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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ZADY GBADGNI JEAN ROMAIN,
11

12 Petitioner,

13 v.

14 JEREMY CASEY, Warden at Imperial
15 Regional Detention Center,

16 Respondents.

CIVIL CASE NO.: 26-cv-2745-LL

**Amended¹ Petition
for a
Writ of Habeas Corpus**

27 ¹ Federal Rule of Civil Procedure 15 permits petitioners to amend their pleadings
28 with leave of Court. This Court gave leave to amend in its scheduling order. Dkt.
2.

1 INTRODUCTION

2 Zady Gbadgni Jean Romain has been detained pending his immigration
3 proceedings for 19 months. This Court should “join[] the majority of courts across
4 the country in concluding that [his] unreasonably prolonged detention under 8
5 U.S.C. § 1225(b) without an individualized bond hearing violates due process.”
6 *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.).
7 Additionally, because of newly emerging evidence that the neutrality of Otay
8 Mesa’s immigration judges (“IJ”) has been compromised, and some IJs and the
9 Department of Homeland Security (“DHS”) have implemented strategies to detain
10 bond-worthy habeas petitioners, a bond hearing before a randomly selected IJ will
11 no longer reliably satisfy due process. This Court should therefore consider the
12 alternative forms of relief set forth at the end of this petition.

13 Most importantly, **Mr. Jean Romain is a rare language speaker for whom**
14 **the immigration court routinely provides the wrong interpreter.** This Court
15 should therefore follow Judge Moskowitz’s lead and **order that the government**
16 **provide a Bete interpreter whom Mr. Jean Romain can understand,** along with
17 the additional relief laid out below.

18 STATEMENT OF FACTS

19 Mr. Jean Romain, a citizen of the Ivory Coast, entered the United States on
20 October 3, 2024 to seek asylum. Exh. A at ¶ 1 He immediately turned him in to
21 border patrol. He has been detained ever since. *Id.*

22 Mr. Jean Romain does not speak French that well. *Id.* at ¶ 2. His best
23 language is Bete. *Id.* Because the government could not find a Bete interpreter, they
24 couldn’t determine whether he had a credible fear. *Id.* He was placed in immigration
25 proceedings before an immigration judge, attending a first court date on November
26 13, 2024. *Id.* During his immigration proceedings, the court has often provided him
27 with interpreters that he cannot understand well. *Id.* at ¶ 5.

28 Mr. Jean Romain lost his asylum claim on April 7, 2026. *Id.* at ¶ 3. He then

1 appealed on April 26, 2026. *Id.* His case is still on appeal. *Id.* Meanwhile, he is kept
2 in jail-like conditions at Imperial Regional Detention Facility. *Id.* at ¶ 6.²

3 LEGAL BACKGROUND

4 **I. The Fifth Amendment’s Due Process Clause prohibits prolonged** 5 **immigration detention without a bond hearing.**

6 This habeas petition presents a question about whether and when the Fifth
7 Amendment’s Due Process Clause countermands the government’s statutory
8 authority to detain immigrants without bond hearings. Mr. Jean Romain is detained
9 under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for
10 admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the
11 United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d
12 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially
13 determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That
14 includes persons who, like Mr. Jean Romain, present themselves for inspection at
15 the border and—rather than producing admission documents—make asylum and
16 other fear-based claims. *See id.* at 1109–11 (describing a similar procedural history
17 and finding that petitioner was detained under § 1225(b)). Such immigrants are
18 detained under § 1225(b) not only during their initial proceedings, but also when
19 they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant
20 with pending BIA appeal).

21 This statutory scheme has left courts to grapple with the limits (if any) of that
22 detention power: Does this statute permit the government to detain immigrants
23 indefinitely, without ever having to prove at a bond hearing that they pose a risk of
24 danger or flight? Three Supreme Court cases are potentially relevant to answering
25 that question.

26 First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite
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28 ² Mr. Jean Romain financially qualifies for Federal Defenders’ services. *Id.* at ¶ 7.

1 immigration detention raises serious due process concerns. 533 U.S. 678 (2001).
2 *Zadvydas* involved a statute authorizing the government to detain immigrants after
3 they are ordered removed. *Id.* at 683. For immigrants who cannot be removed, that
4 statute had the potential to subject them to years, decades, or a lifetime in custody.
5 *See id.* at 690. The Supreme Court held that if the statute “permit[ed] indefinite
6 detention of an alien[,] [it] would raise a serious constitutional problem,” because

7 [t]he Fifth Amendment's Due Process Clause forbids the Government
8 to ‘depriv[e] any ‘person ... of ... liberty ... without due process of law.’
9 Freedom from imprisonment—from government custody, detention, or
10 other forms of physical restraint—lies at the heart of the liberty that
11 Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). And
12 this Court has said that government detention violates that Clause unless
13 the detention is ordered in a *criminal* proceeding with adequate
14 procedural protections, *see United States v. Salerno*, 481 U.S. 739, 746
15 (1987), or, in certain special and ‘narrow’ nonpunitive ‘circumstances,’
Foucha, supra, at 80, where a special justification, such as harm-
threatening mental illness, outweighs the ‘individual's constitutionally
protected interest in avoiding physical restraint.’ *Kansas v. Hendricks*,
521 U.S. 346, 356 (1997).

16 *Id.* Ultimately, however, the Court declined to decide whether a statute permitting
17 indefinite detention would violate the Due Process Clause. Instead, the Court
18 employed the constitutional avoidance canon to read implicit limits into the statute,
19 requiring release after detention became sufficiently prolonged. *Id.* at 699.

20 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
21 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
22 Employing the constitutional avoidance canon, the Ninth Circuit held that
23 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
24 months. *Id.*

25 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,
26 holding that the statute does not entitle detainees to bond hearings or otherwise
27 impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But though
28 *Jennings* held that § 1225(b) imposes no statutory limit on the length of detention,

1 it reserved the question of whether prolonged, mandatory detention without bond
2 hearings violates due process. *Id.* at 312.

3 Finally, the Supreme Court held in *Demore v. Kim* that at least some statutes
4 mandating detention during immigration proceedings do not automatically violate
5 the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore* addressed 8 U.S.C.
6 § 1226(c), which mandates detention without a bond hearing for persons with
7 certain criminal convictions. *Id.* The Court upheld § 1226(c) in a 5-4 opinion based
8 on (1) the government interests justifying the detention of immigrants with certain,
9 aggravated criminal convictions, and (2) the relative brevity of detention in most
10 cases, with the vast majority taking only about five months. *Id.* at 517–31. Justice
11 Kennedy supplied a deciding vote. His concurrence left open the possibility that
12 individual immigrants could be “entitled to an individualized determination as to
13 his risk of flight and dangerousness if the continued detention became unreasonable
14 or unjustified.” *Id.* at 532–33.

15 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
16 grappled with how to address due process challenges to prolonged mandatory
17 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full
18 evaluation, “[n]early all district courts that have considered the issue agree that
19 prolonged mandatory detention pending removal proceedings, without a bond
20 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
21 (collecting cases).

22 These Courts have relied on the due process concerns recognized in
23 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
24 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at
25 *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake, those
26 considerations raise “grave doubts that any statute that allows for arbitrary
27 prolonged detention without any process is constitutional or that those who founded
28 our democracy precisely to protect against the government’s arbitrary deprivation

1 of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir.
2 2018).

3 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
4 only that the statute itself did not impose any limits on detention. It “did not
5 foreclose as-applied constitutional challenges to detention under” mandatory-
6 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
7 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
8 during immigration proceedings does not necessarily or inherently violate the Due
9 Process Clause, particularly when the detention has an expected duration of only
10 about five months. *Id.* at 208–11. But many persons detained under § 1225(b)—
11 like Mr. Jean Romain—do not have criminal convictions. And as Justice Kennedy’s
12 concurrence made clear, *Demore* does not prevent immigrants from arguing that
13 sufficiently prolonged detention violates due process in their individual cases. *See*
14 *id.*³

15 Thus, this Court should hold that sufficiently prolonged detention violates
16 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-CV-
17 2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir*
18 *v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15,
19 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D.
20 Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020)
21 (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-
22 3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-
23 98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v.*
24

25 ³ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
26 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due
27 process rights in deportation proceedings—i.e., the process due when noncitizens
28 seek to stay in the country instead of being removed. *See Lopez-Arevelo v. Ripa*,
No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025). It
does not purport to hold that immigrants have no constitutional right to due process
before the government holds them indefinitely in immigration detention. *Id.*

1 *Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug.
2 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

3 **II. Courts have reached different conclusions about when immigration**
4 **detention becomes indefinitely prolonged, but Mr. Jean Romain would**
5 **prevail under any standard.**

6 Though courts agree that due process mandates a bond hearing when
7 detention grows unreasonably prolonged, they disagree about how to assess
8 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
9 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D. Cal.
10 Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Most have adopted
11 factors tests. *See Sanchez-Rivera*, 2023 WL 139801, at *5–6 (surveying different
12 approaches). Courts generally agree that relevant factors include:

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

17 *Id.* Some courts also consider:

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

21 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are “not
22 particularly suited to assisting the Court in determining whether detention has
23 become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*,
24 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL
25 139801, at *5–6.⁴ Mr. Jean Romain would prevail under any of these factors tests.

26 _____
27 ⁴ Courts also disagree about whether to account for any criminal convictions that
28 have led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5–6. But such
factors—if appropriate at all—are irrelevant where, as here, the person is not being
removed as a result of criminal convictions.

1 First, the “most important factor,” the length of detention, strongly favors
2 Mr. Jean Romain. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is
3 important to bear in mind the context: The detention that is being examined here is
4 the detention of a human being who has never been found to pose a danger to the
5 community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp.
6 3d 853, 859 (D. Minn. 2019). With that context, “[c]ourts have found detention
7 over seven months without a bond hearing weighs toward a finding that it is
8 unreasonable.” *Amado v. United States Dep’t of Just.*, No. 25CV2687-LL(DDL),
9 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025). Mr. Jean Romain has been
10 detained for far longer, over 19 months. Exh. A at ¶ 1.

11 Second, Mr. Jean Romain has reason to anticipate significant future
12 detention. He just filed his appeal to the BIA in April. *Id.* at ¶ 3. And if he loses on
13 appeal, he would have the opportunity to appeal again to the Ninth Circuit. All told,
14 “[t]his process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119.
15 Because “Petitioner’s future detention can last several more months or even
16 years[,]” this factor favors Mr. Jean Romain. *Abdul Kadir v. Larose*, No.
17 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

18 Third, the delay factor is neutral or favors Mr. Jean Romain. Mr. Jean
19 Romain did not unduly delay in his case, and though Mr. Jean Romain did not
20 understand his proceedings well enough to speak on the reason for the delay, there
21 is a strong chance that the difficulty in finding an interpreter contributed to it. *See*
22 Exh. A at ¶¶ 4, 5.

23 Fourth, Mr. Jean Romain’s conditions of confinement weigh in favor of a
24 bond hearing, because being at Otay Mesa is “indistinguishable from penal
25 confinement.” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
26 Supp. 3d at 773); Exh. A at ¶ 6.

27 The fifth factor favors Mr. Jean Romain, because he may win on appeal.

28 Under any test, then, Mr. Jean Romain is entitled to a bond hearing.

1 **III. Because the immigration court routinely fails to provide appropriate**
2 **interpreters for Mr. Jean Romain, this Court should order that he be**
3 **provided with a Bete interpreter whom he can understand.**

4 Mr. Jean Romain is a Bete speaker who speaks only limited French. Exh. A
5 at ¶ 2. The immigration court often provides him with interpreters whom he cannot
6 understand well. *Id.* at ¶ 5. He worries that that will happen at the bond hearing. *Id.*
7 Mr. Jean Romain has a right to understand his immigration proceedings. *See* 8
8 C.F.R. § 208.30(d)(5) (“If the alien is unable to proceed effectively in English, and
9 if the asylum officer is unable to proceed competently in a language the alien speaks
10 and understands, *the asylum officer* shall arrange for the assistance of an interpreter
11 in conducting the interview.” (emphasis added)); *Perez-Lastor v. Immigr. &*
12 *Naturalization Serv.*, 208 F.3d 773, 778 (9th Cir. 2000) (“If an alien does not speak
13 English, deportation proceedings must be translated into a language the alien
14 understands.”).

15 In *Eljaraouy v. Casey*, 26-cv-1449-BTM, Dkt. 10 (Apr. 8, 2026), Judge
16 Moskowitz found that the immigration court had not provided an interpreter for a
17 rare language speaker during his immigration proceedings. Judge Moskowitz
18 therefore ordered that the Respondents provide an interpreter in the petitioner’s best
19 language. *Id.* Based on Federal Defenders’ previous experience, Respondents may
20 provide an interpreter that claims to speak Bete but whom Mr. Jean Romain cannot
21 understand. Federal Defenders is also aware of case in which an immigration judge
22 denied bond in part on the ground that the immigrant’s status as a rare language
23 speaker made it hard for him to communicate with others.

24 Therefore, Mr. Jean Romain requests that this Court order (1) that
25 Respondents provide a Bete interpreter *whom Mr. Jean Romain can understand*;
26 (2) that Mr. Jean Romain’s status as a rare language speaker is not grounds to deny
27 bond; and (3) that Respondents must release Mr. Jean Romain if they cannot .
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CLAIM AND PRAYER FOR RELIEF

Detaining Petitioner Without a Bond Hearing Violates the Fifth Amendment’s Due Process Clause

This Court should therefore order that Respondents provide Petitioner with a hearing and individualized bond determination within ten days of its order. The Court should further order as follows:

1. At that hearing, the government shall bear the burden of establishing by clear and convincing evidence that Petitioner poses a danger or flight risk.
2. The government shall provide a Bete interpreter whom Petitioner can understand.
3. Petitioner’s status as a rare language speaker is not grounds to deny bond.
4. The IJ shall consider alternative conditions of release and Petitioner’s ability to pay bond if he or she determines bond is appropriate.
5. If the government does not provide a bond hearing that complies with this order within 10 days, Petitioner shall be released.

Finally, this Court should order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 12, 2026

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