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8 **UNITED STATES DISTRICT COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 KELIL ELEMO,
 11 Petitioner,

CASE NO.: 26-cv-00281-BJC-JLB

12 v.

**Amended¹ Petition
 for a
 Writ of Habeas Corpus**

14 KRISTI NOEM, Secretary of the
 15 Department of Homeland Security,
 16 PAMELA JO BONDI, Attorney General,
 17 TODD M. LYONS, Acting Director,
 18 Immigration and Customs Enforcement,
 19 JESUS ROCHA, Acting Field Office
 20 Director, San Diego Field Office,
 21 CHRISTOPHER LAROSE, Warden at
 22 Otay Mesa Detention Center,

23 Respondent.

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 27 ¹ Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its
 28 pleading once as a matter of course no later than 21 days after serving it.” Fed. R.
 Civ. Pro. 15(a)(1)(A) (punctuation altered). It is less than 21 days since service.
 Mr. Elemo therefore files this amended petition as of right.

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INTRODUCTION

Mr. Elemo is a 25-year-old man from Ethiopia, who came to the United States seeking asylum. He has been detained pending his immigration proceedings since June of 2025. This Court should “join[] the majority of courts across the country in concluding that his unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).

This Court should grant immediate release.

STATEMENT OF FACTS

Mr. Elemo was born in Ethiopia. Exhibit A, Declaration of Petitioner at ¶ 1. He is 25 years old. *Id.* He fled Ethiopia due to persecution and made his way to the U.S., crossing the border around June 27, 2025. *Id.* at ¶ 2. He was immediately detained pending adjudication of fear-based claims. *Id.* He is waiting for a hearing that is currently scheduled for March 31, 2026. *Id.* at 4. He has been under significant stress. He has been having gastrointestinal problems due to the stress of his detention. *Id.* at ¶ 5.

LEGAL BACKGROUND

I. The Fifth Amendment’s Due Process Clause prohibits prolonged immigration detention without a bond hearing.

This habeas petition presents a question about whether and when the Fifth Amendment’s Due Process Clause countermands the government’s statutory authority to detain immigrants without bond hearings. Mr. Elemo is detained under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That includes persons who, like Mr. Elemo, present

1 themselves for inspection at the border and—rather than producing admission
2 documents—make asylum and other fear-based claims. *See id.* at 1109–11
3 (describing a similar procedural history and finding that petitioner was detained
4 under § 1225(b)). Such immigrants are detained under § 1225(b) not only during
5 their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111
6 (reaching same conclusion for immigrant with pending BIA appeal).

7 This statutory scheme has left courts to grapple with the limits (if any) of
8 that detention power: Does this statute permit the government to detain
9 immigrants indefinitely, without ever having to prove at a bond hearing that they
10 pose a risk of danger or flight? Three Supreme Court cases are potentially relevant
11 to answering that question.

12 First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite
13 immigration detention raises serious due process concerns. 533 U.S. 678 (2001).
14 *Zadvydas* involved a statute authorizing the government to detain immigrants
15 after they are ordered removed. *Id.* at 683. For immigrants who cannot be
16 removed, that statute had the potential to subject them to years, decades, or a
17 lifetime in custody. *See id.* at 690. The Supreme Court held that if the statute
18 “permit[ed] indefinite detention of an alien[,] [it] would raise a serious
19 constitutional problem,” because

20 [t]he Fifth Amendment's Due Process Clause forbids the Government
21 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of
22 law.’ Freedom from imprisonment—from government custody,
23 detention, or other forms of physical restraint—lies at the heart of the
24 liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80
25 (1992). And this Court has said that government detention violates
26 that Clause unless the detention is ordered in a *criminal* proceeding
27 with adequate procedural protections, *see United States v. Salerno*,
28 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’
nonpunitive ‘circumstances,’ *Foucha, supra*, at 80, where a special
justification, such as harm-threatening mental illness, outweighs the
‘individual's constitutionally protected interest in avoiding physical
restraint.’ *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

1 *Id.* Ultimately, however, the Court declined to decide whether a statute permitting
2 indefinite detention would violate the Due Process Clause. Instead, the Court
3 employed the constitutional avoidance canon to read implicit limits into the
4 statute, requiring release after detention became sufficiently prolonged. *Id.* at 699.

5 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
6 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
7 Employing the constitutional avoidance canon, the Ninth Circuit held that
8 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
9 months. *Id.*

10 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,
11 holding that the statute does not entitle detainees to bond hearings or otherwise
12 impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But
13 though *Jennings* held that § 1225(b) imposes no statutory limit on the length of
14 detention, it reserved the question of whether prolonged, mandatory detention
15 without bond hearings violates due process. *Id.* at 312.

16 Finally, the Supreme Court held in *Demore v. Kim* that at least some
17 statutes mandating detention during immigration proceedings do not
18 automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore*
19 addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing
20 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
21 5-4 opinion based on (1) the government interests justifying the detention of
22 immigrants with certain, aggravated criminal convictions, and (2) the relative
23 brevity of detention in most cases, with the vast majority taking only about five
24 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
25 allowed left open the possibility that individual immigrations could be “entitled to
26 an individualized determination as to his risk of flight and dangerousness if the
27 continued detention became unreasonable or unjustified.” *Id.* at 532–33.

28 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have

1 grappled with how to address due process challenges to prolonged mandatory
2 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full
3 evaluation, “[n]early all district courts that have considered the issue agree that
4 prolonged mandatory detention pending removal proceedings, without a bond
5 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
6 (collecting cases).

7 These Courts have relied on the due process concerns recognized in
8 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
9 1113–17; *Abdul Kadir v. Larose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654,
10 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
11 those considerations raise “grave doubts that any statute that allows for arbitrary
12 prolonged detention without any process is constitutional or that those who
13 founded our democracy precisely to protect against the government’s arbitrary
14 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
15 256 (9th Cir. 2018).

16 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
17 only that the statute itself did not impose any limits on detention. It “did not
18 foreclose as-applied constitutional challenges to detention under” mandatory-
19 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
20 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
21 during immigration proceedings does not necessarily or inherently violate the Due
22 Process Clause, particularly when the detention has an expected duration of only
23 about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—
24 like Mr. Elemo —do not have criminal convictions. And as Justice Kennedy’s
25 concurrence made clear, *Demore* does not prevent immigrants from arguing that
26 sufficiently prolonged detention violates due process in their individual cases.
27 *Demore*, 538 U.S. at 532 (Kennedy, J., concurrence). Thus, when detention
28 becomes sufficiently prolonged, immigrants detained under mandatory-detention

1 statutes like § 1225(b) may seek a bond hearing under the Due Process Clause.

2 **II. Courts have reached different conclusions about when immigration**
3 **detention becomes indefinitely prolonged, but Mr. Elemo would prevail**
4 **under any standard.**

5 Though courts agree that due process mandates a bond hearing when
6 detention grows unreasonably prolonged, they disagree about how to assess
7 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
8 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
9 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts
10 have “conclude[d] . . . that detention becomes prolonged after six months and
11 entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-
12 TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In this case, Mr. Elemo
13 has been detained for longer than six months. Exh. A at ¶ 2.

14 Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023
15 WL 139801, at *5–6 (surveying different approaches). Courts generally agree that
16 relevant factors include:

- 17 (1) “the total length of detention to date,”
18 (2) “the likely duration of future detention,” and
19 (3) “the delays in the removal proceedings caused by the petitioner and the
20 government.”

21 *Id.* Some courts also consider:

- 22 (4) “the conditions of detention,” and
23 (5) “the likelihood that the removal proceedings will result in a different
24 final order.”

25 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are
26 “not particularly suited to assisting the Court in determining whether detention
27 has become unreasonable and due process requires a bond hearing.” *Lopez v.*
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1 *Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*,
2 2023 WL 139801, at *5–6.² Mr. Elemo would prevail under any of these.

3 First, the length of detention, favors Mr. Elemo. *Banda*, 385 F. Supp. 3d at
4 1118. In assessing this factor, “[i]t is important to bear in mind the context: The
5 detention that is being examined here is the detention of a human being who has
6 never been found to pose a danger to the community or to be likely to flee if
7 released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With
8 that context, courts have granted bond hearings for persons detained between
9 seven and eleven months. *See, e.g., Hoyos Amado v. U.S. Dep’t of Justice*, No.
10 25-cv-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (“Courts
11 have found detention over seven months without a bond hearing weighs toward a
12 finding that it is unreasonable.”) (collecting cases); *Brissett v. Decker*, 324 F.
13 Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No.
14 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) (“more
15 than nine months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at
16 *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”). Mr. Elemo has been detained
17 for over six months. Exh. A at ¶ 2.

18 Second, Mr. Elemo has reason to anticipate significant future detention
19 during his immigration proceedings. Here, despite being detained over six months
20 ago, he does not have his hearing until another two months from now. Exh. A at
21 ¶4. And regardless of the outcome of the proceedings, either side would have the
22 opportunity to appeal and the case would likely continue to the BIA. A BIA
23 appeal itself can take months, and afterward, a petitioner may appeal to the Ninth
24 Circuit. *See Banda*, 385 F. Supp. 3d at 1119. All told, “[t]his process may take up
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27 ² Courts also disagree about whether to account for any criminal convictions that
28 have led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5–6. But such
factors—if appropriate at all—are irrelevant where, as here, the person is not
being removed as a result of criminal convictions.

1 to [another] two years or longer.” *Id.* Because “Petitioner’s future detention can
2 last several more months or even years[,]” this factor favors Mr. Elemo. *Abdul*
3 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal.
4 Oct. 15, 2025) (Lopez. J.).

5 Third, the delay factor favors Mr. Elemo. His asylum claim is now set for
6 March 31, 2026. That is more than nine months after his detention. Considering
7 the current delays in immigration court, it is likely that the hearing date will
8 continue to be delayed.

9 Fourth, Mr. Elemo’s conditions of confinement weigh in favor of a bond
10 hearing. At Otay Mesa Detention Center, detainees are “locked up behind razor
11 wire and concrete walls in a secured facility, forced to wear a color-coded
12 prisoner jump suit, forbidden from accessing the internet, restricted access to
13 outdoor space, restricted on visitation, and guarded at all times with armed guards
14 authorized to inflict punishment for violations of rules.” *Abdul Kadir*, 2025 WL
15 2932654, at *5. Accordingly, “Petitioner’s confinement at OMDC is
16 ‘indistinguishable from penal confinement.’” *Abdul Kadir*, 2025 WL 2932654, at
17 *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773). The conditions have been
18 weighing on him. He finds himself very stressed and is suffering from
19 gastrointestinal problems due to the stress. Exh. A at ¶ 4-5.

20 Fifth, there is a significant likelihood that Mr. Elemo will succeed in getting
21 relief. Mr. Elemo seeks asylum based on persecution in his native country. There
22 is therefore a good chance that an immigration judge will find that Mr. Elemo
23 should be granted relief.

24 Under any test, then, Mr. Elemo is entitled to a bond hearing.
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CLAIM AND PRAYER FOR RELIEF

Detaining Petitioner Without a Bond Hearing Violates the Fifth Amendment’s Due Process Clause

For the reasons just given, the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Mr. Elemo without a bond hearing.

Accordingly, Petitioner respectfully requests that this Court:

1. Order Petitioner’s immediate release or, alternatively, a bond hearing before an immigration judge.
2. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: February 2, 2026

s/ Zandra L. Lopez
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