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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTHERN CALIFORNIA
IMPERIAL DIVISION

CORTEZ TRUJILLO, PEDRO JUAN
Petitioner,

vs.

Scott **MARQUARDT**, CEO of MTC, acting Warden of Imperial Regional Adult Detention Facility, Patrick **DIVVER** Field Office Director of Enforcement and Removal Operations, ICE, Markwayne **MULLIN**, Secretary, U.S. Department of Homeland Security; Todd **BLANCHE**, U.S. Attorney General; U.S. DEPARTMENT OF HOMELAND SECURITY; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Respondents.

Case No.: '26CV4665 LEK MSB

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This case challenges the unlawful detention of Petitioner Pedro Juan Cortez Trujillo , who is in the physical custody of Respondents' Immigration and Customs Enforcement ("ICE") at Imperial Regional Adult Detention Facility. He is unlawfully detained pursuant to mandatory detention policies recently adopted by the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR).

2. Mr. Cortez Trujillo is a fifty-nine year old Peruvian citizen who has lived in the United States since June 27, 2001.

3. Mr. Cortez Trujillo is the non-biological father, and single parent who raised his non-legal stepson Mr. [redacted] Torres since the age of six, when Mr. Torres's mother was removed from the U.S.

4. Mr. Cortez Trujillo has been detained since July 13, 2026 without a bond hearing or any other custody redetermination review.

5. In direct violation of the Ninth Circuit's holding in *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) the government has not even attempted to prove to any court of competent jurisdiction why continued detention is necessary.

6. Capriciously relying on the desires of the current Presidential administration and hiding behind the BIA ruling in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025), Mr. Cortez Trujillo's detention is punitive in nature because his continued detention is for the sole purpose of deterrence.

7. **Detained for 30 days and counting, every day Petitioner remains detained is a violation of his constitutional rights.**

8. It is important to note that Petitioner is "not asking for review of an order of removal, they are not challenging the decision to detain them in the first place or to seek removal; and they are not even

challenging any part of the process by which their removability will be determined… as a result, "§ 1252(b)(9) does not present a jurisdictional bar." *See* Jennings, 583 U.S. at 292-95.

9. Petitioner's detention violates the plain language of the Immigration and Nationality Act (INA) when detention is based on § 1225(b)(2). The distinguishing factor being Petitioner is a person who previously entered the United States and at time of Petitioner's arrest was residing in the United States making them subject to a different statute, § 1226(a).

10. Detained since July 13, 2026, **more than 30 days,** Petitioner has not had a substantive hearing on his custody redetermination even though the Supreme Court in *Jennings* held that Petitioner's are entitled to a custody redetermination hearing at the beginning of their case.

11. Accordingly, Petitioner seeks a writ of habeas corpus with an order requiring DHS to immediately release. **The only reasonable outcome because of the egregious amount of days Petitioner has already been detained, 30 days**.

JURISDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at Imperial Regional Adult Detention Facility.

13. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. . § 1331 (federal question), and Article 1, section 9, clause 2 of the United States Constitution (the Suspension Clause).

14. This Court may grant relief pursuant to 28 U.S.C § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq. and the All Writs Act, 28 U.S.C. § 1651.

VENUE

15. Venue lies in the United States District Court for the Southern District of California Imperial Division because it is the judicial district where Petitioner is currently detained. *See* Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493-500 (1973).

16. Additionally, venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States and because substantial part of the events giving rise to Petitioner's claims occurred in the Central District of California.

PARTIES

17. Petitioner Pedro Juan Cortez Trujillo ([redacted]) was arrested by ICE on July 13, 2026, and has been detained at the Imperial Regional Adult Detention Facility.

18. Respondent Scott Marquardt is CEO of Management and Training Corporation (MTC), the private for-profit company contracted to manage Imperial Regional Adult Detention Facility; and as such is acting as Warden of the Imperial Regional Adult Detention Facility where Petitioner are detained. He has the immediate physical custody of Petitioners. He is sued in his official capacity.

19. Respondent Patrick Divver is the Director of the Field Office of ICE's Enforcement and Removal Operations division, which area includes the Imperial Regional Adult Detention Facility. As such, Mr. Divver is Petitioners' immediate custodian and is responsible for his detention and removal He is sued in his official capacity.

20. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioners' detention. Mr. Mullin has the ultimate custodial authority over Petitioner's and is sued in his official capacity.

21. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system operates as a component agency. He is sued in his official capacity.

22. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

23. 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.

REQUIREMENT OF 28 U.S.C. § 2243

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

25. Habeas corpus is "perhaps the most important writ known to the constitutional law… affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it receives prompt action from him [or her] within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citations omitted).

8. U.S.C § 1252(b)(9) and (g) DO NOT CREATE A JURISDICTIONAL BAR FOR THIS COURT TO GRANT PETITIONER'S REQUESTED RELIEF

26. Section 1252(b)(9) provides:

"Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision…" *See* 8. U.S.C § 1252(b)(9)

27. Section 1252(g) provides:

"Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien *arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter*." *See* 8. U.S.C § 1252(g)

28. DHS takes the position that this Court does not have jurisdiction to hear Petitioners' habeas because the decision to detain Petitioner arises from DHS's decision to commence removal proceedings, which falls within the scope of Section 1252(b)(9)[1]. *See 25-cv-02304-CAS-BFM, doc 11* Mosqueda et al v. Kristi Noem et al.

29. In the Mosqueda response, DHS "argues that section 1252(g) bars judicial review of petitioner's bond denial claims because those claims stem from their detention, which arises from the decision to commence removal proceedings against them." Id.

[1] DHS Attorney's filed responses to Habeas Corpuses seeking the same relief as Petitioner; a bond hearing to be set in the immigration court, in two other matters in California: in the Central District the case cited above and in the Southern District of California 25-cv-02180-DMS-MMP Julian Garcia et al v. Krisit Noem et al. Both Courts cited Jennings as defining the relief sought in the habeas fall outside the purview of § 1252(b)(9) and are not jurisdictionally barred. See also Nielsen v. Preap, 586 U.S. 392 (2019); Gonzalez v. U.S. Immigr. & Customs Enf't, 975 F.3d 788 (9th Cir. 2020) citing J.E.F.M. v. Lynch, 837 F.3d 1026, 1032 (9th Cir 2016. **"Claims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process"**

30. The same conclusion this Court made in Mosqueda et al v. Krisit Noem et al is the same reasoning to apply in this case. Petitioners are not challenging any part of the removability process or the decision to be detained; therefore, the jurisdictional bar in 8. U.S.C § 1252(b)(9) does not apply.

31. Furthermore, the 9th Circuit made it clear in its Walters v. Reno, 145 F.3d 1032 (9th Cir. 1998) 8. U.S.C § 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders…[s]pecifically, § 1252(g) does not bar due process claims."[2]

32. The 9th Circuit reads § 1252(g) narrowly to apply only to three discrete actions that the Attorney General may take: "decision or action" to 'commence proceedings, adjudicate cases, or execute removal orders.'" Ibarra-Perez v. United States, No. 24-631, at 6, 14-15 (9th Cir. Aug 27, 2025).

LEGAL FRAMEWORK

A. ICE and DHS statutory authority to detain aliens

33. INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

34. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ)[3]. Individuals in § 1226(a) detention are generally entitled to bond hearings at the outset of detention. See *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 1003.19(a), 1236.1(d)(1)).[4]

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[2] Walters v. Reno, 145 F.3d 1032, 1052 "the plaintiffs objective was not to obtain judicial review of the merits of their… proceedings, but rather to enforce their constitutional rights to due process in the context of those proceedings."

[3] See 8. U.S.C. § 1229(a). For Fifth Circuit authority see Granados v. Noem, No. SA-25-CA-1464-XR, 2025 WL 3296314, *1-4 (W.D. Tex. Nov. 26, 2025)

[4] See also Rodriguez Diaz v. Garland, 53 F.4th 1189, 1202 (9th Cir. 2022) "Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions, including … an initial bond hearing before a neutral decisionmaker.)

35. Noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8. U.S.C. § 1226(c).

36. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

37. Last, the INA also provides for detention of noncitizens who have been ordered removed. *See* 8 U.S.C. § 1231 (a)-(b).

38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).[5]

39. For nearly thirty years (30), most people who entered the United States without admission or parole were considered detained under § 1226(a) and put in standard removal proceedings; and unless ineligible due to criminal history, received bond hearings before immigration judges.[6]

B. The Government's Interpretation of Section 1225

40. July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy rejecting the long-standing and ubiquitous statutory interpretation. Without a congressional change to the law nor citing any kind of new legal reasoning, ICE reversed decades of practice in order to usurp the immigration court's jurisdiction in order to keep the majority of aliens under ICE exclusive jurisdiction of § 1225(b)(2) and surreptitiously put aliens in expedited removal. [7]

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[5] The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996; § 1226(a) was most recently amended earlier this year by the Laken Riley Act. IIRIRA of 1996, Pub. L. No. 104-20, Div. C §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Laken Riley Act Pub. L. No. 199-1, 139 Stat. 3 (2025)

[6] This practice was consistent with many prior decades in which noncitizens who were not deemed "arriving" were entitled to custody hearing before an IJ. See also Hasan WL 2682255 "[T]he federal respondent's theory contradicts how the Supreme Court has traditionally construed the relationship between §§ 1225(b) and 1226(a). In Jennings, the Court explained that §1225(b) governs 'aliens seeking admission into the country' whereas §1226(a) governs 'aliens already in the country' who are subject to removal proceedings. See also, e.g., Inspection and Expedited Removal of Aliens; Detention and Removal Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10323 (Mar. 6, 1997)(stating that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

[7] This new interpretation is in direct contradiction to how the Supreme Court views the relationship between the two clauses. See Barrajas, 2025 WL 2717650 (S.D. Iowa Sep. 23, 2025)

41. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225 and therefore subject to mandatory detention under § 1225(b)(2)(A).

42. This policy applies to all persons regardless of when they are apprehended; it affects those who have resided in the United States for months, years, and even decades.

43. Since the BIA Hurtado opinion, dozens of Federal Courts in many of the circuits have rejected this position and have ordered either the immediate release of petitioners or forced immigration judges to set and conduct substantive bond custody redetermination hearings.

44. Most recently on December 18, 2025 the U.S. District Court for the Central District of California issued a final judgment in the federal class action suit, *Maldanado Bautista v. DHS* certifying persons who entered without inspection and not subject to other mandatory detention requirements are bond eligible, who were previously held by the BIA opinion in *Hurtado* to be subject to mandatory detention. See *Maldonado Bautista v. Santacruz*, No. :25-CV-01873-SSS-BFM - F.Supp 3.d-, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025).[8]

45. Petitioner's habeas challenge is constitutional not statutory; and "[l]egislation cannot detract from the privilege afforded by the constitution." See *Counselman v. Hitchcock*, 142 U.S. 547, 565 (1892), overruled on other grounds by *Kastigar v. United States*, 406 U.S. 441 (1972).

[8] The *Maldanado* court certified the following Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1) or 1231 at the time DHS makes an initial custody determination. The 9th Circuit issued an administrative stay pausing the district court's nationwide bond eligibility and vacating of the Hurtado order on March 6, 2026.

46. Following this reasoning, "once it is determined that the due process clause applies, the question remains what process is due. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).[9]

47. The Government actually admitted to the Supreme Court "that as-applied constitutional challenges remain available to address 'exceptional' cases" in the context of immigration detention. Johnson v. Arteaga-Martinez, 596 U.S. 573, 583 (2022).[10]

48 Procedural due process and substantive due process often overlap and are not mutually exclusive. Specific to the issues raised in Petitioner's instant habeas petition the Supreme Court has held "[w]hen protected interests are implicated, the right to some kind of prior hearing is paramount."See Bd. of Regents v. Roth, 408 U.S. 564, 569-70 (1972).

C. Civil Detention cannot be punitive and must be reasonably related to the purpose for which persons are committed.

49. More than a century ago, the Supreme Court ruled that civil detention of a removable noncitizen violates the Constitution if it is punitive. *Wong Wing v. United States*, 163 U.S. 228 (1896)

50. "[D]ue process requires that the conditions and duration of confinement…bear some reasonable relation to the purpose for which persons are committed." *Selling v. Young*, 531 U.S. 250, 265 (2001).

51. The Court in *Jones v. Blanas*, 393 F.3d 918, (9th Cir. 2004) quoting the Supreme Court in *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) answered civil detention "becomes punitive (and thus unconstitutional) when the conditions of detention are too harsh. People detained under civil process

[9] The Government's position often uses the Supreme Court's ruling in Jennings v. Rodriguez to support that detention is mandatory. The holding specifically states that detention under §1225(b) and §1226(a) did require six month bond redetermination hearings; the Court expressly left open the constitutional due process question.

[10] In the *Johnson v. Arteaga-Martinez*, Supreme Court hearings, the court again did not address the constitutional issues citing *Jennings*, 583 U.S. at 312 "leave them for the lower courts to consider in the first instance."

or accused but not convicted of a crime 'cannot be subjected to conditions that 'amount to punishment.'" Id. at 932.

52. The Supreme Court further held that "[c]ivil detention is punitive if it 'become[s] a 'mechanism for retribution or general deterrence.'" Kansas v. Crane, 534 U.S. 407, 412 (2002)(quoting Kansas v. Hendricks, 521 U.S. 346, 372 (1997). [11]

53. To the extent this Court may find that detention was authorized under INA § 241, indefinite detention without a realistic prospect of removal violates the limits set by *Zadvydas v. Davis*, 533 U.S. 678 (2001) and its progeny.

D. Detention authority is established at the time an alien is first detained and the government is estopped from recharacterizing its authority

54. Any attempt by DHS to recharacterize its detention authority after a prior judicial determination is unlawful. This finding aligns with broader administrative law principles that prohibit agencies from using new interpretations to override or evade previously established legal standards, especially when those standards have been affirmed by courts. See Benitez-Cornejo v. Cantu, et. al 2:25-cv-03672 (Arizona District Court Oct. 3 2025). [12]

E . Protected Liberty Interest under the 5th Amendment Due Process Clause of the United States Constitution.

55. The Court wrote in Azarte v. Andrews, 2025 U.S. Dist. LEXIS 149743, United States District Court for the Eastern District of California:

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[11] See also Hendricks, 521 U.S. at 373 ("[R]etribution and general deterrence are reserved for the criminal system alone.").

[12] See also Beltran Barrera v. Tindall, 3:25-cv-00541 (W.D. Ky. Sept. 19, 2025) (holding DHS cannot retroactively recharacterize his detention authority after the fact); Ibrahima Bah v. Warden, et al. No. 1:25-cv-02137-DAE (finding the fact that Petitioner allegedly 'entered without inspection or parole' and 'remains an applicant for admission' does not negate the fact that DHS affirmatively authorized Petitioner's conditional release in 2023… once DHS exercises its authority to release an individual under 8 U.S.C. § 1226(a), it cannot retroactively recharacterize that detention as mandatory pursuant to 8 U.S.C. § 1225 (b)(2).

"A protected liberty interest may arise from a conditional release from physical restraint. Young v. Harper, 520 U.S. 143, 147-49, 117 S. Ct. 1148, 137 L.Ed.2d 270 (1997). Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. See id. (Due Process requires 2025 U.S. Dist LEXIS *10) pre-deprivation hearing before revocation of preparele); Gagnon v. Scarpelli, 411 U.S. 778, 782, 93 S.Ct. 1756, 36 L.Ed. 2d 656 (1973)(same, in probation context); Morrissey v. Brewer, 408 U.S. 471, 482, 92 S.Ct. 2593, 33 L.Ed 2d 484 (1972).

56. In Morrisey, the Supreme Court explained that parole "enables [the parolee] to do a wide range of things open to persons' who have never been in custody or convicted of any crime, including to live at home, work, and 'be with family and friends and to form the other enduring attachments to normal life.' *Morrisey*, 408 U.S. at 482. 'Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens,' such as monitoring and seeking authorization to work and travel, 'his condition is very different from that of confinement in a prison.' Id. 'The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.' Id. at 481-84.

57. Therefore, when the government grants an alien release, it creates a liberty interest intimately tied to the freedom from imprisonment. See *Alegria Palma v. LaRose*, 25-cv-1942 (S.D. Cal. Aug 11, 2025) (finding that "continued freedom after release on own recognizance" was a core liberty interest))[13]

[13] In Palma v. LaRose the court pointed out the fact that DHS can arrest a person with a protected liberty interest "only after a 'material' change in circumstances." Id. at *4-5. See also in Palma at *2 "[b]ecause no immigration judge made a bond determination in this case, Sugay is cited here solely to illustrate the broader principle that DHS's revocation authority has been understood to require a change of circumstances."

57. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

58. In determining whether civil detention violates a detainee's due process rights, a three factor test is applied under the holding in *Mathews v. Eldridge,* 96 S.Ct. 893 (1976). Those factors are: (1) "the private interest that will be affected by the official action," (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

1. Private Interest

59. When noncitizens, regardless of citizenship status, have spent time living, working, or supporting a family in the interior of the United States Federal courts in Texas have held that noncitizens have a protected liberty interest in their freedom. See Garcia v. Andrews, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596 (E.D. Cal. July 14, 2025)(citing Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 460 (1989)). *See also Lopez Miranda v. Flores*, No. EP-25-cv584-KC, 2025 WL 3901908 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, 2025 WL 3645178 (W.D. Tex. Dec 16, 2025) (finding noncitizen has protectable liberty interest because he was "living in the United States for over four years and attends his local church); *Hernandez-Fernandez*, 2025 WL 2976923 at *9 ("Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.")

60 The court in Martinez v. Noem most persuasively espouses this point when it held "[t]he interest in being free from physical detention is the 'the most elemental of liberty interests." Martinez

v. Noem 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025)(quoting Hamdi v. Rumsfeld, 542 U.S. 507, 529 (2004)). Applying these holdings to the instant case, Petitioner has been living in the United States working grossing more than $10,000 monthly, paying taxes and providing for himself and his U.S. citizen girlfriend, who is his proposed bond sponsor, he no doubt has a private interest under the Mathews test.

2. Risk of Erroneous Deprivation

61. Continual refusal to provide bond hearings creates extreme high risk of erroneous deprivation because in the continued denial of the bond hearings, in function, it erases "the process afforded in removal proceedings does 'not ameliorate the risk that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed. Bond hearings are the check and balance against this risk because they are the "precise type of proceeding that would give [a noncitizen] an opportunity to be heard and receive a meaningful assessment of whether he is dangerous or likely to abscond." See Rojas v. Noem, 2025 WL 3038262 at *3-4.*

62. More support is found in re: *Doe,* 787 F.Supp. at 1094 where the Court wrote "given that Petitioner was previously found to not be a danger or risk of flight and the unresolved questions abou the timing and reliability of the new information, the risk of erroneous deprivation remains high.")[14]

3. Government's Interest

63. "[T]he Fifth Amendment entitles aliens to due process of law in the context of removal Proceedings. A.A.R.P. v. Trump, 605 U.S. 91, 94 (2025). Petitioner concedes that the Government has a compelling interest in enforcing its interpretation of immigration detention statutes but a petitioner's constitutional interest in his or her liberty trumps that compelling interest and exists

[14] See also A.E., 2025 WL 1424382 at *5; Ramazan, 2025 WL 3145562, at *6 - this factor almost always weighs in favor of granting a bond hearing.

separate from the INA. See *Rojas*, WL 3038262 citing *A.A.R.P. v. Trump.* Furthermore, any interest held by the government with respect to noncitizens appearing for their removal hearings and ensuring they are not a danger to the community "would be squarely addressed through a bond hearing." Martinez v. Noem, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025.)

64. The government's interest in detaining Petitioner without a bond hearing is low. *Doe* 787 F. Supp. 3d at 1094; see *Ortega v. Bonnar*, 415 F.Supp. 3d 963, 970 (N.D. Cal. 2019)); see also *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) ("And, like other Courts in this district, the Court concludes that the government's interest in re-detaining Petitioner - [] without a hearing is low, particularly in light of the fact that Petitioner has long complied with his reporting requirements")

65. The effort and cost to provide Petitioner with [a bond hearing] is minimal. *Doe* 787 F. Supp. 3d at 1094.

PETITIONER JOSE BALTAZAR GARCIA-RUIZ FACTS

66 Pedro Juan Cortez Trujillo was born on [redacted] in Peru.

67. Pedro Juan Cortez Trujillo entered the United States legally on June 27, 2001 and has remained in the United States continuously since entering.

68. Petitioner has worked and filed tax returns for the last twenty-five years while living in the U.S.

69. Petitioner is a step-father to a thirty year-old United States citizen son, Jose Samuel Torres.

70 Petitioner has raised Jose since he was six years old; serving as his single parent after Jose Torres' biological mother was deported from the U.S. when he was still a young child.

71. Petitioner's step-son, Jose Samuel Torres is living in the United States and has stable housing.

72. Additionally, Mr. Jose Torres is working and financially capable of supporting Respondent by providing for his basic living needs throughout the pendency of Respondent's removal proceedings.

73. Mr. Jose Torres is willing to serve as Respondent's sponsor.

74. Mr. Jose Torres understands the importance of ensuring that Petitioner appears for all his scheduled court appearances.

75. Petitioner has zero history with drugs or violence.

LEGAL ANALYSIS OF THE LAW AND FACTS TO THIS CASE

a. Pedro Juan Cortez Trujillo should be deemed detained pursuant to § 1226(a) and unequivocally eligible for a bond custody re-determination hearing.

76. Petitioner Pedro Juan Cortez Trujillo entered the United States in 2001 and cannot be considered a recent entrant.

77. Petitioner has been continuously present within the U.S. borders living and working affording him a plethora of constitutional rights that are extended to noncitizens in the same manner as U.S. citizens.

78. A single father of a United States citizen stepson, Petitioner has significant ties to the United States and is not a flight risk.

79. Without any arrests, the government could not argue that Petitioner is a danger to the community.

80. The fact that Petitioner may be denied even a setting of hearing is a definitive violation of due process afforded to him under the Constitution of the United States of America.

81. As discussed above, in the Ninth Circuit, courts have held that because detention is determined at the time of apprehension, recharacterization of detention is estopped. Which is why it is a blatant violation when Immigration judges state the court lacks jurisdiction using a futile catchall

reason for denying under *Hurtado*. *Hurtado* detains noncitizens pursuant to §1225(b)(2); and Pedro clearly was detained pursuant to §1226(a) because he already was present within the interior of the United States and not a recent entrant.

82. Applying the on point case law to this situation, it is clear the government is evading previously established legal standards in a cowardly attempt to please the unlawful wishes of the current administration. At best it is weak, at worst it is unethical.. See *Benitez-Cornejo v. Cantu* 25-cv-03672 (Arizona Dist. Oct. 3, 2025).

83. The client has been detained for more than 30 calendar days and does not have a final removal order; the burden is on the government to prove why continued detention is necessary.

84. It is clear Petitioner will never receive fair and meaningful hearing which is why the only acceptable remedy is immediate release.

85. Without any other recourse, Petitioner has no clear understanding of how long his detention may be; as a result, every day he is detained is further violation of his constitutional rights.

86. Filing this habeas corpus petition is Petitioner's only viable option to force ICE, DHS, and EOIR to comply with the law as it has been held to mean for thirty plus years and affirmed time and time again by the Supreme Court of the United States.

87. Again, Petitioner is not challenging any of the substantive reasons behind his detention or reasons why Petitioner is in removal proceedings.

88. Petitioner is challenging the denial of a procedural right he is afforded by statute during those removal proceedings - his right to request a redetermination of his custody from the immigration judge.

89. Petitioner asks this Court to uphold that right.

b. Pedro Juan Cortez Trujillo's 5th Amendment Procedural Due Process rights have been violated applying the Mathews Factor Test.

90. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'proprety' interests within the meaning of the Due Process Clause of the Fifth…Amendment" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

91. [F]reedom from imprisonment - from government custody, detention, or other forms of physical restraint - lies at the heart of that liberty the Clause protects." *Zadvydas*, 533 U.S. at 690.

92. With respect to the first factor under the Mathews test, the issue is whether Petitioner has shown a likelihood of success on the merits of his due process claim that he is entitled to immediate release and for enjoyment of further unlawful detention unless there is a material change in his removal proceedings or other circumstances that would justify his detention.

93. In analyzing this challenge, the court considers (1) "whether there exists a protected liberty interest under the Due Process clause, and [(2)] the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution." *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

94. Pedro, under procedural due process, has an underlying continuing liberty interest from detention. Considering Pedro is the stepfather to a U.S. citizen son and does not have any arrests he cannot be found to be a danger to the community and not a flight risk, it is affirmative proof Pedro holds a liberty interest against detention.

95. Working and raising a family in the United States, Petitioner has cemented family ties in his community, built friendships, garnered meaningful work opportunities and assimilated to life in the United States.[15]

[15] Considering in connection with petitioner's procedural due process claim that "[t]he lengthy duration of his conditional release as well as the meaningful connections Petitioner seems to have made with his community during during that time

96. Finding in favor of Petitioner with respect to this first factor is the proper conclusion.

97. As to the second factor, the risk of an erroneous deprivation of Petitioner's liberty interest is considerable here where he has not received any bond or custody redetermination.

98. Hiding behind blanketed reasoning of 'flight risk' and lack of jurisdiction under *Hurtado*, and the record showing zero evidence from ICE or DHS of material change in circumstance or new evidence, it is a high probability that erroneous deprivation will continue.

99. Because continued custody redetermination is determined by internal ICE custody reviews, there are no procedural safeguards and the fact that DHS, ICE, and the Immigration court have already proven a disregard for the law when it continues to ignore the Ninth Circuit Robbins ruling, the risk of erroneous deprivation remains high. [16]

100. The second factor weighs heavy in favor of granting immediate release or in the very least a substantive bond hearing.

101. The Supreme Court has held that individualized hearings prior to deprivation of interests far less than personal liberty interest are required. See *Goldberg v. Kelly*, 397 U.S. 254, 268 (1970) (requiring a hearing prior losing welfare benefits).

102. It is clear that under precedent case law, erroneous deprivation is high without Petitioner receiving an individualized hearing.

103. **An individualized hearing ensures that detention is not punitive.**

104. In discussing the third factor, the government's interest in detaining Petitioner without a bond hearing is low. Doe, 787 F.Supp.3d at 1094[17]

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create a powerful interest for Petitioner and his continued liberty" Doe v. Becerra, 787 F.Supp. 3d 1083, 1099 (E.D. Cal. 2025)

[16] See Doe, 787 F.Supp at 1094 ("[G]iven that Petitioner was previously found to not be a danger or risk of flight and the unresolved questions about the timing and reliability of the new information, the risk of erroneous deprivation remains high."

[17] See also Ortega v. Bonnar, 415 F.Supp.3d 963, 970 (N.D. Cal. 2019)

105. Similar to the Court's finding in Diaz v. Kaiser, 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal June 14, 2025) "the Court concluded that the government's interest in re-detaining Petitioner without a hearing is 'low' particularly in light of the fact that Petitioner has long complied with his reporting requirements." Here the facts are the same. Pedro has complied with the immigration requirements imposed upon him during this process appearing at all hearings.

106. "The effort and cost to provide Petitioner with [a bond hearing] is minimal." *Doe* at 1094. Even if it can be called a burden, any additional burden imposed upon the government to conduct a substantive bond hearing to determine if continued detention is necessary by clear and convincing evidence does not outweigh Pedro's liberty interest and the risk of further erroneous deprivation that has already occurred.

107. In sum, it is clear, under Mathews, Petitioner demonstrates a likelihood of success on the merits of his claims asserting violations of his procedural due process rights.

e. Pedro Juan Cortez Trujillo's 4th Amendment Rights have been violated by his prolonged unlawful detention by ICE and DHS.

108. The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community and preventing flight prior to removal.[18]

109. Pedro can demonstrate he is not a flight risk nor a danger to the community.

110. There is no likelihood for the removal of Petitioner in the reasonably foreseeable future.

111. Respondents have repeatedly failed to follow their own regulations with respect to custody redetermination; chief among them failing to provide an initial custody redetermination hearing at the outset of his case. Petitioner committed zero immigration violations while in this process.

112. Respondents do not have probable cause to detain Petitioner and his continued detention is a violation of the Fourth Amendment to the U.S. Constitution.

[18] *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention.)

CLAIMS FOR RELIEF

COUNT I

Violation of the INA

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

114. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

115. The application of § 1225(b)(2) to Petitioners unlawfully mandates their continued detention and violates the INA.

COUNT II

Request for Relief Pursuant to Declaratory Relief

116. Petitioner incorporates by reference the allegations of the fact set forth in the preceding paragraphs 1-112 as if fully set forth herein.

117. Declare the application of § 1225(b)(2) to Petitioners unlawfully mandates his continued detention and violates the INA.

118. Declare ICE, DHS, and EOIR are prohibited from considering Petitioner detained under that section and must consider Petitioner subject to detention under § 1225(a).

COUNT III

Violation of Fifth Amendment Procedural Due Process

119. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in paragraphs 1-112 as if fully set forth herein.

120. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Constitution. Amend. V. "Freedom from imprisonment – from government, custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

121. In determining whether civil detention violates a detainee's due process rights, a three factor test is applied under the holding in *Mathews v. Eldridge,* 96 S.Ct. 893 (1976). Those factors are: (1) "the private interest that will be affected by the official action," (2) "the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

122. Petitioner has a fundamental interest in liberty and being free from official restraint.

123. The government's detention of Petitioner without a bond redetermination hearing to determine whether they are a flight risk or danger to others violates his right to due process.

COUNT IV

Violation of Fourth Amendment

124. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in paragraphs 1-112 as if fully set forth herein.

125. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Constitution. Amend. V. "Freedom from imprisonment – from government, custody,

detention, or other forms of physical restraint – lies at the heart of the liberty that the clause protects." Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

126. The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. See Zadvydas v. Davis, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention.) Petitioner has demonstrated he is not a flight risk nor a danger to the community.

127. ICE may re-detain a noncitizen released "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. §241.13(i)(2).

128. In the Ninth Circuit, continued detention must be proved by the government to be necessary by clear and convincing evidence.

129. DHS and ICE have not met their burden and there is no likelihood of for the removal of Petitioner in the reasonably foreseeable future.

130. Respondents do not have probable cause to detain Petitioner and his continued detention is a violation of the Fourth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner prays this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus clarifying that the statutory basis for Petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner;

c. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition. Enjoin Respondents from removing him to a third

country without travel documents, acceptance from that country, notice, and opportunity to contest and from pursuing removal under any punitive banishment policy or practice.

d. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the INA and implementing regulations, the APA, and the Accardi doctrine;

e. **Order Petitioner's immediate release**;

f. Award Petitioner's attorney's fees and costs under the Equal Access to Justice Act ("EAJA") as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Order that Petitioner's status quo be restored and that Petitioner be placed under the original Custody Redetermination Bond release ordered October 2021;

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

Respectfully Submitted,

DATED: August 14, 2026

/s/ Jonathan Aftalion
Jonathan Aftalion (SBOCA: 317235)

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