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7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 XOCHITL HERNANDEZ, CESAR )  
MATIAS, for themselves and on behalf )  
12 of a class of similarly-situated )  
individuals, )

Case No. 16-620

**COMPLAINT – CLASS ACTION**

13 Plaintiffs-Petitioners, )

14 v. )

15 LORETTA LYNCH, U.S. Attorney )  
16 General, JUAN P. OSUNA, Director, )  
Executive Office for Immigration )  
17 Review, JEH JOHNSON, Secretary, )  
Department of Homeland Security, )  
18 SARAH R. SALDANA, Director, )  
Immigration and Customs Enforcement )  
19 (ICE), DAVID JENNINGS, Field Office )  
Director, Los Angeles Field Office of )  
20 ICE, JAMES JANECKA, Warden, )  
Adelanto Detention Facility; )  
21 CHRISTINA HOLLAND, Jail )  
Administrator, Santa Ana City Jail, )  
22 CARLOS ROJA, Chief, Santa Ana City )  
Department, JON BRIGGS, Captain, )  
23 Orange County Sheriff’s Department )  
(OCSD), MIKE KRUEGER, Captain, )  
24 OCSD, SANDRA HUTCHENS, Sheriff, )  
Orange County, in their official capacity )  
25 only, )

26 Defendants-Respondents. )  
27  
28

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19 \* *pro hac vice* or admission application forthcoming  
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**INTRODUCTION**

1  
2 1. This class action lawsuit challenges the federal government’s policy and  
3 practice of setting cash bonds for noncitizens in immigration proceedings, without  
4 regard to a noncitizen’s financial resources, which has resulted in the incarceration of  
5 individuals merely because they are poor. As a result of these policies and practices,  
6 many noncitizens—including longtime lawful permanent residents and asylum seekers  
7 fleeing persecution (including in some cases unlawful imprisonment)—are ordered  
8 released on a cash bond but cannot pay it, and remain detained for prolonged periods  
9 while their immigration cases are pending. The detention of such individuals is not  
10 justified by any valid interest, but rather is based on nothing more than the fact that  
11 they are poor or otherwise lack the financial ability to pay their bonds.

12 2. Plaintiffs-Petitioners Xochitl Hernandez, a mother and grandmother who has  
13 resided in the United States for more than twenty-five years, and Cesar Matias, a  
14 Honduran national seeking asylum in the United States, are detained under the  
15 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1226(a). Each Plaintiff has been  
16 granted release on a money bond pending their immigration removal proceedings.  
17 However, Plaintiffs face months or even years in immigration detention because they  
18 are unable to pay the bond set by Defendants. Indeed, Mr. Matias has already been  
19 detained nearly three-and-a-half years because he cannot afford to pay his bond.

20 3. Plaintiffs’ detentions result from three flaws in the immigration detention  
21 process. First, as a matter of policy and practice, immigration officials are not required  
22 to consider an immigration detainee’s financial ability to pay when setting a money  
23 bond. Second, when they do set the bond amount, immigration officials require  
24 noncitizens to post the full cash bond amount to be released, instead of permitting  
25 noncitizens to post a deposit, property, or other assets as collateral. And third, as a  
26 matter of policy and practice, immigration officials are not required to consider  
27 whether alternative conditions of supervision (such as electronic monitoring or  
28 periodic reporting requirements), alone or in combination with a lower bond amount,

1 would be sufficient to mitigate flight risk and thus permit the person’s release. The  
2 result is that the government incarcerates Plaintiffs and others solely because they lack  
3 the financial means to post the full bond amount that Defendants have set.

4 4. Plaintiffs are not alone. On any given day, at least a hundred similarly situated  
5 immigration detainees remain detained in this District on money bonds set pursuant to  
6 Defendants’ policies and practices.

7 5. Defendants’ policies and practices violate the INA; the due process and equal  
8 protection guarantees of the Fifth Amendment; and the Eighth Amendment’s  
9 Excessive Bail Clause. A person’s poverty or lack of financial resources should not  
10 deprive him of his freedom. Indeed, the federal government has recognized in the  
11 criminal bail context that “[i]ncarcerating [criminal defendants] solely because of their  
12 inability to pay for their release . . . through the payment of . . . a cash bond . . .  
13 violates the Equal Protection Clause . . . .” and that bail systems must “take individual  
14 circumstances into account”—including the person’s financial ability to pay.<sup>1</sup>

15 6. The same principles should govern here. The INA and U.S. Constitution require  
16 that the government both assess an individual’s financial ability to pay when setting  
17 bond and determine if alternative forms of bond or other conditions of supervision  
18 permit the detainee’s release. These basic procedures are necessary to ensure that  
19 Plaintiffs and similarly situated individuals are not impermissibly imprisoned based  
20 solely on their inability to pay.

## 21 PARTIES

22 7. Plaintiff-Petitioner Xochitl Hernandez is a native and citizen of Mexico. She is  
23 detained at the Adelanto Detention Center in Adelanto, California pending  
24 immigration removal proceedings. Ms. Hernandez came to the United States as an

25  
26 <sup>1</sup> Statement of Interest of the United States at 1, 8 (hereinafter “Varden Statement”),  
27 *Varden v. City of Clanton*, No. 2:15-cv-00034-MHT (M.D. Ala. filed Feb. 13, 2015)  
28 (Dkt. 26) *sub nom. Jones v. The City of Clanton*; accord U.S. Dep’t of Justice, Dear  
Colleague Letter, Mar. 14, 2016, at 7-8, *available at*  
<https://www.justice.gov/crt/file/832461/download> (stating that “[c]ourts must not  
employ bail or bond practices that cause indigent defendants to remain incarcerated  
solely because they cannot afford to pay for their release”).

1 adolescent, and has lived in the United States for more than 25 years. Ms. Hernandez  
2 is a single mother who has raised five children in the United States, and cares for her  
3 four grandchildren. All her children and grandchildren are United States citizens. Prior  
4 to her detention, Ms. Hernandez lived with her children and grandchildren, and  
5 cooked, cleaned, and cared for her family, including her mother who suffers from a  
6 heart condition. More than a decade ago, Ms. Hernandez was convicted for  
7 shoplifting, for which she was sentenced to one-day in jail; it is the sole crime for  
8 which she has been convicted during her decades in the United States. In March 2016,  
9 an immigration judge conducted a bond hearing in Ms. Hernandez's case under  
10 Section 1226(a) and set her bond at \$60,000. Ms. Hernandez and her family do not  
11 have the financial ability to pay this bond. Ms. Hernandez's adult children have no  
12 assets, and have to dedicate their limited earnings to rent, food, and other basic  
13 necessities. Ms. Hernandez remains detained because of Defendants' policy and  
14 practice of failing to consider immigration detainees' financial ability to pay a bond;  
15 requiring detainees to post the full cash bond amount to be released; and failing to  
16 consider whether release on an alternative form of bond or conditions of supervision  
17 would sufficiently address any concerns about flight risk. Ms. Hernandez is eligible  
18 for cancellation of removal and for a U-visa (as a victim of domestic violence), but  
19 faces the prospect of months or years in detention until her immigration case is  
20 resolved.

21 8. Plaintiff-Petitioner Cesar Matias is a native and citizen of Honduras. Prior to his  
22 detention, Mr. Matias resided in Los Angeles and worked as a hair stylist. Mr. Matias  
23 has been detained for more than four years at the Santa Ana City Jail in Santa Ana,  
24 California pending immigration removal proceedings. A gay man, Mr. Matias is  
25 seeking protection in the United States on account of the severe persecution he  
26 suffered in Honduras because of his sexual orientation. In November 2012, and again  
27 in February 2013, August 2013, and August 2014, Defendants authorized Mr. Matias'  
28 release on a \$3,000 bond under Section 1226(a). However, Mr. Matias has remained

1 detained because of Defendants’ policy and practice of failing to consider immigration  
2 detainees’ financial ability to pay a bond; requiring detainees to post the full cash  
3 bond amount to be released; and failing to consider whether release on an alternative  
4 form of bond or conditions of supervision would sufficiently address any concerns  
5 about flight risk. Mr. Matias’ removal case is pending at the Ninth Circuit Court of  
6 Appeals, which has ordered a stay of removal and appointed him pro bono counsel in  
7 connection with his appeal. He faces the prospect of months or years of additional  
8 detention until his case is resolved.

9 9. Defendant-Respondent Loretta Lynch is the Attorney General of the United  
10 States and the most senior official in the U.S. Department of Justice (“DOJ”). She has  
11 the authority to interpret the immigration laws and adjudicate removal cases. The  
12 Attorney General delegates this responsibility to the Executive Office for Immigration  
13 Review (“EOIR”), which administers the immigration courts and the Board of  
14 Immigration Appeals (“BIA”). She is named in her official capacity.

15 10. Defendant-Respondent Juan P. Osuna is the Director of EOIR, the agency  
16 within DOJ responsible for the immigration courts and the BIA. He is named in his  
17 official capacity.

18 11. Defendant-Respondent Jeh Johnson is the Secretary of the U.S. Department of  
19 Homeland Security (“DHS”), an agency of the United States. Secretary Johnson is a  
20 legal custodian of Plaintiff-Petitioners and other members of the proposed class  
21 (“Plaintiffs”). He is named in his official capacity.

22 12. Defendant-Respondent Sarah R. Saldaña is the Director of U.S. Immigration  
23 and Customs Enforcement (“ICE”). ICE is responsible for apprehension, detention,  
24 and removal of noncitizens from the United States. Director Saldaña is a legal  
25 custodian of the Plaintiffs. She is named in her official capacity.

26 13. David Jennings is the Field Office Director for the Los Angeles Field Office of  
27 ICE, a component of DHS. Director Jennings has custody of the Plaintiffs and is  
28 named in his official capacity.

1 14. Defendant-Respondent James Janecka is the Warden of the Adelanto Detention  
2 Facility in Adelanto, California. Warden Janecka has custody of the Plaintiffs and is  
3 named in his official capacity.

4 15. Defendant-Respondent Christina Holland is the Jail Administrator of the Santa  
5 Ana City Jail in Santa Ana, California. Defendant Holland has custody of the  
6 Plaintiffs and is named in her official capacity.

7 16. Defendant-Respondent Carlos Roja is the Chief of the Santa Ana City  
8 Department, which operates the Santa Ana City Jail in Santa Ana, California. Chief  
9 Holland has custody of the Plaintiffs and is named in his official capacity.

10 17. Defendant-Respondent Jon Briggs is a Captain in the Orange County Sheriff's  
11 Department and the Officer-in-Charge of the Theo Lacy Facility in Santa Ana,  
12 California. Captain Briggs has custody of the Plaintiffs and is named in his official  
13 capacity.

14 18. Defendant-Respondent Mike Krueger is a Captain in the Orange County  
15 Sheriff's Department and the Officer-in-Charge of the James A. Musick Facility in  
16 Irvine, California. Captain Krueger has custody of the Plaintiffs and is named in his  
17 official capacity.

18 19. Defendant-Respondent Sandra Hutchens is the Sheriff of Orange County, which  
19 operates the Theo Lacy Facility in Santa Ana, California, and the James A. Musick  
20 Facility in Irvine, California. Chief Hutchens has custody of the Plaintiffs and is  
21 named in her official capacity.

22 **JURISDICTION AND VENUE**

23 20. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1361, 1651, 2241; the  
24 Suspension Clause, U.S. Const. art. I, § 2; and 5 U.S.C. § 702.

25 21. Plaintiffs seek declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-  
26 2202.

27 22. Venue is proper in the Central District of California under 28 U.S.C. § 1391  
28 because at least one federal Defendant is in this District, the Plaintiffs are detained in

1 this District, and a substantial part of the events giving rise to the claims in this action  
2 took place in this District.

3 **BACKGROUND**

4 **Legal Background**

5 23. INA § 236(a), 8 U.S.C. § 1226(a), authorizes immigration officials to release a  
6 noncitizen on appropriate conditions pending the resolution of his or her immigration  
7 case. Section 1226(a) provides that, “pending a decision on whether the alien is to be  
8 removed from the United States,”

9 “the Attorney General--

10 (1) may continue to detain the arrested alien; and

11 (2) may release the alien on--

12 (A) bond of at least \$1,500 with security approved by, and  
containing conditions prescribed by, the Attorney General;

13 or

14 (B) conditional parole . . . .”

15 *Id.*

16 24. The Attorney General shares his authority to detain or release noncitizens under  
17 Section 1226(a) with the Secretary of Homeland Security. *See* 8 U.S.C. § 1103(a) &  
18 (g); Homeland Security Act of 2002, Pub. L. No. 107-296, § 441, 116 Stat. 2192.

19 25. The Department of Homeland Security (“DHS”) makes an initial custody  
20 determination for each noncitizen detained under the statute, whereby the agency  
21 considers him or her for release on bond, recognizance, or other conditions (such as  
22 electronic monitoring, periodic reporting requirements, restrictions on travel, or  
23 enrollment in a substance abuse program). With some exceptions not relevant here,  
24 noncitizens may seek review of an ICE custody determination before an immigration  
25 judge (“IJ”) at a hearing commonly known as a “bond hearing.” *See* 8 C.F.R.

26 §§ 1003.19(a) & (h)(2)(i). At the bond hearing, the IJ likewise determines whether the  
27 noncitizen can be released on bond, recognizance, or other conditions. *See* 8 C.F.R.  
28 § 1236.1(d)(1); 8 C.F.R. § 1003.19.

29 26. To obtain release from ICE or the IJ, the noncitizen must “demonstrate to the  
satisfaction of the officer that [his or her] release would not pose a danger to property

1 or persons, and that [he or she] is likely to appear for any future proceeding.” 8 C.F.R.  
2 § 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999). A noncitizen  
3 found to present a danger to persons or property is ineligible for release on bond.  
4 *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). If the person does not pose a  
5 danger and is likely to appear at future proceedings, the ICE officer or IJ determines  
6 whether the noncitizen may be released on recognizance, bond, or other conditions  
7 that will sufficiently address any concerns about flight risk. *See id.* at 39-40.

8 27. There is presently no requirement that ICE consider a detainee’s poverty or  
9 financial ability to pay when setting a bond under Section 1226(a). Nor is there any  
10 requirement that ICE determine whether conditions of supervision, alone or in  
11 combination with a lower bond, would suffice to allow for the person’s release.

12 28. Under BIA precedent, the IJ has “broad discretion in deciding the factors that  
13 he or she may consider in custody redeterminations.” *Guerra*, 24 I. & N. Dec. at 40.  
14 However, there is no requirement that IJs consider an individual’s ability to pay the  
15 bond. Indeed, in a series of unpublished decisions, the BIA has held that a person’s  
16 financial circumstances are *irrelevant* to a bond determination. *See In Re Sandoval-*  
17 *Gomez*, 2008 WL 5477710, at \*1 (BIA Dec. 15, 2008) (“an alien’s ability to pay the  
18 bond amount is not a relevant bond determination factor”); *In Re Castillo-Cajura*,  
19 2009 WL 3063742, at \*1 (BIA Sept. 10, 2009) (same). Nor is there any requirement  
20 that IJs determine whether conditions of supervision, alone or in combination with a  
21 lower bond, would sufficiently address any concerns about flight risk and therefore  
22 suffice to allow for the person’s release.

23 29. The regulations further permit the noncitizen to seek a new bond  
24 redetermination by the IJ, but “only upon a showing that the alien’s circumstances  
25 have changed materially since the prior bond redetermination.” 8 C.F.R. § 1003.19(e).  
26 However, Defendants do not recognize a person’s financial inability to post bond,  
27 despite having made good faith efforts to do so, as a “changed circumstance” that  
28 warrants a new bond hearing.

1 30. Section 1226(a) imposes a minimum \$1,500 bond, “with security approved by  
2 . . . the Attorney General.” However, in practice ICE or IJs routinely set higher bonds,  
3 such as \$20,000, \$25,000, and even \$100,000 or more.

4 31. Moreover, although Section 1226(a) refers broadly to “security approved by . . .  
5 the Attorney General,” the government has a policy and practice of requiring  
6 immigration detainees to post the full cash value of the immigration bond to obtain  
7 release. In sharp contrast to the criminal justice system, no other forms of secured  
8 bonds are deemed acceptable, such as deposit bonds—where the noncitizen would  
9 post a percentage (such as 10%) of the bond as security, and the total bond amount  
10 becomes due only if he fails to appear—or property bonds, where property valued at  
11 the full bond amount would be posted as security and would be forfeited if the person  
12 fails to appear.

13 32. The government’s reliance on full cash bonds—without consideration of an  
14 individual’s financial ability to pay the bond—is out of step with well-established  
15 procedures in federal and state courts. Under the federal Bail Reform Act, a district  
16 court must consider a range of alternative conditions before ordering release on  
17 monetary bond and “may not impose a financial condition that results in the pretrial  
18 detention of the person.” *See* 18 U.S.C. § 3142(a)-(c). Likewise, state criminal justice  
19 systems in this Circuit require that judicial officers must consider a defendant’s  
20 financial ability to pay at custody hearings. *See, e.g.,* Alaska Stat. Ann.  
21 § 12.30.011(c)(8) (requiring court to consider “assets available to the person to meet  
22 monetary conditions of release”); Cal. Penal Code § 1270.1 (requiring court to  
23 consider detained person’s “ability to post bond”); Nev. Rev. Stat. Ann. § 178.498  
24 (requiring bail to be set with regard to “[t]he financial ability of the defendant to give  
25 bail”); Mont. Code Ann. § 46-9-301 (requiring bail to be “considerate of the financial  
26 ability of the accused”); Haw. Rev. Stat. Ann. § 804-9 (amount of bail should be  
27 determined so as not “to render the privilege useless to the poor”); Wash. Rev. Code  
28 Ann. § SUPER CT CR CrR 3.2(b)(6) (“If the court determines that the accused must

1 post a secured or unsecured bond, the court shall consider, on the available  
2 information, the accused’s financial resources for the purposes of setting a bond that  
3 will reasonably assure the accused's appearance.”). *See also Gusick v. Boies*, 72 Ariz.  
4 233, 237 (1951) (noting that that court should consider “the ability of the accused to  
5 give bail” when setting bail to comport with the prohibition of excessive bail).

6 33. Bond systems for criminal detainees also routinely accept the posting of deposit  
7 or property bonds, rather than insisting on payment of a full cash bond.

8 34. Federal and state officials—including the U.S. Department of Justice—are  
9 increasingly calling for an end to the over-reliance on monetary bond, fines, fees, and  
10 other financial constraints that disproportionately affect low-income individuals in the  
11 criminal justice system.<sup>2</sup> However, the federal government’s immigration detention  
12 policies practices suffer from the same flaws.

### 13 CLASS ACTION ALLEGATIONS

#### 14 **Defendants’ Policies and Practices for Setting Immigration Bonds in the Central** 15 **District of California**

16 35. ICE detains several thousand noncitizens in the Central District of California  
17 (the “District”) at any given time, primarily at four detention facilities. The largest, the  
18 Adelanto Detention Facility in Adelanto, California, is operated by the GEO  
19 Corporation and has capacity to hold approximately 1,950 immigrants. ICE also  
20 detains noncitizens in three other detention centers located in Orange County. The  
21 James A. Musick Facility in Irvine, California, is operated by the Orange County  
22 Sheriff and has capacity to hold approximately 350 immigrants. The Theo Lacy  
23 Facility in Orange, California, is operated by the Orange County Sheriff and has  
24 capacity to hold approximately 475 immigrants. The Santa Ana City Jail in Santa Ana,  
25 California, is operated by the Santa Ana City Police and has capacity to hold  
26 approximately 200 immigrants.

27 36. As a matter of policy, practice, or both, ICE and IJs in the District are not  
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<sup>2</sup> *See Varden Statement* at 5-8, 11, 13-14.

1 required to consider an individual's financial resources in setting bond amounts under  
2 Section 1226(a).

3 37. As a matter of policy, practice, or both, Defendants require that immigrants post  
4 the full cash bond to be released.

5 38. As a matter of policy, practice, or both, ICE and IJs are not required to consider  
6 whether an alternative form of bond or conditions of supervision, alone or in  
7 combination with a lower bond, would suffice to address flight risk and permit  
8 release.

9 39. On any given day, at least 100 immigrants—and likely many more—remain  
10 detained in this District under Section 1226(a) on a bond set pursuant to these policies,  
11 practices, or both. This is so even though, by setting a bond, Defendants have already  
12 determined that such individuals do *not* pose a danger to the community or a level of  
13 flight risk that requires their detention.

14 40. The stories of the individual Plaintiffs are typical of the detention practices in  
15 this District. For example, Plaintiff Matias was ordered released on a \$3,000 bond  
16 following a bond hearing in immigration court in approximately November 2012. At  
17 the hearing, the IJ did not ask any questions about his financial circumstances or  
18 ability to pay a bond. At a court hearing in February 2013, Mr. Matias again requested  
19 release from detention to retrieve documents for his removal case. The IJ refused,  
20 telling him the bond set was “pretty generous” even though he could not afford it. In  
21 approximately August 2013, ICE re-evaluated Mr. Matias's custody, but did not  
22 inquire into his financial circumstances or ability to pay a bond. ICE issued a decision  
23 ordering him released on a \$3,000 bond, the same bond amount ordered by the IJ that  
24 he had been unable to afford. At a hearing in approximately August 2014, Mr. Matias  
25 requested that the IJ consider releasing him on non-monetary conditions but the IJ  
26 refused, stating that the \$3,000 bond amount was “reasonable,” even though Mr.  
27 Matias had been unable to afford it for more than a year and a half at that point. As of  
28 this time, Mr. Matias has remained detained for more than three and a half years since

1 his bond was initially set.

2 41. Similarly, Ms. Hernandez was ordered released on a \$60,000 bond following a  
3 bond hearing in immigration court in March 2016. The immigration judge found that  
4 Ms. Hernandez was not a danger to the community, but that she “posed a flight risk”  
5 because she might not win her immigration case. However, prior to setting the bond,  
6 the immigration judge did not inquire into Ms. Hernandez’s financial circumstances or  
7 her ability to pay a bond, and did not state whether he considered whether she could  
8 be released on non-monetary conditions that would suffice to address concerns about  
9 flight risk. Because Ms. Hernandez and her family lack the resources to pay the bond,  
10 she has been detained for several weeks since the bond was initially set, and faces the  
11 prospect of months or years of additional time in detention until her case completes.

12 42. Plaintiffs’ experiences are similar to those of other proposed class members.  
13 For example, in one case of a detainee held in the Central District, an IJ refused to  
14 lower a bond to an amount the detainee’s family could afford on the ground that  
15 evidence of financial circumstances was “irrelevant” to the bond amount  
16 determination. In another case of a detainee held in the Central District, a different IJ  
17 refused to consider a detainee’s indigence and dismissed evidence of financial  
18 hardship because “everyone is poor in here.”

19 **This Action Satisfies the Requirements of Federal Rule of Civil Procedure 23**

20 43. Plaintiffs Hernandez and Matias bring this action pursuant to Federal Rules of  
21 Civil Procedure 23(b)(2) on behalf of themselves and all other persons similarly  
22 situated. The proposed class is defined as follows:

23 All individuals who are or will be detained pursuant to 8 U.S.C.  
24 § 1226(a) on a bond set by an U.S. Immigration and Customs  
25 Enforcement officer or an Immigration Judge in the Central District of  
26 California.

26 44. The requirements of Rule 23(a)(1) are met in this case because the class is so  
27 numerous that joinder of all members is impracticable. At any given time, at least 100  
28 persons remain detained on a bond set by government officials in this District

1 pursuant to the bond policies and practices that Plaintiffs challenge. More individuals  
2 will become class members in the future, as Defendants continue to detain additional  
3 noncitizens under Section 1226(a) on a monetary bond pursuant to their bond policies  
4 and practices.

5 45. Moreover, because Plaintiffs and proposed class members are detained pending  
6 removal proceedings, they may win their cases and be released or deported upon the  
7 conclusion of their removal cases. The inherently transitory state of the proposed class  
8 further demonstrates that joinder is impracticable.

9 46. The proposed class meets the commonality requirements of Federal Rule of  
10 Civil Procedure 23(a)(2) because all proposed class members are subject to  
11 Defendants' three common policies or practices: Defendants' failure to require that  
12 ICE and IJs consider an individual's ability to pay in setting a bond under Section  
13 1226(a); Defendants' requirement that detainees post full cash bonds rather than other  
14 forms of secured bonds; and Defendants' failure to require a determination that no  
15 conditions of supervision, alone or in combination with a lower bond, would mitigate  
16 flight risk. Defendants have concluded that they are not required to make such  
17 inquiries or to accept alternative forms of secured bonds, and this policy applies to all  
18 members of the proposed class.

19 47. The proposed class meets the typicality requirements of Federal Rule of Civil  
20 Procedure 23(a)(3) because the claims of the representative Plaintiffs are typical of the  
21 claims of the class. Plaintiffs Hernandez, Matias, and the class they seek to represent  
22 are all individuals who are or will be detained on a full cash bond pursuant to Section  
23 1226(a), and whose bonds have been set or will be set without any requirement that  
24 Defendants consider their financial ability to pay or the adequacy of an alternative  
25 bond or alternative conditions of supervision. Plaintiffs Hernandez, Matias, and the  
26 proposed class also share the same legal claims, which challenge the legality of these  
27 bond policies and practices under the INA, the Due Process Clause and equal  
28

1 protection guarantee of the Fifth Amendment, and the Eighth Amendment’s Excessive  
2 Bail Clause.

3 48. The proposed class meets the adequacy requirements of Federal Rule of Civil  
4 Procedure 23(a)(4). Plaintiffs Hernandez and Matias seek the same relief as the other  
5 members of the class—namely, custody decisions that require consideration of both  
6 their financial ability to pay a money bond and the adequacy of alternative conditions  
7 of supervision, as well as the opportunity to post forms of security other than a full  
8 cash bond—and they do not have any interests adverse to those of the class as a  
9 whole.

10 49. In addition, the proposed class is represented by counsel from the American  
11 Civil Liberties Union of Southern California, the American Civil Liberties Union  
12 Immigrants’ Rights Project, and experienced pro bono attorneys. Counsel have  
13 extensive experience litigating class action lawsuits and other complex cases in  
14 federal court, including civil rights lawsuits on behalf of immigration detainees.

15 50. Finally, the proposed class satisfies Federal Rule of Civil Procedure 23(b)(2)  
16 because the immigration authorities have acted on grounds generally applicable to the  
17 class by failing to apply procedures required by the U.S. Constitution and Section  
18 1226(a) to all members of the proposed class. Thus, final injunctive and declaratory  
19 relief is appropriate with respect to the class as a whole.

20 51. In the alternative, the class also qualifies for certification under Federal Rules of  
21 Civil Procedure 23(b)(1)(A) and (b)(1)(B).

## 22 **CLAIMS FOR RELIEF**

### 23 **First Claim**

#### 24 **Violation of the Immigration and Nationality Act**

25 52. All of the foregoing allegations are repeated and realleged as though fully set  
26 forth herein.

27 53. Defendants’ policies and practices for setting bond violate the Immigration and  
28 Nationality Act (“INA”), 8 U.S.C. § 1226(a). Properly construed, Section 1226(a)

1 does not permit the government to detain Plaintiffs and proposed class members on a  
2 full cash bond absent consideration of the person’s financial ability to pay the bond  
3 amount and consideration of whether an alternative form of bond or other conditions  
4 of supervision, alone or in combination with a lower bond, would sufficiently mitigate  
5 flight risk. Plaintiffs’ detention under Section 1226(a) in the absence of such  
6 procedures violates the INA.

7  
8 **Second Claim**  
9 **Violation of the Due Process Clause of the Fifth Amendment**  
10 **to the United States Constitution**

11 54. All of the foregoing allegations are repeated and realleged as though fully set  
12 forth herein.

13 55. The Fifth Amendment to the U.S. Constitution provides that “[n]o person shall  
14 be . . . deprived of life, liberty, or property, without due process of law.” U.S. Const.  
15 amend. V. Due process requires that civil immigration detention be reasonably related  
16 to preventing flight and danger to the community and be accompanied by adequate  
17 procedures to ensure those goals are being met.

18 56. For these reasons, due process does not permit the government to detain  
19 Plaintiffs on a full cash bond absent a determination of a person’s financial ability to  
20 pay the bond amount and whether an alternative form of bond or other conditions of  
21 supervision, alone or in combination with a lower bond, can sufficiently mitigate  
22 flight risk.

23 **Third Claim**  
24 **Violation of the Equal Protection Guarantee of the Fifth Amendment**

25 57. All of the foregoing allegations are repeated and realleged as though fully set  
26 forth herein.

27 58. The Fifth Amendment prohibits denying individuals the equal protection of the  
28 laws.

59. The government’s detention of individuals because they lack the financial  
resources to pay a money bond, while affording release to individuals who can afford

1 a money bond, discriminates against individuals who are indigent or lack the  
2 resources to pay their bonds.

3 60. For this reason, equal protection does not permit the government to detain  
4 Plaintiffs on a full cash bond absent a determination of a person's ability to pay the  
5 bond amount and whether an alternative form of bond or other conditions of  
6 supervision, alone or in combination with a lower bond, can sufficiently mitigate  
7 flight risk.

8 **Fourth Claim**  
9 **Violation of the Excessive Bail Clause of the Eighth Amendment**  
10 **to the United States Constitution**

11 61. All of the foregoing allegations are repeated and realleged as though fully set  
12 forth herein.

13 62. The Eighth Amendment provides that “[e]xcessive bail shall not be required  
14 . . . .” U.S. Const. amend. VIII. “[B]ail must be set by a court at a sum designed to  
15 ensure” the government’s goals of preventing flight and danger—“and no more.”  
16 *United States v. Salerno*, 481 U.S. 739, 754 (1987).

17 63. Thus, the Eighth Amendment does not permit the government to detain  
18 Plaintiffs on a full cash bond absent a determination of a person's ability to pay the  
19 bond amount and whether an alternative form of bond or other conditions of  
20 supervision, alone or in combination with a lower bond, can sufficiently mitigate  
21 flight risk.

22 **PRAYER FOR RELIEF**

23 Plaintiffs ask this Court to grant the following relief:

- 24 1. Certify this case as a class action lawsuit, as proposed herein, appoint Plaintiffs  
25 Hernandez and Matias as representatives of the class and the undersigned counsel as  
26 class counsel;
- 27 2. Declare that Defendants’ policy and practice, as described in this Complaint, of  
28 detaining class members on a full cash bond without requiring that ICE and the IJ  
consider class members’ financial ability to pay when setting a bond, as well as the

1 adequacy of an alternative form of secured bond and alternative conditions of  
2 supervision, violates the INA, 8 U.S.C. § 1226(a), and the Fifth and Eighth  
3 Amendments to the U.S. Constitution;

4 3. Order the Defendants to assess each class member's financial ability to pay in  
5 setting a bond under 8 U.S.C. § 1226(a) and consider whether an alternative form of  
6 secured bond or other conditions of supervision, alone or in combination with a lower  
7 bond, would mitigate flight risk and permit the class member's release. If a class  
8 member is unable to pay any bond set by the IJ after making good faith efforts to do  
9 so, Defendants must provide the class member with a new bond hearing before the IJ  
10 to determine if he or she may be released on an alternative form of secured bond or  
11 other conditions of supervision, alone or in combination with a lower bond;

12 4. Grant Plaintiffs Hernandez and Matias's writs of habeas corpus and order a  
13 bond hearing where the IJ considers their financial ability to pay a monetary bond and  
14 whether an alternative form of secured bond or other conditions of supervision, alone  
15 or in combination with a lower bond, would mitigate flight risk and permit the  
16 Plaintiffs' release. If the Plaintiff is unable to pay any new bond set by the IJ after  
17 making good faith efforts to do so, Defendants must provide him or her with a new  
18 bond hearing before the IJ to determine if he or she may be released on an alternative  
19 form of secured bond or other conditions of supervision, alone or in combination with  
20 a lower bond;

21 5. Grant an award of attorneys' fees and costs; and

22 6. Grant such other relief as may be just and reasonable.

23 Respectfully submitted,

24 ACLU OF SOUTHERN CALIFORNIA

25 Dated: April 6, 2016

/s/ Michael Kaufman

26 MICHAEL KAUFMAN

27 Counsel for Plaintiffs-Petitioners