Natasha Phillips, Esq. (CA 350286)
(858) 637-3278
natashap@jfssd.org
Regina Dryjanski, Esq. (CA 336432)
(858) 361-9725
reginac@jfssd.org
Krista Kshatriya, Esq. (CA 274609)
(858) 201-0349
kristak@jfssd.org
Jewish Family Service of San Diego
8804 Balboa Avenue
San Diego, CA 92123
Pro Bono Counsels for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARCOS RAMIREZ LLANES,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego Field Office, United States Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security; TODD BLANCHE, Acting United States Attorney General, *in their official capacities*,

Respondents.

Civil Action No.:

'26CV3192 BJC AHG

PETITION FOR WRIT OF HABEAS CORPUS

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

INTRODUCTION

1. Marcos Ramirez Llanes (Petitioner) is currently unlawfully detained in the custody of Respondents in violation of his constitutional, statutory, and legal rights. Respondents have detained Petitioner since February 23, 2025—452 days, almost fifteen months.

2. Petitioner has peacefully lived his entire adult-life in the United States since 2003; he has no criminal record of any kind. He now has an 11-year-old U.S. citizen son.

3. Petitioner seeks habeas relief under 28 U.S.C. § 2241, which is the proper vehicle for challenging civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001). Because (i) Respondents cannot justify Mr. Ramirez's present prolonged detention under the due process clause of the United States Constitution, (ii) because the *Rodriguez v. Robbins* class injunction, No. CV 07-03239-TJH, 2012 WL 7653016 (C.D. Cal. Sept. 13, 2012), applies to Petitioner and entitles him to a bond hearing, and (iii) because Respondents have incorrectly determined that Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2), Petitioner should be released. In the alternative, this Court should conduct a bail hearing. In the second alternative, the Court should order an immigration court bond hearing.

CUSTODY

4. Petitioner has remained in the physical custody of Respondents for almost fifteen months, since February 23, 2025. Petitioner is currently imprisoned at Otay Mesa Detention Center, an immigration detention facility in San Diego, California, under the direct control of Respondents and their agents.

JURISDICTION

5. This Court has jurisdiction to entertain this habeas petition under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I, § 2.

VENUE

6. Venue is proper in this District because venue lies in the district in which Petitioner is detained. 28 U.S.C. § 2242; *Doe v. Garland*, 109 F.4th 1188, 1198 (9th Cir. 2024).

PARTIES

7. Petitioner Marcos Ramirez Llanes is currently detained by Respondents at Otay Mesa Detention Center and has been detained by Respondents for almost fifteen months.
8. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center, where Petitioner is currently detained. He is a legal custodian of Petitioner and is named in his official capacity.
9. Respondent Patrick Divver is the Field Office Director responsible for the San Diego Field Office of ICE with administrative jurisdiction over Petitioner's immigration case. He is a legal custodian of Petitioner and is named in his official capacity.
10. Respondent Todd M. Lyons is the Acting Director of United States Immigration and Customs Enforcement (ICE), the agency detaining Petitioner. He is a legal custodian of Petitioner and is named in his official capacity.
11. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security (DHS). He is a legal custodian of Petitioner and is named in his official capacity.
12. Respondent Todd Blanche is the Acting Attorney General of the United States Department of Justice. He is a legal custodian of Petitioner and is named in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return within three days, or within twenty days for good cause shown. *Id.*

14. Because "special solicitude" is due in cases of illegal restraint or confinement, "[t]he application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him[.]" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

STATEMENT OF FACTS

15. Petitioner is a 40-year-old man from Mexico who has spent the entirety of his adult life in the United States. Ex A (Petitioner's Declaration). Petitioner fled to the United States in 2003 when he was seventeen years old because [redacted] *Id.* Scared, he entered the United States without inspection and has remained in the Los Angeles area ever since. *Id.*

16. Petitioner has had no brushes with the law: no criminal arrests, prosecutions, or convictions in the U.S. or anywhere else. *Id.* He has not received a write-up in over a year in ICE custody. *Id.*

17. His son [redacted], in Hollywood, California and is a U.S. citizen. *Id.* He is now 11 years old and in fourth grade at a school in Monterey Park, California. *Id.* Petitioner is a devoted father. Though he and his son's mother separated around 2016 or 2017, Petitioner has housed and cared for his son every weekend since, until ICE arrested him. *Id.* Without court order, he paid his ex-girlfriend child support every month in the amount she requested. *Id.* Until ICE arrested him, he never missed a payment. *Id.* Petitioner is able to speak to his son on the phone, and his son tells him that he wants to live with Petitioner instead of with his mom. *Id.*

18. Petitioner also acts as a father figure for his son's six-year-old half-sister Noemy (his ex-girlfriend's daughter). *Id.* At her request, Petitioner also cared for her over the weekends, taking her and his son out to eat and to the park and playing with their toys and dolls at his home. *Id.*

19. ICE arrested Mr. Ramirez outside his home on February 23, 2025, in an operation searching for someone else. *Id.* The officers pointed their guns at him and shouted at him to come out of the house or they would shoot. *Id.* He put his hands up, walked out of the house, peacefully complied with the officers' directions, and honestly answered their questions. ICE brought him to a detention facility in Adelanto, CA. *Id.*

20. Petitioner appeared *pro se* in his removal proceedings. Petitioner had met with a Legal Orientation Program at the detention center and had received assistance from someone who he understood would submit his application to the Court, but did not. *Id.* An immigration judge (IJ) ordered him removed on June 30, 2025. Petitioner promptly appealed to the Board of Immigration Appeals (BIA). Ex. B (Receipt of BIA Appeal). Petitioner will pursue every avenue to litigate his case. Ex. A. He plans to regularize his status through the course of proceedings and hopes to eventually become a firefighter after witnessing part of the Palisades fire firsthand in January 2025. *Id.*

21. On September 8, 2025, ICE provided Petitioner with a notice that he would have a bond hearing under *Rodriguez v. Robbins*. Ex. C. During the hearing on September 12, at which Petitioner was *pro se*, the IJ asked Petitioner if he would like to "withdraw" his bond request. Ex. A. The IJ explained to Petitioner, that in order to receive additional time to collect documents, he needed to withdraw the bond request. *Id.* Petitioner agreed. *Id.* He submitted additional evidence, which the Court received in early November 2025. *Id.* However, no new bond hearing was scheduled. *Id.* And then, after about eight and half months in Adelanto, he was transferred to Otay Mesa Detention Center on November 19, 2025. *Id.*

22. In April 2026, Mr. Ramirez again requested a bond hearing, this time represented by Counsel. During the hearing, the IJ held that he did not have jurisdiction and that Petitioner was not entitled to a bond hearing. Ex. D. As described further *infra*, the position of Executive Office of Immigration Review (which includes the IJs) that individuals who entered without inspection are not entitled to bond is now well-established. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, the bond hearing instead concerned Petitioner's entitlement to a hearing under the *Rodriguez v. Robbins* class injunction. *Id.* Orally, the IJ held that because Petitioner had ostensibly received a bond hearing, even though the government made no showing as to flight risk or danger and the IJ made no flight risk or dangerousness findings, that the government met its obligations under this injunction. The IJ's written decision seems to state that Petitioner was not due a bond hearing under the *Rodriguez v. Robbins* class injunction at all. *Id.*

23. Petitioner is still detained at Otay Mesa today. *Id.* Petitioner has now been detained for almost fifteen months. *Id.*

EXHAUSTION

24. The habeas statute "does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus." *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004) (citation omitted).

25. Exhaustion is also not required as a prudential matter. Prudential exhaustion may be appropriate if "(1) agency expertise makes agency consideration necessary to . . . 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." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). None of these factors weigh in favor of requiring exhaustion here.

26. In fact, exhaustion in this situation would be futile given that Respondents maintain Petitioner is mandatorily detained under 8 U.S.C. § 1225(b)(2),

preventing him from receiving a bond hearing on any basis. *See Matter Yajure Hurtado*, 29 I&N Dec. at 216. The BIA decision requiring Petitioner to be mandatorily detained, *id.*, also constitutes final agency action for purposes of the Administrative Procedure Act (APA). *See* 5 U.S.C. § 704.

LEGAL ARGUMENTS

I. Petitioner's detention violates Constitutional Due Process.

27. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. "Freedom from imprisonment . . . lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. This protection extends to "all 'persons' within the United States . . . whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693. (citations omitted).

28. Due process prohibits civil detention that is "punitive rather than regulatory" in purpose or in effect. *United States v. Torres,* 995 F.3d 695, 708 (9th Cir. 2021). Thus, detention beyond what is reasonably related to the purpose of commitment, such as when it is excessively prolonged, amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *United States v. Salerno,* 481 U.S. 739, 744 n.4 (1987).

29. "Nearly all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019) (cleaned up) (collecting cases). Although courts differ in the tests they use to determine when civil immigration detention becomes unconstitutionally prolonged, the tests all lead to the same result: Petitioner's almost fifteen-month detention violates due process.

30. A few courts have used a bright-line rule that detention without analysis of flight risk or dangerousness violates due process once it reaches six months. *See Rodriguez v. Nielsen*, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019); *Banda*,

385 F. Supp. 3d at 1116 (collecting cases). By this standard, the detention Petitioner has suffered is clearly unconstitutionally prolonged because he has been detained for more than double this amount of time without review of danger or flight risk.

31. Other courts conduct an individualized assessment, considering the following factors: (1) the total length of detention to date; (2) the likely duration of future detention; and (3) the delays in the removal proceedings caused by either party. *Sanchez-Rivera v. Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *6 (S.D. Cal. Jan. 9, 2023); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). Some courts consider additional factors: (4) the conditions of detention and (5) the likelihood of relief from removal. *E.g.*, *Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1094 (S.D. Cal. 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020). These final two factors are "not particularly suited to . . . determining whether detention has become unreasonable," and are better considered in other contexts, for example in a conditions of confinement claim. *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022). But either way, Petitioner prevails.

32. The most important factor and the starting point of the analysis is the length of detention. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025); *Gonzalez v. Bonnar*, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019). Both the length of detention to date and the likely duration of detention strongly militate for granting the writ: Petitioner, who has lived in the United States for over two decades with no criminal record, has been detained for almost fifteen months and there is no end in sight. Petitioner's appeal has been pending at the BIA for over nine months and data indicates that it may be many more until his appeal is adjudicated.[1] And this does not account for the time it

[1] United States Government Accountability Office, Immigration Courts: Actions Needed to Reduce Case Backlog and Address Long-Standing Management and

(Footnote continues on next page.)

would take for the Ninth Circuit to decide a petition for review. Courts in this district and across the country have frequently held that individuals detained for far less than fifteen months experienced constitutionally prolonged detention. *See, e.g.*, *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (over seven months); *Masood v. Barr*, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (nearly nine months); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (over nine months); *see also Abdul Kadir v. Larose*, 2025 WL 2932654, at *5 (almost thirteen months); *Amado v. United States Dep't of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (approximately thirteen months). "As detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing." *Gonzalez*, 2019 WL 330906, at *3 (cleaned up). This is because "[t]he detention that is being examined here is the detention of a human being who has never been found to pose a danger to the community or to be likely to flee if released." *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019).

33. As to the third factor, Petitioner has not delayed his removal proceedings. He received only one continuance, his proceedings were completed in only a few months, and he promptly appealed to the BIA in July 2025. Exs. A-B. The length of time his case has been pending is due to the backlog at the BIA, not Petitioner's actions. If anything, the government is responsible for the delay in Petitioner's case. *See Kydyrali*, 499 F. Supp. 3d at 773 (observing that the "length of time his case has been pending due to crowded dockets, [is] typically attribute[d] to the Government" (internal quotation marks and citations omitted)). This third factor therefore supports a finding of unconstitutionally prolonged detention or is neutral.

Operational Challenges 33 (2017), https://www.gao.gov/assets/690/685022.pdf (showing a chart indicating that in 2015, BIA appeals of removal orders took a median of over 450 days).

34. If the Court proceeds to the fourth and fifth factors rejected by some courts, *Lopez*, 631 F. Supp. 3d at 879, the same conclusion follows: Respondent's detention of Petitioner violates due process. The fourth factor asks courts to consider the conditions of detention.

> Petitioner is detained at Otay Mesa Detention Center [OMDC] where he is locked up behind razor wire and concrete walls in a secured facility, forced to wear a color-coded prisoner jump suit, forbidden from accessing the internet, restricted access to outdoor space, restricted on visitation, and guarded at all times with armed guards authorized to inflict punishment for violations of rules. Petitioner's confinement at OMDC is indistinguishable from penal confinement.

Abdul Kadir, 2025 WL 2932654, at *5 (internal quotation marks and citation omitted); *accord Kydyrali*, 499 F. Supp. 3d at 773 (observing that Otay Mesa Detention Center is "a private, for-profit detention center operated by CoreCivic, Inc., which also runs many state penitentiaries" (internal quotation marks and citation omitted)). The conditions of detention therefore weigh heavily in favor of a finding that Petitioner's detention is unconstitutionally prolonged.

35. As to the fifth and final factor, "where a noncitizen has asserted a good faith challenge to removal, the categorical nature of the detention will become increasingly unreasonable." *Amado*, 2025 WL 3079052, at *6 (cleaned up). Here, Petitioner has a good faith challenge to his removal order because he is prima facie eligible for a form of relief, cancellation of removal, and was unable to apply with the IJ due to receiving potentially ineffective assistance. Ex. A. As one district court explained, "[I]t is sufficient to note [the] existence [of defenses to removal] and the resulting possibility that the Petitioner will ultimately not be removed, which diminishes the ultimate purpose of detaining the Petitioner pending a final determination[.]" *Sajous v. Decker*, 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018). Thus, this factor cuts in favor of Petitioner as well.

36. Viewing these factors collectively, it is clear that Petitioner's detention is prolonged in violation of the due process clause. Even if this Court were to find that one of the factors supported the government's arguments, the fact of the matter is that Petitioner's almost fifteen-month detention is lengthy, weighs the analysis heavily toward unconstitutionally prolonged detention, and there is no significant countervailing factor present. *See Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1095 (S.D. Cal. 2025).

37. Instead of the test described above, a few courts in this district have framed the question as one of procedural due process and conduct the *Mathews v. Eldridge,* 24 U.S. 319, 321, (1976) analysis. *See, e.g.*, *Faizi v. Larose*, No. 25-CV-02974-JO-MSB, 2026 WL 1112035, at *4 (S.D. Cal. Apr. 24, 2026); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *5 (N.D. Cal. Sept. 12, 2025) (collecting cases). The *Mathews* factors "are not particularly dispositive of whether prolonged mandatory detention has become unreasonable in a particular case," but are more commonly used to determine the necessity of a second bond hearing where one has already occurred. *Lopez*, 631 F. Supp. 3d at 879. Nevertheless, Petitioner's detention is unconstitutional under the *Mathews* test as well.

38. *Mathews v. Eldridge* asks the Court to consider: "(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest[.]" *Mathews v. Eldridge*, 424 U.S. at 335 (cleaned up).

39. First, it is clear that Petitioner has a profound interest in his own liberty. *Zadvydas*, 533 U.S. at 690; Second, the risk of erroneous deprivation of Petitioner's liberty where the government has not assessed whether continued detention is justified by flight risk or danger "is obvious." *Faizi*, 2026 WL 1112035, at *4. Third, "[a]lthough the Government has a strong interest in enforcing the immigration laws and in ensuring that lawfully issued removal orders are promptly executed,

the Government's interest in detaining Petitioner without providing an individualized bond hearing is low." *Henriquez v. Garland*, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). And the cost of a bond hearing is minimal. *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019).

40. Balancing these considerations, it is clear that the government's interest in detaining Petitioner without an assessment of flight risk and danger is negligible in comparison to Petitioner's foundational interest in his own liberty. *See Henriquez*, 2022 WL 2132919, at *6; *Sanchez-Rivera v. Matuszewski*, 2023 WL 139801, at *6 n.4; *Singh v. Barr*, 400 F. Supp. 3d 1005, 1022 (S.D. Cal. 2019).

41. Thus, under each and every test the Court may choose, Petitioner's detention is unconstitutionally prolonged in violation of due process.

II. Petitioner is part of the *Rodriguez v. Robbins* class, entitling him to a bond hearing at which the government bears the burden of proof by clear and convincing evidence.

42. By failing to provide Petitioner with a bond hearing under the *Rodriguez v. Robbins* class injunction, Respondents have unlawfully violated Petitioner's rights as a class member.

43. In 2011, a district court in the Central District of California certified a class of noncitizens detained in immigration detention in the Central District for longer than six months, not on national security grounds, who had not been afforded a hearing to determine whether their prolonged detention was justified. *See Rodriguez v. Holder*, 2011 WL 13294658 (C.D. Cal. Mar. 8, 2011).[2] The court then granted a permanent injunction ordering that these individuals receive a bond hearing in which the government had to justify their continued detention.

[2] The class formulation is not stated in the order granting class certification, but can be found in the briefing. *See* Notice of Motion and Motion for Class and Subclass Certification at 1, *Rodriguez v. Holder*, 2011 WL 13294658 (C.D. Cal. Mar. 8, 2011) (No. 2:07-cv-03239, Dkt 101-1).

Rodriguez v. Robbins, No. CV 07-03239-TJH, 2012 WL 7653016, at *1 (C.D. Cal. Sept. 13, 2012), *aff'd*, 715 F.3d 1127 (9th Cir. 2013).

44. The case eventually made its way to the Supreme Court, resulting in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), where the Supreme Court held that periodic bond hearings were not mandated by statute and remanded to determine the constitutional limitations of immigration detention. The initial injunction requiring bond hearings still exists, but is limited to the certified class. *See* Ex C (Notice of *Rodriguez v. Robbins* Bond Hearing); *Garcia-Amaya v. Bondi*, 2026 WL 836715, at *2 (C.D. Cal. Mar. 26, 2026) ("[D]ue to his prolonged detention, Petitioner was entitled to a bond hearing under *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015)"); *Alvarado Barragan v. Sec'y of Homeland Sec.*, 2026 WL 1182200, at *3 (C.D. Cal. Apr. 23, 2026) (noting that the government conceded that Petitioner was due a bond hearing pursuant to *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) and ordering a *Rodriguez* bond); *Rodriguez v. Senior Warden*, 2026 WL 905813, at *4 (C.D. Cal. Apr. 2, 2026) ("Respondents concede that Petitioner is now entitled to a *Rodriguez* bond hearing . . . [under] *Rodriguez v. Robbins*, 804 F.3d 1065 (9th Cir. 2015), *rev'd on other grounds, Jennings v. Rodriguez*, 583 U.S. 281, 314 (2018)"); *Banol, v. Warden*, 2026 WL 776793, at *4 (C.D. Cal. Mar. 19, 2026) ("Respondents concede that Petitioner, who is not yet subject to a final order of removal because her appeal is pending before the BIA and has been detained for approximately nine months . . . is entitled to a *Rodriguez* bond hearing.").

45. Court documents from the original class certification clearly state that the class includes individuals who have been transferred out of the Central District of California. The government's *non*-opposition to the plaintiffs' motion for class certification states, "The proposed class includes individuals who were present in an . . . [ICE] detention facility in the Central District . . . provided they had been detained by ICE for more than six months at that time and remain detained with

a pending case, *even if they are no longer in the Central District.*" Respondents' Response to Motion for Class and Subclass Certification at 2, *Rodriguez v. Holder*, 2011 WL 13294658 (C.D. Cal. Mar. 8, 2011) (No. 2:07-cv-03239, Dkt 122) (emphasis added); *see also* Notice of Motion and Motion for Class and Subclass Certification at 9, *Rodriguez v. Holder*, 2011 WL 13294658 (C.D. Cal. Mar. 8, 2011) (No. 2:07-cv-03239, Dkt 101). The district court granted the motion, including the clarification that individuals transferred outside of the Central District of California were included. *See Rodriguez v. Holder*, 2011 WL 13294658 (C.D. Cal. Mar. 8, 2011).

46. Petitioner was detained in Adelanto, CA, within the Central District of California, from February 23, 2025 until November 19, 2025. Ex. A. Because he was detained in the Central District for nine months, far more than the six months required for receiving a bond hearing, he is part of the *Rodriguez v. Robbins* class.

47. Petitioner has never received a substantive bond hearing. Neither the September 2025 or April 2026 hearing fulfilled the government's obligation to justify further detention by establishing with clear and convincing evidence that Petitioner is a danger or a flight risk. Ex D. The Court did not reach flight risk or danger in either hearing. *Id.*

48. Though the government initially scheduled Petitioner for a *Rodriguez* bond hearing in September 2025, they provided him with only a few days notice. Ex C. A few days is barely enough time for Petitioner to discuss required documents with his sponsor and woefully insufficient time for him to request documents from multiple people, for those individuals to mail the documents to him, and for him to mail the documents to the court. As a result, Petitioner agreed to "withdraw" the bond request when the IJ asked if he would like to, in order to collect and submit documents. Ex. A. But when the immigration court received his evidence in November 2025, a new bond hearing was not scheduled. *Id.* Within two weeks he was transferred to Otay Mesa Detention Center. *Id.*

49. In the April 2026 bond hearing, the IJ found that Petitioner was not entitled to a hearing and did not reach the merits. Ex. D.

50. Because Petitioner is part of the *Rodriguez v. Robbins* class, he is entitled to a bond hearing in which the government carries the burden of proof by clear and convincing evidence. 2012 WL 7653016, at *1. Because the government has not justified his continued detention due to danger or flight risk, its obligation has not been met. Petitioner's continued detention without a substantive hearing is therefore unlawful.

III. Petitioner is detained under 8 U.S.C. 1226(a), not § 1225(b)(2), and therefore entitled to an adjudication of whether he is a danger or a flight risk.

51. The government contended at Petitioner's April 2026 bond hearing that the IJ did not have jurisdiction. But even if Petitioner were not a *Rodriguez v. Robbins* class member, this is incorrect because Petitioner is detained under 8 U.S.C. § 1226(a). By denying Petitioner a bond hearing under § 1226(a), Respondents violate the Immigration and Nationality Act (INA).

A. The Detention Landscape and the Current State of Litigation

52. The INA proscribes different types of detention depending on the circumstances of an individual's entry, any criminal history, and the procedural posture of their immigration case. For an individual inside the country "pending a decision on whether the [noncitizen] is to be removed from the United States," 8 U.S.C. § 1226(a) governs and statutorily permits release on bond or conditional parole. Section 1226(c) provides that individuals convicted or suspected of certain crimes, whether admitted into the country or not, are mandatorily detained.

53. The provision next door, 8 U.S.C. § 1225(b), applies "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281,

287 (2018). Individuals detained under § 1225(b) are mandatorily detained without the option of bond.

54. Since the enactment of these provisions in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) until the summer of 2025, the government treated individuals who entered without inspection (i.e. between Ports of Entry) as detained under 8 U.S.C. § 1226(a). In fact, in 1997, a Federal Register notice stated "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination."[3] For almost three decades these individuals, like Petitioner, could request bond hearings at which an IJ determined whether they were a flight risk or a danger and released them on bond or conditional parole if they were not. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 n.6 (B.I.A. 2025) ("We acknowledge that for years Immigration Judges have conducted [section 1226(a)] bond hearings for [noncitizens] who entered the United States without inspection."). Such individuals were understood *not* to be individuals seeking admission under § 1225(b)(2).

55. In July 2025, ICE issued guidance that individuals who entered unlawfully are detained under 8 U.S.C. § 1225(b)(2) and are therefore ineligible for bond – even if, like Petitioner, they have been in the country for over two decades and have no criminal record.[4] The BIA followed suit in September 2025 in *Matter of Yajure Hurtado*, which held that individuals like Petitioner who entered the country without inspection are subject to mandatory detention under 8 U.S.C. § 1225(b)(2) instead of eligible for bond under § 1226(a). 29 I&N 216, 216, 221

[3] *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).

[4] Rodney S. Scott, Commissioner, *Detention of Applicants for Admission*, U.S. Customs and Border Protection (July 10, 2025), https://www.cbp.gov/sites/default/files/2025-09/intc-46100_-_c1_signed_memo_-_07.10.2025.pdf.

(BIA 2025). Respondents' new interpretation of § 1225(b)(2) is opportunistic and more importantly, in contravention to the dictates of the INA.

56. District Courts across the country have rejected the government's interpretation by large margins. *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 494, Apps. A-B (S.D.N.Y. 2025) (reviewing 362 cases in which this issue was presented and finding that only 12 accepted the government's new statutory interpretation). Data collected by Politico of over 11,600 immigration habeas cases filed since July 2025, shows that judges ruled against the government's argument that individuals like Petitioner are mandatorily detained about 7,100 times and ruled for this argument only about 700 times.[5] The Ninth Circuit has not ruled on the issue,[6] but other Circuits have started to weigh in. The Second, Sixth, Eleventh, and one judge in the Seventh Circuit have all rejected the government's argument. *Barbosa Da Cunha v. Freden*, --- F.4th ---, 2026 WL 1146044 (2d Cir. Apr. 28, 2026); *Lopez-Campos v. Raycraft*, --- F.4th ---, 2026 WL 1283891 (6th Cir. May 11, 2026); *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 2026 WL 1223250 (7th Cir. May 5, 2026); *Hernandez Alvarez v. Warden*, --- F.4th ---, 2026 WL 1243395 (11th Cir. May 6, 2026). Only the Fifth and Eighth Circuits have approved the government's interpretation, both in divided opinions. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Herrera Avila*, 170 F.4th 1128 (8th Cir. 2026).

---

[5] Kyle Cheney & Jessie Blaeser, *Explore the Data: 10,000 Rulings Against Trump in ICE Cases*, Politico (May 13, 2026), https://www.politico.com/news/2026/05/13/mandatory-detention-ice-cases-rulings-database-00913988?utm_campaign=44159848-Hubspot-AILA8-5-13-26&utm_medium=email&_hsenc=p2ANqtz-9ux9hlQHIMYzN_vqvyA93KCMgM4rX8sFpuNI3xkmdmZtPP9oSZtAmC4tI0Qz3XQyQL2pyQUP278W83UtdLBolKkA029w&_hsmi=418665342&utm_content=418665342&utm_source=hs_email. To determine how many cases ruled for the government's argument, Counsel searched the databased for the term "Mandatory detention permitted."

[6] The issue was argued in this Circuit on March 4, 2026, but no decision has been issued. *Rodriguez Vazquez v. Bostock*, No. 25-6842.

B. How to Interpret Section 1225(b)(2)(A) and Section 1226(c)

57. Section 1225(b)(2)(A) states in relevant part, "in the case of [a noncitizen] who is an *applicant for admission*, if the examining immigration officer determines that [a noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained." (emphasis added). "[A]pplicant for admission" is defined by statue: "[A noncitizen] present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). The more difficult interpretative question is whether Petitioner and those similarly-situated are "seeking admission." If not, then § 1225(b)(2)(A) cannot apply to him.

58. "Seeking" is not defined by statute, but admission is. An admission is "the lawful entry . . . into the United States after inspection and authorization[.]" 8 U.S.C. § 1101(a)(13)(A). Because "seeking" is not defined in the statute, we start with "the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992). "Contemporary dictionary definitions of 'seek' or 'seeking' confirm the words' requirement that the noncitizen engage in some affirmative act or attempt towards 'admission.'" *Lopez-Campos*, --- F.4th ---, 2026 WL 1283891, at *4 (citing five different dictionaries). "That the word is written as a present participle ('seeking') underscores that it is describing some active and temporally ongoing step or process." *Hernandez Alvarez*, --- F.4th ---, 2026 WL 1243395, * 7. Therefore, putting "seeking" and "admission" together, the phrase "refers to [a noncitizen] who is pursuing lawful entry . . . into the United States after inspection and authorization[.]" *Id.*; *Castanon-Nava*, --- F.4th ---, 2026 WL 1223250, at *11. Individuals who entered the United States without inspection cannot be understood to be pursuing lawful entry into the United States. *See Barbosa da Cunha*, --- F.4th ---, 2026 WL 1146044, at *6.

59. A basic axiom of textual interpretation is that "every word and every provision is to be given effect and that none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." *Nielsen v. Preap*, 586 U.S. 392, 414 (2019). And the government's "reading—that all applicants for admission are necessarily seeking admission—would render certain words in § 1225(b)(2)(A) surplusage." *Castanon-Nava*, --- F.4th ---, 2026 WL 1223250, at *13. "Congress employed two different phrases, introduced by separate conditional terms, which carry distinct definitional meanings within the statute." *Hernandez Alvarez*, --- F.4th ---, 2026 WL 1243395, * 10. As such, § 1225(b)(2) does not govern the detention of those who are not seeking admission, i.e., affirmatively pursuing lawful entry into the United States. It therefore does not cover individuals, like Petitioner, who entered without inspection.

60. Instead, Petitioner and others who entered without inspection fall naturally into the text of § 1226(a): Petitioner was arrested within the United States and is "detained pending a decision on whether [he] is to be removed from the United States." 8 U.S.C. § 1226(a). The text of the provision quite clearly encompasses him.

61. This reading is the only one that makes sense given the structure of these detention provisions. Section 1226(a) is the "center of gravity for detention authority" that governs everyone with pending proceedings. *Hernandez Alvarez v. Warden*, --- F.4th ---, 2026 WL 1243395, *14. It contains no language limiting its reach to only individuals who have been admitted. *Id.* "If Congress had wanted to limit Section 1226(a)[] only to those noncitizens charged with deportability [i.e. those who were admitted] . . . , it would have said so, as it did repeatedly in other parts of IIRIRA." *Barbosa da Cunha*, --- F.4th ---, 2026 WL 1146044, at *5. In fact, the Supreme Court itself has endorsed this understanding. It described § 1226(a) as "the default rule." *Jennings*, 583 U.S. at 288. Justice Alito, writing for the

Court, continued "[s]ection 1226 generally governs the process of arresting and detaining" individuals "inside the United States," including those "who were inadmissible at the time of entry[.]" *Id.*

62. By contrast, § 1225 is full of indications that it is meant to govern individuals at the border. Its titles refer to "inspections" and its text to "examination"—"process[es] that a person undergoes when attempting to enter the country at the border or port of entry." *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, --- F.4th ---, 2026 WL 1223250, at *13. It addresses "crewmen" and "stowaways," distinctions only relevant at the border. 8 U.S.C. §§ 1225(a)(2), (a)(3), (b)(2)(B). And it further describes the type of questions an immigration officer might ask in this context, such as "the applicant's intended length of stay," 8 U.S.C. § 1225(a)(5), a question that makes the most sense if asked during an inspection of someone attempting to enter the United States at the border. The Supreme Court in *Jennings* explained that 8 U.S.C. § 1225(b) controls a process that begins "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." 583 U.S. at 287.

63. In addition, the Congress which drafted this statute in 1996 demonstrated very clearly that it was aware of limitations on the executive's detention capacity, but it did not address the vast increase in detention space that the government's interpretation of § 1225(b)(2) would require. IIRIRA included a transitional provision allowing the agency to delay the effective date of 8 U.S.C. § 1226(c), which expanded detention of individuals with criminal convictions, to build detention capacity. Pub. L. No. 104-208, § 303(b)(2), 110 Stat. 3009, 586-87 (1996). Congress included no such escape hatch for § 1225(b)(2), even though, if the government's interpretation is correct, it would require detaining far more people—all those who entered the country without inspection—than § 1226(c), which covered only those with certain criminal convictions. *See Lopez-Campos*

v. Raycraft, --- F.4th ---, 2026 WL 1283891, *5 (noting that in 1996 while 45,000 additional people would be subject to mandatory detention under § 1226(c), roughly 1.7 million people were present in the United States following an entry without inspection, ostensibly subjecting them to mandatory detention under the government's interpretation of § 1225(b)(2)).

64. Legislative amendments from early 2025 demonstrate that the current Congress also agrees that individuals who entered unlawfully are detained under § 1226, not § 1225(b)(2). In January 2025, the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025), expanded mandatory detention in § 1226(c) to include an individual who "is charged with, is arrested for . . . or admits committing acts which constitute the essential elements of" certain crimes, *but only if* the individual meets one of three additional criteria, one of which is entry without inspection. *See* 8 U.S.C. § 1226(c)(1)(E) (citing to the inadmissibility grounds at 8 U.S.C. §§ 1182(a)(6)(A), (6)(C), (7)). If § 1225(b)(2) mandatorily detained all individuals who had entered unlawfully, as the government argues, there would be no need to include a subset of such individuals under a different mandatory detention provision. The sensible and obvious explanation is that Congress understands individuals who entered unlawfully to be detained under § 1226(a), which permits release on bond, and wanted to ensure that those suspected of criminal activity would not have the opportunity for bond.

65. Finally, that § 1226 governs the detention of people who entered unlawfully is supported by almost three decades of government practice across five presidential administrations – the entirety of the period the statute has existed in essentially its current form. And though past practice of the executive is not dispositive, "the longstanding practice of the government . . . can inform a court's determination of what the law is." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386 (2024) (cleaned up). In fact, "[a] longstanding want of assertion of power by those who presumably would be alert to exercise it may provide some clue that the power

was never conferred," *Biden v. Nebraska*, 600 U.S. 477, 519 (2023) (Barrett, J., concurring) (internal quotation marks and citation omitted).

66. For these reasons, Petitioner is detained under 8 U.S.C. § 1226(a)—not § 1225(b)(2). Therefore, by denying the opportunity for a substantive bond hearing, Respondents have violated the INA.

REMEDY

I. Given these due process and statutory violations, this Court should order Petitioner's immediate release.

67. It is well-established that a court may authorize release as a remedy to a habeas petition alleging unconstitutional detention. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"); *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) ("Federal courts are authorized, under 28 U.S.C. § 2243, to dispose of habeas corpus matters 'as law and justice require.'"). "[H]abeas corpus is, at its core, an equitable remedy," *Schlup v. Delo*, 513 U.S. 298, 319 (1995), and equitable remedies "are a special blend of what is necessary, what is fair, and what is workable." *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973).

68. These principles and the violations apparent in Petitioner's case allow this Court to order outright release, rather than a bond hearing. *See Maciel v. Noem*, 2026 WL 496948, at *5 (E.D. Cal. Feb. 23, 2026) ("Because Respondents do not assert any alternative basis for Petitioner's detention, and do not provide any extenuating circumstances that would warrant Petitioner's continued unlawful detention pending a bond hearing, the court finds that the appropriate relief is Petitioner's immediate release."). Courts in this district have done just that in similar circumstances. *Aliyev v. LaRose*, No. 3:26-CV-01119-CAB-JLB, 2026 WL 699818, at *3 (S.D. Cal. Mar. 12, 2026); *Rodas-Dieguez v. Noem*, No. 3:26-CV-00976-RBM-MMP, 2026 WL 549910, at *1 (S.D. Cal. Feb. 26, 2026). For release is fair, efficient, and workable.

69. Respondents have an array of less restrictive tools to use and may impose conditions on Petitioner to ensure his appearance at future appointments and hearings. *See Doe v. Becerra*, 732 F. Supp. 3d 1071, 1091 (N.D. Cal. 2024) (ordering respondents to propose an order of release under conditions "the government believes will help address its concerns regarding flight risk or danger to the community."). In fact, the Ninth Circuit has observed that "the Intensive Supervision Appearance Program—which relies on various alternative release conditions—resulted in a 99% attendance rate at all EOIR hearings." *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

70. Courts in this district and across the country have used their equitable powers in habeas to grant release "as law and justice require," 28 U.S.C. § 2243. *See Zheng v. Casey*, No. 3:26-CV-01110-RBM-BLM, 2026 WL 559780, at *1 (S.D. Cal. Feb. 27, 2026); *Ambroladze v. Maldonado,* 2026 WL 280182, at *3 (E.D.N.Y. Feb. 3, 2026) ("[B]ecause the typical remedy for unlawful executive detention is of course, release, the government's ongoing detention of Petitioner, in the face of yet another complete failure of process, entitles him to immediate release" (internal quotation marks and citations omitted)); *Cifuentes v. Soto*, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) ("In light of Respondents' failure to demonstrate a lawful basis for detention under § 1225(b), and consistent with the Court's authority to 'dispose of the matter as law and justice require,' 28 U.S.C. § 2243, immediate release is the appropriate remedy."); *Hussain v. O'Neill*, 2026 WL 66891, at *7 (E.D. Pa. Jan. 8, 2026) ("Because ICE's detention of [petitioner] without a bond hearing is 'in violation of the Constitution or laws or treaties of the United States,' habeas relief is warranted. 28 U.S.C. § 2241(c)(1), (3) . . . the Court will order the release of [petitioner] because he was unlawfully detained."); *Kashranov v. Jamison*, 2025 WL 3188399, at *8 (E.D. Pa. Nov. 14, 2025) ("Because the Government detained [petitioner] without the bond hearing that Section 1226(a) and the Due Process Clause require, [petitioner] should not now

be in custody."); *Kobilov v. O'Neill*, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) ("Here, there is no record evidence from which the Court could infer that [petitioner] is likely to flee or threaten the safety of others. Accordingly, a bond hearing is unnecessary, and the Court will order [petitioner's] immediate release.").[7]

II. An immigration bond hearing is insufficient to remedy Petitioner's unconstitutional detention because immigration judges are no longer unbiased, neutral adjudicators.

71. The actions of EOIR demonstrate that EOIR staff, including IJs are increasingly and systemically biased. There is a significant and unacceptable risk that Petitioner could face unconstitutional bias and partiality at a bond hearing. "[A]cross the country the integrity of these bond proceedings has now been cast sharply into doubt." *Garcia Ortiz v. Henkey*, 2026 WL 948275, at *2 (D. Idaho Apr. 7, 2026).

72. Several sources from this district and elsewhere report that federal court-ordered "bond hearings [are], effectively, stacked against detainees from the start." Kyle Cheney, *How ICE Defies Judges' Orders to Release Detainees, Step by Step*, Politico (Feb. 10, 2026), https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727. The New York Times reported that one sitting immigration judge explained the "pressure to deny bond is overt" and that "there was a requirement to inform a supervisor every time bond was granted[.]" Nicholas Nehamas et al., *How Trump Purged Immigration Judges to Speed Up Deportations*, N.Y. Times (April 9, 2026) https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-

[7] *See also Rueda Torres v. Francis*, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025); *Munoz Materano v. Arteta*, 804 F. Supp. 3d 395, 425 (S.D.N.Y. 2025); *Patel v. McShane*, 2025 WL 3241212, at *3 (E.D. Pa. Nov. 20, 2025); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025); *Gonzalez Centeno v. Lowe*, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026); *Ortega-Aguirre v. Noem*, 2025 WL 3684697, at *4 (S.D. Tex. Oct. 10, 2025).

judges-purge.html [hereinafter *How Trump Purged Immigration Judges*, N.Y. Times]. It further reported that the Office of the Chief Immigration Judge "has sometimes emailed [immigration] judges asking for an explanation about their decisions to grant bond[.]" *Id.*

73. An attorney who formerly worked as legal counsel for ICE attested, based on his firsthand observation and experience that:

> [S]ince the beginning of January 2026, detainees who were granted federal habeas relief and ordered [8 U.S.C.] § 1226(a) bond hearings are now being systematically denied bond based on rationales that would not have been deemed sufficient weeks earlier, in what appears to be a systematic effort to nullify the constitutional protections that federal courts have recognized and enforced through habeas corpus.

Briceno Solano v. Mason, 2026 WL 311624, at *20 (S.D.W. Va. Feb. 4, 2026) (internal quotation marks omitted).

74. This aligns with general indications of bias in immigration court. *See* Maria Sacchetti, *Trump Officials Hire 'Deportation Judges' With Less Training, Experience*, Washington Post (Apr. 27, 2026), https://www.washingtonpost.com/immigration/2026/04/27/justice-department-immigration-judges-deportation/ ("Former judges who were fired say they fear Trump is forcing out judges who rule against the government and replacing them with loyalists[.]"); *How Trump Purged Immigration Judges*, N.Y. Times ("[M]ore than two dozen immigration judges who have served under the second Trump administration described feeling a consistent sense of pressure to deport immigrants or risk losing their jobs."); Ximena Bustillo & Rahul Mukherjee, *An Immigration Court Few Have Heard of Is Quietly Shaping Policy Behind the Scenes*, NPR (Mar. 20, 2026), https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation ("Last year, [BIA] decisions backed [DHS] lawyers in 97% of publicly posted cases; that's at least 30 percentage points higher than the average from the last 16 years.").

75. Statements made by top White House officials similarly demonstrate intent to bypass the statutory and constitutional process due to immigrants. For example, Stephen Miller, a White House Deputy Chief of Staff—known to be one of the President's top advisors on immigration—wrote on X: "If you illegally invaded our country the only 'process' you are entitled to is deportation." Stephen Miller (@StephenM), X (Apr. 1, 2025), https://x.com/StephenM/status/1907116768474071069.

76. The data shows that all of this has caused the bond grant rate to decline substantially. Nationwide, immigration judges are granting bond at a rate of just 31.7% in 2026. Joseph Gunther & Brandon Marrow, *Immigration Bonds in the Second Trump Administration*, bklg blog (May 12, 2026), https://bklg.org/blog/immigration-bonds-in-second-trump-admin/?utm_source=bento&utm_medium=email&utm_campaign=broadcast&bento_uuid=d047674d-eafe-42da-ae7d-09f00774298a (chart titled "Annual Bond Grants and Denials, 2013 – Apr. 2026"). During the entirety of the first Trump administration, the annual bond grant rate was over 50%. *Id.* In 2023 and 2024, it decreased but never dipped below 40%. *Id.*

77. In reference to bond hearings ordered by federal courts, at least one district court observed "there is now an established pattern of Respondents violating judicial orders." *Zheng v. Rokosky*, 2026 WL 800203, at *5 (D.N.J. Mar. 23, 2026); *see generally Juan T.R. v. Noem*, 2026 WL 555601 (D. Minn. Feb. 26, 2026) (cataloging 210 instances in which the Department of Justice violated court order in an immigration habeas). Various courts around the country have been presented with evidence that the bond hearings they ordered were constitutionally deficient.[8]

[8] *E.g.*, *Said v. Noem*, 3:25-cv-938-MOC, at 9 (W.D.N.C, Feb. 4, 2026) (available at https://law.justia.com/cases/federal/district-courts/north-carolina/ncwdce/3:2025cv00938/121898/24/) ("That Order [for a bond hearing] presupposed that this hearing would be conducted in accordance with Petitioner's due process rights. It was not."); *Ulloa Bueno v. Soto*, 2026 WL 509102, at *2

(Footnote continues on next page.)

Immigration judges have denied their jurisdiction to hear the case, misapplied the burden of proof, and denied bond with little or no explanation or based on generic factors common to millions of people. *E.g.*, *Fernandez Alvarez v. Noem*, 2026 WL 598614, at *1 (M.D. Fla. Mar. 4, 2026) (IJ denied jurisdiction); *Pedroso de Oliveira v. Freden*, 2025 WL 3554686, at *1 (W.D.N.Y. Dec. 11, 2025) (IJ misapplied the burden of proof); *Yin v. Maldonado*, 2026 WL 295389, at *3 (E.D.N.Y. Feb. 4, 2026) (IJ denied with a "conclusory, two-line determination of flight risk"); *Santos*, 2020 WL 4530728, at *4 (IJ relied "almost entirely on a mechanistic factor common to virtually all immigration detainees that are subject to prolonged detention[.]" (internal quotation marks and citation omitted)).

78. This district is not exempt from these alarming trends. A local immigration attorney recently filed a declaration explaining that in his experience, many Otay Mesa Immigration Court judges are resistant to implementing habeas orders requiring bond hearings. Perez Declaration, ECF 5-2 at ¶ 7, *Elsayed v. Noem*, No. 26-cv-368-BAS-AHG (S.D. Cal. Feb. 9, 2026).

79. Because of the substantial risk of bias, IJ are not constitutionally neutral adjudicators. To appropriately remedy Petitioner's unlawful detention as efficiently as possible, and to save the Court and all parties from the necessity of an enforcement action, the Court should grant immediate release.

III. In the alternative, this Court should conduct a bail hearing.

80. In the alternative, this Court can hold its own custody hearing and determine whether DHS can prove by clear and convincing evidence that Petitioner must remain in custody or whether he may be released on recognizance, an appropriate bond, or supervised release. *See Santos v. Lowe*, 2020 WL 4530728, at *4 (M.D. Pa. Aug. 6, 2020) (ordering that the federal court would conduct a bail hearing to remedy the defects in an immigration bond hearing which had been ordered to

---

(D.N.J. Feb. 24, 2026) (granting immediate release after IJs twice failed to conduct a fair bond hearing with the burden on DHS as ordered).

remedy prolonged detention); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405-07 (E.D.N.Y. 2025) (holding that the federal court would conduct the bond hearing); *Flores-Powell v. Chadbourne*, 677 F.Supp.2d 476-478 (D. Mass 2010) (ordering a bail hearing and collecting cases in which the federal court conducted a bail hearing).

81. There is no barrier to the Court conducting its own bail hearing. *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty.*, 411 U.S. 345, 350 (1973) ("The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." (citation omitted)). If the Court does not order outright release, a federal bail hearing provides the most efficient and certain remedy to Petitioner's unconstitutional detention.

IV. In the second alternative, the Court should grant an immigration bond hearing with strong procedural protections.

82. As a final option, this Court may partially remedy Petitioner's unconstitutional detention by granting an immigration court bond hearing with specific parameters.

83. First, the burden to justify the continued deprivation of Petitioner's liberty should lie with the government by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011). "[A]s of 2020, the vast majority—an overwhelming consensus—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025) (internal quotation marks and citation omitted); *Gomez v. Olson*, No. 25-cv-15300, 2025 WL 3768242, at *6 (N.D. Ill. Dec. 31, 2025) (also observing an "overwhelming consensus" among courts); *Velasco Lopez v. Decker*, 978 F.3d 842, 855 n.14 (2d Cir. 2020) (collecting cases).

84. Second, to protect against bias, the order should state that the bond hearing should occur in front of a "fair, neutral, and open-minded" adjudicator. *See, e.g.*, *Singh v. LaRose*, 2026 WL 684654, at *4 (S.D. Cal. Mar. 10, 2026).

85. Third, the Court should specify that the IJ must consider alternative conditions of release in assessing whether continued detention is necessary to ensure the safety of the community and Petitioner's appearance at future appointments and hearings. *See, e.g.*, *Sandesh v. Noem*, No. 26-cv-846-JES, at 11 (S.D. Cal. Mar. 13, 2026); *cf. Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017) (ordering that IJs must consider alternatives to detention when setting bond amounts).

86. Fourth, the Court should instruct that DHS may not invoke an automatic stay of a bond grant, which could cause an individual to remain detained for months following a bond grant before the BIA adjudicates the government's appeal. *See, e.g.*, *Perez-Regalado v. Feeley*, 2026 WL 36112, at *6 (D. Nev. Jan. 6, 2026) (enjoining ICE from invoking an automatic stay after a bond grant); *O.F.C. v. Almodovar*, 2026 WL 74262, at *16 (S.D.N.Y. Jan. 9, 2026); *Garay v. Perry*, 2025 WL 3540070, at *4 (E.D. Va. Dec. 10, 2025).

87. Fifth and finally, this Court should keep jurisdiction over this case until satisfied that a constitutionally adequate review was held. To facilitate this, the Court should order the parties to submit a status update promptly after any hearing. *E.g.*, *Dominguez v. Noem*, 2026 WL 67200, at *5 (W.D. Tex. Jan. 8, 2026).

CLAIMS FOR RELIEF

COUNT ONE

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

Substantive Due Process

88. Petitioner realleges and incorporates by reference each and every allegation contained above.

89. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person, including noncitizens, of liberty without due process of law. U.S. Const. amend. V; *Zadvydas*, 533 U.S. at 690.

90. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *See Zadvydas*, 533 U.S. at 690. And there are only two valid purposes: to mitigate the risk of flight and prevent danger to the community. *Id.* Taking into account less restrictive means to manage these interests, detention is punitive and therefore unconstitutional when its duration or nature is unreasonable or excessive relative to the government's interests in mitigating flight risk and danger to the community.

91. Given that Petitioner has been detained for almost fifteen months with no end in sight, the penal-like conditions of his confinement, the lack of any dilatory behavior on his part, and the dearth of any evidence that he poses a danger or flight risk, Petitioner's continued detention is unduly excessive in relation to purposes of civil immigration detention and therefore violates substantive due process.

COUNT TWO

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

Procedural Due Process

92. Petitioner realleges and incorporates by reference each and every allegation contained above.

93. Prolonged civil detention violates procedural due process unless it is accompanied by safeguards against the erroneous deprivation of liberty. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldrige,* 424 U.S. 319, 333 (1976) (internal quotation marks and citations omitted).

94. Under *Mathews v. Eldrige*, procedural due process must be evaluated by balancing: (1) the private interest affected; (2) the risk of erroneous deprivation of such interest and the value of procedural safeguards; and (3) the government's interest. *Id.* at 335.

95. It is beyond debate that Petitioner has a profound private interest in his own liberty. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690 (citation omitted). And the risk of erroneous deprivation is great where, as here, the absence of a review of danger or flight risk has subjected Petitioner to almost fifteen months of confinement. The government's interests in effectuating removals and protecting communities are of course important, but the government's interest in keeping Petitioner confined is negligible here because Petitioner poses no danger to the community and is not a flight risk.

96. Thus, Respondents have violated Petitioner's procedural due process rights.

COUNT THREE

VIOLATION OF INA, 8 U.S.C. § 1226(a)

97. Petitioner realleges and incorporates by reference each and every allegation contained above.

98. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to those who entered unlawfully and had been residing in the United States prior to being apprehended and placed in removal proceedings. Such noncitizens, like Petitioner, are detained under § 1226(a) unless they are eligible for expedited removal, have a certain criminal history, or are subject to a final order of removal. Because none of those exceptions to the general rule apply to Petitioner, he is detained under § 1226(a).

99. The application of § 1225(b)(2) to Petitioner, preventing him from having a bond hearing, violates the INA.

COUNT FOUR

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (APA)

100. Petitioner realleges and incorporates by reference each and every allegation contained above.

101. By failing to provide Petitioner with a bond hearing at which the government has the burden of proof pursuant to Petitioner's class membership in *Rodriguez v. Robbins*, No. CV 07-03239-TJH, 2012 WL 7653016, at *1 (C.D. Cal. Sept. 13, 2012), Respondents have unlawfully violated federal court order. Because this action is arbitrary, capricious, and in violation of the law, it violates the APA.[9]

102. As described in Count Three and *supra*, Petitioner is detained under 8 U.S.C. § 1226(a). The application of § 1225(b)(2) as the statutory basis for Petitioner's detention to bar him from receiving a bond hearing is arbitrary, capricious, and not in accordance with law, and as such, violates the APA. *See* 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
3. Enjoin the Respondents from transferring Petitioner away from the jurisdiction of this District pending these proceedings;
4. Declare that Petitioner's detention is unconstitutional and unlawful;
5. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;

[9] The failure to follow federal court order also contravenes the basic separation of powers principles underlying the U.S. Constitution. U.S. Const. arts. II-III.

6. Enter preliminary and permanent injunctive relief enjoining Respondents from further detention or re-detention of Petitioner without a pre-deprivation bond hearing;
7. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
8. Grant such further relief as this Court deems just and proper.

In the alternative to granting immediate relief, Petitioner prays for:

9. Hold a bail hearing in which this Court determines whether the government can justify Petitioner's continued detention by clear and convincing evidence;

In the second alternative, Petitioner prays for:

10. Order an immigration bond hearing in which:
    i. The burden of proof lies with the government by clear and convincing evidence to establish flight risk or danger to continue detaining Petitioner;
    ii. The adjudicator is "fair, neutral, and open-minded";
    iii. The immigration judge must consider Alternatives to Detention in assessing whether continued detention is appropriate;
    iv. DHS is prohibited from invoking an automatic stay of a bond grant;
    v. The parties must submit a status report to the Court following the bond hearing.

Dated: May 21, 2026

Respectfully submitted,

/s/ Natasha Phillips
Natasha Phillips, Esq (CA 350286)
Pro bono Counsel for Petitioner
Jewish Family Service of San Diego
8804 Balboa Ave
San Diego, CA 92123
(858) 637-3278
natashap@jfssd.org

/s/ Regina Dryjanski
Regina Dryjanski, Esq. (CA 336432)
Pro bono Counsel for Petitioner
Jewish Family Service of San Diego
8804 Balboa Avenue
San Diego, CA 92123
(858) 361-9725
reginac@jfssd.org

/s/ Krista Kshatriya
Krista Kshatriya, Esq. (CA 274609)
Pro Bono Counsel for Petitioner
Jewish Family Service of San Diego
8804 Balboa Avenue
San Diego, CA 92123
(858) 201-0349
kristak@jfssd.org