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

12 GENESIS ESCALONA RAMIREZ,

Case No.: 26-cv-2525-JLS-VET

13 Petitioner,

14 v.

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

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security,
17 TODD BLANCHE, Acting Attorney
18 General, TODD M. LYONS, Acting
19 Director, Immigration and Customs
20 Enforcement, JESUS ROCHA, Acting
21 Field Office Director, San Diego Field
22 Office, CHRISTOPHER LAROSE,
23 Warden at Otay Mesa Detention Center,

24 Respondents.
25
26
27
28

1 **I. Introduction**

2 Twenty-two-year-old Genesis Escalona Ramirez has now been in
3 immigration detention for eight months. She came to the United States after
4 facing political persecution in Venezuela. On April 1, 2026, an immigration judge
5 granted her asylum.

6 In late April, the Department of Homeland Security (DHS) appealed.
7 Ms. Escalona Ramirez remains detained. She faces mandatory statutory detention
8 for the duration of the government's appeal to the BIA and potentially the Ninth
9 Circuit. Considering the factors outlined in *Banda v. McAleenan*, 385 F. Supp. 3d
10 1099, 1106 (W.D. Wash. 2019), this Court should conclude that Ms. Escalona
11 Ramirez's prolonged mandatory detention without an individualized
12 determination violates due process and order that she receive a bond hearing.

13 This Court should also consider ordering Ms. Escalona Ramirez's release
14 as a remedy for the due process violation she faces from prolonged detention.

15 **II. Statement of Facts**

16 Ms. Escalona Ramirez was born in Venezuela in 2003. Exhibit A,
17 Declaration of Genesis Escalona Ramirez, ¶ 1; *see also* Exhibit F at 13 (asylum
18 application materials). She graduated high school in 2020. Exhibit F at 13.¹

19 When the government announced that Nicolás Maduro had been re-elected
20 on July 28, 2024, Ms. Escalona Ramirez demonstrated against the election results
21 for days. Exhibit E. On the third day of protests, she was part of a group of
22 protestors who were chased by local police and armed groups, who shot at them.
23 *Id.* at 14–15. She and her boyfriend were able to flee and hide in her home, but
24 police officers began searching the outside near her home. *Id.* Within a few days,
25 they fled the country. *Id.*

26
27 ¹ In Venezuela, high school degrees are, confusingly, entitled Bachelor of
28 Sciences or Humanities degrees. *See* Education in Venezuela, *Primary and secondary education*, Wikipedia (last accessed May 12, 2026), available at https://en.wikipedia.org/wiki/Education_in_Venezuela.

1 Ms. Escalona Ramirez made it to Mexico in September 2024 and began
 2 requesting an appointment to seek asylum through CBP One. Exhibit F at 13, 144.
 3 She was never able to get an appointment before it was shut down in January
 4 2025. *Id.* On September 18, 2025, Ms. Escalona Ramirez crossed the border and
 5 requested asylum from CBP officers. She was detained. Exhibit A, ¶ 3.

6 An asylum officer found Ms. Escalona Ramirez had a credible fear of
 7 persecution or torture, and DHS issued her a notice to appear for a first court
 8 hearing within the Otay Mesa Detention Center in mid-October 2025. Exhibit B
 9 (notice to appear).

10 Ms. Escalona Ramirez pursued her asylum case as quickly as she could.
 11 Exhibit A, ¶ 4. She submitted her asylum application in January 2026 with
 12 detailed evidence in support. *See* Exhibit F. The immigration judge set her case
 13 for a merits hearing on April 1, 2026. *See* Exhibit C (immigration judge order),
 14 Exhibit E (publicly available immigration case information as of May 12, 2026).

15 The immigration judge granted Ms. Escalona Ramirez asylum at that
 16 hearing on April 1, 2026. Exhibit C. DHS reserved the right to appeal, and, on
 17 April 29, 2026, did appeal to the BIA. Exhibit D (appeal filing receipt). The BIA
 18 has not yet set a briefing schedule. *See* Exhibit E.

19 Ms. Escalona Ramirez has remained detained at the Otay Mesa Detention
 20 Center. She is defending against the government's appeal of her asylum grant.
 21 She explains, "I will fight to keep my asylum. I am very scared of returning to
 22 Venezuela." Exhibit A, ¶ 6.

23 **III. This Court has jurisdiction to consider due process claim of unlawful**
 24 **prolonged detention.**

25 The government often argues that this Court's jurisdiction to consider
 26 immigration habeas petitions under 8 U.S.C. § 2241 is taken away by 8 U.S.C.
 27 § 1252(g). This argument is "mistaken." *Hernandez Cruz v. Noem*, No. 25-cv-
 28 2566-SB-MAA, 2025 WL 3482630, *1 (C.D. Cal. Dec. 2, 2025).

1 As the Supreme Court and the Ninth Circuit have both recently clarified,
 2 courts “should read § 1252(g) narrowly.” *Ibarra-Perez v. United States*, 154 F.4th
 3 989, 991 (9th Cir. 2025) (citing *Dep’t of Homeland Sec. v. Regents of the Univ. of*
 4 *Cal.*, 591 U.S. 1, 19 (2020)). That section’s jurisdiction-stripping provisions are
 5 limited to “three discrete actions”: the “decision or action to *commence*
 6 *proceedings, adjudicate cases, or execute removal orders.*” *Reno v. Am.-Arab*
 7 *Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C.
 8 § 1252(g)). They do not strip jurisdiction and “sweep in any claim that can
 9 technically be said to ‘arise from’ the three listed actions of the Attorney General.
 10 Instead, [the Court] read[s] the language to refer to just those three specific
 11 actions themselves.” *Jennings v. Rodriguez*, 538 U.S. 281, 294 (2018).

12 As a result, this Court still has jurisdiction over Ms. Escalona Ramirez’s
 13 claim. Like many other habeas petitioners in immigration detention, Ms. Escalona
 14 Ramirez “is seeking to review the legality of h[er] detention, arguing that the
 15 length of time he has been detained here violates due process—rather than
 16 challenging the decision to commence proceedings, the adjudication of h[er]
 17 removal case, or an action to execute h[er] removal order.” *Gao v. LaRose*, 805 F.
 18 Supp. 3d 1106, 1109 (S.D. Cal. 2025) (finding jurisdiction over § 2241 habeas
 19 petition in a prolonged detention case for an arriving noncitizen and ordering an
 20 individualized bond hearing). This Court’s jurisdiction is “not barred by Section
 21 1252(g).” *Id.*; accord, e.g., *Khorsheed v. LaRose*, No. 25-cv-3346-BTM-KSC,
 22 2025 WL 3638141, *1 (S.D. Cal. Dec. 15, 2025) (same).

23 **IV. The Fifth Amendment’s Due Process Clause prohibits prolonged** 24 **immigration detention without a bond hearing.**

25 The Fifth Amendment’s Due Process Clause countermands the
 26 government’s statutory authority to detain immigrants without bond hearings.
 27 Ms. Escalona Ramirez has been and remains detained under 8 U.S.C.
 28 § 1225(b)(1)(B)(ii) for “consideration of [her] application for asylum.”

1 “Section 1225 applies to ‘applicants for admission’—noncitizens who
 2 ‘arrive[] in the United States,’ or are ‘present’ in the United States but have ‘not
 3 been admitted.’” *Banda*, 385 F. Supp. 3d at 1111. It “applies to, among others,
 4 noncitizens initially determined to be inadmissible because of . . . lack of valid
 5 documentation.” *Id.* That includes persons who, like Ms. Escalona Ramirez,
 6 arrive at the border and receive asylum in an immigration judge’s discretion, but
 7 whose asylum grant is appealed by DHS. *See* 8 U.S.C. § 1225(b)(1)(B)(ii); *see*
 8 *Rashid v. Trump*, 807 F. Supp. 3d 349, 359–62 (D. Vt. Oct. 27, 2025) (explaining
 9 this framework for individuals who arrived at the border, were granted asylum,
 10 and who are now defending against government appeals to the BIA).

11 In years past, the Ninth Circuit applied the constitutional avoidance canon
 12 to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings
 13 every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
 14 But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding
 15 that the statute does not entitle detainees to bond hearings or otherwise impose
 16 “any limit on the length of detention.” 583 U.S. 281, 297 (2018). *Jennings* did not
 17 address whether prolonged, mandatory detention without a bond hearing violates
 18 due process. *Id.* at 312.² “In the wake of *Jennings*, district courts have grappled
 19 with how to address due process challenges to prolonged mandatory detention
 20 under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116.

21 But after a full evaluation, “[n]early all district courts that have considered
 22 the issue agree that prolonged mandatory detention pending removal proceedings,
 23 without a bond hearing, will—at some point—violate the right to due process.”
 24 *Id.* (cleaned up) (collecting cases); *accord Khedry-Kiyarsi v. Divver*, No., 2026
 25 WL 657752 (S.D. Cal. Mar. 9, 2026). Indeed, the Ninth Circuit has “grave doubts
 26

27 ² The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
 28 591 U.S. 103 (2020), also poses no barrier to granting relief on this 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).

1 that any statute that allows for arbitrary prolonged detention without any process
 2 is constitutional or that those who founded our democracy precisely to protect
 3 against the government's arbitrary deprivation of liberty would have thought so."
 4 *Rodriguez*, 909 F.3d at 256–57.

5 **V. Courts have reached different conclusions about when immigration**
 6 **detention becomes indefinitely prolonged, but Ms. Escalona Ramirez**
 7 **would prevail under any standard.**

8 Though courts agree that due process mandates a bond hearing when
 9 detention grows unreasonably prolonged, they disagree about how to assess
 10 whether a particular migrant's detention has reached that point. *Sanchez-Rivera v.*
 11 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
 12 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts
 13 have "conclude[d] . . . that detention becomes prolonged after six months and
 14 entitles [a petitioner] to a bond hearing." *Rodriguez v. Nielsen*, No. 18-CV-04187-
 15 TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case,
 16 Ms. Escalona Ramirez would automatically qualify, as she has been detained for
 17 eight months.

18 Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023
 19 WL 139801, at *5–6 (surveying different approaches). Relevant factors often
 20 include:

- 21 (1) the total length of detention to date, which is the most important
 22 factor;
- 23 (2) the likely duration of future detention;
- 24 (3) the conditions of detention;
- 25 (4) delays in removal proceedings caused by the detainee;
- 26 (5) delays in removal proceedings caused by the government; and
- 27 (6) the likelihood that the removal proceedings will result in a final order
 28 of removal.

Khedry-Kiyardsi, 2026 WL 657752 at *2 (citing *Banda*, 385 F. Supp. 3d at 1106).

1 Ms. Escalona Ramirez prevails upon balancing these factors.

2 First, the “most important factor,” the length of detention, favors
 3 Ms. Escalona Ramirez. *Banda*, 385 F. Supp. 3d at 1118. She has been detained for
 4 eight months. Exhibit A at ¶ 3. In assessing this factor, “[i]t is important to bear in
 5 mind the context: The detention that is being examined here is the detention of a
 6 human being who has never been found to pose a danger to the community or to
 7 be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D.
 8 Minn. 2019). Indeed, in this case, an immigration judge has already determined
 9 that Ms. Escalona Ramirez is entitled to a favorable exercise of discretion in
 10 granting asylum—a form of relief that is not mandatory. *See* 8 U.S.C.
 11 § 1158(b)(1)(A); *East Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 979
 12 (9th Cir. 2020) (noting “discretion to deny asylum to eligible aliens”). And, of
 13 course, “[c]ourts have found that detention over seven months without a bond
 14 hearing weighs toward a finding that it is unreasonable.” *Amando v. United States*
 15 *Dep’t of Just.*, No. 25-CV-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal.
 16 Nov. 4, 2025) (collecting cases). This factor therefore favors Ms. Escalona
 17 Ramirez.

18 Second, Ms. Escalona Ramirez has reason to anticipate significant future
 19 detention. The government just filed a notice of appeal of her asylum grant to the
 20 BIA two weeks ago. A briefing schedule is not yet set. Exhibits D, E. Because
 21 “Petitioner’s future detention can last several more months or even years[,]” this
 22 factor favors Ms. Escalona Ramirez. *Abdul Kadir*, 2025 WL 2932654, at *5.

23 Third, Ms. Escalona Ramirez’s confinement at the Otay Mesa Detention
 24 Center is similar to penal confinement. *See Ayideji v. Casey*, No., 2026 WL
 25 948669, *2 (S.D. Cal. Apr. 8, 2026).

26 The fourth and fifth factors, regarding delay by the parties, are neutral.
 27 Ms. Escalona Ramirez pursued her asylum claim diligently and quickly, receiving
 28 asylum within six months of her first notice to appear. Neither party delayed.

1 Sixth, there is more than a significant likelihood that Ms. Escalona Ramirez
 2 will prevail on her asylum claim. She already has. Under any test, then,
 3 Ms. Escalona Ramirez is entitled to release or a bond hearing.

4 **CLAIM AND PRAYER FOR RELIEF**

5 For the reasons just given, the Fifth Amendment Due Process Clause
 6 prohibits the government from continuing to detain Petitioner.

7 Accordingly, Petitioner respectfully requests that this Court:

- 8 1. **Order Respondents to immediately release Petitioner from**
 9 **custody.** “In recent months, courts across the country have ordered
 10 the release of detainees in similar situations.” *Moctezuma v. Henkey*,
 11 No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2,
 12 2026) (given that the government’s repeated use of unlawful
 13 detention policies across the country, causing petitioners to “sit in jail
 14 waiting for a judicial decision,” the court would order immediate
 15 release instead of causing additional delay through a bond hearing)
 16 (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U.*
 17 *v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y.
 18 Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL
 19 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-
 20 cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025).
 21 *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13–
 22 14 (W.D. Tex. Oct. 2, 2025) (“Without a legitimate interest in her
 23 detention, immediate release appropriately remedies Respondents’
 24 violation of [Petitioner’s] due process rights through her continued
 25 detention.”). Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-
 26 00698-MEMF (C.D. Cal. March 5, 2026) (“Miri’s prompt release is
 27 the remedy that will best return Miri to the status quo and restore his
 28 position as it was prior to the detention that Miri contends was in

violation of his constitutional and statutory protections.”).

2. **In the alternative, order a prompt bond hearing with safeguards and oversight provided by this Court.** *See* Order, ECF No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March 5, 2026). Specifically, the Court should order:

- a. Respondents provide Petitioner with a hearing and individualized bond determination within **fourteen days** of its order.
 - i. At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk. *Id.*
 - ii. The IJ shall consider alternative conditions of release and Petitioner’s ability to pay bond if he or she determines bond is appropriate. *Id.*
 - iii. Respondents shall make a complete record of the bond hearing available to Petitioner and counsel upon request. *Id.*
 - b. Respondents are ordered to file a Notice of Compliance within **five days** of providing Petitioner with the bond hearing, including apprising the Court of the results of the hearing. *Id.*
3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 13, 2026

s/ Jessie Agatstein

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