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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 M.P.,
14

15 *Petitioner,*

16 v.

17 CHRISTOPHER J. LAROSE, Warden,
18 Otay Mesa Detention Center; PATRICK
19 DIVVER, Field Office Director, San Diego
20 Field Office, United States Immigration
21 and Customs Enforcement; TODD M.
22 LYONS, Acting Director, United States
23 Immigration and Customs Enforcement;
24 MARKWAYNE MULLIN, Secretary of
25 Homeland Security; TODD BLANCHE,
26 United States Attorney General, *in their*
27 *official capacities,*
28 *Respondents.*

Civil Action No.:

'26CV3243 JES MSB

PETITION FOR WRIT OF
HABEAS CORPUS

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

§ 2241

I. INTRODUCTION

1. M.P. (Petitioner) is currently unlawfully detained in the custody of Respondents in violation of his constitutional rights. He has been detained since March 6, 2025—446 days, or over 14 months. M.P. Decl. ¶ 1. His asylum case remains ongoing before the immigration judge. *Id.*

2. Because Respondents cannot justify Petitioner's present prolonged detention, Petitioner respectfully requests that this Court grant the Petition and issue a Writ of Habeas Corpus. 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).

CUSTODY

3. Petitioner has remained in the physical custody of Respondents for over 14 months, since March 6, 2025. Petitioner is currently imprisoned at Otay Mesa Detention Center, an immigration detention facility in San Diego, California. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

4. 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

5. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because Petitioner is detained in this District, at least one Respondent is in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("the proper respondent to a habeas petition is 'the person who has custody over the petitioner'") (citing 28 U.S.C. § 2242) (cleaned up).

REQUIREMENTS OF 28 U.S.C. § 2243¹

6. 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.” *Id.* “[F]or good cause[,] additional time, not exceeding twenty days, is allowed.” *Id.*
7. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The 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 within the four corners of the application.” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

8. Petitioner is a citizen of Iran detained by Respondents at Otay Mesa Detention Center for over 14 months. *See generally*, Ex. A.
9. 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.
10. 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.

¹ In addition, in the Southern District of California, Chief Judge Order No. 144 provides standard procedures for Immigration Habeas Petitions, which the Court may adopt by entering a minute order or other order adopting these procedures.

11. 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.

12. 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.

13. Respondent Todd Blanche is the Attorney General of the United States Department of Justice. He is a legal custodian of Petitioner and is named in his official capacity.

STATEMENT OF FACTS

14. Petitioner is a citizen of Iran who rejected Islam for Christianity. M.P. Decl. ¶ 2. For practicing Christianity in Iran, Petitioner was

Id. at ¶¶ 2, 5. The United States Commission on International Religious Freedom (USCIRF), a federal government commission with commissioners appointed by the President and Congress, recognized in its most recent report that religious minorities are commonly persecuted in the country: “Authorities subjected prisoners detained on religious grounds to torture and severe punishment. . . . The government also continued to systematically harass, intimidate, and target religious minorities through its arbitrary arrests, enforced disappearances. . . . Iran’s government carried out over 900 executions in 2024 and issued scores of death sentences for religiously based charges.” 2025 *Annual Report*, U.S. DEP’T OF STATE at 24, <https://www.uscirf.gov/sites/default/files/2025-03/2025%20USCIRF%20Annual%20Report.pdf>.

15. Running for his life and with no alternatives, Petitioner crossed the U.S. border on or around March 6, 2025, to seek asylum. M.P. Decl. ¶ 6. Upon entry, he

1 walked for about two hours trying to locate a U.S. officer. *Id.* When he had no
 2 luck, he then sat and waited for about another hour for officers to find him. *Id.*
 3 When Border Patrol found him, he told them he was fleeing his country and was
 4 afraid to return to Iran. *Id.*

5 16. That day, Petitioner was detained in Department of Homeland Security (DHS)
 6 custody and has been detained ever since. *Id.* In his 446 days detained, DHS has
 7 transferred Petitioner at least nine times between detention facilities spanning the
 8 United States. *Id.* at ¶¶ 7-12.

9 17. Although he entered the country in March 2025, Petitioner did not receive a
 10 credible fear interview until 5 months later in August 2025. 8 U.S.C. §
 11 1225(b)(1)(A)(ii), (B); 8 C.F.R. § 208.30. This makes Petitioner a class member
 12 of the *Padilla v. ICE* settlement related to delayed credible fear interviews.²
 13 *Padilla et al. v. Immigration & Customs Enforcement et al.*, No. 2:18-cv-928
 14 (W.D. Wash.). The Asylum Officer made a positive credible fear determination.
 15 M.P. Decl. ¶ 12. Because of this positive credible fear determination, the
 16 Government argues Petitioner is not eligible for a bond hearing. *See Matter of M-*
 17 *S-*, 27 I&N Dec. 509 (A.G. 2019).

18 18. Petitioner did not see an Immigration Judge until September 2025. M.P. Decl. ¶
 19 12. By that time, Petitioner had already been detained for approximately six
 20 months without any opportunity to be heard by an Immigration Judge.

21 19. Petitioner is currently represented by a removal defense attorney, and he
 22 continues to fight for asylum, withholding of removal, and protection under the
 23 Convention Against Torture in Immigration Court. *Id.* at ¶ 21. He is experiencing

24 ² The *Padilla* court certified the following class: “All detained asylum seekers in
 25 the United States subject to expedited removal proceedings under 8 U.S.C. §
 26 1225(b) who are not provided a credible fear determination within ten days of the
 27 later of (1) requesting asylum or expressing a fear of persecution to a DHS official
 28 or (2) the conclusion of any criminal proceeding related to the circumstances of
 their entry,” absent a request by the asylum seeker for a delayed credible fear
 interview.” Petitioner was not provided a credible fear interview for over five
 months.

1 extreme difficulties gathering evidence from Iran for his case due to the well-
 2 documented internet blackout imposed in Iran since the 2025-2026 protests and
 3 subsequent war. Nasser Karimi et al., *Iran's Monthslong Internet Shutdown is*
 4 *Crushing Businesses in an Already Battered Economy*, AP NEWS (Apr. 30, 2026),
 5 [https://apnews.com/article/iran-us-war-internet-business-economy-online-](https://apnews.com/article/iran-us-war-internet-business-economy-online-9e1cc7c871cfea25978e3e518065cc26)
 6 [9e1cc7c871cfea25978e3e518065cc26](https://apnews.com/article/iran-us-war-internet-business-economy-online-9e1cc7c871cfea25978e3e518065cc26).

7 20. Due to his extreme fear and the strength of his asylum claim, Petitioner plans to
 8 seek appellate review before the Board of Immigration Appeals (BIA) and, if
 9 necessary, the Ninth Circuit, in the event of an adverse decision, meaning he faces
 10 an indeterminate length of continued detention.³ *Id.* at ¶ 22.

11 21. During his more than 14 months detained, Petitioner has been a model of good
 12 behavior. He is learning English and has a job cleaning the sink where his fellow
 13 detainees wash their hands before they eat. *Id.* at ¶¶ 17, 18. He plays volleyball
 14 twice a week for one hour when he is allowed gym access. *Id.* at ¶ 18. He attends
 15 church weekly and reads the Bible. *Id.* at ¶ 16.

16 22. He has worn a blue jumpsuit in the more than nine detention centers where DHS
 17 has held him since March 2025, meaning he has no criminal history in the United
 18 States. *Id.* at ¶ 17.

19
 20
 21 ³ In 2015, the Government Accountability Office conducted a study finding that
 22 “the median length of time it takes the BIA to complete an appeal of a removal
 23 order exceeds 450 days.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH, 2019 WL
 24 7491555, at *5 (N.D. Cal. Jan. 7, 2019) (citing United States Government
 25 Accountability Office, Immigration Courts: Actions Needed to Reduce Case
 26 Backlog and Address Long-Standing Management and Operational Challenges 33
 27 (2017), <https://www.gao.gov/assets/690/685022.pdf>). As of the first quarter of
 28 2026, the Board of Immigration Appeals still reports 219,945 total appeals pending.
Adjudication Statistics, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (2026),
 available at <https://www.justice.gov/eoir/media/1344986/dl?inline>. This number is
 over six times more than the number of total appeals pending before the BIA ten
 years ago in 2016. *Id.* Because of this, courts in this state have concluded that the
 “government cannot predict with any degree of confidence when the BIA appeal
 will be resolved.” *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3
 (N.D. Cal. Jan. 8, 2020).

23. In detention, Petitioner developed a relationship with a local Christian church and Pastor. *Id.* at ¶ 20. The Pastor, Will James, has agreed to sponsor Petitioner in the form of housing, basic needs, and transportation if released from OMD. *Id.*

24. Petitioner has met with a mental health doctor several times while detained. *Id.* at ¶ 14. He has pain in his neck, head, and shoulders due to stress. *Id.* He wakes up crying. *Id.* at ¶ 13. He fears that his parents or his brothers will be killed in Iran. *Id.* The doctor prescribed him pills for anxiety and sleep, but he still has trouble falling asleep at night. *Id.* at ¶ 14.

25. Given the Government's position that Petitioner is subject to mandatory detention and therefore not eligible for a bond hearing before the Immigration Judge, Petitioner has no mechanism to obtain release through his ongoing removal proceedings. As a result, his detention continues as he proceeds with his case in immigration court, including the lengthy processing of any appeals to the BIA and Ninth Circuit, should these be necessary. Petitioner has already been detained over 14 months and has no meaningful indication of when his detention may end.

LEGAL FRAMEWORK

26. Generally, removable noncitizens are subject to detention under one of three statutory provisions under the Immigration and Nationality Act (INA), depending on the context in which ICE arrests and deems them removable. In this case, Petitioner is subject to 8 U.S.C. § 1225 because, in fear for his life, he sought the help of border patrol immediately upon entering the United States in March 2025 and, subsequently, received and passed a credible fear interview.

27. 8 U.S.C. § 1225 "applies primarily to [noncitizens] seeking entry into the United States" and "mandate[s] detention" of these noncitizens "until certain proceedings have concluded." *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). The BIA found that a non-citizen who is transferred from expedited removal proceedings under 8 U.S.C. § 1225 to full removal proceedings under 8 U.S.C. § 1229 after

1 establishing a credible fear of persecution or torture in a credible fear interview is
2 ineligible for release on bond. *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019).

3 28. Although the Supreme Court has held the statutes governing immigration
4 detention, including 8 U.S.C. § 1225, do not contain implicit statutory limits, the
5 Court did not address whether the Constitution sets any such limitations. *Jennings*
6 *v. Rodriguez*, 583 U.S. 281, 312 (2018). On remand from the Supreme Court, the
7 Ninth Circuit expressed “grave doubts” that the Constitution permitted “arbitrary
8 prolonged detention without any process.” *Rodriguez v. Marin*, 909 F.3d 252, 256
9 (9th Cir. 2018). As the Ninth Circuit has explained in the pretrial detention
10 context—which, like here, involves civil detention—“[i]t is undisputed that at
11 some point, [civil] detention can ‘become excessively prolonged, and therefore
12 punitive,’ resulting in a due process violation.” *United States v. Torres*, 995 F.3d
13 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4
14 (1987)).

15 29. As such, we can take direction from the hundreds of district courts that have
16 addressed the question and found that prolonged civil immigration detention does
17 violate the constitution. Indeed, “[n]early all district courts that have considered
18 the issue agree that prolonged mandatory detention pending removal proceedings,
19 without a bond hearing, will—at some point—violate the right to due process.”
20 *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019) (cleaned
21 up) (collecting cases).

22 30. Courts in this District have similarly found that prolonged mandatory detention
23 violates the right to due process and have relied on the due process concerns
24 recognized in *Zadvydas* to make these rulings. See, e.g., *Sadeqi v. LaRose*, 809 F.
25 Supp. 3d 1090, 1095 (S.D. Cal. 2025) (finding that eleven month detention
26 without a bond hearing “absent meaningful rebuttal by [r]espondents” was
27 unreasonable and violated due process); *Amado v. United States Dep’t of Just.*,
28 No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025)

1 (“Courts have found detention over seven months without a bond hearing weighs
 2 toward a finding that it is unreasonable.”); *Guatam v. Corr. Corp of Am.*, No.
 3 3:25-CV-3600-JES-DEB, 2026 WL 25846, at *4 (S.D. Cal. Jan. 5, 2026) (finding
 4 that one-year detention weighed in favor of granting a bond hearing). *Kydyrali v.*
 5 *Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020); *Abdul Kadir v. Larose*, No.
 6 25CV1045-LL-MMP, 2025 WL 2932654, at *3 (S.D. Cal. Oct. 15, 2025); *Gao v.*
 7 *LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept.
 8 26, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3
 9 (S.D. Cal. Jan. 9, 2026).

10 31. As the Ninth Circuit put it in *Jennings*’ wake, those considerations raise “grave
 11 doubts that any statute that allows for arbitrary prolonged detention without any
 12 process is constitutional or that those who founded our democracy precisely to
 13 protect against the government’s arbitrary deprivation of liberty would have
 14 thought so.” *Rodriguez*, 909 F.3d 252 at 256.

15 EXHAUSTION

16 32. The habeas statute “does not specifically require petitioners to exhaust direct
 17 appeals before filing petitions for habeas corpus.” *Laing v. Ashcroft*, 370 F.3d
 18 994, 997 (9th Cir. 2004) (quoting *Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th
 19 Cir.2001)).

20 33. Exhaustion is also not required as a prudential matter. Prudential exhaustion may
 21 be required if “(1) agency expertise makes agency consideration necessary to
 22 generate a proper record and reach a proper decision; (2) relaxation of the
 23 requirement would encourage the deliberate bypass of the administrative scheme;
 24 and (3) administrative review is likely to allow the agency to correct its own
 25 mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*, 488 F.3d
 26 812, 815 (9th Cir. 2007). None of these factors weigh in favor of requiring
 27 exhaustion.
 28

34. In fact, exhaustion in this situation would be futile given that Respondents maintain Petitioner is detained under 8 U.S.C. § 1225(b) because he was transferred to full removal proceedings after he passed his credible fear interview. His credible fear finding mandates his detention without bond pursuant to the Supreme Court’s decision in *Jennings*, 583 U.S. 281 at 297; *see also Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019). While the Supreme Court in *Jennings* ruled that DHS has *statutory* authority to detain aliens who have established credible fear pending their formal removal proceedings, the Court did not address *constitutional* arguments against this framework. *See Jennings*, 583 U.S. 281 at 297.

LEGAL ARGUMENT

35. 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—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

36. The Due Process Clause protects “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 694 (internal quotations omitted).

I. Petitioner’s prolonged detention violates substantive due process.

37. Substantive due process prohibits civil detention that is “punitive rather than regulatory” in purpose or in effect, including civil detention that “appears excessive in relation to its regulatory purpose.” *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). That is, “due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Jones*

1 v. *Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Jackson*, 406 U.S. at 738).
2 Any detention beyond that amounts to punishment. *See id.*

3 38. Moreover, even where detention is related to a regulatory purpose, it may become
4 punitive when it is “excessively prolonged.” *United States v. Salerno*, 481 U.S.
5 739, 744 n.4 (1987). As such, due process requires greater justification for
6 continued detention “as the period of confinement grows.” *Zadvydas*, 533 U.S. at
7 691. Accordingly, “at some point, regardless of the risks, due process will require
8 that [a person subject to prolonged civil confinement] be released.” *Torres*, 995
9 F.3d at 709–10.

10 39. Although courts generally agree that due process mandates a bond hearing when
11 detention grows unreasonably prolonged, they disagree about how to assess
12 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera*
13 v. *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
14 Cal. Jan. 9, 2023) (surveying the various approaches). Some courts have
15 “conclude[d] . . . that detention becomes prolonged after six months and entitles
16 [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-TSH,
17 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Petitioner
18 automatically qualifies, as he has been detained for well over a year.

19 40. Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023 WL
20 139801, at *5–6 (surveying different approaches). Courts generally agree that
21 relevant factors include: (1) “the total length of detention to date,” (2) “the likely
22 duration of future detention,” and (3) “the delays in the removal proceedings
23 caused by the petitioner and the government.” *Id.* Some courts also consider: (4)
24 “the conditions of detention,” and (5) “the likelihood that the removal proceedings
25 will result in a different final order.” *Id.* Some courts have rejected the fourth and
26 fifth factors, holding that they are “not particularly suited to assisting the Court in
27 determining whether detention has become unreasonable and due process requires
28 a bond hearing.” *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022);

1 *accord Sanchez-Rivera*, 2023 WL 139801, at *5–6.⁴ Petitioner prevails under any
2 of these tests.

3 41. To factors one and two, Petitioner has been detained for over 14 months, and
4 there is no end date in sight as to his detention. In assessing factors one and two,
5 “[i]t is important to bear in mind the context: The detention that is being examined
6 here is the detention of a human being who has never been found to pose a danger
7 to the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F.
8 Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond
9 hearings for persons detained for seven months or longer. *See Sadeqi*, 809 F.
10 Supp. 3d 1090 at 1095 (finding that eleven month detention without a bond
11 hearing “absent meaningful rebuttal by [r]espondents” was unreasonable and
12 violated due process); *Amado*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at
13 *5 (“Courts have found detention over seven months without a bond hearing
14 weighs toward a finding that it is unreasonable.”); *Ashemuke v. ICE Field Off.*
15 *Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29,
16 2024), *report and recommendation adopted*, No. C23-1592-RSL, 2024 WL
17 1676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven months”); *Brissett*
18 *v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez*
19 *v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20,
20 2018) (“more than nine months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020
21 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”).

22 42. Petitioner has yet to receive a decision in his asylum case before the immigration
23 judge. If he does not win asylum, he intends to appeal before the BIA, which could
24 take over 450 days to decide the case, and then an untold number of days to fight
25 before the Ninth Circuit and then back before the immigration court if the case is

26 ⁴ Courts also disagree about whether to account for any criminal convictions that
27 have led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5–6. But such
28 factors—if appropriate at all—are irrelevant here where Petitioner has no criminal
history.

1 further appealed and remanded. *See* United States Government Accountability
2 Office, Immigration Courts: Actions Needed to Reduce Case Backlog and
3 Address Long-Standing Management and Operational Challenges 33 (2017),
4 <https://www.gao.gov/assets/690/685022.pdf>. Because “Petitioner’s future
5 detention can last several more months or even years[,]” factors one and two
6 strongly favor Petitioner. *Abdul Kadir*, No. 25CV1045-LL-MMP, 2025 WL
7 2932654, at *5.

8 43. Factor three contemplates the delays in detention. Petitioner did not receive a
9 credible fear interview until he had already been in the U.S. for more than four
10 months. This, despite the fact that the *Padilla* court certified the following class:
11 “All detained asylum seekers in the United States subject to expedited removal
12 proceedings under 8 U.S.C. § 1225(b) who are not provided a credible fear
13 determination within ten days of the later of (1) requesting asylum or expressing
14 a fear of persecution to a DHS official or (2) the conclusion of any criminal
15 proceeding related to the circumstances of their entry, absent a request by the
16 asylum seeker for a delayed credible fear interview.” *Padilla et. al. v. Immigration*
17 *& Customs Enforcement et al.*, No. 2:18-cv-928 (W.D. Wash.). He was a class
18 member of this settlement recognizing the problem of delayed credible fear
19 interviews from 10 days after he entered the country until four months later. After
20 passing his delayed credible fear interview, he secured legal representation—a
21 difficult feat to accomplish while being transferred between over eight detention
22 facilities—only to then face the impossibility of gathering evidence for his asylum
23 claim from a country at war with the U.S. and where it is widely known that there
24 is an internet black-out. Nasser Karimi et al., *Iran’s Monthslong Internet*
25 *Shutdown is Crushing Businesses in an Already Battered Economy*, AP NEWS
26 (Apr. 30, 2026), [https://apnews.com/article/iran-us-war-internet-business-](https://apnews.com/article/iran-us-war-internet-business-economy-online-9e1cc7c871cfea25978e3e518065cc26)
27 [economy-online-9e1cc7c871cfea25978e3e518065cc26](https://apnews.com/article/iran-us-war-internet-business-economy-online-9e1cc7c871cfea25978e3e518065cc26). As such, this factor also
28 weighs in Petitioner’s favor as he contributed to none of these delays, and he

continues to be at the mercy of the internet shortage in Iran and the Immigration Court's schedule.

44. The fourth factor considers conditions in detention. Although Petitioner has no criminal history in the United States, "Petitioner's confinement at [Otay Mesa Detention Center] is 'indistinguishable from penal confinement.'" *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773). The California Department of Justice (CA DOJ) recently released a report reviewing the conditions of confinement in immigration detention. Among its findings, the CA DOJ reported that OMDC had the second highest population of ICE detainees in California detention centers and noted that overcrowding "puts a strain on the resources available for all detainees. For example, in at least some of the housing units, the number of available toilets per detainee was insufficient for the high number of detainees and did not comply with [national detention] standards." *Immigration Detention in California: A Review of Conditions of Confinement*, CAL. DEP'T OF JUSTICE 117 (2026), <https://oag.ca.gov/system/files/media/immigration-detention-2026.pdf> [hereinafter, "CA DOJ Report"]. While detained, Petitioner is experiencing such extreme stress that he requires medication just to fall asleep. M.P. Decl. ¶ 14. He reports that he is always feeling stressed. *Id.* at ¶ 13. CA DOJ found that "Otay Mesa's medical recordkeeping practices limit the facility's ability to provide quality, consistent medical care. . . . Detainees requiring higher levels of medical care or accommodations that Otay Mesa could not provide remained in the facility's medical housing unit for months." CA DOJ Report at 118. These jail-like conditions considered in tandem with the documented poor healthcare at OMDC favor Petitioner's grant of Habeas Corpus.

1 45. As to the fifth and final factor,⁵ it is likely that the removal proceedings will result
2 in a different final order. Petitioner is a citizen of Iran who converted to
3 Christianity. M.P. Decl. ¶ 2. He has already been tortured and raped for regularly
4 attending church. *Id.* at ¶ 2, 5. The U.S. Department of State recognizes that
5 religious minorities are persecuted in Iran: “Authorities subjected prisoners
6 detained on religious grounds to torture and severe punishment. . . . The
7 government also continued to systematically harass, intimidate, and target
8 religious minorities through its arbitrary arrests, enforced disappearances. . . .
9 Iran’s government carried out over 900 executions in 2024 and issued scores of
10 death sentences for religiously based charges.” *United States Commission on*
11 *International Religious Freedom 2025 Annual Report*, U.S. DEP’T OF STATE at 24,
12 [https://www.uscirf.gov/sites/default/files/2025-](https://www.uscirf.gov/sites/default/files/2025-03/2025%20USCIRF%20Annual%20Report.pdf)
13 [03/2025%20USCIRF%20Annual%20Report.pdf](https://www.uscirf.gov/sites/default/files/2025-03/2025%20USCIRF%20Annual%20Report.pdf). As such, the fifth factor also
14 favors Petitioner.

15 46. Under any test, then, Petitioner’s over 14-month detention without any bond
16 hearing is punitive and excessive.

17 ***II. Petitioner’s prolonged detention also violates procedural due process.***

18 47. Prolonged civil detention also violates procedural due process unless it is
19 accompanied by strong procedural protections to guard against the erroneous
20 deprivation of liberty. *Zadvydas* at 690-91; *Foucha*, 504 U.S. at 81-83; *Kansas v.*
21 *Hendricks*, 521 U.S. at 346, 364-69 (1997); *United States v. Salerno*, 481 U.S.
22 739, 750-752 (1987).

23 48. Under *Mathews v. Eldrige*, 424 U.S. 319 (1976), procedural due process must be
24 evaluated by balancing (1) the private interest affected; (2) the risk of erroneous
25 deprivation of such interest; and (3) the government’s interest. *Id.* at 335. “The

26 ⁵ Whether an individual ultimately prevails in their case should not be a factor. The
27 criteria to justify immigration detention is flight risk or danger, and whether relief is
28 ultimately granted is not necessarily indicative of flight risk. *Demore*, 538 U.S. at 528. Nonetheless, Petitioner prevails on this factor as well.

1 fundamental requirement of due process is the opportunity to be heard ‘at a
2 meaningful time and in a meaningful manner.’” *Id.* at 333.

3 49. Petitioner unequivocally has a private interest in his liberty where “[f]reedom
4 from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause
5 protects.” *Zadvydas*, 533 U.S. at 690. Furthermore, Petitioner’s access to counsel
6 and to evidence is severely limited by his continued detention. The private interest
7 affected here is his asylum claim, access to counsel, and freedom itself.

8 50. The risk of erroneous deprivation is great where, as here, there have been *no*
9 safeguards to assess whether Petitioner is a danger or a flight risk, i.e. whether his
10 detention is justified.

11 51. Finally, “[a]lthough the Government has a strong interest in enforcing the
12 immigration laws... the Government’s interest in detaining Petitioner without
13 providing an individualized bond hearing is low.” *Henriquez v. Garland*, 2022
14 WL 2132919, at *5 (N.D. Cal. June 14, 2022). Here, Respondent’s interest in
15 keeping Petitioner confined is outweighed where Petitioner poses no danger to
16 the community, and where his removal proceedings in immigration court remain
17 ongoing.

18 52. Thus, Respondents have violated Petitioner’s procedural due process rights.

19 REMEDY

20 ***III. Given these due process violations, this Court should order Petitioner’s*** 21 ***immediate release.***

22 53. It is well-established in Supreme Court precedent that “a court has broad
23 discretion in conditioning a judgment granting habeas relief . . . ‘as law and justice
24 require.’” *Hilton v. Braunskill*, 481 U.S. 775 (1987). As such, “[H]abeas corpus
25 is, at its core, an equitable remedy.” *Schlup v. Delo*, 513 U.S. 298, 319 (1995).
26 Such equitable remedies “are a special blend of what is necessary, what is fair,
27 and what is workable.” *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973).

1 54. This Court should order a remedy that fully addresses the constitutional
2 violations in this case and is efficient to administer. *Carafas v. LaVallee*, 391 U.S.
3 234, 238 (1968) (the habeas statute “does not limit the relief that may be granted
4 to discharge of the applicant from physical custody. Its mandate is broad with
5 respect to the relief that may be granted”). These principles and the violations
6 apparent in Petitioner’s case allow this Court to order outright release—rather
7 than a bond hearing—because justice so requires. *Doe v. Chestnut*, --- F.3d ----,
8 No. 24-CV-00943, 2025 WL 3240400, at *22 (E.D. Cal. Nov. 20, 2025)
9 (published decision) (ordering petitioner’s release where continued detention
10 violated substantive due process).

11 55. Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243
12 (the habeas court shall “dispose of the matter as law and justice require.”); *Preiser*
13 *v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding “that the traditional function of
14 the writ is to secure release from illegal custody”). The most appropriate remedy
15 in a case like this, where Petitioner has been detained in violation of due process,
16 is release on recognizance without further conditions of release. *See Ambroladze*
17 *v. Maldonado*, No. 26-CV-00474 (HG), 2026 WL 280182, at *3 (E.D.N.Y. Feb.
18 3, 2026) (given that the typical remedy for unlawful detention is release, “the
19 government’s ongoing detention of Petitioner, in the face of yet another complete
20 failure of process, entitles him to immediate release.”).

21 56. Dozens of courts across the country have agreed. *See, e.g., Munoz Materano v.*
22 *Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate
23 release); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y.
24 July 13, 2025) (same); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL
25 3168759, at *6 (S.D.N.Y. Nov. 13, 2025); *Cifuentes v. Soto*, No. 25-cv-18029,
26 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025); *Gonzalez Centeno v. Lowe*, No.
27 3:25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026); *Feisal O. v. Noem*,
28 No. 26-cv-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026); *Garcia*

1 *Covarrubias v. Holston*, No. 2:25-cv-02445, 2026 WL 25970, at *4 (D. Nev. Jan.
2 5, 2026); *Kenzhebaev v. Noem*, No. 1:25-cv-1786, 2025 WL 3737975, at *9
3 (W.D. Mich. Dec. 29, 2025); *Kobilov v. O'Neill*, No. 26-cv-0058, 2026 WL
4 73475, at *3 (E.D. Pa. Jan. 8, 2026) (same, finding a bond hearing unnecessary
5 where there was no indication petitioner was a danger or flight risk); *Ortega-*
6 *Aguirre v. Noem*, No. 4:25-cv-04332, 2025 WL 3684697, at *4 (S.D. Tex. Oct.
7 10, 2025); *Bumbila Iza v. Arnott*, No. 6:25-cv-3392, 2026 WL 67152, at *5 (W.D.
8 Mo. Jan. 8, 2026); *see also Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128,
9 154 (W.D.N.Y. 2025) (ordering release and that petitioner could not be detained
10 without a pre-deprivation hearing); *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-
11 cv-03279, 2025 WL 3675153, at *4 (S.D. Cal. Dec. 17, 2025); *Sekhon v. Warden*
12 *of Golden State Annex Det. Facility*, No. 1:25-cv-1692, 2026 WL 74151, at *4
13 (E.D. Cal. Jan. 9, 2026).

14 **A. ENFORCEMENT PROBLEMS IN COURT-ORDERED BOND**
15 **HEARINGS**

16 57. Further, a bond hearing by an immigration judge is not the most appropriate or
17 efficient use of this court's equitable authority. Recent actions by ICE attorneys
18 and immigration judges during and after habeas court-ordered bond hearings have
19 necessitated federal court enforcement proceedings across the country, creating
20 significant extra work for the court and the parties while petitioners' unlawful
21 detention continues.

22 i. Immigration Judge Failures to Conduct a Bond Hearing as
23 Ordered

24 58. Immediate release as the appropriate remedy for the Due Process violation in
25 Petitioner's case is especially critical when considering the recent reports of
26 immigration judges' compromised neutrality. There are several reports from this
27 district and elsewhere that court-ordered "bond hearings [are], effectively,
28 stacked against detainees from the start." Kyle Cheney, *How ICE Defies Judges'*

1 *Orders to Release Detainees, Step by Step*, POLITICO (Feb. 10, 2026),
2 [https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727)
3 [orders-00771727](https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727). The New York Times reported that one sitting immigration
4 judge explained the “pressure to deny bond is overt” and that “there was a
5 requirement to inform a supervisor every time bond was granted[.]” Nicholas
6 Nehamas et al., *How Trump Purged Immigration Judges to Speed Up*
7 *Deportations*, N.Y. Times (April 9, 2026)
8 [https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html)
9 [judges-purge.html](https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html) [hereinafter *How Trump Purged Immigration Judges*, N.Y.
10 Times]. It further reported that the Office of the Chief Immigration Judge “has
11 sometimes emailed [immigration] judges asking for an explanation about their
12 decisions to grant bond[.]” *Id.*

13 59. Immigration judges have failed to conduct a neutral, individualized bond hearing
14 or to place the burden of proof as ordered by the habeas court. *See Ulloa Bueno*
15 *v. Soto*, No. 26-CV-896, 2026 WL 509102, at *2 (D.N.J. Feb. 24, 2026) (granting
16 immediate release after immigration judges *twice* failed to conduct a neutral bond
17 hearing with the burden on DHS: “Continued detention in the face of repeated
18 noncompliance with explicit judicial directives constitutes an ongoing deprivation
19 of liberty without constitutionally sufficient process.”); *Pedroso de Oliveira v.*
20 *Freden*, No. 6:25-CV-6663 2025 WL 3554686, at *1 (W.D.N.Y. Dec. 11, 2025)
21 (granting motion to enforce where “the IJ wholly failed to follow the Court’s
22 directions to require Respondents to bear the clear and convincing evidence
23 burden of proof at the bond hearing, nor did the IJ even attempt to consider
24 alternatives to detention”); *A.D. v. Oddo*, 3:25-cv-460-SLH-MPK, Dkt. No. 40
25 (W.D.P.A. Feb. 12, 2026) (granting motion to enforce and ordering immediate
26 release where IJ did not provide correct interpreter, then incorrectly called the
27 petitioner “evasive” in denying bond); *Said v. Noem*, 3:25-cv-938-MOC
28 (W.D.N.C, Feb. 4, 2026) (granting TRO where immigration judge’s refusal to

1 consider testimony and declarations, or let petitioner defend himself against
2 unauthenticated assertion he had not complied with a prior condition of release,
3 likely violated due process).

4 60. These failures also include immigration judges denying bond in numerous cases
5 without explanation or based on generic factors common to millions of people,
6 such as merely being undocumented or having had any criminal contact,
7 regardless of severity or proof of guilt.⁶ *See, e.g., Aguilon Fuentes v. Bondi*, No
8 1:26-cv-167-AJT-WEF (E.D.V.A. Feb. 24, 2026) (granting motion to enforce
9 after immigration judge denied bond based on “flight risk” factors that were “so
10 lacking in probative value” that they violated due process and would result in
11 denying bond to most undocumented persons); *Lozhkina v. Noem*, 6:26-cv-3001-
12 MDH (W.D.Mo. Feb. 10, 2026) (granting motion to enforce where immigration
13 judge’s denial of bond based on flight risk lacked any record support and had
14 “indications of predetermined outcome based on disagreement over [habeas
15 court’s] previous order”); *Picado v. Hyde*, 26-cv-65-JJM-PAS (D.R.I. Feb. 9,
16 2026) (granting immediate release where [petitioner] had “two bond hearings that
17 two separate judges have found to be deficient.”); *Luciano-Jimenez v. Doll*, 543
18 F. Supp. 3d 69, 72 (M.D. Pa. 2021) (finding court-ordered bond hearing was not
19 individualized and granting federal court hearing); *see also Chi Thom Ngo v.*
20 *I.N.S.*, 192 F.3d 390, 398 (3d Cir. 1999) (“The fact that some aliens posed a risk
21 of flight in the past does not mean that they will forever fall into that category.
22 Similarly, presenting danger to the community at one point by committing crime
23 does not place them forever beyond redemption. Measures must be taken to assess
24 the risk of flight and danger to the community on a current basis.”).

25
26 ⁶ *See* Kyle Cheney, *Judges Keep Ordering Immigration Hearings – But Say the*
27 *Results Are Often a Sham*, POLITICO, Mar. 6, 2026, available at
28 <https://www.politico.com/news/2026/03/06/immigration-case-hearings-judges-00815660>.

61. Indeed, as recently as last month, the Southern District of California ordered a petitioner immediately released from Otay Mesa Detention Center (OMDC) because his court-ordered bond hearing was legally and constitutionally deficient. *Perez Velasquez v. Bondi*, No. 26-CV-01759-GPC-DDL, 2026 WL 1042479, at *5 (S.D. Cal. Apr. 16, 2026) (“There is no evidence that the IJ considered the *Guerra* factors or applied them to the set of facts before her.... the IJ failed to consider all relevant evidence as required by due process.”).

62. In a declaration filed in *Briceno Solano v. Mason*, No. 26-CV-00045, 2026 WL 311624 (S.D.W. Va. Feb. 4, 2026), former ICE Counsel Jorge Artieda attests to seeing “a seismic shift in bond hearing outcomes for individuals who had been granted federal habeas relief. . . in the Eastern District of Virginia.” The pattern of granting bond in appropriate cases “abruptly and uniformly ceased” in early January, in a way that “suggests coordinated institutional direction.” *Id.* In Mr. Artieda’s professional opinion, the IJs’ rationales “do not appear to be grounded in legitimate risk assessment” but are “pretexts designed to ensure denial of bond regardless of the individual facts of each case.” *Id.* at 4. Mr. Artieda further attests that, having “communicated with numerous immigration attorneys practicing all over the United States,” “[t]hese conversations have confirmed that the pattern I have observed is widespread and consistent.” *Id.* at 5.

63. To avoid a wasteful round of enforcement proceedings – or even two – while unlawful detention continues, this court should grant release.

ii. Widespread Noncompliance with Federal Habeas Court Orders

64. Hundreds of other cases have involved Respondents’ outright refusal, inability, or failure to hold a timely bond hearing after being ordered to do so. *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *4 (C.D. Cal. Feb. 18, 2026) (granting motion to enforce class-wide declaratory judgment that thousands of noncitizens are eligible for bond after the government failed to

1 provide bond hearings to hundreds of individuals as ordered), ; *Rodriguez*
2 *Vazquez v. Hermosillo*, No. 3:25-CV-05240-TMC, 2026 WL 102461, at *1 (W.D.
3 Wash. Jan. 14, 2026) (granting in part motion for further relief in similar class
4 action concerning a single ICE facility and noting that “more than 100 unlawfully
5 detained noncitizens—left with no other recourse due to Defendants’
6 noncompliance”— had to file habeas petitions to access the bond hearings the
7 court had already ordered for the class); *Juan T.R. v. Noem*, No. 26-CV-0107
8 (PJS/DLM), 2026 WL 555601, at *1 (D. Minn. Feb. 26, 2026) (cataloging 210
9 court orders the Department of Justice had violated in 143 habeas cases, which
10 included over 15 instances of failing to provide a court- ordered bond hearing);⁷
11 *Kumar v. Soto*, No. 26-cv-777, Dkt. No. 21. (D.N.J. Feb. 13, 2026) (filing from
12 the New Jersey U.S. Attorney’s Office admitting to violating 56 orders in habeas
13 cases, including failing to hold bond hearings in the required time period, and
14 failing to file 16 required status updates); *Fernandez Alvarez v. Noem*, No. 2:26-
15 CV-00313-SPC-DNF, 2026 WL 598614, at *1 (M.D. Fla. Mar. 4, 2026) (ordering
16 immediate release after immigration judge found petitioner was detained under 8
17 U.S.C. § 1225(b)(2) and ineligible for bond even after habeas court had explicitly
18 ordered otherwise); *Cartagena Hueso v. Soto*, No. 26-cv-1455 (ZNQ), 2026 WL
19 539271, at *3 (D.N.J. Feb. 26, 2026) (granting immediate release after
20 Respondents failed to comply with two court orders to hold a bond hearing within
21 10 days and to prevent petitioner’s transfer out of state).

22
23 ⁷ The other violations in *Juan T.R.* and other cases around the country include failure,
24 after being ordered to: prevent transfer of a petitioner out of state; return a petitioner
25 to his or her home state; timely release a petitioner; return a petitioner’s personal ID
26 cards and property; and file status updates to the Court showing compliance. *See also*
27 Kyle Cheney, *How ICE defies judges’ orders to release detainees, step by step*,
28 POLITICO, Feb. 10, 2026, available at <https://www.politico.com/news/2026/02/10/ice-immigration-detention-court-orders-00771727>; Maria Sacchetti, *How ICE officers defied court orders as immigrant arrests soared in Minneapolis*, Washington Post, March 9, 2026, available at <https://www.washingtonpost.com/immigration/2026/03/10/trump-immigration-detention-minneapolis-courts/>.

65. Government attorneys have also tried to disavow responsibility for ensuring their clients will comply with future court orders. *See, e.g., Gomez Rodriguez v. Noem*, No. 2:25-cv-01115, 2025 WL 3771268, at *2 (M.D. Fla. Dec. 31, 2025) (noting that “[i]n other cases before this Court, the respondents have claimed they cannot direct the EOIR when to conduct a bond hearing,” and ordering release if the government does not comply); *Khogiani v. Raycraft*, No. 25-cv-13744, 2025 WL 3753532, at *4 (E.D. Mich. Dec. 29, 2025) (noting the government’s argument that given the “overwhelming caseload” in the immigration courts, it likely could not comply with an order to hold a bond hearing within five days, but re-setting a short deadline anyway given the petitioner’s five months of unlawful detention); *Vargas v. Bondi*, No. 25-cv-1023, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025), *report and recommendation adopted*, No. 25-cv-1023, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025) (recommending immediate release, in part because respondents argued that “if this Court ordered a hearing, it would require the immigration judge to do that which, in light of BIA precedent, the judge would not believe he had any authority to do”); *O.F.C. v. Almodovar*, No. 25-cv-9816, 2026 WL 74262, at *16 (S.D.N.Y. Jan. 9, 2026) (expressing concern that at oral argument, government counsel refused to guarantee that in a court-ordered bond hearing, ICE would not invoke the automatic stay or argue that the IJ lacked jurisdiction to set bond; either action “would render the Court’s intended relief illusory”).

66. These are not isolated incidents, as many cases have presented the same ICE actions frustrating the court’s orders. *See Diahn*, 2026 WL 84576, at *2 (explaining that petitioners had filed two motions to enforce, first when ICE invoked the automatic stay after the IJ granted bond, and second when ICE withdrew the stay but placed a painful ankle monitor on the petitioner that the IJ had not ordered); *M.P.L.*, 2025 WL 3288354, at *1 (granting motion to enforce where DHS invoked automatic stay after habeas court-ordered bond hearing);

1 *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2984913, at *2 (S.D.N.Y. Oct. 23,
2 2025) (finding DHS’s use of multiple “one-sided” stay mechanisms to prevent
3 release after habeas-court ordered bond hearing violated due process, and
4 granting motion to enforce).⁸

5 iii. ICE’s Use of the “Automatic Stay” of a Bond Grant

6 67. In the last year, ICE has frequently appealed the IJ’s grant of bond to the BIA
7 and invoked the “automatic stay” regulation, 8 C.F.R. § 1003.19(i)(2). This stay,
8 which keeps the petitioner detained despite an IJ bond grant, was rarely invoked
9 in prior years but has now become common. Dozens of habeas courts have ruled
10 that the automatic stay violates due process and have ordered Respondents to
11 allow a petitioner to post his bond. *See, e.g., Merchan-Pacheo v. Noem*, No. 1:25-
12 cv-03860, 2026 WL 88526, at *16 (D. Colo. Jan. 12, 2026) (finding automatic
13 stay violates due process); *M.P.L. v. Arteta*, No. 25-cv-5307, 2025 WL 3288354,
14 at *7 (S.D.N.Y. Nov. 25, 2025) (same, noting that “at least 50 district court
15 decisions across the United States in the last 6 months alone” have found that
16 DHS’s use of the automatic stay provision violates or likely violates due process,
17 and collecting cases at n.6); *see also Garvey v. Noem*, No. 6:26-CV-3109-MDH,
18 2026 WL 612302, at *3 (W.D. Mo. Mar. 4, 2026) (granting TRO and ordering
19 immediate release given the “blatant absence of procedural due process” in ICE’s
20 use of automatic stay); *Otilio B.F. v. Andrews*, No. 1:25-cv-01398, 2025 WL
21 3152480, at *11 (E.D. Cal. Nov. 11, 2025) (finding the automatic stay likely
22 violates due process and granting preliminary injunction); *Guasco v. McShane*,
23 No. 1:25-cv-1650, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025) (noting
24 that other habeas courts have “assailed the Government’s practice of acting both
25
26

27 ⁸ In *J.M.P.*, the DHS attorney at the habeas-ordered bond hearing continued to insist
28 the IJ lacked jurisdiction to consider bond in the face of the habeas court’s order.
2025 WL 2984913, at *5.

1 as the prosecution and the judge in making a unilateral and unreviewed decision
2 as to detention” (internal citation omitted)).

3 iv. ICE Unilaterally Imposes GPS Ankle Monitors and
4 Conditions of Release Ordered by No Judge

5 68. In other cases, ICE has applied onerous electronic GPS ankle monitors or other
6 unnecessary conditions of release that neither the habeas court nor the
7 immigration court ordered, requiring additional litigation. *See Gonzalez Centeno*
8 *v. Lowe*, No. 3:25-cv-2518, 2026 WL 196513, at *2 (M.D. Pa. Jan. 26, 2026)
9 (ordering ICE to remove ankle monitor it imposed after habeas court had ordered
10 immediate release, noting “the government continues to provide unsupported or
11 even Kafkaesque arguments to justify DHS's noncompliance with court orders”);
12 *Diahn v. Lowe*, No. 1:24-cv-1936, 2026 WL 84576, at *5 (M.D. Pa. Jan. 12, 2026)
13 (ordering ICE to remove ankle monitor it had unilaterally imposed after IJ granted
14 bond without further conditions); *Montes Aguillon v. Bondi*, No. EP-26-CV-71-
15 KC, 2026 WL 531899, at *2 (W.D. Tex. Feb. 25, 2026) (same, and collecting
16 cases); *Batz Barreno v. Baltasar*, --- F.Supp.3d. ---, No. 25-CV-03017, 2026 WL
17 120253, at *3 (D. Colo. Jan. 15, 2026) (same, noting that removal of the ankle
18 monitor was required by “[f]undamental fairness and compliance with the rule of
19 law” and the general notion of “fairness and fairplay”); *Orellana Juarez v. Moniz*,
20 788 F. Supp. 3d 61, 70 (D. Mass. 2025) (same, finding this presented a “real
21 constitutional risk” and defeated the purpose of neutral third-party review of
22 custody); *Menjivar Sanchez v. Wofford*, No. 1:25-CV-01187, 2025 WL 3089712,
23 at *9 (E.D. Cal. Nov. 5, 2025) (same, in preliminary injunction context); *N- N- v.*
24 *McShane*, No. 25-cv-5494, 2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025)
25 (finding ICE’s imposition of an ankle monitor, check-ins, and travel restrictions,
26 which the IJ did not order in setting bond, violated due process and the *Accardi*
27 doctrine); *da Silva v. LaForge*, No. 25-cv-17095, 2026 WL 45165, at *4 (D.N.J.
28 Jan. 7, 2026) (requiring ICE to vacate its imposed conditions including electronic

1 monitoring, home confinement days, unscheduled ICE home visits, and travel
2 restrictions, as their imposition violated the bond regulations and substantially
3 prejudiced petitioner).

4 ***IV. In the alternative, this Court should conduct a bail hearing.***

5 69. In the alternative, this Court can hold its own custody hearing and determine
6 whether DHS can prove by clear and convincing evidence that Petitioner must
7 remain in custody, or whether he may be released on recognizance, an appropriate
8 bond in light of his ability to pay, or supervised release. This is a more efficient
9 and effective remedy than ordering an immigration judge to conduct a hearing,
10 which may lead to additional enforcement proceedings and delays before the
11 unlawful detention in this case is remedied. *See L.G.M. v. LaRocco*, 788
12 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the
13 habeas court, as this would be more efficient than delegating the task to the agency
14 and ensure proper constitutional oversight); *Flores-Powell v. Chadbourne*, 677
15 F.Supp.2d 474-78 (D. Mass 2010) (granting petition and discussing at length
16 habeas court's equitable power, which includes power to hold its own bail
17 hearing); *see also Santos v. Lowe*, No. 1:18-CV-1553, 2020 WL 4530728, at *4
18 (M.D. Pa. Aug. 6, 2020) (finding that habeas court-ordered bond hearing was not
19 individualized and did not comport with due process, and granting motion to
20 enforce to hold the court's own bond determination).

21 70. "[T]he federal habeas statute provides for a swift, flexible, and summary
22 determination of [a petitioner's] claim." *Preiser v. Rodriguez*, 411 U.S. 475, 495
23 (1973). The Supreme Court has instructed district courts addressing habeas claims
24 "to cut through barriers of form and procedural mazes" and has "consistently
25 rejected interpretations of the habeas corpus statute that would suffocate the writ
26 in stifling formalisms or hobble its effectiveness with the manacles of arcane and
27 scholastic procedural requirements." *Hensley v. Mun. Ct., San Jose Milpitas Jud.*
28 *Dist., Santa Clara Cnty.*, 411 U.S. 345, 350 (1973) (internal quotation marks and

1 citation omitted). The need for a swift, straightforward path to Due Process for
2 Petitioner favors a hearing before this Court. Doing so would eliminate “barriers
3 of form and procedural mazes” that a remand to immigration court for a bond
4 hearing would entail. *Id.*

5 71. The immigration courts, including the BIA, do not regularly apply constitutional
6 principles. If an immigration judge were to act unconstitutionally, it would
7 implicate an erroneous risk of deprivation of liberty and may require Petitioner to
8 seek this Court’s intervention anew. That, in turn, would delay the due process
9 that the Constitution requires given his prolonged detention. *See Martinez v.*
10 *Clark*, 36 F.4th 1219, 1223 (9th Cir. 2022).

11 ***V. In the second alternative, the Court should grant an immigration bond***
12 ***hearing with strong procedural protections.***

13 72. As a final option, this Court could grant an immigration court bond hearing that
14 follows clear guidelines and keep jurisdiction over this case until satisfied that an
15 individualized, constitutionally adequate review was held. *See Hernandez-*
16 *Fernandez v. Lyons*, No. 5:25-CV-00773, 2025 WL 2976923, at *10 (W.D. Tex.
17 Oct. 21, 2025) (holding that the proper remedy given the due process concerns is
18 a bond hearing where the government bears the burden of proof); *Gomez v. Olson*,
19 No. 25-cv-15300, 2025 WL 3768242, at *6 (N.D. Ill. Dec. 31, 2025) (noting the
20 “overwhelming consensus” that the burden in a court-ordered bond hearing
21 should be placed on the government). The court should order that in that hearing,
22 DHS bears the burden of proof to justify continued detention by clear and
23 convincing evidence, and DHS is barred from invoking the automatic stay
24 regulation if the immigration judge grants bond. *See Singh v. Holder*, 638 F.3d
25 1196, 1205 (9th Cir. 2011); *see also Cooper v. Oklahoma*, 517 U.S. 348, 363
26 (1996) (holding that “due process places a heightened burden of proof on the State
27 in civil proceedings in which the ‘individual interests at stake . . . are both
28 particularly important and more substantial than mere loss of money”) (quoting

1 *Santosky v. Kramer*, 455 U.S. 745, 756 (1982)); *Foucha v. Louisiana*, 504 U.S.
2 71, 80 (1992) (requiring clear and convincing evidence to justify civil
3 commitment because “[f]reedom from bodily restraint has always been at the core
4 of the liberty protected by the Due Process Clause”). *See, e.g., O.F.C.*, 2026 WL
5 74262, at *16 (to ensure due process, ordering DHS to justify detention by clear
6 and convincing evidence, and enjoining DHS from invoking the automatic stay
7 on a bond grant or arguing that the IJ lacked jurisdiction); *Lopez-Romero v. Lyons*,
8 No. 2:25-cv-01113, 2026 WL 92873, at *7 (D.N.M. Jan. 13, 2026) (to ensure due
9 process, requiring the government justify detention by clear and convincing
10 evidence, and that the immigration judge consider petitioner’s ability to pay
11 bond); *Perez-Regalado v. Feeley*, No. 2:25-cv-02409, 2026 WL 36112, at *6 (D.
12 Nev. Jan. 6, 2026) (enjoining ICE from invoking an automatic stay after a bond
13 grant); *Rueda Torres*, 2025 WL 3168759, at *6 (same); *Garay v. Perry*, No. 1:25-
14 CV-2215, 2025 WL 3540070, at *4 (E.D. Va. Dec. 10, 2025) (releasing petitioner
15 immediately, ordering a bond hearing within 14 days, and enjoining ICE from
16 arguing the IJ lacks jurisdiction or from invoking the automatic stay).

17 73. The parties should submit a status update to the Court promptly after any hearing.
18 *See Dominguez v. Noem*, 25-cv-0074, 2026 WL 67200, at *4 (W.D. Tex. Jan. 8,
19 2026) (ordering bond hearing with burden on the government by clear and
20 convincing evidence, and ordering “an expedited timeline for compliance” given
21 multiple past cases where the government had violated the court’s orders).
22 However, because this may still be inefficient and result in additional litigation,
23 release or a detention hearing held by this Court are the most appropriate and
24 efficient remedies.

25 CLAIMS FOR RELIEF

26 COUNT ONE

27 VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH 28 AMENDMENT TO THE U.S. CONSTITUTION

Substantive Due Process

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

75. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

76. Due process prohibits punitive civil detention. Detention becomes punitive when its duration or nature becomes unreasonable or excessive relative to the purpose for which the detained individual is detained.

77. Civil detention must be tailored to the government’s purpose. That is, when a civil restriction is excessive in relation to the governmental interests, or the government could accomplish its interests through less restrictive means, the restriction violates substantive due process.

78. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and prevent danger to the community. *Demore v. Kim*, 538 U.S. 510 at 528 (2003).

79. Given that Petitioner has been detained for over 14 months with no end to detention in sight, the penal-like conditions of his confinement, the DHS delays in his case, and lack of any evidence whatsoever that Petitioner poses a current danger or flight risk, Petitioner’s continued detention is unduly excessive in relation to purposes of civil immigration detention. The government’s interests could be effectively satisfied by Petitioner’s release on appropriate conditions.

COUNT TWO

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

Procedural Due Process

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

1 81. The Due Process Clause of the Fifth Amendment forbids the government from
2 depriving any “person” of liberty “without due process of law.” U.S. Const.
3 amend. V.

4 82. Prolonged civil detention also violates due process unless it is accompanied by
5 strong procedural protections to guard against the erroneous deprivation of liberty.
6 *Zadvydas* at 690-91; *Foucha*, 504 U.S. at 81-83; *Kansas v. Hendricks*, 521 U.S.
7 at 346, 364-69 (1997); *United States v. Salerno*, 481 U.S. 739, 750-752 (1987).

8 83. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), procedural due process must be
9 evaluated by balancing (1) the private interest affected; (2) the risk of erroneous
10 deprivation of such interest; and (3) the government’s interest. *Id.* at 335.

11 84. Petitioner unequivocally has a private interest in his liberty where “[f]reedom
12 from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause
13 protects. *Zadvydas*, 533 U.S. at 690. The risk of erroneous deprivation is great
14 where, as here, the absence of safeguards has subjected Petitioner to prolonged
15 unjustified confinement. Finally, the government’s interest in keeping Petitioner
16 confined is outweighed where Petitioner poses no danger to the community and
17 is not a flight risk. *See generally*, Ex. A.

18 85. Thus, Respondents have violated Petitioner’s procedural due process rights. The
19 government’s interests could be effectively satisfied by Petitioner’s release on
20 appropriate conditions.

21 PRAYER FOR RELIEF

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

- 23 1. Assume jurisdiction over this matter;
- 24 2. Order Respondents to show cause why the writ should not be granted within three
25 days, as required by 28 U.S.C. §2243;
- 26 3. Enjoin the Respondents from transferring Petitioner away from the jurisdiction of
27 this District pending these proceedings;

- 1 4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth
- 2 Amendment;
- 3 5. Issue a writ of habeas corpus ordering Respondents to immediately release
- 4 Petitioner from custody;
- 5 6. Enter preliminary and permanent injunctive relief enjoining Respondents from
- 6 further unlawful detention or re-detention of Petitioner;
- 7 7. In the alternative, issue a writ of habeas corpus and order a prompt bail hearing as
- 8 described in 28 U.S.C. § 2243, at which Respondents must establish the necessity
- 9 of further detention by clear and convincing evidence, evaluate Petitioner's ability
- 10 to pay in setting bond, and consider the necessity of any conditions of release that
- 11 reasonably assure the safety of the community and Petitioner's future
- 12 appearances;
- 13 8. In the further alternative, issue a writ of habeas corpus and order Respondents to
- 14 release Petitioner unless Respondents provide a prompt hearing before a fair,
- 15 neutral, and open-minded immigration judge within fourteen days of this Court's
- 16 order, at which the government must bear the burden for further detention by clear
- 17 and convincing evidence, and DHS is barred from invoking the automatic stay
- 18 regulation if the immigration judge grants bond. The Court should further order
- 19 that the immigration judge must also make an individualized determination and a
- 20 reasoned decision, consider Petitioner's ability to pay bond, and consider
- 21 alternatives to detention that effectively mitigate flight risk or danger concerns;
- 22 9. Award reasonable attorney's fees and costs pursuant to the Equal Access to
- 23 Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412; and
- 24 10. Grant such further relief as this Court deems just and proper.

25
26 Dated: May 26, 2026

27
28 Respectfully submitted,

1 /s/ Regina Dryjanski

/s/ Natasha Phillips

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