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8 UNITED STATES DISTRICT COURT
9 For the District of Arizona

10 JUAN FRANCISCO ALONZO) Case No.
11 NICOLAS,)
12 Plaintiff,) PETITION FOR WRIT OF HABEAS
13 v.) CORPUS
14 PAMELA BONDI, United States Attorney)
15 General; KRISTI NOEM, Secretary of the)
16 Department of Homeland Security;)
17 JOHN CANTU, ICE ERO Phoenix Field)
18 Office Director; DAVID R. RIVAS,)
19 Warden of San Luis Regional Detention)
20 Center; SIRCE OWEN, Acting Director,)
21 EOIR; in their official capacities,)
22 Defendants)

23 Plaintiff alleges as follows:

24 INTRODUCTION

25 1. Plaintiff Juan Francisco Alonzo Nicolas is subjected to unlawful and
prolonged detention by at the San Luis Regional Detention Center Defendants without
being afforded the most basic of procedural protections—a bond hearing. He seeks an
order compelling an immigration judge to afford him a bond hearing because of his
prolonged detention is unlawful and an affront to the United States Constitution.

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JURISDICTION

2. This action arises under the Constitution of the United States; the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq*; and the Administrative Procedures Act (“APA”), 5 U.S.C. § 500, *et seq* .

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 *et seq*. (APA); and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

VENUE

4. Venue is proper in this judicial district pursuant to 28 USC §1391(e) because at least one federal defendant is in this District; plaintiff is detained in this District; and a substantial part of the events or omissions giving rise to the claims in this action took place in this District. No real property is involved in this action.

PARTIES

5. Plaintiff JUAN FRANCISCO ALONZO NICOLAS (“plaintiff”) is a 40-year-old citizen of Guatemala. He is subject to a final order of removal and is detained by the defendants in the San Luis Regional Detention Center in San Luis, Arizona.

6. Defendant PAMELA BONDI is being sued in her official capacity as the Attorney General of the United States. She is the official generally charged with supervisory authority over all operations of the Department of Justice. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive Office for Immigration Review (“EOIR”), a component of the DOJ, which includes the immigration courts and the Board of Immigration Appeals (“BIA” or “Board”). She is empowered to oversee the adjudication of removal and bond hearings and by regulation has delegated that power to the nation’s Immigration Judges and the BIA.

2

1 1231(a)(6). The statute provides that individuals “may be detained beyond the removal
2 period” where the immigrant “has been determined by the Attorney General to be a risk
3 to the community or unlikely to comply with the order of removal.” 8 U.S.C. §
4 1231(a)(6).

5 13. In *Diouf v. Mukasey*, 542 F.3d 1222, 1230 (9th Cir. 2008) (*Diouf I*), the
6 Ninth Circuit held that individuals who are awaiting judicial review of the BIA’s denial
7 of a motion to reopen, and who have been issued a judicial stay of removal, are detained
8 pursuant to § 1231(a)(6). The Ninth Circuit reaffirmed this holding in *Diouf II*,
9 explaining that “[§] 1231(a)(6) encompasses [noncitizens] such as Diouf, whose
10 collateral challenge to his removal order (a motion to reopen) is pending in the court of
11 appeals, as well as to [noncitizens] who have exhausted all direct and collateral review of
12 their removal orders, but who, for one reason or another, have not yet been removed from
13 the United States.” 634 F.3d at 1085.

14 14. Ninth Circuit law establishes the right to a bond hearing for those subject to
15 prolonged detention under 8 U.S.C. § 1231(a)(6). In *Diouf v. Napolitano*, 634 F.3d 1081,
16 1084 (9th Cir. 2011) (*Diouf II*), the Ninth Circuit, noting the serious Constitutional
17 concerns that arise from prolonged civil detention without procedural protections, applied
18 the canon of constitutional avoidance and “construe[d] § 1231(a)(6) as requiring an
19 individualized bond hearing, before an immigration judge, for [individuals] facing
20 prolonged detention under that provision.” *Id.* at 1086.

21 15. Relying on *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Ninth Circuit held
22 that noncitizens who have been detained for 180 days under § 1231(a)(6) are “entitled to
23 a bond hearing before an immigration judge” at which they are to be “released from
24 detention unless the government establishes that the [noncitizen] poses a risk of flight or
25 a danger to the community.” *Id.* at 1081. *Diouf II* thus applied *Zadvydas*’s conclusion that

1 § 1231(a)(6) is ambiguous and susceptible to a limiting construction to avoid the
2 constitutional issues posed by prolonged, but not necessarily indefinite, detention. *Id.* at
3 1086, 1087 n.8.

4 16. The Supreme Court's decision in *Jennings v. Rodriguez*, 138 S. Ct. 830,
5 842-44 (2018), strongly supports *Diouf II*. *Jennings* held that two other immigration
6 detention statutes, Sections 1225 and 1236(c) of 8 U.S.C., could not be read to authorize
7 a bond hearing. By contrast, the Court observed that because § 1231(a)(6) states that
8 certain individuals "may be detained," there is not "necessarily unlimited discretion" in
9 detaining individuals. *See id.* at 843 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 697
10 (2001) (applying canon of constitutional avoidance to construe Section 1231(a)(6) not to
11 authorize detention beyond six months where removal is not reasonably foreseeable)).

12 17. Taken together, these cases require that all individuals in the Ninth Circuit
13 with final orders of removal who are detained pursuant to 8 U.S.C. § 1231(a)(6) must be
14 provided a bond hearing after six months of detention, where the government bears the
15 burden of proving by clear and convincing evidence that the individual is a flight risk or a
16 danger to the community. *See Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal.
17 June 5, 2018), *aff'd Aleman Gonzalez v. Barr*, 955 F.3d. 762, 766 (9th Cir. 2020), *rev'd*
18 *and remanded on other grounds sub nom. Garland v. Aleman Gonzalez*, 596 U.S. 543
19 (2022).

20 FACTUAL ALLEGATIONS

21 18. Plaintiff has lived in the United States since 2016. He is married, with
22 seven children. His three youngest children are United States citizens. Plaintiff works as a
23 landscaper. He has no criminal record.

24 19. Plaintiff came to the USA fleeing violence and death in Guatemala. He was
25 paroled into the USA in 2016. In July 2016, the DHS filed a Notice to Appear to start a

1 removal case at the San Diego Immigration Court (A [REDACTED]). Plaintiff applied for
2 asylum and related remedies. In February 2019, the immigration judge ordered removal.
3 Plaintiff appealed to the BIA. In June 2021, the BIA denied the appeal. Plaintiff filed a
4 petition for review with the Ninth Circuit Court of Appeals (21-338), which was denied.

5 20. While these cases were pending, plaintiff's circumstances changed.

6 [REDACTED]
7 [REDACTED]

8 21. In February 2025, the DHS detained plaintiff (and his son F [REDACTED]
9 [REDACTED]). The DHS removed F [REDACTED] but plaintiff is still detained at the San Luis
10 Regional Detention Center. On March 7, 2025, Juan filed a Motion to Reopen with the
11 Board of Immigration Appeals. The motion to reopen was to seek to apply for asylum
12 based on changed country conditions in Guatemala. The Motion to Reopen is still
13 pending with the BIA; that is, there has been no decision on the motion to reopen.

14 22. Plaintiff filed a motion for a custody determination hearing with the Otay
15 Mesa Immigration Court. On September 12, 2025, the immigration judge concluded that
16 he did not have jurisdiction to consider bond, so plaintiff withdrew the motion.

17 **CAUSES OF ACTION**

18 **COUNT 1**

19 **(Violation of the Immigration and Nationality Act)**

20 23. Plaintiff incorporates by reference the allegations set forth in paragraphs 1
21 to 22.

22 24. Section 1226(a)(6) of 8 U.S.C. entitles Plaintiff to a bond hearing
23 immigration court after six months of detention.

24 25. Plaintiff's detention under Section 1226(a)(6), in the absence of a bond
25 hearing violates the INA.

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COUNT 2

(Violation of the Administrative Procedure Act)

26. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 to 25.

27. Section 706 of 5 U.S.C. provides that a reviewing court shall compel agency action unlawfully withheld and hold unlawful and set aside agency action not in accordance with law. 5 U.S.C. § 706(1)-(2).

28. Plaintiff has a statutory and due process right to have an Immigration Judge conduct a bond hearing after six months in detention. 8 U.S.C. § 1231(a)(6); U.S. Const. amend. V; *Diouf II*, 634 F.3d at 1086.

29. Defendants' refusal to provide a bond hearing to Plaintiff harms him and constitutes final agency action for purposes of the APA.

30. There are no other adequate available remedies.

31. Defendants' actions constitute an unlawful withholding of an agency action and unlawful agency action in violation of the APA.

COUNT 3

(Violation of the Due Process Clause)

32. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 to 31.

33. The Due Process Clause of the Fifth Amendment to the United States Constitution requires an adequate hearing before a neutral decision maker to determine whether prolonged immigration detention is justified by the prevention of flight risk and danger to the community.

34. Defendants' practice of denying Plaintiff an individualized bond hearing after six months thus violates the Due Process Clause of the United States Constitution.

7

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs prays that the Court:

- 3 1. Assume jurisdiction over this matter;
- 4 2. Order Defendants to automatically conduct bond hearings after six months
5 of detention for Plaintiff;
- 6 3. Declare that Defendants' refusal to conduct individualized bond hearings
7 after six months violates the INA, the APA, and the United States Constitution;
- 8 4. Order Defendants to conduct a bond hearing at which the Government
9 carries the burden of proof by clear and convincing evidence to demonstrate that the
10 Plaintiff is a flight risk or a danger to the community; and, if bond is denied, to review
11 and hold a new bond hearing every six months to determine if release is warranted.
- 12 5. Award costs and reasonable attorney fees under the Equal Access to Justice
13 Act (28 U.S.C. § 2412), and any other applicable statute or regulation; and
- 14 6. Grant such other and further relief as this Court deems proper; and

15 DATED: 2 October 2025

16 Respectfully submitted,

17 */s/ William Baker*

18
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