DETAINED

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THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

Sandy Milian Rodriguez, an adult,

Petitioner,

v.

Laura HERMOSILLO, Seattle Acting Field Office Director, Enforcement and Removal Operations, Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE); Bruce SCOTT, Warden, Northwest ICE Processing Center; Kristi NOEM, Secretary, United States Department of Homeland Security; Pamela BONDI, U.S. Attorney General; UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Respondents.

Case No.: 2:26-cv-00282

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Agency File Number: [redacted]

INTRODUCTION

1. This habeas petition challenges Petitioner Mr. Milian Rodriguez's re-detention and prolonged immigration detention, where his removal proceedings have been dismissed, his requests for bond have been twice denied, and he remains detained for close to eight months.

2. When Mr. Milian Rodriguez first entered the country, he was detained but later released on his own recognizance to pursue his removal proceedings. On May 27, 2025, however, he was abruptly re-detained immediately after the Immigration Judge ("IJ") granted the Department of Homeland Security's ("DHS") motion to dismiss his proceedings at his Master Calendar Hearing without any individualized assessment, notice, or pre-deprivation hearing.

3. Mr. Milian Rodriguez timely sought review through an interlocutory appeal to the Board of Immigration Appeals ("BIA"), which remains pending. Despite the ongoing appeal, the Immigration Court denied bond twice. The first denial was based on the conclusion that it lacked jurisdiction. The second denial was based on the conclusion that there were no changed circumstances. The court has treated Mr. Milian Rodriguez's detention as mandatory under INA § 1225(b), effectively subjecting him to prolonged and potentially indefinite confinement. He remains detained despite his full compliance with prior ICE supervision, the grant of employment authorization, the absence of any criminal history, and the fact that no immigration hearing is currently scheduled.

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4. Respondents' actions violate the Fifth Amendment's Due Process Clause and the Immigration and Nationality Act ("INA"). This Court has repeatedly held that due process requires notice and a hearing before the government may revoke a person's liberty, and that prolonged civil immigration detention becomes punitive and unconstitutional. Because Mr. Milian Rodriguez's continued detention is legally unjustified, procedurally defective, and substantively punitive, the Court should grant the writ of habeas corpus and order his immediate release.

5. This Petition is supported by the pleadings and documents on file in this case, including Declaration of Olia Catala ("Catala Decl.") with exhibits attached thereto. Mr. Milian Rodriguez does not request an evidentiary hearing and submits that the existing record is sufficient for the Court to determine that his continued detention is unlawful and that immediate release is warranted.

JURISDICTION

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

7. 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).

8. 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.

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VENUE

9. Venue is proper because Mr. Milian Rodriguez is in Respondents' custody at the NWIPC in Tacoma, Washington. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the judicial district in which Mr. Milian Rodriguez currently is in custody.

10. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

REQUIREMENTS OF 28 U.S.C. § 2243

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

12. 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v.*

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Wilkinson, 216 F.2d 735, 737–38 (9th Cir. 1954) (Habeas corpus is "a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.").

PARTIES

13. Petitioner Mr. Sandy Milian Rodriguez is a 33-year old adult citizen of Cuba. He has been detained at the Northwest ICE Processing Center since his re-detention on May 27, 2025, and has now remained in custody for nearly eight months. Mr. Milian Rodriguez's requests for bond were denied twice.

14. Respondent Laura Hermosillo is the Acting Field Office Director for ICE's Seattle Field Office. The Seattle Field Office is responsible for local custody decisions relating to noncitizens charged with being removable from the United States. The Seattle Field Office's area of responsibility includes Alaska, Oregon, and Washington. Respondent Hermosillo is a legal custodian of Petitioner and is sued in her official capacity.

15. Respondent Bruce Scott is employed by the private corporation The GEO Group, Inc., as Warden of the NWIPC, where Petitioner is detained. He has immediate physical custody of Petitioners. He is sued in his official capacity.

16. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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17. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice. She is sued in her official capacity.

18. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. He is the head of the federal agency responsible for all immigration enforcement in the United States.

19. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE.

FACTUAL BACKGROUND

20. Mr. Milian Rodriguez is a 33-year-old citizen and national of Cuba. *See* Catala Decl., Ex. A. He fled Cuba after [redacted] left the country permanently in or about March 2022, entered the United States without inspection on or about April 1, 2022, and sought asylum. *Id.*

21. Shortly after his entry, Mr. Milian Rodriguez was apprehended by U.S. Border Patrol and initially detained. On April 2, 2022, the government released him from immigration custody on his own recognizance so that he could continue litigating his removal proceedings while at liberty. *See* Catala Decl., Ex. B. ICE issued him a Notice to Appear in removal proceedings under 8 U.S.C. § 1229a. *See* Catala Decl., Ex. A. Mr. Milian Rodriguez thereafter timely filed his Application for Asylum and for Withholding of Removal on September 17, 2022.

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22. While living in the community, Mr. Milian Rodriguez complied with conditions imposed by Immigration and Customs Enforcement, was granted employment authorization, and resided in Florida. He has no criminal history in the United States or in any other country.

23. At the initial Master Calendar Hearing on May 27, 2025, DHS moved to dismiss the removal proceedings under 8 C.F.R. § 239.2. *See* Catala Decl., Ex. C. The IJ granted DHS's motion and dismissed the proceedings. *Id.*

24. Immediately following that oral dismissal, Mr. Milian Rodriguez was apprehended, and taken back into immigration custody without explanation, individualized cause or justification. He has remained detained since that date and is currently confined at the Northwest ICE Processing Center in Tacoma, Washington. Since his re-detention on May 27, 2025, Mr. Milian Rodriguez has remained in DHS custody for nearly eight months.

25. In June 2025, Mr. Milian Rodriguez timely filed an interlocutory appeal with the Board of Immigration Appeals. *See* Catala Decl., Ex. D. No decision has been issued on the interlocutory appeal more than six months after it was filed. During this period, Mr. Milian Rodriguez has remained detained despite the absence of any scheduled immigration hearing. *See* Catala Decl., Ex. E.

26. Mr. Milian Rodriguez has sought bond on two occasions, and both requests have been denied. *See* Catala Decl., Exs. F-G. While his appeal was pending, the Immigration Judge issued a Custody Order on July 1, 2025, denying bond and concluding that the court lacked jurisdiction on the ground that Mr. Milian Rodriguez was subject to mandatory

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detention under *Matter of M-S-* and *Matter of Q. Li*, pursuant to INA §§ 235(b)(1) and 235(b)(2). *See* Catala Decl., Ex. F.

27. On November 3, 2025, Mr. Milian Rodriguez filed a second request for bond redetermination. The Immigration Judge denied the request on November 4, 2025, finding that Mr. Milian Rodriguez had not demonstrated materially changed circumstances since his prior bond hearing. *See* Catala Decl., Ex. G. The Immigration Judge further concluded that Mr. Milian Rodriguez remained subject to mandatory detention under INA § 235 because he was initially apprehended by immigration officers immediately upon entry and is present in the United States without having been admitted, relying on *Matter of Q. Li* and *Matter of Yajure-Hurtado*. *Id.* The Immigration Judge also found that Mr. Milian Rodriguez was not a member of the Rodriguez-Vazquez class and ordered that he would continue to be detained without bond. *Id.* As a result, Mr. Milian Rodriguez remains detained with no end in sight and without any meaningful opportunity to challenge the legality or necessity of his continued custody.

28. Before re-detaining Mr. Milian Rodriguez on May 27, 2025, Respondents did not provide him with any written notice explaining the basis for revoking his release. Nor did ICE assess whether he posed a flight risk or danger to the community. Mr. Milian Rodriguez was never afforded a hearing before a neutral decisionmaker to determine whether re-detention was justified.

29. As this Court has recently held in multiple cases, due process requires such a hearing before the government may terminate a person's liberty. *See E.A. T.-B. v. Wamsley*, --- F.

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Supp. 3d ---, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *2–4 (W.D. Wash. Sept. 12, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025); Report & Recommendation, *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15, 2025), Dkt. 13; *Y.M.M. v. Wamsley*, No. 2:25-CV-02075-TMC, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025). Many other courts have recently held the same.

30. By failing to provide such a hearing, Respondents have violated Mr. Milian Rodriguez's constitutional right to due process. In addition, Respondents have violated his substantive due process rights by subjecting him to unreasonably prolonged and effectively indefinite civil detention. Detention lasting approximately eight months, with no definite end in sight and no meaningful procedural mechanism to secure release, no longer bears a reasonable relationship to any legitimate governmental purpose and has become excessive and punitive in effect.

31. The Due Process Clause of the Fifth Amendment forbids Mr. Milian Rodriguez's prolonged and unjustified detention. His continued confinement is punitive and serves no lawful purpose. This Court should therefore grant the instant petition for a writ of habeas corpus and order Mr. Milian Rodriguez's immediate release. *See E.A. T.-B.*, 2025 WL 2402130, at *6 (ordering immediate release because "a post-deprivation hearing cannot

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serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"); *Ramirez Tesara*, 2025 WL 2637663, at *4 (same); *Kumar*, 2025 WL 2677089, at *3–4 (same); *Ledesma Gonzalez*, 2025 WL 2841574, at *9 (same); *Y.M.M.*, 2025 WL 3101782, at *2–3 (same).

32. Accordingly, Mr. Milian Rodriguez asks this Court to declare his continued detention unconstitutional as applied to him and to order his immediate release.

LEGAL FRAMEWORK

Violation of Substantive Due Process: Prolonged Detention

33. The Fifth Amendment's Due Process Clause protects all persons, including noncitizens, from arbitrary civil detention. *Zadvydas v. Davis*, 533 U.S. 678, 690–93 (2001). Because immigration detention is civil rather than criminal, it is constitutionally permissible only so long as it bears a reasonable relationship to a legitimate regulatory purpose—such as ensuring appearance at proceedings or protecting the community—and does not operate as punishment. Civil detention becomes unconstitutional when its nature or duration is excessive in relation to those purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Jones v. Blanas*, 393 F.3d 918, 931–32 (9th Cir. 2004).

34. As civil confinement lengthens, the government must provide correspondingly stronger justification to continue detention. *Zadvydas*, 533 U.S. at 699–701. Even where Congress has authorized mandatory detention for certain categories of noncitizens, detention may become punitive when it is excessively prolonged or when continued confinement is untethered from individualized necessity. *United States v. Salerno*, 481 U.S. 739, 747 n.4

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(1987); *United States v. Torres*, 995 F.3d 695, 709–10 (9th Cir. 2021). At some point, regardless of the government's asserted interests, due process requires release from civil detention that has become excessive or indefinite. *Torres*, 995 F.3d at 709–10.

35. Applied here, Mr. Milian Rodriguez's continued detention is substantively unconstitutional. He has been confined for nearly eight months with no defined endpoint and no meaningful mechanism to secure release. Respondents have not shown that his continued detention is necessary to mitigate flight risk or danger, particularly given his prior compliance with ICE supervision, the absence of any criminal history, and his appearance at scheduled proceedings. Instead, his confinement persists solely because Respondents have placed him in a custody posture that forecloses any realistic path to release, not because an individualized assessment supports continued detention.

36. When prolonged civil detention is maintained without individualized necessity and without a meaningful release valve, it becomes excessive in relation to any legitimate regulatory purpose and operates as punishment. *Jackson*, 406 U.S. at 738; *Jones*, 393 F.3d at 932. Under *Zadvydas* and *Torres*, due process does not permit civil detention to continue indefinitely on this record.

37. Absent this Court's intervention, Mr. Milian Rodriguez's detention is likely to continue for an unknown period, as there is no clear timeline for a decision on Mr. Milian Rodriguez appeal. Moreover, once the BIA issues a decision, Mr. Milian Rodriguez must wait for the next potential procedural step. Because continued detention violates substantive due process in this case, this Court should issue the writ and order Mr. Milian Rodriguez's immediate release.

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38. Courts in this circuit regularly issue writs of habeas corpus releasing immigrants whose ongoing custody violates the Constitution when the government cannot justify their prolonged detention. See, e.g., *Doe v. Becerra*, 732 F. Supp. 3d 1071, 1090 (N.D. Cal. 2024); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008) (ordering petitioner's release on a motion to enforce a habeas order after an IJ denied bond at a prolonged detention hearing); *Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1118–19 (S.D. Cal. 2008) (same); *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 1082648, at *4 (N.D. Cal. Mar. 6, 2020) (same); see also *Ekeh v. Gonzales*, 197 F. App'x 637, 638 (9th Cir. 2006) (ordering supervised release pursuant to *Zadvydas*); *Nguyen*, 84 F. Supp. 2d at 1113 (issuing order to show cause why petitioner should not be released pursuant to *Zadvydas*).

39. Courts also issue writs of habeas corpus releasing detained noncitizens when conditions of confinement are excessive in relation to the person's flight risk or danger to the community. See, e.g., *Doe v. Becerra*, 732 F. Supp. 3d at 1089–90; *Bent v. Barr,* 445 F. Supp. 3d 408, 414–15, 421 (N.D. Cal. 2020); Doe v. Barr, No. 20-cv-02141-LB, 2020 WL 1820667, at *8–10 (N.D. Cal. Apr. 12, 2020); *Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724, at *3–5 (N.D. Cal. Apr. 8, 2020); Doe v. Barr, No. 20-cv-02263-RMI, 2020 WL 1984266, at *6–7 (N.D. Cal. Apr. 27, 2020). Here, Mr. Milian Rodriguez presents no danger to the community and no flight risk, yet remains confined under conditions that are excessive in relation to any legitimate governmental purpose.

40. Accordingly, Mr. Milian Rodriguez's continued confinement violates substantive due process and warrants habeas relief.

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Due Process Requires a Pre-Deprivation Hearing Before Re-Detention

41. The Due Process Clause of the Fifth Amendment protects individuals from arbitrary deprivations of liberty and requires constitutionally adequate procedures before the government may revoke a person's freedom. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Where a noncitizen has been released into the community and is later re-detained, due process protects the individual's interest in continued liberty and requires procedural safeguards before that liberty may be withdrawn. See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

42. Consistent with these principles, when DHS seeks to re-arrest an individual who was previously released on his own recognizance with a scheduled court date, has lived in the United States without incident, and has complied with all conditions of release, due process requires notice and a hearing before a neutral decisionmaker to determine whether renewed detention is actually justified based on danger to the community or risk of flight. See *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970); *Morrissey*, 408 U.S. at 485.

43. This Court has repeatedly applied these principles to DHS's recent practice of re-detaining noncitizens long after their release, often without notice or a hearing. In *E.A. T.-B. v. Wamsley*, the Court held that even where the government asserted mandatory detention authority, due process required a pre-deprivation hearing before re-detention. 2025 WL 2402130, at *3–6 (W.D. Wash. Aug. 19, 2025). Applying the *Mathews v.*

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Eldridge, 424 U.S. 319 (1976), framework, the Court concluded that the petitioner's interest in liberty was at its apex, the risk of erroneous deprivation absent a hearing was substantial, and the government's interest in re-detaining without process was minimal. *E.A. T.-B.*, 2025 WL 2402130, at *4–5. The Court ordered the petitioner's immediate release. Id. at *6.

44. This Court has reached the same conclusion in multiple subsequent cases. See *Ramirez Tesara v. Wamsley*, 2025 WL 2637663, at *2–5 (W.D. Wash. Sept. 12, 2025); *Kumar v. Wamsley*, 2025 WL 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025); *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-MLP, Dkt. 13 (W.D. Wash. Oct. 15, 2025). These decisions reflect a consistent rule: DHS may not revoke conditional liberty through re-detention without first providing a constitutionally adequate hearing.

45. Applying the *Mathews* factors here confirms that Mr. Milian Rodriguez's re-detention violates procedural due process. His private interest is at its zenith because the challenged action is physical confinement—"the most elemental of liberty interests." *Zadvydas*, 533 U.S. at 690. The risk of erroneous deprivation is substantial where DHS re-detains without a hearing capable of testing whether confinement is actually necessary to address flight risk or danger, particularly where the record reflects compliance with prior release conditions and appearance at scheduled proceedings. Finally, the government's interest in re-detaining without a hearing is minimal, as providing notice and a neutral hearing

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would impose modest administrative burdens that are far outweighed by the risk of unjustified confinement.

46. Because DHS revoked Mr. Milian Rodriguez's conditional liberty without providing constitutionally adequate process, his re-detention violates the Fifth Amendment. Under controlling precedent in this District, habeas relief is warranted, and the appropriate remedy is his immediate release.

Custody Authority Governing Mr. Milian Rodriguez's Detention

47. Mr. Milian Rodriguez restates and realleges all preceding paragraphs as if fully set forth here.

48. The controlling authority for Mr. Milian Rodriguez's custody is 8 U.S.C. § 1226(a) because the DHS expressly processed, charged, and released him under that statutory framework. *See* Catala Decl., Exs. A–B. Although Mr. Milian Rodriguez was briefly detained following his entry without inspection, DHS released him the following day, on April 2, 2022, on his own recognizance. *See* Catala Decl., Ex. B. The Order of Release on Recognizance (Form I-220A) issued to Mr. Milian Rodriguez states in plain text: "In accordance with section 236 of the Immigration and Nationality Act … you are being released on your own recognizance." *Id.* Section 236 is codified at 8 U.S.C. § 1226. Because Mr. Milian Rodriguez has no criminal history and does not fall within the categories enumerated in § 1226(c), DHS's express invocation of § 236 reflects a formal determination that his custody was governed by discretionary detention under § 1226(a), not mandatory detention under either § 1226(c) or § 1225(b).

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49. DHS's charging document confirms this statutory classification. On the Notice to Appear (Form I-862) dated April 2, 2022, DHS officers had the option to classify Mr. Milian Rodriguez as an "arriving alien" subject to § 1225(b). *See* Catala Decl., Ex. A. They did not. The box stating "You are an arriving alien" is unchecked. Instead, DHS classified Mr. Milian Rodriguez as "an alien present in the United States who has not been admitted or paroled" and charged him under INA § 212(a)(6)(A)(i). This is the standard charge used in ordinary removal proceedings under INA § 240 and is ordinarily associated with post-entry detention governed by 8 U.S.C. § 1226(a). DHS thus affirmatively elected to process Mr. Milian Rodriguez as a noncitizen present in the United States and released him into the interior. Having made that contemporaneous classification and release decision, DHS may not later invoke § 1225(b) to impose mandatory detention untethered from any ongoing inspection-based custody.

50. Section 1226(a) is the default statutory authority governing the detention of noncitizens pending a decision on removal and provides for individualized custody determinations, including bond hearings before an Immigration Judge. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Nothing in the INA authorizes the government to revive border-focused mandatory detention authority years after release into the interior absent continuous inspection-stage custody or parole pursuant to § 1225(b).

51. In denying Mr. Milian Rodriguez's bond requests, the Immigration Judge relied on *Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019), and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). That reliance is legally erroneous because the statutory predicates central to

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both decisions are absent here. *Matter of M-S-* addresses detention under INA § 235(b)(1) and holds that noncitizens who are initially placed in expedited removal proceedings and later transferred to full removal proceedings after establishing a credible fear remain subject to mandatory detention throughout those proceedings, absent parole under INA § 212(d)(5)(A). Mandatory detention under *Matter of M-S-* presupposes continuous detention authority under § 235(b), including any temporary parole that preserves the inspection-stage custody framework. 27 I&N Dec. at 512–14. Here, the record contains no Notice and Order of Expedited Removal, no credible-fear referral or determination, and no documentation reflecting a transfer from § 235(b)(1) custody. DHS has not produced any such records as of yet. Instead, DHS issued a Notice to Appear on April 2, 2022 initiating ordinary removal proceedings and contemporaneously released Mr. Milian Rodriguez on his own recognizance pursuant to INA § 236, as reflected on Form I-220A. Because *Matter of M-S-* applies only to noncitizens who were initially placed in expedited removal and later transferred to § 240 proceedings following a credible-fear finding while remaining subject to § 235(b) detention authority, its holding is inapplicable here.

52. *Matter of Q. Li* applies the § 1225(b) detention framework in the specific context of parole under INA § 212(d)(5)(A), holding that when a noncitizen detained under § 1225(b) is released on parole and that parole is subsequently terminated, the statute requires that the noncitizen "shall forthwith return or be returned to the custody from which he was paroled." 29 I. & N. Dec. at 69–70. The mandatory return to custody in *Q.*

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Li thus flows directly from the parole statute itself and presupposes the continued applicability of § 1225(b) detention authority, notwithstanding the temporary physical release effectuated by parole.

53. In the second bond denial, the IJ concluded that Mr. Milian Rodriguez remained subject to mandatory detention because he was "initially apprehended by immigration officers immediately upon his illegal entry into the United States" and "is present in the United States without admission," relying on *Matter of Q. Li* and *Matter of Yajure-Hurtado*, and further finding that he was not a member of the *Rodriguez-Vazquez* class. *See* Catala Decl., Ex. G. That reasoning conflates initial apprehension with continuous inspection-stage custody and misapplies authorities that require an unbroken tether to § 1225(b) custody or parole as a matter of law. Neither *Matter of Q. Li* nor *Matter of M-S-* authorizes mandatory detention based solely on the fact of initial apprehension where DHS subsequently released the individual under § 236 and initiated ordinary § 240 proceedings.

54. Those conditions are not present here. As noted above, Mr. Milian Rodriguez was not released on parole pursuant to § 212(d)(5)(A), and did not remain in continuous inspection-based custody tethered to the border. Instead, DHS released him on recognizance under INA § 236 and initiated standard removal proceedings under § 240, thereby terminating any inspection-stage detention authority. Because the statutory predicates underlying both *Matter of M-S-* and *Matter of Q. Li* are absent, neither

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decision authorizes mandatory detention in this case or divests the IJ of jurisdiction to conduct a bond hearing.

55. Section 236 contains no parole-termination mechanism and no statutory mandate requiring a return to custody based on dismissal of proceedings or other procedural developments. Because Mr. Milian Rodriguez was never granted parole, there was no parole to terminate and no statutory basis to reimpose § 1225(b) custody. *Matter of Q. Li* is therefore factually and legally inapplicable, and *Matter of M-S-* provides no authority for mandatory detention where, as here, DHS elected post-entry discretionary detention and release.

56. Finally, although not binding on this Court, the reasoning in *Maldonado Bautista v. Santacruz* is highly persuasive and confirms the statutory structure at issue. There, the court squarely rejected DHS's attempt to subject noncitizens who were processed into ordinary removal proceedings to mandatory detention under INA § 1225(b), holding that such an interpretation "runs counter to the plain language of the INA" and improperly "collapses the distinct detention schemes Congress established." *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-cv-01873-SSS-BFM, at *7 (C.D. Cal. Nov. 25, 2025). The same statutory flaw is present here. DHS's effort to apply § 1225(b) mandatory detention to Mr. Milian Rodriguez, after releasing him under INA § 236 and placing him in ordinary § 240 proceedings, creates precisely the conflict between detention provisions that *Maldonado Bautista* found impermissible.

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57. Accordingly, DHS's own records, including the Notice to Appear and the Order of Release on Recognizance, establish that Mr. Milian Rodriguez's custody is governed by 8 U.S.C. § 1226(a). Because he has now been detained for approximately eight months without the due process mandated by § 1226(a), a belated bond hearing is an insufficient remedy. As courts in this District have held, "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." *See E.A. T.-B. v. Wamsley*, 2025 WL 2402130, at *6; *Ramirez Tesara v. Wamsley*, 2025 WL 2637663, at *4.

58. Therefore, to remedy the unconstitutional deprivation of liberty he has already suffered, Mr. Milian Rodriguez is entitled to immediate release.

The IJ's Bond Denial Does Not Moot the Habeas Petition

59. The IJ's denial of bond does not moot this habeas proceeding because a case becomes moot only when it is impossible for a court to grant any effectual relief, and intervening or discretionary custody determinations do not extinguish Mr. Milian Rodriguez's concrete interest in the legality of his detention. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117–18 (9th Cir. 2010).

60. As the Supreme Court has recognized, a challenge to the legality of immigration detention may be brought through habeas corpus independently of the merits of a noncitizen's removal proceedings. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

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61. Because the IJ disclaimed jurisdiction to even consider the lawfulness of Mr. Milian Rodriguez's detention, federal judicial review remains the only avenue to remedy his unconstitutional confinement, rendering further exhaustion futile and leaving federal habeas review as the sole available avenue for relief. *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 710–12 (D. Md. 2016); *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538–39 (S.D.N.Y. 2014); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456–57 (S.D.N.Y. 2010); *Sengkeo v. Horgan*, 670 F. Supp. 2d 116, 121–23 (D. Mass. 2009).

62. Therefore, Mr. Milian Rodriguez continues to challenge the physical legality of his ongoing detention.

Exhaustion of Administrative Remedies is Prudential and Should be Waived

63. Exhaustion in § 2241 cases is prudential, not jurisdictional. *Arango Marquez v. INS*, 346 F.3d 892, 896–97 (9th Cir. 2003); *Ali v. Ashcroft*, 346 F.3d 873, 877–78 (9th Cir. 2003). Following *Santos-Zacaria v. Garland* (2023), statutory exhaustion requirements are understood as non-jurisdictional claims-processing rules. *Santos-Zacaria v. Garland*, 598 U.S. 411, 416–23 (2023); see also *Kemokai v. U.S. Att'y Gen.*, 83 F.4th 886, 891 (11th Cir. 2023) (recognizing *Santos-Zacaria* as treating INA §242(d)(1) as a claims-processing rule).

64. Exhaustion is waived when administrative remedies are inadequate or futile. *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 893–97 (9th Cir. 2021); *Szonyi v. Whitaker*, 915 F.3d 1228, 1232–35 (9th Cir. 2018); *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1073

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(9th Cir. 2016); *Gonzalez v. O'Connell*, 355 F.3d 1010, 1015–18 (7th Cir. 2004); *Iddir v. INS*, 301 F.3d 492, 498 (7th Cir. 2002).

65. The clear and convincing evidence standard applies in detention bond hearings, and the government bears the burden of proof. *Singh v. Holder*, 638 F.3d 1196, 1202, 1205 (9th Cir. 2011). It is a constitutional error for an IJ not to hold the government to that heightened burden. *Id.* The government has failed to demonstrate by clear and convincing evidence that Mr. Milian Rodriguez is a danger or a flight risk such that no condition of release could secure his presence.

66. An IJ or BIA has no authority to remedy the constitutional violations in a bond hearing. INA §242(a)(2)(D); see REAL ID Act, Pub. L. No. 109-13, div. B, §106, 119 Stat. 231 (2005). Furthermore, the continued loss of liberty Mr. Milian Rodriguez faces constitutes irreparable harm, necessitating immediate intervention by this Court.

67. Moreover, the IJ's ruling demonstrates that further administrative appeals are futile. *American-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995). Prudential exhaustion is not required when the administrative process is inadequate to protect a detainee's liberty interests. Where an immigration judge disclaims jurisdiction in bond proceedings, administrative review cannot provide meaningful relief and habeas intervention is required. Exhaustion is unnecessary where the Government is applying the wrong statutory framework.

68. Furthermore, requiring Mr. Milian Rodriguez to await the outcome of his pending interlocutory appeal before the Board of Immigration Appeals would be futile and would

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result in irreparable harm. The Immigration Judge has twice denied bond, leaving no meaningful administrative avenue for relief. Because Mr. Milian Rodriguez remains subject to ongoing civil detention during the pendency of the appeal, exhaustion would merely prolong an unlawful deprivation of liberty. Courts routinely excuse exhaustion in habeas cases where administrative review cannot provide timely relief and continued detention itself constitutes irreparable harm. Under these circumstances, requiring further administrative exhaustion would serve no purpose and would only compound the constitutional injury.

CLAIM FOR RELIEF

Count I: Violation of Fifth Amendment Right to Due Process

Procedural Due Process

69. Mr. Milian Rodriguez restates and realleges all the prior paragraphs as if fully set forth herein.

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

71. Due process does not permit the government to re-detain Mr. Milian Rodriguez and strip him of his liberty without written notice and a pre-deprivation hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight risk. *See Morrissey v. Brewer*, 408 U.S. 471, 487–88 (1972).

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72. Such written notice and a hearing must occur before or promptly at the time of re-detention, absent exigent circumstances not present here.

73. Respondents revoked Mr. Milian Rodriguez's release and deprived him of liberty without providing written notice and a meaningful opportunity to be heard by a neutral decisionmaker prior to his re-detention. Accordingly, Mr. Milian Rodriguez's re-detention violates the Due Process Clause of the Fifth Amendment.

74. Mr. Milian Rodriguez's detention has become prolonged. He has been detained for approximately eight months and faces additional months of continued detention. His prolonged detention, imposed without any meaningful procedural safeguards or opportunity to contest necessity, violates procedural due process.

Count II: Violation of Due Process under the Fifth Amendment

Substantive Due Process

75. Mr. Milian Rodriguez re-alleges and incorporates by reference the paragraphs above.

76. The Due Process Clause prohibits the government from imposing punishment through purportedly civil detention. Although immigration detention is civil in form, it violates substantive due process when it becomes punitive in effect. Detention becomes punitive when its nature or duration is unreasonable in relation to its asserted purposes, including ensuring appearance, protecting the community, and effectuating removal. A civil restriction that is excessive in relation to a legitimate governmental interest is unconstitutional.

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77. Mr. Milian Rodriguez's continued detention is excessive in both nature and duration in relation to any legitimate governmental interest. He has been detained for nearly eight months without an individualized determination that detention is necessary to address flight risk or danger, and without a meaningful or realistic mechanism to obtain release.

78. Under these circumstances, Mr. Milian Rodriguez's ongoing confinement no longer serves a valid regulatory purpose and instead operates as punishment.

79. For these reasons, Mr. Milian Rodriguez's unjustified and prolonged detention violates substantive due process.

80. Accordingly, the Court should order Mr. Milian Rodriguez's immediate release.

PRAYER FOR RELIEF

WHEREFORE, Mr. Milian Rodriguez respectfully requests that this Court:

1) Assume jurisdiction over this action;

2) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243 directing Respondents to show cause within three days, or within such other expedited timeframe as the Court deems appropriate, why the Petition should not be granted;

3) Order Respondents, during the pendency of this action, not to transfer Mr. Milian Rodriguez outside the jurisdiction of the Western District of Washington in a manner that would defeat or impair this Court's jurisdiction or Mr. Milian Rodriguez's ability to litigate this Petition, or, in the alternative, to provide Mr. Milian Rodriguez and habeas counsel with at least 48 hours' advance written notice of any proposed transfer or removal;

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4) Grant expedited consideration of this Petition and any related request for interim relief, in light of the prolonged nature of Mr. Milian Rodriguez's detention and the legal errors warranting relief;

5) Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Milian Rodriguez from ICE custody at the Northwest ICE Processing Center;

6) In the alternative, order Mr. Milian Rodriguez's immediate release under reasonable conditions of supervision pending further order of the Court, including, as appropriate, participation in ICE's Alternatives to Detention program;

7) Declare that Respondents' re-detention of Mr. Milian Rodriguez without prior written notice, a meaningful opportunity to be heard, and an individualized determination by a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment and the requirements of 8 U.S.C. § 1357(a)(2);

8) Enjoin Respondents from re-detaining Mr. Milian Rodriguez absent written notice and a pre-deprivation hearing providing constitutionally adequate procedures, including that Respondents bear the burden of proving, by clear and convincing evidence, that detention is necessary to address a specific flight risk or danger to the community and that no less restrictive alternatives would suffice;

9) Award Mr. Milian Rodriguez reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

10) Grant such other and further relief as the Court deems just and proper.

Dated: 1/24/2026

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