District Judge Tiffany M. Cartwright
Magistrate Judge Brian A. Tsuchida

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Jesus Bento CARDOZO, Relson FERNANDES, Yassine BELHAJ, Marouane BOULHJAR, Mouloud Ben KHADAJ,

Petitioners,

v.

Drew BOSTOCK, Field Office Director of Enforcement and Removal Operations, Seattle Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela Bondi, U.S. Attorney General; Bruce SCOTT, Warden of Northwest ICE Processing Center,

Respondents.

Case No. 2:25-cv-00871-TMC-BAT

PETITIONERS' TRAVERSE AND RESPONSE TO RESPONDENTS' MOTION TO DISMISS

Note on Motion Calendar: July 25, 2025

Oral Argument Requested

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INTRODUCTION

Petitioners are noncitizens who have been detained for nearly a year because Respondents failed to promptly secure adequate interpreters in their primary languages. Respondents now claim to have worked diligently to find interpreters, yet they located the necessary interpreters well over six months after Petitioners were detained—and only *after* this litigation commenced. The lengthy delays, Petitioners' protracted confinement, the additional detention they still face, and the oppressive conditions at the Northwest Immigration and Customs Enforcement (ICE) Processing Center (NWIPC) demonstrate that any further detention is unlawful unless Petitioners are afforded a custody hearing before a neutral decisionmaker where ICE must justify any continuing detention.

FACTUAL SUMMARY AND DEVELOPMENTS

I. The Status of Petitioners' Cases

Since Respondents found adequate interpreters, two petitioners—Jesus Bento Cardozo and Marouane Boulhjar—accepted voluntary departure to end their prolonged detention. *See* Dkt. 12 ¶ 22; Dkt. 16 ¶ 4. Accordingly, they now withdraw their claims and do not seek relief.

As to the remaining petitioners—Relson Fernandes, Yassine Belhaj, and Mouloud Ben Khadaj—Respondents acknowledge that their "individual removal proceedings have been delayed due to language barriers." Dkt. 11 at 1. In the case of Mr. Fernandes, he has been detained nine months. *See* Dkt. 3 ¶ 1; Dkt. 13 ¶ 10. Over that time, he has received at least seven master calendar hearings (MCHs). Dkt. 3 ¶¶ 8–12, Dkt. 12 ¶¶ 23–30, Dkt. 16 ¶ 5. Only at the most recent hearing did Respondents provide an interpreter in Mr. Cardozo's native language, Goanese Konkani, whom he could understand. Dkt. 3 ¶¶ 8, 10–12. Dkt. 16 ¶ 5. His case was reset for a further hearing. *Id.*

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Mr. Belhaj has faced similar barriers to obtaining even an initial hearing in his native language. He entered the United States in September 2024 and has been detained over ten months. Dkt. 4 ¶ 1; Dkt. 13 ¶ 16. Over that time, he has received over ten MCHs. Dkt. 4 ¶¶ 4, 6; Dkt. 12 ¶ 4–9. Only on May 12, 2025, did Respondents finally locate an interpreter for Mr. Belhaj. Dkt. 4 ¶ 5, Dkt. 12 ¶ 8. At Mr. Belhaj's most recent MCH on June 2, 2025, he submitted a Form I-589, Application for Asylum and Withholding of Removal. Dkt. 12 ¶ 9. His case is now scheduled for a merits hearing on August 11, 2025. *Id.*

Finally, Mr. Khadaj has also been detained for months due to Respondents' inability to find an interpreter. He also entered the United States on September 15, 2024, and therefore has also been detained over ten months. Dkt. 6 ¶ 1; Dkt. 13 ¶ 33. Like Mr. Belhaj, during that time, he has received over ten MCHs. Dkt. 6 ¶ 6; Dkt. 12 ¶ 10–16. Only at a hearing on June 2, 2025, did Respondents finally provide an interpreter in Mr. Khadaj's native language. Dkt. 12 ¶ 15. His case was also reset for a further hearing. *Id.* ¶ 16.

II. Response to Respondents' Assertions Regarding Petitioners' Language Abilities and Certificates of Service

In their response, Respondents question whether the Court can rely on the declarations of Mr. Fernandes and Mr. Khadaj, suggesting that the certificates of translation are unreliable. *See* Dkt. 11 at 12–13. They also question whether Mr. Fernandes has misrepresented his language abilities. *See id.* at 13–14. With this traverse, Petitioners submit additional evidence to address these claims.

As an initial matter, Petitioners note that their declarations align with the facts Respondents themselves have submitted. *Compare* Dkt. 3 ¶¶ 1, 7–12, *with* Dkt. 12 ¶¶ 23, 25–28, *and* Dkt. 13 ¶¶ 10–12 (providing similar accounts of dates of entry, transfer, and immigration court hearings, for Mr. Fernandes); *compare* Dkt. 6 ¶¶ 1, 4, 6, *with* Dkt. 12 ¶¶ 10–13, *and* Dkt.

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13 ¶¶ 33, 35 (same, for Mr. Khadaj). Those facts undermine Respondents' assertion that "the accuracy of the translations" is in question. Dkt. 11 at 13.

Messrs. Fernandes and Khadaj also submit additional statements from their interpreters to address Respondents' claims that their declarations are inaccurate. With respect to Mr. Fernandes, Sanjay Bhananker translated his declaration (and that of Mr. Cardozo). *See* Bhananker Decl. ¶¶ 3, 5. Mr. Bhananker is a professor at the University of Washington, originally from the Goa region of India, and fluent in both English and the Goanese dialect of Konkani. *Id.* ¶¶ 1–2. He notes that "[p]eople from the Goa region of India are not likely to understand other dialects of Konkani clearly," *id.* ¶ 4, which explains why Mr. Fernandes could not understand the other interpreters that Respondents provided. As for Mr. Khadaj, his interpreter was a cousin who speaks both English and Tashelhit, the dialect of Tamazight that Mr. Khadaj also speaks. Imortaji Decl. ¶¶ 3–4.

As noted, Respondents also allege that Mr. Fernandes speaks English and Hindi, implying he is not being forthright about his language abilities. They rely on a visa application in which Mr. Fernandes listed those languages. Dkt. 11 at 13–14. To address this allegation, Mr. Fernandes submits a supplemental declaration, which explains the visa application form offered no Konkani option, which led him to choose English and Hindi. Suppl. Fernandes. Decl. ¶ 4. However, he has only limited proficiency in those languages—far from enough to communicate meaningfully in immigration court. *See id.* ¶¶ 2–3, 6.

ARGUMENT

Respondents do not contest that the Court should apply the five-factor test from *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019). That test requires a court to examine "(1) the total length of detention to date; (2) the likely duration of future detention; (3)

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the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal." *Banda*, 385 F. Supp. 3d at 1106 (citation omitted). Here, each factor either favors Petitioners or is neutral. In addition, the Court should order that, in the unlikely event that the immigration court finds any Petitioner a danger to the community, it must consider any alternatives to detention.

I. Due Process Requires Respondents to Afford Petitioners a Bond Hearing

A. The length of detention to date, as well as likely duration of future detention, favor Petitioners.

Respondents recognize that "Petitioners' detention periods have become prolonged," but argue that this factor should be considered "neutral" because prolonged detention has "not reached the length of what many courts have found to be unreasonable." Dkt. 11 at 11. They also argue that any projected future detention is "speculative at best" and therefore should also be considered "neutral." *Id.* at 12. But both the time they have spent in detention—ten months for Messrs. Belhaj and Khadaj, and nine for Mr. Fernandes—as well as the likely detention they can expect, weigh in favor of granting their request.

As an initial matter, this Court should apply a strong presumption that detention exceeding six months violates due process. While *Jennings v. Rodriguez*, 583 U.S. 281 (2018), abrogated the Ninth Circuit's decision in *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), which held that § 1226(c) requires bond hearings after six months as a matter of *statutory* interpretation, it did not undermine other decisions that look to six months as a constitutional benchmark for when the government must justify continued detention or incarceration. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) ("Congress previously doubted the constitutionality of detention for more than six months."); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 250

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(1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment); *see also Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968) ("[I]n the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term . . . ."); *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion) (finding 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); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1098 (W.D. Wash. 2025) ("Detention that has lasted longer than six months is more likely to be unreasonable, and thus contrary to due process, than detention of less than six months." (citation modified)). Indeed, in *Demore v. Kim*, the Supreme Court authorized mandatory detention without a hearing under § 1226(c) only for the "brief period necessary for . . . removal proceedings," 538 U.S. 510, 513 (2003), which, at the time, was understood to constitute "roughly a month and a half in the vast majority of cases . . . and about five months in the minority of cases" where the noncitizen appealed to the Board of Immigration Appeals, *id.* at 530. Thus, even *Demore* supports a finding that the time at issue in Petitioners' cases has become prolonged.[1]

Furthermore, courts have found that similarly lengthy detention requires a bond hearing where the government bears the burden of proof. *See, e.g.*, *Banda*, 385 F. Supp. 3d at 1118–19 (citing cases granting bond hearings "after more than" nine and ten months of detention); *Alvarado v. Garland*, 608 F. Supp. 3d 32, 38 & n.4 (W.D.N.Y. 2022) (collecting cases where courts found that detention ranging from seven to more than ten months had become

[1] Petitioners do not seek the "bright-line rule" that judges have rejected in other cases. *See, e.g.*, *Banda*, 385 F. Supp. 3d at 1117. Instead, consistent with *Zadvydas*, *Demore*, and related precedent, they ask the Court to consider detention over six months, and prospective detention surpassing a year, as a strong factor in their favor in the Court's multi-factor analysis.

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"unreasonably prolonged"); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (collecting cases where courts found that detention under one year was "unreasonable"); *Hylton v. Decker*, 502 F. Supp. 3d 848, 854 (S.D.N.Y. 2020) (discussing cases where detention was found to be unreasonably prolonged at eight months and at more than nine months); *Vargas v. Beth*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019) (finding detention to be unreasonably prolonged at about nine-and-a-half months); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (same, at seven months); *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 720 (D. Md. 2016) (same, where "detention [was] now exceeding ten months"); *Ashemuke v. ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024) (recommending denial of request for bond hearing, but finding that seven months' detention at the time of filing the habeas petition, which had extended to approximately eleven months, "weighs in Petitioner's favor"), *R&R rejected & petition granted*, No. C23-1592-RSL, 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024); *Anyanwu v. ICE Field Off. Dir.*, No. 2:24-CV-00964-LK-GJL, 2024 WL 4627343, at *4 (W.D. Wash. Sept. 17, 2024) (noting even seven months' detention "would still tilt [this factor of the analysis] in [petitioner's] favor"), *R&R adopted*, No. C24-0964 TSZ, 2024 WL 4626381 (W.D. Wash. Oct. 30, 2024). *Hong v. Mayorkas* does not support Respondent's argument, Dkt. 11 at 11, as that case recognized the existence of "cases granting bond hearings after nine[] [and] 10 . . . months' detention." No. 2:20-CV-1784-RAJ-TLF, 2021 WL 8016749, at *3 (W.D. Wash. June 8, 2021), *R&R adopted*, No. 20-CV-01784-LK, 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022). The "length of detention, which is the most important factor," thus strongly weighs in favor of Petitioners. *Banda*, 385 F. Supp. 3d at 1118.

As for the length of future detention, courts consider the "anticipated duration of all removal proceedings—including administrative and judicial appeals." *Banda*, 385 F. Supp. 3d at

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1119 (citation omitted). In *Banda*, this Court found that a petitioner who had "only recently" appealed the IJ's denial of his case to the BIA faced a process that could "take up to two years or longer"—a factor that weighed in favor of his request for a bond hearing. *Id.* In this case, all three remaining Petitioners are at an even earlier stage of the process than the petitioner in *Banda*, meaning the likely duration of future detention for them is significant.

Respondents argue that Mr. Boulhjar's case "demonstrates" that the likelihood of future detention for Petitioners is "speculative," because once he could communicate through an adequate interpreter, he requested voluntary departure. Dkt. 11 at 12. Mr. Cardozo's case has taken the same course. Dkt. 15 at 1. Accordingly, both individuals have withdrawn their claims for relief in this Court. *See supra* p. 1. Far from undermining Petitioners' argument, the two individuals' decisions to no longer seek relief from removal highlights the oppressive effect of prolonged detention. Moreover, as Respondents concede, the three remaining petitioners—all of whom have now been able to communicate with the IJ through an adequate interpreter—have chosen to continue pursuing their case. *See* Dkt. 11 at 12 (noting Mr. Khadaj is preparing an application for relief and Mr. Belhaj has an upcoming merits hearing on August 11); Dkt. 15 (representing Mr. Fernandes is continuing to pursue his case). All three men are seeking asylum. Dkt. 3 ¶ 7; Dkt. 4 ¶ 1; Dkt. 6 ¶ 3. And in the case of Messrs. Fernandes and Khadaj, the delays in obtaining interpretation mean they have not yet submitted asylum applications, much less been scheduled for merits hearings. This means that they still have at least two to three months of proceedings before the immigration court. *See* Dkt. 12 ¶ 9 (reflecting that Mr. Belhaj's merits hearing was scheduled for two months after the submission of his asylum application).

Even assuming Petitioners do not prevail before the IJ, they may appeal their cases as of right to the Board of Immigration Appeals (BIA), 8 C.F.R. § 1003.3(a)(1), and later, the Ninth

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Circuit Court of Appeals *see* 8 U.S.C. § 1252(a)–(b). This appeals process is lengthy. Administrative appeals for detainees typically take around six months. *See* Aldana Madrid Decl. Ex. A (BIA data showing that, on average, the BIA takes approximately 190 days to adjudicate appeals of IJ merits decisions in detained cases). Once Petitioners finish the administrative appeals process, they may remain in detention for up to two additional years while appealing to the Ninth Circuit. *See* U.S. Court of Appeals for the Ninth Circuit, Frequently Asked Questions, at Questions 17 & 18, https://www.ca9.uscourts.gov/general/faq/ (last visited July 18, 2025). ICE may attempt to remove them during this period, but they are entitled to seek a stay of removal, and the Ninth Circuit provides for an automatic stay while it adjudicates the stay motion. Ninth Circuit General Order 6.4(c)(1). Then the Ninth Circuit may issue a stay of removal pending the case's outcome. *See Nken v. Holder*, 556 U.S. 418, 422 (2009).

Because it "it appears likely [petitioners] will face many more months and potentially years in detention," this factor weighs in their favor. *Sarr*, 765 F. Supp. 3d at 1098; *see also, e.g.*, *Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 922 (W.D. Wash. 2020) (finding no error in assessing that this factor weighed in petitioner's favor where resolution of his case might "reasonably take another year or longer"); *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019) (finding this factor "strongly supports granting petitioner's bond hearing request "given th[e] immigration court] backlog, given Jamal's right to appeal an adverse decision of the IJ to the BIA, and given Jamal's right to ask the Eighth Circuit to review an adverse decision of the BIA," which means "Jamal might well be detained for two years or longer before he gets a final decision regarding his removal"); *Hong*, 2021 WL 8016749, at *4 (finding factor favored petitioner where he faced "an additional 15 to 38 months" in detention because he was at the

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"earliest stages" of pursuing a petition for review before the court of appeals); *see also* Dkt. 1 ¶ 97 (listing additional cases).

Accordingly, both of the first two factors in the *Banda* multi-factor analysis strongly weigh in Petitioners' favor.

B. The conditions of detention favor Petitioners.

The conditions of detention also strongly favor Petitioners. This Court has recognized this fact before, explaining that the conditions at NWIPC "are similar . . . to those in many prisons and jails." *Diaz Reyes v. Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903, at *7 (W.D. Wash. Aug. 7, 2020) (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 329 (2018) (Breyer, J., dissenting)), *R&R adopted as modified*, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020); *see also Sarr*, 765 F. Supp. 3d at 1100–03 (concluding that conditions of confinement at NWIPC weighed in favor of bond hearing). With respect to their testimony regarding the conditions, Respondents claim that the Court cannot rely on three of Petitioners' declarations because they were not "performed by competent translators." Dkt. 11 at 12. This contention lacks merit. As detailed above, Petitioners have submitted additional declarations to address this issue. Messrs. Cardozo's and Fernandes' declarations were translated by Sanjay Bhananker, a University of Washington professor, U.S. citizen, and native of Goa, India, who speaks both English and the Goa dialect of Konkani fluently. *See generally* Bhananker Decl. With respect to Mr. Khadaj, his cousin who speaks English and Tashelhit provided interpretation. *See generally* Imortaji Decl. This additional evidence refutes Respondents' claim that Petitioners' declarations are not reliable (in addition to the fact that Petitioners' declarations are consistent with Respondents' own evidence).

Petitioners' declarations (including those that Respondents do not challenge) establish

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that detention in NWIPC is akin to, if not worse than, incarceration in a jail or prison. Petitioners are confined inside in a restrictive setting and receive no outdoor access. Dkt. 2 ¶ 14; Dkt. 3 ¶ 13. Petitioners also report severe crowding that fuels fights and tension among other detained persons. Dkt. 2 ¶ 15; Dkt. 3 ¶ 14. In addition, Petitioners attest to substandard food and hygiene at NWIPC. Dk. 2 ¶¶ 12–13; Dkt. 3 ¶ 14; Dkt. 4 ¶ 9; Dkt. 5 ¶ 10. Several petitioners also report difficulty in accessing medical care due to interpretation issues. Dkt. 4 ¶ 8; Dkt. 5 ¶ 9; Dkt. 6 ¶ 11. Further, Mr. Khadaj testifies to repeated sexual harassment, which he cannot report because no one can understand him. Dkt. 6 ¶¶ 8–10. Reports by independent outside entities have similarly documented poor food quality, medical neglect, unsanitary environment, and other issues at NWIPC. *See* Univ. of Wash. Ctr. for Hum. Rts., Conditions at the Northwest Detention Center (last accessed July 18, 2025), https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/.

Respondents provide no evidence to rebut these facts. Indeed, besides questioning the translations, their only assertion is that each petitioner's conditions must be assessed individually. Dkt. 11 at 13. Respondents provide no authority for this argument that evidence of conditions of detention at NWIPC may only be proven by an individual petitioner's declaration. And that argument makes little sense: Petitioners are all parties to this case, and all are detained in the same facility with the same policies, practices, and circumstances of detention. Indeed, this Court has previously rejected this precise argument, which Respondents fail to acknowledge. *See Parada Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718, at *4 (W.D. Wash. Mar. 21, 2025) ("The Court interprets [the caselaw] as requiring evidence that speaks to the conditions of the detention facility itself. The Court sees no reason why such evidence should be restricted solely to firsthand accounts made by the Petitioner. Other courts in this district have

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acted accordingly.").

C. The delay factors favor Petitioners.

Next, Respondents assert that the petitioner-caused delay factor favors them for Mr. Fernandes, while it is neutral as to Mr. Belhaj and Mr. Khadaj. To the contrary, this factor favors all remaining petitioners. Respondents assert that Mr. Fernandes has misstated his language abilities in Hindi and English, as evidenced by his visa application. Dkt. 11 at 13–14. This claim is unfounded: as Mr. Fernandes explains in his supplemental declaration, he selected Hindi or English on this visa application only because (at least at that time), Konkani was not an option. Suppl. Fernandes Decl. ¶ 4. He thus chose the two languages of which he has a "limited understanding." *Id.* In any event, it defies logic to assert Petitioners would purposefully endure months of additional detention without any benefit to their immigration case by concealing their true language skills. Any alleged "delay" that Respondents claim Mr. Fernandes has caused serves no purpose other than to prolong his detention.

This factor therefore favors not only Mr. Fernandes, but also Mr. Belhaj and Mr. Khadaj, because none of them have sought to delay their proceedings. Respondents do not contest that due process and the Immigration and Nationality Act require that every noncitizen in removal proceedings be afforded a full and fair opportunity to present their case. *See, e.g.*, 8 U.S.C. § 1229a(b)(4); *Jacinto v. INS*, 208 F.3d 725, 727 (9th Cir. 2000) ("Due process requires that a[] [noncitizen] receive a full and fair hearing."); *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002) (noting that any denial of one of the procedural protections set forth in § 1229a(b)(4) violates the "constitutional guarantee of due process"). That right to a full and fair hearing includes the right to adequate interpretation. *See, e.g.*, *Perez-Lastor v. INS*, 208 F.3d 773, 777–78 (9th Cir. 2000). This well-established principle underscores that Petitioners do not engage in "delay" by waiting

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for Respondents to provide a hearing in the only language in which they can meaningfully participate in their proceedings. *See also Banda*, 385 F. Supp. 3d at 1119–20 (holding that petitioner did not engage in dilatory tactics, even where he spoke some English, as he waited for the government to provide hearings in his native language of Chichewa).

The same principles show that the government-caused delay factor also favors Petitioners. Respondents' evidence confirms they have repeatedly failed to provide adequate interpretation at Petitioners' hearings. *See* Dkt. 12 ¶¶ 4–7, 10–14, 23–30; *see also supra* pp. 1–2 (summarizing evidence). While Respondents claim to have "diligently" searched for interpreters, Dkt. 11 at 2, 15, they submit no evidence documenting such efforts other than to report what happened in immigration court. Respondents never met with Petitioners outside of court to determine what specific dialect they speak. Indeed, Respondents' evidence suggests that at most hearings (at least prior to filing this case), the immigration court called a language-line service and provided incorrect interpreters or simply hoped the desired language would be available. *See, e.g.*, Dkt. 12 ¶¶ 4–6, 10–14, 23–30. Critically, there are many instances of Respondents obtaining the wrong language or no interpreter even *after* Petitioners specified their language and dialect, underscoring that Respondents' efforts are haphazard and have needlessly delayed proceedings for months. *See id.* ¶¶ 12–14, 26–30. This delay is "attributable to the Government, not petitioner[s]." *Banda*, 385 F. Supp. 3d at 1120 (holding this factor favored the petitioner where the government failed to provide an appropriate interpreter for over a year).

D. The likelihood of removal factor favors Petitioners or is neutral.

Finally, the last factor is neutral or favors Petitioners. Each petitioner has filed or indicated an intention to file an application for relief from removal proceedings. *See, e.g.*, Dkt. 3 ¶ 7; Dkt. 4 ¶ 1; Dkt. 6 ¶ 3; Dkt. 12 ¶¶ 9, 16; Dkt. 16 ¶ 5. As courts have repeatedly recognized, a

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petitioner "is entitled to raise legitimate defenses to removal, . . . and such challenges to . . . removal cannot undermine [the] claim that detention has become unreasonable." *Liban M.J. v. Sec'y of DHS*, 367 F. Supp. 3d 959, 965 (D. Minn. 2019).

For all these reasons, the Due Process Clause requires affording Petitioners a bond hearing before a neutral decisionmaker to test the legality of their ongoing detention.

II. The Court should grant Petitioners' requested relief in full.

Respondents argue Petitioners "seek[] unwarranted relief even if [they] were to prevail." Dkt. 11 at 16. Yet Respondents offer no opposition to Petitioners' request that, should this Court order bond hearings for them, the government must bear the burden to demonstrate by clear and convincing evidence that Petitioners present a flight risk or danger. *See id*. Indeed, when granting requests for bond hearings, courts routinely assign the burden of proof to the government. *See* Dkt. 1 ¶ 116 (listing cases). Likewise, Respondents do not contest Petitioners' request that their ability to pay bond be considered as part of any bond hearing "to prevent against detention based on poverty." *Id.* ¶ 118. Accordingly, should the Court grant the petition, it should require the government to demonstrate by clear and convincing evidence that Petitioners are a flight risk or danger to the community, and direct the IJ to consider Petitioners' ability to pay when setting any bond amount.

Respondents assert that ordering consideration of alternatives to detention would be inappropriate for anyone "the IJ finds to be a danger to the community." Dkt. 11 at 16. To begin, Petitioners do not have a criminal record. *See* Dkt. 3 ¶ 14; Dkt. 14-3 at 2 (Fernandes I-213); Dkt. 4 ¶ 7; Dkt. 14-5 at 3 (Belhaj I-213); Dkt. 14-8 at 3 (Khadaj I-213). Additionally, *Martinez v. Clark* specifically dealt with noncitizens subject to detention under 8 U.S.C. § 1226(c). 124 F.4th 775, 786 (9th Cir. 2024). Petitioners, by contrast, are detained under § 1225(b). Dkt. 11 at 1. This distinction matters, for, "in adopting § 1226(c)," Congress was attempting to address, inter alia,

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reported "high rates of recidivism" by noncitizens with certain criminal records. *Demore*, 538 U.S. at 528, 518–19. No such concerns animate detention under § 1225(b). *See* H.R. Rep. No. 104-469, pt. 1, at 157–58 (1996) (explaining focus was on managing "thousands of [noncitizens] arriving in the U.S. . . . each year without valid documents [who] attempt to illegally enter the U.S.," with specific processes for those raising fear claims), 228–29 (explaining § 1225(b) is focused on processing noncitizens "arriving in the United States"); H.R. Rep. No. 104-828, at 209–10 (1996) (Conf. Rep.) (same).

Moreover, while *Martinez* held that "due process [does not] mandate[] that immigration courts consider release conditions or conditional parole before deciding that a[] [noncitizen] is a danger to the community," 124 F.4th at 786, Petitioners do not assert that release conditions should be considered to preclude a dangerousness finding; rather, they contend that IJs must be required to evaluate if tailored release conditions could address any specific dangerousness concerns, should any such finding be made. This is necessitated by Supreme Court precedent, which recognizes that "[d]ue process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed." *Foucha v. Louisiana*, 504 U.S. 71, 79 (1992). As a result, detention is not reasonably related to its purpose of mitigating flight risk or danger where there are alternative conditions of release that could mitigate those risks. *See Bell v. Wolfish*, 441 U.S. 520, 538–40 (1979).

In the immigration bond context, "[d]ue process thus mandates particularized findings . . . to sustain the prolonged detention of a noncitizen based on the government's general interest in detaining those [in removal proceedings]." *Cantor v. Freden*, 761 F. Supp. 3d 630, 637 (W.D.N.Y. 2025). "More specifically, the '[g]overnment [is] required, in a 'full-blown adversary hearing,' to convince a neutral decisionmaker by clear and convincing evidence that no

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conditions of release can reasonably assure the safety of the community or any person." *Id.* (alterations in original) (quoting *Foucha*, 504 U.S. at 81). As the *Cantor* court explained, "a noncitizen with a history of drunk driving might well pose a serious danger to the community. But that danger would be ameliorated if the noncitizen were released on the condition that he or she not drive a car, or that he or she wear a remote alcohol monitoring device." *Id.* at 637–38 (citation modified). This Court should thus order that if a danger finding is made, alternatives to detention be considered in determining whether prolonged incarceration is warranted.

Respondents oppose Petitioners' request that this Court order their release, arguing Petitioners have purportedly not "provided a legal basis" for such a request, as their detention has not become "indefinite." Dkt. 11 at 16. But Petitioners have demonstrated that their detention is unconstitutionally prolonged and therefore unreasonable, *see supra* Sec. I, and under traditional habeas principles, courts may issue conditional writs ordering release *or* a bond hearing. *See, e.g.*, *Diaz Reyes*, 2020 WL 6820822, at *5 (ordering release "on bond or reasonable conditions" unless a bond hearing was provided in 30 days); *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1026 (W.D. Wash. 2019) (ordering release unless a new bond hearing with the appropriate protections was held within 45 days); *Hylton v. Decker*, 502 F. Supp. 3d 848, 856 (S.D.N.Y. 2020) (ordering release unless a bond hearing was provided within 7 days); *Cabral v. Decker*, 331 F. Supp. 3d 255, 263 (S.D.N.Y. 2018) (same). That is all that Petitioners seek here. *See* Dkt. 1 at 24.

Courts, including this one, regularly employ such conditional writs ordering release unless the custodian provides a timely remedy to address the unlawful detention. Historically, "[g]iven th[e] function of the writ [of habeas corpus], courts . . . confined habeas relief to orders requiring the petitioner's unconditional release from custody." *Harvest v. Castro*, 531 F.3d 737,

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741 (9th Cir. 2008). But in "modern practice," including in many, if not most, immigration detention habeas cases, "courts employ a conditional order of release . . . , which orders the [detaining authority] to release the petitioner unless the [detaining authority] takes some remedial action." *Id.* Such writs merely "provide[] the [detaining authority] with a window of time within which it might cure the constitutional error." *Gibbs v. Frank*, 500 F.3d 202, 208 (3d Cir. 2007) (citation omitted). These writs are "essentially accommodations accorded to the [detaining authority]," allowing the custodian to quickly remedy the constitutional violation through a means other than immediate release of the individual. *Harvest*, 531 F.3d at 742 (quoting *Phifer v. Warden*, 53 F.3d 859, 864–65 (7th Cir. 1995)); *see also DHS v. Thuraissigiam*, 591 U.S. 103, 137 (2020) (explaining such orders are "often 'appropriate' to allow the executive to cure defects in a detention" (citation omitted)).[2] The Court can and should do the same here.

CONCLUSION

In light of the above, the Court should hold that the Due Process Clause requires a bond hearing before a neutral decisionmaker where ICE must justify any continued detention by clear and convincing evidence. Accordingly, the Court should order Petitioners' release unless Respondents provide that hearing within 14 days in their primary languages. *See* Dkt. 1 at 24.

[2] Finally, Respondents ask this Court to decline to hold the bond hearing itself because "courts in this Circuit have regularly found that the IJ is the proper authority to conduct bond hearings." Dkt. 11 at 16 (citation omitted). Petitioners have not requested otherwise: they only seek that this Court hold its own hearing as an "alternative[]" means to consider their release. Dkt. 1 at 24. If the Court elects this alternative, it plainly has the authority to hold a hearing and determine if release is appropriate pursuant to 28 U.S.C. § 2243.

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Dated this 18th day of July, 2025.

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WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7, I certify that the foregoing response has 5,253 words and complies with the word limit requirements of Local Civil Rule 7(e).

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