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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jianzhong Cao,

Petitioner-Plaintiff,

v.

KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security, in their official
capacity;
PAMELA BONDI, Attorney General of the
United States, in their official capacity;
TODD M. LYONS, Acting Director of U.S.
Immigration and Customs Enforcement, in their
official capacity;
ACTING FIELD OFFICE DIRECTOR,
Phoenix Field Office (ERO Phoenix, Arizona) ICE
Field Office Director, in their official capacity;
ERIC ROKOSKY, Warden of ELOY FED CTR
FACILITY (CORE CIVIC), in their official
capacity.

Respondents-Defendants.

Case No. _____

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

PETITION FOR WRIT OF HABEAS CORPUS

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I. PRELIMINARY STATEMENT

1. This case challenges the government's authority to indefinitely detain a noncitizen pending removal proceedings based on a constitutionally defective bond hearing. Petitioner asks that this Court grant him release, or alternatively, order a new, constitutionally compliant bond hearing before a neutral arbiter where the government bears the burden of proof.
2. Petitioner, Mr. Cao, alien number  an asylum seeker, is currently in immigration proceedings. Although Petitioner has an upcoming Master Calendar Hearing (MCH) scheduled for March 05, 2026, this hearing is procedural and does not resolve his custody status or the merits of his asylum claim. Therefore, the duration of his continued civil detention remains unreasonably prolonged and indefinite, with no imminent resolution in sight.
3. As of the date of this Petition, petitioner has been detained by Immigration and Customs Enforcement ("ICE") for over 22 days, with no end to petitioner's detention in the reasonably foreseeable future. Petitioner was recently detained by ICE on or about February 08, 2026.
4. ICE continues to detain petitioner under the Immigration and Nationality Act ("INA"), following a constitutionally flawed custody determination on February 27, 2026. § 1225(b). In separate subsections, that statute provides for the detention of asylum seekers who pass a credible fear interview "for further consideration of the application for asylum," *id.* § 1225(b)(1)(B)(ii), as well as detention of all other noncitizens whom an immigration official believes are not "clearly and beyond a doubt entitled to admission for a proceeding under 1229a of this title [removal proceedings before an immigration judge]." *id.* § 1225(b)(2)(A). Collectively, the Department of Homeland Security ("DHS") refers to these noncitizens as "arriving aliens." 8 C.F.R. § 1.2.
5. The government interprets § 1225(b) to require mandatory detention without a bond hearing of all arriving aliens, for the indefinite length of time necessary to complete removal proceedings, even if that time becomes unreasonably prolonged. *See Matter of X-K-*, 23 I. & N. Dec. 731, 732 (BIA 2005) (*There is no question that Immigration Judges lack jurisdiction [for a bond hearing] over arriving aliens who have been placed*

in . . . removal proceedings); 8 C.F.R. § 1003.19(h)(2)(i)(B) (stating that an immigration judge may not conduct a custody determination of an “arriving alien”).

6. Petitioner’s prolonged, indefinite detention pending removal proceedings violates the U.S. Constitution’s Fifth Amendment because it deprives petitioner of liberty without due process of law and the Immigration and Nationality Act because it is not authorized by the statute.
7. Petitioner therefore respectfully requests that this Court issue a writ of *habeas corpus* and order petitioner’s release from custody, with appropriate conditions of supervision if necessary. In the alternative, petitioner requests that this Court conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to detention that could mitigate risk of flight.

II. PARTIES

8. Petitioner is presently detained at the direction of Respondents at ELOY FED CTR FACILITY (CORE CIVIC), Eloy Federal Contract Facility (CoreCivic) 1705 E Hanna Rd Eloy, AZ 85131.
9. Respondent KRISTI NOEM is named in their official capacity as the Secretary of DHS. They are responsible for the administration of the immigration laws. 8 U.S.C. § 1103(a). They routinely transact business in the DISTRICT OF ARIZONA and is legally responsible for Petitioner’s detention. As such, they are a legal custodian of Petitioner. Respondent KRISTI NOEM’s address is U.S. Department of Homeland Security, Washington, DC 20528.
10. Respondent PAMELA BONDI is named in their official capacity as the Attorney General of the United States. They are responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review. 8 U.S.C. § 1103(g). They routinely transact business in the DISTRICT OF ARIZONA and are legally responsible for Petitioner’s detention. As such, they are a legal custodian of Petitioner. Respondent PAMELA BONDI’s address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.
11. Respondent TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement (“ICE”), is named in their official capacity. In this capacity, they are

responsible for the administration and enforcement of the immigration laws as exercised by ICE, including the detention and custody of noncitizens. They routinely transact business in the DISTRICT OF ARIZONA and are legally responsible for Petitioner's detention. As such, they are a legal custodian of Petitioner. Respondent TODD M. LYONS's address is 500 12th Street, S.W., Washington, D.C. 20536.

12. Respondent ACTING FIELD OFFICE DIRECTOR, Phoenix Field Office (ERO Phoenix, Arizona) ICE Field Office Director is named in their official capacity as an ICE District Director. In this capacity, they are a legal custodian of petitioner. Respondent's address is ICE Enforcement and Removal Operations (ERO) Phoenix Field Office, 2035 N Central Ave, Phoenix, AZ 85004.
13. Respondent ERIC ROKOSKY, Warden of ELOY FED CTR FACILITY (CORE CIVIC) is named in their official capacity as the warden of the facility where petitioner is held. In this capacity, they are a legal custodian of petitioner. Respondent's address is Eloy Federal Contract Facility (CoreCivic) 1705 E Hanna Rd Eloy, AZ 85131.

III. JURISDICTION

14. Petitioner is detained in the custody of Respondents at ELOY FED CTR FACILITY (CORE CIVIC).
15. This Court has subject matter jurisdiction over this Petition under 28 U.S.C. § 2241 (power to grant *habeas corpus*) and 28 U.S.C. § 1331 (federal question jurisdiction); the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C. § 701.
16. Federal district courts have jurisdiction to hear *habeas corpus* claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003).

IV. VENUE

17. Under 28 U.S.C. § 2241(d), venue properly lies in the DISTRICT OF ARIZONA because Petitioner is physically present and in the custody of Respondents within the district. In addition, Petitioner's pending removal proceedings are taking place within the district at the immigration court located at 1705 EAST HANNA RD., SUITE 366, ELOY, AZ 85131.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009). Any requirement of administrative exhaustion is therefore purely discretionary.
19. In making that decision, the Court should consider the urgency of the need for immediate review. “Where a person is detained by executive order . . . the need for collateral review is most pressing. . . . In this context the need for habeas corpus is more urgent.” *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) (waiving administrative exhaustion for executive detainees).
20. Moreover, where the agency has predetermined a dispositive issue, no further action with the agency is necessary. *See, e.g., Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-57 (S.D.N.Y. 2010); *Garcia*, 615 F. Supp. 2d at 180.
21. Although Petitioner had an initial bond hearing on February 27, 2026, where the Immigration Judge denied bond after concluding that Petitioner was a flight risk, an appeal to the BIA would be futile. The BIA does not have jurisdiction to adjudicate constitutional issues, such as the unconstitutional shifting of the burden of proof to the noncitizen or the failure to consider alternatives to detention under the Due Process Clause. *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002). Exhaustion of these constitutional claims is therefore purely discretionary and should be waived.
22. Further, “the BIA [Board of Immigration Appeals] does not have jurisdiction to adjudicate constitutional issues” (quotations and citation omitted). *United States v. Gonzalez-Roque*, 301 F.3d 39, 48 (2d Cir. 2002). Because petitioner raises a constitutional due process claim in his habeas petition, exhaustion of his due process claims would be futile.
23. A request for release on humanitarian parole under 8 U.S.C. 1182(d)(5)(A) would also be futile. Parole review is conducted informally by DHS officers—the jailing authority—by checking a box on a form that contains no factual findings, no specific explanation, and no evidence of deliberation. There is no hearing, no record, and no administrative appeal from a negative parole decision, even to correct manifest errors. *See Rodriguez v. Robbins*, 804 F.3d 1060, 1081 (9th Cir. 2015), *cert. granted sub nom. Jennings v.*

Rodriguez, 136 S. Ct. 2489, 195 L. Ed. 2d 821 (2016) (*identifying denials of parole based on blatant errors: In two separate cases . . . officers apparently denied parole because they had confused Ethiopia with Somalia. And in a third case, an officer denied parole because he had mixed up two detainees' files.*); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1082 (9th Cir. 2006) (finding that DHS abused its authority by denying parole). In the absence of administratively enforceable standards, grants of parole have decreased sharply in recent years. *See Human Rights First, Lifeline on Lockdown: Increased U.S. Detention of Asylum Seekers* 13 (2016).

24. President Trump has further restricted the already limited use of parole authority by ordering DHS officials to “end the abuse of parole and asylum provisions” in a January 2017 executive order. *See Exec. Order. No. 13,767: Border Security and Immigration Enforcement Improvements*, 82 Fed. Reg. 8793 (Jan. 25, 2017).
25. Because a request for release on humanitarian parole would be futile for the reasons stated above, petitioner has exhausted all available administrative remedies.

VI. STATEMENT OF FACTS

26. Petitioner Jianzhong Cao (A-Number XXXXXXXXXX) is an asylum seeker who fled religious persecution in the People’s Republic of China. Petitioner entered the United States in or around August 2024, was processed by immigration authorities at the border, and was thereafter lawfully released from custody on an I-220A order of release on recognizance. Since that release, Petitioner has lived and worked in the community and has remained available to immigration authorities. For approximately 18 months following his August 2024 release, Petitioner complied with all known requirements of U.S. immigration authorities. He has no criminal record, has not been charged with any crime, and there is no allegation that he poses any danger to the community. He attended ICE check-ins as directed and timely filed his affirmative request for protection by submitting his asylum application (Form I-589). Petitioner also worked consistently, including employment with XXXXXXXXXXXXXXXXXXXX, supporting himself through lawful labor and maintaining stability in the community.
27. On February 8, 2026, while traveling through Yuma, Arizona for legitimate work-related purposes, Petitioner was abruptly arrested and re-detained by ICE. The arrest was sudden and unexpected given his prior compliance, and it occurred without meaningful advance

notice. Petitioner is currently detained at the Eloy Detention Center in Arizona, where his ability to communicate with family and assist in his legal case has been significantly restricted.

28. Petitioner's detention has imposed serious and escalating harms. In limited phone calls, Petitioner has reported significant mental distress in detention, including panic and depression. He has also reported a sharp decline in physical health, including severe skin allergies with extensive rashes and daily severe headaches. These conditions have worsened during detention and underscore the urgent need for appropriate medical evaluation and care outside the detention setting.
29. Petitioner's asylum case remains pending, and detention has substantially impeded his ability to prepare evidence, coordinate witness statements, and assist counsel in developing testimony and corroboration necessary for a fair adjudication. Continued detention during the pendency of removal proceedings prejudices Petitioner's ability to pursue protection claims and undermines the fairness and integrity of the process.
30. Petitioner sought release through the immigration court process and received a bond hearing on February 27, 2026. The Immigration Judge denied bond after concluding that Petitioner was a flight risk. That decision did not reflect a constitutionally adequate, individualized assessment of whether detention is necessary in Petitioner's circumstances. The bond proceeding was defective because it failed to apply a constitutionally sufficient standard and did not meaningfully consider less restrictive alternatives to detention that would reasonably ensure appearance, such as release to a stable sponsor, conditions of supervision, reporting requirements, or other tailored measures. The denial is also inconsistent with Petitioner's demonstrated history of compliance during the approximately 18 months he lived openly in the community after being released on an I-220A, during which he attended check-ins and continued to pursue his asylum application.
31. Petitioner has strong family and community ties in the United States. His brother-in-law, Shengxian Wu, is a lawful permanent resident who resides at [REDACTED] [REDACTED] California 91755. Mr. Wu has stable employment and income and has offered to serve as Petitioner's sponsor and custodian. If released, Petitioner will reside with Mr. Wu, who has committed to supervising Petitioner and ensuring he appears at all

immigration court hearings and complies with any reporting or supervision requirements. These concrete supports further demonstrate that Petitioner is not a flight risk and does not present any danger to the community.

32. Petitioner has an upcoming Master Calendar Hearing scheduled for March 05, 2026. This hearing is a preliminary, procedural setting in removal proceedings, typically used for pleadings, scheduling, and identification of relief, and it does not provide a meaningful mechanism to adjudicate custody or secure release. The merits adjudication of Petitioner's asylum claim will not occur at the Master Calendar Hearing and is expected to take months to reach a final evidentiary hearing date. As a result, absent federal intervention, Petitioner faces continued confinement for an unreasonably prolonged and effectively indefinite period while his protection claim proceeds through an overburdened adjudicatory system.
33. Petitioner's ongoing detention is not justified by any claim of dangerousness and rests on an unreliable conclusion of flight risk that is contradicted by his lengthy record of compliance, stable family sponsorship, and readily available alternatives to detention. Despite his individualized equities and the availability of conditions of supervision, Petitioner remains confined at Eloy as his immigration case moves forward slowly. Petitioner is not in expedited removal under INA § 235(b)(1); rather, he is detained in connection with pending removal proceedings under INA § 236. His continued confinement, following a constitutionally defective bond process that failed to meaningfully evaluate alternatives and necessity, has become unreasonably prolonged and unlawful.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

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

34. Petitioner re-alleges and incorporates by reference the paragraphs above. Petitioner's prolonged detention under § 1225(b) without any individualized assessment of the need for detention deprives petitioner of due process of law. The Court should therefore order release from unconstitutional detention.

35. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). For this reason, even “removable and inadmissible aliens are entitled to be free from detention that is arbitrary and capricious,” *Id.* at 721 (Kennedy, J., dissenting). That constitutional protection is unaffected by the government’s authority to make rules for “admission” that regulate the immigration status of noncitizens. *See* 8 U.S.C. § 1101(a)(13)(A) (defining admission as “the lawful entry of the alien”).
36. “A statute permitting indefinite detention of an alien would raise a serious constitutional problem” under the Fifth Amendment’s Due Process Clause. *Id.* at 690. That serious constitutional problem is raised by the government’s reading of § 1225(b). It interprets the statute to permit the indefinite detention of a noncitizen whom the government has not found to be removable or inadmissible, but instead granted the right to remain in the United States pending removal proceedings after demonstrating a credible fear of persecution to an asylum officer. In *Zadvydas v. Davis*, the Supreme Court rejected the government’s argument that its immigration powers permit it to indefinitely detain noncitizens after the conclusion of removal proceedings. *Id.* at 699.
37. Since then, the government has repeated that same argument to justify prolonged, indefinite detention pending removal proceedings. Each time, federal courts have roundly rejected it. Every Court of Appeals to consider prolonged detention under INA § 236(c), 8 U.S.C. § 1226(c)—a statute that, like § 1225(b) mandates detention of inadmissible noncitizens pending removal proceedings—holds it limited to a reasonable period by the Due Process Clause. *See Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).
38. None of these decisions distinguishes between previously admitted and inadmissible noncitizens. Instead, they find that due process limits the period that any noncitizen may be held in prolonged mandatory detention pending removal proceedings. In doing so, they follow *Demore v. Kim*, 538 U.S. 510, 518 (2003). *Demore* identified mandatory

detention pending removal proceedings as a “brief period,” lasting “roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal.”

39. Thus, in the Second and Ninth Circuits, the reasonable period of § 1226(c) mandatory detention pending removal proceedings ends at six months. *Lora*, 804 F.3d at 613; *Rodriguez*, 804 F.3d at 1079. The remaining circuits to have addressed the issue hold detention unreasonable some time after six months, depending on the facts and circumstances of the case, with nine months “straining any common-sense definition of a limited or brief civil detention.” *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 477 (3d Cir. 2015). The only Court of Appeals to consider prolonged detention under § 1225(b) holds that “to avoid serious constitutional concerns, mandatory detention under § 1225(b) . . . must be construed as implicitly time-limited.” *Rodriguez*, 804 F.3d 1060.
40. Following *Rodriguez* and *Lora*, numerous district courts in the Second Circuit hold that due process limits mandatory detention under § 1225(b) to a reasonable period of six months. *See, e.g., Ricketts v. Simonse*, 2016 WL 7335675 (S.D.N.Y. Dec. 16, 2016); *Saleem v. Shanahan*, 2016 WL 4435246 (S.D.N.Y. Aug. 22, 2016); *Arias v. Aviles*, 2016 WL 3906738 (S.D.N.Y. July 14, 2016). They are joined by district courts in other circuits. *See, e.g., Ahad v. Lowe*, 2017 WL 66829 (M.D. Pa. Jan. 6, 2017); *Gregorio-Chacon v. Lynch*, 2016 WL 6208264 (D.N.J. Oct. 24, 2016); *Damus v. Tsoukaris*, 2016 WL 4203816 (D.N.J. Aug. 8, 2016); *Bautista v. Sabol*, 862 F. Supp. 2d 375, 377 (M.D. Pa. 2012); *Maldonado v. Macias*, 150 F.Supp.3d 788 (W.D. Tex. 2015).
41. The ability to apply for humanitarian parole under 8 U.S.C. 1182(d)(5)(A) does not provide due process for noncitizens detained under § 1225(b). Parole does not provide a neutral forum to contest the necessity of ongoing detention. Instead it is a purely discretionary process, administered by the jailer. Neither the detained noncitizen nor counsel are provided an in-person hearing to contest facts leading to the parole decision. And no review of that decision is available. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013).
42. Moreover, release on parole is only available for “urgent humanitarian reasons or significant public benefit,” 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(b).

Neither of those criteria evaluate the constitutionally permissible rationales for continued, prolonged detention during removal proceedings: whether the detained noncitizen is a flight risk or danger to her community. *See R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 188 (D.D.C. 2015) (“The Zadvydas Court clearly identified a pair of interests that can, under certain circumstances, suffice to justify the detention of noncitizens awaiting immigration proceedings: ‘preventing flight’ and ‘protecting the community’ from aliens found to be ‘specially dangerous.’”).

43. Finally, parole was also available to inadmissible noncitizens who challenged prolonged detention under § 1226(c). Yet every Court of Appeals to consider § 1226(c) has nonetheless ruled it limited to a reasonable period by the Due Process Clause. The ability to apply for parole is therefore an inadequate substitute for due process. Petitioner’s prolonged, indefinite detention under § 1225(b) violates the Fifth Amendment by depriving him of liberty without due process of law. This Court should therefore order his release, with appropriate conditions of supervision if necessary. *See, e.g., Nadarajah v. Gonzales*, 443 F.3d 1069, 1084 (9th Cir. 2006); *Madrane v. Hogan*, 520 F.Supp.2d 654 (M.D. Pa. 2007); *Victor v. Mukasey*, 2008 WL 5061810 (M.D. Pa. Nov. 25, 2008); *Nunez-Pimentel v. U.S. Dep’t of Homeland Security*, 2008 WL 2593806 (M.D. Pa. June 27, 2008).

SECOND CLAIM FOR RELIEF

VIOLATION OF THE IMMIGRATION AND NATIONALITY

ACT § 235(b), 8 U.S.C. § 1225(b)

44. Petitioner re-alleges and incorporates by reference the paragraphs above. Under the statutory interpretation doctrine of constitutional avoidance, the Court should construe § 1225(b) as limited to a reasonably brief period, extendable only if the government shows justification for detention at a bond hearing.
45. Though the government’s interpretation of § 1225(b) as permitting indefinite mandatory detention is unconstitutional, “[W]hen the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.” *Crowell v. Benson*, 285 U.S. 22, 62 (1932); *see also Zadvydas*, 533 U.S. 678 at 689. “[T]he Supreme Court has instructed that, where

one possible application of a statute raises constitutional concerns, the statute as a whole should be construed through the prism of constitutional avoidance.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1141 (citing *Clark v. Martinez*, 543 U.S. 371, 380 (2005)). Thus, the dispositive question is not whether the government’s reading of § 1225(b) is permissible in some (or even most) cases, but rather whether there is any single application of the statute that calls for a limiting construction. *Id.*

46. In *Martinez*, the Court analyzed § 1231(a)(6), a statute it had previously read as a matter of constitutional avoidance to limit mandatory detention after the conclusion of removal proceedings to a presumptively reasonable period of six months. *Zadvydas v. Davis*, 533 U.S. 678. The same statute applied to both admitted and inadmissible noncitizens, but the government argued that the same limit on detention did not apply to inadmissible noncitizens because they were not entitled to the same constitutional protections. *Martinez*, 543 U.S. at 380.
47. The text of the statute did not distinguish between the two classes, however, and “To give these same words a different meaning for each category would be to invent a statute rather than interpret one.” *Id.* at 378. Because the same statutory text applied to both groups, and detention for more than six months raised constitutional concerns for at least the admitted noncitizens, every noncitizen subject to the statute was entitled to the same reading limiting mandatory detention. “The lowest common denominator, as it were, must govern.” *Id.* at 380.
48. The government reads § 1225(b) to permit the prolonged detention without a bond hearing of all “arriving aliens,” 8 C.F.R. § 1.2., including both asylum seekers and certain lawful permanent residents (“LPR”) who depart the country and seek admission upon their return. INA § 101(a)(13)(C), 8 U.S.C. § 1101(a)(13)(C); 8 C.F.R. § 1003.19(h)(2)(i)(B). As explained above in the First Claim for Relief, arriving asylum seekers are entitled to be free from arbitrary and capricious detention under the Due Process Clause. Even assuming *arguendo* they were not, however, LPRs are entitled to due process in prolonged detention because “once an alien gains admission to our country and begins to develop the ties that go with permanent residence his constitutional status changes accordingly.” *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

49. In *Plasencia*, the Supreme Court ruled that an LPR seeking readmission after a trip abroad and charged as “excludable” could nonetheless “invoke the Due Process Clause on returning to this country” *Id.* Because an LPR’s due process right is constitutional in nature, it may not be stripped by mere statutory designation as an “arriving alien.” See *Kwong Hai Chew v. Colding*, 344 U.S. 590, 600 (1953) (“From a constitutional point of view, he is entitled to due process without regard to whether or not, for immigration purposes, he is to be treated as an entrant alien”).
50. Section 1225(b) would therefore “raise a serious constitutional problem,” *Zadvydas*, 533 U.S. at 690, if read to deny a bond hearing to LPRs held as arriving aliens in prolonged detention. Thus, as a matter of constitutional avoidance, the statute must be read to require a bond hearing when detention becomes unreasonably prolonged. *Ricketts v. Simonse*, 2016 WL 7335675; *Arias v. Aviles*, 2016 WL 3906738 4- 10. Moreover, because the text of § 1225(b) does not distinguish between LPRs and other noncitizens charged as arriving aliens, LPRs are the statute’s “lowest common denominator.” *Martinez*, 543 U.S. at 380. Section 1225(b) must therefore be read to grant all noncitizens held as arriving aliens the same due process protections afforded to LPRs in unreasonably prolonged detention. *Rodriguez v. Robbins*, 715 F.3d 1127, 1142-43; *Saleem v. Shanahan*, 2016 WL 4435246, at 3- 5.
51. The only Court of Appeals to address detention under § 1225(b) holds that it becomes unreasonably prolonged at six months. *Rodriguez*, 715 F.3d at 1144. Such a bright-line limit follows the practice of both the Supreme Court and Second Circuit of limiting mandatory immigration detention to the presumptively reasonable period of six months. *Zadvydas*, 533 U.S. at 701; *Lora v. Shanahan*, 804 F.3d 601, 616 (2d Cir. 2015). This Court should therefore find that petitioner, whose mandatory detention has exceeded the brief period authorized by due process, is entitled to a bond hearing.
52. Petitioner’s detention is also unreasonably prolonged based on the facts and circumstances of his case, including the overall length of his detention (22 days), the promptness of proceedings, the complexity of the case, the reasonable foreseeability of continued, lengthy litigation, and the conditions of confinement. *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 474-478. “[S]ometime after the six-month

timeframe considered by Demore, and certainly by the time [a noncitizen] ha[s] been detained for one year,” mandatory detention is unreasonable. *Id.* at 478.

53. Moreover, delay caused by “individual actions by various actors in the immigration system, each of which takes only a reasonable amount of time to accomplish,” can nevertheless result in an unreasonable, and ultimately unconstitutional, period of detention. *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 223. The reasonableness of ongoing detention must also consider “whether an alien challenges aspect of the Government’s case that present real issues, for example: a genuine factual dispute; poor legal reasoning; reliance on a contested legal theory; or the presence of a new legal issue.” It is impermissible to “effectively punish these aliens for choosing to exercise their legal right to challenge the Government’s case against them by rendering the corresponding increase in time of detention as reasonable.” *Chavez-Alvarez*, 783 F.3d at 476.
54. The reasonable foreseeability of continued, lengthy litigation is also relevant to whether Petitioner’s current detention is constitutional. *Id.* at 477-78 (noting that the government “could have reasonably predicted that [the noncitizen’s] appeal would take a substantial amount of time, making his already lengthy detention considerably longer”). Finally, this Court “cannot ignore the conditions of confinement.” *Id.* at 478. Where immigration detention takes place in a penal setting, prolonged detention is more likely to be unconstitutional. Merely calling a confinement “civil detention” does not, of itself, meaningfully differentiate it from penal measures. “As the length of the detention grows, the weight given to this aspect of [a noncitizen’s] detention increases.” *Id.*
55. Petitioner’s prolonged detention raises all of these concerns, based on the *Chavez-Alvarez* factors detailed in the Statement of Facts, including government-caused delays, the complexity of the legal issues, the high likelihood of future litigation, and the punitive conditions of confinement. Under either a bright-line rule or the facts and circumstances of this case, petitioner’s continued detention is unreasonably prolonged. This Court should therefore conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the Court considers alternatives to detention that could mitigate flight risk. *See Leslie v. Attorney Gen. of U.S.*, 678 F.3d 265, 271 (3d Cir. 2012); *Rodriguez*, 804 F.3d 1060, 1086-87. In the alternative, the Court should order an immigration judge to conduct the bond hearing.

THIRD CLAIM FOR RELIEF
VIOLATION OF THE IMMIGRATION AND NATIONALITY

ACT § 236(a), 8 U.S.C. § 1226(a)

56. Petitioner re-alleges and incorporates by reference the paragraphs above.
57. Petitioner Falls Within The Bond Eligible Class Certified in *Maldonado Bautista v. Garland*.
58. The United States District Court in *Maldonado Bautista v. Garland* has now issued two dispositive rulings—its nationwide class-certification order and its earlier order granting partial summary judgment—that together conclusively determine that members of the certified Bond Eligible Class are detained under INA § 236 and therefore entitled to individualized bond hearings before an Immigration Judge. *See* Final Judgment of *Maldonado Bautista v. Garland*.
59. First, in its summary judgment ruling issued on November 20, 2025, the district court rejected *Matter of Yajure Hurtado* and the prior ICE policy that automatically subjected all noncitizens who entered without admission or inspection to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The court held that such individuals are, instead, detained pursuant to INA § 236. As a result, noncitizens who fall within the scope of the challenged policy are not subject to mandatory detention and must be afforded consideration for release on bond.
60. Second, the class certification order extends that declaratory relief nationwide on November 25, 2025. The district court expressly stated:
61. “When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”
62. Thus, the court confirmed that the statutory holding in the summary judgment order applies identically to every member of the certified class.
63. The court certified the following Bond Eligible Class, which is expressly nationwide in scope:
64. All noncitizens in the United States without lawful status who: (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time DHS makes the initial custody determination.

65. Accordingly, every individual who meets these criteria now possesses the benefit of a binding federal judgment declaring that they are detained under INA § 236 rather than § 1225(b)(2)(A).
66. Petitioner meets all three criteria: (1) he entered the United States without inspection on August 12, 2024; (2) he was not apprehended upon arrival but was initially released on Form I-220A; and (3) he is not detained under § 1226(c), § 1225(b)(1), or § 1231. He is therefore a member of the Bond Eligible Class and possesses the benefit of a binding federal judgment declaring that he is detained under INA § 236 rather than § 1225(b)(2)(A). This Court should therefore hold that petitioner's detention pending removal proceedings is governed by § 1226(a), entitling him to a bond hearing upon request before an immigration judge.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a) Assume jurisdiction over this matter;
- b) Declare that Petitioner's ongoing detention, based on a constitutionally inadequate bond hearing, violates federal law and Petitioner's constitutional right to due process;
- c) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, on reasonable conditions of supervision if necessary;
- d) In the alternative, vacate the prior bond denial and remand to the immigration judge for a NEW bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) alternatives to detention that could mitigate flight risk are considered;
- e) In the alternative, hold that Petitioner's detention is governed by 8 U.S.C. § 1226(a), entitling Petitioner to a bond hearing upon request before an immigration judge;
- f) Issue a temporary restraining order and preliminary injunction as needed to ensure Petitioner is not removed from this Court's jurisdiction and to secure prompt relief (as detailed in Petitioner's accompanying Motion for Immediate Release and TRO Application);

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Dated: March 02, 2026