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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE ROBERTO BERMUDEZ MARTINEZ

Petitioner,

v.

CHRISTOPHER LAROSE, in his official capacity as Warden of Otay Mesa Detention Center Detention Center; **GREGORY J. ARCHAMBEAULT**, in his official capacity as San Diego Field Office Director, ICE Enforcement Removal Operations; **TODD LYONS**, in his official capacity as Acting Director of Immigration and Customs Enforcement; **MARKWAYNE MULLI**, in his official capacity as Secretary of Homeland Security; and **TODD BLANCHE**, in his official capacity as Attorney General of the United States,

Respondents.

Case No. **'26CV2567 JLS MSB**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This is a Petition for a Writ of Habeas Corpus file on behalf of Petitioner Jose Roberto Bermudez Martinez to remedy his unlawful detention. Petitioner has been detained for two hundred seventy-seven (277) days. Petitioner is a twenty-five (25) year-old native of Mexico. Petitioner entered the United States on June 1, 2003,

without being admitted or inspected. Petitioner was two (2) years-old when he entered the country. He has been residing in Riverside, California since 2003. On July 18, 2025, Respondent was on his way to work in Mira Loma, California when he was pulled-over and apprehended by ICE officers.

2. Petitioner complied with Customs and Immigration Enforcement ("ICE") agents' orders and provided his driver's license as proof of identity.
3. Petitioner is currently detained at the Otay Mesa Detention Center by U.S. Customs and Immigration Enforcement ("ICE") and has an appeal pending with the Board of Immigration Appeals (Alien Number [redacted].
4. Petitioner is charged with having entered the United States without inspection and being present without valid immigration documents. 8 USC § 1182(a)(6)(A)(i) §1182(a)(7)(A)(i).
5. On July 18, 2025, DHS filed Form I-862, Notice to Appear charging Petitioner as an alien present without admission or Parole under INA section 212(a)(6)(A)(i).
6. Petitioner was represented by a pro-bono attorney, Jose Alfaro from the office of Jose Alfaro Law.
7. On March 9, 2026, Petitioner had a bond hearing before Immigration Judge Eugene Robinson at the Otay Mesa Immigration Court.
8. On March 9, 2026, the Immigration Judge ("IJ") denied Petitioner's bond request, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and concluding that Petitioner was instead subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

9. At his bond hearing, Petitioner's counsel argued that under the nationwide injunction and class action certification in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, Petitioner should be entitled to a bond hearing under 8 U.S.C. § 1226(a). The IJ acknowledged the district court's order in *Maldonado Bautista v. Santacruz* but instead relied on *Matter of Yajure Hurtado* to find that the immigration court lacks jurisdiction over the request for custody redetermination. Further the IJ noted that the Ninth Circuit Court of Appeals' recent order of administrative stay prevented proceeding with Petitioner's bond hearing.
10. As relief from removal, Petitioner applied for cancellation of removal and adjustment of status for certain nonpermanent residents (EOIR-42B) specifically under the Special rule for cancellation of removal for certain battered children under the Violence Against Women Act ("VAWA").
11. Petitioner has lived in the United States for twenty-three (23) years, he has no criminal history.
12. On March 5, 2021, Petitioner applied for Consideration of Deferred Action (DACA), however due to the pending federal case at the time, his application was never adjudicated.
13. Petitioner was a victim of severe emotional and physical abuse at the hands of his legal permanent resident father, Jose Ignacio Bermudez Sanchez.
14. Petitioner presented his case at his Individual merits hearing on March 17, 2026. The IJ, John Driscoll denied Petitioner's application for cancellation of removal EOIR-42B because he found that Petitioner did not suffer extreme cruelty by a parent and that he had not provided proof of physical abuse such as police reports.

15. Petitioner testified as to the abuse he suffered as a child growing up and his inability to file a police report due to fear of his father and retaliation against his mother, siblings, and himself. Petitioner's father was an alcoholic who verbally and emotionally abused him throughout his childhood.

16. On March 31, 2026, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA"). Petitioner appeal is pending with the BIA. Petitioner's appeal could be pending from months up to years. Nothing on the record justifies Petitioner's detention while his appeal is pending.

17. Petitioner has lived in the United States all his life and he has no criminal history. Prior to his detention, Petitioner was working as a salesman at a company where he has been working for the past six (6) years.

18. Petitioner's detention on this basis violates the plain language of the INA and its implementing regulations.

19. Subparagraph 1225(b)(2)(A) applies to individuals who are apprehended on arrival in the United States. It states that an "applicant for admission" who is "seeking admission" shall be detained for a removal proceeding. *Id.* It does not apply to individuals like Petitioners who are arrested and detained by ICE after having entered and begun residing in the United States. Instead, such individuals are subject to a different statute, 8 USC § 1226(a), that allows for release on conditional parole or bond. The statute expressly applies to individuals who, like Petitioners, are charged as inadmissible for having entered the United States without inspection.

20. Consistent with the statutory framework, noncitizens who entered the United

States without inspection, were not immediately apprehended pursuant to § 1225(b)(or subjected to expedited removal under § 1225(b)(1)), and are not subject to a final order of removal, are generally detained under § 1226.

21. As a result, unless Petitioner has an enumerated criminal offense subjecting him to § 1226(c), he is entitled to bond hearings under § 1226(a) before an IJ to determine whether their detention is justified by danger or flight risk.

22. Petitioner is entitled to an individualized custody determination following apprehension by DHS and, if not released, a bond determination by the Immigration Court.

23. Petitioner respectfully requests that this Court grant him a Writ of Habeas Corpus, and order Respondents to immediately release him from custody.

PARTIES

24. Petitioner, Jose Roberto Bermudez Martinez, is a native and citizen of Mexico who is currently in the custody of the DHS at the Otay Mesa Detention Facility in San Diego, California.

25. Respondent Todd Blanche is the Attorney General of the United States and is the most senior official in the United States Department of Justice ("DOJ"). He has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals ("BIA"). He is named as a party in his official capacity.

26. Respondent, Markwayne Mullin, is the Secretary of the DHS and he has authority over the detention and departure of noncitizens, like Petitioner, because he administers and enforces immigration laws pursuant to section 402 of the Homeland Security Act of 2002. In this role, Respondent Mullin has "control direction, and supervision" of all employees of DHS, including Respondent Cantu. See U.S.C. § 1003(a)(2). Mr. Mullin, is named as a party in his official capacity.

27. Respondent, Gregory J. Archambeault, is the San Diego Filed Office Director for ICE/ERO, which has administrative jurisdiction over Petitioner's case. As such, Respondent Archambeault is the federal official most directly responsible for overseeing the Otay Mesa Detention Center. He is a legal custodian of Petitioner and is named in his official capacity.

28. Respondent, Christopher Larose, is the Warden of the Otay Mesa Detention Center, which is operated by CoreCivic and contracted by DHS. As such, he is the immediate physical custodian of Petitioner and he is named in his official capacity.

FACTUAL ALLEGATIONS

29. Petitioner is a twenty-five (25) year-old male and citizen of Mexico. He has resided continuously in the United States since 2003.

30. Petitioner entered the United States in 2003 without inspection and has remained in the United States for twenty-three (23) years. Petitioner has no previous contact with immigration authorities. **Exhibit A.** Petitioner's NTA.

31. Petitioner has deep ties to the Riverside, California area, as he has worked as a salesman for the same company for over six (6) years. As support letters from his submission in support of EOIR-42B application, he is a ward worker who is loving, respectful, and missed dearly by his family. **Exhibit B.** Petitioner's Form EOIR-42B.

32. On July 17, 2025, Petitioner was detained in Mira Loma, California on his way to work when ICE agents took him into custody. **Exhibit C.** Petitioner's Form I-213.

33. Petitioner is now detained at the Otay Mesa Detention Centre, over 124 miles away from his family who has to drive two hours to visit him in custody.

34. DHS placed Petitioner in removal proceedings before the Otay Mesa Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged him with, *inter alia*, being inadmissible under 8 USC § 1182(a)(6)(A)(i) as someone who allegedly entered the United States without inspection.

35. Petitioner appeared for his individual hearing before an Immigration Judge and sough cancellation of removal and adjustment of status for certain nonpermanent residents (EOIR-42B) under the Special rule for cancellation of removal for certain battered children under the Violence Against Women Act ("VAWA").

36. On March 17, 2026, the Immigration Judge denied respondent's application and ordered his removal to Mexico. **Exhibit D.** Order of the Immigration Judge Dated March 17, 2026.

37. On March 31, 2026, Petitioner appealed the Immigration Judge's decision denying his application. Petitioner has a pending appeal pending the Board of Immigration Appeals. **Exhibit E.** Filing Receipt for Appeal Dated April 3, 2026.

38. On March 9, 2026, Petitioner had a bond hearing and an Otay Mesa Immigration Judge issued a decision stating that the immigration court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner is subject to mandatory detention under 8 USC § 1125(b)(2)(A) and stating that the court lacked jurisdiction. **Exhibit F.** Order of the Immigration Judge dated March 9, 2026.

39. As a result, Petitioner remains in detention while he has an appeal pending. Petitioner's appeal could last months or up to years based on the backlog of cases the BIA is experiencing. Petitioner faces the prospect of months, or even years, in immigration custody, separated from his family and community.

40. Prior to his detention Petitioner was engaged with his U.S. citizen fiancé and she was pregnant with their first baby. While Petitioner was in detention his son, [redacted] was born on [redacted] and Petitioner missed being present for his first born baby's birth.

JURISDICTION

41. 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 San Diego, California and is under the direct control of Respondents and their agents.

42. Petitioner challenges his custody as such jurisdiction is proper in this Court. While the courts of appeals have jurisdiction to review removal orders through petitions for review pursuant to 8 U.S.C. § 1252(a)(1) and (b), the federal district courts have jurisdiction under 28 U.S.C. § 2241, to hear habeas petitions by noncitizens challenging the lawfulness of their detention. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9th Cir. 2006).

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

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

45. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writes Act, 28 U.S.C. § 1651.

46. 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

47. Venue is properly with the Southern District of California pursuant to 28 USC § 1391(e) because Petitioner is detained at the Otay Mesa Detention Center in San Diego, California, which is within the geographical jurisdiction of the U.S. District Court for the Southern District of California, and because the events or omissions giving rise to this claim occurred in this District. Further, this is a civil action in which the Respondents are employees or officers of the United States or, as in the case of Respondent Larose, contracted by the United States.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

48. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." Id. (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).

49. Here, Petitioner argues that he has exhausted his administrative remedies, and any further requests for parole or reconsideration would be futile. Moreover, an immigration judge denied Petitioner bond on March 9, 2026. Therefore, Petitioner has

exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

LEGAL FRAMEWORK

50. A writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions." 28 U.S.C. § 2241(a). The petitioner bears the burden of demonstrating that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." *Id.* § 2241(c)(3).

Due Process Clause

51. The Due Process Clause of the Fifth Amendment provides Petitioner with important 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).

52. 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).

53. 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).

54. 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).

55. 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).

56. 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.

57. 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").

58. **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).

59. 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.

60. Due process also requires certain minimal procedures at bond hearings. First, the 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 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.

61. 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).

62. 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).

63. 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)).

64. 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.

65. 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.

66. 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).

67. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Petitioner. Her 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).

68. 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.

69. 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.*

70. 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.

71. 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)).

72. 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.

73. Here, the Respondents can neither show that the continued detention of petitioner following his detention is reasonably related to the original purpose and the *Mathews* tests are satisfied. Similarly, no procedural safeguards are offered to those who remain in custody pending an appeal of a decision on termination of removal proceedings.

Maldonado Bautista v. Santacruz

74. In Maldonado Bautista, the United States District Court for the Central District of California found that "the DHS policy is unlawful" and "the interpretation in *Yajure-Hurtado*, 29 I. N. Dec. 2016, which contradicts the Court's reasoning is no longer controlling." Maldonado Bautista v. Santacruz, No. 5:25-cv-018733-sss-bfm, --- F. Supp. 3d ---, 2025WL 3719897, at *1, judgment entered sub nom. Maldonado Bautista v. Noem. The District court vacated the DHS Policy under the Administrative Procedure Act. *Id.* at *22. The court certified the "Bond Eligibility Class," which defined as: All noncitizens in the United States without lawful status who (1) entered or will enter the United States without inspection; (2) were not or

will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. Maldonado Bautista, 2025 WL 3713987, at *32.

75. Petitioner asserts that he is a member of the Bond Eligible Class in Maldonado Bautista v. Santacruz, and thus is entitled for a bond hearing before an IJ pursuant to 8 U.S.C. § 1226(a).

8 USC 1225 v 1226

76. 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).

77. 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)).

78. 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.

79. 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)).

80. 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).

81. 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).

82. 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).

83. 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).

84. 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..

85. 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)).

86. 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).

87. 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).

88. 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.

89. 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)).

90. 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).

CLAIM FOR RELIEF

COUNT I

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

91. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth and incorporated herein by reference.

92. Petitioner is in custody "under or by color of the authority of the United States" and in custody "in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2241.

93. The Fifth Amendment's Due Process Clause provides that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." It specifically "entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993). The Supreme Court held more than a century ago that civil detention of a removable noncitizen violates the Constitution if it is punitive. *Wong Wing v. United States*, 163 U.S. 228, 237-38, 16 S. Ct. 977, 41 L. Ed. 140 (1896).

94. Noncitizens subject to civil immigration detention "cannot be subjected to conditions that 'amount to punishment.'" See *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)). At some point, civil detention can become punitive, resulting in a due process violation. *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021).

95. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

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

COUNT II

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT UNLAWFUL DENIAL OF BOND

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

99. 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.

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

101. 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 III

VIOLATION OF THE BOND REGULATIONS, 8 CFR § 236.1, 1236.1 AND 1003.19 UNLAWFUL DENIAL OF RELEASE OF BOND

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

103. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) *will be eligible for bond and bond redetermination.*" 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

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

105. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT IV

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT CONTRARY TO LAW AND ARBITRARY AND CAPRICIOUS AGENCY POLICY

106. Petitioners incorporate by reference the allegations of fact set forth in paragraphs 1-37 as if fully set forth herein.

107. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

108. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Defendants. Such noncitizens are detained under § 1226(a) and are eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

109. Nonetheless, DHS and the Otay Immigration Court Immigration Judge have adopted a policy and practice of applying § 1225(b)(2) to Petitioner.

110. Defendants have failed to articulate reasoned explanations for their decisions, which represent changes in the agencies' policies and positions; have considered factors that Congress did not intend to be considered; have entirely failed to consider important aspects of the problem; and have offered explanations for their decisions that run counter to the evidence before the agencies.

111. 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).

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

112. Assume jurisdiction over this matter;

113. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

114. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

115. Issue a Writ of Habeas Corpus ordering the Respondents to release Petitioner from custody; hold a hearing if warranted; determine that Mr. Bermudez Martinez 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;

116. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the court's approval;

117. Declare that Mr. Bermudez Martinez' 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;

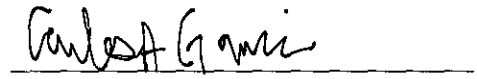
118. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with law;

119. In the alternative, should the Court determine that immediate release is not warranted, order Respondents to provide Mr. Bermudez Martinez 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;

120. 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

121. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Counsel for Petitioner

Dated: April 22, 2026

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jose Roberto Bermudez Martinez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 22nd day of April 2026.

Carlos A. Garcia, Esq.
Attorney for Petitioner