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Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT

FOR THE 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;

Defendants-Respondents

Case No. 3:26-cv-02487-RSH-AHG

MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, the Petitioner hereby moves this Court for an order enjoining the Respondents from (1) removing the Petitioner from the United States or transferring Petitioner outside of the Southern District of California while this action is pending; and (2) continuing to detain the Petitioner without providing him within 14 days an individualized bond hearing before a neutral adjudicator in which the government has the burden to show that there is clear and convincing evidence establishing that the Petitioner is a danger to the community or a flight risk, even after consideration of alternatives to detention that could mitigate any risk that the Petitioner's release would present; if the government cannot meet its burden, the adjudicator must order the Petitioner's release on appropriate conditions of supervision, taking into account the Petitioner's ability to pay a bond.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Madhavi Narayanan with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and *Ex-Parte* Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, the Petitioner asserts that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing prolonged deprivation without an individualized bond hearing. In this case, the Petitioner has been detained in Department of Homeland Security custody for nearly nine months without the opportunity to seek an individualized bond hearing due.

WHEREFORE, the Petitioner prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining the Respondents from continuing to detain him absent an individualized bond hearing that meets the requirements described above.

Dated: April 20, 2026

Respectfully Submitted

/s/ Warren Craig
Warren Craig
Attorney for Mr. G

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I. INTRODUCTION

Petitioner-Plaintiff, Z.G. ("Mr. G"),[1] by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the Respondents from continuing to detain him without an individualized bond hearing at which the Department of Homeland Security (DHS) must establish by clear and convincing evidence that he is a danger to the community or a flight risk.

As discussed further below, Mr. G is an asylum seeker from Ethiopia who has been detained for nearly nine months at the Otay Mesa Detention Center. During his time in detention, Mr. G has been sexually assaulted and has experienced severe medical issues, including hemorrhoids, without adequate treatment. Mr. G speaks a rare language—Kambaata, which no one at the facility speaks. His proceedings have been delayed on at least three occasions because the immigration court has been unable to find an appropriate interpreter. Now, Mr. G's case is on appeal, which is likely to take months, if not years, to resolve. Further, pursuant to Board of Immigration Appeals precedent, Mr. G is not eligible to apply for bond before the immigration Court. Thus, Mr. G has remained detained in DHS custody for nearly nine months with no end in sight, and this prolonged detention has caused significant hardships for Mr. G.

As multiple district court judges within the Southern District of California have determined under similar circumstances, such prolonged detention without an individualized bond hearing violates a noncitizen's right to due process under the Fifth Amendment of the United States Constitution. *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); *Durand v. Allen*, No.: 3:23-cv-00279-RBM-BGS 2024, WL 711607 (S.D. Cal. Feb. 21, 2024); *Sibomana v. LaRose*, No.: 3:22-cv-933-LL-NLS, 2023 WL 3028093 (S.D. Cal. April 20, 2023); *Sanchez-*

[1] Mr. G is currently identifying himself using his initials (Z.G.) and will file a motion to proceed under a pseudonym.

Rivera v. Matuszewski, No.: 22-cv-1357-MMA (JLB), 2023 WL 139801 (S.D. Cal. Jan. 9, 2023); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582 (S.D. Cal. Mar. 29, 2019). Thus, Mr. G is likely to succeed on the merits of his due process claim as presented in his accompanying petition for writ of habeas corpus. Furthermore, as documented below, such ongoing violation of Mr. G's constitutional rights will cause Mr. G immediate and irreparable injury, and the balance of equities and the public interest strongly favors remedying this ongoing constitutional violation by granting a temporary protective order requiring the Respondents to provide Mr. G with an individualized bond hearing within 14 days of the Court's order. To prevent loss of access to local counsel, Mr. G also requests the Court grant a temporary restraining order preventing the Respondents from removing or transferring Mr. G outside of the jurisdiction of the Southern District of California while this matter is pending. *See Domingo-Ros v. Archambeault*, 2025 WL 1425558, at *5 (S.D. Cal May 18, 2025).

II. STATEMENT OF FACTS AND CASE

On or around July 22, 2025, Mr. G, who is 30 years old, entered the United States without inspection near Otay Mesa, California, seeking asylum from Ethiopia. Declaration of Mahdavi Narayanan ("Narayanan Decl.") at ¶ 4; Exh 3. Mr. G speaks only one language fluently—Kambaata. *Id.* at ¶ 4. Upon entry, Mr. G was detained by the Department of Homeland Security ("DHS") and placed in immigration detention at the Otay Mesa Detention Facility. *Id.* at ¶ 5.

DHS initially placed Mr. G in expedited removal proceedings. *Id.* at ¶ 6; Exh. 1. 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. *Id.* at ¶ 7; Exh 2. USCIS, therefore, determined that Mr. G should be issued a discretionary Notice to Appear due to lack of available Kambaata interpreters. *Id.* Nevertheless, DHS took an additional six weeks to place Mr. G into full removal proceedings. *Id.* at ¶ 8; Exh 3.

Mr. G's first master calendar hearing was on September 29, 2025, and he appeared *pro se* at this hearing. *Id.* at ¶ 9. At the hearing, the immigration court could not secure a Kambaata interpreter, and therefore Mr. G's case was rescheduled. *Id.* At his next hearing on October 6, 2025, Mr. G appeared again *pro se*. *Id.* at ¶ 10. 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. *Id.* Mr. G. informed the court that he could not understand Amharic and requested a Kambaata interpreter. *Id.* His case was again reset for October 20, 2025. *Id.*

Thereafter, Mr. G was able to secure pro bono representation, and his pro bono counsel appeared at the hearing on October 20, 2025. *Id.* at ¶ 11. The immigration judge could not find a Kambaata interpreter, so Mr. G's counsel waived interpretation for this hearing. *Id.* 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. *Id.* The immigration judge instructed Mr. G to file a Form I-589, Application for Asylum and Withholding of Removal, prior to November 7, 2025. *Id.*

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. *Id.* at ¶ 12. 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. *Id.* 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. *Id.* 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. *Id.* He requested that his counsel contact Immigration and Customs Enforcement ("ICE") to escalate these issues. *Id.* 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. *Id.*

On November 1, 2025, Mr. G was sexually assaulted at Otay Mesa Detention Center when he was playing basketball. *Id.* at ¶ 13. Another detainee grabbed him by the waist and thrust his pelvis against him several times. *Id.* Mr. G. felt humiliated and other detainees laughed at him. *Id.* He filed a complaint about the incident, but the investigator did not provide him with an interpreter to explain his side. *Id.* He was also not provided with video footage of the incident. *Id.*

Mr. G filed his Form I-589, Application for Asylum and Withholding of Removal, with

the immigration court on November 6, 2025. *Id.* at ¶ 14. Mr. G appeared again in court on November 7, 2025. *Id.* 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. *Id.* Counsel informed the immigration judge that Mr. G would need a Kambaata interpreter for the final hearing, which was set for February 10, 2026. *Id.*

Mr. G filed hundreds of pages of evidence in support of his request for asylum in January 2026. *Id.* at ¶ 15. On February 5, 2026, Mr. G's, through new counsel, requested a four-day continuance of his individual hearing due to change in his counsel. *Id.* Mr. G's previous counsel changed employment, and new counsel entered an appearance in his case. *Id.* 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. *Id.*

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. *Id.* at ¶ 16. 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. *Id.*; Exh 4.

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. *Id.* at ¶ 17. The immigration judge never ruled on this motion. *Id.* 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. *Id.*

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. *Id.* at ¶ 18; Exh 5. 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. *Id.*; Exh 5. 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. *Id.*; Exh 6. To date, ICE has not issued any decision on the parole request. *Id.*

On March 17, 2026, Mr. G appeared at his master calendar hearing, and counsel waived interpretation for him. *Id.* at ¶ 19. The immigration judge set a new hearing for March 24, 2026 to discuss the issue of removal to Uganda. *Id.* Counsel reminded the immigration judge that Mr. G required a Kambaata interpreter. *Id.* 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. *Id.* at ¶ 20. 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. *Id.* The immigration judge again reset the hearing for April 7, 2026. *Id.* 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. *Id.* at ¶ 21. Although the service provider got in touch with the interpreter, they did not onboard him in time for the April 7, 2026 hearing. *Id.*

On April 7, 2026, Mr. G and counsel appeared at his hearing. *Id.* at ¶ 22. The immigration judge called an Amharic interpreter and asked Mr. G if he could understand an Amharic interpreter. *Id.* Mr. G confirmed that he did not speak Amhara fluently and needed a Kambaata interpreter. *Id.* Mr. G.'s attorney asked the immigration judge if he could waive interpretation for this hearing related to removal to Uganda. *Id.* 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. *Id.* DHS responded that the immigration judge should not consider whether Mr. G could request asylum in Uganda. *Id.* 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). *Id.* The immigration judge ordered Mr. G's removal to Uganda. *Id.*

Mr. G, through counsel, filed a Notice of Appeal at the BIA on April 17, 2026. *Id.* at 23; Exh 7. This appeal is currently pending. *Id.* 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. *Id.* at ¶ 24. 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. *Id.* 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. *Id.*

Mr. G has been detained for close to nine months and is isolated from his community. *Id.* at 25. There is no one at the immigration detention center who speaks his language, and he has limited funds to call his relatives or home. *Id.* 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* Exh 6; 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* Exh 8; 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.

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. Narayanan Decl. at ¶ 26. Intervention from this Court is therefore required to ensure that Mr. G is not unlawfully subject to continued prolonged detention without an individualized bond hearing. Such unlawful conduct would cause Mr. G to suffer immediate and irreparable harm.

III. LEGAL STANDARD

Mr. G is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Mr. G does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). As set forth in more detail below, Mr. G's prolonged detention without an individualized bond hearing violates his right to due process, and Mr. G will continue to suffer irreparable injury each day that he remains detained without such a hearing. Furthermore, the balance of equites and the public interest tip in his favor.

IV. ARGUMENT

1. Mr. G is Likely to Succeed on the Merits of His Claim That His Prolonged Detention Without an Individualized Bond Hearing Violates His Right to Due Process.

Mr. G is likely to succeed on his claim that, in the particular circumstances involving his prolonged detention, the Due Process Clause of the Constitution prevents the Respondents from

continuing to detain Mr. G without bond absent an individualized bond hearing where the government must demonstrate by clear and convincing evidence that he is a danger to the community or a flight risk, as numerous district courts within the Southern District of California have held under similar circumstances involving prolonged detention. *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); *Durand v. Allen*, No.: 3:23-cv-00279-RBM-BGS 2024, WL 711607 (S.D. Cal. Feb. 21, 2024); *Sibomana v. LaRose*, No.: 3:22-cv-933-LL-NLS, 2023 WL 3028093 (S.D. Cal. April 20, 2023); *Sanchez-Rivera v. Matuszewski*, No.: 22-cv-1357-MMA (JLB), 2023 WL 139801 (S.D. Cal. Jan. 9, 2023); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582 (S.D. Cal. Mar. 29, 2019). Pursuant to the Board of Immigration Appeals' ("BIA") precedent decision in *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025), Mr. G is presently unable to seek an individualized bond hearing before an immigration judge because the BIA regards him as an "applicant for admission" who is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Thus, action from this Court is necessary to remedy this constitutional violation.[2]

"'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.,

[2] As a result of the BIA decision above, Mr. G has not sought a bond hearing with the immigration court as doing so would be entirely futile. *See Hernandez v. Sessions*, 872 F.3d 976, 988, 989 (9th Cir. 2017) (exhaustion of remedies may waived where doing so would be a "futile gesture").

dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious"). 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.

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 v. Rodriguez*, 138 S. Ct. 830, 862 (2018) (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).

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"). Indeed, 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).

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*, 2025 WL 3079052, at *5; *Gao*, 2025 WL 2770633, at *4; *Sadeqi*, 2025 WL 3154520, at *3; *Abdul Kadir*, 2025 WL 2932654, at *4; *Kydyrali*, 499 F. Supp. 3d at 773. These cases have generally relied on a six-factor analysis from *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (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. *Id.* at 1106. As explained below, each of these factors favors Mr. G in this case.

First, Mr. G has been detained for nearly nine months. As the Supreme Court stated in *Zadvydas* stated, "We do have reason to believe . . . that Congress previously doubted the constitutionality of detention for more than six months." 533 U.S. at 701. As noted above, 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*, 384 U.S. at 380 (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil*, 407 U.S. at 250-52 (recognizing six months as an outer limit for confinement without an individualized inquiry for civil commitment). Further, an injunction remains in place in the Central District of California requiring a bond hearing once immigration detention has reached six months. *See Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018). As one district court judge in this district observed, "Courts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable." *Hoyos Amado*, 2025 WL 3079052, at *5 (citing *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (finding detention for nearly nine months weighs in favor of the petitioner); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (over seven months); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) (over nine months); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (over nine months)). In this case, Mr. G's detention well exceeds the 6-7-month mark cited in the cases above. Indeed, Mr. G has been detained for around the same period of time or longer as multiple petitioners whose detention courts within this district have found to be prolonged under the due process clause. *See Akhtar v. LaRose*, No. 3:26-cv-00982-RBM-MMP, 2026 WL 905086 (S.D. Cal. Apr. 2, 2026) (nearly seven months); *Hasaballah v. LaRose*, No. 26cv1172 DMS DDL, 2026 WL 936951 (S.D. Cal. Apr. 7, 2026) (slightly more than seven months); *Khalid v. LaRose*, No. 26-CV-1462 JLS (MSB), 2026 WL 776842 (S.D. Cal. Mar. 19, 2026) (nearly seven months); *Gurung v. LaRose*, No. 3:26-cv-00888-JLS-MSB, 2026 WL 776841 (S.D. Cal. Mar. 19, 2026) (over eight months); *Shahrani v. LaRose*, No. 3:26-cv-00303-AJB-MSB, 2026 WL 776306 (S.D. Cal. Mar. 11, 2026) (over nine months); *Babaveisi v. LaRose*, No. 3:25-cv-02358-BAS-MSB, 2026 WL 76565 (S.D. Cal. Jan. 8, 2026) (nearly ten months). As such, the length of detention in

this case must be considered a factor that weighs strongly in Mr. G's favor, and this factor has been described by courts as "the most important one" *Akhtar*, 2026 WL 905086, at *2-3 (quoting *Banda*, 385 F. Supp. at 1118).

The likely duration of future detention also weighs in Mr. G's favor. Mr. G's removal proceedings are currently on appeal to the BIA. His notice of appeal was filed on April 17, 2026 following a decision by the Immigration Judge on April 7, 2026. Appeals to the BIA often take six months or longer to resolve. *See* Narayanan Decl. at ¶ 24. Even following a decision by the BIA, further delays are possible if the case goes up to the Ninth Circuit or is remanded back to the Immigration Court. *See id.* In *Banda*, the court noted that an appeal to the BIA and subsequent judicial review "may take up to two years or longer." 385 F. Supp. 3d at 1119. Thus, absent intervention from this Court, it is reasonably foreseeable that Mr. G could remain detained for months or even years. In *Sibomana*, the court found that "the pending administrative appeal and the potential judicial review process will be sufficiently lengthy such that this factor weighs in Petitioner's favor." 2023 WL 3028093 at *4. The courts in *Durand* and *Sanchez-Rivera* also held that the possibility of lengthy appeals weighed in the favor of the respective petitioners. 2024 WL 711607 at *5; 2023 WL 139801 at *6. Accordingly, this factor weighs strongly in Mr. G's favor.

The conditions of detention also weigh in Mr. G's favor. The Ninth Circuit has noted that detainees in DHS custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016), vacated on other grounds by *Nielsen v. Preap*, 139 S. Ct. 954 (2019). Moreover, courts within this district have recognized that the conditions at the Otay Mesa Detention Center (OMDC) are "indistinguishable from penal confinement." *Kydyrali*, 499 F. Supp. 3d at 773; *Amado*, 2025 WL 3079052, at *6. As noted above, news reports have documented overcrowding, delayed medical care, and poor nutrition at OMDC and other DHS detention facilities. *See supra* at 6; Exhs 6 & 8. While detained at OMDC, the Petitioner has been sexually assaulted by another inmate without adequate recourse from the facility. *See* Narayanan Decl. at & 13. Further, he has suffered from severe medical issues, including hemorrhoids, without proper medical treatment. *Id.* at & 12. This factor, likewise, weighs strongly in Mr. G's favor.

Further, the delays in this case are mostly attributable to the government. The Petitioner did not receive his first master calendar hearing until more than two months after he was detained. *Id.* at ¶¶ 6-8. His proceedings were again delayed on three occasions because the Immigration Court was unable to obtain a Kambaata interpreter. *Id.* at ¶¶ 9, 10, 20. By contrast, Mr. G has pursued his claim for asylum diligently, requesting only one continuance—and that was a request for a four-day continuance due to a chance in counsel. *See id.* at ¶ 15; *see also Abdul Kadir*, 2025 WL 2932654, at *5 (finding that continuances requested by petitioner did not result in undue delays). Thus, both of the delay factors also weigh in Mr. G's favor.

Finally, Mr. G's removal proceedings are currently pending before the BIA. Mr. G 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. *See* Narayanan Decl. at ¶ 15, 16; Exhs 4 & 7. In *Hoyos Amado*, the court found that the mere fact that petitioner had a "good faith challenge to removal" on appeal where the Immigration Judge had denied relief was enough for this factor to weigh in the petitioner's favor. *See* 2025 WL 3079052, at *4-5. Accordingly, this factor also weighs in Mr. G's favor.

Considering that all six factors weigh in Mr. G's favor, including the most important factor of length of detention, Mr. G's continued detention without an individualized bond hearing violates his right to due process. In the cases cited above, the district courts for the Southern District of California agreed that the appropriate remedy is to order an individualized bond hearing at which the government has the burden of proof to demonstrate by clear and convincing evidence that the noncitizen presents a flight risk or is a danger to the community—the same request that Mr. G makes with this motion for a TRO. *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. Mr. G also asks this Court order that the Respondents shall not deny Mr. G's bond request on the basis that § 1225(b)

requires mandatory detention. *See Garcia v. Noem*, 2025 WL 2549431, at *8 (S.D. Cal. Sept. 3, 2025). Given the authorities cited above, the Court in this matter should find that Mr. G is likely to succeed in his due process claim.

2. Mr. G will Suffer Irreparable Harm Absent Injunctive Relief.

Mr. G. will suffer irreparable harm if he continues to be subject to prolonged detention without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in DHS custody are held in "prison-like conditions." *Preap*, 831 F.3d at 1195. As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Finally, the government itself has documented alarmingly poor conditions in DHS detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), SUMMARY OF UNANNOUNCED INSPECTIONS OF ICE FACILITIES CONDUCTED IN FISCAL YEARS 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day);[3] *see also* Exhs 6 & 8.

Mr. G's individual circumstances also demonstrate the harm he will experience from continuing prolonged detention. Mr. G has suffered from very painful hemorrhoids and has not received proper treatment while detained. *See* Narayanan Decl. at ¶ 12. While he was gone to the medical unit multiple times, the medical unit did not call an interpreter for him, forcing him to

[3] *Available at* https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf.

use hand gestures. *Id.* He has also experienced pain in his wrist and knee from the torture he suffered in Ethiopia. *Id.* Additionally, he was sexually assaulted without an adequate response from the facility. *Id.* at ¶ 13. There is no one at the facility who speaks his language, which has left him isolated as he suffers in pain from the conditions noted above. *Id.* at ¶ 25.

Finally, as detailed above, Mr. G contends that his continued detention absent an individualized bond hearing before a neutral adjudicator would violate his due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. G from suffering irreparable harm by being subject to unlawful and unjust prolonged detention.

3. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

The balance of equities and the public interest also strongly favor granting this temporary restraining order.

First, the balance of hardships strongly favors Mr. G. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Second, any burden imposed by requiring an individualized bond hearing for Mr. G is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he remains subject to prolonged detention. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

Finally, a temporary restraining order is in the public interest. Importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal

law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to continue detaining Mr. G indefinitely in violation of the requirements of the Due Process Clause. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

Therefore, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

V. CONCLUSION

For all the above reasons, this Court should find that Mr. G warrants a temporary restraining order and a preliminary injunction ordering that Respondents refrain from continuing to detain the Respondent unless he is afforded within 14 days an individualized bond hearing before a neutral adjudicator at which the government bears the burden of proof to show by clear and convincing evidence that he is a danger to the community or a flight risk, even after consideration of alternatives to detention that could mitigate any risk that Mr. G's release would present. If the government cannot meet its burden, the adjudicator must order Mr. G's release on appropriate conditions of supervision, taking into account his ability to pay a bond. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

To prevent loss of access to local counsel, Mr. G also requests the Court grant a temporary restraining order preventing the Respondents from removing or transferring Mr. G outside of the jurisdiction of the Southern District of California while this matter is pending.

Dated: April 20, 2026

Respectfully submitted,

/s/ Warren Craig
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