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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO COUNTY DIVISION

Sofonias Alfaro Reyes

Petitioner.

v.

Christopher J. LaRose, Warden of Otay Mesa Detention Center; **Orestes Cruz,** Director of San Francisco U.S. Immigration and Customs Enforcement Field Office; U.S. Immigration and Customs Enforcement; **Markwayne Mullin,** Secretary of the U.S. Department of Homeland Security; U.S. Department of Homeland Security (DHS); **Todd Blanche,** Attorney General of the United States, and **Todd Lyons**, Director of Immigration and Customs Enforcement; in their official capacities.

Respondents.

Case No. **'26CV2460 RBM AHG**

PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT REQUESTED

INTRODUCTION

Petitioner, Sofonias Alfaro Reyes (Mr. Alfaro Reyes) is a citizen of Honduras who Respondents have detained at the Otay Mesa Detention Center since February 17, 2026. Mr. Alfaro Reyes has a pending removal proceedings case and pending applications for cancellation of removal for certain non-permanent residents (EOIR-42B) and asylum. Moreover, his detention is no longer reasonably related to its statutory purpose. Additionally, Mr. Alfaro Reyes was unlawfully denied bond because of the Respondents' failure to properly interpret and apply the Immigration and Nationality Act (INA). Because he is likely to face many additional months in detention, he seeks relief from this Court that would allow him to challenge his continuing, lengthy and unconstitutional detention.

JURISDICTION

1. Petitioner is in the physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). He is detained at the Otay Mesa Detention Center in Otay Mesa, California and is under the direct control of Respondents and their agents.

2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

3. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause).

4. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writes Act, 28 U.S.C. § 1651.

5. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§

1252(b)(9), (f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to prolonged immigration detention).

VENUE

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

7. Venue is also properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies in the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of California.

PARTIES

8. Petitioner is a citizen of Honduras who arrived to the United States in 2006. He has been in custody of the Department of Homeland Security (DHS) since February 17, 2026. Since that time, he has sought relief from removal in his immigration court case and is currently scheduled for a master hearing for May 27, 2026.

9. Respondent Orestes Cruz is the Director of the San Francisco U.S. Immigration and Customs Enforcement Field Office. As such, Mr. Orestes is Petitioner's immediate custodian. He is named in his official capacity.

10. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement, and he has authority over the actions of ICE in general. Respondent

Lyons is a legal custodian of Petitioner.

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

12. Respondent Todd Blanche is the acting Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

13. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center, where Petitioner is detained. As such, Mr. LaRose is Petitioner's immediate custodian. He is named in his official capacity.

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

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

FACTUAL ALLEGATIONS

16. Petitioner, Sofonias Alfaro Reyes, is a 39-year-old native and citizen of Honduras who has resided continuously in the United States since 2006. He was placed in removal proceedings by the issuance of a Notice to Appear ("NTA") dated March

8, 2010. Said NTA charged Petitioner with removal pursuant to INA § 212(a)(6)(A)(i), as an alien who entered the U.S. without inspection or parole. In addition, said NTA did not specify the time, date or location of Petitioner's first removal hearing. Instead, the document stated "to be set" in the place of this information.

17. In response to his proceedings, Mr. Alfaro Reyes filed an application for protection under the United Nations Convention Against Torture ("CAT"). At in individual hearing held on November 27, 2017, he testified in support of his application.
18. Following all testimony, the Immigration Judge issued her decision to deny Petitioner's Convention Against Torture application and order him removed to Honduras.
19. Mr. Alfaro Reyes married his U.S. Citizen wife on June 9, 2021.
20. Based on his marriage and defective Notice to Appear, Mr. Alfaro Reyes filed a motion to reopen his removal case in order to apply for cancellation of removal for certain non-permanent residents (EOIR-42B). Said motion was granted on February 24, 2022 by the Board of Immigration Appeals. (See attached).
21. Mr. Alfaro Reyes' wife later filed an I-130 family petition for him on September 9, 2022 with USCIS.
22. Based on this pending petition, EOIR administratively closed Mr. Alfaro Reyes' removal case so he may file an I-601A waiver after the approval of his I-130 petition.
23. However, Mr. Alfaro Reyes' removal case was recalendared in 2025 through a

DHS motion.

24. Mr. Alfaro Reyes was later scheduled for a final individual hearing in the San Francisco Immigration Court for June 11, 2029.

25. On February 17, 2026, Mr. Alfaro Reyes was stopped at a traffic check point by Immigration officers and detained. No reason was given for his detention and no criminal charges or allegations were ever expressed by immigration authorities.

26. Mr. Alfaro Reyes was subsequently transferred to the Otay Mesa Detention Center where he remains to this day.

27. Mr. Alfaro Reyes requested a bond hearing in the Otay Mesa Immigration Court on April 7, 2026.

28. However, the Immigration Judge denied his request citing a lack of jurisdiction. (See attached). No alternative findings were made.

29. Since his entry into the U.S. in 2006 and the initiation of his removal case in 2010, Mr. Alfaro Reyes has appeared for all his court hearings and has complied with all requirements given to him by I.C.E. and E.R.O. He has absolutely no criminal history in the United States or elsewhere. He has been working in the U.S., paying taxes, supporting his U.S. Citizen wife who suffers from various medical conditions and has been in general a productive and positive member of his community.

30. Both Mr. Alfaro Reyes and his wife have suffered severe psychological trauma due to his detention. I.C.E. has not given any reason why they detained him in February of 2026. Petitioner has never committed a crime, been charged with a crime nor has he shown any indication he is a danger to the community or flight

risk. His wife needs Petitioner for emotional and financial support due in large part to her various medical conditions. (See medical documents attached).

31. Petitioner has had a legal process pending with Immigration since 2010 and currently has a pending I-130 petition with USCIS that, if approved, will allow him to apply for lawful permanent residence through his U.S. Citizen wife.

32. Petitioner has been deprived of liberty since his warrantless seizure, despite his pending removal case and absence of any criminal or immigration-law violation that would justify detention or removal. His continued custody exceeds the government's lawful authority under 8 U.S.C. § 1231 and related provisions.

LEGAL FRAMEWORK

33. The Due Process Clause of the Fifth Amendment provides Petitioner with important protections regarding his detention. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

34. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).

35. The INA also provides for mandatory detention for noncitizens in expedited removal proceedings, 8 U.S.C. § 1225(b)(1), and detention for noncitizens whose immigration cases are completed, id. § 1231(a)(6). *See Banda v. McAleenan*, 385 F. Supp. 3d 1099,

1111-13 (W.D. Wash. 2019) (providing overview of INA's detention authorities.

36. Since the Supreme Court's *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision, the Ninth Circuit has expressed "grave doubt" 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).

37. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

38. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.; Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based on any other justification.

39. As a result, where the government detains a noncitizen for a prolonged period or where the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); cf. *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent*

Inst., 407 U.S. 245, 249- 50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

40. Courts have found that automatic detention pending appeal "after a judicial officer has determined that release [] is appropriate," where the government has made no "showing of dangerousness or flight risk," "renders the continued detention arbitrary" and "raises a substantial Fifth Amendment claim." *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D. Minn. 2025). Whilst this case is in the context of the automated stay of bond on appeal, the same reasoning applies here: "... no special justification exists that outweighs the individual's constitutionally protected interest in avoiding physical restraint . . ." *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004).

41. Courts that apply a reasonableness test have considered three main factors in determining whether prolonged detention is reasonable. First, courts have evaluated whether the noncitizen has raised a "good faith" challenge to removal—that is, the challenge is "legitimately raised" and presents "real issues." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Second, reasonableness is a "function of the length of the detention," with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-78; *accord Sopo*, 825 F.3d at 1217-18. Third, courts consider the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention unreasonable after ninth months of detention, when the parties could "have reasonably predicted that Chavez-Alvarez's appeal would take a substantial amount of time, making his already lengthy detention considerably longer");

Sopo, 825 F.3d at 128; *Reid*, 819 F.3d at 500.

42. Due process also requires certain minimal procedures at bond hearings. First, the government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen's ability to pay a bond when determining the appropriate conditions of release.

43. To justify immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof at least by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where the detainee was afforded a "full-blown adversary hearing," requiring "clear and convincing evidence" before a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee); see also *Padilla v. Immigration & Customs Enf't*, 379 F. Supp. 3d 1170 (W.D. Wash. 2019) (requiring the government to bear the burden of proof for class members who receive bond hearings after being found to have a credible fear of persecution or torture); *Banda v. McAleenan*, 385 F. Supp. 3d 1120-21 (in case of arriving asylum seeker, government must bear burden of proof to justify continued detention after noncitizen had been

detained for more than 18 months).

44. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

45. First, incarceration deprives noncitizens of a "profound" liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; *see also Foucha*, 504 U.S. at 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

46. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See infra* ¶ 66.

47. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

48. In light of these considerations, "[t]he overwhelming majority of courts to consider

the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).

49. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. His interest in liberty and family unity is paramount; the Government's blanket detention policy under *Yajure Hurtado* creates an extreme risk of erroneous deprivation by denying her any opportunity to demonstrate eligibility for release; and the Government's interest in ensuring appearance can be served by far less restrictive means. Accordingly, due process requires an individualized bond hearing under § 1226(a).

50. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

51. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires "consideration of financial circumstances and alternative conditions of release" to prevent against detention based on poverty. *Id.*

52. Evidence about immigration detention and the adjudication of removal cases provide further support for the due process right to a bond hearing in cases of prolonged detention.

53. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: "the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-Alvarez*, 783 F.3d at 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. "And in some cases[,] the conditions of their confinement are inappropriately poor." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one

detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

54. These conditions and obstacles only further underscore the serious due process concerns that prolonged immigration detention pose for noncitizens like the Petitioner and reflect the need for a decision before a neutral decisionmaker regarding continued detention.

55. Here, the Respondents can neither show that the continued detention of Mr. Alfaro Reyes following his detention is reasonably related to the original purpose and the *Mathews* tests are satisfied.

56. Full removal proceedings under 8 U.S.C. § 1229a are "the standard mechanism for removing inadmissible noncitizens." *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 WL 2494908, at *2 (D.D.C. Aug. 29, 2025); *see also Dep't of Homeland Sec v. Thuraissigiam*, 591 U.S. 103, 108 (2020) ("The usual removal process involves an evidentiary hearing before an immigration judge, and at that hearing an alien may attempt to show that he or she should not be removed."). These proceedings are initiated by serving the noncitizen with a Form I-862 "notice to appear" in immigration court. 8 U.S.C. § 1229(a)(1).

57. Full removal proceedings "take place before an [immigration judge ("IJ")], an employee of the Department of Justice (DOJ) who must be a licensed attorney and has a duty to develop the record in cases before them." *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), — F.Supp.3d ——, ——, 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025) (citing 8 U.S.C. § 1229a(a)(1), (b)(1)).

58. In full removal proceedings, noncitizens have rights to hire counsel, to a reasonable opportunity to examine evidence against them, to present evidence on their own

behalf, and to cross-examine any government witnesses. 8 U.S.C. § 1229a(b)(4)(A)–(B). "[D]ue to the built in procedures," full removal proceedings "typically take[ ] place over the course of multiple hearings," which "allows time for noncitizens to both gather evidence in support of petitions for relief available in immigration court ... and seek collateral relief from other components of [the Department of Homeland Security ("DHS")]." *Coal. for Humane Immigrant Rts.*, — F.Supp.3d at ——, 2025 WL 2192986, at *3.

59. Accordingly, "[w]hen a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination." *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). If the detainee disagrees with the officer's determination, they "may request a bond hearing before an IJ at any time before a removal order becomes final." *Id.* at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). The procedural posture progresses and the detainee must then "establish to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Hernandez v. Sessions,* 872 F.3d 976, 982 (9th Cir. 2017) (quoting *In re Guerra,* 24 I. & N. Dec. 37, 38 (B.I.A. 2006)). Appeal on an adverse decision is available with the BIA. *Id.* at 983 (citing § 236.1(d)(3)).

60. By contrast, expedited removal proceedings are a "more streamlined ... form of proceeding applicable only to certain noncitizens," whereby removal orders are "usually issued within a few days, if not hours." *Id.* (citation omitted). In expedited removal proceedings, the initial fact finder is an immigration officer, not an IJ. 8 C.F.R. § 235.3(b)(2)(i). The immigration officer asks the noncitizen a series of

questions regarding (1) their "identity, alienage, and inadmissibility," and (2) their "intention to apply for asylum" or potential fear of persecution, torture, or return to their country. *Id.* at § 235.3(b)(2)(i), (b)(4). During this questioning, noncitizens do not have a right to counsel. *Id.* at § 235.3(b)(2)(i). If the immigration officer determines that the noncitizen is inadmissible under §1182(a)(6)(C) or 1182(a)(7), "the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 ... or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

61. 8 U.S.C. § 1225 enumerates the procedures allowing the government to detain (mandatory detention) certain "applicants for admission." Under § 1225, an "applicant for admission" is a noncitizen "present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1).

62. INA § 1225(b)(1) authorizes expedited removal for certain "applicants for admission" in two categories. First, noncitizens "arriving in the United States" that are determined by an immigration officer to be inadmissible due to misrepresentation or failure to meet documents requirements. *Id.* at § 1225(b)(1)(A)(i); *see also id.* at § 1182(a)(6)(C), (a)(7).

63. Second, noncitizens that (a) are inadmissible because of misrepresentation or failure to meet documents requirements; (b) have not "been admitted or paroled into the United States"; (c) have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"; and (d) have been designated by the Attorney General for

expedited removal. *Id.* at § 1225(b)(1)(A)(iii).

64. 8 U.S.C. § 1226 "provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022). The provision "distinguishes between two different categories" of noncitizens. *Jennings*, 583 U.S.

65. These two categories of noncitizens subject to § 1225(b)(1) are subject to mandatory detention "until certain proceedings have concluded." *Jennings*, 583 U.S. at 297. Individuals that fall into § 1225(b)(1) are "normally ordered removed 'without further hearing or review' pursuant to an expedited removal process" unless claiming asylum or a fear of persecution. *Jennings,* 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing § 1225(b)(1)(A)(ii).

66. Noncitizens who are "seeking admission" and not covered by the expedited removal provisions in § 1225(b)(1) are subject to § 1225(b)(2). *See id.* At 287. This category would include, for example, noncitizens who are arriving in the United States, seek admission, and are inadmissible for some reason other than misrepresentation or failure to meet documents requirements. *See* 8 U.S.C. § 1182(a)(2)–(3). Subject to limited exceptions, the § provides that such noncitizens "shall be detained" for full removal proceedings under § 1229a "if the examining immigration officer determines" that the noncitizen "is not clearly and beyond a doubt entitled to be admitted." *Id.* at § 1225(b)(2)(A).

67. Under § 1226(a), the "default rule," *id.*, a noncitizen "may be arrested and detained" "[o]n a warrant issued by the Attorney General" if their removal proceedings are pending, 8 U.S.C. § 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the

noncitizen was not charged with, arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the government has discretion to release them on "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or ... conditional parole." *Id.* at § 1226(a)(2)(A)–(B).

68. Until this year, DHS has applied § 1226(a) and its discretionary release and review of detention "to the vast majority of noncitizens allegedly in this country without valid documentation"—a practice codified by regulation. *Salcedo Aceros,* 2025 WL 2737503, at *3.

69. The Government now contends that mandatory detention under § 1225 is the appropriate detention authority for noncitizens, such as petitioner, who have not been admitted or paroled. *See Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

70. In recent weeks, several district courts have held that the Government's new, and more expansive interpretation of mandatory detention under the INA is either incorrect or likely incorrect on the basis that this reading of the statute would render 1226(c) inoperable or moot. *See*, e.g., *Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025).

EXHAUSTION

71. Mr. Alfaro Reyes requested a bond hearing with the Otay Immigration Court on April 7, 2026.

72. However, the Court denied his request in a decision dated April 10, 2026, citing lack

of jurisdiction.

73. Petitioner argues any appeal to the BIA would be futile considering a September 5, 2025 BIA decision where the BIA adopted DHS' interpretation of the INA as mandating detention without bond for millions of noncitizens who reside in the U.S. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA's decision held that immigration judges lack jurisdiction to hold bond hearings or grant bond to all individuals charged with entering the country without inspection. *Id.*

74. The Court should find administrative exhaustion would be futile. *See Vasquez- Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) ("where the agency's position appears already set and recourse to administrative remedies is very likely futile, exhaustion is not required."). BIA decisions are binding on immigration judges, and *Hurtado* thus precludes an IJ from finding jurisdiction over noncitizens like petitioner to hold a custody redetermination hearing. Therefore, judicial intervention enjoining Respondents from preventing petitioner from having a bond hearing pursuant to the holding in *Hurtado* is necessary to enable petitioner to avail herself of her administrative remedies.

75. Therefore, the Court should consider the merits of the Petition.

CLAIM FOR RELIEF

COUNT 1: Violation of 8 U.S.C. § 1226(a) Unlawful Denial of Bond Hearing.

76. Petitioner herein incorporates all allegations and facts set forth in the paragraphs above.

77. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they previously entered the country without being admitted. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as §

1225(b)(1), § 1226(c), or § 1231.

78. Nonetheless, the Otay Mesa Immigration Court IJs have a policy and practice of applying § 1225(b)(2) to the Petitioner and did so during his bond hearing.

79. The application of § 1225(b)(2) to Petitioner violates the Immigration and Nationality Act.

COUNT 2: Violation of the Administrative Procedure Act Unlawful Denial of Bond.

80. Petitioner herein incorporates all allegations and facts set forth in the paragraphs above.

81. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

82. Nonetheless, the Otay Mesa Immigration Court IJs have a policy and practice of applying § 1225(b)(2) to Petitioner.

83. The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. *See* 5 U.S.C. § 706(2).

COUNT 3: Unconstitutional Detention in Violation of the Fifth Amendment.

84. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

85. Civil immigration detention is only permissible where it bears a "reasonable relation to the purpose for which the individual was committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and

protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

86. Neither community protection nor flight risk applies to the Petitioner, and therefore, the detention no longer bears a reasonable relation to the purpose for which it was committed. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. As stated above, Petitioner has no criminal history or negative factors of any kind. He has complied with all requirements given to him by immigration authorities. He is therefore not a danger to the community or a flight risk. He has a pending removal case before the Immigration Court and was preparing for said case until his sudden detention. He has pending and legitimate cancellation of removal and asylum applications as well that has given him employment authorization and protection from removal. His removal is therefore not imminent.
87. Petitioner's detention is therefore not based on any negative behavior on his part, but rather a policy to punish individuals in his circumstances.
88. Accordingly, Petitioner's continued detention, in the absence of removal authority and contrary to DHS's own findings, constitutes a deprivation of liberty without due process of law. The Court should order his release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter.
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days.
3. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment.

4. Issue a Writ of Habeas Corpus ordering the Respondents to release Petitioner from custody; hold a hearing if warranted; determine that Mr. Alfaro Reyes' detention is not justified because the government has not established by clear and convincing evidence that he presents a risk of flight or a danger to the community in light of the available alternatives.
5. Issue an Order prohibiting the Respondents from transferring Mr. Alfaro Reyes from the district without the court's approval.
6. Declare that Mr. Alfaro Reyes' continued detention is unconstitutional and unlawful, as it is not reasonably related to any valid purpose of immigration detention and violates the Fifth Amendment guarantee of due process.
7. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with law.
8. In the alternative, should the Court determine that immediate release is not warranted, order Respondents to provide Mr. Alfaro Reyes an individualized bond hearing before an impartial immigration judge within 14 days, at which the government bears the burden to justify continued detention by clear and convincing evidence.
9. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
10. Grant such other and further relief as the Court deems just and proper.

/////////

RESPECTFULLY submitted this 17th day of April 2026.

I remain, respectfully yours,

LAW OFFICES OF THOMAS D. PAMILLA, APC

/S/ Thomas D. Pamilla

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VERIFICATION BY SOMEONE ACTING N PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: April 17, 2026

Respectfully submitted,

/s/

Thomas D. Pamilla, Esq.

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the ACMS system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

Christopher J. LaRose, Warden of Otay Mesa Detention Center
ATTENTION WARDEN: 7488 Calzada De La Fuente
Otay Mesa, CA 92154

Orestes Cruz, Acting Director of San Francisco U.S. Immigration and Customs Enforcement Field Office
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U.S. Immigration and Customs Enforcement, Principal Legal Advisor
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Markwayne Mullin, Secretary of the U.S. Department of Homeland Security
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Todd Blanche, Attorney General U.S. Department of Justice
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Todd M. Lyons, Acting Director, U.S. Immigration and Customs Enforcement
500 12th Street SW, Washington D.C: 20536

Dated: April 17, 2026

Respectfully submitted,

/s/

Thomas D. Pamilla, Esq.

Pro Bono Counsel for Petitioner