UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

Mujtaba QEYAMI, *Petitioner*, v. Michael BRECKON, Warden, Folkston D. Ray ICE Processing Center, *in his official capacity*; LaDeon FRANCIS, Field Office Director of U.S. Immigration and Customs Enforcement, Atlanta Field Office, *in his official capacity*; Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement, *in his official capacity*; Pamela BONDI, Attorney General of the United States, *in her official capacity*, *Respondents*.	Civil Action No. _CV 525-087___ **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** **HEARING REQUESTED**

1. Petitioner Mujtaba Qeyami ("Mr. Qeyami" or "Petitioner"), a citizen and national of Afghanistan, has been detained by Respondents for over six months without access to any lawful or valid immigration process and without the ability to challenge his detention.

2. Mr. Qeyami is entitled either to release or to a bond hearing at which the Government bears the burden of proving by clear and convincing evidence that no conditions or alternatives to detention exist to mitigate any risk of flight or danger he may pose, either under 8 U.S.C. § 1226(a) or because his continued detention without review has become unconstitutional.

JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (declaratory relief), and Article I, section 9, clause 2 of the U.S. Constitution (Suspension Clause), as Mr.

Qeyami is presently in custody under or by color of the authority of the United States, and he challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

4. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by individuals challenging the lawfulness of their detention. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003). In *Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018), the Supreme Court again upheld the federal courts' jurisdiction to review such claims.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), (e)(1) because Mr. Qeyami is detained in this district and it is where a substantial part of the events or omissions giving rise to this action occurred and continue to occur.

PARTIES

6. Petitioner Mujtaba Qeyami is a citizen of Afghanistan currently detained at Folkston D. Ray ICE Processing Center ("FIPC").[1] Mr. Qeyami has now been continuously detained by Respondents for over six months, since approximately February 5, 2025.

7. Respondent Michael Breckon is the Warden of FIPC. Pursuant to a contract with Immigration and Customs Enforcement ("ICE"), Respondent Breckon is responsible for the operation of FIPC. He is Mr. Qeyami's immediate custodian. He is sued in his official capacity.

8. Respondent LaDeon Francis is the Field Office Director of the ICE Atlanta Field Office. Respondent Francis is responsible for ICE activities in the Atlanta Area of Responsibility,

[1] Folkston ICE Processing Center is made up of several buildings housing detained noncitizens: Main, Annex, and D. Ray James. D. Ray James was originally a state prison, but since 2010 has held inmates for the federal Bureau of Prisons. The Department of Homeland Security executed a modification to the existing Intergovernmental Service Agreement ("IGSA") with Charlton County, GA, on or around June 6, 2025, to add use of the D. Ray James building to the Folkston ICE Processing Center. *See* Tyler Davis, *Charlton County, ICE contract to expand processing center moves forward*, Georgia Recorder, June 11, 2025, https://georgiarecorder.com/briefs/charlton-county-ice-contract-to-expand-processing-center-moves-forward/. Because D. Ray James is part of the Folkston ICE Processing Center complex, this petition refers to the location of Mr. Qeyami's detention as FIPC.

which encompasses Georgia, North Carolina, and South Carolina and its detention facilities, including FIPC. Accordingly, Respondent Francis is a legal custodian of Mr. Qeyami. He is sued in his official capacity.

9. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for the administration of ICE and the implementation and enforcement of immigration laws, including immigrant detention. Respondent Lyons is a legal custodian of Mr. Qeyami. He is sued in his official capacity.

10. Respondent Pamela Bondi is the Attorney General of the United States. Attorney General Bondi is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g), including oversight of the Executive Office for Immigration Review, encompassing the immigration courts. Respondent Bondi is a legal custodian of Mr. Qeyami. She is sued in her official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. "[W]here Congress does not say there is a jurisdictional bar, there is none." *Santiago-Lugo v. Warden*, 785 F.3d 467, 473 (11th Cir. 2015). "Congress knows how to limit courts' subject matter jurisdiction to decide § 2241 petitions when it wishes to do so. The fact that it did not limit courts' subject matter jurisdiction to decide unexhausted § 2241 claims compels the conclusion that any failure of [the respondent] to exhaust administrative remedies is not a jurisdictional defect." *Id.* at 474.

12. In the absence of a statutorily-mandated exhaustion requirement, whether to apply a common law exhaustion requirement is a decision that rests soundly within the broad discretion of district courts. *See J.N.C.G. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-62-MSH, 2020 WL 5046870, at *3 (M.D. Ga. Aug. 26, 2020) (citing *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992));

see also Richardson v. Reno, 162 F.3d 1338, 1374 (11th Cir. 1998), *vacated on other grounds*, 526 U.S. 1142 (1999); *Yahweh v. U.S. Parole Comm'n*, 158 F. Supp. 2d 1332, 1341 (S.D. Fla. 2001) (observing the "broad discretion" given to courts if exhaustion is not statutorily mandated).

13. Here, there is no reason to require exhaustion of administrative remedies where Mr. Qeyami's liberty interest is at issue and the appeal of the immigration judge's bond determination will take several months, during which time his rights will continue to be violated.

14. An immigration judge ruled that he did not have jurisdiction over Mr. Qeyami's custody redetermination, and did not have the jurisdiction to determine whether he was properly in detention as a result of his processing status. Current ICE guidance further states that someone like Mr. Qeyami, who entered without inspection at the border, is subject to mandatory detention.[2] Thus, Mr. Qeyami's claims are not likely to be resolvable within the agency.

15. Further, Mr. Qeyami's prolonged detention raises constitutional issues. "[A] petitioner need not exhaust [their] administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim.'" *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir. 2001) (quoting *Gonzalez v. United States*, 959 F.2d 211, 212 (11th Cir. 1992)), *abrogated on other grounds*, *Santiago-Lugo*, 785 F.3d 467. Thus, "[b]ecause the BIA does not have the power to decide constitutional claims . . . certain due process claims need not be administratively exhausted." *Warsame v. U.S. Att'y Gen.*, 796 F. App'x 993, 1006 (11th Cir. 2020); *see also Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 (11th Cir. 1989) (holding that exhaustion had "no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the Immigration and Naturalization Service), *aff'd sub nom. McNary v. Haitian Refugee Ctr., Inc.*,

[2] *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, American Immigration Lawyers Association, https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (last visited Aug. 25, 2025).

498 U.S. 479 (1991); *J.N.C.G.*, 2020 WL 5046870, at *3 ("The Court will not require Petitioner to remain detained while awaiting the BIA's ruling before allowing him to raise a constitutional challenge to the length of that detention, as such a requirement would verge on Orwellian."); *see also Matter of G-K-*, 26 I. & N. Dec. 88, 96–97 (BIA 2013) ("Neither the Board nor the Immigration Judges have the authority to rule on the constitutionality of the statutes we administer.").

16. Thus, this Court has jurisdiction over Mr. Qeyami's § 2241 action because administrative exhaustion is not required and the petition raises constitutional issues that cannot be addressed administratively. Even if exhaustion were required, any administrative remedies available to Mr. Qeyami are underway.

STATEMENT OF FACTS & LEGAL BACKGROUND

17. Mr. Qeyami is a citizen of Afghanistan. [redacted] He fled from Afghanistan in November 2024.

18. Mr. Qeyami arrived in the United States on or around February 5, 2025. He entered without inspection at or near the San Ysidro Port of Entry. He was apprehended upon arrival and taken into custody by Customs and Border Protection ("CBP") shortly thereafter. He was then transferred to ICE custody and moved through a series of detention centers until arriving at FIPC.

I. Suspension of Entry under INA § 212(f) and the President's Proclamation

19. At the time of his apprehension, Mr. Qeyami was subjected to a suspension of his entry under the Presidential Proclamation, "Guaranteeing The States Protection Against Invasion," Proclamation No. 10888, 90 Fed. Reg. 8333 (Jan. 20, 2025) [hereinafter, "the 2025 Proclamation"], which in part purports to enact § 212(f) of the Immigration and Nationality Act

("INA") (8 U.S.C. § 1182(f)) [hereinafter, "212(f)"].

20. Section 212(f) states, in relevant part,

> Whenever the President finds that the entry of any [noncitizens] or of any class of [noncitizens] into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all [noncitizens] or any class of [noncitizens] as immigrants or nonimmigrants, or impose on the entry of [noncitizens] any restrictions he may deem to be appropriate.

21. There are no regulations implementing 212(f).

22. In 2018, President Trump enacted 212(f), suspending the entry of noncitizens between southern border ports of entry. Proclamation No. 9822, *Addressing Mass Migration Through the Southern Border of the United States*, 83 Fed. Reg. 57661, 57663 (Nov. 9, 2018). At the time, the Department of Homeland Security ("DHS") and the Department of Justice ("DOJ") acknowledged that noncitizens should generally have access to processes under 8 U.S.C. § 1225 to claim a credible fear with the opportunity to seek asylum, and issued implementing regulations. *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims*, 83 Fed. Reg. 55934, 55940 (Nov. 9, 2018). The Attorney General's attempt to block asylum eligibility by regulation was enjoined. *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 771–73 (9th Cir. 2018) (affirming injunction of regulations); *see OA v. Trump*, 404 F. Supp. 3d 109 (D.D.C. 2019) (vacating regulations).

23. On January 20, 2025, President Trump issued the 2025 Proclamation "in effect, prevent[ing] anyone who crosses the southern border of the United States at any place other than a designated port of entry, as well as anyone who enters anywhere else (including at a designated port of entry) without a visa or without extensive medical information, criminal history records, and other background records, from applying for asylum or withholding of removal." *Refugee and Imm. Ctr. for Educ. & Legal Servs. v. Noem*, – F. Supp. 3d –, 2025 WL 1825431, at *1 (D.D.C.

July 2, 2025) ("*RAICES*"), *appeal docketed*, No. 25-5243 (D.C. Cir. July 3, 2025).[3]

24. Section 1 of the 2025 Proclamation states that, pursuant to 212(f), entry into the United States "shall be suspended" until the President issues another order "finding that the invasion at the border has ceased." Section 2 states that these suspended noncitizens "are restricted from invoking provisions of the INA that would permit their continued presence in the United States, including, but not limited to, [the asylum statute], 8 U.S.C. 1158[.]"

25. Accordingly, a person purportedly processed under 212(f) pursuant to the 2025 Proclamation does not have access to the Expedited Removal processing framework codified in 8 U.S.C. § 1225 (INA § 235). Despite this, DHS uses the language "Expedited Removal" to refer to 212(f) suspensions.[4]

26. Someone subject to 212(f) suspension under the 2025 Proclamation can be processed in one of two ways, neither of which is the result of formal rulemaking or other regulatory process: "212(f) Direct Repatriation" or "212(f) Expedited Removal." *RAICES*, 2025

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[3] In *RAICES v. Noem*, the District Court for the District of Columbia (a) set aside, or vacated, the guidance implementing the 2025 Proclamation (*see* Exh. 1); (b) issued declaratory relief that the 2025 Proclamation is unlawful inasmuch as it suspends or restricts access to asylum, withholding of removal under the Immigration and Nationality Act, and CAT; and (c) enjoined implementation of the 2025 Proclamation. *See* 2025 WL 1825431, at *50–55. On August 1, 2025, the Court of Appeals for the District of Columbia denied in substantial part the government's motion to stay the majority of the district court's order, and granted the stay only as to the portions related to access to **asylum** specifically, since access to asylum is discretionary. *See RAICES v. Noem*, Case No. 25-5243, slip op. at 35 (D.C. Cir. Aug. 1, 2025) (Millett, J., concurring) ("[T]he asylum statute itself likely allows such suspension of its protections."). In all other ways, the stay was denied, with the district court's orders vacating the implementing guidance for everything except asylum, the declaratory relief of the 2025 Proclamation as unlawful for everything except asylum, and the injunction of the implementation of the 2025 Proclamation for everything except asylum. *Id.* at 2.

[4] "Expedited Removal" has generally been used as a term of art to refer to processes codified in 8 U.S.C. § 1225 and 8 U.S.C. § 1228 ("Expedited Removal of Aggravated Felons"). Neither INA § 212(f) nor the 2025 Proclamation use the term "expedited removal." To avoid confusion, this petition refers only to processing under § 1225 as "expedited removal" and refers to suspension under § 212(f) and pursuant to the 2025 Proclamation as "suspension."

The District Court for the District of Columbia recently made this observation: "'212(f) Expedited Removal' is not the same thing as expedited removal under 8 U.S.C. § 1225(b)(1). . . . [T]he defining characteristics of a § 1225(b)(1) expedited removal proceeding[ ]is precisely what the Proclamation and guidance do not allow. Notably, Defendants are not even purporting to implement § 1225(b)(1); they are, on their own telling, implementing the Proclamation." *RAICES v. Noem*, 2025 WL 1825431, at *26.

WL 1825431, at *13. "[T]he difference between the two pathways is that '[noncitizens] subject to expedited removal procedures are served with a Notice to Alien Ordered Removed and issued an Expedited Removal Order (Form I-860),' while '[noncitizens] processed for repatriation are not issued a removal order.' Beyond the issuance of a notice and order, however, Defendants fail to identify any difference between the two '212(f)' procedures." *Id.*

27. The United States is a signatory to the Convention Against Torture ("CAT"), which prohibits repatriation of a person to a country where there are substantial grounds for believing that they would be tortured. *See* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, S. Treaty Doc. No. 100–20 (1988), 1465 U.N.T.S. 85, implemented at 8 C.F.R. § 1208.18.

28. In February 2025, DHS issued guidance, now largely enjoined through *RAICES v. Noem*, that directed agents to, among other things, "refer any [noncitizen] who manifests fear [of the country where DHS may attempt to send them] to U.S. Citizenship and Immigration Services ("USCIS") for a Convention against Torture (CAT) screening." Exh. 1 (DHS 212(f) Guidance filed in *RAICES v. Noem*) at 5. Under that guidance, USCIS is required to provide a "CAT Assessment Worksheet" and "CAT Assessment Notice" for inclusion in the individual's A-file, and the individual should also be presented a copy of the Notice. *Id.* at 39.

29. The guidance also states that for individuals from "hard to remove countries," if the person manifests a fear, they should be referred to ICE Enforcement and Removal Operations ("ERO") "for detention and [a] CAT interview." *Id.* at 9.

30. According to the guidance, if the result of the CAT interview is positive, CBP may either (a) designate a third country for removal, or (b) refer the individual to proceedings with the immigration court. *Id.* at 20; *see also id.* at 24. If the result is negative, CBP should "transfer" the

individual to the country of removal. *Id.* at 20. If "time in custody" (more than 72 hours) becomes an "operational concern," CBP should transfer the individual to ERO custody. *Id.* at 29.

31. In the absence of regulations implementing 212(f) at all, let alone anything close to the 2025 Proclamation's interpretation of 212(f), USCIS created a slideshow presentation outlining its internal process for these 212(f) CAT interviews. *Id.* at 40; *see also id.* at 69. This process states that a person in these interviews is "not entitled to a consultant, legal representative, or consultation period." *Id.* at 45 (emphasis in original). USCIS is directed to use a high standard, which requires an individual to establish that it is "more likely than not" that they will be tortured—the ultimate standard that the person would be required to prove in court with access to the myriad due process protections including access to counsel and an opportunity to present evidence. *Id.* at 46; *see also* 8 C.F.R. § 1208.16(c)(2); *see also RAICES v. Noem*, No. 25-5243, slip op. at 35 ("The implementing materials cast aside all that law and collapse the process into a single interview that requires the applicant when first detained to carry her ultimate burden of proving she will likely be subjected to torture, without the benefit of time to assemble evidence or to prepare a presentation.") (Millett, J., concurring). Further, the USCIS PowerPoint states that there is "[n]o IJ review"—that is to say, there is no mechanism or process for the USCIS assessment to be reviewed or reconsidered. *Compare* Exh. 1 at 51 *with* 8 U.S.C. § 1225(b)(1)(B)(iii)(III) (immigration judge review of credible fear interviews); 8 C.F.R. § 1208.31(e) (same for reasonable fear interviews).

32. Upon information and belief, DHS does not have or utilize official forms specifically to suspend entry under 212(f) by way of the 2025 Proclamation. *See* Exh. 1 at 61 ("Only an I-213 is required for CAT Assessment cases.").[5] The February Guidance includes an

[5] An I-213 is the standard "Record of Deportable/Inadmissible [Noncitizen]" used in the vast majority of immigration encounters.

informal "Transportation" Tear Sheet with no official form number. *See id.* at 22, 25. The USCIS Guidance contains an informal "Convention Against Torture Assessment Worksheet For [Noncitizen](s) Whose Entry Has Been Suspended and/or Restricted Pursuant to INA §§ 212(f) or 215(a)" and an informal "Convention Against Torture Assessment Notice For [Noncitizen](s) Whose Entry Has Been Suspended and/or Restricted Pursuant to INA §§ 212(f) or 215(a)." These do not contain form numbers, nor were they drafted as part of formal rulemaking.

33. In *RAICES v. Noem*, the D.C. Court of Appeals drew a distinction between what 212(f) permits, suspension of *entry*, and what the 2025 Proclamation unlawfully attempted to do, i.e., "remov[e] persons already present and . . . suspend statutorily mandated removal requirements." *RAICES v. Noem*, No. 25-5243, slip op. at 22 (Millett, J., concurring); *see also id.* at 26 ("Section [212](f)'s plain text allows a President only to suspend 'entry,' and not to regulate the removal of those already present in the United States.").

34. Nowhere in the INA or implementing regulations is there any authority to detain someone whose entry is suspended under 212(f).

II. Mr. Qeyami's Process and Requests for Custody Redetermination

35. Upon information and belief, USCIS interviewed Mr. Qeyami on or about March 24, 2025. Although he never received the results of that interview, on information and belief, USCIS found that it was not more likely than not that he would be tortured in Afghanistan. There are no administrative mechanisms for independent review or reconsideration of this life-or-death finding.

36. On June 25, 2025, Mr. Qeyami's immigration attorney emailed the Folkston ICE outreach inbox to request information about whether Mr. Qeyami had been provided a credible

fear interview.[6] Exh. 2 at 6 (email communication between ICE and Mr. Qeyami's immigration counsel). The next day, on June 26, an ICE officer emailed back, responding that Mr. Qeyami "was given a negative fear determination by United States Citizenship and Immigration Services (USCIS)" and was subject to and being scheduled for removal. *Id.* at 5. Mr. Qeyami's immigration counsel responded immediately, believing the officer to be referring to the results of a credible fear interview, and requested review of the determination pursuant to 8 U.S.C. § 1225(b)(1)(B)(iii)(III) and 8 C.F.R. § 1208.30(g)(2). *Id.*

37. ICE Deportation Officer ("D.O.") Joshua Vazquez then responded that Mr. Qeyemi had "entere[d]"[7] under the "Expedited Removal 212(F) process," and as a result he was "automatically not eligible for an IJ review." *Id.* at 4.

38. D.O. Vazquez later clarified ICE's position that Mr. Qeyami "falls under the parameter of- Convention Against Torture Assessment Worksheet For Alien(s) Whose Entry Has Been Suspended and/or Restricted Pursuant to INA §§ 212(f) and 212(a) (Rev. 01/31/2025). An Asylum Officer from USCIS gave a negative CAT (not credible fear) determination." *Id.* at 3.

39. On July 1, 2025, Mr. Qeyami's immigration counsel filed a Motion for Custody Redetermination under 8 U.S.C. § 1226(a) (also referred to as a bond motion). *See* Exh. 3 (Bond Memorandum) at 1.[8] A hearing was held on the bond motion on July 17, 2025. *Id.* at 2.

40. At the bond hearing, the attorney for ICE took the statutorily impossible position that (a) Mr. Qeyami was given a "negative **credible fear** determination"; (b) he has a final

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[6] At the time, Mr. Qeyami's immigration counsel was not aware of his processing and suspension under 212(f). Credible fear interviews are statutorily required for individuals subjected to expedited removal under § 1225(b) who express a fear of persecution or torture. 8 U.S.C. §1225(b)(1)(A)(ii).

[7] This statement underscores the bizarre nature of Mr. Qeyami's detention, since 212(f) only authorizes the President to "suspend entry."

[8] Page numbers refer to the pages of the bond memorandum.

"**expedited removal**" order, and (c) the credible fear determination and expedited order were issued **under 212(f)**. *See* Exh. 3 at 2 (emphases added).

41. The immigration court held that it did not have jurisdiction to reconsider Mr. Qeyami's custody because it concluded that he had a "final order" of removal. *Id.* It based this decision on a "limited bond record," acknowledging the "absence of clear documentation of a final order of removal." *Id.*

42. Mr. Qeyami filed a timely appeal of the immigration court's order to the Board of Immigration Appeals, which remains pending.

43. There is no definite end point to Mr. Qeyami's detention. He is not currently in any process, and for over six months the U.S. government has failed to, through "suspension" of his entry, transfer, deport, return, or remove him back to Afghanistan or any other country.

ARGUMENT

I. Statutory framework for immigration detention

44. The INA contains three relevant provisions that explicitly govern the detention of noncitizens during removal proceedings and after they have been ordered removed, respectively: 8 U.S.C. §§ 1225, 1226 and 1231.

45. Section 1226 relates to the detention of individuals "pending a decision on whether [they are] to be removed from the United States." 8 U.S.C. § 1226(a). The detention of an individual under § 1226(a) is discretionary. *Jennings*, 583 U.S. at 303 (referring to § 1226(a) as the "default rule"). An individual detained under § 1226(a) is eligible for release on bond or conditional parole. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d). Those detained under § 1226(c)—which relates to individuals who have committed certain criminal offenses—are generally under "mandatory" detention, and not automatically entitled to a bond hearing. *See Demore*, 538 U.S. at 517–18.

46. Section 1231 governs the detention of individuals during and, in some cases, after the initial 90-day "removal period" once they have received a final order of removal. 8 U.S.C. § 1231(a)(1)(A). Detention is considered mandatory during the initial removal period, but later becomes discretionary. *Compare* § 1231(a)(2) ("During the removal period, the Attorney General *shall* detain the [noncitizen]." (emphasis added)), *with* § 1231(a)(6) (the government "may" detain certain noncitizens "beyond the removal period").

47. Section 1225 authorizes detention for two categories of "applicants for admission" who enter or attempt to gain admission to the United States without authorization or valid documents: "(b)(1) applicants are those who are inadmissible on either of the two grounds specified in that subsection. Section (b)(2) applicants are all other inadmissible applicants." *Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1083 (9th Cir. 2020), *vacated as moot by Innovation Law Lab v. Mayorkas*, 5 F.4th 1099 (9th Cir. 2021) (Mem.); *see also Jennings*, 583 U.S. at 287 (explaining who falls into § 1225(b)(1) and who falls into § 1225(b)(2)). Individuals who fall into both categories are entitled to processes: "[i]f a § (b)(1) applicant passes his or her credible fear interview, he or she will be placed in regular removal proceedings . . . [or] may also be placed directly into regular removal proceedings under § 1229a at the discretion of the Government"; "[a] § (b)(2) applicant who is 'not clearly and beyond a doubt entitled to be admitted' is automatically placed in regular removal proceedings." *Innovation Law Lab*, 951 F.3d at 1084. The statute provides for detention of applicants for admission who are subject to those processes. 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ("Any [noncitizen] **subject to the procedures under this clause** shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.") (emphasis added); 8 U.S.C. § 1225(b)(2)(A) ("[I]f the examining immigration officer determines that a [noncitizen] seeking admission is not clearly and beyond a

doubt entitled to be admitted, the [noncitizen] shall be detained **for a proceeding under section 1229a of this title.**") (emphasis added).

48. Notably, the Government is "not even purporting to implement § 1225(b)(1)" for noncitizens subjected to 212(f) and the 2025 Proclamation, so their "suspension" is not a "final order." *RAICES*, 2025 WL 1825431, at *26; *see* 8 C.F.R. § 1241.1 (defining "Final order of removal" for full removal proceedings); 8 C.F.R. § 235.3(b)(7) (defining finality for expedited removal proceedings).

49. Upon information and belief, no federal courts have addressed the detention authority for a person whose entry has been suspended under 212(f) or the 2025 Proclamation.

II. There is no statutory authority to detain someone whose entry is suspended under 212(f) or the 2025 Proclamation

50. INA § 212(f), 8 U.S.C. § 1182(f), mentions only the suspension of entry of noncitizens or certain classes of noncitizens. Neither the statute nor any regulations refer to the detention of individuals whose entry has been suspended.

51. Congress is well aware of how to mandate or permit detention. *See e.g.*, 8 U.S.C. § 1225(b)(1)(B)(iii)(IV); 8 U.S.C. § 1225(b)(2)(A); 8 U.S.C. § 1226(a), (c); 8 U.S.C. § 1231(a)(2), (6).

52. Therefore, even if Mr. Qeyami has been properly subjected to a process under 212(f) and the 2025 Proclamation, that process confers no detention authority.

53. However, the process that Mr. Qeyami was subjected to was not lawful or proper.

54. As the District Court for the District of Columbia recently held and the D.C. Court of Appeals affirmed, the 2025 Proclamation violates the INA and the Constitution. The district court referred to the 2025 Proclamation as an "extra-statutory, extra-regulatory regime for repatriating or removing individuals from the United States." *RAICES*, 2025 WL 1825431, at *4.

The district court observed that 212(f) "cannot plausibly be read to authorize the President, the Secretary [of the DHS], or their subordinates to supplant the § 1225(b)(1) and § 1229a removal procedures with the new '212(f) Direct Repatriation' and '212(f) Expedited Removal' mechanisms." *Id.* at *32. The court of appeals echoed that the government was "unlikely to show that the Proclamation or its implementing guidance otherwise lawfully allows the removal of noncitizens already present in the United States, or that the Proclamation or its implementing guidance complies with the statutorily mandatory withholding of removal provisions required by the [INA] and the Convention Against Torture" and specifically that "[s]ection 1182(f)'s plain text allows a President only to suspend entry,' and not to regulate the removal of those already present in the United States." *RAICES v. Noem*, No. 25-5243, slip op. at *4–5, *29 (Millett, J., concurring).

55. As such, Mr. Qeyami was subjected to a process that a federal court of appeals has held was ultra vires. His detention, then, is completely unauthorized as he has no ongoing lawful legal process that would justify custody. As such, he should be released from detention.

III. In the alternative, Mr. Qeyami is detained under 8 U.S.C. § 1226(a) and therefore entitled to a bond hearing.

56. If the Government does have authority to detain someone whose entry has been unlawfully suspended under 212(f) and the 2025 Proclamation, it must fall under the "default" statute of § 1226(a), which entitles Mr. Qeyami to a hearing before an immigration judge to determine whether he should be released on a bond or other conditions.

57. There are few analogous situations where the government detains a person absent express statutory authority to do so, but one possible reference point is the Visa Waiver Program ("VWP"), where individuals who overstay or otherwise violate the terms of their entry can contest

their deportation in "asylum-only" proceedings.[9] The VWP statute—8 U.S.C. § 1187—is silent as to the government's detention authority while a VWP entrant is in asylum-only proceedings.

58. Federal courts have held that although the VWP statute does not contain a reference to detention at all, 1226(a) authorizes detention as the default statute. *See Malets v. Horton*, No. 4:20-cv-01041-MHH-SGC, 2021 WL 4197594, at *4 (N.D. Ala. Sept. 15, 2021) (citing with approval *Hechavarria v. Sessions*, 891 F.3d 49, 57 (2d Cir. 2018) ("Broadly speaking, section 1226 governs the detention of immigrants who are not immediately deportable.")). Courts have concluded that, although § 1226 is not a perfect fit, "that section is the only one that appears would otherwise be applicable" where the other detention statutes mandating detention do not apply. *Romance v. Warden York Cnty. Prison*, No. 3:20-cv-00760, 2020 WL 6054933, at *4 (M.D. Pa. July 28, 2020), *report and recommendation adopted*, 2020 WL 6047594 (M.D. Pa. Oct. 13, 2020); *see also Emila N. v. Ahrendt*, No. CV 19-5060 (SDW), 2019 WL 1123227, at *3 (D.N.J. Mar. 12, 2019) (noting that although asylum-only respondents who entered under the Visa Waiver Program "do[] not fit neatly into any of the normal detention categories," § 1226 was the only applicable section); *Gjergj G. v. Edwards*, No. CV 19-5059 (SDW), 2019 WL 1254561, at *2–3 (D.N.J. Mar. 18, 2019) (same).

59. Most critically, courts have rejected any interpretation that reads detention authorization into the statute without express detention language. Indeed, a district court in the Eleventh Circuit noted that "the biggest roadblock to the government's claim that [the Visa Waiver Program statute authorizing asylum-only proceedings] provides detention authority is the code

[9] The Visa Waiver Program allows citizens from participating countries "to travel to the United States for business or tourism for stays of up to 90 days without a visa." U.S. Dep't of Homeland Security, U.S. Visa Waiver Program, https://www.dhs.gov/visa-waiver-program (last updated May 2, 2025); *see also* 8 U.S.C. § 1187 (VWP statute). The program allows citizens of designated countries to enter the United States as a nonimmigrant visitor without a visa for a maximum of 90 days. *See* 8 U.S.C. § 1187(a)(1).

section's failure to mention detention at all." *Malets*, 2021 WL 11549981, at *2 n.7, *4 n.12. There, the district court ultimately concluded that the petitioner was "entitled to a bond hearing under § 1226(a)." *Malets*, 2021 WL 4197594, at *5.[10]

60. Similarly here, both 212(f) and the 2025 Proclamation are silent as to detention authority. There are no final orders of removal, because no such procedure exists for people like Mr. Qeyami with suspended entry, and there are no other issues that would raise mandatory detention. Therefore, the "default" statute of 1226(a) is the most applicable detention framework if one exists for Mr. Qeyami. He is therefore entitled to a bond hearing.

IV. Regardless of the statute of detention, due process requires that Mr. Qeyami be given a bond hearing.

61. Given Mr. Qeyami's 6-month prolonged detention and the lack of avenues available to have his custody reviewed, he should be granted a bond hearing to remedy an ongoing due process violation.

A. Mr. Qeyami's detention cannot continue unreviewed absent a valid state interest

62. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V. The Due Process Clause protects the substantive due process right to be free from unjustified deprivations of liberty as well as the procedural due process right to a neutral forum in which to contest prolonged detention. *Zadvydas*, 533 U.S. at 690.

63. In *Zadvydas*, the Supreme Court held that the Due Process Clause imposes

[10] In his report and recommendation, the magistrate judge ultimately did not decide the question of which statute authorized the petitioner's detention, concluding, "[r]egardless of the statutory basis for the petitioner's detention, assuming one exists, *Jennings* left open the possibility that due process may require a bond hearing or release from detention even when the relevant statute does not." *Malets*, 2021 WL 11549981, at *5; *see* Section IV.A. *infra*. The district court sustained the petitioner's objections to the magistrate's report and recommendation, and concluded that the petitioner was, in fact, detained pursuant to § 1226(a). 2021 WL 4197594, at *3, *5 (rejecting the government's arguments that § 1231 governed detention).

limitations on the length of unreviewed civil detention. *Id.* at 690–91, 701.[11] The Supreme Court emphasized that "[t]he Fifth Amendment's Due Process Clause forbids the Government to 'depriv[e]' any 'person . . . of . . . liberty . . . without due process of law.' Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690 (first quoting U.S. Const. Amend. V (alteration in original), and then citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

64. In particular, the Court emphasized that immigration proceedings are "civil, not criminal, and . . . nonpunitive in purpose and effect," and that "government detention violates [the Due Process] Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in certain special and 'narrow' nonpunitive 'circumstances,' where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotations omitted) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997) (emphasis original).

65. The Court in *Zadvydas* weighed the government's interests against the petitioners' strong liberty interest. The government's justifications—ensuring appearance at future proceedings and preventing danger to the community—were not sufficiently strong to outweigh the petitioners' liberty interest against indefinite and potentially permanent detention. *Id.* at 690–91. Considering the possibility of administrative custody reviews by an agency without judicial review, the Court observed, "the Constitution may well preclude granting 'an administrative body the unreviewable authority to make determinations implicating fundamental rights.'" *Id.* at 692

[11] At issue in *Zadvydas* was whether noncitizens who had final orders of removal could be indefinitely detained. Under 8 U.S.C. § 1231(a)(6), the government "may" continue detention beyond the ninety-day mandatory removal period if a noncitizen falls within certain broad categories of removability or is determined "to be a risk to the community or unlikely to comply with the order of removal."

(quoting *Superintendent, Mass. Corr. Inst. at Walpole v. Hill*, 472 U.S. 445, 450 (1985)).

66. The Court held that § 1231(a)(6), when "read in light of the Constitution's demands, limits [a noncitizen]'s post-removal-period detention to a period reasonably necessary to bring about that [noncitizen]'s removal from the United States." *Id.* at 689. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* At that point, the individual must be released because his continued detention would violate both § 1231(a)(6) and the Due Process Clause of the Constitution. *Id.*

67. Several years later, the Supreme Court took up the related but distinct question of whether a statute that authorizes mandatory detention for noncitizens with certain criminal histories during their removal proceedings—8 U.S.C. § 1226(c)—was constitutional. *Demore*, 538 U.S. 510. Relying on the distinction that § 1226(c) authorized detention during "the *limited* period of [the] removal proceedings," and did not implicate the indefinite detention at issue in *Zadvydas*, the Court held that the petitioner's six-month detention without a bond hearing was constitutionally permissible. *Id.* at 531 (emphasis added).[12] In its holding, the Court specified that "Congress . . . may require that persons such as respondent be detained for the *brief period* necessary for their removal proceedings." *Id.* at 513 (emphasis added). Importantly, in his concurrence, Justice Kennedy stated that due process might require "an individualized determination as to [a noncitizen's] risk of flight and dangerousness if the continued detention became unreasonable or

[12] In 2016, the Solicitor General admitted that the data on which *Demore* relied was erroneous and that new calculations "yield an average and median of 382 and 272 days, respectively, for the total completion time in cases where there was an appeal," as opposed to the roughly four-month average presented to the Court in *Demore*. Letter from U.S. Solicitor Gen. to U.S. Supreme Court Clerk 1, 3 (Aug. 26, 2016), https://lawprofessors.typepad.com/files/demore.pdf.

unjustified." *Id.* at 532 (Kennedy, J., concurring) (emphasis added).[13]

68. In 2016, the Eleventh Circuit joined several sister circuits in employing the canon of constitutional avoidance to hold that § 1226(c) contained an implicit reasonable time limitation, at which point a detained person should receive a bond hearing. *Sopo*, 825 F.3d at 1213–14.[14]

69. After *Jennings*, "virtually every court that has addressed the issue," *Muse v. Sessions*, 409 F. Supp. 3d 707, 715 (D. Minn. 2018), has confirmed that due process requires a bond hearing once detention during removal proceedings becomes unreasonably prolonged.

70. Neither the Supreme Court nor the Eleventh Circuit, nor any district court in the Eleventh Circuit, has had occasion to speak specifically to when detention becomes unreasonable or unjustified for a person like Mr. Qeyami whose entry has been suspended. Regardless, general principles of due process are applicable to guard against his prolonged unreviewed detention.

71. Courts have held that there are two valid purposes for civil detention: to prevent flight and to mitigate the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. Civil immigration detention that is no longer reasonably related to its statutory purpose violates due process. *Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). The Eleventh Circuit has held that civil detention without individualized review and other rigorous safeguards "patently raises serious constitutional concerns" when it becomes

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[13] *See also Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1212 (11th Cir. 2016) (describing Justice Kennedy's concurrence as "especially relevant" because it provided the fifth vote for the majority and emphasizing that *Demore* included "a strong constitutional caveat about due process concerns as to continued mandatory detention where the duration of the removal proceedings is unreasonably long or delayed"), *vacated on other grounds*, 890 F.3d 952 (11th Cir. 2018).

[14] *Sopo*'s holding was abrogated two years later by *Jennings*, 583 U.S. at 312, which held that the mandatory detention statute contained no such implicit limitation and should be considered on the constitutional question in the first instance by the courts below. Regardless, *Sopo* remains persuasive authority on the constitutional question. *See, e.g.*, *Dorley v. Normand*, No. 5:22-CV-62, 2023 WL 3620760, at *4 (S.D. Ga. Apr. 3, 2023), *report and recommendation adopted*, 2023 WL 3174227 (S.D. Ga. May 1, 2023); *Moore v. Nielsen*, No. 4:18-CV-01722, 2019 WL 2152582, at *10 (N.D. Ala. May 3, 2019) ("In assessing the constitutional avoidance doctrine, the Eleventh Circuit affirmatively answered the due process question in *Sopo*."), *withdrawn on other grounds sub nom.*, *Moore v. Edwards*, ECF No. 25 (N.D. Ala. Oct. 10, 2019).

unreasonably prolonged. *Sopo*, 825 F.3d at 1213.

72. Irrespective of the statute authorizing detention, the vast majority of district courts to review the due process rights afforded to noncitizens detained in a proceeding where detention is not explicitly authorized, such as in the VWP context, *see* ¶¶ 57–58 *supra*, have held that the noncitizen is entitled to a bond hearing. *See, e.g.*, *Dukuray v. Decker*, No. 18 CV2898 VB, 2018 WL 5292130, at *2 (S.D.N.Y. Oct. 25, 2018) (court need not determine statutory basis for detention because due process requires a bond hearing even if § 1187 applies); *Bacuku v. Aviles*, No. 15-2543 (MCA), 2016 WL 818894, at *6 (D.N.J. Mar. 2, 2016) (same); *Neziri v. Johnson*, 187 F. Supp. 3d 211, 212, 215, 217 (D. Mass. 2016) (VWP entrant in asylum-only proceedings whose removal was stayed pending judicial review was entitled under due process to a bond hearing); *Mitka v. ICE Field Off. Dir.*, No. C19-193-MJP-BAT, 2019 WL 5892025, at *2–4 (W.D. Wash. Nov. 12, 2019) (due process entitled VWP entrant to a bond hearing); *Kleinauskaite v. Doll*, No. 4:17-cv-02176, 2018 WL 6112482, at *12 (M.D. Pa. Oct. 9, 2018) (VWP entrant's detention without bond violated due process), *report and recommendation adopted*, 2018 WL 6112482 (M.D. Pa. Nov. 21, 2018).

73. "[T]he reasonableness of continued detention 'must be measured "primarily in terms of the [detention] statute's basic purpose."'" *Neziri*, 187 F. Supp. 3d at 215 (quoting *Reid v. Donelan*, 819 F.3d 486, 497 (1st Cir. 2016)) (alteration in original). The "basic purpose" of 212(f) is to *suspend* entry into the United States for—not detain and deport—classes of noncitizens who, in the President's view, threaten public safety. *See RAICES v. Noem*, No. 25-5243, slip op. at 22 (Millett, J., concurring) (distinguishing between suspending *entry* and unlawfully suspending statutory processes for those already in the country). This cannot be accomplished in a way that abrogates the right to seek mandatory protective relief and cannot be implemented against people

who are already in the country. *See id.* at 7 (Millet, J., concurring) (explaining that "[w]ithholding under the INA and the Convention Against Torture are mandatory, not discretionary").

74. Mr. Qeyami, someone who is not a danger to the community, has not merely been stopped upon entry and denied the ability to physically enter the U.S.; he has been taken into custody by Respondents and held at taxpayer expense for over six months. This is far outside of the scope 212(f)'s purpose.

75. Mr. Qeyami has now been detained for over six months, including five months since his 212(f) CAT interview, which is far from expeditious. He is also being detained in a manner that deprives him of an opportunity to seek protective relief from deportation. His detention is related neither to his individual risk of danger to the community nor his particular risk of flight. There has been no finding that he poses any risk to the interests of the United States. There is no likelihood that he will be deported from the United States in the reasonably foreseeable future. Therefore, his detention does not bear a relationship to a state interest and due process requires that his detention be reviewed.

B. Due Process Requires a Bond Hearing That Includes Certain Procedural Safeguards.

76. When detention has become unreasonable, due process requires an opportunity for custody to be reviewed. As a part of that review, due process requires "adequate procedural protections" to ensure that the government's asserted justification for confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

77. Specifically, after prolonged detention, due process requires that at a bond hearing, (1) the government bear the burden to prove the noncitizen's dangerousness and/or risk of flight

by clear and convincing evidence, and (2) the Immigration Judge ("IJ") consider the noncitizen's ability to pay and whether alternatives to detention in lieu of or in addition to monetary bond satisfy any risk of flight.

78. The Supreme Court has repeatedly recognized that civil detention must be carefully limited—particularly through placing a heightened burden of proof on the government to justify detention—to avoid due process concerns. *See, e.g.*, *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money." (internal quotation marks omitted) (quoting *Santosky v. Kramer*, 455 U.S. 745, 756 (1982)); *Foucha*, 504 U.S. at 82–86 (holding unconstitutional a state civil insanity detention "statute [that] place[d] the burden on the detainee to prove that he is not dangerous"). Indeed, "[i]ncreasing the burden of proof is one way to impress the factfinder with the importance of the decision and thereby perhaps to reduce the chances that inappropriate commitments will be ordered." *Addington v. Texas*, 441 U.S. 418, 427 (1979).

79. Placing the burden of proof on the government is especially important as a constitutional remedy to prolonged civil detention, where there is an ongoing constitutional harm. *See Asolo v. Prim*, No. 21-cv-50059, 2021 WL 3472635, at *6 (N.D. Ill. Aug. 6, 2021) ("[T]he [C]onstitution requires the government to provide clear and convincing evidence of danger and risk of flight . . . at the point that detention is no longer reasonable."); *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 722 (D. Md. 2016) ("Placing the burden on Mr. Jarpa at the hearing, therefore, would be inconsistent with having found his continued detention unconstitutional.").[15]

[15] Many courts have shifted the burden in a bond hearing even in hearings ordered for noncitizens with criminal histories that subject them to mandatory detention under § 1226(c). *See, e.g.*, *German Santos v. Warden, Pike Cnty.*

80. District courts around the country have shifted the burden to the government at bond hearings pursuant to § 1226(a). *See, e.g.*, *Brito v. Garland*, 22 F.4th 240, 256–57 (1st Cir. 2021) [hereinafter, *Brito II*] (holding that "if the government refuses to offer release subject to bond to a noncitizen detained pursuant to 8 U.S.C. § 1226(a), it must either prove by clear and convincing evidence that the noncitizen is dangerous or prove by a preponderance of the evidence that the noncitizen poses a flight risk"); *Velasco Lopez v. Decker*, 978 F.3d 842, 856–57 (2d Cir. 2020) (ordering bond hearing with burden of proof on government by clear and convincing evidence as remedy for unreasonably prolonged § 1226(a) detention).

81. The Government has stipulated in at least two cases where petitioners were detained pursuant to VWP asylum-only proceedings that the burden should be on the government in a bond hearing. *See Choi v. Garland*, No. 5:23-cv-36-LGW-BWC, Doc. 38, Joint Stipulation of Dismissal and Proposed Order (S.D. Ga. Aug. 29, 2023) ("It is hereby stipulated and agreed, by and between the parties, that: (1) The government shall . . .provide Petitioner with an individualized bond hearing before an immigration judge **at which ICE bears the burden of establishing, by clear and convincing evidence, that he poses a danger to the community or a flight risk**.") (emphasis added).

82. The District Court for the Middle District of Georgia has also ordered a bond hearing with the burden on the government under § 1226(a). *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1341–42 (M.D. Ga. 2020). In *J.G.*, the court began by observing that although courts are split on where to lay the burden in bond hearings under § 1226(a), "the overwhelming majority of district courts" have assigned the burden to the government to justify a

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Corr. Facility, 965 F.3d 203, 213 (3d Cir. 2020) (holding that the government must bear burden by "clear and convincing" to prove dangerousness and/or flight risk).

person's continued civil detention. *Id.* at 1335 (quoting *Hernandez-Lara v. Immigr. & Customs Enf't, Acting Dir.*, No. 19-cv-394-LM, 2019 WL 3340697, at *3 (D.N.H. July 25, 2019)).

83. The court then employed the balancing test under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which considers (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 1336. First, the court in *J.G.* observed that the petitioner's interest in "freedom from physical incarceration" is a "fundamental liberty interest" with particularly heavy weight. *Id.* at 1336–37. Second, the court determined that the risk of erroneous deprivation where "the onus [is] on noncitizens who are incarcerated to gather and present evidence" with no "meaningful opportunity to correct" any erroneous deprivation was "high" given that the government generally has access to publicly inaccessible information about a detained person. *Id.* at 1337–38 ("The fact that an IJ *can consider* any relevant evidence does little to ameliorate the challenges an incarcerated noncitizen faces in *gathering and presenting* evidence." (emphases added)). Finally, where the petitioner in *J.G.* entered the U.S. lawfully and overstayed his visa, the government's interest in preventing a person in proceedings from absconding along with the "strong interest in avoiding erroneous deprivations of liberty" were both served by a bond hearing where the government, not the detained person, bore the burden. *Id.* at 1340–41.

84. Several district courts have ordered such a burden shift when considering the prolonged detention of VWP entrants, who, as discussed above, are similarly situated to Mr. Qeyami. *See Dukuray*, 2018 WL 5292130, at *5 (concluding, after finding that due process

required a bond hearing for a VWP entrant currently in asylum-only proceedings, that the government should bear the burden at the bond hearing); *Mitka v. ICE Field Off. Dir.*, No. C19-193-MJP-BAT, 2019 WL 5901970, at *4 (W.D. Wash. Sept. 6, 2019), *report and recommendation adopted*, 2019 WL 5892025 (same).

85. Here, Mr. Qeyami's liberty interest and risk of erroneous deprivation without a burden shift at a bond hearing is even greater because Mr. Qeyami, unlike the *J.G.* petitioner, has never had a bond hearing at all. *See J.G.*, 501 F. Supp. 3d at 1333 (observing that J.G. did have a bond hearing where an immigration judge determined that he presented a flight risk); *see also Brito v. Barr*, 415 F. Supp. 3d 258, 267 (D. Mass. 2019) [hereinafter, *Brito I*] (concluding that bond hearing ordered on due process grounds following prolonged detention must contain equal safeguards—such as a burden shift and alternative conditions of release—whether under § 1226(a) or § 1226(c)), *aff'd sub nom. Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021) (*Brito II*); *Velasco Lopez*, 978 F.3d at 854 (same); *see also Dukuray*, 2018 WL 5292130, at *3 (discussing the procedural protections, including a burden shift, for individuals detained under § 1226(c), and extending them to a VWP entrant, even if they were detained under § 1187).

86. Applying the *Mathews* balancing test here, first, it is generally acknowledged that prolonged detention deprives noncitizens of a "fundamental" liberty interest. *See J.G.*, 501 F. Supp. 3d at 1336. Mr. Qeyami has been detained for over six months with no evaluation as to the Government's justification for the deprivation of his liberty, and no process in which he is engaged that would indicate an end to his detention. Second, there is a "high" risk of erroneous deprivation of Mr. Qeyami's physical liberty were he obligated to bear the burden at a bond hearing. *See id.* at 1337–38 (recognizing the "[l]imited resources and investigative tools" available to a detained noncitizen, which "increase the likelihood that the factual record developed at the bond hearing

will be incomplete"). Third and finally, having the Government bear the burden of proof at a bond hearing imposes a minimal burden to the Government as it has access to all of Mr. Qeyami's immigration or other records to be used as part of the bond analysis. *See id.* at 1340 (observing that the government's interests of "preventing noncitizens from fleeing the country" and "avoiding erroneous deprivations of liberty" were both served by placing the burden on the government). Therefore, given that the *Mathews* balancing test favors placing the burden on the Government to justify Mr. Qeyami's detention and the Court's ability to order measures to protect Mr. Qeyami's due process rights, the Court should require the Government to justify the reasons for Mr. Qeyami's continued detention at Mr. Qeyami's bond hearing.

87. To ensure an adequate remedy for due process violations, courts have also required immigration judges to incorporate other considerations as a part of their bond determinations. For example, due process also requires that the immigration judge consider conditions that could be imposed on Mr. Qeyami's release, in addition to or in lieu of a monetary bond. Detention is not reasonably related to the purpose of reducing risk of flight or danger if there are plausible alternative conditions of release that could mitigate any risk. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (questioning why the government "would refuse to consider alternatives to monetary bonds that also serve the same interest the bond requirement purportedly advances," especially when those alternatives have "empirically demonstrated effectiveness . . . at meeting the government's interest in ensuring future appearances"); *Ousman D. v. Decker*, No. 20-9646 (JMV), 2020 WL 5587441, at *4 (D.N.J. Sept. 18, 2020) (finding burden-shifted bond hearing still failed to comply with due process because the immigration judge did not consider alternatives to detention); *Brito I*, 415 F. Supp. 3d at 271 (ordering immigration judges to consider "alternative conditions of release, such as GPS monitoring, that reasonably assure the safety of the community

and the [noncitizen]'s future appearances"), *declined to adopt for failure to exhaust in Brito II*, 22 F.4th at 256; *Bah v. Barr*, 409 F. Supp. 3d. 464, 472 (E.D. Va. 2019) ("The government must prove 'to the satisfaction of the [immigration judge] that' no condition or combination of conditions, including electronic monitoring, will reasonably assure the appearance of the person as required and the safety of any other person and the community.") (citing 8 C.F.R. § 1236.1(c)(8)); *Joseph v. Decker*, No. 18-cv-2640, 2018 WL 6075067, at *13 (S.D.N.Y. Nov. 21, 2018) (requiring immigration judge to consider "whether alternatives to detention may [better] serve those purposes [of detention]").

88. Courts have similarly concluded that due process also requires the immigration judge to consider the noncitizen's ability to pay bond. *See Hernandez*, 872 F.3d at 991–92; *Hernandez v. Decker*, No. 18-cv-5026 (ALC), 2018 WL 3579108, at *12 (S.D.N.Y. July 25, 2018) (holding that the Constitution compels "consideration of ability to pay and alternatives to detention" at a bond hearing); *Brito I*, 415 F. Supp. 3d at 271 (ordering immigration judges "to evaluate the [noncitizen]'s ability to pay in setting bond above $1,500"). Indeed, "refusing to consider financial circumstances would be inexplicable, as the amount likely to secure the appearance of an indigent person obviously differs from the amount necessary to secure the appearance of a wealthy person." *Hernandez*, 2018 WL 3579108, at *12 (internal quotation marks omitted) (quoting *Hernandez*, 872 F.3d at 991, n.4, 993-94); *cf. Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc) (concluding "[t]he [pretrial] incarceration of those who cannot [pay a set bail amount], without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements").

89. Here, due process similarly calls for this Court to order an immigration judge to consider alternative conditions of release and financial circumstances in Mr. Qeyami's bond

hearing. When Mr. Qeyami's "freedom from governmental detention is conditioned on the payment of a monetary sum, courts must consider the person's financial situation and alternative conditions of release when calculating what the person must pay to satisfy a particular state interest." *Hernandez v. Lynch*, No. EDCV 16-00260-JGB (KKx), 2016 WL 7116611, at *25 (C.D. Cal. Nov. 10, 2016), *aff'd sub nom. Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

ULTRA VIRES DETENTION

90. Mr. Qeyami re-alleges and incorporates by reference each and every allegation contained above.

91. Section 212(f) of the INA, 8 U.S.C. § 1182(f), may permit the President to *suspend* entry, but it does not authorize detention at all, and does not apply to people, like Mr. Qeyami, already present in the United States.

92. Mr. Qeyami is not currently in any proceeding to determine whether he can be removed from the United States, and the process to which he was subjected violated his rights.

93. Respondents lack any statutory or constitutional authority to detain Mr. Qeyami.

94. Mr. Qeyami's detention is therefore unlawful, and he is entitled to immediate release from custody.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT 8 U.S.C. § 1226(a)

95. Mr. Qeyami re-alleges and incorporates by reference each and every allegation contained above.

96. Mr. Qeyami sought admission to the United States to seek asylum, but his entry

was purportedly suspended under 212(f) and the 2025 Proclamation. Ms. Qeyami has not been processed through 8 U.S.C. § 1225 (expedited removal and credible fear) or 8 U.S.C. § 1229a (full removal proceedings, nor is he subject to a final order of removal either section.

97. Mr. Qeyami has not committed any of the criminal offenses that would place him under mandatory detention pursuant to 8 U.S.C. § 1226(c).

98. Accordingly, if his detention is authorized at all, it can only be authorized by the "default" statute, § 1226(a).

99. Mr. Qeyami is therefore entitled to an individualized bond hearing before an immigration judge at which the Government bears the burden of establishing by clear and convincing evidence that Mr. Qeyami presents a risk of danger or flight, even after consideration of alternatives to detention and Mr. Qeyami's ability to pay bond, pursuant to U.S.C. § 1226(a). *See* 8 C.F.R. § 1236.1(d).

THIRD CLAIM FOR RELIEF

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

100. Mr. Qeyami re-alleges and incorporates by reference each and every allegation contained above.

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

102. Civil immigration detention violates due process if it is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690 (citing *Jackson*, 406 U.S. at 738); *Demore*, 538 U.S. at 528.

103. Mr. Qeyami's detention without a bond hearing is not reasonably related to the statutory purpose of preventing flight or preventing danger to the community. He is not detained

for any valid process and his detention is not likely to lead toward his removal, or return.

104. Under these circumstances, Mr. Qeyami's detention violates both substantive and procedural due process.

105. To justify Mr. Qeyami's ongoing prolonged and seemingly indefinite detention, due process requires the government to establish, at an individualized hearing before a neutral decision-maker, that Mr. Qeyami's detention is justified, taking into consideration whether alternative conditions of release might mitigate risk of flight and Mr. Qeyami's ability to pay a bond. *See Hernandez*, 872 F.3d at 990.

PRAYER FOR RELIEF

WHEREFORE Petitioner requests that the Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order Respondents to show cause why a writ of habeas corpus should not be granted;

c. Order that as part of their filing showing cause why the Petition should not be granted, Respondents provide all evidence relevant to Mr. Qeyami's detention and efforts made to deport Mr. Qeyami to Afghanistan or any other country;

d. Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under chapter 153 (habeas corpus) of Title 28;

e. In the event that this Court determines that a genuine dispute of material fact exists regarding Respondents' custody of Mr. Qeyami, the process to which he has been subjected, the likelihood of repatriation, or regarding any other material factual issue, schedule an evidentiary hearing pursuant to 28 U.S.C. § 2243. *See Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1315–16 (11th Cir. 2019);

f. Grant a writ of habeas corpus ordering Respondents to immediately release Mr. Qeyami from their custody and facilitate and effectuate his prompt removal and release to Afghanistan or his prompt return and release into the United States;

g. Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawfully detaining Mr. Qeyami;

h. Declare that Mr. Qeyami's detention is ultra vires;

i. Declare that Mr. Qeyami's prolonged detention without review violates the Due Process Clause of the Fifth Amendment;

j. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

k. Grant such further relief as this Court deems just and proper.

Dated: Aug. 26, 2025

Respectfully submitted,

/s/ Gracie Willis
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** Motion to appear pro hac vice forthcoming*
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 # Admission to SDGA pending with swearing in scheduled for Aug. 27, 2025.

Verification

I declare under penalty of perjury that the facts set forth in the foregoing Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

/s/ Gracie Willis Date: 08/26/2025

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that I filed this Petition for Habeas Corpus and all attachments using the CM/ECF system, which will send a notice of this filing to all participants in this case. I will furthermore send a courtesy copy to counsel for Respondents.

Dated: August 26, 2025

Respectfully submitted,
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