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-TMC

PETITIONER'S TRAVERSE AND RESPONSE TO RESPONDENTS' MOTION TO DISMISS

Noted for Consideration:
June 17, 2025

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Comes now Petitioner, Nehral Albert Ruiz Maliwat, by and through his undersigned counsel, and alleges as follows:

I. INTRODUCTION

1. On the date this matter is noted for consideration, June 17, 2025, Petitioner Nehral Albert Ruiz Maliwat (Mr. Maliwat), will have been in the custody of the U.S. Immigration and Customs Enforcement (ICE) for 11 months. On July 15, 2024, Mr. Maliwat (a lawful permanent resident (LPR) of the United States since 2007) was detained by ICE and placed in immigration removal proceedings as an arriving alien pursuant to 8 U.S.C. § 1225(b)(2) because of a 2013 conviction for rape under the Uniform Code of Military Justice. Detention under 8 U.S.C. §1225(b)(2) is mandated during immigration proceedings and the immigration court twice denied Mr. Maliwat an opportunity for an individualized bond hearing citing a lack of jurisdiction over arriving aliens. As a result, although there is no evidence that Mr. Maliwat presents a flight risk or any current danger to the community, Mr. Maliwat remains detained.

2. However, mandated detention under 8 U.S.C. §1225(b)(2) during the pendency of removal proceedings is not without constitutional limitation and courts across this country and in this district have repeatedly recognized that once an individual has been detained for a prolonged period, the government must justify detention by clear and convincing evidence. See, e.g., *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019); *Diaz Reyes v. Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903 (W.D. Wash. Aug. 7, 2020), R&R adopted as modified, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020). Ninth Circuit case law, this Court's case law, and case law from around the country demonstrate that Mr. Maliwat's continued detention without an individualized bond hearing before a neutral decisionmaker to determine the necessity of such continued detention is in violation of the Due

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Process Clause of the Fifth Amendment and Mr. Maliwat is entitled to an individualized bond hearing in which the government must justify his detention by clear and convincing evidence.

3. Accordingly, Mr. Maliwat pleads with this Court to:

(1) Order Mr. Maliwat's release on the merits of this claim; or in the alternative

(2) To order a bond hearing before this Court within 14 days where the Government must justify Mr. Maliwat's continued detention by clear and convincing evidence and where alternatives to detention are considered; or

(3) If this Court decides to order the Government to provide a hearing in Immigration Court within 14 days where the Government must justify Mr. Maliwat's continued detention by clear and convincing evidence, Mr. Maliwat pleads that this Court order that alternatives to detention must also be considered and that any such hearing in immigration court must be recorded or transcribed.

II. SUPPLIMENTAL FACTUAL AND PROCEDURAL BACKGROUND

4. Mr. Maliwat reasserts the factual and procedural background stated in his initial Habeas complaint. See, Dkt. 1 ¶ 17-43.

5. As noted by the Government in their response, since Mr. Maliwat's initial pleading in this matter the IJ has found good cause to grant a continuance in Mr. Maliwat's removal proceedings so that Mr. Maliwat's counsel can effectively prepare Mr. Maliwat's arguments for withholding of removal under the Immigration Nationality Act (INA) and Convention Against Torture (CAT). See, Dkt. 24 Lambert Decl., Ex. H (Motion for Continuance); Ex. I (IJ Order). The next immigration court hearing in Mr. Maliwat's removal proceeding has been set for September 4, 2025. Id., Ex. J (Notice of In-Person Hearing).

6. On Wednesday, June 4, 2025, the staff at the Naval Consolidated Brig Charlston, North Carolina provided copies of Mr. Maliwat's confinement and release orders for his 2013 military conviction. *See* Appendix A - Maliwat Confinement and Release Orders. These U.S.

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Navy records show that Mr. Maliwat was confined on August 28, 2013, and released on March 3, 2015, serving 18 months of his 24-month sentence just as he has alleged in his initial Habeas pleading. *See* Id.

III. ARGUMENT

7. Mr. Maliwat reasserts and realleges all legal argument within his initial Habeas compliant. Dkt. 1 ¶ 36-63.

A. Mr. Maliwat's detention pursuant to 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 and to an individualized bond hearing to determine whether continued detention is justified.

8. As noted by this Court and the Government in earlier pleadings, this issue should be analyzed and has been analyzed in the Western District of Washington using the multifactor test set out in *Banda v. McAleenan,* 385 F. Supp. 3d 1099, 1117-118 (W.D. Wash. 2019). Dkt. 22; Dkt 23. The *Banda* multifactor test sets out six factors: (1) length of detention; (2) how long detention is likely to continue absent judicial intervention; (3) conditions of detention; (4) the nature and extent of any delays in removal caused by the petitioner; (5) the nature and extent of any delays caused by the government; and (6) the likelihood that the final proceedings will culminate in a final order of removal. See Id.

1. The total length of Mr. Maliwat's detention of nearly 11 months without a court-ordered bond hearing is unconstitutionally prolonged.

9. In this analysis of whether a non-citizens detention has been unreasonably prolonged, courts have found the length of detention to be the most important factor. *Banda,* 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019). This Court should find that this most important factor weighs heavily in Mr. Maliwat's favor.

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10. While acknowledging that Mr. Maliwat's detention has become prolonged, the Government suggests that this Court should not find this factor in Mr. Maliwat's favor because his detention has not yet reached the lower end of what the courts in this district have found to be unreasonable. The Government cites to *Hong v. Mayorkas*, No. 2:20-cv-1784, 2021 WL 8016749, at *5 (W.D. Wash. June 8, 2021), *report and recommendation adopted*, 2022 WL 107 8627 (W.D. Wash. Apr. 11, 2022), which notes a collection of cases in the Western District were detention without a court ordered bond hearing was found unreasonable where it ranged from 13 months to 23 months. Dkt. 23 Pg. 4 at 1-4; Pg. 5 at 12-19. The Government's argument seems to suggest that in the Western District of Washinton there is a bright line rule of a minimum of 13 months of detention before the detention becomes unconstitutionally prolonged. This Court should reject this argument. Instead, this Court should complete a meaningful analysis of the length of Mr. Maliwat's detention in the context of the *Banda* factors and the relevant body of case law that informs the purpose of the *Banda* factors. In doing so this Court will find that Mr. Maliwat's detention without an individualized bond hearing is unconstitutional.

11. While the Supreme Court has addressed the constitutionality of mandatory detention in *Demore v. Kim*, 538 U.S. 510 (2003) and denied a facial challenge to mandatory detention under § 1226(c), the Supreme Court emphasized that such detention was typically "brief" in length and lasted "Roughly ***a month and a half in the vast majority of cases*** . . . and ***about five months in the minority of cases*** in which the [non-citizen] chooses to appeal." 538 U.S. at 513, 530. Notably, Justice Kennedy—who provided the fifth vote for the majority on the constitutional issue—penned a concurrence that reasoned detention may eventually become

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sufficiently lengthy that a hearing to justify continued detention is constitutionally required. *Id.* at 538 U.S. at 532–33 (Kennedy, J., concurring).

12. Initially, this Court should apply a strong presumption that detention greater than six months—and certainly detention lasting nearly a year—violates due process. While *Jennings v. Rodriguez,* 583 U.S. 281 (2018), abrogated the Ninth Circuit's holding in *Rodriguez v. Robbins,* 804 F.3d 1060 (9th Cir. 2015); that § 1226(c) requires a bond hearings after six months as a matter of statutory interpretation, it did not undermine other decisions that look to six months as a benchmark when deciding whether the government must justify continued detention or incarceration. *See Zadvydas v. Davis,* 533 U.S. 678, 690, 701 (2001). ("Congress previously doubted the constitutionality of detention for more than six months."); *McNeil v. Dir., Patuxent Inst.,* 407 U.S. 245, 250 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment); see also *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968) ("[I]n the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term . . . ."); *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion) (finding six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by a jury trial).

13. In this instance, Mr. Maliwat's civil detention while he has been litigating his immigration case has far surpassed what is typical of brief immigration detention previously contemplated by congress as noted above. This Court should consider the above-described reasoning in its assessment of the length of Mr. Maliwat's detention.

14. Furthermore, in considering the length of Mr. Maliwat's detention this Court should also consider the purpose of immigration detention. In the immigration context, the

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Supreme Court has recognized two primary purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. Id.; see also *Demore*, 538 U.S. at 522, 528. In addition, both the Supreme Court and the Ninth Circuit have long made clear that a significant time in civil detention warrants an opportunity to test the legality of that detention. As the Ninth Circuit has explained in the pretrial detention context—which, like here, involves civil detention—"[i]t is undisputed that at some point, [civil] detention can 'become excessively prolonged, and therefore punitive,' resulting in a due process violation." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987)). That is especially true where the initial detention decision lacks significant (or any) safeguards, as is the case here. See *O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975) ("Nor is it enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if in fact it was, because even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed."); *McNeil*, 407 U.S. at 249–50 (explaining that as the length of civil detention increases, more substantial safeguards are required).

15. When considered in the context outlined above, the conditions of Mr. Maliwat's civil confinement at NWIPC, which are indistinguishable from many criminal prisons that are intended to be punitive, and the 18 months he served on his military—also punitive, should inform this Court's analysis as to the reasonableness of Mr. Maliwat's now nearly 11-month civil-non-punitive immigration confinement without an individualized bond hearing in which the government must justify his detention by clear and convincing evidence.

16. Significantly, as noted in *Banda* and outlined in Mr. Maliwat's initial pleading, Courts regularly afford noncitizens a bond hearing after facing *similar* periods of detention. See,

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e.g., *Banda*, 385 F. Supp. 3d at 1118. In its decision the *Banda* court found 17 months detention to be a ***very long*** time and in its analysis is cited to cases outside of this District that granted bond hearings after 9 months detention (*Brisset v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) and after 10 months detention (*Lett v. Decker,* 346 F. Supp. 3d 379, 387–88 (S.D.N.Y. 2018), vacated and remanded, No. 18-3714, 2020 WL 13558956 (2d Cir. July 30, 2020). Dkt. 23, Pg. 5 at 12-19; See *Banda* at 1118.

17. Additionally, in a recent Habeas case in the Western District of Washington, *Calderon v. Bostock*, the Honorable Judge Marsha Pechman found a 12-month mandatory detention under §1226(c)[1] to be unconstitutionally prolonged. In that case, Judge Pechman, considered the constitutionality of a mandatory §1226(c) detention of an LPR who was detained by ICE on October 5, 2023, after he was paroled on a 34 year and 8 months to life sentence for a 1992 conviction for one count of murder and three counts of attempted murder. *Calderon v. Bostock, No.* 2:24-CV-01619-MJP-GJL, 2025 WL 879718, at *1 (W.D. Wash. Mar. 21, 2025). Calderon petitioned the Western District Court for a Writ of Habeas Corpus on October 7, 2024, after 12 months in ICE detention. *Id* at 2. On January 1, 2025, Magistrate Judge Leupold issued a Report and Recommendation ("R&R") recommending that the Court grant the petitioner's request for a bond hearing after applying a multifactor test and finding 12 months detention to be unconstitutionally prolonged. *See* Appendix B - *Calderon v. Bostock,* No. 2:24-CV-01619-MJP-GJL Report and Recommendation Pg. 10 at 6-7. Subsequently in her consideration of Magistrate Judge Leupold's decision the Honorable Judge Pechman applied the Martinez multi-

[1] Although Mr. Maliwat is in ICE custody pursuant to §1225(b), §1226(c) is sufficiently similar to §1225(b) for purposes of assessing the length of detention *Banda* factor. Both §1225(b) and §1226(c) mandate detention during removal proceedings for individuals with certain criminal convictions and both utilize multifactor tests that include the length of detention as a factor in determining whether the length of detention has become unconstitutionally prolonged.

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factor analysis that many other courts have relied upon to determine whether § 1226(c) detention has become unreasonable and in doing so adopted Magistrate Judge Leupold's finding that 12 months detention was unconstitutionally prolonged, "because Petitioner's current period of detention is more than double the presumptively reasonable six-month period discussed in *Denmore*, this first factor strongly weights in favor of granting a bond hearing". *Id*, at 2 citing *Martinez v. Clark*, No. 2:18-cv-1669-RAJ-MAT, 2019 WL 5968089, at *6–7 (W.D. Wash. May 23, 2019), report and recommendation adopted, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019); *See* also Appendix B - *Calderon v. Bostock,* No. 2:24-CV-01619-MJP-GJL Report and Recommendation Pg. 10 at 6-7.

18. Moreover, in considering the length of detention factor, the Court in *Banda* quoting *Jamal v. Whitaker* highlights that "'it is important to bear in mind the context: The detention that is being examined here is the detention of a human being who has never been found to pose a danger to the community or to be likely to flee if released.'" See *Banda* at 1118; See *Jamal v. Whitaker,* 358 F. Supp. 3d 853, 858, 859 (D. Minn. 2019). While Mr. Maliwat has been previously convicted of the crime of rape by a military court martial, he served his sentence, has made every effort to rehabilitate himself and turn his life around, and has now been in the community crime free for over a decade during which time he has continually demonstrated that he does not pose a danger to the community nor is he a flight risk. Dkt. 1 ¶ 60-62.

19. In the context of the relevant case law history and precedent, Mr. Maliwat's nearly 11-month detention is undoubtedly prolonged in violation of his constitutional Due Process rights and this Court should find this factor in Mr. Maliwat's favor.

2. Likely Duration of Future Detention.

20. In finding this second factor in Banda's favor, the *Banda* court provides that in its analysis the court considered "how long detention is likely to continue absent judicial intervention; in other words, the '***anticipated*** duration of all removal proceedings—including administrative and judicial appeals.'" *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019) citing to *Jamal v. Whitaker*, 358 F. Supp. 3d 853, at 859. The Banda court considered that although the petitioner in that case "only recently filed the appeal of the IJ's removal order with the BIA [,] if the BIA affirms, the petitioner will have the opportunity to seek review in the Ninth Circuit," and noted that "this process may take up two years or longer." See *Id.*

21. Similarly, in analyzing the likely duration of future detention in *Calderon v. Bostock*, Magistrate Judge Leupold also considered the anticipated duration of all removal proceedings including administrative and judicial appeals and in doing so recommended that this factor should way in favor of granting the petitioner a bond hearing. Appendix B - *Calderon v. Bostock,* No. 2:24-CV-01619-MJP-GJL Report and Recommendation Pg. 10 at 11-23, Pg. 11 at 1-5). While noting that "any estimate as to how long Petitioner's detention will continue requires a certain degree of speculation," Magistrate Judge Leupold considered the anticipated timelines for civil appeal from notice of appeal until final decision as noted on the Ninth Circuit Court website just as Mr. Maliwat has in his initial Habeas pleading. *Id. See* also Dkt. 1 ¶ 45. Subsequently the Honorable Judge Pechman adopted Magistrate Judge Leupold's recommendation that this this factor should also weigh in favor of the petitioner. *Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718, at *3 (W.D. Wash. Mar. 21, 2025).

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22. In Mr. Maliwat's case, the IJ has already found good cause to continue Mr. Maliwat's next hearing to September 4, 2025, so that counsel can adequately prepare argument for his claims of relief under the INA and CAT thus his detention will certainly continue for an additional three months. However, even if the IJ still orders Mr. Maliwat removed at the September 4, 2025, hearing he will have opportunity to file an appeal with the BIA and if unsuccessful to seek review at the Ninth Circuit of Appeals. As noted in Mr. Maliwat's initial complaint the litigation of Mr. Maliwat's immigration case will likely take years. Dkt 1. ¶ 45-47. This Court should follow the precedent set by the *Banda* and *Calderon* courts and find this factor in Mr. Maliwat's favor.

3. The conditions of Mr. Maliwat's confinement 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.

23. 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). Mr. Maliwat reasserts the argument outlined in his initial Habeas pleading as to this factor. Dkt. 1 ¶ 48-50.

24. Additionally, Mr. Maliwat highlights the details he outlined as to his conditions of confinement in the Navy Brig in Charlston, North Carolina in his declaration on conditions of confinement dated on April 28, 2025. In his declaration Mr. Maliwat notes that in his confinement at the navy brig his meals were regular and nutritionally sufficient, the water quality did not appear compromised, the detention facility was well staffed, and he felt safe. Dkt 4 - Appendix B.

25. In considering Mr. Maliwat's arguments on this factor and the fact that the courts of this district have already previously found that conditions at the NWIPC are 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). This Court should find this factor in Mr. Maliwat's favor.

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

26. Mr. Maliwat reasserts and reaffirms his arguments as to this factor from his initial Habeas pleading and asks this Court to find this factor also neutral or that it weights in his favor. Dkt 1 ¶ 51-52.

27. The Government argues that this factor should way in the Government's favor because but for Mr. Maliwat's request for a continuance of his previously scheduled June 2025 immigration court hearing, which has now been continued to September 2025, his detention could have concluded by June if he had prevailed on the merits of his case. Dkt 23, Pg 6 at 12-23. The Government further argues that "this delay is attributable solely to Maliwat and reflects a *deliberate litigation choice* that postponed the adjudication of his application for request." *Id.* However, in assessing this factor the *Banda* court did not consider deliberate litigation choices but rather the *Banda* court assessed whether the petitioner engaged in *dilatory tactics* not only to put off the final day of deportation, but also to compel a determination that [the noncitizen] must be released because of the length of incarceration. *Banda,* 385 F. Supp. 3d 1099, 1119–20 (W.D. Wash. 2019).

28. Here, Mr. Maliwat has not engaged in bad faith dilatory tactics as contemplated by the *Banda* court, but rather through his counsel Mr. Maliwat has been litigating the basis for

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his inadmissibility. Moreover, in granting Mr. Maliwat's motion for a continuance of his next hearing to September 4, 2025, so that his counsel can effectively prepare his defenses for withholding of removal under the INA and CAT, the IJ found *good cause* has been established for the requested continuance. Dkt. 23, Exhibits H-I to Lambert Declaration. This good cause finding supports the fact that Mr. Maliwat is reasonably raising legitimate defenses to his removal that require careful preparation and due diligence by counsel.

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

30. Here the Government argues that Mr. Maliwat has made a deliberate litigation choice in requesting a continuance but fails to distinguish between bona fide and frivolous arguments in opposition. Moreover, while the Government argues that but for his request to continue his June 2025 hearing Mr. Maliwat's detention could have concluded if he prevailed

on the merits of his claim, the Government makes no suggestion that his claims are frivolous. Dkt. 23, Pg. 6 at 21-23. This Court should find that Mr. Maliwat has not engaged in dilatory tactics and thus find this fourth *Banda* factor either neutral or in his favor.

5. Delays in removal proceedings caused by the Government.

30. Mr. Maliwat reasserts and reaffirms his argument from his initial Habeas pleading as to this factor. Dkt. 1 ¶ 53-54.

6. The likelihood that removal proceedings will result in a final order of removal.

31. Mr. Maliwat reasserts and reaffirms his argument from his initial Habeas pleading as to this factor and asks the Court to find this factor in his favor or neutral. Dkt. 1 ¶ 55-56.

32. Accordingly, after weighing all six of the *Banda* factors, this Court should find that Mr. Maliwat's nearly 11-month prolonged detention under 8 U.S.C. § 1225(b) has become unreasonably prolonged in violation of his Fifth Amendment Constitutional Due Process rights and he is entitled to an individualized bond hearing where the government must justify Mr. Maliwat's continued detention by clear and convincing evidence.

B. The Court Should Require a Bond Hearing Where the Government Must Bear the Burden to Justify Continued Detention and Consider Alternatives to Detention.

33. 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

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1134, 1146-47 (N.D. Cal. 2018) (holding that Singh's standards continue to apply to prolonged detention bond hearings post-Jennings).

34. The Ninth Circuit's decision in *Singh v. Holder* holds *as a constitutional matter* that the Due Process Clause requires the government to justify continued detention by clear and convincing evidence after it has become prolonged. *Singh,* 638 F.3d 1196, 1203–05 (9th Cir. 2011); *accord Kashem v. Barr*, 941 F.3d 358, 380 (9th Cir. 2019) (noting that *Singh*'s clear and convincing evidence burden is a procedural due process standard that "applies in a range of civil proceedings involving substantial deprivations of liberty"). In Westlaw, *Singh* is flagged as having been abrogated as "[r]ecognized by *Rodriguez Diaz v. Garland*," 53 F.4th 1189 (9th Cir. 2022). But *Rodriguez Diaz* leaves open the question of whether *Singh* remains good law outside the context of the statutorily implied hearings where it held the clear and convincing evidence standard applied (hearings that no longer exist after subsequent Supreme Court and circuit cases)). *Rodriguez,* 53 F.4th at 1202.

35. Moreover, as noted, cases like *Kashem* recognize that the burden of proof requirement in *Singh* is a constitutional holding. *See Kashem,* 941 F.3d at 380. *Singh*'s constitutional holding therefore continues to apply in cases like this one that do not rest on a statutorily implied right to a hearing. And in any event, "the [Ninth] Circuit Court [of Appeals] has signaled that the clear and convincing evidence standard remains good law for immigration detainees subject to prolonged detention." *Anyanwu v. U.S. Immigr. & Customs Enf't Field Off. Dir.*, No. 2:24-CV-00964-LK- GJL, 2024 WL 4627343, at *8 (W.D. Wash. Sept. 17, 2024), *R&R adopted*, No. C24-0964 TSZ, 2024 WL 4626381 (W.D. Wash. Oct. 30, 2024).

36. The clear and convincing evidence requirement is consistent with a long line of Supreme Court precedent requiring the government to bear the burden of proof in civil

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detention schemes. *See Salerno*, 481 at 750 (upholding pre-trial detention where the detainee was afforded a "full-blown adversary hearing," requiring the government to justify detention with "clear and convincing evidence" before a "neutral decisionmaker"); *Foucha*, 504 U.S. at 81–83 (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 683–84, 692 (finding administrative custody review procedures deficient because, inter alia, they placed burden of proof on detainee); *see also Tijani v. Willis*, 430 F.3d 1241, 1244 (9th Cir. 2005). In sum, the Court should hold that the Government must justify Mr. Maliwat's continued detention by clear and convincing evidence at a hearing before a neutral decisionmaker.

37. Finally, in a bond hearing either before this Court or the Immigration Court alternatives to detention should also be considered. Supreme Court precedent demonstrates that detention is not reasonably related to its purpose of mitigating flight risk or danger where there are alliterative conditions of release that could mitigate those risks. See *Bell v. Wolfish*, 441 U.S. 520, 538-40 (1979). Notably, ICE itself operates the Intensive Supervision Appearance Program (ISAP), an alternatives-to-detention program that offers varying levels of monitoring to address such risks. See, e.g, *Hernandez v. Sessions*, 872 F.3d at 991 (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 9%% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged detention is warranted.

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

38. Section § 2241 of Title 28 of the United States Code "authorizes a district court to grant a writ of habeas corpus whenever a petitioner is 'in custody in violation of the

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

D. If this Court orders an individualized bond hearing to be held before the Immigration Court, this Court should order that such a hearing be recorded.

39. Ordinarily bond hearings in Immigration Court are not recorded or transcribed, as a result those seeking to appeal the decision of the IJ must rely on their recollection of the IJs analysis rather than rely on the record. In a recent decision in *Rodriguez v. Bostock*, this Court ordered the Government to provide the petitioner with a bond hearing before the immigration court and ordered the Government must record this hearing. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *17–18 (W.D. Wash. Apr. 24, 2025). Similarly, if this Court orders a bond hearing before the IJ, Mr. Maliwat petitions this Court for a ***recorded*** individualized bond hearing that requires the Government to show by clear and convicting evidence that the presents a flight risk or a danger to the community at the time of the bond hearing in order to continue to detain a him, so that there is a clear record of the analysis conducted by the IJ in any such bond hearing.

IV. CONCLUSION

40. In light of the above, this Court should find that Mr. Maliwat's nearly 11-month prolonged detention under 8 U.S.C. § 1225(b) has become unreasonably prolonged in violation of his Fifth Amendment Constitutional Due Process rights and he is entitled to an individualized bond hearing before a neutral decisionmaker where the government must justify Mr. Maliwat's continued detention by clear and convincing evidence.

41. Accordingly, Mr. Maliwat pleads with this Court to:

(4) Order Mr. Maliwat's release on the merits of this claim; or in the alternative

(5) To order a bond hearing before this Court within 14 days where the Government must justify Mr. Maliwat's continued detention by clear and convincing evidence and where alternatives to detention are considered; or

(6) If this Court decides to order the Government to provide a hearing in Immigration Court within 14 days where the Government must justify Mr. Maliwat's continued detention by clear and convincing evidence, Mr. Maliwat pleads that this Court order that alternatives to detention must also be considered at any such hearing and that any such hearing in immigration court must be recorded or transcribed.

Dated this 10th day of June, 2025.

Respectfully submitted,

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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 9th day of June 2025.

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