

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF VIRGINIA**  
**ALEXANDRIA DIVISION**

ERIC GONZALEZ ORDONEZ,

*Petitioner,*

v

PAUL PERRY, *in his official capacity as*  
*Superintendent of the Caroline Detention Facility;*  
RUSSELL HOTT, *in his official capacity as Field*  
*Office Director of the Immigration and Customs*  
*Enforcement, Enforcement and Removal*  
*Operations Washington Field Office,* KRISTI  
NOEM, *in her official capacity as Secretary of*  
*Homeland Security of the United States,*  
PAMELA BONDI, *in her official capacity as*  
*Attorney General of the United States,*

*Respondents.*

**PETITION FOR A WRIT OF  
HABEAS CORPUS**

Case No. \_\_\_\_\_

**INTRODUCTION**

1 Petitioner Eric Gonzalez Ordonez (“Mr. Gonzalez Ordonez” or “Petitioner”), a 28-year-old citizen of Guatemala who has lived in the United States since January 2023 and was granted relief by the Immigration Court of deferral of removal under the Convention Against Torture (“CAT”), has been detained in Immigration and Customs Enforcement (“ICE”) custody for over 16 months without receiving a bond hearing. Mr. Gonzalez Ordonez petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 to remedy his unlawful detention by Respondents at the Caroline Detention Facility.

2. Mr. Gonzalez Ordonez is detained pursuant to 8 U.S.C. § 1226(c), which governs the detention of noncitizens deemed ineligible for bond pending their removal proceedings. *See Bah v. Barr*, 409 F. Supp. 3d 464, 467–68 (E.D. Va. 2019). Mr. Gonzalez Ordonez’s mandatory detention of over 16 months has become unconstitutionally prolonged in violation of his Due Process rights. *See Portillo v. Hott*, 322 F. Supp. 3d 698 (E.D. Va. 2018).

3. Mr. Gonzalez Ordonez requests a bond hearing before this Court at which the Department of Homeland Security (“DHS”) bears the burden of proving by clear and convincing evidence that he is a present flight risk or danger to the community. Moreover, Mr. Gonzalez Ordonez asks that this Court consider his ability to pay a monetary bond and the suitability of alternative conditions of supervision that could mitigate any perceived flight risk or danger. *See, e.g., Black v. Decker*, 103 F.4th 133, 138 (2d Cir. 2024). Alternatively, he seeks a bond hearing before an Immigration Judge (“IJ”) under the same procedures. *See Abreu v. Crawford*, No. 1:24-cv-01782, 2025 WL 51475, at \*7 (E.D. Va. Jan. 8, 2025) (ordering the immigration court to conduct a bond hearing within fourteen days with the burden on the Government by clear and convincing evidence); *Bah*, 409 F. Supp. 3d at 473 (ordering bond hearing with burden on the Government). Moreover, Mr. Gonzalez Ordonez asks that this Court order the IJ to consider his limited ability to pay bond and the suitability of alternative conditions of supervision, such as telephonic reporting. *See, e.g., Black*, 103 F.4th at 138.

### **JURISDICTION & VENUE**

4. This case arises under the United States Constitution. This Court has subject matter jurisdiction under Art. I § 9, cl. 2 of the U.S. Constitution (“the Suspension Clause”), 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1331 (federal question jurisdiction).

5. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

6. Administrative exhaustion is unnecessary, as it would be futile. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542 (E.D. Va. 1999). The Government has not afforded, and will not afford, Petitioner a bond hearing because he is detained under § 1226(c).

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Gonzalez Ordonez is physically detained in this district and events or omissions giving rise to this action continue to occur in this district.

### **PARTIES**

8. Petitioner Eric Gonzalez Ordonez is a native and citizen of Guatemala who has been in ICE custody since December 13, 2023, and is currently detained at the Caroline Detention Facility in Bowling Green, Virginia (“Caroline”).

9. Respondent Paul Perry is the Warden of the Caroline Detention Facility. Respondent Perry is responsible for overseeing the administration and management of Caroline. Though Respondent Perry does not have the legal authority to release Mr. Gonzalez Ordonez without ICE’s permission, he is the immediate custodian of the Petitioner. Respondent Perry is sued in his official capacity.

10 Respondent Russell Hott is the Field Office Director of the ICE Enforcement and Removal Operations (“ERO”) Washington Field Office. In that capacity, he is charged with overseeing all ICE detention centers in Virginia, including Caroline, and has the authority to make custody determinations regarding individuals detained there. Respondent Hott is a legal custodian of the Petitioner. Respondent Hott is sued in his official capacity.

11. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (“DHS”). She supervises ICE, an agency within DHS which is responsible for the administration and enforcement of immigration laws and has supervisory responsibility for and authority over the detention and removal of noncitizens throughout the United States. Secretary Noem is the ultimate legal custodian of Petitioner. Respondent Noem is sued in her official capacity.

12. Respondent Pamela Bondi is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office for Immigration Review (“EOIR”), including all IJs, the Board of Immigration Appeals (“BIA”), and the National Qualified Representative Program (“NQRP”), and has authority over immigration detention. Respondent Bondi is sued in her official capacity.

#### **STATEMENT OF FACTS**

13. Mr. Gonzalez Ordonez was born in Guatemala in 1997 and came to the United States in 2023. Exhibit A, Mr. Gonzalez Ordonez’s Declaration, at ¶ 1. As a consequence of his uncle’s position in the Guatemalan Civil National Police, Mr. Gonzalez Ordonez faced several attempts on both his and his family’s lives from armed gangs in Guatemala. *Id.*

14. At his Individual Merits Hearing in front of the Immigration Court, IJ Karen Donoso Stevens found that Mr. Gonzalez Ordonez and his family were threatened by the 18th Street gang for several years because of his uncle’s work. *See* Exhibit D, IJ Order Granting Relief, at 3-4. In late 2022, 18th Street gang members assaulted and attempted to kidnap Mr. Gonzalez Ordonez. *Id.* at 4, 16. The men beat him so much that he could see his ankle bone coming out and had seizure-like symptoms. *Id.* at 16. Soon after, Mr. Gonzalez Ordonez fled his home country in January 2023. *Id.* at 4.

15. When Mr. Gonzalez Ordonez fled Guatemala in 2023, he came to live with his brother and his family in Harrisonburg, Virginia. Exhibit A, at ¶ 26. There, he found work as a

painter for his sister-in-law's company. *Id.* at ¶ 27. When work at the painting company was slow due to inclement weather, Mr. Gonzalez Ordonez found work cleaning the machines in a poultry plant. *Id.*

16. In September 2023, Mr. Gonzalez Ordonez was riding his bike down the street when he was hit by a passing car. Exhibit B, Medical Records from Sentara Medical Center, at 1-2. He suffered subdural hematoma and was unconscious for 30 minutes. *Id.*; Exhibit A, at ¶ 14. When he awoke, his legs were temporarily paralyzed. Exhibit A, at ¶ 14. While he eventually regained the ability to move his legs, the accident left him with headaches, difficulties with memory and concentration, and other symptoms of head trauma. *Id.* at ¶ 15; Exhibit C, Medical Records from Caroline Detention Facility, at 23–24, 26, 29. Mr. Gonzalez Ordonez believes his previous head injury, suffered from a gang attack in Guatemala, exacerbated the symptoms Exhibit A, at ¶ 14.

17. A month after the accident, in October 2023, Mr. Gonzalez Ordonez was arrested for the first and only time in his life. *Id.* at ¶ 3. He initially was unaware of what the charges were. *Id.* He eventually learned he was charged with misdemeanor sexual battery, which carries a maximum punishment of twelve months of incarceration. Va. Code. Ann. § 18.2-67.4. On the advice of his attorney and wishing to avoid spending time in prison, Mr. Gonzalez Ordonez pled guilty. Exhibit A, at ¶ 4. On December 12, 2023, the judge imposed a 12-month sentence with all but 60 days suspended and placed him on probation for one year. Although the General District Court ordered his release from the Harrisonburg County Jail, Mr. Gonzalez Ordonez was held until ICE transferred him to the Caroline Detention Facility the following day. Exhibit A, at ¶ 5.

18. Mr. Gonzalez Ordonez began to fight his immigration case from the moment he became detained. He struggled to find an attorney for several months, all the while suffering from his head injury. IJ Donoso Stevens designated Mr. Gonzalez Ordonez incompetent to stand trial

alone March 14, 2024 and appointed attorneys from the Amica Center for Immigrant Rights as his Qualified Representative.<sup>1</sup> Exhibit D, IJ Order Granting Relief, at 2 After the appointment of counsel, Mr. Gonzalez Ordonez and his legal team worked diligently to submit a Form I-589 Application for Asylum, Withholding of Removal, and CAT. *Id.* at 3 He testified to his past trauma and experiences in Guatemala at his Individual Merits Hearing on September 5, 2024 and October 8, 2024 *Id.*

19. Three months later, on January 2, 2025, IJ Donoso Stevens granted Mr. Gonzalez Ordonez relief under the CAT, finding that he “sufficiently established that upon removal to Guatemala, he will more likely than not face torture from gang members with the consent or acquiescence of a public official ” *Id.* at 13. Specifically, the IJ found Mr. Gonzalez Ordonez and “his family have a history both of continuously resisting and reporting the 18th Street gang and experiencing general as well as targeted violence from the gang in the form of death threats, physical harm, and extortion over the course of many years.” *Id.* at 15.

20. For several days following the decision, Mr. Gonzalez Ordonez believed he would be released from Caroline Exhibit A, at ¶ 23. However, instead, DHS appealed the IJ’s order on January 15, 2025. The appeal brief filed by DHS disputes the IJ’s factual findings regarding the likelihood that Mr. Gonzalez Ordonez will suffer torture if removed to Guatemala. If this habeas petition is not granted, Mr. Gonzalez Ordonez will remain in ICE custody indefinitely while the BIA considers his case and during a potential remand to the IJ Even if the BIA dismisses the government’s appeal, Mr. Gonzalez Ordonez further faces the threat of prolonged detention by ICE during an extended “removal period” to seek third country removal. *See* 8 U.S.C. § 1231(a)(6).

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<sup>1</sup> Under the National Qualified Representative Program, immigrants in detention who are found by an IJ or the BIA to be “mentally incompetent to represent themselves in immigration proceedings” are appointed a Qualified Representative to assist them in the proceedings. *See* Executive Office of Immigration Review, *National Qualified Representative Program (NQR)* (February 18, 2020), <https://www.justice.gov/eoir/national-qualified-representative-program-nqr>

**Mr. Gonzalez Ordonez's experiences in ICE Detention**

21. Mr. Gonzalez Ordonez has remained in ICE custody for 16 months. He lives in a dormitory that has previously held about 55 people; however, recent overcrowding has increased dorm populations to closer to 70. Exhibit A, at ¶ 12.

22. For Mr. Gonzalez Ordonez and the other detainees at Caroline, every day is the same. They are allowed outside for only about an hour every day. *Id.* at ¶ 10. Otherwise, Mr. Gonzalez Ordonez is surrounded by others. The constant noise causes him headaches, so he spends his days in as much solitude as he can find, attempting to take naps, reading, or drawing. *Id.* at ¶ 11

23. The food served in Caroline makes Mr. Gonzalez Ordonez ill due to a dairy intolerance. *Id.* at ¶ 7; Exhibit G, Complaint to Office of the Immigration Detention Ombudsman, July 22, 2024, at 23–26. He also reports that sometimes the milk in the food is spoiled. Exhibit A, at ¶ 7. When he attempts to eat it, it causes him stomach pain, nausea, and vomiting, for which he has seen medical staff. *Id.*, Exhibit G, at 23–26. With the help of his attorney, Mr. Gonzalez Ordonez requested that he be given different, dairy-free food, but that request was repeatedly denied. Exhibit A, at ¶ 7. His attorney assisted him in filing a complaint with the Office of the Immigration Detention Ombudsman (“OIDO”), but the facility nevertheless continued to deny this modest accommodation.<sup>2</sup> Exhibit G. Without the cafeteria food, he instead sustains himself with food he or others buy from commissary. Exhibit A, at ¶ 8.

24. The guards and facility staff at Caroline treat detainees harshly or neglect detainees altogether. Mr. Gonzalez Ordonez stated that so much as speaking out of turn to a guard can result

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<sup>2</sup> The OIDO was shut down, along with the Office of Civil Rights and Civil Liberties, by the new administration on March 21, 2025. See Ximena Bustillo, *Homeland Security makes cuts to civil rights and immigration oversight offices*, Nat'l Pub. Rad. (Mar. 21, 2025, 6:02pm), <https://www.npr.org/2025/03/21/nx-s1-5336738/homeland-security-cuts-dhs>. If Mr. Gonzalez Ordonez continues to face challenges accessing appropriate medical care in Caroline, there will be no agency from which he can ask for help.

in punishment, including even being smacked. *Id.* at ¶ 9 He characterized the staff as being more interested in hurting detainees than assisting them. *Id.*

25. The medical care at Caroline has been wholly insufficient. Mr. Gonzalez Ordonez has faced various medical issues, from minor illnesses to major problems requiring outside care. Yet, regardless of the situation, medical attention was consistently delayed by weeks or months and was not sufficient to solve the problem. *See generally* Exhibit C, Medical Records from Caroline; *see also* Exhibit G; Exhibit H, OIDO Complaint, January 15, 2025, regarding lack of dental care

26. When Mr. Gonzalez Ordonez was initially detained, he sought treatment for his head-trauma injury. Exhibit A at ¶ 15. He felt dizzy and nauseous many days, had trouble sleeping, and experienced headaches *Id.* Mr. Gonzalez Ordonez requested to see a doctor, but it took several weeks for an appointment to be scheduled. *Id.* When he at last spoke to a medical professional, they conducted a brief examination of him before sending him away with Topamax, an anti-seizure drug, which proved ineffective and was subsequently changed to Duloxetine and Topiramate. *Id.*; Exhibit C, Medical Records from Caroline, at 28. Unfortunately, none of these drugs worked and he still suffers from head pain and other symptoms of head-trauma. Exhibit A, at ¶ 15

27. Then, in or around July 2024, Mr. Gonzalez Ordonez began to experience pain in his tooth. *Id.* at ¶ 15. The pain prevented him from eating, sleeping, or completing daily tasks. After requesting an appointment with medical staff, Mr. Gonzalez Ordonez waited several months before receiving any treatment. *Id.*; Exhibit C, Medical Records from Caroline, at 15 (noting Mr. Gonzalez Ordonez's pain began one to two months prior). However, at that visit he was given ibuprofen and told to wait, even though staff noted his pain was an 8 out of 10. Exhibit A, at ¶ 16, Exhibit C, Medical Records from Caroline, at 15–16.



28. The pain continued to worsen. Exhibit A, at ¶ 16. Despite various attempts by Mr. Gonzalez Ordonez, medical staff continued to fail to address the issue. *See* Exhibit C, Medical Records from Caroline, at 1–17. Between August and November 2024, Mr. Gonzalez Ordonez spoke to medical staff at least four separate times about his tooth. *Id.* at 4–17. The first three appointments, staff noted his pain, gave him ibuprofen or other mild painkillers for his pain, instructed him on dental hygiene, and sent him away. *Id.* In the intervening time, Mr. Gonzalez Ordonez’s tooth began to decompose, leading to an infection. Exhibit A, at ¶ 17. On November 18, 2024, medical staff diagnosed him with “irreversible pulpitis,” “asymptomatic apical [sic] periodontitis,” and “chronic periapical abscess [sic].” Exhibit C, Medical Records from Caroline at 5. Medical staff told Mr. Gonzalez Ordonez the tooth needed to be extracted and gave him amoxicillin, an antibiotic. *Id.* at 6.

29. Despite these notes, Mr. Gonzalez Ordonez continued to suffer from the tooth. On December 12, 2024, he spoke to medical staff again and told them he was “ready to have [his] tooth taken out.” *Id.* at 1. A dentist at the facility attempted to extract the tooth but was unsuccessful due to Caroline’s failure to provide anesthesia, and Mr. Gonzalez Ordonez’s subsequent preventable pain and bleeding. *Id.* at 2; Exhibit A, at ¶ 17. Following the failed extraction, staff gave Mr. Gonzalez Ordonez acetaminophen and amoxicillin but did not schedule him for another appointment. Exhibit C, Medical Records from Caroline, at 2.

30. With the aid of his attorney, Mr. Gonzalez Ordonez filed an OIDO complaint in January 15, 2025. *See* Exhibit H, OIDO Complaint, January 15, 2025, regarding lack of dental care. An OIDO representative visited him in custody and intervened. At last, after seven months in February 2025, the tooth was extracted by an outside professional. Exhibit A, at ¶ 18.

31. The more than 16 months Mr. Gonzalez Ordonez has spent in ICE detention have taken an immense toll on Mr. Gonzalez Ordonez’s mental and physical health. Mr. Gonzalez

Ordonez's prolonged detention in ICE custody has also exacerbated his anxiety and depression. *Id.* at ¶ 22–24. He has struggled seeing others in detention being released on bond while he is denied even the opportunity to ask *Id.* at ¶ 22. He likened the feeling of his indefinite detention to torture. *Id.*

32. If released, Mr. Gonzalez Ordonez will return to live with his brother and his family in Harrisonburg, Virginia. *Id.* at ¶ 26. Mr. Gonzalez Ordonez's sister-in-law has assured him that he will be able to return to work for her company if he is released. *Id.* at ¶ 27. Counsel has also referred Mr. Gonzalez Ordonez to appropriate community resources he can seek to better address his mental health needs upon his release. *Id.* at ¶ 28. Until then, absent relief from this Court, Mr. Gonzalez Ordonez will continue to needlessly suffer in ICE detention as he fights to defend his CAT grant and to return to his family

## LEGAL BACKGROUND AND ARGUMENT

### I. MR. GONZALEZ ORDONEZ’S PROLONGED DETENTION UNDER § 1226(c) WITHOUT A BOND HEARING VIOLATES DUE PROCESS UNDER THIS COURT’S *PORTILLO* FACTORS.

33. DHS purports that Mr. Gonzalez Ordonez is currently detained under 8 U.S.C. § 1226(c). Mr. Gonzalez Ordonez has never had a bond hearing to evaluate whether he is a danger or flight risk, or whether he could be released with an appropriate order of supervision. His prolonged detention under § 1226(c) without a bond hearing violates Due Process because it has become unreasonable under the five-factor test this Court laid out in *Portillo v. Hott*, 322 F. Supp. 3d 698 (E.D. Va. 2018).

34. This Court has consistently held that unreasonably prolonged mandatory detention violates a noncitizen’s due process rights. *See Abreu v. Crawford*, No. 1:24-cv-01782, 2025 WL 51475, at \*1 (E.D. Va. Jan. 8, 2025); *Santos Garcia v. Garland*, No. 1:21-cv-742, 2022 WL 989019, at \*9 (E.D. Va. Mar. 31, 2022); *Martinez v. Hott*, 527 F. Supp. 3d 824, 836 (E.D. Va. 2021); *Gutierrez v. Hott*, 475 F. Supp. 3d 492, 500 (E.D. Va. 2020); *Deng v. Crawford*, No. 2:20-cv-199, 2020 WL 6387326, at \*1 (E.D. Va. Oct. 30, 2020); *Songlin v. Crawford*, No. 3:19-cv-895, 2020 WL 5240580, at \*8 (E.D. Va. Sep. 2, 2020); *Urbina v. Barr*, No. 1:20-cv-325, 2020 WL 3002344, at \*5 (E.D. Va. June 4, 2020); *Bah*, 409 F. Supp. 3d at 470; *Portillo v. Hott*, 322 F. Supp. 3d 698, 709 (E.D. Va. 2018); *Mauricio-Vasquez v. Crawford*, No. 1:16-cv-01422, 2017 WL 1476349, at \*1 (E.D. Va. Apr. 24, 2017).

35. Though there is no Fourth Circuit precedent on this issue, this Court’s well-established precedent is consistent with the precedent of the Second Circuit and Third Circuit. *See Black*, 103 F.4th at 138 (2d Cir. 2024) (“[W]e conclude that a noncitizen’s constitutional right to due process precludes his unreasonably prolonged detention under section 1226(c) without a bond

hearing.”); *German Santos v Warden Pike Cnty Corr. Facility*, 965 F. 3d 203, 206 (3d Cir. 2020) (“Because his detention has become unreasonable, he has a due process right to a bond hearing . . .”).

36. This Court has adopted a five-factor balancing test for determining whether prolonged § 1226(c) detention violates Due Process (“the *Portillo* factors”). See *Portillo*, 322 F. Supp. 3d at 707. The five factors are: “(1) the duration of detention, including the anticipated time to completion of the alien’s removal proceedings; (2) whether the civil detention exceeds the criminal detention for the underlying offense; (3) dilatory tactics employed in bad faith by the parties or adjudicators, (4) procedural or substantive legal errors that significantly extend the duration of detention; and (5) the likelihood that the government will secure a final removal order.” *Id.*, see also *Gutierrez*, 475 F. Supp. 3d at 496–97; *Urbina*, 2020 WL 3002344, at \*5; *Bah*, 409 F. Supp. 3d at 471 n 9; *Mauricio-Vasquez*, 2017 WL 1476349, at \*4–5. This court employed these factors as recently as January 2025. See *Abreu*, 2025 WL 51475, at \*5.

37. The first *Portillo* factor, the duration of detention, is “the most important” factor and is given significant weight. 322 F. Supp. 3d at 708. When the *Portillo* factors are split, this Court has ruled for the petitioner when the first factor was in his favor. *Id.* at 708–09. This Court has granted a petitioner’s habeas petition even when the first factor was the only one in the petitioner’s favor. *Songlin*, 2020 WL 5240580, at \*21–22. In *Bah*, this Court focused almost exclusively on the length of detention, finding that detention becomes presumptively unreasonable when it exceeds “*Zadvydas*’s presumptively reasonable six-month period.” 409 F. Supp. 3d at 471–72. This Court has also found that this first factor particularly weighs in the noncitizen’s favor for detentions ranging from 11 to 24 months. *Deng*, 2020 WL 6387010, at \*18–19 (11 months); *Haughton v. Crawford*, No. 1:16-cv-634, 2016 WL 5899285, \*2 (E.D. Va. 2016) (12 months); *Portillo*, 322 F. Supp. 3d at 708 (14 months); *Mauricio-Vasquez*, 2017 WL 1476349, at \*11 (15

months); *Martinez*, 527 F. Supp. 3d at 836 (16 months); *Songlin*, 2020 WL 5240580, at \*18–19 (16 months), *Urbina*, 2020 WL 3002344, at \*14–15 (19 months); *Gutierrez*, 475 F. Supp. 3d at 497 (23 months); *Bah*, 409 F. Supp. 3d at 471 (24 months)

38. This first *Portillo* factor, the duration of detention, overwhelmingly favors Mr. Gonzalez Ordonez. The Supreme Court assumed in *Demore v. Kim*, based on statistics provided by the Government that were later determined to be inaccurate, that detention under § 1226(c) typically lasted between 30 days and five months. *See* 538 U.S. 510, 529 (2003). In *Zadvydas*, the Court held that detention becomes, at the very least, constitutionally suspect when it exceeds six months. 533 U.S. at 701.

39. At the time of this filing, Mr. Gonzalez Ordonez has been in ICE custody for approximately 16 months. The length of his detention is “significantly longer than the one-, five-, and six-month boundaries described in *Zadvydas* and *Demore*,” and therefore “weighs heavily in his favor as a prolonged and substantial burden on his liberty interest.” *See Portillo*, 322 F. Supp. 3d at 708 (holding that petitioner’s 14-month mandatory detention was unreasonable).

40. In the absence of relief from this Court, Mr. Gonzalez Ordonez will likely remain in detention for many more months, while his immigration proceedings continue with no clear end in sight. DHS appealed the IJ’s order from January 10, 2025 and briefing from the parties was completed on March 3, 2025. Exhibit F, BIA Briefing Schedule. There is no timeline of when the BIA will issue a decision. Even if the BIA were to dismiss the government’s appeal, Mr. Gonzalez Ordonez faces prolonged detention during the 90-day “removal period” pursuant to 8 U.S.C. § 1231(a)(2)(A) if DHS seeks to remove him to a third country and while he litigates fear-based claims, if any, to those third countries. Mr. Gonzalez Ordonez is painfully aware that many ICE detainees can languish in detention for years, but even so, is committed to fighting for the right to remain with his family in the United States. Exhibit A at ¶ 24 (“I know someone who was here for

25 months. He won his case three times, but every time, something happened and he never got to leave I am scared that this will happen to me too”). During the months or years to come before his case is resolved, Mr. Gonzalez Ordonez’s mental and physical health are likely to deteriorate further, as he will continue to be deprived of adequate medical care and subjected to the stresses of ICE detention.

41. The second factor, which weighs the length of civil immigration detention against the length of criminal detention for the underlying offense that prompted immigration detention, equally strongly favors Mr. Gonzalez Ordonez. In 2023, Mr. Gonzalez Ordonez pled guilty to a misdemeanor charge with a maximum sentence of one year. The judge imposed a sentence of 12 months with all but 60 days suspended and placed him on probation for a year. To date, he has been detained in ICE custody for nearly eight times the length of the sentence imposed by the criminal court, and four months longer than even the maximum sentence he could have received, so this factor is squarely in his favor. *See Portillo*, 322 F. Supp. 3d at 707-08 (comparing the length of ICE custody to the length of time served on a criminal sentence); *Santos Garcia*, 2022 WL 989019 at \*7 (“petitioner’s detention exceeds the sentences that he could have served for his underlying convictions,” so “this factor plainly weighs in Petitioner’s favor.”).

42. With respect to the third factor—dilatory tactics—DHS is responsible for delaying proceedings and has stood in the way of a final outcome for Mr. Gonzalez Ordonez’s proceedings. DHS appealed the IJ’s decision and has refused to release Mr. Gonzalez Ordonez while proceedings remain ongoing. Mr. Gonzalez Ordonez has diligently litigated his case and sought the legal remedies available to him as he seeks to remain safely in this country. Mr. Gonzalez Ordonez has sought minor, reasonable extensions for preparation throughout this litigation. Mr. Gonzalez Ordonez diligently searched for *pro bono* counsel during his first months of detention until he was appointed a qualified representative on March 14, 2024. Exhibit E, Order Appointing

Qualified Representative. Following this, Mr. Gonzalez Ordonez submitted his I-589 Application for Asylum within the month. He and his legal team prepared for his Individual Hearing, which was held September 5, 2024, and October 8, 2024. Exhibit D, IJ Order Granting Relief, at 2. The IJ granted relief under the CAT three months later, on January 2, 2025 Exhibit D, IJ Order Granting Relief. Following the Notice of Appeal from the government, Mr. Gonzalez Ordonez timely submitted his brief on March 3, 2025. Mr. Gonzalez Ordonez has not unduly delayed his proceedings since they began in December 2023.

43. Furthermore, while it is true that Mr. Gonzalez Ordonez sought continuances to find counsel, courts may not “impermissibly penalize[] [a noncitizen’s] exercise of his legal rights,” because a “petitioner’s decision to explore avenues of relief that the law makes available to him does not mitigate the Due Process concerns created by his lengthy detention.” *Bah*, 409 F Supp 3d at 471–72 (internal quotations omitted). Indeed, a detained individual’s pursuit of legal relief is typically at least one factor contributing to their prolonged detention. *Id.* at 472 (observing that “appeals and petitions for relief are to be expected as a natural part of the process”) Mr. Gonzalez Ordonez was found to be incompetent to stand trial without counsel in May 2024. As such, he and his legal team had the right to seek appropriate safeguards so that Mr. Gonzalez Ordonez could adequately present his claims for relief. The time it took for him to find an attorney and apply for those safeguards cannot be used to penalize him in the current proceedings.

44. The fourth factor—legal and factual errors that significantly extend the duration of detention—at this point is neutral. While DHS argues on appeal that the IJ made factual errors in Mr. Gonzalez Ordonez’s case, no adjudicator has agreed with DHS to date.

45. The fifth factor—the likelihood that the government will secure a final removal order—weighs in Mr. Gonzalez Ordonez’s favor. Mr. Gonzalez Ordonez has already won his case for protection under the CAT. In her decision, IJ Donoso Stevens found both Mr. Gonzalez

Ordonez and his testifying expert credible. Exhibit D, IJ Order Granting Relief, at 8–10. She then found that the “multiple beatings, phone and in-person death threats directed at [Mr. Gonzalez Ordonez] and his family while under constant gang surveillance, and the murder of his uncle Fernando sufficiently establish past torture.” *Id.* at 16. The IJ explained, relying on country conditions evidence and the testimony of both Mr. Gonzalez Ordonez and his expert, that such torture was more likely than not to occur again if he were returned. *Id.* at 18. The IJ likewise found that the torture would be with the acquiescence and consent of the government. *Id.* at 16–17 (“the authorities demonstrated consent and acquiescence by failing to create reports or conduct further investigation after the Respondent’s family reported the robbery. ... [N]ow ... the Respondent is the typical victim the police would ignore because they assume those kinds of people were likely gang members or criminals.”) After a thorough review of all evidence and arguments presented, the IJ found that Mr. Gonzalez Ordonez met his burden for protection under the CAT. *Id.* at 18.

46. The government now appeals the IJ’s decision, and it is unlikely to succeed. The DHS appeal focuses on disputing the IJ’s factual findings regarding likelihood of future torture. To prevail on the question of fact, DHS must overcome a rigorous standard of review—that the IJ’s determination was “clearly erroneous.” 8 C.F.R. § 1003.1(d)(3)(i). As the BIA has noted, such a standard places a high burden on the appealing party. *See Matter of R-S-H*, 23 I&N Dec. 629, 637 (BIA 2003) (under the “clear error” standard, the BIA cannot overturn an IJ’s “factfinding may not be overturned simply because the Board would have weighed the evidence differently or decided the facts differently had it been the factfinder.”). Although DHS makes meager attempts to dress up its arguments as legal questions by framing its contentions as a question of whether Mr. Gonzalez Ordonez met his burden of proof, the BIA is unlikely to be persuaded. Even if the BIA interprets some of DHS’ arguments as legal disputes, DHS is still unlikely to succeed even under *de novo* review, see 8 C.F.R. § 1003.1(d)(3)(ii) (noting that the BIA reviews legal questions *de*



novo), given that the regulations support the IJ's finding that the harm Mr. Gonzalez-Ordonez will likely face in Guatemala meets the legal definition of torture. 8 C.F.R. § 1208.18(a) (defining torture as any act by which severe physical or mental pain or suffering is intentionally inflicted, including the threat of imminent death or the threat that another person will imminently be subjected to death or severe physical pain or suffering).

47. This Court has explicitly found that the fifth factor weighs “strongly in petitioner’s favor” when the government appeals to the BIA because “given the favorable disposition at the IJ level, petitioner has a much stronger argument that a final removal order is unlikely to be forthcoming than does the average alien detained under § 1226(c)” *Haughton*, 2016 WL 5899285 at \*10. In such cases, “the foreseeability of proceedings ending adversely is relatively low and the government’s interest in mandatory detention is diminished” *Id*. Taken together, the fourth and fifth factors weigh strongly in favor of Mr. Gonzalez Ordonez.

48. Under the *Portillo* factors, Mr. Gonzalez Ordonez’s detention is unreasonable and unconstitutional. Every factor weighs in his favor. His detention has been prolonged—more than a year longer than the maximum criminal sentence he faced. The *Portillo* factors clearly demonstrate that Mr. Gonzalez Ordonez’s continued detention violates his due process rights unless this Court orders a bond hearing where DHS must justify his ongoing detention.

49. Furthermore, Mr. Gonzalez Ordonez’s significant medical concerns, including his continued head trauma symptoms and his mental health conditions, pose an additional concern regarding his continued detention. *See Gutierrez*, 475 F. Supp. 3d at 498 n.8 (acknowledging that medical issues are an “additional factor of legitimate concern . . . to incarcerated persons”). Mr. Gonzalez Ordonez’s inability to obtain full and necessary medical care at any ICE facility elevates his liberty interests and diminishes the government’s interest in continuing to detain him. *See ¶¶ 23, 25-32, supra*

**II. THE COURT SHOULD ORDER AN IMMEDIATE BOND HEARING WITH THE BURDEN ON THE GOVERNMENT BY CLEAR AND CONVINCING EVIDENCE, AND CONSIDERATION OF MR. GONZALEZ ORDONEZ’S ABILITY TO PAY AND ALTERNATIVES TO DETENTION.**

**a. This Court Should Conduct Mr. Gonzalez Ordonez’s Bond Hearing.**

50. Given that he has already been detained for over 16 months, Mr. Gonzalez Ordonez asks this Court to conduct a bond hearing so he can have the opportunity to return to his family, seek necessary medical and mental health care, and continue to litigate his immigration case from outside detention. Mr. Gonzalez Ordonez should be released from custody because of his family ties and support (particularly from his brother and sister-in-law), his medical vulnerabilities (including his ongoing head trauma), and the substantial likelihood of success in his immigration case before the BIA after being granted relief by the Immigration Court. Additionally, Mr. Gonzalez Ordonez’s mental health continues to deteriorate inside ICE detention as conditions of confinement worsen due to overcrowding.

51. This Court has the authority to conduct Mr. Gonzalez Ordonez’s bond hearing. *Smith v. Bounds*, 813 F.2d 1299, 1301 (4th Cir. 1987) (“A district court enjoys wide discretionary authority in formulating remedies for constitutional violations.”); *Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) (“We are empowered to conduct bail proceedings in habeas corpus proceedings brought by immigration detainees. Indeed, the authority to conduct such hearing has long been recognized as an essential ancillary aspect of our federal habeas corpus jurisdiction.”); *Luciano-Jimenez v. Doll*, 543 F. Supp. 3d 69, 73 (M.D. Pa. 2021) (conducting an independent bond hearing after determining the hearing afforded by the immigration court was inadequate); *D’Alessandro v. Mukasey*, No. 08-914, 2009 WL 799957 at \*4, 6 (W.D.N.Y. March 25, 2009) (ordering the immediate release of a noncitizen with “chronic and debilitating health conditions” with “a bond in a reasonable amount” and “subject to the conditions of supervision”).

52. The Fourth Circuit has not decided when a district court should exercise its authority to conduct a bond hearing as a habeas remedy in the first instance, but the Third Circuit offers at least two considerations for when doing so is appropriate. (1) when a hearing in the district court “provides justified protection of the [noncitizen’s] liberty interest and conserves judicial resources,” *Alli v. Decker*, 644 F. Supp. 2d 535, 542 (M.D. Pa. 2009), *rev’d in part, vacated in part on other grounds*, 650 F.3d 1007 (3d Cir. 2011); and (2) in “extraordinary circumstances,” which “include[s] medical considerations relating to the petitioner’s health, family and medical needs.” *Deptula v. Lynch*, No. 1:15-cv-2228, 2016 WL 98152, at \*4 (M.D. Pa. Jan. 8, 2016).

53. Both considerations counsel that this Court conduct Mr. Gonzalez Ordonez’s bond hearing. In *Alli*, the Court held that “[if a noncitizen] detained pursuant to § 1226(c) makes a showing via a habeas petition that detention is no longer reasonable, the [noncitizen] must be afforded a hearing *before the habeas court*” 644 F. Supp. 2d at 541 (emphasis added). It did not order an initial bond hearing in immigration court because doing so would have only prolonged the petitioner’s detention while expending additional judicial resources. A similarly “circuitous and potentially lengthy process” awaits Mr. Gonzalez Ordonez if this Court directs the immigration court to conduct a bond hearing first. *Alli*, 644 F. Supp. 2d at 542. As explained above, delaying Mr. Gonzalez Ordonez’s release endangers his health. *See Leslie*, 865 F. Supp. 2d at 638-39 (finding “extraordinary circumstances” in part based on “the cascading array of medical problems”). If this Court orders an IJ to conduct a bond hearing under the above procedures, Mr. Gonzalez Ordonez would have to make his case before an IJ, wait for a decision, and, if the IJ fails to comply with the court order, return to this Court to pursue habeas relief—all the while remaining detained at a facility that has insufficient health care resources. *Abreu v. Crawford*, 1:24-cv-1782, Dkt. No. 31 (E.D. Va. Feb. 14, 2025) (granting a Motion to Enforce after an IJ failed to comply with the district court’s order to hold the Government to its burden).

54. If this Court does not find holding a bond hearing itself to be appropriate, Due Process demands that the IJ immediately conduct an individualized hearing with adequate procedural safeguards as set forth below.

**b. The Government Must Bear the Burden of Justifying Mr. Gonzalez Ordonez's Continued Detention by Clear and Convincing Evidence and the Adjudicator Must Consider His Ability to Pay and Alternatives to Detention.**

55 In ordering a bond hearing either before this Court or before an IJ, this Court should require that 1) the Government bear the evidentiary burden to prove by clear and convincing evidence that Mr. Gonzalez Ordonez is a flight risk and/or a danger to the community in order to justify his continued detention, and that 2) the IJ consider alternatives to detention, and 3) Mr. Gonzalez Ordonez's limited ability to pay bond. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention conditional upon "full-blown adversary hearing" requiring "clear and convincing evidence" and "neutral decision maker"); *Foucha*, 504 U.S. at 81–83 (striking down civil detention scheme that placed burden on detained person).

56. Where a noncitizen has been subjected to unconstitutionally prolonged § 1226(c) detention, this Court has previously ordered individualized bond hearings at which the Government bears the burden of justifying continued detention by clear and convincing evidence. *See Deng*, 2020 WL 6387326, at \*1; *Gutierrez*, 475 F. Supp. 3d at 499, *Urbina*, 2020 WL 3002344, at \*7; *Portillo*, 322 F. Supp. 3d at 709–10 To place the burden on Mr. Gonzalez Ordonez at a bond hearing meant to remedy the violation of his constitutional rights would be "inconsistent with having found his continued detention unconstitutional." *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 722 (D. Md. 2016), *see also Zadvydas*, 533 U.S. at 692 (finding post-order immigration custody review procedures deficient in part because they placed burden on detained noncitizen) Requiring him to prove "that he is neither a flight risk nor a danger would also logically mean that he is *presumed* validly and constitutionally detained unless he demonstrates otherwise." *Jarpa*, 211 F.

Supp. 3d at 722 (emphasis in the original). Therefore, a bond hearing is only a meaningful remedy for the violation of Mr. Gonzalez Ordonez's due process rights if that hearing requires the Government to bear the burden of proof.

57. While the Fourth Circuit held in *Miranda v Garland* that placing the burden of proof on these noncitizens at the outset of their detention is not *per se* unconstitutional, that case is not controlling here. 34 F.4th 338, 365–66 (4th Cir. 2022). *Miranda* dealt specifically with bond hearings for noncitizens subject to discretionary § 1226(a) detention who had already received bond hearings—not noncitizens subject to mandatory detention under § 1226(c) who had not received bond hearings. As such, the Court's decision for Mr. Gonzalez Ordonez should instead be informed by precedent from the Second and Third Circuits, both of which have held that the Government bears the burden of justifying detention by clear and convincing evidence at a court-ordered bond hearing remedying unconstitutional prolonged detention under § 1226(c). *See Black*, 103 F.4th at 157 (“[W]e conclude that once detention under section 1226(c) has become so prolonged that due process warrants a bond hearing, as in *Black*'s case, the government must justify continued detention at such a hearing.”); *see also German Santos*, 965 F.3d at 214 (“[A]t *German Santos*'s bond hearing, the Government bears the burden of persuasion by clear and convincing evidence.”).

58. Likewise, Due Process requires that the IJ consider Mr. Gonzalez Ordonez's limited ability to pay bond and alternatives to detention in addition to, or in lieu of, monetary bond. *See Bah*, 409 F. Supp. 3d at 472 (ordering bond hearing at which government “must prove . . . [that] no condition or combination of conditions, including electronic monitoring, will reasonably assure the appearance of the person and the safety of any other person”). When the Government fails to either consider a noncitizen's financial circumstances when setting bond or take into account alternatives to detention, it potentially justifies impermissible detention based solely on an

individual's inability to pay rather than the two legitimate purposes for detention: preventing flight and mitigating danger to the community. *See Black*, 103 F.4th at 158 (“At that point, refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons”); *Hernandez v Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). A prohibitively high bond that Mr. Gonzalez Ordonez cannot pay will leave him detained and is the practical equivalent of no bond at all.

59 Alternatives to detention mitigate the burden on noncitizens like Mr. Gonzalez Ordonez and have proven to be highly effective. For example, the Intensive Supervision Appearance Program (“ISAP”)—one of ICE’s principal monitoring programs—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez*, 872 F.3d at 991 (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). With highly effective alternatives to detention at ICE’s disposal, there is little to no justification for continuing to detain Mr. Gonzalez Ordonez, particularly in light of his physical and mental health concerns.

### **CLAIM FOR RELIEF**

#### **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

79 Mr. Gonzalez Ordonez realleges and incorporates by reference the paragraphs above.

80. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

81. Civil immigration detention violates Due Process if its continuation is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 513.

79. Mr. Gonzalez Ordonez's detention without a bond hearing, which has lasted for over 16 months and will very likely span many more months or years while the BIA appeal remains pending and any subsequent remands or appeals, is no longer related to the statutory purpose of ensuring his appearance for removal proceedings or preventing danger to the community, and therefore has become unreasonable under this Court's *Portillo* factors. *See Portillo*, 322 F. Supp. 3d at 707. To remedy Mr. Gonzalez Ordonez's prolonged detention, Due Process requires at a minimum, that the Government be obligated to establish, at an individualized bond hearing, that Mr. Gonzalez Ordonez's detention is justified by clear and convincing evidence, taking into consideration his limited ability to pay and whether conditions of release might mitigate risk of flight.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Declare that Mr. Gonzalez Ordonez's prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment;
- b. Issue a writ of habeas corpus and conduct an individualized bond hearing with the burden of proof on the Government to establish by clear and convincing evidence that Mr. Gonzalez Ordonez poses a flight risk or danger the community and ordering the IJ to consider alternatives to detention and Mr. Gonzalez Ordonez's limited ability to pay a bond, or,
- c. Alternatively, issue a writ of habeas corpus ordering Respondents to schedule an individualized bond hearing within 14 days before an IJ with the burden of proof on the Government to establish by clear and convincing evidence that Mr. Gonzalez Ordonez poses a flight risk or danger the community and ordering the IJ to consider alternatives to detention and Mr. Gonzalez Ordonez's limited ability to pay a bond;

d. Grant any other further relief that the Court deems just and proper.

Dated. April 18, 2025

Respectfully submitted,

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT  
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: April 18, 2025

Respectfully submitted,  
/s/ Adina Appelbaum  
Adina Appelbaum

**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system, which will send a notice of electronic filing to all counsel of record. I or my co-counsel will furthermore send true copies by USPS Certified Priority Mail with electronic return receipt to the following individuals:

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