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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DIEUJUSTE, RONY,

Petitioner,

vs.

TODD BLANCHE, Acting Attorney General of the U.S.; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; GREGORY J. ARCHAMBEAULT, San Diego Field Office Director, U.S. Enforcement and Removal Operations; Warden, Imperial Regional Detention Facility, in their official capacities,

Respondents.

Case No. '26CV4542 CAB VET

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR INJUNCTIVE RELIEF

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INTRODUCTION

1. Petitioner, Rony Dieujuste ("Petitioner"), is detained by Respondents in the Imperial Regional Adult Detention Facility ("Imperial") in Calexico, California in violation of the Immigration and Nationality Act ("INA"), Due Process, the Administrative Procedure Act ("APA"), and their implementing regulations. Petitioner is a Haitian national who last entered the United States on or around September 13, 2018, with a K-1 Fiancé Visa, and has remained in the U.S. since then.

2. Petitioner was not afforded a pre-detention hearing, despite residing in the United States for nearly seven years at the time he was taken into ICE custody. In September 2024, Petitioner's application to remove conditions from his green card was denied, terminating his permanent residency. Despite this, ICE did not initiate removal proceedings or make any effort to apprehend Petitioner in the eight months following the decision to deny.

3. Since entering the U.S. lawfully, Petitioner has worked hard to respect the laws of the United States and has raised a family over the course of the eight years he has resided here. He has since filed and been granted a Petition for Non-Citizen Relative, Form I-130. With this approved form, Petitioner is now eligible to immediately adjust status and become a Legal Permanent Resident ("LPR") of the United States. Despite this, the U.S. Immigration and Customs Enforcement ("ICE") has unlawfully detained Petitioner for a prolonged period without a constitutionally sufficient bond hearing resulting in the necessary finding that Petitioner has committed acts which make him a danger to the community or a flight risk.

4. Despite Petitioner being eligible for adjustment of status and release from detention, the Department of Homeland Security ("DHS") has subjected him to unlawful prolonged detention.

5. On July 01, 2025, a bond hearing was held before Immigration Judge ("IJ") Jose Penalosa Jr. The IJ denied bond despite the record showing no indicia that the government tried to rebut any of the Petitioner's arguments in favor of bond. DHS filed no evidence in the case, whereas Petitioner filed nearly 50 pages of evidence in addition to a legal brief.

6. On May 8, 2026, a bond hearing was scheduled pursuant to an order issued by the Immigration Judge Anne Perry after she found that changed circumstances existed following Petitioner's filing of a Motion for Bond Hearing Due to Changed Circumstances.

7. Although the hearing took place, the proceeding itself was misleading, lacked a neutral adjudication process, and was conducted in a manner that revealed a pre-determined outcome, an outcome that would not change, regardless of what was said or presented at the hearing.

8. Petitioner has now been detained at Imperial under Respondents' custody and control for almost thirteen months, since May 30, 2025.

9. Petitioner's prolonged detention without a pre-deprivation bond hearing violates both the substantive and procedural guarantees of the Fifth Amendment's Due Process Clause. Further, the sham bond hearings which were given to Petitioner do not comport with the requirements of due process and therefore independently violated Petitioner's Fifth Amendment rights.

10. Accordingly, Petitioner respectfully requests that this Court order he be immediately released.

JURISDICTION

11. This case arises under the United States Constitution, the INA, 8 U.S.C. § 1101, *et seq.*, and the APA, 5 U.S.C. §§ 500–596, 701–706.

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, *et seq.* (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346

(United States as Respondent), and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

13. The Court may grant relief under 28 U.S.C. § 2241, *et seq.*; 28 U.S.C. § 2201, *et seq.*; 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's inherent equitable powers.

VENUE

14. Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States; and Petitioner is detained in this district. *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also Doe v. Garland*, 109 F.4th 1188, 1192 (9th Cir. 2024). Venue is further proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district.

15. Because Petitioner is seeking relief related only to his custody status, which is not inconsistent with the order of removal, exhaustion of administrative remedies, if any, is not required.

16. Moreover, federal district courts have habeas jurisdiction to review bond hearing determinations for constitutional and legal errors. *See Leonardo v Crawford*, 646 F.3d 1157, 1159 (9th Cir. 2011); *see Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024); *see also Melchor-Melchor v. Noem,* No. 5:26-CV-00766-SSS-BFM, 2026 WL 760058 (C.D. Cal. 2026).

PARTIES

17. Petitioner is a 37-year-old citizen of Haiti has a pending adjustment of status application based on an approved Form I-130. Petitioner has been detained for about 13 months and is currently detained in the control and custody of Respondents and their agents at the Imperial Detention Center.

18. Respondent Todd Blanche is the Acting Attorney General of the United States. In this capacity, Respondent Blanche is the legal custodian of Petitioner. Respondent Blanche is sued in his official capacity.

19. Respondent Markwayne Mullin is the Secretary of DHS. In this capacity, Respondent Mullin is the legal custodian of Petitioner. Respondent Mullin is sued in his official capacity.

20. Respondent David Venturella is the Acting Director and Senior Official Performing the Duties of Director of ICE. Respondent Venturella is responsible for ICE's policies, practices, and procedures, including those relating to removal procedures and the detention of immigrants during their removal proceedings. In this capacity, Respondent Venturella is the legal custodian of Petitioner. Respondent Venturella is sued in his official capacity.

21. Respondent Gregory J. Archambeault is the Acting Field Office Director for ICE Enforcement and Removal Operations ("ERO") in San Diego, California. As the ERO San Diego Field Office Director, he is Petitioner's immediate custodian, responsible for his detention at Imperial, and is the person with the authority to authorize detention or release. Respondent Archambeault is sued in his official capacity.

22. Respondent Warden of the Imperial Detention Center, oversees the day-to-day functioning of Imperial, and has immediate physical custody of Petitioner pursuant to a contract with ICE to detain noncitizens. Respondent Casey is sued in his official capacity as the Warden of a federal detention facility.

LEGAL BACKGROUND

I. Petitioner has a right to a bond hearing which comports with the Fifth Amendment's Procedural Due Process Requirements.

23. In *Jennings v. Rodriguez*, the Supreme Court held that there is no statutory

right to a bond hearing under certain detention statutes, including 8 U.S.C. § 1226. 583 U.S. 281, 304-08 (2018). However, the Supreme Court did not assess whether a bond hearing was *constitutionally* required under the Fifth Amendment's Due Process Clause. *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, *6-*8 (N.D. Cal. 2019). Such a bond hearing would require that the government show by clear and convincing evidence that its detention of a noncitizen is justified. *Id.* (citing *Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011).

24. While the government is given a certain level of discretion when it pertains to immigration custody determinations, that discretion does not give it carte blanche to violate an individual's constitutional rights without review. *See Leonardo*, 646 F.3d at 1160-61; *see also E.A. T.-B. v. Wamsley*, 795 F.Supp.3d 1316, 1321 (W.D. Wash. 2025) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017)). Indeed, the Supreme Court was clear when it held that "[t]he Due Process Clause applies to all 'persons' within the United States . . . whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Therefore, bond hearings must comply with Due Process requirements to be constitutionally lawful. In other words, bond hearings must be individualized and "meaningful," not just a blanket policy of denial without justification. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

25. Procedural due process requires notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333–34 (1976). Where there is a liberty interest, determining what procedures are due generally requires examining the factors set forth in *Mathews*:

> (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest

> through the procedures used, and the probable value, if any, of additional or substitute procedural safeguard; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute safeguard procedural requirement would entail.

Lara v. Noem, No. 5:25-CV-3072-ODW (JCX), 2025 WL 3255001, *3 (C.D. Cal. 2025) (quoting *Mathews*, 424 U.S. at 335).

a. Petitioner's liberty interest is significant and entitles him to due process.

26. Petitioners' interest in not being detained is "the most elemental of liberty interests." *Lara v. Noem*, 2025 WL 3255001 at *3 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)).

27. Given that the liberty interest here is "clearly weighty," numerous courts have found that this first factor weighs heavily in a petitioner's favor. *See Lara v. Noem*, 2025 WL 3255001 at *3. Petitioner's status as a noncitizen does not negate that interest. *Id.* ("It is settled law that noncitizens within the United States are entitled to due process whether their presence here is lawful, unlawful, temporary, or permanent." (internal quotations omitted) (quoting *Zadvydas*, 533 U.S. at 693).

28. Non-citizens who have lived in the U.S. over extended periods of time, even if never civilly detained, still develop strong and cognizable liberty interests. *See Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025); *see also Diallo v. Joyce*, No. 25-CV-9909, 2025 WL 3718477, *6 (S.D.N.Y. 2025) (finding "an interest in being free from imprisonment" for a noncitizen who was never in immigration custody); *Chaudhry v. Bondi*, No. 2:25-CV-02339-DGE, 2025 WL 3706534, *4 (W.D. Wash. 2025) (finding that "logically," a noncitizen who was never civilly detained by immigration authorities has a liberty interest).

29. Further, the government's decision not to detain Petitioner gives rise to a liberty interest in their continued freedom. *See Kharitonova v. Albarran*, No. 3:26-cv-01362-JSC, 2026 WL 531441, at *2 (N.D. Cal. Feb. 25, 2026) ("The government's insistence Petitioner lacks a liberty interest because it never before sought to detain her is specious...Although the government did not detain and then release her, it made a decision not to detain her in the first place; Petitioner thus has the same liberty interest in her continued freedom as an individual initially detained."); *see also Anderson v. Chernut,* No. 1:26-CV-01960-DAD-CKD, 2026 WL 809990, at *2 (E.D. Cal. Mar. 24, 2026) (finding, in context of petitioner who was granted parole and whose DACA status was terminated due to a DUI conviction, "that the government's knowing decision not to detain an individual creates a liberty interest in their continued release" and "[e]ven though petitioner's parole authorization expired, petitioner maintains her liberty interest in continued release").

b. Petitioner's liberty interest has been severely curtailed without the ability to obtain release on bond.

30. With respect to the second *Mathews* factor, the risk of erroneous deprivation of liberty through the procedures used, it is also unquestionable that Petitioner's due process rights were violated. Procedures used must be "meaningful." *Mathews,* 424 U.S. at 333. The "fairness and reliability" of the procedures provided must be evaluated, not just their mere existence. *Id.* at 343. Legally required procedural safeguards include an impartial decision maker and the proper placement of the burden of proof.

31. The risk of an erroneous deprivation of liberty is heightened by use of an impartial decisionmaker. *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) ("A neutral judge is one of the most basic due process

protections."). Many federal courts have recognized that bond hearings before IJs are scheduled with unlawful, preordained outcomes of denial. *Singh v. Valdez*, No. 26-CV-1109-WJM, 2026 WL 890240, at *5 (D. Colo. 2026) ("[C]ourts across the country have, with increasing frequency, ceased 'order[ing] even initial bond hearings . . . because Respondents' conduct can no longer be attributed to mere negligence or ineptitude . . . and doing so would effectively allow the Government to transform an unlawful detention into a lawful one through post-hoc justifications." (citing *Haiguang Zheng v. Rokosky*, No. 26-CV-01689, 2026 WL 800203, *11 (D.N.J 2026) (collecting cases); *Zheng,* 2026 WL 800203 at *18-*20 (holding there is "substantial concerns" and "serious question[s] as to whether the constitutional guarantee of an impartial decisionmaker is being honored in any case brought before an IJ); *Rivera Mendoza v. Noem*, No. CV 25-3227-MWF(AGR), 2026 WL 923311, *6 (C.D. Cal. 2026) (holding that to require another bond hearing before an IJ "would be to authorize Respondents to evade habeas review by holding an endless series of insufficient—or even sham—bond hearings.").

32. The burden of justifying prolonged detention of noncitizens is placed on the government as a procedural protection against erroneous deprivation of liberty. *See Rodriguez v. Robbins*, 804 F.3d 1060, 1069 (9th Cir. 2015). The government must prove by clear and convincing evidence that a noncitizen is either a danger or a flight risk to continue to detain them. *Id.*

33. "Clear and convincing evidence requires greater proof than preponderance of the evidence. To meet this higher standard, a party must present sufficient evidence to produce 'in the ultimate factfinder an abiding conviction that the truth of its factual contentions are [sic] highly probable.'" *Sophanthavong v. Palmateer,* 378 F.3d 859, 866 (9th Cir. 2004) (Citing *Colorado v. New Mexico,* 467 U.S. 310, 316 (1984)).

34. Whether Petitioner is a danger is a mixed question of fact and law that is properly reviewable by a district court. *Martinez*, 124 F.4th at 779-80. District courts must evaluate whether the IJ relied upon proof that "as a matter of law—could not establish that conclusion [of danger or flight risk]." *Kharis v. Sessions*, No. 18-CV-04800-JST, 2018 WL 5809432, *5 (N.D. Cal. 2018). As a matter of law, insufficient evidence, or evidence that does not meet the applicable "quantum of evidence" corresponding to the burden of proof, is reviewable and should be held to be a violation. *Id.* (citing *Slim v. Nielson*, No. 18-CV-02816-DMR, 2018 WL 4110551, *5 (N.D. Cal. 2018)). IJs must consider all the evidence in the record when determining if the burden of proof has been satisfied. *See, e.g.*, *Sales v. Johnson*, 323 F. Supp. 3d 1131, 1141 (N.D. Cal. 2017) (ordering release of immigration detainee after bond hearing where government did not present sufficient evidence to show flight risk, especially in light of other evidence favorable to the petitioner, including his "family ties" to the United States).

c. The government's interest in detaining Petitioner is low.

35. The Supreme Court has recognized only two permissible non-punitive government interests for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510, 519–20, 527–28, 31 (2003). "The government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions." *Valencia Zapata v. Kaiser*, 801 F.Supp.3d 919, 939 (N.D. Cal. 2025) (quoting *Hernandez*, 872 F.3d at 990, 994.)

36. In *Singh v. Holder*, the Ninth Circuit explained that while a noncitizen's criminal record is relevant to a bond assessment, criminal history alone is

not always "sufficient to justify denial of bond on the basis of dangerousness. Rather, the recency and severity of offenses *must* be considered." 638 F.3d at 1206 (emphasis added). Courts have also held that the remoteness of even a serious offense undermines its probative value as to potential danger. *See, e.g.*, *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1036 (W.D. Wash. 2019) (holding that ICE failed to meet burden where petitioner's DUI convictions were "serious" but had occurred seven years prior and petitioner had been sober since); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1126–27 (S.D. Cal. 2008) (holding that crime committed decades ago and lack of evidence that similar conduct was likely to recur "shed[] little light" on petitioner's potential danger to the community).

37. The Ninth Circuit has held that, where "the government never argue[s] that [someone] is a flight risk or present[s] any evidence to that effect," the government cannot meet its heavy burden. *Singh*, 638 F.3d at 1205. This includes the requirement that the government offer some evidence as to why alternatives to detention ("ATD"), such as regular check-ins, would fail to abate any flight risk concerns. *See, e.g.*, *Hernandez*, 872 F.3d at 991.

II. The Fifth Amendment protects against unreasonably prolonged detention.

38. "Freedom 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); *see also Zadvydas*, 533 U.S. at 696, (finding that a noncitizen has a liberty interest "strong enough" to challenge "indefinite and potentially permanent" immigration detention).

39. Courts have employed either a bright-line 6-month rule or a multi-factor reasonableness test in assessing whether prolonged detention is constitutionally impermissible. *Rodriguez v. Nielsen*, No. 18-CV-04187-

TSH, 2019 WL 7491555, *6 (N.D. Cal. 2019) (holding that detention is presumptively unlawfully prolonged after 6 months and entitled noncitizen to bond hearing); *Bonnar*, 2019 WL 330906 at *3-*5 (holding that multi-factor test should be used to determine if detention has become unconstitutionally prolonged).

40. Courts in the Southern District of California have taken the position that an individualized analysis is appropriate to determine whether a non-citizen detainee's prolonged detention has become so unreasonable as to require an initial bond hearing. *See Hoyos Amado v. U.S. DOJ*, No.: 25cv2687-LL(DDL), 2025 WL 3079052 (S.D. Cal. Nov 4, 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. Nov. 4, 2020). These cases have generally relied on a six-factor analysis from *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019), which considers the following factors in determining whether detention has become so prolonged that violates the Due Process Clause: (1) the total length of detention to date; (2) the likely duration of future detention; (3) conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal.

41. The regulatory purpose of immigration detention is to hold a person that is a flight risk or a danger to the community. *In re Guerra*, 24 I&N Dec. 37 (BIA 2006). "A due process violation occurs when detention becomes punitive rather than regulatory, meaning there is no regulatory purpose that can rationally be assigned to the detention or the detention appears excessive in relation to its regulatory purpose." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *see also Padilla v. ICE*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. 2023). In other words, a "serious constitutional

threat" under the Fifth Amendment's Due Process Clause is posed by the indefinite detention of noncitizens. *Zadvydas*, 533 U.S. at 699.

III. Exhaustion to the Board of Immigration Appeals is not required.

42. There is no requirement of statutory exhaustion for a petition for writ of habeas corpus. However, exhaustion may be required as a prudential matter. *Ward v. Chavez*, 678 F.3d 1042, 1045 (9th Cir. 2012).

43. "Courts may require prudential exhaustion if (1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (internal citations and quotations omitted).

44. Because exhaustion is not jurisdictional, courts "have discretion to waive a prudential requirement." *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004).

45. A court may waive the exhaustion requirement "when administrative remedies are inadequate or their exercise would be futile, or irreparable injury would result without immediate judicial intervention." *Ward*, 678 F.3d at 1045.

46. Prudential exhaustion should be waived because administrative remedies are inadequate and exhaustion would be futile. The precedent decisions issued by the Board of Immigration Appeals under the Trump Administration indicate that it is futile to require prudential exhaustion in this case. A March 30, 2026 report issued by the National Public Radio found that last year, 97 percent of Board published decisions were in favor

of the Department of Homeland Security.[1] On April 9, 2026, *The New York Times* reported that "The administration has instructed judges to stop granting bond to immigrants who crossed the border illegally, a change from decades of practice. The new policy has required people to remain in detention for extended periods even if they do not have a criminal record and have lived in the country for years."[2]

47. As such it is futile to require Petitioner to appeal to the Board of Immigration Appeals and any requirement of prudential exhaustion should be waived.

48. Further, Petitioner will suffer irreparable injury waiting for an appeal to be decided before the Board.

STATEMENT OF FACTS

49. Petitioner is detained by Respondents at the Imperial Regional Detention Center in Calexico, California in violation of various laws and regulations. Petitioner is a Haitian national who entered the United States on or around September 13, 2018. Petitioner lawfully entered the United States using a valid K-1 fiancé visa and has resided in the United States since then. He married his fiancé on September 26, 2018. The couple remained married until November 21, 2023, when they divorced on account of abuse suffered by Petitioner.

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[1] Ximena Bustillo, Rahul Mukherjee, "An Immigration Court Few Have Heard of is Quietly Shaping Policy Behind the Scenes," npr.org, (Mar. 20, 2026) https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation

[2] Nicholas Nehamas, Allison McCann, Steven Rich, Jazmine Ulloa and Hamed Aleaziz, "How Trump Purged Immigration Judges to Speed Up Deportations," *The New York Times*, April 9, 2026 https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html

50. During his time in the U.S., Petitioner has worked hard to respect the laws of the U.S. and has formed deep ties in the country. For example, Petitioner has five children, four of whom are United States Citizens. Petitioner's youngest child suffers from medical complications, making his absence from his family even more difficult.

51. Petitioner does not have any criminal convictions. On August 25, 2024, he was arrested due to a domestic violence incident. Petitioner did not accept or admit any guilt and instead was placed in a pre-trial diversion program. Petitioner is one class away from completing the pre-trial diversion program and Petitioner will not be convicted. On May 30, 2025, Petitioner was arrested on suspicion of Driving Under the Influence, however those charges are still pending because of ICE detained Petitioner on the same day of the arrest.

52. Petitioner entered the country legally through his then-fiancé, whom he married shortly after coming to the United States. On September 26, 2024, Petitioner was informed that his application to remove conditions on his residency had been denied. Petitioner has had no contact with immigration officials since the denial, nor has he been in removal proceedings prior to his current detention starting on May 30, 2025.

53. Petitioner now has pending applications for asylum and adjustment of status. He has been scheduled for a final merits hearing on both forms of relief for August 28, 2026.

54. On June 26, 2025, Petitioner's previous bond counsel filed a request for a bond hearing, and one was held on July 01, 2025. DHS did not file any evidence to show Petitioner was either a flight risk or danger, whereas Petitioner filed nearly 50 pages of evidence as well as a legal brief. After only ten minutes and not allowing Petitioner to speak on his own behalf, the IJ denied the bond request. Additionally, Petitioner was not offered an

interpreter of Haitian Creole, the language of which he understands best during his bond proceedings. The IJ's order offers no rationale for his decision, despite DHS not having even addressed flight risk during the hearing.

55. On May 5, 2026, nearly a year after Petitioner's first bond hearing, Petitioner's bond counsel filed a request for a bond hearing due to changed circumstances, namely his marriage to his now United States citizen ("USC") wife and the Form I-130 Petition that she filed on behalf of Petitioner on April 10, 2026. The IJ granted the motion and scheduled a bond hearing.

56. On May 08, 2026, Respondents held a second constitutionally defective bond hearing before IJ Anne Kristina Perry.

57. At this hearing, Petitioner presented evidence of his eligibility for relief, evidence of his USC wife's willingness to sponsor and support him upon his release from ICE custody, evidence of his community ties, evidence of his child's health issues, as well as correspondence with Florida public defenders assigned to Petitioner showing that he does not have any convictions, nor will his outstanding matters result in jail time or a conviction.

58. Respondents on the other hand, only presented Form I-213, a self-produced document, and a police report for Petitioner's 2024 arrest. Respondents presented no evidence to rebut Petitioner's showing of changed circumstances, instead repeating arguments made in July 2025.

59. The IJ found that Petitioner's pending I-130 did not in fact rise to the level of changed circumstances, despite making that finding in granting Petitioner's motion for a new bond hearing. Additionally, the IJ made findings of both danger and flight risk, again despite Respondents making

no arguments as to flight risk and could not respond to Petitioner's evidence showing a lack of convictions.

60. The IJ acted in a concerningly biased and prosecutorial manner which lacked any semblance of neutrality and absolved the government of its burden of proof. The IJ alone acted as judge and prosecutor and completely ignored the record before them to reach the absurd conclusion that Petitioner is somehow a danger and flight risk. Petitioner holds no convictions and matters are still pending in the Florida criminal court. Despite Petitioner's counsel presenting evidence from Petitioner's public defenders providing that no conviction will be given, the IJ improperly adjudicated Petitioner's criminal matters and made an erroneous decision of denying Petitioner bond based upon her own presumptions.

61. The IJ improperly issued a ruling after declining to find changed circumstances, denied Petitioner's request for bond and issued a written decision which gave no reasoning beyond "Danger/Flight" in their written order.

62. On June 04, 2026, Petitioner filed an appeal of the bond denial with the Board of Immigration Appeals ("BIA"). It has now been over a month, and the BIA has still not provided a briefing schedule.

63. Petitioner is suffering the traumatic effects and stress that results from the impact his detention has had on his family. The concerning health condition of his youngest son, the financial strain his detention has inflicted on his wife and the growing absence in his own children's life have heavily affected his mental health. Petitioner has made every effort to seek out mental health support while detained. Despite speaking with various Deportation Officers and medical personnel at the detention center, he was informed all they can do is have him go to church and speak with a pastor.

64. Having no other option, Petitioner has continued to see the church pastor at the Imperial Detention Center to address his mental health concerns. A pastor is not a mental health expert, nor do they have the skills and tools to provide Petitioner adequate care.

Biased Immigration Judges and Unconstitutional Bond Hearings.

65. Even before the current administration came into office, bond hearings in immigration court were regarded as "law-free zones" and "implicit bias minefields." Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025). To begin, IJs are not independent adjudicators. They are career attorneys who report to the Attorney General, an appointee of the executive branch, making them "very susceptible to pressure from above to decide cases in a certain way." *Accord* Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. Rev. 2743, 2755 (2024); Holper, 74 Duke L.J. at 1010 (describing an IJ as "a prosecutor masquerading as a judge.").

66. Since the current presidential administration took office early this year, it has fired IJs *en masse*, "many seemingly because their judicial philosophies did not align with the administration's priorities."[3] One recently fired IJ who served in that position for twenty years observed: "I think the current administration . . . does not see the immigration courts as neutral decision-makers. I think that they see immigration courts as a tool for this administration to advance its policy objectives."[4]

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[3] Levin, Sam, "'Hell on earth': immigrants held in new California detention facility beg for help," THE GUARDIAN (Sept. 27, 2025). https://www.theguardian.com/us-news/2025/sep/27/immigrants-california-detention-facility (last accessed Feb. 18, 2026).

[4] Bennett, Geoff and Ali Schmitz, "Ousted immigration judge describes deepening court backlog" PBS NEWS HOUR (Nov. 12, 2025), https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog. (last accessed Feb. 18, 2026).

67. At the same time, hundreds of military lawyers are being recruited to sit as IJs after minimal training.[5] The move alarms legal experts for myriad reasons, including because of the president's outsized influence over the military. *Id.* The administration has even widely issued policy guidance admitting DHS (its enforcement arm) is actively coordinating with the Department of Justice ("DOJ") (under which the BIA and IJs sit) to expand mandatory detention.[6] The DOJ has also launched a campaign to hire new IJs that advertises the position as "deportation judges" and describes it as an opportunity to "[b]ring the hammer down on criminal illegal aliens . . . Defend your communities, your very way of life."[7]

68. Moreover, the administration's copious precedential decisions are largely published *post hoc* to defend the administration's policies, rather than proceeding from neutral adjudication of controversies. As one example in the bond context, the BIA has issued a series of bond decisions that now subjects vast swaths of noncitizens to mandatory detention. *See, e.g.*, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). These decisions upend decades-long understanding of federal law, as federal judges have repeatedly found.[8] Notably, they come as

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[5] Villarreal, Alexandra, "Hiring of military lawyers as immigration judges alarms law experts" THE GUARDIAN (Sept. 22, 2025), https://www.theguardian.com/us-news/2025/sep/22/trump-administration-military-lawyers-immigration-judges. (last accessed Feb. 18, 2026).

[6] Interim Guidance from U.S. Department of Homeland Security to All ICE Employees Re: "Detention Authority for Applications for Admission" (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last accessed Feb. 18, 2026).

[7] *See* Gutierrez, Hilda and Michael Bott, "'An all-out attack on immigration court:' SF immigration judges speak out after firings" NBC BAY AREA (Nov. 25, 2025), https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/ (last accessed Feb. 18, 2026).

[8] Gerstein, Josh and Kyle Cheney, "Immigration appeals court expands mandatory detention for millions" POLITICO (Sept. 5, 2025),

the DHS has received exorbitantly more money to detain immigrants in for-profit immigration detention centers.[9]

GROUNDS FOR RELIEF

I. Ground One: Petitioner's Fifth Amendment Procedural Due Process Rights Were Violated.

69. The allegations in the above paragraphs are realleged and incorporated herein.

70. Petitioner has a heightened liberty interest in not being detained. *See Hamdi*, 542 U.S. at 529. Applying the three-factor test of *Mathews*, that interest has undoubtedly been unconstitutionally infringed upon.

71. Petitioner's liberty interest was infringed upon when Petitioner was not provided with a hearing in advance of this deprivation of liberty.

72. The risk of an erroneous deprivation is also high, because Petitioner was not provided with a bond hearing which comports with due process requirements. The IJs in both previous hearings did not act as neutral adjudicators, acted in a manner which indicated a preordained outcome of denial, and improperly made a general finding of Danger/Flight Risk despite denying Petitioner's request for a bond hearing based on changed circumstances. *See Lemus Crispin v. Bondi*, No. 1:26-CV-191 (LMB/WEF), 2026 WL 768859, *5 (E.D. Va. 2026)("[A]n individual's bond hearing fails to comport with due process where an Immigration Judge relies on considerations that would lead to an automatic denial of bond in all cases"). Moreover, the IJ completely ignored the record before them in making a decision as Petitioner submitted strong evidence in favor

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https://www.politico.com/news/2025/09/05/immigration-mandatory-detention-00548660 (last accessed Feb. 18, 2026).

[9] Dickerson, Caitlin, "ICE's Mind-Bogglingly Massive Blank Check" THE ATLANTIC (July 31, 2025), https://www.theatlantic.com/politics/archive/2025/07/ice-budget-immigration-enforcement/683678/.

of release, including letters of support and sponsorship from his wife and professional mentor, financial documents showing the ability of Petitioner's sponsor to care for him and ensure he attends hearings, evidence of the family petition filed on his behalf, and evidence of the hardship placed on Petitioner's wife and five young children; while the government submitted nothing more than their self-generated Form I-213 and a partially redacted police report and made little to no argument during the bond hearing itself.

73. Finally, the government's interest in Petitioner being further detained is low and significantly outweighed by the other factors. The Supreme Court has recognized only two permissible non-punitive government interests for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore*, 538 U.S. at 519–20, 527–28, 31. Petitioner is neither a danger or flight risk and the Respondents did not demonstrate that he is at either sham hearing they provided. The procedures employed were therefore not meaningful and violated Petitioner's Fifth Amendment Due Process rights.

II. Ground Two: Petitioner Has Been Subjected to Unreasonably Prolonged Detention.

74. The allegations in the above paragraphs are realleged and incorporated herein.

75. Petitioner has been subjected to unreasonably prolonged detention. *See Hoyos Amado v. U.S. DOJ*, No.: 25cv2687-LL(DDL), 2025 WL 3079052 (S.D. Cal. Nov 4, 2025). When the *Banda* test is applied, this prolonged detention undoubtedly violates the Due Process Clause.

76. First, Petitioner has been detained for *thirteen* months and counting, since May 30, 2026. Courts, including those in the Ninth Circuit, have found

detention longer than seven months is unreasonable without a constitutionally sufficient bond hearing. *See Hoyos Amado* at *10; *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (finding that nine months of detention weighed in favor of the Petitioner).

77. Second, the likelihood that the Petitioner will suffer additional detention in the future is great. The Petitioner's removal proceeding is currently set for a final merits hearing on Petitioner's asylum claim and adjustment of status on August 28, 2026. If Petitioner does not succeed on his asylum claim or adjustment of status on August 28, 2026, the Petitioner intends to appeal to the Board of Immigration Appeals (BIA). Such appeals typically constitute a multi-month process, which may result in a remand back to the immigration court or a subsequent petition for review to the Ninth Circuit Court of Appeals.

78. Third, Petitioner's thirteen months of detention at Imperial Regional Detention Center have been characterized by unsanitary, unsafe and degrading conditions. Petitioner has received no professional treatment for his deteriorating mental health, instead he has only been offered counsel from the detention center's pastor.

79. Fourth, there have been no delays caused by the Petitioner. Petitioner, and his attorney, have diligently completed all requirements of the case in a timely manner.

80. Fifth, the government on the other hand, has caused delays in Petitioner's removal proceedings. The I-130 petition filed on behalf of the Petitioner was improperly denied by their administrative branch, which delayed the process as the petition had to be refiled. Additionally, the BIA has not even assigned a briefing schedule for Petitioner's BIA appeal, prolonging the adjudication process.

81. Finally, there is not a high likelihood of a final removal order will be issued in this case, because Petitioner is immediately eligible for a visa based on his approved I-130 Petition.

82. The Supreme Court has recognized only two permissible non-punitive government interests for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore*, 538 U.S. at 519–20, 527–28, 31. If neither can be demonstrated by the government, then the detention is unconstitutional. *See Torres*, 995 F.3d at 708.

83. Petitioner is not a flight risk and no meaningful evidence or argument was made by the government to support that finding. Petitioner's proposed sponsor and wife, Kleya Rice, submitted a letter of support and years-worth of tax information that demonstrated her willingness and ability to assist Petitioner upon release. In addition to this, Peitioner submitted a letter of support from his former employer. She spoke highly of the Petitioner and promised to provide him continued employment upon his release. Petitioner also provided his own tax returns demonstrating the financial support and importance he holds for his family. A letter from the physician of Petitioner's youngest son was submitted, a physician who stressed the importance of both parents being present to make medical decisions for their child. And yet, the IJ ignored all this evidence to find that the relationship between Petitioner and his family was not strong enough. The IJ impermissibly made a finding that Petitioner was a flight risk, despite Respondents failing to make any arguments to support the finding.

84. Petitioner is also not a danger. He has never been convicted of a crime. Petitioner submitted evidence of correspondence between Petitioner's bond hearing counsel and his public defenders in his respective pending cases in

Florida. In both communications, the public defenders provided the likely outcome of the case if Petitioner was returned to Florida, which would not result in a conviction. Petitioner's wife submitted a letter attesting to the domestic violence incident and emphatically spoke about the Petitioner's growth and change, to which she firmly believes that Petitioner is not a danger to her. The IJ disregarded evidence Petitioner filed and instead interpreted the arrests as sufficient evidence to find that Petitioner was a danger.

85. Because the purported bond hearing did not comport with due process requirements it does not justify Petitioner's prolonged detention. Therefore, Petitioner's continued detention violates his right to be free of unreasonably prolonged detention.

III. Ground Three: Violation of APA.

86. The allegations in the above paragraphs are realleged and incorporated herein.

87. The denial of release on bond is a final agency action where, as here, prudential exhaustion not required.

88. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

89. Immigration judges are required to follow precedent. 8 C.F.R. § 1003.1(g) ("decisions of the Board and decisions of the Attorney General are binding on all officers and employees of DHS or immigration judges in the administration of the immigration laws of the United States.").

90. The Board of Immigration Appeals' precedent decision in *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) requires that the noncitizen

demonstrate that he is not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk." *Id.* If these factors are met, the immigration judge is required to order release. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022).

91. The *Matter of Guerra* factors include any or all of the following:

(1) whether the [noncitizen] has a fixed address in the United States;

(2) the [noncitizen]'s length of residence in the United States;

(3) the [noncitizen]'s family ties in the United States, and whether they may entitle the [noncitizen] to reside permanently in the United States in the future;

(4) the [noncitizen]'s employment history;

(5) the [noncitizen]'s record of appearance in court;

(6) the [noncitizen]'s criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses;

(7) the [noncitizen]'s history of immigration violations;

(8) any attempts by the [noncitizen] to flee prosecution or otherwise escape from authorities; and

(9) the [noncitizen]'s manner of entry to the United States. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

92. The immigration judge failed to apply the full set of *Matter of Guerra* factors.

93. An arrest or charge alone is insufficient for the Immigration Judge to find that Petitioner has been convicted of a disqualifying offense. Further, Petitioner does not have any convictions, and DHS has not raised mandatory detention in this case.

94. Petitioner has a fixed address with his family, has resided in the United States for almost 8 years, has worked, and has no prior immigration

violations with the exception of his staying in the U.S. after his application to remove conditions from his permanent residency was denied. However, at no point was Petitioner referred for removal proceedings after this denial and prior to his detention.

95. The finding that Petitioner was a flight risk such that no bond amount, or alternatives to detention, will secure his appearance at future immigration court hearings is an abuse of discretion in light of the *Matter of Guerra* factors.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

(a) Assume jurisdiction over this action;

(b) Issue an Order directing Respondents promptly to show cause why this Petition should not be granted;

(c) Order Respondents to immediately release Petitioner from custody;

(d) Order that Respondents may not re-detain Petitioner without first holding a hearing before a neutral decisionmaker at which the government bears the burden of establishing flight risk or danger to the community by clear and convincing evidence based on changed circumstances; and

(e) Order all other relief that the Court deems just and proper.

DATED this 7th day of August 2026.

Respectfully submitted,
/s/ Catherine Ann Roe
Catherine Ann Roe
Esperanza Immigrant Rights Project
Pro Bono Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242 AND L. R. 83-16.2

Counsel verifies that this petition is authorized by Petitioner. It does not personally bear Petitioner's signature because of the significant difficulty for counsel in meeting with Petitioner in person and because mailing the petition to Petitioner and having it mailed back would cause delay that would only extend the period of his unlawful detention. Counsel knows the facts asserted above or alleges them on information and belief, based on information obtained from the government, Petitioner, and/or Petitioner's current pro bono attorney.

DATED this 7th day of August 2026.

Respectfully submitted,
/s/ Catherine Ann Roe
Catherine Ann Roe
Esperanza Immigrant Rights Project
Pro Bono Attorney for Petitioner

PAGE COUNT CERTIFICATION

Counsel verifies that the foregoing brief in support of this petition, contained in this document, is 25 pages in length excluding the cover page, tables of contents and authorities, and verifications, which complies with the page limit set forth in CivL.R. 7.1(h).

Respectfully submitted,
/s/ Catherine Ann Roe
Catherine Ann Roe
Esperanza Immigrant Rights Project
Pro Bono Attorney for Petitioner