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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NAYYER, VINAYAK, Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden at Otay Mesa Detention Center; **GREGORY J. ARCHAMBEAULT,** San Diego Field Office Director ICE Enforcement Removal Operations; **TODD M. LYONS,** Acting Director, Immigration and Customs Enforcement. **MARKWAYNE MULLIN,** Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; **TODD BLANCHE,** Attorney General of the United States; U.S. IMMIGRATION CUSTOMS ENFORCEMENT; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents

CIVIL CASE NO.: '26CV4376 JES JAC

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS

Agency No: [redacted]

Immediate Release Requested

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I. INTRODUCTION

Petitioner Vinayak Nayyer has now been detained for over thirteen months under 8 U.S.C. § 1226(a) despite two constitutionally defective bond hearings and ICE's unlawful re-detention of him without a pre-deprivation hearing. This Court previously granted his habeas petition and ordered a bond hearing. Nayyer v. LaRose, No. 3:25-cv-03111-AGS-DDL (S.D. Cal. Dec. 12, 2025). But the immigration judge ("IJ") again denied bond based solely on a misdemeanor DUI that resulted in a $500 fine, ignoring extensive rehabilitation, new sponsors, community support, and changed circumstances.

Federal courts have repeatedly held that (1) re-detention without a pre-deprivation hearing violates due process and warrants immediate release, and (2) bond hearings that misallocate the burden or rely on irrelevant factors are "fundamentally unfair" and require immediate release, not another hearing. See Alejandro R.R. v. Warden, 2026 U.S. Dist. LEXIS 131352; Monsalve v. Chestnut, 2026 U.S. Dist. LEXIS 17745; Ortiz v. Henkey, 2026 U.S. Dist. LEXIS 78932.

Respondents have twice failed to provide a constitutionally adequate bond hearing. Petitioner respectfully requests that this Court order his immediate release.

II. STATEMENT OF FACTS

1. Petitioner arrived in the United States on April 22, 2016, via the U.S.-Mexico border near Calexico, California, where he was apprehended by Customs and Border Patrol agents and requested asylum.
2. After an Asylum Officer conducted Petitioner's Credible Fear Interview ("CFI") and found him to be credible, Petitioner was referred to an Immigration Judge for consideration of his full asylum application in INA Section 240 proceedings.
3. On June, 9 2016, Petitioner was released on parole conditioned on a $2,500.00 bond payment, based on DHS' determination that he was neither a flight risk nor a danger to the community.
4. Ultimately,after his release, Petitioner settled in Massachusetts and transferred venue of Petitioner's removal proceedings correspondingly.
5. While in removal proceedings, Petitioner timely filed his asylum application around June 2021 and an Immigration Judge administratively closed his proceedings.
6. On May 25, 2025, Petitioner was arrested by the Massachusetts State Police for suspicion of operating a motor vehicle while under the influence of alcohol. He was taken to the Stoughton State Police Station. After a few hours of being detained there, Petitioner was told that he was being released and was walked outside by one of the officers who was

carrying Petitioner's belongings. As Petitioner exited the building, he was instead lead to ICE officers and his belongings were also given to the ICE officers who took immediate custody of the Petitioner.

7. Petitioner was then taken to the ICE Enforcement and Removal Operations (ERO) Field Office in Burlington, Massachusetts, where he was kept for about three days. Petitioner was then transferred to the ICE Detention facility at Plymouth County Correctional Facility. Then after a few days, Petitioner was transferred to the Otay Mesa Detention Center where he is presently and has been detained to date for over 14 months.

8. Petitioner's removal proceedings were then recalendared and venue was transferred to the Otay Mesa Immigration Court.

9. While detained, Petitioner requested a custody redetermination hearing before the Immigration Judge and on June 6,2025 and again on June 13, 2025, the IJ declined to accept jurisdiction and denied bond.

10. On November 11, 2025, Petitioner further submitted a habeas petition to this court, under 28 U.S.C. § 2241 on Respondents' administrative decisions to detain him under 8 U.S.C. § 1225(b)(2), INA § 235(b)(2).

11. The habeas correctly asserted, Petitioner was not an applicant for admission nor was he seeking admission. The government purported to hold him under § 1225(b)(2) and had not provided him with an individualized bond hearing to challenge his detention under 8 U.S.C. §

1226(a), INA § 236(a), contravening his rights under the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.

12. The initial habeas pointed out that Petitioner's Order of Release on Recognizance with respect to Petitioner's release in 2016 specifically stated that the release is under Section 1226, and thus Respondent's assertion to hold Petitioner pursuant to 1225(b) was incorrect.

13. Ultimately Petitioner's re-arrest and the revocation of his release on parole conditioned on a payment of bond without a pre-deprivation hearing violated the Due Process Clause.

14. In response to this violation of the Due Process Clause, this court granted Petitioner's habeas petition ordering that an initial bond hearing be held.

15. On December 19, 2025, pursuant to that order, the immigration judge denied bond because of Mr. Nayyer's danger to the community based on the pending criminal case in Massachusetts. The charge has a maximum penalty of up to 2.5 years in prison. This was and remains Petitioner's only criminal conduct.

16. Subsequent to the bond hearing, on April 23, 2026, Mr. Nayyer was ultimately convicted of his DUI charge. He received the minimum penalty of $500 fine, which is way below the maximum penalty of 2.5 years in prison. He has also participated in multiple Alcohol Recovery

Courses since his DUI charge. *See* Exhibit A, Petitioner's Rehabilitation Certificates. A second bond request was also denied on April 30, 2026.

17. Then an Immigration Judge ordered Mr. Nayyer removed on May 18, 2026. Mr. Nayyer timely filed a Notice of Appeal with the Board of Immigration Appeals (BIA) received on June 4, 2026, which is presently pending. The removal order is therefore not final.

18. A motion to reconsider the custody determination was entered evidencing the change in circumstance with supporting evidence of rehabilitation and the minimum sentence imposed was submitted the the immigration court and ultimately again denied on July 15, 2026.

19. Now Petitioner's detention has become prolonged, persisting more than 14 months as of the day of this filing, and habeas again is justified.

20. This court already ordered a bond hearing that comports with due process of law on December 12, 2025. In failing to provide such a hearing and, in fact, failing to provide it on three occasions since, Respondents have waived their opportunity to dispute that immediate release is the proper remedy for their repeated failure to provide an adequate bond hearing. See, e.g., *Perez Velasquez v. Bondi*, 26-cv-1759-GPC-DDL, Dkt. 11 (Apr. 16, 2026); *Hernandez-Garcia v. Warden*, 26-cv-1248-JO-BLM, Dkt. 11 (Mar. 26, 2026); *Izquierdo Mendez v. Casey*, 26-cv-1731-JO-SBC, Dkt. 6 (Mar. 30, 2026); Miri v.

Noem, No. 5:26-CV-00698-MEMF-MAR, 2026 WL 622302, at *11 (C.D. Cal. Mar. 5, 2026). Thus, this Court should conclude that Petitioner's continued detention violates due process and order his immediate release.

21. Additionally, Ms. Nayyer was released under parole in 2016 before being detained, granting him constitutional rights of liberty. No pre-deprivation hearing was given before his re-detention in 2025, which is a violation of his rights of liberty. This ground also supports his immediate release.

22. Therefore, Petitioner respectfully requests that the Court expeditiously grant an immediate release of this wrongfully detained individual.

III. JURISDICTION

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

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

25. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252 (e)(2).

26. Although 8 U.S.C. § 1226(e) bars review of discretionary bond decisions, it does not bar review of constitutional claims or questions of law. *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011). District courts retain habeas jurisdiction to review whether the bond process itself was constitutionally flawed. *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1031 (W.D. Wash. 2019).

27. This jurisdiction extends to mixed questions involving application of law to fact. *N.A. v. Warden*, 2026 WL 734587, at *6 (C.D. Cal. Feb. 20, 2026), *adopted*, 2026 WL 734585 (C.D. Cal. Mar. 12, 2026). Claims that the bond process was constitutionally defective "fit comfortably within the scope of § 2241." *Id.*

28. Petitioner challenges the legality and constitutionality of the process he received at his § 1226(a) bond hearing. This Court therefore retains jurisdiction to review his claims.

IV. VENUE

29. Venue is proper because Petitioner is in Respondents' custody in San Diego, California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

30. For the same reasons, a divisional venue is proper under Local 5 Rule HC. 1.

V. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

31. The Court must grant the Petition for Writ of Habeas Corpus or issue an Order to Show Cause (OSC) to the Respondents "forthwith," unless the petitioner

is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

32. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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).

33. Petitioner is "in custody" for the purpose of § 2241 because he is arrested and detained by Respondents.

VI. PARTIES

34. Vinayak Nayyer ("Petitioner") is a 29-year-old citizen of India. He is presently detained by Otay Mesa Detention Center, within the state of California, as of the time of the filing of this petition.

35. Respondent Christopher J. LaRose is the Warden of the Otay Mesa City Detention Center and is a legal custodian of Petitioner.

36. Respondent Gregory J. Archambeault is the San Diego Field Office Director ("FOD") for ICE Enforcement and Removal Operations ("ERO"). As such, Respondent Gregory J. Archambeault is responsible for the oversight of ICE operations at the California City Detention Center. Respondent Gregory J. Archambeault is being sued in his official capacity.

37.Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement ("ICE"). As such, Respondent Lyons is responsible for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.

38.Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Mullin is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

39.Respondent Todd Blanche is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

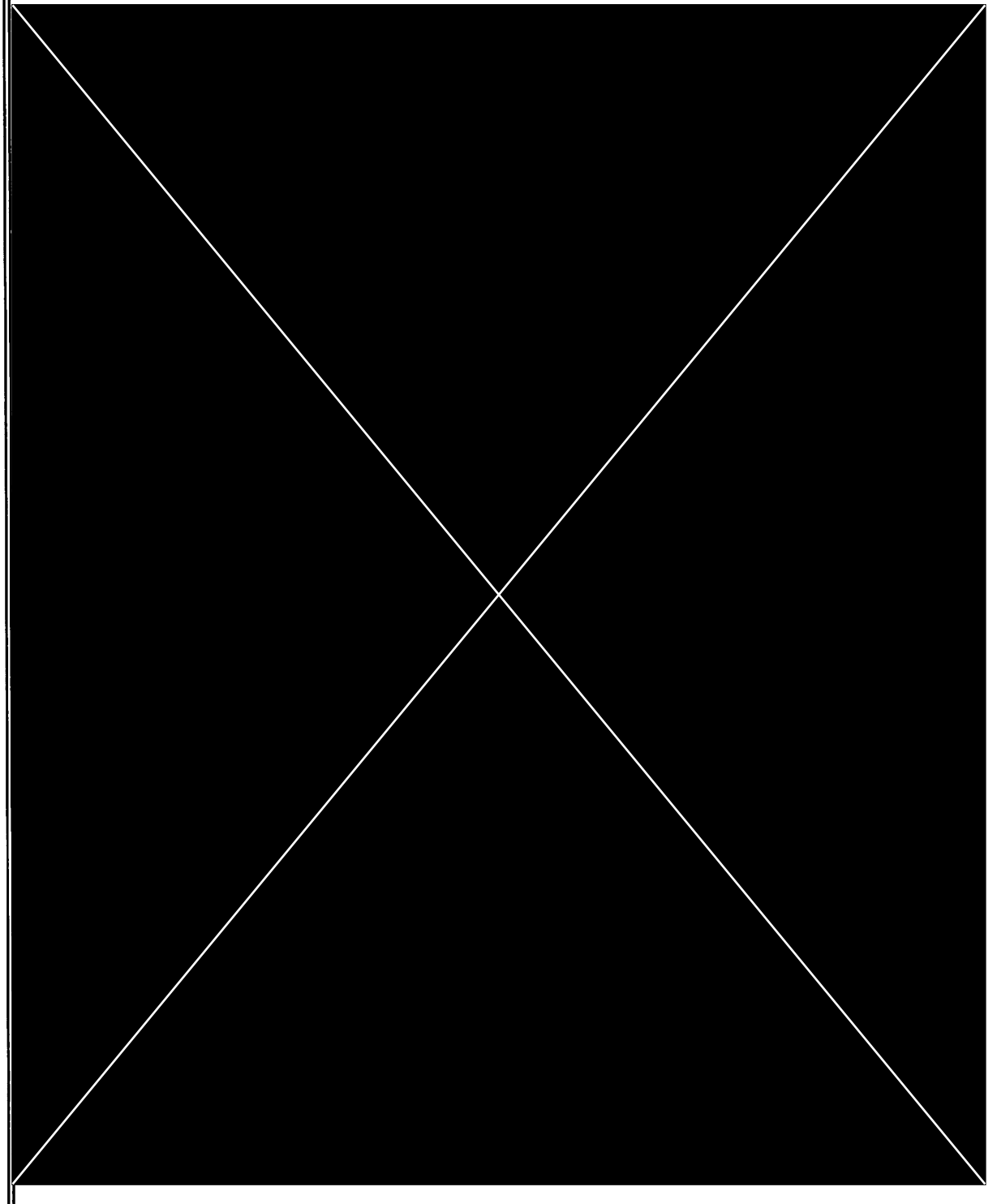
40.Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

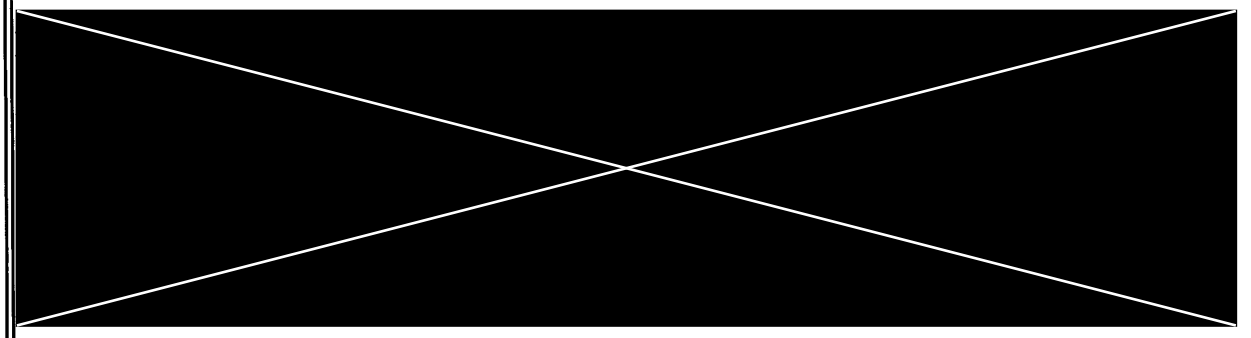
41.Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents. This action is commenced against all Respondents in their official capacities.

42.Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

VII. FACTUAL BACKGROUND

43. Petitioner, Mr. Vinayak Nayyer, is an Indian citizen born in New Delhi, India.





47.Petitioner arrived in the United States on April 22, 2016 (he entered through the U.S.-Mexico border near Calexico, California) where he was apprehended by Customs and Border Patrol agents and requested asylum.

48.At that time, an Asylum Officer conducted Petitioner's Credible Fear Interview (CFI) and found him to be credible. On May 6, 2016, Petitioner was referred to an Immigration Judge for consideration of his full asylum application in INA Section 240 proceedings. On or about June 9, 2016, Petitioner was released from ICE custody on parole conditioned on a $2,500.00 bond payment, after a determination that he was neither a flight risk nor a danger to the community. The venue of Petitioner's proceedings was then changed to Boston, Massachusetts as that is where Petitioner settled following his release. While in removal proceedings, Petitioner timely filed his asylum application in June 2021, and an Immigration Judge administratively closed his proceedings.

49.Since his release on parole conditioned on a $2,500.00 bond payment, Petitioner was living in Boston and building community ties there. At the time of his re-arrest on May 26, 2025, he was managing a store. In fact, Mr. Nayyer received 22 support letters from the community members that he has connected

with in support of his motion for custody redetermination. *See* Exhibit B, Support Letters.

50. On May 25, 2025, Petitioner was arrested by the Massachusetts State Police for suspicion of operating a motor vehicle while under the influence of alcohol ("DUI"). He was taken to the Stoughton State Police Station.

51. On June 13, 2025 Petitioner was denied bond by an Immigration Judge based on lack of jurisdiction.

VIII. PROCEDURAL BACKGROUND

52. On November 11, 2025, Petitioner further submitted a habeas petition to this court, under 28 U.S.C. § 2241 on Respondents' administrative decisions to detain him under 8 U.S.C. § 1225(b)(2), INA § 235(b)(2).

53. That petition was granted and ordered a bond hearing be held in the immigration court by December 19, 2025.

54. On December 19, 2025 an Immigration Judge denied bond based on danger to the community, citing *Matter of Sinkiauskas* 27 I&N Dec 207, 207 (BIA 2018). Additionally the immigration judge cited the wrong burden requiring the Petitioner to bear the burden of proof.

55. After the pending criminal charge was final, another bond hearing was held which upheld this decision, again denying based on danger to the community finding.

56. Again after the submission of a reconsideration motion for custody redetermination (bond), an immigration judge denied upholding the danger to the community despite previously unavailable evidence of rehabilitation and extensive additional evidence to the immigration court.

IX. LEGAL FRAMEWORK

A. The Due Process Clause of Fifth Amendment Warrants Petitioner's Immediate Release Because His Detention Is Prolonged.

57. Individuals in civil detention are afforded "more considerate treatment, and conditions of confinement" than individuals in criminal custody "whose conditions of confinement are designed to punish." *Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982). Immigrant detainees are civil detainees held pursuant to civil immigration laws. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

58. Immigration detention, as a type of civil detention in nature, must not be punitive. The Due Process Clause prohibits the use of civil detention as punishment but must be justified by a non-punitive governmental purpose. Where detention is prolonged and serves no legitimate immigration enforcement purpose, it becomes punitive in effect and violates due process. In Ninth Circuit, a bright-line six-month standard was applied to request mandatory bond hearings for prolonged detainees pursuant to section 1226(c). *See Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), *abrogated by Jennings v. Rodriguez*, 583 U.S. 281

(2018). The Supreme Court has recognized that civil immigration detention must serve a legitimate purpose tied to removal or immigration proceedings. *See Nken v. Holder*, 556 U.S. 418 (2009). The traditional purposes underlying immigration detention, for example, ensuring appearance at removal proceedings and preventing flight from removal, are absent for Petitioner, because Petitioner's misdemeanor case has closed and he no longer needs to attend the proceedings. Without danger to the community or flight risk, his continued detention serves no legitimate governmental interest.

59. Since the last order, dated December 12, 2025, Petitioner has accumulated more than seven more months of detention, totaling over 14 months. The court should and may grant this petition on prolonged detention grounds. Courts recognize prolonged detention under § 1226(a) without adequate justification *violates due process. See Tellez v. Bondi, 2025 U.S. Dist. LEXIS 262261. See also Jennings v. Rodriguez*, 583 U.S. 281 *Zadvydas v. Davis*, 533 U.S. 678.

B. Petitioner Should Be Released Because ICE Re-Detained Him When Facts and Circumstances Do Not Warrant Revocation or Reconsideration.

60. In addition to prolonged detention due process concerns, Petitioner was re-detention without notice and thus arrest and detention violates the Fifth Amendment. Courts have ordered immediate release in identical circumstances. *Alejandro R.R. v. Warden, Mesa Verde Det. Facility*, No. 1:26-cv-02775-TLN-AC

(E.D. Cal. June 11, 2026) (DUI "inconsequential"; immediate release) *Monsalve v. Chestnut*, No. 1:26-cv-00626-DAD-CKD, (E.D. Cal. Jan. 29, 2026) (re-detention after DUI; immediate release)Petitioner's re-detention was unlawful.

61. Custody determinations for individuals in 1229(a) removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if she does not present a danger to persons or property and is not a flight risk. *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.

62. Once a determination to release an individual from custody is made pursuant to 8 U.S.C. § 1226, the release order may be revisited only if the facts and circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). Revocation of release and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). "In practice, DHS re-arrests individuals only after a 'material' change in circumstances. To satisfy due process, those changed circumstances must represent individualized legal justification for detention." *Sanchez v. Larose*, No. 25cv2396-JES-MMP (S.D. Cal. Sep. 26, 2025) (internal citations omitted); *Tran v. Noem*, No. 25cv2334-JES-MSB, at *6-7 (S.D. Cal. Sep. 29, 2025) (citing *Ying Fong v. Ashcroft*, 317

F.Supp. 2d 398, 403 (S.D.N.Y. 2004). "This standard prevent[s] arbitrary revocations and ensure[s] that detention decisions rest[] on individualized assessments of changed circumstances rather than categorical assumptions. *Gonzalez v. Bostock*, No. 2:25cv01404-JNW-GJL at *13 (W.D. Wash. Oct. 7, 2025) (discussing *Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *22 (N.D. Cal. Aug. 23, 2020) (quoting *Ortega v. Bonnar*, 415 F.Supp.3d 963, 969 (N.D. Cal. 2019) (quoting *Matter of Sugay*, 17 I.&N. Dec. 637, 640 (B.I.A. 1981))); *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (N.D. Cal. 2017). Cf., *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) ("Where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change in circumstance[.]"). By regulation, revocation decisions are limited in nature and may only be made by certain authorized individuals. *Id.*

63. Custody determinations for individuals in 1229(a) removal proceedings are governed by 8 U.S.C. § 1226. Under section 1226(a), an individual may be released if she does not present a danger to persons or property and is not a flight risk. *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Custody determinations under section 1226(a) are individualized and based on the facts presented in those cases. Unlike section 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, section 1226(a) requires a case-by-case review of the facts and circumstances.

64. Once a determination to release an individual from custody is made pursuant to 8 U.S.C. § 1226, the release order may be revisited only if the facts and circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). Revocation of release and return to custody is authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). "In practice, DHS re-arrests individuals only after a 'material' change in circumstances. To satisfy due process, those changed circumstances must represent individualized legal justification for detention." *Sanchez v. Larose*, No. 25cv2396-JES-MMP (S.D. Cal. Sep. 26, 2025) (internal citations omitted); *Tran v. Noem*, No. 25cv2334-JES-MSB, at *6-7 (S.D. Cal. Sep. 29, 2025) (citing *Ying Fong v. Ashcroft*, 317 F.Supp. 2d 398, 403 (S.D.N.Y. 2004). "This standard prevent[s] arbitrary revocations and ensure[s] that detention decisions rest[] on individualized assessments of changed circumstances rather than categorical assumptions. *Gonzalez v. Bostock*, No. 2:25cv01404-JNW-GJL at *13 (W.D. Wash. Oct. 7, 2025) (discussing *Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *22 (N.D. Cal. Aug. 23, 2020) (quoting *Ortega v. Bonnar*, 415 F.Supp.3d 963, 969 (N.D. Cal. 2019) (quoting *Matter of Sugay*, 17 I.&N. Dec. 637, 640 (B.I.A. 1981))); *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (N.D. Cal. 2017). *Cf.*, *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) ("Where a previous bond determination has been made by an immigration judge, no change should be made by a District Director

absent a change in circumstance[.]"). By regulation, revocation decisions are limited in nature and may only be made by certain authorized individuals. *Id.*

C. Immediate Release Is the Only Appropriate Remedy Because Respondents Have Been Given Adequate Opportunity to Afford Petitioner with Due Process

65. Here, Petitioner has had at least two constitutionally deficient bond hearings. Each time, Petitioner has tried to se the available remedies in the immigration court and has been met with further irreparable injury to his liberty and freedom, in violation of the Constitution.

66. Additionally systemically, no pre-deprivation hearing in the immigration system is conforming to due process requirements. In part, this is because no "neutral and detached" hearing body is available at all. Instead, in practice, DHS and ICE officers have sole discretion to determine who is detained. The deprivation of liberty is happening with no individualized determination and remains unchecked. Therefore, a writ of habeas corpus is necessary to enforce Petitioner's rights.

67. According to research by Zabdi J. Salazar, a Ph.D. candidate at Berkeley Law, a broad shift toward more denial-heavy outcomes is observed in the data from 2024 to 2026. *See* Exhibit C, Declaration of Zabda J. Salazar on Nation Immigration Court Bond Outcomes and Recorded Bond Amounts. For example, denial share in bond hearings significantly rose from 36.1% in 2024 to 43.2% in

2025. Even more evidently, the bond-amount has increased more significantly than the denial rate. Only in Quarter 1 2026, the typical bond amount increased from a median of $6,000 to $7,500. The high amount of bond would be an obstacle for Petitioner's Due Process Right. There is no legitimate basis of such burden when Petitioner entitles full protection by Due Process Clause.

68. The same trend was also reported by a whistle-blower on how ICE functions. This declaration described a shift that can

> only be described as a seismic shift in bond hearing outcomes for individuals who had been granted federal habeas relief and ordered § 1226(a) bond hearings by this Court and other judges in the Eastern District of Virginia. Prior to this shift, while bond amounts had increased in recent months, bond was routinely granted in post-habeas cases where individuals demonstrated: (a) lack of significant criminal history; (b) strong family ties in the United States; (c) lengthy residence in the country; (d) viable claims for relief from removal; and (e) community support including stable housing and employment prospects.

Exhibit D, Declaration of Jorge E. Artieda.

69. Because of the biased bond hearings, immediate release is the only appropriate remedy for Petitioner who has already worked diligently and patiently through the biased process of the EOIR.

X. EXHAUSTION OF REMEDIES

A. Petitioner satisfies the prudential exhaustion requirement

70. Even if Petitioner had not availed himself of remedies available in the immigration courts, the law "does not specifically require petitioners to exhaust

direct appeals before filing petitions for habeas corpus" because exhaustion to the BIA is "prudential." (*Castro–Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)). "Courts may require prudential exhaustion if (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Id.* (quoting *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)).

71. Recently, this District Court held that exhaustion was not required in a materially identical situation where the IJ claimed to have properly placed the burden on Respondents but did not. *See Zarei v. Larose*, No. 26-CV-02335-GPC-MMP, 2026 WL 1415042, at *3-4 (S.D. Cal. May 19, 2026). There, Judge Curiel noted that "a court may waive the prudential exhaustion requirement if: (1) administrative remedies are inadequate or not efficacious; (2) "pursuit of administrative remedies would be a futile gesture; (3) irreparable injury will result; or (4) the administrative proceedings would be void." *Id.* at *3 (quoting Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004)).

72. Judge Curiel held he "need not determine whether the Puga factors weigh in favor of an exhaustion requirement" because "even if exhaustion is required, Petitioner successfully meets several Laing factors such that waiver is warranted." *Id.* Specifically, Judge Curiel held that "the pursuit of administrative remedies

would not be adequate and would cause irreparable harm and hardship to Petitioner." *Id.* While acknowledging "the BIA's general subject-matter expertise in individual immigration bond decisions," it was noted that the petitioner "raises a constitutional challenge to the adequacy of his bond hearing, which is better suited to review by the federal courts." *Id.* Thus, "the first factor leans in favor of waiving prudential exhaustion." *Id.*

73. Judge Curiel also explained that the petitioner would "suffer irreparable harm in the form of continued detention without a legally adequate opportunity to demonstrate his entitlement to bond." *Id.* Judge Curiel explained that "several courts—including those in this Circuit—have found that continued detention after a potentially legally inadequate hearing may constitute such irreparable harm." *Id.* at *4. So "while continued detention alone may not constitute irreparable injury, the inherent delays in the current appeals process support a finding that Petitioner will suffer irreparable injury if he is required to wait for BIA adjudication of his bond denial." *Id.*

74. Holding that a "combination of evidence in this case—including evidence (1) that the BIA is unlikely to provide Petitioner with adequate relief and (2) that Petitioner would likely face lengthy continued detention"—showed that "waiver of exhaustion is appropriate." *Id.* Judge Curiel thus exercised his "discretion to waive the exhaustion requirement in this case." *Id.*

75.Here, the same legal error has occurred to the Petitioner and thus this Court should similarly conclude that "waiver of exhaustion is appropriate." *Id.* at *4.

76.In the alternative, if this Court were to apply the Puga factors, it would reach the same result. On the first factor, evaluating if "agency expertise is required" because the BIA is "the subject matter expert in immigration bond decisions." Petitioner contends no "agency expertise" is required to read the transcript of the bond hearing that the IJ applied the wrong standard. Had the IJ properly placed the burden to show danger to the community on Respondents—as this Court required—the BIA might be in a better position to apply agency expertise, but the IJ did not. Because the IJ instead denied bond based not on evidence Respondents provided, this Court need not weigh the relevant bond factors—only acknowledge that the IJ misplaced the burden.

77.Second, enforcing the burden to show danger to the community on Respondents, would not "encourage the deliberate bypass of the administrative scheme" because exhaustion will only exacerbate the delay. *Puga*, 488 F.3d at 815. "According to data released by the Executive Office for Immigration Review, the average processing time for bond appeals exceeded 200 days in 2024." *Gomes v. Hyde*, 804 F. Supp. 3d 265, 272 (D. Mass. 2025). And that is the case even when the BIA is fully staffed. At present, the BIA has been reduced from 28 members to 15. Current reporting provides "evidence that BIA has been drastically reshaped within the past year, such that the BIA now functions to rubberstamp IJ bond

denials." *Perez Velasquez v. Bondi*, No. 26-CV-01759-GPC-DDL, 2026 WL 1042479, at *3 (S.D. Cal. Apr. 16, 2026). And as NPR reported in late March 2026, BIA decisions "backed Department of Homeland Security lawyers in 97% of publicly posted cases; that's at least 30 percentage points higher than the average from the last 16 years."[1] Thus, administrative exhaustion will only serve to cause further delay.

78. The same is true for the third *Puga* factor—whether "administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga*, 488 F.3d at 815. "[W]here the agency's position on the question at issue appears already set, and it is 'very likely' what the result of the recourse to administrative remedies would be, such recourse would be futile and is not required." *Hernandez v. Sessions*, 872 F.3d 976, 989 (9th Cir. 2017) (internal citations omitted).

79. As courts have observed, "the BIA appears to have largely ceased functioning as a meaningful check on lower-level agency errors, instead upholding 97% of all immigration appeals in 2025, including bond determinations, a rate exceeding the 16-year historical average by at least 30 percentage points." *Tiboko-Tifuh v. Noem*, 2026 WL 1603795, at *3 (S.D. Cal. June 4, 2026) (citing *Perez Velasquez*, at *3). Thus, under any test, this Court should find that administrative exhaustion was not required.

[1] Ximena Vustillo & Rahul Mukherjee, *An immigration court few have heard of is quietly shaping policy behind the scenes*, NPR (Mar. 20, 2026).

B. Any Further Exhaustion Would Be Futile and Cause Irreparable Injury Because the Bond Hearing Was Constitutionally Defective, and the BIA Cannot Cure the Underlying Due Process Violations

80. A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Liang v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) their continued detention results in irreparable harm. Both circumstances apply here.

81. Although Petitioner received a bond hearing, that hearing was constitutionally defective. The immigration judge applied the incorrect burden of proof, and DHS presented no evidence whatsoever to support detention. Additionally, the IJ misapplied distinguishable law and failed to acknowledge the specific facts of Petitioner's case in such a way that it further deprived Petitioner of due process. A bond determination made without evidence and under the wrong legal standard is *not* a meaningful opportunity to be heard. Because the hearing itself violated due process, the BIA cannot cure the underlying constitutional defects. The BIA may review discretionary determinations, but it cannot retroactively supply the pre-deprivation process Petitioner was entitled to, nor can

it correct the structural errors that occurred when DHS re-detained Petitioner without notice or a hearing.

82. Further exhaustion would also be futile because Petitioner already sought custody redetermination under INA § 236(a), 8 U.S.C. § 1226(a), and 8 C.F.R. § 1003.19(e). That motion was returned to the same immigration judge who issued the defective bond decision, and the judge simply reaffirmed their prior ruling. The administrative process has therefore proven incapable of correcting its own mistakes. Requiring Petitioner to pursue an appeal to the BIA—an appellate body that cannot fix the lack of pre-deprivation process and cannot supply the correct burden of proof retroactively—would serve no purpose other than prolonging unlawful detention. In fact, data analysis on bond appeals is now available, which was not at previous time intervals and shows that in the first quarter of 2026 the median time to have bond appeal heard has nearly doubled from 2024; increasing from 111 days up to 216 days with favorable merits outcomes essentially zero.

83. Finally, continued detention under these circumstances constitutes irreparable injury. Petitioner was re-detained without any pre-deprivation hearing, held for months without an impartial post-deprivation hearing, and remains detained under a constitutionally flawed process. Courts waive exhaustion when detention itself is the product of a due-process violation that the administrative scheme cannot remedy. *See Leonardo v. Crawford*, 646 F.3d 1157, 1160–61 (9th Cir. 2011).

84. Because the administrative process cannot cure the constitutional defects in Petitioner's re-detention and bond proceedings, and because continued detention constitutes irreparable injury, exhaustion should be excused.

C. Petitioner Attempted to Exhaust Available Remedies but Was Improperly Denied Bond by the Immigration Court Because a DUI Record Alone Does Not Constitute Danger to Community

85. Following this Court's prior order, Petitioner sought custody redetermination under INA § 236(a), 8 U.S.C. § 1226(a), and 8 C.F.R. § 1003.19(e), requesting release on reasonable bond or recognizance. Petitioner's bond hearing was denied twice with the same reason of danger to the community based on his DUI record. However, District courts have repeatedly ordered immediate release unlawfully detained detainees with DUI records. *See, e.g., Monsalve v. Chestnut*, No. 1:26-cv-00626-DAD-CKD, (E.D. Cal. Jan. 29, 2026); *Ortiz v. Henkey*, No. 1:26-cv-00043-BLW, 2026 LX 100757 (D. Idaho Apr. 7, 2026) (ordering immediate release of a detainee arrested for DUI but was given a "fundamentally unfair" bond hearing).

86. A DUI record alone cannot constitute the conclusion of danger to the community for the detainee. The district courts have noted that a misdemeanor DUI is not an aggravated felony or a crime of moral turpitude. *Hernandez v. Warden of Adelanto ICE Processing* Ctr., No. 5:26-cv-02231-AJR, at *23 (C.D. Cal. May 11, 2026). By relying solely on this conviction to deny bond, the IJ

effectively created an unlawful "categorical denial" for anyone with a DUI, rather than providing the required individualized determination. *Id.* DUI records are also "inconsequential" regarding whether the detention was mandatory under section 1225 or discretionary under section 1226(a). *Alejandro R.R. v. Warden, Mesa Verde Det. Facility*, No. 1:26-cv-02775TLN-AC at *4 (E.D. Cal. June 11, 2026); *see also Tellez v. Bondi*, 826 F. Supp. 3d 1141 (N.D. Cal. 2025); *Jimenez v. Chestnut*, No. 1:26-cv-2584-DC-JDP (E.D. Cal. May 1, 2026).. Even with the DUI charge, the government still bears the burden of proving danger to community or flight risk to continue detaining the Petitioner. *See Quiroz v. Larose*, No. 26-CV-866 JLS (DEB), 2026 LX 142763 (S.D. Cal. Mar. 10, 2026).

87.DUI is not dispositive for finding a danger to community, further, it is not likely substantial to prove it. fade with time. In *Reyes v. Bonnar*, the petitioner was arrested for DUI. *Reyes v. Bonnar*, No. 18-cv-07429-SK, (N.D. Cal. Dec. 24, 2018). He then went through rehabilitation programs and have letters of supports proving his good moral character and ties to the community. *Id.* The court ordered immediate release for the petitioner, reasoning that "the government has to consider the increasing remoteness of the DUI convictions and address the change in circumstances." *Id.*

88.The Immigration Judge denied Petitioner's first bond motion on December 19, 2025, citing *Matter of Siniauskas*, 27 I&N Dec. 207, 207 (BIA 2018). However, Mr. Nayyer's factual pattern is completely distinct from the cited case,

where the petition in that case demonstrates repeated behavior of DUI and was arrested for his fourth DUI violation. In Mr. Nayyer's case, he has only one DUI, for which he was subjected to the minimum penalties under the law. Mr. Nayyer also illustrated a strong will to repent by attending the rehabilitation programs. *See* Exhibit A. Mr. Nayyer's case is more like *Diaz-Calderon v. Barr*, where the district judge ordered the government to "justify Diaz's continued detention by clear and convincing evidence" while the detainee had a DUI record along with other crimes. *Diaz-Calderon v. Barr*, No. 2:20-CV-11235-TGB, at *53 (E.D. Mich. Sep. 22, 2020). Similarly, in *Henriquez-Osorio v. Noem*, the district court held that the government needed to prove the petitioner's danger to the community with "clear and convincing evidence" standard regardless of the petitioner's criminal history. *Henriquez-Osorio v. Noem*, No. 2:26-cv-00234-RFB-BNW, at *10 (D. Nev. Mar. 11, 2026). Respondent has the burden to justify Mr. Nayyer's detention with the same standard. Instead the onus has been improperly placed on the Petitioner who continues to provide overwhelming evidence to support the position he is not a danger to the community.

89. For the foregoing reasons, Petitioner's bond denials are improper, and the immigration court has failed to provide Petitioner with a Constitutionally adequate hearing thus necessitating immediate release of the Petitioner who has in fact exhausted remedies both theoretically and practically.

XI. CLAIMS FOR RELIEF

A. Count 1: Violation of Mr. Nayyer's Substantive Due Process Rights Under the Fifth Amendment

90. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

91. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. Immigration detention is civil, not punitive, and must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690); U.S. Const. amend. V. The Supreme Court has stated that the purpose or civil detention in this context is to "ensur[e] the appearance of [noncitizens] at future proceedings," *Zadvydas*, 533 U.S. at 690, and to prevent flight, *Demore*, 538 U.S. at 528. The federal government violates Fifth Amendment substantive due process rights when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment or does not ensure those detainees' safety and health.

92. Petitioner's detention bears no relation to the purposes of civil commitment because he poses no flight risk or danger to the community. He was released in 2016 and has complied with all requirements. There has been no material change regarding danger to community or flight risk since Petitioner was released in 2016, besides the DUI misdemeanor. However, material change in circumstances has taken place. The petitioner has been convicted $500 in fine, and his case has been

closed. He is not in criminal proceedings anymore, and the low penalty, which is much slighter than the highest possible penalty, supports that he is not likely a danger to community. In fact, Petitioner's has shown his strong tie to the community with up to 22 support letters from the community members for his bond hearing, evidencing that he is helpful and friendly to his neighbors. Petitioner also made significant effort education himself to be a better neighbor by taking rehabilitation course on traffic safety.

93. Because the detention of Petitioner serves no legitimate governmental purpose, this detention is a violation of Petitioner's rights under the Due Process Clause.

B. Count 2: Violation of Mr. Nayyer's Procedural Due Process Rights Under the Fifth Amendment

94. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

95. Due process requires that government action be rational and non-arbitrary. See, *United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. *See Zadvydas*, 533 U.S. at 698. Although the Ninth Circuit no longer applies the six-month bright-line rule for prolonged detention, the courts have increasingly required bond

hearings for noncitizens facing prolonged detention. At this bond hearing, the government bears the burden of proof and cannot continue to detain the individual unless it meets a heightened evidentiary standard to prove that the detainee is a flight risk or a danger to the community to justify the denial of bond. *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (2011).

96. Here, Mr. Nayyer was detained May 25, 2025. He has been detained for more than 14 months at Oaty Mesa Detention Center as of the time of this filing, and a Constitutionally required bond hearing was never provided. The government never proved that Mr. Nayyer is more dangerous to the community or has more likelihood of flight risk since his last release. Additionally, because the prolonged detention was not conducted after an appropriate bond hearing, the detention violations Petitioner's procedural due process.

C. Count 3: Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Abuse of Discretion

97. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

98. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

99. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be

ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

100. To prevail against such a claim, the agency must articulate "a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." *Dept. of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

101. Respondents considered Petitioner's individual facts and circumstances in 2016 and determined that Petitioner was not a flight risk or a danger to the community. Respondents have the burden to prove that these circumstances have changed in a pre-deprivation hearing to justify this revocation of release and re-detention. By categorically revoking Petitioner's release and re-detaining without consideration of individualized facts and circumstances, Respondents have violated the APA by failing to exercise discretion at all, let alone find facts and make a rational choice based on those facts.

D. Count 4: Immediate Release is the Appropriate Remedy

102. Release is the customary remedy in habeas proceedings. *See* § 2243 (the habeas should "dispose of the matter as law and justice require."); *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). The most appropriate remedy in a

case like this, where Petitioner has been detained in violation of both the INA and due process, is release. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1080 (9th Cir. 2006) (holding that immediate release is the appropriate remedy when "the length of the detention [is] unreasonable"). Hundreds of courts across the country have agreed. *See, e.g., Munoz Materano v. Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (ordering immediate release); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (ordering immediate release); *Cifuentes v. Soto*, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (ordering immediate release).

103. Mr. Nayyer has been subject to prolonged unlawful detention. Bond hearings within the immigration courts are systematically biased thus ordering another bond hearing will only further prolong Petitioner's detention and irreparably harm his physical and mental health. Therefore, immediate release should be granted without the need for a bond hearing or any proceedings that will extend his detention unnecessarily.

XII. PRAYER FOR RELIEF

WHEREFORE, Mr. Nayyer asks that this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Order that Mr. Nayyer shall not be transferred outside the Southern District of California or deported pending these proceedings;

3. Declare that Mr. Nayyer's prolonged detention is unlawful;

4. Issue a Writ of Habeas Corpus requiring Respondents to release Mr. Nayyer immediately without conditions;

5. Enjoin Respondents from re-detaining Mr. Nayyer unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Mr. Nayyer is a flight risk or danger to the community;

6. Award Mr. Nayyer attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

7. Grant any other and further relief that this Court deems just and proper.

8. I affirm, under penalty of perjury, that the foregoing is true and correct.

XIII. CONCLUSION

For all these reasons, this Court should grant the petition.

Dated: 07/30/2026

/s/Caroline G. Matthews
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Pro Bono Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Caroline Matthews, CERTIFY

I am over the age of 18 and not a party to this matter. My business address is 120 Stevens Avenue, Solana Beach, CA 92075. On July 30, 2026, I served a copy of this **Petition for Writ of Habeas Corpus and Order to Show Cause Within Three Days.**

Dated: 07/30/2026

/s/Caroline G. Matthews
Caroline Matthews, Esq.
Pro Bono Attorney for Petitioner