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

10 **SABBIR HOSSAIN RAFIK ULLAH,**
11
12 **Petitioner,**

13 **v.**

14 **MARKWAYNE MULLIN, Secretary of**
15 **the Department of Homeland Security,**
16 **TODD BLANCHE, Acting Attorney**
17 **General, TODD M. LYONS, Acting**
18 **Director, Immigration and Customs**
19 **Enforcement, JESUS ROCHA, Acting**
20 **Field Office Director, San Diego Field**
21 **Office, CHRISTOPHER LAROSE,**
22 **Warden at Otay Mesa Detention Center,**
23
24
25
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28
Respondents.

Civil Case No:26-cv-2165-CAB-DDL

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

1 INTRODUCTION

2 Sabbir Hossain Rafik Ullah is an asylum seeker from Bangladesh who has
3 been detained pending his immigration proceedings for 14 months. This Court
4 should “join[] the majority of courts across the country in concluding that [his]
5 unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an
6 individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp.
7 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.). It should do so because Mr. Rafik
8 Ullah satisfies the six-factor test set forth in *Banda v. McAleenan*, 385 F. Supp. 3d
9 1099, 1118 (W.D. Wash. 2019).

10 Additionally, because of newly emerging evidence that the neutrality of
11 Otay Mesa’s immigration judges (“IJ”) has been compromised, and some IJs and
12 the Department of Homeland Security (“DHS”) have implemented strategies to
13 detain bond-worthy habeas petitioners, a bond hearing before a randomly selected
14 IJ will no longer reliably satisfy due process. This Court should therefore consider
15 the alternative forms of relief, including that: 1) the IJ shall consider alternative
16 conditions of release and Petitioner’s ability to pay bond; and 2) Respondents
17 shall make a complete record of the bond hearing available to Petitioner’s
18 counsel.

19 STATEMENT OF FACTS

20 Mr. Rafik Ullah was born in Bangladesh. Declaration of Sabbir Hossain
21 Rafik Ullah, at ¶ 1. [REDACTED]

22 [REDACTED]. *Id.* at ¶ 1.

23 On February 28, 2025, Mr. Rafik Ullah entered the United States to seek
24 asylum. *Id.* at ¶ 2. He was arrested immediately after entering and was taken to
25 the Otay Mesa Detention Center. *Id.* at ¶ 2.

26 Mr. Rafik Ullah passed his credible fear interview and was put into removal
27 proceedings. *Id.* at ¶ 3. Neither he nor his attorney asked for any unreasonable
28 extensions. *Id.* at ¶ 3.

1 Mr. Rafik Ullah applied for asylum before the immigration judge. *Id.* at ¶ 4.
2 But on February 4, 2026, the judge denied his application and ordered him
3 removed. *Id.* at ¶ 4. However, his case is currently on appeal to the BIA. *Id.* at ¶ 4.
4 If the BIA dismisses his appeal, he will likely appeal to the Ninth Circuit. *Id.* at ¶
5 4. He has now been detained for about 14 months.

6 LEGAL BACKGROUND

7 I. The Fifth Amendment’s Due Process Clause prohibits prolonged 8 immigration detention without a bond hearing.

9 This habeas petition presents a question about whether and when the Fifth
10 Amendment’s Due Process Clause countermands the government’s statutory
11 authority to detain immigrants without bond hearings. Mr. Rafik Ullah is detained
12 under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants
13 for admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in
14 the United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F.
15 Supp. 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others,
16 noncitizens initially determined to be inadmissible because of . . . lack of valid
17 documentation.” *Id.* That includes persons who, like Mr. Rafik Ullah, seek asylum
18 at or near the border. *See id.* at 1109–11 (describing a similar procedural history
19 and finding that petitioner was detained under § 1225(b)). Such immigrants are
20 detained under § 1225(b) not only during their initial proceedings, but also when
21 they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant
22 with pending BIA appeal).

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

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

9 [t]he Fifth Amendment's Due Process Clause forbids the Government
10 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of
11 law.’ Freedom from imprisonment—from government custody,
12 detention, or other forms of physical restraint—lies at the heart of the
13 liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80
14 (1992). And this Court has said that government detention violates
15 that Clause unless the detention is ordered in a *criminal* proceeding
16 with adequate procedural protections, *see United States v. Salerno*,
17 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’
nonpunitive ‘circumstances,’ *Foucha, supra*, at 80, where a special
justification, such as harm-threatening mental illness, outweighs the
‘individual's constitutionally protected interest in avoiding physical
restraint.’ *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

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

22 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
23 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
24 Employing the constitutional avoidance canon, the Ninth Circuit held that
25 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
26 months. *Id.*

27 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,
28 holding that the statute does not entitle detainees to bond hearings or otherwise

1 impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But
2 though *Jennings* held that § 1225(b) imposes no statutory limit on the length of
3 detention, it reserved the question of whether prolonged, mandatory detention
4 without bond hearings violates due process. *Id.* at 312.

5 Finally, the Supreme Court held in *Demore v. Kim* that at least some
6 statutes mandating detention during immigration proceedings do not
7 automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore*
8 addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing
9 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
10 5-4 opinion based on (1) the government interests justifying the detention of
11 immigrants with certain, aggravated criminal convictions, and (2) the relative
12 brevity of detention in most cases, with the vast majority taking only about five
13 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
14 left open the possibility that individual immigrants could be “entitled to an
15 individualized determination as to his risk of flight and dangerousness if the
16 continued detention became unreasonable or unjustified.” *Id.* at 532–33.

17 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
18 grappled with how to address due process challenges to prolonged mandatory
19 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full
20 evaluation, “[n]early all district courts that have considered the issue agree that
21 prolonged mandatory detention pending removal proceedings, without a bond
22 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
23 (collecting cases).

24 These Courts have relied on the due process concerns recognized in
25 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
26 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
27 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
28 those considerations raise “grave doubts that any statute that allows for arbitrary

1 prolonged detention without any process is constitutional or that those who
2 founded our democracy precisely to protect against the government’s arbitrary
3 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
4 256 (9th Cir. 2018).

5 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
6 only that the statute itself did not impose any limits on detention. It “did not
7 foreclose as-applied constitutional challenges to detention under” mandatory-
8 detention statutes. *Santos v Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
9 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
10 during immigration proceedings does not necessarily violate due process,
11 particularly when the detention has an expected duration of about five months. *Id.*
12 at 208–11. But many persons detained under § 1225(b)—like Mr. Rafik Ullah—
13 do not have criminal convictions. And as Justice Kennedy’s concurrence made
14 clear, *Demore* does not prevent immigrants from arguing that sufficiently
15 prolonged detention violates due process in their individual cases. *See id.*¹

16 Thus, this Court should hold that sufficiently prolonged detention violates
17 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-
18 CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul*
19 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal.
20 Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
21 *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
22 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*,
23 25-cv-3175-JO; *Abdul-Samed v Warden of Golden State Annex Det Facility*, No.

24
25 ¹ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
26 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due
27 process rights in deportation proceedings—i.e., the process due when noncitizens
28 seek to stay in the country instead of being removed. *See Lopez-Arevelo v. Ripa*,
No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025). It
does not purport to hold that immigrants have no constitutional right to due process
before the government holds them indefinitely in immigration detention. *Id.*

1 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);
2 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.
4 Wash. 2023).

5 **II. Courts have reached different conclusions about when immigration**
6 **detention becomes indefinitely prolonged, but Mr. Rafik Ullah would**
7 **prevail under any standard, including the *Banda* factors.**

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). Because it
13 incorporates nearly all the factors, many courts have found it “most appropriate to
14 apply the *Banda* test to Petitioner’s detention here under § 1225(b), as other
15 courts within this district have done in the past.” *Sandesh v Noem*, 26-cv-846-
16 JES-DDL, Dkt. 13 at 5 (Mar. 5, 2026 S.D. Cal). The *Banda* factors include:

- 17 (1) the total length of detention to date;
- 18 (2) the likely duration of future detention;
- 19 (3) the conditions of detention;
- 20 (4) delays in the removal proceedings caused by the detainee;
- 21 (5) delays in the removal proceedings cause by the government; and
- 22 (6) the likelihood that the removal proceedings will result in a final order
23 of removal.

24 *Banda*, 385 F. Supp. 3d at 1106. Applying these factors here shows that Mr. Rafik
25 Ullah’s detention has become prolonged.

26 *First*, the “most important factor,” the length of detention, favors Mr. Rafik
27 Ullah. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important
28 to bear in mind the context: The detention that is being examined here is the

1 detention of a human being who has never been found to pose a danger to the
2 community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp.
3 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond
4 hearings for persons detained between nine and eleven months. *See Ashemuke v.*
5 *ICE Field Off Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D.
6 Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL,
7 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven
8 months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over
9 nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at
10 *5 (S.D.N.Y. Aug. 20, 2018) (“more than nine months”); *Masood v. Barr*, No. 19-
11 CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine
12 months”). Mr. Rafik Ullah has been detained for even longer, for 14 months. Exh.
13 A at ¶ 5. This factor therefore strongly favors Mr. Rafik Ullah.

14 *Second*, Mr. Rafik Ullah has reason to anticipate significant future
15 detention, as his case is on appeal to the BIA and will likely go to the Ninth
16 Circuit. *Id.* at ¶ 4. All told, “[t]his process may take up to two years or longer.”
17 *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future detention can last
18 several more months or even years[.]” this factor favors Mr. Rafik Ullah. *Abdul*
19 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal.
20 Oct. 15, 2025).

21 *Third*, conditions of confinement weigh in favor of him. “Petitioner’s
22 confinement at [Otay Mesa Detention Center] is ‘indistinguishable from penal
23 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
24 Supp. 3d at 773). And in the last four months, he has developed three abnormal
25 growths in his liver and abdomen that are causing him severe pain. Exh. A at ¶ 5.
26 The doctors at the detention center are not treating these growths; they are simply
27 giving him painkillers. *Id.* at ¶ 5. But the painkillers are not working, and Mr.
28 Rafik Ullah spends most of the day in excruciating pain and cannot sleep at night.

1 *Id.* at ¶ 5. Thus, the conditions of confinement are severely affecting his well-
2 being.

3 *Fourth* and *fifth*, Mr. Rafik Ullah has not caused any unreasonable delays in
4 his removal proceedings; thus, this factor is arguably neutral.

5 *Sixth*, regarding the likelihood that the removal proceedings will result in a
6 final order of removal, Mr. Rafik Ullah has a strong asylum claim and would
7 likely win on appeal. *Id.* at ¶ 4. Accordingly, under the *Banda* factors, Mr. Rafik
8 Ullah is entitled to release or a bond hearing.

9 **CLAIM AND PRAYER FOR RELIEF**

10 Accordingly, Petitioner respectfully requests that this Court:

11 **1. Order Respondents to immediately release Petitioner from custody.**

12 “In recent months, courts across the country have ordered the release of
13 detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-
14 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the
15 government’s repeated use of unlawful detention policies across the
16 country, causing petitioners to “sit in jail waiting for a judicial decision,”
17 the court would order immediate release instead of causing additional delay
18 through a bond hearing) (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104
19 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765,
20 at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157,
21 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No.
22 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago*
23 *v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex.
24 Oct. 2, 2025) (“Without a legitimate interest in her detention, immediate
25 release appropriately remedies Respondents’ violation of [Petitioner’s] due
26 process rights through her continued detention.”). Order, ECF No. 14 at 19,
27 *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026)
28 (“Miri’s prompt release is the remedy that will best return Miri to the status

1 quo and restore his position as it was prior to the detention that Miri
2 contends was in violation of his constitutional and statutory protections.”).

3 **2. In the alternative, order a prompt § 1226(a) bond hearing, with**
4 **safeguards and oversight provided by this Court. See Order, ECF**
5 **No. 13, *Sandesh v. LaRose*, No. 3:26-CV-00846-JES (S.D. Cal.**
6 **March 5, 2026). Specifically, the Court should order:**

7 1. Respondents provide Petitioner with a hearing and
8 individualized bond determination within **ten days** of its order.
9 *Id.*

10 (a) At that hearing, the government shall bear the burden of
11 establishing by clear and convincing evidence that
12 Petitioner poses a danger or flight risk. *Id.*

13 (b) The IJ shall consider alternative conditions of release and
14 Petitioner’s ability to pay bond. *Id.*

15 (c) Respondents shall make a complete record of the bond
16 hearing available to Petitioner and his counsel. *Id.*

17 2. Respondents are ordered to file a Notice of Compliance within
18 **five days** of providing Petitioner with the bond hearing,
19 including apprising the Court of the results of the hearing. *Id.*

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

21 Respectfully submitted,

22 Dated: April 22, 2026

23 *s/ Kara Hartzler*

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