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6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8 Mohammed Awal ABDUL RAHMAN,

9 Petitioner,

10 vs.

11 JEREMY CASEY, Warden, Imperial
Regional Detention Facility; GREGORY
12 J. ARCHAMBEAULT, Field Officer
Director for the San Diego Immigration
13 and Customs Enforcement Office;
TODD LYONS, Acting Director of
14 United States Immigration and
Customs Enforcement; KRISTI NOEM,
15 Secretary of the United States
Department of Homeland Security,
16 PAMELA BONDI, Attorney General of
the United States, acting in their official
17 capacities

18 Respondents.
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Case No. '26CV1418 RSH BJW

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

I. INTRODUCTION

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2 1. Petitioner Mohammed Awal Abdul Rahman respectfully petitions this Honorable
3 Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, as
4 follows:

5 2. Petitioner is an asylum seeker from Ghana, who is currently detained by Immigration
6 and Customs Enforcement (“ICE”) at the Imperial Regional Detention Facility
7 (“Imperial”).

8 3. Petitioner has been detained in immigration custody for over 14 months even though
9 no neutral decisionmaker—whether a federal judge or immigration judge (“IJ”)—has ever
10 conducted a hearing to determine whether this lengthy incarceration is warranted based on
11 danger or flight risk. Despite actively participating in his removal case and seeking
12 immigration relief both *pro se* and with the assistance of counsel, Mr. Abdul Rahman
13 languished in detention for over a year due to Respondents’ failure to locate and identify
14 proper interpretation services for his immigration proceedings. Mr. Abdul Rahman remains
15 detained in conditions that are indistinguishable from penal confinement while he appeals
16 an erroneous denial of his applications for asylum, withholding of removal, and protection
17 under the Convention Against Torture (“CAT”).

18 4. The United States Constitution protects Mr. Abdul Rahman—and every other person
19 present in this country—from arbitrary deprivations of his liberty and guarantees him due
20 process of law. The government’s power over immigration is broad but, as the Supreme
21 Court has declared, it “is subject to important constitutional limitations.” *Zadvydas v.*

1 *Davis*, 533 U.S. 678, 695 (2001). “Freedom from bodily restraint has always been at the
2 core of the liberty protected by the Due Process Clause from arbitrary governmental
3 action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

4 5. Mr. Abdul Rahman’s continued detention violates both the substantive and
5 procedural due process guarantees of the Fifth Amendment. The Constitution prohibits
6 civil confinement that amounts to punishment, which is the nature of Mr. Abdul Rahman’s
7 14-month detention under conditions equal to or worse than criminal incarceration. *Jones*
8 *v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004). Therefore, Mr. Abdul Rahman respectfully
9 requests that this Court issue a writ of habeas corpus, declare that his detention is unlawful,
10 and order his immediate release, with appropriate conditions of supervision if necessary,
11 taking into account Mr. Abdul Rahman’s ability to pay a bond.

12 6. Alternatively, Mr. Abdul Rahman requests that the Court issue a writ of habeas
13 corpus and order his release within 30 days unless Respondents schedule a hearing before
14 an IJ where: (1) to continue detention, the government must establish by clear and
15 convincing evidence that Petitioner presents a risk of flight or danger, even after
16 consideration of alternatives to detention that could mitigate any risk that Petitioner’s
17 release would present; and (2) if the government cannot meet its burden, the IJ shall order
18 Petitioner’s release on appropriate conditions of supervision, taking into account
19 Petitioner’s ability to pay a bond.

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1 **II. JURISDICTION**

2 7. Petitioner Mohammed Awal Abdul Rahman is in the physical custody of
3 Respondents and the Immigration and Customs Enforcement, an agency within the
4 Department of Homeland Security. He is detained at the Imperial Regional Detention
5 Facility in Imperial, California, under the direct control of Respondents and their agents.

6 8. This action arises under the Constitution of the United States and the Immigration
7 and Nationality Act (INA), 8 U.S.C. § 1101 et. seq. The Court has subject matter
8 jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), U.S.C. § 1651 (All Writs Act),
9 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus),
10 Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth
11 Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701–706 (Administrative Procedure
12 Act).

13 9. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§
14 1252(b)(9), 1252(f)(1), or 1226(e). Congress has preserved judicial review of challenges
15 to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–95
16 (2018) (holding that 8 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of legal
17 challenges to prolonged immigration detention); *see also id.* at 876 (Breyer, J., dissenting)
18 (“8 U.S.C. § 1252(b)(9) . . . by its terms applies only with respect to review of an order of
19 removal.”) (internal quotation marks and alterations omitted).

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III. VENUE

10. Venue is proper in this District pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Abdul Rahman is located in this District, is presently detained in this District, and because a substantial part of the events giving rise to the claims in this action took place in this District.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

11. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

12. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).

13. Habeas corpus must also remain a swift remedy. Accordingly, “the statute itself directs courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (quoting *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954)).

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V. EXHAUSTION

14. Petitioner is not required to exhaust administrative remedies. Exhaustion for habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Even prudential exhaustion is not required if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result.” *Laing*, 370 F.3d at 1000; *see also Hernandez*, 872 F.3d at 988.

15. Here, administrative remedies would be inadequate, futile, and requiring exhaustion would only result in additional injury to Petitioner. Petitioner has no administrative remedy available because Section 1225(b)(1)(B)(ii) does not authorize immigration courts to conduct individualized custody hearings for those, like Petitioner, who are subject to detention under that provision. *See* 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.”); *See also Matter of M-S-*, 27 I&N Dec. 509 (AG 2019) (“An alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such an alien must be detained until his removal proceedings conclude, unless he is granted parole.”).

16. Even if Petitioner had access to an administrative custody hearing, exhausting his constitutional claims would be futile because Petitioner’s due process claim does not arise

1 from the Immigration and Nationality Act, and therefore immigration courts and the Board
2 of Immigration Appeals (“BIA”) do not have the authority to rule on his constitutional
3 claims. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) (“[T]he
4 inability of the INS to adjudicate the constitutional claim completely undermines most, if
5 not all, of the purposes underlying exhaustion.”). Therefore, exhaustion is not required.

6 VI. PARTIES

7 17. Petitioner Mohammed Awal Abdul Rahman is a citizen and national of Ghana who
8 arrived in the United States in December 2024, and has since been detained by Respondents
9 at the Imperial Regional Detention Facility pending ongoing removal proceedings.

10 18. Respondent Jeremy Casey is the warden of Imperial Regional Detention Center. He
11 is responsible for the physical custody of Petitioner and is sued in his official capacity.

12 19. Respondent Patrick Divver is the director of the regional ICE Field Office
13 responsible for the administration of the immigration laws. 8 U.S.C. § 1103(a). He is the
14 legal custodian of Petitioner. He is named in his official capacity.

15 20. Respondent Kristi Noem is the Secretary of the Department of Homeland Security
16 (“DHS”). She is responsible for overseeing DHS and its sub-agency, ICE, and has ultimate
17 responsibility for the detention of noncitizens in civil immigration custody. Respondent
18 Noem is a legal custodian of Petitioner and is named in her official capacity.

19 21. Respondent Todd M. Lyons is the Acting Director for ICE. Respondent Lyons is
20 responsible for ICE’s policies, practices, and procedures, including those relating to the
21 detention of immigrants. He is named in his official capacity.

22. Respondent Pamela Bondi is the Attorney General of the United States and the head of the Department of Justice (“DOJ”), which encompasses the BIA and immigration judges as part of its sub-agency, the Executive Office for Immigration Review (“EOIR”). Respondent Bondi has the authority to interpret the immigration laws and adjudicate removal cases and bond hearings. *See* 8 U.S.C. § 1103(g). She has delegated that power to the nation’s immigration judges and the BIA.

VII. STATEMENT OF FACTS

A. Petitioner’s Removal Proceedings

23. Mohammed Awal Abdul Rahman is a 40-year-old native and citizen of Ghana. Mr. Abdul Rahman has never been arrested or charged in connection with any crime, anywhere in the world. Mr. Abdul Rahman is married, and has three children who remain in Ghana. Because of restrictions on video calls at the Imperial Regional Detention Facility, Petitioner has not seen his children’s faces since December of 2024.

24. Mr. Abdul Rahman experienced physical violence, intimidation, and threats from family members and government officials in Ghana due to his sexual orientation and

 As a result, Mr. Abdul Rahman fled Ghana in October of 2024.

25. Mr. Abdul Rahman did not initially plan on traveling to the United States, but first sought refuge in Brazil. Mr. Abdul Rahman subsequently endured a harrowing, weeks-long journey, in which he traveled or was taken from country to country in Latin America. At various points he was placed on buses or in boats by immigration officials in other

1 countries who informed him he needed to continue moving. At various points he was
2 harassed, assaulted, and robbed.

3 26. In December of 2024, Mr. Abdul Rahman was [REDACTED]
4 [REDACTED]
5 [REDACTED], before being pointed out the door towards the U.S. border and told to

6 not look back. It was at this point, on December 19, 2024, that Mr. Abdul Rahman crossed
7 the United States border, without being inspected or admitted. He immediately surrendered
8 to officials from the Department of Homeland Security, presented identification, and
9 expressed his fear of return to Ghana.

10 27. On January 6, 2025, Mr. Abdul Rahman had a Credible Fear Interview with an
11 Asylum Officer. This interview took place telephonically, and in English, even though
12 Petitioner had indicated that his “native” language was Tchamba. When questioned, Mr.
13 Abdul Rahman stated he spoke “small small English.” Mr. Abdul Rahman “failed” to
14 establish a Credible Fear at this interview and sought review before an Immigration Judge.

15 28. Mr. Abdul Rahman was assisted by a limited-scope pro bono attorney for his
16 Credible Fear Review, which took place on January 13, 2025. Mr. Abdul Rahman
17 established a credible fear during this review, and the Immigration Judge vacated the
18 finding from the interview and placed Mr. Abdul Rahman in removal proceedings pursuant
19 to 8 U.S.C. § 1225(b)(1)(B)(ii).

20 29. The Department of Homeland Security served Mr. Abdul Rahman with a Notice to
21 Appear for removal proceedings on February 26, 2025.

30. Removal proceedings under 8 U.S.C. § 1229a involve two types of hearings: master calendar hearings (“MCH”) and individual calendar hearings (“ICH”). At MCHs, the immigration judge (“IJ”) and parties resolve preliminary and procedural matters, and the noncitizen may submit applications in anticipation of the ICH. At the ICH, also referred to as the merits hearing, the noncitizen presents evidence and testimony to support the claims and defenses that would permit that noncitizen to remain in the United States.

31. A key component of due process in removal proceedings is “competent translation.” *Perez-Lastor v INS*, 208 F.3d 773, 778 (9th Cir. 2000); *see also* Imm. Ct. Prac. Manual § 4.11 (stating that the “Immigration Court will arrange for an interpreter both during the individual calendar hearing and, if necessary, the master calendar hearing”).

32. Between February and November of 2025, Mr. Abdul Rahman was scheduled for twenty-two MCHs before the IJ. Recordings are only available for some of these hearing dates. However, the IJ’s orders indicate, and Mr. Abdul Rahman confirms, that on all but one of these dates, Mr. Abdul Rahman was brought to court, informed that the Court had not secured a Tchamba interpreter, and the hearing was summarily rescheduled without him ever speaking to the judge.

33. On July 9, 2025, Mr. Abdul Rahman spoke to the IJ for the one and only time through a Tchamba interpreter, pro se. He was advised of his rights and obligations, and provided a list of pro bono counsel, and the case was reset.

34. On August 22, 2025, Mr. Abdul Rahman filed an application for asylum, pro se, with the assistance of another detainee who spoke Hausa and English. Mr. Abdul Rahman was

1 subsequently reset for six hearings, before undersigned counsel took on his case and
2 entered an appearance on November 10, 2025.

3 35. On November 10, 2025, the IJ, through a Tchamba interpreter, inquired of Mr. Abdul
4 Rahman what his “best” language was. In Tchamba, Mr. Abdul Rahman responded that
5 his best language is Hausa. When questioned about this apparent discrepancy, Mr. Abdul
6 Rahman indicated that the Asylum Officer had asked him about his “native” language, and
7 he provided the native tongue of his mother, which he was taught at birth. However,
8 because he was not raised by his mother, his best and most fluent language is Hausa, the
9 predominant language in Accra. The IJ updated the language for the proceedings, and the
10 remainder of Mr. Abdul Rahman’s proceedings were carried out with the assistance of a
11 Hausa interpreter.

12 36. Pleadings were taken in this case on November 25, 2025. That is, Mr. Abdul
13 Rahman was detained for over 11 months before an IJ ever made a finding that he was
14 inadmissible, based on his own concession of the charge contained in the Notice to Appear.

15 37. On December 16, 2025, Mr. Abdul Rahman, through undersigned counsel, made
16 one request for a continuance, due to difficulties with having an interpreter assist with
17 certifying his declaration over the detention facility’s video appointment platform.

18 38. On December 19, 2025, exactly one year after Mr. Abdul Rahman was detained, the
19 Department of Homeland Security filed a motion to pretermite his application for asylum
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1 on the grounds that he was subject to an Asylum Cooperative Agreement with Uganda.¹

2 39. On January 13, 2026, the IJ in the Imperial immigration court set Mr. Abdul
3 Rahman's case for a final merits hearing on the substance of his claims for relief, before a
4 Temporary IJ sitting in the West Los Angeles Court.²

5 40. Just 13 days later, on January 26, 2026, the Temporary IJ denied Petitioner's claims
6 for asylum, withholding of removal, and protection under the Convention Against Torture,
7 and ordered him removed to Ghana. In so holding, the Temporary IJ found that Mr. Abdul
8 Rahman was only "partially credible," and cited his failure to provide corroborative
9 evidence. This holding was made in spite of the fact that Mr. Abdul Rahman submitted
10 sworn statements by witnesses to his abuse in Ghana. The Temporary IJ did not provide
11 Mr. Abdul Rahman with notice and an opportunity to submit additional corroborative
12 evidence, as required by law. *See Ren v. Holder*, 648 F.3d 1079, 1091–92 (9th Cir. 2011)
13 (where the court is not persuaded by applicant's otherwise credible testimony, the court
14 must put the applicant on notice that he needs to produce corroborative evidence and
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17 ¹ See Gwynne Hogan, *Trump Administration Moves to Send Asylum Seekers to Uganda, Honduras, and Ecuador*, THE CITY, (Dec 18, 2025) <https://www.thecitynyc.com/2025/12/18/asylum-seekers-trump-uganda-honduras-ecuador-deportation/>. ("The Department of Homeland Security's attorneys . . . are moving to close asylum claims en masse, arguing that people in deportation proceedings have no right to seek asylum in the United States because they're eligible to do so in three other countries with which the U.S. has recent agreements: Honduras, Ecuador and Uganda."); *see also Matter of C-I-G-M- & L-V-S-G-*, 29 I&N Dec. 291 (BIA 2025) ("A respondent subject to the terms of an asylum cooperative agreement has the burden to establish by a preponderance of the evidence that he or she will more likely than not be persecuted on account of a protected ground or tortured in the relevant third country to avoid application of the safe third country bar and for the respondent to be eligible to seek asylum and other protection claims in the United States.")

20 ² Temporary Immigration Judges are military lawyers, usually with no prior immigration experience, who have been hired for the express purpose of streamlining removal proceedings. *See* Villarreal, Alexandra, "Hiring of military lawyers as immigration judges alarms law experts" THE GUARDIAN (Sept 22, 2025), <https://www.theguardian.com/us-news/2025/sep/22/trump-administration-military-lawyers-immigration-judges>.
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1 provide the applicant “an opportunity to either provide that corroboration or explain why
2 he cannot do so.”).

3 41. The Temporary IJ further found that the [REDACTED] Mr.
4 Abdul Rahman survived immediately preceding his entry to the United States did not
5 constitute an “imminent or extreme threat to life or safety,” and as a result, Mr. Abdul
6 Rahman was barred from asylum under the Circumvention of Lawful Pathways rule. *See*
7 8 CFR § 208.33(a)(3)(i).

8 42. Mr. Abdul Rahman timely filed a notice of appeal of the Temporary IJ’s decision
9 with the Board of Immigration Appeals (“BIA”) on February 9, 2026.

10 **B. Petitioner’s 14 Months in ICE Detention**

11 43. Mr. Abdul Rahman indicates that in his “unit” at Imperial, he is one of seven people
12 who have been detained for much longer than anyone else—everyone else has come and
13 gone in much shorter amounts of time.

14 44. Mr. Abdul Rahman is in a unit with 50 or 60 people and shares a cell with three other
15 men. His “bunk” is a thin metal platform more akin to a shelf, with a thin cushion on top
16 of it. There are cells to his left and right, and he notes that often during the night, other
17 people cause disturbances. He does not get proper sleep and is often exhausted.

18 45. There is one shared toilet in this cell, with no real privacy—the detainee using the
19 toilet can be both seen and heard by anyone on their bunk.

20 46. The temperature in the facility is extreme—either cold or hot, and most often cold.
21 Mr. Abdul Rahman has only been given short-sleeved uniforms, one thin sweatshirt, and

1 one blanket he can cover himself with when he sleeps.

2 47. Detainees at Imperial are allowed to participate in the volunteer work program if
3 they exhibit good behavior. At least five days a week, and sometimes every day of the
4 week, Mr. Abdul Rahman works in the kitchen from 12 p.m. to 6:30 p.m. He is paid two
5 dollars a day for this work. He has received certificates of exemplary participation for his
6 work in both the kitchen and in cleaning.

7 48. Detainees at Imperial are allowed outside for two hours a day. On the days that the
8 outside time occurs in the afternoon, Mr. Abdul Rahman cannot go outside because of his
9 work schedule.

10 49. Mr. Abdul Rahman speaks with his wife and children on the phone once a week. A
11 three-minute phone call costs five or six dollars—which is what motivated Mr. Abdul
12 Rahman to join the volunteer work program.

13 50. Mr. Abdul Rahman notes that the food they are given is not enough and lacks fresh
14 fruit or vegetables. On occasion he will be given a banana, which is often either spoiled or
15 not ripe, an apple, an orange, or some lettuce. He is unable to ask for more food.

16 51. Mr. Abdul Rahman reports that he has not been disciplined or had any problems with
17 any other detainees in his time at Imperial. However, when his cell mates have been
18 disciplined, he has been yelled at or forced back into his cell by guards.

19 52. Mr. Adul Rahman reports that one of the hardest parts of his detention is the
20 monotony and lack of variety. He reports that at this point, he struggles to eat the same
21 food every day. He is experiencing depression and has had several anxiety attacks. He

1 also notes that he has severe pain in his back and knees as a result of his sleeping conditions.

2 **C. Petitioner's Release Plan**

3 53. Mr. Abdul Rahman is currently receiving case management services from staff at
4 Immigrant Defenders Law Center ("IMMDEF"). These case management services will
5 continue after Mr. Abdul Rahman is released and until he is settled and self-sufficient. His
6 case manager has prepared a detailed and comprehensive release plan for him, that includes
7 wrap around services and housing in Los Angeles County. IMMDEF's Case Management
8 associates are dedicated to assisting clients such as Mr. Abdul Rahman with becoming
9 settled in their new communities, and, in particular, with navigating the needs that arise
10 immediately upon release. Mr. Abdul Rahman's case manager at IMMDEF will assist with
11 transportation to his new residence, as well as his first appointments with ICE or ISAP, and
12 will connect him with other supports while he adjusts to independent life in California.
13 IMMDEF has also approved the purchase and activation of a cell phone for Mr. Abdul
14 Rahman to use to comply with ISAP reporting requirements.

15 54. Mr. Abdul Rahman has been referred to the Los Angeles Homeless Services
16 Authority (LAHSA). LAHSA accepts referrals for individuals who are detained, with the
17 understanding that immediate access to shelter is a critical need. LAHSA is committed to
18 providing shelter, wraparound services, and assistance with transition to permanent
19 housing, once Mr. Abdul Rahman is released.

20 55. Mr. Abdul Rahman will receive transportation assistance from Detention Resistance
21 upon his release. Detention Resistance has confirmed that they will be able to provide

1 transportation from Imperial to his new housing in Los Angeles County, as well as to and
2 between appointments once he is resettled in Los Angeles.

3 56. Mr. Abdul Rahman has also been referred to the Los Angeles LGBTQ Center's
4 support group and therapeutic services. He has also been connected to the Islamic Center
5 of Southern California, where he will have access to educational programming including
6 English classes, and basic-needs resources. These classes are tuition free, and will assist
7 Mr. Abdul Rahman with improving his English proficiency, and helping him gain skills to
8 obtain stable employment in the United States. He will also be connected to a mosque near
9 his residence. These connections will allow Mr. Abdul Rahman to build community with
10 other individuals who share his language and some of his background and experience.

11 57. Mr. Abdul Rahman will continue to be represented by undersigned counsel for the
12 duration of his immigration proceedings, receiving support with understanding and
13 complying with any conditions of his release as well as future court dates and
14 appointments.

15 **VIII. LEGAL FRAMEWORK**

16 **A. Legal Framework and Constitutionality of Prolonged Immigration Detention**

17 58. 8 U.S.C. § 1225(b)(1)(B)(ii) provides that “applicants for admission” found to have
18 a credible fear of persecution are subject to detention pending consideration of an asylum
19 application. *See* 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the
20 interview that an alien has a credible fear of persecution ... the alien shall be detained for
21 further consideration of the application for asylum.”). *Rana v. LaRose*, No. 26-CV-285-

1 RSH-DDL, 2026 WL 266630, at *1 (S.D. Cal. Feb. 2, 2026). The Attorney General and
2 Board of Immigration Appeals affirm that individuals like Petitioner, who start in expedited
3 removal proceedings, and later establish a credible fear of persecution or torture before
4 being transferred to full removal proceedings, are ineligible for release on bond. *See Matter*
5 *of M-S-*, 27 I&N Dec. 509 (AG 2019) (analyzing 8 USC § 1225(b)(1)).

6 59. Nevertheless, “it is well established that the Fifth Amendment entitles [noncitizens]
7 to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523
8 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Due Process “protections apply
9 to all ‘persons’ within the United States, including [noncitizens], whether their presence
10 here is lawful, unlawful, temporary, or permanent, and to immigration detention as well
11 as criminal detention.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017). For
12 noncitizens in immigration detention, “[f]reedom from imprisonment—from government
13 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that
14 Clause protects.” *Zadvydas*, 533 U.S. at 690.

15 60. The Supreme Court has addressed several challenges to the immigration detention
16 scheme in the last two decades. First, in *Zadvydas*, the Supreme Court held that the
17 government must demonstrate that a noncitizen’s removal is reasonably likely to occur if
18 the noncitizen remains detained for six months after the removal period specified in 8
19 U.S.C. § 1231(a)(6). 533 U.S. at 701. In doing so, the Court recognized a presumption that
20 detention longer than six months following a noncitizen’s removal period violates that
21 noncitizen’s due process right to liberty. *Id.*

61. Second, in *Demore* the Court upheld the mandatory detention of a noncitizen under 8 U.S.C. § 1226(c) based on the petitioner's concession of deportability and the Court's understanding that detention under § 1226(c) is typically "brief," and has a "definite termination point." *Demore*, 538 U.S. at 528, 529. Nevertheless, the Supreme Court's decision in *Demore* did not foreclose a noncitizen's right to challenge prolonged detention without protections such as a bond hearing.

62. Following *Zadvydas* and *Demore*, every circuit court of appeals to confront the issue found either that the INA or due process require a hearing **or release** for noncitizens subject to unreasonably prolonged detention pending removal proceedings. *See, e.g., Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016), vacated as moot, 890 F.3d 952 (11th Cir. 2018); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015); *Rodriguez v. Robbins* (Rodriguez III), 804 F.3d 1060 (9th Cir. 2015); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).

63. While due process may not require bond hearing after six months in *every* case, at a minimum, due process demands a bond hearing after detention has become unreasonably prolonged. *See generally Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (citing *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091 (9th Cir. 2011)); *see also Diop*, 656 F.3d at 234. Detention *without a bond hearing* should be treated as "prolonged" when it exceeds six months. *See Demore*, 538 U.S. at 529-30 (upholding only "brief" detentions under 8 U.S.C. § 1226(c) that last "roughly a month and a half in the vast

majority of cases . . . and about five months in the minority of cases in which the alien chooses to appeal”); *Zadvydas*, 533 U.S. at 701.

64. In 2018, the Supreme Court held that the Ninth Circuit erred by interpreting 8 U.S.C. §§ 1226(c) and 1225(b) to require bond hearings after six months as a matter of statutory construction. *Jennings*, 583 U.S. at 296–306. Because the Ninth Circuit had not decided whether the Constitution itself requires bond hearings in cases of prolonged detention, the Court remanded for the Ninth Circuit to address the issue. *Id.* at 312. The Court’s majority opinion did not express any views on the constitutional question and left it to the lower courts to address the issue in the first instance. Since the Supreme Court’s *Jennings* decision, the Ninth Circuit has expressed “grave doubts 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).

65. That is, neither the Supreme Court nor the Ninth Circuit have settled on a test for assessing the constitutionality of prolonged mandatory detention. *See Banda v. McAleenan*, 385 F.Supp. 3d 1099 (W.D. Wash. 2019).

B. Immigration Detention Violates Substantive Due Process if it is Excessive or Unnecessary in Relation to its Purpose and thus Punitive

66. Substantive “due process requires that the nature and duration of [civil incarceration] bear some reasonable relation to the purpose for which the individual is committed”; otherwise, it amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004)

1 (quoting *Jackson v Indiana*, 406 U.S. 715, 738 (1972)). In the immigration context, the
2 Supreme Court has recognized only two valid purposes for detention: to mitigate the risks
3 of danger to the community and to prevent flight. *Zadvydas*, 533 U.S. at 690; *Denmore*,
4 538 U.S. at 528.

5 67. Even when the Constitution permits some confinement, the Supreme Court has
6 recognized that such confinement becomes punitive when it is “excessively prolonged.”
7 *U.S. v. Salerno*, 481 U.S. 739, 747 n.4 (1987). Applying these principles, the Ninth Circuit
8 has held that civil restrictions on liberty violate due process: (1) “where [they] are expressly
9 intended to punish,” or (2) “where the challenged restrictions serve an alternative, non-
10 punitive purpose but are nonetheless ‘excessive in relation to the alternative purpose,’ or
11 ‘are employed to achieve objectives that could be accomplished in so many alternative and
12 less harsh methods.’” *Jones*, 393 F.3d at 932 (internal citations omitted).

13 68. Civil detention is also presumptively punitive if the individual is held in conditions
14 that are similar to, or more restrictive than, conditions in criminal custody. *See id.* at 934;
15 *King v. Cty. of Los Angeles*, 885 F.3d 548, 556–57 (9th Cir. 2018). Accordingly, when a
16 person subjected to prolonged civil immigration detention poses no risk of flight or danger
17 to the community, or when restrictions short of physical custody are sufficient to mitigate
18 any risk a detained person poses, the Constitution requires their release.

19 ///

20 ///

C. Even if not Punitive, Prolonged Detention without an Individual Hearing Violates Procedural Due Process

69. Prolonged immigration detention violates *procedural* due process absent an individualized inquiry of whether the government’s asserted justification for confinement “outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Zadvydas*, 533 U.S. at 690 (citations omitted).

70. The Ninth Circuit in *Rodriguez Diaz* noted that other courts have regularly applied the *Mathews* test when evaluating due process challenges to immigration detention—observing that “*Mathews* ‘remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context.’ The court therefore assumed—without deciding—that *Mathews* applied.” *Singh v. United States Immigr. & Customs Enft*, 2023 WL 4627819, at *7 (W.D. Wash. Mar. 17, 2023) (citing *Rodriguez Diaz*, 53 F. 4th at 1206–07).

71. Courts in this district have used a six-factor balancing test to determine whether prolonged detention without a bond hearing violates procedural due process. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019). That test considers: (1) the total length of detention to date; (2) the likely duration of future detention; (3) conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. *Kydyrali*, 499 F. Supp. 3d at 773–74.

72. Given this background, a majority of district courts have found prolonged detention

1 under § 1225(b) without a bond hearing will eventually give rise to due process issues. *See*,
2 *e.g.*, *Sadeqi v. LaRose*, No. 25-CV-2587-RSH-BJW, 2025 WL 3154520, at *2 (S.D. Cal.
3 Nov. 12, 2025) (“This Court agrees with the majority position that a petitioner detained
4 under Section 1225(b)(1) may assert a due process challenge to prolonged mandatory
5 detention without a bond hearing.”); *Abdul-Samed v. Warden of Golden State Annex Det.*
6 *Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025)
7 (“Although the Ninth Circuit has yet to take a position on whether due process requires a
8 bond hearing for noncitizens detained under 8 U.S.C. § 1225(b)...‘essentially all district
9 courts that have considered the issue agree that prolonged mandatory detention pending
10 removal proceedings, without a bond hearing, will—at some point—violate the right to
11 due process.’”) (quoting *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089,
12 at *6 (W.D. Wash. May 23, 2019)).

13 73. Courts in this district also consistently find that Petitioners similarly situated to Mr.
14 Abdul Rahman are entitled to a bond hearing once their detention is prolonged. *See, e.g.*,
15 *Asratyan v. Noem*, No. 26CV0414 DMS JLB, 2026 WL 465954, at *1 (S.D. Cal. Feb. 18,
16 2026); *Amado v. United States Dep’t of Just.*, No. 25CV2687-LL(DDL), 2025 WL
17 3079052, at *8 (S.D. Cal. Nov. 4, 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D.
18 Cal. 2020) (“[T]he Court joins the majority of courts across the country in concluding that
19 an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized
20 bond hearing violates due process”).

21 ///

D. The Government Bears the Burden of Justifying Petitioner's Prolonged Detention

74. 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, 1205 (9th Cir. 2011); *Zadvydas*, 533 U.S. at 13 692 (finding post-final-order custody review procedures deficient because, inter alia, they placed burden on detainee).

75. This 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 v. Eldridge*, 424 U.S. 319, 335 (1976).

76. First, prolonged incarceration deprives noncitizens of a “profound” liberty interest—one that always requires some form of procedural protections. *Diouf*, 634 F.3d at 1091-92; see also *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)).

77. 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 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

1 to obtain legal assistance, gather evidence, and prepare for a bond hearing.

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

5 79. In light of these considerations, "[t]he overwhelming majority of courts to consider
6 the question . . . have concluded that imposing a clear and convincing standard would be
7 most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL
8 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted); *Singh*, 638
9 F.3d at 1205.

10 80. In summary, where the government wishes to detain a noncitizen for a prolonged
11 period while the noncitizen pursues a substantial defense to removal or a claim to relief,
12 due process requires an individualized hearing before a neutral decisionmaker, at which
13 the burden must be on the government to demonstrate by clear and convincing evidence
14 that the noncitizen is a danger or a flight risk.

15 **1. Other considerations**

16 81. Due process also requires that a neutral decisionmaker consider alternatives to
17 detention. One of only two permissible purposes of immigration detention is to ensure a
18 noncitizen's appearance during removal proceedings. Detention is not reasonably related
19 to this purpose if there are alternative conditions of release that could mitigate a theoretical
20 risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention
21 program—the Intensive Supervision Appearance Program (ISAP)—has achieved

1 extraordinary success in ensuring appearance at removal proceedings, reaching
2 compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th
3 Cir. 2017) (observing that ISAP “resulted in a 99% attendance rate at all EOIR hearings
4 and a 95% attendance rate at final hearings”). It follows that alternatives to detention must
5 be considered in determining whether prolonged incarceration is warranted.

6 82. Due process likewise requires consideration of a noncitizen’s ability to pay a bond.
7 “Detention of an indigent ‘for inability to post money bail’ is impermissible if the
8 individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms
9 of release.’” *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978)
10 (en banc)). As a result, in determining the appropriate conditions of release for immigration
11 detainees, due process requires “consideration of financial circumstances and alternative
12 conditions of release” to prevent against detention based on poverty. *Id.*

13 IX. ARGUMENT

14 A. Mr. Abdul Rahman’s Detention Violates the Substantive Due Process Clause Because it is Excessive in Relation to the Government’s Interests

15 83. Petitioner’s detention of over 14 months violates his substantive and procedural due
16 process rights. First, Petitioner’s detention is not reasonably related to its non-punitive
17 purpose because he is neither a flight risk nor danger to the community—the only
18 permissible grounds for civil detention. *See Demore*, 538 U.S. at 515; *Zadvydas*, 533 U.S.
19 at 690.

20 84. Mr. Abdul Rahman poses no danger to the community. Mr. Abdul Rahman has
21 never been arrested or charged in connection with any crime, anywhere in the world. He
22

1 is a committed husband and a father who works hard to be able to stay in contact with his
2 family. He has exhibited exemplary behavior in detention and has participated fully and
3 honestly in his removal proceedings.

4 85. Mr. Abdul Rahman also does not pose a risk of flight. Mr. Abdul Rahman has a
5 detailed release plan that includes housing, community support, transportation, and
6 educational opportunities. Mr. Abdul Rahman is eager to participate in these supports as
7 they will allow him to contribute to the community, continue to pursue permanent lawful
8 status, and also to reconnect with his family back in Ghana.

9 86. Moreover, any risk can be entirely mitigated with less restrictive conditions of
10 supervision upon release. Mr. Abdul Rahman has noted his willingness to participate in
11 alternatives to detention programs including wearing an ankle monitor and attending
12 regular check ins. He is also committed to continuing his immigration case with his
13 immigration counsel, who will represent him for the duration of his proceedings. Studies
14 show that 96% or 97% of non-detained immigrants with a lawyer attend all of their
15 hearings, and alternatives to detention have “resulted in a 99% attendance rate at all EOIR
16 hearings and a 95% attendance rate at final hearings.”³ Mr. Abdul Rahman is motivated to
17 continue and comply with the requirements of his immigration case because of his
18 conviction that he has a meritorious claim for asylum.

19
20 ³ See American Immigration Council, Measuring In Absentia Removal in Immigration Court (Jan 2021),
21 https://www.americanimmigrationcouncil.org/sites/default/files/research/measuring_in_absentia_in_immigration_court.pdf,
American Immigration Council, Immigrants and Families Appear in Court (Jul 2019),
<https://www.americanimmigrationcouncil.org/research/immigrants-and-families-appear-court>, *Hernandez*, 872 F.3d at 991.

B. Alternatively, Petitioner's 14 Months of Physical Custody, Under Conditions Equal or Worse to Criminal Custody, is Punitive.

87. Even civil detention that begins as constitutionally acceptable may become unconstitutionally punitive when it exceeds a particular duration. “[A]s the period of . . . confinement grows,” greater justification is needed “for detention to remain reasonable.” *Zadvydas*, 533 U.S. at 701; *see also id.* at 690 (“A statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem”).

88. In the present case, Petitioner has never had an individualized hearing to determine if he poses a flight risk or danger to the community. Rather, Petitioner has been detained for 14 months while awaiting a final decision on his applications for Asylum and other humanitarian protection. At *least* eight months of this detention was caused exclusively by the Respondents’ failure to secure proper interpretation. Arguably, this detention was also prolonged by Respondent’s failure to provide interpretation for Petitioner’s Credible Fear Interview, necessitating a Credible Fear Review. Such prolonged detention without any justification must be recognized as impermissibly punitive.

89. The conclusion that Petitioner’s detention is impermissibly punitive is also supported by the fact that there is no meaningful distinction between the conditions at Imperial and a criminal prison. Due process prohibits conditions of civil detention that are the same as, or worse than, criminal custody.⁴ *King v. Cty. Of Los Angeles*, 885 F.3d 548,

⁴ *Report Immigration Detention is Bigger, Harsher, and Less Accountable Than Ever*, AMERICAN IMMIGRATION COUNCIL (Jan. 14, 2026) <https://www.americanimmigrationcouncil.org/press-release/report-trump-immigration-detention-2026/> (“the government is spending billions on mass detention to pressure people who pose no threat to give up their cases and accept deportation”).

1 556–57 (9th Cir. 2018). Mr. Abdul Rahman has extremely limited time outdoors, and
2 sometimes goes days without being able to go outside at all. He has almost no access to
3 fruits or vegetables, and is not provided sufficient food. He has spent over a year sleeping
4 on a thin cushion on a metal shelf, in a shared cell with no privacy in using the restroom.
5 He must work thirty hours a week in order to receive funds to speak briefly to his family.
6 He is suffering physical and mental stress and he feels he is being punished for seeking
7 protection. This Court should find that these conditions are the same or worse than criminal
8 confinement, and impermissibly punitive. *See King*, 885 F.3d at 553–54 (finding that civil
9 confinement was indistinguishable from criminal confinement based on conditions
10 including being handcuffed when move out of their cells, having limited time outdoors,
11 and limited contact with family).

12 90. Petitioner’s prolonged detention is further unjustified because any risk of flight or
13 danger can be successfully mitigated with less restrictive measures than physical custody.
14 In other words, the government’s objectives can be accomplished through “alternative and
15 less harsh methods,” including reasonable conditions of supervision upon release. *Jones*,
16 393 F.3d at 932; *see Perez v. Wolf*, 445 F. Supp. 3d 275, 291, 295 (N.D. Cal. 2020)
17 (upholding IJ’s finding of dangerousness and nonetheless ordering release from
18 immigration detention on conditions of release based on substantive due process claim);
19 *Ortuño v. Jennings*, No. 20-cv-02064-MMC, 2020 WL 1701724, at *4 (N.D. Cal. Apr. 8,
20 2020) (holding that physical custody was “excessive in relation” to DHS’s interest in
21 preventing flight risk and ordering release from immigration detention on conditions of
22

1 release based on substantive due process claim); *Doe v. Barr* (*Doe v. Barr II*), No. 20-cv-
2 02263-RMI, 2020 WL 1984266, at *6 (N.D. Cal. Apr. 27, 2020) (same).

3 91. Immigration authorities already claim to have developed and successfully
4 implemented programs to supervise individuals while their removal proceedings remain
5 pending. ICE's Intensive Supervision Appearance Program ("ISAP"), for example, has
6 achieved near-perfect compliance with court obligations. *See Hernandez*, 872 F.3d at 991
7 (ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate
8 at final hearings"). Such alternative supervision programs are also significantly less costly
9 than continued incarceration. According to ICE's website, the daily cost of detention is
10 \$152 per day, compared to \$4.20 per day for ISAP.⁵

11 92. Under that data, the government has already spent over \$64,000 to house, feed and
12 provide 24-hour staffing to detain Petitioner for over 15 months. Petitioner's release from
13 custody would significantly reduce the government's added burden on taxpayers for the
14 duration of his case, which could continue for months or years into the future. Moreover,
15 Petitioner has a structured release plan that includes transitional housing in combination
16 with several layers of support from his case manager, his attorney, and other community
17 organizations dedicated to supporting individuals just like him to successfully reintegrate
18 into the communities. Because the conditions of Petitioner's release will successfully
19 protect any conceivable governmental interest, his continued detention is
20 unconstitutionally punitive.

21 _____
22 ⁵ Immigration and Customs Enforcement, "Alternatives to Detention " <https://www.ice.gov/features/atd> (archived)

93. Petitioner has already been subject to detention for over 14 months and is expected to remain in detention at least several more months, and possibly years, if his case is remanded, and if either side appeals after a new decision on remand. As of the date of this filing, Petitioner has not received a briefing schedule or any other response to the appeal filed on February 9, 2026. That is, his detention is certain to continue for at least several more months absent intervention from this Court. This can only be construed as punishment for availing himself of the system and his right to seek humanitarian protection.

1. This Court Has Authority to Order Release as a Remedy to a Substantive Due Process Violation.

94. If the Court finds that Petitioner's continued detention is punitive and violates substantive due process, the proper remedy is to order release.

95. Such a remedy is well within the Court's power. The federal habeas statute directs district courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *see also Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (explaining that as far back as the nineteenth century, "the Court interpreted the predecessor of § 2243 as vesting a federal court 'with the largest power to control and direct the form of judgment to be entered in cases brought up before it on habeas corpus'" (quoting *In re Bonner*, 151 U. S. 242, 261 (1894))).

96. In immigration habeas cases, courts regularly order release upon determining that detention violates substantive due process. *See Singh v. Warden of the Golden State Annex Detention Facility*, 2026 WL 171952 at *7 (E.D. Cal., Jan. 22, 2026) (examining the record

1 and concluding that no evidence of flight risk or danger merits immediate release following
2 prolonged detention of over six months); *Rodriguez Cabrera v. Mattos*, No. 2:25-CV-
3 01551-RFB-EJY, 2025 WL 3072687, at *14 (D. Nev. Nov. 3, 2025) (“Because the Court
4 finds Petitioner’s continued detention . . . is unconstitutional, the Court grants the Writ of
5 Habeas Corpus and orders his immediate release. . .”); *Escobar Salgado v. Mattos*, No.
6 2:25-CV-01872-RFB-EJY, 2025 WL 3205356, at *26 (D. Nev. Nov. 17, 2025); *Ekeh v.*
7 *Gonzales*, 197 F. App’x 637, 638 (9th Cir. 2006) (ordering supervised release pursuant to
8 *Zadvydas*).

9 97. A bond hearing is an inadequate remedy for Mr. Abdul Rahman’s situation, because
10 the purpose of the bond hearing—for a neutral decisionmaker to determine whether Mr.
11 Abdul Rahman is a “flight risk” or “danger to the community” so that his release from
12 detention will not disrupt the status quo of proceedings—cannot be satisfied here. Here,
13 because Petitioner’s prolonged detention is excessive, punitive, and unnecessary in relation
14 to any governmental interest, the Court must order his immediate release.

15 **C. In the Alternative, Mr. Abdul Rahman’s Prolonged Detention Without an**
16 **Individualized Determination Violates Procedural Due Process.**

17 98. Because Petitioner is subject to punitive civil incarceration in violation of
18 substantive due process, this Court need not reach the question of whether his detention
19 also violates procedural due process. However, if the Court does reach the issue, the Court
20 should find that Petitioner’s prolonged and ongoing detention without any individualized
21 evaluation of the government’s asserted justification for confinement violates procedural

1 due process. *See Zadvydas*, 533 U.S. at 693 (2001) (citations omitted). Petitioner is thus
2 entitled to a prompt, evidentiary custody hearing by this Court, which must “hear and
3 determine the facts” of his habeas petition and “dispose of the matter as law and justice
4 require.” 28 U.S.C. § 2243.

5 1. **Banda Test**

6 99. As noted above, Courts in this district routinely apply the six-factor test set out in
7 *Banda* to analyze due process challenged to prolonged detention. *See Sadeqi v. LaRose*,
8 No. 25-CV-2587-RSH-BJW, 2025 WL 3154520, at *3 (S.D. Cal. Nov. 12, 2025); *Banda*,
9 385 F.Supp. 3d at 1106, 1117. These factors are: (1) total length of detention to date; (2)
10 the likely duration of future detention; (3) the conditions of detention; (4) delays in the
11 removal proceedings caused by the detainee (5) delays in the removal proceedings caused
12 by the government; and (6) the likelihood that the removal proceedings will result in a final
13 order of removal. *Id.*

14 100. The first factor weighs in favor of Petitioner’s argument, as he has been detained for
15 over 14 months. “Examples [of district courts ordering a bond hearing where a petitioner
16 was subject to mandatory detention for a comparable length of time] abound, including
17 from this Court.” *Sadeqi v. LaRose*, No. 25-CV-2587-RSH-BJW, 2025 WL 3154520, at
18 *3 (S.D. Cal. Nov. 12, 2025) (citing *Hoyos Amado*, 2025 WL 3079052, at *5 (“Courts have
19 found detention over seven months without a bond hearing weighs toward a finding that it
20 is unreasonable.”); *Tonoyan v. Andrews*, No. 1:25-CV-00815-SKO (HC), 2025 WL
21 3013684, at *4 (E.D. Cal. Oct. 28, 2025) (“Petitioner has been detained approximately 11
22

1 months. This period . . . qualifies as prolonged.”); *Gao*, 2025 WL 2770633, at *5 (“The
2 Court finds that Petitioner’s detention for over 10 months without a bond hearing, in the
3 context of the specific circumstances described above, has become unreasonable and
4 violates due process.”); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022)
5 (“Petitioner has been in immigration detention . . . approximately one year. District court
6 have found shorter lengths of detention . . . without a bond hearing to be unreasonable.”)).
7 101. The likely duration of future detention also weighs in favor of Petitioner, as his
8 ongoing appeal, likely remand, and subsequent re-hearing of the merits of his application
9 is certain to take *at least* 190 days. *See Belqasim v. Bostock*, No. 2:25-CV-01282-LK-TLF,
10 2025 WL 3466971, at *7 (W.D. Wash. Oct. 28, 2025), *report and recommendation adopted*
11 *sub nom. Belqasim v. Hermosillo*, No. 2:25-CV-01282-LK, 2025 WL 3170929 (W.D.
12 Wash. Nov. 13, 2025) (citing a Response from EOIR to FOIA Request Showing BIA
13 Processing Times for January 1, 2024, to May 31, 2025)).

14 102. If his appeal to the BIA is denied, Mr. Abdul Rahman has noted that his fear of
15 persecution in Ghana is such that he will pursue all appeals necessary, including to the
16 Ninth Circuit. If the Petitioner’s appeal is granted, the government may petition for review
17 from the Ninth Circuit. Either way, this would cause further delays of at least six months
18 to a year.⁶ While the Court cannot definitively determine the duration of Petitioner’s future
19 detention, based on the current record, the Court should determine it will certainly last
20

21 ⁶ See U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, *Frequently Asked Questions*,
22 <https://www.ca9.uscourts.gov/general/faq/> (last accessed February 25, 2026).

1 several months, and possibly years, weighing heavily in favor of Petitioner's claim.

2 103. As analyzed above, the conditions of detention at the Imperial Regional Facility are
3 indistinguishable from criminal incarceration, are demonstrably punitive, and thus this
4 factor weighs heavily in favor of Petitioner's argument.

5 104. In analyzing delays in the removal proceedings caused by the detainee vs. delays
6 caused the government, this Court should find that both the fourth and fifth *Banda* factors
7 weigh heavily in favor of Petitioner. In December 2025, Petitioner, through undersigned
8 counsel, requested one brief continuance, in order to be able to complete his written
9 declaration with the assistance of a professional interpreter. Completing this task required
10 utilizing the Imperial Regional Facility's attorney scheduling procedure and video call
11 service, during which Petitioner and undersigned counsel experienced additional
12 scheduling delays and technological difficulties. Even still, this continuance was the one
13 and only delay caused by Petitioner. As noted, from February to November 2025,
14 Respondents reset Petitioner's case over twenty times. This, after putting Petitioner
15 through a Credible Fear Interview in English, and erroneously asking Petitioner for his
16 "native" language rather than his "best language." Respondents also placed Petitioner's
17 claim before a Temporary IJ who erroneously denied Petitioner's applications for relief,
18 requiring Petitioner to appeal. *See Martinez v. Clark*, No. 18-1669, 2019 WL 5968089, at
19 *10 (W.D. Wash. May 23, 2019), *R & R adopted*, 2019 WL 5962685 (W.D. Wash. Nov.
20 13, 2019) ("Petitioner is entitled to raise legitimate defenses to removal . . . and such
21 challenges to his removal cannot undermine his claim that detention has become

unreasonable.”). The future delays that are sure to ensue during this appeal are also attributable to the government’s processing times and are unavoidable by Petitioner. The Court should find that Respondents have caused numerous unnecessary delays, such that these two factors weigh strongly in favor of Petitioner.

105. The Court should find that the sixth factor, namely the likelihood that the removal proceedings will result in a final order of removal, is neutral at this point in Petitioner’s proceedings. Petitioner affirms that his claim for Asylum is meritorious.

106. In sum, the Court should find that five of the six *Banda* factors weigh in favor of a finding that Petitioner’s detention has become impermissibly prolonged, while one factor is neutral, and that due process requires he be granted a bond hearing.

2. Application of *Matthews* Test

107. Outside of this district, numerous courts have chosen to apply the *Mathews* test, and have found that prolonged detention under Section 1225(b) without an individualized hearing violates procedural due process. *See, e.g., Rodriguez Cabrera v. Mattos*, No. 2:25-CV-01551-RFB-EJY, 2025 WL 3072687, at *14 (D. Nev. Nov. 3, 2025) (“the Court finds Petitioner’s continue detention, with no process afforded to challenge it as arbitrary, violates his procedural due process rights.”); *Khaco v. Warden*, No. 1:25-CV-1659 CSK P, 2026 WL 295551, at *6 (E.D. Cal. Feb. 4, 2026); *Mohammed v. Warden of California City Det. Ctr.*, 2026 WL 192368, at *2 (E.D. Cal. Jan. 26, 2026) (granting petitioner’s motion for temporary restraining order and ordering bond hearing within seven days before an immigration judge of petitioner detained for seventeen months pursuant to § 1225(b)).

1 108. Because Petitioner has *never* received any individualized evaluation of his detention,
2 the *Mathews* factors clearly weigh in his favor and require that this Court promptly hold a
3 bail hearing to evaluate whether Respondents can justify his continued detention.

4 109. First, Petitioner's private interest in his liberty, the main private interest here, is
5 "unquestionably substantial." *Martinez Leiva v. Garland*, 3:23-cv-02027-CRB, Dkt. 15 at
6 13 (quoting *Singh*, 638 F.3d at 1208). Petitioner "has an overwhelming interest here—
7 regardless of the length of his immigration detention—because 'any length of detention
8 implicates the same' fundamental rights." *Perera v. Jennings*, No. 21-cv-04136-BLF, 2021
9 WL 2400981, at *4 (N.D. Cal. June 11, 2021) (citation omitted). Petitioner's private
10 interest is particularly strong because the length of his detention is significant, and is likely
11 to continue. *See Portillo v. Hott*, 322 F. Supp. 3d 698, 708 (E.D. Va. 2018) (holding that
12 the petitioner's "fourteen-month detention weighs heavily in his favor as a prolonged and
13 substantial burden on his liberty interest" and that finding was "enhanced by the potential
14 for significant additional proceedings," including an estimate of "at least six additional
15 months")

16 110. Petitioner's private interest is further strengthened by the conditions of his civil
17 detention, which, as described above, are indistinguishable from the conditions of penal
18 confinement, and which are having profound effects on his mental and physical health.

19 111. Second, the risk of erroneous deprivation and the probable value of additional
20 procedural safeguards also weigh heavily in Petitioner's favor. "[T]he risk of an erroneous
21 deprivation of liberty in the absence of a hearing before a neutral decisionmaker is
22

1 substantial.” *Diouf II*, 634 F.3d at 1092. Petitioner has been detained for over 14 months
2 without any individualized inquiry into whether the government can justify his detention
3 based on a risk of flight or danger. *See Zadvydas*, 533 U.S. at 690 (permissible purposes
4 for immigration detention are risk of flight or danger to the community). Conversely, “the
5 probable value of additional procedural safeguards—an individualized evaluation of the
6 justification for his detention—is high, because Respondents have provided virtually no
7 procedural safeguards at all.” *Jimenez*, 2020 WL 510347, at *3 (granting habeas petition
8 for person who had been detained for one year without a bond hearing); *see also Perera*,
9 2021 WL 2400981, at *4 (“[T]he value of providing Perera with a hearing is high.”).
10 Moreover, “[t]hat there is no remotely certain end in sight to [Petitioner’s] custody only
11 raises the risk of erroneous deprivation.” *Perera*, 2021 WL 2400981, at *4.

12 112. Third, the government’s interest in continuing to detain Petitioner without any
13 individualized, neutral review is very weak. The government’s interest at stake here is not
14 its ability to continue to detain Petitioner, but rather the government’s ability to continue
15 to detain him *for 14 months on end without any individualized review*. Courts both within
16 and outside of this district consistently find that this factor weighs in favor of the Petitioner.
17 *See Esquivel Pacheco v. LaRose*, No. 3:25-CV-2421-JO-AHG, 2026 WL 242300 (S.D.
18 Cal. Jan. 29, 2026) (finding the government’s fiscal and administrative burden in providing
19 detained noncitizen with individualized bond hearing under INA was entitled to little
20 weigh); *L.S. v. Warden, Otay Mesa Det. Ctr.*, No. 25CV3598-LL-BJW, 2026 WL 143150,
21 at *6 (S.D. Cal. Jan. 20, 2026); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D.

1 Cal. 2019); *Lopez Reyez v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Singh v.*
2 *Barr*, 400 F. Supp. 3d 1005, 1021 (N.D. Cal. 2019); *Henriquez*, 2022 WL 2132919, at *5
3 (“[T]he Government’s interest in detaining Petitioner without providing an individualized
4 bond hearing is low.”).

5 113. The cost of providing an individualized inquiry is also minimal. *See Marroquin*
6 *Ambriz*, 420 F. Supp. 3d at 964; *Lopez Reyez*, 362 F. Supp. 3d at 777; *Singh*, 400 F. Supp.
7 3d at 1021; *Henriquez*, 2022 WL 2132919, at *5. In any event, it is “always in the public
8 interest to prevent the violation of a party’s constitutional rights.” *See Melendres v. Arpaio*,
9 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Sammartano v. First Judicial Dist Court*, 303
10 F.3d 959, 974 (9th Cir. 2002)). “Requiring the government to provide [Petitioner] a bond
11 hearing does not meaningfully undermine the government’s interest in detaining non-
12 citizens who pose a danger to the community or are a flight risk.” *Perera*, 2021 WL
13 2400981, at *5; *see also Hernandez*, 872 F.3d at 994 (“[T]he government has no legitimate
14 interest in detaining individuals who have been determined not to be a danger to the
15 community and whose appearance at future immigration proceedings can be reasonably
16 ensured by a lesser bond or alternative conditions.”).

17 114. Accordingly, under either the *Banda* or *Mathews* tests, this Court should find that
18 Petitioner’s continued detention without the minimal protection of a bond hearing violates
19 his procedural due process rights.

20 ///

21 ///

D. This Court Should Hold the Evidentiary Hearing to Which Petitioner Is Entitled.

115. After finding a procedural due process violation, this Court should hold the evidentiary hearing to determine whether the government can justify further detention.

116. This Court's habeas power gives it the authority to conduct evidentiary hearings and release a petitioner on bail. "[T]he federal habeas statute provides for a swift, flexible, and summary determination of [a petitioner's] claim." *Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973). The statute directs district courts to "hear and determine the facts" of a habeas petition and to "dispose of the matter as law and justice require." 28 U.S.C. § 2243. Indeed, the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest"). The common law gave habeas courts power to hold a hearing and release a habeas petitioner to bail even absent a statute contemplating such release. *See Wright v. Henkel*, 190 U.S. 40, 63 (1903) ("[T]he Queen's Bench had, 'independently of statute, by the common law, jurisdiction to admit to bail.'" (quoting *Queen v. Spilsbury*, 2 Q. B. 615 (1898)); *see also Mapp v. Reno*, 241 F.3d 221, 223 (2d Cir. 2001) ("We hold that the federal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in criminal habeas cases.")).

1 117. District courts are at no disadvantage in considering evidence relevant to a custody
2 proceeding. In fact, courts in this Circuit have regularly considered whether the
3 government can justify further detention. *See id.*; *Judulang v. Chertoff*, 562 F. Supp. 2d
4 1119, 1126–27 (S.D. Cal. 2008) (ordering release where evidence did not satisfy the
5 government’s evidentiary burden post grant of writ of habeas); *Mau v. Chertoff*, 562
6 F.Supp.2d 1107, 1118-19 (S.D. Cal. 2008) (same). And district courts regularly make
7 custody determinations in the criminal pre-trial detention context. *See* 18 U.S.C. § 3142.

8 **1. Due process also requires a neutral adjudicator,**
9 **which Respondent DOJ is currently unable to**
10 **provide.**

11 118. “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v.*
12 *INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-*
13 *Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an
14 erroneous deprivation of liberty under *Mathews* can be decreased where a neutral
15 decisionmaker, rather than DHS alone, makes custody determinations. *Diouf v. Napolitano*
16 (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

17 119. Even before the current administration came into office, bond hearings in
18 immigration court were regarded as “law-free zones” and “implicit bias minefields.” Mary
19 Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025). To begin, IJs
20 are not independent adjudicators. They are career attorneys who report to the Attorney
21 General, an appointee of the executive branch, making them “very susceptible to pressure
22 from above to decide cases in a certain way.” *Accord* Karen Musalo et. al., *With Fear*,

1 *Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L.
2 Rev. 2743, 2755 (2024); Holper, 74 Duke L.J. at 1010 (describing an IJ as “a prosecutor
3 masquerading as a judge.”).

4 120. Since the current presidential administration took office in 2025, it has fired IJs *en*
5 *masse*, “many seemingly because their judicial philosophies did not align with the
6 administration’s priorities.”⁷ One recently fired IJ who served in that position for twenty
7 years observed: “I think the current administration . . . does not see the immigration courts
8 as neutral decision-makers. I think that they see immigration courts as a tool for this
9 administration to advance its policy objectives.”⁸

10 121. At the same time, hundreds of military lawyers are being recruited to sit as IJs after
11 minimal training.⁹ The Temporary IJ that denied Mr. Abdul Rahman’s claim for asylum
12 was one such military judge. This move alarms legal experts for myriad reasons, including
13 because of the president’s outsized influence over the military. *Id.* The administration has
14 even widely issued policy guidance admitting the DHS (its enforcement arm) is actively
15 coordinating with the DOJ (under which the BIA and IJs sit) to expand mandatory
16 detention.¹⁰ Respondent DOJ has also launched a campaign to hire new IJs that advertises

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18 ⁷ Levin, Sam, “‘Hell on earth’: immigrants held in new California detention facility beg for help,” THE GUARDIAN (Sept 27, 2025), <https://www.theguardian.com/us-news/2025/sep/27/immigrants-california-detention-facility>

19 ⁸ Bennett, Geoff and Ali Schmitz, “Ousted immigration judge describes deepening court backlog” PBS NEWS HOUR (Nov 12, 2025), <https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog>

20 ⁹ Villarreal, Alexandra, “Hiring of military lawyers as immigration judges alarms law experts” THE GUARDIAN (Sept 22, 2025), <https://www.theguardian.com/us-news/2025/sep/22/trump-administration-military-lawyers-immigration-judges>

21 ¹⁰ Interim Guidance from U.S. Department of Homeland Security to All ICE Employees Re: “Detention Authority for Applications for Admission” (July 8, 2025), <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>

1 the position as “deportation judges” and describes it as an opportunity to “[b]ring the
2 hammer down on criminal illegal aliens . . . Defend your communities, your very way of
3 life.”¹¹

4 122. Nor does appellate review by the BIA “play a corrective role[,] because it is subject
5 to essentially the same institutional constraints as IJs.” Musalo, 65 B.C. L. Rev. at 2756.
6 After taking office, the current administration purged BIA members from twenty-six to
7 nine.¹² This allowed for a smaller majority to publish decisions and thus highlighted the
8 agency’s lack of independence.¹³ Indeed, since January 20, 2025, the BIA has issued at
9 least sixty-three precedent decisions.¹⁴ All but one of these decisions found against the
10 noncitizen¹⁵; all involving bond proceedings ruled against the noncitizen; some reversed
11 prior grants and called for re-detention.¹⁶ By contrast, in all of 2024 the BIA issued just
12 fourteen precedent decisions, some of which were in favor of the DHS while others favored
13 the noncitizen.¹⁷

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15
16 ¹¹ See Gutierrez, Hilda and Michael Bott, “An all-out attack on immigration court ‘ SF immigration judges speak out after
firings” NBC BAY AREA (Nov. 25, 2025), <https://www.nbcbayarea.com/investigati>
17 [ons/san-francisco-immigration-judges-speak-out-firings/3986850/](https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/).

¹² See Catholic Legal Immigration Network, Inc., “Precedent or Policy? A Quiet Transformation of the Board of Immigration
Appeals” (Aug. 22, 2025), <https://www.cliniclegal.org/resources/precedent-or-policy-quiet-transformation-board-immigration-appeals>

18 ¹³ *Id*

¹⁴ See U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol 29*, online at
19 <https://www.justice.gov/eoir/volume-29> (last accessed Dec. 15, 2025).

¹⁵ The one decision purportedly in favor of the noncitizen described the methods in which an IJ can premit an application
20 for relief prior to any evidentiary hearing, and remanded the case back to the IJ to follow that method. See Catholic Legal
Immigration Network, Inc., “Precedent or Policy? A Quiet Transformation of the Board of Immigration Appeals” (citing *Matter*
of C-A-R-R-, 29 I&N Dec 13 (BIA 2025)).

21 ¹⁶ *Id*

¹⁷ See U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol 28*, online at
22 <https://www.justice.gov/eoir/volume-28>

1 123. Moreover, the administration's copious precedential decisions are largely published
2 *post hoc* to defend the administration's policies, rather than proceeding from neutral
3 adjudication of controversies. As one example in the bond context, the BIA has issued a
4 series of bond decisions that now subjects vast swaths of noncitizens to mandatory
5 detention. *See, e.g., Matter of Q. Li*, 29 I&N Dec. 66; *Matter of Yajure Hurtado*, 29 I&N
6 Dec. 216. These decisions upend decades-long understanding of federal law, as federal
7 judges have repeatedly found.¹⁸ Notably, they come as the DHS has received exorbitantly
8 more money to detain immigrants in for-profit immigration detention centers.¹⁹

9 124. Clearly, the risk of erroneous deprivation for Petitioner is high if he is subjected to
10 a hearing before Respondent DOJ under current conditions, such that any such hearing
11 must instead occur before this Court to ensure it is conducted by a neutral adjudicator as
12 due process requires.

13 **1. Holding the Evidentiary Hearing in this Court Would be a Swift**
14 **Remedy**

15 125. Requiring Petitioner to prevail in this court and then litigate *another* administrative
16 proceeding in his effort to remedy his unconstitutional detention would undermine the
17 "demand for speed, flexibility, and simplicity" that the federal habeas statute requires.
18 *Hensley*, 411 U.S. at 350. The Supreme Court has instructed district courts addressing
19 habeas claims "to cut through barriers of form and procedural mazes" and has

20 ¹⁸ Gerstein, Josh and Kyle Cheney, "Immigration appeals court expands mandatory detention for millions" POLITICO (Sept. 5,
2025), [https://www.politico.com/news/2025/09/05/immigration-mandatory-d](https://www.politico.com/news/2025/09/05/immigration-mandatory-detention-00548660)
21 [etention-00548660](https://www.politico.com/news/2025/09/05/immigration-mandatory-detention-00548660)

22 ¹⁹ Dickerson, Caitlin, "ICE's Mind-Bogglingly Massive Blank Check" THE ATLANTIC (July 31, 2025),
23 <https://www.theatlantic.com/politics/archive/2025/07/ice-budget-immigration-enforcement/683678/>.

1 “consistently rejected interpretations of the habeas corpus statute that would suffocate the
2 writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and
3 scholastic procedural requirements.” *Id.* (quoting *Harris v. Nelson*, 394 U.S. 286, 291
4 (1969)). Referring the procedural safeguard that Petitioner seeks to an administrative
5 immigration adjudicator, as a separate litigation matter with its own separate appellate
6 process, would erect “barriers of form and procedural mazes,” instead of following the
7 Supreme Court’s instruction to eliminate them. *See id*

8 126. By holding the custody hearing itself, this Court can provide a truly “swift” and
9 certain remedy for a final resolution of Petitioner’s detention. *See Preiser*, 411 U.S. at 495.

10 The Court can avoid the duplicative and time-consuming efforts by the government and
11 pro bono counsel to resubmit evidence and arguments to an immigration court in that
12 forum. *See generally* U.S. Dep’t of Justice, Imm. Ct. Practice Manual, available at
13 <https://www.justice.gov/eoir/reference-materials/ic>. It also avoids the possibility that
14 Petitioner will be forced to return to this Court to *enforce* its order after the IJ hearing is
15 conducted, any denial is appealed to the BIA, additional motions for injunctive relief are
16 litigated in this Court, and disagreements over whether the Court has jurisdiction over post-
17 bond hearing claim are also adjudicated. *See, e.g., Jimenez v. Wolf*, No. 19-cv-07996-NC,
18 2020 WL 1082648, *4 (N.D. Cal. Mar. 6, 2020) (granting petitioner’s motion for a
19 temporary restraining order and ordering release where the court had previously ordered
20 an immigration court bond hearing and the hearing did not comply with due process);
21 *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1036-38 (N.D. Cal. 2018) (granting petitioner’s

1 motion to enforce and ordering release). In short, it is the swiftest way to ensure that, if the
2 government cannot justify further detention, Petitioner is relieved of further unnecessary
3 and unconstitutional restrictions on his liberty.

4 127. Overall, if the Court determines that procedural due process requires an
5 individualized hearing, it should conduct the hearing itself and evaluate whether the
6 government can justify continued prolonged detention in this case. As analyzed above,
7 Petitioner is neither a danger to the community, nor a flight risk, and any risk of flight can
8 be ameliorated through alternative means. Accordingly, this Court should find that
9 Petitioner is entitled to released on bond.

10 **E. At Any Custody Hearing, the Government Must Justify Petitioner's**
11 **Continued Detention by Clear and Convincing Evidence**

12 128. Where a custody hearing is warranted as a procedural safeguard against
13 unreasonably prolonged detention, the government must bear the burden of justifying
14 continued confinement by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196,
15 1205 (9th Cir. 2011). “Because it is improper to ask the individual to share equally with
16 society the risk of error when the possible injury to the individual—deprivation of liberty—
17 is so significant, a clear and convincing evidence standard of proof provides the appropriate
18 level of procedural protection.” *Id.* at 1203–04 (internal citations and quotation marks
19 omitted); *see also Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) (“[D]ue process places
20 a heightened burden of proof on the State in civil proceedings in which the ‘individual
21 interests at stake ... are both particularly important and more substantial than mere loss of
22

money”)) (citation omitted)); *Foucha v. Louisiana*, 504 U.S. 71, 80-81 (1992) (requiring clear and convincing evidence to justify civil commitment because “[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.”).

129. In line with this principle, courts in this District that have ordered individualized hearings to remedy prolonged detention under Section 1225 have required the government to bear the burden of proving flight risk or danger by clear and convincing evidence. *See, e.g., Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *6 (S.D. Cal. Oct. 15, 2025); *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1112 (S.D. Cal. 2025) (“Petitioner is entitled to a prompt and individualized bond hearing, at which Respondents must justify his continued detention by a showing of clear and convincing evidence that Petitioner would likely flee or pose a danger to the community if released.”). Should this Court find that the appropriate remedy is for Respondents to provide Petitioner with a bond hearing, the Court should order that Respondents must bear the burden of demonstrating the appropriateness of continued detention by clear and convincing evidence.

X. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment: Substantive Due Process

130. Petitioner re-alleges and incorporates by reference the paragraphs above.

131. 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.

1 132. The government has two legitimate interests that may be served by civil
2 immigration detention: preventing flight from removal proceedings and protecting the
3 community from danger.

4 133. Due process prohibits the government from punishing people in civil detention.
5 Due process requires that the nature and duration of commitment bear some reasonable
6 relation to the purpose for which the individual is detained. Civil custody that is
7 excessively prolonged in relation to the government's interest is unconstitutionally
8 punitive. When a civil restriction is excessive in relation to a governmental interest, or the
9 government could accomplish its interests through less restrictive means, the restriction is
10 unconstitutionally punitive.

11 134. Petitioner does not pose a danger or a flight risk or a danger to the community.
12 Petitioner's detention is punitive, and excessive in relation to any legitimate government
13 interest, which would be amply satisfied by his release on appropriate conditions. For
14 these reasons, Petitioner's ongoing and prolonged detention violates substantive due
15 process.

16 **SECOND CLAIM FOR RELIEF**

17 **Violation of the Fifth Amendment: Procedural Due Process**

18 135. Petitioner re-alleges and incorporates by reference the paragraphs above.

19 136. The Due Process Clause of the Fifth Amendment forbids the government from
20 depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.
21
22
23

1 137. Petitioner's detention has become prolonged as he has been detained for more than
2 14 months and faces months, if not years, of continued detention while his petition for
3 review is adjudicated and potentially remanded to the agency for further proceedings.

4 138. Petitioner's ongoing prolonged detention without an individualized bail hearing at
5 which the government has established clear and convincing evidence of flight risk or
6 danger (in consideration of alternatives to detention) violates the Due Process Clause.

7 **XI. PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner respectfully requests that this Court:

- 9 1) Assume jurisdiction over this matter;
- 10 2) Grant the Order to Show Cause as requested in this petition;
- 11 3) Declare that Petitioner's ongoing prolonged detention violates the Due Process
12 Clause of the Fifth Amendment;
- 13 4) Issue a Writ of Habeas Corpus and order Respondents to immediately release
14 Petitioner from DHS's physical custody.
- 15 5) In the alternative, hear and determine the facts, as described in 28 U.S.C. § 2243, at
16 a prompt bail hearing before this Court, evaluate Petitioner's ability to pay in setting
17 bond, and consider alternative conditions of release;
- 18 6) In the alternative, order Respondents to schedule a bond hearing where the
19 government must establish by clear and convincing evidence that Petitioner presents a
20 risk of flight or danger, taking into consideration alternatives to detention as well as
21 Petitioner's ability to pay a bond, to justify continued detention;

3. Enjoin Respondents from causing Petitioner any greater harm during the pendency of this litigation and immigration court case, such as by transferring him away from his counsel and this judicial District;

7) Grant such further relief as the Court deems just and proper.

Respectfully submitted on 03/05/2026,

s/ Hannah Kazim

Hannah Kazim

Pro Bono Attorney(s) for Petitioner

Verification Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am Petitioner's Attorney. I have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 03/05/2026

s/ Hannah Kazim

Hannah Kazim

Pro Bono Attorney for Petitioner