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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARLON GUSTAVO ZAPATA AROSTEGUI,

Petitioner,

v.

WARDEN, Imperial Regional Detention Facility;

DAVID VENTURELLA, Acting Director of U.S. Immigration and Customs Enforcement;

MARKWAYNE MULLIN, Secretary of Homeland Security;

U.S. DEPARTMENT OF HOMELAND SECURITY; and

TODD BLANCHE, Acting United States Attorney General,

Respondents.

Case No. '26CV4427 RBM MMP

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Marlon Gustavo Zapata Arostegui is a forty-eight-year-old Nicaraguan national who entered the United States lawfully on May 14, 2023, through Miami International Airport under Nicaraguan Humanitarian Parole ("NHP") status. Petitioner has resided continuously in the United States since the date of his initial entry, was lawfully employed, paid taxes, and complied with every obligation imposed by his immigration status. Petitioner has no criminal record in Nicaragua, the United States, or abroad. On April 20, 2026, Petitioner was arrested by U.S. Immigration and Customs Enforcement ("ICE") agents while a passenger in a vehicle on his way to work. He was not committing any crimes or operating a motor vehicle.

2. This Petition is brought under the federal habeas corpus statute on three independent, alternative grounds, each directed solely at the lawfulness of Petitioner's physical confinement and none of which challenges any order of removal. First, Petitioner has been held in civil immigration custody since April 20, 2026, without any individualized hearing at which a neutral decisionmaker has determined that his confinement is justified, a deprivation of physical liberty without the process the Fifth Amendment's Due Process Clause requires. Second, Petitioner's detention has become prolonged and, in the absence of any available bond hearing, threatens to continue indefinitely throughout his pending administrative appeal, in violation of the Due Process Clause, which independently entitles a civil detainee subjected to prolonged detention to an individualized bond hearing. Third, and in the alternative, Petitioner's continued confinement bears no reasonable relationship to any legitimate government interest that could not be equally served through conditions of supervision and is therefore substantively arbitrary in violation of the Due Process Clause. The detention itself is the constitutional injury.

3. On March 5, 2025, Petitioner timely filed an application for asylum, withholding of removal and relief under the Convention Against Torture with United States Citizenship and Immigration Services ("USCIS"). Once detained by ICE, he placed in removal proceedings, and his asylum application was transferred to the Imperial Immigration Court. When Petitioner requested a custody redetermination hearing, the Immigration Judge denied the request, holding that the court lacked jurisdiction to consider bond and treated Petitioner as an applicant for admission. The Immigration Judge later denied Petitioner's applications for relief and ordered him removed to Nicaragua. Petitioner reserved his right to appeal and intends to file an appeal before the Board of Immigration Appeals, which would automatically stay his removal pending a final decision. He therefore faces continued, and now indefinite, civil confinement with no forum available to obtain an individualized custody determination.

4. Petitioner's mother, María Delia Arostegui, is a naturalized citizen of the United States who obtained her citizenship on July 17, 2015. On April 24, 2026, four days after Petitioner's arrest, she filed a Form I-130, Petition for Alien Relative, with USCIS on Petitioner's behalf. That petition is currently pending. Petitioner therefore has an immediate qualifying U.S. citizen family member who has formally petitioned for his status — a circumstance reflecting the depth of his community ties and establishing an independent pathway to lawful permanent residence.

5. Since his arrest on April 20, 2026, Petitioner has been continuously confined — first in Florida and now at the Imperial Regional Adult Detention Facility in California — for over three months. In that time, no neutral decisionmaker has ever determined that his detention is justified. When Petitioner sought a custody redetermination hearing, the Immigration Judge declined to reach the merits, holding that he lacked jurisdiction to set bond. As a result, there is no

administrative forum in which Petitioner can obtain an individualized hearing as to whether he poses a danger or a flight risk, and his confinement will persist throughout his administrative appeal. Each day of confinement without a bond hearing is an independent constitutional injury.

6. No adequate alternative remedy exists. The Immigration Judge's ruling that he lacks jurisdiction to consider bond means there is no administrative mechanism through which Petitioner can secure an individualized custody hearing, and the Board of Immigration Appeals can neither order a hearing the Immigration Judge has held is unavailable nor adjudicate Petitioner's constitutional challenge to the fact of his prolonged and indefinite detention. Monetary damages cannot compensate for Petitioner's ongoing loss of liberty. Federal habeas corpus is the sole vehicle available to Petitioner to challenge the lawfulness of his confinement, and this Court is the only forum with authority to order his release or compel the individualized process to which he is entitled.

7. Petitioner respectfully requests that this Court (a) issue an immediate temporary stay of any transfer outside this District and of any removal pending resolution of this Petition; (b) order his immediate release under reasonable conditions of supervision; or, in the alternative, (c) order that Petitioner be brought before an Immigration Judge for an individualized bond hearing, at which the Government bears the burden of justifying his continued detention by clear and convincing evidence, within seven (7) days of this Court's Order.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241(a) and (c)(3), which authorize federal courts to grant writs of habeas corpus to persons held in violation of the Constitution or laws of the United States. Jurisdiction also rests on 28 U.S.C. § 1331 (federal question). The Supreme Court has confirmed that § 2241 remains available to challenge the

legality of executive immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018). A writ of habeas corpus operates against the person holding the petitioner in custody, and jurisdiction lies so long as the issuing court has jurisdiction over that custodian, who can be reached by service of process and can produce Petitioner or effectuate his release. *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 494–95 (1973). Petitioner's immediate custodian, the Warden of the Imperial Regional Adult Detention Facility, is located within this District and exercises day-to-day control over Petitioner, so this Court has authority to grant effectual relief by ordering Petitioner's release or compelling an individualized bond hearing.

9. This Petition challenges only the lawfulness of Petitioner's civil detention; it does not seek review of any order of removal. Although the Immigration Judge entered an order of removal on July 23, 2026, Petitioner reserved appeal and will file a timely appeal to the Board of Immigration Appeals, which renders that order administratively non-final and stays its execution. See 8 C.F.R. § 1003.6(a). Petitioner's detention therefore remains governed by 8 U.S.C. § 1226, and this challenge is not subject to the jurisdiction-stripping provisions of the Immigration and Nationality Act ("INA") § 242. Petitioner does not challenge any discretionary determination under 8 U.S.C. § 1252(a)(2)(B) and raises no claim requiring channeling through a petition for review under 8 U.S.C. § 1252(b)(9). A challenge to the lawfulness of detention is squarely cognizable under § 2241. *Jennings*, 583 U.S. at 293–96 (§ 1252(b)(9) does not bar claims challenging the lawfulness of detention); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (8 U.S.C. § 1226(e) does not preclude constitutional challenges to the framework of detention). See also *Martinez v. Clark*, 124 F.4th 775, 779–86 (9th Cir. 2024) (8 U.S.C. § 1226(e) does not strip the district courts of traditional habeas jurisdiction to review the lawfulness of immigration detention).

10. Exhaustion of administrative remedies is excused. Petitioner requested a custody redetermination, and the Immigration Judge denied the request for lack of jurisdiction, holding that no bond hearing was available to him. There is thus no further administrative remedy for Petitioner to pursue: the Board of Immigration Appeals can neither order an individualized bond hearing that the Immigration Judge has held is unavailable, nor adjudicate Petitioner's constitutional challenge to the fact of his prolonged and indefinite detention. Any further attempt at administrative exhaustion would be futile and would itself perpetuate the irreparable constitutional injury of continued confinement. *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004) (§ 2241's exhaustion requirement is prudential, not jurisdictional, and is excused where administrative remedies are inadequate or ineffective, exhaustion would be futile, or irreparable injury would result); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (excusing exhaustion where pursuit of administrative remedies would cause irreparable harm).

11. Venue is proper in the Southern District of California. Petitioner is currently confined at the Imperial Regional Adult Detention Facility, located at 1572 Gateway Road, Calexico, California, which lies within this District, and his immediate custodian is located here. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are officers of the United States and Petitioner is confined within this District. That the Government transferred Petitioner from Florida to California does not defeat jurisdiction or venue in this District; jurisdiction attaches where the petitioner is confined and his immediate custodian may be reached, and any change in the identity of that custodian is effected automatically by operation of Federal Rule of Civil Procedure 25(d), without need for amendment. Should any question of venue arise, the proper remedy would be transfer under 28 U.S.C. § 1631, not dismissal. The anti-transfer and anti-removal relief requested herein is necessary to prevent the

Government from defeating this Court's jurisdiction over the immediate custodian by transferring Petitioner again, and to ensure that any relief granted remains meaningful.

REQUIREMENTS OF 28 U.S.C. § 2243

12. This Court must grant the writ or issue an order to show cause forthwith unless it is plain Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause issues, Respondents must file a return within three (3) days, absent good cause for additional time not to exceed twenty days. *Id.* A prompt return is essential: Petitioner remains in physical custody every day this Petition is pending, without any individualized hearing on the lawfulness of that custody, and his confinement will continue throughout the pendency of his administrative appeal. Each day of delay perpetuates the very deprivation of liberty this Petition seeks to remedy.

PARTIES

13. Petitioner Marlon Gustavo Zapata Arostegui is a native and citizen of Nicaragua, born [redacted], in Masaya, Nicaragua. He entered the United States lawfully on May 14, 2023, through Miami International Airport under NHP status. He has resided continuously in the United States since his arrival. Following his arrest, he was initially detained at the Broward Transitional Center in Pompano Beach, Florida, and was subsequently transferred to the Imperial Regional Detention Facility, 1572 Gateway Road, Calexico, California, where he is currently confined.

14. Respondent Warden is the Warden of the Imperial Regional Detention Facility and Petitioner's immediate custodian. He is sued in his official capacity.

15. Respondent David Venturella is sued in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement, a position he has held since June 1, 2026. He

exercises supervisory authority over Petitioner's detention and possesses the power to direct his release and to comply with any injunctive relief issued by this Court.

16. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security, an office he has held since March 24, 2026. As Secretary, he heads the U.S. Department of Homeland Security and exercises ultimate supervisory authority over its component agencies, including U.S. Immigration and Customs Enforcement, and over Petitioner's detention. He possesses the power to direct Petitioner's release and to comply with any injunctive relief issued by this Court and is a legal custodian of Petitioner.

17. Respondent U.S. Department of Homeland Security ("DHS") is the executive department of the United States charged with the administration and enforcement of the immigration laws. U.S. Immigration and Customs Enforcement, the component agency that maintains physical custody of Petitioner, is an agency within DHS and operates under its authority and direction. DHS, through its officers and agents, directs and controls Petitioner's detention, possesses the authority to effectuate his release, and is a legal custodian of Petitioner.

18. Respondent Todd Blanche is sued in his official capacity as Acting Attorney General of the United States. He is the senior officer of the U.S. Department of Justice and exercises supervisory authority over the Executive Office for Immigration Review, which administers the immigration courts and the Board of Immigration Appeals, and is a legal custodian of Petitioner.

STATEMENT OF FACTS

A. Background and Persecution

19. Petitioner Marlon Gustavo Zapata Arostegui is a forty-eight-year-old Nicaraguan veterinarian who fled his country on May 14, 2023, following [redacted]

[redacted] See Exhibit ("Exh.") A, Petitioner's Birth Certificate; Exh. B, Petitioner's Notice to Appear ("NTA"). [redacted] [redacted] See Exh. C, Petitioner's Declaration. [redacted] [redacted] With no safe professional or personal alternative remaining, he left Nicaragua on May 14, 2023. *Id.*

20. Petitioner entered the United States lawfully through Miami International Airport on May 14, 2023, under NHP status, initially authorized to remain until May 12, 2025. See Exh. C. Since his arrival, Petitioner has worked continuously and legally in the United States. He obtained employment authorization, worked at Florida Lumber as a dispatcher, held various other positions, and worked at a car wash in Hollywood, Florida. *Id.* Since February 2025, he has been employed full-time at [redacted] where he has been a dedicated and punctual employee. He has paid his taxes and has complied with every obligation applicable to his immigration status. *Id.*

21. Petitioner's mother, María Delia Arostegui, is a naturalized citizen of the United States. She naturalized on July 17, 2015. She resides in [redacted]. On April 24, 2026, four days after Petitioner's arrest, she filed a Form I-130, Petition for Alien Relative, with USCIS on Petitioner's behalf. See Exh. D, Form I-130 Receipt Notice. That petition is currently pending.

The existence of a U.S. citizen immediate relative who has formally petitioned for Petitioner reflects the depth of his ties to this country, constitutes an independent pathway to lawful permanent residence, and powerfully militates against any suggestion of flight risk.

22. On March 5, 2025, Petitioner filed his Form I-589, Application for Asylum and for Withholding of Removal, with the Miami Asylum Office of USCIS. See Exh. E. His application was accepted as complete, and he completed his biometrics appointment on March 28, 2025. His case was thereafter placed in removal proceedings and, following his transfer to California, was heard in the Imperial Immigration Court. See Exh. F.

B. Circumstances of Arrest

23. On the morning of Monday, April 20, 2026, Petitioner was a passenger in a vehicle being driven by a third party, traveling from the Little Havana neighborhood of Miami to his place of employment at [redacted]. See Exh. C. Petitioner did not drive. His Florida driver's license had expired, and out of caution he had elected not to renew it in order to avoid any potential complications arising from his immigration status. He was not operating any vehicle at the time of the encounter with law enforcement. *Id.*

24. Law enforcement established a checkpoint along the vehicle's route. Officers stopped the vehicle and requested documentation from the driver. The driver complied without incident. Officers then approached Petitioner and requested his documents. Petitioner had no valid identification on his person. His license was expired and he did not have his immigration documents with him. On that basis alone, ICE officers detained him. *Id.*

25. Petitioner was not committing any criminal offense at the time of his arrest. He was a passenger in a vehicle, riding to work. He had no outstanding warrants, no prior arrests, and no criminal record of any kind. He had never been arrested in the United States or abroad. He was

transported to the Broward Transitional Center in Pompano Beach, Florida, and was subsequently transferred to the Imperial Regional Detention Facility in Calexico, California, where he remains detained. He has been held in continuous civil immigration custody since April 20, 2026. See Exh. G, Detention Information.

C. Record of Compliance

26. Petitioner's history in the United States is a record of consistent legal compliance across every dimension relevant to a custody and flight-risk determination:

(a) **Continuous Residence:** Petitioner has resided in the United States continuously since his lawful entry on May 14, 2023, residing in the Little Havana neighborhood of Miami. See Exh. C.

(b) **Lawful Employment:** Petitioner has held lawful employment throughout his presence in the United States under valid employment authorization, most recently as a full-time employee at [redacted] since February 2025. *Id.*

(c) **Tax Compliance:** Petitioner has paid his federal and state taxes consistently throughout his time in the United States. *Id.*

(d) **No Criminal Record:** Petitioner has no criminal record of any kind — not in Nicaragua, not in the United States, not anywhere. He has no outstanding warrants, no arrests, and no convictions. Section 1226(c) mandatory detention has not been invoked and does not apply. *Id.*

(e) **Completed Biometrics:** Petitioner appeared at and completed his biometrics appointment on March 28, 2025, without incident. *Id.*

(f) **Compliance With All Proceedings:** Petitioner has appeared at every stage of his immigration proceedings and has never missed an appointment or hearing; he now has a timely appeal pending before the Board of Immigration Appeals. See Exh. F.

(g) **Pending I-130:** Petitioner's U.S. citizen mother has filed a Form I-130 on his behalf, an immediate qualifying family petition that establishes strong ties to the United States and an independent basis for lawful status. See Exh. D.

(h) **Less-Restrictive Alternatives Accepted:** Petitioner is willing and able to comply with any conditions of release this Court deems appropriate, including regular check-ins with ICE, electronic monitoring, reporting obligations, or any other supervisory condition that would fully satisfy any legitimate government interest in ensuring his appearance.

27. Since his arrest, Petitioner has been held in continuous civil immigration custody, initially at the Broward Transitional Center in Florida and, since his transfer, at the Imperial Regional Adult Detention Facility in Calexico, California. See Exh. G. On June 23, 2026, Petitioner requested a custody redetermination before the Imperial Immigration Court. The Immigration Judge denied the request, ruling that the court was without jurisdiction to determine bond under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). See Exh. H. No neutral decisionmaker has ever considered, on the merits, whether Petitioner is a danger to the community or a flight risk, and no bond amount has ever been set. On July 23, 2026, the Immigration Judge denied Petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture, and ordered him removed to Nicaragua. See Exh. I. Petitioner reserved appeal; his appeal

to the Board of Immigration Appeals is due August 24, 2026, and he intends to pursue it. See Exh. F, I.

28. Petitioner has now been detained for over three months, and because the Immigration Judge has held that no bond hearing is available to him, his confinement will continue throughout his administrative appeal, a process that routinely takes many months or longer, with no individualized determination that his detention serves any legitimate purpose. See Exh. F, H. His prolonged and effectively indefinite detention, imposed without any neutral custody hearing, impairs his ability to consult with counsel and prepare his appeal, and is itself the constitutional injury for which he seeks relief.

LEGAL FRAMEWORK

29. Section 2241 of Title 28 authorizes federal courts to grant habeas corpus relief to persons held in custody in violation of the Constitution or laws of the United States. *Zadvydas*, 533 U.S. at 687–88. The Supreme Court has expressly confirmed that § 2241 remains available to challenge both the statutory and constitutional basis of civil immigration detention, including pre-final-order detention under § 1226. *Jennings*, 583 U.S. at 293–96.

30. Section 1226(a) of Title 8 is the default authority governing the detention of noncitizens who are arrested in the interior and placed in removal proceedings, and it authorizes release on bond or conditional parole pending a final removal determination. *Jennings v. Rodriguez*, 583 U.S. 281, 297–98 (2018); see *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022); 8 C.F.R. § 236.1. In Petitioner's case, the Immigration Judge instead treated Petitioner as an applicant for admission subject to detention under 8 U.S.C. § 1225(b) and, on that basis, held that it lacked jurisdiction to set bond under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). See Exh. H. Petitioner's constitutional claims do not require this Court to resolve that statutory dispute or

to disturb the Immigration Judge's ruling: whatever the statutory label, the Due Process Clause independently constrains the Government's authority to subject Petitioner to prolonged and indefinite civil detention without an individualized hearing.

31. Section 1226(c) mandatory detention applies only to noncitizens who have been convicted of, arrested for, or charged with offenses enumerated in the statute, including those taken into custody "when the alien is released" from criminal custody. 8 U.S.C. § 1226(c)(1). Petitioner has no criminal history whatsoever: no convictions, no charges, no arrests, and no pending criminal matters of any kind, in any jurisdiction. Section 1226(c) does not apply and has not been invoked by Respondents.

32. The Fifth Amendment prohibits the deprivation of liberty without due process of law. Civil immigration detention is subject to both procedural and substantive due process constraints. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). The *Mathews v. Eldridge*, 424 U.S. 319 (1976), balancing test governs procedural due process claims, weighing: (1) the private interest at stake; (2) the risk of erroneous deprivation and the probable value of additional safeguards; and (3) the government's interest, including the burden of additional procedural requirements.

33. Civil detention that is prolonged or indefinite raises serious constitutional concerns and is subject to the strictures of the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690, 699–701 (2001) (indefinite civil detention would raise a serious constitutional problem, and the Government's detention authority must be reasonably related to its purpose). When immigration detention becomes prolonged, due process requires that the detainee receive an individualized bond hearing before a neutral decisionmaker at which the Government must justify continued detention. *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011); see *Singh v. Holder*, 638

F.3d 1196, 1203–04 (9th Cir. 2011) (Government must justify detention by clear and convincing evidence); *Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024) (same). These protections apply with full force where, as here, the detainee has been afforded no custody hearing at all and none is administratively available.

CLAIMS FOR RELIEF

COUNT I
PROCEDURAL DUE PROCESS: U.S. CONST. AMEND. V
Detention Without a Constitutionally Adequate Individualized Custody Hearing

34. Petitioner realleges and incorporates by reference paragraphs 1 through 7 (Introduction, grounds for relief, and no adequate alternative remedy), paragraphs 8 through 10 (jurisdiction and excused exhaustion), paragraph 11 (venue and preservation of jurisdiction), paragraph 13 (Petitioner's identity, lawful entry, and custody), paragraphs 18 through 27 (Statement of Facts, including Sections A through C), and paragraphs 28 through 32 (Legal Framework) as though fully set forth herein.

35. Physical liberty is among the most fundamental interests protected by the Constitution, and civil immigration detention is subject to the full protection of the Due Process Clause. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Zadvydas*, 533 U.S. at 690. Even where the Government has authority to detain, due process requires a procedurally adequate, individualized means for the detainee to contest that detention before a neutral decisionmaker. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Petitioner has been in civil custody since April 20, 2026 and has never received such a hearing.

36. When Petitioner requested a custody redetermination, the Immigration Judge declined to reach the merits, holding that it lacked jurisdiction to set bond. See Exh. H. As a result, no neutral decisionmaker has ever weighed Petitioner's substantial ties to the United States against

any asserted government interest in his confinement, and the Government has never been required to justify his detention — much less to do so by clear and convincing evidence, as due process demands. *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011); *Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024).

37. Applying the *Mathews* balancing test, the private interest — freedom from physical confinement — is the most substantial the law recognizes; the risk of erroneous deprivation is at its maximum because Petitioner has received no process whatsoever; and the additional safeguard of a prompt individualized hearing would impose only minimal burden on the Government, which may present its evidence at such a hearing. The complete absence of any individualized custody determination renders Petitioner's detention constitutionally infirm and requires this Court to order his release or, at minimum, an individualized bond hearing before an immigration judge.

COUNT II
PROCEDURAL DUE PROCESS: U.S. CONST. AMEND. V
Prolonged Detention Requires an Individualized Bond Hearing

38. Petitioner realleges and incorporates by reference paragraphs 1 through 7 (Introduction), paragraphs 8 through 11 (jurisdiction, exhaustion, and venue), paragraph 13 (identity and custody), paragraphs 18 through 27 (Statement of Facts, including the Record of Compliance at Paragraph 25), paragraphs 28 through 32 (Legal Framework), and paragraphs 33 through 36 (Count I) as though fully set forth herein.

39. Independent of the complete absence of any custody hearing, the Due Process Clause forbids the Government from subjecting a noncitizen to prolonged civil detention without an individualized bond hearing. *Zadvydas*, 533 U.S. at 690, 701. The Ninth Circuit has long held that once immigration detention becomes prolonged, the detainee is entitled to a hearing before an immigration judge at which the Government must show that continued detention is justified. *Diouf*

v. Napolitano, 634 F.3d 1081, 1091–92 (9th Cir. 2011). That principle governs here: Petitioner has been detained for over three months, and because the Immigration Judge has held that no bond hearing is available to him, his confinement will continue throughout his administrative appeal without any end in sight.

40. The relevant considerations confirm that Petitioner's prolonged detention cannot stand without an individualized hearing:

(1) **Private Interest.** The private interest at stake is the most severe the law recognizes: continued deprivation of physical liberty, now exceeding three months and with no fixed endpoint. Petitioner has resided continuously and lawfully in the United States for over three years; has worked legally and paid his taxes throughout; has a pending I-130 filed by his U.S. citizen mother; appeared at his March 28, 2025 biometrics appointment and at every stage of his immigration proceedings without exception; and was arrested as a passenger commuting to work, having committed no offense. See Exh. C, D. The Record of Compliance established in paragraph 25 above leaves no legitimate basis for his continued confinement.

(2) **Risk of Erroneous Deprivation.** The risk of erroneous deprivation is at its apex. Because the Immigration Judge held that he lacked jurisdiction to consider bond, no neutral decisionmaker has ever weighed Petitioner's substantial ties to the United States against any government interest in his confinement, and none will do so as his detention continues through his appeal. See Exh. H. A prompt individualized hearing, at which the Government bears the burden of justifying detention by clear and convincing evidence, would eliminate that risk. On the record here, including the pending I-130, the full employment history, the

unblemished compliance record, and the absence of any criminal history or mandatory-detention trigger, Petitioner would present a compelling case for release.

(3) **Government's Interest.** The Government's legitimate interests, ensuring appearance and protecting public safety, are fully served by a bond hearing at which it may present its evidence and bears the burden of demonstrating, by clear and convincing evidence, that Petitioner poses a danger or a serious risk of non-appearance. *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011); *Martinez v. Clark*, 124 F.4th 775, 785 (9th Cir. 2024). Petitioner's Record of Compliance shows those interests can be fully served through less-restrictive conditions of supervision. *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017). The marginal burden on the Government of providing the hearing due process requires is minimal.

41. The constitutional injury deepens with each additional week of confinement. Because his removal is stayed during his administrative appeal but his detention is not, Petitioner faces continued and open-ended civil confinement — imposed without any neutral custody hearing — in a proceeding that will determine whether he is removed to a country whose government has persecuted him. See Exh. F, I. That is precisely the prolonged, unreviewed detention the Due Process Clause forbids.

COUNT III
SUBSTANTIVE DUE PROCESS: U.S. CONST. AMEND. V
Indefinite Detention Serves No Legitimate Government Interest — Alleged in the Alternative

42. Petitioner realleges and incorporates by reference paragraphs 1 through 7 (Introduction), paragraph 13 (identity and custody), paragraphs 18 through 27 (Statement of Facts,

including the Record of Compliance at Paragraph 25), paragraphs 28 through 32 (Legal Framework), paragraphs 33 through 36 (Count I), and paragraphs 37 through 40 (Count II) as though fully set forth herein. This Count is pleaded in the alternative to Counts I and II.

43. The Due Process Clause forbids the Government from depriving a person of liberty through executive action that is arbitrary or bears no reasonable relationship to a legitimate government purpose, and civil detention is constitutional only when it is reasonably related to a legitimate regulatory objective such as ensuring appearance or protecting the public. *Zadvydas*, 533 U.S. at 690, 699–701; *Foucha*, 504 U.S. at 80; *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997). Because the Immigration Judge has held that Petitioner is entitled to no bond hearing at all, his detention has no identifiable endpoint and will persist throughout his administrative appeal and any further review, the very species of indefinite civil confinement *Zadvydas* held raises grave constitutional concerns.

44. Based on the Record of Compliance established in paragraph 25 above, each of the following independently negates any reasonable relationship between Petitioner's continued detention and a legitimate government objective:

(a) Petitioner has no criminal record of any kind; § 1226(c) mandatory detention has not been and cannot be invoked;

(b) Petitioner has resided continuously and lawfully in the United States for over three years;

(c) Petitioner has maintained lawful employment and paid his taxes throughout his presence in the United States;

(d) Petitioner has appeared at every required immigration appointment without exception, including his biometrics appointment on March 28, 2025;

(e) Petitioner has pursued his claims at every stage of his proceedings and now has a timely appeal pending before the Board of Immigration Appeals — a powerful incentive to appear and comply;

(f) Petitioner has a pending I-130 petition filed by a U.S. citizen parent — the most direct qualifying family relationship — giving him an independent pathway to lawful status and further anchoring him to the United States;

(g) Petitioner was arrested as a passenger commuting to work, not fleeing, not evading law enforcement, and not committing any offense; and

(h) Petitioner is willing to comply with any less-restrictive condition of release, including ICE check-ins, electronic monitoring, or reporting obligations.

45. Under these circumstances, confining Petitioner in a secure detention facility serves no regulatory purpose that reasonable conditions of supervision could not equally serve. The Government's detention authority must be reasonably related to its purpose. *Zadvydas*, 533 U.S. at 699–701. Petitioner's continued, open-ended confinement falls outside that constitutional limit, and release under conditions of supervision is constitutionally required.

HABEAS REMEDY

46. This Court has authority under 28 U.S.C. § 2241 to order Petitioner's immediate release from custody upon finding that his detention violates the Constitution or laws of the United States. *Zadvydas*, 533 U.S. at 699–700. Each of the violations established above, the total absence of any individualized custody hearing, the prolonged and indefinite character of Petitioner's detention, and the absence of any legitimate purpose served by his confinement, independently supports the remedy of immediate release or, at minimum, a compelled individualized bond hearing.

47. In the alternative, this Court may order Respondents to present Petitioner before an immigration judge for an individualized bond hearing within seven (7) days of this Court's Order. At such a hearing, the immigration judge shall determine whether Petitioner's continued detention is justified, with the Government bearing the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a serious risk of flight and shall give full consideration to the Record of Compliance established in paragraph 25 and to less-restrictive alternatives to continued detention. If Respondents fail to present Petitioner for such a hearing within seven days, this Court should order his immediate release under appropriate conditions as the default remedy.

48. To preserve this Court's jurisdiction over Petitioner's immediate custodian and to ensure that any relief granted remains meaningful, this Court should issue an immediate temporary stay prohibiting (a) any transfer of Petitioner to a detention facility outside this District, and (b) execution of any order of removal, pending resolution of this Petition. The anti-transfer stay is anchored in the immediate-custodian and district-of-confinement principles established in *Padilla*; transfer outside the District would defeat this Court's jurisdiction. Although Petitioner's reserved appeal independently stays his removal, the anti-removal stay guards against mootness and ensures that a favorable ruling is not rendered hollow by removal before it can issue.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Marlon Gustavo Zapata Arostegui respectfully requests that this Court:

(1) Assume jurisdiction over this Petition under 28 U.S.C. § 2241 and Article III;

(2) Issue an immediate temporary stay, effective upon filing, prohibiting: (a) any transfer of Petitioner to any detention facility outside the Southern District of California without prior notice to counsel and leave of Court; and (b) execution of any order of removal or removal of Petitioner from the United States pending resolution of this Petition, in order to preserve this Court's jurisdiction over the immediate custodian and to prevent mootness of the relief requested herein;

(3) Issue an Order to Show Cause directing Respondents to show cause within three (3) days why this Petition should not be granted, consistent with 28 U.S.C. § 2243;

(4) Declare that Petitioner's continued detention, imposed without any individualized hearing at which the Government has justified his confinement, and now prolonged and indefinite in duration, violates the Due Process Clause of the Fifth Amendment;

(5) Issue a Writ of Habeas Corpus ordering Petitioner's immediate release from custody under reasonable conditions of supervision sufficient to satisfy any legitimate government interest in ensuring his appearance, given his continuous residence, lawful employment, tax compliance, absence of any criminal record, full compliance with every stage of his immigration proceedings, and pending I-130 from a U.S. citizen parent; or

(6) In the alternative, order Respondents to present Petitioner before an immigration judge for an individualized bond hearing at which (a) the Government bears the burden of justifying continued detention by clear and convincing evidence; (b) the immigration judge shall consider the Record of

Compliance set forth in paragraph 25 and all less-restrictive alternatives to continued detention; and (c) if Respondents fail to present Petitioner for such a hearing, this Court shall order his immediate release under appropriate conditions of supervision as the default remedy;

(7) Grant any further relief this Court deems just and proper.

This Petition seeks narrow relief directed solely at the lawfulness of Petitioner's confinement: immediate release under conditions of supervision or, in the alternative, an individualized bond hearing. It rests on three independent constitutional grounds: (1) Petitioner has been detained since April 20, 2026 without any individualized hearing at which the Government has justified his confinement; (2) his detention has become prolonged and, with no bond hearing available, threatens to continue indefinitely throughout his administrative appeal; and (3) his continued confinement bears no reasonable relationship to any legitimate government interest that conditions of supervision could not equally serve. The detention itself is the constitutional injury, and Petitioner asks only that the law be applied as written.

Respectfully submitted,

/s/ Arno J. Lemus
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Counsel for Petitioner
Local Counsel

Dated: July 31, 2026.

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

I, Arno Javier Lemus and Mariana L. Hanna counsels of record for Petitioner Marlon Gustavo Zapata Arostegui, are familiar with the facts of this matter and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

Dated: July 31, 2026.

/s/ Arno J. Lemus
Arno Javier Lemus
Counsel for Petitioner
(Pro Hac Vice application pending)

/s/ Mariana L. Hanna
Mariana L. Hanna
Counsel for Petitioner
Local Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2026, a true and correct copy of the foregoing Petition for Writ of Habeas Corpus, together with all supporting exhibits, was filed via the Court's CM/ECF system and served upon all counsel of record via electronic notification generated by CM/ECF.

/s/ Arno J. Lemus
Arno Javier Lemus
Counsel for Petitioner
(Pro Hac Vice application pending)

/s/ Mariana L. Hanna
Mariana L. Hanna
Counsel for Petitioner
Local Counsel