matter of Yajure Hurtado* is an unlawful detention and  
13 unconstitutional.

14 5. INJUNCTIVE RELIEF. Pursuant to the Court's equitable powers, Fed. R. Civ. P. 65, and  
15 the All Writs Act, 28 U.S.C. § 1651, enter:

- 16 a. Preliminary injunction immediately prohibiting Respondents, their agents,  
17 employees, and all persons acting in concert with them from continuing to detain  
18 Petitioner pending his underlying removal proceedings and any relevant appeals  
19 and adjudication of immigration petitions;
- 20 b. A permanent injunction barring Respondents from attempting to subject Petitioner  
21 to 8 U.S.C. § 1225's mandatory detention provision;
- 22

- 1 c. A permanent injunction barring Respondents from refusing to  
2 recognize jurisdiction over Petitioner's custody redetermination and bond request;  
3 and  
4 d. An order retaining jurisdiction to monitor and enforce compliance with the  
5 foregoing injunctions.

6 6. FEES AND COSTS. Award Petitioner his reasonable attorneys' fees and litigation  
7 expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable  
8 authority.

9 7. SUCH OTHER RELIEF. Grant such further legal or equitable relief as the  
10 Court deems just and proper.

11 8. Grant such further relief as the Court deems just, equitable, and proper.

12 Dated: January 29, 2026

Respectfully Submitted,

13 By: s/ Maria Quiroga  
14 Maria Quiroga  
15 Nevada State Bar Number: 13939  
16 7935 W Sahara Ave, #103  
17 Las Vegas, NV 89117  
18 Tel: (702) -972-8348  
19 Maria@QuirogaLawOffice.com

20 *Attorney for Petitioner*  
21  
22

**CERTIFICATE OF SERVICE**

Pursuant to LCR 47-4, I, Maria Quiroga, counsel for Petitioner Giovanny Cruz-Olvera, do hereby certify that on the 29th day of January, 2026, a true and correct copy of the foregoing Writ of Habeas Corpus Complaint was forwarded to the Office of the U.S. Attorney's Office for Respondents by U.S. Mail at the following address:

Office of the United States Attorney  
Sigal Chattah, First Assistant U.S. Attorney  
501 Las Vegas Boulevard South  
Suite 1100  
Las Vegas, NV 89101  
Phone: (702) 388-6336  
Email: sigal.chattah@usdoj.gov

Date: January 29, 2026

By: s/ Maria Quiroga  
Maria Quiroga  
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*Attorney for Petitioner*