UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Hayatullah ZAHID,	)	Case No.3:25-cv-00563-KC
	)	
Petitioner,	)	HON. J. KATHLEEN CARDONE
	)	
	)	
	)	
v.	)	
	)	
Angel Garite, et. al.	)	
	)	
Respondents.	)	
	)	

REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

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STATEMENT OF ISSUES

1. Whether the U.S. Constitution and laws place any due process limits upon Respondents' statutory authority to detain Mr. Zahid under 8 U.S.C. § 1225(b) et seq.

2. Whether Mr. Zahid's pre-order mandatory detention under 8 U.S.C. § 1225(b) is unconstitutional in that it violates his due process rights.

3. Whether, in the alternative, Mr. Zahid's post-order mandatory detention under 8 U.S.C. § 1231 is unconstitutional in that it violates his due process rights.

INTRODUCTION

On November 17, 2025, Petitioner Hayatullah Zahid filed a Petition for Writ of Habeas Corpus challenging his unlawful detention of over 20 months. On November 26, 2025, this Court ordered Respondents to show cause why the application for writ of habeas corpus should not be granted, and Respondents filed their response on December 3, 2025. By order dated December 12, 2025, this Court has sought additional briefing on Respondents' specific claim that petitioners like Mr. Zahid are not entitled to the constitutional protections otherwise afforded to illegal aliens as an "inadmissible arriving alien" under 8 U.S.C. § 1225(b)(1)(B)(ii).

This case is ultimately about the well-established due process protections provided by the Fifth Amendment to the Constitution that protects citizens and aliens – whether considered inadmissible arriving aliens under 8 U.S.C. § 1225(b)

or not – from unreasonable, unjustifiable detentions in violation of due process. There is no question that this case – involving an administratively final asylum claim, ongoing federal litigation regard Petitioner Convention Against Torture claims, and a stay of removal - raises numerous issues over which immigration detention provisions govern (including the protections afforded thereby). Even so, regardless of the context or statutes, courts have universally recognized that indefinite unjustifiable detentions in every one of these situations violates the Fifth Amendment's constitutional protections.

The entire basis of the Government's contention that Mr. Zahid is not entitled to constitutional protections, pursuant to 8 U.S.C. § 1225(b)(1(B)(ii) as a noncitizen detained for "further consideration of the application for asylum" relies on inapplicable cases addressing procedural due process claims in very different contexts. In spite of the Government's efforts to parse out what different procedural due process protections are afforded under 8 U.S.C.§1225(b) or 8 U.S.C. § 1231, the fact remains – Mr. Zahid has been detained without justification for approximately 21 months – a substantive violation of his due process rights under *Zadvydas v. Davis,* 533 U.S. 678 (2001) and other precedents in this court and beyond. In short, the Government's reliance on 8 U.S.C. §1225(b)(1)(B)(ii) does not suspend Mr. Zahid's due process rights where there is no legitimate basis to detain Mr. Zahid, as this appeal process continues in the midst of delays caused

by no fault of Mr. Zahid's but rather, factors like the government shut down that delayed briefing on the consolidated appeal and will also delay the Fifth Circuit's decision in that case.

Mr. Zahid refers the Court to his petition for writ of habeas corpus for a full recitation of the facts and legal argument addressing the application of 8 U.S.C. § 1231, *Zadvydas v. Davis,* 533 U.S. 678 (2001), and other controlling precedents in this case.

ARGUMENT

I. Relevant Detention Statutes

Respondents contend that Mr. Zahid is an "inadmissible arriving alien" under 8 U.S.C. §1225(b), rather than a removable alien under 8 U.S.C. § 1231, and therefore is not entitled to any procedural due process protections other than those afforded under statute, specifically 8 U.S.C. §1225(b). See Govt Brief, p.12. Whether Mr. Zahid is considered an "inadmissible alien" under 8 U.S.C. § 1225(b) or a removable alien under 8 U.S.C. § 1231, his prolonged unjustifiable detention of almost two years violates his due process rights under the Constitution and requires immediate release or a bond hearing.

From the outset, it is important to note that, even assuming Mr. Zahid is not subject to 8 U.S.C. § 1231, he would be subject to 8 U.S.C. § 1225(b)(2)(A)

proceedings. Specifically, 8 U.S.C. § 1225(b)(1)(B)(ii) governs mandatory detention of aliens subject to expedited proceedings who have expressed a credible fear of persecution. 8 U.S.C. § 1225(b)(2)(A), on the other hand, governs mandatory detention of arriving aliens who are in INA § 240 (8 U.S.C. § 1229a) removal proceedings. The Court in *Maldonado v. Macias* recognized the difference - noting that upon a positive credible fear determination, an alien is subject to INA § 240 removal proceedings, rather than expedited removal proceedings, thereby applying 8 U.S.C. § 1225(b)(2)(A) in its due process analysis (discussed below). *Maldonado v. Macias*, 150 F. Supp.3d 788, 796 (W.D. Tex. 2015) (applying 8 U.S.C. § 1225(b)(2)(A) to alien deemed inadmissible and detained from the outset upon receiving positive credible fear determination).

As is clear from the history set forth in his petition and his Notice to Appear at removal proceedings, Mr. Zahid was not subject to expedited removal and his case was referred to an immigration judge for full proceedings with the right to apply for asylum and withholding of removal. In addition, where the plain language of 8 U.S.C. § 1225(b)(1)(B)(ii) provides that [t]the alien shall be detained for further consideration of the application for asylum," Mr. Zahid's application for asylum is no longer being considered. Indeed, Mr. Zahid's petition for review is limited to relief under the Convention Against Torture (CAT) only. His eligibility for asylum is not being considered by the Fifth Circuit or any administrative body.

As such, it can no longer be said that his detention is a result of "further consideration of [his] application for asylum." Furthermore, the Court should take note that 8 U.S.C. § 1225(b)(1)(B)(ii) falls under the portion of the statute labeled "Asylum Interviews." Thus, the plain language of this statute supports that its detention authority was not intended to extend far beyond the final decision in an asylum interview, through INA § 240 proceedings, and in this case, where Petitioner is no longer even proceeding with his underlying application for asylum.

Even if Mr. Zahid is classified as an alien subject to expedited removal under 8 U.S.C. § 1225(b)(1)(B)(ii), it is a classification without a difference. As set forth below, numerous courts have recognized that Mr. Zahid is entitled to constitutional due process protections to be free from prolonged indefinite detention under 8 U.S.C. §1225(b) and many other applicable detention provisions. Moreover, this Court in *Alves v. United States v. DOJ,* 2025 U.S. Dist. LEXIS 180676 (W.D. Tex. Sept. 12, 2025) recently recognized that indefinite detention under 8 U.S.C. § 1225(b)(1)(B)(ii) may violate the Constitution's due process protections.

II. Mr. Zahid's Prolonged Detention Violates the Due Process Clause Even If Considered an Inadmissible Alien Under 8 U.S.C. §1225(b)

Mr. Zahid refers the Court to his initial brief for a discussion addressing the unlawful detention under 8 U.S.C. § 1231. Given the procedural complexities in

this case – where the asylum claim is administratively final and the CAT claim ongoing, there is legal basis for the application of 8 U.S.C. § 1231. Yet, as set forth below, the following establishes that Mr. Zahid is also entitled to habeas relief even if considered "an inadmissible alien" under 8 U.S.C. § 1225(b)'s detention provisions.

Of particular import, this Court has already recognized that a petitioner, considered an "arriving alien" under 8 U.S.C. § 1225(b), is entitled to constitutional due process protections beyond 8 U.S.C. § 1225(b)'s statute, including a bond hearing to prevent prolonged unconstitutional detention. *Maldonado v. Macias*, 150 F. Supp.3d 788, 800 (W.D. Tex. 2015) (26-month detention without bond hearing violated due process).

In *Maldonado*, this Court was required to determine whether petitioner, an inadmissible alien under 8 U.S.C. §1225(b)(2)(a), was subject to an unreasonable twenty-six month's detention. This Court addressed whether detention under 8 U.S.C. §1225(b) is subject to a reasonableness time limitation in the first place. In finding that 8 C.F.R. § 1225(b) does in fact require reasonable time limitations, this Court expressly noted that the Supreme Court's decision in *Zadvydas* never limited its prescription against indefinite detention to aliens to 8 U.S.C. § 1231. *Id.* at 801. Recognizing that the *Zadvydas* Court was primarily "troubled" by the "potentially permanent" nature of detention, the *Maldonado* court referred to numerous other

cases that read "reasonableness" time limitations into immigration statutes, including 8 U.S.C. §1225(b) (as well as a reasonableness time limit on 8 U.S.C. §1226(c)'s mandatory detention of aliens even convicted of crimes). *Id.* at 801, 804.

The *Maldonado* court further recognized that adequate process and reasonable time limitations were even more important in the context of detention under 8 U.S.C. § 1225(b) because parole decisions under that statute are purely under the discretion of the Attorney General, and not subject to judicial review.

> Because aliens detained under § 1225(b)(2)(A) have no access to an individualized determination regarding whether they are properly placed in the § 1225(b)(2)(A) category or properly detained because they present a flight risk and a danger to the community, the Court finds that detention pursuant to § 1225(b)(2)(A) is subject to a reasonable time limitation.

Id. at 807-08.

Upon concluding that 8 U.S.C. § 1225(b) is subject to the same reasonableness standard as in 8 U.S.C. §1231 proceedings, the Court then addressed the numerous cases that also applied reasonableness standards on detention under 8 U.S.C. §1225(b). Ultimately, in the case of the detained "inadmissible alien," the Court concluded: "[s]itting in immigration detention for more than two years, having committed no crime in his attempt to seek asylum in this country, and without any opportunity for an individualized review of his

detention by an immigration judge, the Court finds Petitioner's detention to be prolonged." *Id.* at 809.

Alves, decided by this court on September 12, 2025, is instructive on the issue of when prolonged detention becomes unreasonable in violation of due process, even where 8 U.S.C. § 1225(b)(1)(B)(ii) detention is in question. 2025 U.S. Dist. LEXIS 180676, at **5-7. That case considered whether the eight-month detention of petitioner constitutes prolonged detention, where petitioner was immediately detained upon entry, placed in expedited proceedings, then referred to INA § 240 (8 U.S.C. § 1229a) proceedings following a credible fear interview. *Id.* at *2. There too, Respondents asserted that, because petitioner had established a credible fear of persecution, she was subject to mandatory detention at 8 U.S.C. §1225(b)(1)(B)(ii). However, in response, the Court reiterated that "even assuming the correctness of Respondents' interpretation of the statute, there remains the possibility that the statute could be applied to *Alvez* in an unconstitutional manner. *Id.* at **6-7 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018)).

The District Court in *N.Z.M. v. Wolf* also recognized a petitioner's due process rights against prolonged indefinite detention as an arriving alien under 8 U.S.C. § 1225(b). 2020 U.S. Dist. LEXIS 93387 (S.D. Tex. 2020). Rejecting the same type of claim here that the petitioner had no due process rights, the District Court stated: "While federal immigration statutes afford more rights to removable

aliens than to arriving aliens, Respondents offer no persuasive reason to read the distinction into the Constitution." The Court's reliance on *Zadvydas* is instructive:

> The same concerns that animate the decision in *Zadvydas* apply to detained asylum seekers like Petitioner. "Just like a deportable resident alien, Petitioner has a fundamental interest in [his] physical liberty that warrants strong procedural protections." . . . The Government, in contrast, does not have a legitimate interest in detaining Petitioner for an extended period without determining whether he poses a flight risk or danger to the community.

*Id. at *5 (citations omitted).* The Court agreed with the "weight of authority that arriving aliens subjected to unreasonably prolonged and unnecessary detention have a due process right to be released from custody." *Id.; see also Rosales-Garcia v. Holland*, 322 F.3d 386, 412 (6th Cir. 2003) (recognizing that indefinite detention of inadmissible aliens raised the same constitutional concerns as indefinite detention of removable resident aliens); *Maldonado v. Macias,* 150 F. Supp.3d 788, 811 (W.D. Tex. 2015) (26-month detention under §1225(b) without bond hearing violated due process). *Tuser E. v. Rodriguez,* 370 F. Supp.3d 435, 442 (D.N.J. 2019) (20-month detention under 8 U.S.C. §1225(b) violated due process); *Wang v. Brophy, 2019 U.S. Dist. LEXIS 1826, 2019 WL 112346, at *3 (W.D.N.Y. Jan. 4, 2019)* (finding Petitioner's prolonged, two-year detention pursuant to 8 U.S.C. § 1225(b) "without a bond hearing is unreasonable and is thus unconstitutional as applied to him"); *Jamal A. v. Whitaker,* 358 F. Supp.3d 853, 859 (D. Minn. 2019) (noting that 19-month detention under 8 U.S.C. § 1225(b)

"was a very long time, even for an alien who may be entitled to less Due Process . . . than an alien detained under another provision of the immigration laws"); *Lett v. Decker,* 346 F. Supp.3d 379, 387-88 (S.D.N.Y. Oct. 10, 2018) (holding that petitioner's nearly 10 months detention pursuant to 8 U.S.C. §1225(b) without access to a bond hearing was unreasonable, and therefore unconstitutional); *Ahad v. Lowe,* 235 F. Supp.3d 676, 686-88 (M.D. Pa. 2017) (20-month detention under 8 U.S.C. § 1225(b) violated due process).

Respondents conveniently ignore these holdings pointing to *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020) for the proposition that Mr. Zahid is entitled to no procedural due process protections - unduly and improperly seeking to limit the scope of the constitutional due process protections available to "inadmissible aliens" under 8 U.S.C. § 1225(b). Govt. Brief, p.12, *citing DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020).

Contrary to Respondents' argument, *Thuraissigiam* – distinguishable on its facts - does not eliminate all procedural due process protections for those detained under 8 U.S.C. §1225(b) and does not limit the constitutional protections against unreasonable prolonged detention afforded under *Zadvydas, Maldonado*, and the many other cases cited herein.

The petitioner in *Thuraissigiam* was detained at the border under 8 U.S.C. §1225(b), where an asylum officer determined that he had not established credible

fear for asylum and was placed in expedited removal proceedings. Petitioner then sought habeas procedure as a means to relitigate the credible fear assessment made by the asylum office. In rejecting petitioner's habeas claim, the Supreme Court recognized that the petitioner had not challenged the lawfulness of his detention and rejected the claim because petitioner had already received due process on his asylum claim as provided by the statute and could not obtain another opportunity to relitigate his asylum and claims through habeas review. *Id.* at 118-19.

The Supreme Court's decision in *Thuraissigiam* did not address any constitutional issues about the length or justification for detention. Indeed, the Supreme Court noted that petitioner's request did not fall within the scope of habeas relief and expressly recognized historical precedent that permit challenges to unlawful detention provided by habeas protections. *Id.* at 119-20. In short, nothing in the Supreme Court's decision in *Thuraissigiam* eliminates all procedural or substantive due process protections afforded under the Constitution or limits the *Zadvydas* prohibition against unreasonable prolonged detention for "inadmissible aliens" under 8 U.S.C. § 1225(b).

This Court has already recognized the limited scope of the Supreme Court's decision in *Thuraissigiam*, expressly rejecting Respondents' claim that *Thuraissigiam* acts to curb all procedural due process rights afforded under 8 U.S.C. § 1225(b). *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232, * 22

(2025). In its analysis, this Court recognized the distinction between deportability and detention - *Thuraissigiam*'s effort to relitigate deportability was not subject to review, but it did not erase the Lopez petitioner's challenge to the constitutional basis for detention itself. According to this Court, "[the *Thuraissigiam*] Court centered its analysis on the scope of habeas relief, which permits challenges to unlawful detention, but cannot provide another 'opportunity to remain lawfully in the United States.'" *Id.* at *21-22, *citing Thurasissigiam*, 591 U.S. at 117-120. This Court concluded that Lopez's challenge to detention was different than the effort to relitigate the denial of the credible fear assessment at issue in *Thuraissigiam*:

> For purposes of his application for admission, *Thuraissigiam* had already received his due process through the credible fear interview and was subject to immediate removal and deportation thereafter. It was in this context that the Court determined that "an alien in [his] position has only those rights regarding admission that Congress has provided by statute. *Id.* at 140 (emphasis added). The Court did not address whether noncitizens mandatorily detained under §1225(b) have a constitutional due process right to challenge the fact or length of their detention, as *Lopez-Arevelo* does here.

Id.

For these reasons, Respondents' reliance on *Jennings* is also misplaced. The Supreme Court in *Jennings*, which addressed whether the language of certain statutes required periodic bond hearings or imposed six-month detention limitations, did not address the constitutional challenge to unlawful detention. As this Court noted in *Lopez,* "[The Jennings] Court expressly left open the constitutional due process question and remanded the case with instructions that

the lower courts consider the constitutional issue in the first instance." *Lopez*, 2025 U.S. Dist. Lexis 188232, at *23.

Respondents' reliance on *Gisbert v. U.S. Att'y Gen.*, 988 F.2d 1437, 1442 (5th Cir. 1993) – a case from 1993 – to claim that Mr. Zahid is not entitled to any due process rights under 8 U.S.C. §1225(b) is particularly puzzling and again flies in the face of the decisions listed above. While the Court addressed whether the "excludable" aliens had a right to being released under certain provisions, it did not address or conclude that inadmissible aliens lack all constitutional due process rights. Moreover, in addressing the duration of detention in this specific case, the Court in fact balanced various due process considerations – whether the detention was "imposed for the purpose of punishment or whether [was] merely incidental to another legitimate purpose." *Id.* at 1441. Ultimately, the Court recognized that the government had asserted a legitimate purpose in the detention of the permanently excludable aliens (all of whom had been convicted of various crimes including murder) because they were deemed to be a security risk. *Id.* at 1441-42; *citing Palma v. Verdeyen*, 676 F.2d 100, 103 (4th Cir. 1982) ("indefinite detention of a permanently excludable alien deemed to be a security risk, who is refused entry to other countries, is not unlawful").[1]

[1] It is also noteworthy that this case was decided before *Zadvydas*, which recognized further substantive due process interests discussed above.

For the same reasons, the Government's reliance on *Rios v. INS* – a one-page decision addressing detention of an excludable alien with an extensive criminal history - does not apply. *Rios v. INS*, 324 F.3d 296 (5th Cir. 2003) ("The record shows that he has received parole review but has been repeatedly denied release on account of his criminal history and disciplinary record").[2]

In short, the Supreme Court and numerous circuit and district courts have all recognized that unreasonable detention can raise legitimate and important constitutional due process challenges – regardless of the alien's status as an "inadmissible arriving alien" under 8 U.S.C. § 1225(b) or in removal proceedings under 8 U.S.C. § 1231.

II. Mr. Zahid's Prolonged Indefinite Detention Violates His Due Process Rights and Serves No Legitimate Government Interest

Contrary to Respondents' claim, Mr. Zahid has languished in prolonged indefinite detention for nearly two years. Mr. Zahid, who has litigated good faith asylum and Convention Against Torture claims, did nothing to delay proceedings. As set forth in Mr. Zahid's petition, this unnecessary and prolonged detention is unconstitutional under numerous precedents in this Court and elsewhere. *See* Zahid Petition for Habeas Corpus, ¶¶61 *L.N.*, 5:18-MC-932, No. 32, at *21 (*quoting*

[2] Government also relies on an unpublished single page decision in *Parra-Parra v. Ashcroft,* 96 F. App'x 178 (5th Cir. 2004) (without precedential value per the opinion) and provides no analysis on the due process claim other than petitioner had had parole revoked (without details in the decision why) and his claims appear to relate to procedural claims that he was denied periodic reviews to the INS's custody decision.

Perez v. Decker, 2018 U.S. Dist. LEXIS 141768, 2018 WL 3991497 (S.D.N.Y. Aug. 20, 2018)).

As noted in Mr. Zahid's petition, his almost 21-month detention is unreasonable and unnecessary in violation of his due process rights. *See e.g. Tuser E. v. Rodriguez*, 370 F. Supp.3d 435, 442 (D.N.J. 2019) (20-month detention under § 1225(b) violated due process); *Wang v. Brophy*, 2019 U.S. Dist. LEXIS 1826, 2019 WL 112346, at *3 (W.D.N.Y. Jan. 4, 2019) (two-year detention was "unreasonable in violation of the Due Process Clause"); *Jamal A. v. Whitaker*, 358 F. Supp.3d 853, 859 (D. Minn. 2019) (19-month detention without bond hearing violated due process); *Lett v. Decker*, 346 F. Supp.3d 379, 387-88 (S.D.N.Y. Oct. 10, 2018) (10-month detention where delay was attributable to IJ violated due process); *Ahad v. Lowe*, 235 F. Supp.3d 676, 686-88 (M.D. Pa. 2017) (20-month detention "whose on-going duration is unknown" violated due process); *Maldonado v. Macias*, 150 F. Supp.3d 788, 811 (W.D. Tex. 2015) (26-month detention without bond hearing violated due process).

While Respondents point to a number of cases involving prolonged detention, all are distinguishable on their facts and affirm the requirement that aliens are entitled to individualized assessments at bond hearings to address whether the government has a legitimate interest in detaining them. For example, *Casas-Castrillon v. DHC* involved the detention of a permanent legal alien who

was initially subject to removal for commission of crimes "of moral turpitude." 535 F.3d 942 (9th Cir. 2008). While detention originally fell within 8 U.S.C. §1226(c) (mandatory authority to detain criminals), it shifted to 8 U.S.C. § 1226(a), which provides the government discretionary authority to detain an alien while final removal proceedings are pending. The Circuit Court noted that, contrary to the Government's insinuation, a "seven-year detention certainly qualifies as prolonged by any measure . . . ." *Id.* at 948. While the Court recognized that the Government retained authority to detain petitioner under 8 U.S.C. § 1226(a)'s language, the Court concluded that petitioner was entitled to contest his detention in a "neutral forum" where the government was required to establish that he was a flight risk or danger to the community. *Id.* at 948 ("[A] prolonged detention [under the statute] must be accompanied by appropriate safeguards, including a hearing to establish whether releasing the alien would pose a danger to the community or a flight risk." *Id.*

Similarly, *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008), involving a three-year detention under 8 U.S.C. §1226(c) affirmed the that a prolonged detention must be supported by the procedural protections of individualized assessments at bond hearings where the government must establish that the alien is a flight risk or security threat. In that case, the Circuit Court rejected the petitioner's habeas claim noting that he had in fact received three individualized

bond hearings – two in front of an immigration judge and a third at the direction of the district court which in fact directed release for $15,000 bond (an amount that petitioner was unable to pay). *Id.* at 1065-66.

Moreover, contrary to Respondents' claim (Respondents' Brief, pp.12-13), removal proceedings are not reasonably foreseeable in this case – because of delays beyond Mr. Zahid's control, specifically the government shut down. While Mr. Zahid filed his own brief on appeal on July 27, 2025, Respondents requested an extension of time to respond to Mr. Zahid's initial brief, and the government shutdown stopped all action on the case from September 30, 2025 to December 17, 2025, when the Fifth Circuit granted an order reopening the case and establishing a briefing schedule. Mr. Zahid, through counsel, will be submitting a brief in that consolidated appeal on or before the deadline of December 31, 2025. Given the long period of the government shutdown it is highly likely that the Fifth Circuit's ability to adjudicate his appeal will be significantly delayed as well.

Nor can Mr. Zahid be punished as the cause of the delay, as Respondents suggest. Respondents' Brief, p.19. Mr. Zahid has asserted legitimate and good faith claims in his appeal of his Convention Against Torture claims that ultimately may mean the difference between his life or his death. *See* Zahid Petition, ¶¶66-68. Numerous courts have recognized that good faith appeals do not serve as a basis to punish petitioners with lengthy detention. *See Chavez-Alvarez v. Warden York*

County Prison, 783 F.3d at 476 (noting that petitioner's good faith challenges in proceedings and appeal, regardless of merit, were legitimately raised and could not serve as basis to "effectively punish" an alien for choosing to exercise legal challenges); *Sajous v. Decker*, 2018 U.S. Dist. LEXIS 86921 at *11 (S.D.N.Y. May 23, 2018)("The Court need not inquire into the strength of the defenses—it is sufficient to note their existence and the resulting possibility that the Petitioner will ultimately not be removed, which diminishes the ultimate purpose of detaining the Petitioner pending a final determination as to whether he is removable.").

The Government bears the burden of proving by "clear and convincing" evidence that Mr. Zahid poses some kind of flight risk or danger to the community. Nevertheless, it has failed to state any legitimate interest in further detaining Mr. Zahid, including that he poses any kind of danger or flight risk. *N.Z.M. v. Wolf*, No. 5:20-CV-24, 2020 U.S. Dist. LEXIS 93387 at *5; *see also Anariba v. Shanahan*, 2017 U.S. Dist. LEXIS 117032 at *11 (S.D.N.Y. July 26, 2017) ("It is particularly important that the Government be held to the 'clear and convincing' burden of proof in the immigration detention context because civil removal proceedings, unlike criminal proceedings, 'are nonpunitive in purpose and effect.'"). *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 475 (3d Cir. 2015) (recognizing that even in the context of aliens convicted of crimes, "[t]he primary point of reference for justifying the alien's confinement must be whether detention

is necessary to achieve the statute's goals: ensuring participating in the removal process, and protecting the community from the danger he or she poses.").

Mr. Zahid passed all required security clearances. At his initial individual hearing before the immigration judge, the Government indicated that Mr. Zahid's clearances were complete and had undergone all relevant background and security checks. He has never committed any crimes, and has no reason to flee or pose a flight risk.

III. Mr. Zahid Has Established a Right to An Individualized Bond Hearing to Address His Prolonged Indefinite Unjustifiable Detention

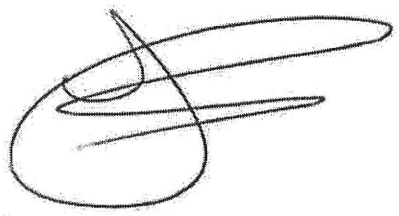
The Government's claim that Mr. Zahid is not entitled to a bond hearing disregards the mass of constitutional authorities that all recognize that he is entitled to an individualized bond hearing in this case.

Where, as here, due process concerns raised by the indefinite detention of unreasonable detention, courts throughout this Circuit and beyond have recognized that the alien is entitled to some measure of due process through bond hearings - regardless of whether the alien is admitted or considered inadmissible and whether or not in pre- or post-removal settings. In this case, Mr. Zahid was never offered any type of opportunity – before through government review in detention or before a court – for a review of his detention. Given the scope of due process protections recognized above, Mr. Zahid is entitled to this due process regardless of his status under detention statutes 8 U.S.C. § § 1225(b) or 8 U.S.C. § §1231. *Maldonado v.*

Macias, 150 F. Supp.3d 788, 811 (W.D. Tex. 2015) (26-month detention under 8 U.S.C. § §1225(b) without bond hearing violated due process); *see also* Wang v. Brophy, 2019 U.S. Dist. LEXIS 1826, 2019 WL 112346, *at *3 (W.D.N.Y. Jan. 4, 2019); Lett v. Decker,* 346 F. Supp.3d 379, 387-88 (S.D.N.Y. Oct. 10, 2018) (holding that petitioner's nearly 10 months detention pursuant to §1225(b) without access to a bond hearing was unreasonable, and therefore unconstitutional).

CONCLUSION

For all these reasons, Mr. Zahid is entitled to due process protection against his prolonged, indefinite detention of nearly two years, including immediate release or, in the alternative, a bond hearing for due process on the government's claims.



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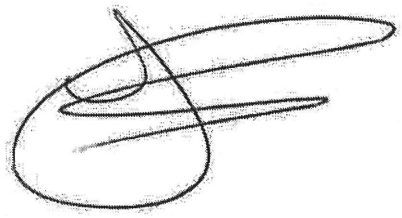
CERTIFICATE OF SERVICE

I certify that, on December 24, 2025, a true and correct copy of the foregoing was served via the Court's CM/ECF system on all counsel of record.



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