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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 AARON ESTEBAN MARTINEZ-
14 PEREZ,

15 Petitioner,

16 v.

17 CHRISTOPHER LAROSE, Warden at
18 Otay Mesa Detention Center,

19 Respondents.
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Case No: 26-cv-2256-JLS-MSB

**Amended Petition
for a
Writ of Habeas Corpus**

INTRODUCTION

Aaron Esteban Martinez-Perez has been detained by Respondents for more than seven months as he pursued asylum from Guatemala. Yet he has never so much as received a bond hearing. This Court should “join[] the majority of courts across the country in concluding that his unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020). “Courts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable.” *Amado v. United States Dep’t of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). This case is just the latest example.

STATEMENT OF FACTS

Mr. Martinez first applied for asylum in 2022. ECF No. 1 at 2. Following a traffic stop, Respondents detained Mr. Martinez-Perez in September 2025. Ex. A ¶ 1; *see also* ECF No. 1 at 2. Since then, he has not had a bond hearing despite no demonstration that he poses a risk of flight or to anyone’s safety. Ex. A ¶ 2. He meanwhile has diligently pursued his asylum claim. *Id.* ¶ 3; Ex. B.

LEGAL BACKGROUND

I. The Fifth Amendment’s Due Process Clause prohibits prolonged immigration detention without a bond hearing.

This habeas petition presents a question about whether and when the Fifth Amendment’s Due Process Clause countermands the government’s statutory authority to detain immigrants without bond hearings. Mr. Martinez-Perez is detained under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid

documentation.” *Id.* Such immigrants are detained under § 1225(b) not only during their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

In years past, the Ninth Circuit applied the constitutional avoidance canon to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015). But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding that the statute does not entitle detainees to bond hearings or otherwise impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But *Jennings* did not address whether prolonged, mandatory detention without bond hearings violates due process. *Id.* at 312.¹

“In the wake of *Jennings*, district courts have grappled with how to address due process challenges to prolonged mandatory detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. Yet “[n]early all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up) (collecting cases).

These courts have taken their cues largely from *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Court construed a statute to provide that persons detained following a final removal order may not be subjected to indefinite detention. *Id.* at 699. The Court justified its holding by describing the serious due process concerns that indefinite detention would occasion:

A statute permitting indefinite detention of an alien would raise a serious constitutional problem. The Fifth Amendment's Due Process Clause forbids the Government to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of law.’ Freedom from imprisonment—from government custody, detention, or other forms of physical

¹ The Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), also poses no barrier to relief for a detention-based due process claim. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025).

restraint—lies at the heart of the liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this Court has said that government detention violates that Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’ nonpunitive ‘circumstances,’ *Foucha, supra*, at 80, where a special justification, such as harm-threatening mental illness, outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’ *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

Id.

As the Ninth Circuit put it in *Jennings*’ wake, these considerations raise “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). The same concerns have led district courts to conclude that immigrants cannot be detained indefinitely without bond hearings pending their immigration proceedings.

II. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Martinez-Perez would prevail under any standard.

Though courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged, they disagree about how to assess whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D. Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts have “conclude[d] . . . that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019).

1 In that case, Mr. Martinez-Perez would automatically qualify, as he has
2 been detained for more than seven months.

3 Other courts have adopted multifactor tests. *See Sanchez-Rivera*, 2023 WL
4 139801, at *5–6 (surveying different approaches). Courts generally agree that
5 relevant factors include:

6 (1) “the total length of detention to date,”

7 (2) “the likely duration of future detention,” and

8 (3) “the delays in the removal proceedings caused by the petitioner and the
9 government.”

10 *Id.* Some courts also consider:

11 (4) “the conditions of detention,” and

12 (5) “the likelihood that the removal proceedings will result in a different final
13 order.”

14 *Id.*; *but see Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding
15 that the fourth and fifth factors are “not particularly suited to assisting the Court in
16 determining whether detention has become unreasonable and due process requires
17 a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at *5–6 (agreeing with
18 *Lopez*).

19 Mr. Martinez-Perez would prevail under any of those tests.

20 First, the “most important factor,” the length of detention, favors him. *Banda*,
21 385 F. Supp. 3d at 1118. “It is important to bear in mind the context: The detention
22 that is being examined here is the detention of a human being who has never been
23 found to pose a danger to the community or to be likely to flee if released.” *Jamal*
24 *A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts
25 have granted bond hearings for persons detained for as little as six months. As
26 mentioned, above “[c]ourts have found detention over seven months without a bond
27 hearing weighs toward a finding that it is unreasonable.” *Amado*, 2025 WL
28 3079052, at *5; *see also Cabral v. Decker*, 331 F. Supp. 3d 255, 256 (S.D.N.Y.

1 2018).

2 Second, Mr. Martinez-Perez has reason to anticipate significant future
3 detention during his appellate process. He is still pursuing an asylum claim. His
4 next hearing is May 19. Ex. B. If that fails, as many claims do these days, a BIA
5 appeal itself can take months, and afterward, a petitioner may appeal to the Ninth
6 Circuit. *See Banda*, 385 F. Supp. 3d at 1119. All told, “[t]his process may take up
7 to two years or longer.” *Id.* Because “Petitioner’s future detention can last several
8 more months or even years[,]” this factor also favors Mr. Martinez-Perez. *Abdul*
9 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal.
10 Oct. 15, 2025) (Lopez. J.).

11 Third, Mr. Martinez-Perez did not delay his asylum proceedings.

12 Four, Mr. Martinez-Perez’s conditions of confinement also favor a bond
13 hearing. At Otay Mesa Detention Center, detainees are “locked up behind razor
14 wire and concrete walls in a secured facility, forced to wear a color-coded
15 prisoner jump suit, forbidden from accessing the internet, restricted access to
16 outdoor space, restricted on visitation, and guarded at all times with armed guards
17 authorized to inflict punishment for violations of rules.” *Abdul Kadir*, 2025 WL
18 2932654, at *5. Accordingly, “Petitioner’s confinement at OMDC is
19 ‘indistinguishable from penal confinement.’” *Abdul Kadir*, 2025 WL 2932654, at
20 *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

21 Thus, under any test, then, Mr. Martinez-Perez is entitled to a bond hearing.

22 **III. New reports that Respondents are pressuring immigration judges to**
23 **deny bond undermine their neutrality and this Court should grant**
24 **release or maintain jurisdiction over Petitioner’s case.**

25 Given recent news reports on IJ neutrality, this Court should consider
26 alternative remedies, including ordering release outright.

27 An alarming report from The New York Times documents not just how
28 Respondents have purged IJs seen as insufficiently supportive of the President but

1 also discourage those IJs who remain from granting bond. For example, the chief
 2 immigration judge now “receive[s] daily reports about bond rulings.” Nicholas
 3 Nehamas et al., *Immigration Judges Are Purged as Trump Speeds Deportations*,
 4 N.Y. Times, April 12, 2026, at A1.² “Her office has sometimes emailed judges
 5 asking for an explanation about their decisions to grant bond,” while there is no
 6 indication that she seeks explanation for the denial of bond. *Id.*

7 The message is clear. As one IJ told the Times, “the “pressure to deny bond
 8 is overt.” *Id.* That IJ explained that “there was a requirement to inform a
 9 supervisor every time bond was granted, underscoring how closely the
 10 administration was monitoring decisions.” *Id.*

11 Thus, although this Court understandably has resisted finding that IJ’s as a
 12 class are not applying the law faithfully, the evidence continues to mount. Thus,
 13 this Court should consider granting release or holding a bond hearing itself.

14 Alternatively, it should craft an order like Judge Simmons’s procedure in the
 15 *Sandesh* case. *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-
 16 JES (S.D. Cal. March 5, 2026). The specifics of such an order are detailed below.

17 CLAIM AND PRAYER FOR RELIEF

18 Detaining Petitioner Without a Bond Hearing Violates the Fifth 19 Amendment’s Due Process Clause

20 For the reasons just given, the Fifth Amendment Due Process Clause
 21 prohibits the government from continuing to detain Mr. Martinez-Perez without a
 22 bond hearing.

23 Accordingly, Petitioner respectfully requests that this Court order
 24 Mr. Martinez-Perez released or hold a bond hearing itself. Alternatively, it should
 25 order that:

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 27 ² The article is available at
 28 <https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html>

1 (1) Respondents provide Petitioner with a hearing and individualized bond
2 determination within ten days of its order. *Id.*

3 (a) At that hearing, the government shall bear the burden of
4 establishing by clear and convincing evidence that Petitioner poses a
5 danger or flight risk, while further specifying that concerns about
6 interrupting court schedules is not a ground to deny bond. *Id.*

7 (b) The IJ shall consider alternative conditions of release and
8 Petitioner's ability to pay bond if he or she determines bond is
9 appropriate. *Id.*

10 (c) Respondents shall make a complete record of the bond hearing
11 available to Petitioner and his counsel. *Id.*

12 (2) Respondents are ordered to file a Notice of Compliance within five days
13 of providing Petitioner with the bond hearing, including apprising the
14 Court of the results of the hearing. *Id.*

15 (3) Prohibit ICE from invoking the automatic stay provisions under 8 C.F.R.
16 § 1003.19(i)(2) to defeat the IJ's bond determination.

17 Finally, this Court should order all other relief that the Court deems just and
18 proper.
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22 Respectfully submitted,

23 Dated: May 6, 2026

s/ Daniel J. Yadron, Jr.

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