

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 Musa WAGGEH,

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. '26CV2498 BAS DEB

**PETITION FOR WRIT OF
HABEAS CORPUS**

1 **INTRODUCTION**

2 Petitioner, Musa Waggeh, has been detained pending his immigration
3 proceedings for more than 6 months since October 18, 2025. This Court should
4 “join[] the majority of courts across the country in concluding that his
5 unreasonably prolonged detention under 8 U.S.C. §1225(b) without an
6 individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp.
7 3d 768, 772 (S.D. Cal. 2020)(Battaglia J.).

9 **JURISDICTION**

- 10 1. Petitioner is in the physical custody of Respondents. Petitioner is detained at
11 the Otay Mesa Detention Facility in San Diego, California.
- 12 2. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28
13 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the
14 United States Constitution (the Suspension Clause).
- 15 3. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory
16 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. §
17 1651.
- 18 4. The federal district courts have jurisdiction under Section 2241 to hear
19 habeas claims by individuals challenging the lawfulness of their detention by
20 ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).
- 21
22
23
24

VENUE

- 1
- 2 5. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.
- 3 484, 493- 500 (1973), venue lies in the United States District Court for the
- 4 Southern District of California, the judicial district in which Petitioner
- 5 currently is detained.
- 6
- 7 6. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because
- 8 Respondents are employees, officers, and agencies of the United States, and
- 9 because a substantial part of the events or omissions giving rise to the claims
- 10 occurred in the Southern District of California.

11 **REQUIREMENTS OF 28 U.S.C. § 2243**

- 12
- 13 7. The Court must grant the petition for writ of habeas corpus or issue an order
- 14 to show cause (OSC) to the respondents “forthwith,” unless the petitioner is
- 15 not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must
- 16 require respondents to file a return “within three days unless for good cause
- 17 additional time, not exceeding twenty days is allowed.” *Id.*
- 18
- 19 8. Habeas corpus is “perhaps the most important writ known to the
- 20 constitutional law . . . affording as it does a *swift* and imperative remedy in
- 21 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400
- 22 (1963) (emphasis added). “The application for the writ usurps the attention
- 23 and displaces the calendar of the judge or justice who entertains it and
- 24

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
5 9. Petitioner, Musa Waggeh, is currently detained by Respondents in the Otay
6 Mesa Detention Facility.

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, Musa Waggeh, is a 26-year-old native and citizen of Gambia and
11  Petitioner experienced harm, mistreatment, and threats
12 in Gambia due to his membership in a particular social group. He was forced into
13 slavery until he escaped in 2015. Petitioner left Gambia and ultimately sought
14 protection in the United States. He entered the United States on or about October
15 18, 2025, without inspection. He was issued a Notice to Appear on January 8,
16 2026, after an asylum officer determined that he had a credible fear of persecution.
17 On February 17, 2026, less than a year after entering the United States, he applied
18 for asylum before Immigration Court.
19

20 He has had four mater calendar hearings January 22, 2026, January 28,
21 2026, February 18, 2026, and March 11, 2026. On January 28, 2026, the
22 Department of Homeland Security filed a motion to pretermitt Petitioner's asylum
23 application on the basis that his subject to the asylum cooperative agreement
24

1 between the United States and Uganda. On March 11, 2026, the Immigration
2 granted the DHS motion, pretermitted his application for asylum, and ordered him
3 removed to Uganda. On March 14, 2026, he filed an appeal before the Board of
4 Immigration Appeals.
5

6 LEGAL FRAMEWORK

7 A. Prolonged Detention

8 **II. The Fifth Amendment's Due Process Clause prohibits prolonged** 9 **immigration detention without a bond hearing**

10 This habeas petition presents a question about whether and when the Fifth
11 Amendment's Due Process Clause countermands the government's statutory
12 authority to detain immigrants without bond hearings. "[N]early all district courts
13 that have considered the issue agree that prolonged mandatory detention pending
14 removal proceedings, without a bond hearing, will—at some point—violate the
15 right to due process." *Id.* (cleaned up) (collecting cases). These courts have taken
16 their cues largely from *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the
17 Supreme Court applied the constitutional avoidance canon to hold that persons
18 detained following a final removal order may not be subjected to indefinite
19 detention. *Id.* at 699. Though *Zadvydas*'s holding rests on statutory rather than
20 constitutional grounds, the Court justified its constitutional avoidance approach by
21
22
23
24

1 describing the serious due process concerns that indefinite detention would
2 occasion:

3
4 A statute permitting indefinite detention of an alien would raise a
5 serious constitutional problem. The Fifth Amendment's Due Process
6 Clause forbids the Government to 'depriv[e]' any 'person ...
7 of ...liberty ... without due process of law.' Freedom from
8 imprisonment—from government custody, detention, or other forms of
9 physical restraint—lies at the heart of the liberty that that Clause
10 protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And this
11 Court has said that government detention violates that Clause unless the
12 detention is ordered in a criminal proceeding with adequate procedural
13 protections, *see United States v. Salerno*, 481 U.S. 739, 746 (1987), or,
14 in certain special and 'narrow' nonpunitive 'circumstances,' *Foucha*,
15 *supra*, at 80, where a special justification, such as harm-threatening
16 mental illness, outweighs the 'individual's constitutionally protected
17 interest in avoiding physical restraint.' *Kansas v. Hendricks*, 521 U.S.
18 346, 356 (1997).

19 As the Ninth Circuit put it in *Jennings v. Rodriguez*'s 583 U.S. 281, 297
20 (2018) wake, these considerations raise "grave doubts that any statute that allows
21 for arbitrary prolonged detention without any process is constitutional or that those
22 who founded our democracy precisely to protect against the government's arbitrary
23 deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252,
24 256 (9th Cir. 2018). The same concerns have led district courts to conclude that
immigrants cannot be detained indefinitely without bond hearings pending their
immigration proceedings.

25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

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

1 Though courts agree that due process mandates a bond hearing when detention
2 grows unreasonably prolonged, they disagree about how to assess whether a
3 particular individual's detention has reached that point. *Sanchez-Rivera v.*
4 *Matusewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5-6. (S.D. Cal.
5 Jan 9, 2023) (Anello J.) (surveying the various approaches). Some courts have
6 "conclude[d]...that detention becomes prolonged after six months and entitles [a
7 petitioner] to a bond hearing." *Rodriguez v. Nielson*, No. 18-CV-04187-TSH, 2019
8 WL 7491555, at *6 (N.D. Cal. Jan 7, 2019). In that case, Petitioner would
9 automatically qualify, as he has been detained for over 6 months.
10

11 Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023
12 WL 139801, at *5-6 (surveying different approaches). Courts generally agree
13 that the relevant factors include:
14

- 15 (1) "the total length of detention to date,"
16 (2) "the likely duration of future detention," and
17 (3) The delays in the removal proceedings caused by the petitioner and the
18 government."
19

20 *Id.* Some courts also consider:

- 21 (1) "the conditions of detention," and
22 (2) "the likelihood that the removal proceedings will result in a different
23 final order."
24

1 *Id.*; but see *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding
2 that the fourth and fifth factors and “not particularly suited to assisting the Court in
3 determining whether detention has become unreasonable and due process requires
4 a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at *5-6 (agreeing with
5 *Lopez*).¹ Petitioner would prevail under any of these factors tests.
6

7 First, the “most important factor,” the length of detention, favors Petitioner.
8 *Banda*, 385 F. Supp. 3d. at 1118. In assessing this factor, “[i]t is important to bear
9 in mind the context: The detention that is being examined here is the detention of a
10 person who has never been found to pose a danger to the community or to be likely
11 to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d. 853, 859 (D. Minn.
12 2019). With that context, courts have granted bond hearings for persons detained
13 between nine and eleven months. See *Ashemuke v. ICE Filed Off. Dir.* No. C23-
14 1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report*
15 *and recommendation adopted*, No. C23-1592-RSL, 20241676681 (W.D. Wash.
16 Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*, 324 F. Supp.
17 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No. 18-CV-
18 5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y) Aug. 20, 2018) (“More than nine
19 months”).
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 Second, Petitioner has reason to anticipate significant future detention
2 during his removal proceedings. The Petitioner was ordered removed to Uganda, a
3 country with which he has no ties or familiarity. The Department did not present
4 any evidence that it would actually be able to remove Petitioner to Uganda or that
5 Uganda would be willing to accept Petitioner. Petitioner's appeal was submitted on
6 March 14, 2026. *See Banda*, 385 F. Supp. 3d at 1119. All told, "[t]his process may
7 take up to two years or longer." *Id.* Because "Petitioner's future detention can last
8 several more months or even years[,] " this factor favors Petitioner. *Abdul Kadir v.*
9 *LaRose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15
10 2025) (Lopez, J.).
11

12
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.

16 Fourth, Petitioner conditions of confinement weigh in favor of a bond
17 hearing. At Otay Mesa Detention Center, detainees are "locked up behind razor
18 wire and concrete walls in a secured facility, forced to wear a color-coded prisoner
19 jump suit, forbidden from accessing the internet, restricted access to outdoor space,
20 restricted on visitation, and guarded at all times with armed guards authorized to
21 inflict punishment for violations of rule." *Abdul Kadir*, 2025 WL 2932654, at *5.
22 "Petitioner's confinement at OMDC is 'indistinguishable from penal
23
24

1 confinement.” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
2 Supp. 3d at 773).

3 Fifth, there is a likelihood that the removal proceedings will result in a
4 remand. The Department is seeking to remove Petitioner to Uganda, a country with
5 which he has no familiarity. In analogous cases involving attempted third-country
6 removals under the asylum cooperative agreement framework, the Department has
7 been unable to effectuate removal and has subsequently been forced to reopen
8 proceedings. These circumstances underscore a recurring pattern in which DHS
9 designates alternative countries of removal without a viable mechanism to carry
10 out such removal in practice. Here, the speculative nature of removal to Uganda,
11 coupled with the Department’s historical inability to execute comparable third-
12 country removals, demonstrates that Petitioner’s removal is not reasonably
13 foreseeable. Further, the Ninth Circuit has made clear that immigration detention is
14 strictly limited by due process and must bear a reasonable relation to its purpose.
15 See *Nadarajah v. Gonzales*, 443 F.3d 1069, 1079 (9th Cir. 2006) (holding that
16 detention is impermissible where it is “indefinite and potentially permanent” and
17 not reasonably related to effectuating removal). Where, as here, removal is
18 speculative at best, continued detention loses its justification and becomes
19 punitive. Accordingly, continued detention violates due process and warrants
20 immediate release. Under any test, then, Petitioner is entitled to a bond hearing in
21
22
23
24

1 which Respondents bear the burden of establishing whether Petitioner is a flight
2 risk or a danger to the community.

3
4 **CLAIM FOR RELIEF**

5 **Violation of the INA:**

6 **Request for Relief Pursuant to *Maldonado Bautista and the Fifth Amendment***
7 ***Due Process Clause***

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

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

12 **PRAYER FOR RELIEF**

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

- 14 a. Assume jurisdiction over this matter;
- 15 b. Order that Petitioner shall not be transferred outside the Southern
16 District of California.
- 17 c. Issue a writ of habeas corpus requiring that within one day,
18 Respondents release Petitioner;
- 19 d. Alternatively, issue a writ of habeas corpus requiring Respondents to
20 release Petitioner unless they provide a bond hearing within seven
21 days;
- 22 e. Order that Respondents shall not re-detain or continue to detain
23 Petitioner absent a material change in circumstances;
- 24 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 20 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