UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Kendy DUVINE,

Petitioner,

v.

Laura HERMOSILLO, Acting Field Office Director of Enforcement and Removal Operations, Seattle Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; Bruce SCOTT, Warden of Northwest ICE Processing Center,

Respondents.

Case No. 2:25-cv-2583

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

INTRODUCTION

1. Petitioner Kendy Duvine is a noncitizen in the custody of Immigration and Customs Enforcement (ICE) at the Northwest ICE Processing Center (NWIPC). He has been detained for over six months pending removal proceedings.

2. During the entire time Mr. Duvine has been detained, he has never received a hearing before an immigration judge, or even a document placing him into removal proceedings. Respondents have let him languish in detention for no apparent reason and for no apparent purpose.

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

4. Accordingly, Petitioner asks this Court for a writ of habeas corpus to vindicate his right to due process and to seek relief from his continued arbitrary detention. He requests that the Court declare his continued detention unconstitutional as applied to him, and to order his release or, alternatively, a bond hearing where the government must prove that any continued detention is justified by clear and convincing evidence.

JURISDICTION

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

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

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7. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651.

9. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), 1252(f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Western District of Washington, the judicial district in which Petitioner is currently in custody.

11. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

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confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (Habeas corpus is "a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.").

PARTIES

14. Petitioner Kendy Duvine is a citizen of Haiti who entered the United States in November 2022. He is currently detained at NWIPC.

15. Respondent Laura Hermosillo is the Acting Director of the Seattle Field Office of ICE's Enforcement and Removal Operations division. As such, Ms. Hermosillo is Petitioner's immediate custodian and is responsible for his detention. She is named in her official capacity.

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

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

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

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

FACTUAL ALLEGATIONS

20. Kendy Duvine is a noncitizen from Haiti who entered the United States in November 2022. Duvine Decl. ¶ 4. Mr. Duvine fled Haiti based on his fear of persecution there. *Id.* ¶ 3.

21. Following his entry to the United States, Mr. Duvine was apprehended by immigration authorities and subsequently released. He moved to Florida, where he resided until his immigration arrest in May 2025. *Id.* ¶¶ 1, 4–5, 11.

22. In May 2023, Mr. Duvine submitted a timely asylum application to U.S. Citizenship and Immigration Services. That application remains pending. *Id.* ¶ 4.

23. In February 2025, Mr. Duvine was arrested following a car collision. *Id.* ¶ 5. Mr. Duvine's vehicle hit another vehicle when he changed lanes, but he did not realize what had happened, thinking that he had instead hit a curb. *Id.* As a result, he continued driving. Later, the police stopped Mr. Duvine and he was arrested for leaving the scene of a traffic accident. *Id.*

24. Mr. Duvine remained in pre-trial criminal custody until May 2025. At that point, charges against him were dropped and he was transferred to ICE custody. *Id.* ¶¶ 5–6. Mr. Duvine was first placed at an ICE detention facility in Texas, and then later transported to the NWIPC. *Id.* ¶ 6.

25. Since his arrest by ICE, Mr. Duvine has never received a hearing or even a notice placing him in removal proceedings. *Id.* ¶ 6. As a result, he has languished in detention for no apparent purpose.

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LEGAL FRAMEWORK

26. The Due Process Clause of the Fifth Amendment provides Petitioner with important protection against detention without procedures to determine if he is a flight risk or danger. As the Supreme Court has explained, "[f]reedom 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).

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

28. The Supreme Court has addressed the constitutionality of mandatory detention on one occasion. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court denied a facial challenge to mandatory detention under § 1226(c), which asserted that the statute was unconstitutional because it imposed mandatory detention without a custody hearing. However, the Supreme Court emphasized that such detention was typically "brief" in length and lasted "roughly a month and a half in the vast majority of cases . . . and about five months in the minority of cases in which the [noncitizen] chooses to appeal." 538 U.S. at 513, 530. The Court

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also upheld the statute in part because it was based on a voluminous congressional record that supported the need for detention as to individuals convicted of certain crimes. *See id.* at 518–20.

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

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

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

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

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

34. As a result, where the government detains a noncitizen for a prolonged period while the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

35. Detention without a bond hearing is unconstitutional when it becomes prolonged. *See, e.g.*, *Rodriguez*, 909 F.3d at 256; *see also Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months.").

36. The recognition that six months constitutes a substantial period of confinement that qualifies as prolonged detention is deeply rooted in our legal tradition. With only a few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. Louisiana*, 391 U.S. 145,

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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 a jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil*, 407 U.S. at 249, 250–52 (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment).

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

38. These principles have "[o]verwhelmingly[] [led the] district courts that have considered the constitutionality of prolonged mandatory detention—including . . . other judges in this District[ ] [to] agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Diaz Reyes v. Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903, at *3 (W.D. Wash. Aug. 7, 2020) (internal

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quotation marks omitted), *R&R adopted as modified*, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020); *see also Parada Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 1047578, at *4 (W.D. Wash. Jan. 17, 2025) (similar), *R&R adopted in part, rejected in part*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718 (W.D. Wash. Mar. 21, 2025); *Belqasim v. Bostock*, No. 2:25-CV-01282-LK-TLF, 2025 WL 3466971, at *7 (W.D. Wash. Oct. 28, 2025), *R&R adopted sub nom. Belqasim v. Hermosillo*, No. 2:25-CV-01282-LK, 2025 WL 3170929 (W.D. Wash. Nov. 13, 2025) (similar).

39. Indeed, "[i]n the context of immigration detention, it is well-settled that 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." *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017)

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

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

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42. The application of this test demonstrates Petitioner is entitled to a bond hearing. He has been detained more than six months and yet has not even been placed in removal proceedings or received an initial Master Calendar Hearing (MCH) before an immigration judge. Once that initial MCH happens, removal proceedings are likely to take several months (at a minimum) just to receive a decision on his asylum application. And if Petitioner is ordered removed, any BIA appeal that would follow will take many additional months to complete. If the BIA denies the appeal, Petitioner is entitled to file a petition for review with the Ninth Circuit Court of Appeals, which is likely to last another year. Thus, Petitioner is likely to face at least another year of detention, if not much longer.

43. Courts regularly afford noncitizens a bond hearing after facing similar periods of detention. *See, e.g.*, *Banda*, 385 F. Supp. 3d at 1118 (noting that 17 months of detention was a "very long time" that "strongly favor[ed] granting a bond hearing); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) ("Petitioner has been in immigration detention since September 10, 2021—approximately one year. District courts have found shorter lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable."); *Cardozo v. Bostock*, No. 2:25-CV-00871-TMC-BAT, 2025 WL 2597521, at *5 (W.D. Wash. July 29, 2025) (detention of ten months favored granting bond hearing), *R&R adopted in part, rejected in part*, No. 2:25-CV-00871-TMC, 2025 WL 2592275 (W.D. Wash. Sept. 8, 2025); *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019) (detention of just over a year that would last several more months favored granting bond hearing); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *1 (W.D. Wash. May 23, 2019), *R&R adopted*, No. 18-CV-01669-RAJ, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (detention of 13 months favored granting bond hearing); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018)

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

44. The punitive and restrictive conditions at NWIPC also support affording Petitioner a hearing. Those conditions "are similar . . . to those in many prisons and jails," despite Petitioner's ostensible status as a "civil" detainee. *Diaz Reyes*, 2020 WL 6820903, at *7 (alteration in original); *see also Parada Calderon*, 2025 WL 879718, at *4 (concluding this factor favored petitioner); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1100–033 (W.D. Wash. 2025) (reviewing extensive evidence regarding conditions of detention at NWIPC and agreeing with petitioner that "the conditions . . . at NWIPC are similar or possibly worse than those . . . penal institutions"); *id.* at 1103 (citing cases); *Toktosunov v. Wamsley*, No. 2:25-CV-1724-TL, 2025 WL 3492858, at *5 (W.D. Wash. Dec. 5, 2025) (concluding this factor favored petitioner). Indeed, for all intents and purposes, NWIPC is a prison. Petitioner is confined inside in a restrictive setting, where the lights are on 24/7, where he receives only 30 minutes of recreation three times a week, and where he faces significant limitations in his access to hygiene and visitation. Duvine Decl. ¶¶ 7, 9. Reports by independent outside entities have also documented problems with food, medical neglect, cleanliness, and other issues at NWIPC. *See* Univ. of Wash. Ctr. for Hum. Rts., Conditions at the Northwest Detention Center (last accessed Dec. 16, 2025), https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/.

45. The delay factor also favors Petitioner. Petitioner has not caused any delay in his case. By contrast, Respondents have caused significant delay. ICE has not even issued Mr. Duvine a Notice to Appear placing him in removals proceedings.

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46. Finally, Petitioner intends to make a good faith defense to removal based on the harm he is likely to face in Haiti. Indeed, he already submitted a timely filed asylum application years ago, which remains pending.

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

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

49. Here, Petitioner's interest is at its zenith: he has a powerful interest in his physical liberty, as the Supreme Court, the Ninth Circuit, and this Court have repeatedly made clear. *See generally supra* ¶¶ 31–39.

50. Second, additional protections are warranted here. Respondents almost certainly believe that Mr. Duvine is detained under 8 U.S.C. § 1225(b)(2). That statute affords Petitioner no protection whatsoever and requires his detention.

51. Finally, any burden on the government is minimal. Bond proceedings are short, informal hearings where an immigration judge typically receives records and testimonial evidence at a hearing and issues an oral ruling. Such hearings do not entail any significant expenditure of government resources. *See* Imm. Ct. Practice Manual ch. 9.3(e).

52. Accordingly, application of the *Mathews* test also requires a bond hearing to justify further detention.

53. Due process also requires certain minimal procedures at Petitioner's bond hearing. First, the government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to

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detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen's ability to pay a bond when determining the appropriate conditions of release.

54. 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). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof by at least clear and convincing evidence. *See Salerno*, 481 U.S. at 750, 752 (upholding pre-trial detention where the detainee was afforded a "full-blown adversary hearing," requiring "clear and convincing evidence" before 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); *see also Banda*, 385 F. Supp. 3d 1120–21 (requiring application of clear and convincing evidence standard).

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

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

57. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English

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proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762–63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding," including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

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

59. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted). Courts in this district regularly impose this requirement. *See Banda*, 385 F. Supp. 3d 1120–21 (requiring clear and convincing evidence); *Djelassi*, 434 F. Supp. 3d at 929 (same); *Diaz Reyes*, 2020 WL 6820903, at *9 (same); *Belqasim*, 2025 WL 3466971, at *12 (same).

60. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved compliance rates close to 100 percent. *See*

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Hernandez, 872 F.3d at 991 (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

61. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability 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.'" *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires "consideration of financial circumstances and alternative conditions of release" to prevent against detention based on poverty. *Id.*; *see also, e.g.*, *Belqasim*, 2025 WL 3466971, at *13 (ordering bond hearing requiring the immigration judge to consider alternative conditions and ability to pay).

CLAIM FOR RELIEF
28 U.S.C. § 2241
Violation of Fifth Amendment Right to Due Process

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

63. 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.

64. Petitioner's detention—which has lasted nearly six months without a hearing—constitutes prolonged detention and is not reasonably related to a legitimate government purpose.

65. To justify Petitioner's ongoing prolonged detention, due process requires an individualized hearing before a neutral decisionmaker where the government must establish that continued detention is justified by clear and convincing evidence of flight risk or danger and that no alternatives to detention could sufficiently mitigate any risk that does exist.

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

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

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

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

d. Issue a declaration that Petitioner's prolonged detention without a hearing violates the Due Process Clause of the Fifth Amendment;

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e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted this 16th of December, 2025.

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