

1 RENE L. VALLADARES
Federal Public Defender
2 Nevada State Bar No. 11479
3 ALLIE WILSON
Assistant Federal Public Defender
4 New York State Bar No. 5479597
200 S. Virginia Street, Suite 340
5 Reno, Nevada 89501
Allie_Wilson@fd.org
6 (775) 388-8451/Phone
7 (702) 388-6261/FAX

8 Attorneys for Petitioner Yancarlos Cartaya Benitez

9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 Yancarlos Cartaya Benitez,

13 Petitioner,

14 v.

15 John Mattos, NSDC Warden; Michael Bernacke,
Field Director, West Valley City Office of ICE
16 ERO; Todd Lyons, ICE Acting Director; Kristi
Noem DHS Secretary; Pam Bondi, U.S. Attorney
General,

17 Respondents.
18
19

Case No. 2:26-cv-00410-ART-BNW

First Amended Petition

20 **INTRODUCTION**

21 Mr. Cartaya is a Cuban citizen and an asylum seeker in the United States. After being
22 arrested, beaten, and threatened in Cuba for protesting the Cuban government, he arrived at the
23 U.S. border in 2019 to seek asylum. He followed all the rules. He timely filed a *pro se* asylum
24 application. Although he spent one year in immigration detention upon arrival, he was eventually
25 paroled into the United States and allowed to live in the community.

26 An immigration judge denied Mr. Cartaya's asylum application. Mr. Cartaya timely
27 appealed *pro se* to the Board of Immigration Appeals, which summarily affirmed the denial. He

1 then timely appealed to the Ninth Circuit. The Ninth Circuit appointed *pro bono* counsel and
2 ordered a stay of removal pending the appellate proceedings. Mr. Cartaya's *pro bono* counsel
3 timely filed an opening brief. The government delayed filing its answer four times before
4 engaging in mediation and moving to administratively close the case. The administrative closure
5 left the stay of removal in place, and, while it allowed either party to later reopen the appeal, it
6 allowed Mr. Cartaya to live in the community. For five years, Mr. Cartaya lived in Las Vegas.
7 He had a child. Most recently, he lived with his mother, his girlfriend, and his 1.5-year-old son.

8 In July 2025, Mr. Cartaya was arrested on criminal charges that were dismissed within a
9 month. However, when he was released, he was taken into ICE custody, on or around August 25,
10 2025. Mr. Cartaya has sat in ICE custody for nearly seven months. He has never seen any judge.
11 He has never had any opportunity to argue for his release.

12 It was not until November 2025 that the government even reopened Mr. Cartaya's appeal.
13 In other words, for the first three months Mr. Cartaya spent in detention, there were no active
14 immigration proceedings against him. The government had agreed to allow him to live at liberty
15 in the United States for years. It was on the government's motion that the case was
16 administratively closed. Then, the government changed its mind, re-detained him, gave him no
17 opportunity to argue for his release, and did not even take any steps at all to resolve the
18 immigration case against Mr. Cartaya. The government has since taken one step to resolve the
19 appeal by moving to reopen the appeal, on November 17, 2025. Yet, the government has failed
20 to take any further steps, by filing the answering brief it owes the Ninth Circuit or even by
21 seeking a deadline for its briefing. That appeal continues to sit stagnant.

22 Mr. Cartaya should be released. Release is the only appropriate remedy in light of this
23 egregious government conduct. In the alternative, the Court should order the immigration court
24 to hold a bond hearing at which the government bears the burden of proving by clear and
25 convincing evidence that Mr. Cartaya is a flight risk or a danger to the community.

26 JURISDICTION AND VENUE

27 This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (granting general habeas
authority to district courts); Art. 1 § 9, cl. 2 of the U.S. Constitution (the "Suspension Clause");

1 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 2201, 2202 (Declaratory
2 Judgment Act).

3 Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging
4 the lawfulness of their detention. *See e.g. Zadvydas v. Davis*, 533 U.S. 678 (2001). Federal courts
5 also have federal question jurisdiction, through the Administrative Procedure Act (“APA”) to
6 “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion,
7 or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable in
8 habeas. 5 U.S.C. § 703. The APA affords a right of review to a person who is “adversely affected
9 or aggrieved by agency action.” 5 U.S.C. § 702.

10 Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. §
11 1391(b)(2) and (e)(1) because Petitioner is detained within this district at Nevada Southern
12 Detention Center.

13 Accordingly, Petitioner’s habeas petition is properly before this Court.

14 **PARTIES**

15 Yancarlos Cartaya Benitez is a native and citizen of Cuba who sought asylum at the U.S.
16 border in 2019. He is currently detained at the Nevada Southern Detention Center in Pahrump,
17 Nevada.

18 John Mattos is the warden of Nevada Southern Detention Center. Mattos, in his official
19 capacity, is the immediate custodian of Mr. Cartaya.

20 Michael Bernacke is the Field Director of the West Valley City ICE Enforcement and
21 Removal Operations, which has jurisdiction of enforcement and removal operations over
22 detention facilities in Nevada, including Nevada Southern Detention Center where Mr. Cartaya is
23 detained. Bernacke, in his official capacity, is a legal custodian of Mr. Cartaya.

24 Todd Lyons is the Acting Director of ICE, which is responsible for administering and
25 enforcing immigration laws, including the detention and removal of immigrants. Lyons, in his
26 official capacity, is a legal custodian of Mr. Cartaya.

27 Kristi Noem is the Secretary of the Department of Homeland Security (DHS), which
oversees ICE. Noem, in her official capacity, is the ultimate legal custodian of Mr. Cartaya.

1 Pam Bondi is the Attorney General of the United States. She oversees the immigration
2 court system, which is housed within the Executive Office for Immigration Review (EOIR) and
3 includes all immigration courts and the Board of Immigration Appeals (BIA). She is named in
4 her official capacity.

5 EXHAUSTION

6 In habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.
7 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential
8 exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of
9 administrative remedies would be a futile gesture, irreparable injury will result, or the administrative
10 proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)
11 (citation modified)).

12 As addressed below, Mr. Cartaya has had no opportunity to seek bond. He was detained on or
13 around August 25, 2025, when there were no open immigration proceedings against him. There
14 continued to be no open immigration proceedings against him until November 17, 2025. His
15 immigration case is in the Ninth Circuit, which does not have jurisdiction to consider his custody
16 determination. While detained for the last seven months, Mr. Cartaya has never seen any judge.

17 Exhaustion is satisfied here because no other forum exists in which Petitioner can raise his
18 claims. Requiring exhaustion would be futile. *See, e.g., Am.-Arab Anti-Discrimination Comm. v.*
19 *Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because the
20 agency does not have jurisdiction to review” constitutional claims). Meanwhile, Petitioner will
21 “suffer irreparable harm if unable to secure immediate judicial consideration of his claim.” *McCarthy*
22 *v. Madigan*, 503 U.S. 140, 147 (1992), *superseded by statute*, Prison Litigation Reform Act of 1997,
23 42 U.S.C. § 1997e(a).
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STATEMENT OF FACTS¹

Mr. Cartaya is a Cuban citizen. He left Cuba in 2019 after he was beaten, detained, and received death threats for publicly protesting the Cuban regime. He crossed the U.S. border on a commercial bus, and he sought asylum at the border. He was detained in Florence, AZ for approximately one year while his asylum application was pending. He was then paroled into the United States. He was initially issued an ankle monitor, which was removed several months later. Mr. Cartaya was at liberty in the United States for approximately five years before he was redetained on or around August 25, 2025.

An immigration judge denied Mr. Cartaya's *pro se* asylum application. He appealed to the Board of Immigration Appeals ("BIA"), and the BIA summarily affirmed the IJ's denial.

Mr. Cartaya appealed to the Ninth Circuit. *See Yancarlos Cartaya v. Merrick Garland*, Case No. 20-70129 (9th Cir. 2020). The Ninth Circuit found sufficient merit to appoint *pro bono* counsel and to issue a stay of removal. *Id.*, ECF No. 10. Mr. Cartaya's *pro bono* counsel filed an opening brief on November 30, 2020. *Id.*, ECF No. 16. The government sought two extensions of time to file its answer and twice filed requests to hold the appellate proceedings in abeyance. *Id.*, ECF Nos. 23, 26, 30, 32. The parties then participated in mediation, as a result of which the government moved to administratively close the case in March 2022. *Id.*, ECF No. 38, 39, 40. This means of resolving cases was common at the time. The administrative closure left the stay of removal in place. *Id.* Both parties retained the right to reopen the case. *Id.*

As a result of the government's own motion, Mr. Cartaya continued living lawfully in the United States with a stay of removal preventing his deportation for an additional three years. He had a child, who is now 1.5 years old. Most recently, he was living with his mother, his girlfriend, and his child in Las Vegas.

In July 2025, Mr. Cartaya was arrested in Las Vegas on charges that were dismissed a month later. When he was released from criminal detention, however, he was detained by ICE

¹ These factual allegations are made on information and belief. The documents that could corroborate these facts are in the possession of the Federal Respondents.

1 and transferred to immigration detention. Mr. Cartaya has remained in immigration detention
2 since on or about August 25, 2025.

3 For the first three months of Mr. Cartaya's detention, there were no active immigration
4 proceedings against him. Mr. Cartaya's *pro bono* counsel was never even informed that ICE re-
5 detained Mr. Cartaya. Despite detaining him in August 2025, the government did not move to
6 reopen his appellate proceedings until November 17, 2025. *Id.* The government, therefore,
7 detained him despite having itself moved to administratively close his appeal and without taking
8 steps to reopen his appeal. The government has taken no further steps to conclude the appellate
9 proceedings. The next step in the appeal is the government's answering brief. The government
10 has done nothing, not even request a briefing schedule. There are no deadlines in the appellate
11 matter.

12 Mr. Cartaya has sat in immigration detention for nearly seven months. He has not seen a
13 judge. He has had no opportunity to argue for his release from detention.² His immigration
14 proceedings are in the Ninth Circuit, and, even in the best case scenario, his appeal would take at
15 least another year to resolve. And yet, in the last seven months Mr. Cartaya has spent detained,
16 the government has done nothing to further the appellate process.

17 CLAIMS FOR RELIEF

18 **Fifth Amendment (Substantive Due Process): Release is the appropriate remedy because**
19 **Mr. Cartaya's prolonged detention due to government inaction is an egregious violation of**
20 **his Fifth Amendment substantive due process rights.**

21 Freedom from detention "lies at the heart of liberty" protected by the Due Process
22 Clause. *Zadvydas*, 533 U.S. at 690. When, as here, a noncitizen poses no flight risk or danger to
23 the community, immigration detention serves no legitimate government purpose and becomes
24 impermissibly punitive, violating a person's substantive due process rights. *See Jackson v.*
25 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the

26 ² Mr. Cartaya received a letter from ICE that seems to pertain to his custody.
27 However, the letter is in English, and Mr. Cartaya does not speak any English. Undersigned
counsel has been unable to review the letter, as it is in Mr. Cartaya's possession at the detention
center.

1 government's interests in preventing flight and danger); *see also Valencia Zapata v. Kaiser*,
2 2025 WL 2741654, at *11-12 (N.D. Cal. Sep. 26, 2025) (holding that a similarly situated
3 petitioner demonstrated serious questions going to the merits of their substantive due process
4 claim); *Leiva Flores v. Albarran*, 2025 WL 3228306, at *5 (N.D. Cal. Nov. 19, 2025) (same);
5 *Bautista Pico v. Noem*, 2025 WL 3295382, at *3 (N.D. Cal. Nov. 26, 2025) (same).

6 In considering whether prolonged detention under the statutes authorizing immigration
7 detention violates substantive due process, courts have considered: (1) the length of detention
8 and whether it is excessive in relation to its regulatory purpose; (2) the government's
9 contribution to any delay; (3) the evidence supporting any finding of flight risk or
10 dangerousness; (4) whether the government's interests in assuring future appearances or
11 protecting the public could be accomplished through alternatives to detention; and (5) the
12 conditions of detention. *See, e.g., Doe v. Becerra*, 732 F.Supp.3d 1071, 1080 (N.D. Cal. 2024);
13 *Doe v. Chestnut*, Case No. 1:24-cv-943, 2025 WL 3240400, at *5 (E.D.Cal. Nov. 20, 2025).³

14 First, Mr. Cartaya has spent seven months in immigration detention entirely because of
15 government delay. Mr. Cartaya timely appealed the denial of his asylum application to the Ninth
16 Circuit, and timely filed an opening brief in November 2020 with the assistance of court-
17 assigned *pro bono* counsel. The government sought two continuances of its deadline for its
18 answering brief, moved for two additional periods of abeyance, voluntarily entered mediation,
19 and moved to administratively close the case rather than to continue litigating Mr. Cartaya's
20 appeal. Then, in August 2025, the government re-detained Mr. Cartaya, but the government did
21 not reopen the appeal for another three months—i.e. Mr. Cartaya sat in immigration detention for
22 three months with no active immigration proceedings against him. The government then
23 reopened the appeal but has yet to file an answering brief or to take any additional steps to

24 ³ Presumably, given the procedural history, either ICE or DHS granted Mr. Cartaya
25 parole, which facilitated his release from immigration detention in 2019 and allowed him to
26 remain in the United States at liberty while his asylum application was pending—at least, until
27 ICE re-detained him in August 2026 without any legal process. Given that he was originally
released and has no criminal record that would statutorily bar his release, his detention now falls
under 18 U.S.C. § 1226(a), under which detention is discretionary.

1 litigate the appeal, such as by setting a new briefing schedule to impose a deadline on the
2 government's answering brief.

3 At this point, Mr. Cartaya's detention is indefinite. Resolving an appeal could take years
4 even if the government diligently pursues it. And the government is anything but diligently
5 pursuing this appeal.

6 Second, there is no evidence supporting a finding of flight risk or dangerousness. Mr.
7 Cartaya was originally released in 2019—i.e. a determination was made that he poses neither a
8 flight risk nor a danger to the community. And, in 2022, the government agreed to
9 administratively close his case, allowing Mr. Cartaya to remain at liberty in the United States
10 indefinitely. Surely, at that point, the government maintained its position that Mr. Cartaya was
11 neither a flight risk nor dangerous. Although Mr. Cartaya has a prior criminal arrest, upon
12 information and belief, he has accrued no criminal record while in the United States. And it
13 remains in Mr. Cartaya's interest, as it did when he was originally released, to continue pursuing
14 his appeal and secure a grant of asylum. In fact, he has an even greater interest than he did upon
15 his release in 2019 as he now has a U.S. citizen son.

16 As the Ninth Circuit has held, "the government has no legitimate interest in detaining
17 individuals who have been determined not to be a danger to the community and whose
18 appearance at future immigration proceedings can be reasonably ensured by a lesser bond or
19 alternative conditions." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). A government
20 agency determined that Mr. Cartaya should be released pending adjudication of his asylum
21 claim. He has complied with all conditions of release.⁴ Because the government cannot show that
22 Mr. Cartaya's re-detention would advance the only accepted rationales for civil detention—flight
23 risk or danger—Mr. Cartaya has demonstrated his re-detention would violate his substantive due
24 process rights. *Zadvydas*, 533 U.S. at 690.

25
26
27 ⁴ Although Mr. Cartaya was arrested, those criminal charges were dropped within one month.

1 Release is the appropriate remedy for a violation of Mr. Cartaya's substantive due
 2 process rights. The federal habeas corpus statute "does not limit the relief that may be granted to
 3 discharge of the applicant from physical custody." *Carafas v. LaVallee*, 391 U.S. 234, 238
 4 (1968). "Its mandate is broad with respect to the relief that may be granted." *Id.* "It provides that
 5 '[t]he court shall ... dispose of the matter as law and justice require.' " *Id.* (quoting 28 U.S.C. §
 6 2243). *See also Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding "that the traditional
 7 function of the writ is to secure release from illegal custody").

8 "Numerous courts across the country have ordered the release of individuals stemming
 9 from ICE's illegal detention." *Meza v. Lewis*, Case No. 4:25-cv-171-RGJ, 2026 WL 92102, at
 10 *12 (W. D. Ky. Jan. 13, 2026) (collecting cases); *see also, e.g., Doe v. Chestnut*, 2025 WL
 11 3240400, at *23 (granting release after finding detention violated substantive due process rights);
 12 *Alfaro Herrera v. Baltazar*, Case No. 1:25-cv-04014, 2026 WL 91470, at *14 (D. Col. Jan. 13,
 13 2026) (same).

14 **Fifth Amendment (Procedural Due Process): Mr. Cartaya's prolonged detention without a**
 15 **bond hearing violates his procedural due process rights under the Fifth Amendment of the**
 16 **United States Constitution.**

17 In the alternative, Mr. Cartaya's re-detention violates his procedural due process rights
 18 under the Fifth Amendment to the United States Constitution, necessitating a bond hearing
 19 before a neutral arbiter. "The Fifth Amendment's Due Process Clause forbids the Government to
 20 'depriv[e]' any 'person ... of ... liberty ... without due process of law.' Freedom from
 21 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
 22 the heart of the liberty that Clause protects." *Zadvydass*, 533 U.S. at 690 (citing *Foucha v.*
 23 *Louisiana*, 504 U.S. 71, 80 (1992)). "Arbitrary civil detention is not a feature of our American
 24 government. '[L]iberty is the norm, and detention prior to trial or without trial is the carefully
 25 limited exception.'" *Rodriguez v. Marin*, 909 F.3d 252, 256–57 (9th Cir. 2018) (quoting *United*
 26 *States v. Salerno*, 481 U.S. 739, 755 (1987)).

27 In considering the issue of prolonged detention in ICE custody pursuant to 8 U.S.C.
 §§1225(b), 1226(a), and 1226(c), the Ninth Circuit has expressed "grave doubts that any statute
 that allows for arbitrary prolonged detention without any process is constitutional or that those

1 who founded our democracy precisely to protect against the government's arbitrary deprivation
2 of liberty would have thought so." *Rodriguez*, 909 F.3d at 256. Addressing a similar issue,
3 Justice Kennedy, concurring in *Demore v. Kim*, 538 U.S. 510, 532 (2003), pronounced that
4 "since the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent
5 resident alien such as respondent could be entitled to an individualized determination as to his
6 risk of flight and dangerousness if the continued detention became unreasonable or unjustified."
7 Other circuits have similarly determined that unreasonably prolonged detention violates a
8 noncitizen's due process rights. *See Black v. Decker*, 103 F.4th 133 (2d Cir. 2024); *Reid v.*
9 *Donelan*, 17 F.4th 1, 7 (1st Cir. 2021).

10 Mr. Cartaya's continued detention without a bond hearing is the type of arbitrary
11 deprivation of liberty the Due Process Clause of the Constitution protects against. *See Rodriguez*,
12 909 F.3d at 257 ("The Fifth Amendment says that '[n]o person shall be . . . deprived of life,
13 liberty, or property without due process of law.' An alien is a 'person.' To hold him without bail
14 is to deprive him of bodily 'liberty.' And, where there is no bail proceeding, there has been no
15 bail-related 'process' at all. The Due Process Clause—itsself reflecting the language of the Magna
16 Carta—prevents arbitrary detention." (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 330 (2018)
17 (Breyer, J., dissenting) (internal citations omitted)).

18 There is no precedent from the Supreme Court or the Ninth Circuit on the question of
19 exactly when prolonged mandatory detention in immigration custody becomes unconstitutional.
20 However, as outlined above, both the Supreme Court and the Ninth Circuit have suggested that,
21 at some point, continued detention during removal proceedings without a bond hearing will run
22 afoul of the due process guarantee of the Constitution. Furthermore, "[n]early all district courts
23 that have considered the issue agree that prolonged mandatory detention pending removal
24 proceedings, without a bond hearing, will—at some point—violate the right to due process."
25 *Vargas v. Wolf*, No. 2:19-cv-02135-KJD-DJA, 2020 WL 1929842, at *7 (D. Nev. Apr. 21, 2020)
26 (quoting *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019), appeal
27 dismissed, 2019 WL 5885047 (9th Cir. Oct. 9, 2019)); *see also De Leon v. Mayorkas*, No. 2:23-
cv-02073-GMN-VCF, 2024 WL 343437 (D. Nev. Jan. 29, 2024); *Ortiz-Castillo v. United States*,

1 No. 2:23-cv-01485-RFB-MDC, 2024 WL 756075 (D. Nev. Feb. 23, 2024); *Arechiga v.*
2 *Archambeault*, No. 2:23-cv-00600-CDS-VCF, 2023 WL 5207589 (D. Nev. Aug. 11, 2023)
3 (acknowledging that prolonged mandatory detention in immigration custody without a bond
4 hearing can violate the Due Process Clause).

5 Courts in this circuit have used various legal tests to determine whether due process
6 compels a bond hearing in a particular case. Many courts, including in the District of Nevada,
7 have used the test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), to evaluate whether an ICE
8 detainee's continued detention without a bond hearing has become unconstitutional. *See, e.g., De*
9 *Leon*, 2024 WL 343437. Recognizing that "due process is flexible and calls for such procedural
10 protections as the particular situation demands," *Mathews* lays out a three-factor test to analyze
11 whether a claimant has been provided with adequate due process. *Ortiz-Castillo*, 2024 WL
12 756075, at *2 (citing *Mathews*, 424 U.S. at 333). These familiar factors are: (1) "the private
13 interest that will be affected by the official action"; (2) "the risk of erroneous deprivation of such
14 interest through the procedures used, and probable value, if any, of additional or substitute
15 procedural safeguards"; and (3) "the Government's interest, including the function involved and
16 the fiscal and administrative burdens that the additional or substitute procedural requirements
17 would entail." *Mathews*, 424 U.S. at 334–35.

18 The *Mathews* factors provide an appropriate framework to analyze the constitutionality
19 of Mr. Cartaya's continued detention. As applied to his case, the factors this Court should
20 consider are: (1) Mr. Cartaya's liberty interest; (2) the risk that Mr. Cartaya is erroneously
21 deprived of his liberty due to his continued mandatory detention without a bond hearing, and the
22 probable value of a bond hearing in ensuring that he is not erroneously deprived of his liberty;
23 and (3) the government's interest in detaining Mr. Cartaya without affording him a bond hearing,
24 and the fiscal and administrative burdens that affording him a bond hearing would entail.

25 **1. Mr. Cartaya's liberty interest**

26 The first *Mathews* factor weighs strongly in favor of Mr. Cartaya because he was at
27 liberty before being re-detained by ICE with no opportunity to argue for his release in a bond
hearing. Courts routinely recognize that an individual's liberty interest is heightened when the

1 individual was released and later re-detained. *See, e.g., Guillermo M.R. v. Kaiser*, 791 F.Supp.3d
2 1021, 1030 (N.D.Ca. 2025); *Zapata*, 801 F.Supp.3d at 932 (collecting cases).

3 Mr. Cartaya received a decision in 2019 that he was neither a flight risk nor a danger. He
4 was released into the community. He complied with the conditions of his release. He wore an
5 ankle monitor, until that ankle monitor was removed after only a few months. He filed timely
6 appeals. The government chose to close administratively close his appeal, demonstrating a
7 renewed determination that Mr. Cartaya could remain at liberty in the community. And then, in
8 2025, the government changed its mind, re-detained Mr. Cartaya, and gave him no opportunity to
9 argue for his release.

10 Even more egregious, for the first three months of Mr. Cartaya's detention, the
11 government took no steps to resolve Mr. Cartaya's appeal. In November 2025, it took the step of
12 moving to reopen the appellate proceedings. Now, in March 2026, the government has taken no
13 additional steps to resolve Mr. Cartaya's appeal. The ball is in the government's court. It is the
14 government's answering brief that would further a resolution.

15 Yet, as Mr. Cartaya languishes in immigration detention, the government does nothing.

16 **2. The risk of error**

17 The second Mathews factor weighs in favor of Mr. Cartaya because he has yet to see any
18 individual who could make a custody determination and there is a high probability that a neutral
19 arbiter would find him to be neither a flight risk nor a danger. "The second Mathews factor is
20 'the risk of an erroneous deprivation of [Mr. Cartaya's liberty] interest through the procedures
21 used, and the probable value, if any, of additional or substitute procedural safeguards.'" *See*
22 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at
23 335). In this analysis, the Court looks at "the existing agency procedures" and whether they
24 sufficiently protect the petitioner's liberty interest and mitigate the risk of erroneous deprivation.
25 *Id.* For example, in evaluating the risk of erroneous deprivation in the context of noncitizen
26 detention, the Ninth Circuit has looked to whether the detainee has a statutory right to procedural
27 protections, such as individualized custody determinations and the right to seek additional bond
hearings throughout detention. *See id.* at 1209–10 (finding a small risk of erroneous deprivation

1 where petitioner was detained under a different provision and thus received numerous procedural
 2 protections, including individualized custody determinations and right to seek additional bond
 3 hearings).

4 Here, the risk of an erroneous deprivation of Mr. Cartaya's liberty interest is high where
 5 he has not received any bond or custody determination hearing. That point cannot fairly be
 6 disputed. As one court aptly put it, there is "immense benefit to be gleaned—protection against
 7 arbitrary and prolonged detention during removal proceedings—in exchange for the minimal
 8 fiscal and administrative burden of a bond hearing." *Hong v. Mayorkas*, No. 20-CV-01784-LK,
 9 2022 WL 1078627, at *5 (W.D. Wash. Apr. 11, 2022). "[T]he probable value of additional
 10 procedural safeguards, i.e., a bond hearing, is [also] high, because Respondents have provided
 11 virtually no procedural safeguards at all." *A.E. v. Andrews*, 2025 WL 1424382, at *5.

12 **3. The United States' interest**

13 The third and final Mathews factor also weighs in Mr. Cartaya's favor. While it may be
 14 true that the government "has a strong interest in preventing aliens from 'remain[ing] in the
 15 United States in violation of our law'" and "has an obvious interest in 'protecting the public from
 16 dangerous criminal aliens,'" those interests are not the ones implicated by this petition. *See*
 17 *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518, 515). "It is important to
 18 stress that the government interest at stake here is not the continued detention of Petitioner, but
 19 the government's ability to detain him without a bond hearing." *Singh v. Garland*, No. 1:23-CV-
 20 01043-EPG-HC, 2023 WL 5836048, at *6 (E.D. Cal. Sept. 8, 2023) (internal quotations
 21 omitted); *see also Henriquez v. Garland*, No. 5:22-cv-00869-EJD, 2022 WL 2132919, at *5
 22 (N.D. Cal. June 14, 2022) ("Although the Government has a strong interest in enforcing the
 23 immigration laws and in ensuring that lawfully issued removal orders are promptly executed, the
 24 Government's interest in detaining Petitioner without providing an individualized bond hearing
 25 is low.").

26 The government's interest in continuing to detain Mr. Cartaya without a bond hearing is
 27 minimal, especially because "[c]ourts generally have found that the cost of providing a bond
 hearing is relatively minimal." *Eliazar G.C. v. Wofford*, No. 1:24-CV-01032-EPG-HC, 2025 WL

1 711190, at *8 (E.D. Cal. Mar. 5, 2025); *see also Singh v. Barr*, 400 F. Supp. 3d 1005, 1021–22
2 (S.D. Cal. 2019) (“Here, given the ‘minimal cost of conducting a bond hearing, and the ability of
3 the IJ to adjudicate the ultimate legal issue as to whether [petitioner’s] continued detention is
4 justified, the Court concludes that the government’s interest is not as weighty as
5 [petitioner’s].”). This is particularly true where, as here, the government previously made a
6 decision that Mr. Cartaya was neither a flight risk nor dangerous when it originally released him
7 from immigration detention. *See Aviles-Mena v. Kaiser*, 2025WL 2578215, at *6 (N.D.Cal. Sept.
8 5, 2025) (“the government’s interest in re-detaining Aviles-Mena without a hearing is low,
9 because ICE previously made the determination to release him, and there is no evidence in the
10 record of any changed circumstances that might cause ICE to reconsider its parole
11 determination”). As a result, the third factor weighs in Mr. Cartaya’s favor.

12 Again, the most appropriate remedy to these constitutional violations is release. The
13 government was constitutionally required to provide Mr. Cartaya with a hearing prior to his re-
14 detention to determine whether he was a flight risk or dangerous. The government failed to do so
15 and held Mr. Cartaya for seven months before Mr. Cartaya—previously unrepresented in this
16 matter—sought relief *pro se* in the federal courts. Many courts across the country have granted
17 release in similar circumstances when the government has repeatedly illegally detained
18 noncitizens. *See, e.g., Qasemi v. Francis*, Case No. 25-cv-10029, 2025 WL 3654098, at *14
19 (S.D.N.Y. Dec. 17, 2025) (release is the appropriate remedy for a procedural due process
20 violation following re-detention of an asylum seeker); *Moctezuma Macias v. Henkey*, No. 1:25-
21 CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government’s
22 repeated use of unlawful detention policies across the country, causing petitioners to “sit in jail
23 waiting for a judicial decision,” the court would order immediate release instead of causing
24 additional delay through a bond hearing); *Garcia Covarrubias v. Holston*, Case No. 2:25-cv-
25 02445-RFB-DJA, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026) (ordering release in light of the
26 government’s repeated erroneous misinterpretation of 18 U.S.C. § 1226(a) despite overwhelming
27 rebuke by the federal courts).

1 In the alternative, Mr. Cartaya seeks an order from this Court that the immigration court
 2 must hold a bond hearing within two business days of the Court's order in which the government
 3 must bear the burden of proving Mr. Cartaya is a flight risk or a danger to the community by
 4 clear and convincing evidence. If the government cannot do so, the immigration court must
 5 release him.

6 **PRAYER FOR RELIEF**

7 Accordingly, Yancarlos Cartaya Benitez respectfully requests that this Court:

8 1. Declare that Mr. Cartaya's continued detention violates his substantive and
 9 procedural due process rights under the Fifth Amendment to the U.S. Constitution, and order that
 10 Mr. Cartaya be promptly released; or, in the alternative,

11 2. Order that the immigration court promptly schedule a bond hearing for Mr.
 12 Cartaya at which the government bears the burden of proving flight risk or dangerousness by
 13 clear and convincing evidence; and

14 3. Grant such other and further relief as, in the interests of justice, may be
 15 appropriate.⁵

16 Dated March 11, 2026.

17 Respectfully submitted,

18 Rene L. Valladares
 19 Federal Public Defender

20 /s/ Allie Wilson

21 Allie Wilson
 22 Assistant Federal Public Defender
 23
 24
 25

26 ⁵ Petitioner is amenable to receiving a ruling on the papers and is willing to waive a
 27 hearing, unless this Court believes that relief on this claim is not warranted, in which case
 Petitioner requests a chance to be heard in oral argument.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the facts alleged in this petition are true and correct to the best of counsel's knowledge, information, and belief.

Dated March 11, 2026.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Allie Wilson

Allie Wilson
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on March 11, 2026. I personally served a true and correct copy of the first amended petition by CM/ECF to the following individuals:

Virginia T. Tomova
US Attorney's Office, District of Nevada
501 Las Vegas Blvd. South
Las Vegas, NV 89101
Email: virginia.tomova@usdoj.gov

Ashlee Hesman
Struck Love Acedo, PLC
3100 West Ray Road
Suite 300
Chandler, AZ 85226
Email: ahesman@strucklove.com

I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following people:

Yancarlos Cartaya Benitez Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89060	John Mattos, Warden Nevada Southern Detention Center 2190 E Mesquite Avenue Pahrump, NV 89060
Pam Bondi Attorney General U.S. Department of Justice 950 Pennsylvania Ave, NW, Washington, DC, 20530	Todd Lyons 500 12th St SW Washington, DC 20536
Kristi Noem Secretary of the Department of Homeland Security 2707 Martin Luther King Jr. Ave SE, Washington, DC 20528	Michael Bernanke Salt Lake City ICE Field Office Director 2975 Decker Lake Drive, Ste 100 West Valley City, UT 84119
Sigal Chattah First Assistant, District of Nevada 501 Las Vegas Blvd, Ste 1100 Las Vegas, NV 89101 Email: Sigal.Chattah@usdoj.gov	

/s/ Katrina Burden

Employee of the Federal Public Defender

