

1 **Kara Hartzler**
2 Bar No. 293751
3 Federal Defenders of San Diego, Inc.
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 Kara_hartzler@fd.org
9 Attorneys for Petitioner

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

10 JEMAL WAKO BORE,
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, JEREMY CASEY, Warden at
22 Imperial Regional Detention Center,
23
24 Respondents.

Civil Case No:26-cv-2286-JES-GC

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

20
21
22
23
24
25
26
27
28

1 INTRODUCTION

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

10 STATEMENT OF FACTS

11 Mr. Bore was born in Ethiopia. Exhibit A, Declaration of Jemal Wako
12 Bore, at ¶ 1. Because he is a member of the LGBTQ community, he was scared
13 for his safety and fled to avoid being killed. *Id.* at ¶ 1.

14 On July 16, 2025, Mr. Bore entered the United States to seek asylum. *Id.* at
15 ¶ 2. He was arrested immediately after entering and has been held in immigration
16 detention ever since. *Id.* at ¶ 2.

17 Mr. Bore passed his credible fear interview and was put into removal
18 proceedings. *Id.* at ¶ 3. Neither he nor his attorney asked for any unreasonable
19 extensions. *Id.* at ¶ 3.

20 Mr. Bore applied for asylum before the immigration judge. *Id.* at ¶ 4. But
21 on February 17, 2026, the judge denied his application and ordered him removed.
22 *Id.* at ¶ 4. However, his case is currently on appeal to the BIA. *Id.* at ¶ 4. If the
23 BIA dismisses his appeal, he will likely appeal to the Ninth Circuit. *Id.* at ¶ 4.

24 LEGAL BACKGROUND

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

27 This habeas petition presents a question about whether and when the Fifth
28 Amendment’s Due Process Clause countermands the government’s statutory

1 authority to detain immigrants without bond hearings. Mr. Bore is detained under
2 one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for
3 admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in
4 the United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F.
5 Supp. 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others,
6 noncitizens initially determined to be inadmissible because of . . . lack of valid
7 documentation.” *Id.* That includes persons who, like Mr. Bore, seek asylum at or
8 near the border. *See id.* at 1109–11 (describing a similar procedural history and
9 finding that petitioner was detained under § 1225(b)). Such immigrants are
10 detained under § 1225(b) not only during their initial proceedings, but also when
11 they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant
12 with pending BIA appeal).

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

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

26 [t]he Fifth Amendment's Due Process Clause forbids the Government
27 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of
28 law.’ Freedom from imprisonment—from government custody,
detention, or other forms of physical restraint—lies at the heart of the
liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80

1 (1992). And this Court has said that government detention violates
2 that Clause unless the detention is ordered in a *criminal* proceeding
3 with adequate procedural protections, *see United States v. Salerno*,
4 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’
5 nonpunitive ‘circumstances,’ *Foucha, supra*, at 80, where a special
6 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).

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

11 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
12 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
13 Employing the constitutional avoidance canon, the Ninth Circuit held that
14 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
15 months. *Id.*

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

22 Finally, the Supreme Court held in *Demore v. Kim* that at least some
23 statutes mandating detention during immigration proceedings do not
24 automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore*
25 addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing
26 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
27 5-4 opinion based on (1) the government interests justifying the detention of
28 immigrants with certain, aggravated criminal convictions, and (2) the relative

1 brevity of detention in most cases, with the vast majority taking only about five
2 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
3 left open the possibility that individual immigrants could be “entitled to an
4 individualized determination as to his risk of flight and dangerousness if the
5 continued detention became unreasonable or unjustified.” *Id.* at 532–33.

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

13 These Courts have relied on the due process concerns recognized in
14 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
15 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
16 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
17 those considerations raise “grave doubts that any statute that allows for arbitrary
18 prolonged detention without any process is constitutional or that those who
19 founded our democracy precisely to protect against the government’s arbitrary
20 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
21 256 (9th Cir. 2018).

22 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
23 only that the statute itself did not impose any limits on detention. It “did not
24 foreclose as-applied constitutional challenges to detention under” mandatory-
25 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
26 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
27 during immigration proceedings does not necessarily violate due process,
28 particularly when the detention has an expected duration of about five months. *Id.*

1 at 208–11. But many persons detained under § 1225(b)—like Mr. Bore—do not
2 have criminal convictions. And as Justice Kennedy’s concurrence made clear,
3 *Demore* does not prevent immigrants from arguing that sufficiently prolonged
4 detention violates due process in their individual cases. *See id.*¹

5 Thus, this Court should hold that sufficiently prolonged detention violates
6 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-
7 CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul*
8 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal.
9 Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
10 *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
11 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*,
12 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No.
13 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);
14 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
15 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.
16 Wash. 2023).

17 **II. Courts have reached different conclusions about when immigration**
18 **detention becomes indefinitely prolonged, but Mr. Bore would prevail**
19 **under any standard, including the *Banda* factors.**

20 Though courts agree that due process mandates a bond hearing when
21 detention grows unreasonably prolonged, they disagree about how to assess
22 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
23 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
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 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Because it
2 incorporates nearly all the factors, many courts have found it “most appropriate to
3 apply the *Banda* test to Petitioner’s detention here under § 1225(b), as other
4 courts within this district have done in the past.” *Sandesh v. Noem*, 26-cv-846-
5 JES-DDL, Dkt. 13 at 5 (Mar. 5, 2026 S.D. Cal). The *Banda* factors include:

- 6 (1) the total length of detention to date;
- 7 (2) the likely duration of future detention;
- 8 (3) the conditions of detention;
- 9 (4) delays in the removal proceedings caused by the detainee;
- 10 (5) delays in the removal proceedings cause by the government; and
- 11 (6) the likelihood that the removal proceedings will result in a final order
12 of removal.

13 *Banda*, 385 F. Supp. 3d at 1106. Applying these factors here shows that
14 Mr. Bore’s detention has become prolonged.

15 *First*, the “most important factor,” the length of detention, favors Mr. Bore.
16 *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important to bear
17 in mind the context: The detention that is being examined here is the detention of
18 a human being who has never been found to pose a danger to the community or to
19 be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D.
20 Minn. 2019). With that context, courts have granted bond hearings for persons
21 detained between nine and eleven months. *See Ashemuke v. ICE Field Off. Dir.*,
22 No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024),
23 *report and recommendation adopted*, No. C23-1592-RSL, 2024 WL 1676681
24 (W.D. Wash. Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*,
25 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*,
26 No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018)
27 (“more than nine months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL
28 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”). Mr. Bore has been

1 detained for approximately this long. Exh. A at ¶ 2. This factor therefore strongly
2 favors Mr. Bore.

3 *Second*, Mr. Bore has reason to anticipate significant future detention, as
4 his case is on appeal to the BIA and will likely go to the Ninth Circuit. *Id.* at ¶ 4.
5 All told, “[t]his process may take up to two years or longer.” *Banda*, 385 F. Supp.
6 3d at 1119. Because “Petitioner’s future detention can last several more months or
7 even years[,]” this factor favors Mr. Bore. *Abdul Kadir v. Larose*, No. 25CV1045-
8 LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

9 *Third*, conditions of confinement weigh in favor of him. “Petitioner’s
10 confinement at [Otay Mesa Detention Center] is ‘indistinguishable from penal
11 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
12 Supp. 3d at 773). And in the last four months, he has developed three abnormal
13 growths in his liver and abdomen that are causing him severe pain. Exh. A at ¶ 5.
14 The doctors at the detention center are not treating these growths; they are simply
15 giving him painkillers. *Id.* at ¶ 5. But the painkillers are not working, and Mr.
16 Bore spends most of the day in excruciating pain and cannot sleep at night. *Id.* at ¶
17 5. Thus, the conditions of confinement are severely affecting his well-being.

18 *Fourth and fifth*, Mr. Bore has not caused any unreasonable delays in his
19 removal proceedings; thus, this factor is arguably neutral.

20 *Sixth*, regarding the likelihood that the removal proceedings will result in a
21 final order of removal, Mr. Bore has a strong asylum claim and would likely win
22 on appeal. *Id.* at ¶ 4. Accordingly, under the *Banda* factors, Mr. Bore is entitled to
23 release or a bond hearing.

24 **CLAIM AND PRAYER FOR RELIEF**

25 Accordingly, Petitioner respectfully requests that this Court:

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

27 “In recent months, courts across the country have ordered the release of
28 detainees in similar situations.” *Moctezuma v. Henkey*, No. 1:25-CV-

1 00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (given that the
2 government’s repeated use of unlawful detention policies across the
3 country, causing petitioners to “sit in jail waiting for a judicial decision,”
4 the court would order immediate release instead of causing additional delay
5 through a bond hearing) (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104
6 (E.D. Cal. 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765,
7 at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157,
8 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Pinchi v. Noem*, No.
9 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025). *Santiago*
10 *v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex.
11 Oct. 2, 2025) (“Without a legitimate interest in her detention, immediate
12 release appropriately remedies Respondents’ violation of [Petitioner’s] due
13 process rights through her continued detention.”). Order, ECF No. 14 at 19,
14 *Miri v. Bondi*, No. 5:26-CV-00698-MEMF (C.D. Cal. March 5, 2026)
15 (“Miri’s prompt release is the remedy that will best return Miri to the status
16 quo and restore his position as it was prior to the detention that Miri
17 contends was in violation of his constitutional and statutory protections.”).

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

22 1. Respondents provide Petitioner with a hearing and
23 individualized bond determination within **ten days** of its order.

24 *Id.*

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

28 (b) The IJ shall consider alternative conditions of release and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Petitioner's ability to pay bond. *Id.*

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

2. 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 22, 2026

s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Mr. Bore
Email: kara_hartzler@fd.org