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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Toan Bao Nguyen,

Petitioner,

v.

Fred Figueroa, Eloy Detention Center;

John Cantu, Field Office Director,

Phoenix ICE; Todd Lyons, Director, U.S.

Immigration and Customs Enforcement

(ICE), Kristi Noem, Secretary of

Homeland Security; Pamela Bondi, U.S.

Attorney General,

Respondents.

Case No:

Petition for Writ of Habeas Corpus Under  
28 U.S.C. § 2241

**I. Introduction**

Petitioner Toan Bao Nguyen, a lawful permanent resident of the United States for over 16 years, has been detained by U.S. Immigration and Customs Enforcement (“ICE”)

at the Eloy Detention Center in Arizona since March 9, 2025, without any opportunity for release on bond. He is held under the mandatory detention provision of 8 U.S.C. § 1226(c) due to a non-violent criminal conviction that renders him deportable, and he is currently pursuing relief from removal (cancellation of removal) on appeal. His continued detention – now exceeding eight months – with no individualized bond hearing violates his right to due process under the Fifth Amendment. Petitioner, by and through undersigned counsel Daniel M. Huynh, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 ordering his immediate release or, at minimum, a prompt individualized bond hearing. Prolonged, indefinite detention without a hearing is not justified in Petitioner’s case and is unconstitutional absent a finding that he poses a flight risk or danger – a finding that has never been made. Petitioner has deep family and community ties, a long history of lawful residence, and no history of violence, underscoring the *urgency and necessity* of judicial intervention to remedy his unlawful confinement.

## **II. Jurisdiction and Venue**

This Court has jurisdiction under 28 U.S.C. § 2241 to grant habeas corpus relief to a person in federal custody in violation of the Constitution or laws of the United States. Petitioner is currently detained in Eloy, Arizona, within the District of Arizona, so venue is proper in this Court. Petitioner’s claim is solely a challenge to the legality of his detention and the failure to provide a bond hearing, not a challenge to his removal order (which is not yet final). Accordingly, this petition is not barred by 8 U.S.C. § 1252(b)(9) or other jurisdiction-stripping provisions, because Petitioner has no other effective avenue to seek release from this prolonged detention. He has exhausted any available administrative

remedies to the extent required – notably, there is no administrative procedure to obtain a bond hearing under § 1226(c), and the Board of Immigration Appeals (“BIA”) cannot redress the constitutional claim raised here. The Suspension Clause guarantees habeas corpus review of such detention where no other remedy exists. This Court therefore has the authority to order Petitioner’s release or a bond hearing to rectify the ongoing due process violation.

### III. Parties

1. Petitioner: Toan Bao Nguyen ( [REDACTED] ) is a 37-year-old lawful permanent resident of the U.S. who has lived in this country since 2009. Before his detention, Mr. Nguyen resided in Southern California with his wife and their one U.S.-citizen child (all of whom depend on him) and has extensive family ties in the community. He has no aggravated felony convictions and no felony crimes of violence, and all of his convictions are low-level misdemeanors; no case involved serious bodily injury or use of a weapon. In 2021, he was convicted of a low-level, non-violent offense (a controlled substance possession offense) for which he served a short jail sentence. The government’s charge of removability rests on a single 2021 misdemeanor drug conviction in case [REDACTED] under HS 11377(a). Toan’s broader criminal history consists of California misdemeanors – including drug possession, violation of court orders, and domestic-related offenses – but no aggravated felony or felony crime of violence as defined in the INA. He poses no threat to public safety.

2. Respondents: Petitioner is in custody of the Phoenix Field Office of ICE. The Respondents, properly named in their official capacities, include the warden or facility administrator of Eloy Detention Center (Petitioner's immediate custodian) and other appropriate federal officials responsible for his detention (such as the Field Office Director for ICE Enforcement and Removal Operations in Arizona, the Director of ICE, the Secretary of Homeland Security, and the U.S. Attorney General). Respondents have custody over Petitioner and the legal authority to release him.

#### **IV. Factual Background**

##### **1. Petitioner's Long-Term U.S. Residence and Family Ties**

Toan Bao Nguyen has been a lawful permanent resident (LPR) since 11/29/2009, when he obtained a green card through his U.S. citizen father. He has lived in the United States for most of the past 16 years. Although he spent approximately 18 months in Vietnam from October 2022 to April 2024 for family reasons, his primary residence, close family, and community ties have always been in the United States. He is a devoted husband and father – his wife is a U.S. citizen and together they have one young child, a U.S. citizen, who depends on Petitioner for financial and emotional support. Petitioner's criminal record consists of non-violent misdemeanor drug-related and related court-order violations (including convictions under Cal. Health & Safety Code §§ 11377(a) and 11364(a)). For the conviction that forms the basis of his removability, he served a short local jail sentence of a 10-day local jail sentence and a term of probation. He accepted responsibility and served a brief sentence of a 10-day in local jail. Other than this incident, Petitioner has been

a law-abiding resident, consistently employed, and actively involved in his local church and community. Numerous family members, including his elderly parents (both U.S. residents), siblings, and in-laws, live in Southern California. Petitioner's roots in the United States are strong although he spent an extended period in Vietnam from October 2022 to April 2024 for family reasons, his primary residence and close family ties are in the United States, where he has lived for most of his adult life.

## **2. Immigration Proceedings and Mandatory Detention:**

On or about March 9, 2025, ICE arrested Petitioner and placed him in immigration detention pursuant to a previously-issued Notice to Appear charging him as removable for a controlled-substance conviction. Since that date he has been continuously detained at Eloy Detention Center in Arizona, and he has never been afforded an individualized bond hearing. The Department of Homeland Security ("DHS") charged him as removable for a controlled substance offense. Since March 9, 2025, ICE has detained Mr. Nguyen under the mandatory detention provisions of the INA (whether characterized as § 1226(c) or § 1225(b)), and has refused to provide him any individualized bond hearing. The Immigration Court has not afforded him a bond hearing at any point during this custody. An Immigration Judge ("IJ") has no authority to set bond for an alien detained under § 1226(c), so Petitioner was not given any bond hearing when he was taken into custody. He has remained detained ever since (over eight months and counting).

## **3. Relief Application – Cancellation of Removal**

Petitioner conceded his removability for the 2021 conviction but applied for Cancellation of Removal for Certain Permanent Residents under INA § 240A(a) (8 U.S.C.

§ 1229b(a)). This form of relief is available to LPRs who have at least 5 years of lawful permanent residence, 7 years of continuous residence, and no aggravated felony conviction. Petitioner meets these statutory criteria. At an individual hearing on September 19, 2025, Petitioner presented evidence of his rehabilitation, his lengthy residence and positive equities (family hardship, community service), and the minor nature of his offense, requesting that the IJ exercise discretion to cancel his removal and allow him to remain in the U.S. with his family. However, on September 19, 2025, the Immigration Judge held an individual hearing and denied Petitioner's application for LPR cancellation of removal, ordering him removed to Vietnam. Petitioner timely appealed to the BIA, which has accepted the appeal and has not yet issued a decision. The IJ's decision acknowledged Petitioner's positive equities but gave greater weight to the drug conviction. Petitioner promptly appealed this removal order to the Board of Immigration Appeals on November 2, 2025. The BIA appeal remains pending as of the filing of this Petition, and no final decision on Petitioner's removal has been made.

#### **4. Prolonged Detention Without Bond Hearing**

Throughout the entirety of his immigration case – from March 9, 2025 to present (late November 2025) – Petitioner has never received an individualized custody hearing. At his initial master calendar hearing, he requested release on bond, but the IJ informed him that under 8 U.S.C. § 1226(c) the court lacked jurisdiction to release him. Consequently, Petitioner has now been jailed in civil immigration detention for over eight months with no opportunity to contest his confinement. His detention will likely continue many more months while the BIA adjudicates his appeal (BIA appeals in non-detained

cases often take over a year). If the BIA affirms the removal order, Petitioner may then seek review in the Ninth Circuit and a stay of removal, potentially extending his detention further. In other words, Petitioner faces the very real prospect of a year or even multiple years in detention – all without a bond hearing – solely because he is exercising his legal right to appeal, despite having strong ties and a viable claim for relief. This prolonged deprivation of liberty has caused severe hardship to Petitioner and his family: he has missed over eight months of watching his children grow, his wife has struggled to support the household alone, and Petitioner's health has begun to suffer under the stress and conditions of extended detention. Yet at no point has any neutral decision-maker evaluated whether Petitioner's continued detention is justified by any legitimate government interest (such as risk of flight or danger to the community).

#### **5. No Risk of Flight or Danger**

Petitioner does not pose a flight risk or a danger – facts that could readily be confirmed if a bond hearing were held. Petitioner has every incentive to appear for all immigration proceedings, as he is fighting to remain with his family. He timely pursued an appeal rather than attempting to abscond. His stellar record of compliance (no escape attempts, no disciplinary issues in custody) demonstrates respect for the process. Moreover, numerous family members are willing to ensure his appearance and even post a substantial bond if required. Petitioner likewise poses no danger to the community: his single conviction was non-violent, and he has no history of violent or threatening conduct. While detained at Eloy, he has been a model detainee with no incidents. If released, he would reside with his U.S. citizen wife and young children and continue gainful employment at

his brother's business, as that job remains available to him. Community members (including his pastor and employer) have written letters attesting to Petitioner's good character and urging his release. These facts make clear that mandatory detention is not necessary in Petitioner's case – he can be safely released under appropriate conditions.

In summary, Petitioner's continued lock-up for over eight months without any hearing is fundamentally unfair and not tailored to any legitimate need. It is, effectively, punitive indefinite detention of a longtime lawful resident who has strong ties and is not dangerous – a situation the Constitution does not tolerate. We now turn to the legal grounds demonstrating why habeas relief is warranted.

## **V. Legal Grounds for Relief: Prolonged Detention Without a Bond Hearing Violates Due Process**

### **1. Due Process Limits Prolonged Civil Detention**

The Fifth Amendment's Due Process Clause safeguards individuals – including noncitizens – from unwarranted deprivation of liberty. Freedom from bodily restraint lies at the core of the liberty interest protected by due process. Civil immigration detention is permissible only to the extent it serves valid regulatory purposes (such as preventing danger or flight during removal proceedings) and includes adequate procedural protections. Detention that becomes unreasonably prolonged or arbitrary violates due process, especially when it lacks a meaningful opportunity for the detainee to contest the need for continued confinement. The Supreme Court and lower courts have repeatedly recognized that indefinite or prolonged immigration detention raises serious constitutional concerns. Notably, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court construed the post-

removal-order detention statute (8 U.S.C. § 1231) to contain an implicit temporal limitation: six months was deemed a “presumptively reasonable” period of detention to effectuate removal, after which continued detention would be constitutionally suspect. The Court held that § 1231 does not authorize indefinite detention; if removal is not reasonably foreseeable after about six months, due process requires a further justification or the alien must be released. Although *Zadvydas* concerned detention after a removal order, its constitutional reasoning applies a fortiori to pre-removal detention under § 1226: the government’s interest is preventive, not punitive, and detention cannot continue beyond a reasonable period without adequate process.

Importantly, the Supreme Court in *Demore v. Kim*, 538 U.S. 510 (2003), upheld the constitutionality of § 1226(c)’s mandatory detention only for the “limited period” necessary for the brief completion of removal proceedings. In *Demore*, the Court noted that the average duration of § 1226(c) detention was relatively short – about 47 days for cases without an appeal, and around 4 to 5 months for cases with an appeal – and thus found that Congress could require detention for that temporary period without individualized bond hearings in order to ensure deportable criminal aliens appeared for their proceedings. *Demore*, 538 U.S. at 528–30. However, *Demore* expressly relied on the assumption that detention under § 1226(c) is finite and typically brief. The Court distinguished *Zadvydas* on that basis, highlighting that § 1226(c) detention has an “obvious termination point” when the proceedings conclude (unlike post-order detention) and emphasizing that prolonged detention was not at issue in *Demore*. Notably, Justice Kennedy’s concurrence in *Demore* cautioned that *due process may require a hearing for*

*an individual whose detention becomes unreasonably prolonged* – suggesting that in “*improper circumstances, such as unreasonable delay by the government,*” a detainee could seek habeas relief. 538 U.S. at 532 (Kennedy, J., concurring). Thus, *Demore* did not sanction indefinite or excessively long detention without review; it upheld mandatory detention only for the “brief period” reasonably necessary to promptly conclude removal proceedings. When that period stretches beyond reason, *Demore*’s rationale no longer applies and due process concerns become paramount.

Here, Petitioner’s case starkly illustrates the scenario *Demore* did not address: detention that has far exceeded the “brief” period – already 8 months and counting, with no end in sight – and has become unreasonably prolonged. What was meant to be a narrow exception (mandatory detention for a short period) has turned into open-ended incarceration. Due process demands that at some point, the government justify the continued detention of an individual through a neutral hearing. The categorical denial of bond hearings under § 1226(c) cannot be constitutionally applied to detain Petitioner indefinitely. As the detention stretches on, the risk of an erroneous deprivation of liberty escalates, and procedural safeguards are required to ensure that an individual’s liberty is not unjustifiably restrained.

## **2. Multiple Courts Recognize a Constitutional Requirement of Bond Hearings Once Detention Becomes Prolonged**

In the wake of *Demore* and *Zadvydas*, the federal courts – including the Ninth Circuit – have grappled with the question of how long is too long for immigration detention without bond review. While the Supreme Court in *Jennings v. Rodriguez*, 138 S. Ct. 830

(2018), held that the immigration statutes (including § 1226(c)) could not be reinterpreted to impose a hard time limit on detention (thereby overturning the Ninth Circuit's prior statutory 6-month bond hearing rule), the Court in *Jennings* did not decide the constitutional issue, remanding it for lower courts to address in the first instance. *Jennings* thus preserves detainees' ability to raise as-applied due process challenges to prolonged detention. Since *Jennings*, a consensus has emerged in several circuits that unreasonably prolonged mandatory detention without a hearing violates due process, and that courts must conduct a fact-specific inquiry to determine when a hearing is required.

The Ninth Circuit has long been a leader in safeguarding noncitizens' due process rights in prolonged detention. In *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), the Ninth Circuit recognized that when immigration detention becomes prolonged, due process entitles the detainee to a bond hearing at which the government bears the burden to justify further detention. Similarly, in the *Rodriguez* class action litigation (pre-*Jennings*), the Ninth Circuit held that detention beyond six months is "prolonged" and triggers the right to a bond hearing under due process principles. In *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) ("Rodriguez II"), and 804 F.3d 1060 (9th Cir. 2015) ("Rodriguez III"), the Ninth Circuit affirmed injunctions requiring that noncitizens detained under §§ 1226(c), 1225(b), or 1226(a) receive bond hearings after 6 months of detention, and further requiring that the government prove by clear and convincing evidence that continued detention is warranted because the person is a flight risk or a danger. Although *Jennings* later vacated the *Rodriguez* injunction on statutory grounds, the Ninth Circuit's underlying constitutional concern remains instructive: prolonged detention without a hearing raises

grave due process problems. Indeed, even after *Jennings*, the Ninth Circuit has indicated that its prior constitutional avoidance rulings were driven by the serious constitutional doubt arising from lengthy no-hearing detention.

Other circuit courts to address this issue post-*Jennings* have overwhelmingly agreed that due process imposes a limit on mandatory detention. For example, the Third Circuit held that detention under § 1226(c) that exceeds one year was likely unconstitutional absent a bond hearing, applying a case-by-case analysis (*German Santos v. Warden Pike County*, 965 F.3d 203, 210–11 (3d Cir. 2020)). The First Circuit similarly ruled that a noncitizen’s 16-month mandatory detention without a hearing was unconstitutional and required a bond hearing (*Hernández-Lara v. Lyons*, 10 F.4th 19, 42 (1st Cir. 2021)). Most recently, the Second Circuit in *Black v. Decker*, 2024 WL 2789282 (2d Cir. Apr. 5, 2024), held unequivocally that “a noncitizen’s constitutional right to due process precludes unreasonably prolonged detention under § 1226(c) without a bond hearing,” and it affirmed a habeas grant ordering a bond hearing with the burden on the government. The Second Circuit applied the balancing test of *Mathews v. Eldridge* and concluded that after a certain point, the private interest in liberty and the risk of erroneous deprivation far outweigh the government’s interest in categorical detention. These courts reject any notion that the government can detain someone for years on end, under § 1226(c), without any individualized review.

While there is no fixed timeframe that automatically triggers a hearing in all cases, courts have provided guidance. Many have treated the 6-month mark as a crucial threshold: detention past six months becomes presumptively prolonged and must be justified. The

Ninth Circuit itself, in the context of post-order detention, observed that “as a general matter, detention is prolonged when it has lasted six months and is expected to continue more than minimally beyond six months.” *Diouf v. Napolitano*, 634 F.3d 1081, 1092 & n.13 (9th Cir. 2011). Multiple courts have recognized that detention approaching or exceeding a year, without a meaningful bond hearing, raises grave due-process concerns, particularly where delays are not attributable to the noncitizen. See, e.g., *German Santos v. Warden Pike County Corr. Facility*, 965 F.3d 203, 211–15 (3d Cir. 2020) (collecting cases and holding that 2½-year § 1226(c) detention without bond hearing was unconstitutional; emphasizing that “as detention grows longer, what counts as a ‘reasonable time’ ... shrinks” and length is a “most important factor”); *Black v. Decker*, 103 F.4th 133, 144–49 (2d Cir. 2024) (concluding that about 14 months of mandatory § 1226(c) detention without adequate bond procedures violated due process and requiring a bond hearing with clear-and-convincing standard and consideration of alternatives to detention); *Hernández-Lara v. Lyons*, 10 F.4th 19, 39–43 (1st Cir. 2021) (holding that due process demands robust bond procedures—including a clear-and-convincing burden on the government and consideration of ability to pay—for noncitizens in prolonged detention); *Diouf v. Napolitano (Diouf II)*, 634 F.3d 1081, 1086–92 (9th Cir. 2011) (recognizing that § 1231 detention that is “prolonged,” typically beyond six months, requires an individualized hearing before a neutral decisionmaker). Thus, somewhere between six months and a year of detention – especially when removal is not imminent – due process requires a safety valve in the form of a bond hearing. Eight months (Petitioner’s detention length now) is well past the point where continued categorical detention is suspect. Indeed, courts have

granted habeas relief for comparable or shorter detention periods. For instance, in *Viruel Arias v. Choate*, a district court held that a 16-month mandatory detention violated due process and ordered a bond hearing, noting that even a prior custody review did not suffice to dispense with the need for a full bond determination. In Petitioner's case, there hasn't even been a prior review – *no judge has ever assessed whether his detention is necessary*. Such unreviewed, prolonged deprivation of liberty is precisely what the Due Process Clause guards against.

### **3. Petitioner's Detention Has Become Unreasonably Prolonged and Unjustified:**

To determine whether detention has become “unreasonably prolonged” such that due process demands a bond hearing, courts examine several factors on a case-by-case basis. These factors include, inter alia:

- (1) Length of detention: How long the person has already been detained.
- (2) Reasons for the delay: Whether the detainee has prolonged the proceedings through bad-faith appeals or whether the delay is due to normal administrative processes or government action.
- (3) Likelihood of removal: The strength of the government's case on removability and the detainee's prospects of ultimately being removed. (If relief is pending or likely, prolonged detention is less justified.)
- (4) Conditions of detention compared to criminal incarceration: Whether the nature of confinement has become indistinguishable from punishment.

- (5) The duration of detention compared to the underlying offense: For LPRs with criminal convictions, a stark disparity between the time served for the crime and time spent in immigration detention can signal excessiveness.

Analyzing these factors here demonstrates that Petitioner's ongoing detention is unreasonably prolonged and no longer serves its intended purpose, rendering it unconstitutional absent a hearing:

- Length of Detention: Petitioner has been detained over 8 months (since March 9, 2025). This far exceeds the 6-month benchmark that the Supreme Court in *Zadvydas* deemed presumptively reasonable, and it is approaching the outer limit (one year) that even the Ninth Circuit suggested is generally the point at which detention becomes unreasonable absent a hearing. By the time this habeas is heard, Petitioner's detention may well surpass nine or ten months, with no guarantee of release anytime soon. Such a prolonged period of incarceration, without any individualized review, is extraordinary and courts have rarely countenanced it. Indeed, in *Rodriguez II/III*, the Ninth Circuit was concerned with detentions exceeding 6 months as being constitutionally problematic. Petitioner's 8-month (and counting) detention squarely falls into the category of "prolonged" by any reasonable measure.
- Reasons for the Delay: The timeline of Petitioner's case shows that Petitioner is not responsible for any undue delay. He has pursued legitimate avenues of relief (cancellation of removal, appeal to the BIA) in a timely manner. There is no indication of dilatory tactics; to the contrary, Petitioner has an appeal pending

because he has a colorable claim for relief, and he filed that appeal promptly. The duration of proceedings is largely due to the normal time required for immigration adjudications – IJ hearing schedules and now the BIA’s appellate backlog – none of which is Petitioner’s fault. Courts have distinguished between delays caused by the immigrant (e.g. frivolous motions purely to stall) versus delays inherent in the system or caused by the government. Here, any delay beyond the initial few months is attributable to the immigration court process and the government’s decision to oppose relief, not any bad faith by Petitioner. Notably, had the government not opposed cancellation of removal (or if it agreed to reasonable bond), Petitioner might not be detained at all. Petitioner should not be penalized for exercising his legal right to appeal an order that would separate him from his family potentially forever. The Ninth Circuit has observed that “lawfully pursuing the right to remain in the United States” is not a valid reason to ratchet up the government’s interest in detention. Thus, this factor weighs heavily in Petitioner’s favor: the length of his detention has stretched out due to circumstances beyond his control, and he has been in custody far longer than the typical case through no dilatory behavior of his own.

- Likelihood of Removal: Petitioner has a pending appeal with the BIA on his cancellation of removal claim. This means there is a real possibility that the removal order could be reversed or remanded. Petitioner’s cancellation case is strong – he meets all statutory criteria and presents compelling equities (long-term residence, rehabilitation, U.S. citizen family who would face extreme hardship if he were deported). The IJ denied relief by weighing factors, but reasonable minds (or the

BIA on de novo review) could disagree on the discretionary balance. It is certainly *not* a foregone conclusion that Petitioner will be removed. If Petitioner wins his appeal, he will remain in the U.S. as an LPR, entirely negating the justification for detaining him in the first place. Even if he loses at the BIA, he may seek judicial review; and if a court grants a stay, his detention would shift to the § 1226(a) framework (since he would no longer be under § 1226(c) after the BIA decision, per *Hechavarria v. Sessions*, 891 F.3d 49 (2d Cir. 2018) (holding those with a court stay of removal are detained under § 1226, not § 1231)). In short, Petitioner's ultimate removability is uncertain, undermining the rationale for keeping him locked up. The government's interest in assuring removal is weaker when removal is not imminent or certain. Meanwhile, the human cost to Petitioner of continued detention is enormous. This factor thus favors a bond hearing: before further depriving Petitioner of liberty, there should be an inquiry into whether his detention is justified in light of the chance he may never be removed if relief is granted.

- Conditions of Detention vs. Punishment: Petitioner is jailed in a secure immigration detention center (Eloy) that is effectively a prison. Eloy Detention Center is operated by a private prison company (CoreCivic) and holds detainees in conditions similar to those of criminal inmates – with cells or dormitories, 24/7 confinement, strict discipline, and minimal freedoms. Civil immigration detention is ostensibly non-punitive, yet Petitioner's experience has been indistinguishable from punishment. In fact, Eloy has been described as one of the most severe ICE facilities, with extensive use of lockdowns and a troubling history of detainee mistreatment. While

Petitioner has not been convicted of any offense beyond the 2021 conviction for which he already served his sentence, he remains incarcerated *long after completing his criminal punishment*. The conditions of confinement he endures now are “not meaningfully different from criminal punishment,” a factor indicating that due process protections are needed. Keeping Petitioner detained for months on end in this manner, without a hearing, essentially imposes additional punishment without trial. This offends due process. The Supreme Court has warned that preventive detention becomes suspect when it approaches punitive conditions or duration. Thus, the nature of Petitioner’s confinement supports granting relief or at least a bond hearing review.

- Duration vs. Underlying Criminal Sentence: Petitioner’s 8-month immigration detention is now longer than the 2-month jail term he served for his offense. If he remains detained several more months pending appeal, he will soon have been locked up far longer for immigration purposes than for the crime itself. This imbalance is significant. The civil detention should not surpass the criminal penalty to which Petitioner was sentenced (especially given that the criminal justice system, with full due process, deemed 60 days sufficient punishment for the offense). Yet absent intervention, Petitioner might spend a year or more in ICE custody. Courts consider such a disparity a sign that continued detention may be excessive and unjustified. In essence, Petitioner is suffering a greater deprivation of liberty from civil detention (with no hearing rights) than he did from the actual criminal

conviction that triggered these proceedings – an outcome difficult to reconcile with fundamental fairness.

In sum, by every relevant measure, Petitioner’s continued detention has become prolonged, unreasonable, and unjustifiable without an individualized bond hearing. The length is excessive, Petitioner is not to blame for delays, his removal is far from assured, his confinement conditions are punitive in effect, and he has already been detained longer than his criminal sentence. Each day that passes heightens the due process injury. This Court’s intervention is urgently needed to put an end to this unconstitutional deprivation of liberty.

#### **4. The Government’s Interests Do Not Outweigh Petitioner’s Liberty Interest Absent a Hearing**

In evaluating due process, the Court may balance the individual’s interest against the government’s interests and consider the value of additional safeguards (the *Mathews v. Eldridge* test). Here, Petitioner’s interest in freedom is obviously profound – the interest in avoiding erroneous, unnecessary incarceration. On the other side, the government’s interests are ensuring Petitioner’s appearance at proceedings and protecting the community. *Critically, those interests can be addressed by means less draconian than continued imprisonment without review.* Petitioner does not dispute that the government had a valid interest in initially detaining certain categories of noncitizens upon commencement of removal proceedings. But as time goes on, the generalized justifications for mandatory detention yield to the individual’s right to be heard. The government’s interest does not increase with the length of detention, but the individual’s liberty interest

certainly does. In fact, one Ninth Circuit judge pointed out the troubling notion that under the government's view, "*the government's interest increases with the length of detention, while the individual's liberty interest does not,*" a rationale that would make it nearly impossible for a due process challenge to ever succeed. We must reject that reasoning – due process is a flexible concept that demands greater protection as the period of confinement grows and the "risk of erroneous deprivation" becomes intolerable.

Providing a bond hearing poses minimal burden on the government and greatly reduces the risk of error. At such a hearing, an Immigration Judge can examine Petitioner's actual circumstances and determine if he truly poses a flight risk or danger. If the government has evidence of risk, it can present it; if not, Petitioner can be released under supervised conditions. The value of this procedural safeguard is enormous – it is the difference between liberty and continued jail for someone who may very well not need to be detained. The Ninth Circuit has noted, in the context of prolonged detention, that "the value added by another hearing is great" especially where circumstances (like a detainee's health or family ties) strongly favor release. Here, an IJ's fresh look would likely confirm that Petitioner can safely be released. On the other hand, the government's administrative burden in holding a single hearing is slight, and its interest in categorical detention is not compelling when applied to someone like Petitioner, who has demonstrated good behavior and has substantial equities. The cost-benefit analysis under *Mathews* strongly favors a hearing: the incremental burden on the government is minimal, the benefit to ensuring correct decisions is considerable, and no statute forbids such a hearing (*Jennings* addressed only statutory interpretation, not the constitutionality of providing a hearing as a remedy).

Moreover, alternative conditions (bond, check-ins, maybe even electronic monitoring if truly necessary) exist to mitigate any concern short of imprisonment. The government's legitimate aims can be met without keeping Petitioner behind bars. Continuing to detain him without giving him a chance to be heard is excessive and unnecessary.

Finally, prolonged detention without a hearing offends fundamental principles of justice. Our legal system ordinarily does not jail people for long periods without a neutral adjudication of necessity. Even persons charged with serious crimes are entitled to bail hearings. Yet Petitioner, a green-card holder with a minor conviction, has been jailed for eight months with fewer procedural protections than an accused criminal. The Fifth Amendment will not tolerate such an anomaly indefinitely. As the Supreme Court cautioned in *Zadvydas*, "the Constitution may well preclude granting an administrative body unreviewable authority to make determinations implicating fundamental rights". Here, DHS has effectively had unreviewable authority to detain Petitioner – that arrangement can no longer continue in harmony with due process. Petitioner does not ask this Court to second-guess the Executive's initial detention decision in every case; he asks only for the basic procedural safeguard of a bond hearing now that his detention has become so prolonged. Numerous courts, including within the Ninth Circuit, have granted such relief in habeas actions to avoid constitutional problems. This Court should do the same.

#### **5. Petitioner's Case Exemplifies Why a Bond Hearing is Necessary**

Petitioner's personal circumstances make clear that his continued detention is not justified. If a bond hearing were held, Petitioner would present abundant evidence of his

community ties, stable family support, lack of dangerousness, and commitment to obeying the law and attending all future proceedings. Indeed, the only reason he remains detained is the rigid mandate of § 1226(c) – a mandate that, as applied here, has far outlived its purpose. Petitioner’s removal proceedings are ongoing not because of any misconduct by him, but because he has a meritorious defense to deportation pending appeal. The categorical denial of release in such circumstances has been deemed likely unconstitutional by courts across the country. Equity and fairness demand that Petitioner at least be given a chance to show he merits release. Given his background, it is highly likely an IJ would set a reasonable bond or other conditions of release. The Court should not countenance a scenario where a presumptively viable cancellation case (and a person with deep American roots) languishes in jail for a year or more, only for Petitioner to potentially win his case and walk free after unnecessary months of suffering. If Petitioner loses his immigration case and is ordered removed, the government can effectuate removal at that time (and even detain him for a brief period to do so), but in the interim, there is no compelling reason to treat him as a prisoner. The status quo is tantamount to punishment before adjudication, which is anathema to our constitutional values.

For all the foregoing reasons, Petitioner’s continued detention without an individualized bond hearing violates the Due Process Clause. He is entitled to habeas relief.

**V. Request for Relief**

**WHEREFORE**, Petitioner respectfully requests that this Court grant the writ of habeas corpus and order the following relief:

- **Immediate Release:** Order Respondents to immediately release Petitioner Toan Bao Nguyen from immigration custody. The Court has authority to order outright release as a remedy for unlawful detention, especially given the extended duration and constitutional violation at issue. Petitioner is willing to comply with any reasonable conditions the Court or ICE may impose to ensure his appearance (such as periodic check-ins or bond). Immediate release would appropriately remedy the due process violation and reunite Petitioner with his family while his immigration case proceeds.
- **Alternative Relief – Bond Hearing:** In the alternative, Petitioner requests that the Court order Respondents to provide him with a prompt individualized bond hearing before an Immigration Judge. This hearing should occur within 7 days of the Court’s order (or as soon as practicable), to prevent further undue delay. At that hearing, the burden must be on the government to justify Petitioner’s continued detention by clear and convincing evidence, as the Ninth Circuit and other courts have required for prolonged detention cases. The Immigration Judge should be directed to make an individualized determination of whether Petitioner poses a flight risk or danger to the community. If the government fails to prove that Petitioner’s detention remains necessary, Petitioner should be released on appropriate terms (bond or conditions of supervision). The Court should also require that a written decision be issued by the IJ, so that there is an adequate record of the bond determination. This alternative relief – a bond hearing – is the bare minimum required by due process at this stage. It would provide Petitioner the procedural safeguard he has been denied,

and still give the government an opportunity to make its case for continued detention if it can.

Additionally, Petitioner requests that this Court retain jurisdiction to ensure compliance with its orders, and grant any other and further relief that justice may require. Given the ongoing harm to Petitioner's constitutional rights, we urge the Court to act expeditiously.

Dated: December 07, 2025

Respectfully Submitted,

/s/Daniel M Huynh

Daniel M Huynh, Esq.  
Counsel for Petitioner