

REPLY MEMORANDUM
IN SUPPORT OF
PETITIONER'S MOTION TO
LIFT STAY OF PROCEEDINGS

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with this opinion,” the stay in this case should be dissolved. While Respondents did in fact file a Petition for Rehearing *En Banc* on September 22, 2025, it is not a foregone conclusion that the Fifth Circuit will grant that petition. Indeed, the Internal Operating Procedures to Fifth Circuit Rule 40 states that “en banc hearing or rehearing is not favored.” 5th Cir. R. 40, IOP. It further states that “a petition for rehearing *en banc* is an extraordinary procedure,” and is “the most abused prerogative of appellate advocates in the Fifth Circuit. Fewer than 1% of the cases decided by the Court on the merits are reheard *en banc*, and frequently those rehearings granted result from a request for *en banc* reconsideration by a judge of the court rather than a petition by the parties.” *Id.* Accordingly, the stay in this case should not be continued given the highly discretionary nature of rehearings *en banc*, and the original panel’s opinion, ruling against the U.S. government’s position. Indeed, Respondents have not cited one judicial decision in which an Article III court has upheld the issuance of the Proclamation as a proper invocation of the AEA. Respondents thus fail to provide any support for the first factor to be considered by a Court when granting (or dissolving) a stay, namely, a showing of likelihood of success on the merits. *See* Respondents’ Motion to Stay Proceedings Pending Appeal (Doc 49, pp. 3-4).

II. Petitioner’s Indefinite Detention Violates the U.S. Constitution

As of September 24, 2025, Petitioner has been detained for over six months without a hearing or the presentment of any evidence that he is a member of TdA or that he is subject to the unlawful Proclamation. For no other reason, the stay must be lifted to provide Petitioner some semblance of due process.

The recognition that six months is a substantial period of confinement – and is the time after which additional process is required to support continued incarceration – is deeply rooted in our legal tradition. With few exceptions, “in the late 18th century in America crimes triable

without a jury were for the most part punishable by no more than six-month prison term...”

Duncan v. State of La., 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment). The Court has likewise recognized the need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110 (2010). (14 days for re-interrogation following invocation of Miranda rights); *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (48 hours for probable cause hearing).

To justify prolonged immigration detention, the government bears the burden of proof at least by clear and convincing evidence that the noncitizen is a danger or a flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the Government bore the burden of proof at least by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial determination where “full-blown adversary hearing,” requiring “clear and convincing evidence” and “Neutral decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. 678 at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee). *See Ramirez v. Watkins*, 2010 U.S. Dist. Lexis 142508 at 77-78 (N.D.T.X. 2010). (“...if an alien makes a showing via a habeas petition that continued detention is no longer reasonable in the absence of an individualized hearing, the alien must be

afforded a hearing before the habeas court at which the Government bears the burden of justifying continued detention based on traditional bail factors such as the alien's specific risk of flight and potential danger to the community."').

On April 24, 2025, during an individualized bond hearing in which Respondents participated and had the opportunity to present evidence, Respondents did not present any evidence or make any argument to the Immigration Court that Petitioner is a danger or flight risk. The Immigration Court determined that Petitioner was not a danger or a flight risk, and granted the minimum bond allowed by law. Respondents did not appeal that decision. Because Petitioner has already been determined to not be a danger or a flight risk, the prolonged detention of Petitioner is not justifiable and violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

In their opposition to the Motion to Lift Stay, Respondents give short shrift to Petitioner's continued detention, stating simply that he will not be removed until the end of his habeas proceedings, without any acknowledgment of the physical and psychological harm caused to Petitioner by his detention thousands of miles from where he was arrested and where his family lives. Respondents argue that the stay should remain in place because "the lawfulness of his detention under the AEA remains a question for higher courts," without any acknowledgement that this argument cuts both ways, that the *unlawfulness* of Petitioner's detention under the terms of the Proclamation and the AEA is a violation of the Eighth Amendment's protection against cruel and unusual punishments and the Fifth Amendment's right to due process. Respondents still have not produced *any* evidence that Petitioner is a member of TdA, much less met the required "clear, unequivocal, or convincing," standard. *Sanchez Puentes v. Garite*, 2025 U.S. Dist. LEXIS 79267, (W.D. Tx. April 25, 2025). No evidence has been filed in these proceedings

and no evidence has been filed with the Immigration Court despite Petitioner's asylum application having been scheduled for a final hearing on September 9, 2025 and that was continued solely because of the Immigration Court's full docket that day.

In light of Petitioner's prolonged detention without any due process and the Fifth Circuit ruling in *W.M.M. v. Trump*, the balance of equities plainly favor the lifting of the stay. For all of the aforementioned reasons, Petitioner respectfully requests that the stay be lifted and that pursuant to 28 U.S.C. §2243, this Court enter a Writ of Habeas Corpus.

Dated: September 24, 2025

Respectfully Submitted,

/s/ Laura Smith

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2025, a true and correct copy of the foregoing document was electronically filed via the Court's CM/ECF system which sends notice of electronic filing to all counsel of record.

Dated: September 24, 2025

/s/ Laura Smith
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