

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Jesus Bento CARDOZO, Relson
FERNANDES, Yassine BELHAJ, Marouane
BOULHJAR, Mouloud Ben KHADAJ,

Petitioners,

v.

Drew BOSTOCK, Field Office Director of
Enforcement and Removal Operations, Seattle
Field Office, Immigration and Customs
Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Pamela Bondi, U.S. Attorney
General; Bruce SCOTT, Warden of Northwest
ICE Processing Center,

Respondents.

Case No. 3:25-cv-5394

**PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C.
§ 2241**

INTRODUCTION

1. Petitioners Jesus Bento Cardozo, Relson Fernandes, Yassine Belhaj, Marouane Boulhjar, and Mouloud Ben Khadaj are noncitizens in the custody of Immigration and Customs Enforcement (ICE) at the Northwest ICE Processing Center (NWIPC). All of them have been detained for over six months pending removal proceedings—without *ever* receiving even an initial hearing in their native language.

2. Petitioners have languished in detention simply because the Executive Office for Immigration Review (EOIR) has failed to secure interpretation services for their removal proceedings.

3. The Due Process Clause of the Fifth Amendment forbids such arbitrary and prolonged detention. Respondents have never justified Petitioners' continued detention at a hearing before a neutral decisionmaker with any evidence of danger or flight risk.

4. Accordingly, Petitioners ask this Court for a writ of habeas corpus to vindicate their right to due process and to seek relief from their continued arbitrary detention. They ask the Court to declare their continued detention unconstitutional as applied to them, and to order their release or alternatively, a bond hearing where the government must prove that any continued detention is justified by clear and convincing evidence.

JURISDICTION

5. Petitioners are in the physical custody of Respondents and ICE, an agency within the Department of Homeland Security (DHS). They are detained at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington, which is under the direct control of Respondents and their agents.

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

7. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651.

9. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), 1252(f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Western District of Washington, the judicial district in which Petitioners are currently in custody.

11. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

REQUIREMENTS OF 28 U.S.C. § 2243

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

13. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . 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). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (Habeas corpus is “a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.”).

PARTIES

14. Petitioner Jesus Bento Cardozo is a citizen of India who entered the United States in October 2024. He is currently detained at NWIPC.

15. Petitioner Relson Fernandes is a citizen of India who entered the United States in October 2024. He is currently detained at NWIPC.

16. Petitioner Yassine Belhaj is a citizen of Morocco who entered the United States in September 2024. He is currently detained in NWIPC.

17. Petitioner Marouane Boulhjar is a citizen of Morocco who entered the United States in August 2024. He is currently detained in NWIPC.

18. Petitioner Mouloud Ben Khadaj is a citizen of Morocco who entered the United States in September 2024. He is currently detained in NWIPC.

19. Respondent Drew Bostock is the Director of the Seattle Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Bostock is Petitioners' immediate custodian and is responsible for their detention. He is named in his official capacity.

1 27. Upon his arrival in Tacoma, Mr. Cardozo was told he would receive a credible
2 fear interview (CFI) under § 1225(b)(1). *Id.* ¶ 5.

3 28. Under § 1225(b)(1), DHS is authorized to order the expedited removal of
4 noncitizens unless they demonstrate a credible fear of return to their country of origin in a CFI.
5 Generally, if the individual passes the CFI, the person is placed into full proceedings before an
6 immigration judge, where the person may apply for asylum and related protections.

7 29. In January 2025, after weeks of waiting for a CFI, DHS declined to administer
8 Mr. Cardozo a CFI. Instead, the agency vacated Mr. Cardozo's expedited removal order and
9 placed him directly into full removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 5.

10 30. In the months since Mr. Cardozo was placed into removal proceedings, he has
11 *never* received a hearing before an immigration judge (IJ) with an interpreter who could translate
12 into his native language and dialect. *Id.* ¶¶ 6–10.

13 31. Mr. Cardozo speaks a dialect of Konkani, a language spoken by some populations
14 who live primarily on the western coast of India. *Id.* ¶¶ 2, 7–8.

15 32. Mr. Cardozo's first master calendar hearing (MCH) was held on February 5,
16 2025. *Id.* ¶ 6. Generally, during MCHs, IJs take pleadings, inform noncitizens of their rights,
17 accept filing of applications, and manage case scheduling. A Hindi interpreter was present at the
18 initial MCH. *Id.* Mr. Cardozo does not speak Hindi and was unable to communicate with the
19 interpreter in Hindi. *Id.* His MCH was continued until a later date in February. *Id.*

20 33. At Mr. Cardozo's second MCH on February 21, 2025, a Konkani interpreter was
21 telephonically present, but the interpreter did not speak Mr. Cardozo's dialect of Konkani. *Id.*
22 ¶ 7. As a result, he was unable to communicate meaningfully with the interpreter and the hearing
23 was again continued. *Id.*

1 34. At a third MCH on March 18, 2025, the telephonic interpreter again did not speak
2 Mr. Cardozo's dialect of Konkani, even though he and other speakers of the same dialect were
3 present at the hearing. *Id.* ¶ 8. Mr. Cardozo's MCH was again continued. *Id.*

4 35. On April 1, 2025, Mr. Cardozo attended a fourth ICH, where yet again, no
5 interpreter who spoke his language was present. *Id.* ¶ 9. The IJ again continued the case. *Id.*

6 36. Mr. Cardozo had a fifth MCH on April 16, 2025, and once more, no interpreter
7 who spoke Mr. Cardozo's language was present. *Id.* ¶ 10. Following that hearing, Mr. Cardozo
8 received a notice from EOIR instructing him to inform the immigration court if he speaks a
9 second language. *Id.* Mr. Cardozo's English is limited and insufficient to meaningfully present
10 his case, and he does not speak any other language. *Id.*

11 37. Mr. Cardozo's detention has now lasted for over six months. Yet during that time,
12 he has not received even one complete MCH in his native language.

13 38. Mr. Cardozo faces months—and likely a year or more—of continued detention
14 just to present his asylum application, due to EOIR's continued failure to provide him with
15 interpretation at his hearings.

16 39. The Tacoma Immigration Court considers Mr. Cardozo to be subject to
17 mandatory detention under 8 U.S.C. § 1225(b). Accordingly, he has never received a hearing
18 before a neutral decisionmaker where ICE was required to justify his continued detention by
19 clear and convincing evidence.

20 **Relson Fernandes**

21 40. Relson Fernandes is a noncitizen from India who entered the United States in
22 October 2024. Fernandes Decl. ¶ 1. Mr. Fernandes fled India based on his fear of persecution
23 there. *Id.* ¶ 7.

1 41. He was apprehended shortly after entering the United States without inspection.
2 *Id.* ¶ 1. Upon information and belief, DHS issued Mr. Fernandes an expedited removal order
3 under 8 U.S.C. § 1225(b)(1).

4 42. Upon his arrival in Tacoma in November 2024, Mr. Fernandes was told he would
5 receive a CFI under § 1225(b)(1). *Id.* ¶ 7.

6 43. In January 2025, after weeks of waiting for a CFI, DHS declined to administer
7 Mr. Fernandes a CFI. *Id.* Instead, the agency vacated Mr. Fernandes's expedited removal order
8 and placed him directly into full removal proceedings under 8 U.S.C. § 1229a. *Id.*

9 44. In the months since Mr. Fernandes was placed into removal proceedings, he has
10 *never* received a hearing before an immigration judge with an interpreter who could translate into
11 his native language and dialect. *Id.* ¶¶ 8–12.

12 45. Like Mr. Cardozo, Mr. Fernandes speaks a dialect of Konkani. *Id.* ¶ 2. And like
13 Mr. Cardozo, Mr. Fernandes was scheduled for MCHs on February 5, February 21, March 18,
14 April 1, and April 16. *Id.* ¶¶ 8–12. An interpreter who speaks Mr. Fernandes' language was not
15 present at any of these hearings. *Id.*

16 46. Mr. Fernandes attended all of the scheduled hearings, with the exception of the
17 MCH held on February 21, 2025, due to testing positive for COVID-19. *Id.* ¶ 9.

18 47. Mr. Fernandes' detention has now lasted for over six months. *Id.* ¶ 1. Yet during
19 that time, he has not received even an initial MCH with the required interpretation in his native
20 language.

21 48. Mr. Fernandes faces months—and likely a year or more—of continued detention
22 just to present his asylum application due to EOIR's failure to provide him with interpretation at
23 his hearings.

1 49. The Tacoma Immigration Court considers Mr. Fernandes subject to mandatory
2 detention under § 1225(b). Accordingly, he has never received a hearing before a neutral
3 decisionmaker where ICE was required to justify his continued detention by clear and
4 convincing evidence.

5 **Yassine Belhaj**

6 50. Yassine Belhaj is a noncitizen from Morocco who entered the United States in
7 September 2024. Belhaj Decl. ¶ 1. Mr. Belhaj fled Morocco based on his fear of persecution
8 there. *Id.*

9 51. He was apprehended shortly after entering the United States without inspection.
10 *Id.* Upon information and belief, DHS issued Mr. Belhaj an expedited removal order under
11 8 U.S.C. § 1225(b)(1).

12 52. Since September 2024, Mr. Belhaj has been detained in Mississippi, Nevada, and
13 Washington. *Id.* ¶¶ 3–4, 6. In total, he has been detained for over seven months. *Id.* ¶ 1.

14 53. Mr. Belhaj was scheduled to receive a CFI while detained at a facility in Las
15 Vegas, Nevada. *Id.* ¶ 3. However, the asylum officer was not able to conduct the interview due to
16 the lack of an interpreter for Mr. Belhaj's native language, Moroccan Hassaniya. *Id.*

17 54. Mr. Belhaj also speaks Tega, a dialect spoken in his parents' hometown and not
18 known throughout or outside Morocco. *Id.* ¶ 2.

19 55. In October 2024, DHS subsequently vacated Mr. Belhaj's expedited removal
20 order and placed him directly into full removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 4.

21 56. In the months since Mr. Belhaj was placed into removal proceedings, he has *never*
22 received a hearing before an immigration with an interpreter who could translate into his native
23 language and dialect. *Id.* ¶¶ 4–6.

1 57. Mr. Belhaj attended several MCHs before an IJ in Las Vegas. *Id.* ¶ 4. At
2 Mr. Belhaj's initial MCH, an Arabic telephonic interpreter was present. *Id.* ¶ 5. However, Mr.
3 Belhaj could not understand them. *Id.* Consequently, his hearing was continued. *Id.*

4 58. Mr. Belhaj then attended at least four additional hearings in Las Vegas, during
5 which telephonic interpreters appeared for languages and dialects that he could not understand,
6 such as Mauritanian Hassaniya, Darija, Tamazight, and Shilha. *Id.*

7 59. Around late January or early February of 2025, Mr. Belhaj was transferred to
8 NWIPC. *Id.* ¶ 6. He has attended four additional MCHs before the Tacoma Immigration Court,
9 on February 25, March 20, April 2, and May 1. *Id.* He was not provided with an interpreter in his
10 native language at any of these hearings. *Id.*

11 60. Mr. Belhaj faces months—and likely a year or more—of continued detention just
12 to present his asylum application due to EOIR's failure to provide him with interpretation at his
13 hearings.

14 61. The Tacoma Immigration Court considers Mr. Belhaj subject to mandatory
15 detention under § 1225(b). Accordingly, he has never received a hearing before a neutral
16 decisionmaker where ICE was required to justify his continued detention by clear and
17 convincing evidence.

18 **Marouane Boulhjar**

19 62. Marouane Boulhjar is a noncitizen from Morocco who entered the United States
20 in August 2024. Boulhjar Decl. ¶ 1. Mr. Boulhjar fled Morocco based on his fear of persecution.
21 *Id.*

1 63. He was apprehended shortly after entering the United States without inspection.
2 *Id.* Upon information and belief, DHS issued Mr. Boulhjar an expedited removal order under 8
3 U.S.C. § 1225(b)(1).

4 64. Since August 2024, Mr. Boulhjar has been detained in California, Nevada, and
5 Washington. *Id.* ¶¶ 3–4, 6. In total, he has been detained for over eight months. *Id.* ¶ 1.

6 65. Mr. Boulhjar was scheduled to receive a CFI while detained at a facility in Las
7 Vegas, Nevada. *Id.* ¶ 3. However, the asylum officer was not able to conduct the interview due to
8 the lack of an interpreter for Mr. Boulhjar’s native language, a subdialect of Tachelhit. *Id.*

9 66. In October 2024, DHS subsequently vacated Mr. Boulhjar’s expedited removal
10 order and placed him directly into removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 4.

11 67. In the months since Mr. Boulhjar was placed into removal proceedings, he has
12 *never* received a hearing before an immigration judge with an interpreter who could translate into
13 his native language and dialect. *Id.* ¶¶ 4–7.

14 68. Between October and December 2024, Mr. Boulhjar attended several MCHs
15 before an IJ in Las Vegas. *Id.* ¶ 4. At each hearing, a different interpreter appeared
16 telephonically, but none of them spoke Tachelhit; instead, they spoke other languages, such as
17 Arabic, Moroccan Darija, Berber, and Tamazigt. *Id.* ¶ 5. Consequently, Mr. Boulhjar’s removal
18 proceedings were terminated on December 13, 2024, due to the immigration court’s failure to
19 find an adequate interpreter. *Id.* ¶ 6.

20 69. Following the termination of his proceedings, ICE initially informed Mr. Boulhjar
21 that he would be released on parole. *Id.* However, in February 2024, he was transferred to
22 NWIPC. *Id.*

1 70. DHS issued Mr. Boulhjar another Notice to Appear for removal proceedings. *Id.*
2 ¶ 7. He has since appeared for hearings before the Tacoma Immigration Court three times, on
3 March 24, April 4, and May 1, 2025. *Id.* ¶ 7. Each time, the hearing was again continued for lack
4 of an adequate interpreter. *Id.*

5 71. Mr. Boulhjar faces months—and likely a year or more—of continued detention
6 just to present his asylum application due to EOIR’s failure to provide him with interpretation at
7 his hearings.

8 72. The Tacoma Immigration Court considers Mr. Boulhjar subject to mandatory
9 detention under § 1225(b). Accordingly, he has never received a hearing before a neutral
10 decisionmaker where ICE was required to justify his continued detention by clear and
11 convincing evidence.

12 **Mouloud Ben Khadaj**

13 73. Mouloud Ben Khadaj is a noncitizen from Morocco who entered the United States
14 in September 2024. Khadaj Decl. ¶ 1. Mr. Khadaj fled Morocco based on his fear of persecution
15 there. *Id.* ¶ 3.

16 74. He was apprehended shortly after entering the United States without inspection.
17 *Id.* ¶ 1. Upon information and belief, DHS issued Mr. Khadaj an expedited removal order under
18 8 U.S.C. § 1225(b)(1).

19 75. Since September 2024, Mr. Khadaj has been detained in California, Nevada, and
20 Washington. *Id.* ¶¶ 4, 6. In total, he has been detained for over seven months. *Id.* ¶ 1.

21 76. Mr. Khadaj was scheduled to receive a CFI while detained at a facility in Las
22 Vegas, Nevada. *Id.* ¶ 4. However, the asylum officer was not able to conduct the interview due to
23 the lack of an interpreter for Mr. Khadaj’s native language, a subdialect of Tachelhit. *Id.* ¶¶ 2, 4.

1 77. DHS subsequently vacated Mr. Khadaj's expedited removal order and placed him
2 directly into removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 5.

3 78. In the months since Mr. Khadaj was placed into removal proceedings, he has
4 *never* received a hearing before an immigration judge with an interpreter who could translate into
5 his native language and dialect. *Id.* ¶¶ 5–6. He has attended around nine MCHs in both Nevada
6 and Washington, but each hearing was continued due to the lack of an adequate interpreter. *Id.*
7 ¶ 5. He does not understand what is happening in his removal proceedings or these hearings. *Id.*

8 79. Mr. Khadaj faces months—and likely a year or more—of continued detention just
9 to present his asylum application due to EOIR's failure to provide him with interpretation at his
10 hearings.

11 80. The Tacoma Immigration Court considers Mr. Khadaj subject to mandatory
12 detention under § 1225(b). Accordingly, he has never received a hearing before a neutral
13 decisionmaker where ICE was required to justify his continued detention by clear and
14 convincing evidence.

15 LEGAL FRAMEWORK

16 81. The Due Process Clause of the Fifth Amendment provides Petitioners with
17 important protection against arbitrary detention without procedures to determine if someone is a
18 flight risk or danger. As the Supreme Court has explained, “[f]reedom from imprisonment—from
19 government custody, detention, or other forms of physical restraint—lies at the heart of the
20 liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

21 82. The INA authorizes three basic forms of detention for noncitizens in removal
22 proceedings. The first is detention for noncitizens in regular, non-expedited removal
23 proceedings. *See* 8 U.S.C. § 1226(a). Individuals in § 1226(a) detention are entitled to a bond
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1 hearing at the outset of their detention, while noncitizens who have committed certain crimes are
2 subject to mandatory detention. *See id.* § 1226(c). Second, the INA also provides for mandatory
3 detention for noncitizens in expedited removal proceedings and others arriving in the United
4 States. *Id.* § 1225(b). Last, the statute provides for detention for noncitizens who are subject to a
5 final removal order. *Id.* § 1231(a)(6). *See also Banda v. McAleenan*, 385 F. Supp. 3d 1099,
6 1111–13 (W.D. Wash. 2019) (providing overview of INA’s detention authorities).

7 83. The Supreme Court has addressed the constitutionality of mandatory detention on
8 one occasion. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court denied a facial
9 challenge to mandatory detention under § 1226(c), which asserted that the statute was
10 unconstitutional because it imposed mandatory detention without a custody hearing. However,
11 the Supreme Court emphasized that such detention was typically “brief” in length and lasted
12 “roughly a month and a half in the vast majority of cases . . . and about five months in the
13 minority of cases in which the [non-citizen] chooses to appeal.” 538 U.S. at 513, 530. The Court
14 also upheld the statute in part because it was based on a voluminous congressional record that
15 supported the need for detention as to individuals convicted of certain crimes. *See id.* at 518–20.

16 84. Notably, Justice Kennedy—who provided the fifth vote for the majority on the
17 constitutional issue—penned a concurrence that reasoned detention may eventually become
18 sufficiently lengthy that a hearing to justify continued detention is constitutionally required. 538
19 U.S. at 532–33 (Kennedy, J., concurring).

20 85. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court again
21 addressed the mandatory provision of § 1226(c), as well as the one at § 1225(b). There, the Court
22 held that, as a matter of statutory interpretation, those sections did not require the government to
23 provide a detainee subject to prolonged detention with a bond hearing. Significantly, the Court
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1 did not reach the constitutional question of whether the Due Process Clause requires an
2 opportunity to test the government's justification for detention once detention becomes
3 prolonged.

4 86. Since the Supreme Court's *Rodriguez* decision, the Ninth Circuit has expressed
5 "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process
6 is constitutional or that those who founded our democracy precisely to protect against the
7 government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909
8 F.3d 252, 256 (9th Cir. 2018).

9 87. To guard against such arbitrary detention and to guarantee the right to liberty, due
10 process requires "adequate procedural protections" that ensure the government's asserted
11 justification for a noncitizen's physical confinement "outweighs the individual's constitutionally
12 protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation
13 marks omitted).

14 88. In the immigration context, the Supreme Court has recognized two primary
15 purposes for civil detention: to mitigate the risks of danger to the community and to prevent
16 flight. *Id.*; see also *Demore*, 538 U.S. at 522, 528. The government may not detain a noncitizen
17 based on other justifications.

18 89. As a result, where the government detains a noncitizen for a prolonged period
19 while the noncitizen pursues a substantial defense to removal or claim to relief, due process
20 requires an individualized hearing before a neutral decisionmaker to determine whether detention
21 remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring)
22 (stating that an "individualized determination as to [a noncitizen's] risk of flight and
23 dangerousness" may be warranted "if the continued detention became unreasonable or
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1 unjustified”); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the “initial
2 commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–
3 50 (1972) (noting that “lesser safeguards may be appropriate” for “short-term confinement”);
4 *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that
5 “the length of confinement cannot be ignored in deciding whether [a] confinement meets
6 constitutional standards”).

7 90. Detention without a bond hearing is unconstitutional when it becomes prolonged.
8 *See, e.g., Rodriguez*, 909 F.3d at 256; *see also Zadvydas*, 533 U.S. at 701 (“Congress previously
9 doubted the constitutionality of detention for more than six months.”).

10 91. The recognition that six months constitutes a substantial period of confinement
11 that qualifies as prolonged detention is deeply rooted in our legal tradition. With only a few
12 exceptions, “in the late 18th century in America crimes triable without a jury were for the most
13 part punishable by no more than a six-month prison term.” *Duncan v. Louisiana*, 391 U.S. 145,
14 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be
15 the limit of confinement for a criminal offense that a federal court may impose without the
16 protection afforded by a jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality
17 opinion). The Court has also looked to six months as a benchmark in other contexts involving
18 civil detention. *See McNeil*, 407 U.S. at 249, 250–52 (recognizing six months as an outer limit
19 for confinement without individualized inquiry for civil commitment).

20 92. In addition, both the Supreme Court and Ninth Circuit have long made clear that a
21 significant time in civil detention warrants an opportunity to test the legality of that detention. As
22 the Ninth Circuit has explained in the pretrial detention context—which, like here, involves civil
23 detention—“[i]t is undisputed that at some point, [civil] detention can ‘become excessively
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1 prolonged, and therefore punitive,' resulting in a due process violation." *United States v. Torres*,
2 995 F.3d 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4
3 (1987)). That is especially true where the initial detention decision lacks significant (or any)
4 safeguards, as is the case here. See *O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975) ("Nor
5 is it enough that Donaldson's original confinement was founded upon a constitutionally adequate
6 basis, if in fact it was, because even if his involuntary confinement was initially permissible, it
7 could not constitutionally continue after that basis no longer existed."); *McNeil*, 407 U.S. at 249-
8 50 (explaining that as the length of civil detention increases, more substantial safeguards are
9 required).

10 93. These principles have "[o]verwhelmingly[] [led the] district courts that have
11 considered the constitutionality of prolonged mandatory detention—including . . . other judges in
12 this District[] [to] agree that prolonged mandatory detention pending removal proceedings,
13 without a bond hearing, will—at some point—violate the right to due process." *Diaz Reyes v.*
14 *Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903, at *3 (W.D. Wash. Aug. 7, 2020) (internal
15 quotation marks omitted), *R&R adopted as modified*, No. C20-0377JLR, 2020 WL 6820822
16 (W.D. Wash. Nov. 20, 2020); see also *Parada Calderon v. Bostock*, No. 2:24-CV-01619-MJP-
17 GJL, 2025 WL 1047578, at *4 (W.D. Wash. Jan. 17, 2025) (similar), *R&R adopted in part*,
18 *rejected in part*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718 (W.D. Wash. Mar. 21, 2025).
19 Indeed, "[i]n the context of immigration detention, it is well-settled that due process requires
20 adequate procedural protections to ensure that the government's asserted justification for
21 physical confinement outweighs the individual's constitutionally protected interest in avoiding
22 physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017)

1 94. Courts assessing whether a detained noncitizen is entitled to a hearing as a matter
2 of due process typically employ one of two tests: a multi-factor test or the test found in *Mathews*
3 *v. Eldridge*, 424 U.S. 319 (1976). Courts in this district generally employ a multi-factor test. *See*
4 *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 929 (W.D. Wash. 2020); *Banda*, 385 F.
5 Supp. 3d at 1106. Petitioners merit bond hearings under either test.

6 95. Under the multi-factor test, courts look to “(1) the total length of detention to
7 date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the
8 removal proceedings caused by the detainee; (5) delays in the removal proceedings cause[d] by
9 the government; and (6) the likelihood that the removal proceedings will result in a final order of
10 removal.” *Banda*, 385 F. Supp. 3d at 1106 (citation omitted). The length of detention is the
11 “most important factor.” *Id.* at 1118.

12 96. The application of this test demonstrates Petitioners are entitled to a bond hearing.
13 They have been detained well over six months and yet have not even received an *initial* MCH in
14 their removal proceedings. Once that initial MCH happens, removal proceedings are likely to
15 take six months to a year or more just to receive a decision on their asylum applications. And if
16 Petitioners are ordered removed, BIA appeals typically take many additional months to
17 complete. If the BIA the appeal is denied, Petitioners are entitled to file a petition for review with
18 the Ninth Circuit Court of Appeals, which is likely to last another year. Thus, Petitioners all are
19 likely to face at least another year of detention, if not much longer.

20 97. Courts regularly afford noncitizens a bond hearing after facing similar periods of
21 detention. *See, e.g., Banda*, 385 F. Supp. 3d at 1118 (noting that 17 months of detention was a
22 “very long time” that “strongly favor[ed] granting a bond hearing); *Lopez v. Garland*, 631 F.
23 Supp. 3d 870, 879 (E.D. Cal. 2022) (“Petitioner has been in immigration detention since
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September 10, 2021—approximately one year. District courts have found shorter lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable.”); *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019) (detention of just over a year that would last several more months favored granting bond hearing); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *1 (W.D. Wash. May 23, 2019), *R&R adopted*, No. 18-CV-01669-RAJ, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (detention of 13 months favored granting bond hearing); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (same, for 7 months); *Liban M.J. v. Sec’y of DHS*, 367 F. Supp. 3d 959, 963 (D. Minn. 2019) (same, for 12 months).

98. The punitive and restrictive conditions at NWIPC also support affording Petitioners a hearing. Those conditions “are similar . . . to those in many prisons and jails,” despite Petitioners’ ostensible status as “civil” detainees. *Diaz Reyes*, 2020 WL 6820903, at *7 (alteration in original); *see also Parada Calderon*, 2025 WL 879718, at *4 (concluding this factor favored petitioner). Indeed, for all intents and purposes, NWIPC is a prison. Petitioners are confined inside in a restrictive setting and currently receive *no* outdoor time at all. Cardozo ¶ 14; Fernandes ¶ 13. Petitioners also report crowded conditions, leading to fights and tension among other detained persons. Cardozo Decl. ¶ 15; Fernandes Decl. ¶ 14. In addition, Petitioners have uniformly attested to poor food and hygiene at NWIPC. Cardozo Decl. ¶¶ 12–13; Fernandes Decl. ¶ 14; Belhaj Decl. ¶ 9; Boulhjar ¶ 10; Khadaj Decl. ¶ 13. Several of the petitioners also report difficulty in accessing medical care due to translation issues. Belhaj Decl. ¶ 8; Boulhjar ¶ 9; Khadaj Decl. ¶ 11. Further, Mr. Khadaj testifies to repeated sexual harassment, which he cannot report because none one can understand him. Khadaj ¶¶ 8–10. Reports by independent outside entities have similarly documented problems with food, medical neglect, cleanliness, and

1 other issues at NWIPC. *See* Univ. of Wash. Ctr. for Hum. Rts., Conditions at the Northwest
2 Detention Center (last accessed May 6, 2025),
3 [https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-](https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/)
4 [northwest-detention-center/](https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/).

5 99. The delay factor also favors Petitioners. Petitioners have not caused any delay in
6 their cases, while EOIR has repeatedly failed to provide the basic due process protection of an
7 interpreter at Petitioners' many continued MCHs.

8 100. Due process and the INA demand that every noncitizen in removal proceedings be
9 afforded a full and fair opportunity to present their case. *See, e.g.*, 8 U.S.C. § 1229a(b); *Jacinto v.*
10 *INS*, 208 F.3d 725, 727 (9th Cir. 2000) ("Due process requires that a[] [noncitizen] receive a full
11 and fair hearing."); *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002) (noting that any denial of
12 one of the procedural protections set forth in § 1229a(b)(4) violates the "constitutional guarantee
13 of due process").

14 101. That right to a full and fair hearing includes the right to adequate interpretation.
15 *See, e.g.*, *Perez-LASTOR v. INS*, 208 F.3d 773, 777–78 (9th Cir. 2000). By failing to provide that
16 interpretation while subjecting Petitioners to ongoing, prolonged detention, Respondents
17 effectively deny that right altogether, because it will eventually force Petitioners to give up their
18 cases when their removal proceedings never progress.

19 102. Finally, Petitioners intend to make a good faith defense to removal based on the
20 harm they are likely to face in their countries of origin. However, until now, they have been
21 precluded from even hearing about their rights to apply for asylum and protection in immigration
22 court, because EOIR has not provided an interpreter in their native language.

23 103. As a result, due process demands that Petitioners receive a bond hearing.
24

1 104. Notably, this Court has previously issued habeas relief in nearly identical
2 circumstances. In *Banda*, the noncitizen's case was repeatedly continued because an adequate
3 interpreter was not present at the petitioner's hearings in removal proceedings. *See* 385 F. Supp.
4 3d at 1109–10. The Court there concluded that the noncitizen was entitled to a bond hearing after
5 months of delays in the case due to the lack of an interpreter. *Id.* at 1107, 1120.

6 105. A similar result occurs under application of the test in *Mathews*. That test looks to
7 (1) the petitioner's interest, (2) the value of additional procedural protections, and (3) any burden
8 on the government in providing additional protections. 424 U.S. at 335.

9 106. Here, Petitioners' interest is at its zenith: they have a powerful interest in their
10 physical liberty, as the Supreme Court, the Ninth Circuit, and this Court have repeatedly made
11 clear. *See supra* ¶¶ 80, 85–92.

12 107. Second, additional protections are warranted here. The statute affords Petitioners
13 no protection whatsoever and requires their detention. *See* 8 U.S.C. § 1225(b)(2).

14 108. Finally, any burden on the government is minimal. Bond proceedings are short,
15 informal hearings where an IJ typically receives records and testimonial evidence at a hearing
16 and issues an oral ruling. Such hearings do not entail any significant expenditure of government
17 resources. *See* Imm. Ct. Practice Manual ch. 9.3(e).

18 109. Accordingly, application of the *Mathews* test also requires a bond hearing to
19 justify further detention.

20 110. Due process also requires certain minimal procedures at Petitioners' bond
21 hearings. First, the government must bear the burden of proof by clear and convincing evidence
22 to justify continued detention. Second, the decisionmaker must consider available alternatives to
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1 detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a
2 noncitizen's ability to pay a bond when determining the appropriate conditions of release.

3 111. To justify prolonged immigration detention, the government must bear the burden
4 of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh*
5 *v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the
6 Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that
7 the government bore the burden of proof by at least clear and convincing evidence. *See Salerno*,
8 481 U.S. at 750, 752 (upholding pre-trial detention where the detainee was afforded a "full-
9 blown adversary hearing," requiring "clear and convincing evidence" before a "neutral
10 decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (striking down civil detention
11 scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order
12 custody review procedures deficient because, *inter alia*, they placed burden on detainee); *see*
13 *also Banda*, 385 F. Supp. 3d 1120–21 (requiring application of clear and convincing evidence
14 standard).

15 112. The requirement that the government bear the burden of proof by clear and
16 convincing evidence is also supported by application of the three-factor balancing test from
17 *Mathews*.

18 113. First, prolonged incarceration deprives noncitizens of a profound liberty
19 interest—one that always requires some form of procedural protections. *See Foucha*, 504 U.S. at
20 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty
21 that requires due process protection." (citation omitted)).

22 114. Second, the risk of error is great where the government is represented by trained
23 attorneys and detained noncitizens are often unrepresented and frequently lack English
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1 proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762–63 (1982) (requiring clear and
2 convincing evidence at parental termination proceedings because “numerous factors combine to
3 magnify the risk of erroneous factfinding,” including that “parents subject to termination
4 proceedings are often poor, uneducated, or members of minority groups” and “[t]he State’s
5 attorney usually will be expert on the issues contested”). Moreover, Respondents detain
6 noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance,
7 gather evidence, and prepare for a bond hearing.

8 115. Third, placing the burden on the government imposes minimal cost or
9 inconvenience, as the government has access to the noncitizen’s immigration records and other
10 information that it can use to make its case for continued detention.

11 116. In light of these considerations, “[t]he overwhelming majority of courts to
12 consider the question . . . have concluded that imposing a clear and convincing standard would
13 be most consistent with due process.” *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL
14 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted). Courts in this
15 district regularly impose this requirement. *See Banda*, 385 F. Supp. 3d 1120–21 (requiring clear
16 and convincing evidence); *Djelassi*, 434 F. Supp. 3d at 929 (same); *Diaz Reyes*, 2020 WL
17 6820903, at *9 (same).

18 117. Due process also requires that a neutral decisionmaker consider available
19 alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen’s
20 appearance during removal proceedings. Detention is not reasonably related to this purpose if
21 there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*,
22 441 U.S. 520, 538 (1979). ICE’s alternatives to detention program—the Intensive Supervision
23 Appearance Program (ISAP)—has achieved compliance rates close to 100 percent. *See*

1 *Hernandez*, 872 F.3d at 991 (observing that ISAP “resulted in a 99% attendance rate at all EOIR
2 hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention
3 must be considered in determining whether prolonged incarceration is warranted.

4 118. Due process likewise requires consideration of a noncitizen’s ability to pay a
5 bond. “Detention of an indigent ‘for inability to post money bail’ is impermissible if the
6 individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms of
7 release.’” *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)).
8 As a result, in determining the appropriate conditions of release for immigration detainees, due
9 process requires “consideration of financial circumstances and alternative conditions of release”
10 to prevent against detention based on poverty. *Id.*

11 **CLAIM FOR RELIEF**

12 **28 U.S.C. § 2241**

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

14 119. Petitioners allege and incorporate by reference the paragraphs above.

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

17 121. Petitioners’ detention—which has lasted over six months without a hearing in
18 their own language—constitutes prolonged detention and is not reasonably related to a legitimate
19 government purpose.

20 122. To justify Petitioners’ ongoing prolonged detention, due process requires an
21 individualized hearing before a neutral decisionmaker where the government must establish that
22 continued detention is justified by clear and convincing evidence of flight risk or danger and that
23 no alternatives to detention could sufficiently mitigate any risk that does exist.
24

1 123. For these reasons, Petitioners' ongoing detention violates the Due Process Clause
2 of the Fifth Amendment.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioners pray that this Court grant the following relief:

- 5 a. Assume jurisdiction over this matter;
- 6 b. Issue a Writ of Habeas Corpus and order Petitioners' release unless Respondents
7 hold a custody hearing for each Petitioner before an immigration judge in their
8 native language and dialect within 14 days. At that hearing, the government must
9 establish by clear and convincing evidence that Petitioners present a risk of flight
10 or danger and that no alternative to detention can mitigate any risk that his release
11 would present. The Court should further order that if the government cannot meet
12 its burden, the immigration judge must order Petitioners' release on appropriate
13 conditions of supervision, taking into account their ability to pay a bond;
- 14 c. Alternatively, issue a Writ of Habeas Corpus and hold a hearing before this Court
15 if warranted; determine that Petitioners' detention is not justified because the
16 government has not established by clear and convincing evidence that Petitioners
17 present a risk of flight or danger in light of available alternatives to detention; and
18 order Petitioners' release, with appropriate conditions of supervision if necessary,
19 taking into account his ability to pay a bond;
- 20 d. Issue a declaration that, as applied in this case, 8 U.S.C. § 1225(b) and
21 Petitioners' prolonged detention under that statute violate the Due Process Clause
22 of the Fifth Amendment;
- 23
24

- 1 e. Award Petitioners attorney's fees and costs under the Equal Access to Justice Act
2 ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other
3 basis justified under law; and
4 f. Grant any other and further relief that this Court deems just and proper.

5 Respectfully submitted this 8th of May, 2025.

6
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