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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Gilda Garcia REYNOSO

Petitioner-Plaintiff,

vs.

Jeremy CASEY, in his official capacity
as Warden of Imperial Regional
Detention Center in Imperial, California;
Markwayne MULLIN, in his official
capacity as Secretary of Homeland
Security, Patrick DIVVER, Field Office
Director of San Diego Office of
Detention and Removal; Todd LYONS,
in his official capacity as Acting Director
of ICE; Daren MARGOLIN is the
Acting Director of EOIR; and Todd
BLANCHE, in his capacity as acting
U.S. Attorney General

Respondent-Defendants.

Case No.: '26CV3024 JLS DDL

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

Agency File No.:



INTRODUCTION

1. Petitioner, Gilda Garcia REYNOSO, entered the United States without inspection near McAllen, Texas on or about January 10, 2012. For years, she provided for her 3 children, two of which are US citizens, working as a hotel maintenance worker, agricultural field worker and selling food from her home. In 2025, she was falsely accused of stealing food at a grocery store in Jacksonville, Florida. The charges were dropped but due to help lack of lawful immigration status she was transferred to ICE custody on May 28, 2025.
2. Petitioner has been detained in at least 5 different immigration detention facilities, in over 4 different states; California, Arizona, Florida, and Texas.
3. Petitioner has been in immigration custody for over 11 months now and no neutral decisionmaker has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk.
4. Petitioner's prolonged detention without a hearing on danger, and flight risk violates the Due Process Clause of the Fifth Amendment.
5. Petitioner therefore respectfully requests that this Court 1) Issue a writ of habeas corpus, 2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the United States District Court for the Southern District of California pending the resolution of this case, 3) Order Respondents to

1 immediately release Petitioner from immigration detention; 4) Alternatively,
2 conduct an immediate bond hearing where DHS bears the burden of
3 justifying Petitioner's continued detention by clear and convincing evidence;
4 5) Award reasonable attorney's fees and costs pursuant to the Equal Access
5 to Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412; 6) Grant such further relief
6 as the Court deems just and proper.
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8

9 10 **STATEMENT OF FACTS**

- 11 6. Petitioner came to the United States in January 2012 without inspection near
12 McAllen, Texas. Petitioner has lived in Texas and Florida where she has
13 raised and provided for her three children – two of which are US citizens.
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15 7. In the 14 years she resided in the US, Petitioner has worked as an
16 agricultural worker, hotel maintenance staffer and cook in order to provide
17 for her family.
18
19 8. On April 30, 2025, Petitioner was arrested for Petty theft, after
20 being falsely accused of stealing \$40.62 worth of groceries at a Walmart in
21 Florida. *See* Exhibit C at 2. Following an investigation, the charges were
22 dismissed "Nolle Prosequi" on May 28, 2025. *See* Exhibit D at 1.
23
24 Nevertheless, Petitioner was transferred to ICE custody because she did not
25 have lawful status in the United States.
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1 9. On May 28, 2025, Petitioner was detained at an immigration detention
2 facility in Florida, and since has been transferred to immigration detention
3 facilities in 4 different states. Petitioner is currently detained at the Imperial
4 Regional Detention Center, in Calexico, California.

6 10. On June 9, 2025, DHS issued a Notice to Appear (NTA), initiating 8 USC §
7 1229a (INA § 240) removal proceedings. *See* Exhibit E.

9 11. Petitioner's first scheduled Master Calendar hearing occurred on June 26,
10 2025. Over the course of 5 months, Petitioner had at least two Master
11 Calendar Hearings. She appeared with counsel at each hearing.

13 12. On October 24, 2025, with the assistance of an attorney, Petitioner filed an I-
14 589 Application for Asylum, Withholding of Removal and Protection under
15 the Convention Against Torture. Petitioner also applied for Cancellation of
16 Removal under INA § 240A(b)(1).

18 13. The basis of her asylum application was persecution in Guatemala by her ex-
19 partner who severely beat her and threatened her children for years in the
20 United States before he was deported.

22 14. On November 21, 2025 an immigration judge denied petitioners applications
23 for relief. *See* Exhibit G.

25 15. On January 20, 2026 with the help of a different attorney, Petitioner filed an
26 appeal with the Board of Immigration Appeals (BIA). This petition is
27

1 pending resolution.

2 16. Immigration and Customs Enforcement (ICE) has detained Petitioner for
3 more than 11 months and yet she has not been provided with a bond hearing
4 before a neutral decisionmaker to determine whether her prolonged
5 detention is justified based on danger or flight risk.
6

7 17. Over the past several months, Immigration Judges throughout the country
8 have been denying bonds at habeas-mandated bond hearings based on “flight
9 risk” at concerning rates. *See Perez Velasquez v. Bondi*, No. 3:26-cv-01759-
10 GPC-DDL (S.D. Ca. Apr. 16, 2026), *Monroy Martinez v. Lyons*, No. 26-CV-
11 2173 JLS (AHG) (S.D. Ca. Apr. 17, 2026), *Said v. Noem*, No. 3:25-cv-938-
12 MOC, 2026 LX 47279 (W.D.N.C. Feb. 4, 2026); *Picado v. Hyde*, No. 26-cv-
13 065-JJM-PAS, 2026 LX 18501 (D.R.I. Feb. 9, 2026); *W.T.M. v. Bondi*, No.
14 2:25-cv-02428-RAJ-BAT, 2026 LX 50958, (W.D.Wash. Jan. 30, 2026). The
15 trend of constitutionally deficient bond hearings and the failure of many
16 Immigration Courts to consider the individual merits of each detainees’ bond
17 eligibility is a concerning trend.
18

19 18. Petitioner requests immediate release because a bond hearing at the Imperial
20 Immigration court would be futile.
21

22 CUSTODY

23 19. Petitioner is currently in Respondents’ legal and physical custody.
24

1 Respondents are detaining Petitioner at the Imperial Regional Detention
2 Center in Calexico, California. Management and Training Corporation
3 (MTC), a Utah-based private prison company, operates that facility.
4
5 Petitioner is under Respondents' and their agents' direct control.

6 JURISDICTION

7
8 20. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the
9 United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently
10 in Respondents' custody under the United States' color of authority, and
11 such custody violates the United States' Constitution, laws, or treaties. Its
12 jurisdiction is not limited by a petitioner's nationality, status as an
13 immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S.
14 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9,
15 cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus),
16 1651 (All Writs Act), 2241 (habeas corpus).
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19

20 21. Congress has preserved judicial review of constitutional challenges to
21 prolonged immigration detention. See *Jennings v. Rodriguez*, 583 U.S. 281
22 (2018) (holding that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of
23 challenges to prolonged immigration detention); see also *id.* at *327 (Breyer,
24 J., dissenting). ("8 U.S.C. § 1252(b)(9), . . . by its terms applies only with
25 respect to review of an order of removal") (internal quotation marks and
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27
28

1 brackets omitted).

2 22. Section 1252(f)(1) does not repeal this Court's authority to grant the relief
3
4 Petitioner seeks because, *inter alia*, Petitioner is in removal proceedings. See
5 8 U.S.C. § 1252(f)(1) (exempting claims by "an individual alien against
6 whom proceedings . . . have been initiated"); *Reno v. Am.-Arab Anti-*
7 *Discrimination Comm.*, 525 U.S. 471, 482 (1999) (Section 1252(f) "does not
8 extend to individual cases").
9

10 23. If Section 1252(f)(1) did bar the relief Petitioner seeks, it would violate the
11 Suspension Clause.
12

13 24. Moreover, 8 U.S.C. § 1252(g) does not strip this Court of authority to grant
14 relief. 8 U.S.C. § 1252(g) states that, with limited exceptions,
15

16 "no court shall have jurisdiction to hear any cause or claim by or on
17 behalf of any alien arising from the decision or action by the Attorney
18 General to commence proceedings, adjudicate cases, or execute
19 removal orders against any alien."
20

21 25. 8 U.S.C. § 1252(g) does not apply here because Petitioner is not challenging
22 the decision to commence proceedings. Instead, Petitioner challenges the
23 prolonged length of detention.
24

25 **REQUIREMENTS OF 28 U.S.C. § 2243**
26

27 26. The Court must grant the petition for writ of habeas corpus or issue an order
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1 to show cause (OSC) to Respondents “forthwith,” unless the petitioner is not
2 entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must
3
4 require Respondents to file a return “within three days unless for good cause
5 additional time, not exceeding twenty days, is allowed.” *Id.*

6 27. Courts have long recognized the significance of the habeas statute in
7
8 protecting individuals from unlawful detention. The Great Writ has been
9 referred to as “perhaps the most important writ known to the constitutional
10 law of England, affording as it does a swift and imperative remedy in all
11 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
12
13 (1963).

14 28. Habeas corpus must remain a swift remedy. Importantly, “the statute itself
15 directs courts to give petitions for habeas corpus ‘special, preferential
16 consideration to insure expeditious hearing and determination.’” *Yong v.*
17 *INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The
18 Ninth Circuit warned against any action creating the perception “that courts
19 are more concerned with efficient trial management than with the
20 vindication of constitutional rights.” *Id.*

21 22 23 24 VENUE

25
26 29. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
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1 484, 493- 500 (1973), venue lies in the United States District Court for the
2 Southern District of California, the judicial district in which Petitioner
3 currently is detained.
4

5 30.Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
6 Respondents are employees, officers, and agencies of the United States, and
7 because a substantial part of the events or omissions giving rise to the claims
8 occurred in the Southern District of California.
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11

12 EXHAUSTION OF ADMINISTRATIVE REMEDIES

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14 31.In habeas claims, exhaustion of administrative remedies is prudential, not
15 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A
16 court may waive the prudential exhaustion requirement if “administrative
17 remedies are inadequate or not efficacious, pursuit of administrative
18 remedies would be a futile gesture, irreparable injury will result, or the
19 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*,
20 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).
21
22

23 32.Immigration judges in this District claim to have no jurisdiction to conduct a
24 custody redetermination hearing as to individuals procedurally situated like
25 the Petitioner. Indeed, in contravention to the INA and long-standing
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precedent and practice, the Board of Immigration Appeals and Attorney General have deemed no noncitizen eligible for bond before an immigration judge---except for only noncitizens who entered the U.S. on a visa.

33.Exhausting administrative remedies by requesting release from ICE or an Immigration Judge is also futile because Respondents contend Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2). As such, the Respondents will not entertain any request to release Petitioner from custody on bond.

34.Moreover, statutory exhaustion requirements do not apply to Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that she needs to exhaust. See *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000).

35.Every day that Petitioner remains detained causes her harm that cannot be repaired. Petitioner suffers from anxiety, depression and other medical conditions that have gotten worse each day while under DHS custody. See Exhibit B. Her continued detention puts her physical and mental health at greater risk, further warranting a waiver of the prudential exhaustion

1 requirement.

2 **PARTIES**

3
4 36. Petitioner, Gilda Garcia Reynoso, is a noncitizen currently detained by
5 Respondents.

6 37. Petitioner is currently in Respondents' legal and physical custody at the
7 Imperial Regional Detention Center in Calexico, California. Management
8 and Training Corporation (MTC) a Utah corporation, operates that facility.

9
10 38. Respondent Markwayne MULLIN is the newly appointed Secretary of the
11 DHS and is named in his official capacity. DHS is the federal agency
12 encompassing ICE, which is responsible for the administration and
13 enforcement of the INA and all other laws relating to the immigration of
14 noncitizens. In his capacity as Secretary, Respondent MULLIN has
15 responsibility for the administration and enforcement of the immigration and
16 naturalization laws pursuant to section 402 of the Homeland Security Act of
17 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8
18 U.S.C. § 1103(a). Respondent MULLIN is the ultimate legal custodian of
19 Petitioner.

20
21 39. Respondent Jeremy CASEY is the Warden of the Imperial Regional
22 Detention Center where Petitioner is being held. Respondent Jeremy
23 CASEY oversees the day to-day operations of the Imperial Regional
24

1 Detention Center and acts at the Direction of Respondents Divver, Lyons
2 and Mullin. Respondent Eric ROKOSKY is a custodian of Petitioner and is
3 named in his official capacity.
4

5 40. Respondent Patrick DIVVER is the Acting Field Office Director of ICE in
6 San Diego, California and is named in his official capacity. ICE is the
7 component of DHS that is responsible for detaining and removing
8 noncitizens according to immigration law and oversees custody
9 determinations. In his official capacity, he is the legal custodian of
10
11 Petitioner.
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13 41. Respondent Todd M. LYONS is the Acting Director of ICE and is named in
14 his official capacity. Among other things, ICE is responsible for the
15 administration and enforcement of the immigration laws, including the
16 removal of noncitizens. In his official capacity as head of ICE, he is the legal
17
18 custodian of Petitioner.
19

20 42. Respondent Daren MARGOLIN is the Acting Director of EOIR and has
21 ultimate responsibility for overseeing the operation of the immigration
22 courts and the Board of Immigration Appeals, including bond hearings.
23 Executive Office for Immigration Review (EOIR) is the federal agency
24 responsible for implementing and enforcing the INA in removal
25 proceedings, including for custody redeterminations in bond hearings. He is
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1 sued in his official capacity.

2 43. Respondent Todd BLANCHE is the Attorney General of the United States
3 and the most senior official in the U.S. Department of Justice (DOJ) and is
4 named in his official capacity. He has the authority to interpret the
5 immigration laws and adjudicate removal cases. The Attorney General
6 delegates this responsibility to the Executive Office for Immigration Review
7 (EOIR), which administers the immigration courts and the BIA.
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10 11 **LEGAL FRAMEWORK AND ANALYSIS**

12 13 **A) Substantive Due Process Constraints on Immigration Detention**

14
15 44. The Due Process Clause of the Fifth Amendment protects all “person[s]”
16 from deprivation of liberty “without due process of law.” U.S. Const.
17 amend. V.
18

19 45. Due process extends to “all ‘persons’ within the United States, including
20 [non-citizens], whether their presence here is lawful, unlawful, temporary, or
21 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)
22

23 46. While the immigration laws afford ICE discretion over its decisions to
24 arrest, detain, and revoke prior release decisions, those decisions are
25 nonetheless constrained by the laws Congress has enacted and the
26 requirements of the Constitution, including the Due Process Clause. See
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generally *Id.* at 690; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

47. This is because “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

48. Immigration detention only comports with Due Process when it furthers the government’s goals of “ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community.” *Id.* ICE detention violates substantive Due Process where it is not justified by flight risk or danger concerns. See *id.*

49. For that reason, ostensibly “nonpunitive” detention pursuant to a blanket policy under which the agency claims authority to arrest and detain all noncitizens who it alleges are not lawfully present in the United States, without regard for whether they are a flight risk or danger, would violate the Due Process Clause. See *id.* So too would ICE detention for the purposes of meeting quotas, punishment, deterring immigration, or encouraging voluntary deportation. *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015) (observing that “[i]n discussing civil commitment more broadly, the [Supreme] Court has declared such ‘general deterrence’ justifications impermissible” and finding likely contrary to Due Process a

1 deterrence policy pursuant to which DHS detained “one particular
2 individual” for purposes of “sending a message of deterrence to other[s]
3 who may be considering immigrating. (citing *Kansas v. Crane*, 534 U.S.
4 407, 412 (2002)).

5
6 50. All such detentions would be unlawful because they bear no reasonable
7 relation to a legitimate government purpose. See *id.*; *Demore v. Kim*, 538
8 U.S. 510, 532–33 (Kennedy, J., concurring); *Kansas v. Hendricks*, 521 U.S.
9 346, 361–62 (1997); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).
10

11
12 **B. Procedural Due Process Constraints When Detained Under**
13 **8 USC § 1225(b) and § 1226 (c)**

14 51. Procedural Due Process ensures that no persons are deprived of their liberty
15 absent a fair process. 8 U.S.C. § 1225(b)(1) states that “[i]f an immigration
16 officer determines that an alien...who is arriving in the United States or is
17 described in clause (iii) is inadmissible under section 1182(a)(6)(C) or
18 1182(a)(7)...and the alien indicates either an intention to apply for
19 asylum...or a fear of persecution, the officer shall refer the alien for an
20 interview by an asylum officer.” 8 U.S.C. § 1225(b)(1)(A)(ii).
21

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23
24 52. Once the noncitizen has been referred for an interview, “[i]f the [asylum]
25 officer determines at the time of the interview that an alien has a credible
26 fear of persecution...the alien shall be detained for further consideration of
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1 the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). Thus Section
2 1225(b)(1) “mandate[s] detention of applicants for admission until certain
3 proceedings have concluded.” *Jennings v. Rodriguez*, 583 U.S. 281, 297
4 (2018). Until the noncitizen’s asylum application has been fully considered,
5 “nothing in the statutory text imposes any limit on the length of detention...
6 [or] says anything whatsoever about bond hearings.” *Id.*

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8
9 53. In *Thuraissigiam*, the respondent was a noncitizen detained close to the
10 border and shortly after unlawful entry. *Dep’t of Homeland Sec. v.*
11 *Thuraissigiam*, 591 U.S. 103, 140, (2020). The Supreme Court held that
12 those “in respondent’s position ha[ve] only those rights regarding admission
13 that Congress has provided by statute.”

14
15
16 54. After the decision, district courts have taken two different approaches. In
17 one approach, district courts have dismissed or denied habeas petitions for
18 individuals detained under 8 U.S.C. § 1225(b)(1) when they challenge
19 detention on due process grounds and go beyond statutory protections. See,
20 e.g., *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 669 (S.D. Tex. 2021) (“As
21 far as Petitioner is concerned, whatever procedure Congress has authorized
22 is sufficient due process.”); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329,
23 336 (W.D.N.Y. 2021) (“Petitioner is on the threshold of initial entry into the
24 United States and [] he accordingly is not entitled to procedural protections
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beyond those provided by statute.”).

55. However, most courts have opted for an alternative, as-applied approach.

Specifically, while facial challenges to mandatory detention have been rejected, see *Demore v. Kim*, 538 U.S. 510, 530-31 (2003), nothing has been said “about whether due process may eventually require a hearing.” *Black v. Decker*, 103 F.4th 133, 149 (2d Cir. 2024). This is also true for *Thuraissigiam*. Though *Thuraissigiam* limits an arriving noncitizen's due process rights in regard to admission, the court did not address the issue of prolonged detention. See *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash. 2023) (“*Thuraissigiam's* discussion of due process is necessarily constrained to challenges to admissibility to the United States. This was the sole claim presented and the respondent expressly asked for a chance to reapply for asylum and admission.”).

56. While the Ninth Circuit has not spoken on whether due process requires a bond hearing for noncitizens mandatorily detained, the First, Second, and Third Circuits have held that “the Due Process Clause imposes some form of ‘reasonableness’ limitation upon the duration of detention ... under [section 1226(c)].” *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (alterations in original) (citation omitted); see *Black*, 103 F.4th at 138; *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209-10 (3d Cir. 2020).

1 Though § 1225(b) was not specifically addressed by the Supreme Court or
2 the three Circuit courts, § 1225(b) contains similar mandatory detention
3 provisions to § 1226(c). Thus, the reasoning underlying this as-applied
4 approach would seemingly also transfer to § 1225(b).

5
6 57. A majority of district courts have found prolonged detention under § 1225(b)
7 or § 1226 (c) without a bond hearing can eventually give rise to due process
8 issues. See, e.g., *Singh v. Warden of the Golden State Annex ICE Det.*
9 *Facility*, No. 1:26-cv-00048 DJC SCR, 2026 U.S. Dist. LEXIS 75840 (E.D.
10 Cal. Apr. 3, 2026); *Hamideh Sadeqi v. Larose*, No. 25-CV-2587-RSH-BJW,
11 2025 U.S. Dist. LEXIS 222822, 2025 WL 3154520, at *2 (S.D. Cal. Nov.
12 12, 2025) ("This Court agrees with the majority position that a petitioner
13 detained under Section 1225(b)(1) may assert a due process challenge to
14 prolonged mandatory detention without a bond hearing."); *Abubakar Abdul-*
15 *Samed v. Warden of the Golden State Annex Det. Facility*, No. 25-cv-98-
16 SAB-HC, 2025 U.S. Dist. LEXIS 142973, 2025 WL 2099343, at *6 (E.D.
17 Cal. July 25, 2025) ("Although the Ninth Circuit has yet to take a position
18 on whether due process requires a bond hearing for noncitizens detained
19 under 8 U.S.C. § 1225(b)... 'essentially all district courts that have
20 considered the issue agree that prolonged mandatory detention pending
21 removal proceedings, without a bond hearing, will—at some point—violate
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1 the right to due process.’’)) (quoting *Martinez v. Clark*, No. C18-1669-RAJ-
2 MAT, 2019 U.S. Dist. LEXIS 197895, 2019 WL 5968089, at *6 (W.D.
3 Wash. May 23, 2019)); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D.
4 Cal. 2020) (“[T]he Court joins the majority of courts across the country in
5 concluding that an unreasonably prolonged detention under 8 U.S.C. §
6 1225(b) without an individualized bond hearing violates due process.”);
7 *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019)
8 (collecting cases); *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025)
9 (“Nowhere in [*Thuraissigiam*] did the Supreme Court suggest that arriving
10 aliens being held under § 1225(b) may be held indefinitely and unreasonably
11 with no due process implications, nor that such aliens have no due process
12 rights whatsoever.”)

17 FIRST CLAIM FOR RELIEF

18 A. Violation of Petitioner’s Procedural Due Process Rights

19 U.S. Const. amend. V

20
21 58. Petitioner’s due process rights have been violated because she has been
22 subject to unreasonably prolonged detention. To determine whether a
23 petitioner’s detention has been unreasonably prolonged, Courts in the Ninth
24 Circuit have applied the *Banda v. McAleenan*’s six-factor analysis, which
25 weighs: (1) total length of detention to date; (2) likely duration of future
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1 detention; (3) conditions of detention; (4) delays in the removal proceedings
2 caused by the detainee; (5) delays in the removal proceedings caused by the
3 government; and (6) the likelihood that the removal proceedings will result
4 in a final order of removal. *Banda*, 385 F. Supp. 3d at 1106.
5

6
7 **1. Total Length Of Detention:**

8 59. The Petitioner has been detained for over 11 months. While 11 months of
9 detention does not presumptively establish unreasonably prolonged
10 detention, it is also not so little time as to preclude constitutional scrutiny.
11 Courts have previously found that similar or shorter lengths of detention
12 were unreasonable. *See, e.g., Mingzhi Gao v. Larose*, No. 25-CV-2084-
13 RSH-SBC, 2025 U.S. Dist. LEXIS 190572, 2025 WL 2770633, at *5 (S.D.
14 Cal. Sept. 26, 2025) (“The Court finds that Petitioner’s detention for over 10
15 months without a bond hearing, in the context of the specific circumstances
16 described above, has become unreasonable and violates due process.”);
17 *Amado v. United States Dep’t of Just.*, No. 25-CV-2687-LL-DDL, 2025 U.S.
18 Dist. LEXIS 217453, 2025 WL 3079052, at *6 (S.D. Cal. Nov. 4, 2025)
19 (“Courts have found detention over seven months without a bond hearing
20 weighs toward a finding that it is unreasonable.”); *Masood v. Barr*, No. 19-
21 CV-07623-JD, 2020 U.S. Dist. LEXIS 4809, 2020 WL 95633, at *3 (N.D.
22 Cal. Jan. 8, 2020) (finding detention for nearly nine months weighs in favor
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1 of the petitioner); *Zadvydas v. Davis*, 533 U.S. 678 (2001) (detention beyond
2 six months becomes prolonged.).

3
4 60. This factor weighs in Petitioner's favor.

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6 **2. Likely Duration of Future Detention:**

7 61. The second *Banda* factor requires consideration of "how long the detention
8 is likely to continue absent judicial intervention; in other words, the
9 anticipated duration of all removal proceedings—including administrative
10 and judicial appeals." *Banda*, 385 F. Supp. 3d at 1119.

11
12 62. Courts throughout the country have acknowledged the unpredictability of
13 immigration court proceedings and the variances in length of detention.

14
15 "While the Court cannot definitively determine the duration of petitioner's
16 future detention, based on the current record, it appears likely petitioner will
17 face many more months and potentially years in detention, 'especially if
18 there is a petition for review before the Court of Appeals.'" *Belqasim v.*
19 *Bostock*, No. 2:25-CV-01282-LK-TLF, 2025 U.S. Dist. LEXIS 224772,
20 2025 WL 3466971, at *9 (W.D. Wash. Oct. 28, 2025), *report and*
21 *recommendation adopted sub nom. Belqasim v. Hermosillo*, No. 2:25-CV-
22 01282-LK, 2025 U.S. Dist. LEXIS 223710, 2025 WL 3170929 (W.D. Wash.
23 Nov. 13, 2025); *Guatam v. Corr. Corp. of Am.*, No. 3:25-CV-3600-JES-DEB,
24 2026 U.S. Dist. LEXIS 994, 2026 WL 25846, at *5 (S.D. Cal. Jan. 5, 2026)
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1 (“[A] removal order may not become final until after the appeals Petitioner
2 could file, to both the Board of Immigration Appeals and Ninth Circuit...These
3 appeals can take a long time.”); *Abubakar Abdul-Samed v. Warden of the*
4 *Golden State Annex Det. Facility*, No. 1:25-CV-00098-SAB-HC, 2025 U.S.
5 Dist. LEXIS 142973, 2025 WL 2099343, at *7 (E.D. Cal. July 25, 2025)
6 (“Although the Court recognizes that future events are difficult to predict, the
7 Court nevertheless finds that in the event Petitioner’s applications for relief
8 from removal are denied, Petitioner’s possible administrative appeal and
9 judicial review by the Ninth Circuit will be sufficiently lengthy such that this
10 factor weighs in favor of Petitioner.”).

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14 63. Here, the length of future detention is unclear. Petitioner through pro-bono
15 counsel filed a Petition for Review with the Board of Immigration Appeals
16 (BIA) on January 20, 2026. At this is time, it is not known how much longer
17 the adjudication of Petitioner’s appeal will take. If Petitioner is not granted
18 relief, she will appeal the decision to the appropriate court. Petitioner may be
19 subject to detention for many more months if not years before final
20 adjudication of their case.
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23 64. This factor falls in favor of Petitioner.
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26 **3. Conditions of Detention.**

27 65. For the third factor, “[t]he more that the conditions under which the
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1 noncitizen is being held resemble penal confinement, the stronger his
2 argument that he is entitled to a bond hearing.” *Banda*, 385 F. Supp. 3d at
3 1119. Courts have recognized that the conditions in local detention
4 centers are "indistinguishable from penal confinement." *See Kydyrali*, 499 F.
5 Supp. 3d at 773; *Amado v. United States Dep't of Just.*, No. 25-CV2687-
6 LL(DDL), 2025 U.S. Dist. LEXIS 217453, 2025 WL 3079052, at *6 (S.D.
7 Cal. Nov. 4, 2025). Further, Petitioner suffers from anxiety and experiences
8 episodes of depression as a result of her prolonged separation from her
9 minor children. While in Respondents custody, she also has been denied
10 treatment for various medical conditions like athletes foot infections and
11 concerning heart palpitations. Her mental and physical conditions have been
12 exacerbated by her detention and puts her at risk for further deterioration.
13 *See Exhibit B.* Petitioner has also been subject to substandard food quality
14 and unsanitary conditions. *Id.*

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20 66. Immigration detention is “civil” (as opposed to criminal), meaning that it
21 should not be punitive in nature. The Imperial Regional Detention Center
22 infrastructure is indistinguishable from the criminal detention context, with
23 cell based housing, poor food quality, and substandard health and safety
24 protocols. This factor weighs in favor of Petitioner.
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27 **4 & 5 Delays in Removal**

1 67. The fourth and fifth factors concern delays in the removal proceedings
2 caused by Petitioner or the Respondents. These factors are meant to weigh
3 and protect against delay tactics; good-faith actions to litigate and defend are
4 not considered. *See Lopez v. Garland*, 631 F. Supp. 3d 870, 881 (E.D. Cal.
5 2022) (“Petitioner is entitled to raise legitimate defenses to removal ... and
6 such challenges to his removal cannot undermine his claim that detention
7 has become unreasonable.”); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC,
8 2019 U.S. Dist. LEXIS 12636, 2019 WL 330906, at *4 (N.D. Cal. Jan. 25,
9 2019) (“The government cites no authority for the proposition that a
10 petitioner who pursues his available legal remedies must forego any
11 challenge to the reasonableness of his detention in the interim and the Court
12 is unaware of any.”); *Liban M.J. v. Sec’y of Dep’t of Homeland Sec.*, 367 F.
13 Supp. 3d 959, 965 (D. Minn. 2019) (“[T]he Court agrees Petitioner has not
14 engaged in dilatory tactics and finds this factor favors granting
15 relief...Petitioner is entitled to raise legitimate defenses to removal, including
16 filing a petition for conditional residence, and such challenges to his removal
17 cannot undermine his claim that detention has become unreasonable.”).

18 68. The Respondent detained the Petitioner on May 28, 2025 and was
19 subsequently served with a notice to appear on June 9, 2025. The delay of
20 more than 1 week to initiate removal proceedings (although minor in the
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1 context of her prolonged detention of over 11 months) is a delay
2 nonetheless.
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4 69. These factors slightly favor Petitioner.
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6 **6. Likelihood of Final Removal Order.**

7 70. For the sixth *Banda* factor, the Court evaluates the likelihood that the
8 removal proceedings will result in a final order of removal, or “[i]n other
9 words, the Court considers whether the noncitizen has asserted any defenses
10 to removal.” *Banda*, 385 F. Supp. 3d at 1120. Here, Petitioner claims she
11 will be persecuted by an ex-spouse if removed to Guatemala. Based on this
12 persecution, the Respondent has determined that Petitioner's fears are
13 credible. While the petitioner was initially denied relief by an immigration
14 judge, Counsel has subsequently elevated credible challenges to this order to
15 the BIA. Petitioner's claims at the BIA include that the Immigration Judge
16 erred legally and factually by misstating and mischaracterizing evidence in
17 the record and that the Immigration Judge erred legally by failing to give
18 proper weight to country conditions evidence in analyzing her claim. While
19 it remains unclear how the BIA will eventually rule, Petitioner has so far
20 presented a case that reduces the likelihood of a final removal order. Thus,
21 this factor slightly favors Petitioner.
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SECOND CLAIM FOR RELIEF

Violation of Petitioner's Substantive Due Process

U.S. Const. amend. V

71. Immigration detention only comports with Due Process when it furthers the government's goals of "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690.

72. Petitioner has now been detained by ICE for over 11 months. If the BIA does not render a favorable decision, Petitioner plans on appealing to any subsequent Courts. Courts consistently find detention beyond this threshold triggers due process scrutiny. See *Kydyrali*, 499 F.Supp. 3d at 774–75.

73. Conditions of confinement also raise constitutional concerns as Petitioner's mental, emotional and physical health is deteriorating by the day. See Exhibit B at 4.

74. Conditions at the Imperial Regional Detention Center are punitive in nature, the food is often inedible (e.g., spoiled meat, stale rice and moldy bread). The facility is overcrowded causing frequent exposure to respiratory illnesses like COVID 19 and the flu, and the bathrooms and showers are so filthy they are almost unusable. See Exhibit B at 4.

75. Petitioner poses no risk of flight and no danger to the community. She had

1 been living in the US for approximately 14 years without incident. In 2025,
2 she was arrested and falsely accused of theft.

3
4 76. Petitioner's continued detention violates the Due Process Clause because the
5 conditions of detention are punitive and not rationally related to any
6 legitimate government purpose. She is not a flight risk nor a danger to the
7 community. She only wishes to return to her minor children.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Petitioner prays that this Court grant the following
11 relief:
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- 13
14 1. Assume jurisdiction over this matter;
15 2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of
16 the U.S. District Court for the Southern District of California pending the
17 resolution of this case;
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19 3. Issue a Writ of Habeas Corpus;
20 4. Order Respondents to immediately release Petitioner from immigration
21 detention;
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23 5. Alternatively, conduct an immediate bond hearing where DHS bears the
24 burden of justifying Petitioner's continued detention by clear and convincing
25 evidence. If a bond hearing is not scheduled within the Courts ordered
26 deadline, we request immediate release;
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6. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412
7. Grant such further relief as the Court deems just and proper.

Dated: May 14, 2026

Respectfully submitted,

By: s/ Nicholas Paul

Attorney for Petitioner

Email: nickp61895@gmail.com

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition and reviewed Petitioner's immigration file. Based on said review and those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge. Executed on this May 14, 2026, in San Diego, California.

Dated: May 14, 2026

Respectfully submitted,

By: s/ Nicholas Paul

Attorney for Petitioner

Email: nickp61895@gmail.com