

Honorable S. Kate Vaughan

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

Kendy DUVINE,

Petitioner,

v.

Laura HERMOSILLO et al.,

Respondents.

Case No. 2:25-cv-02583-SKV

**PETITIONER'S TRAVERSE**

Note on Motion Calendar:

January 5, 2026

**INTRODUCTION**

Respondents concede that Petitioner Kendy Duvine has languished in the custody of U.S. Immigration and Customs Enforcement (ICE) for more than seven months without being provided a credible fear interview or any immigration court hearing. Dkt. 9 ¶¶ 8–15. It was only *after* Mr. Duvine filed this habeas petition that Respondents deigned to initiate removal proceedings. *Id.* ¶ 15. His first master calendar hearing is now scheduled for January 8, 2026. *Id.* ¶ 16. Only then will he even begin the lengthy process of having his claim for asylum adjudicated—despite having first applied for asylum back in May 2023. *Id.* ¶ 6.

As Respondents recognize, “courts assess whether [civil immigration] detention has become unreasonably prolonged under due process balancing factors.” Dkt. 8 at 7 (citing *Banda*

1 v. *McAleenan*, 385 F. Supp. 3d 1099, 1117–18 (W.D. Wash. 2019)). Applying these factors to  
2 the instant case and especially because his removal proceedings were initiated only *after* being  
3 locked up for more than seven months, he is readily able to demonstrate that his civil  
4 immigration detention “has become unreasonably prolonged,” violating his constitutional right to  
5 due process under the law.

### 6 ARGUMENT

7 Mr. Duvine was taken into custody by ICE in May of 2025. Dkt. 9 ¶ 8. For more than  
8 seven months he waited in ICE custody for the opportunity to present his claim for asylum, but  
9 he was never granted a court hearing or even a credible fear interview. Respondents’ declaration  
10 confirms that he has been detained for months without any interviews or hearings. *Id.* at 2–3.  
11 Only after he filed the instant habeas petition did ICE finally place him in removal proceedings  
12 on December 17, 2025, by creating the Notice to Appear on form I-862 (the charging document)  
13 and filing it with the immigration court. Dkt. 10-6. Mr. Duvine’s first master calendar hearing  
14 before the Tacoma Immigration Court is scheduled for later this month. Given that he has  
15 already been subjected to over seven months civil detention and his immigration proceedings  
16 have not yet even begun, the six-factor test laid out in *Banda*, 385 F. Supp. 3d at 1106, weighs  
17 heavily in his favor, demonstrating that a bond hearing is required to ensure that his civil  
18 detention remains tethered to a lawful purpose.

19 With respect to the first factor, the length of detention, Respondents assert in a  
20 conclusory manner that because Petitioner has been detained only for “approximately seven  
21 months” that his “continued detention without a court-ordered bond hearing does not violate his  
22 Fifth Amendment due process rights.” Dkt. 8 at 8. But this ignores a long line of case law  
23 pointing to six months as indicative of prolonged detention creating constitutional concerns

1 without appropriate procedural safeguards, and also ignores that in this case Respondents have  
2 held Mr. Duvine for all this time without even initiating the process. Only now are removal  
3 proceedings set to commence.

4 The Ninth Circuit has expressed “grave doubt” that “any statute that allows for arbitrary  
5 prolonged detention without any process is constitutional or that those who founded our  
6 democracy precisely to protect against the government’s arbitrary deprivation of liberty would  
7 have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). In *Zadvydas v. Davis*,  
8 the Supreme Court specifically pointed to six months as a point at which civil detention that  
9 raises constitutional concerns, noting that “Congress previously doubted the constitutionality of  
10 detention for more than six months.” 533 U.S. 678, 701 (2001). *See also McNeil*, 407 U.S. at  
11 249, 250–52 (recognizing six months as an outer limit for confinement without individualized  
12 inquiry for civil commitment). As noted in the habeas petition, Dkt. 1 ¶¶ 35–36, the Court has  
13 also looked to six months as a benchmark in other contexts involving civil detention.

14 While there is no bright line rule that detention becomes constitutionally impermissible at  
15 six-months, it is clear that it generally raises concerns once it reaches this mark. Here, given that  
16 Mr. Duvine has been detained for over seven months without even his first master calendar  
17 hearing, he has demonstrated that his detention has become impermissibly prolonged. Thus, the  
18 first factor weighs heavily in his favor.

19 With respect to the second factor, Respondents plainly err in asserting that “any  
20 assessment of the length of his future detention would be speculative at best because his  
21 proceedings are still in the early stages” and “[t]hus this factor should be neutral.” Dkt. 8 at 9. It  
22 is precisely because proceedings have not begun, that it is not simply speculative that Mr.  
23 Duvine faces many months and perhaps well more than a year of future proceedings.” He has not

1 yet even had his first hearing, at which the immigration judge (IJ) will explain his rights and  
2 address the charges of removability against him. More importantly, the IJ has not yet had the  
3 opportunity to set up a schedule for Mr. Duvine to file his asylum application with the court, let  
4 alone set up a schedule for the final hearing to adjudicate any asylum application on the merits.  
5 Thus, he is able to demonstrate the second factor weighs in his favor without even addressing  
6 any future appeals. *Cf. Cardozo v. Bostock*, No. 2:25-cv-00871-TMC-BAT, 2025 WL 2597521  
7 (W.D. Wash. Sept. 8, 2025) (finding that the second *Banda* factor favors a petitioner in removal  
8 proceedings before the immigration court because “Respondents have not indicated that absent  
9 judicial intervention, Petitioners will ever be afforded a bond hearing.”), *report and*  
10 *recommendation rejected in part on other grounds*, 2025 WL 2592275 (W.D. Wash. Sept. 8,  
11 2025). As Respondents concede, “[i]t is unknown whether Petitioner’s removal proceedings will  
12 ultimately end in his release or further proceedings before the BIA or the Ninth Circuit.” Dkt. 8  
13 at 9.

14 Respondents do not contest that the third factor, the conditions of detention, weigh in Mr.  
15 Duvine’s favor, acknowledging that he is detained at NWIPC. *Id.*

16 The fourth and fifth factors, assessing delays caused by either party, also weigh heavily in  
17 Mr. Duvine’s favor. *Id.* Respondents assert, without basis, that these factors should be neutral,  
18 seeking to avoid accountability for sitting on his case for more than six months without any  
19 credible fear interview or immigration court hearing. *Id.* Specifically, Respondents attempt to  
20 point the finger at USCIS, arguing

21 ICE detained Petitioner pending his credible fear interview with USCIS, and ICE  
22 kept in contact with USCIS concerning the interview. Rather than continue to wait  
23 for a credible fear interview, DHS issued a notice to appear placing Petitioner into  
full removal proceedings – for which USCIS does not need to conduct a credible  
fear interview. The record reflects that ICE repeatedly followed up with USCIS and

1 ultimately exercised its statutory discretion to place Petitioner into Section 1229a  
2 proceedings rather than prolong expedited removal processing.

3 *Id.*, That argument ignores that DHS is a Respondent in this case, *see* Dkt. 1 ¶ 17, and is  
4 ultimately responsible for ensuring its subagencies—including both ICE and USCIS—fulfill the  
5 agency’s statutory obligations, including performing credible fear interviews as required by 8  
6 U.S.C. 1225(b)(1)(A)(ii).

7 Respondents also err in their analysis of government delay by noting that ICE “ultimately  
8 exercised its statutory discretion to place Petitioner into Section 1229a proceedings rather than  
9 prolong expedited removal processing,” Dkt. 8 at 9, to suggest that it fulfilled its obligations and  
10 demonstrated good faith. This ignores that ICE was in fact required to provide Petitioner a  
11 credible fear determination within 60 days of his request for asylum or assertion of fear and, in  
12 case of further delay, transfer him to removal proceedings before the immigration court. *Padilla*  
13 *v. ICE*, No. 2:18-cv-00928-MJP, Dkt. 215-2 (Oct. 18, 2023) (Proposed Settlement Agreement);  
14 *see also id.*, Dkt. 225 (Jan. 5, 2024) (approving Settlement Agreement). In this case, Petitioner  
15 has been in custody for more than six months without a credible fear determination—more than  
16 three times required by the settlement agreement—before ICE finally initiated removal  
17 proceedings under 8 U.S.C. § 1229a.<sup>1</sup> Accordingly, the fourth and fifth factors weigh in his  
18 favor, based on the more than seven months he languished in detention without any credible fear  
19 interview or immigration court hearing.

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21 <sup>1</sup> Respondents’ declaration acknowledges that Mr. Duvine was initially released pending a  
22 credible fear interview, which is administered to those who claim a fear of persecution. Dkt. 9  
23 ¶ 5. This occurred shortly after his detention in November of 2022. Similarly, they acknowledge  
that he submitted an asylum application in May of 2023. *Id.* ¶ 6. Thus, Respondents  
acknowledge that Petitioner has consistently sought to present his claim for asylum from the  
outset of his case.

1 As to the final factor, Mr. Duvine explains that he fled Haiti after being “threatened,  
2 kidnapped, and beaten for speaking out against a corrupt politician.” Dkt. 3 ¶ 2. The record thus  
3 demonstrates that he has a substantive claim for relief that he plans to present, and that from his  
4 arrival he has consistently sought to present his claim for asylum. *See infra* n.1. Thus, he has  
5 demonstrated a bona fide claim for relief from removal.

6 The Due Process Clause requires a bond hearing for Mr. Duvine. His continued detention  
7 is unconstitutional because he has been detained for over a seven months for civil immigration  
8 proceedings, yet Respondents failed to even initiate any proceedings until after he filed a petition  
9 for writ of habeas corpus. Respondents point to the fact that detention statutes authorize  
10 detention in expedited removal proceedings without the opportunity for a bond hearing, but those  
11 statutes do not form the basis of Mr. Duvine’s claim (nor do they sanction prolonged detention  
12 without due process). Yet more than six months passed from his initial detention in May of 2025,  
13 without Respondents moving forward on his expedited removal proceedings under 8 U.S.C.  
14 1225(b)(1).

15 Finally, Respondents dispute the procedural protections that should be afforded even if  
16 Mr. Duvine is found to be entitled to a bond hearing. They flatly err in contending that  
17 “Petitioner provides no legal support that due process requires such justification for a noncitizen  
18 subject to prolonged mandatory detention.” Dkt. 8 at 10. The habeas petition cites multiple  
19 authorities, including binding Ninth Circuit precedent and decisions by other courts in this  
20 District. *See, e.g.*, Dkt. 1 ¶ 54 (citing *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011));  
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1 Dkt. 1 ¶ 54 (listing cases from the Western District of Washington holding that DHS must bear  
2 the burden and applying the clear and convincing standard).<sup>2</sup>

3 **CONCLUSION**

4 For all the foregoing reasons, Petitioner respectfully requests that this Court grant a writ  
5 of habeas corpus, and order Respondents release him unless they provide a custody hearing  
6 before an immigration judge within 14 days, at which Respondents must establish by clear and  
7 convincing evidence that Petitioner presents a risk of flight or danger and that no alternative to  
8 detention can mitigate any risk that his release would present.

9 Respectfully submitted this 5th day of January, 2026.

10  
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14 *\*I certify that the foregoing contains 1,913 words,  
15 in compliance with the Local Civil Rules.*

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20 \_\_\_\_\_  
21 <sup>2</sup> Respondents also assert that if this Court were to conduct any bond hearing it “would exceed  
22 what due process requires and improperly intrude on the statutory detention scheme enacted by  
23 Congress ordered.” Dkt. 8 at 11. Yet Respondents simultaneously acknowledge that “this court  
may have the authority to conduct bond hearings,” while simply urging the Court to decline to  
do so. *Id.* at 10. In any event, Petitioner primarily requests that this Court “order Petitioner’s  
release unless Respondents hold a custody hearing for Petitioner before an immigration judge  
within 14 days,” and only requests in the alternative that this Court conduct the bond hearing.  
Dkt. 1 at 16, Prayer for Relief (b)–(c).

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