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

MOSAZIG MEHARI MEDHANI,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, JEREMEY CASEY, Warden at
Imperial Regional Detention Center,

Respondents.

Case No.: 26-cv-2090-CAB-JLB

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

I. Introduction

Mosazig Medhani has now been in immigration detention for over thirteen months. After detaining him for a year on an expedited removal order, immigration authorities determined Mr. Medhani has a credible fear of return to Eritrea. DHS thus vacated his removal order and instituted proceedings before an immigration judge to consider his application for asylum. Mr. Medhani will not be statutorily entitled to a bond hearing for the entirety of his asylum case.

Mr. Medhani is in the unusual position of having been held in immigration custody for a year on a final removal order that is no longer final. Last month, this Court held that his post-final-removal-order detention was authorized under *Zadvydas v. Davis*, 533 U.S. 678 (2001). The same day this Court issued its decision, unbeknownst to counsel or this Court, Mr. Medhani had his first immigration court hearing in his asylum case. Now, Mr. Medhani faces mandatory statutory detention for the duration of his newly reinstated immigration proceedings. Those proceedings take half a year even under optimal conditions.

Considering the factors outlined in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019), this Court should conclude that Mr. Medhani's prolonged mandatory detention without an individualized determination violates due process and order that he receive a bond hearing.

II. Statement of Facts

Mr. Medhani is from Eritrea. Exhibit A, Second Declaration of Mosazig Medhani at ¶ 1. He entered the United States to seek asylum on March 19, 2025. *Id.* ¶¶ 1–2. He was detained and has been in immigration detention since. *Id.*

Mr. Medhani had his first credible fear interview in May 2025. *Id.* ¶ 3. The asylum officer determined he was not eligible for asylum, and on appeal, an immigration judge agreed. *Id.* For the remainder of 2025, DHS sought to deport Mr. Medhani. The two have differing accounts of what occurred during that period. Mr. Medhani declared that ICE officers had only interviewed him in a way

1 he could understand as a Tigrinyan speaker three times, and that when they asked
2 for his Eritrean passport, he explained he did not have one. Exhibit C, Declaration
3 of Mosazig Medhani, ¶ 5. DHS alleged Mr. Medhani willfully refused to
4 cooperate with his removal. Last month, this Court held that Mr. Medhani could
5 continue to be held in immigration detention under *Zadvydas* pursuant to his final
6 expedited removal order in light of DHS's allegations. *Medhani v. Noem*, No. 26-
7 cv-594-CAB-JLB, ECF No. 12 (S.D. Cal. Mar. 24, 2026).

8 Shortly before this Court issued its decision, DHS provided Mr. Medhani
9 with another credible fear interview. As a result of that interview, an asylum
10 officer determined that Mr. Medhani did have a credible fear of persecution. DHS
11 vacated Mr. Medhani's expedited removal order and placed him in immigration
12 proceedings. Exhibit A ¶ 4; Exhibit B.

13 Mr. Medhani's first immigration court hearing was on March 24, 2026.
14 Exhibit A ¶ 4. He has been "working very hard to find a free lawyer to pursue
15 [his] asylum case as quickly as [he] can." *Id.* ¶ 5. Earlier today, counsel received
16 confirmation that Mr. Medhani has a pro bono attorney who will represent him in
17 his asylum case. His next hearing is on May 14, 2026. Exhibit B.

18 Mr. Medhani has had a hard time in custody. Exhibit A ¶ 7. He explains,
19 Detention has been really hard on me. I'm just sitting here. I do not
20 know where my family is and I do not know how they are doing. I
cannot sleep.

21 *Id.* ¶ 7.

22 **III. This Court has jurisdiction to consider due process claim of unlawful**
23 **prolonged detention.**

24 The government often argues that this Court's jurisdiction to consider
25 immigration habeas petitions under 8 U.S.C. § 2241 is taken away by 8 U.S.C.
26 § 1252(g). This argument is "mistaken." *Hernandez Cruz v. Noem*, No. 25-cv-
27 2566-SB-MAA, 2025 WL 3482630, *1 (C.D. Cal. Dec. 2, 2025).
28

As the Supreme Court and the Ninth Circuit have both recently clarified, courts “should read § 1252(g) narrowly.” *Ibarra-Perez v. United States*, 154 F.4th 989, 991 (9th Cir. 2025) (citing *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020)). That section’s jurisdiction-stripping provisions are limited to “three discrete actions”: the “decision or action to *commence* proceedings, *adjudicate* cases, or *execute* removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (quoting 8 U.S.C. § 1252(g)). They do not strip jurisdiction and “sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. Instead, [the Court] read[s] the language to refer to just those three specific actions themselves.” *Jennings v. Rodriguez*, 538 U.S. 281, 294 (2018).

As a result, this Court still has jurisdiction over Mr. Medhani’s claim. Like many other habeas petitioners in immigration detention, Mr. Medhani “is seeking to review the legality of his detention, arguing that the length of time he has been detained here violates due process—rather than challenging the decision to commence proceedings, the adjudication of his removal case, or an action to execute his removal order.” *Gao v. LaRose*, __ F. Supp. 3d. __, 2025 WL 2770633, *2 (S.D. Cal. 2025) (Huie, J.) (finding jurisdiction over § 2241 habeas petition in a prolonged detention case for an arriving noncitizen and ordering an individualized bond hearing). This Court’s jurisdiction is “not barred by Section 1252(g).” *Id.*; accord, e.g., *Khorsheed v. LaRose*, No. 25-cv-3346-BTM-KSC, 2025 WL 3638141, *1 (S.D. Cal. Dec. 15, 2025) (same).

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

The Fifth Amendment’s Due Process Clause countermands the government’s statutory authority to detain immigrants without bond hearings. When he was ordered removed, Mr. Medhani had been detained under on such statute, 8 U.S.C. § 1231, which requires mandatory detention for noncitizens

1 ordered removed. *See Medhani*, No. 26-cv-594-CAB-JLB, ECF No. 12. Because
2 his removal order has now been vacated, Mr. Medhani is now detained under
3 another such statute, 8 U.S.C. § 1225(b).

4 “Section 1225 applies to ‘applicants for admission’—noncitizens who
5 ‘arrive[] in the United States,’ or are ‘present’ in the United States but have ‘not
6 been admitted.’” *Banda v.* 385 F. Supp. 3d at 1111. It “applies to, among others,
7 noncitizens initially determined to be inadmissible because of . . . lack of valid
8 documentation.” *Id.* That includes persons who, like Mr. Medhani, make credible
9 asylum and other fear-based claims whose asylum case remains pending. *See* 8
10 U.S.C. § 1225(b)(1)(B)(ii).

11 In years past, the Ninth Circuit applied the constitutional avoidance canon
12 to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings
13 every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
14 But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding
15 that the statute does not entitle detainees to bond hearings or otherwise impose
16 “any limit on the length of detention.” 583 U.S. 281, 297 (2018). *Jennings* did not
17 address whether prolonged, mandatory detention without a bond hearing violates
18 due process. *Id.* at 312.¹ “In the wake of *Jennings*, district courts have grappled
19 with how to address due process challenges to prolonged mandatory detention
20 under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116.

21 But after a full evaluation, “[n]early all district courts that have considered
22 the issue agree that prolonged mandatory detention pending removal proceedings,
23 without a bond hearing, will—at some point—violate the right to due process.”
24 *Id.* (cleaned up) (collecting cases); *accord Khedry-Kiyarsi v. Divver*, No., 2026
25 WL 657752 (S.D. Cal. Mar. 9, 2026). Indeed, the Ninth Circuit has “grave doubts
26

27 ¹ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
28 591 U.S. 103 (2020), also poses no barrier to granting relief on this detention-
based due process claim. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC,
2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025).

1 that any statute that allows for arbitrary prolonged detention without any process
2 is constitutional or that those who founded our democracy precisely to protect
3 against the government's arbitrary deprivation of liberty would have thought so."
4 *Rodriguez*, 909 F.3d at 256–57.

5 **V. Courts have reached different conclusions about when immigration**
6 **detention becomes indefinitely prolonged, but Mr. Medhani would**
7 **prevail under any standard.**

8 Though courts agree that due process mandates a bond hearing when
9 detention grows unreasonably prolonged, they disagree about how to assess
10 whether a particular migrant's detention has reached that point. *Sanchez-Rivera v.*
11 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
12 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts
13 have "conclude[d] . . . that detention becomes prolonged after six months and
14 entitles [a petitioner] to a bond hearing." *Rodriguez v. Nielsen*, No. 18-CV-04187-
15 TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr.
16 Medhani would automatically qualify, as he has been detained for over thirteen
17 months.

18 Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023
19 WL 139801, at *5–6 (surveying different approaches). Relevant factors often
20 include:

- 21 (1) the total length of detention to date, which is the most important
22 factor;
- 23 (2) the likely duration of future detention;
- 24 (3) the conditions of detention;
- 25 (4) delays in removal proceedings caused by the detainee;
- 26 (5) delays in removal proceedings caused by the government; and
- 27 (6) the likelihood that the removal proceedings will result in a final order
28 of removal.

Khedry-Kiyardsi, 2026 WL 657752 at *2 (citing *Banda*, 385 F. Supp. 3d at 1106).

1 Mr. Medhani prevails upon balancing these factors.

2 First, the “most important factor,” the length of detention, favors
3 Mr. Medhani. *Banda*, 385 F. Supp. 3d at 1118. He has been detained for more
4 than thirteen months. Exhibit A at ¶ 1. In assessing this factor, “[i]t is important to
5 bear in mind the context: The detention that is being examined here is the
6 detention of a human being who has never been found to pose a danger to the
7 community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp.
8 3d 853, 859 (D. Minn. 2019). “In general, as detention continues past a year,
9 courts become extremely wary of permitting continued custody absent a bond
10 hearing.” *Gonzalez v. Bonnar*, No. 18-cv-5321-JSC, 2019 WL 330906 at *3 (N.D.
11 Cal. Jan. 25, 2019). Indeed, “[c]ourts have found that detention over seven
12 months without a bond hearing weighs toward a finding that it is unreasonable.”
13 *Amando v. United States Dep’t of Just.*, No. 25-CV-2687-LL-DDL, 2025 WL
14 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). This factor therefore
15 favors Mr. Medhani.

16 Second, Mr. Medhani has reason to anticipate significant future detention.
17 Although he has been detained for over a year, he just began his asylum case last
18 month, and he just received confirmation that he will have a pro bono attorney to
19 assist him today. He does not yet have a merits hearing scheduled. Because
20 “Petitioner’s future detention can last several more months or even years[,]” this
21 factor favors Mr. Medhani. *Abdul Kadir*, 2025 WL 2932654, at *5.

22 Third, Mr. Medhani’s confinement at the Imperial Regional Detention
23 Center is similar to penal confinement. *See Ayideji v. Casey*, No., 2026 WL
24 948669, *2 (S.D. Cal. Apr. 8, 2026). It has also affected his mental health.
25 Because he cannot contact his family in Eritrea from detention, and he does not
26 know how they are, he often cannot sleep. Exhibit A ¶ 7.

27 The fourth and fifth factors, regarding delay by the parties, are together
28 neutral. On the one hand, DHS took almost exactly a year to decide that

Mr. Medhani *does* have a credible fear of persecution in Eritrea. On the other hand, Mr. Medhani and DHS have conflicting accounts of whether he cooperated in his removal before DHS came to this decision. Regardless, Mr. Medhani has continued to pursue his claim for asylum and assert his rights to seek protection from persecution, and he has worked diligently to obtain counsel. “As courts have repeatedly noted, ‘a petitioner’s pursuit of defenses to removal should not be held against a determination that they are entitled to due process.’” *Khedry-Kiyarsi*, 2026 WL 657752 at *2 (quoting *Bayani v. LaRose*, No. 26-cv-266-JES-VET, 2026 WL 194748, *3 (S.D. Cal. Jan. 26, 2026)).

Sixth, there is a significant likelihood that Mr. Medhani will prevail on his asylum claim. Under any test, then, Mr. Medhani is entitled to release or a bond hearing.

CLAIM AND PRAYER FOR RELIEF

For the reasons just given, the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Petitioner.

Accordingly, Petitioner respectfully requests that this Court:

1. **Order Respondents to immediately release Petitioner from custody.** “In recent months, courts across the country have ordered the release of detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the government’s repeated use of unlawful detention policies across the country, causing petitioners to “sit in jail waiting for a judicial decision,” the court would order immediate release instead of causing additional delay through a bond hearing) (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No. 25-

1 cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025).
2 *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14
3 (W.D. Tex. Oct. 2, 2025) (“Without a legitimate interest in her
4 detention, immediate release appropriately remedies Respondents’
5 violation of [Petitioner’s] due process rights through her continued
6 detention.”). Order, ECF No. 14 at 19, *Miri v. Bondi*, No. 5:26-CV-
7 00698-MEMF (C.D. Cal. March 5, 2026) (“Miri’s prompt release is
8 the remedy that will best return Miri to the status quo and restore his
9 position as it was prior to the detention that Miri contends was in
10 violation of his constitutional and statutory protections.”).

11 2. **In the alternative, order a prompt bond hearing with safeguards**
12 **and oversight provided by this Court.** *See* Order, ECF No. 13,
13 *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal. March 5,
14 2026). Specifically, the Court should order:

- 15 a. Respondents provide Petitioner with a hearing and
16 individualized bond determination within **fourteen days** of its
17 order.
- 18 i. At that hearing, the government shall bear the burden of
19 establishing by clear and convincing evidence that
20 Petitioner poses a danger or flight risk, while further
21 specifying that concerns about interrupting court
22 schedules is not a ground to deny bond. *Id.*
- 23 ii. The IJ shall consider alternative conditions of release
24 and Petitioner’s ability to pay bond if he or she
25 determines bond is appropriate. *Id.*
- 26 iii. Respondents shall make a complete record of the bond
27 hearing available to Petitioner and his counsel. *Id.*
- 28 b. Respondents are ordered to file a Notice of Compliance within

five days of providing Petitioner with the bond hearing,
including apprising the Court of the results of the hearing. *Id.*

3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: April 29, 2026

s/ Jessie Agatstein

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