District Judge Lauren King
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Abderrahim BELQASIM, Petitioner, v. Cammilla WAMSLEY, et al., Respondents.	Case No. 2:25-cv-01282-LK-TLF **PETITIONER'S TRAVERSE AND RESPONSE TO RESPONDENTS' MOTION TO DISMISS** Noted on Motion Calendar: October 1, 2025 Oral Argument Requested

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INTRODUCTION

Petitioner Abderrahim Belqasim is an asylum seeker from Morocco who has been detained for over a year because Respondents failed to promptly secure adequate interpretation in his primary language. Respondents now claim to have worked diligently to find interpreters, yet they located the necessary interpreters nearly *nine* months after Mr. Belqasim was detained—and at least seven months after being aware of his primary language. The lengthy delays, Mr. Belqasim's protracted confinement, the additional detention he still faces, and the oppressive conditions at the Northwest Immigration and Customs Enforcement (ICE) Processing Center (NWIPC) demonstrate that any further detention is unlawful unless Mr. Belqasim is afforded a custody hearing before a neutral decisionmaker where ICE must justify any continuing detention. In fact, this Court has long recognized that similar claims involving prolonged detention and the government's failure to secure adequate interpretation strongly support providing a bond hearing where the government must bear the burden of proof to justify continued detention by clear and convincing evidence. *See, e.g.*, *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019); *Cardozo v. Bostock*, No. 2:25-CV-00871-TMC, 2025 WL 2592275 (W.D. Wash. Sept. 8, 2025). It should do the same here.

FACTUAL SUMMARY AND DEVELOPMENTS

Mr. Belqasim has now been detained 12 months. *See* Dkt. 3 ¶ 1; Dkt. 12-1 at 1. Over that time, he has received at least fifteen master calendar hearings (MCHs). Dkt. 10 ¶¶ 6–12. Only in June, after nine months and at least a dozen hearings, did Respondents provide an interpreter in Mr. Belqasim's native language and dialect, Tachelhit, whom he could understand. Dkt. 3 ¶¶ 5-6; Dkt. 11 ¶ 18. The case was then reset for another MCH in early July. Dkt. 3 ¶ 6; Dkt. 10 ¶ 9. An attorney from the Northwest Immigrant Rights Project (NWIRP) subsequently provided Mr. Belqasim assistance in completing a pro se asylum application, Form I-589, which was delivered

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to the immigration court on July 7. *See* Reist Decl., Ex. B. At his next MCH, on July 14, the IJ informed Mr. Belqasim that he needed to pay a $100 asylum application filing fee, and to ask NWIRP for help. *Id.*, Ex. C. His case was reset so he could pay the fee. *Id.* This $100 fee is the product the reconciliation bill that Congress passed earlier this year. *See* Dkt. 8 at 4. Despite the new filing fee, neither the Department of Homeland Security (DHS) nor the Executive Office for Immigration Review (EOIR) had created a system to pay the fees, leaving Mr. Belqasim in limbo. *See* Reist Decl. ¶¶ 6–10. As a result, at his next two hearings on August 8 and September 15, Mr. Belqasim's case was again reset. *See* Reist Decl. ¶¶ 8–9; *see also id.* Ex. E (notice of September 15 hearing issued by IJ advising Mr. Belqasim to "work with [NWIRP] to get the fee paid as soon as the USCIS website is updated" and noting the court "appreciate[s] [his] patience"). At the September 15 hearing, the court set Mr. Belqasim's next MCH to September 30 to give him further time to pay the fee (or rather, to give DHS and EOIR more time to establish a system to pay the fee). *Id.* ¶ 9. On September 23, EOIR updated its website to permit payment of the filing fee for asylum applications filed in removal proceedings, and Mr. Belqasim's filing fee was paid that same day. *Id.* ¶ 10.

ARGUMENT

The parties agree 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) 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." 385 F. Supp. 3d at 1106 (citation omitted). Here, each factor either favors Mr. Belqasim or is neutral. In addition, the Court should order

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that, in the unlikely event that the immigration court finds Mr. Belqasim a danger to the community, it must consider any alternatives to detention.

I. Due process requires Respondents to afford Mr. Belqasim a bond hearing.

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

Respondents recognize that Mr. Belqasim's detention has become prolonged and that this factor "likely favors" him. Dkt. 8 at 6. They also argue that any projected future detention is "speculative at best" and therefore should be considered "neutral." *Id.* But *both* the time he has spent in detention—12 months and counting—as well as the likely detention he can expect, weigh in favor of granting his request.

As an initial matter, as this Court recently recognized, "[d]etention 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." *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1098 (W.D. Wash. 2025) (citation modified)). 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 (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)

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(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). 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 (BIA), *id.* at 530. Thus, even *Demore* supports a finding that the time at issue in Mr. Belqasim's case has become prolonged.[1]

Furthermore, courts have found that detention that is similar in length or even shorter than that of Mr. Belqasim's requires a bond hearing where the government bears the burden of proof. *See, e.g.*, *Banda*, 385 F. Supp. 3d at 1118–19 (detention of 17 months favored granting a bond hearing, and citing cases granting bond hearings "after more than" nine and ten months of detention); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) ("Petitioner has been in immigration detention [for] . . . approximately one year. District courts have found shorter lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable."); *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 "unreasonably prolonged"); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *3 (N.D. Cal. Jan. 25, 2019) ("In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing." (citation modified));

[1] Mr. Belqasim does 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, he asks the Court to consider detention over six months, and prospective detention surpassing a year, as a strong factor in his favor in the Court's multi-factor analysis.

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Martinez v. Clark, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *1 (W.D. Wash. May 23, 2019), *R&R adopted*, No. 18-CV-01669-RAJ, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (detention of 13 months favored granting bond hearing); *Liban M.J. v. Sec'y of DHS,* 367 F. Supp. 3d 959, 963 (D. Minn. 2019) (same, for 12 months); *Vargas v. Beth*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019) (same, for about nine-and-a-half months). The "length of detention, which is the most important factor," thus strongly weighs in favor of Mr. Belqasim, as Respondents concede. *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." *Id.* at 1119 (citation omitted). Respondents argue that the length of future detention is "speculative at best because his proceedings are still in the early stages before an IJ." Dkt. 8 at 6. But this factor weighs in Mr. Belqasim's favor precisely because the case is still in the early stages. The delays in obtaining interpretation initially prevented him from submitting an asylum application. Now that he has submitted one, Respondent DHS's failure to establish a system for asylum seekers to pay the required asylum application filing fee has prevented the immigration court from accepting Mr. Belqasim's application and scheduling him for a merits hearing. *See* Reist Decl. ¶¶ 6–10; *see also* Dkt. 8 at 7–8. 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. 385 F. Supp. 3d at 1119. In this case, Mr. Belqasim is at an even earlier stage of the proceedings than the petitioner in *Banda*, meaning the likely duration of future detention is significant.

Because his case has not even been set for a merits hearing, he likely faces another two to three months of detention while the immigration court adjudicates his claim. Even assuming Mr.

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Belqasim does not prevail before the IJ, he may appeal his cases as of right to the BIA, 8 C.F.R. § 1003.3(a)(1), and later, the Ninth 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 Mr. Belqasim finishes the administrative appeals process, he 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 September 21, 2025). ICE may attempt to remove him during this period, but he is 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 [Mr. Belqasim] will face many more months and potentially years in detention," this factor weighs in his 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 "[g]iven 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 v. Mayorkas*, 2:20-cv-1784-RAJ-TLF, 2021 WL

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8016749, at *4 (W.D. Wash., June 8, 2021) (finding factor favored petitioner where he faced "an additional 15 to 38 months" in detention because he was at the "earliest stages" of pursuing a petition for review before the court of appeals).

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

B. The conditions of detention also favor Mr. Belqasim.

The conditions of detention also strongly favor Mr. Belqasim. Respondents claim this factor should favor them, but their arguments are insufficient to overcome the fact that, as this Court has recognized before, 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*, 583 U.S. at 329 (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).

Respondents try to overcome Mr. Belqasim's evidence by arguing that his declaration is not "specific enough" with respect to the bullying and harassment he has faced while in detention and that he has received better medical care than he asserts. Dkt. 8 at 6. But they do not dispute Mr. Belqasim's assertion that he has only been allowed to go outside for a handful of times since being moved to the NWIPC more than five months ago. *Compare* Dkt. 3 ¶ 11, *with* Dkt. 8 at 6. And while the parties dispute whether his interactions with NWIPC medical staff have been "successful[]," Dkt. 8 at 6, it is undisputed that Mr. Belqasim has not been provided medical assistance in Tachelhit, the only language in which he is fluent, *compare* Dkt. 3 ¶¶ 7–8, *with* Dkt. 9 ¶¶ 6–10 (discussing interactions in English and with Arabic interpretation). Mr.

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Belqasim's declaration, moreover, specifies the individuals who have bullied and harassed him, as well as the likely reason for it. *See* Dkt. 3 ¶ 10. The lack of additional detail is not enough to overcome the strong evidence Mr. Belqasim presented—both personally, Dkt. 3, and in the form of caselaw and independent analysis, Dkt. 1 ¶ 49 (quoting *Diaz Reyes* and a report from the University of Washington Center for Human Rights). Indeed, reports by independent outside entities have 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 Sept. 21, 2025), https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/. Notably, this reporting and Mr. Belqasim's testimony is supported by the many other habeas petitioners who have brought similar claims before this Court in recent months and testified about NWIPC's conditions. *See, e.g.*, *Cardozo*, No. 2:25-cv-00871-TMC-BAT (W.D. Wash. filed May 8, 2025), Dkts. 2–6 (declarations of similarly situated individuals facing lengthy detention at NWIPC due to language access issues who also attested to limited outdoor time, overcrowding, and poor food quality).

This evidence establishes that detention in NWIPC is akin to, if not worse than, incarceration in a jail or prison. *See Jamal A.*, 358 F. Supp. 3d at 860 ("The more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing." (citation omitted)).

C. The delay factors favor Mr. Belqasim.

Next, Respondents assert that the petitioner-caused delay factor should be considered neutral and the government-caused delay factor should favor them. Dkt. 8 at 7. To the contrary, both factors favor Mr. Belqasim.

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Respondents are flat wrong to claim that "the continuances since June should be attributable to him—not the Government." Dkt. 8 at 7. Despite having submitted a completed asylum application more than two months ago, Mr. Belqasim has had his case reset without a merits hearing scheduled due to Respondents' own failure to create a system through which he can submit the $100 asylum fee. *See* Reist Decl., Ex. E (hearing notice acknowledging that the USCIS website must be "updated" in order for Mr. Belqasim to pay the fee and stating that the court "appreciate[s] [his] patience"); *id.* ¶ 8–10. Blaming Mr. Belqasim for such delays is confounding and exactly backwards of what the record in his removal proceedings reflects, and it would be perverse to penalize Mr. Belqasim for delay that has been wholly within *Respondents'* control.

Moreover, the continuances that Mr. Belqasim requested since June should not be counted against him: it was only in June that, for the first time, Respondents *finally* provided him with an interpreter in a language he understood, through whom the IJ was finally able to communicate what was happening with his case. Following those hearings, Mr. Belqasim quickly sought assistance and was able to submit his asylum application by his July 14 hearing, showing that he has acted diligently in this matter. Accordingly, the petitioner-caused factor favors Mr. Belqasim.

The government-caused delay factor also strongly favors Mr. Belqasim. Respondents' evidence confirms they have repeatedly failed to provide adequate interpretation at his hearings. *See* Dkt. 11 ¶¶ 4–18. And while Respondents aver that the delay in obtaining interpretation for Mr. Belqasim is due to their efforts to "protect [his] due process rights to meaningfully participate in his proceedings" and *not* to "the inactivity of the government," for "it was difficult for the immigration court to pinpoint [his] best language and dialect," Dkt. 8 at 7, the very

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evidence they submitted demonstrates that the delay was due, at minimum, to serious government miscommunication and lack of coordination.

As early as November 4, 2024, when issuing his Notice to Appear (NTA), the government was aware that Mr. Belqasim's best language was Tachelhit. Dkt. 12-3 at 2 (Mr. Belqasim's NTA).[2] Despite this, at his first MCH, he was not provided an interpreter in that language, Dkt. 11 ¶ 4; at his second MCH, the IJ unsuccessfully attempted to obtain a Moroccan *Arabic* interpreter, and, when he was unable to communicate with Mr. Belqasim using a *Hassaniya* interpreter, noted that DHS "would investigate further whether a language could be identified," *id.* ¶ 5, even though that information was on the NTA DHS had issued and that was on file with the court, *see* Dkt. 12-3. It was not until the third MCH that the IJ identified Tachelhit as the relevant language (though they had not secured an interpreter in that language for that hearing), Dkt. 11 ¶ 6, yet somehow it was a *Tamasheq* language interpreter that the court attempted to obtain (unsuccessfully) at the next two MCHs, *id.* ¶¶ 8–9.[3]

At the sixth MCH, Mr. Belqasim was again able to put the court on notice that his best language was Tachelhit, and the hearing was reset for the court to find a Tachelhit interpreter. *Id.* ¶ 10. By this point nearly three full months had passed since the government issued Mr. Belqasim's NTA. *Compare* Dkt. 12-3 (NTA issued on November 4, 2024), *with* Dkt. 11 ¶ 10 (sixth MCH was held on January 27, 2025). At the seventh hearing, the immigration court did attempt to obtain a Tachelhit interpreter by calling three different interpreter services, but none

[2] Indeed, Mr. Belqasim states that he informed the government that he speaks Tachelhit since he was first called for his credible fear interview on October 31, 2024. Dkt. 3 ¶ 3.

[3] In fact, at this fifth MCH, the IJ again attempted to speak to Mr. Belqasim through Moroccan Arabic and Hassaniya interpreters, Dkt. 11 ¶ 9, even though it was already clear from Mr. Belqasim's second MCH that he was not fluent in either language, *id.* ¶ 5.

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was available, Dkt. 11 ¶ 11, suggesting that the court had not attempted to coordinate for a Tachelhit interpreter ahead of time despite being aware that was Mr. Belqasim's language. No phone interpreter was available at Mr. Belqasim's eighth MCH either. *Id.* ¶ 14. By this point Mr. Belqasim had been detained for five months. *Compare* Dkt. 12-1 (noting apprehension date of Sept. 15, 2024), *with* Dkt. 11 ¶ 14 (eighth MCH was on March 20, 2025).

At the ninth MCH, on April 4, 2025, nearly six months since Mr. Belqasim's initial detention, the immigration court finally secured a Tachelhit interpreter, but in the wrong dialect. Dkt. 11 ¶ 15. Yet incredibly, at his tenth MCH almost a month later, instead of having Tachelhit interpreter in the correct dialect, the court had once again obtained a Tamasheq interpreter. *Id.* ¶ 16. Through that interpreter the court learned, yet *again*, "that Mr. Belqasim spoke the Tachelhit language with a dialect from the Atlas/Toubkal mountains"—the very information the court had "learned" during the previous hearing. *Compare id.* ¶ 15, *with id.* ¶ 16. Unbelievably, at the eleventh hearing, the court only had a Moroccan Arabic interpreter—through whom, yet again, the court "determined" that Mr. Belqasim spoke Tachelhit. *Id.* ¶ 17. It was not Mr. Belqasim's next hearing—nearly ninth months into his detention—that the court provided him with an interpreter in the correct language and dialect. *Id.* ¶ 18.

This evidence demonstrates, at minimum, gross incompetence on the part of the government in providing Mr. Belqasim with adequate interpretation for his removal proceedings. The government had to "learn," not once, not twice, but *four* times, the language in which Mr. Belqasim is fluent before providing him with adequate interpretation. Far from demonstrating a strong commitment to protecting Mr. Belqasim's due process rights and "significant actions to move [his] proceedings forward," Dkt. 8 at 7, the evidence paints a picture of a disregard for the immense strain that such lengthy detention imposes on a person like Mr. Belqasim. Indeed,

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Respondents' evidence suggests that at most hearings, the immigration court called a language-line service and provided incorrect interpreters or simply hoped the desired language would be available, but did not even check any notes from earlier hearings to attempt to ascertain what language was the correct one. The many instances of Respondents obtaining the wrong language or no interpreter even *after* Mr. Belqasim specified his language and/or dialect underscores that Respondents' efforts were haphazard and needlessly delayed proceedings for months. What is more, Mr. Belqasim's proceedings have now been delayed yet again due to the government's failure to provide a way for him to pay his asylum application filing fee.

The delay here is thus overwhelmingly "attributable to the Government, not petitioner." *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); *see also Cardozo*, 2025 WL 2592275, at *1 (ordering bond hearing for similarly situated petitioner). The government-delay factor thus strongly favors Mr. Belqasim.

D. The likelihood of removal factor favors Mr. Belqasim or is neutral.

Finally, the last factor is neutral or favors Mr. Belqasim, who has filed an application for asylum.[4] As courts have repeatedly recognized, a 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.*, 367 F. Supp. 3d at 965.

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[4] Respondents assert Mr. Belqasim has not yet applied for relief from removal "or paid the required fee." Dkt. 8 at 7–8. Mr. Belqasim has submitted a completed asylum application, *see* Reist Decl., Ex. B (FedEx delivery confirmation); *id.* ¶ 3, but the immigration court appears not to have processed it as filed because, until yesterday, Respondents had no system for accepting the filing fee, *see id.* ¶ 10.

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

II. The Court should grant Mr. Belqasim's requested relief in full.

Respondents argue Mr. Belqasim "seeks unwarranted relief even if [he] was to prevail." Dkt. 8 at 8. As an initial matter, Respondents do not oppose his request that, should this Court order a bond hearing, the government bear the burden to demonstrate by clear and convincing evidence that he presents a flight risk or danger. *See id*. at 8–9. Indeed, when granting requests for bond hearings, courts routinely assign the burden of proof to the government. *See* Dkt. 1 ¶ 67 (listing cases). Likewise, Respondents do not contest Mr. Belqasim's request that his ability to pay bond be considered as part of any bond hearing "to prevent against detention based on poverty." *Id.* ¶ 69. Accordingly, should the Court grant the petition, it should require the government to demonstrate by clear and convincing evidence that Mr. Belqasim is a flight risk or danger to the community, and direct the IJ to consider his ability to pay when setting any bond amount.

Respondents do assert that ordering consideration of alternatives to detention would be inappropriate "if the IJ finds [Mr.] Belqasim to be a danger to the community." Dkt. 8 at 8. To begin, Mr. Belqasim does not have a criminal record. Dkt. 12-1 at 3 (I-213); *see* Dkt. 3 ¶ 7. 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). Mr. Belqasim, by contrast, is detained under § 1225(b). Dkt. 8 at 2. This distinction matters, for, "in adopting § 1226(c)," Congress was attempting to address, inter alia, 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 that § 1225(b) is focused on managing the "thousands of [noncitizens] arriving in the U.S. . . . each year without

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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, Mr. Belqasim does not assert that release conditions should be considered to preclude a dangerousness finding. Rather, he contends that IJs must be required to evaluate if tailored release conditions could address any specific dangerousness concerns, should any such finding be made. Supreme Court precedent necessitates this inquiry, as it 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 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

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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 also oppose Mr. Belqasim's request that this Court order his release, arguing he has purportedly not "provided a legal basis" for such a request, as his detention has not become "indefinite." Dkt. 8 at 8. But Mr. Belqasim has demonstrated that his 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); *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 Mr. Belqasim seeks here. *See* Dkt. 1 at 17 ¶ b.

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, 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

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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)).[5] 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 Mr. Belqasim's release unless Respondents provide that hearing within 14 days in his primary language. *See* Dkt. 1 at 17.

Dated this 24th of September, 2025.

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[5] 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. 8 at 8–9 (citation omitted). Mr. Belqasim has not requested otherwise: he only seeks that this Court hold its own hearing as an "[a]lternative[]" means to consider his release. Dkt. 1 at 17 ¶ c. 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.

WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7, I certify that the foregoing response has 5,277 words and complies with the word limit requirements of Local Civil Rule 7(e).

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