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# IN THE UNITED STATES DISTRICT COURT
# FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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|---|---|---|
| GURPREET GIR,<br>Petitioner | ) | |
| V. | ) | '26CV1567 RSH DDL |
| Warden of Imperial Regional Detention Facility, Calexico; | ) | |
| GREGORY ARCHAMBEAULT, Director, San Diego ICE Field Office; | ) | |
| KRISTI NOEM, Secretary of the Department of Homeland Security; U.S. Department of Homeland Security (DHS); | ) | |
| PAMELA BONDI, Attorney General of the United States, and | ) | |
| TODD LYONS, Director, Immigration and Customs Enforcement. | ) | |
| Respondents | | |

## PETITION FOR WRIT OF HABEAS CORPUS

## PRELIMINARY STATEMENT

1. This case challenges the government's authority to indefinitely detain a noncitizen without any finding of dangerousness. It asks that this Court grant the petitioner release from prolonged immigration detention or a bond hearing before a neutral arbiter.

2. Petitioner is a 32 year-old native and citizen of India.

3. On or about February 25, 2022, Petitioner entered the US. *See Ex. A.*

4. He affirmatively filed an I-589, Application for Asylum with the USCIS. *See Ex. B.*

5. Petitioner was interviewed by the USCIS and his decision is still pending with the USCIS.

6. On February 27, 2026, the Petitioner was arrested by the ICE while he was filling gas in his truck at a gas station in San Bernardino, CA. Petitioner had no violations or crimes despite he was arrested with his pending I-589 applications.

7. On February 28, 2026, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA") under section 212(a)(6) (A)(i). *See Ex. C.*

8. He was unlawfully arrested and detained by the ICE on February 27, 2026.

9. As of the date of this Petition, petitioner has been detained by Immigration and Customs Enforcement ("ICE"), with no end to petitioner's detention in the reasonably foreseeable future without him committing any crime or fraud.

10. He is presently detained at the direction of Respondents at Imperial Retional Detention Facility, 1572 Gateway Road, Calexico, CA 92231. *See Ex. D.*

11. ICE claims the authority to indefinitely detain petitioner without a bond hearing under the Immigration and Nationality Act ("INA") § 235(a), 8 U.S.C. § 1225(b), *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In separate subsections, that statute provides for the detention of applicants for admission. *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.

12. 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").

13. 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.

14. 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.

## PARTIES

15. Petitioner is a citizen of India who most recently arrived in the United States and is presently detained at the direction of Respondents at Imperial Retional Detention Facility, 1572 Gateway Road, Calexico, CA 92231.

16. Respondent Gregory Archambeault is the Acting Director of the San Diego District Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

17. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of respondent and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

18. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Noem is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

20. Respondent is the Warden of the Imperial Regional Detention Facility, Calexico, California, where Petitioner is detained. He has immediate physical custody of Petitioner and is sued in his official capacity.

21. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

22. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

## JURISDICTION

23. Petitioner is detained in the custody of Respondents at Imperial Retional Detention Facility, 1572 Gateway Road, Calexico, CA 92231.

24. 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.

25. 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).

## VENUE

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

## EXHAUSTION OF ADMINISTRATIVE REMEDIES

27. There is no statutory exhaustion requirement in 28 U.S.C § 2241. However, exhaustion may be judicially required. This type of exhaustion is known as prudential exhaustion. Courts may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004) (quoting S.E.C. v. G.C. George Sec., Inc., 637 F.2d 685, 688 (9th Cir. 1981).

28. Exhaustion requirements may be excused if the BIA lacks authority to grant the relief sought. *See Singh v. Gonzales*, 432 F.3d 533 (3d Cir. 2006) (constitutional claims not barred by failure to exhaust).

29. The BIA interprets § 1225(b) as mandating detention of arriving aliens pending removal proceedings. See *Matter of X-K-*, 23 I. & N. Dec. at 732 ("There is no question that Immigration Judges lack jurisdiction [for a bond hearing] over arriving aliens who have been placed in . . . removal proceedings . . . ."). Exhaustion before the BIA would therefore be futile.

30. Further, "the BIA [Board of Immigration Appeals] does not have jurisdiction to adjudicate constitutional issues . . . ." (quotations and citation omitted). *Id.* Because petitioner raises a constitutional due process claim in his habeas petition, exhaustion of his due process claims would be futile.

31. Since the IJ and the Board have both claimed that aliens who entered the US without admission are not eligible for bond, under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), claiming that IJ lack authority to hear bond requests or grant bond to aliens present in the US without admission, filing a bond would have been futile, and the BIA does not have the authority to claim a statute unconstitutional.

32. 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) (relying on government data to document a one-third decrease in parole grants between 2012 and 2015).

33. 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 20, 2025, executive order. *See* Exec. Order No. 14159: Protecting the American People Against Invasion (Jan. 20, 2025).

34. Thus, requesting parole when it is no longer an option would also be futile.

## STATEMENT OF FACTS

35. Petitioner is a 32-year-old native and citizen of India.

36. On or about February 25, 2022, Petitioner entered the US.

37. He affirmatively filed an I-589, Application for Asylum with the USCIS. Petitioner was interviewed by the USCIS and his decision is still pending with the USCIS.

38. On February 27, 2026, the Petitioner was arrested by the ICE while he was filling gas in his truck at a gas station in San Bernardino, CA. Petitioner had no violations or crimes despite he was arrested with his pending I-589 applications.

39. On February 28, 2026, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA") under section 212(a)(6) (A)(i). He was unlawfully arrested and detained by the ICE on February 27, 2026.

40. As of the date of this Petition, petitioner has been detained by Immigration and Customs Enforcement ("ICE"), with no end to petitioner's detention in the reasonably foreseeable future without him committing any crime or fraud.

41. He is presently detained at the direction of Respondents at Imperial Retional Detention Facility, 1572 Gateway Road, Calexico, CA 92231.

## CLAIMS FOR RELIEF

### FIRST CLAIM FOR RELIEF

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

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

43. 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.

44. 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.

45. "[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").

46. "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.

47. In *Zadvydas v. Davis*, the Supreme Court rejected the government's argument that its immigration powers permit it to indefinitely detain non citizens after the conclusion of removal proceedings. *Id.* at 695. Since then, the government has repeated that same argument to justify prolonged, indefinite detention pending removal proceedings.

48. 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). 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.

49. 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."

50. 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 1065. The remaining circuits to have addressed the issue hold detention unreasonable sometime 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).

51. 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.

52. 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).

53. 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) (describing parole process).

54. 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.'") (citing *Zadvydas v. Davis*, 533 U.S. at 690–92)).

55. 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.

56. 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) (ordering release from prolonged detention pending removal proceedings).

**SECOND CLAIM FOR RELIEF**

**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT § 235(b), 8 U.S.C. § 1225(b)**

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

58. 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.

59. 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 (citing *Crowell*). This doctrine of statutory interpretation is known as constitutional avoidance.

60. "[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.

61. 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.

62. The text of the statute did not distinguish between the two classes, however, and "[t]o 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.

63. 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) (identifying LPRs classified as arriving aliens when

returning to the United States after travel abroad); 8 C.F.R. § 1003.19(h)(2)(i)(B) (depriving an immigration judge of jurisdiction over a bond hearing for arriving aliens in removal proceedings).

64. 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).

65. In *Plasencia*, the Supreme Court ruled that an LPR seeking readmission after a trip abroad and charged as "excludable" (the former term of art for "inadmissible" under then-current immigration laws), 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) (in the case of a returning LPR, holding that "[f]rom 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").

66. 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.

67. 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, at *1; *Saleem v. Shanahan*, 2016 WL 4435246, at *3-*5.

68. 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 ("We do have reason to believe . . . that Congress previously doubted the constitutionality of detention for more than six months."); *Lora v. Shanahan*, 804 F.3d 601, 616 (2d Cir. 2015) ("[W]e hold that[] in order to avoid the constitutional concerns raised by indefinite detention, an immigrant . . . must be afforded a bail hearing before an immigration judge within six months of his or her detention." This Court should therefore find that petitioner, whose mandatory detention exceeds six months, is entitled to a bond hearing.

69. Petitioner's detention is also unreasonably prolonged based on the facts and circumstances of his case, including the overall length of his detention, 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 (outlining factors that govern when mandatory detention becomes prolonged).

70. 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 the detention of a removable alien for an unreasonable, and ultimately unconstitutional, period of time." *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 223.

71. The reasonableness of ongoing detention must also consider "whether an alien challenges aspects 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.

72. 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").

73. 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.* (internal citations omitted).

74. Petitioner's detention raises all of these concerns.

75. 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) (stating that "Leslie's appeal will be remanded to the District Court with instructions to conduct an individualized bond hearing as required by *Diop*); Rodriguez, 804 F.3d 1060, 1086-89 (outlining constitutionally adequate procedural protections at a prolonged detention bond hearing). 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)**

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

77. As a matter of statutory interpretation, this Court should hold that § 1225(b) is limited to the period between a noncitizen's arrest as an arriving alien and the commencement of his removal proceedings before an immigration judge. Such an interpretation is supported by the text, purpose, and overall construction of the statute, the doctrine of constitutional avoidance, and the government's own practice of limiting mandatory detention of other recently arrived noncitizens to the period before removal proceedings commence. The Court should therefore find that petitioner's detention pending removal proceedings is authorized not by § 1225(b), but

by the discretionary detention statute at § 1226(a), entitling petitioner to an immediate bond hearing before an immigration judge.

78. The plain text of § 1225(b) mandates detention of arriving aliens only for the period between their arrest and before they are referred to an immigration judge for removal proceedings. The two subsections of § 1225(b) at issue here permit detention only "*for* further consideration of the application for asylum," 8 U.S.C. § 1225(b)(1)(B)(ii) and "*for* a proceeding . . . ." Id. § 1225(b)(2)(a). Neither provision governs detention beyond that point, much less pending completion of removal proceedings. See Webster's Third New International Dictionary 886 (1993) (defining "for" to mean "as a preparation toward . . . or in view of"). Pending removal proceedings, detention is authorized by section 1226(a), entitling petitioner to a bond hearing. *See Matter of X-K-*, 23 I. & N. Dec. at 731 ("Immigration Judges have custody jurisdiction over aliens in . . . removal proceedings . . . .")

79. Where Congress intended to authorize detention pending completion of an administrative proceeding, it unambiguously said so. *See* 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (stating that a noncitizen "shall be detained *pending* a final determination of credible fear of persecution and, if found not to have such a fear, until removed"); *id.* § 1226(a) ("an alien may be arrested and detained *pending* a decision on whether the alien is to be removed from the United States). (emphases added). *Cf. Ratzlaf v. United States*, 510 U.S. 135, 143 (1994) ("A term appearing in several places in a statutory text is generally read the same way each time it appears.").

80. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Nken v. Holder*, 556 U.S. 418, 430 (2009)

(internal citations and alterations omitted). This is "particularly true here" where the provisions at issue were "enacted as part of a unified overhaul" of the statute under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. *Id.* at 430-31.

81. The overall construction of the statute also supports a reading that limits § 1225(b) detention to the period before removal proceedings commence. *Cf. United States v. Witkovich*, 353 U.S. 194, 199 (1957) ("A restrictive meaning for what appear to be plain words may be indicated by the Act as a whole . . . ."). Section 1225 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." Section 1225(b) is titled "Inspection of Applicants for Admission." The subsections at issue here are titled "Asylum Interviews: Referral of certain aliens," 8 U.S.C. § 1225(b)(1)(B)(ii), and "Inspection of other aliens: In general," id. § 1225(b)(2)(A). By their plain language, none of these sections address detention authority pending removal proceedings. Rather, they address only detention pending inspection and referral to subsequent removal proceedings. Authority for mandatory detention pending removal proceedings appears instead in 8 U.S.C. § 1226, in a section appropriately titled "Apprehension and detention of aliens." That section does not authorize mandatory detention pending removal proceedings for arriving aliens.

82. Where Congress intended to authorize mandatory detention of arriving aliens past the inspection and referral process, it provided specific statutory authority to do so. In § 1225(b)(1)(B)(iii)(IV), titled "Mandatory Detention," Congress provided for the detention of a noncitizen "pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." If Congress had intended to subject all arriving aliens to mandatory detention beyond the inspection and referral process, the specific mandate in §

1225(b)(1)(B)(iii)(IV) would be superfluous. "It is a cardinal principle of statutory construction that a statute ought . . . to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (internal quotations omitted).

83. Moreover, as explained above in the Second Claim for Relief, the doctrine of constitutional avoidance requires this Court to "first ascertain whether a construction of the statute is fairly possible by which the [constitutional] question may be avoided." *Crowell v. Benson*, 285 U.S. 22, 62. In light of the text and overall construction of § 1225(b), as discussed above, the statute may be fairly construed to limit mandatory detention to the period before removal proceedings commence. The Court must do so in order to avoid the constitutional question raised by the government's reading.

84. Petitioner's interpretation of § 1225(b) also accords with the government's own practice of detaining other recent arrivals under § 1226(a) once they pass a credible fear interview and their removal proceedings have commenced. Both noncitizens who present themselves at the border and those who enter without inspection and are subsequently arrested near the border are initially detained under § 1225(b)(1)(B)(ii) for expedited removal proceedings. *See Matter of X-K-*, 23 I. & N. Dec. 731, 734.

85. Once the government determines that either arriving aliens or entrants without inspection have a credible fear of persecution, it refers them to non-expedited removal proceedings. Yet for entrants without inspection alone, the government detains under § 1226(a) once removal proceedings commence. *Id.* This entitles entrants without inspection, but not those who present themselves to an officer to seek asylum, to an immediate bond hearing.

86. Finally, a construction of § 1225(b) as limited to before commencement of removal proceedings avoids the absurd result of incentivizing entry without inspection. According to the government's reading of § 1225(b), Congress incentivized asylum seekers to enter without inspection rather than present themselves at the border by providing access to bond hearings during removal proceedings for only the first class. It is improbable that Congress intended such a result with § 1225(b), because the purpose of mandatory detention is "preventing . . . aliens from fleeing prior to . . . their removal proceedings[,]" *Demore v. Kim*, 538 U.S. 510, 527–28, not avoiding removal proceedings altogether by entering without inspection.

87. This Court should therefore hold that petitioner's detention pending appeal in removal proceedings is governed by § 1226(a), entitling him to a bond hearing upon request before an immigration judge.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Issue a Writ of Habeas Corpus ordering respondents to release petitioner immediately, on reasonable conditions of supervision if necessary;

3) In the alternative, conduct a bond hearing or remand to the immigration judge for a 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;

4) Award petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, other statute; and

5) Grant such further relief as the Court deems just and proper.

Dated: 3/12/2026

/s/ Nneka Jackson
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