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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **YORDANI TELLEZ TORRES**



11 Petitioner,

12 v.

13 **JEREMY CASEY, WARDEN, IMPERIAL**
REGIONAL DETENTION FACILITY;
14 **JESUS ROCHA, FIELD OFFICE**
DIRECTOR, UNITED STATES
15 **IMMIGRATION AND CUSTOMS**
16 **ENFORCEMENT, ICE SAN DIEGO FIELD**
OFFICE; TODD M. LYONS, ACTING
17 **DIRECTOR, UNITED STATES**
IMMIGRATION AND CUSTOMS
18 **ENFORCEMENT; MARKWAYNE**
19 **MULLIN, SECRETARY, UNITED**
20 **STATES DEPARTMENT OF HOMELAND**
SECURITY; AND TODD W. BLANCHE,
21 **ACTING ATTORNEY GENERAL,**

22 Respondents.

) Case No. **'26CV2650 DMS VET**

) **PETITION FOR WRIT OF HABEAS**
) **CORPUS, PURSUANT TO 28 U.S.C. §**
) **2241; VERIFIED PETITION**

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PETITION FOR WRIT OF HABEAS CORPUS, PURSUANT TO 28 U.S.C. § 2241

I.

INTRODUCTION

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1. Petitioner Yordani Tellez Torres, through counsel, brings the instant petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2241, to challenge his prolonged, unjustified detention by the Respondents.

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2. Mr. Tellez Torres is a national and citizen of Cuba. [Exh. A].¹ On or about May 17, 2025, Mr. Tellez Torres entered the United States near Calexico, California. [Exh. B, p. 3; Exh. C, p. 12; Exh. D, p. 14]. Officers of United States Customs and Border Protection (hereinafter “CBP”) apprehended Mr. Tellez Torres on May 18, 2025, and detained him at the Imperial Regional Detention Facility in Calexico, California. [Exh. B, p. 3].

3. On July 11, 2025, federal immigration officials referred Mr. Tellez Torres to the United States Immigration Court in Imperial, California, following an assessment of his eligibility for protection under Article III of the United Nations Convention Against Torture. [Exh. B, pp. 10-11].

4. On July 11, 2025, an officer of United States Immigration and Customs Enforcement (hereinafter “ICE”) issued a Notice to Appear for removal proceedings under section 240 of the Immigration and Nationality Act (hereinafter “INA”), 8 U.S.C. § 1229a, to Mr. Tellez Torres. Mr. Tellez Torres’ Notice to Appear charged him with being subject to removal from the United States under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i), for being a noncitizen who was present in the United States without admission or parole, or who arrived in the United States at any time or place other than as designated by the Attorney General. [Exh. C, p. 12].

¹ “Exh.” refers to the Exhibits that Mr. Tellez Torres, through counsel, files with the instant Petition.

1 5. On August 15, 2025, Mr. Tellez Torres, through former counsel, filed
2 applications for asylum, withholding of removal, and protection under Article III of the United
3 Nations Convention Against Torture with a federal Immigration Judge in Imperial, California.
4 [Exh. D]. On November 14, 2025, the Immigration Judge denied Mr. Tellez Torres'
5 applications for relief from removal, and ordered him removed to Cuba. [Exh. E, pp. 28, 30].
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7 6. On December 15, 2025, Mr. Tellez Torres, through counsel, filed a timely
8 appeal of the Immigration Judge's adverse decisions on his applications for asylum,
9 withholding of removal, and protection under Article III of the United Nations Convention
10 Against Torture with the Board of Immigration Appeals. [Exh. F]. Mr. Tellez Torres' case is
11 still pending with the Board of Immigration Appeals, as of the date of this Petition. [Exh. H].
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13 7. Mr. Tellez Torres has been in the Respondents' continuously since on or about
14 May 18, 2025. He remains in ICE custody at the Imperial Regional Detention Facility in
15 Calexico, California. [Exh. G].
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17 8. The Respondents' prolonged and unjustified detention of Mr. Tellez Torres
18 without an individualized bond hearing deprives him of his rights under the Due Process
19 Clause of the Fifth Amendment to the United States Constitution, U.S. Const. amend. V.
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21 9. Accordingly, Mr. Tellez Torres, through counsel, asks the Court to grant the
22 instant petition for writ of habeas corpus. He asks the Court to issue an Order, declaring that
23 his prolonged and unjustified detention by the Respondents violates the Due Process Clause of
24 the Fifth Amendment.

25 10. Mr. Tellez Torres, through counsel, respectfully requests that the Court issue an
26 Order directing the Respondents to immediately release him from their custody, unless the
27 Respondents provide an individualized bond hearing to him before a neutral decisionmaker
28 within seven days. At that hearing, the Respondents must justify his continued confinement

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1 through clear and convincing evidence that Mr. Tellez Torres poses a risk of flight or a danger
2 to the community if federal immigration officials release him from detention. See Sandesh v.
3 Larose, U.S.D.C. No. 26-cv-0846-JES-DDL, ___ F. Supp. 3d ___, 2026 U.S. Dist. LEXIS 45941,
4 at *14-*15 (S.D. Cal. Mar. 4, 2026). Mr. Tellez Torres, through counsel, asks the Court to
5 order that a neutral decisionmaker consider alternative conditions of release and his ability to
6 pay a bond if he or she determines that his release on bond is warranted. See id. at *16; see
7 also Hernandez v. Sessions, 872 F.3d 976, 993-94 (9th Cir. 2017).
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9 11. If the Court orders his release from the Respondents' custody, Mr. Tellez
10 Torres, through counsel, asks the Court to prohibit the Respondents from imposing any
11 additional conditions on his release from detention, such as electronic monitoring, unless a
12 neutral decisionmaker determines that such conditions of release are necessary at a pre-
13 deprivation hearing. He further requests that the Court enjoin his re-arrest and re-detention by
14 the Respondents without constitutional safeguards, including pre-deprivation notice and a
15 hearing before a neutral adjudicator.
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18 12. To preserve the Court's jurisdiction, Mr. Tellez Torres, through counsel, asks
19 the Court for an order, enjoining the Government from transferring him to another detention
20 facility outside this District and from removing him from the United States for the duration of
21 his habeas corpus proceedings.
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23 13. Finally, Mr. Tellez Torres, through counsel, asks the Court to issue an Order
24 awarding him attorneys' costs, fees, and expenses, pursuant to the Equal Access to Justice Act,
25 28 U.S.C. §§ 2412(a)(1) and 2412(b).
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1 II.

2 **JURISDICTION AND VENUE**

3 14. The Court has jurisdiction under 21 U.S.C. §§ 2241(a) and 2241(c)(3) to grant a
4 writ of habeas corpus to a noncitizen in federal immigration detention who is “in custody in
5 violation of the Constitution or laws or treaties of the United States[.]” 8 U.S.C. § 2241(c)(3).
6 The Constitution states that “[t]he Privilege of the Writ of Habeas Corpus shall not be
7 suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”
8 U.S. Const. Art. I, § 9, cl. 2. The Suspension Clause makes clear that some “‘judicial
9 intervention in deportation cases’ is unquestionably ‘required by the Constitution.’” INS v. St.
10 Cyr, 533 U.S. 289, 300 (2001) (quoting Heikkila v. Barber, 345 U.S. 229, 235 (1953)).
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12 15. A petition for writ of habeas corpus “historically provides a remedy to
13 noncitizens challenging executive detention.” Trinidad y Garcia v. Thomas, 683 F.3d 952, 956
14 (9th Cir. 2012) (citing St. Cyr, 533 U.S. at 301-03).
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16 16. After the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231, 231
17 (2005), the Court retains jurisdiction under 28 U.S.C. § 2241 to review constitutional and legal
18 challenges to a noncitizen’s detention in federal immigration custody that are “‘independent of
19 challenges of removal orders.’” Singh v. Holder, 638 F.3d 1196, 1211-12 (9th Cir. 2011)
20 (quoting H.R. Rep. No. 109-72, at 175, reprinted in 2005 U.S.C.C.A.N. 240, 299).
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22 17. The Court has original jurisdiction over Mr. Tellez Torres’s petition for writ of
23 habeas corpus under 28 U.S.C. § 1331 because he raises federal questions arising under the
24 United States Constitution and the laws of the United States. This case involves the
25 Respondents’ construction and application of the Fifth Amendment to the United States
26 Constitution, U.S. Const. amend. V.
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1 18. In the immigration context, “[t]he default rule is that agency actions are
2 reviewable under federal question jurisdiction, pursuant to 28 U.S.C. § 1331...even if no
3 statute specifically authorizes judicial review.” Perez v. Wolf, 943 F.3d 853, 860 (9th Cir.
4 2019) (quoting ANA Int’l, Inc. v. Way, 393 F.3d 886, 890 (9th Cir. 2004), overruled on other
5 grounds, Bouafra v. Mayorkas, 604 U.S. 6, 13, 19 (2024)).

7 19. The Declaratory Judgment Act provides, in part, that “[i]n a case of actual
8 controversy within its jurisdiction,...any court of the United States, upon the filing of an
9 appropriate pleading, may declare the rights and other legal relations of any interested party
10 seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. §
11 2201(a). The law specifies that “[f]urther necessary or proper relief based on a declaratory
12 judgment or decree may be granted, after reasonable notice and hearing, against any adverse
13 party whose rights have been determined by such judgment.” 28 U.S.C. § 2202.

15 20. The All Writs Act, 28 U.S.C. § 1651(a), empowers federal district courts to
16 allows federal courts to “issue all writs necessary or appropriate in aid of their respective
17 jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). While
18 the All Writs Act does not “enlarge” federal courts’ jurisdiction, Clinton v. Goldsmith, 526
19 U.S. 529, 534-35 (1999), it nonetheless confers “express authority...to issue such temporary
20 injunctions as may be necessary to protect its own jurisdiction[.]” F.T.C. v. Dean Foods Co.,
21 384 U.S. 597, 608 (1966).

24 21. Venue lies in the United States District Court for the Southern District of
25 California under 28 U.S.C. §§ 1391(e)(1)(B) and 2241(a) because the Respondents have
26 detained Mr. Tellez Torres at the Imperial Regional Detention Facility in Calexico, California.
27 See Rumsfeld v. Padilla, 542 U.S. 426, 443 (2004) (declaring that “for core habeas petitions
28 challenging present physical confinement, jurisdiction lies in only one district: the district of
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1 confinement[]”); Doe v. Garland, 109 F.4th 1188, 1192, 1199 (9th Cir. 2024) (applying the
2 “district of confinement rules to core habeas petitions filed pursuant to 28 U.S.C. § 2241,
3 including those filed by immigrant detainees”) (citing Lopez-Marroquin v. Barr, 955 F.3d 759,
4 760 (9th Cir. 2020)). The Imperial Regional Detention Facility lies within the Court’s
5 territorial jurisdiction. See 28 U.S.C. § 84(d).
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7 **III.**

8 **PARTIES**

9 **A. Petitioner.**

10 22. Petitioner Yordani Tellez Torres is a national and citizen of Cuba, who arrived
11 in the United States on or about May 17, 2025. [Exh. A]. On May 18, 2025, CBP officers
12 arrested Mr. Tellez Torres, and detained him at the Imperial Regional Detention Facility in
13 Calexico, California. [Exh. B, p. 3]. Mr. Tellez Torres remains in the Respondents’ custody
14 at the Imperial Regional Detention Facility. [Exh. H].
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16 **B. Respondents.**

17 23. Respondent Jeremy Casey is the Warden of the Imperial Regional Detention
18 Facility, a private, for-profit immigration detention facility in Calexico, California owned and
19 operated by the Management and Training Corporation. The Management and Training
20 Corporation contracts with ICE to detain noncitizens for suspected civil immigration
21 violations. The warden of a facility in which ICE officers have detained a noncitizen is a
22 proper Respondent in a challenge to the noncitizen’s confinement in federal immigration
23 custody in habeas corpus proceedings. See Padilla, 542 U.S. at 435, 447 (declaring that when a
24 habeas petitioner challenges his “present physical confinement” within the United States, “the
25 default rule is that the proper respondent is the warden of the facility where the prisoner is
26 being held[]”); Doe, 109 F.4th at 1192, 1196-97, 1199 (applying the “immediate custodian”
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1 rule to a habeas petition under 28 U.S.C. § 2241 that challenges a noncitizen’s detention in
2 federal immigration custody, and affirming that “the immediate custodian, not a supervisory
3 official who exercises legal control, is the proper respondent[.]” for the habeas petition)
4 (quoting Padilla, 542 U.S. at 440) (other citations omitted).
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6 24. Respondent Jesus Rocha is the Field Office Director for the ICE San Diego
7 Field Office in San Diego, California. He has a duty, delegated to him by the Secretary of the
8 United States Department of Homeland Security and the Acting Director of ICE, to supervise
9 the apprehension, detention, and removal of noncitizens who ICE has detained in the San
10 Diego Area of Responsibility (counties of San Diego, California and Imperial, California),
11 including the Imperial Regional Detention Facility in Calexico, California.
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13 25. Respondent Todd M. Lyons is the Acting Director of ICE. He has a mandate,
14 pursuant to 6 U.S.C. §§ 251(2) and 252(a)(3)(A)(ii) and 8 U.S.C. §§ 1103(a)(1) and
15 1103(g)(2), to exercise any functions delegated to him by the Secretary of the United States
16 Department of Homeland Security, including the enforcement of the INA and all other laws,
17 regulations, and policies pertaining to the immigration and naturalization of immigrants, and
18 the apprehension and detention of noncitizens for removal from the United States.
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20 26. Respondent Markwayne Mullin is the Secretary of the United States
21 Department of Homeland Security. He has a mandate, pursuant to 8 U.S.C. § 1103(a), to
22 administer and enforce the INA and other laws related to the immigration and naturalization of
23 aliens. He is responsible for “[c]arrying out the immigration enforcement functions vested by
24 statute in, or performed by, the Commissioner of [the former] Immigration and Naturalization
25 (or any officer, employee, or component of the Immigration and Naturalization Service)[.]” 6
26 U.S.C. § 202(3), and for “[e]stablishing national immigration enforcement policies and
27 priorities.” 6 U.S.C. § 202(5).
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1 27. Respondent Todd W. Blanche is the Acting Attorney General of the United
2 States. He has a mandate, pursuant to 8 U.S.C. §§ 1101(b)(4) and 1103(g), to supervise the
3 implementation and enforcement of the INA, including the apprehension, detention, and
4 removal of noncitizens from the United States.
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6 IV.

7 **STATUTORY AND REGULATORY REFERENCES**

8 28. Section 236 of the INA “authorizes the Government to detain certain aliens
9 already in the country pending the outcome of removal proceedings” under section 240 of the
10 INA, 8 U.S.C. § 1229a. Jennings v. Rodriguez, 583 U.S. 281, 289 (2018); Rodriguez Diaz v.
11 Garland, 53 F.4th 1189, 1196 (9th Cir. 2022) (same). The statute “distinguishes between two
12 different categories of aliens.” Jennings, 583 U.S. at 288; Rodriguez Diaz, 53 F.4th at 1196
13 (same).
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15 29. Section 236(a) of the INA, 8 U.S.C. § 1226(a), establishes the “‘default rule[.]’”
16 for arresting and detaining removable noncitizens, and gives “the Attorney General ‘broad
17 discretion’ over detention matters[.]” Rodriguez Diaz, 53 F.4th at 1196 (quoting Nielsen v.
18 Preap, 586 U.S. 392, 409 (2019), and Jennings, 583 U.S. at 288). Section 236(a)(1) of the INA
19 provides, in relevant part, that “[o]n a warrant issued by the Attorney General, an alien may be
20 arrested and detained pending a decision on whether the alien is to be removed from the United
21 States.” 8 U.S.C. § 1226(a)(1); see also 8 C.F.R. § 236.1(b)(1)(A) (2026) (declaring that “[a]t
22 the time of issuance of the notice to appear, or at any time thereafter and up to the time
23 removal proceedings are completed, the respondent may be arrested and taken into custody
24 under the authority of Form I-200, Warrant of Arrest[.]”). An ICE district director makes the
25 initial custody determination, “including the setting of a bond.” 8 C.F.R. § 236.1(d) (2026).
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An immigration officer “authorized to issue a warrant of arrest may, in the officer’s discretion,

1 release an alien” who does not fall within section 236(c)(1) of the INA, 8 U.S.C. § 1226(c)(1),
2 if the noncitizen “demonstrate[s] to the satisfaction of the officer that such release would not
3 pose a danger to property or persons, and that the alien is likely to appear for any future
4 proceeding.” 8 C.F.R. § 236.1(c)(8) (2026).

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6 30. Noncitizens who are detained under section 236(a) of the INA, 8 U.S.C. §
7 1226(a), are entitled to “receive bond hearings at the outset of detention.” Jennings, 583 U.S.
8 at 360 (citing 8 C.F.R. §§ 236.1(d)(1) and 1236.1(d)(1)). A noncitizen who disagrees with the
9 initial custody determination by an ICE officer may request a bond redetermination hearing
10 before an Immigration Judge at any time before the issuance of an administratively final order
11 of removal. See 8 C.F.R. § 236.1(d) (2026); Rodriguez Diaz, 53 F.4th at 1197 (citing 8 C.F.R.
12 §§ 236.1(d)(1) and 1003.19). During a bond redetermination hearing, an Immigration Judge
13 “(1) may continue to detain the arrested alien; and (2) may release the alien on - (A) bond of at
14 least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney
15 General; or (B) conditional parole[,]” if the noncitizen does not fall within the categories of
16 “criminal aliens[,]” who face mandatory detention under section 236(c)(1) of the INA, 8
17 U.S.C. § 1226(c)(1). 8 U.S.C. § 1226(a)(1); 8 C.F.R. § 236.1(d) (2026).

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20 31. During a bond redetermination hearing, if a noncitizen “demonstrates by the
21 preponderance of the evidence that he is not ‘a threat to national security, a danger to the
22 community at large, likely to abscond, or otherwise a poor bail risk,’” an Immigration Judge
23 “will order his release.” Rodriguez Diaz, 53 F.4th at 1197 (quoting Matter of Guerra, 24 I. &
24 N. Dec. 37, 40 (BIA 2006), and citing Matter of Barreiros, 10 I. & N. Dec. 536, 537-38 (BIA
25 1964)). An Immigration Judge “considers various factors” when deciding whether to release a
26 noncitizen from detention, “including the individual’s ties to the United States as well as his
27 employment history, criminal record, history of immigration violations, and manner of entry
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1 into this country[.]” and assesses “whether bond or other conditions on the alien’s release are
2 appropriate.” *Id.* (citing *Guerra*, 24 I. & N. Dec. at 40, and 8 U.S.C. § 1226(a)(2)). During
3 bond proceedings, “[t]he detainee may be represented by counsel and can submit evidence in
4 support of his claims.” *Id.* (citing 8 C.F.R. § 1003.19(b), and *Matter of Fatahi*, 26 I. & N. Dec.
5 791, 792 (BIA 2016)). A noncitizen can challenge an Immigration Judge’s adverse decision on
6 a motion for bond redetermination in the Board of Immigration Appeals, *see* 8 C.F.R. §
7 236.1(d)(3) (2026), or “request an additional bond hearing whenever he experiences a material
8 change in circumstances.” *Rodriguez Diaz*, 53 F.4th at 1197 (citing 8 C.F.R. § 1003.19(e)).

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11 32. Section 236(c) of the INA, 8 U.S.C. § 1226(c), “carves out a statutory category
12 of [noncitizens] who may not be released under [8 U.S.C.] § 1226(a).” *Jennings*, 583 U.S. at
13 289. The statutory subsection mandates detention of certain noncitizens “who fall[] into one of
14 several enumerated categories involving criminal offenses and terrorist activities[.]” *id.*, and
15 extends to both “inadmissible” and “deportable” noncitizens with criminal history. 8 U.S.C. §
16 1226(c)(1). Federal immigration officials may only release a detainee under 8 U.S.C. §
17 1226(c) “if necessary for witness protection purposes.” *Rodriguez Diaz*, 53 F.4th at 1197
18 (citing 8 U.S.C. § 1226(c)(2), and *Jennings*, 583 U.S. at 289). The plain language of section
19 236(c) of the INA “implies that the default discretionary bond procedures in Section 1226(a)
20 apply to a noncitizen who...is present without being admitted or paroled but has not been
21 implicated in any crimes as set forth in Section 1226(c).” *Rodriguez v. Bostock*, 779 F. Supp.
22 3d 1239, 1256-57 (W.D. Wash. 2025) (citing 8 U.S.C. § 1226(a), and *Shady Grove Orthopedic*
23 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

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26 33. Section 235 of the INA, 8 U.S.C. § 1225, “applies primarily to [noncitizens]
27 seeking entry into the United States[.]” *Jennings*, 583 U.S. at 297. Section 235(a)(1) of the
28 INA states, in part, that a noncitizen who is “present in the United States who has not been

1 admitted or who arrives in the United States (whether or not at a designated port of arrival and
2 including an alien who is brought to the United States after having been interdicted in
3 international or United States waters) shall be deemed... an applicant for admission.” 8 U.S.C.
4 § 1225(a)(1). All noncitizens “who are applicants for admission or otherwise seeking
5 admission or readmission to or transit through the United States shall be inspected by
6 immigration officers[.]” 8 U.S.C. § 1225(a)(3), to confirm “that they may be admitted into the
7 country consistent with U.S. immigration law.” Jennings, 583 U.S. at 287 (quoting 8 U.S.C. §
8 1225(a)(3)). The inspection process “generally begins at the Nation’s borders and ports of
9 entry, where the Government must determine whether an alien seeking to enter the country is
10 admissible.” Id.

13 34. Section 235(b) of the INA, 8 U.S.C. § 1255(b), divides applicants for admission
14 into the United States into “one of two categories, those covered by [8 U.S.C.] § 1225(b)(1)
15 and those covered by [8 U.S.C.] § 1225(b)(2).” Id.

17 35. Section 1225(b)(1) “applies to [noncitizens] initially determined to be
18 inadmissible due to fraud, misrepresentation, or lack of valid documentation,” who are
19 “normally ordered removed ‘without further hearing or review’ pursuant to an expedited
20 removal process.” Id. (quoting 8 U.S.C. §§ 1225(b)(1)(A)(i) and 1225(b)(1)(A)(ii)) (other
21 internal citations omitted). Two classes of inadmissible noncitizens qualify for expedited
22 removal under 8 U.S.C. § 1225(b)(1) - noncitizens who are “arriving in the United States[.]”
23 and certain noncitizens designated by the Attorney General, who “ha[ve] not been admitted or
24 paroled into the United States” and cannot “affirmatively show[.]” that they have been
25 “physically present in the United States continuously for the 2-year period immediately prior to
26 the date of the determination of inadmissibility.” 8 U.S.C. §§ 1225(b)(1)(A)(i),
27 1225(b)(1)(A)(iii).

1 36. A noncitizen in expedited removal proceedings under 8 U.S.C. § 1225(b)(1)
 2 who indicates “either an intention to apply for asylum...or a fear of persecution[.]” must be
 3 referred for an asylum interview, 8 U.S.C. § 1225(b)(1)(A)(ii), and “shall be detained” by
 4 federal immigration officials “[p]ending the credible fear determination by an asylum officer
 5 and any review of that determination by an immigration judge[.]” 8 C.F.R. § 235.3(b)(4)(ii)
 6 (2025). If an immigration officer determines that a noncitizen in section 1225(b)(1)
 7 proceedings has a credible fear of persecution in his country of origin, the noncitizen “shall be
 8 detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii).
 9 If an immigration officers finds that the noncitizen does not have a credible fear of persecution,
 10 the immigration officer “shall order the [noncitizen] removed from the United States without
 11 further hearing or review[.]” unless the noncitizen requests a review of that finding by an
 12 Immigration Judge. 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), 1225(b)(1)(B)(iii)(III). A noncitizen
 13 with a negative credible fear determination “shall be detained pending a final determination of
 14 credible fear of persecution and, if found not to have such a fear, until removed.” 8 U.S.C. §
 15 1225(b)(1)(B)(iii)(IV).
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17 37. Section 235(b)(2) of the INA, 8 U.S.C. § 1225(b)(2), “serves as a catchall
 18 provision that applies to all applicants for admission not covered by [8 U.S.C.] § 1225(b)(1)[.]”
 19 subject to certain exceptions. Jennings, 583 U.S. at 287 (citing 8 U.S.C. §§ 1225(b)(2)(A),
 20 1225(b)(2)(B)). The statute provides that, “in the case of an alien who is an applicant for
 21 admission, if the examining immigration officer determines that an alien seeking admission is
 22 not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a
 23 proceeding under section 240 [of the INA, 8 U.S.C. § 1229a].” 8 U.S.C. § 1225(b)(2)(A).
 24 Federal immigration officials’ power to detain a noncitizen under 8 U.S.C. § 1225(b)(2)(A)
 25 ends when removal proceedings conclude. See Jennings, 583 U.S. at 297.
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V.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

38. Exhaustion of administrative remedies “can be either statutorily required or judicially imposed as a matter of prudence.” Puga v. Chertoff, 488 F.3d 812, 815 (9th Cir. 2007) (citing Noriega-Lopez v. Ashcroft, 335 F.3d 874, 881 (9th Cir. 2003)).

39. Exhaustion is a prudential requirement for a petition for writ of habeas corpus under 28 U.S.C. § 2241. See Hernandez, 872 F.3d at 988 (citing Singh, 638 F.3d at 1203 n.3) (other internal citations omitted). A court may require prudential exhaustion when “(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.” Id. (citing Puga, 488 F.3d at 815). Even if those factors apply, a court may nonetheless waive a prudential exhaustion mandate 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)).

40. “An exception to the exhaustion requirement has been carved for constitutional challenges to...[DHS] procedures.” Iraheta-Martinez v. Garland, 12 F.4th 942, 949 (9th Cir. 2021) (quoting Sola v. Holder, 720 F.3d 1134, 1135 (9th Cir. 2013) (per curiam) (other internal citations omitted)). Mr. Tellez Torres, through counsel, contests his prolonged, unjustified detention in the Respondents’ custody under the Fifth Amendment. Neither an Immigration Judge nor the Board of Immigration Appeals has the authority to decide the constitutionality of immigration statutes. See Padilla-Padilla v. Gonzales, 463 F.3d 972, 977 (9th Cir. 2006) (citing Liu v. Waters, 55 F.3d 421, 425 (9th Cir. 1995)); Matter of G.K., 26 I. & N. Dec. 88,

1 96-97 (BIA 2013) (explaining that “[n]either the [BIA] nor the Immigration Judges have the
2 authority to rule on the constitutionality of the statutes we administer[.]”). Since those tribunals
3 cannot address Mr. Tellez Torres’ constitutional challenge to the legality of his detention, the
4 Court cannot require him to exhaust that claim before an Immigration Judge and the Board of
5 Immigration Appeals before seeking habeas relief. See Padilla-Padilla, 463 F.3d at 977
6 (excusing the petitioners from exhausting a “constitutional due process claim” in the Board of
7 Immigration Appeals because the Board could not resolve the claim) (citing Liu, 55 F.3d at
8 426, and Garcia-Ramirez v. Gonzales, 423 F.3d 935, 938 (9th Cir. 2005)); see also Blake v.
9 Mullin, U.S.D.C. No. 3:26-cv-00844-BTM-SBC, __ F. Supp. 3d __, 2026 U.S. Dist. LEXIS
10 73989, at *3-4 (S.D. Cal. Apr. 2, 2026) (declining to require exhaustion of Blake’s challenge to
11 the lawfulness of his prolonged detention without a bond hearing because the Government did
12 not show that he “can raise his constitutional claim before the immigration courts[.]”); Ambriz
13 v. Barr, 420 F. Supp. 3d 953, 961 (N.D. Cal. 2019) (waiving exhaustion requirement for due
14 process challenge to prolonged detention under 8 U.S.C. § 1226(a) because the Board of
15 Immigration Appeals lacks jurisdiction “to decide questions of the constitutionality of the
16 immigration laws[.]” and therefore cannot “address the constitutional arguments Marroquin
17 Ambriz raises in his petition[.]” (quoting Liu, 55 F.3d at 426); Hechavarria v. Whitaker, 358 F.
18 Supp. 3d 227, 237-38 (W.D.N.Y. 2019) (holding that the petitioner need not exhaust his
19 challenge to his prolonged, indefinite detention in ICE custody pending a final determination
20 on his removal because “the BIA does not have jurisdiction to adjudicate constitutional
21 issues”) (other internal citations and quotation marks omitted).

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26 41. Mr. Tellez Torres, through counsel, challenges his prolonged, unjustified
27 detention by the Respondents under the Due Process Clause. An administrative record is not
28 necessary to resolve the “purely legal question[.]” presented in this case - whether his

1 prolonged detention by the Respondents deprives him of due process. Hernandez, 872 F.3d at
2 989 (finding that “an administrative appellate record is not necessary to resolve the purely legal
3 questions presented by Plaintiffs’ challenge to the government’s policy of refusing to require
4 ICE and IJs to consider financial circumstances and alternative conditions of release in bond
5 determinations[.]”) (citing Singh, 638 F.3d at 1203 n. 3); see also W.T.M. v. Bondi, U.S.D.C.
6 No. 2:25-cv-02428-RAJ-BAT, ___ F. Supp. 3d ___, 2026 U.S. Dist. LEXIS 21315, at *5-*6
7 (W.D. Wash. Jan. 30, 2026) (holding that the petitioner need not exhaust his “constitutional
8 challenge to the adequacy of his bond hearing” in the Board of Immigration Appeals because
9 his constitutional challenge to his detention was “fundamentally a question of law”) (quoting
10 Scott v. Walmsley, U.S.D.C. No. 2:25-CV-1819, ___ F. Supp. 3d ___, 2025 U.S. Dist. LEXIS
11 253288, at *10 (W.D. Wash. Dec. 8, 2025)); Daley v. Andrews, U.S.D.C. No. 1:25-cv-00922-
12 KES-CDB (HC), ___ F. Supp. 3d ___, 2026 U.S. Dist. LEXIS 7406, at *10 (E.D. Cal. Jan. 14,
13 2026) (determining that “an administrative appellate record is not necessary to resolve the legal
14 questions presented by Petitioner as to 1) whether detention that exceeds six months without a
15 bond hearing is per se unconstitutional; [and] 2) whether Petitioner’s ongoing detention
16 without a bond hearing is unreasonably prolonged and violates the Due Process Clause of the
17 Fifth Amendment[.]”).

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22 42. The Court’s decision to waive the prudential exhaustion requirement will not
23 “encourage the deliberate bypass of the administrative scheme” in future cases. Hernandez,
24 872 F.3d at 989 (quoting Puga, 488 F.3d at 815). Mr. Tellez Torres contests his prolonged,
25 unjustified detention by the Respondents under the Due Process Clause of the Fifth
26 Amendment. When this Court determines the legality of Mr. Tellez Torres’ confinement, the
27 disputed issue “should cease to arise.” Id. (quoting Singh, 638 F.3d at 1203 n.3); see also
28 Daley, 2026 U.S. Dist. LEXIS 7406, at *11 (same) (quoting Hernandez, 872 F.3d at 989).

1 While “similarly situated individuals” may “desire to raise similar appeals in the district
2 courts[.]” a “resolution of this question of law at the district court level might provide
3 expedient clarity and guidance to the IJs and BIA, obviating the need for similar, subsequent
4 bypassing of administrative remedies.” Bautista v. Santacruz, U.S.D.C. No. 5:25-cv-01873-
5 SSS-BFM, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 171364, at *21 (C.D. Cal. July 28,
6 2025); see also W-T-M-, 2026 U.S. Dist. LEXIS 21315, at *6-*7 (waiving exhaustion, in part,
7 because a resolution of the petitioner’s constitutional challenge to the adequacy of bond
8 proceedings “may actually promote clarity such that future petitioners may not feel the need to
9 bypass the administrative process by appealing bond denials” to federal district courts) (citing
10 Rodriguez, 779 F. Supp. 3d at 1251-52.).
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13 43. Requiring exhaustion will not permit the Respondents to “correct [their] own
14 mistakes and to preclude the need for judicial review.” Puga, 488 F.3d at 815. The instant
15 case concerns a constitutional challenge to Mr. Telles Torres’ prolonged, unjustified detention
16 without bond, rather than the Board of Immigration Appeals’ ““authority to correct the
17 erroneous factual determinations and evidentiary errors alleged”” in bond proceedings that
18 have already transpired. W-T-M-, 2026 U.S. Dist. LEXIS 21315, at *7 (citing Martinez v.
19 Scott, U.S.D.C. No. 2:25-cv-01538-TSZ-GJL, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS
20 186226, at *15 (W.D. Wash. Aug. 27, 2025)) (other internal citations omitted).
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23 44. Mr. Tellez Torres, through counsel, challenges the constitutional basis for his
24 detention in the Respondents’ custody. In circumstances where, as here, a noncitizen is
25 detained by ICE in violation of the Constitution, “[i]t is well established that the deprivation
26 of constitutional rights unquestionably constitutes irreparable injury.” Hernandez, 872 F.3d at
27 994-95 (quoting Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012)) (other internal
28 citations and quotation marks omitted). The Ninth Circuit has recognized “the irreparable

1 harms imposed on anyone subject to immigration detention[,]” including “evidence of subpar
2 medical and psychiatric care in ICE detention facilities, the economic burdens imposed on
3 detainees and their families as a result of detention, and the collateral harms to children of
4 detainees whose parents are detained.” *Id.* at 995.

6 45. There are no deadlines for the resolution of administrative proceedings
7 concerning noncitizens’ custodial status, *see Ambriz*, 420 F. Supp. 3d at 961, and recent data
8 from the Executive Office for Immigration Review indicates that the Board of Immigration
9 Appeals routinely takes more than 200 days to process a bond appeal. *See W-T-M-*, 2026 U.S.
10 Dist. LEXIS 21315, at *8 (*citing Rodriguez*, 779 F. Supp. 3d at 1248-49). If the Court requires
11 Mr. Tellez Torres to exhaust administrative remedies before seeking federal judicial review of
12 the lawfulness of his detention, prolonged delays in the administrative process may “result in
13 the very harm that the bond hearing was designed to prevent: ‘prolonged detention without due
14 process during lengthy and backlogged removal proceedings.’” *Hechavarria*, 358 F. Supp. 3d
15 at 237 (*quoting Enoh v. Sessions*, U.S.D.C. No. 16-CV-85(LJV), __ F. Supp. 3d __, 2017 U.S.
16 Dist. LEXIS 73676, at *7-*8 (W.D.N.Y. May 15, 2017)) (other internal quotation marks
17 omitted). Any further detention of Mr. Tellez Torres that violates his due process rights will
18 “be an irreparable injury.” *Padilla v. Bowen*, U.S.D.C. No. 2:25-cv-10780-CAS-SK, __ F.
19 Supp. 3d __, 2025 U.S. Dist. LEXIS 229955, at *26-27 (C.D. Cal. Nov. 21, 2025) (*citing*
20 *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018), and *Cortez v. Sessions*, 318 F. Supp.
21 3d 1134, 1139 (N.D. Cal. 2018)); *see also Cortez*, 318 F. Supp. 3d at 1139 (determining that
22 the Petitioner “suffers potentially irreparable harm every day that he remains in custody
23 without a hearing, which could ultimately result in his release from detention”). Federal
24 district courts in the Ninth Circuit have routinely waived exhaustion requirements for
25 noncitizens, who face irreparable injury from their prolonged, unlawful detention if they must
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1 await the outcome of administrative proceedings concerning their custodial status. See
2 Rodriguez, 779 F. Supp. 3d at 1254 (collecting cases of district courts who have “routinely
3 waived prudential exhaustion requirements for noncitizens like Rodriguez facing prolonged
4 detention while awaiting administrative appeals[.]”) (other citations omitted); Ambriz, 420 F.
5 Supp. 3d at 962 (noting the “vast majority of cases that have waived exhaustion based on
6 irreparable injury when an individual has been detained for months without a bond hearing[.]”)
7 (other internal citations omitted); Velasquez v. Bondi, U.S.D.C. No. 26-cv-01759-GPC-DDL,
8 ___ F. Supp. 3d ___, 2026 U.S. Dist. LEXIS 85165, at *8 (S.D. Cal. Apr. 16, 2026) (same).
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11 VI.

12 **STATEMENT OF FACTS**

13 46. Petitioner Yordani Tellez Torres is a national and citizen of Cuba. [Exh. A].

14 47. On or about May 17, 2025, Mr. Tellez Torres entered the United States near
15 Calexico, California. [Exh. B, p. 3; Exh. C, p. 12; Exh. D, p. 14].
16

17 48. On May 18, 2025, CBP officers apprehended Mr. Tellez Torres, and detained
18 him at the Imperial Regional Detention Facility in Calexico, California. [Exh. B, p. 3].

19 49. As was explained above, in part, see supra ¶¶ 33-37, CBP officers should have
20 ascertained whether an inadmissible noncitizen, like Mr. Tellez Torres, either intended to apply
21 for asylum under section 208(a) of the INA, 8 U.S.C. § 1158(a), or harbored a fear of
22 persecution when they apprehended him. See 8 U.S.C. §§ 1225(b)(1)(A)(i), 1225(b)(1)(A)(iii);
23 see also Refugee and Immigrant Center for Education and Legal Services, et al. v. Mullin,
24 U.S.C.A. No. 25-5243, ___ F.4th ___, 2026 U.S. App. LEXIS 11668, at *18 (D.C. Cir. Apr. 24,
25 2026) (noting that “existing regulations” require CBP officers to inform inadmissible
26 individuals subject to 8 U.S.C. § 1225(b)(1) that ““U.S. law provides protection to certain
27 persons who face persecution, harm or torture upon return to their home country,”” and then
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1 “prompt the individual to advise the officer of any ‘fear’ or ‘concern’ that they have about
2 ‘being removed from the United States or about being sent home[.]’” (quoting Refugee &
3 Immigrant Ctr. for Educ. & Legal Servs. (RAICES) v. Noem, 793 F. Supp. 3d 19, 55 (D.D.C.
4 2025), and citing 8 C.F.R. § 235.3(b)(2)(i)) (other citations omitted). An inadmissible person
5 subjected to 8 U.S.C. § 1225(b)(1) who indicates “either an intention to apply for asylum...or a
6 fear of persecution[.]” must be referred for an interview with an asylum officer. 8 U.S.C. §
7 1225(b)(1)(A)(ii); 8 C.F.R. § 8 C.F.R. § 235.3(b)(4) (2026) (same).

9 50. On January 20, 2025, however, the President signed a Proclamation, which
10 directed federal immigration officials to “(1) suspend ‘entry into the United States’ on or after
11 January 20, 2025 of persons ‘engaged in the invasion across the southern border,’...(2)
12 suspend ‘entry into the United States’ of persons who - regardless of their point of entry -
13 ‘fail[.], before entering the United States, to provide Federal officials with sufficient medical
14 information and reliable criminal history and background information as to enable’
15 immigration officials to make statutorily required judgments about admissibility,...and (3)
16 prevent persons subject to the entry suspension from invoking ‘provisions of the INA that
17 would permit their continued presence in the United States, including but not limited to’ the
18 asylum statute, until the President issues ‘a finding that the invasion at the southern border has
19 ceased[.]’” pursuant to sections 212(f) and 215(a) of the INA, 8 U.S.C. §§ 1182(f) and 1185(a).
20 Refugee, 2026 U.S. App. LEXIS 11668, at *3, *15-*16 (D.C. Cir. Apr. 24, 2026) (quoting
21 Proclamation No. 10888, Guaranteeing the States Protection Against Invasion, 90 Fed. Reg.
22 8,333, 8,334-35 (Jan. 20, 2025)). Under subsequent guidance issued by the United States
23 Department of Homeland Security, only individuals who “spontaneously manifest fear” of
24 persecution to an immigration officer will be referred for an “additional assessment” of their
25 eligibility for protection under Article III of the United Nations Convention Against Torture.”
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1 Id. at *19 (other internal quotation marks omitted). That assessment consists of a single
2 interview by a USCIS officer, at which the inadmissible person must - without the benefit of
3 counsel or time to assemble evidence - carry the burden to show that he or she is more likely
4 than not to be tortured if removed to the proposed country.” Id. at *20 (other internal quotation
5 marks omitted).²

7 51. On July 10, 2025, German Silverio, an Asylum Officer with United States
8 Citizenship and Immigration Services (hereinafter “USCIS”), a subordinate agency within the
9 United States Department of Homeland Security, conducted an assessment of Mr. Tellez
10 Torres’ eligibility for protection under Article III of the United Nations Convention Against
11 Torture. [Exh. B, pp. 3-9]. During an interview with Mr. Tellez Torres, Mr. Tellez Torres told
12 the Asylum Officer that Cuban police in Las Tunas, Cuba beat him, detained him, tried to
13 imprison him, and threatened his life and safety after he participated in human rights protests in
14 the country. [Exh. B, pp. 5-9]. He expressed his fear that Cuban police would imprison him,
15 “disappear” him, and endanger his life if he returned to his country of origin, due to his
16 perceived opposition to the Cuban government. [Exh. B, pp. 8-9].
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20 ² In Refugee and Immigrant Center for Education and Legal Services, et al. v. Mullin, a
21 panel of the United States District Court for the District of Columbia Circuit held that the
22 “Proclamation and Guidance are unlawful insofar as they circumvent Congress’s carefully
23 crafted removal procedures and cast aside federal laws that afford individuals the opportunity
24 to apply and be considered for a grant of asylum or withholding of removal.” Refugee, 2026
25 U.S. App. LEXIS 11668, at *76. Accordingly, the panel affirmed the district court’s decision
26 to grant summary judgment to a class of Plaintiffs who were precluded from seeking from
27 protection from removal under the Proclamation and Guidance, and upheld the district court’s
28 certification of a modified class of Plaintiffs comprised of “[a]ll individuals who (1) are present
in the United States while Proclamation 10888 and/or its implementation is in effect, (2) are
not statutorily ineligible for all forms of relief from removal listed in point (3), and (3) absent
the Proclamation and/or its implementation, would seek asylum, 8 U.S.C. § 1158, withholding
of removal under the Immigration and Nationality Act, 8 U.S.C. § 1231(b), or withholding
under the Convention Against Torture, see FARRA, Pub. L. No. 105-277, § 2242, 112 Stat.
2681-822 (1998) (codified at 8 U.S.C. § 1231 note).” Id. at *5, *23-25, *76.

1 52. After that interview concluded, USCIS Asylum Officer Silverio issued a
2 “Convention Against Torture Assessment Notice For Alien(s) Whose Entry Has Been
3 Suspended and/or Restricted Pursuant to INA §§ 212(f) and 215(a)[,]” in which he found that
4 Mr. Tellez Torres “established it was more likely than not that [he] will be tortured in CUBA.”
5 [Exh. B, pp. 3, 9]. USCIS Supervisory Asylum Officer Harold Smith concurred with that
6 assessment on July 11, 2025. [Exh. B, p. 9]. Subsequently, federal immigration officials
7 referred Mr. Tellez Torres to the United States Immigration Court in Imperial, California.
8 [Exh. B, pp. 10-11].
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10 53. On July 11, 2025, an ICE officer issued a Notice to Appear for removal
11 proceedings under section 240 of the INA, 8 U.S.C. § 1229a, to Mr. Tellez Torres. Mr. Tellez
12 Torres’ Notice to Appear charged him with being subject to removal from the United States
13 under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. § 1182(a)(6)(A)(i), for being a noncitizen
14 who was present in the United States without admission or parole, or who arrived in the United
15 States at any time or place other than as designated by the Attorney General. [Exh. C, p. 12].
16 Federal immigration officials filed the Notice to Appear with the United States Immigration
17 Court in Imperial, California on July 14, 2025. [Exh. C].
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19 54. On August 15, 2025, Mr. Tellez Torres, through former counsel, filed a Form I-
20 589, Application for Asylum and Withholding of Removal, a copy of the photographic page of
21 his Cuban passport, and a personal statement for his application with a federal Immigration
22 Judge in Imperial, California. [Exh. D]. In his application, Mr. Tellez Torres raised claims for
23 asylum and withholding of removal under sections 208(a) and 241(b)(3) of the INA, 8 U.S.C.
24 §§ 1158(a) and 1231(b)(3), on account of his political opinion and his membership in a
25 particular social group. [Exh. D, p. 18]. He expressed his intent to pursue an application for
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1 protection under Article III of the United Nations Convention Against Torture as an additional
2 form of relief from removal. [Exh. D, pp. 14, 18].

3 55. Mr. Tellez Torres' Form I-589, Application for Asylum and Withholding of
4 Removal alleged that Cuban police assaulted him during a human rights demonstration in Las
5 Tunas, Cuba on June 11, 2021. [Exh. D, p. 18]. He claimed that Cuban police summoned him
6 for questioning shortly after the demonstration, threatened to imprison him for fifteen years,
7 placed him under surveillance, and harassed him, his family, and friends, due to his political
8 beliefs. [Exh. D, p. 18].
9

10 56. In his application, Mr. Tellez Torres expressed his fear that Cuban authorities
11 will arrest him, imprison him, and subject him to "forced disappearance[,]” torture, or other
12 forms of mistreatment if he returns to his country of origin because they “still view me as a
13 political threat due to my past participation in peaceful protests.” [Exh. D, p. 18]. He asserted
14 that Cuban authorities will not protect him from harm in his home country because “the Cuban
15 government does not tolerate political opposition[,]” and treats “those who speak against the
16 government” as “criminals.” [Exh. D, p. 19].
17

18 57. On August 29, 2025, Mr. Tellez Torres, through former counsel, filed a copy of
19 his summons from the Cuban police, letters of support from friends and family in Cuba,
20 evidence of his medical and mental health history in Cuba, and documentation pertaining to
21 Cuban country conditions with the Immigration Judge.
22

23 58. On November 14, 2025, the Immigration Judge denied Mr. Tellez Torres'
24 applications for relief from removal, and ordered him removed to Cuba. [Exh. E, pp. 28, 30].
25 Mr. Tellez Torres, through counsel, reserved appeal of the Order of the Immigration Judge.
26 [Exh. E, p. 31].
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1 59. On December 15, 2025, Mr. Tellez Torres, through counsel, filed a timely
2 appeal of the Immigration Judge’s adverse decisions on his applications for asylum,
3 withholding of removal, and protection under Article III of the United Nations Convention
4 Against Torture with the Board of Immigration Appeals. [Exh. F, pp. 35-37]. The Board of
5 Immigration Appeals acknowledged its receipt of Mr. Tellez Torres’ case as of December 31,
6 2025. [Exh. F, p. 32].

8 60. Mr. Tellez Torres’ case is still pending with the Board of Immigration Appeals,
9 as of the date of this Petition. [Exh. H].

11 61. Mr. Tellez Torres has remained in the custody of the United States Department
12 of Homeland Security continuously since May 18, 2025. At present, ICE officers are detaining
13 him at the Imperial Regional Detention Facility in Calexico, California. [Exh. G].

14 62. On information and belief, ICE officers have transferred Mr. Tellez Torres to
15 immigration detention facilities in Texas and Louisiana on three occasions, so that they could
16 attempt to remove him from the United States. ICE officers returned Mr. Tellez Torres to the
17 Imperial Regional Detention Facility after they determined that they could not execute his
18 order of removal, due to his pending appeal of the Order of the Immigration Judge in the Board
19 of Immigration Appeals. See 8 C.F.R. § 1003.6(a) (2026) (declaring that, subject to certain
20 exceptions, a decision of an Immigration Judge “from which an appeal to the Board may be
21 taken shall not be executed during the time allowed for the filing of an appeal unless a waiver
22 of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or
23 while a case is before the Board by way of certification[]”).

VII.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of Fifth Amendment to the United States Constitution

(challenge to the Petitioner’s prolonged detention in ICE custody under the Due Process Clause of the Fifth Amendment)

63. The Petitioner, through counsel, incorporates by reference all preceding paragraphs of the instant Petition, as stated therein.

64. This Court may grant a writ of habeas corpus to a noncitizen in federal immigration detention who is “in custody in violation of the Constitution or laws or treaties of the United States[.]” 8 U.S.C. § 2241(c)(3).

65. The Due Process Clause of the Fifth Amendment states that no person shall “be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. The Constitution does not limit the “procedural protections provided by the Fifth Amendment’s Due Process Clause” to citizens. Washington v. Trump, 847 F.3d 1151, 1165 (9th Cir. 2017). Rather, the Due Process Clause applies “to all persons within the United States, including aliens,’ regardless of ‘whether their presence here is lawful, unlawful, temporary, or permanent.” Id. (quoting Zadvydas v. Davis, 533 U.S. 678, 693 (2001)) (other internal quotation marks omitted).

66. Since 2001, the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit “have grappled in piece-meal fashion with whether the various immigration detention statutes may authorize indefinite or prolonged detention of detainees and, if so, may do so without providing a bond hearing[.]” consistent with the Due Process Clause of the Fifth Amendment. Rodriguez v. Robbins, 804 F.3d 1060, 1067 (9th Cir. 2015)

1 (hereinafter “Rodriguez III”), rev’d sub nom. Jennings v. Rodriguez, 583 U.S. 281 (2018)
2 (quoting Rodriguez v. Robbins, 715 F.3d 1127, 1134 (9th Cir. 2013)) (other internal citations
3 and quotation marks omitted).

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5 67. In Zadvydas, the United States Supreme Court resolved constitutional and
6 statutory challenges to the indefinite detention of noncitizens with final removal orders under 8
7 U.S.C. § 1231(a)(6), in circumstances where the noncitizen’s removal was not “practicable.”
8 Rodriguez III, 813 F.3d at 1067. The Supreme Court discerned that “[a] statute permitting
9 indefinite detention of an alien would raise a serious constitutional problem[.]” because the
10 Due Process Clause of the Fifth Amendment prohibits deprivations of a person’s liberty
11 “without due process of law[.]” and “[f]reedom from imprisonment - from government
12 custody, detention, or other forms of physical restraint - lies at the heart of the liberty that
13 Clause protects.” Zadvydas, 533 U.S. at 690 (citing Foucha v. Louisiana, 504 U.S. 71, 80
14 (1992)). The Court noted that it previously held that “government detention violates that
15 Clause unless the detention is ordered in a criminal proceeding with adequate procedural
16 protections,...or, in certain special and ‘narrow’ nonpunitive ‘circumstances,’...where a
17 special justification, such as harm-threatening mental illness, outweighs the ‘individual’s
18 constitutionally protected interest in avoiding physical restraint.” Id. (quoting Kansas v.
19 Hendricks, 521 U.S. 346, 356 (1997), and Foucha, 504 U.S. at 80, and citing United States v.
20 Salerno, 481 U.S. 739, 746 (1987)). To avert those “serious constitutional concerns,” the
21 Supreme Court applied the doctrine of constitutional avoidance, determined that 8 U.S.C. §
22 1231(a)(6) precluded noncitizens’ indefinite detention without a bond hearing, “construe[d]
23 the statute to contain an implicit ‘reasonable time’ limitation,” and recognized a six-month
24 “presumptively reasonable” period of post-removal order confinement. Id. at 682, 701.
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1 68. In Demore v. Kim, 538 U.S. 510 (2003), the Supreme Court considered a
2 constitutional challenge to 8 U.S.C. § 1226(c), which mandates the detention of noncitizens
3 who have been convicted of certain crimes during their removal proceedings. The Supreme
4 Court reiterated its “longstanding view that the Government may constitutionally detain
5 deportable aliens during the limited period necessary for their removal proceedings,” reasoning
6 that mandatory detention under 8 U.S.C. § 1226 had “a definite termination point” and
7 ordinarily “lasts roughly a month and a half in the vast majority of cases in which it is invoked,
8 and about five months in the minority of cases in which the alien chooses to appeal.” Id. at
9 526, 529-30. While the Supreme Court held that criminal noncitizens’ mandatory detention
10 during removal proceedings under 8 U.S.C. § 1226(c) “is a constitutionally permissible part of
11 that process[.]” id. at 531, Justice Kennedy’s concurring opinion recognized that “a lawful
12 permanent resident alien such as respondent could be entitled to an individualized
13 determination as to his risk of flight and dangerousness if the continued detention became
14 unreasonable or unjustified.” Id. at 532 (Kennedy, J., concurring).

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18 69. After Zadvydas and Demore, the Ninth Circuit recognized that “prolonged
19 detention without adequate procedural protections would raise serious constitutional concerns.”
20 Casas-Castrillon v. Department of Homeland Security, 535 F.3d 942, 950 (9th Cir. 2008)
21 (concerning immigration detention 8 U.S.C. § 1226(a)); see also Singh, 638 F.3d at 1203,
22 1206, 1208 (addressing procedural safeguards for noncitizens subjected to prolonged detention
23 under 8 U.S.C. § 1226(a)); Diouf v. Napolitano, 634 F.3d 1081, 1086 (9th Cir. 2011)
24 (determining that “prolonged detention under [8 U.S.C.] § 1231(a)(6), without adequate
25 procedural protections, would raise ‘serious constitutional concerns[.]’”) (quoting Casas-
26 Castrillon, 535 F.3d at 950); Tijani v. Willis, 430 F.3d 1241, 1242 (9th Cir. 2005) (finding
27 “constitutionally doubtful” the prolonged detention of a lawful permanent resident under 8
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1 U.S.C. § 1226(c)). To address the serious constitutional concerns arising from noncitizens’
2 prolonged, indefinite detention under 8 U.S.C. §§ 1225(b), 1226(a), and 1226(a), the Ninth
3 Circuit required individualized bond hearings for noncitizens detained under those statutes
4 every six months, and directed Immigration Judges to consider alternatives to detention when
5 they make custody re-determinations. See Rodriguez III, 804 F.3d at 1087-89.

7 70. In Jennings v. Rodriguez, the United States Supreme Court reversed Rodriguez
8 III, held that the Ninth Circuit erroneously applied the canon of constitutional avoidance when
9 it construed 8 U.S.C. §§ 1225(b), 1226(a), and 1226(c), and discerned that the plain text of
10 those statutes authorized detention until noncitizens’ removal proceedings conclude without
11 limiting the length of the detention that those statutes authorize or requiring “periodic bond
12 hearings.” Jennings, 583 U.S. at 285, 296-306. The Supreme Court remanded the case to the
13 Ninth Circuit for a determination of whether the noncitizen Respondents’ prolonged detention
14 under those statutes contravenes the Due Process Clause. See id. at 312, 314.

17 71. On remand, the Ninth Circuit returned Rodriguez III to the district court to
18 define “the minimum requirements of due process” for noncitizens detained under 8 U.S.C. §§
19 1225(b), 1226(a), and 1226(c). Rodriguez v. Marin, 909 F.3d 252, 255, 257 (9th Cir. 2018)
20 (hereinafter “Rodriguez IV”). Although it did not resolve the class Plaintiffs’ constitutional
21 challenges to their detention, the Ninth Circuit expressed “grave doubts that any statute that
22 allows for arbitrary prolonged detention without any process is constitutional or that those who
23 founded our democracy precisely to protect against the government’s arbitrary deprivation of
24 liberty would have thought so.” Id. at 956. The Court noted that “[a]rbitrary civil detention is
25 not a feature of our American government[,]” that “[l]iberty is the norm, and detention prior to
26 trial or without trial is the carefully limited exception[,]” and that “[c]ivil detention violates
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1 due process outside of ‘certain special and narrow nonpunitive circumstances.’” Id. at 256-57
2 (quoting Zadvydas, 533 U.S. at 690, and Salerno, 481 U.S. at 755).

3 72. After Jennings, most district courts that have contemplated due process
4 challenges to prolonged mandatory detention agree that “‘prolonged mandatory detention
5 pending removal proceedings, without a bond hearing, will - at some point - violate the right to
6 due process.’” Banda v. McAleenan, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019) (quoting
7 Bermudez Paiz v. Decker, U.S.D.C. No. 18-cv-4759 (GHW) (BCM), __ F. Supp. 3d __, 2018
8 U.S. Dist. LEXIS 217604, at *22 (S.D.N.Y. Dec. 27, 2018)) (other internal citations and
9 quotation marks omitted) (collecting cases); Kydyrali v. Wolf, 499 F. Supp. 3d 768, 772-73
10 (S.D. Cal. 2020) (declaring that “the Court joins the majority of courts across the country in
11 concluding that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an
12 individualized bond hearing violates due process[.]”) (citing Yagao v. Figueroa, U.S.D.C. No.
13 17-CV-2224-AJB-MDD, __ F. Supp. 3d __, 2019 U.S. Dist. LEXIS 54566, 2019 WL
14 1429582, at *2 (S.D. Cal. Mar. 29, 2019)); Sandesh, 2026 U.S. Dist. LEXIS 45941, at *5
15 (same) (citing Maksim v. Warden, Golden State Annex, U.S.D.C. No. 1:25-CV-00955-SKO
16 (HC), __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 200588, at *8 (E.D. Cal. Oct. 9, 2025),
17 Abdul-Samed v. Warden of Golden State Annex Det. Facility, U.S.D.C. No. 1:25-CV-00098-
18 SAB-HC, __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 142973, at *16 (E.D. Cal. July 25, 2025),
19 and Kydyrali, 499 F. Supp. 3d at 772).

20 73. While “[n]either the Ninth Circuit nor the Supreme Court have provided
21 guidance regarding the point at which an immigration detainee’s prolonged mandatory
22 detention becomes unconstitutional[.]” courts in this District have adopted the six-factor test
23 developed in Banda v. McAleenan, 385 U.S. 1099 (W.D. Wash. 2019), to measure when a
24 detainee’s prolonged mandatory detention becomes unconstitutional. Sandesh, 2026 U.S. Dist.

1 LEXIS 45941, at *6-*7 (quoting Amado v. United States Department of Justice, U.S.D.C. No.
2 25-CV2687-LL(DDL), __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 217453, at *13 (S.D. Cal.
3 Nov. 4, 2025), and citing Sadeqi v. LaRose, 809 F. Supp. 3d 1090, 1094 (S.D. Cal. 2025),
4 Kadir v. Larose, U.S.D.C. No. 25CV1045-LL-MMP, __ F. Supp. 3d __, 2025 U.S. Dist.
5 LEXIS 203614, at *12-*13 (S.D. Cal. Oct. 15, 2025), and Gao v. LaRose, 805 F. Supp. 3d
6 1106, 1111 (S.D. Cal. 2025)); see also Domingos v. Casey, U.S.D.C. No. 3:26-cv-01151-
7 BTM-JLB, __ F. Supp. 3d __, 2026 U.S. Dist. LEXIS 60961, at *4-*5 (S.D. Cal. Mar. 23,
8 2026) (same); Khadka v. Otay Mesa Det. Ctr., U.S.D.C. No. 3:26-cv-00475-RBM-MMP, __ F.
9 Supp. 3d __, 2026 U.S. Dist. LEXIS 60967, at *6-7 (S.D. Cal. Mar. 23, 2026); L.R.G. v.
10 Larose, U.S.D.C. No. 3:25-cv-3490-CAB-MSB, __ F. Supp. 3d __, 2026 U.S. Dist. LEXIS
11 14597, at *10-*11 (S.D. Cal. Jan. 16, 2026); Babaveisi v. Larose, U.S.D.C. No. 25-cv-3746-
12 GPC-SBC, __ F. Supp. 3d __, 2026 U.S. Dist. LEXIS 5601, at *13 (S.D. Cal. Jan. 9, 2026).

15 74. Banda v. McAleenan considered the following factors to measure whether a
16 noncitizen’s mandatory detention under 8 U.S.C. § 1225(b) is unconstitutionally prolonged:
17 ““(1) the total length of detention to date; (2) the likely duration of future detention; (3) the
18 conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5)
19 delays in the removal proceedings caused by the government; and (6) the likelihood that the
20 removal proceedings will result in a final order of removal.”” Sandesh, 2026 U.S. Dist. LEXIS
21 45941, at *6-*7 (quoting Banda, 385 U.S. at 1118).

24 75. The length of detention “is the most important factor[.]” in the Banda analysis.
25 See Banda, 385 F. Supp. 3d at 1118 (citing Jamal A. v. Whitaker, 358 F. Supp. 3d 853, 858-59
26 (D. Minn. 2019), and Sajous v. Decker, U.S.D.C. No. 18-cv-2447 (AJN), __ F. Supp. 3d __,
27 2018 U.S. Dist. LEXIS 86921, at *27-*28 (S.D.N.Y. May 23, 2018)). When a reviewing court
28 analyzes a prolonged detention claim in habeas corpus proceedings, it should “bear in mind

1 the context: The detention that is being examined here is the detention of a human being who
2 has never been found to pose a danger to the community or to be likely to flee if released.” Id.
3 (quoting Jamal, 358 F. Supp. 3d at 859). The Ninth Circuit has previously found noncitizens’
4 detention in excess of six months to be unreasonably prolonged, and constitutionally doubtful,
5 in circumstances in “no individualized bond hearings had taken place at all[.]” Rodriguez
6 Diaz, 53 F.4th at 1207 (citing Zadvydas, 533 U.S. at 701, and Diouf, 634 F.3d at 1091) (other
7 internal citations omitted).
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10 76. The Respondents have detained Mr. Tellez Torres continuously since May 18,
11 2025 - eleven months and eight days, as of the date of this Petition. [Exh. B, p. 3; Exh. G].
12 While the “length of [the] Petitioner’s detention to date - almost 12 months - does not by itself,
13 without more, establish prolonged detention in violation of due process[.]” it does not “serve as
14 a safe harbor or insulate Petitioner’s case from constitutional review.” Sadeqi, 809 F. Supp. 3d
15 at 1094. Other courts in this district have ordered bond hearings for noncitizens, who the
16 Respondents have detained for a comparable length of time. See id. (finding that the
17 petitioner’s detention of over eleven months without a bond hearing “has become unreasonable
18 and violates due process[.]” and citing cases in which noncitizens’ detention of seven months,
19 ten months, eleven months, and “approximately one year” was found to be unreasonably
20 prolonged) (citing Amado, 2025 U.S. Dist. LEXIS 217453, at *14, Tonoyan v. Andrews,
21 U.S.D.C. No. 1:25-CV-00815-SKO (HC), __ F. Supp. 3d __, 2025 U.S. Dist. LEXIS 212584,
22 at *10 (E.D. Cal. Oct. 28, 2025), Gao, 805 F. Supp. 3d at 1112, and Lopez v. Garland, 631 F.
23 Supp. 3d 870, 879 (E.D. Cal. 2022)); see also Sandesh, 2026 U.S. Dist. LEXIS 45941, at *7-*8
24 (finding that the petitioner’s detention of just over one year was “within the range such that this
25 factor should weigh in favor of Petitioner[.]” and citing cases); Babaveisi, 2026 U.S. Dist.
26 LEXIS 5601, at *13 (finding the petitioner’s ten months of ICE detention to weigh in favor of
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1 a finding that his detention is unreasonably prolonged, and citing cases); Amado, 2025 U.S.
2 Dist. LEXIS 217453, at *14 (declaring that “[c]ourts have found detention over seven months
3 without a bond hearing weighs toward a finding that it is unreasonable[,]” and citing cases).
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5 77. The second Banda factor focuses upon “how long the detention is likely to
6 continue absent judicial intervention; in other words, the ‘anticipated duration of all removal
7 proceedings—including administrative and judicial appeals.’” Banda, 385 F. Supp. 3d at 1119
8 (quoting Jamal, 358 F. Supp. 3d at 859). For noncitizens, “[t]he usual removal process
9 involves an evidentiary hearing before an immigration judge, and at that hearing an alien may
10 attempt to show that he or she should not be removed.” Department of Homeland Security v.
11 Thuraissigiam, 591 U.S. 103, 108 (2020). In removal proceedings, a noncitizen “may apply
12 for asylum on the ground that he or she would be persecuted if returned to his or her home
13 country.” Id. (citing 8 U.S.C. § 1229a(b)(4), and 8 C.F.R. § 1240.11(c) (2020)). If the
14 Immigration Judge rejects his asylum claim and the noncitizen is “ordered removed,” he “can
15 appeal the removal order to the Board of Immigration Appeals and, if that appeal is
16 unsuccessful, the [noncitizen] is generally entitled to review in a federal court of appeals.” Id.
17 (citing 8 U.S.C. §§ 1229a(c)(5) and 1252(a)). The process of seeking administrative and
18 judicial review of an order of removal “may take up to two years.” Banda, 385 F. Supp. 3d at
19 1119; Sandesh, 2026 U.S. Dist. LEXIS 45941, at *8-*9 (same). Significant backlogs at the
20 Board of Immigration Appeals may lengthen the time of a noncitizen’s detention while he
21 seeks review of his order of removal. See L.R.G., 2026 U.S. Dist. LEXIS 14597, at *11
22 (describing the petitioner’s exhibit, which showed a Board of Immigration Appeals backlog of
23 “over 200,000 appeals” as of January of 2026).
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28 78. A federal Immigration Judge denied Mr. Tellez Torres’ applications for asylum,
withholding of removal, and protection under Article III of the United Nations Convention
PETITION FOR WRIT OF HABEAS CORPUS, PURSUANT TO 28 U.S.C. § 2241

1 Against Torture on November 14, 2025. [Exh. E, p. 28]. The Order of the Immigration Judge
2 directed Mr. Tellez Torres' removal to Cuba. [Exh. E, p. 30]. Mr. Tellez Torres, through
3 counsel, filed an appeal of the Order of the Immigration Judge on December 15, 2025. [Exh.
4 F, pp. 35-37]. The Board of Immigration Appeals acknowledged its receipt of Mr. Tellez
5 Torres' case as of December 31, 2025. [Exh. F, p. 32; Exh. H, p. 40]. The Board of
6 Immigration Appeals has not issued a briefing schedule or a decision in Mr. Telles Torres'
7 case, as of the date of this Petition. [Exh. H, p. 40]. The "undetermined, but likely significant,
8 period of mandatory detention through the appeals process[]" Gao, 805 F. Supp. 3d at 1111, as
9 Mr. Tellez Torres awaits the issuance of a briefing schedule, the filing of briefs on appeal, and
10 adjudication by the Board of Immigration Appeals, weighs in his favor. See Mubashar v.
11 LaRose, U.S.D.C. No. 3:26-cv-0836-CAB-DDL, ___ F. Supp. 3d ___, 2026 U.S. Dist. LEXIS
12 54267, at *5 (S.D. Cal. Mar. 16, 2026) (finding that the second Banda factor "favors
13 Petitioner[]" because "Petitioner submitted his appeal on October 22, 2025 and it is unclear
14 whether it will be adjudicated soon[]"); Rash v. Larose, U.S.D.C. No. 26v0008-LL-DEB, ___ F.
15 Supp. 3d ___, 2026 U.S. Dist. LEXIS 19033, at *11-*12 (S.D. Cal. Jan. 30, 2026) (holding that
16 "the duration of future detention weighs in favor of Petitioner" because the district court
17 anticipated that he would be detained for "several more months or even years" while he waited
18 for the Board of Immigration Appeals to issue a briefing schedule and adjudicate his case);
19 L.R.G., 2026 U.S. Dist. LEXIS 14597, at *11 (same).

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24 79. The third Banda factor concerns "the conditions of the detention facility where
25 the petitioner is detained." Banda, 385 F. Supp. 3d at 1119 (citing Jamal, 358 F. Supp. 3d at
26 859). In habeas corpus matters concerning prolonged detention, "[t]he more that the
27 conditions under which the [noncitizen] is being held resemble penal confinement, the stronger
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1 his argument that he is entitled to a bond hearing.” Banda, 385 F. Supp. 3d at 1119 (citing
2 Jamal, 358 F. Supp. 3d at 859); see also Sandesh, 2026 U.S. Dist. LEXIS 45941, at *9 (same).

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4 80. As is the case with the Otay Mesa Detention Center, which courts in this
5 District have found to have conditions ““indistinguishable from penal confinement[,]”
6 Kydyrali, 499 F. Supp. 3d at 774 (quoting Jamal, 358 F. Supp. 3d at 859), the Imperial
7 Regional Detention Facility is a private, for-profit detention facility operated by the
8 Management and Training Corporation, a Utah corporation that operates correctional facilities
9 in several states. See Imperial Regional Detention Center, available at Management &
10 Training Corp., <https://www.mtctrains.com/facility/imperial-regional-detention-facility/>
11 (visited Apr. 26, 2026); Corrections Services, available at Management & Training Corp.,
12 <https://www.mtctrains.com/corrections/> (visited Apr. 26, 2026) (containing list of correctional
13 facilities operated by the company). ICE officers have detained Mr. Tellez Torres “behind
14 razor wire and concrete walls in a secured facility.” Kadir, 2025 U.S. Dist. LEXIS 203614, at
15 *14 (S.D. Cal. Oct. 15, 2025); see also Kori Suzuki, Imperial County Detention Center Seeks
16 Doctor After Detainee Dies In Custody (Nov. 10, 2025), available at KPBS,
17 [https://www.kpbs.org/news/border-immigration/2025/11/10/imperial-county-detention-center-](https://www.kpbs.org/news/border-immigration/2025/11/10/imperial-county-detention-center-seeks-doctor-after-detainee-dies-in-custody)
18 [seeks-doctor-after-detainee-dies-in-custody](https://www.kpbs.org/news/border-immigration/2025/11/10/imperial-county-detention-center-seeks-doctor-after-detainee-dies-in-custody) (visited Apr. 26, 2026) (showing fencing and razor
19 wire surrounding the Imperial Regional Detention Facility); Imperial Regional Detention
20 Facility, available at Management and Training Corporation, [https://www.mtctrains.com/](https://www.mtctrains.com/facility/imperial-regional-detention-facility/)
21 [facility/imperial-regional-detention-facility/](https://www.mtctrains.com/facility/imperial-regional-detention-facility/) (visited Apr. 26, 2026) (showing fencing and razor
22 wire surrounding the facility in a photograph and a video, at 0:06 and at 1:46). A video of the
23 Imperial Regional Detention Facility, which the Management and Training Corporation posts
24 on its website, depicts secured detainee dormitories, restricted recreational facilities, and
25 detainees in color coded jumpsuits. See Imperial Regional Detention Facility, available at

1 Management and Training Corporation, <https://www.mtctrains.com/facility/imperial-regional->
2 [detention-facility/](https://www.mtctrains.com/facility/imperial-regional-detention-facility/) (visited Apr. 26, 2026) (showing detainees in color coded jumpsuits, limited
3 recreational facilities, and secured dormitory facilities for detainees, at 0:47, 0:56, 1:04-1:06,
4 1:20-1:23, and 1:25). Guards at the Imperial Regional Detention Facility impose penalties for
5 detainees' violation of the facility's rules, including prolonged administrative segregation. See
6 ICE Needs to Address Prolonged Administrative Segregation and Other Violations at the
7 Imperial Regional Detention Facility, at pp. 2, 4-5 (Dec. 18, 2020), available at United States
8 Department of Homeland Security, Office of the Inspector General, [https://www.oig.dhs.gov/](https://www.oig.dhs.gov/sites/default/files/assets/2020-12/OIG-21-12-Dec20.pdf)
9 [sites/default/files/assets/2020-12/OIG-21-12-Dec20.pdf](https://www.oig.dhs.gov/sites/default/files/assets/2020-12/OIG-21-12-Dec20.pdf) (visited Apr. 26, 2026). The third
10 Banda factor weighs in Mr. Tellez Torres' favor where, as here, the conditions of his detention
11 resemble penal confinement. See L.R.G., 2026 U.S. Dist. LEXIS 14597, at *11 (finding that
12 the petitioner's detention "is similar to penal confinement because she is detained in a secure
13 facility, guarded by armed personnel, and has restricted access to outdoor space, activities, and
14 communication[,]") and finding that the third Banda factor weighs in the petitioner's favor);
15 Kadir, 2025 U.S. Dist. LEXIS 203614, at *14 (holding that the third Banda factor weighs in the
16 petitioner's favor because the petitioner is "locked up behind razor wire and concrete walls in a
17 secured facility, forced to wear a color-coded prisoner jump suit, forbidden from accessing the
18 internet, restricted access to outdoor space, restricted on visitation, and guarded at all times
19 with armed guards authorized to inflict punishment for violations of rules[]") (other internal
20 citations and quotation marks omitted).

25 81. The fourth Banda factor, "the nature and extent of any delays in the removal
26 proceedings that petitioner caused[,] focuses on "dilatory tactics" or "bad faith" attempts
27 by a detainee to deliberately slow the pace of removal proceedings and secure release from
28 detention. Banda, 385 F. Supp. 3d at 1119 (quoting Sopo v. United States Attorney General,

1 825 F.3d 1199, 1218 (11th Cir. 2016), vacated on other grounds, 890 F.3d 952, 954 (11th Cir.
2 2018), and Ly v. Hansen, 351 F.3d 263, 272 (6th Cir. 2003)); see also Babaveisi, 2026 U.S.
3 Dist. LEXIS 5601, at *17 (same); Kydyrali, 499 F. Supp. 3d at 774 (same). A noncitizen’s
4 “good-faith actions to litigate and defend are not considered.” Babaveisi, 2026 U.S. Dist.
5 LEXIS 5601, at *17 (citing Lopez, 631 F. Supp. 3d at 881, Gonzalez v. Bonnar, U.S.D.C. No.
6 18-CV-05321-JSC, __ F. Supp. 3d __, 2019 U.S. Dist. LEXIS 12636, at *12 (N.D. Cal. Jan.
7 25, 2019), and Liban M.J. v. Secretary of Department of Homeland Security, 367 F. Supp. 3d
8 959, 965 (D. Minn. 2019); see also Lopez, 631 F.3d at 881 (declaring that the “Petitioner is
9 entitled to raise legitimate defenses to removal...and such challenges to his removal cannot
10 undermine his claim that detention has become unreasonable[.]”) (quoting Liban M.J., 367 F.
11 Supp. 3d at 965).

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14 82. Federal immigration officials apprehended and detained Mr. Tellez Torres on
15 May 18, 2025, conducted an assessment of his eligibility for protection under Article III of the
16 United Nations Convention Against Torture on July 10, 2025, and referred Mr. Tellez Torres to
17 the United States Immigration Court for further proceedings on July 11, 2025. [Exh. B, pp. 3-
18 9, 11]. Removal proceedings commenced in the above-captioned matter on July 14, 2025,
19 when ICE officers filed Mr. Tellez Torres’ Notice to Appear for removal proceedings under
20 section 240 of the INA, 8 U.S.C. § 1229a, with the United States Immigration Court in
21 Imperial, California. [Exh. C]. See 8 C.F.R. § 1003.14(a) (2026) (stating that “[j]urisdiction
22 vests, and proceedings before an Immigration Judge commence, when a charging document is
23 filed with the Immigration Court by the [Department of Homeland Security][.]”). Mr. Tellez
24 Torres, through former counsel, filed a Form I-589, Application for Asylum and Withholding
25 of Removal and supporting documents with a federal Immigration Judge in Imperial,
26 California on August 15, 2025, [Exh. D], and supplemented his applications for relief from
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1 removal with a federal Immigration Judge on August 29, 2025. The Immigration Judge denied
2 Mr. Tellez Torres' applications for relief from removal on November 14, 2025, less than three
3 months later. [Exh. E, pp. 28-30]. Mr. Tellez Torres, through present appellate counsel, filed a
4 timely appeal of the Order of the Immigration Judge on December 15, 2025. [Exh. F].
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6 83. No evidence suggests that Mr. Tellez Torres engaged in dilatory tactics or
7 sought to deliberately slow his removal proceedings, in an effort to gain his release from
8 detention. Mr. Tellez Torres' case was pending before the Immigration Judge for exactly four
9 months, well within the average completion time for removal proceedings for a noncitizen in
10 ICE detention. See Kydyrali, 499 F. Supp. 3d at 774; see also Demore, 538 U.S. at 530
11 (estimating that removal proceedings last “roughly a month and a half” for mandatory
12 detainees under 8 U.S.C. § 1226(c), and “about five months in the minority of cases in which
13 the alien chooses to appeal[]”). While Mr. Tellez Torres has appealed the Order of the
14 Immigration Judge, “there is no indication that he is responsible for undue delay in the
15 proceedings.” Gao, 805 F. Supp. 3d at 1111.
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18 84. Under the Fifth Banda factor, the “nature and extent of any delays in removal
19 proceedings caused by the government” weigh in favor of finding a detainee's continued
20 detention to be unreasonable, and a violation of the detainee's due process rights. See Banda,
21 385 F. Supp. 3d at 1120 (finding that delays by the Government in securing an interpreter for
22 the petitioner's removal proceedings “favors granting petitioner a bond hearing[]”) (citing
23 Jamal, 352 F. Supp. 3d 853 at 860, and Sajous, 2018 U.S. Dist. LEXIS 86921, at *35); see also
24 Khadka 2026 U.S. Dist. LEXIS 60967, at *10 (declaring that ““where the fault is attributable to
25 some entity other than the [noncitizen], the factor will weigh in favor of concluding that
26 continued detention without a bond hearing is unreasonable[]”) (quoting Abduraimov v.
27 Andrews, U.S.D.C. 1:25-cv-00843-EPG-HC, ___ F. Supp. 3d ___, 2025 U.S. Dist. LEXIS
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1 202711, at *27 (E.D. Cal. Oct. 14, 2025)); Kydyrali, 499 F. Supp. 3d at 774 (concluding that a
2 delay in the adjudication of the petitioner’s case attributable to the “crowded dockets” of the
3 Board of Immigration Appeals and the Ninth Circuit supported a finding that the petitioner had
4 been subjected to “unreasonably prolonged detention”) (quoting Firas Djelassi v. ICE Field
5 Office Dir., 434 F. Supp. 3d 917, 923 (W.D. Wash. 2019)).
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7 85. While only four months transpired between the initiation and the completion of
8 Mr. Tellez Torres’ removal proceedings in the United States Immigration Court, [Exh. C, E],
9 the Government does not explain the delay of nearly two months between the date of Mr.
10 Tellez Torres’ apprehension on May 18, 2025 and the date that federal immigration officials
11 screened him for eligibility for protection under Article III of the United Nations Convention
12 Against Torture and referred him for removal proceedings. [Exh. B; Exh. C]. Likewise, the
13 Government has not explained its four-month delay in issuing a briefing schedule for Mr.
14 Tellez Torres’ case before the Board of Immigration Appeals, following the timely submission
15 of his Notice of Appeal. [Exh. F; Exh. H, p. 40]. The Respondents’ unexplained delay in
16 initiating removal proceedings and in processing Mr. Tellez Torres’ appeal weighs in favor of a
17 finding that he has been subjected to unreasonably prolonged detention.
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20 86. The final Banda factor focuses upon “the likelihood that the final proceedings
21 will culminate in a final order of removal.” Banda, 385 F. Supp. 3d at 1120 (quoting Jamal,
22 358 F. Supp. 3d at 859). To ascertain whether the sixth Banda factor favors the habeas
23 petitioner the Court “considers whether the noncitizen has asserted any defenses to removal.”
24 Id. (citing Sajous, 2018 U.S. Dist. LEXIS 86921, at *36). When “a noncitizen has not asserted
25 any grounds for relief from removal, presumably the noncitizen will be removed from the
26 United States, and continued detention will at least marginally serve the purpose of detention,
27 namely assuring the noncitizen is removed as ordered.” Id. (citing Sajous, 2018 U.S. Dist.
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1 LEXIS 86921, at *36) (other internal citations omitted). However, when “a noncitizen has
2 asserted a good faith challenge to removal, “the categorical nature of the detention will
3 become increasingly unreasonable.” Id. (quoting Sajous, 2018 U.S. Dist. LEXIS 86921, at
4 *36) (other internal citations omitted).

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6 87. The Respondents’ determination that Mr. Tellez Torres established that he
7 would more likely than not face torture in Cuba, based upon his testimony regarding his
8 persecution in Cuba and documentation of Cuban country conditions, [Exh. B, pp. 2, 10-11],
9 weighs slightly in favor of a finding that he has faced unreasonably prolonged detention, in
10 violation of his due process rights. See Khadka, 2026 U.S. Dist. LEDXIS 60967, at *11 (other
11 internal citations omitted); Sandesh, 2026 U.S. Dist. LEXIS 45941, at *10; Singh v. Noem,
12 U.S.D.C. No. 26-cv-0265-GPC-BLM, ___ F. Supp. 3d ___, 2026 U.S. Dist. LEXIS 15095, at *15
13 (S.D. Cal. Jan. 27, 2026). Although a federal Immigration Judge denied Mr. Tellez Torres’
14 applications for asylum, withholding of removal, and protection under Article III of the United
15 Nations Convention Against Torture, [Exh. E, pp. 28, 30], Mr. Tellez Torres has appealed the
16 Order of the Immigration Judge. [Exh. F]. Mr. Tellez Torres’ appeal remains pending with the
17 Board of Immigration Appeals, as of the date of his Petition. [Exh. H, p. 40].

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20 88. Intervening developments, following the filing of Mr. Tellez Torres’ appeal of
21 the Order of the Immigration Judge in December of 2025, suggest that the likelihood that the
22 present proceedings in the Board of Immigration Appeals will result in a final order of removal
23 has diminished. As was explained above, see supra ¶¶ 50-52, the President of the United
24 States issued a Proclamation, which barred people who arrived at the southern border of the
25 United States from seeking asylum, on January 20, 2025. See Refugee, 2026 U.S. App. LEXIS
26 11668, at *15. Subsequent policy guidance issued by the United States Department of
27 Homeland Security stated that people who cross the southern border of the United States
28

1 between Ports of Entry cannot apply for asylum, see id., at *16, and directed asylum officers to
2 only consider those individuals' eligibility for protection under the Torture Convention. See
3 id. at *16-*20.

4
5 89. Although a federal district judge in the United States District Court for the
6 District of Columbia certified a class of “all individuals who are or will be subject to the
7 Proclamation and/or its implementation and who are now or will be present in the United
8 States[,]” vacated the policy guidance, declared the Proclamation unlawful “insofar as it
9 purports to suspend or restrict access to asylum, withholding of removal, or the existing
10 regulatory processes for obtaining [Convention Against Torture] protection[,]” and enjoined
11 the Government from implementing the Proclamation on July 2, 2025, id. at *22 (quoting
12 RAICES, 793 F. Supp. 3d at 98, 105), an Asylum Officer nonetheless informed Mr. Tellez
13 Torres that “The President of the United States has invoked U.S. law to suspend and restrict the
14 entry of certain aliens[,]” that noncitizens “may not be returned to a country where it is more
15 likely than not they will be tortured[,]” and that “[t]he purpose of this interview is to determine
16 whether it is more likely than not that you will be tortured in Cuba[]” one week later. [Exh. B,
17 p. 4]. The Asylum Officer then assessed Mr. Tellez Torres solely for eligibility for protection
18 under the Torture Convention. [Exh. B].

19
20
21 90. On August 1, 2025, two weeks after Mr. Tellez Torres entered removal
22 proceedings, [Exh. C], the United States Court of Appeals for the District of Columbia Circuit
23 stayed the district court's order in part. See id. at *23-*24 (citing Refugee & Immigrant Ctr.
24 for Educ. and Legal Servs. v. Noem, U.S.C.A. No. 25-5243, __ F.4th __, 2025 U.S. App.
25 LEXIS 19422 (D.C. Cir. Aug. 1, 2025)). On April 24, 2026, the District of Columbia Circuit
26 declared the Proclamation and the related policy guidance “unlawful to the extent that they
27 circumvent the INA's removal procedures and cast aside federal laws affording individuals the
28

1 right to apply and be considered for asylum or withholding of removal protections[,]” affirmed
2 the district court’s grant of summary judgment for the Plaintiffs, and affirmed the district
3 court’s class certification order, as modified by the appellate court. Id. at *5, *24-*25, *76.

4
5 91. While Mr. Tellez Torres, through former counsel, submitted applications for
6 asylum, withholding of removal, and protection under the Torture Convention to an
7 Immigration Judge, [Exh. D], and the Immigration Judge denied those applications for relief
8 from removal, [Exh. E, p. 28], the ongoing litigation concerning the Proclamation and the
9 Respondents’ limited assessment of Mr. Tellez Torres’ eligibility for protection from removal
10 suggest that the Respondents may not have fully considered his claims for asylum and
11 withholding of removal during his removal proceedings. The increased prospects of a remand
12 of Mr. Tellez Torres’ immigration matter for reconsideration of his claims for asylum and
13 withholding of removal to an Immigration Judge diminishes the likelihood that his case in the
14 Board of Immigration Appeals will result in a final order of removal, and weighs in favor of a
15 finding that he faces unreasonably prolonged detention under the Due Process Clause. See
16 Banda, 385 F. Supp. 3d at 1120.
17

18
19 92. A majority of the Banda factors weigh in Mr. Tellez Torres’ favor.
20 Accordingly, he respectfully requests an Order from this Court, declaring his continued
21 mandatory detention under 8 U.S.C. § 1225(b) has become unreasonably prolonged, and
22 violates his rights under the Due Process Clause.
23

24 93. Mr. Tellez Torres, through counsel, asks this Court to issue an Order mandating
25 his immediate release from the Respondents’ custody, unless the Respondents provide an
26 individualized bond hearing to him before a neutral decisionmaker within seven days. At that
27 hearing, the Respondents must justify his continued confinement through clear and convincing
28 evidence that Mr. Tellez Torres poses a risk of flight or a danger to the community if federal

1 immigration officials release him from detention. See Singh, 638 F.3d at 1203 (requiring the
2 Government to prove “by clear and convincing evidence that an alien is a flight risk or a
3 danger to the community” to justify a noncitizen’s continued, prolonged detention in federal
4 immigration custody, due to the “substantial liberty interest at stake” in the detainee’s
5 circumstances); see also Martinez v. Clark, 124 F.4th 775, 785 (9th Cir. 2024) (stating that “the
6 BIA properly noted that the government bore the burden to establish by clear and convincing
7 evidence that Martinez is a danger to the community” during a bond hearing for a noncitizen
8 detained under 8 U.S.C. § 1226(c)); Sandesh, 2026 U.S. Dist. LEXIS 45941, at *14-*15
9 (applying the legal standards set forth in Singh and in Martinez to a bond hearing for a
10 noncitizen who faced unreasonably prolonged detention in ICE custody); Gao, 805 F. Supp. 3d
11 at 1112 (same); Kydyrali, 499 F. Supp. 3d at 774 (same). Mr. Tellez Torres, through counsel,
12 asks the Court to order that a neutral decisionmaker consider alternative conditions of release
13 and his ability to pay a bond if he or she determines that his release on bond is warranted. See
14 Sandesh, 2026 U.S. Dist. LEXIS 45941, at *16; see also Hernandez, 872 F.3d at 993-94.
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18 **VIII.**

19 **PRAYER FOR RELIEF**

20 WHEREFORE, the Petitioner prays that this Court grant the following requests for
21 relief:

- 22 1. That this Court grant a writ of habeas corpus;
- 23 2. That this Court issue an Order, enjoining the Respondents from removing the
24 Petitioner from the United States District Court for the Southern District of California or from
25 the United States, pursuant to the All Writs Act, 28 U.S.C. § 1651(a);
- 26 3. That this Court declare that the Petitioner’s continued detention in the
27 Respondents’ custody violates the Due Process Clause of the Fifth Amendment;
- 28

PETITION FOR WRIT OF HABEAS CORPUS, PURSUANT TO 28 U.S.C. § 2241

1 4. That this Court issue an Order, directing the Petitioner's immediate release from
2 the Respondents' custody, unless they provide an individualized bond determination to him
3 within seven business days, at which the Respondents will bear the burden of justifying his
4 continued confinement by clear and convincing evidence that he will pose a flight risk or a
5 danger to the community if he was released from ICE custody;
6

7 5. That this Court issue an Order, directing a neutral adjudicator who presides over
8 an individualized bond redetermination hearing for the Petitioner to consider alternative
9 conditions of release and the Petitioner's ability to pay a bond if he or she determines that the
10 Petitioner's release on bond is warranted;
11

12 5. That this Court enjoin the Respondents from imposing additional conditions on
13 the Petitioner's release from detention, such as a bond or electronic monitoring, unless a
14 neutral decisionmaker determines that such conditions of release are necessary at a pre-
15 deprivation hearing;
16

17 6. That this Court issue an Order, enjoining the Petitioner's re-arrest and re-
18 detention by the Respondents without constitutional safeguards, including pre-deprivation
19 notice and a hearing before a neutral adjudicator;
20

21 7. That this Court award to the Petitioner and counsel reasonable attorneys' fees,
22 costs, and expenses incurred from bringing this action, in conformity with the Equal Access to
23 Justice Act, 28 U.S.C. § 2412; and
24
25
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27
28

1 8. That this Court order any other relief that it deems appropriate.

2 Respectfully Submitted,

3 Dated: April 26, 2026

4 /s/ Lori B. Schoenberg
5 **LORI B. SCHOENBERG**
6 **LAW OFFICES OF LORI B. SCHOENBERG**
7 611 Wilshire Boulevard, Suite 1006
8 Los Angeles, CA 90017

9 Attorney for Petitioner Yordani Tellez Torres

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

11 I represent Petitioner Yordani Tellez Torres, and submit this verification on his behalf. I
12 hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas
13 Corpus, Pursuant to 28 U.S.C. § 2241, are true and correct to the best of my knowledge. Dated
14 this 26th day of April, 2026.

15 /s/ Lori B. Schoenberg
16 **LORI B. SCHOENBERG**