

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

NEHRAL ALBERT RUIZ MALIWAT,

Plaintiffs,

v.

BRUCE SCOTT, Warden, Northwest
Immigration and Customs Enforcement
Processing Center;

DREW BOSTOCK, Seattle Field Office
Director, Enforcement and Removal
Operations, United States Immigration and
Customs Enforcement;

KRISTI NOEM, Secretary, United States
Department of Homeland Security;

PAMELA BONDI, Attorney General of
the United States;

TEAL LUTHY MILLER, US Attorney for
Western District of Washington
Department of Justice;

Respondents.

Case No. 2:25-cv-788

**PETITION FOR WRIT OF HABEAS
CORPUS**

Expedited Hearing Requested

INTRODUCTION

1
2 1. Nehral Albert Ruiz Maliwat, a native of the Philippines and a U.S. Lawful Permanent
3 Resident since February 6, 2007, enlisted in the United States Air Force in 2011. In 2013¹, he
4 was convicted of rape using force under Article 120(A)(1) of the Uniform Code of Military
5 Justice and sentenced to two years of confinement but was released early for good behavior.
6 Since then, he has remained crime-free, complied with all legal requirements, and maintained his
7 residency status. He has also presented himself to immigration authorities multiple times,
8 including for naturalization and to renew his Lawful Permanent Resident status. Although nearly
9 a decade has passed since Mr. Maliwat was released from confinement for his criminal
10 conviction, he was not placed in removal proceedings until July 2024, following a vacation trip
11 to Mexico. He is now detained as an arriving alien without bond at the Northwest ICE
12 Processing Center pursuant to 8 U.S.C. § 1182(a)(2)(A)(i)(I) (INA § 212(a)(2)(A)(i)(I)), related
13 to a crime involving moral turpitude. (See Appendix A – DHS Form I-213 and Supporting
14 Documents).

15 2. Mr. Maliwat, through counsel, has submitted numerous requests for a bond hearing or
16 custody redetermination to both the Immigration Court and U.S. ICE Enforcement and Removal
17 Operations (ERO). The Honorable Immigration Judge John O'Dell has consistently declined to
18 hold a bond hearing, citing a lack of jurisdiction over arriving aliens. U.S. ICE ERO has also
19 denied a request for an individualized bond hearing based on Mr. Maliwat's criminal conviction.
20 Mr. Maliwat has exhausted the remedies available to request a bond hearing with the
21 Immigration Court and immigration officials.
22

23 ¹ DHS Incorrectly Notes Date of Court Martial Date of Conviction as March 11, 2014. While March 11, 2014 is the
24 date of the Court-Martial Order document attached to DHS Form I-213 and in other documents, the order itself
states the date as August 28, 2013.

3. At this time Mr. Maliwat has already been detained for a period of nine and a half months in conditions that are similar if not worse than that in a criminal detention facility and faces continued lengthy detention while his removal proceedings are litigated. While Mr. Maliwat remains in custody his young family is experiencing financial hardship without his support and their savings are dwindling. Most concerning, Mr. Maliwat's wife, Leilani Davis, and his young daughters are experiencing substantial mental and emotional anguish. Over the last few months Ms. Davis's mental health has deteriorated significantly, and she has been approved for state medical leave under the Family Medical Leave Act. Ms. Davis's mental health is a matter of grave concern for Mr. Maliwat and their family and an urgent circumstance for purposes of this petition for Writ of Habeas and the Temporary Restraining Order requesting immediate release. (See Appendix B – Declaration of Nehral Maliwat on Conditions of Confinement; Appendix C – Leilani Davis, Mental Health Records and Declarations).

4. Mr. Maliwat has now been subject to prolonged detention without the rigorous review necessary under 8 U.S.C. 1182 (d)(5)(A); (INA § 212(d)(5)(A)) to sustain such an unreasonable and unjustified detention in violation of the Due Process Clause of the Fifth Amendment of the United States Constitution. U.S. Const. Amend. 5.

4. Accordingly, Mr. Maliwat urgently petitions this Court for immediate release or, in the alternative, an order requiring the Respondents to hold a bond hearing in accordance with Mr. Maliwat's Fifth Amendment Constitutional rights.

JURISDICTION

5. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 (INA § 101) *et seq.*

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

7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

7. Venue is proper because Petitioner is detained at the Northwest Immigration and Customs Enforcement Processing Center in Tacoma, Washington which is within the jurisdiction of this District.

8. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and the Petitioner resides in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

400 (1963) (emphasis added).

PARTIES

11. Mr. Maliwat is a Lawful Permanent Resident (LPR) of the United States and is currently detained at Northwest Immigration and Customs Enforcement Processing Center in Tacoma, Washington. He is in the custody, and under the direct control, of Respondents and their agents.

12. Respondent Bruce Scott is the Warden of Northwest Immigration and Customs Enforcement Processing Center, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Scott is a legal custodian of Petitioner.

13. Respondent Drew Bostick is sued in his official capacity as the Director of the Seattle Field Office of U.S. Immigration and Customs Enforcement. Respondent Bostick a legal custodian of Petitioner and has authority to release him.

14. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Noem is a legal custodian of Petitioner.

15. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi a legal custodian of Petitioner.

1 16. Defendant Teal Luthy Miller is the United States Attorney for Western District of
2 Washington Department of Justice and is sued in his official capacity only.

3 **STATEMENT OF FACTS**

4 17. Petitioner is a 38-year-old citizen of the Philippines and a Lawful Permanent Resident
5 of the United States.

6 18. On January 20, 2007, Mr. Maliwat entered the United States at the SeaTac
7 International Airport in SeaTac, WA as the child of a Lawful Permanent Resident (See Appendix
8 A)

9 19. On February 06, 2007, Mr. Maliwat was granted Lawful Permanent Resident Status
10 (F43) by United States Citizenship and Immigration Services. (See Appendix A)

11 20. On November 7, 2011, Maliwat enlisted in the United States Air Force (USAF) and
12 entered active-duty service. (See Appendix A)

13 21. On October 15, 2012, the United States Airforce Office of Special Investigations
14 (USAF-OSI) arrested Mr. Maliwat for abusive sexual contact and rape using force. On August
15 28, 2013, before a General Court Martial at Joint Base McGuire-Dix-Lakehurst, NJ, Mr. Maliwat
16 was found guilty by a Court Martial of the offense of Rape Using Force in violation of Article
17 120(A)(1) of the uniform Code of Military Justice and found *not guilty* of the charge of abusive
18 sexual misconduct. Mr. Maliwat was sentenced to two years confinement and dishonorably
19 discharged. (See Appendix A)

20 22. On February 20, 2015, USAF-OSI again arrested Mr. Maliwat for charges of rape
21 using force. Although this arrest occurred after Mr. Maliwat's 2013 conviction, it was based on
22 an alleged incident dated prior to 2012). ***Mr. Maliwat was not convicted of these charges.***

1 23. Mr. Maliwat received early release from the brig based on good behavior and only
2 served about 18 months in the brig. Not only did Mr. Maliwat complete all required conditions in
3 confinement, but he also took advantage of multiple courses offered in military confinement
4 (Appendix E - Evidence in Support of Bond Prepared by Prior Counsel Nicholas Marchi, August
5 26, 2024, Pgs. 47-53). Mr. Maliwat also received clinical treatment services from Dr. Craig
6 Noble and ultimately received a certificate of completion of Sexual Offender Treatment
7 (Appendix E - Evidence in Support of Bond Prepared by Prior Counsel Nicholas Marchi, August
8 26, 2024, Pg. 53). Mr. Maliwat was categorized as the lowest risk to reoffend for purposes of Sex
9 Offender Registration and upon release diligently complied with all registration requirements for
10 many years (Appendix F - WSP Criminal History WATCH Report, March 20, 2025). Since his
11 release, Mr. Maliwat has been crime free and has led an exemplary life where he has thrived in
12 his career, as a valued member of the community, and most importantly as a husband and father.
13 (See Appendix D - Evidence in Support of Bond Prepared by Prior Counsel Nicholas Marchi,
14 August 26, 2024).

15 24. On December 21, 2015, Mr. Maliwat filed an Application for Naturalization, Form
16 N400, with USCIS. At no time during the pendency and review of his Application of
17 Naturalization was Mr. Maliwat detained by immigration authorities because of his conviction
18 nor were any removal proceedings initiated (Appendix A - DHS Form I-213 and Supporting
19 Documents, July 15, 2024. Pg. 3).

20 25. On November 08, 2016, USCIS denied Mr. Maliwat's Application for Naturalization
21 for lack of good moral character after Mr. Maliwat appeared for a naturalization interview and
22 was entirely forthcoming in disclosing his criminal conviction. (Appendix A - DHS Form I-213
23 and Supporting Documents, July 15, 2024. Pg. 3). Notably, even when Mr. Maliwat presented
24

1 himself to USCIS and disclosed his conviction in person, removal proceedings were not initiated
2 nor was Mr. Maliwat detained on a discretionary basis for being a danger to the community or a
3 flight risk (1226(a)) nor was he mandatorily detained on the basis of having been convicted of a
4 crime of moral turpitude (1226(c)(B); 1227(a)(2)(A)(a)).

5 26. On May 21st, 2024, Mr. Maliwat was returning from a vacation trip to Mexico with
6 his wife Lailani Maliwat. On reentry into the United State Mr. Maliwat presented his Lawful
7 Permanent Resident documentation (Appendix D - Evidence in Support of Bond Prepared by
8 Prior Counsel Nicholas Marchi, August 26, 2024. Pg. 6.). He then was questioned regarding his
9 criminal conviction. Mr. Maliwat was fully forthcoming and USCBP regarding his prior
10 conviction and at that point USCBP paroled Mr. Maliwat into the United States until June 20,
11 2024, and instructed him to report to USCBP deferred inspections with his conviction and
12 sentencing documentation within 30 days. Notably, at this point, USCBP did not detain Mr.
13 Maliwat but rather instructed him to return to USCBP Deferred inspections with his conviction
14 and sentencing records within 30 days. (Appendix A - DHS Form I-213 and Supporting
15 Documents, July 15, 2024)

16 27. On June 19, 2024, Mr. Maliwat reported to USCBP Deferred inspections in Seattle,
17 WA at which point USCBP issued Mr. Maliwat a Notice to Appear (Form I-862) charging Mr.
18 Maliwat under section 212(a)(2)(A)(if)(I) (8 USC 1182 (a)(2)(A)a(I) of the Immigration
19 Nationality Act, as amended, as an alien who has been convicted of, or who admits having
20 committed, or who admits committing acts which constitute the essential elements of a crime
21 involving moral turpitude (other than a purely political offenses) or an attempt or conspiracy to
22 commit such a crime. *Notably, again, USCBP did not detain Mr. Maliwat but rather instructed*
23 *him to return to USCBP Deferred inspections with his conviction and sentencing records*

1 *within 30 days.* (Appendix A - DHS From I-213 and Supporting Documents, July 15, 2024. Pg.
2 3).

3 28. July 15, 2024, a U.S. Immigration and Customs Enforcement Deportation Officer
4 completed a Custody Redetermination of Mr. Maliwat and concluded that Mr. Maliwat meets
5 “Public Safety and Border Security Priorities” and should complete his immigration proceedings
6 in form a Detained Docket. (See attached) On that same day, July 15, 2024, Mr. Maliwat
7 presented himself at a deferred inspection appointment before ICE in Tukwila at which point he
8 was arrested and transferred to detention at the Northwest Ice Processing Center (NWIPC) in
9 Tacoma, Washington. (Appendix A - DHS From I-213 and Supporting Documents, July 15,
10 2024. Pg. 2)

11 29. On August 6, 2024, a request for release was sent to Officer Daniel Strzelecki and on
12 August 19, 2024, a request for release was sent to Officer Christian Decastro. (Appendix G -
13 Supplemental Request for Release on Order of Supervision or in the Alternative, Bond.
14 September 10, 2024. Pg. 2). August 26, 2024, prior counsel Nicholas Marchi, filed evidence in
15 immigration court in support of a motion for release. (Appendix D - Evidence In Support of
16 Bond Prepared by Prior Counsel Nicholas Marchi, August 26, 2024).

17 30. September 5, 2024 – Honorable Immigration Judge John O’Dell declined to hold a
18 hearing for redetermination of custody status pursuant to 9 CFR Part 236 based on no
19 jurisdiction over arriving aliens (Appendix H - Order of Immigration Judge John O’Dell
20 Denying Bond Hearing Based on Lack of Jurisdiction. September 5, 2024.)

21 31. On September 10, 2024, Prior Counsel Nicholas Marchi submitted a supplemental
22 request for release on order of supervision or in the alternative, bond to Officer Christian
23

Decastro of U.S. Department of Homeland Security (Appendix E - Supplemental Evidence in Support of Bond Prepared by Prior Counsel Nicholas Marchi, August 26, 2024.)

32. On November 18, 2024 – Counsel Nicholas Marchi filed another motion for a bond redetermination hearing before an immigration Court Judge pursuant to 8 C.F.R §1241.14. (Appendix I - Motion and Declaration to Request Bond Hearing. November 18, 2024.) On November 26, 2024 - Honorable Immigration Judge John O’Dell again declined to hold a hearing for redetermination of custody status on the basis that Mr. Maliwat remains an arriving alien, and the Immigration Court has no jurisdiction over arriving aliens (Appendix J - Order of Immigration Judge John O’Dell Denying Bond Hearing Based on Lack of Jurisdiction. November 26, 2024.)

33. On December 12, 2024, ICE Enforcement and Removal Operations completed a review of Mr. Maliwat’s supplemental package request for release on order of supervision or in the alternative release on bond and denied the request on the basis of Mr. Maliwat’s criminal history with no further analysis or reasoning included outside of the note that “After review, please note that your request has been denied based on Mr. Nehral’s [Maliwat’s] criminal history.” (Appendix K - Email Communication from ICE ERO Denying Release Reconsideration. December 12, 2024).

34. During the pendency of Mr. Maliwat’s pending removal case the immigration court there appear to have been four Master Case Hearings (September 5, 2024; October 16, 2024; November 26; December 3, 2024). Mr. Nicholas Marchi was the only prior counsel of record on the removal matter, he filed a motion to withdraw on April 4, 2024, that motion was granted on April 24, 2025, and that same day the undersigned Liya Djamilova filed notice of appearance on the pending removal matter. Mr. Maliwat initially retained the Law Office of Liya Djamilova in

1 at the end of March 2025 for purposes of filing a habeas petition because Mr. Marchi was in an
2 extended murder trial did not have the capacity to urgently file a habeas petition. In April, Mr.
3 Maliwat made the decision to retain our office for both the habeas and the removal proceedings.
4 While Mr. Marchi was on the case he litigated several issues, including whether Mr. Maliwat's
5 conviction constitutes a crime of moral turpitude, the Honorable Judge John O'Dell ruled on that
6 issue finding that Mr. Maliwat's conviction does constitute a crime of moral turpitude. Mr.
7 Maliwat also then briefing challenging asserting that Mr. Maliwat's conviction is not an
8 aggravated felony and while the government has filed response briefing, it appears that the
9 immigration court has not yet ruled on this issue. Mr. Marchi also filed form I-601, Application
10 for Waiver of Grounds of Inadmissibility with statements of hardship on and form I-589 –
11 Submission for Asylum. (Appendix L - Submission Of I-601, Application for Waiver of Grounds
12 of Inadmissibility. October 16, 2024; Appendix M - Submission of I-589 for Asylum. December
13 2024).

14 35. The next Master Calendar Hearing on this matter has been set for June 2, 2025. As
15 new counsel on Mr. Maliwat's case, our office will be imminently filing a request for a
16 continuance as well as pursuing additional claims. Specifically, Mr. Maliwat's wife, Ms. Davis
17 who is a US citizen, has now filed an I-130 USCIS form to establish a qualifying relationship
18 with Mr. Maliwat, which in turn will allow Mr. Maliwat to apply for readjustment under INA
19 212(h) due to the extremely unusual hardship his wife, daughters, and elderly parents (all of
20 whom are U.S. citizens) will suffer because of his removal.

21 43. Mr. Maliwat's wife, Leilani Davis, his young daughters, and parents are all United
22 States citizens. Mr. Maliwat's two young daughters are under the age of 4. Mr. Maliwat has now
23 been in custody for most of his youngest daughter's life and for a third of his eldest daughter's

1 life. As Mr. Maliwat was the primary breadwinner for his family, since his detention his wife has
 2 had to take on all the financial and childcare responsibilities of the family. The Maliwat family
 3 has had to put their home on sale and Ms. Davis and their daughters have now moved in with her
 4 parents. The strain of Mr. Maliwat's absence, detention, and pending immigration proceedings
 5 have caused Ms. Davis substantial and debilitating mental and emotional turmoil and has
 6 resulted in her therapist transferring Ms. Davis's care to a psychiatrist and ultimately resulted in
 7 Ms. Davis being placed on medical leave under the Family Medical Leave Act from March 3,
 8 2025 – May 30, 2025. (Appendix C - Leilani Davis, Mental Health Records and Declarations).
 9 Mr. Maliwat's detention is causing irreparable harm to him and his family, his release is even
 10 more urgent now during his wife's medical leave period.

11 **LEGAL FRAMEWORK AND ANALYSIS**

12 **I. Mr. Maliwat's is a Lawful Permanent Resident (LPR) who has been detained as an** 13 **arriving alien upon reentry into the United States under 8 U.S.C. §1225(b)(2)(A).**

14 36. Although Lawful Permanent Residents (LPRs) who reenter the United States are
 15 not ordinarily considered arriving aliens, under the statutory exception in 8 U.S.C. §
 16 1101(a)(13)(C)(v); ((INA § 101(a)(13)(C)(v))), LPRs who have "committed an offense identified
 17 in section 1182(a)(2) of this title" are deemed "inadmissible" and must be detained pursuant to 8
 18 U.S.C. § 1225(b)(2)(A) pending removal proceedings in Immigration Court. 8 U.S.C. §
 19 1101(a)(13)(C)(v)(INA § 101(a)(13)(C)(v))²; 8 USC § 1182(a)(2) (; (INA § 212(a)(2)³; 8

20 ² See 8 U.S.C. § 1101(a)(13)(C)(v) (INA § 101(A)(13)(C) ("An alien lawfully admitted for permanent residence in
 21 the United States shall not be regarded as seeking an admission into the United States for purposes of the
 22 immigration laws unless the alien-[...] (v) has committed an offense identified in section 1182(a)(2) of this title,
 23 unless since such offense the alien has been granted relief under section 1182(h) or 1229b(a)").

24 ³ See 8 USC § 1182(a)(2) (INA § 212 (a)(2) ("Except as otherwise provided in this chapter, aliens who are
 inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the
 United States[...] any alien convicted of, or who admits having committed, or who admits committing acts which
 constitute the essential elements of- (I) a crime involving moral turpitude (other than a purely political offense) or an
 attempt or conspiracy to commit such a crime.").

U.S.C. § 1225(b)(2)(A)4; See also *Brissett v. Decker*, 324 F. Supp. 3d 444, 449 (S.D.N.Y. 2018) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 282, 138 S. Ct. 830, 834, 842, 200 L. Ed. 2d 122 (2018)). Mr. Maliwat is an LPR whose status does not expire until September 20, 2027 and who, following reentry into the United States on May 21, 2024 after a vacation to Mexico, was ordered to appear for deferred inspections and has been detained since July 15, 2024, at the Northwest ICE Processing Center (NWPIC) as an arriving alien after having been placed in removal proceedings under 8 USC §1182(a)(2); (INA § 212(a)(2))for a crime of moral turpitude based on August 28, 2013 conviction for Rape Using Force in violation of Article 120(A)(1) of the Uniform Code of Military Justice. Therefore, as an LPR who is regarded as an arriving alien under 8 §1182(a)(2) and pursuant to the statutory exception in 8 U.S.C. § 1101(a)(13)(C)(v); (INA § 101(a)(13)(C)(v)), Mr. Maliwat is detained pursuant to 8 U.S.C. § 1225(b)(2)(A).

II. Even as an LRP who has been detained as an arriving alien, Mr. Maliwat is guaranteed Due Process of Law under the Fifth Amendment of the United States Constitution.

37. The Fifth Amendment of the United States Constitution guarantees that “No person [...] shall be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. Critically, the United States Supreme Court has recognized that “freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects” and that “aliens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by

⁴ See 8 U.S.C. § 1225(b)(2)(A) (requires the detention of aliens arriving at the border, including certain LPRs, “if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted” to the United States and the statute further requires that such detention continue through the removal proceedings.) *Brissett v. Decker*, 324 F. Supp. 3d 444, 449 (S.D.N.Y. 2018); *Jennings v. Rodriguez*, 583 U.S. 281, 282, 138 S. Ct. 830, 834, 842, 200 L. Ed. 2d 122 (2018).

the Fifth and Fourteenth Amendments.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001); *Clerveaux v. Searls*, 397 F. Supp. 3d 299, 306–07 (W.D.N.Y. 2019) quoting *Plyer v. Doe*, 457 U.S. 202, 210, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982).

38. In considering the statutorily mandatory detention of aliens under the various provisions of the Immigration Nationality Act, Courts have found that “the Due Process Clause is not offended by the mandatory detention of aliens—even lawful permanent resident aliens—for the ‘brief period necessary for their removal proceedings,’ but due process may be implicated if that ‘continued detention be[comes] unreasonable or unjustified.’” *Clerveaux* at 397 F. Supp. 3d 299, 307 (W.D.N.Y. 2019) quoting *Demore v. Kim*, 538 U.S. 510, 513, 532, 123 S.Ct. 1708, 155 L.Ed.2d 724 (2003) (emphasis added). In *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), this Western District Court of Washington specifically considered the detention of a non-citizen detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and “joining the vast majority of other district courts” concluded that “prolonged detention under § 1225(b) without a bond hearing violates due process.” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019). Accordingly, as an LPR detained under 8 U.S.C. § 1225(b)(2)(A), Mr. Maliwat is protected by the Fifth Amendment of the United States Constitution and this Court must determine if his detention pending immigration removal proceedings has become unjustifiably prolonged in violation of his constitutional Due Processes rights.

III. Mr. Maliwat’s detention pursuant to 8 U.S.C. §1225(b)(2)(A) has become unreasonably prolonged in violation of his Fifth Amendment Constitutional Due Process Rights and he is entitled to an individualized Bond hearing to determine whether continued detention is justified.

39. In determining whether a noncitizen’s prolonged mandatory detention under U.S.C. § 1225(b) has become unreasonable, the courts of the Western District of Washington State have

adopted “a multi-factor test that many other courts have relied upon to determine whether § 1225(b) detention has become unreasonable,”⁵ a multi-factor test which includes the following factors: (1) the total length of detention to date; (2) the likely duration of future detention; (3) the 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. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106-07, 1118 (W.D. Wash. 2019); *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 920-21 (W.D. Wash. 2020) (same); *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *9 (W.D. Wash. Mar. 29, 2024), report and recommendation adopted, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024). In applying the *Banda* multi-factor test in determining the reasonableness of Mr. Maliwat’s detention under § 1225(b) this Court will find that Mr. Maliwat’s detention under § 1225(b) has become unjustifiably unreasonable and prolonged in violation of his due process rights.

a. The total length of Mr. Maliwat’s detention to date, a period of nearly ten months, has become unreasonably prolonged.

40. In this analysis of whether a non-citizens detention has been unreasonably prolonged pending removal proceedings, courts have found the length of detention to be the most important factor. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118–19 (W.D. Wash. 2019).

41. In *Zadvydas v. Davis*, 533 U.S. 678, 680, 121 S. Ct. 2491, 2494, 150 L. Ed. 2d 653 (2001) in considering constitutional challenges to the reasonableness of post-removal-period

⁵ See *Jamal v. Whitaker*, 358 F. Supp. 3d 853, 858, 859 (D. Minn. 2019); *Lett v. Decker*, 346 F. Supp. 3d 379, 387-88 (S.D.N.Y. 2018) (same); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452-53 (S.D.N.Y. 2018) (same); *Bermudez Paiz*, 2018 WL 6928794, at *10 (same); *Perez v. Decker*, No. 18-5279, 2018 WL 3991497, at *4-*5 (S.D.N.Y. Aug. 20, 2018) (same).

1 detention, the United States Supreme Court opined that “[i]t is unlikely that Congress believed
2 that all reasonably foreseeable removals could be accomplished in 90 days, but there is reason to
3 believe that it doubted the constitutionality of more than six months’ detention” and further
4 discussed a need for a reasonableness analysis when removal is not reasonably foreseeable.
5 *Zadvydas* at 2494. Mr. Maliwat is currently in detention pending removal proceedings rather in
6 post-removal detention and removal is even less reasonably foreseeable as counsel for Mr.
7 Maliwat are in the process of raising an additional claim for relief under INA § 212(h). As a
8 result, his continued detention beyond six months without a bond is that much more
9 unreasonable given the likelihood of even longer future detention.

10 42. In considering the length of detention factor, other courts engaged in the case specific
11 analysis adopted by this district for non-citizens detained under 8 U.S.C. § 1225(b) and have
12 found detention to be unreasonably prolonged and granted bond for periods of detention ranging
13 from 9 months to 19 months and longer. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118–19
14 (W.D. Wash. 2019) (granted bond hearing after 17 months); *Lett v. Decker*, 346 F. Supp. 3d 379,
15 387-88 (S.D.N.Y. 2018) (granting bond hearing after more than months detention); *Brissett v.*
16 *Decker*, 324 F. Supp. 3d 444, 452-53 (S.D.N.Y. 2018) (granting bond after more than 9 months
17 detention); *Bermudez Paiz*, 2018 WL 6928794, at *10 (recommending granting bond after 18
18 months detention); *Perez v. Decker*, No. 18-5279, 2018 WL 3991497, at *4-*5 (S.D.N.Y. Aug.
19 20, 2018) (granting bond hearing after 9 months detention). *Banda v. McAleenan*, 385 F. Supp.
20 3d 1099, 1118–19 (W.D. Wash. 2019).

21 43. Mr. Maliwat has been detained at the NWIPC facility pending *civil* removal
22 proceedings intended to be the brief detention necessary for the processing of removal
23 proceedings, since July 15, 2024, and as of the date this pleading has been filed, he has been in

1 custody for nearly 10 months. This 10-month long period is nearly half of the 2-year criminal
2 sentence that Mr. Maliwat received in his 2013 conviction for rape under Article 120(A)(1) of
3 the Uniform Code of Military Justice and over just over half of the 18-month punitive criminal
4 detention that Mr. Maliwat served in that conviction since he received early release based on his
5 rehabilitative efforts and good behavior.

6 44. Mr. Maliwat is a lawful permanent resident who has served his sentence on his only
7 criminal conviction from 2013. He has complied with all conditions of his sentence, has
8 committed no crimes for nearly a decade since his conviction and has led an exemplary life since
9 his release. Since his conviction Mr. Maliwat has presented himself to immigration authorities on
10 multiple occasions for purposes of applying for naturalization and eventually successfully
11 renewing his lawful permanent status during which he was always forthcoming regarding his
12 conviction when asked about it. In the last decade Mr. Maliwat became the husband of a United
13 States citizen and the father of two little girls who are also United States citizens. Mr. Maliwat's
14 elderly parents have also become citizens. And as of this date, Mr. Maliwat has been detained at
15 NWIPC without bond for half of his youngest daughter's life and nearly a third of his older
16 daughter's life. In the context of all these factors, Mr. Maliwat's nearly 10-month detention is
17 undoubtedly prolonged in violation of his constitutional Due Process rights.

18
19 ***b. The claims Mr. Maliwat is raising in his civil immigration proceedings and the***
20 ***appellate rights he retains in those proceedings all but guarantee that his***
21 ***detention will continue for many more months if not years.***

22 45. In the nearly 10-months he has been detained Mr. Maliwat, through his prior and
23 current counsels, has been pursuing every remedy reasonably available to him in his civil
24 immigration removal proceedings. The immigration court has already ruled on Mr. Maliwat's
challenge to classifying his conviction as a crime of moral turpitude and that issue has been

preserved for appeal. Notably, according to the Ninth Circuit's public website, it takes approximately 6 to 12 months from the date of the notice of appeal to oral argument and, following argument, most cases take 3 months to a year for the Court of Appeals to decide the case. *Sarr v. Scott*, No. 2:24-CV-01293-RAJ-BAT, 2025 WL 388652, at *7 (W.D. Wash. Feb. 4, 2025) citing to U.S. Court of Appeals for the Ninth Circuit, Frequently Asked Questions, www.ca9.uscourts.gov/content/faq.php (last accessed April 27, 2025).

46. In addition to the above-mentioned remedies, as noted above, Maliwat's U.S. citizen wife filed an I-130 USCIS form to establish a qualifying relationship with Mr. Maliwat, which in turn will allow Mr. Maliwat to apply for readjustment under INA 212(h) due to the extremely unusual hardship his wife, daughters, and elderly parents (all of whom are U.S. citizens) will suffer because of his removal, especially in light of Ms. Davis's declining mental health (Appendix C – Leilani Davis, Mental Health Records and Declarations). Current I-130 processing time is 17 months and the I-130 filed by Ms. Davis was just received by USCIS on April 16, 2025. U.S. Citizenship and Immigration Services "Check Case Processing Times" portal, <https://egov.uscis.gov/processing-times/> (last accessed on April 27, 2025).

47. This Court should find that based on the remedies available to Mr. Maliwat and the current wait times for some of those remedies as noted above, detention is likely to continue for many more months if not years without judicial intervention. However, if this Court declines to speculate as to the likely duration of the future detention on the basis that Mr. Maliwat's immigration removal proceedings are still in the early stages and he could be released, this Court should find this factor neutral not favoring either party. *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *10 (W.D. Wash. Mar. 29, 2024), *report and recommendation adopted*, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024).

c. The conditions of Mr. Maliwat's conditions at the Northwest Immigration and Customs Enforcement Processing Center (NWIPC) are substantially similar if not worse than conditions in criminal detention facilities across in the United States.

48. In considering the conditions of detention, courts have found that “[t]he more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing.” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019) (quoting *Jamal v. Whitaker*, 358 F. Supp. 3d 853, 860 (D. Minn. 2019). This Court has already previously found that conditions at the NWIPC are as a generally “similar to those in many prisons and jails.” *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *11 (W.D. Wash. Mar. 29, 2024), *report and recommendation adopted*, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024).

48. On April 27, 2025, the University of Washington Center for Human Rights released an alarming report on the conditions at NWIPC, noting that “in just the first three months of 2025, multiple hunger strikes have broken out, with detained people reporting to community-based advocacy organization La Resistencia that even as infectious disease spreads through the facility, clean clothing, medical care, and food are in short supply” and that “the abusive conditions documented for eight years by the UW Center for Human Rights—such as the overuse of solitary confinement, the denial of access to quality medical care, poor hygiene and sanitation, frequent uses of physical force and chemical gases, and a lack of adequate responses to reported sexual abuse—not only persist, but may in fact have become even more acute as the facility approaches its maximum capacity of 1575 people.”⁶

⁶ Conditions at the NWDC: Patterns of neglect in TPD response to reports of crimes, Center for Human Rights. Available at: <https://jsis.washington.edu/humanrights/2025/04/24/conditions-at-the-nwdc-patterns-of-neglect-in-tpd-response-to-abuse-and-assault/> (Accessed: 27 April 2025). See also La Resistencia, @laresistencianw, 2024, “New Petition for Writ of Habeas Corpus

49. Mr. Maliwat's personal experience in detention at NWICP is consistent with the latest report of the University of Washington Center for Human Rights (Appendix B - Declaration of Nehral Maliwat on Conditions of Confinement, April 28, 2025). Mr. Maliwat has described that the drinking water at NWICP at times appears brown and yellow in color, meal times are inconsistent and delayed (to a point where dinner is served past 10:00 pm at times), meals are nutritionally insufficient, due to low staffing dorms of 70-80 people are at times supervised by just one officer and when violence breaks up officers have to wait for back up before intervening creating an unsafe situation. *Id.* In comparing his civil detention at NWICP with his criminal detention at the Navy Brig in Charleston, North Carolina, Mr. Maliwat notes that the conditions of his criminal detention were substantially better. *Id.*

50. This Court should find that this factor favors Mr. Maliwat's position that his nearly 10-month confinement under these conditions without bond violates his constitutional Due Process Rights.

d. Mr. Maliwat has not been the cause of any delays in his removal proceedings.

51. Courts have found that petitioners are, "entitled to raise legitimate defenses to removal ... and such challenges to [...] removal cannot undermine [...] claims that detention has become unreasonable." *Liban M.J. v. Sec'y of Dep't of Homeland Sec.*, 367 F. Supp. 3d at 665 (citing *Hernandez v. Decker*, 2018 WL 3579108, at *9 (S.D.N.Y. July 25, 2018) ("[T]he mere fact that a noncitizen opposes his removal is insufficient to defeat a finding of unreasonably prolonged detention, especially where the Government fails to distinguish

signage at NWDC confirms Varicella (the virus that causes the chicken pox) inside the facility!", January 16, 2024, https://www.instagram.com/laresistencianw/p/DE5hVQBz17W/?img_index=1.

1 between bona fide and frivolous arguments in opposition.”)). *Barraza v. ICE Field Off. Dir.*,
2 No. C23-1271-BHS-MLP, 2023 WL 9600946, at *6 (W.D. Wash. Dec. 8, 2023), report and
3 recommendation adopted sub nom. *Barraza v. United States Immigr. & Customs Enf’t Field*
4 *Off. Dir.*, No. C23-1271 BHS, 2024 WL 518945 (W.D. Wash. Feb. 9, 2024); *See also Doe v.*
5 *Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *12 (W.D. Wash. Mar. 29,
6 2024), report and recommendation adopted, No. C24-0326JLR-SKV, 2024 WL 2861675
7 (W.D. Wash. June 6, 2024)

8 52. Throughout the pendency of his removal proceeding, Mr. Maliwat has sought
9 rigorous representation by counsel in pursuing viable remedies to oppose his removal and pursue
10 continuances as needed in pursuit of those viable remedies, as is his right. *Id.* This Court should
11 find this factor also in his favor.

12 ***e. Delays in removal proceedings caused by the Government.***

13 53. Even though Mr. Maliwat engaged with and presented himself to US immigration
14 authorities on multiple occasions following his 2013 criminal conviction including when in 2016
15 he applied for and even interviewed for naturalization (which was denied after Mr. Maliwat
16 disclosed his conviction) and including when USCIS renewed his lawful permanent residence in
17 2017, US immigration authorities did not initiate removal proceedings until July 15, 2024, nearly
18 a decade after he was released from criminal confinement. (See Appendix – Part 2 pg. 26). In
19 those nearly 10 years post release, Maliwat rehabilitated himself and led an exemplary crime free
20 life, married a U.S. citizen and had multiple children, and overall has become a valued member
21 of the community here in the United States. As a result of the Government initiating removal
22 proceedings for nearly a decade after his release from criminal confinement, Mr. Maliwat’s
23
24

1 current detention is not just impacting Mr. Maliwat but has also placed tremendous mental and
 2 financial strain on his family including his wife and children who are all U.S. citizens.

3 54. This Court should find that the Government's delay in initiating removal proceedings
 4 against Mr. Maliwat allowing him to build a substantial life in the United States in which his
 5 young family comprised of United States citizen relies heavily on him for financial and
 6 emotional support makes Mr. Maliwat's almost 10-month detention without a bond hearing that
 7 much more unreasonably prolonged in violation of his constitutional Due Process rights.

8 *f. The likelihood that removal proceedings will result in a final order of removal.*

9 55. In considering the likelihood that removal proceedings will result in a final order of
 10 removal, courts have considered whether the noncitizen has asserted any defenses to removal.
 11 *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1120 (W.D. Wash. 2019) (citing to *Sajous v.*
 12 *Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018)). "Where
 13 a noncitizen has not asserted any grounds for relief from removal, presumably the noncitizen will
 14 be removed from the United States, and continued detention will at least marginally serve the
 15 purpose of detention, namely assuring the noncitizen is removed as ordered [...] but where a
 16 noncitizen has asserted a good faith challenge to removal, 'the categorical nature of the detention
 17 will become increasingly unreasonable.'" *Id.* (quoting *Reid v. Donelan*, 819 F.3d 486, 500 (1st
 18 Cir. 2016), opinion withdrawn on reconsideration, No. 14-1270, 2018 WL 4000993 (1st Cir.
 19 May 11, 2018)). In *Banda*, where the Petitioner was appealing a denial of an asylum application
 20 during his removal proceedings, the Court noted that it did "not have sufficient information to
 21 determine whether the appeal is nonfrivolous or whether petitioner ultimately would prevail and
 22 concluded this factor as favoring neither party. *Banda*, 385 F. Supp. 3d 1099, 1120 (W.D. Wash.
 23 2019).

1 56. In this case, in addition to prior claims filed Mr. Maliwat will now also be asserting a
2 good faith challenge to removal under a U.S.C. § ; INA § 212 (h) and believes he is entitled to
3 such relief. As a result, this Court should find this final factor in Mr. Maliwat's favor.

4 57. In sum, after weighing all five of the *Banda* factors, this Court should find that Mr.
5 Maliwat's nearly 10-month prolonged detention under 8 U.S.C. § 1225(b) has become
6 unreasonable prolonged in violation of his Fifth Amendment Constitutional Due Process rights
7 and he is entitled to an individualized bond hearing to determine whether continued detention is
8 justified. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106-07, 1118 (W.D. Wash. 2019); U.S.
9 Const. amend. V.

10 **IV. Under 28 U.S.C.A. § 2241(c)(3) this Court is authorized to hold a bond hearing and**
11 **order Mr. Maliwat released upon a determination that Mr. Maliwat does not**
12 **present a danger to the community and upon a determination that Mr. Maliwat is**
not a flight risk.

13 58. Section § 2241 of Title 28 of the United States Code "authorizes a district court to
14 grant a writ of habeas corpus whenever a petitioner is 'in custody in violation of the Constitution
15 or laws or treaties of the United States.'" 28 U.S.C.A. § 2241(c)(3). If a habeas court determines
16 that a petitioner is being held unlawfully either without bond or under excessive bond, the court
17 can either order the agency to hold a bond hearing to establish bond in a reasonable amount or
18 hold the bond hearing itself and to order the defendant released pendente lite, either under FRAP
19 23(b) or by virtue of its inherent authority. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1084 (9th Cir.
20 2006) (ordering "immediate release, subject to terms and conditions to be set by the appropriate
21 delegate of the Attorney General"). Therefore, This Court has the authority to grant Mr.
22 Maliwat's petition for immediate release or, in the alternative, a bond hearing before an
23

immigration judge. Ms. Davis medical leave creates an emergent need for Mr. Maliwat's release so that he can support her and his daughters.

V. The Respondents failed to prove by clear and convincing evidence that Mr. Maliwat's is a danger to the community or that he is a flight risk and accordingly this Court should order Mr. Maliwat's immediate release or in the alternative this Court should order Respondents to hold an individualized bond hearing.

59. Due Process requires the Government to show by clear and convicting evidence that the detainee presents a flight risk or a danger to the community at the time of the bond hearing in order to continue to detain a noncitizen for a prolonged period of time while removal proceedings are pending. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1120–21 (W.D. Wash. 2019) (citing to *Calderon-Rodriguez v. Wilcox*, No. 18-1373, 2019 WL 487709, at *6 (W.D. Wash. Jan. 9, 2019), *R & R adopted*, 374 F.Supp.3d 1024 (W.D. Wash. 2019) (citing *Singh v. Holder*, 638 F.3d 1196, 1208 (9th Cir. 2011)); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1146-47 (N.D. Cal. 2018) (holding that *Singh's* standards continue to apply to prolonged detention bond hearings post-*Jennings*). In this case the Government simply cannot meet this burden and as such Mr. Maliwat must be released while his removal proceedings are pending.

60. First, there is absolutely no evidence to even suggests that Mr. Maliwat presents a flight risk. Over the course of his nearly twenty years in the United States, the majority of which has been spent in Washington State, Mr. Maliwat has developed deep familial, career, and financial ties to this community. Mr. Maliwat's parents, wife, and children as well as many members of their extended family reside in Washington State. His wife and children are all citizens of the United States and prior to his detention Mr. Maliwat was the primary financial provider for his family. Moreover, prior to his detention Mr. Maliwat build a successful career where he has been deeply respected, so much so that his last employer is fully aware of Mr. Maliwat's conviction and recognized the strides Mr. Maliwat has made in rehabilitating himself.

1 In fact, Mr. Maliwat's last employer-maintained Mr. Maliwat's employment for a couple of
2 months after Mr. Maliwat's detention in the hopes that he would return. Unfortunately, Mr.
3 Maliwat had to resign from the position, but he is very anxious to seek employment and reapply
4 if he is released so that he can provide for his family. While his prior employer has not extended
5 an offer of reemployment, they did note in email communications that because he resigned, Mr.
6 Maliwat would be eligible for re-hire. (Appendix E – Supplemental Evidence in Support of Bond
7 Prepared by Prior Counsel Nicholas Marchi, September 2, 2024. Pg. 5.)

8 61. Outside of Mr. Maliwat's ties to this community, Mr. Maliwat has demonstrated time and
9 time again that he is not a flight risk by complying with all of the conditions of his sentence,
10 including regular required registration with law enforcement as a registered sex offender
11 (Appendix F – WSP Criminal History WATCH Report, March 20, 25) and including the
12 completion of numerous therapeutic and rehabilitative programs following his conviction
13 (Appendix E – Supplemental Evidence in Support of Bond Prepared by Prior Counsel Nicholas
14 Marchi, September 2, 2024. Pg. 46-53). Not only has Mr. Maliwat complied with all
15 requirements in his criminal matter, over the nearly ten years since his conviction he has
16 consistently engaged with US immigration authorities regarding his immigration status here and
17 has always been forthcoming about his conviction when asked. Finally, each time Mr. Maliwat
18 has been ordered to report for deferred inspection following his return from Mexico on May 21,
19 2025, Mr. Maliwat complied until his ultimate detention on July 15, 2024. In sum, this Court has
20 clear and convincing evidence that Mr. Maliwat is *not* a flight risk.

21 62. Outside of the nature of Mr. Maliwat's 2013 conviction for rape using force under
22 Article 120(A)(1) of the Uniform Code of Military Justice for which Mr. Maliwat was sentenced
23 to two years in the navy brig, there is no evidence that Mr. Maliwat currently is a danger to the

1 public or to anyone. While in confinement Mr. Maliwat availed himself of numerous
2 rehabilitative services to prepare for release into the community. Following the decade since his
3 release, not only has Mr. Maliwat remained crime free, but he has also led an exemplary life
4 where he has built a thriving career and has demonstrated himself to be a loving and supportive
5 husband, father, and community member. Here again the Government cannot establish by clear
6 and convincing evidence that Mr. Maliwat currently presents a danger to the community.

7 63. This Court should order Mr. Maliwat's immediate release from civil detention under
8 8 U.S.C. §1225(b) as his detention has been unreasonably prolonged in violation of his
9 constitutional Fifth Amendment Due Process rights, as the Government cannot meet its burden
10 of showing by clear and convincing evidence that Mr. Maliwat is a flight risk or a danger to the
11 community, and because his family is suffering irreparable mental trauma and financial strain
12 while he remains detained.

13 **CLAIMS FOR RELIEF**

14 **Violation of Fifth Amendment Right to Due Process**

15 64. Petitioner restates and realleges all paragraphs as if fully set forth here.

16 65. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits
17 the federal government from depriving any person of "life, liberty, or property, without due
18 process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United
19 States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or
20 permanent." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001);
21 *Clerveaux v. Searls*, 397 F. Supp. 3d 299, 306–07 (W.D.N.Y. 2019) quoting *Plyer v. Doe*, 457
22 U.S. 202, 210, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982).

66. In *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), this Western District Court of Washington specifically considered the detention of a non-citizen detained pursuant to 8 U.S.C. § 1225(b)(2)(A) and “joining the vast majority of other district courts” concluded that “prolonged detention under § 1225(b) without a bond hearing violates due process” and such a violation is determined utilizing a multi-factor test which includes the following factors: (1) the total length of detention to date; (2) the likely duration of future detention; (3) the 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. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106-07, 1118 (W.D. Wash. 2019).

67. Accordingly, as an LPR detained under 8 U.S.C. § 1225(b)(2)(A), Mr. Maliwat is protected by the Fifth Amendment of the United States Constitution and this Court in evaluating all of the *Banda* factors this Court will find that Mr. Maliwat’s detention has become unreasonably prolonged in violation of his Fifth Amendment Due Process Rights and he is entitled to immediate relief.

PRAYER FOR RELIEF

68. Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- (3) Declare the Petitioner’s detention civil detention during the pendency of his immigration removal proceedings under § 1225(b) without a bond hearing has become unjustifiably

1 and unreasonable prolonged in violation of the Due Process Clause of the Fifth
2 Amendment.

- 3 (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately
4 or in the alternative to schedule an individualized bond hearing before this Court, or in
5 the alternative before an immigration judge.
- 6 (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on
7 any other basis justified under law; and
- 8 (6) Grant any further relief this Court deems just and proper.

9 Respectfully submitted,

10 /s/ Violetta Stringer
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206-623-0118

Dated: this 28th day of April, 2025.

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

We represent Petitioner, Nehral Albert Ruiz Maliwat, and submit this verification on his behalf. Petitioner is currently detained at the Northwest ICE Processing Center. We hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of our knowledge.

Dated this 29th day of April, 2025.

/s/ Violetta Stringer
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