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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO

Jossir Viviana AVELAR ZEPEDA,

Petitioner,

v.

Todd Blanche, Acting Attorney General of the United States, Department of Justice;

Markwayne Mullin, Secretary of Homeland Security;

Todd Lyons, Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;

Patrick Divver, Field Office Director of the San Diego Immigration and Customs Enforcement Office;

Christopher LaRose, Senior Warden, Otay Mesa Detention Center;
Respondents.

Case No. '26CV4504 TWR JAC
Agency No. [redacted]

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY UNDER 28 U.S.C. § 2241 AND ORDER TO SHOW CAUSE

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY

UNDER 28 U.S.C. § 2241 AND ORDER TO SHOW CAUSE

Petitioner Jossir Viviana Avelar Zepeda, by and through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, and for an Order to Show Cause, and in support thereof alleges as follows:

INTRODUCTION

1. Petitioner, Jossir Viviana Avelar Zepeda (A [redacted]) ("Petitioner" or "Ms. Avelar Zepeda"), is a 32-year-old native and citizen of Honduras who has resided continuously in the United States since 2014. She is presently detained at the Otay Mesa Detention Center ("OMDC") in San Diego, California, after having been transferred from the Stewart Detention Center in Lumpkin, Georgia. She alleges that her continued detention, and the flight-risk determination on which it rests, violate the Due Process Clause of the Fifth Amendment to the United States Constitution.

2. Ms. Avelar Zepeda was arrested during a routine traffic stop arising from unpaid traffic citations and a resulting bench warrant—a warrant that has since been recalled because it was not supported by adequate evidence. She has never been convicted of any crime. Despite this, an Immigration Judge denied her bond, finding her to be a flight risk based substantially on the very traffic infractions and missed court date that, properly understood, were the product of her former husband's broken promise to pay her citations—not any intent to evade the law or abscond from these proceedings.

3. Ms. Avelar Zepeda has a pending, and facially meritorious, application for cancellation of removal for certain nonpermanent residents under INA § 240A(b), 8 U.S.C. § 1229b(b)(1), based in substantial part on the hardship her removal would cause her two minor United States citizen children, ages 5 and 7. *See* Exhibit A: 42B Cancelation of Removal Evidence/Filing. Her

continued detention is severely undermining her ability to litigate that application and, independently, is being exploited by her former husband in a pending state-court custody dispute over those same children. Her prolonged, unlawful detention is therefore compounding the very hardship her cancellation application is designed to prevent.

4. Petitioner was detained on March 12, 2026 in Monroe, North Carolina, and transferred to the Stewart Detention Facility in Lumpkin, Georgia, before being moved to the Otay Mesa Detention Center in San Diego, CA on June 1, 2026. Petitioner is not an arriving alien and is not presently subject to expedited removal proceedings under INA § 235. Because Petitioner has continuously resided in the country for years, and never received an expedited removal order, her detention is governed by INA § 236(a), which entitles her to an individualized custody determination before a neutral fact finder.

5. Petitioner is not a danger to the community nor a flight risk based on the core factors to be used by Immigration Courts. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

6. Petitioner requests that this Court make an order for Respondents to show cause within three days, or in the alternative pursuant to the timing set forth in this District's general orders governing habeas petitions filed by detained noncitizens. Petitioner now challenges her continued detention as illegal and unconstitutional and requests her immediate release.

JURISDICTION

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

8. 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).

9. 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., and the All Writs Act, 28 U.S.C. § 1651.

10. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of jurisdiction. Petitioner does not contest the commencement or adjudication of removal proceedings against her, nor does she raise any issue with respect to the execution of removal. Petitioner instead challenges the constitutionality of her bond denial and her ongoing prolonged detention, claims that are independent of and collateral to the removal process. "[C]laims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). Section 1252(g) likewise "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). This Court is therefore not stripped of jurisdiction.

VENUE

11. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center in the County of San Diego, within the jurisdiction of this District. A substantial part of the events giving rise to her claims—including her present custody and the ongoing denial of constitutionally adequate process—occurs in this District, and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an Order to Show Cause to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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. (emphasis added).

13. 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) (emphasis added).

PARTIES

Petitioner

14. Petitioner, Jossir Viviana Avelar Zepeda, is a native and citizen of Honduras who is in custody at OMDC, located at 7488 Calzada De La Fuente, San Diego, CA 92154. She is in the custody, and under the direct control, of Respondents and their agents.

Respondents

15. Respondent Todd Blanche is sued in his official capacity as the Acting Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. Respondent Acting Attorney General is a legal custodian of Petitioner.

16. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the Department of Homeland Security ("DHS"). In this capacity, Respondent Secretary is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement ("ICE"), the component agency responsible for Petitioner's detention and custody. Respondent Secretary is a legal custodian of Petitioner.

17. Respondent Todd Lyons is sued in his official capacity as the Senior Official Performing the Duties of the Director of ICE. Respondent Lyons is a legal custodian of Petitioner.

18. Respondent Patrick Divver is sued in his official capacity as the Field Office Director of the San Diego ICE Office. Respondent Divver is a legal custodian of Petitioner and has authority to release her.

19. Respondent Christopher LaRose is sued in his official capacity as Senior Warden, Otay Mesa Detention Center. Respondent LaRose is the direct physical custodian of Petitioner and has direct authority to release her.

STATEMENT OF FACTS

20. Ms. Avelar Zepeda, "Petitioner", is a 32-year-old native and citizen of Honduras. She first entered the United States in approximately 2013 on a nonimmigrant B-2 tourist visa. After briefly departing on several occasions, she returned to the United States and has resided here continuously since 2014—over twelve years. Ex. A. Because this is more then the two year minimum she is not subject to mandatory detention.

21. Ms. Avelar Zepeda has three children. Her eldest child, now fifteen years old, was born in Honduras, later entered the United States on a visa, and currently resides in the United States with

the child's father, Ms. Avelar Zepeda's former husband. Her two younger children, ages 5 and 7, are United States citizens by birth and resided with Ms. Avelar Zepeda prior to her detention. Ex. A.

22. Ms. Avelar Zepeda and her former husband are divorced. Like Ms. Avelar Zepeda, her former husband is a noncitizen who overstayed his own authorized period of admission.

23. Ms. Avelar Zepeda has no criminal convictions of any kind. Her only contact with law enforcement prior to her arrest consisted of routine traffic citations for driving without a valid license and failing to come to a complete stop at a stop sign. Outside of the traffic violations, Respondent has been living a crime-free life in the United States for over 12 years.

24. As part of the parties' post-divorce arrangement, Ms. Avelar Zepeda's former husband agreed to pay the fines associated with her outstanding traffic citations, which included a scheduled traffic court date. He did not do so, and Ms. Avelar Zepeda, relying on that arrangement, was unaware that the citations remained unresolved and that a court date remained pending.

25. As a direct result of her former husband's failure to pay the citations as promised, Ms. Avelar Zepeda missed her scheduled traffic court date, and a bench warrant issued for her arrest.

26. On March 9, 2026, Ms. Avelar Zepeda was stopped by local law enforcement during an ordinary traffic stop. She was arrested on the outstanding bench warrant related solely to the unpaid traffic citations. She was not, and has never been, arrested for or charged with any other offense. She was detained one week later.

27. Following her arrest, ICE took Ms. Avelar Zepeda into custody on March 12, 2026, commenced removal proceedings against her, and detained her, first at the Stewart Detention

Center in Lumpkin, Georgia, and subsequently at the Otay Mesa Detention Center in San Diego, California, where she remains detained.

28. The bench warrant underlying Ms. Avelar Zepeda's arrest has since been recalled and cleared because it was not based on sufficient evidence. There is, and never was, any valid outstanding warrant, charge, or conviction against Ms. Avelar Zepeda apart from the resolved traffic infractions described above.

29. While detained at Stewart, Ms. Avelar Zepeda applied for bond. An Immigration Judge denied her application, finding that she presented a risk of flight. In reaching that conclusion, the Immigration Judge relied substantially on the traffic citations, the missed court date, and the resulting bench warrant—without meaningful consideration of the undisputed facts that (i) the missed appearance was the product of her former husband's broken promise to pay the citations, not any intent to abscond, and (ii) the underlying warrant has since been recalled as unsupported by evidence.

30. Ms. Avelar Zepeda did not appeal the Immigration Judge's bond denial to the Board of Immigration Appeals ("BIA"). As set forth more fully below, in Counsel's experience and as documented in the empirical record, appealing a bond decision to the present BIA is futile. *See* Exhibit B: Welcome to the Trump Administration's, Board of Immigration Appeals, The Immigrant Always Loses. by Jason A. Cade to be published in the 2026 by The Yale Law Journal Company; *See also* Exhibit C: The Board of Immigration Appeals Under the Second Trump Administration, An Empirical Analysis of Grant Rates and DHS Appellate Behavior

31. Ms. Avelar Zepeda has a pending application for cancellation of removal for certain nonpermanent residents pursuant to INA § 240A(b), 8 U.S.C. § 1229b(b)(1). Ex. A. She is prima

facie eligible for that relief: she has resided continuously in the United States for more than ten years, she has no disqualifying criminal conviction, and her removal would result in exceptional and extremely unusual hardship to her two United States citizen children, ages 5 and 7, both of whom are enrolled in school and depend on her daily care, as well as to her lawful permanent resident mother. Id.

32. Ms. Avelar Zepeda's continued detention is directly undermining her ability to prosecute that application. Establishing extreme hardship under INA § 240A(b) requires a fact-intensive showing regarding, among other things, the health and medical needs of the qualifying relatives. *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994) (hardship factors "must be considered in the aggregate"). Counsel requires medical and psychological assessments of the two minor United States citizen children to fully document the hardship they would suffer from their mother's removal or continued absence.

33. Ms. Avelar Zepeda's former husband, who has physical custody of the parties' eldest child and access to the two younger children, has been non-cooperative and has refused to facilitate the medical and psychological evaluations necessary to support Ms. Avelar Zepeda's cancellation application. *See* Exhibit D: Letters of Petitioner Family members Vivian Yamileth Zepeda (Mother), Osly Garcia Zepeda (Brother), and Emerson Daniel Fuentes Garcia (Fiancé) in Support of Petitioner, Regarding the Children's Welfare and the Non-Cooperation of Ex-Husband Bryan Caballero and former Mother-in-law Elia Paz. Ms. Avelar Zepeda's detention leaves her with no meaningful ability to compel this cooperation, to arrange the evaluations herself, or to otherwise develop this critical evidence in support of her pending application for relief. According to written statements from Ms. Avelar Zepeda's mother, brother, and fiancé, her former husband, Bryan Caballero, and his mother, Elia Paz—the paternal grandmother, who holds a power of attorney

concerning the children—have each, at different times, claimed that the other had already arranged counseling or a mental health evaluation for the children, yet neither has produced any documentation confirming that any such evaluation has occurred, and both have expressed skepticism about the value of mental health treatment generally. Ex. D.

34. Ms. Avelar Zepeda attests in her own declaration that the power of attorney currently held by Ms. Paz did not originate as, and was never authorized to be, a general grant of authority over the Children's affairs. Ms. Avelar Zepeda attests that she signed a power of attorney document written in Spanish, and separately signed what she was told was the English-language version of that same document; however, the English-language document was blank at the time she signed it. The only other person present when she signed these documents was the notario público, who provided her with the blank English-language document and then affixed her own notarial stamp and signature to it. Ms. Avelar Zepeda attests that she authorized Ms. Paz to hold power of attorney solely for the limited purpose of obtaining passports for the Children, and that she never authorized Ms. Paz to exercise power of attorney for any other purpose. Ms. Avelar Zepeda further attests that the scope of the power of attorney was subsequently changed from what she had authorized. This discrepancy calls into serious question the validity of Ms. Paz's purported authority to act on the Children's behalf and further undermines the reliability of the information Ms. Paz has provided regarding the Children to Ms. Avelar Zepeda, her counsel, and this Court. *See* Exhibit E: Declaration of Petitioner.

35. This pattern of obstruction began at the outset of Ms. Avelar Zepeda's detention. Because Mr. Caballero and Ms. Paz lived in the same city and state as Ms. Avelar Zepeda, they were the first people contacted after her arrest, and they delayed for a significant period in providing Ms. Avelar Zepeda's own mother, brother, and fiancé with contact information, repeatedly assuring Ms. Avelar

Zepeda that they would "resolve the situation quickly" while limiting her ability to reach her own family. Ex. D. Ms. Paz, without consulting Ms. Avelar Zepeda's mother, brother, or fiancé, retained the first immigration attorney on Ms. Avelar Zepeda's behalf and, according to the declarants, provided that attorney with incomplete and inaccurate information; Ms. Avelar Zepeda's initial bond application was denied during the period in which this incorrect and incomplete information had been provided. Id. Upon learning of these failures, Ms. Avelar Zepeda instructed her attorney that she no longer wanted Mr. Caballero or Ms. Paz handling her case and designated her own mother, brother, and fiancé as her primary points of contact. *Id.*

36. Since that time, Ms. Avelar Zepeda's family and fiancé have repeatedly requested—by phone, text message, and a group chat created for that purpose—documents and records in Mr. Caballero's and Ms. Paz's possession that are necessary to Ms. Avelar Zepeda's case, including records relating to the children that only Mr. Caballero or Ms. Paz can access. Ex. D. According to the declarants, Ms. Paz has repeatedly promised to send the requested documents "within a few days" or "over the weekend," has claimed on multiple occasions to have already sent documents that were never received, left the group chat created to coordinate the case and ignored attempts to add her back, and has otherwise been evasive, inconsistent, and unresponsive for weeks and months at a time. Id. Much of this needed documentation remains outstanding to date.

37. Ms. Avelar Zepeda's family has also observed firsthand, and reports, serious concerns regarding the children's welfare and stability while in Mr. Caballero's and Ms. Paz's care. According to the declarants, the children are now shuttled among multiple households—Mr. Caballero's home, Ms. Paz's home, and the home of Mr. Caballero's girlfriend and her family—one of which is overcrowded and includes other adults, including an individual with a prior drug-related legal history. Ex. D. The parties' eldest child, who lived with his two younger siblings and

Ms. Avelar Zepeda as their primary caregiver his entire life, now lives separately from them for the first time. Id. During a family visit, the declarants observed that the children appeared thinner and paler than before, with dark circles under their eyes, and that the youngest child cried at night asking for his mother and, during a video call, repeatedly told Ms. Avelar Zepeda that he wanted to hug her and be with her. Id.

38. Ms. Avelar Zepeda's ability to maintain contact with, and to parent, her own children has been substantially curtailed during her detention. According to the declarants, when Ms. Avelar Zepeda calls the children, she is frequently told they are busy and to call back later, and her former husband and his mother have made disparaging and false statements to family members suggesting that Ms. Avelar Zepeda neglected her children, when in fact she was their consistent, primary caregiver before her detention. Ex. D. The parties' eldest child is currently involved in his own legal proceedings, and the parties' daughter has ongoing medical issues, yet Mr. Caballero has refused to provide Ms. Avelar Zepeda with information about either matter despite her repeated requests, including the contact information for the relevant doctors and attorneys. Id.

39. Ms. Avelar Zepeda's detention severely impairs her fundamental parental rights at imminent risk of permanent and irreparable loss during the pendency of removal proceedings in which she has a facially meritorious claim to remain in the United States as the custodial parent of two United States citizen children.

40. As of the filing of this Petition, Ms. Avelar Zepeda has been detained for approximately five months without a constitutionally adequate individualized bond determination, without any conviction of any offense, and while her former husband uses her very detention as a sword against her ongoing custody over their shared children, all while her family's repeated, documented efforts

to obtain basic information and cooperation necessary to both her removal case and her children's welfare have been met with delay, inconsistency, and obstruction.

LEGAL FRAMEWORK

A. Due Process Rights of Detained Noncitizens

41. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." Hernandez v. Sessions, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). These rights include procedural and substantive due process protections.

42. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "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.

43. Substantive due process prohibits civil detention that is punitive in purpose or effect, including detention that is excessively prolonged in relation to its purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). "[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed"; otherwise, the commitment amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting Jackson, 406 U.S. at 738). As a detained person's time in custody increases, so too does the weight of the private liberty interest at stake. *Zadvydas*, 533 U.S. at 691. Even confinement the

Constitution otherwise permits "becomes punitive when it is 'excessively prolonged.'" *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987).

44. The Ninth Circuit has "regularly applied Mathews to due process challenges to removal proceedings." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1193 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Under Mathews, this Court must weigh: (1) the private interest affected; (2) the risk of erroneous deprivation and the probable value of additional procedural safeguards; and (3) the government's interest. 424 U.S. at 335.

B. The Guerra Flight-Risk Standard

45. Where an Immigration Judge conducts a bond hearing under 8 U.S.C. § 1226(a), the assessment of flight risk must be individualized and holistic, weighing the totality of the noncitizen's circumstances—including family and community ties, employment and residence history, and any record of appearance at prior proceedings—rather than resting on isolated, decontextualized facts. See Matter of Guerra, 24 I&N Dec. 37 (BIA 2006). "'[A]buse of discretion' review does not involve 'reweigh[ing] evidence' but rather determining whether the IJ 'applied the correct legal standard.'" *Loba L.M. v. Andrews*, No. 1:25-CV-00611-JLT-SAB, 2026 WL 710307, at *5 (E.D. Cal. Mar. 13, 2026) (quoting *Rodriguez Diaz,* 53 F.4th at 1207) (alterations in original).

46. Factors bearing on collateral, non-immigration matters—such as unpaid traffic citations or a failure to appear on a minor traffic matter—have long been recognized to bear little, if any, relevance to whether a noncitizen presents a genuine risk of flight from removal proceedings. *See Matter of Patel*, 15 I. & N. Dec. 666, 666–67 (BIA 1976) (finding that a visa overstay and a denied labor certification "bear little if any relevance to the issue of whether or not the respondent is likely to appear for his deportation proceeding"). Similarly, "[t]he failure to pay taxes, standing alone,

'does not provide the evidentiary support constitutionally required to deny a noncitizen's request for release on bond, particularly given that the Immigration Judge did not consider any condition or set of conditions that will reasonably ensure [petitioner's] appearance at future proceedings.'" *Lemus Crispin v. Bondi*, No. 1:26-cv-191-LMB-WEF, slip op. at 12; accord *Mendez Trigueros v. Guadian*, No. 1:26-cv-205-AJT-WBP, Dkt. No. 13, at 6 (E.D. Va. Feb. 18, 2026).

47. The same reasoning controls here with even greater force. Unlike a visa overstay, a tax delinquency, or a driver's license infraction standing alone, Ms. Avelar Zepeda's missed court appearance was the direct result of her former husband's broken promise to pay her citations—conduct entirely outside her control and bearing no rational relationship to any intent to abscond from federal removal proceedings. And the bench warrant on which the Immigration Judge relied has since been recalled as unsupported by evidence. A driving-without-a-license citation and a failure to stop at a stop sign do not, and cannot, establish that a person with twelve years of continuous residence and two minor United States citizen children is a flight risk so severe that no bond amount could mitigate it.

C. The Present BIA Renders Exhaustion of a Bond Appeal Futile

48. Prudential exhaustion is not required where administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, or irreparable injury will result. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Exhaustion serves purposes—developing a record, allowing the agency to correct its own errors—that are absent where the reviewing body is structurally disposed against the petitioner. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (citing *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007)).

49. In February 2025, the administration removed nine sitting BIA members, reducing the Board from 28 to 15 members; all but one of the remaining members were appointed by the current administration. See Exhibits B, C. *See also* Ximena Bustillo & Rahul Mukherjee, An immigration court few have heard of is quietly shaping policy behind the scene, NPR (Mar. 20, 2026).

50. A rigorous empirical analysis of 79,149 BIA appeals decided between January 2024 and January 2026 found that the noncitizen-filed grant rate was cut roughly in half after the change in Board composition—from 20.05% to 10.31%—a decline that was statistically significant and spanned every appeal type, the five largest federal circuits (including the Ninth Circuit), and both represented and pro se noncitizens. Jayashri Srikantiah & Rajan Lukose, The Board of Immigration Appeals Under the Second Trump Administration: An Empirical Analysis of Grant Rates and DHS Appellate Behavior (Mar. 23, 2026), Exhibit C. Over the same period, DHS's own use of the appeals process surged: DHS-filed appeals increased 315% overall and 28-fold in bond cases specifically, and the Board sustained DHS's appeals at a markedly higher rate than before (from 51.6% to 69.0% overall, and to 55.9% in bond cases). *See* Exhibits B, C.

51. Separately, and independent of outcome, the sheer duration of BIA review renders exhaustion futile and irreparably harmful for a detained petitioner. "Appeals of bond denials 'typically take six months or more to be resolved at the BIA.'" *Espinosa v. Noem*, No. 1:25-cv-1396, 2025 WL 3455533 (W.D. Mich. Dec. 2, 2025) (quoting *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025)). Average bond-appeal processing time has exceeded 200 days. *Gomes v. Hyde*, 804 F. Supp. 3d 265, 272 (D. Mass. 2025). Courts in this Circuit and elsewhere "routinely' waive prudential exhaustion requirements for noncitizens facing prolonged detention while awaiting administrative appeals." *W.T.M. v. Bondi*, No. 2:25-CV-02428-RAJ-BAT, 2026 WL 262583, at *3 (W.D. Wash. Jan. 30, 2026) (quoting *Rodriguez v. Bostock*, 779 F. Supp. 3d at 1251);

accord C.A.R.V. v. Wofford, No. 1:25-CV-01395-JLT-SKO, 2026 WL 241823, at *5 n.7 (E.D. Cal. Jan. 29, 2026); *Soriano v. Hernandez*, No. 2:26-CV-00900-DGE, 2026 WL 969764, at *4 (W.D. Wash. Apr. 10, 2026); *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 240 (W.D.N.Y. 2019).

52. The pressures shaping the immigration courts below are equally well documented. Immigration Judges have described feeling compelled to deny relief and bond regardless of the merits, for fear of removal from the bench. Former San Francisco Immigration Judge Elizabeth Young explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'" Marco Poggio, Judges, *See* an Immigration Court Gutted from Inside, Law360 (Oct. 31, 2025). This is not a system capable of the individualized, dispassionate weighing of the Guerra factors that due process requires; it is one operating, in the words of former ICE counsel Jorge E. Artieda, on "a remarkably narrow and predictable set of rationales to deny bond—rationales that appear to bear little relationship to genuine individualized risk assessment."

53. For these reasons, requiring Ms. Avelar Zepeda to exhaust a bond appeal before the present BIA before seeking habeas relief would be futile, would cause further irreparable harm, and is excused.

D. The Fundamental Right to Family Integrity and Parental Custody

54. The Due Process Clause protects a parent's fundamental liberty interest "in the care, custody, and management" of her children. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). This interest is "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Troxel v. Granville*, 530 U.S. 57, 65 (2000). It applies with full force to noncitizen parents. *See Stanley v.*

Illinois, 405 U.S. 645, 651 (1972) (parental interest "undeniably warrants deference and, absent a powerful countervailing interest, protection").

55. Ms. Avelar Zepeda's prolonged detention does not merely deprive her of physical liberty; it is actively being used against her in regards to custody matters of her minor children, by her former husband and ex mother-in-law, as they seeks to strip her of custody of their minor children, and it forecloses her ability to obtain the medical and psychological evaluations of those children necessary to support her cancellation of removal application in the immigration proceedings themselves. Ex.D. The government's asserted interest in continuing to detain a noncitizen with no criminal conviction, on the strength of resolved traffic infractions and a recalled warrant, cannot outweigh the compounding and irreversible harm to Ms. Avelar Zepeda's parental rights and to the welfare of her United States citizen children that her continued detention is causing.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Fifth Amendment – Erroneous and Arbitrary Flight-Risk Determination

56. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

57. The Immigration Judge's denial of bond was an abuse of discretion and a violation of due process because it rested on an erroneous and unindividualized application of the Guerra flight-risk factors. The Immigration Judge treated resolved, minor traffic infractions and a since-recalled bench warrant as conclusive evidence of flight risk, without adequately weighing Ms. Avelar Zepeda's twelve years of continuous residence, her two United States citizen children, her lack of

any criminal conviction, and the undisputed fact that her missed court appearance stemmed from her former husband's failure to fulfill his obligation to pay her citations, not from any intent to abscond.

58. This slanted and conclusory reasoning is precisely the sort of abuse of discretion condemned in *Zaitsev v. Warden of Adelanto ICE Processing Center*, No. 2:26-CV-00454-SPG-AS, 2026 WL 391429, at *10 (C.D. Cal. Feb. 9, 2026), and is inconsistent with binding BIA precedent holding that collateral, non-immigration infractions bear little to no relevance to flight risk. *Matter of Patel*, 15 I. & N. Dec. at 666–67.

59. As a result, Ms. Avelar Zepeda's ongoing detention rests on a constitutionally deficient bond determination, in violation of the Due Process Clause of the Fifth Amendment.

COUNT TWO

Violation of the Fifth Amendment – Prolonged Detention Without a Constitutionally Adequate Bond Hearing

60. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

61. Petitioner has a fundamental private interest in being free from detention. *See Zadvydas*, 533 U.S. at 690; Hernandez, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). That interest grows heavier the longer detention continues. *Zadvydas,* 533 U.S. at 691.

62. Because Ms. Avelar Zepeda's sole individualized bond hearing rested on an erroneous and arbitrary application of the governing legal standard, and because further administrative review before the present BIA is futile and would itself cause additional irreparable harm through months

of continued, unjustified detention, the risk of erroneous deprivation of her liberty interest is exceedingly high, and no adequate alternative process exists to correct it. *See Mathews*, 424 U.S. at 335.

63. The government has no legitimate interest in Ms. Avelar Zepeda's continued detention without a constitutionally adequate bond hearing. She has no criminal conviction, poses no danger to the community, and her only law-enforcement contact—resolved traffic citations and a since-recalled warrant—does not support a finding that no bond amount or condition of release could reasonably ensure her appearance at future proceedings.

64. For these reasons, Ms. Avelar Zepeda's prolonged detention violates the Due Process Clause of the Fifth Amendment. She should be immediately released or, in the alternative, afforded a new bond hearing before a neutral and fair arbiter at which the government bears the burden of proving by clear and convincing evidence that she is a flight risk or a danger to the community.

COUNT THREE

Violation of the Fifth Amendment – Deprivation of the Fundamental Right to Family Integrity and Parental Rights

65. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

66. Ms. Avelar Zepeda possesses a fundamental liberty interest in the care, custody, and control of her minor children. *Santosky*, 455 U.S. at 753; Troxel, 530 U.S. at 65.

67. Ms. Avelar Zepeda's continued detention is directly and materially impairing that fundamental right. Her former husband has initiated state custody proceedings expressly premised on her

immigration detention, and her detention leaves her unable to meaningfully appear in, respond to, or defend against those proceedings. Her detention likewise prevents her from securing her former husband's cooperation in obtaining the medical and psychological evaluations of the parties' minor children that are necessary to support her pending cancellation of removal application—the very application that, if granted, would allow her to remain their custodial parent in the United States.

68. This compounding harm to Ms. Avelar Zepeda's parental rights, occurring while she remains detained on the strength of a flight-risk finding that itself violates due process, constitutes an independent and ongoing deprivation of a fundamental liberty interest without adequate process, in violation of the Fifth Amendment.

69. Absent immediate relief from this Court, Ms. Avelar Zepeda faces the imminent and irreparable loss of custody of her minor United States citizen children during the very proceedings in which she seeks to establish that her removal would cause them exceptional and extremely unusual hardship.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Order that Petitioner shall not be transferred outside of the Southern District of California while this petition is pending;

3. Declare that the Immigration Judge's flight-risk determination and denial of bond were arbitrary, an abuse of discretion, and a violation of the Due Process Clause of the Fifth Amendment;

4. Declare that Petitioner's ongoing prolonged detention is unlawful and violates the Due Process Clause of the Fifth Amendment;

5. Declare that Petitioner's continued detention violates her fundamental right to family integrity and parental custody under the Fifth Amendment;

6. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from their custody, or, in the alternative, order Respondents to provide Petitioner a bond hearing before a neutral and fair arbiter within seven (7) days, at which the government must prove by clear and convincing evidence that Petitioner is a flight risk or a danger to the community;

7. Issue an Order to Show Cause ordering Respondents to show cause within three days why this Petition should not be granted;

8. Excuse any requirement that Petitioner exhaust an administrative appeal to the Board of Immigration Appeals prior to obtaining the relief requested herein;

9. Award Petitioner 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

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

Respectfully submitted,

DATED this 5th Day of August, 2026.

/S/ ANNA M HYSELL
Attorney for Petitioner