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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

M.K.,

Petitioner,

v.

SIXTO MARRERO, Warden of the
Imperial Regional Detention Facility;
PETER E. DIVVER JR., Field Office
Director, San Diego Field Office, U.S.
Immigration and Customs Enforcement;
TODD M. LYONS, Acting Director,
U.S. Immigration and Customs
Enforcement; TODD BLANCHE,
Acting Attorney General;
MARKWAYNE MULLIN, Secretary,
Department of Homeland Security, in
their official capacities,

Respondents.

Case No. **'26CV2499 RBM MMP**

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
AND ORDER TO SHOW CAUSE
WITHIN THREE DAYS AND
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Date:
Time:
Courtroom:
Judge:

Action Filed:
Trial Date:

1 Petitioner M.K.¹ (“Petitioner” or “M.K.”) respectfully petitions this Court for
2 a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents’ detaining
3 him unlawfully, and states as follows:

4 INTRODUCTION

5 1. Petitioner M.K. did exactly what the laws and policies of this country
6 ask of those seeking asylum: he followed the rules. M.K., a 53-year-old Russian
7 dissident and devoted single father, fled political and racial persecution for opposing
8 corruption and war, bringing with him his then 19-year-old daughter, whom he has
9 raised and cared for on his own. (M.K. Decl. ¶ 2.) Rather than crossing the border
10 unlawfully, M.K. and his daughter waited approximately seven months in Mexico so
11 they could present themselves lawfully at a port of entry through the government’s
12 CBP One process. (*Id.* ¶¶ 4–5.) When their appointment finally arrived on January
13 13, 2025, they did what this country encourages: they came forward, identified
14 themselves, and sought protection. (*Id.* ¶ 5.) For that, they were separated and
15 detained. More than a year later, both father and daughter remain in immigration
16 custody, thousands of miles apart, without ever receiving a meaningful opportunity
17 to seek release. (*Id.* ¶¶ 5, 9.) M.K. has now spent nearly fifteen months in jail-like
18 conditions behind razor wire, while his daughter remains detained in Louisiana, and
19 their contact is limited to infrequent, timed, and monitored phone calls. (*Id.* ¶¶ 3, 5,
20 10–11.) The prolonged separation and confinement have taken a severe toll on both
21 of them, leaving M.K. suffering from panic attacks, depression, and worsening
22 physical and mental pain, while he helplessly watches his daughter’s health decline
23 from afar. (*Id.* ¶ 11.) They fled their home country for doing what they believed was
24 right and complied with every legal requirement placed before them, yet they now
25 remain confined, their family fractured and their health deteriorating, without the
26 basic process the Constitution demands.

27
28 ¹ A motion to proceed under pseudonym will be filed concurrently with the
Petition.

2. M.K. only challenges the legality of his present physical confinement and seeks the traditional habeas remedy of immediate release or, alternatively, a prompt individualized bond hearing. M.K. seeks immediate release by way of a petition for a writ of habeas corpus under 28 U.S.C. § 2241, which provides the proper vehicle for challenging the legality of civil immigration detention. *See Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024) (noting that a noncitizen’s challenge to his present confinement falls within the “core of habeas”).

3. M.K.'s continued detention without a hearing as to flight risk and danger to the community violates the Due Process Clause of the Fifth Amendment. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (Fifth and Fourteenth Amendments protect “all persons”); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (due process applies even to those whose presence is “unlawful, involuntary, or transitory”).

4. M.K. respectfully requests that this Court grant the writ of habeas corpus and order Respondents to provide him with a prompt, individualized bond hearing before a neutral decisionmaker. *See, e.g., Harbeet Singh v. Larose*, No. 26-cv-589-RSH-BJW, 2026 WL 497478, *5 (S.D. Cal. Feb. 23, 2026) (ordering an individualized bond hearing because prolonged detention of an arriving noncitizen without a bond hearing can violate due process). At that bond hearing, the government should bear the burden of demonstrating that M.K.’s continued detention is justified based on flight risk or danger to the community. *Id.* at *5. M.K. respectfully requests that this Court issue the Writ of Habeas Corpus requiring Respondents to immediately release M.K. from custody or in the alternative, provide M.K. with a bond hearing before a neutral decisionmaker.

CUSTODY

M.K. is currently in Respondents' legal and physical custody under 28 U.S.C. § 2241(c)(3), and he is being detained at the Imperial Regional Detention Facility in Calexico, California. He is thus under Respondents' and their agents' direct control.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under: 28 U.S.C. § 2241 *et seq.*, which authorizes federal courts to grant habeas relief; 28 U.S.C. § 1331 because this action arises under federal law; Suspension Clause of the United States Constitution; the Due Process Clause of the Fifth Amendment; the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*; and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* Further, this Court may grant the requested relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*

6. Venue is proper in the Southern District of California under 28 U.S.C. §§ 1391 and 2242 because M.K. is currently detained in this District, a substantial part of the events and omissions giving rise to his claims occurred here, and this action is brought against agencies and officers of the United States acting in their official capacities.

7. The historical “core” of habeas includes review of the legality of a person’s detention and, when appropriate, the ordering release. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh v. Holder*, 638 F.3d 1196, 1211-12 (9th Cir. 2011)) (9th Cir. held that challenges to immigration detention must be brought via § 2241 habeas in the district of confinement, and transferred petitioner’s motion accordingly). M.K.’s claim is a prototypical confinement challenge, with unique facts. He challenges only present detention and seeks release, to salvage and preserve his and his daughter’s mental and physical health, which lies within the “core of habeas.” *Garland*, 109 F.4th at 1194.

8. Further, Federal Courts are not stripped of jurisdiction to hear M.K.’s petition under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (holding that § 2241 habeas jurisdiction permits federal courts to review post-removal detention, which is limited to a reasonable time—presumptively six

1 months—and cannot be indefinite if removal is not reasonably foreseeable).

2 9. No other Court has ruled on the legality of M.K.’s detention. Further,
3 8 U.S.C. § 1252(b)(9) is not a jurisdictional bar here. Indeed, M.K. does not seek
4 review of removability, admission, or any order of removal; he challenges only
5 prolonged physical detention and seeks release (or, alternatively, a bond hearing).
6 *See Jennings v. Rodriguez*, 583 U.S. 281, 294-95 (2018) (plurality opinion)
7 (holding that, “[u]nder these circumstances, § 1252(b)(9) does not present a
8 jurisdictional bar” to a prolonged detention/bond-hearing challenge). The Third
9 Circuit recently applied *Jennings* and clarified that § 1252(b)(9) applies only to
10 claims that are closely tied to removal—that is, claims “inextricably linked” to the
11 government’s authority or basis to remove a noncitizen. By contrast, claims
12 challenging the length or conditions of detention are “detention-specific” and fall
13 outside the scope of § 1252(b)(9). *Khalil v. President of the United States*, 164
14 F.4th 259, 274, 277 (3d Cir. 2026); *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th
15 Cir. 2016) (“[C]laims that are independent of or collateral to the removal process do
16 not fall within the scope of § 1252(b)(9).”). Here, M.K.’s claims fall squarely on
17 the detention-specific side of that line because M.K. seeks judicial review of the
18 legality of his detention, contending that its prolonged duration violates due
19 process. He does not challenge the decision to initiate removal proceedings, the
20 adjudication of his removal case, or any action taken to execute his removal order.
21 He does not seek to litigate in this Court questions of whether he is removable or
22 whether he is entitled to relief from removal. The relief M.K. respectfully seeks
23 here is solely release from custody or a bond hearing at which his release may be
24 considered by an immigration judge.

25 PARTIES

26 10. Petitioner M.K. is currently detained at the Imperial Regional
27 Detention Facility (“IRDF”) in Calexico, California. (M.K. Decl. ¶ 3.) He has
28 been in Immigration and Customs Enforcement (“ICE”) custody since January 14,

1 2025.

2 11. Respondent, Sixto Marrero, is the Warden at IRDF, where M.K. is
3 being held. Thus, Mr. Marrero is his immediate custodian and is sued in his official
4 capacity.

5 12. On information and belief, Respondent Peter E. Divver Jr. is the
6 current Field Office Director responsible for the San Diego Field Office of ICE
7 with administrative jurisdiction over M.K.'s immigration case. He is M.K.'s legal
8 custodian, and thus M.K. sues him in his official capacity.

9 13. Respondent Todd M. Lyons is the Acting Director of ICE. ICE is a
10 component of the U.S. Department of Homeland Security ("DHS"), 6 U.S.C. § 271,
11 and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C.
12 § 701(b)(1). It is the agency responsible for enforcing immigration laws, and
13 responsible for M.K.'s detention. Respondent Lyons has custodial authority over
14 M.K., and thus M.K. sues him in his official capacity.

15 14. Respondent Todd Blanche is the Acting Attorney General of the
16 United States and is head of the Department of Justice. The Attorney General is
17 responsible for the fair administration of the laws of the United States, and thus
18 M.K. sues him in his official capacity.

19 15. Respondent Markwayne Mullin is the Secretary of DHS. The DHS
20 Secretary is charged with the administration and enforcement of immigration laws,
21 8 U.S.C. § 1103(a), and thus M.K. sues him in his official capacity.

22 **FACTS**

23 16. Petitioner M.K. is a 53-year-old citizen of Russia who fled his home
24 country after facing political persecution for his beliefs and advocacy. (M.K. Decl.
25 ¶ 2.) Determined to follow the law, M.K. did not attempt to enter the United States
26 unlawfully. Instead, he and his then 19-year-old daughter waited approximately
27 seven months in Mexico so they could comply with U.S. immigration procedures
28 and present themselves at a port of entry through the government's CBP One

1 process. (*Id.* ¶¶ 4–5.) On January 13, 2025, they did exactly that, arriving at the
2 Calexico, California Port of Entry for their scheduled appointment seeking
3 protection. (*Id.* Decl. ¶ 5.)

4 17. The next day, despite having no criminal history and having followed
5 the rules at every step, M.K. was taken into custody by DHS and separated from his
6 daughter, who was sent to a detention facility in Louisiana. (*Id.* ¶ 5.) That
7 separation continues today. Since January 14, 2025, M.K. has remained detained at
8 the Imperial Regional Detention Facility, while his daughter has remained detained
9 thousands of miles away. (*Id.* ¶¶ 3, 5, 11.) Throughout this time, Petitioner has
10 complied with every requirement placed upon him, including attending all court
11 hearings and pursuing his case through the proper legal channels. (*Id.* ¶ 7.)

12 18. Removal proceedings were initiated against M.K. by a Notice to
13 Appear charging him under INA § 212(a)(7)(A)(i)(I) as an applicant for admission
14 without valid entry documents. (*Id.* ¶ 5.) Without the benefit of counsel, M.K.
15 appeared at his initial Master Calendar Hearing on January 30, 2025, where he
16 requested time to seek representation. (*Id.* ¶ 7.) Still unrepresented, he proceeded
17 with pleadings on February 27, 2025, and the following day filed a pro se
18 application for asylum on Form I-589, seeking protection as a political dissident.
19 (*Id.* ¶ 7.)

20 19. M.K. continued to pursue his claim through multiple hearings, at times
21 with and without counsel. On September 18, 2025, the immigration court denied
22 his asylum application, and M.K. timely exercised his right to appeal. (*Id.* ¶ 8;
23 Sept. 18, 2025 Oral Decision at 13; Sept. 18, 2025 Tr. 166–67.) He filed his notice
24 of appeal on October 17, 2025, and submitted his appellate brief on March 3, 2026.
25 (M.K. Decl. ¶ 8.) That appeal remains pending, and throughout this entire process,
26 DHS has continued to detain him without providing any individualized bond
27 hearing. (*Id.* ¶¶ 8–9.)

28 20. The consequences of that prolonged detention have been severe. M.K.

1 has been separated from his daughter for over a year, with their contact limited to
2 infrequent, timed, and monitored phone calls. (*Id.* ¶ 11.) The emotional toll has
3 been profound: M.K. suffers from panic attacks, anxiety, depression, and chronic
4 sleep disruption. (*Id.* ¶ 11.) At the same time, he endures the distress of knowing
5 his daughter remains detained far away, with her own health deteriorating.

6 21. M.K.'s physical health has likewise declined significantly while in
7 custody. He now suffers from [REDACTED]
8 [REDACTED] (*Id.* ¶ 12.) Despite
9 these conditions, he has been denied adequate pain management. (*Id.*) His dental
10 condition has also worsened: a decayed tooth adjacent to a dental bridge has left
11 him facing the potential loss of multiple teeth, and he has been reduced to a mostly
12 liquid diet, resulting in substantial weight loss. (*Id.* ¶ 12.)

13 22. M.K. came to the United States seeking protection from political
14 persecution, and he has complied with every legal requirement since his arrival.
15 Yet Respondents have never provided any process—or any evidence—justifying
16 his continued detention based on flight risk or danger to the community. The
17 record shows the opposite. M.K. has no criminal history, has passed all
18 background checks, and has consistently appeared for all court proceedings and
19 complied with all immigration requirements. (*Id.* ¶¶ 6–7, 12, 14.) He is neither a
20 danger nor a flight risk.

21 23. Nevertheless, M.K. faces indefinite detention, and his removal
22 proceedings have been prolonged by repeated continuances, judicial reassignments,
23 and court scheduling issues outside of his control. (*Id.* ¶ 16.) Since entering
24 proceedings in January 2025, his case has been continued or reset numerous times,
25 including adjournments due to an immigration judge leaving the bench, multiple
26 judicial reassignments, delayed docket management decisions due to judges
27 covering each other's dockets, and other court-driven scheduling changes. (*Id.* ¶
28 16.) In addition, at least one continuance was granted for DHS to better prepare its

1 case, and one continuance for M.K.’s counsel to prepare arguments. (*Id.* ¶ 16.)
 2 The resulting delay primarily stems from court-driven and government-related
 3 causes and has significantly extended the length of his detention. (*Id.* ¶ 16–17.)

4 24. M.K. has not moved for custody redetermination because he was
 5 designated as an “arriving alien” and immigration judges have consistently ruled
 6 that they do not have jurisdiction to redetermine custody of detainees who entered
 7 the United States through a port of entry. 8 USC 1225(b)(2); *see, e.g., Matter of Q.*
 8 *Li*, 29 I&N Dec. 66, 69 (BIA 2025) (individuals deemed “arriving aliens” and
 9 detained under section 235(b) are ineligible for release on bond because detention is
 10 mandated until removal proceedings are concluded). Further, there is no other
 11 statutory or regulatory pathway for M.K. to seek a bond hearing before a neutral
 12 decisionmaker. Absent intervention by this Court, M.K. cannot and will not be
 13 provided with a bond hearing by a neutral decisionmaker to assess the propriety of
 14 his continued detention.

15 25. M.K.’s continued detention without a tenable justification and
 16 demonstration that removal is significantly likely in the reasonably foreseeable
 17 future violates his due process rights under the U.S. Constitution. *See e.g.,*
 18 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020) (applying a six-factor due
 19 process analysis, the court held M.K.’s detention under § 1225(b) was unreasonably
 20 prolonged and required an individualized bond hearing).

21 CLAIMS FOR RELIEF

22 FIRST CAUSE OF ACTION

23 **Fifth Amendment Due Process Violation – Prolonged Mandatory Detention** 24 **Without Bond Hearing**

25 26. Petitioner M.K. re-alleges and incorporates by reference paragraphs 1–
 26 25 above as if fully set forth herein.

27 27. M.K. is detained pursuant to 8 U.S.C. § 1225(b)(2)(A) following a
 28 credible fear determination and has remained continuously detained since January

1 14, 2025—nearly fifteen months—without any individualized custody or bond
2 hearing.

3 28. As noted earlier, the Due Process Clause applies to noncitizens. *See*
4 *Yick Wo*, 118 U.S. at 369; *see also Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir.
5 2004) (Civil detainees may not be subjected to punitive conditions under the Due
6 Process Clause.).

7 29. Further, the doctrine of “entry fiction” does not apply to M.K. Entry
8 fiction is narrow and does not extinguish detention-related Due Process Claims.
9 Under “entry fiction,” a noncitizen detained or paroled after presenting at a port of
10 entry has not “entered” the United States and therefore has “no procedural due
11 process rights in the admission process” beyond what Congress provides. *Wong v.*
12 *United States*, 373 F.3d 952, 971 (9th Cir. 2004) (abrogated on other grounds). But
13 the Ninth Circuit emphasized that “entry fiction” limits only “procedural due
14 process rights in the admission process,” and is “not necessarily applicable with
15 regard to other constitutional rights.” *Id.* at 971-72 (explaining that the “entry
16 fiction” limits procedural rights in admission decisions but does not categorically
17 strip non-admitted aliens of all constitutional protections, including equal-
18 protection-type claims). Thus, “entry fiction” must be construed narrowly to
19 prevent constitutional “abuses” that would follow from labeling persons as “non-
20 persons.” *Id.* at 973. Here, M.K. does not seek adjudication of admissibility or
21 asylum eligibility; rather, he seeks release (or, at minimum, a bond hearing) from
22 prolonged civil detention—relief collateral to the admission process and therefore
23 not barred by the entry fiction. *See id.* at 971-73.

24 30. Further, *Department of Homeland Security v. Thuraissigiam*, does not
25 foreclose M.K.’s detention-based due process claim because it addressed limits on
26 review of expedited removal screening—not prolonged detention without an
27 individualized hearing. 591 U.S. 103, 107 (2020). Courts have consistently held
28 that *Thuraissigiam* does not bar such claims or permit detention under § 1225(b) to

1 continue indefinitely without due process. *See Padilla v. U.S. Immigration and*
2 *Customs Enforcement*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. Dec. 4, 2023)
3 (holding that *Thuraissigiam* is limited to due process rights regarding admission
4 and does not foreclose claims seeking bond hearings for detained asylum seekers);
5 *Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (HC), 2025 WL 2420390, at
6 *3–6 (E.D. Cal. Aug. 21, 2025) (holding that *Thuraissigiam* did not foreclose a due
7 process challenge to re-detention because the case concerned detention, not
8 admission).

9 31. In this district, Courts evaluating whether § 1225(b)(2)(A) detention
10 has become unreasonably prolonged apply a fact-intensive balancing framework,
11 including the six factors articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099,
12 1106 (W.D. Wash. June. 12, 2019). *See Prabhpreet v. LaRose*, No. 26-cv-393-JES-
13 SBC, 2026 WL 310192, at *3 (S.D. Cal. Feb. 5, 2026) (articulating that, although
14 other courts apply the general *Mathews v. Eldridge* framework, the Southern
15 District of California applies the *Banda* test for detentions under § 1225(b)); *see*
16 *Hoyos Amado v. United States Dep't of Just.*, No. 25cv2687-LL(DDL), 2025 WL
17 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (“This court has used *Banda*’s six-factor
18 test in deciding whether a petitioner’s mandatory detention under § 1225(b) has
19 become unreasonable and requires a bond hearing.”).

20 32. The *Banda* factors consider (1) the total length of detention to date; (2)
21 the likely future duration of future detention; (3) conditions of detention; (4) delays
22 in the removal proceedings caused by the detainee; (5) delays in the removal
23 proceedings caused by the government; and (6) the likelihood that the removal
24 proceedings will result in a final removal order. *See Banda*, 385 F. Supp. 3d at
25 1106.

26 33. Courts in this district have recognized that, at some point, prolonged
27 mandatory detention under § 1225(b) without an individualized bond hearing
28 violates due process. *See Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.

2020) (“[T]he Court joins the majority of courts across the country in concluding that an unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.”); *Amado*, 2025 WL 3079052, at *5 (noting that “[c]ourts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable” and finding a detention of thirteen months to weigh in favor of the petitioner).

34. The first *Banda* factor, the length of detention, is “the most important factor.” *Banda*, 385 F. Supp. 3d at 1118. Here, M.K. has already been detained for nearly 15 months in jail-like conditions. During that time, he has remained confined at the Imperial Regional Detention Facility behind razor wire, separated from his daughter who is detained in Louisiana, with only limited, monitored communication while his physical and mental health have steadily deteriorated. (M.K. Decl. ¶¶ 3, 5, 10–11.). While this *Banda* factor itself is not dispositive, the length now is above the range such that this factor should weigh in favor of M.K. *Amado*, 2025 WL 3079052 at *5 (noting that “[c]ourts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable” and finding a detention of thirteen months to weigh in favor of the petitioner); *Gao*, 2025 WL 2770633, at *5; *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *3 (N.D. Cal. Jan. 25, 2019) (“In general, ‘[a]s detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing.’”).

35. The second *Banda* factor examines the expected length of future detention, focusing on the “anticipated duration of all removal proceedings—including administrative and judicial appeals.” *Banda*, 385 F. Supp. 3d at 1119. M.K.’s appeal before the Board of Immigration Appeals has been pending since September 2025. A removal order typically does not become final until the noncitizen has pursued or declined to pursue review before the Board of Immigration Appeals (“BIA”) and, if necessary, a federal court of appeals. M.K.

intends to pursue all available avenues of review, including seeking relief in the court of appeals and, if necessary, the Supreme Court, meaning his detention is likely to continue for a significant additional period. *See Thuraissigiam*, 591 U.S. at 108 (explaining that the standard removal process includes appeal to the BIA and potential review in a court of appeals). Those stages alone can add years to the overall timeline. *See Banda*, 385 F. Supp. 3d at 1119 (noting that BIA proceedings and Ninth Circuit review may extend two years or longer). Notably, in *Banda*, the court determined that this factor favored the petitioner even though he had already been ordered removed and had initiated an appeal to the BIA. Here, M.K. is similarly situated, with a pending appeal before the BIA. Accordingly, this factor weighs in M.K.'s favor.

36. The third *Banda* factor examines the conditions of confinement. *See Banda*, 385 F. Supp. 3d at 1119 ("The more that the conditions under which the noncitizen is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing.") M.K. is detained at IRDF where he is "locked up behind razor wire and concrete walls in a secured facility," forced to wear "a color-coded prisoner jumpsuit," and forbidden from accessing the internet. (M.K. Decl. ¶ 10.) He has restricted visitation rights, restricted calls with his daughter who is detained in Louisiana, and restricted access to outdoor space. (*Id.*) He is guarded at all times by armed guards authorized to inflict punishment for violations of rules." (*Id.*) Numerous news outlets report on the inhumane conditions at IRDF. *See Facing Noxious Air and Contaminated Water, Immigrants Detained in Imperial ICE Prison Lodge New Federal Complaint*, Earthjustice (Jan. 25, 2022), <https://earthjustice.org/press/2022/facing-noxious-air-and-contaminated-water-immigrants-detained-in-imperial-ice-prison-lodge-new-federal-complaint> (reporting that people detained at IRDF alleged exposure to contaminated water, toxic air, and unsafe conditions, resulting in various health problems); Kori Suzuki, *Another Immigrant Dies in ICE Custody in California, This Time in the Imperial Valley*,

1 KPBS (Oct. 6, 2025), [https://www.kpbs.org/news/border-](https://www.kpbs.org/news/border-immigration/2025/10/06/another-immigrant-dies-in-ice-custody-in-california-this-time-in-the-imperial-valley)
2 [immigration/2025/10/06/another-immigrant-dies-in-ice-custody-in-california-this-](https://www.kpbs.org/news/border-immigration/2025/10/06/another-immigrant-dies-in-ice-custody-in-california-this-time-in-the-imperial-valley)
3 [time-in-the-imperial-valley](https://www.kpbs.org/news/border-immigration/2025/10/06/another-immigrant-dies-in-ice-custody-in-california-this-time-in-the-imperial-valley) (documenting that a man detained at IRDF died
4 following a medical emergency, bringing into question his medical care at the
5 facility); Tammy Murga, *These Spaces Are Often Stressful: Questions Raised After*
6 *Another Death in Imperial County*, KPBS (Jan. 16, 2026),
7 [https://www.kpbs.org/news/border-immigration/2026/01/16/these-spaces-are-often-](https://www.kpbs.org/news/border-immigration/2026/01/16/these-spaces-are-often-stressful-questions-raised-after-another-death-in-imperial-county)
8 [stressful-questions-raised-after-another-death-in-imperial-county](https://www.kpbs.org/news/border-immigration/2026/01/16/these-spaces-are-often-stressful-questions-raised-after-another-death-in-imperial-county) (detailing another
9 man's death following a medical emergency at IRDF and raising concerns about
10 medical care and stressful detention conditions).

11 37. Moreover, the punitive nature of these conditions is compounded by
12 the harm M.K. has suffered during his detention. (M.K. Decl. ¶ 11–12.) M.K.'s
13 prolonged confinement has caused significant deterioration in his mental and
14 physical health, including panic attacks, insomnia, anxiety, depression, severe
15 hemorrhoids requiring surgery, chronic back pain due to a herniated disc, leg pain,
16 kidney-related issues, tooth decay and infection, and continued denial of pain
17 medication. (*Id.*) His serious dental decay and worsening overall health have left
18 him on a mostly liquid diet and caused substantial weight loss. (M.K. Decl. ¶ 12.)
19 Taken together, M.K.'s circumstances reflect the significant burdens imposed by
20 his ongoing confinement and cause the third *Banda* factor to weigh significantly in
21 favor of a bond hearing.

22 38. As mentioned earlier, M.K.'s confinement has also caused him to be
23 separated from his young daughter, whom he fled Russia with. (M.K. Decl. ¶ 5,
24 11.) M.K.'s daughter had only recently turned 19 prior to their entry to the United
25 States, and she is currently detained in a detention center in Louisiana. (M.K. Decl.
26 ¶ 5, 14.) M.K.'s separation from his daughter and his daughter's detainment in
27 Louisiana cause M.K. severe mental stress. (M.K. Decl. ¶ 11.) M.K.'s daughter's
28 health is deteriorating due to her detention, and M.K. is only able to communicate

1 with his daughter infrequently due to his detention. (*Id.*) As a result, M.K. suffers
2 severe stress and mental anguish, which has manifested in physical symptoms such
3 as panic attacks, difficulty sleeping, anxiety, and depression. (*Id.*) The separation,
4 therefore, exacerbates the weight of the third *Banda* factor favoring a bond hearing.

5 39. The fourth and fifth *Banda* factors examine the source and extent of
6 any delay in the removal proceedings—first, whether the petitioner caused delay,
7 and second, whether the government caused delay. *Banda*, 385 F. Supp. 3d at
8 1119-20. First, nothing in the record suggests that M.K. has engaged in dilatory
9 tactics or otherwise prolonged these proceedings. On the contrary, he has complied
10 with all court appearances and procedural requirements. Second, the record reflects
11 that the government and the Court have contributed to delays, including the
12 rescheduling of M.K.'s merits hearing, continuances due to his immigration judge
13 leaving the bench, judicial reassignments and judges covering each other's dockets,
14 delayed docket management decisions, and a continuance due to Government
15 counsel being unprepared. In addition, one continuance was granted for M.K.'s
16 counsel to brief an argument. (M.K. Decl. ¶ 16.) Because the M.K. has not
17 engaged in dilatory tactics and because the government bears responsibility for
18 most of the delays, the fourth and fifth *Banda* factors weigh in M.K.'s favor.

19 40. The sixth *Banda* factor considers the likelihood that the removal
20 proceedings will ultimately result in a final order of removal—that is, whether the
21 noncitizen has asserted potentially viable defenses. *Banda*, 385 F. Supp. 3d at
22 1120. Here, M.K.'s claim for asylum is currently on appeal before the BIA, and the
23 record does not establish that removal is inevitable. At this stage, the outcome of
24 the BIA proceedings remains uncertain, and M.K. plans to appeal to the Ninth
25 Circuit, if needed. Because there is a real prospect of continued litigation—and
26 thus continued detention—the sixth *Banda* factor weighs in M.K.'s favor.

27 41. In total, by continuing to detain M.K. without providing a prompt
28 individualized bond hearing, Respondents are violating M.K.'s rights under the

1 Fifth Amendment's Due Process Clause. *Banda*, 385 F. Supp. 3d at 1106; *Singh*,
2 638 F.3d at 1203. Therefore, Respondents should be ordered to release the M.K.
3 from custody. Alternatively, Respondents should be ordered to provide a prompt
4 individualized bond hearing before a neutral adjudicator at which the government
5 bears the burden of justifying the M.K.'s continued detention by clear and
6 convincing evidence.

7 SECOND CAUSE OF ACTION

8 **Fifth Amendment Due Process Violation – Arbitrary and Unreasonable** 9 **Government-Caused Delay**

10 42. Petitioner M.K. re-alleges and incorporates by reference paragraphs 1–
11 41 above as if fully set forth herein.

12 43. Separate and apart from M.K.'s claim that prolonged mandatory
13 detention without a bond hearing violates constitutional due process, M.K. alleges
14 here that Respondents and other government actors have affirmatively prolonged
15 his detention through avoidable administrative delays, rendering continued
16 confinement arbitrary and constitutionally unreasonable. *Zadvydas*, 533 U.S. at
17 721 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible aliens are
18 entitled to be free from detention that is arbitrary or capricious.”). Government-
19 caused delays are a central consideration in determining whether continued
20 detention has become constitutionally unreasonable. *See Banda*, 385 F. Supp. 3d at
21 1106 (including “delays . . . caused by the government” as a factor in assessing
22 whether detention has become unreasonably prolonged).

23 44. Here, many delays are attributable to the government. These include
24 repeated continuances and resets resulting from his previous immigration judge
25 leaving the bench, judicial reassignments—at least four different judges handling
26 M.K.'s docket—docket management decisions, administrative error; the
27 rescheduling of M.K.'s merits hearing; a continuance because Government's
28 counsel was unprepared, and at least one continuance granted for Respondent's

1 preparation. Collectively, these interruptions have prevented timely adjudication of
2 M.K.'s case and have extended his detention through no fault of his own.

3 45. The BIA's own rules reflect that detained appeals are intended to move
4 on an expedited basis—when an appeal is filed by a detained noncitizen, the
5 noncitizen and DHS receive concurrent initial briefing deadlines of 21 calendar
6 days. *See* BIA Practice Manual Ch. 3.7(a)(1)(B); 8 C.F.R. § 1003.3(c)(1). Despite
7 these expedited rules, there has been a significant delay in M.K.'s BIA appeal.

8 46. Respondents are violating M.K.'s Fifth Amendment Due Process
9 rights. M.K.'s continued detention under § 1225(b) has been materially prolonged
10 by government-caused delays—contrary to the BIA's expedited detained-appeal
11 framework and without any individualized justification tied to danger or flight
12 risk—while M.K. has diligently pursued his claims and complied with all
13 obligations. In light of this violation of M.K.'s Fifth Amendment Due Process
14 rights, Respondents should be ordered to release the M.K. from
15 custody. Alternatively, Respondents should be ordered to provide a prompt
16 individualized bond hearing before a neutral adjudicator at which the government
17 bears the burden of justifying M.K.'s continued detention and medical neglect by
18 clear and convincing evidence. *See Banda*, 385 F. Supp. 3d at 1106.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Petitioner M.K. asks this Court to grant the following
21 relief:

- 22 1. Assume jurisdiction over this matter;
- 23 2. Order Respondents to show cause why the writ should not be granted
24 as to Petitioner within three days, and set a hearing on this Petition
25 within five days of the return, as required by 28 U.S.C. § 2243;
- 26 3. Enjoin Respondents from transferring Petitioner out of the jurisdiction
27 during the pendency of the habeas petition;
- 28 4. Issue a writ of habeas corpus requiring that Respondents immediately

- 1 release Petitioner from immigration custody;
- 2 5. Alternatively, order Respondents to provide a prompt individualized
- 3 bond hearing before a neutral adjudicator at which the government
- 4 bears the burden of demonstrating that Petitioner is either a flight risk
- 5 or danger to society by clear and convincing evidence. *See Singh*, 638
- 6 F.3d at 1203;
- 7 6. Order Respondents to return to Petitioner all property confiscated from
- 8 him during his arrest and processing into detention, including but not
- 9 limited to any personal identification, employment authorization
- 10 document, medical insurance card, money, and documents he received
- 11 upon entry and release into the United States;
- 12 7. Enjoin Respondents from further detaining him without providing
- 13 notice to the Court and Petitioner's counsel, and a pre-deprivation
- 14 hearing at which Respondents must prove that changed circumstances
- 15 regarding his dangerousness or risk of flight warrant his detention;
- 16 8. Declare that Petitioner's detention violates the Due Process Clause of
- 17 the Fifth Amendment. *See Kydyrali*, 499 F. Supp. 3d at 772-74; and
- 18 9. Grant such further relief as this Court deems just and proper.
- 19
- 20

21 Dated: April 20, 2026

MORRISON & FOERSTER LLP

22
23 /s/ Brian M. Kramer
24 BRIAN M. KRAMER

25 *Attorneys for Petitioner*
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