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

10 NATNAEL NEGASH BEYENE,
11
12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, Secretary of
15 the Department of Homeland Security,
16 TODD BLANCHE, Acting Attorney
17 General, TODD M. LYONS, Acting
18 Director, Immigration and Customs
19 Enforcement, JESUS ROCHA, Acting
20 Field Office Director, San Diego Field
21 Office, CHRISTOPHER LAROSE,
22 Warden at Otay Mesa Detention Center,
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28 Respondents.

Civil Case No:26-cv-3037-JLS-DDL

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

1 INTRODUCTION

2 Natnael Negash Beyene is an asylum seeker from Ethiopia who has been
3 detained pending his immigration proceedings for nearly seven months. This
4 Court should “join[] the majority of courts across the country in concluding that
5 [his] 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.). It should do so because Mr. Beyene
8 satisfies the six-factor test set forth in *Banda v. McAleenan*, 385 F. Supp. 3d 1099,
9 1118 (W.D. Wash. 2019).

10 STATEMENT OF FACTS

11 Mr. Beyene was born in Ethiopia and is currently 22 years old. Exhibit A,
12 Declaration of Natnael Negash Beyene, at ¶ 1. He fled his country because he
13 feared persecution and came to the United States to seek asylum. *Id.* at ¶ 1.

14 Mr. Beyene crossed into the United States on November 5, 2025, and was
15 immediately arrested. *Id.* at ¶ 2. He was taken into custody and transferred to Otay
16 Mesa Detention Center, where he passed his credible fear interview. *Id.* at ¶ 2.

17 Respondents placed Mr. Beyene in removal proceedings. *Id.* at ¶ 3. But
18 before he had a hearing on the merits of his asylum claim, Respondents moved to
19 pretermite his asylum application and order him removed to Uganda. *Id.* at ¶ 3. The
20 immigration judge granted this motion and ordered Mr. Beyene removed to
21 Uganda on February 10, 2026. *Id.* at ¶ 3.

22 On March 5, 2026, Mr. Beyene filed a timely appeal to the Board of
23 Immigration Appeals. *Id.* at ¶ 4. If the BIA dismisses his appeal, he plans to
24 appeal to the Ninth Circuit. *Id.* at ¶ 4.

25 Mr. Beyene has been detained for nearly seven months. *Id.* at ¶ 5. If he
26 loses his case, he will likely be detained for several more years. *Id.* at ¶ 5.

1 “permit[ed] indefinite detention of an alien[,] [it] would raise a serious
2 constitutional problem,” because

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

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

16 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
17 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
18 Employing the constitutional avoidance canon, the Ninth Circuit held that
19 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
20 months. *Id.*

21 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,
22 holding that the statute does not entitle detainees to bond hearings or otherwise
23 impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But
24 though *Jennings* held that § 1225(b) imposes no statutory limit on the length of
25 detention, it reserved the question of whether prolonged, mandatory detention
26 without bond hearings violates due process. *Id.* at 312.

27 Finally, the Supreme Court held in *Demore v. Kim* that at least some
28 statutes mandating detention during immigration proceedings do not

1 automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore*
2 addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing
3 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
4 5-4 opinion based on (1) the government interests justifying the detention of
5 immigrants with certain, aggravated criminal convictions, and (2) the relative
6 brevity of detention in most cases, with the vast majority taking only about five
7 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
8 left open the possibility that individual immigrants could be “entitled to an
9 individualized determination as to his risk of flight and dangerousness if the
10 continued detention became unreasonable or unjustified.” *Id.* at 532–33.

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

18 These Courts have relied on the due process concerns recognized in
19 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
20 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
21 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
22 those considerations raise “grave doubts that any statute that allows for arbitrary
23 prolonged detention without any process is constitutional or that those who
24 founded our democracy precisely to protect against the government’s arbitrary
25 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
26 256 (9th Cir. 2018).

27 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
28 only that the statute itself did not impose any limits on detention. It “did not

1 foreclose as-applied constitutional challenges to detention under” mandatory-
2 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
3 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
4 during immigration proceedings does not necessarily violate due process,
5 particularly when the detention has an expected duration of about five months. *Id.*
6 at 208–11. But many persons detained under § 1225(b)—like Mr. Beyene—do
7 not have criminal convictions. And as Justice Kennedy’s concurrence made clear,
8 *Demore* does not prevent immigrants from arguing that sufficiently prolonged
9 detention violates due process in their individual cases. *See id.*¹

10 Thus, this Court should hold that sufficiently prolonged detention violates
11 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-
12 CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul*
13 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal.
14 Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
15 *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
16 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*,
17 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No.
18 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);
19 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
20 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.
21 Wash. 2023).

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25 ¹ 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-Arevalo 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 **II. Courts have reached different conclusions about when immigration**
2 **detention becomes indefinitely prolonged, but Mr. Beyene would**
3 **prevail under any standard, including the *Banda* factors.**

4 Though courts agree that due process mandates a bond hearing when
5 detention grows unreasonably prolonged, they disagree about how to assess
6 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
7 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
8 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Because it
9 incorporates nearly all the factors, many courts have found it “most appropriate to
10 apply the *Banda* test to Petitioner’s detention here under § 1225(b), as other
11 courts within this district have done in the past.” *Sandesh v. Noem*, 26-cv-846-
12 JES-DDL, Dkt. 13 at 5 (Mar. 5, 2026 S.D. Cal). The *Banda* factors include:

- 13 (1) the total length of detention to date;
- 14 (2) the likely duration of future detention;
- 15 (3) the conditions of detention;
- 16 (4) delays in the removal proceedings caused by the detainee;
- 17 (5) delays in the removal proceedings cause by the government; and
- 18 (6) the likelihood that the removal proceedings will result in a final order
19 of removal.

20 *Banda*, 385 F. Supp. 3d at 1106. Applying these factors here shows that
21 Mr. Beyene’s detention has become prolonged.

22 *First*, the “most important factor,” the length of detention, favors Mr.
23 Beyene. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important
24 to bear in mind the context: The detention that is being examined here is the
25 detention of a human being who has never been found to pose a danger to the
26 community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp.
27 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond
28 hearings for persons detained between nine and eleven months. *See Ashemuke v.*

1 *ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D.
2 Wash. Feb. 29, 2024), *report and recommendation adopted*, No. C23-1592-RSL,
3 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) (“approximately eleven
4 months”); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over
5 nine months”); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at
6 *5 (S.D.N.Y. Aug. 20, 2018) (“more than nine months”); *Masood v. Barr*, No. 19-
7 CV-07623-JD, 2020 WL 95633, at *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine
8 months”). Mr. Beyene has been detained for nearly this long. Exh. A at ¶ 2. This
9 factor therefore favors Mr. Beyene.

10 *Second*, Mr. Beyene has reason to anticipate significant future detention, as
11 his case is on appeal to the BIA and will likely go to the Ninth Circuit. *Id.* at ¶ 4.
12 All told, “[t]his process may take up to two years or longer.” *Banda*, 385 F. Supp.
13 3d at 1119. Because “Petitioner’s future detention can last several more months or
14 even years[,]” this factor favors Mr. Beyene. *Abdul Kadir v. Larose*, No.
15 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

16 *Third*, conditions of confinement weigh in favor of him. “Petitioner’s
17 confinement at [Otay Mesa Detention Center] is ‘indistinguishable from penal
18 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
19 Supp. 3d at 773).

20 *Fourth and fifth*, Mr. Beyene has not caused any unreasonable delays in his
21 removal proceedings; thus, this factor is arguably neutral.

22 *Sixth*, regarding the likelihood that the removal proceedings will result in a
23 final order of removal, Mr. Beyene has a strong asylum claim and would likely
24 win on appeal. *Id.* at ¶ 4. Accordingly, under the *Banda* factors, Mr. Beyene is
25 entitled to release or a bond hearing.

26 **CLAIM AND PRAYER FOR RELIEF**

27 Accordingly, Petitioner respectfully requests that this Court order
28 Respondents to provide Petitioner with a hearing and individualized bond

1 determination at which the government shall bear the burden of establishing by
2 clear and convincing evidence that Petitioner poses a danger or flight risk. At this
3 hearing, the IJ should consider alternative conditions of release and Petitioner's
4 ability to pay bond. Finally, this Court should order that Respondents make the
5 audio of the bond hearing available to Petitioner and his counsel upon request.

6 Respectfully submitted,

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8 Dated: May 26, 2026

s/ Kara Hartzler
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