

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Omurbek TOKTOSUNOV,

Petitioner,

v.

Cammilla WAMSLEY, 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. 2:25-cv-1724

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

INTRODUCTION

1. Petitioner Omurbek Toktosunov is a noncitizen in the custody of U.S. Immigration and Customs Enforcement (ICE) at the Northwest ICE Processing Center (NWIPC). He has been detained for over thirteen months—including the month and a half since an immigration judge (IJ) granted his application for asylum on July 22, 2025. The only reason Mr. Toktosunov remains detained is because the Department of Homeland Security (DHS) has appealed the IJ's asylum grant.

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

3. Accordingly, Petitioner asks this Court for a writ of habeas corpus to vindicate his right to due process and to seek relief from his continued arbitrary detention. He requests that the Court declare his continued detention unconstitutional as applied to him, and to require the government to prove before a neutral decisionmaker that any continued detention is justified by clear and convincing evidence.

JURISDICTION

4. Petitioner is in the physical custody of Respondents and ICE, an agency within the Department of Homeland Security (DHS). He is detained at the NWIPC in Tacoma, Washington, which is under the direct control of Respondents and their agents.

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

6. 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).

7. 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.

8. 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

9. 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 Petitioner is currently in custody.

10. 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

11. 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

1 735, 737–38 (9th Cir. 1954) (Habeas corpus is “a speedy remedy, entitled by statute to special,
2 preferential consideration to insure expeditious hearing and determination.”).

3 12. Consistent with these principles, and as required by statute, the Court must grant
4 the petition for writ of habeas corpus or order Respondents to show cause “forthwith,” unless the
5 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the
6 Respondents must file a return “within three days unless for good cause additional time, not
7 exceeding twenty days, is allowed.” *Id.*

8 13. Following the return by the custodian, the statute further requires a hearing within
9 five days, and states that Court must then “summarily hear and determine the facts, and dispose
10 of the matter as law and justice require.” *Id.*

11 14.

12 **PARTIES**

13 15. Petitioner Omurbek Toktosunov is a citizen of Russia who entered the United
14 States on or around July 17, 2024. He was granted asylum on July 22, 2025, following a merits
15 hearing before the Tacoma Immigration Court. He is currently detained at NWIPC.

16 16. Respondent Cammilla Wamsley is the Director of the Seattle Field Office of
17 ICE’s Enforcement and Removal Operations division. As such, Ms. Wamsley is Petitioner’s
18 immediate custodian and is responsible for his detention. He is named in his official capacity.

19 17. Respondent Kristi Noem is the Secretary of the DHS. She is responsible for the
20 implementation and enforcement of the INA, and oversees ICE, which is responsible for
21 Petitioner’s detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in
22 her official capacity.

1 18. Respondent DHS is the federal agency responsible for implementing and
2 enforcing the INA, including the detention of noncitizens.

3 19. Respondent Pamela Bondi is the Attorney General of the United States. She is
4 responsible for the Department of Justice, of which the Executive Office for Immigration Review
5 and the immigration court system it operates is a component agency. She is sued in her official
6 capacity.

7 20. Respondent Bruce Scott is employed by the private corporation GEO Group, Inc.,
8 as Warden of the NWIPC, where Petitioner is detained. He has immediate physical custody of
9 Petitioner. He is sued in his official capacity.

10 **FACTUAL ALLEGATIONS**

11 21. Omurbek Toktosunov is a Russian citizen of Kyrgyz ethnicity who entered the
12 United States on or around July 17, 2024. Toktosunov Decl. ¶ 1. Mr. Toktosunov fled Russia
13 after officials targeted him for his political opinion. *Id.*

14 22. Mr. Toktosunov was apprehended by immigration officials shortly after entering
15 the United States without inspection. *Id.* ¶ 3. DHS placed him in removal proceedings under 8
16 U.S.C. § 1229a by issuing a Notice to Appear, charging him as being removable under 8 U.S.C.
17 § 1182(a)(6)(A)(i). Maltese Decl., Ex. A, IJ Decision, at 1.

18 23. Mr. Toktosunov filed his application for asylum before the Tacoma Immigration
19 Court. On July 22, 2025, a little more than a year after he was first detained, the IJ granted his
20 application, finding that he “has a well-founded fear of persecution in Russia and is thus
21 statutorily eligible for asylum,” and that he “warrants a favorable exercise of discretion.” *Id.* at 8.

22 24. DHS appealed the IJ’s decision to the Board of Immigration Appeals (BIA) on
23 August 1, 2025. The IJ’s decision granting asylum is stayed “during the time allowed for the
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1 filing of an appeal” or “while an appeal is pending” before the BIA. 8 C.F.R. § 1003.6. The BIA
2 appeal remains pending. Toktosunov Decl. ¶ 3.

3 25. The Tacoma Immigration Court considers Mr. Toktosunov to be subject to
4 mandatory detention under 8 U.S.C. § 1225(b). Accordingly, he has never received a hearing
5 before a neutral decisionmaker where ICE was required to justify his continued detention by
6 clear and convincing evidence.

7 26. In total, Mr. Toktosunov has already been detained over thirteen months without
8 any individualized determination of danger or flight risk.

9 LEGAL FRAMEWORK

10 27. The Due Process Clause of the Fifth Amendment protects Petitioner against
11 arbitrary detention without procedures to determine if he is a flight risk or danger. As the
12 Supreme Court has explained, “[f]reedom from imprisonment—from government custody,
13 detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due
14 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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

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

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

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

21 32. Since the Supreme Court’s *Jennings* decision, the Ninth Circuit has expressed
22 “grave doubt” that “any statute that allows for arbitrary prolonged detention without any process
23 is constitutional or that those who founded our democracy precisely to protect against the
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1 government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909
2 F.3d 252, 256 (9th Cir. 2018).

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

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

12 35. As a result, where the government detains a noncitizen for a prolonged period
13 while the noncitizen pursues a substantial defense to removal or claim to relief, due process
14 requires an individualized hearing before a neutral decisionmaker to determine whether detention
15 remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring)
16 (stating that an "individualized determination as to [a noncitizen's] risk of flight and
17 dangerousness" may be warranted "if the continued detention became unreasonable or
18 unjustified"); cf. *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial
19 commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–
20 50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement");
21 *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that
22 "the length of confinement cannot be ignored in deciding whether [a] confinement meets
23 constitutional standards").
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1 36. Detention without a bond hearing is unconstitutional when it becomes prolonged.
2 *See, e.g., Rodriguez*, 909 F.3d at 256; *see also Zadvydas*, 533 U.S. at 701 (“Congress previously
3 doubted the constitutionality of detention for more than six months.”).

4 37. The recognition that six months constitutes a substantial period of confinement
5 that qualifies as prolonged detention is deeply rooted in our legal tradition. With only a few
6 exceptions, “in the late 18th century in America crimes triable without a jury were for the most
7 part punishable by no more than a six-month prison term.” *Duncan v. Louisiana*, 391 U.S. 145,
8 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be
9 the limit of confinement for a criminal offense that a federal court may impose without the
10 protection afforded by a jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality
11 opinion). The Court has also looked to six months as a benchmark in other contexts involving
12 civil detention. *See McNeil*, 407 U.S. at 249, 250–52 (recognizing six months as an outer limit
13 for confinement without individualized inquiry for civil commitment).

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

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

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

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

4 42. The application of this test demonstrates Petitioner is entitled to a bond hearing.
5 He has been detained well over a year and now remains detained even after an IJ found him
6 eligible for asylum. The BIA appeal is likely to take at least six additional months to complete, if
7 not longer. *See, e.g.,* Maltese Decl., Ex. B, BIA Adjudication Statistics (showing increases in
8 filed and pending appeals before BIA). If the BIA sustains DHS’s appeal, Petitioner would be
9 entitled to file a petition for review with the Ninth Circuit Court of Appeals, which is likely to
10 last another year. Thus, Petitioner is likely to face at least another year of detention, if not much
11 longer.

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

1 (S.D.N.Y. 2018) (same, for 7 months); *Liban M.J. v. Sec'y of DHS*, 367 F. Supp. 3d 959, 963 (D.
2 Minn. 2019) (same, for 12 months).

3 44. The punitive and restrictive conditions at NWIPC also support affording
4 Petitioner a hearing. Those conditions “are similar . . . to those in many prisons and jails,”
5 despite Petitioner’s ostensible status as a “civil” detainee. *Diaz Reyes*, 2020 WL 6820903, at *7
6 (alteration in original); *see also, e.g., Parada Calderon*, 2025 WL 879718, at *4 (concluding this
7 factor favored petitioner); *Sarr v. Scott*, 765 F.Supp.3d 1091, 1103 (W.D. Wash. 2025) (same).
8 Indeed, Petitioner’s experience demonstrates that NWIPC is, for all intents and purposes, a
9 prison: he is confined in a restrictive setting, where he is permitted to go outside only twice a
10 week, for forty minutes each time. Toktosunov Decl. ¶ 4. In addition, he has no ability to
11 participate in religious worship and regularly opts not to eat meals because they contain foods
12 that are forbidden in Islam. *Id.* ¶¶ 5, 7. The conditions of detention have triggered Mr.
13 Toktosunov’s trauma of being politically persecuted in Russia. *Id.* ¶ 9. Reports by independent
14 outside entities have also documented problems with food, medical neglect, cleanliness, and
15 other issues at NWIPC. *See* Univ. of Wash. Ctr. for Hum. Rts., Conditions at the Northwest
16 Detention Center (last accessed Sept. 4, 2025),
17 [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/)
18 [northwest-detention-center/](https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/).

19 45. The delay factor is neutral. Petitioner has not caused any delay in his case.
20 Instead, his proceedings have now been further prolonged as a result of DHS exercising its
21 statutory right to appeal the IJ’s decision granting Mr. Toktosunov asylum.
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1 46. Finally, Petitioner has already prevailed before the IJ in his asylum application.
2 He can thus demonstrate that he has a meritorious claim for relief from removal and is likely to
3 succeed on his case. This final factor therefore also favors him.

4 47. As a result, due process demands that Petitioner receives a bond hearing.

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

8 49. First, Petitioner's interest is at its zenith: he has a powerful interest in his physical
9 liberty, as the Supreme Court, the Ninth Circuit, and this Court have repeatedly made clear. That
10 interest is underscored by the IJ's finding that Petitioner faces the threat of persecution by
11 Russian authorities if removed, Maltese Decl., Ex. A, IJ Decision at 7, and that his "wife and
12 children" would be "eligible to follow to join [Mr. Toktosunov] as described in [8 U.S.C.
13 § 1158(b)(3)(A)]," *id.* at 4.

14 50. Second, additional protections are warranted here. The statute affords Petitioner
15 no protection whatsoever and requires his detention. *See* 8 U.S.C. § 1225(b)(2).

16 51. Finally, any burden on the government is minimal. Bond proceedings are short,
17 informal hearings where an IJ typically receives records and testimonial evidence at a hearing
18 and issues an oral ruling. Such hearings do not entail any significant expenditure of government
19 resources. *See* Imm. Ct. Practice Manual ch. 9.3(e). Indeed, releasing Petitioner alleviates the
20 financial expenses the government must bear for his detention.

21 52. Accordingly, application of the *Mathews* test also requires a bond hearing to
22 justify further detention.
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1 53. Due process also requires certain minimal procedures at Petitioner's bond
2 hearing. First, the government must bear the burden of proof by clear and convincing evidence to
3 justify continued detention. Second, the decisionmaker must consider available alternatives to
4 detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a
5 noncitizen's ability to pay a bond when determining the appropriate conditions of release.

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

18 55. The requirement that the government bear the burden of proof by clear and
19 convincing evidence is also supported by application of the three-factor balancing test from
20 *Mathews*.

21 56. First, prolonged incarceration deprives noncitizens of a profound liberty
22 interest—one that always requires some form of procedural protections. *See Foucha*, 504 U.S. at
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1 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty
2 that requires due process protection." (citation omitted)).

3 57. Second, the risk of error is great where an IJ has already found that Petitioner is
4 entitled to relief from removal. Furthermore, the government is represented by trained attorneys,
5 while Petitioner lacks legal training and English proficiency. *See Santosky v. Kramer*, 455 U.S.
6 745, 762–63 (1982) (requiring clear and convincing evidence at parental termination proceedings
7 because "numerous factors combine to magnify the risk of erroneous factfinding," including that
8 "parents subject to termination proceedings are often poor, uneducated, or members of minority
9 groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover,
10 Respondents detain noncitizens in prison-like conditions that severely hamper their ability to
11 obtain gather evidence and prepare for a bond hearing.

12 58. Third, placing the burden on the government imposes minimal cost or
13 inconvenience, as the government has access to the noncitizen's immigration records and other
14 information that it can use to make its case for continued detention.

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

22 60. Due process also requires that a neutral decisionmaker consider available
23 alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's
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1 appearance during removal proceedings. Detention is not reasonably related to this purpose if
2 there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*,
3 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision
4 Appearance Program (ISAP)—has achieved compliance rates close to 100 percent. *See*
5 *Hernandez*, 872 F.3d at 991 (observing that ISAP “resulted in a 99% attendance rate at all EOIR
6 hearings and a 95% attendance rate at final hearings”). It follows that alternatives to detention
7 must be considered in determining whether prolonged incarceration is warranted.

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

15 **CLAIM FOR RELIEF**

16 **28 U.S.C. § 2241**

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

18 62. Petitioner alleges and incorporates by reference the paragraphs above.

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

21 64. Petitioner's detention—which has lasted over thirteen months without a hearing in
22 his own language—constitutes prolonged detention and is not reasonably related to a legitimate
23 government purpose.
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65. To justify Petitioner's ongoing prolonged detention, due process requires an individualized hearing before a neutral decisionmaker where the government must establish that continued detention is justified by clear and convincing evidence of flight risk or danger and that no alternatives to detention could sufficiently mitigate any risk that does exist.

66. For these reasons, Petitioner's ongoing detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a Writ of Habeas Corpus and order Petitioner's release unless Respondents hold a custody hearing for Petitioner before an immigration judge within 14 days. At that hearing, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger and that no alternative to detention can mitigate any risk that his release would present. The Court should further order that if the government cannot meet its burden, the immigration judge must order Petitioner's release on appropriate conditions of supervision, taking into account his ability to pay a bond;

c. Alternatively, issue a Writ of Habeas Corpus and hold a hearing before this Court if warranted; determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available alternatives to detention; and order Petitioner's release, with appropriate conditions of supervision if necessary, taking into account his ability to pay a bond;

- 1 d. Issue a declaration that, as applied in this case, 8 U.S.C. § 1225(b) and
2 Petitioner's prolonged detention under that statute violate the Due Process Clause
3 of the Fifth Amendment;
4 e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
5 ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other
6 basis justified under law; and
7 f. Grant any other and further relief that this Court deems just and proper.

8 Respectfully submitted this 8th day of September, 2025.
9

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