UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Abderrahim BELQASIM,

Petitioner,

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-1282

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Abderrahim Belqasim is a noncitizen in the custody of Immigration and Customs Enforcement (ICE) at the Northwest ICE Processing Center (NWIPC). He has been detained for nearly ten months pending removal proceedings.

2. Petitioner has languished in detention simply because the Executive Office for Immigration Review (EOIR) has failed to secure interpretation services for his removal proceedings. After over fifteen court hearings, EOIR only recently provided Mr. Belqasim with an interpreter that speaks his language at his most recent court hearing.

3. The Due Process Clause of the Fifth Amendment forbids such arbitrary and prolonged detention. Respondents have never justified Petitioner's continued detention at a hearing before a neutral decisionmaker with any evidence of danger or flight risk.

4. Accordingly, Petitioner asks this Court for a writ of habeas corpus to vindicate his right to due process and to seek relief from his continued arbitrary detention. He requests that the Court declare his continued detention unconstitutional as applied to him, and to order his release or alternatively, a bond hearing where the government must prove that any continued detention is justified by clear and convincing evidence.

JURISDICTION

5. Petitioner is in the physical custody of Respondents and ICE, an agency within the Department of Homeland Security (DHS). He is detained at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington, which is under the direct control of Respondents and their agents.

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

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7. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651.

9. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), 1252(f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Western District of Washington, the judicial district in which Petitioner is currently in custody.

11. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

REQUIREMENTS OF 28 U.S.C. § 2243

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

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

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confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (Habeas corpus is "a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.").

PARTIES

14. Petitioner Abderrahim Belqasim is a citizen of Morroco who entered the United States in September 2024. He is currently detained at NWIPC.

15. Respondent Drew Bostock is the Director of the Seattle Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Bostock is Petitioner's immediate custodian and is responsible for his detention. He is named in his official capacity.

16. Respondent Kristi Noem is the Secretary of the DHS. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

17. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

18. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

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19. Respondent Bruce Scott is employed by the private corporation GEO Group, Inc., as Warden of the NWIPC, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

FACTUAL ALLEGATIONS

20. Abderrahim Belqasim is a noncitizen from Morocco who entered the United States in September 2024. Belqasim Decl. ¶ 1. Mr. Belqasim fled Morroco based on his fear of persecution there. *Id*.

21. He was apprehended shortly after entering the United States without inspection. *Id.* ¶ 3. Upon information and belief, DHS issued Mr. Belqasim an expedited removal order under 8 U.S.C. § 1225(b)(1).

22. After his apprehension, Mr. Belqasim was initially detained in Mississippi, and then later in Nevada. *Id.* ¶ 3. He was transferred to NWIPC in February 2025. *Id.*

23. In total, he has already been detained over nine months. *Id.* ¶¶ 1, 3.

24. While detained in Nevada, Mr. Belqasim was called in for a credible fear interview (CFI) under § 1225(b)(1). *Id.* ¶ 3. The CFI did not take place because there was no interpreter. *Id.*

25. Under § 1225(b)(1), DHS is authorized to order the expedited removal of noncitizens unless they demonstrate a credible fear of return to their country of origin in a CFI. Generally, if the individual passes the CFI, the person is placed into full proceedings before an immigration judge, where the person may apply for asylum and related protections.

26. Due to the lack of an interpreter, DHS was unable to proceed with the CFI. As a result, the agency vacated Mr. Belqasim's expedited removal order and placed him directly into full removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 4.

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27. Since being placed in removal proceedings, Mr. Belqasim estimates that he has attended over fifteen master calendar hearings (MCH). *Id.* ¶¶ 4, 6. Generally, during MCHs, IJs take pleadings, inform noncitizens of their rights, accept filing of applications, and manage case scheduling.

28. For nine months, Respondents detained Mr. Belqasim without ever providing him a hearing before an immigration judge (IJ) with an interpreter who could translate into his native language and dialect. *Id.* ¶¶ 5–6. The immigration court failed to provide an interpreter even though Mr. Belqasim repeatedly provided the court with information about the language he speaks. *Id.* ¶ 4. Only at Mr. Belqasim most recent hearing did EOIR finally provide him with an interpreter that speaks his language. *Id.* ¶ 6.

29. Mr. Belqasim speaks a dialect of Tashelhit, a language spoken in Morrocco with several dialects that are not mutually intelligible. *Id.* ¶¶ 2, 5.

30. Mr. Belqasim faces months of continued detention just to present his asylum application due to EOIR's failure to provide him with interpretation at his hearings. Should he be required to appeal, he will likely be detained another year or more.

31. The Tacoma Immigration Court considers Mr. Belqasim to be subject to mandatory detention under 8 U.S.C. § 1225(b). Accordingly, he has never received a hearing before a neutral decisionmaker where ICE was required to justify his continued detention by clear and convincing evidence.

LEGAL FRAMEWORK

32. The Due Process Clause of the Fifth Amendment provides Petitioner with important protection against arbitrary detention without procedures to determine if he is a flight risk or danger. As the Supreme Court has explained, "[f]reedom from imprisonment—from

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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).

33. The INA authorizes three basic forms of detention for noncitizens in removal proceedings. The first is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c). Second, the INA also provides for mandatory detention for noncitizens in expedited removal proceedings and others arriving in the United States. *Id.* § 1225(b). Last, the statute provides for detention for noncitizens who are subject to a final removal order. *Id.* § 1231(a)(6). *See also Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111–13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

34. The Supreme Court has addressed the constitutionality of mandatory detention on one occasion. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court denied a facial challenge to mandatory detention under § 1226(c), which asserted that the statute was unconstitutional because it imposed mandatory detention without a custody hearing. However, the Supreme Court emphasized that such detention was typically "brief" in length and lasted "roughly a month and a half in the vast majority of cases . . . and about five months in the minority of cases in which the [non-citizen] chooses to appeal." 538 U.S. at 513, 530. The Court also upheld the statute in part because it was based on a voluminous congressional record that supported the need for detention as to individuals convicted of certain crimes. *See id.* at 518–20.

35. Notably, Justice Kennedy—who provided the fifth vote for the majority on the constitutional issue—penned a concurrence that reasoned detention may eventually become

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sufficiently lengthy that a hearing to justify continued detention is constitutionally required. 538 U.S. at 532–33 (Kennedy, J., concurring).

36. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court again addressed the mandatory detention provision of § 1226(c), as well as the one at § 1225(b). There, the Court held that, as a matter of statutory interpretation, those sections did not require the government to provide a detainee subject to prolonged detention with a bond hearing. Significantly, the Court did not reach the constitutional question of whether the Due Process Clause requires an opportunity to test the government's justification for detention once detention becomes prolonged.

37. Since the Supreme Court's *Rodriguez* decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

38. To guard against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

39. In the immigration context, the Supreme Court has recognized two primary purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *see also Demore*, 538 U.S. at 522, 528. The government may not detain a noncitizen based on other justifications.

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40. As a result, where the government detains a noncitizen for a prolonged period while the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

41. Detention without a bond hearing is unconstitutional when it becomes prolonged. *See, e.g.*, *Rodriguez*, 909 F.3d at 256; *see also Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months.").

42. The recognition that six months constitutes a substantial period of confinement that qualifies as prolonged detention is deeply rooted in our legal tradition. With only a few exceptions, "in 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." *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). 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. *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

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civil detention. *See McNeil*, 407 U.S. at 249, 250–52 (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment).

43. In addition, both the Supreme Court and Ninth Circuit have long made clear that a significant time in civil detention warrants an opportunity to test the legality of that detention. As the Ninth Circuit has explained in the pretrial detention context, "[i]t is undisputed that at some point, [civil] detention can 'become excessively prolonged, and therefore punitive,' resulting in a due process violation." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987)). That is especially true where the initial detention decision lacks significant (or any) safeguards, as is the case here. *See O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975) ("Nor is it enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if in fact it was, because even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed."); *McNeil*, 407 U.S. at 249–50 (explaining that as the length of civil detention increases, more substantial safeguards are required).

44. These principles have "[o]verwhelmingly[] [led the] district courts that have considered the constitutionality of prolonged mandatory detention—including . . . other judges in this District[ ] [to] agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Diaz Reyes v. Wolf,* No. C20-0377-JLR-MAT, 2020 WL 6820903, at *3 (W.D. Wash. Aug. 7, 2020) (internal quotation marks omitted), *R&R adopted as modified*, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020); *see also Parada Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 1047578, at *4 (W.D. Wash. Jan. 17, 2025) (similar), *R&R adopted in part, rejected in part*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718 (W.D. Wash. Mar. 21, 2025).

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Indeed, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017)

45. Courts assessing whether a detained noncitizen is entitled to a hearing as a matter of due process typically employ one of two tests: a multi-factor test or the test found in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Courts in this district generally employ a multi-factor test. *See Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 929 (W.D. Wash. 2020); *Banda*, 385 F. Supp. 3d at 1106. Petitioner merits a bond hearing under either test.

46. Under the multi-factor test, courts look to "(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 cause[d] 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). The length of detention is the "most important factor." *Id.* at 1118.

47. The application of this test demonstrates Petitioner is entitled to a bond hearing. He has been detained well over six months and yet has not even received an *initial* MCH in his removal proceedings. Once that initial MCH happens, removal proceedings are likely to take six months to a year or more just to receive a decision on his asylum application. And if Petitioner is ordered removed, any BIA appeal that would follow will take many additional months to complete. If the BIA the appeal is denied, Petitioner is entitled to file a petition for review with the Ninth Circuit Court of Appeals, which is likely to last another year. Thus, Petitioner is likely to face at least another year of detention, if not much longer.

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48. Courts regularly afford noncitizens a bond hearing after facing similar periods of detention. *See, e.g.*, *Banda*, 385 F. Supp. 3d at 1118 (noting that 17 months of detention was a "very long time" that "strongly favor[ed] granting a bond hearing); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) ("Petitioner has been in immigration detention since September 10, 2021—approximately one year. District courts have found shorter lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable."); *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019) (detention of just over a year that would last several more months favored granting bond hearing); *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); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (same, for 7 months); *Liban M.J. v. Sec'y of DHS,* 367 F. Supp. 3d 959, 963 (D. Minn. 2019) (same, for 12 months).

49. The punitive and restrictive conditions at NWIPC also support affording Petitioner a hearing. Those conditions "are similar . . . to those in many prisons and jails," despite Petitioner's ostensible status as a "civil" detainee. *Diaz Reyes*, 2020 WL 6820903, at *7 (alteration in original); *see also Parada Calderon*, 2025 WL 879718, at *4 (concluding this factor favored petitioner). Indeed, for all intents and purposes, NWIPC is a prison. Petitioner is confined inside in a restrictive setting, where he has faced bullying and harassment, as well as inadequate medical care. Belqasim Decl. ¶¶ 7–8, 10. In addition, during the many months he has been detained in Tacoma, he has only been permitted to go outside on a few occasions. *Id.* ¶ 11. Reports by independent outside entities have similarly documented problems with food, medical neglect, cleanliness, and other issues at NWIPC. *See* Univ. of Wash. Ctr. for Hum. Rts.,

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Conditions at the Northwest Detention Center (last accessed May 6, 2025), https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/.

50. The delay factor also favors Petitioner. Petitioner has not caused any delay in his case, while EOIR has repeatedly failed to provide the basic due process protection of an interpreter at his many continued MCHs.

51. Due process and the INA demand 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); *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").

52. 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). By failing to provide that interpretation while subjecting Petitioner to ongoing, prolonged detention, Respondents effectively deny that right altogether, because it will eventually force Petitioner to give up his case when his removal proceedings never progress.

53. Finally, Petitioner intends to make a good faith defense to removal based on the harm he is likely to face in Morrocco. However, until now, he has been precluded from even hearing about his rights to apply for asylum and protection in immigration court, because EOIR has not provided an interpreter in his native language.

54. As a result, due process demands that Petitioner receives a bond hearing.

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55. Notably, this Court has previously issued habeas relief in nearly identical circumstances. In *Banda*, the noncitizen's case was repeatedly continued because an adequate interpreter was not present at the petitioner's hearings in removal proceedings. *See* 385 F. Supp. 3d at 1109–10. The Court there concluded that the noncitizen was entitled to a bond hearing after months of delays in the case due to the lack of an interpreter. *Id.* at 1107, 1120.

56. A similar result occurs under application of the test in *Mathews*. That test looks to (1) the petitioner's interest, (2) the value of additional procedural protections, and (3) any burden on the government in providing additional protections. 424 U.S. at 335.

57. Here, Petitioner's interest is at its zenith: he has a powerful interest in his physical liberty, as the Supreme Court, the Ninth Circuit, and this Court have repeatedly made clear. *See supra* ¶¶ XX.

58. Second, additional protections are warranted here. The statute affords Petitioner no protection whatsoever and requires his detention. *See* 8 U.S.C. § 1225(b)(2).

59. Finally, any burden on the government is minimal. Bond proceedings are short, informal hearings where an IJ typically receives records and testimonial evidence at a hearing and issues an oral ruling. Such hearings do not entail any significant expenditure of government resources. *See* Imm. Ct. Practice Manual ch. 9.3(e).

60. Accordingly, application of the *Mathews* test also requires a bond hearing to justify further detention.

61. Due process also requires certain minimal procedures at Petitioner's bond hearing. First, the government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to

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detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen's ability to pay a bond when determining the appropriate conditions of release.

62. To justify prolonged immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof by at least clear and convincing evidence. *See Salerno*, 481 U.S. at 750, 752 (upholding pre-trial detention where the detainee was afforded a "full-blown adversary hearing," requiring "clear and convincing evidence" before a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee); *see also Banda*, 385 F. Supp. 3d 1120–21 (requiring application of clear and convincing evidence standard).

63. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews*.

64. First, prolonged incarceration deprives noncitizens of a profound liberty interest—one that always requires some form of procedural protections. *See Foucha*, 504 U.S. at 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

65. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English

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proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762–63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding," including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

66. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

67. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted). Courts in this district regularly impose this requirement. *See Banda*, 385 F. Supp. 3d 1120–21 (requiring clear and convincing evidence); *Djelassi*, 434 F. Supp. 3d at 929 (same); *Diaz Reyes*, 2020 WL 6820903, at *9 (same).

68. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved compliance rates close to 100 percent. *See*

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Hernandez, 872 F.3d at 991 (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

69. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires "consideration of financial circumstances and alternative conditions of release" to prevent against detention based on poverty. *Id*.

CLAIM FOR RELIEF
28 U.S.C. § 2241
Violation of Fifth Amendment Right to Due Process

70. Petitioner alleges and incorporates by reference the paragraphs above.

71. 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.

72. Petitioner's detention—which has lasted over nine months without a hearing in his own language—constitutes prolonged detention and is not reasonably related to a legitimate government purpose.

73. To justify Petitioner's ongoing prolonged detention, due process requires an individualized hearing before a neutral decisionmaker where the government must establish that continued detention is justified by clear and convincing evidence of flight risk or danger and that no alternatives to detention could sufficiently mitigate any risk that does exist.

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a Writ of Habeas Corpus and order Petitioner's release unless Respondents hold a custody hearing for Petitioner before an immigration judge in his native language and dialect within 14 days. At that hearing, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger and that no alternative to detention can mitigate any risk that his release would present. The Court should further order that if the government cannot meet its burden, the immigration judge must order Petitioner's release on appropriate conditions of supervision, taking into account his ability to pay a bond;

c. Alternatively, issue a Writ of Habeas Corpus and hold a hearing before this Court if warranted; determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available alternatives to detention; and order Petitioner's release, with appropriate conditions of supervision if necessary, taking into account his ability to pay a bond;

d. Issue a declaration that, as applied in this case, 8 U.S.C. § 1225(b) and Petitioner's prolonged detention under that statute violate the Due Process Clause of the Fifth Amendment;

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e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

Respectfully submitted this 8th of July, 2025.

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