

1 Robert Pauw, WSBA No. 13613
GIBBS HOUSTON PAUW
2 1000 Second Avenue, Suite 1600
Seattle, WA 98104-1003
3 Phone: (206)682-1080
Fax: (206)689-2270
4 Email: rpauw@ghp-law.net

5 G. Michael Zeno, Jr., WSBA No. 14589
Law Office of G. Michael Zeno, Jr., P.S.
6 135 Lake Street S., Suite 257
Kirkland, WA 98033
7 Phone: (425) 947-8050
Fax: (425) 947-8052
8 Email: mikez@zenolawfirm.com

9
10 UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

12 Vanessa Soto Gimenez,

Petitioner

13 vs.

Case No. 2:260-cv-966

14 Julio HERNANDEZ, Seattle Field Office Acting
Director, Enforcement and Removal Operations, U.S.
15 Immigration and Customs Enforcement;
Bruce SCOTT, Warden, Northwest ICE Processing
16 Center;
Kristi NOEM, Secretary of Department of Homeland
17 Security;
U.S. DEPARTMENT OF HOMELAND SECURITY;
18 Pamela BONDI, United States Attorney General,

19 Respondents

PETITION FOR WRIT OF
HABEAS CORPUS

20
21
22 PETITION FOR WRIT OF HABEAS - 1

Gibbs Houston Pauw
1000 Second Avenue, Suite 1600
Seattle, WA 98104
Ph. (206) 682-1080
Fax. (206) 689-2270

INTRODUCTION

1. Petitioner, Vanessa Soto Gimenez, is a native and citizen of Venezuela. Until her arrest by Immigration and Customs Enforcement (ICE), she had been living in Florida with her two U.S. citizen children, 9 and 7 years old. She is currently in divorce and custody proceedings in Florida against her husband. Her husband is an alcoholic and is physically and emotionally abusive to Ms. Soto and her children.

2. Ms. Soto has never been convicted of a crime. She has never failed to appear for any scheduled immigration hearing. She is eligible for release on bond and there is no legitimate, constitutional reason to deny bond. *Padilla v. ICE*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) (“Due process protects against immigration detention that is not reasonably related to the legitimate purpose of effectuating removal or protecting against danger and flight risk.”); *Lopez v. Decker*, 978 F.3d 842, 857 (2d Cir. 2020) (“[t]he Government ... has no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to his community”). Nevertheless, the immigration judge at the Northwest ICE Processing Center (NWIPC) has, without any lawful reason, denied bond.

3. Ms. Soto seeks an order that she be released from detention immediately.

JURISDICTION

4. This court has jurisdiction pursuant to 28 U.S.C. §2241 (habeas corpus jurisdiction); 28 U.S.C. §1331 (federal question jurisdiction); 28 U.S.C. §2201 (jurisdiction to render declaratory judgments); and 28 U.S.C. §1361 (jurisdiction over actions for mandamus).

1 8. Respondent Julia Hernandez is the Seattle Field Office Acting Director, Enforcement
2 and Removal Operations, U.S. Immigration and Customs Enforcement. She is sued in her
3 official capacity.

4 9. Respondent Bruce Scott is Warden of the Northwest ICE Processing Center in
5 Tacoma, Washington. He is sued in his official capacity.

6 10. Respondent Kristi Noem is the Secretary of the Department of Homeland Security
7 (DHS). DHS is the agency responsible for implementing the Immigration and Nationality Act,
8 and Kristi Noem, as Secretary of DHS, is the person ultimately responsible for custody
9 determinations regarding Petitioner. Respondent Noem is sued in her official capacity.

10 11. The United States Department of Homeland Security is the federal agency
11 responsible for implementing and enforcing the INA, including the detention and removal of
12 noncitizens.

13 12. Respondent Pamela Bondi, United States Attorney General, is the executive officer
14 who has been given authority to manage and control the Executive Office of Immigration
15 Review (EOIR), including the Immigration Judges and the Board of Immigration Appeals (BIA).
16 In addition, the U.S. Attorney General has authority to establish legal and policy guidelines
17 concerning which non-citizens are to be detained for immigration purposes. Respondent Bondi
18 is sued in her official capacity.

19 FACTUAL BACKGROUND

20 13. Vanessa Soto Gimenez is 39 years old, a native and citizen of Venezuela.

21 14. On November 16, 2016, Ms. Soto entered the United States at Miami, Florida on a
22 B-2 visitor's visa. She overstayed her visa.

1 15. On July 20, 2017, Ms. Soto's husband filed an application for asylum (Form I-589).
2 Ms. Soto was listed as a derivative beneficiary on her husband's asylum application. USCIS has
3 granted Ms. Soto employment authorization, valid through May 14, 2029.

4 16. Ms. Soto has lived in Florida since her arrival in the United States. She maintains a
5 stable residence in Florida. She owns and operates her own business.

6 17. Ms. Soto has two U.S. citizen daughters, 9 years old and 7 years old. Until her
7 arrest, Ms. Soto served as the primary caregiver and primary emotional support for her
8 daughters.

9 18. Ms. Soto's brother is a U.S. citizen living in Gainesville, Florida.

10 19. In March 2024, Ms. Soto filed an application for Temporary Protected Status (TPS).
11 On or about November 19, 2025, TPS for Venezuelans was terminated.

12 20. Ms. Soto is in divorce proceedings and custody dispute with her husband. He is
13 alcoholic. He has been physically and emotionally abusive to Ms. Soto and her children. He has
14 beaten Ms. Soto and threatened to kill her. Ms. Soto has been afraid to report the abuse to the
15 police.

16 21. On or about November 30, 2025, Ms. Soto was arrested in Gainesville, Florida on a
17 misdemeanor charge of domestic violence. These charges have been dismissed for lack of
18 evidence. As a result, there is no conviction on Ms. Soto's record.

19 22. On December 3, 2025, when Ms. Soto was released from state custody, ICE arrested
20 her and took her into custody in Orlando, Florida.
21

1 23. On December 15, 2025, DHS commenced removal proceedings against Ms. Soto and
2 issued a Notice to Appear. DHS alleges that Ms. Soto is removable under 8 U.S.C.
3 §1227(a)(1)(B), for having overstayed her nonimmigrant visa.

4 24. On or about December 21, 2025, over her objections, ICE transferred Ms. Soto from
5 custody in Florida to the Northwest ICE Processing Center in Tacoma, Washington (NWIPC).
6 Ms. Soto remains in custody at NWIPC.

7 25. Once jurisdiction vested with the Tacoma Immigration Court, Ms. Soto filed a new
8 application for asylum I-589 in her own name.

9 26. Ms. Soto is currently involved in ongoing family court proceedings concerning the
10 custody and care of her two minor United States citizen children. These proceedings
11 require her continued presence in the United States. If she is not released from custody and is
12 deported to Venezuela, her children may be left with an alcoholic and abusive father. Ms. Soto
13 may never see her children again.

14 27. On January 6, 2026, Immigration Judge Tammy Fitting denied bond. At the time,
15 the domestic violence charge against Ms. Soto was pending in Florida. The IJ did not make a
16 finding that Ms. Soto is a danger to the community or a flight risk, nor would there be any
17 legitimate basis for such a finding. Instead, the IJ denied bond by simply checking a box on a
18 form stating: "Ability to pay considered."

19 28. On January 30, 2026, the domestic violence charge against Ms. Soto was dismissed
20 for lack of evidence.

21 29. On February 3, 2026, Ms. Soto filed a second request for a bond hearing submitting
22 substantial evidence proving that Ms. Soto has never been convicted of any criminal offense,

1 does not have any history of violent conduct, is a loving mother raising her two U.S. citizen
2 children, has strong family and community ties where she lives, and that she has never failed to
3 comply with a requirement that she appear at a hearing for immigration purposes.

4 30. On February 4, 2026, Immigration Judge Tammy Fitting denied bond without a
5 hearing. There was no evidence in the record to support a claim that Ms. Soto is a danger to the
6 community or a flight risk. Nevertheless, IJ Fitting denied bond. The stated reason for denying
7 bond was: "There are no materially changed circumstances."

8 31. On February 20, 2026, Ms. Soto filed a third request for a bond hearing. Ms. Soto
9 submitted substantial evidence proving that she has never been convicted of any criminal
10 offense, does not have any history of violent conduct, is a loving mother raising her two U.S.
11 citizen children, has strong family and community ties where she lives, and that she has never
12 failed to comply with a requirement that she appear at a hearing for immigration purposes.

13 32. On March 4, 2026, a hearing before an immigration judge was held on Ms. Soto's
14 application for asylum. Ms. Soto was unable to contact her husband who might have been able
15 to provide supporting documentation for her asylum application. Her request for a continuance
16 for additional time to obtain documentation was denied. The immigration judge then denied her
17 application for asylum and ordered her removed to Venezuela.

18 33. The next day, March 5, 2026, Immigration Judge Tammy Fitting denied bond
19 without a hearing. There was no evidence in the record to support a claim that Ms. Soto is a
20 danger to the community or a flight risk. Nevertheless, IJ Fitting denied bond. The stated reason
21 for denying bond was: "The respondent's application for asylum, withholding of removal, and
22

1 Convention Against Torture were denied. He [sic] was ordered removed. The court does not
2 find favorable changed circumstances.”

3 34. Ms. Soto has never been convicted of a crime. Ms. Soto is not a danger to the
4 community.

5 35. Ms. Soto has never failed to appear for any immigration appointment, filing
6 obligation, or court appearance. Ms. Soto is not a flight risk.

7 LEGAL FRAMEWORK

8 Substantive Due Process

9 36. “[S]ubstantive due process prevents the government from engaging in conduct that
10 shocks the conscience, or interferes with rights implicit in the concept of ordered liberty.” *United*
11 *States v. Salerno*, 481 U.S. 739, 746 (1987) (cleaned up). “Freedom from bodily restraint has
12 always been at the core of the liberty protected by the Due Process Clause from arbitrary
13 governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80, (1992).

14 37. Civil detention, including detention for immigration purposes, is justified only in
15 certain “special and narrow non-punitive circumstances ... where a special justification, such as
16 harm-threatening mental illness, outweighs the individual’s constitutionally protected interest in
17 avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S.
18 71, 80 (1992) and *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997). In the immigration context,
19 the special justification for detention is two-fold: first, preventing danger to the community; and
20 second, ensuring the appearance of the noncitizen at future immigration proceedings and for
21 removal, if ordered. *Zadvydas*, 533 U.S. at 691. *See also Lopez v. Decker*, 978 F.3d 842, 857

(2d Cir. 2020) (“[t]he Government ... has no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to his community”).

38. “A due process violation occurs when detention becomes punitive rather than regulatory, meaning there is no regulatory purpose that can rationally be assigned to the detention or the detention appears excessive in relation to its regulatory purpose.” *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021). *See also Padilla v. ICE*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023) (“Due process protects against immigration detention that is not reasonably related to the legitimate purpose of effectuating removal or protecting against danger and flight risk.”).

39. If a noncitizen has been previously granted an immigration benefit and is living in the community, and if that person has not committed any criminal offense since being granted such benefit and has not failed to appear for any required immigration appearance, then her detention is not reasonably related to any legitimate purpose and violates the noncitizen’s substantive right to due process.

Procedural Due Process

40. The Due Process Clause of the Fifth Amendment to the U.S. Constitution forbids the government from depriving any person of liberty without due process of law. Procedural due process requires at a minimum notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333–334 (1976).

41. To determine what procedures are constitutionally sufficient, courts must consider: (1) the private interest that is affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value of any

1 additional or alternative procedural safeguards; and (3) the government's interest, including the
2 fiscal and administrative burdens of additional or alternative procedural safeguards. *Mathews v.*
3 *Eldridge*, 424 U.S. at 335.

4 42. As to the first *Mathews* factor: the individual's private interest at stake when DHS
5 detains a person weighs heavily in the petitioner's favor. *See, e.g., United States v. Salerno*, 481
6 U.S. 739, 755 (1987) ("In our society liberty is the norm"); *Foucha v. Louisiana*, 504 U.S. 71, 80
7 (1992) (freedom from imprisonment is at the "core of the liberty protected by the Due Process
8 Clause"); *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("the most elemental of liberty interests
9 [is] the interest in being free from physical detention"); *Rodriguez v. Marin*, 909 F.3d 252, 256
10 (9th Cir. 2018) ("Arbitrary civil detention is not a feature of our American government."); *Lopez*
11 *v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (the interest in being free from detention "is the
12 most significant liberty interest there is").

13 43. A person who has been previously vetted by USCIS and been granted a lawful
14 immigration status – such as Ms. Soto, who was previously granted TPS status and who has been
15 issued a currently valid employment authorization document – has a higher liberty interest than
16 that of the normal ICE detainee. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)
17 (granting a person parole "enables him to do a wide range of things open to persons who have
18 never been convicted of any crime"; "he can be gainfully employed and is free to be with family
19 and friends and to form the other enduring attachments of normal life"). *Cf. Carballo v.*
20 *Andrews*, 2025 U.S. Dist. LEXIS 158839, *12-13 (E.D. Cal. 2025) (in contrast to an immigration
21 detainee with no period of release after a conviction, "a person who has been released from
22

1 physical restraint gains a liberty interest that is valuable and must be seen as within the
2 protection of the Due Process Clause” (cleaned up)).

3 44. As to the second *Mathews* factor: civil immigration detention – which is
4 “nonpunitive in purpose and effect” – is justified only if a noncitizen presents a danger to the
5 community or a flight risk. *Zadvydas*, 533 U.S. at 690; *Padilla v. ICE*, 704 F. Supp. 3d 1163,
6 1172 (W.D. Wash. 2023) (“Due process protects against immigration detention that is not
7 reasonably related to the legitimate purpose of effectuating removal or protecting against danger
8 and flight risk.”). Where a person has been vetted, granted an immigration benefit, and has
9 committed no further criminal offenses and has not failed to appear at any required immigration
10 hearing, the risk of an erroneous deprivation of liberty is high where the person is detained
11 without sufficient procedural safeguards in place to ensure that the justifications for detention –
12 danger to the community and flight risk – are carefully considered. *See, e.g., A.E. v. Andrews*,
13 2025 U.S. Dist. LEXIS 94233, *12 (Report and Recommendation, adopted 2025 U.S. Dist.
14 LEXIS 125244 (E.D. Cal. 7/1/2025) (petitioner taken into custody as an “enforcement priority”;
15 the risk of error was high because “Respondents have provided virtually no procedural
16 safeguards at all”). Where a person who has been previously granted an immigration benefit has
17 not committed any criminal offense and has appeared at all required immigration hearings, there
18 should be a presumption that the person is not a danger to the community or a flight risk and
should be released.

19 45. As to the third *Mathews* factor: where a noncitizen has been previously granted an
20 immigration benefit and has not committed any criminal offense and has appeared at all required
21 immigration hearings, the government’s interest is low. The government does not have a

legitimate interest in taking such a noncitizen into custody without a pre-deprivation hearing. *See, e.g., Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, *7-8 (N.D. Cal. July 4, 2025) (the government’s interest in re-detaining a person released from custody is low where the person “has consistently appeared for her immigration hearings for more than two years and she does not have a criminal record”).

46. Under the *Mathews* analysis, where a noncitizen has been granted an immigration benefit, has complied with all immigration requirements, has appeared at all scheduled immigration hearings, and has not committed any criminal offense, continued detention violates procedural due process and the noncitizen is entitled to an order of immediate release. *See, e.g., Tran v. Bondi*, 2025 U.S. Dist. LEXIS 265787, *19 (W.D. Wash. Dec. 24, 2025) (ordering immediate release; “all three *Mathews* factors favor Petitioner” and thus the “detention of Petitioner with apparently no process at all violates the due process protections afforded to him by the Constitution”); *Khim v. Bondi*, 2025 U.S. Dist. LEXIS 261018, *11 (W.D. Wash. 12/17/2025) (ordering immediate release; “the government’s interest in arresting and detaining a noncitizen without a hearing is low where the noncitizen was already released”); *Jimenez v. Bondi*, 2025 U.S. Dist. LEXIS 253558, *6 (W.D. Wash. 12/3/2025) (ordering immediate release and holding: “[b]ased on ... review of the *Mathews* factors, ... due process requires that Petitioner receive proper notice and an opportunity to respond before he can be re-detained”).

47. Under the circumstances of this case, the government bears the burden of establishing – based on events after Ms. Soto was granted TPS and employment authorization – that Ms. Soto presents a danger to the community or a flight risk. If the government is not able to meet that burden, then Ms. Soto is entitled to immediate release. *See, e.g., Duong v. Kaiser*,

1 800 F.Supp.3d 1030, 1042 (N.D. Cal. 2025) (holding that where a person was previously
2 released, she cannot be detained “except upon a showing of a material change in
3 circumstances”).

4 48. Under the circumstances of this case, in any hearing held by the government to
5 justify Ms. Soto’s continued detention, the government bears the burden of establishing danger
6 to the community or flight risk by clear and convincing evidence. *See, e.g., Singh v. Holder*, 638
7 F.3d 1196, 1203 (9th Cir. 2011) (“Given the substantial liberty interest at stake ... we hold that
8 the government must prove by clear and convincing evidence that an alien is a flight risk or a
9 danger to the community to justify denial of bond”).

10 **Bond Hearings under 8 U.S.C. §1226(a)**

11 49. Before an order of removal becomes final, release decisions generally are governed
12 by 8 USC §1226(a). Guidelines for making bond determinations are drawn from *Matter of*
13 *Patel*, 15 I&N Dec. 666 (BIA 1976) (addressing predecessor statute). According to *Patel*, a
14 noncitizen should not be detained or required to post bond “except on a finding that he is a threat
15 to the national security or that he is a poor bail risk.” *Id.* at 666. *See also Matter of Guerra*, 24
16 I&N Dec. 37, 40 (BIA 2006) (reaffirming the *Patel* guidelines under current statute).

17 50. A noncitizen held under § 1226(a) has the right to request a bond hearing before an
18 immigration judge at any time before a removal order becomes final. *See* 8 C.F.R. §236.1(d)(1),
19 §1003.19. If the noncitizen provides evidence showing that she is not a danger to the community
20 at large or likely to abscond, then the IJ will order release. *Matter of Guerra*, 24 I&N Dec. at 40.
21 *See also Matter of Barreiros*, 10 I&N Dec. 536, 537-538 (BIA 1964). In making the bond
22 decision, the IJ must consider all relevant factors, including the individual’s ties to the United

1 States, employment history, criminal record, history of immigration violations, and manner of
2 entry into this country. *Matter of Guerra*, 24 I&N Dec. at 40. The IJ also decides whether bond
3 or other conditions on the noncitizen's release are appropriate. *Id.* The noncitizen can appeal an
4 adverse decision to the BIA. *See* 8 C.F.R. §236.1(d)(3).

5 51. The essence of due process is the requirement of prior notice of the charges against a
6 person and a fair opportunity to be heard before being finally deprived of liberty or property.

7 *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The Supreme Court has explained:

8 Certain principles have remained relatively immutable in our jurisprudence. One of these
9 is that where governmental action seriously injures an individual, and the reasonableness
of the action depends on fact findings, the evidence used to prove the Government's case
must be disclosed to the individual so that he has an opportunity to show that it is untrue.

10 *Greene v. McElroy*, 360 U.S. 474, 496 (1959). Again:

11 A party is entitled, of course, to know the issues on which decision will turn and to be
12 apprised of the factual material on which the agency relies for decision so that he may
rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that
forecloses an opportunity to offer a contrary presentation.

13 *Bowman Transport v. Arkansas Best Freight Systems*, 419 U.S. 281, 288, n.4 (1974).

14 52. As a matter of fundamental due process, a noncitizen in a bond hearing before an
15 immigration judge under §1226(a) is entitled to the following: (1) written notice of the factual
16 basis for any allegation that the noncitizen is a danger to the community or a flight risk; (2) an
17 opportunity to be heard in person and to present documentary evidence; and (3) if the
18 immigration judge decides to deny bond, a written statement by the immigration judge
19 explaining the reasons why the noncitizen is deemed to be a danger to the community and/or a
20 flight risk. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 489 (1972).

53. Essential to due process is the requirement that an immigration judge actually consider all of the evidence offered and issue a decision explaining the basis for a finding of danger to the community or flight risk. In *Wolff v. McDonnell*, 418 U.S. 562, 558 (1974), the Supreme Court held that when the government terminates parole granted to incarcerated individuals, a written statement of reasons is required as a matter of minimum due process. If the “minimum requirements of procedural due process are to be satisfied,” the adjudicator must provide a written statement “as to the evidence relied upon and the reasons for the disciplinary action taken.” *Wolff v. McDonnell*, 418 U.S. at 563. This requirement “helps to insure that administrators ... will act fairly.” *Id.* at 565. In *Gray Panthers v. Schweiker*, 652 F.2d 146 (D.C. Cir. 1980), the plaintiffs argued that the standardized forms used in denying medicare benefits were cryptic and unhelpful, making it difficult or impossible to present an effective written request for reconsideration. The court held that the use of such form denial letters was constitutionally impermissible, explaining:

It is universally agreed that adequate notice lies at the heart of due process. Unless a person is adequately informed of the reasons for denial of a legal interest, a hearing serves no purpose – and resembles more a scene from Kafka than a constitutional process. Without notice of the specific reasons for denial, a claimant is reduced to guessing what evidence can or should be submitted in response

Id. at 168.

54. If an immigration judge in a bond hearing deems evidence submitted by the noncitizen to be insufficient for release on bond, the immigration judge must explain to the noncitizen that the evidence is deemed insufficient and give the noncitizen an opportunity to respond. *See, e.g., Lizhi Qiu v. Barr*, 944 F.3d 837, 846 (9th Cir. 2019), overruled in part on other grounds *Alam v. Garland*, 11 F.4th 1133, 1136 (9th Cir. 2021) (en banc) (“[o]nly after

1 providing notice and an opportunity to respond could the IJ (1) rule that Petitioner had not met
 2 her burden of proof due to the failure to produce corroborating evidence or (2) rely on that
 3 failure to make an adverse credibility finding”); *Ren v. Holder*, 648 F.3d 1079, 1093 (9th Cir.
 4 2011) (as a matter of due process, if the IJ determines that the documentation submitted is not
 5 sufficient, “the IJ must give the applicant notice of the corroboration that is required and an
 6 opportunity either to produce the requisite corroborative evidence or to explain why that
 7 evidence is not reasonably available”).

8 EXHAUSTION OF ADMINISTRATIVE REMEDIES

9 55. Ms. Soto has no available meaningful administrative remedies that can provide the
 10 relief she seeks. *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541–42 (9th Cir. 2004)
 11 (“Exhaustion of remedies is not required when resort to such remedies would be futile.”).

12 56. In habeas petitions under 28 U.S.C. § 2241, “[t]he exhaustion requirement is
 13 prudential, rather than jurisdictional.” *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).
 14 This Court should waive any exhaustion requirement it deems applicable here.

15 57. Prudential exhaustion may be required where “(1) agency expertise makes agency
 16 consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of
 17 the requirement would encourage the deliberate bypass of the administrative scheme; and (3)
 18 administrative review is likely to allow the agency to correct its own mistakes and to preclude
 19 the need for judicial review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007).

20 58. Even where these factors warrant exhaustion, “there are a number of exceptions to the
 21 general rule requiring exhaustion, covering situations such as where administrative remedies are
 22 inadequate or not efficacious, . . . irreparable injury will result, or the administrative proceedings

1 would be void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). In
2 addition, a court may waive an exhaustion requirement when “requiring resort to the
3 administrative remedy may occasion undue prejudice to subsequent assertion of a court action.”
4 *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), superseded by statute on other grounds as
5 stated in *Booth v. Churner*, 532 U.S. 731, 739–41 (2001). “Such prejudice may result . . . from
6 an unreasonable or indefinite timeframe for administrative action.” *Id.* at 147 (citing cases).

7 59. Here, exhaustion is not warranted, and even if it is, it should be excused.

8 60. First, agency expertise is not necessary to generate a proper record and reach a proper
9 decision. Ms. Soto is not challenging a discretionary decision made by the IJ. Instead, she raises
10 a constitutional claim that she her due process rights have been violated, and “an administrative
11 appellate record is not necessary to resolve the purely legal questions.” *Hernandez v. Sessions*,
12 872 F.3d 976, 989 (9th Cir. 2017). *See also W.T.M. v. Bondi*, 2026 U.S. Dist. LEXIS 21315, *5-
13 6 (W.D. Wash. Jan 30, 2026) (“a constitutional challenge to the adequacy of his bond hearing ...
14 is better suited to review by the federal courts”); *Scott v. Wamsley*, 2025 WL 3514304, at *9-10
15 (W.D. Wash. Dec. 8, 2025) (“agency expertise is unnecessary because the question his claim
16 presents is a question of statutory interpretation and due process, which is the province of the
17 courts”).

18 61. The second *Puga* factor weighs in favor of Ms. Soto. Granting the habeas petition
19 here may help to “provide concrete guidance for future administrative proceedings” as to what is
20 required as a matter of due process in bond hearings. *Rodriguez Vazquez v. Bostock*, 779 F.
21 Supp. 3d 1239, 1251 (W.D. Wash. 2025) (petitioner “seeks resolution of a legal question that
22 will provide concrete guidance for future administrative proceedings”); *W.T.M.*, 2026 WL

1 262583, at *6 (it may promote clarity for the court to resolve “the question of whether a recalled
 2 or inactive bench warrant can ever serve as the sole basis for an IJ’s determination that a
 3 petitioner is a flight risk”). It is improper – and violates due process – for an immigration judge
 4 to find danger to the community or flight risk based solely on the fact that the noncitizen was
 5 arrested for charges that are later dismissed. This Court’s decision may provide guidance for
 6 similarly situated persons in future bond proceedings. Accordingly, this Court’s habeas ruling
 7 may “provide concrete guidance for future administrative proceedings.”

8 62. The final *Puga* factor also weighs in Petitioner’s favor. Here, Ms. Soto alleges
 9 constitutional defects in the IJ’s decision. The Board claims that it has no authority to address
 10 constitutional claims. *See, e.g., Matter of Ramos*, 15 I&N Dec. 671, 675 (BIA 1976) (“we do
 11 not entertain constitutional challenges to the statutes we administer”). Moreover, since January
 12 2025 the Board’s official policy has been to deny bond in every single case that comes before it.
 13 In every reported decision issued by the Board, the Board has reversed IJ decisions granting
 14 bond and held that noncitizens should be held in detention without bond. *See, e.g., Matter of*
 15 *Choc-Tut*, 29 I&N Dec. 48 (BIA Feb. 25, 2025); *Matter of Beltrand-Rodriguez*, 29 I&N Dec. 76
 16 (BIA Mar. 27, 2025); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA May 15, 2025); *Matter of E-Y-F-G-*,
 17 29 I&N Dec. 103 (BIA June 11, 2025); *Matter of C-M-M-*, 29 I&N Dec. 141 (BIA June 13,
 18 2025); *Matter of Mayorga Ipina*, 29 I&N Dec. 110 (BIA June 26, 2025); *Matter of Akhmedov*, 29
 19 I&N Dec. 166 (BIA June 30, 2025); *Matter of Salas Pena*, 29 I&N Dec. 173 (BIA July 31,
 20 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025); *Matter of*
 21 *Dobrotvorskii*, 29 I&N Dec. 211 (BIA Sept. 5, 2025); *Matter of Ghanbari*, 29 I&N Dec. 376
 22 (BIA Oct. 10, 2025); *Matter of Rodriguez Pena*, 29 I&N Dec. 358 (BIA Nov. 6, 2025); *Matter of*

1 Z-N-L-, 29 I&N Dec. 511 (BIA Mar. 12, 2026). There is virtually no chance that the Board will
2 correct the constitutional errors committed by the immigration judge and grant bond. To the
3 contrary, its message to immigration judges is to deny bond in every possible case. *See W.T.M.*
4 *v. Bondi*, 2026 U.S. Dist. LEXIS 21315, *7 (W.D. Wash. Jan. 30, 2026) (“it is unlikely that
5 appeal to the BIA will permit the agency to correct a factual or evidentiary oversight by the IJ”).

6 63. Accordingly, the three *Puga* factors do not support requiring exhaustion.

7 64. Even if the *Puga* factors weigh in favor of prudential exhaustion, waiver is
8 appropriate under *Laing v. Ashcroft*. Requiring Ms. Soto to exhaust an appeal to the BIA will
9 result in irreparable injury. She will be forced to wait for the BIA to issue a decision, and
10 according to data released by the Executive Office for Immigration Review (EOIR), the average
11 processing time for bond appeals in exceeds 200 days. *See Rodriguez Vazquez*, 779 F.Supp.3d at
12 1248-49. Such a delay constitutes prolonged detention. *See Diouf v. Napolitano*, 634 F.3d 1081,
13 1091-92 (9th Cir. 2011) (when a noncitizen “has been detained for approximately six months,” at
14 that point “continuing detention becomes prolonged”). *See also Zadvydas v. Davis*, 533 U.S.
15 678, 701 (“We do have reason to believe, however, that Congress previously doubted the
16 constitutionality of detention for more than six months.”). Thus, courts “routinely” waive
17 prudential exhaustion requirements “for noncitizens ... facing prolonged detention while
18 awaiting administrative appeals.” *Rodriguez Vazquez*, *supra* at 1253-54 (collecting cases).

19 65. Moreover, as Ms. Soto is the primary caregiver for her two U.S. citizen children, and
20 the children are suffering significant emotional distress in the absence of their mother, the
21 continued detention of Ms. Soto pending a BIA appeal that may last for a prolonged period of
22 time causes continued irreparable harm.

1 66. As this Court explained in *Rodriguez Vazquez v. Bostock*, there is a long line of
2 Supreme Court and Ninth Circuit cases “establishing the importance of timely appellate
3 procedures to protect the liberty interests of detainees, particularly in pretrial settings.”
4 *Rodriguez Vazquez v. Bostock*, 802 F. Supp. 3d 1297, 1321 (W.D. Wash. Sept. 30, 2025). This
5 line of cases includes *United States v. Salerno*, 481 U.S. 739, 752 (1987) (upholding the Bail
6 Reform Act in part because of the “immediate appellate review of the detention decision” the
7 Act provides); *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (review of pretrial detention decisions “must
8 be speedy if it is to be effective”); and *United States v. Fernandez-Alfonso*, 813 F.2d 1571,
9 1572–73 (9th Cir. 1987) (holding that a district judge’s failure to consider an appeal of a
10 magistrate judge’s detention order for thirty days violated the Bail Reform Act’s promptness
11 requirement).

12 67. Taking six months or more to issue a custody decision is not “immediate appellate
13 review,” *Salerno*, 481 U.S. at 752, nor is it “speedy” or “effective,” *Stack*, 342 U.S. at 4. Such a
14 delay disregards Ms. Soto’s fundamental interest in liberty. *See, e.g., Rodriguez Vazquez*, 779 F.
15 Supp. 3d at 1253 (petitioner “will not have a meaningful opportunity to show his entitlement to
16 bond . . . if he is forced to wait for BIA review”). *See also Picado v. Hyde*, 2026 U.S. Dist.
17 LEXIS 27155, *13 (D.R.I. Feb. 9, 2026) (petitioner’s loss of liberty is a “severe form of
18 irreparable injury” that is “further compounded due to the considerable amount of time – up to
19 six months, in many cases – it takes for the BIA to decide bond appeals”); *Garcia v. Hyde*, 2025
20 U.S. Dist. LEXIS 253787, *14 (D.R.I. Dec. 3, 2025) (“if he were required to go through a BIA
21 appeal first, it is very likely that he would face further irreparable harm and hardship”);
22 *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961 (N.D. Cal. 2019) (petitioner “would suffer

1 irreparable injury if this Court did not waive the exhaustion requirement”; he “suffers potentially
2 irreparable harm every day that he remains in custody”); *Hechavarria v. Whitaker*, 358 F. Supp.
3 3d 227, 237 (W.D.N.Y. 2019) (“because of delays inherent in the administrative process, BIA
4 review would result in the very harm that the bond hearing was designed to prevent: prolonged
5 detention without due process”).

6 68. In sum, even if the Court concludes the *Puga* factors warrant exhaustion, any
7 exhaustion requirement should be waived because of the irreparable injury Ms. Soto will face
8 due to her loss of liberty during a lengthy BIA appeal.

9 CLAIMS

10 Count I

11 69. Petitioner restates and realleges paragraphs 1 to 68 as if fully set forth herein.

12 70. The Due Process Clause of the Fifth Amendment forbids the government from
13 depriving any person of liberty without due process of law. U.S. Const. amend. V. “Freedom
14 from imprisonment—from government custody, detention, or other forms of physical restraint—
15 lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas*, 533 U.S. at 690.

16 71. Under the Due Process Clause, immigration detention must always “bear[] a
17 reasonable relation to the purpose for which the individual was committed.” *Zadvydas*, 533 U.S.
18 at 690.

19 72. The only legitimate purposes of detention under immigration statutes are preventing
20 danger to the community and ensuring the appearance of aliens at future immigration
21 proceedings. *Zadvydas*, 533 U.S. at 690. Therefore, if a noncitizen is detained under 8 U.S.C.

1 §1226(a), and if there is no evidence in the record that the noncitizen is a danger to the
2 community or a flight risk, her continued detention violates Due Process.

3 73. There is no evidence in the record showing that Ms. Soto is a danger to the
4 community or a flight risk. Accordingly, the continued detention of Ms. Soto violates the Due
5 Process Clause of the Fifth Amendment.

6 **Count II**

7 74. Petitioner restates and realleges paragraphs 1 to 68 as if fully set forth herein.

8 75. As a matter of law, the fact that a noncitizen has been arrested and charged with a
9 criminal offense that is subsequently dismissed does not establish that the noncitizen is either a
10 danger to the community or a flight risk. Accordingly, the immigration judge violated the Due
11 Process Clause of the Fifth Amendment when she denied bond to Ms. Soto based solely on the
12 fact that she was arrested and charged with a criminal offense, even though the charges were
13 subsequently dismissed.

14 **Count III**

15 76. Petitioner restates and realleges paragraphs 1 to 68 as if fully set forth herein.

16 77. As a matter of law, the fact that a noncitizen's application for an immigration benefit
17 has been denied and an immigration judge has ordered removal does not establish that a
18 noncitizen is either a danger to the community or a flight risk. Accordingly, the immigration
19 judge violated the Due Process Clause of the Fifth Amendment when she denied bond based
20 solely on the fact that Ms. Soto's application for an immigration benefit had been denied and she
21 was ordered removed.

Count IV

78. Petitioner restates and realleges paragraphs 1 to 68 as if fully set forth herein.

79. In any bond proceeding under 8 U.S.C. §1226(a), the noncitizen is entitled to certain basic due process rights, including notice of any adverse evidence the immigration judge intends to consider; a meaningful opportunity to respond to such adverse evidence; and, if the immigration judge decides to deny bond, a decision in writing explaining the basis for concluding that the noncitizen is a danger to the community or a flight risk.

80. A noncitizen held in detention under 8 U.S.C. §1226(a) is entitled as a matter of procedural due process to a hearing before an immigration judge at which the immigration judge considers on an individualized basis whether the noncitizen should be granted bond. The immigration judge must consider all relevant evidence in the record and must make a determination based only on that evidence whether the noncitizen is a danger to the community or a flight risk.

81. In any bond proceeding under 8 U.S.C. §1226(a), if the immigration judge deems evidence submitted by the noncitizen to be insufficient to establish that the noncitizen is not a danger to the community or not a flight risk, the noncitizen is entitled as a matter of due process to an explanation by the immigration judge that the evidence is deemed insufficient and entitled as a matter of due process to a meaningful opportunity to respond.

82. In any bond proceeding under 8 U.S.C. §1226(a), if the immigration judge concludes that evidence submitted by the noncitizen to be insufficient to establish that the noncitizen is not a danger to the community or not a flight risk, the noncitizen is entitled to a written decision

1 from the immigration judge explaining the reasons for concluding that the noncitizen is a danger
2 to the community or a flight risk.

3 83. Ms. Soto has never had a bond hearing at which an immigration judge considered all
4 relevant facts and made a lawful determination that she is a danger to the community or a flight
5 risk. Accordingly, the continued detention of Ms. Soto violates the Due Process Clause of the
6 Fifth Amendment.

7
8 REQUEST FOR RELIEF

9 WHEREFORE, Petitioner respectfully requests that this Court:

- 10 (1) Assume jurisdiction over this matter;
- 11 (2) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from
12 custody immediately;
- 13 (3) Order that upon Petitioner's release, Respondents must return to Petitioner any
14 personal property, including personal identification documents (other than a passport)
15 and employment authorization documents;
- 16 (4) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and
17 on any other basis justified under law; and
- 18 (5) Grant such other relief as may be just and appropriate.
- 19
20
21
22

1
2
3 Dated this 21st day of March, 2026 .

4 /s/ Robert Pauw

5 Robert Pauw
6 GIBBS HOUSTON PAUW
7 1000 Second Ave., Suite 1600
8 Seattle, WA 98104
9 (206) 682-1080
10 rpauw@ghp-law.net

11 /s/ G. Michael Zeno, Jr.

12 G. Michael Zeno, Jr.
13 Law Office of G. Michael Zeno, Jr., P.S.
14 135 Lake Street S., Suite 257
15 Kirkland, WA 98033
16 (425) 947-8050
17 mikez@zenolawfirm.com

18 Attorneys for Vanessa Soto Gimenez
19
20
21

VERIFICATION

Robert Pauw, being duly sworn upon oath, hereby states: I represent the Petitioner in these habeas corpus proceedings. I have reviewed the immigration court record in this matter and I have discussed with the Petitioner's immigration attorney the matters alleged in the foregoing Petition. I verify that the information contained in the foregoing Petition is true and correct to the best of my knowledge and belief.

Dated: March 21, 2026

/s/ Robert Pauw