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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LUIS CRUZ-RIVAS,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, JEREMY CASEY, Warden of Imperial Regional Detention Facility,

Respondents.

CASE NO.: 26-cv-2310-BJC-MMP

Amended[1] Petition for Writ of Habeas Corpus

[Civil Immigration Habeas, 28 U.S.C. § 2241]

[1] Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to "amend its pleading once as a matter of course no later than 21 days after serving it." Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Mr. Cruz-Rivas therefore files this amended petition as of right.

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Mr. Cruz-Rivas has been living in this country for over 30 years. He was previously granted Temporary Protective Status from being removed to his native El Salvador. Then, around 2015, he was denied continued TPS status.

Ten months ago, ICE agents in unmarked cars stopped Mr. Cruz-Rivas and arrested him. He was not given notice or an opportunity to contest his detention. For ten months, he has remained detained without a bond hearing.

District courts around the country, including this Court, have repeatedly agreed that a person like Mr. Cruz-Rivas who has lived in the United States for decades, is entitled to a bond hearing under 8 U.S.C. § 1226(a) and is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Singh v. Bondi.*, No. 26-CV-0399-BJC-JLB, 2026 WL 842067, at *1 (S.D. Cal. Feb. 4, 2026); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), including this one, *see Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.).

Moreover, regardless of whether he falls under § 1226(a) (nonmandatory) or § 1225(b)(2)(A) (mandatory), Mr. Cruz-Rivas's detention violates due process, he is entitled to immediate release or, in the alternative, 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) (Battaglia, J.).

Additionally, because of newly emerging evidence that the neutrality of Otay Mesa's immigration judges ("IJ") has been compromised, and some IJs and the Department of Homeland Security ("DHS") have implemented strategies to detain bond-worthy habeas petitioners, a bond hearing before a randomly selected IJ will no longer reliably satisfy due process. This Court should therefore consider the alternative forms of relief set forth at the end of this petition.

STATEMENT OF FACTS

Mr. Cruz Rivas was born in El Salvador. Exh. A, Declaration of Cruz Rivas, at ¶ 1. He entered the US on 1995. *Id.* Around 1999, Mr. Cruz-Rivas was provided TPS from returning to El Salvador. Id. at ¶ 2. Around 2015, he was denied TPS status. *Id.*

More than 10 years after the denial of his TPS status, Mr. Cruz-Rivas was arrested by ICE agents. Around June 28, 2025, while he was in New York on his way to send money to his family in El Salvador, Mr. Cruz-Rivas was stopped by unmarked cars. *Id.* at ¶ 4. The agents arrested him without explanation or an opportunity to contest his detention. *Id.*

For 10 months, he has been detained without a bond hearing. *Id.* at ¶ 7. His case remains pending in immigration court. Exhibit B, EOIR Automated Case Information. Meanwhile, he is detained in jail-like conditions.

LEGAL BACKGROUND

I. Noncitizens who enter without inspection are entitled to a bond hearing under 8 U.S.C. § 1226(a).

A. In *Yajure Hurtado*, the BIA stripped most noncitizens who enter without inspection of the right to seek bond.

This habeas petition turns on the BIA's recent decision in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The issue in *Yajure Hurtado* revolves around two statutes, 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b)(2)(A).

"Section 1226(a) provides for the arrest and detention of noncitizens 'pending a decision on whether the alien is to be removed from the United States.'" *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *3 (N.D. Cal. Sept. 3, 2025). It instructs that the Attorney General "may continue to detain" arrestees or "may release [them] on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." 8 U.S.C. § 1226(a) (punctuation altered). "Federal regulations" implementing this statute "provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. § 1236.1(d)(1)).

Section 1225(b)(2)(A) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for" certain immigration proceedings. 8 U.S.C. § 1225(b)(2)(A). Federal regulations do not prescribe bond hearings for people detained under that section. Instead, "DHS has the sole discretion to temporarily release on parole 'any alien applying for admission to the United States' on a 'case-by-case basis for urgent humanitarian reasons or significant public benefit.'" *Hernandez Nieves*, 2025 WL 2533110, at *3 (quoting 8 U.S.C. § 1182(d)(5)(A)).

By their terms, these statutes apply to different groups of immigrants. "Section 1226(a) sets out the default rule," which governs unless some other, more specific detention provision overrides it. *Rodriguez* 779 F. Supp. 3d at 1246 (cleaned up). Section 1225(b)(2)(A) is more specific, but it applies only to an "applicant for admission" who is also an "alien seeking admission." 8 U.S.C. § 1225(b)(2)(A).

Yajure Hurtado considered which of these provisions—the default rule in § 1226(a) or the mandatory detention provision in § 1225(b)(2)(A)—applies to

immigrants who enter the United States without inspection but live for years in the country's interior. 29 I.&N. Dec. at 216. The respondent in *Yajure Hurtado* had entered without inspection in November 2022, before obtaining Temporary Protected Status ("TPS"). *Id.* at 216–17. He was arrested after his TPS expired in April 2025. *Id.* An immigration judge ("IJ") ruled that he was subject to mandatory detention under § 1225(b)(2)(A). *Id.* at 217.

On appeal to the BIA, the respondent conceded that he was an "applicant for admission" in the meaning of § 1225(b)(2)(A), *id.* at 221, because he had not been legally "admitted"—that is, he had not effected a "lawful entry . . . into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). But he argued that he did not fall within § 1225(b)(2)(A)'s ambit because he was not actively "seeking admission" at the border. 29 I&N Dec. at 221. He had crossed the border and proceeded to the country's interior years ago. *Id.*

The BIA disagreed, holding that only noncitizens who were legally admitted retain bond eligibility. *Id.* at 218, 223. The BIA gave three reasons to support that conclusion.

First, the BIA rejected the distinction between immigrants who are "applicants for admission" and those who are "seeking admission." In the BIA's view, that distinction would leave people like Mr. Yajure Hurtado without any "legal status" and would create a line-drawing problem. *Id.* at 221.

Second, the BIA rejected the argument that interpreting § 1225(b)(2) to cover noncitizens like Mr. Yajure Hurtado renders superfluous much of § 1226(c). Instead, it asserted without explanation that limiting the reach of § 1225(b)(2) would render that provision superfluous. *Id.* at 221–22.

Third, the BIA claimed that the legislative history supported its construction of § 1225, because in enacting IIRIRA, Congress sought to remedy the inequity of the prior statutory scheme, which provided greater procedural and

substantive rights to noncitizens who entered without inspection (and were placed in deportation proceedings) than those who presented themselves to authorities for inspection (and were placed in exclusion proceedings). *Id.* at 223–25. But the BIA did not cite any legislative history specifically addressing detention statutes or custody determinations that would support its interpretation. *Id.*

For these reasons, the BIA concluded that noncitizens who enter without inspection have no right to seek bond from an IJ, regardless of how long they have been residing in the country and irrespective of whether they were apprehended by immigration authorities. *Id.* at 228.

B. Courts disagree with the BIA's reasoning.

Since *Yajure Hurtado* was decided, many immigrants who otherwise would have received bond hearings under § 1226(a) have challenged that decision in the federal courts. Courts broadly agree that the BIA's novel constructions of § 1225(b)(2)(A) and § 1226(a) are not correct.

On the one hand, § 1225(b)(2)(A) is best read to apply to immigrants who are at or near the border or other ports of entry, for at least three reasons.

First, § 1225(b)(2)(A)'s statutory context strongly suggests that it applies only to persons apprehended at or near the border. As the Supreme Court recognized in *Jennings*, § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." 583 U.S. at 297, 287. Throughout its text, the statute refers to "inspections"—a term not defined in the INA but which typically connotes an examination upon or soon after physical entry. 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing"); *id.* § 1225(b)(1)–(2) (referring to "inspections" in their titles); *id.* § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being

1 brought into the United States"). Many statutory provisions, various regulations,
2 and BIA precedent discuss "inspection" in the context of admission processes at
3 ports of entry, further supporting the conclusion that § 1225 has a limited
4 temporal and geographic scope. 8 U.S.C. § 1187(h)(2)(B)(i); 8 U.S.C. § 1225(a);
5 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA
6 2010). Petitioner's interpretation accords

7 *Second*, consistent with the statute's overall focus on the moment of
8 physical entry, § 1225(b)(2)'s plain language limits the statute's reach to persons
9 actively attempting to enter the United States. The statute applies only to those
10 who are *both* "applicants for admission" *and* in the process of "seeking
11 admission." 8 U.S.C. § 1225(b)(2)(A). Because the statute's first clause already
12 limits the provision to "applicants for admission," the phrase "seeking admission"
13 must have a different meaning. Any other reading would constitute "an obvious
14 violation of the rule against surplusage." *Romero*, 2025 WL 2403827, at *10.

15 On its face, the phrase "seeking admission" suggests an active attempt to
16 enter the country. Congress's use of the present and present progressive tenses
17 "necessarily requires some sort of present-tense action," excluding noncitizens in
18 the interior who are no longer in the process of seeking admission to the U.S.
19 *Romero*, 2025 WL 2403827, at *9 (cleaned up); *accord Rosado*, 2025 WL
20 2337099, at *11 (similar); *Lopez Benitez*, 2025 WL 2371588, at *6 (noting the
21 statute's "present-tense active language"). "Realistically speaking," it is hard to
22 accept that the statute's plain language could mean anything else: "[I]f Congress's
23 intention" to detain everyone who entered without inspection "was so clear, why
24 did it take thirty years to notice?" *Romero*, 2025 WL 2403827, at *12.

25 *Third*, the statutory history supports a limited reading of § 1225(b)'s reach.
26 When Congress amended § 1225(b)'s predecessor statute—which authorized
27 detention only of arriving noncitizens—to include individuals who had not been
28 admitted, legislators expressed concerns about recent arrivals to the United States

1 who lacked the documents to remain in the country. H.R. Rep. No. 104-469, pt. 1,
2 at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.).
3 There was no suggestion in the legislative history that Congress intended to
4 subject all people present in the United States after an unlawful entry to
5 mandatory detention and thereby transform immigration detention and sweep
6 millions of noncitizens into § 1225(b).

7 The BIA's contrary reading of the legislative history is not persuasive.
8 True, IIRIRA "altered the typology of immigration *proceedings* to 'place[ ] on
9 equal footing' 'all immigrants who have not been lawfully admitted.'" *Romero*,
10 2025 WL 2403827, at *12 (emphasis added) (quoting *Torres v. Barr*, 976 F.3d
11 918, 928 (9th Cir. 2020)). But that "says nothing about *detention* pending the
12 outcome of those proceedings." *Id.* (emphasis added). All these indicators suggest
13 that § 1225(b)(2)(A) applies only to recent arrivals at the border or ports of entry,
14 not people who have already entered the country.

15 On the other hand, § 1226(a) is best read to apply to some inadmissible
16 persons. It cannot plausibly be the case that all inadmissible persons fall under
17 § 1225(b)(2)(A) and none fall under § 1226(a).

18 *First*, § 1226(a)'s statutory structure makes clear that it reaches some
19 individuals who have not been admitted and have entered without inspection.
20 Section 1226(c) exempts specific categories of noncitizens from the default
21 eligibility to seek release on bond in § 1226(a). "Among the individuals carved
22 out and subject to mandatory detention are certain categories of 'inadmissible'
23 noncitizens." *Rodriguez*, 779 F. Supp. 3d at 1246 (quoting 8 § 1226(c)(1)(A), (D),
24 (E)). The 2025 Laken Riley Act ("LRA") added to that list. "This 'new' category"
25 of persons not eligible for bond "includes those noncitizens who are deemed
26 inadmissible, including for being 'present in the United States without being
27 admitted or paroled,' and who have been arrested, charged with, or convicted of
28 certain crimes." *Rosado*, 2025 WL 2337099, at *9 (citing 8 U.S.C.

§ 1226(c)(1)(E); LRA, Pub. L. No. 119-1). If § 1226(a) did not apply to inadmissible noncitizens, then the longstanding carve outs that refer to inadmissibility and Congress' most recent amendments would all be surplusage. *See Garcia*, 2025 WL 2549431, at *6. The better reading is the Supreme Court's in *Jennings*: that § 1226(a) "applies to aliens already present in the United States." 583 U.S. at 303.

Second, § 1226(a)'s legislative history supports Petitioner's reading. "After passing the IIRIRA, Congress declared the new § 1226(a) 'restates the current provisions in [the predecessor statute] regarding the authority of the Attorney General to arrest, detain, and release on bond' a noncitizen 'who is not lawfully in the United States.'" *Rosado*, 2025 WL 2337099, at *9. Because noncitizens deemed inadmissible "were entitled to discretionary detention under § 1226(a)'s predecessor statute, and Congress declared the statute's scope unchanged by IIRIRA," § 1226(a) must "allow for a discretionary release on bond for" inadmissible noncitizens, too. *Id.*

Thus, the best reading of 8 U.S.C. §§ 1225, 1226 shows that petitioner is eligible for bond. And under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, this Court must independently interpret the meaning and scope of §§ 1225(b), 1226(a) using the traditional tools of statutory construction. 603 U.S. 369, 385, 401 (2024); *see also Rodriguez*, 779 F. Supp. 3d at 1251; *Kostak*, 2025 WL 2472136, at *2 n.29; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 n.9 (D. Mass. July 7, 2025). Because the BIA's decision in *Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 1225, 1226; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, this Court should give it no weight. If anything, the government's "decades of practice" providing bond hearings to those who entered without inspection is a more persuasive guide to the proper outcome here. *Martinez*, 2025 WL 2084238,

at *4.

C. The Ninth Circuit's stay in *Maldonado Bautista* does not prevent this Court from granting relief.

In *Maldonado-Bautista v. DHS*, 25-cv-1873-SSS-BFM (C.D. Cal.), a district judge granted national, class-wide relief to plaintiffs challenging the BIA's interpretation of §§ 1225, 1226. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The Ninth Circuit subsequently stayed the order, "insofar as the district court's judgment extends beyond the Central District of California." *Maldonado Bautista v. DHS*, No. 26-1044, Dkt. No. 5.1 (Mar 6, 2026). The Ninth Circuit left the judgement in place in the Central District. *Id.*

Because of the stay order, the government is no longer required to follow *Maldonado Bautista* in this district. But the stay order does not indicate any opinion on the stay order's merits or prevent this Court from finding in Petitioner's favor. It means only that this Court must do an independent evaluation on the merits. For the reasons given above, that independent evaluation demands relief here.

D. Because an appeal to the BIA would be futile and Mr. Cruz-Rivas faces irreparable harm, exhaustion is not required.

Petitioners raising this argument need not exhaust remedies by appealing to the BIA. "Here, no statute requires exhaustion." *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *5 (D. Mass. Aug. 19, 2025). Rather, "exhaustion here is a prudential requirement." *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025). "[A] court may waive the prudential exhaustion requirement if . . . pursuit of administrative remedies would be a futile gesture [or] irreparable injury will result." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (cleaned up).

"Here, exhausting administrative remedies would be futile because all ICE employees have been directed by DHS' and DOJ's new policy to consider anyone arrested in the United States and charged with being inadmissible under § 1182(a)(6)(A)(i) to be an 'applicant for admission' under § 1225(b)(2)(A) and therefore be subject to mandatory detention." *Garcia v. Noem*, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *5 (S.D. Cal. Sept. 3, 2025) (cleaned up). In June, "DHS issued an internal memorandum, 'in coordination with the Department of Justice (DOJ),' affirming that section 1225 'is the applicable immigration detention authority for all applicants for admission.'" *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *7 (D. Mass. Aug. 19, 2025). "The BIA, as part of the Executive Office for Immigration Review ('EOIR'), operates under DOJ authority," and an appeal here would be "foreclosed by BIA precedent." *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *7 (D. Mass. Aug. 19, 2025).

Furthermore, Petitioner "is likely to experience irreparable harm if he is unable to seek habeas relief until the BIA decides ICE's appeal of the Immigration Judge's order granting his release on bond." *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *6 (D. Mass. Sept. 9, 2025). "According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024." *Id.* If required to complete a BIA appeal, then, Petitioner "is likely to endure several additional months of detention that may be unlawful. Such a prolonged loss of liberty would, in these circumstances, constitute irreparable harm." *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924, at *6 (D. Mass. Sept. 9, 2025).

II. Regardless of whether Mr. Cruz-Rivas falls under mandatory detention or not, the Fifth Amendment's Due Process Clause prohibits his continued 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. Cruz-Rivas 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.* That includes persons who, like Mr. Cruz-Rivas, present themselves for inspection at the border and—rather than producing admission documents—make asylum and other fear-based claims. *See id.* at 1109–11 (describing a similar procedural history and finding that petitioner was detained under § 1225(b)). 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).

This statutory scheme has left courts to grapple with the limits (if any) of that detention power: Does this statute permit the government to detain immigrants indefinitely, without ever having to prove at a bond hearing that they pose a risk of danger or flight? Three Supreme Court cases are potentially relevant to answering that question.

First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite immigration detention raises serious due process concerns. 533 U.S. 678 (2001). *Zadvydas* involved a statute authorizing the government to detain immigrants after they are ordered removed. *Id.* at 683. For immigrants who cannot be removed, that statute had the potential to subject them to years, decades, or a lifetime in custody. *See id.* at 690. The Supreme Court held that if the statue "permit[ed] indefinite detention of an alien[,] [it] would raise a serious constitutional problem," because [t]he 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 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.* Ultimately, however, the Court declined to decide whether a statute permitting indefinite detention would violate the Due Process Clause. Instead, the Court employed the constitutional avoidance canon to read implicit limits into the statute, requiring release after detention became sufficiently prolonged. *Id.* at 699.

Following *Zadvydas*, the Ninth Circuit applied similar reasoning to § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015). Employing the constitutional avoidance canon, the Ninth Circuit held that § 1225(b) implicitly entitled detained immigrants to bond hearings every six months. *Id.*

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 though *Jennings* held that § 1225(b) imposes no statutory limit on the length of detention, it reserved the question of whether prolonged, mandatory detention without bond hearings violates due process. *Id.* at 312.

Finally, the Supreme Court held in *Demore v. Kim* that at least some statutes mandating detention during immigration proceedings do not automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore* addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing

1 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
2 5-4 opinion based on (1) the government interests justifying the detention of
3 immigrants with certain, aggravated criminal convictions, and (2) the relative
4 brevity of detention in most cases, with the vast majority taking only about five
5 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
6 left open the possibility that individual immigrants could be "entitled to an
7 individualized determination as to his risk of flight and dangerousness if the
8 continued detention became unreasonable or unjustified." *Id.* at 532–33.

9 "In the wake of *Jennings*," *Zadvydas*, and *Demore*, "district courts have
10 grappled with how to address due process challenges to prolonged mandatory
11 detention under § 1225(b)." *Banda*, 385 F. Supp. 3d at 1116. But after a full
12 evaluation, "[n]early all district courts that have considered the issue agree that
13 prolonged mandatory detention pending removal proceedings, without a bond
14 hearing, will—at some point—violate the right to due process." *Id.* (cleaned up)
15 (collecting cases). These Courts have relied on the due process concerns
16 recognized in *Zadvydas*. *See, e.g.*, *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385
17 F. Supp. 3d at 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025
18 WL 2932654, at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in
19 *Jennings*' wake, those considerations raise "grave doubts that any statute that
20 allows for arbitrary prolonged detention without any process is constitutional or
21 that those who founded our democracy precisely to protect against the
22 government's arbitrary deprivation of liberty would have thought so." *Rodriguez*
23 *v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

24 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
25 only that the statute itself did not impose any limits on detention. It "did not
26 foreclose as-applied constitutional challenges to detention under" mandatory-
27 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
28 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention

during immigration proceedings does not necessarily or inherently violate the Due Process Clause, particularly when the detention has an expected duration of only about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—like Mr. Cruz-Rivas—do not have criminal convictions. And as Justice Kennedy's concurrence made clear, *Demore* does not prevent immigrants from arguing that sufficiently prolonged detention violates due process in their individual cases. *See id.*[2]

Thus, this Court should hold that sufficiently prolonged detention violates the Due Process Clause, as most courts have. *See, e.g.*, *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

[2] The Supreme Court's later decision in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants' due process rights in deportation proceedings—i.e., the process due when noncitizens seek to stay in the country instead of being removed. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025). It does not purport to hold that immigrants have no constitutional right to due process before the government holds them indefinitely in immigration detention. *Id.*

A. Courts have reached different conclusions about when immigration detention becomes indefinitely prolonged, but Mr. Cruz-Rivas 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). In that case, Mr. Cruz-Rivas would automatically qualify, as he has been detained for well over a year.

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

(1) "the total length of detention to date,"

(2) "the likely duration of future detention," and

(3) "the delays in the removal proceedings caused by the petitioner and the government."

Id. Some courts also consider:

(4) "the conditions of detention," and

(5) "the likelihood that the removal proceedings will result in a different final order."

Id. Other courts have rejected the fourth and fifth factors, holding that they are "not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires a bond hearing." *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*,

2023 WL 139801, at *5–6.[3] Mr. Cruz-Rivas would prevail under any of these factors tests.

First, the "most important factor," the length of detention, favors Mr. Cruz-Rivas. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, "[i]t is important to bear in mind the context: The detention that is being examined here is the detention of a human being who has never been found to pose a danger to the community or to be likely to flee if released." *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With that context, "[c]ourts 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). Mr. Cruz-RIvas has been detained for 10 months. Exh. A at ¶ 6. This factor therefore favors a bond hearing.

Second, Mr. Cruz-Rivas has reason to anticipate significant future detention. After 10 months, his asylum case is still pending and it is unknown when it will be decided by an immigration judge. Exh. A at ¶ 4. The EOIR website indicates that Mr. Cruz-Rivas has an individualized hearing set for May 26, 2026. Exhibit B, EOIR Automated Case Information. Even if there is a negative ruling by the immigration court, Mr. Cruz-Rivas will appeal his case. All told, "[t]his process may take up to two years or longer." *Banda*, 385 F. Supp. 3d at 1119. Because "Petitioner's future detention can last several more months or even years[,]" this factor favors Mr. Ali. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Third, the delay factor favors Mr. Cruz-Rivas. He has not delayed the proceedings. Moreover, Mr. Cruz-Rivas was arrested without notice or

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[3] Courts also disagree about whether to account for any criminal convictions that have led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5–6. But such factors—if appropriate at all—are irrelevant where, as here, the person is not being removed as a result of criminal convictions.

opportunity to contest. He was taken far from his family and resources, making it even more difficult for him to defend his case.

Fourth, Mr. Cruz-Rivas's conditions of confinement weigh in favor of a bond hearing, because "Petitioner's confinement at [Imperial Detention Center] is 'indistinguishable from penal confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

The fifth factor does not apply, because Mr. Cruz-Rivas's asylum claim is still pending and thus no "different" outcome can occur.

Under any test, then, Mr. Cruz Rivas is entitled to a bond hearing.

III. Because immigration judges' neutrality has been compromised, this Court must order outright release, or at least put in place additional safeguards.

In a perfect world, this Court could remedy the due process violation by ordering a bond hearing before a neutral immigration judge ("IJ"), allowing the IJ to determine whether Mr. Cruz-Rivas posed a risk of danger or flight. Unfortunately, attacks on IJ independence under the current administration have severely compromised IJs' neutrality. As a result, there is a serious risk that an IJ will order Mr. Cruz-Rivas's continued detention even if he poses no danger or flight risk. Several data points support that conclusion.

Most importantly, reports are streaming in from this district and elsewhere that court-ordered "bond hearings [are], effectively, stacked against detainees from the start." Kyle Cheney, *How ICE Defies Judges' Orders to Release Detainees, Step by Step*, Politico (Feb. 10, 2026), https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727.

In *Yin v. Moldanado*, a court expressed consternation at an IJ's "conclusory, two-line determination of flight risk" for a person whom DHS had previously agreed "to release . . . on his own recognizance" and who "attend[ed]

1 [all] immigration check-ins" during his release. No. 26-CV-0103 (PKC), 2026
2 WL 295389, at *3 (E.D.N.Y. Feb. 4, 2026).
3 In *Said v. Noem*, a court ordered a bond hearing for a habeas petitioner,
4 only to learn that "[t]he IJ denied Petitioner the opportunity to present testimony,
5 declined to consider the sworn, documentary evidence submitted by Petitioner,
6 and based his decision on an uncorroborated, unauthenticated claim by a
7 government official that Petitioner failed to share his location for the ISAP." No.
8 3:25-CV-938-MOC, 2026 WL 295651, at *5 (W.D.N.C. Feb. 4, 2026). The
9 original habeas "Order presupposed that this hearing would be conducted in
10 accordance with Petitioner's due process rights," the court wrote. "It was not." *Id.*
11 And in *Picado v. Hyde*, a district judge ordered outright release after two
12 deficient bond hearings. No. 26-CV-065-JJM-PAS, 2026 WL 352691, at *7
13 (D.R.I. Feb. 9, 2026). The IJ in the second hearing had deemed the immigrant a
14 danger to the community based on an uncorroborated police report accusing him
15 of driving 90 mph in a 55-mph zone. *Id.*
16 In a recently filed declaration, local attorney Edward Perez attests that he
17 has similar concerns about some immigration judges at Otay Mesa. In his
18 experience, some Otay Mesa IJs are resistant to implementing habeas orders
19 requiring bond hearings. *Elsayed v. Noem*, Case No. 26-cv-368, Dkt. 5-2 at ¶ 7
20 (S.D. Cal. Feb. 9, 2026). These IJs have begun denying bond on the ground that
21 court hearings are coming up, and release would disrupt the hearing schedule. *Id.*
22 Of course, that logic could justify any asylum seeker's detention, and it has
23 nothing to do with danger or flight. *Id.* Furthermore, the Department of Homeland
24 Security ("DHS") has started appealing bonds to take advantage of the automatic
25 stay. *Id.* Both of these strategies ensure that even those who pose no risk of
26 danger or flight will stay in detention. *Id.*
27 He is far from the only one to express concerns. In a declaration filed in
28 *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb.

4, 2026), Former ICE Counsel Jorge Artieda attests to seeing "a seismic shift in bond hearing outcomes for individuals who had been granted federal habeas relief and ordered § 1226(a) bond hearings . . . in the Eastern District of Virginia." Exh. B at 2. The pattern of granting bond in appropriate cases "abruptly and uniformly ceased" in early January, in a way that "suggests coordinated institutional direction." *Id.* IJs there now rely on a "remarkably narrow and predictable set of rationales to deny bond—rationales that appear to bear little relationship to genuine individualized risk assessment and that would not have been deemed sufficient to justify denial just weeks earlier." *Id.* at 3. In Mr. Artieda's professional opinion, the IJs' rationales "do not appear to be grounded in legitimate risk assessment" but are "pretexts designed to ensure denial of bond regardless of the individual facts of each case." *Id.* at 4.

Mr. Artieda further attests that to having "communicated with numerous immigration attorneys practicing all over the United States who handle detention cases." *Id.* at 5. "These conversations have confirmed that the pattern [he] ha[s] observed is widespread and consistent." *Id.* Based on these conversations, Mr. Artieda believes that these bond denials are part of a "coordinated institutional effort." *Id.* at 6. That coordinated effort supports outright release or, at a minimum, additional scrutiny from this Court.

These trends are consistent with sustained attacks on IJs' independence under this administration. Several examples illustrate the point.

First, the Trump administration has eliminated 128 IJs insufficiently aligned with the administration's priorities, illustrating to the remaining IJs the cost of resistance. *See* Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo (Sept. 20, 2025), https://www.donga.com/en/article/all/20250920/5859412/1.

These IJs are under no illusions about why they were let go. Former Baltimore IJ Emmett Soper stated: "I think the current administration of the

immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that they see the immigration courts as a tool for this administration to advance its policy objectives." Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour (Nov. 12, 2025), https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog. Former San Francisco IJ Jeremiah Johnson similarly understood "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially." Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area (Nov. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/. Former San Francisco IJ George Pappas was even more direct: "We were told to facilitate deportation… Due process is dead in immigration courts." Isabela Dias, *"Fired for No Reason": Former Immigration Judges Speak Out Against Trump's Assault on the Courts*, Mother Jones (Oct. 9, 2025), https://www.motherjones.com/politics/2025/10/immigration-court-judge-trump-assault-purge-dhs-ice/.

This has had the predictable effect on those who remain. According to former San Francisco IJ Elizabeth Young, "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'" Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside. Meanwhile, Department of Justice recruitment materials seek "deportation judges" to fill the empty IJ slots, Coral Murphy Marcos, *US Justice Department Recruiting Legal Experts to Serve as 'Deportation' Judges,* Guardian, https://www.theguardian.com/us-news/2025/nov/21/us-justice-department-ad-deportation-judges, inviting

candidates to "bring the hammer down on criminal illegal aliens" and "defend your communities, your culture, your very way of life." dhsgov, Instagram (Nov. 21, 2025), https://www.instagram.com/p/DRVT8DmCQKD/?hl=en.

Second, a parallel purge occurred at the BIA, which was reduced from 28 members to 15 members. All Biden appointees on the BIA were fired. Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025), https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/. The statistical impact is stark. As of January 22, 2026, the reconstituted BIA has issued 71 published decisions. Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep't of Just. (Jan. 21, 2025), https://www.justice.gov/eoir/volume-29. Of those, 69 decisions (97%) favored the administration. By contrast, during the entire four-year span of the prior administration, the BIA issued 76 published decisions. Exec. Off. for Immigr. Rev., *Volume 28*, U.S. Dep't of Just. (June 13, 2025), https://www.justice.gov/eoir/volume-28. (First decision, *Matter of DIKHTYAR*, 28 I&N Dec. 214 (BIA 2021), issued 01/22/2021). Of those, 46 decisions (60%) favored the administration. The transformation from 60% to 97% pro-government outcomes—achieved through wholesale termination of one administration's appointees —speaks for itself.

Third, beyond personnel changes, EOIR's new acting director, Sirce E. Owen, has issued "a string of sharply worded policy memos" encouraging IJs to side with the government over immigrants and minimize due process. E. Tammy Kim, *Inside Donald Trump's Attack on Immigration Courts*, New Yorker, https://www.newyorker.com/inside-donald-trumps-attack-on-immigration-court. The policy directives include: a memorandum dated June 27, 2025 warning judges not to demonstrate "bias directed against DHS" or to be "adjudicatory outliers," at risk of "close examination and potential action," Exec. Off. for

Immigr. Rev., Policy Memorandum 25-33, Neutrality and Impartiality in Immigration Court Proceedings (June 27, 2025), https://iptp-production.s3.amazonaws.com/media/documents/2025.06.27_EOIR_-_PM_25-33.pdf; a memorandum encouraging judges to deny asylum applications without full evidentiary hearings, styled as efficiency guidance but functioning as a directive to reduce due process protections, Exec. Off. for Immigr. Rev., Policy Memorandum 25-28, Pretermission of Legally Insufficient Application for Asylum (Apr. 11, 2025), https://www.justice.gov/eoir/media/1396411/dl?inline; and memoranda restricting immigration judges' ability to grant continuances, Exec. Off. for Immigr. Rev., Policy Memorandum 25-27, Cancellation of Director's Memorandum 23-01 and Reinstatement of Policy Memorandum 19-13 (Mar. 21, 2025), https://www.justice.gov/eoir/media/1394086/dl, and administrative closure, Exec. Off. for Immigr. Rev., Policy Memorandum 25-29, Cancellation of Director's Memorandum 22-03 (Apr. 18, 2025), https://www.justice.gov/eoir/media/1397161/dl?inline.

Fourth, EOIR personnel have at times directed IJs to ignore federal court orders related to bond hearings. On January 13, 2026, in the wake of *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025), Chief Immigration Judge Teresa L. Riley sent all IJs the following instructions:

> Please provide the following guidance to all immigration judges forthwith: Maldonado Bautista is not a nationwide injunction and does not purport to vacate, stay, or enjoin Yajure Hurtado. Therefore Yajure Hurtado remains binding precedent on agency adjudications. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationships without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party. Thank you for your

attention to this matter.

Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on *Maldonado Bautista*, AILA Doc. No. 26011404 (Jan. 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista. A few days later, Judge Sykes issued a scathing order, calling out "Respondents' deliberate choice to continue defying the final judgment entered in *Bautista*." *Palomera Baltazar v. Janecka,* No. 5:26-cv-00019-SSS-BFM at *2–3 (C.D. Cal. Jan. 16, 2026). IJs' resistance to granting bond therefore accords with the larger movement to eliminate or silence IJs who side with immigrants, while bringing those that remain into line with the administration's priorities.

The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

CLAIM AND PRAYER FOR RELIEF

Here, because ordering a bond hearing before a randomly selected IJ would not properly redress the constitutional violations present in this matter, Petitioner urges the court to provide an alternative corrective measure. That might include outright release. *See, e.g.*, Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026); *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026). Or it could mean holding a bond hearing in district court. *See, e.g., L.G.M. v. LaRocco*, 788 F.

1 Supp. 3d 401, 405–07 (E.D.N.Y. 2025).

2 A third option would be to craft an order like the one in the *Sandesh* case.
3 *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal.
4 March 5, 2026). Specifically, the Court should order:

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

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

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

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

17 2. Respondents are ordered to file a Notice of Compliance within **five**
18 **days** of providing Petitioner with the bond hearing, including
19 apprising the Court of the results of the hearing. *Id.*

20 3. Prohibit ICE from invoking the automatic stay provisions under
21 8 C.F.R. § 1003.19(i)(2) to defeat the IJ's bond determination.

22 4. Finally, this Court should order all other relief that the Court deems
23 just and proper.

24 Respectfully submitted,

25

26 Dated: April 27, 2026 *s/ Zandra Luz Lopez*

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