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Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Z.G.,
Petitioner-Plaintiff,

v.

Christopher LAROSE, Warden, Otay Mesa Detention Center;

Gregory J. ARCHAMBEAULT, Acting Field Office Director of San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Markwayne MULLIN, in his Official Capacity, Secretary, U.S. Department of Homeland Security; and

Todd BLANCHE, in his Official Capacity, Acting Attorney General of the United States;

Respondents-Defendants.

Case No. '26CV2487 RSH AHG

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. The Petitioner, Z.G.,[1] is in the physical custody of the Department of Homeland Security at the Otay Mesa Detention Center (OMCD) in San Diego, California. He is facing prolonged detention in violation of the Due Process Clause of the Fifth Amendment.

2. The Petitioner has been detained for almost nine months, even though no neutral decisionmaker has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk. During the time he has detained, the Petitioner has been sexually assaulted and has suffered severe medical conditions without adequate treatment. The length of his detention has been extended due to the Immigration Court's inability to provide an interpreter in his native language of Kambaata and is likely to continue for months, if not years, without intervention from this Court.

3. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus, determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available alternatives to detention, and order Petitioner's immediate release.

4. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus and order Petitioner's release within 14 days unless Respondents schedule a hearing before a neutral adjudicator where (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; and

[1] The Petitioner is proceeding under a pseudonym and will file a motion to proceed under a pseudonym with the Court. The Petitioner will provide his identity, including his full name and alien number, to the Respondents' counsel.

(2) if the government cannot meet its burden, the adjudicator shall order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

JURISDICTION

5. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center in San Diego, California.

6. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas corpus); U.S. Const. Art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure Act). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

7. Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); *see also id.* at 876 (Breyer, J., dissenting). ("8 U.S.C. § 1252(b)(9) . . . by its terms applies only with respect to review of an order of removal") (internal quotation marks and brackets omitted).

VENUE

8. Venue is proper in this District because this is the district in which Petitioner is confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

9. 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

10. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

11. 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 receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

12. Petitioner Z.G. is a noncitizen currently detained by Respondents pending ongoing removal proceedings.

13. Respondent Christopher J. LaRose is employed by CoreCivic as Senior Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

14. Respondent Gregory J. Archambeault is the Acting Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Archambeault is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

15. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs Enforcement (ICE) and is responsible for ICE's policies, practices, and procedures, including those

relating to the detention of immigrants. ICE is a legal custodian of Petitioner and Mr. Lyons is named in his official capacity.

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

17. Respondent Todd Blanche is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

FACTS

18. On or around July 22, 2025, the Petitioner ("Mr. G"), who is 30 years old, entered the United States without inspection near Otay Mesa, California, seeking asylum from Ethiopia. Mr. G speaks only one language fluently—Kambaata.

19. Upon entry, Mr. G was detained by the Department of Homeland Security ("DHS") and placed in immigration detention at the Otay Mesa Detention Facility.

20. DHS placed Mr. G in expedited removal proceedings on July 22, 2025.

21. Mr. G requested a fear interview, but the Asylum Officer at United States Citizenship and Immigration Services ("USCIS") could not secure a Kambaata interpreter for the interview. USCIS determined that Mr. G should be issued a discretionary Notice to Appear due to lack of available Kambaata interpreters.

22. Nevertheless, DHS took an additional six weeks to place Mr. G into full removal proceedings.

23. Mr. G's first master calendar hearing was on September 29, 2025, and he appeared *pro se* at this hearing. At the hearing, the immigration court could not secure a Kambaata interpreter, and therefore Mr. G's case was reset for October 6, 2025.

24. On October 6, 2025, Mr. G appeared again *pro se*. The court still could not find a Kambaata interpreter, and the immigration judge tried to proceed with an Amharic interpreter due to Mr. G's Ethiopian nationality. Mr. G informed the court that he could not understand Amharic and requested a Kambaata interpreter. His case was again reset for October 20, 2025.

25. Thereafter, Mr. G was able to secure *pro bono* representation, and his *pro bono* counsel appeared at the hearing on October 20, 2025. The immigration judge could not find a Kambaata interpreter, so Mr. G's counsel waived interpretation for this hearing. Mr. G's counsel conceded the charges on his Notice to Appear and requested relief from removal through asylum, withholding of removal, and protection under the Convention Against Torture. The immigration judge instructed Mr. G to file a Form I-589, Application for Asylum and Withholding of Removal, prior to November 7, 2025.

26. During this time, Mr. G also informed his counsel that he was facing medical issues at the detention center, but he was not receiving proper care. Mr. G said he had gone to the medical unit multiple times, but the medical unit did not call an interpreter for him, forcing him to use hand gestures. He stated that he has not received proper treatment for his very painful hemorrhoids, and he was worried because his cousin died from a similar condition. He also shared that his knee and wrist were in a lot of pain from his torture in prison in Ethiopia and that he needs glasses but has not been able to see an optometrist while detained. He requested that his counsel contact Immigration and Customs Enforcement ("ICE") to escalate these issues. On

October 28, 2025, Mr. G's counsel left a message with the medical unit at Otay Mesa Detention Center explaining these issues and also sent an email to a deportation officer with ICE at the Otay Mesa Detention Center to request that Mr. G see a medical provider with an interpreter.

27. On November 1, 2025, Mr. G was sexually assaulted at Otay Mesa Detention Center when he was playing basketball. Another detainee grabbed him by the waist and thrust his pelvis against him several times. Mr. G felt humiliated and other detainees laughed at him. He filed a complaint about the incident, but the investigator did not provide him with an interpreter to explain his side. He was also not provided with video footage of the incident.

28. Mr. G filed his Form I-589, Application for Asylum and Withholding of Removal, with the immigration court on November 6, 2025. Mr. G appeared again in court on November 7, 2025. The immigration court could not secure a Kambaata interpreter, but Mr. G's counsel waived interpretation for the hearing since it was for the purpose of scheduling a final hearing. Counsel informed the immigration judge that Mr. G would need a Kambaata interpreter for the final hearing, which was set for February 10, 2026.

29. Mr. G filed hundreds of pages of evidence in support of his request for asylum in January 2026. On February 5, 2026, Mr. G's new counsel requested a four-day continuance of his individual hearing due to change in counsel. Mr. G's previous counsel changed employment, and new counsel entered an appearance in his case. Around February 6, 2026, the immigration judge assigned to Mr. G's case left the Otay Mesa Immigration Court, and Mr. G's case was reset for a master calendar hearing in front of a new immigration judge on March 11, 2026.

30. On February 6, 2026, DHS filed a motion to pretermit Mr. G's applications for protection based on the Asylum Cooperative Agreement with Uganda and requested that the

immigration judge enter an order of removal to Uganda so that Mr. G could apply for asylum in Uganda. Through counsel, Mr. G filed an opposition to the motion on February 16, 2026 with evidence that Uganda categorically banned Ethiopians from seeking asylum, including a sworn declaration from a lawyer in Uganda explaining that Ethiopians cannot request protection in Uganda and are targeted for arrest, detention, and refoulement by immigration authorities.

31. On February 17, 2026, Mr. G's counsel filed a motion to set Mr. G's case for a final hearing instead of having another master calendar hearing, as Mr. G was struggling in detention and the case was ready for a final hearing. The immigration judge never ruled on this motion. On March 5, 2026, the case was again pushed back to March 24, 2026 in front of a new immigration judge, again for a master calendar hearing.

32. On March 5, 2026, Mr. G's counsel filed a request with ICE to release Mr. G on parole due to his intense medical issues and lack of language support at the facility, noting that Mr. G has a strong case for asylum and no criminal history, making him a strong candidate for release on parole. Attached to the parole request was a letter and supporting documents from Mr. G's relative in Colorado who was willing to host and support Mr. G if released. Mr. G's deportation officer confirmed receipt of this parole request on March 6, 2026 and told Mr. G's counsel that he will inform her once a decision has been made. To date, ICE has not issued any decision on the parole request.

33. On March 17, 2026, Mr. G appeared at his master calendar hearing, and counsel waived interpretation for him. The immigration judge set a new hearing for March 24, 2026 to discuss the issue of removal to Uganda. Counsel reminded the immigration judge that Mr. G required a Kambaata interpreter.

34. On March 24, 2026, Mr. G appeared at his hearing, and his counsel advised the immigration judge that Mr. G is willing to waive interpretation until the final asylum hearing, but the immigration judge responded that he could not continue without a Kambaata interpreter and asked counsel to put the Kambaata interpreter she was working with in touch with the interpretation service provider at the court. DHS requested that the immigration judge ask Mr. G to continue in a different language, but the immigration judge examined the record and confirmed that Mr. G had consistently said that he only understood Kambaata and requested only Kambaata interpreters. The immigration judge again reset the hearing for April 7, 2026.

35. Thereafter, Mr. G's counsel contacted the interpretation service provider at the immigration court and put them in touch with a Kambaata interpreter, reminding them that Mr. G had a hearing on April 7, 2026. Although the service provider got in touch with the interpreter, they did not onboard him in time for the April 7, 2026 hearing.

36. On April 7, 2026, Mr. G and counsel appeared at his hearing. The immigration judge called an Amharic interpreter and asked Mr. G if he could understand an Amharic interpreter. Mr. G confirmed that he did not speak Amhara fluently and needed a Kambaata interpreter. Mr. G's attorney asked the immigration judge if he could waive interpretation for this hearing related to removal to Uganda. The immigration judge proceeded with the hearing and asked DHS why he should consider their motion to pretermit when there was evidence that Ethiopians could not receive asylum in Uganda. DHS responded that the immigration judge should not consider whether Mr. G could request asylum in Uganda. The immigration judge ultimately ruled that Mr. G had not established that he would be persecuted in Uganda and that the court was precluded from denying the motion based on the fact that Ethiopians cannot apply for asylum in Uganda by the Board of Immigration Appeals' ("BIA") decision

in *Matter of C-I-G-M- & L-V-S-G-*, 29 I&N Dec. 291 (BIA 2025). The immigration judge ordered Mr. G's removal to Uganda.

37. Mr. G, through counsel, filed a Notice of Appeal at the BIA on April 17, 2026. This appeal is currently pending.

38. Based on information and belief, the BIA often takes more than six months—sometimes closer to one year—to make a decision on an appeal for a detained individual. If the BIA determines that the immigration judge erred in ordering removal to Uganda and instructs the immigration judge to make a decision on Mr. G's asylum case, it is unclear if the immigration court will ever have access to a Kambaata interpreter for him to testify about the persecution he faced in Ethiopia. Even if the BIA affirms the immigration judge's removal order, Mr. G retains the right to appeal that decision through a petition for review to the Ninth Circuit Court of Appeals, which would take several more months—if not years—to come to a decision.

39. Mr. G has been detained for close to nine months and is isolated from his community. There is no one at the immigration detention center who speaks his language, and he has limited funds to call his relatives or home. A recent study has found that "increased length of imprisonment . . . directly exerts harm" and that "detention lasting 6 months or longer . . . [results in] even higher rates of poor [health], mental illness, and PTSD following release." *See* Saadi, Altaf, et al, DURATION IN IMMIGRATION DETENTION AND HEALTH HARMS, JAMA NETWORK (Jan. 24, 2025), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2829506. A local news station has also reported on the unhealthy conditions at Otay Mesa Detention Facility, citing overcrowding, delayed medical care, and poor nutrition in the facility. *See* Gustavo Solis, *Overcrowded Conditions Plague Otay Mesa and Other Immigrant Detention Facilities*, KPBS News (July 28,

2025), *available at* https://www.kpbs.org/news/local/2025/07/28/overcrowded-conditions-plague-otay-mesa-and-other-immigrant-detention-facilities.

40. Despite being detained for nearly nine months, Mr. G has never been provided with a bond hearing before a neutral decisionmaker to determine whether his prolonged detention is justified based on danger or flight risk.

LEGAL FRAMEWORK

41. "'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious").

42. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

43. Due process requires that the government provide bond hearings to noncitizens facing prolonged detention. "The Due Process Clause foresees eligibility for bail as part of due process" because "[b]ail is basic to our system of law." *Jennings*, 138 S. Ct. at 862 (Breyer, J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding at the time that such detentions are typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) ("[I]ndividualized determination as to his risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that "lesser safeguards may be appropriate" for "short term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth Amendment context, "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards"); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) (holding that "the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention" under section 1226(c)) (internal quotation marks omitted).

44. Courts have continually expressed concern about the constitutionality of detention without a bond hearing that lasts longer than six months. *See Demore*, 538 U.S. at 529-30 (upholding only "brief" detentions under Section 1226(c), which last "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases

in which the [noncitizen] chooses to appeal"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months."); *Rodriguez v. Nielsen*, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019) ("[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond hearing").

45. The recognition that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in U.S. legal tradition. With few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment).

46. Courts in the Southern District of California have taken the position that an individualized analysis is appropriate to determine whether a non-citizen detainee's prolonged detention has become so unreasonable as to require an initial bond hearing. *See Hoyos Amado v. U.S. DOJ,* No.: 25cv2687-LL(DDL), 2025 WL 3079052 (S.D. Cal. Nov 4, 2025); *Gao v. LaRose*, No.: 25-cv-2084-RSH-SBC, 2025 WL 2770633 (S.D. Cal. Sept. 26, 2025); *Sadeqi v. LaRose*, No.: 25-cv-2587-RSH-BJW, 2025 WL 3154520 (S.D. Cal. Nov 12, 2025); *Abdul Kadir v. LaRose*, No.: 25cv1045-LL-MMP, 2025 WL 2932654 (S.D. Cal Oct 15, 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. Nov. 4, 2020). These cases have generally relied on a six-factor analysis from

Banda v. McAleenan, 385 F. Supp. 3d 1099, 1106 (W.D. Wash. 2019), which considers the following factors in determining whether detention has become so prolonged that violates the Due Process Clause: (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.

47. Petitioner's detention, without *any* individualized review, is unreasonable under the test set out in *Banda*, and each of these six factors favors the Petitioner.

48. First, Petitioner has experienced detention of a significant and prolonged duration. Petitioner, who has been held in carceral conditions for almost nine months, has already indisputably experienced a significant length of civil detention, thus satisfying the first of the three *Banda* factors.

49. Second, the likelihood that the Petitioner will suffer additional detention in the future is great. The Petitioner's removal proceeding is currently on appeal to the Board of Immigration Appeals (BIA). Such appeals typically constitute a multi-month process, which may result in a remand back to the immigration court or a subsequent petition for review to the Ninth Circuit Court of Appeals.

50. Third, the conditions inside the Otay Mesa Detention Center (OMDC), which is a for-profit privately run detention center, are indistinguishable from penal confinement. As noted above, news reports have documented overcrowding, delayed medical care, and poor nutrition at OMDC and other DHS detention facilities. While detained at OMDC, the Petitioner has been sexually assaulted by another inmate without adequate recourse from the facility. Further, he has suffered from severe medical issues, including hemorrhoids, without proper medical treatment.

51. Fourth, the Petitioner has not caused any undue delays in this matter. He requested a continuance only once in this case—and that was a request for a four-day continuance due to change of counsel.

52. Fifth, the vast majority of delays in these proceedings have been caused by the government. The Petitioner did not receive his first master calendar hearing until more than two months after he was detained. His proceedings were again delayed on three occasions because the Immigration Court was unable to obtain a Kambaata interpreter.

53. Finally, the Petitioner's removal proceedings are currently pending before the Board of Immigration Appeals. The Petitioner has submitted an application for asylum, withholding of removal, and protection under the Convention Against Torture supported by hundreds of pages of evidence and has submitted multiple good faith challenges to the government's attempt to remove him to the third country of Uganda under the Asylum Cooperative Agreement between the United States and Uganda.

54. Accordingly, based on the factors above, the Petitioner's ongoing detention over nearly nine months, which will remain prolonged while his case is on appeal with the Board of Immigration Appeals, violates his right to due process. Thus, he must be immediately released if not afforded a bond hearing.

55. At a bond hearing, due process requires certain minimum protections to ensure that a noncitizen's detention is warranted: the government must bear the burden of proof by clear and convincing evidence to justify continued detention, taking into consideration available alternatives to detention; and, if the government cannot meet its burden, the noncitizen's ability to pay a bond must be considered in determining the appropriate conditions of release.

56. 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, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d 762, 781 (9th Cir. 2020), *rev'd on other grounds by Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 213 L. Ed. 2d 102 (2022) ("*Jennings*'s rejection of layering [the clear and convincing burden of proof standard] onto § 1226(a) as a matter of statutory construction cannot . . . undercut our constitutional due process holding in *Singh*."); *Doe v. Garland*, 2023 WL 1934509, at *2 (N.D. Cal. Jan. 10, 2023). Multiple courts within this district have held likewise. *See Hoyos Amado*, 2025 WL 3079052, at *7; *Gao*, 2025 WL 2770633, at *5; *Sadeqi*, 2025 WL 3154520, at *4; *Abdul Kadir*, 2025 WL 2932654, at *6; *Kydyrali*, 499 F. Supp. 3d at 775-76; *Durand,* 2024 WL 711607 at *5; *Sanchez-Rivera*, 2023 WL 139801 at *7; *Sibomana*, 2023 WL 3028093 at *4.

57. Where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the Government bore the burden of proof by at least clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention after a "full-blown adversary hearing" requiring "clear and convincing evidence" and "a neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee).

58. The 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). First, "an individual's private interest in 'freedom from prolonged detention' is 'unquestionably substantial.'" *See Rodriguez Diaz v. Garland*, 53

F.4th 1189, 1207 (citing *Singh*, 638 F.3d at 1208). Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens may lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 763 (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, detained noncitizens are incarcerated in prison-like conditions that severely hamper their ability to gather evidence and prepare for a bond hearing. Third, placing the burden on the government imposes minimal cost or inconvenience to it, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

59. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during civil removal proceedings. *See Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538-39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is excessive in relation to its legitimate purpose). Thus, alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

60. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). Therefore, when determining the appropriate conditions of release for people detained for

immigration purposes, due process requires "consideration of financial circumstances and alternative conditions of release." *Id.*; *see also Martinez v. Clark*, 36 F.4th 1219, 1231 (9th Cir. 2022) ("While the government had a legitimate interest in protecting the public and ensuring the appearance of noncitizens in immigration proceedings, we held [in *Hernandez*] that detaining an indigent alien without consideration of financial circumstances and alternative release conditions was 'unlikely to result' in a bond determination 'reasonably related to the government's legitimate interests.'") (citation omitted).

CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUION

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

2. 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.

3. Given the circumstances of this case, as outlined above, Petitioner's nearly nine-month long detention without a bond hearing has become prolonged in violation of his right to due process under the Fifth Amendment.

4. To justify Petitioner's ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that Petitioner's detention is justified by clear and convincing evidence of flight risk or danger, taking into account whether alternatives to detention could sufficiently mitigate that risk. The government has not done so in this case.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue a Writ of Habeas Corpus, determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available alternatives to detention, and order Petitioner's immediate release;

c. In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release within 14 days unless Respondents schedule a hearing before a neutral adjudicator where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if the government cannot meet its burden, the adjudicator must order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond;

d. Issue a declaration that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment;

e. Issue an order enjoining the Respondent's from removing the Plaintiff from the United States or transferring him from the Southern District of California while this matter is pending;

f. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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

DATED this 20 of April, 2026.

/s/ Warren Craig
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Attorney for Petitioner

VERIFICATION FOR SOMEONE ACTING ON PETITIONER'S BEHALF PERSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's counsel in his removal proceedings and in all the applications for parole from immigration custody that he has previously filed with ICE. I have been representing Petitioner since February 2026 and have also discussed with him the events described in this Petition. On those bases, 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 this 20th of April, 2026.

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