

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

**HERMALINDO G. ESCOBAR
MONTERROSO,**

Petitioner,

v.

MARKWAYNE MULLIN, *Secretary of
Homeland Security, U.S. Department of
Homeland Security,*

DAVID VENTURELLA, *Acting Director,
U.S. Immigration and Customs Enforcement,*

CHRISTOPHER MCGREGOR, *Director,
El Paso ICE Field Office, U.S. Immigration
and Customs Enforcement,*

TODD BLANCHE, *Acting Attorney
General, U.S. Department of Justice,*

WARDEN, *El Paso Service Processing
Center,*

In their official capacities,

Respondents.

CIVIL CASE NO. 3:26-cv-1915

**PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. “No one can reasonably question that freedom from physical detention is one of the most sacred and elemental of liberty interests.” *Mendoza v. Noem*, --- F. Supp. 3d ---, 2026 WL 809441, at *8 (W.D. Tex. Feb. 26, 2026).

2. Petitioner Hermalindo G. Escobar Monterroso (“Mr. Escobar”) is a citizen of Guatemala who has been detained since September 2025, when he was arrested while attempting to secure the release of his minor daughter from Office of Refugee Resettlement custody.

3. Mr. Escobar has been imprisoned for over *nine months* without any individualized assessment as to the necessity or reasonableness of detention, in violation of his constitutional rights.

4. His unjust and unnecessary detention at taxpayer expense has become unconstitutionally prolonged and removal is not immediately foreseeable. Mr. Escobar is currently appealing a denial of relief in the Immigration Courts and the process will likely take months or even years to resolve.

5. In addition, because Mr. Escobar has lived in the United States for approximately fifteen years and has strong ties to his community, he is entitled to meaningful due process prior to deprivation of liberty from confinement. Having received no individualized process at all, his constitutional rights have been irreparably violated.

6. Continuing to detain Mr. Escobar under these circumstances violates the Constitution.

7. Absent an order from the Court, Mr. Escobar will continue to languish indefinitely in detention for many months, if not years, in violation of his constitutional rights.

8. Accordingly, Mr. Escobar asks the Court to find his prolonged incarceration is unreasonable and unconstitutional and order him immediately released from custody along with his personal effects returned. Mr. Escobar also requests that the Court order the Government not to remove him from this jurisdiction while this Petition is pending and that the Government be enjoined from re-detaining him while his appeal before the Immigration Courts is pending.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction because this case arises under 28 U.S.C. § 2241 (habeas corpus) and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*,

the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10. Venue is proper because Mr. Escobar is detained in this District and each Respondent is an agency or officer of the United States sued in his or her official capacity. 28 U.S.C. § 2241; 28 U.S.C. § 1391(e)(1).

11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

PARTIES

12. Petitioner Hermalindo G. Escobar Monterroso is a citizen and native of Guatemala and is currently detained by Respondents at the El Paso Service Processing Center in El Paso, TX within the territorial jurisdiction of this Court. He has never received an individualized bond hearing before an Immigration Judge. He has no criminal convictions.

13. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security (“DHS”). He is the cabinet-level secretary responsible for immigration enforcement in the United States. In this capacity, he is responsible for the administration of the immigration laws, he routinely transacts business in this District, he supervises respondents Venturella and McGregor, he is legally responsible for the pursuit of Mr. Escobar’s detention and removal, and as such he is a legal custodian of Mr. Escobar.

14. Respondent David Venturella is the Acting Director for U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for immigration enforcement in the United States. In this capacity, he is responsible for the administration of the immigration laws, he routinely transacts business in this District, he supervises respondent McGregor, he is legally responsible for the pursuit of Mr. Escobar’s detention and removal, and as such he is a legal custodian of Mr. Escobar.

15. Respondent Christopher McGregor is the Director of the El Paso ICE ERO Field Office of ICE, which has jurisdiction over the El Paso Service Processing Center where Mr. Escobar is unlawfully detained. As the local ICE official overseeing enforcement operations in the region, he is responsible for Mr. Escobar's continued detention and actions related to his removal. He is his immediate legal custodian for purposes of habeas jurisdiction.

16. Respondent Todd Blanche is the Acting Attorney General of the United States. He is the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Court judges who decide removal cases and applications for bond as her designees.

17. Respondent Warden of the El Paso Service Processing Center is the immediate custodian who is holding Mr. Escobar in physical custody in El Paso, TX.

18. Each respondent is sued in their official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

19. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

20. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

STATEMENT OF FACTS

I. Mr. Escobar is a respected leader in his community, and his detention has caused his family severe hardship.

21. Mr. Escobar is a citizen of Guatemala who has resided in Maryland since approximately 2011. He is married and has four minor children, two of whom are United States citizens. Prior to his detention in September 2025, he lived with his family in Takoma Park, MD.

22. Mr. Escobar has no criminal record at all.

23. When Mr. Escobar entered the United States in or around 2011, he did not encounter immigration officials and was not detained. Since that time, Mr. Escobar has built strong ties to his Maryland community. He married his wife Fabiola Garcia Garcia in 2014, and they have three children, ages 16, 14, 8, and 3. The youngest two, D.E.G. and E.E.G.,¹ are United States citizens. Ms. Garcia lives with the three youngest children in Takoma Park, Maryland, where Mr. Escobar also lived before he was detained. Mr. Escobar's eldest daughter, aged 16, entered the United States in or around the summer of 2025 and was taken into Office of Refugee Resettlement ("ORR") custody, where she remains.

24. Mr. Escobar's prolonged and unjust civil detention has caused significant emotional, psychological, and financial hardship to his entire family, including his youngest two children who are American citizens.

25. Mr. Escobar is very involved in his family's church, where he participates in the men's group and leads the music group. His oldest son, D.E.G., is also involved in the church through its music and youth programming. But since Mr. Escobar has been detained, D.E.G. has been unable to attend church because his mother cannot drive and there is no one to take him,

¹ To protect the minor children's privacy and comply with the redaction rules, they are referred to here with their initials.

causing him to be isolated from a key support network in his community.

26. D.E.G., a United States citizen, has struggled to understand his father's absence and has had to receive therapy to cope. He has suffered psychological distress and depression due to his father's shocking and abrupt detention, and his continued absence from the family.

27. The youngest child, E.E.G., only age 3 and also a United States citizen, has also been showing signs of emotional distress and separation anxiety. He does not understand why his father has not come home.

28. All three minor children residing at the family home in Maryland are suffering emotionally because their loving and involved father is being kept from them, locked up unjustly in a faraway detention center.

29. Ms. Garcia does not have full-time work due to her responsibilities caring for the three young children. She is struggling to provide emotional and financial support for her children without the support of her husband.

30. Mr. Escobar has also suffered from diabetes, high cholesterol, anxiety, and stress since he was detained. Although he is receiving some medical care, the confinement and uncertainty have aggravated his health concerns.

II. ICE used the promise of reunification with his minor daughter as bait to arrest Mr. Escobar without a warrant.

31. Mr. Escobar was arrested in or around September 2025 because ICE used the promise of reunification with his eldest daughter, who is currently in ORR custody, as bait.

32. The arrest occurred in Baltimore, MD while Mr. Escobar was attempting to complete paperwork to serve as her sponsor for her release. When a child who is not accompanied by a parent or legal guardian is apprehended by immigration authorities, the child is transferred to the care of ORR, which is responsible for feeding, sheltering, and providing medical care for the

child until the child can be released to a sponsor (usually a family member). There has never been a requirement that the sponsor be a United States citizen or permanent resident.

33. Mr. Escobar had planned to serve as his daughter's sponsor in hopes of being reunited and had submitted application paperwork along with supporting documentation. An ORR official informed Mr. Escobar that he had completed almost all the necessary paperwork to serve as her sponsor, and that only one step remained: an in-person meeting in Baltimore, Maryland. The ORR official urged Mr. Escobar to plan for the in-person meeting as soon as possible to complete this necessary part of the sponsor application process.

34. When Mr. Escobar arrived in Baltimore for the in-person meeting, he realized that the address for the meeting was the ICE Baltimore Field Office. While an in-person meeting has historically been part of the sponsorship application process, the meeting does not usually occur at an ICE field office.

35. The ORR official had instructed Mr. Escobar to let her know that he had arrived for the meeting, and he did so.

36. The ORR official appeared and brought Mr. Escobar to a small room. Other government officials in plain clothes, believed to be from ICE, were also present. The ORR official left, leaving Mr. Escobar alone with unknown government officials. The officials photographed his identification card and interrogated him about his immigration status. Mr. Escobar truthfully answered their questions, including stating that he was undocumented.

37. The government officials told Mr. Escobar that he was going to be detained and ordered him to put his hands behind his back.

38. Prior to the meeting, the officials had not obtained a judicial warrant for Mr. Escobar's arrest.

39. In this way, the U.S. government used a meeting that he believed would lead to him reuniting with his 16-year-old daughter to instead detain Mr. Escobar at an ICE field office and seek his deportation from the United States. His minor daughter remains in ORR custody to this day because she does not have a sponsor. Mr. Escobar's wife cannot risk serving as sponsor any longer because she is responsible for caring for the couple's three other young children and if detained, the four minor children will be left without both of their parents. Since the process was used to secure the arrest of Mr. Escobar, Ms. Garcia is unable to risk leaving the other three children with both parents detained.

40. Mr. Escobar was detained in Baltimore for a few days, where he suffered horrific conditions including lack of access to blankets, warm clothing, or medical care. He was then transferred to Louisiana, and finally to El Paso, Texas. He remains unlawfully detained at the El Paso Service Processing Center.

41. On May 11, 2026, Mr. Escobar appeared before an Immigration Judge. That same day, the Immigration Judge issued an order denying all relief to Mr. Escobar. Through undersigned legal counsel, Mr. Escobar filed an appeal of the Immigration Judge's order to the Board of Immigration Appeals on June 8, 2026. Mr. Escobar is awaiting a briefing schedule from the Board, which can take several months due to the backlog currently facing the immigration courts.

III. Mr. Escobar's prior habeas petition was filed before his detention became prolonged.

42. On November 7, 2025, Mr. Escobar joined a habeas petition in this District. *See Castro Cardona v. Noem*, No. 3:25-cv-514. On November 19, 2025, he was stricken from the petition and ordered to file his own action. He did so on November 21, 2025. *See Escobar v. Noem*, No. 3:25-cv-576. The Petition sought relief on the basis that holding him without the opportunity for a bond hearing violated 8 U.S.C. § 1226(a) because he was not an applicant for admission

“seeking admission” or an arriving alien subject to 8 U.S.C. § 1225(b)(1) or (b)(2), and had no disqualifying criminal arrests or convictions.

43. After Mr. Escobar filed his petition, the Fifth Circuit decided *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) holding that noncitizens who were apprehended within the United States were nonetheless “seeking admission” and subject to detention.

44. The Court denied the Petition on these grounds and because his detention was not indefinite. *See Escobar Monterroso v. Noem*, No. 3:25-cv-576, 2026 WL 852140 (W.D. Tex. Mar. 27, 2026).²

45. Since then, Mr. Escobar has remained in custody. He is currently detained at the El Paso Service Processing Center.

EXHAUSTION OF REMEDIES

46. While exhaustion of administrative remedies is often a precursor to seeking habeas relief, exhaustion is not required where the claimant advances a constitutional challenge unsuitable for determination in an administrative proceeding or where exhaustion would be futile. *See Garner v. U.S. Dep’t of Lab.*, 221 F.3d 822, 825 (5th Cir. 2000); *see also Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *6 (W.D. Tex. Oct. 21, 2025) (declining to require exhaustion in similar habeas proceeding).

47. Here, Mr. Escobar raises constitutional questions beyond the scope of administrative review, and the immigration appellate timeline presented here exacerbates Mr. Escobar’s alleged injury of prolonged detention. *See Mendoza v. Noem*, --- F. Supp. 3d ---, 2026 WL 809441, at *2 (W.D. Tex. Feb. 26, 2026) (finding administrative exhaustion not required in similar habeas proceeding).

² Mr. Escobar maintains he is not an applicant seeking admission and is therefore detained under § 1226, not § 1225, but will not belabor that argument here in light of *Buenrostro*.

48. Further, exhaustion would be futile because according to the Government's interpretation of 8 U.S.C. § 1225, detention is mandatory without a bond hearing. *See id.*

49. Accordingly, there is no exhaustion requirement here.

ARGUMENT

I. Mr. Escobar's continued detention violates due process.

50. The Due Process Clause of the United States Constitution applies to all "persons" within the United States, including noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent. "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).

51. This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. It also protects noncitizens who have been ordered removed from the United States and who face continuing detention. *Id.* at 690.

52. Respondents have detained Mr. Escobar pursuant to § 1225(b) without a bond hearing or other individualized assessment of whether detention is necessary. Respondents apparently intend to detain him for the pendency of his immigration proceedings.

53. Mr. Escobar's continued detention violates the Due Process Clause for at least two reasons. First, his prolonged detention is unlawful because he has been held for longer than six months and is unlikely to be removed in the foreseeable future. *See generally Zadvydas v. Davis*, 533 U.S. 678 (2001). Second, detaining Mr. Escobar without notice and an opportunity to be heard violates the Due Process Clause because he has a liberty interest rooted in his length of residence in the United States and community ties. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)

(establishing balancing test); *Zamudio Sanchez v. Noem*, 2026 WL 596133, at *11-12 (W.D. Tex. Mar. 2, 2026) (applying *Mathews* balancing).

A. Continuing to detain Mr. Escobar is unconstitutional because his detention has become prolonged and he is unlikely to be removed in the foreseeable future.

54. First, continuing to detain Mr. Escobar is unconstitutional because his detention has become prolonged and he is unlikely to be removed in the foreseeable future.

55. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528. The government may not detain a noncitizen based on any other justification. Thus, under *Zadvydas*, “if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699–700.

56. While *Zadvydas* did not concern pre-final-removal-order detention, prolonged detention can still be assessed under the unreasonableness framework described there. *See, e.g., Ali v. DHS*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) (“Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.”); *N.Z.M. v. Wolf*, 2020 WL 2813557, at *2 (S.D. Tex. May 28, 2020) (“[A]rriving aliens subjected to unreasonably prolonged and unnecessary detention have a due process right to be released from custody.” (citing cases)); *da Silva v. Nielsen*, 2019 WL 13218461, at *10-11 (S.D. Tex. Mar. 29, 2019) (concluding that “arriving aliens detained pre-removal pursuant to § 1225(b) have a due process right to an individual bond consideration once it is determined that the duration of their detention has become unreasonable”).

57. Here, Mr. Escobar has already been detained for well beyond the threshold six month window. Civil detention for six months or more without an individualized determination of the necessity of continued detention is “suspect.” *Banegas Avila v. Frink*, 2026 WL 976144, 1 *3-4 (S.D. Tex. Apr. 10, 2026). Yet Mr. Escobar has already been detained for over nine months. And he is unlikely to be removed in the foreseeable future because of his immigration appeal.

58. Therefore, his detention has become unreasonable and his continued detention would be unconstitutional.

i. Mr. Escobar is unlikely to be removed in the foreseeable future due to his pending immigration appeal.

59. Mr. Escobar’s continued detention is unconstitutional because he has been detained for far longer than the presumptively permissible six months, and removal is not likely in the foreseeable future. *See Zadvydas*, 533 U.S. at 701 (stating that “Congress previously doubted the constitutionality of detention for more than six months” and, therefore, requiring the opportunity for release when deportation is not reasonably foreseeable and detention exceeds six months); *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005) (recognizing “6-month presumptive detention period”).

60. It is unlikely that Mr. Escobar will be removed in the foreseeable future because he is appealing the May 11, 2026 order of the Immigration Judge. This process is likely to take months, if not years.

61. Mr. Escobar filed his Notice of Appeal on June 8, 2026. The Board of Immigration Appeals (“BIA”) has not yet set a briefing schedule.

62. Appeals to the Board of Immigration Appeals can take anywhere from several months to several years. A recent study found that cases averaged approximately five months for

a decision where, as here, the noncitizen is detained.³ At a minimum, this figure suggests that Mr. Escobar could be detained for well over a year before the Board of Immigration Appeals decides his appeal.

63. But even that timeline is not guaranteed, as Levesque's figure includes cases where detainees are proceeding *pro se* and recognizes that for many detainees "can last years before, during, and even after the judge decides their case." *See id.* This study also came out in 2022, before the current administration's immigration enforcement surge and a recent decrease in BIA judges. At the end of 2024, the BIA had decided 44,785 appeals, with approximately 138,791 pending; in 2025, the backlog increased to 202,803 appeals pending with only 35,362 decided.⁴ As of Q1 2026, 11,171 appeals had been completed with 219,945 pending. As of early 2026, the broader immigration court backlog now exceeds 3.2 million cases.⁵

64. Courts may consider the BIA's backlog in determining that deportation is not reasonably foreseeable in the near future. *See, e.g., Banegas Avila*, 2026 WL 976144, at *3 (noting that petitioner's "immigration proceedings are likely to continue for some time" because "[h]undreds of thousands of appeals are pending before the BIA, . . . and the government reduced the number of judges on the BIA from 28 to fifteen").

65. Following the BIA's decision, Mr. Escobar or the Government could seek review from a federal circuit court of appeals. This process could further prolong his detention despite no

³ See Cristopher Levesque, *Time is on their side? A duration analysis of U.S. immigration court decisions*, Minnesota Population Center and Department of Sociology, Working Paper No. 2022-04, at p. 12 (Sept. 2022), available at <https://assets.ipums.org/files/mpc/wp2022-04.pdf#page=12>.

⁴ See Executive Office for Immigration Review Adjudication Statistics (Jan. 26, 2026), <https://www.justice.gov/eoir/media/1344986/dl?inline>.

⁵ See Nate Raymond, *Trump administration names 33 new immigration judges, most with military backgrounds*, Reuters (Feb. 5, 2026), <https://www.reuters.com/legal/government/trump-administration-names-33-new-immigration-judges-most-with-military-2026-02-05/>.

reasonable basis for the government to keep him in custody.

66. Removal of Mr. Escobar is stayed during his BIA appeal, but the Government is unlikely to release him because of its determination that he must be detained under 8 U.S.C. § 1225(b)(2). *See also Buenrostro*, 166 F.4th at 500 (recounting how the BIA concluded that aliens who enter the United States without inspection and admission, like Mr. Escobar, are subject to mandatory detention).

67. Thus, Mr. Escobar's continued immigration proceedings are likely to go on for many months, if not many years, and he is likely to be detained during that time absent order of this Court—despite no individualized determination that he is a flight risk (which he is not) or a danger to the community (which he is not).

ii. Mr. Escobar's continued and prolonged detention is unreasonable and unconstitutional under *Zadvydas*.

68. Under *Zadvydas*, prolonged detention for longer than six months during immigration proceedings is unreasonable and unconstitutional where, as here, removal is not reasonably foreseeable. Prolonged detention can be unreasonable under the *Zadvydas* framework even if the detainee does not have a final order of removal. *See, e.g., Ali*, 451 F. Supp. 3d at 708; *N.Z.M.*, 2020 WL 2813557, at *2; *da Silva*, 2019 WL 13218461, at *10-11.

69. The Court's ruling in *Zadvydas* is rooted in due process's requirement that there be "adequate procedural protections" to ensure that the government's asserted justification for a noncitizen's physical confinement "outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). *See also, e.g., Zamudio Sanchez*, 2026 WL 596133, at *9 (explaining that civil detention "only comports with due process" in narrow circumstances where detention will mitigate danger to the community or prevent the detainee from fleeing before their case is resolved (emphasis in

original)).

70. The first justification of preventing flight, however, is “by definition . . . weak or nonexistent where removal seems a remote possibility.” *Zadvydas*, 533 U.S. at 690. Thus, where removal is not reasonably foreseeable and the flight prevention justification for detention accordingly is “no longer practically attainable, detention no longer ‘bears [a] reasonable relation to the purpose for which the individual [was] committed.’” *Id.* (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

71. As for the second justification of protecting the community, “preventive detention based on dangerousness” is permitted “only when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 690–91.

72. The recognition that six months is a substantial period of confinement, after which additional process is required to support continued detention, is deeply rooted in our legal tradition. *See Duncan v. Louisiana*, 391 U.S. 145, 161 (1968) (noting that in the late 18th century, crimes triable without a jury were for the most part punishable by no more than a six-month prison term). 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 a jury trial. *See 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, such as where a court has found that a person has demonstrated persistent aggravated antisocial or criminal behavior. *See McNeil v. Director, Patuxent Inst.*, 407 U.S. 245, 249–52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment). In contrast, this case involves *civil* detention without any underlying criminal violations or convictions, and there has been no showing (nor could there be) of factors like aggravated

antisocial or criminal behavior.

73. Beyond a six-month period, when, like here, a noncitizen presents a good reason to believe that there is “no significant likelihood of removal in the reasonably foreseeable future,” the Government must provide evidence sufficient to rebut that showing in order to continue detaining that noncitizen. *Ali*, 451 F. Supp. 3d at 707 (citing *Zadvydas*, 533 U.S. at 701).

74. Courts that assess the reasonableness of the government’s continued detention of an immigrant often consider three main factors in determining whether prolonged detention is reasonable: (1) the length of time the noncitizen has been detained, (2) whether the noncitizen is responsible for the delay, and (3) whether the noncitizen has asserted defenses to removal. *See da Silva*, 2019 WL 13218461, at *11; *see also N.Z.M.*, 2020 WL 2813557, at *2.

75. With regard to the first factor, Mr. Escobar has been detained for over nine months and is almost guaranteed to be detained much longer—an unreasonable length of time. *See Da Silva*, 2019 WL 13218461, at *11 (recognizing *Zadvydas* held detention longer than six months entitles noncitizen to bond hearing). Indeed, “the six-month presumption is not a bright line, . . . and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits.” *Ali*, 451 F. Supp. 3d at 707. *See also Clark*, 543 U.S. at 384 (“*Zadvydas* did not hold that the statute authorizes detention until it approaches constitutional limits.”).

76. The second factor also weighs in Mr. Escobar’s favor because the Government is responsible for the delays in this case caused by the backlog of cases before the BIA. While the Government may argue that Mr. Escobar is responsible for his continued custody because he could accept deportation, “[t]his is a rather cynical interpretation of the choices available,” and even if the Court to accept that argument, “it would merely counterbalance [the government]’s own delays and render this second factor neutral.” *Da Silva*, 2019 WL 13218461, at *11. “[C]ourts do not hold

an alien's good-faith challenge to his removal against him, even if his appeals or applications for relief have drawn out the proceedings." *Banegas Avila*, 2026 WL 976144, at *3 (quoting *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020)).

77. The third and final factor also weighs in favor of Mr. Escobar's immediate release. Mr. Escobar has asserted a defense to removal before the Immigration Courts. The Court need not (and cannot) inquire into the merits of his defense, but the fact that it exists and there is a possibility that Mr. Escobar ultimately will not be removed "diminishes the ultimate purpose" of continuing to detain him. *See Da Silva*, 2019 WL 13218461, at *11. *See also Banegas Avila*, 2026 WL 976144, at *3 ("It is possible that Banegas Avila's detention would have been purposeless, for there is little evidence in the record that he is a danger or flight risk.").

78. Because removal is not reasonably foreseeable and continued detention beyond six months would be unreasonable, *Zadvydas* requires that Mr. Escobar be immediately released. *See* 533 U.S. 700-01 (describing release as an appropriate remedy). *See also Ali*, 451 F. Supp. 3d at 707 ("Because there is no significant likelihood of removal in the foreseeable future, and because Petitioner is not a flight risk, the Court finds that the Government is exceeding its authorization under [the applicable statute] by continuing to detain Petitioner.").

79. To order that release, the Court need only determine that Mr. Escobar's removal is not reasonably foreseeable, as described above, and it need not separately analyze whether he poses a danger to the community or a flight risk. *See id.* at 699-700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute."). The Court need not address these factors because *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis and because even dangerousness alone could not unilaterally justify indefinite civil detention absent "special circumstances, which

do not include “removable status.” *See id.* at 690-91 (recognizing that flight risk is part of reasonable foreseeability because the “justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best”); *Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) (“A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention].”).

80. But to the extent the Court considers factors outside the foreseeability of removal, Mr. Escobar has significant equities that also warrant release.

81. There is no evidence that he is a “flight risk”; on the contrary, he has lived in the United States for approximately 15 years; has gainful employment he can return to on release; has a family he supports; and is part of a strong local and church community where he is respected and viewed as a leader. Mr. Escobar has demonstrated he is not a flight risk by actively participating in his immigration proceedings, where he is represented by counsel and hopes to prevail, and because he has a family, including two young United States citizen children, and a life in Maryland that he wishes to return to, not flee. And he is not a danger to the community; he has no criminal record at all, is an involved father and an active member of his church, and he is an asset to his community.

82. Accordingly, because the Government’s detention of Mr. Escobar has become prolonged, the constitution requires that the Court order an end to his continued detention.

B. Mr. Escobar’s length of residence in the United States and ties to the community create a liberty interest and entitle him to meaningful process.

83. In addition to the prolonged nature of his detention under *Zadvydas*, Mr. Escobar is also entitled to due process because of his length of residence and community ties, under the balancing test set out in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). *See also Mendoza*, 2026 WL 809441, at *7 (“[N]oncitizens already in the country who have established a life here—albeit

without authorization[,] possess a strong liberty interest in their freedom from detention.”).

84. Those individuals who have established ties in the country are protected by constitutional procedural due process. *See, e.g., Trump v. J.G.G.*, 604 U.S. 670 (2025). Consistent with that principle, courts have applied *Mathews* in the immigration context to assess whether continued detention violates due process. *See, e.g., Zamudio*, 2026 WL 596133, at *11-14 (applying *Mathews* test to determine whether noncitizen detained pursuant to § 1225(b) had a due process right to release from immigration detention). The Fifth Circuit recently affirmed this principle in *Rodriguez v. Ortega*, --- F.4th ---, 2026 WL 1906557, at *1 (5th Cir. July 2, 2026). While that decision has since been vacated so that the Fifth Circuit may rehear the case en banc, the principles set forth in the vacated decision reflect many cases from within this Circuit and Supreme Court precedent recognizing that noncitizens are entitled to meaningful due process.

85. “Once it is determined that due process applies, the question remains what process is due.” *Mendoza*, 2026 WL 809441, at *7. The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews*, 424 U.S. at 333. “Procedural due process requires an individualized assessment consistent with the framework articulated in *Mathews*.” *Mendoza*, 2026 WL 809441, at *7.

86. In determining whether a petitioner has received due process, courts consider three factors under *Mathews*: (1) the private interests to be affected by the official action, (2) the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail, and (3) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of such safeguards. *Mathews*, 424 U.S. at 335. *See also, e.g., Arias Flores v. Blanche*, 2026 WL 1603561, at *4 (W.D. Tex. June 4, 2026) (applying *Mathews* factors in similar immigration habeas

petition).

87. The first *Mathews* factor weighs in Mr. Escobar's favor. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. A noncitizen's interest in his freedom pending the conclusion of his removal proceedings deserves great "weight and gravity." See *Addington v. Texas*, 441 U.S. 418, 427 (1979) (holding that an "individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify commitment by proof more substantial than a mere preponderance of the evidence"); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (recognizing that a noncitizen's interest in "the right to stay and live and work in this land of freedom" is "a weighty one"). Mr. Escobar's interest in his freedom pending conclusion of his removal proceedings is strong. He has built a life in the United States and is a respected member of his community. He is the sole provider for his family, including four children, two of whom are United States citizens. His continued detention is significantly harmful to their wellbeing, and his. See *Arias Flores*, 2026 WL 1603561, at *4 (recognizing that "because he spent approximately fourteen years at liberty in the United States, Petitioner possesses a cognizable interest in his freedom from detention" (cleaned up)).

88. Courts considering similar cases have determined that such facts weigh in favor of relief for the petitioner. For example, in *Zamudio*, the court recognized that the petitioner, who like Mr. Escobar was "a father to four children and the sole breadwinner for his family," showed the first factor weighed in his favor because "[h]is longstanding ties to the country do not indicate that he would flee during the pendency of his removal proceedings, and there is no evidence to suggest that he poses a risk of danger to others." *Zamudio*, 2026 WL 596133, at *12 (also noting that

petitioner was “experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, lack of privacy, and, most fundamentally, the lack of freedom of movement”). *See also Arias Flores*, 2026 WL 1603561, at *4; *Hernandez-Fernandez*, 2025 WL 2976923, at *9 (finding liberty interest where petitioner “spent nearly three years at liberty in the United States”).

89. The second *Mathews* factor also weighs in favor of Mr. Escobar. Here, the Court considers “the [g]overnment’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335. Any fiscal or administrative burdens the government may assert by having to provide a bond hearing are diminished given that the government has conducted such hearings for thirty years until a recent change in ICE’s interpretation of the relevant statute. *See Zamudio*, 2026 WL 596133, at *14 (“[T]he burdens necessary to ensure substitute or additional process are *de minimis*.”). And while the government has an interest in ensuring Mr. Escobar’s continued appearance and participation in his immigration proceedings, there is no reason to think that he would not continue to fully participate. Mr. Escobar is not a flight risk, nor is he a danger to his community given his lack of criminal record and strong community ties.

90. The third *Mathews* factor also weighs in Mr. Escobar’s favor. There is a substantial risk of erroneous deprivation of liberty through the procedures used, because the government’s procedures were to deny Mr. Escobar a bond hearing. There is significant risk in the automatic continued deprivation of liberty for a noncitizen who is neither a flight risk nor a danger to his community and who has lived in the United States for a long time. *See Arias Flores*, 2026 WL 1603561, at *4 (finding risk of erroneous deprivation where petitioner “lack[ed] any opportunity to contest the reasonableness of his detention”). “[D]etention no longer bears a reasonable relation

to its purpose when the noncitizen's detention is prolonged without any particularized assessment of need." *Zamudio*, 2026 WL 596133, at *13 (finding this factor weighed in petitioner's favor in similar case).

II. Immediate release is the proper remedy for the Government's due process violations.

91. For all of these reasons, Mr. Escobar requests that the Court order his immediate release and the return of his personal property.

92. "In habeas cases where the Court finds an ongoing detention unlawful, the typical remedy for such detention is, of course, release." *Arias Flores*, 2026 WL 1603561, at *5 (quoting *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). Other similarly situated courts have recognized that ordering a bond hearing *after* a noncitizen has been unlawfully detained without due process cannot make up for the lack of an initial, individualized determination process by the Government. *See, e.g., Arias Flores*, 2026 WL 1603561, at *5 (collecting cases); *Mendoza*, 2026 WL 809441, at *9 (ordering petitioner's immediate release from ICE facility following unconstitutional prolonged detention); *Cruz-Reyes v. Bondi*, 818 F. Supp. 3d 875, 887 (S.D. Tex. 2026) ("The Court is now persuaded that a post-deprivation bond hearing cannot cure the core violation of [Petitioner's] due process rights that occurred when he was unlawfully detained under a mandatory detention provision without any process for such determination.").

93. Mr. Escobar respectfully urges the Court to reach the same conclusion and order the Government to release him from custody.

94. But if the Court is not inclined to order his immediate release, there are alternatives that the Court can and should consider. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings, but detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate flight risk. *See Bell v.*

Wolfish, 441 U.S. 520, 538 (1979). Due process thus also requires the neutral decisionmaker to consider such alternatives.

95. For example, the Court could itself order an unsecured bond. *See N.Z.M.*, 2020 WL 2813557, at *3 (ordering an “*unsecured* bond of 5,000” and the petitioner’s release) (emphasis in original).

96. At a minimum, the Court should order a bond hearing within seven days, where the government will bear the burden of justifying Mr. Escobar’s continued detention during the pendency of his removal proceedings by clear and convincing evidence. *See, e.g., Zamudio*, 2026 WL 596133, at *15 (ordering a bond hearing where “the burden shifts to the Government to show, by clear and convincing evidence, that the detainee poses a danger or flight risk”); *Banegas Avila*, 2026 WL 976144, at *5 (ordering a bond hearing within seven days “at which the Government bears the burden of proving, by clear and convincing evidence, that the petitioner presents a risk of flight or a danger to the community”); *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 702 (W.D. Tex. Oct. 16, 2025) (ordering bond hearing and citing cases).

CLAIMS FOR RELIEF

Count I

Violation of Fifth Amendment Right to Due Process

97. Petitioner re-alleges and incorporates by reference the facts set forth above as if fully set forth herein.

98. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

99. Petitioner has been detained by Respondents for over six months. This prolonged detention is unlikely to end in the reasonably foreseeable future. Where, as here, removal is not reasonably foreseeable, detention cannot be reasonably related to the purpose of effectuating

removal and thus violates due process. *See Zadvydas*, 533 U.S. at 690, 699–700.

100. Further, Mr. Escobar has a liberty interest in being free from official restraint, and has been deprived of an individualized hearing to justify his detention. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Yet, Mr. Escobar never received a bond hearing after he was detained and yet he has been detained for over nine months.

101. Mr. Escobar has no criminal record and his prolonged detention is not necessary to protect the community. He has participated in his immigration proceedings and is not a flight risk.

102. For these reasons, Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Mr. Escobar respectfully requests that the Court:

1. Assume jurisdiction over this matter;
2. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Mr. Escobar from detention, along with his personal effects and identification documents;
3. In the alternative, issue an Order to Show Cause ordering Respondents to respond within three days showing cause why this Petition should not be granted;
4. Declare that Mr. Escobar's detention violates the Due Process Clause of the Fifth Amendment;
5. Order that the Government may not re-detain Mr. Escobar while his case is pending in the Immigration Courts;
6. Order the Government not to remove Mr. Escobar from this District while this Petition is pending;
7. Award Petitioner's attorneys' fees and costs under the Equal Access to Justice Act, and any

other basis under law; and

8. Grant any further relief the Court deems just and proper.

Dated:

Respectfully Submitted:

/s/ Imelda Maynard

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