

1 Tina Malek, Esq. (CSBN 265543)
2 MALEK LAW GROUP, APC
3 402 W. Broadway, Ste 1260
4 San Diego, CA 92101
5 Tel: 619-565-0600
6 Fax: 619-374-8573
7 tmalek@malek-law.com

8 Attorney for Petitioner

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Bernard ANYE NCHE,

12 Petitioner,

13 v.

14 Patrick, DIVVER, Field Office Director
15 of Enforcement and Removal
16 Operations, San Diego Field Office,
17 Immigration and Customs Enforcement;
18 Todd M. LYONS, Acting Director, U.S.
19 Immigration and Customs Enforcement;
20 Markwayne Mullin, Secretary, U.S.
21 Department of Homeland Security; U.S.
22 DEPARTMENT OF HOMELAND
23 SECURITY; Todd BLANCE, U.S.
24 Attorney General; EXECUTIVE
OFFICE FOR IMMIGRATION
REVIEW; Christopher J. LAROSE,
Warden of Otay Mesa Detention Facility,

Respondents.

Case No. '26CV2449 JES DDL

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

Petitioner, Bernard Anye Nche, has been detained pending his immigration proceedings for more than 6 months since October 16, 2025. This Court should “join[] the majority of courts across the country in concluding that his unreasonably prolonged detention under 8 U.S.C. §1225(b) without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)(Battaglia J.).

JURISDICTION

1. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Facility in San Diego, California.
2. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).
3. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
4. The federal district courts have jurisdiction under Section 2241 to hear habeas claims by individuals challenging the lawfulness of their detention by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).

VENUE

5. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner currently is detained.
6. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of California.

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days is allowed.” *Id.*
8. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . 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) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and

1 receives prompt action from him within the four corners of the application.”

2 *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

3 **PARTIES**

4 9. Petitioner, Bernard Anye, is currently detained by Respondents in the Otay
5 Mesa Detention Facility.

6
7 10. Respondent Patrick Divver (“Divver”) is the Director of the San Diego
8 Field Office of ICE’s Enforcement and Removal Operations division. As
9 such, Divver is Petitioner’s immediate custodian and is responsible for
10 Petitioner’s detention and removal. He is named in his official capacity.

11 11. Respondent Markwayne Mullin is the Secretary of the Department of
12 Homeland Security. She is responsible for the implementation and
13 enforcement of the Immigration and Nationality Act (INA), and oversees
14 ICE, which is responsible for Petitioner’s detention. Mr. Mullin has ultimate
15 custodial authority over Petitioner and is sued in his official capacity.

16
17 12. Respondent Todd Lyons is the Director of ICE. He is responsible for the
18 administration of ICE and the implementation and enforcement of the
19 immigration laws, including immigrant detention. As such, Mr. Lyons is a
20 legal custodian of Petitioner. He is sued in his official capacity.

21
22 13. Respondent Todd Blanche is the Acting Attorney General of the United
23 States. She is responsible for the Department of Justice, of which the
24

1 Executive Office for Immigration Review and the immigration court system
2 it operates is a component agency. He is sued in her official capacity.

3 14. Respondent Christopher LaRose ("LaRose") is the Senior Warden at the
4 Otay Mesa Detention Center as Warden of the, where Petitioner is detained.
5 He has immediate physical custody of Petitioner. He is sued in his official
6 capacity.
7

8 **STATEMENT OF FACTS**
9

10 Petitioner, Bernard Anye, is a 31-year-old native and citizen of Cameroon
11 and was born [REDACTED]. Petitioner experienced harm, mistreatment, and
12 threats in Cameroon due to his political opinion. Petitioner left Cameroon and
13 ultimately sought protection in the United States. He entered the United States on
14 or about October 16, 2025, without inspection. He was issued a Notice to Appear
15 on November 18, 2025. On January 30, 2026, less than a year after entering the
16 United States, he applied for asylum before Immigration Court.
17

18 He has had six mater calendar hearings November 4, 2025, November 7,
19 2025, December 1, 2025, January 15, 2026, March 11, 2026, and March 25, 2026.
20 On January 22, 2026, the Department of Homeland Security filed a motion to
21 pretermitt Petitioner's asylum application on the basis that his subject to the asylum
22 cooperative agreement between the United States and Uganda. On March 30,
23 2026, the Immigration granted the DHS motion, pretermitted Petitioner's
24

1 application for asylum, and ordered him removed to Uganda. On April 6, 2026,
2 Petitioner filed an appeal before the Board of Immigration Appeals.

3 4 LEGAL FRAMEWORK

5 A. Prolonged Detention

6 II. The Fifth Amendment's Due Process Clause prohibits prolonged 7 immigration detention without a bond hearing

8 This habeas petition presents a question about whether and when the Fifth
9 Amendment's Due Process Clause countermands the government's statutory
10 authority to detain immigrants without bond hearings. "[N]early all district courts
11 that have considered the issue agree that prolonged mandatory detention pending
12 removal proceedings, without a bond hearing, will—at some point—violate the
13 right to due process." *Id.* (cleaned up) (collecting cases). These courts have taken
14 their cues largely from *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the
15 Supreme Court applied the constitutional avoidance canon to hold that persons
16 detained following a final removal order may not be subjected to indefinite
17 detention. *Id.* at 699. Though *Zadvydas*'s holding rests on statutory rather than
18 constitutional grounds, the Court justified its constitutional avoidance approach by
19 describing the serious due process concerns that indefinite detention would
20 occasion:
21
22

23 A statute permitting indefinite detention of an alien would raise a
24 serious constitutional problem. The Fifth Amendment's Due Process

1 Clause forbids the Government to ‘depriv[e]’ any ‘person ...
2 of ...liberty ... without due process of law.’ Freedom from
3 imprisonment—from government custody, detention, or other forms of
4 physical restraint—lies at the heart of the liberty that that Clause
5 protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this
6 Court has said that government detention violates that Clause unless the
7 detention is ordered in a criminal proceeding with adequate procedural
8 protections, *see United States v. Salerno*, 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).

9 As the Ninth Circuit put it in *Jennings v. Rodriguez*’s 583 U.S. 281, 297
10 (2018) wake, these considerations raise “grave doubts that any statute that allows
11 for arbitrary prolonged detention without any process is constitutional or that those
12 who founded our democracy precisely to protect against the government’s arbitrary
13 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
14 256 (9th Cir. 2018). The same concerns have led district courts to conclude that
15 immigrants cannot be detained indefinitely without bond hearings pending their
16 immigration proceedings.
17

18
19 **III. Courts have reached different conclusions about when immigration**
20 **detention becomes indefinitely prolonged, but Petitioner would**
prevail under any standard

21 Though courts agree that due process mandates a bond hearing when detention
22 grows unreasonably prolonged, they disagree about how to assess whether a
23 particular individual’s detention has reached that point. *Sanchez-Rivera v.*
24

1 *Matusewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5-6. (S.D. Cal.
2 Jan 9, 2023) (Anello J.) (surveying the various approaches). Some courts have
3 “conclude[d]...that detention becomes prolonged after six months and entitles [a
4 petitioner] to a bond hearing.” *Rodriguez v. Nielson*, No. 18-CV-04187-TSH, 2019
5 WL 7491555, at *6 (N.D. Cal. Jan 7, 2019). In that case, Petitioner would
6 automatically qualify, as he has been detained for over 6 months.
7

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

- 11 (1) “the total length of detention to date,”
12 (2) “the likely duration of future detention,” and
13 (3) The delays in the removal proceedings caused by the petitioner and the
14 government.”
15

16 *Id.* Some courts also consider:
17

- 18 (1) “the conditions of detention,” and
19 (2) “the likelihood that the removal proceedings will result in a different
20 final order.”
21

22 *Id.*; *but see Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding
23 that the fourth and fifth factors and “not particularly suited to assisting the Court in
24

1 determining whether detention has become unreasonable and due process requires
2 a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at *5-6 (agreeing with
3 *Lopez*).¹ Petitioner would prevail under any of these factors tests.

4 First, the “most important factor,” the length of detention, favors Petitioner.
5
6 *Banda*, 385 F. Supp. 3d. at 1118. In assessing this factor, “[i]t is important to bear
7 in mind the context: The detention that is being examined here is the detention of a
8 person who has never been found to pose a danger to the community or to be likely
9 to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d. 853, 859 (D. Minn.
10 2019). With that context, courts have granted bond hearings for persons detained
11 between nine and eleven months. *See Ashemuke v. ICE Filed Off. Dir.* No. C23-
12 1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report*
13 *and recommendation adopted*, No. C23-1592-RSL, 20241676681 (W.D. Wash.
14 Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*, 324 F. Supp.
15 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No. 18-CV-
16 5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y) Aug. 20, 2018) (“More than nine
17 months”); *Hoyos Amado v. U.S. Dep’t of Justice*, No. 25-cv -2687-LL-DDL, 2025
18 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (“Courts have found detention over
19
20
21
22

23 ¹ Courts also disagree about whether to account for any criminal convictions that led to the deportation. *Sanchez-*
24 *Rivera*, 2023 WL 139801, at *5-6. But such factors – if appropriate at all – are irrelevant where, as here, the
individual is not being removed due to criminal convictions.

1 seven months without a bond hearing weighs toward a finding that it is
2 unreasonable.”

3 Second, Petitioner has reason to anticipate significant future detention
4 during his removal proceedings. The Petitioner was ordered removed to Uganda, a
5 country with which he has no ties or familiarity. The Department did not present
6 any evidence that it would actually be able to remove Petitioner to Uganda or that
7 Uganda would be willing to accept Petitioner. Petitioner’s appeal was submitted on
8 April 6, 2026. *See Banda*, 385 F. Supp. 3d at 1119. All told, “[t]his process may
9 take up to two years or longer.” *Id.* Because “Petitioner’s future detention can last
10 several more months or even years[,]” this factor favors Petitioner. *Abdul Kadir v.*
11 *LaRose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15
12 2025) (Lopez, J.).

13 Third, Petitioner did not delay his proceedings, but moved forward
14 expeditiously. He has complied every filing deadline and his case proceeded
15 expeditiously. Petitioner’s notice to appear was issued on November 18, 2025. The
16 Department did not file their motion to pretermitt until January 22, 2027, more than
17 2 months after they initiated removal proceedings. This caused further delay in
18 Petitioner’s proceedings.

19 Fourth, Petitioner conditions of confinement weigh in favor of a bond
20 hearing. At Otay Mesa Detention Center, detainees are “locked up behind razor
21

1 wire and concrete walls in a secured facility, forced to wear a color-coded prisoner
2 jump suit, forbidden from accessing the internet, restricted access to outdoor space,
3 restricted on visitation, and guarded at all times with armed guards authorized to
4 inflict punishment for violations of rule.” *Abdul Kadir*, 2025 WL 2932654, at *5.
5 “Petitioner’s confinement at OMDC is ‘indistinguishable from penal
6 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
7 Supp. 3d at 773).

9 Fifth, there is a likelihood that the removal proceedings will result in a
10 remand. The Department is seeking to remove Petitioner to Uganda, a country with
11 which he has no familiarity. In analogous cases involving attempted third-country
12 removals under the asylum cooperative agreement framework, the Department has
13 been unable to effectuate removal and has subsequently been forced to reopen
14 proceedings. These circumstances underscore a recurring pattern in which DHS
15 designates alternative countries of removal without a viable mechanism to carry
16 out such removal in practice. Here, the speculative nature of removal to Uganda,
17 coupled with the Department’s historical inability to execute comparable third-
18 country removals, demonstrates that Petitioner’s removal is not reasonably
19 foreseeable. Further, the Ninth Circuit has made clear that immigration detention is
20 strictly limited by due process and must bear a reasonable relation to its purpose.
21 See *Nadarajah v. Gonzales*, 443 F.3d 1069, 1079 (9th Cir. 2006) (holding that
22
23
24

1 detention is impermissible where it is “indefinite and potentially permanent” and
2 not reasonably related to effectuating removal). Where, as here, removal is
3 speculative at best, continued detention loses its justification and becomes
4 punitive. Accordingly, continued detention violates due process and warrants
5 immediate release. Under any test, then, Petitioner is entitled to a bond hearing in
6 which Respondents bear the burden of establishing whether Petitioner is a flight
7 risk or a danger to the community.
8

9
10 **CLAIM FOR RELIEF**

11 **Violation of the INA:**

12 **Request for Relief Pursuant to *Maldonado Bautista* and the *Fifth Amendment***
13 ***Due Process Clause***

14 15. Petitioner repeats, re-alleges, and incorporates by reference each and every
15 allegation in the preceding paragraphs as if fully set forth herein.

16 16. The Fifth Amendment Due Process Clause prohibits the government from
17 continuing to detain Petitioner a bond hearing.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 20 a. Assume jurisdiction over this matter;
- 21 b. Order that Petitioner shall not be transferred outside the Southern
- 22 District of California.
- 23 c. Issue a writ of habeas corpus requiring that within one day,
- 24 Respondents release Petitioner;
- d. Alternatively, issue a writ of habeas corpus requiring Respondents to
release Petitioner unless they provide a bond hearing within seven
days;

- e. Order that Respondents shall not re-detain or continue to detain Petitioner absent a material change in circumstances;
- f. Order that Respondents shall provide Petitioner's counsel with advance written notice of their position in advance of any bond hearing; and
- g. Grant any other and further relief that this Court deems just and proper.

DATED this 16 of April 2026

Respectfully Submitted:

/s/ Tina Malek
Tina Malek
402 W. Broadway, Ste 1260
619-566-0600
CA Bar No. 265543
Counsel for Petitioner