Deron Smallcomb (SBN 282493)
Modern Law Group
789 Gateway Center Way
San Diego, CA 92102
Telephone: 888-902-9285
Email: deron@lawofficeimmigration.com
Attorney for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YADER ISMAEL HERNANDEZ-SEQUEIRA, Petitioner, v. WARDEN, Imperial Regional Detention Facility; DANIEL A. BRIGHTMAN, San Diego ICE Field Office Director; DAVID J. VENTURELLA, Acting ICE Director; MARKWAYNE MULLIN, Secretary of Homeland Security; TODD BLANCHE, Acting Attorney General; and DAREN K. MARGOLIN, EOIR Director, all in their official capacities, Respondents.	Case No. '26CV3969 DMS GC **PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** (Immigration Detention) **EXPEDITED CONSIDERATION REQUESTED**

INTRODUCTION

1. Petitioner Yader Ismael Hernandez-Sequeira is a thirty-seven-year-old native and citizen of Nicaragua who has lived in the United States since 2022. He has never been convicted of a crime. He entered without inspection, an asylum officer found that he had a credible fear of persecution or torture, and the Department of Homeland Security placed him into removal proceedings under 8 U.S.C. § 1229a. The

record before this Court contains no executed expedited removal order. After a period of initial custody, the government released him. He is now confined at the Imperial Regional Detention Facility in Calexico, California. He has never received a bond hearing, and no immigration judge has ever determined that he is a danger to the community or a flight risk.

2. For more than three years after that release, Petitioner lived openly in the community. United States Citizenship and Immigration Services granted him employment authorization, and he worked pursuant to it, driving a commercial truck and operating a mobile car-wash business. He filed an application for asylum, withholding of removal, and protection under the Convention Against Torture, which remains pending. He filed his federal income taxes and remained current on them. He appeared at every hearing and complied with every condition the government imposed. He never failed to appear, and he was never arrested.

3. On June 28, 2026, Immigration and Customs Enforcement officers arrested Petitioner during a traffic stop in the interior of the United States. They did so without an administrative arrest warrant. They gave him no written notice of the reasons for his arrest, afforded him no hearing before a neutral decisionmaker, made no individualized assessment of danger or flight risk, and identified no changed circumstance and no new derogatory information. Respondents then moved him across the country and jailed him in Calexico.

4. This case presents two questions. The first is statutory. Section 1226(a) of Title 8 governs the detention of noncitizens arrested in the interior pending a decision on removal; § 1225(b) governs the inspection and detention of those who present themselves at the border and at ports of entry. Petitioner was not apprehended at the border in 2026. He was pulled over at a traffic stop more than three years after he entered and more than three years after DHS placed him in § 1229a proceedings. He is detained under § 1226(a), and he is entitled to a bond hearing. The second question is constitutional, and it is answered the same way whichever statute applies: whether the government may strip a person of a liberty it previously granted, after more than three years of unbroken compliance, without notice, without a hearing, without any finding of changed circumstances, and without any individualized determination that detention is necessary. Under the Fifth Amendment, it may not.

5. The consequences are not abstract. Petitioner's next individual merits hearing before the Miami Immigration Court is scheduled for February 21, 2029. If Respondents are correct that no immigration judge may consider his release, Petitioner will sit in civil detention for roughly thirty-two months before an immigration judge so much as hears his asylum claim, and longer still if either party appeals. Petitioner therefore seeks a writ of habeas corpus ordering his immediate and unconditional release. In the alternative, he seeks an order requiring Respondents to provide him an individualized bond hearing before an immigration judge within seven days, at which

the government bears the burden of proving by clear and convincing evidence that his detention is justified, with automatic release if no such hearing occurs.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3), because Petitioner is in custody in violation of the Constitution and laws of the United States; under 28 U.S.C. § 1331; and under the Suspension Clause, U.S. Const. art. I, § 9, cl. 2. *See Boumediene v. Bush*, 553 U.S. 723, 739 (2008). Relief is available under 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the All Writs Act, 28 U.S.C. § 1651.

7. Petitioner does not challenge a removal order. No final order of removal has been entered in his § 1229a proceedings, and the record before this Court contains no executed expedited removal order. His removal proceedings remain pending. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 therefore have no application here. Petitioner challenges only the lawfulness of his physical confinement.

8. Venue is proper in this District. Petitioner is confined at the Imperial Regional Detention Facility in Calexico, Imperial County, California, which lies within the Southern District of California. 28 U.S.C. § 84(d). Jurisdiction over a core habeas petition challenging present physical confinement lies in the district of confinement. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). Respondent Warden is Petitioner's immediate custodian and is present within this District, and Respondent Field Office

Director maintains an office within this District. Venue is also proper under 28 U.S.C. § 1391(e) as to the remaining Respondents, who are officers of the United States sued in their official capacities.

REQUIREMENTS OF 28 U.S.C. § 2243

9. Pursuant to 28 U.S.C. § 2243, upon the filing of a habeas corpus petition, "the court shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto."

10. The writ of habeas corpus "is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Fay v. Noia*, 372 U.S. 391, 401-02 (1963). Courts are required to act promptly on habeas petitions. *See Yong v. INS*, 208 F.3d 1116, 1119 (9th Cir. 2000) (vacating a district court order staying habeas proceedings and remanding for prompt adjudication).

EXHAUSTION

11. Petitioner is not required to exhaust administrative remedies. Section 2241 contains no statutory exhaustion requirement; any exhaustion requirement is prudential rather than jurisdictional, and may be waived where administrative remedies are inadequate or not efficacious, where pursuit of them would be futile, or where irreparable injury will result absent immediate judicial relief. *Laing v. Ashcroft*, 370 F.3d 994, 997, 1000-01 (9th Cir. 2004). Each condition is satisfied here.

12. Exhaustion would be futile. Respondents' position is that Petitioner is detained under 8 U.S.C. § 1225(b) and that no immigration judge has jurisdiction to consider his release on bond. The agency has issued precedential decisions adopting that view, including *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and ICE has implemented that view through a memorandum dated July 8, 2025. Although the Central District of California vacated *Yajure Hurtado* on February 18, 2026, the Ninth Circuit stayed that order pending appeal on March 31, 2026. *Yajure Hurtado* therefore remains operative agency precedent in this District, and an immigration judge is bound by it. Asking an immigration judge to disregard binding agency precedent is the paradigm of a futile gesture.

13. Counsel did not first present a bond request to an immigration judge because the disputed question is the agency's asserted absence of bond jurisdiction, not the exercise of bond discretion. An immigration judge has no authority to decide whether that jurisdictional premise is lawful, and requiring Petitioner to present the question to a tribunal bound to reject it would not supply an adequate administrative remedy. *Cf. Leonardo v. Crawford*, 646 F.3d 1157, 1160-61 (9th Cir. 2011) (petitioner sought review of an immigration judge's adverse bond ruling). Every additional day of unlawful civil detention is an irreparable injury that no later remedy can undo.

PARTIES

14. Petitioner Yader Ismael Hernandez-Sequeira is a native and citizen of Nicaragua, born in 1988. He bears Alien Registration Number [redacted] He is presently detained by ICE at the Imperial Regional Detention Facility, 1572 Gateway Road, Calexico, California 92231.

15. Respondent Warden of the Imperial Regional Detention Facility, or that officer's successor, is sued in an official capacity. The Warden exercises day-to-day physical control over Petitioner at a facility operated under contract with ICE, and is Petitioner's immediate custodian. *See Doe v. Garland*, 109 F.4th 1188, 1195-96 (9th Cir. 2024).

16. Respondent Daniel A. Brightman is the Field Office Director of the San Diego Field Office of ICE Enforcement and Removal Operations and is sued in an official capacity. He exercises legal custody over Petitioner and controls whether Petitioner remains detained and whether he is transferred.

17. Respondent David J. Venturella is the Acting Director of U.S. Immigration and Customs Enforcement and is sued in an official capacity. He is a legal custodian of Petitioner and exercises ultimate authority over ICE's detention and release decisions.

18. Respondent Markwayne Mullin is the Secretary of Homeland Security and is sued in an official capacity. He is responsible for the administration and enforcement

of the immigration laws, including the detention of noncitizens, and ICE is a component of the Department he heads.

19. Respondent Todd Blanche is the Acting Attorney General of the United States and is sued in an official capacity. Petitioner seeks, in the alternative to release, an order directing that he receive a bond hearing before an immigration judge. Immigration judges are employees of the Department of Justice, and the Attorney General supervises the Executive Office for Immigration Review. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 1003.0. The Attorney General's presence is necessary for complete relief.

20. Respondent Daren K. Margolin is the Director of the Executive Office for Immigration Review and is sued in an official capacity. He administers the immigration courts and supervises the immigration judges who would conduct the custody hearing Petitioner seeks. *See* 8 C.F.R. § 1003.0(b).

21. Each Respondent is sued only in an official capacity. Any successor in office is automatically substituted under Federal Rule of Civil Procedure 25(d).

STATEMENT OF FACTS

A. Entry, Credible Fear, and Placement in Section 1229a Removal Proceedings

22. Petitioner entered the United States without inspection in 2022. DHS encountered him and referred him for a credible fear interview, and an asylum officer

determined that he had demonstrated a credible fear of persecution or torture. Ex. A at 1.

23. On November 17, 2022, DHS issued a Notice to Appear, Form I-862, charging Petitioner as removable under Sections 212(a)(7)(A)(i)(I) and 212(a)(6)(A)(i) of the Immigration and Nationality Act. DHS did not designate Petitioner an arriving alien; the box reading "You are an arriving alien" is unchecked, and DHS instead checked the box reading "You are an alien present in the United States who has not been admitted or paroled." Ex. A at 1.

24. The Notice to Appear does not indicate that any expedited removal order was entered against Petitioner and later vacated. The box reading "Section 235(b)(1) order was vacated pursuant to" is unchecked, and neither the 8 C.F.R. § 208.30 box nor the 8 C.F.R. § 235.3(b)(5)(iv) box is marked. Ex. A at 1. The record before this Court contains no executed Form I-860 or other expedited removal order. If Respondents contend that such an order issued, they should be required to produce it.

25. The Notice to Appear was served on Petitioner in person on November 20, 2022, and filed with the Miami Immigration Court on November 21, 2022, commencing removal proceedings under 8 U.S.C. § 1229a. Since that date Petitioner has been in full proceedings under Section 240 of the INA. No removal order, administrative or judicial, has ever been entered against him, and the record reflects no expedited removal order at any stage. Ex. A at 1-2; Ex. B.

B. Release and More Than Three Years of Compliance in the Community

26. After a period of initial ICE custody, believed to have lasted approximately three months, the government released Petitioner from detention in or about late 2022 or early 2023.

27. By releasing Petitioner from custody, DHS determined that his continued physical detention was not necessary and permitted him to remain in the community under conditions. Respondents have identified no changed circumstance and no new derogatory information that would justify reversing that custody posture more than three years later.

28. Petitioner lived openly in the United States for more than three years after that release, most recently in North Lauderdale, Broward County, Florida. Ex. D. USCIS granted him employment authorization, and he supported himself through lawful work, driving a commercial truck and operating a mobile car-wash business. He filed his federal income tax returns and remained current on his tax obligations.

29. Petitioner filed a Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture, which remains pending before the immigration court. He appeared at every hearing scheduled in his removal proceedings, complied with every condition of his release, and never failed to appear. Ex. B.

C. The Warrantless Interior Arrest of June 28, 2026

30. On June 28, 2026, ICE officers arrested Petitioner during a traffic stop in the interior of the United States, more than three years after DHS released him and more than three years after DHS placed him in § 1229a proceedings.

31. ICE did not obtain an administrative warrant of arrest before taking Petitioner into custody. *See* 8 C.F.R. § 236.1(b). Nor is there any indication that ICE had reason to believe Petitioner was likely to escape before a warrant could be obtained, as a warrantless arrest requires. *See* 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii). Petitioner had lived at a known address, held employment authorization, and appeared at every hearing for more than three years.

32. Respondents re-detained Petitioner without providing any of the process the Due Process Clause requires:

a. No written notice of the reasons for the re-detention was provided;

b. No hearing before a neutral decisionmaker was conducted, before or after the arrest;

c. No individualized assessment of flight risk or danger was performed;

d. No finding of changed circumstances justifying re-detention was made;

e. No administrative arrest warrant was obtained; and

f. No new derogatory information was identified. The only material fact that changed between the government's decision to release Petitioner and its

decision to re-jail him is that Petitioner spent more than three years demonstrating that the government's original judgment was correct.

33. Following the arrest, Respondents transferred Petitioner across the country to the Imperial Regional Detention Facility in Calexico, Imperial County, California, more than two thousand miles from his home, his community, and the immigration court in which his case is pending. He has been continuously detained since June 28, 2026. Ex. C.

D. Pending Removal Proceedings and the Anticipated Duration of Detention

34. Petitioner's removal proceedings remain pending. The Executive Office for Immigration Review's Automated Case Information system reflects that his case is pending, that no decision has been entered, and that no appeal has been taken. His next individual merits hearing is scheduled for February 21, 2029, at 10:30 a.m., before Immigration Judge Dalin R. Holyoak of the Miami Immigration Court. Ex. B.

35. If Petitioner remains detained until that hearing, he will have spent approximately thirty-two months in civil confinement without ever having received a custody hearing, and without an immigration judge having reached the merits of his asylum claim. Any appeal to the Board of Immigration Appeals would extend that period further. Petitioner has not delayed his removal proceedings in bad faith; he filed his application for relief, appeared at every hearing, and sought no continuance that caused the current hearing date.

E. Petitioner Has No Criminal History

36. Petitioner has never been convicted of any criminal offense in the United States or anywhere else. He has no pending criminal charges. He has never been arrested other than by immigration authorities.

37. Petitioner received one red-light camera citation. On February 18, 2026, the Town of Davie, Florida, issued Notice No. [redacted] and Florida Uniform Traffic Citation No. [redacted], arising from a violation dated November 25, 2025. The citation states on its face that it charges a "non-criminal traffic infraction" under Florida Statutes § 316.0083, the Florida red-light-camera statute. The citation was paid in full on June 29, 2026, in the amount of $287.00, through the Office of the Clerk of the Court of Broward County, Florida. Ex. D.

38. A civil red-light-camera infraction is not a crime involving moral turpitude, is not a controlled substance offense, and is not an offense described in 8 U.S.C. § 1226(c). Petitioner is not subject to mandatory detention under § 1226(c). Because no removal order exists, he is not detained under 8 U.S.C. § 1231.

F. Petitioner Has Never Received a Custody Hearing

39. No immigration judge has ever conducted a bond hearing for Petitioner, determined that he is a danger to the community or a flight risk, or otherwise reviewed his detention. Respondents take the position that Petitioner is an applicant for admission subject to mandatory detention under 8 U.S.C. § 1225(b), and that an

immigration judge accordingly lacks jurisdiction to consider his release. Under that position, Petitioner will never receive a custody hearing at any point during his removal proceedings.

LEGAL FRAMEWORK

40. Section 1226(a) of Title 8 authorizes the arrest and detention of a noncitizen "pending a decision on whether the alien is to be removed from the United States," and permits release on bond or conditional parole. It is the default authority for detention during removal proceedings, and its text reaches people charged as inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Section 1225(b), by contrast, governs the inspection of applicants for admission. The Supreme Court has explained that its mandatory detention scheme operates "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *accord Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (specific statutory exceptions prove the general rule).

41. Whatever statute governs, the Due Process Clause of the Fifth Amendment supplies a constitutional floor. Freedom from imprisonment lies "at the heart of the liberty" the Clause protects, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and "[f]reedom from bodily restraint has always been at the core of the liberty protected by

the Due Process Clause from arbitrary governmental action," *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). These protections apply regardless of which detention statute governs Petitioner's custody. *See Zadvydas*, 533 U.S. at 695; *Clark v. Martinez*, 543 U.S. 371, 380 (2005).

COUNT I

Violation of the Immigration and Nationality Act: Petitioner Is Detained Under 8 U.S.C. § 1226(a) and Is Entitled to a Bond Hearing

42. Petitioner repeats and incorporates by reference each preceding paragraph.

43. Petitioner is detained "pending a decision on whether [he] is to be removed from the United States." 8 U.S.C. § 1226(a). He is therefore detained under § 1226(a), which makes him eligible for release on bond or conditional parole.

44. Section 1225(b)(2)(A) does not apply. Petitioner was not apprehended upon arrival. He entered the United States in 2022, was placed in § 1229a proceedings, was released, and lived in the interior for more than three years before ICE arrested him at a traffic stop. That mandatory detention provision does not reach people who have already entered and were apprehended long after their entry.

45. Section 1225(b)(1) does not apply either. The record before this Court contains no executed expedited removal order: consistent with 8 C.F.R. § 208.30(f), the asylum officer who found credible fear issued a Notice to Appear and referred Petitioner into proceedings under § 1229a, and the Notice to Appear reflects no order

entered and later vacated. Ex. A at 1. If Respondents contend that an order issued under § 1225(b)(1), they should be required to produce it. Moreover, DHS charged Petitioner as a person present in the United States without admission or parole, not as an arriving alien. Respondents' litigating position contradicts their own charging document.

46. Nor does any authority § 1225(b)(1)(B)(ii) supplied in 2022 survive. That provision authorizes detention "for further consideration of the application for asylum" during the credible fear process; it was spent when the government released Petitioner and referred him to full removal proceedings, and it says nothing about the warrantless re-arrest of a person living in the interior more than three years later. The custody under review began with a warrantless interior arrest, and ICE's warrantless arrest authority, 8 U.S.C. § 1357(a)(2), is an interior enforcement power tethered to § 1226, not to the inspection regime of § 1225. Courts have rejected the theory that a petitioner's original processing through credible fear insulates the government from habeas relief when the petitioner was later released and re-detained in the interior. *See Atakhanov v. Oddo*, No. 3:26-cv-00211-NR (W.D. Pa. Mar. 26, 2026); *Villagrez v. Bondi*, No. 26-72, 2026 WL 545380 (W.D. Pa. Feb. 26, 2026).

47. The agency decisions on which Respondents rely command no deference, *see Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400-01 (2024), and are inapposite. *Matter of Q. Li* involved a near-border encounter, release on parole the next day, and re-detention only after the government received new derogatory information in the

form of an Interpol Red Notice alleging document forgery and human smuggling. Nothing of the kind is present here. The Board itself has acknowledged that the courts of appeals are divided on the statutory question. *See Matter of N-A-G-C-*, 29 I&N Dec. 662 (BIA 2026).

48. Four courts of appeals have rejected Respondents' statutory theory. *See Cunha v. Freden*, No. 25-3141-pr (2d Cir. Apr. 28, 2026); *Lopez-Campos v. Raycraft*, Nos. 25-1965, 25-1969, 25-1978 & 25-1982 (6th Cir. May 11, 2026); *Quiroz v. Mullin*, No. 26-6019 (10th Cir. June 30, 2026); *Hernandez Alvarez v. Warden*, Nos. 25-14065 & 25-14075 (11th Cir. May 6, 2026); *accord Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1060-62 (7th Cir. 2025). The Fifth and Eighth Circuits have accepted it in materially different cases involving noncitizens detained under § 1225(b)(2) who were never released into the community, and neither decision binds this Court. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). The Ninth Circuit has not resolved the question; it is pending in *Rodriguez Vazquez v. Hermosillo*, No. 25-6842 (argued Mar. 4, 2026).

49. The Central District of California certified a class, held Respondents' statutory theory unlawful, and entered declaratory relief. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). On March 31, 2026, the Ninth Circuit stayed that judgment pending appeal

insofar as it extends beyond the Central District, and stayed the order vacating *Yajure Hurtado*. *Bautista v. U.S. Dep't of Homeland Sec.*, Nos. 25-7958 & 26-1044 (9th Cir. Mar. 31, 2026). Petitioner therefore cites *Maldonado Bautista* as persuasive authority only. The stay order did not reach the merits, and in weighing the equities the Ninth Circuit reasoned that harm to class members was lessened because "they can seek habeas relief in their districts of confinement." This Petition is that remedy. The Western District of Washington reached the same conclusion on class-wide summary judgment, and that judgment has not been stayed. *Rodriguez Vazquez v. Bostock*, 802 F. Supp. 3d 1297, 1336 (W.D. Wash. 2025).

50. This District has repeatedly granted relief on this ground, including to detainees held at the Imperial Regional Detention Facility. *See Pineda v. Warden of Imperial Reg'l Det. Facility*, No. 3:26-cv-01801-GPC-AHG (S.D. Cal. Mar. 27, 2026) (granting petition and ordering an individualized bond hearing under § 1226(a) within seven days); *Sariboga v. Warden of Imperial Reg'l Det. Facility*, No. 3:26-cv-01566 (S.D. Cal. Apr. 17, 2026) (order granting petition); *Vasquez Garcia v. Noem*, No. 25-cv-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025). One judge of this District has adopted Respondents' reading, *Sixtos Chavez v. Noem*, No. 3:25-cv-02325-CAB, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed*, No. 25-7077 (9th Cir.), but that decision binds no one and the weight of authority in this District and this Circuit is to the contrary.

51. Respondents' application of § 1225(b) to bar Petitioner from a bond hearing violates the Immigration and Nationality Act. Petitioner is entitled to release, or at minimum to a bond hearing under § 1226(a).

COUNT II

Violation of the Bond Regulations

52. Petitioner repeats and incorporates by reference each preceding paragraph.

53. In 1997, following IIRIRA, the Immigration and Naturalization Service and the Executive Office for Immigration Review promulgated an interim rule interpreting the new detention provisions. That rule confirmed that noncitizens who entered without inspection are eligible for bond. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

54. The regulations promulgated under that rule remain in force and have been neither repealed nor amended. They provide that a noncitizen detained under § 1226(a) may be released on bond or conditional parole and may seek redetermination of custody by an immigration judge. 8 C.F.R. §§ 236.1(c), (d); 1003.19; 1236.1. A memorandum and a series of Board decisions cannot override a validly promulgated regulation, and they command no deference in any event. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400-01 (2024).

55. By denying Petitioner access to the custody redetermination procedures that the regulations guarantee, Respondents have violated 8 C.F.R. §§ 236.1(d) and 1003.19.

COUNT III

Violation of the Due Process Clause of the Fifth Amendment: Unlawful Re-Detention Without Notice or Hearing

56. Petitioner repeats and incorporates by reference each preceding paragraph. This claim is independent of the statutory question and succeeds regardless of which detention statute governs.

57. In or about late 2022 or early 2023, the government released Petitioner from custody and permitted him to remain in the community under conditions. That release reflected that DHS did not consider Petitioner's continued physical detention necessary at that time, with full knowledge of his manner of entry and the charges against him. In reliance on it, Petitioner built a life. He worked, paid taxes, obtained work authorization, pursued his asylum claim, appeared at every hearing, and complied with every condition of release for more than three years.

58. Liberty conditionally granted may not be revoked without due process. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). "Freedom from imprisonment, from government custody, detention, or other forms of physical restraint, lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. The

right to be free from involuntary confinement without due process is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

59. Each *Mathews* factor favors Petitioner. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Petitioner's private interest is the most fundamental interest the Constitution protects. The risk of erroneous deprivation is severe, and acute here because Respondents' re-detention decision appears to have rested on the identical facts known to DHS when it released him: his manner of entry, his pending removal proceedings, and his asylum claim. *Cf. Matter of Q. Li*, 29 I&N Dec. 66 (re-detention followed the government's receipt of new derogatory information). Those unchanged facts cannot supply a new individualized justification for re-detention after more than three years of compliance. And the government's interest in re-jailing, without process, a person it previously determined need not be detained is minimal; the marginal cost of notice and a hearing is trivial compared to the liberty at stake.

60. Respondents revoked Petitioner's release and deprived him of liberty without affording him any written notice or meaningful opportunity to be heard before a neutral decisionmaker, either before or after his re-detention. That violates the Due Process Clause, and multiple courts have ordered immediate release under these circumstances. *See, e.g., E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316 (W.D. Wash. 2025); *Ramirez Tesara v. Wamsley*, No. 2:25-cv-01723-MJP-TLF (W.D. Wash. Sept. 12, 2025); *Kumar v. Wamsley*, No. 2:25-cv-01772-JHC-BAT (W.D. Wash. Sept. 17,

2025). Because Respondents deprived Petitioner of liberty without any process at all, the appropriate remedy is immediate and unconditional release.

COUNT IV

Violation of the Due Process Clause of the Fifth Amendment: Detention Without a Constitutionally Adequate Custody Hearing

61. Petitioner repeats and incorporates by reference each preceding paragraph.

62. Civil detention without an individualized hearing before a neutral decisionmaker violates the Due Process Clause. *Zadvydas*, 533 U.S. at 690. In this Circuit, when the government detains a noncitizen pending removal proceedings, it must justify continued detention by clear and convincing evidence at a hearing before an immigration judge, *Singh v. Holder*, 638 F.3d 1196, 1203, 1208 (9th Cir. 2011); *see also Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011); *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008), and the immigration judge must consider the noncitizen's financial circumstances and alternatives to detention in setting conditions of release, *Hernandez v. Sessions*, 872 F.3d 976, 1000 (9th Cir. 2017). Respondents have provided Petitioner no hearing at all, and under their theory he will never receive one.

63. Even if a statute authorized Petitioner's detention, prolonged detention without a bond hearing independently violates the Due Process Clause. The analysis turns on the likely duration of detention, both elapsed and anticipated, and on whether the petitioner has delayed the proceedings in bad faith. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022); *Hernandez*, 872 F.3d at 994.

64. Both factors favor Petitioner decisively. His next merits hearing is more than two and a half years away. Ex. B. He has not delayed his proceedings in bad faith. This duration of civil detention without a bond hearing gravely risks the erroneous deprivation of Petitioner's liberty interest, especially where the record contains no evidence that he presents a danger to the community or a flight risk, or that the government has any other legitimate interest in his continued confinement. "Detention for its own sake . . . is not a legitimate government interest." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1035 (N.D. Cal. 2025).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Southern District of California while this Petition is pending, and that Respondents shall provide Petitioner's counsel and this Court with at least forty-eight hours' written notice before any transfer;

c. Issue an Order to Show Cause directing Respondents to show cause, within three days, why the writ should not be granted, as provided by 28 U.S.C. § 2243;

d. Declare that Petitioner is detained pursuant to 8 U.S.C. § 1226(a) and that his detention violates the Immigration and Nationality Act, the bond regulations, and the Due Process Clause of the Fifth Amendment;

e. Issue a writ of habeas corpus ordering Respondents to release Petitioner immediately and unconditionally;

f. In the alternative, order that within seven days of this Court's order Respondents shall provide Petitioner with an individualized bond hearing before a neutral immigration judge at which the government bears the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a flight risk that cannot reasonably be addressed by bond or conditional release; at which the immigration judge shall consider Petitioner's financial circumstances and alternatives to detention in setting any conditions of release; and at which Respondents shall not seek denial of bond on the basis that 8 U.S.C. § 1225(b) requires or authorizes mandatory detention or that Board of Immigration Appeals precedent deprives the immigration judge of jurisdiction to decide bond;

g. Order that if no such hearing occurs within seven days of this Court's order, Respondents shall release Petitioner from custody by 5:00 p.m. on the eighth day;

h. Order Respondents to file a declaration within eleven days of this Court's order stating the outcome of any bond hearing conducted pursuant to the order, including any denial of bond, bond amount set, or other conditions of release, or, if no bond hearing was conducted, confirming that Petitioner has been released;

i. Enjoin Respondents from re-detaining Petitioner during the pendency of his removal proceedings without first providing written notice, an individualized hearing before a neutral decisionmaker, and a finding of changed circumstances warranting re-detention, and order Respondents to file a declaration attesting to compliance with these obligations at least forty-eight hours before any re-detention;

j. Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

k. Grant such other and further relief as this Court deems just and proper.

Dated: July 10, 2026

Respectfully submitted,

/s/ Deron Smallcomb
DERON SMALLCOMB (SBN 282493)
MODERN LAW GROUP, P.C.
789 Gateway Center Way
San Diego, CA 92102
Telephone: (888) 902-9285
Email: deron@lawofficeimmigration.com
Attorney for Petitioner

VERIFICATION

I, Deron Smallcomb, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am counsel of record for Petitioner Yader Ismael Hernandez-Sequeira in this matter.

2. Petitioner is presently detained at the Imperial Regional Detention Facility in Calexico, California, and is unable to sign this Petition without unreasonable delay. I therefore verify this Petition on his behalf pursuant to 28 U.S.C. §§ 2242 and 1746.

3. I have made diligent inquiry into the facts alleged in this Petition, including through communications with Petitioner, review of the immigration and court records identified in the exhibits, and review of publicly available records of U.S. Immigration and Customs Enforcement and the Executive Office for Immigration Review.

4. The factual allegations set forth in this Petition are true and correct to the best of my knowledge, information, and belief formed after that diligent inquiry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 10, 2026, at Southlake, Texas.

/s/ Deron Smallcomb
DERON SMALLCOMB