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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Ahmed Babatunde BELLO
A# [redacted]
PRO SE

Case# 3:25-cv-1379-WWB-PDB

PETITIONER

V.

Warden of North Florida Detention Facility (formerly Baker Correctional Facility);

Current or Acting Field Office Director, Jacksonville Field Office, U.S. Immigration & Customs Enforcement;

Current or Acting Director, U.S. Immigration & Customs Enforcement;

Current or Acting Secretary, U.S. Department of Homeland Security;

Current or Acting United States Attorney General.

RESPONDENTS

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

Petitioner, Ahmed Babatunde Bello respectfully petitions this Honorable Court Pro Se, for a writ of habeas corpus to remedy his unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner is currently detained by Immigration and Customs Enforcement ("ICE") at the North Florida Detention Facility (formerly Baker Correctional Institution), pending adjudication of his Petition for Review at the Ninth Circuit Court of Appeal.

2. Petitioner has been detained in immigration custody for nine (9) months, even though no neutral decisionmaker---whether a Federal Judge or immigration Judge ("IJ") has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk.

3. Petitioner's prolonged detention without hearing on danger or flight risk violates the Due Process Clause of the Fifth Amendment.

4. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus, 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 Petitioner's ability to pay a bond.

5. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus and order Petitioner's release within 30 days unless Respondents schedule a hearing before an IJ where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that petitioner's release would present; and (2) if the government cannot meet its burden, the IJ shall order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay bond.

JURISDICTION AND VENUE

6. Petitioner is detained in the custody of Respondents at North Florida Detention Facility (formerly Baker Correctional Institution).

7. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question), 2241 (habeas corpus); U.S. Const. Art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure Act). This Court may grant relief under habeas corpus statutes, 28 U.S.C. § 2241 et seq., the Declaratory judgement Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

8. Congress has preserved judicial review of challenges to prolonged immigration detention. See Jennings v. Rodriguez, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C. § 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); see also id. at 876 (Breyer, J., dissenting). ("8 U.S.C. § 1252(b)(9)...by its terms applies only with respect to review of an order of removal") (internal quotation marks and brackets omitted).

9. Venue is proper in this district because this is the district in which Petitioner is confined.

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court may grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith", unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file return "within three (3) days unless for good cause additional time, not exceeding twenty (20) days, is allowed," ID. (emphasis added).

11. Courts have long recognized the significance of the habease statute in protecting individuals from unlawful detention. The Great Writ affords "a swift and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963) (emphasis added); (explaining that habeas statute requires expeditious determination of petitions).

PARTIES

12. Petitioner is a noncitizen currently detained by Respondents pending adjudication of his Petition for Review at the Ninth Circuit Court of Appeal (Docket # 25-6707, Bello v. Bondi, et al.).

13. Respondent Warden of North Florida Detention Facility (formerly Baker Correctional Institution) is Petitioner's immediate custodian at the facility where Petitioner is detained. See Doe, 108 F. 4th at 1194-97.

14. Respondent Acting or Current Field Office Director of the Jacksonville ICE Field Office is responsible for the Jacksonville Field Office of ICE with administrative jurisdiction over petitioner's case. They are a legal custodian and named in their official capacity.

15. Respondent Acting or Current Director of ICE is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. They are a legal custodian of Petitioner and are named in their official capacity.

16. Respondent Current or Acting Secretary of U.S. Department of Homeland Security ("DHS"), an agency of the United States, is responsible for the administration of the immigration laws. 8 U.S.C. § 1103(a). They are a legal custodian of Petitioner. They are named in their official capacity.

17. Respondent Acting or Current Attorney General of the United States is the most senior official in the U.S. Department of Justice ("DOJ"). They have the authority to interpret the immigration laws and adjudicate removal cases. They delegate this responsibility to the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals ("BIA"). They are named in their official capacity.

STATEMENT OF FACTS

18. Petitioner is a noncitizen currently detained by Respondents pending adjudication of his Petition for Review of his Immigration Appeal decision, currently pending at the United States Court of appeal for the Ninth (9th) Circuit. Petitioner is pursuing an appeal of his inabsentia removal order to be reopened, so he can pursue relief for adjustment of Status, which he is Prima Facie eligible for.

19. Petitioner has been detained in Immigration and Customs Enforcement ("ICE") custody, since February 15, 2025. He was arrested at San Juan Airport, Puerto Rico on his way to board a flight back home to California on a routine citizenship check at the airport. He was asked if he was a U.S. citizen or Greencard holder by ICE Agents at the airport. When he responded with "I am married to a U.S. citizen, I have an approved I-130 (Petition for Alien Relative) and a pending I-485 application (Application for Adjustment of Status)", he was told to come with them for 'verification' and subsequently detained in Puerto Rico for two days; flown to Miami, and detained at Krome Processing and Detention Centre for over six (6) months, the transferred to the facility he is currently being held, the North Florida Detention Facility (formerly Baker Correctional Institution)

20. Petitioner has not been provided a bond hearing before a neutral decisionmaker to determine whether their prolonged detention is justified on danger or flight risk.

21. The Immigration Court lacks jurisdiction and authority to provide Petitioner with a bond hearing to determine whether Petitioner's detention is justified. See 8 U.S.C. § 1225(b); 1226(c). There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before a neutral decisionmaker.

22. Absent intervention from this Court, Petitioner cannot and will not be provided with a bond hearing by a neutral decisionmaker to assess the propriety of Petitioner's continued detention.

23. Petitioner has nonviolent criminal convictions of California PC 496 and 496(a) (Receiving stolen property), which were dismissed by the Courts and expunged. (See attached Court orders of dismissal and County notification of termination of probation after felony was reduced to misdemeanor, pursuant to California's Proposition 47. Attachment A). None of his prior convictions make him inadmissible. The Ninth Circuit held that the minimum conduct to commit §496 or 496(a) involves intent to temporarily deprive the owner, which is not a CIMT. Castillo-Cruz v. Holder, 581 F.3d 1154 (9th Cir. 2009) (Pen C §496(a)).

24. Petitioner is prima facie eligible for Adjustment of Status. He was admitted into the United States on an F-1 visa on January 5, 2012, to get his Master of Business Administration; and has not departed since. (See attached I-94. Attachment B). He is married to Pamela Bello, a United States citizen by birth, since September 29, 2016. (See marriage certificate and birth certificate of Pamela Bello, formerly Childers. Attachment C). He and Pamela welcomed their son, A[redacted] into the world on [redacted] (See birth certificate of A[redacted]. Attachment D). He is eligible for adjustment of status under INA 245(a) because he was admitted into the United States, he is married to a U.S. citizen and a visa is immediately available to him, and he has no bars or subject to any grounds of inadmissibility... See 8 U.S.C. §1225(a). Copy of stamp-approved Petition for Alien Relative (I-130), Case history, and Receipt notice attached. Attachment E).

25. Petitioner does not pose a threat to national or border security nor does he pose threat to public safety. He has no associations with any organization that has illegal dealings. He has been working on his own business MVP Legal Services (a small business that does Document Preparation and Service of Process) (see attached Business name registration

and Tax registration. Attachment F); and raising a family. He is a well respected member of his Community and a Recipient of Special Congressional Recognition Award from U.S. Congressman Eric Swalwell of California's 15th Congressional District since August 2, 2013. (See attached Certificate of Special Congressional Recognition Award and Congratulatory letter from the Congressman. Attachment G). If released, he will return home to his family and continue to help people in his business and be a good role model to his family and community.

26. There is no statutory exhaustion requirement for a petition challenging immigration detention.

27. DHS internal review to determine whether release is warranted is not subject to review or challenge. Thus, there is a significant risk of erroneous, unwarranted detention and the deprivation of my liberty interests. In this case, notice of 6-month custody review was served on Petitioner 24 hours before the review interview. Per DHS guidelines and policy, the notice should have been provided to Petitioner and his Attorney at least 30 days before such review. Nevertheless, the result of the 6-month custody review (which was just 10 minutes interview where Petitioner was only asked 5 questions and hurriedly returned to confined detention) has been pending since August 2, 2025, till date. Efforts by Petitioner to get status of the custody review has been unproductive and he is still being held in confined detention.

LEGAL BACKGROUND

28. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." Demore v. Kim, 538 U.S. 510, 523 (2003) (quoting Reno v. Flores, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); see id. at 718 (Kennedy, J., dissenting) ("Liberty under Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. See id. at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious").

29. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." Zadvydas, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court

has recognized only two valid purposes for civil detention—to mitigate the risk of danger to the community and to prevent flight. Id.; Demore, 538 U.S. at 528.

30. Due process requires that the government provide bond hearings to noncitizens facing prolonged detention. "The Due Process Clause foresees eligibility for bail as part of due process" because "[b]ail is basic to our system of law." Jennings, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in Demore, it did so based on the petitioner's concession of deportability and the Court's understanding at the time that such detentions are typically "brief." Demore, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim for relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. Id. at 532 (Kennedy, J., concurring) ("[I]ndividualized determination as to his risk of flight or dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); see also Jackson v. Indiana, 406 U.S. 715, 733 (1972) (holding that detention beyond the "initial commitment" requires additional safeguards); McNeil v. Dir., Patuxent Inst., 407 U.S. 245, 249-50 (1972) (holding that "lesser safeguards may be appropriate" for "short-term confinement"); Hutto v. Finney, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth Amendment context, "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards"); Reid v. Donelan, 17 F.4th 1, 7 (1st Cir. 2021) (holding that "the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention" under section 1226(c)) (internal quotation marks omitted).

A.) Detention That Exceeds Six Months Without A Bond Hearing Is Unconstitutional

31. Detention without a bond hearing is unconstitutional when it exceeds six months. See Demore, 538 U.S. at 529-30 (upholding only "brief" detention under section 1226(c), which last "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which [noncitizen] choses to appeal"); Zadvydas, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months."); Rodriguez Diaz v. Garland, 53 F.4th 1189, 1091 (9th Cir. 2022) ("Once the [noncitizen] has been detained for approximately six months, continuing detention becomes prolonged".

32. The recognition that six months is a substantial period of confinement—and is the time which additional process is required to support continued incarceration—is deeply rooted

in American legal tradition. With few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than six months prison term." Duncan v. Louisiana, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. Cheff v. Schnackenberg, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked at six months as a benchmark in other contexts involving civil detention. See McNeil v. Dir., Patuxent Inst., 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment). The Court has likewise recognized the need for brightline constitutional rules in other areas of law. See Maryland v. Shatzer, 559 U.S. 98, 110 (2010) (holding that 14 days must elapse following invocation of Miranda rights before re-interrogation permitted); Cnty. Of Riverside v. McLaughlin, 500 U.S. 44, 55-56 (1991) (holding that a probable cause hearing must take place within 48 hours of warrantless arrest).

B.) Even Absent A Bright-Line Six-Month Standard, An Individualized Bond Hearing Is Required When Detention Becomes Unreasonably Prolonged.

33. Petitioner's detention, without an individualized review, is unreasonable under Mathews v. Eldridge due process test. Alternatively, Petitioner prevails under multi-factor reasonableness test the Third Circuit adopted in German Santos v. Warden Pike Correctional Facility, 965, F.3d 203, 211 (3rd Cir. 2020).

34. Each year, thousands of noncitizens are incarcerated for lengthy periods pending the resolution of their removal proceedings. See Jennings, 138 S. Ct. at 860 (Breyer, J., dissenting) (observing that class members, numbering in the thousands, had been detained "on average one year" and some had been detained for several years). For noncitizens who have some criminal history, if any. Id. ("between one-half and two-thirds of the class served [criminal] sentences less than six months").

35. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a confinement cell of a locked down facility, which used to be a State Prison ran by Florida Department of Corrections, with limited freedom and no access to family or support network. "The circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." Jennings, 138 S. Ct. at 861 (Breyer, J., dissenting); accord Chavez-Alvarez v. Warden York Cnty. Prison, 783 F.3d 469, 478 (3rd Cir. 2015); Ngo v. INS, 192 F.3d 390, 397-98 (3rd Cir. 1999); Sopo v. U.S. Att'y Gen., 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). "And in some cases, the conditions of their confinement are

inappropriately poor" including, for example, "invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee." Jennings, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Press Release, Off. Of Inspector Gen., Dept. of Homeland Sec., DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities (Dec. 14, 2017); see also Tom Dreisbach, Government's own experts found 'barbaric' and 'negligent' conditions in ICE detention, NPR (Aug. 16, 2023, 5:01AM) (reporting on the "negligent" medical care (including mental health care), 'unsafe and filthy' conditions, racist abuse of detainees, inappropriate pepper-spraying of detainees and other problems that, in some cases, contributed to detainee deaths" contained in inspection reports prepared by experts from the Department of Homeland Security's Office for Civil Rights and Civil Liberties after examining detention facilities between 2017 and 2019). Individuals at Krome Detention Centre where Petitioner was held for over six months before transfer to North Florida Detention Facility have described receiving food contaminated with insects (including cockroaches, flies, and spiders), hair, and other foreign objects. At Krome, over 80% of detained individuals claimed they had received expired food. At North Florida Detention Facility, situation of feeding and housing confinement is worse. Petitioner's detention at Krome subjected him to miserable conditions and deprivation of religious liberty. Petitioner slept on concrete floor without mattress or blanket for over a week; this was after I was subjected to sleeping in a bus with both sexes, shackled and cuffed for more than 24 hours because the Processing Centre at Krome was full. When processed into Krome, I was housed in a multipurpose room meant for recreation with no bathroom privacy. When transferred to housing unit, I was on a temporary colt bed with no bedsheet or blanket, in a room at over double the maximum capacity, surrounded by cockroaches, bedbugs, and mold in the bathroom. I received meals that do not comply with my dietary restrictions as a practicing Muslim. There was no provision for me to observe my 5 daily prayers as I should; when I complain to Officers, I am told they do not have space for people to sleep, that my prayer was not a priority. I was unable to practice my religion, which is a violation of my religious rights. (see attached grievances. Attachment H). During Ramadan (Muslim fasting), the meal do not come as scheduled. At one point, I lost 22 pounds in a matter of three days; I experienced migraines and dizziness, unable to stand or walk. (see attached medical records pages 55 and 64. Attachment I). The Chaplain and staff of Krome failed to accommodate my religious requirements for prayer. This was a daily and ongoing religious deprivation which I am forced to endure, due to my continued detention; even as I have been transferred to North Florida Detention Facility.

Upon my transfer to North Florida Detention Facility since September 5, 2025, religious deprivation became worse. We could not tell the time of the day, as there are no clocks in

the Pods. Prayer materials are unavailable and there is no Chaplain at the facility. (See attached grievances and requests. Attachment J).
Legal mail was taken from every detainee upon arrival. No access to visit from family, no availability of commissary to supplement poor feeding (even in Penal incarcerations, prisoners have access to commissary). Status of detainees' immigration cases are unknown because nearly 99% of detainees are yet to see an ICE Deportation Officer in charge of their cases or get necessary forms to help with cases or change address with respective Courts because we were transferred. Officers assault detainees at will, without any disciplinary repercussion from higher authority or ICE. I was physically assaulted by Officer Wall, and my grievance never resulted in any action. (see attached copies of grievances. Attachment J). Attorney video visitations are not confidential. Other detainees can hear each other's video visits with respective Attorneys, and you can clearly hear the Officers' radio during Attorney video visits.

36. The Mathews test for procedural due process claims balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; (3) the government interest. Mathews v. Eldridge, 424 U.S. 319, 335 (1976). Here, each factor weighs in Petitioner's favor, requiring this court to promptly hold a hearing to evaluate whether the government can justify their ongoing detention.

37. First, Petitioner indisputably has a weighty interest in their liberty, the core private interest at stake. Zadvydas, 533 U.S. at 690 ("Freedom from imprisonment… lies at the heart of the liberty [the Due Process Clause] protects.") Petitioner, who is being held in "incarceration-like conditions," has an overwhelming interest here.

38. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty is high, as they have been detained since February 15, 2025, without any evaluation of whether the government can justify detention under their individualized circumstances. "The risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." Diouf, 634 F.3d at 1092.

39. Third, the government's interest is very low in continuing to detain Petitioner without providing any neutral review. See Mathews, 424 U.S. at 335. The specific interest at stake here is not the government's ability to continue to detain Petitioner, but rather the government's ability to continue to detain them for months on end without any individualized review. The cost of providing an individualized inquiry is minimal.

40. In sum, the Mathews factors establish that Petitioner is entitled to an evidentiary hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards have repeatedly held that prolonged detention without a hearing before a neutral adjudicator violates procedural due process.
This Court should so hold as well.

41. Rodriguez Diaz v. Garland, 53 F.4th 1189 (9th Cir. 2022), does not disturb this result. In Rodriguez Diaz, the Ninth Circuit applied Mathews test to hold that the detention of a noncitizen under a different detention statute, 8 U.S.C. §1226(a), did not violate procedural due process. 53 F.4th at 1195. Unlike Sections 1225(b) and 1226(c), §1226(a) mandates that detained individuals receive an individualized bond hearing at the outset of detention and provides for further bond hearings upon material change in circumstances. See 8 C.F.R. § 1003.19(e). The panel's decision in Rodriguez Diaz was predicated on the immediate and ongoing availability of this administrative process under § 1226(a). 53 F.4th at 1202 ("Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under detention provisions..."). Unlike the Petitioner in Rodriguez Diaz, Petitioner has no statutory access to individualized review of his detention.

42. Alternatively, courts that apply a reasonableness test have considered four non-exhaustive factors in determining whether detention is reasonable. German Santos v. Warden Pike Cnty. Corr. Facility, 965 F.3d 203, 210-22 (3rd Cir. 2020). The reasonableness inquiry is "highly fact-specific." Id. at 210. "The most important factor is the duration of detention." Id. at 211. Duration is evaluated along with "all the other circumstances," including (1) whether detention is likely to continue, (2) reasons for the delay, and (3) whether conditions of confinement are meaningfully different from criminal punishment. Id. at 211.

43. As noted, Petitioner has been detained for a substantial length of time, and Petitioner's detention is likely to continue as petitioner asserts their right to seek immigration relief. A detained person who simply made use of the statutorily permitted appeals process should not be made responsible for his prolonged detention. Noncitizens should not be punished for pursuing "legitimate proceedings" to seek relief. See Masood v. Barr, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) ("It ill suits the United States to suggest that Petitioner could shorten his detention by giving up these rights and abandoning his asylum application."). Moreover, Petitioner's confinement and experiences at a facility operated by a private, for-profit prison contractor, demonstrate that their conditions of confinement are not meaningfully different from those of criminal punishment.

C. At Any Hearing, The Government Must Justify Ongoing Detention By Clear And Convincing Evidence.

44. At a bond hearing, due process requires certain minimum protections to ensure that a noncitizen's detention is warranted: the government must bear the burden of proof by clear and convincing evidence to justify continued detention, taking into consideration available alternatives to detention; and, if the government cannot meet its burden, the noncitizen's ability to pay a bond must be considered in determining the appropriate conditions of release.

45. To justify prolonged immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. See Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir. 2011). ("Jennings's rejection of layering [clear and convincing burden of proof standard] onto § 1226(a) as a matter of statutory construction cannot… undercut our constitutional due process holding in Singh."); Sho, 2023 WL 4014649, at *5 (applying Singh and holding that the government shall bear the burden in a constitutionally required bond hearing to remedy detention under a different statutory provision); Singh, 2023 WL 5836048, at *9 (same).

46. Where the Supreme Court has permitted civil detention in other context, it has relied on the fact that the Government bore the burden of proof by at least clear and convincing evidence. See United Stated v. Salerno, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention after a "full-blown adversary hearing" requiring "clear and convincing evidence" and "a neutral decisionmaker"); Foucha v. Louisiana, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); Zadvydas, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, inter alia, they placed burden on detainee).

47. The requirement that Government bear the burden of proof by clear and convincing evidence is also supported by application of three-factor balancing test from Mathews v. Eldridge, 424 U.S. 319, 335 (1976). First, "an individual's private interest in 'freedom from prolonged detention' is 'unquestionably substantial'." Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and may lack English proficiency. Moreover, detained noncitizens are incarcerated in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. Third, placing the burden on the government imposes minimal cost or inconvenience to it, as the government has access to noncitizen's immigration records and other information that it can use to make its case for continued detention.

D.) Due Process Requires Consideration Of Alternatives To Detention.

48. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during civil removal proceedings. Zadvydas, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. ICE's alternative to detention program—the Intensive Supervision Appearance Program ("ISAP") has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rate close to 100%. Hernandez v. Sessions, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EORI hearing and a 95% attendance rate at final hearings").
Petitioner was previously on ISAP alternative to detention program from April 11, 2013 to July 14, 2015, without missing a check-in or court date. He was released by ICE on his own recognizance on April 11, 2013. And was present at every subsequent EOIR hearings. The program ended when IJ at the San Francisco Immigration Court administratively closed the removal proceeding on July 14, 2015; and Petitioner was released from further monitoring. (see copy of ICE release order 4/11/13 on own recognizance and IJ order attached. Attachment K). Thus, alternatives to detention must be considered in determining whether prolonged incarceration is warranted; especially where in this case, Petitioner never violated the program once afforded him.

49. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for ability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release." Hernandez, 872 F.3d at 990 (quoting Pugh v. Rainwater, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). Therefore, when determining the appropriate conditions of release for people detained for immigration purposes, due process requires "consideration of financial circumstances and alternative conditions of release.

CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE CONSTITUTION

50. Petitioner re-alleges and incorporates by reference the paragraphs above.

51. 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.

52. To justify Petitioner's ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that Petitioner's detention is justified by clear and convincing evidence of flight risk or danger, taking into account whether alternatives to detention could sufficiently mitigate that risk.

53. For these reasons, Petitioner's ongoing prolonged detention without a hearing violates due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

2) Issue a Writ of Habeas Corpus, 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;

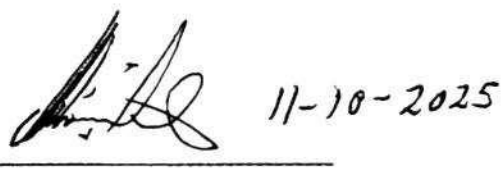
3) In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release within 30 days unless Respondents schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger; and (2) if the government cannot meet its burden, the immigration judge order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond;

4) Issue a declaration that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment; and

5) Grant such further relief as the Court deems just and proper.

I affirm, under penalty of perjury, that I am the Petitioner, I have read this petition, and the information in this petition is true and correct.

Respectfully submitted,



Ahmed Babatunde BELLO

[redacted]

Detained in ICE custody at:

North Florida Detention Facility (formerly Baker Correctional Facility)
20706 US Highway 90 West,
Sanderson, FL. 32087

Table of Contents

Ahmed Babatunde Bello, [redacted]

Attachments