

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No: 1:25-cv-2712

JOHN DOE,

Petitioner-Plaintiff,

v.

PAM BONDI, U.S. Attorney General; SIRCE E. OWEN, Director, Executive Office for Immigration Review; KRISTI NOEM, Secretary, United States Department of Homeland Security; TODD M. LYONS, Director, U.S. Immigration and Customs Enforcement; ROBERT GUADIAN, Denver Field Office Director, U.S. Immigration and Customs Enforcement; DAWN CEJA, Warden of Denver Contract Detention Facility,

Respondents-Defendants.

**PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioner, John Doe,¹ brings this case to challenge his unlawful and prolonged seven-month incarceration by the U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), in an immigration jail without the possibility for even a bond hearing. He seeks an order from this Court directing his outright release from custody because he is neither a danger nor a flight risk and therefore does not satisfy either of the criteria for being held in further civil custody. Alternatively, should the Court find that outright release is not appropriate, the Court should conduct a bond hearing or, in the alternative, direct the U.S. Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), to provide Petitioner with a bond hearing before a neutral adjudicator that comports with due process, where (1) DHS must carry the burden to establish, by clear and convincing evidence, that his continued prolonged incarceration is necessary and (2) the neutral adjudicator, in rendering a decision, is required to consider alternatives to detention, Petitioner's ability to pay a bond, and the amount of time that he has already been physically confined at an immigration jail.

2. Petitioner is a twenty-five-year-old citizen and native of Nicaragua who fled to the United States to seek asylum after his parent, a former high-ranking official in the Nicaraguan government, who reported to co-president Rosario Murillo, was kidnapped, disappeared, and tortured. Prior to his parent's kidnapping and disappearance, he and his family had been placed under house arrest and were subjected to constant surveillance. After presenting himself at the San Ysidro port of entry on January 7, 2025, Petitioner was permitted to enter the United States for the purpose of

¹ Concurrent with the filing of this Complaint, Petitioner has moved pursuant to Colo. R. Civ. P. 10(a) to file this matter pseudonymously.

seeking asylum. Petitioner received a positive “credible fear” determination and was placed into full removal proceedings before the Immigration Court, pursuant to 8 U.S.C. § 1229a. Since his arrival, Petitioner has been detained in ICE immigration jails, first at the Otay Mesa Detention Center in California and, since February 23, 2025, in the Denver Contract Detention Facility in Aurora, Colorado as he pursues his meritorious asylum claim. Petitioner has never sought a continuance in his immigration proceedings, and in fact filed a motion to advance his hearing to pursue his claim for relief as expeditiously as possible. Nevertheless, the Aurora Immigration Court’s scheduling constraints have led to his hearing being repeatedly rescheduled as proceedings drag onward.

3. ICE claims the authority to indefinitely detain Petitioner without a bond hearing under 8 U.S.C. § 1225(b) [Immigration and Nationality Act (“INA”) § 235(b)]. In separate subsections, that statute provides for the incarceration of asylum seekers who pass a credible fear interview “for further consideration of the application for asylum,” *id.* § 1225(b)(1)(B)(ii), as well as incarceration of all other noncitizens whom an immigration official believes are not “clearly and beyond a doubt entitled to admission for a proceeding under 1229a of this title [removal proceedings before an immigration judge].” *id.* § 1225(b)(2)(A). Collectively, DHS refers to these noncitizens as “arriving aliens.” 8 C.F.R. § 1.2.

4. This petition and complaint bring an as-applied challenge to the application of 8 U.S.C. § 1225(b)(1) to Petitioner based on the particular facts and circumstances of his case.

5. Respondents-Defendants interpret U.S.C. § 1225(b) to require mandatory detention without a bond hearing of all arriving aliens, for the indefinite length of time necessary to complete removal proceedings, even if that time becomes unreasonably prolonged. In *Matter of M-S-*, the

Attorney General interpreted 8 U.S.C. § 1225(b)(1)(B)(ii) to require mandatory detention without bond hearings for asylum seekers who were initially subject to expedited removal but later transferred to full removal proceedings after establishing a credible fear. 27 I. & N. Dec. 509, 515-17 (2019). Under *Matter of M-S-*, the only possibility for release available to noncitizens in this category is a discretionary grant of parole by DHS for “urgent humanitarian reasons or significant public benefit” pursuant to 8 U.S.C. § 1182(d)(5). On information and belief, DHS has effectively ceased granting parole to arriving aliens as a result of a directive issued in February 2025 that the Director of ICE must personally sign off on any release of a detainee from ICE custody,² which serves to implement the Trump administration’s executive orders entitled “Securing Our Borders,” which directs ICE to detain noncitizens “to the maximum extent authorized by law,” and “Protecting the American People Against Invasion.” Exec. Order No. 14165, 90 C.F.R. 8467 (2025); Exec. Order No. 14159, 90 C.F.R. 8443 (2025). Furthermore, as discussed in more detail below, even if this parole process were an option, it would do nothing to ensure that Petitioner’s constitutional rights are fulfilled.

6. Accordingly, at no point during the seven months that Petitioner has been incarcerated by ICE has the government provided him with a single hearing to determine whether he poses such a danger or flight risk to warrant prolonged detention by ICE. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1185 (D. Colo. 2024) (“It would stand to reason if a noncitizen was neither a flight risk nor dangerous, there would be no government or public

² See “Reported: ICE Limits Release of Immigrant Detainees, Requiring Sign-off by ICE Director,” *Guttentag, Immigration Policy Tracking Project*, <https://immpolicytracking.org/policies/reported-ice-tightens-and-limits-immigrant-release-rules/>.

interest in detention.”). This is even though Petitioner is litigating his meritorious claim for asylum before the immigration court, and his removal from the United States is not reasonably foreseeable.

7. Were Petitioner to be provided with a bond hearing before a neutral decisionmaker, he would be released from custody—either on a bond or pursuant to alternatives to detention—because he is neither a flight risk nor a danger to the community. He is a highly educated individual with no criminal history, deep ties to the United States, and a strong application for relief in the form of asylum, withholding of removal, and protection under the Convention Against Torture. Upon release, he intends to reside with his U.S. citizen aunt in California, near his numerous U.S. citizen and Lawful Permanent Resident (LPR) family members.

8. Each day that Petitioner is detained, both he and his family suffer irreparable harm, including the deprivation of his constitutional rights, emotional distress, and economic hardship, as his family members must incur significant expense to visit him in Colorado and attend his immigration court hearings. He himself will suffer even more devastating harms if he remains in custody, as he suffers from ongoing psychological issues, including anxiety and depression, that are worsening the longer he remains in custody. These diagnosed psychological conditions, for which he takes prescribed medication, stem from sexual abuse he suffered as a child that were exacerbated in 2024 when the Nicaraguan government persecuted and tortured his family.

9. Petitioner thus respectfully requests that this Court order his immediate release from confinement as Respondents-Defendants have no justification for taking away, without due process, his liberty. In the alternative, Petitioner requests that the Court order that he be provided a constitutionally adequate bond hearing before a neutral decisionmaker where DHS bears the burden to prove, by clear and convincing evidence, that he is a danger to the community or such a

flight risk that his continued detention is necessary. *See Zadvydas*, 533 U.S. at 692; *L.G.*, 744 F. Supp. 3d at 1185. And even then, continued detention would only be justified after consideration of alternatives to detention that could mitigate any risk that his release would present and after consideration of the length of his already lengthy incarceration by ICE. *L.G.*, 872 F. Supp. 3d at 1187.

CUSTODY

10. Petitioner is currently detained by DHS at the Denver Contract Detention Facility in Aurora, Colorado. During these past seven months, he has yet to be provided with a constitutionally compliant bond hearing where the government must justify his detention by clear and convincing evidence.

JURISDICTION

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution, 28 U.S.C. § 1331, 28 U.S.C. § 1361, and 5 U.S.C. § 702. This action arises under the Due Process clause of the Fifth Amendment of the United States Constitution, and under the Immigration and Nationality Act of 1952 (INA). The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and the All Writs Act, 28 U.S.C. § 1651. Congress has preserved judicial review of challenges to mandatory immigration detention. *See, e.g., Nielsen v. Preap*, 139 S. Ct. 954, 961-62 (2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents-Defendants “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C.

§ 2243. If an OSC is issued, the Court must require Respondents-Defendant to file a return “within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” *Id.* (emphasis added).

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). The Tenth Circuit has cautioned district courts from allowing significant delays in resolving habeas petitions, lest “the function of the Great Writ [] be eviscerated.” *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990).

VENUE

14. Venue is proper in the District of Colorado because a substantial part of the events and omissions giving rise to Petitioner’s claims occurred in the district. 29 U.S.C. § 1391(b)(2). Petitioner is also currently confined at the Denver Contract Detention Facility in Aurora, Colorado, in the District.

PARTIES

15. **Petitioner-Plaintiff John Doe** is currently incarcerated by Respondents-Defendants at the Denver Contract Detention Facility in Aurora, Colorado. He has been confined without bond by ICE since January 7, 2025, after fleeing Nicaragua to the United States to seek asylum, even though his incarceration has become prolonged and his removal is not reasonably foreseeable. Petitioner has been diligently pursuing his claim for asylum, withholding of removal, and protection under the Convention Against Torture while detained, but through no fault of his own has faced

significant delays in his removal proceedings.

16. **Respondent Pam Bondi** is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ). She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals (BIA). She is named in her official capacity.

17. **Respondent Sirce E. Owen** is the Director of EOIR, which administers the immigration courts and the BIA. She is named in her official capacity.

18. **Respondent Kristi Noem** is the Secretary of DHS. She has authority over the detention and departure of noncitizens, like Petitioner, because she administers and enforces immigration laws pursuant to section 402 of the Homeland Security Act of 2002. 107 Pub L. 296 (November 25, 2003). Secretary Noem is the legal custodian of Petitioner. She is named in her official capacity.

19. **Respondent Todd M. Lyons** is the Acting Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. As the head of ICE, an agency within the DHS that detains and removes certain noncitizens, Respondent Lyons is a legal custodian of Petitioner. He is named in his official capacity.

20. **Respondent Robert Guadian** is the Field Office Director responsible for the Denver Field Office of ICE Enforcement and Removal Operations, which has administrative jurisdiction over Petitioner's case. As such, Respondent Guadian is the federal official most directly responsible for overseeing Denver Contract Detention Facility in Aurora, Colorado. He is a legal custodian of Petitioner and is named in his official capacity.

21. **Respondent Dawn Ceja** is the Warden of the Denver Contract Detention Facility in Aurora, Colorado, where Petitioner is being held. Respondent Ceja oversees the day-to-day operations of the Denver Contract Detention Facility and acts at the direction of Respondents Bondi, Lyons, and Guadian. She is a custodian of Petitioner and is named in her official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *See Hoang v. Comfort*, 282 F.3d 1247, 1254 (10th Cir. 2002) (citing 8 U.S.C. § 1252(d)(1)), *cert. granted and judgment vacated on other grounds sub nom. by Weber v. Phu Chan Hoang*, 538 U.S. 1010 (2003) (“With regard to immigration laws, exhaustion of remedies is statutorily required only for appeals of final orders of removal”); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Exhaustion is not required if administrative remedies would be futile. *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000). Courts in this District also do not require exhaustion “when ‘the interests of the individual in retaining prompt access to a federal judicial forum’ outweigh the interests of the agency in protecting its own authority.” *Gonzalez-Portillo v. U.S. Attorney Gen., Reno*, No. CIV. A. 00-Z-2080, 2000 WL 33191534, at *4 (D. Colo. Dec. 20, 2000) (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992)).

23. Petitioner asserts that exhaustion should be waived in this case because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

24. Petitioner has been detained for over seven months without an individualized determination before a neutral adjudicator as to whether his detention is justified. This Court has repeatedly waived any exhaustion requirement in cases where individuals in immigration custody (1) demonstrate that any administrative appeal would be futile, and (2) allege that their continued

detention is unlawful. *See e.g., Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010) (exhaustion not required if futile); *Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1192 (D. Colo. 2024) (“exhaustion of remedies is not required if exhaustion would be futile”); *Son Vo*, 109 F. Supp. 2d at 1282; *L.G.*, 744 F.Supp.3d at 1181.

25. Administrative relief is futile in Petitioner’s case. As explained further below, because he is detained under 8 U.S.C. § 1225(b), he is statutorily ineligible for bond and can be subjected to continued incarceration without even the possibility of a bond hearing. Furthermore, the process for requesting parole from ICE is inadequate and currently nonexistent in light of the Trump administration’s executive orders. As described above, *supra* n. 2, the Trump administration has adopted a policy wherein the ICE Director must personally sign off on the release of any detainee from ICE custody. This has effectively eliminated release on parole for immigration detainees. Furthermore, even if the parole process were available to Petitioner, it does not provide due process. Parole does not provide a neutral forum to contest the necessity of ongoing detention. Instead, it is a purely discretionary process, administered by ICE—the jailer. Neither the detained noncitizen nor counsel are provided an in-person hearing to contest facts leading to the parole decision, and no review of that decision is available. The Ninth Circuit has recognized that this wholly one-sided process produces error-ridden results. *See Rodriguez v. Robbins*, 804 F.3d 1060, 1081 (9th Cir. 2015), *reversed on other grounds sub nom. Jennings v. Rodriguez*, 583 U.S. 281 (2018) (identifying denials of parole “based on blatant errors: In two separate cases . . . officers apparently denied parole because they had confused Ethiopia with Somalia. And in a third case, an officer denied parole because he had mixed up two detainees’ files.”); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1082 (9th Cir. 2006) (finding that DHS abused its authority by denying parole). Additionally,

release on parole is only available for “urgent humanitarian reasons or significant public benefit,” 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(b). Neither of those criteria evaluate the constitutionally permissible rationales for continued, prolonged detention during removal proceedings: whether the detained noncitizen is a flight risk or danger to his community.

26. More importantly, every day that Petitioner remains incarcerated causes him harm that cannot be repaired. His continued incarceration puts his physical and mental health at greater risk, further warranting a finding of irreparable harm and the waiver of the prudential exhaustion requirement. Petitioner is not receiving adequate psychological care for his preexisting documented mental health conditions, which is putting him at risk of harm. *See* Declaration of Johnny Sinodis (Sinodis Decl.) at Ex. A (Declaration of John Doe). The Court must consider this in its irreparable harm analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the petitioner “continues to suffer significant psychological effects from his detention, including anxiety caused by the threats of other inmates and two suicide attempts,” in finding that petitioner would suffer irreparable harm warranting waiver of exhaustion requirement).

STATEMENT OF FACTS

27. Petitioner is a citizen and national of Nicaragua from an extremely well-known family who fled to the United States in January 2025 to seek asylum. *See* Sinodis Decl. at Ex. A (Declaration of John Doe). Petitioner’s parent is a former high-ranking official in the ruling regime of co-presidents Daniel Ortega and his wife Rosario Murillo (i.e., the Ortega regime) who was kidnapped, disappeared, imprisoned, and tortured after leaving the government. Petitioner and his other immediate family members were placed under house arrest for several days and also subjected to

constant surveillance for months. Since Petitioner fled Nicaragua, the Nicaraguan government has continued to pursue and target his family.

28. On January 7, 2025, Petitioner arrived at the San Ysidro Port of Entry, presented himself to a CBP officer, and asked to seek asylum in the United States. He explained the life-threatening circumstances that had compelled him to flee Nicaragua for his safety and showed the officer several of the documents he had brought with him to the United States in support of his claim for asylum. The officer brought Petitioner into the United States for processing. Petitioner was then transferred to the Otay Mesa Detention Center to await a credible fear interview (CFI) with a USCIS Asylum Officer (AO).

29. A month after his arrival, on February 5, 2025, the AO found that Petitioner had established during his CFI that there exists a reasonable probability that he would be subject to persecution or torture if returned to Nicaragua.³ Sinodis Decl. at Ex. B (CFI determination). That same day, Petitioner was issued a Notice to Appear (NTA) and placed in removal proceedings pursuant to 8 U.S.C. § 1229a. *Id.* at Ex. C (NTA). He was scheduled to appear for his first hearing before the Otay Mesa Immigration Court on February 20, 2025.

30. On February 20, 2025, Petitioner appeared at his hearing, entered pleadings to his Notice to Appear, and was rescheduled for a second hearing on March 27, 2025, before the Otay Mesa Immigration Court.

³ The AO erroneously determined that now-vacated 8 C.F.R. § 208.35, which barred certain noncitizens who enter the United States across the southern border from asylum, applied to Petitioner, but still found he was eligible to apply for protection under Withholding of Removal and the Convention Against Torture (CAT). On May 9, 2025, the Honorable Judge Rudolph Contreras of the Federal District Court of the District of Columbia issued partial summary judgment in favor of plaintiffs in *Las Americas Immigrant Advocacy Center v. U.S. Department of Homeland Security*. The court vacated and set aside the limit on asylum eligibility relating to manner of entry. No. CV 24-1702 (RC), 2025 WL 1403811, at *15 (D.D.C. May 9, 2025). Accordingly, Petitioner is eligible to apply for asylum and has been pursuing his application for asylum before the immigration court.

31. On February 23, 2025, without advance notice to him or his counsel, ICE transferred Petitioner to the Denver Contract Detention Facility in Aurora, Colorado, where he remains detained. Petitioner opposed DHS's motion to change venue for several reasons, including that transferring his case to another immigration court would delay his ability to obtain a resolution on his applications for relief. *Id.* at Ex. D (Petitioner's Opposition to DHS's Motion to Change Venue). His proceedings are now pending before the Aurora Immigration Court. *Id.* at Ex. D (IJ Order Granting Change of Venue to Aurora Immigration Court).

32. On March 31, 2025, Petitioner appeared for his first hearing before the Aurora Immigration Court. *See Sinodis Decl.* He was then scheduled to appear for a hearing on the merits of his asylum application on August 19, 2025, more than four months later. *Id.* On May 5, 2025, that hearing was reset for August 7, 2025. *Id.*

33. On May 28, 2025, Petitioner filed a motion to advance his merits hearing, noting that he desires to resolve and conclude his removal proceedings as expeditiously as possible given his strong claim for relief. *Id.* at Ex. E (Petitioner's Motion to Advance). The Aurora Immigration Court subsequently reset his merits hearing to a two-hour hearing slot on July 11, 2025. *Id.*

34. On July 11, 2025, Petitioner appeared for his hearing and presented his testimony on direct examination, but given the two-hour time restriction, DHS could not conduct cross examination, and Petitioner could not call any of his witnesses to testify. The immigration court reset the matter for a one-hour slot on August 8, 2025. *Id.*

35. Petitioner appeared for his continued merits hearing on August 8, 2025, and waited approximately three hours for his matter to be called. Again, testimony could not be completed as the immigration court had several other matters scheduled for the same day and only had

approximately forty minutes for continued testimony. Petitioner concluded his testimony but could not call any of his witnesses. The matter was subsequently reset for August 27, 2025, at 8:30 a.m. *Id.*; see also *id.* at Ex. F (Petitioner's EOIR Case Portal).

36. On August 27, 2025, Petitioner appeared for his continued merits hearing at 8:30 a.m. Mountain Time and waited for over three hours as other cases were heard. *Id.* Although the immigration court offered to call his case after the lunch break at 1:00 p.m., his witnesses—one of whom is a licensed psychologist and another a university professor—were not available in the afternoon and had not rearranged their schedules given that the hearing was supposed to begin at 8:30 a.m. *Id.* The immigration court therefore reset the matter for September 22, 2025, at 1:00 p.m. *Id.*

37. As stated above, despite being incarcerated by ICE for more than seven months, Petitioner has yet to be provided with a constitutionally compliant bond hearing where the government must justify his detention by clear and convincing evidence.

38. Petitioner has ample community support in the United States. Upon release, he will reside with his U.S. citizen aunt in California, near his other U.S. citizen and lawful permanent resident relatives.

LEGAL BACKGROUND

Statutory and Regulatory Framework during the Pendency of Removal Proceedings Including Judicial Review

39. Pursuant to 8 U.S.C. § 1225, a noncitizen “who arrives in the United States or is present in this country but has not been admitted, is treated as an applicant for admission.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(a)(1). Any applicant for admission “must ‘be inspected by

immigration officers' to ensure that they may be admitted into the country consistent with U.S. immigration law." *Id.* at 287 (quoting 8 U.S.C. § 1225(a)(3)).

40. Generally speaking, applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Id.* at 837. Noncitizens "arriving in the United States" and "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation" fall under the provisions at 8 U.S.C. § 1225(b)(1). *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i). Such individuals are ordered removed "without further hearing or review" unless they "indicate[] either an intention to apply for asylum . . . or a fear of persecution[.]" in which case they are referred for further proceedings regarding their claim to asylum. 8 U.S.C. § 1225(b)(1)(A)(i); 8 C.F.R. § 235; 8 C.F.R. § 208.30; *see also Jennings*, 583 U.S. at 287. All applicants for admission "not covered by § 1225(b)(1)[.]" fall under the "broader . . . catchall provisions" at 8 U.S.C. § 1225(b)(2). *Jennings*, 583 U.S. at 287. If an "examining immigration officer" determines an individual under § 1225(b)(2)(A) "is not clearly and beyond a doubt entitled to be admitted" to the United States, they are referred for full removal proceedings before an Immigration Judge (IJ). 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.6(a)(i); *see also* 8 U.S.C. § 1229a; *Jennings*, 583 U.S. at 287.

41. Regardless of whether § 1225(b)(1) or § 1225(b)(2) applies, the statutory text "mandate[s] detention of aliens throughout the completion of applicable proceedings[.]" *Jennings*, 583 U.S. at 301; 8 U.S.C. §§ 1225(b)(1)(B)(1)(B)(ii) (stating that, upon determination that an individual "has a credible fear of persecution, the alien *shall be detained* for further consideration of the application for asylum.") (emphasis added); § 1225(b)(2)(A) (stating that, upon determination that an individual "is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained*

for a proceeding under [8 U.S.C. §] 1229a”). Release in the form of parole is only allowed “for urgent humanitarian reasons or significant public health benefit,” 8 U.S.C. 1182(d)(5)(A), and parole determinations fall exclusively within DHS’s exercise of discretion. *Id.*; 8 C.F.R. §§ 235.3(b)(2)(iii), § 235.3(c); *see also id.* at § 212.5(b); *Jennings*, 583 U.S. at 287. As such, IJs are fully divested of jurisdiction to grant bond to detainees held under § 1225(b) or review DHS’s decision to deny or terminate parole.

42. Petitioner has now been detained under 8 U.S.C. § 1225(b)(1) since January 7, 2025—over seven months. Seeking release on humanitarian parole from ICE is an inadequate remedy and functionally unavailable, and Petitioner has no procedural protections outside of this Court. *See Matter of M-S-*, 27 I. & N. Dec. at 515-17. The only available remedy for Petitioner’s unconstitutionally prolonged detention is through a writ of habeas corpus and/or a complaint for declaratory and injunctive relief.

The Detention of Noncitizens Must Comply with Due Process

43. The Due Process Clause of the Fifth Amendment prohibits the government from depriving individuals of their life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. “These protections apply to all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent, and to immigration detention as well as criminal detention.” *Hernandez*, 872 F.3d at 990 (internal quotations omitted). The Supreme Court has long held that civil detention must not be punitive or arbitrary, and generally must rest on an individualized determination of the necessity for detention accompanied

by fair procedural safeguards. Civil commitment is constitutional only when there are “proper procedures and evidentiary standards,” including individualized findings of dangerousness. *Kansas v. Hendricks*, 521 U.S. 346, 357-58 (1997); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992) (noting individual’s entitlement to “constitutionally adequate procedures to establish the grounds for his confinement”).

44. In 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.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). “The government has legitimate interests in protecting the public and in ensuring that noncitizens in removal proceedings appear for hearings, but any detention incidental to removal must ‘bear a reasonable relation to its purpose.’” *Hernandez*, 872 F.3d at 990 (citing *Zadvydas*, 533 U.S. at 690). In *Zadvydas*, the Court interpreted the statute governing detention after a final order of removal to require the release of a noncitizen whose removal is not “reasonably foreseeable.” *Id.* at 699-701. In doing so, the Court reaffirmed that, as with other types of civil detention, immigration detention can only be imposed with strong procedural safeguards to ensure that it serves a legitimate purpose. *See, e.g., id.* at 691-92 (noting that preventive detention based on dangerousness is permissible “only when limited to specially dangerous individuals and subject to strong procedural protections”).

45. The Court carved out a narrow exception to the general rule that civil detention must be accompanied by an individualized hearing in *Demore v. Kim*, 538 U.S. 510 (2003). In *Demore*, the Court upheld 8 U.S.C. § 1226(c) against a facial challenge to the statute, in a case where the noncitizen was detained within a day of his release from criminal incarceration. *Id.* at 513-14; *see*

also Brief for Petitioner at 4, *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), 2002 WL 31016560.

46. The *Demore* Court held, based on the factual record before it, that “Congress, justifiably concerned that deportable criminal [noncitizens] who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that [such noncitizens] be detained for the brief period necessary for their removal proceedings.” *Id.* at 513 (emphasis added); see also *id.* at 526 (noting the “narrow” nature of the mandatory detention statute). The “brief period” of detention in *Demore* was four months.

47. While the Supreme Court held in *Demore* that *brief* mandatory detention under 8 U.S.C. § 1226(c) without a bond hearing did not violate due process, this holding was specifically premised on the short period for which the noncitizen had been detained, as well as—now discredited—evidence that, at the time, § 1226(c) detention was neither indefinite nor prolonged. 538 U.S. at 529-531 (relying on evidence provided by the Government that, at the time, removal proceedings were completed in an average time of 47 days and a median time of 30 days in 85% of cases, and that the remaining 15% of cases in which there was an appeal were completed in an average of four months).⁴

48. Justice Kennedy acknowledged in his concurrence that “if continued detention bec[omes] unreasonable or unjustified,” a noncitizen could be “entitled to an individualized determination as

⁴ While *Jennings v. Rodriguez* was being briefed, the government informed the Supreme Court that it had “made several significant errors in calculating” the statistics which it provided to the Court in *Demore* and which the Court relied upon in its decision. Letter from Ian Heath Gershengorn, Acting Solicitor General, to Hon. Scott S. Harris, Clerk, Supreme Court (Aug. 26, 2016), *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), available at <http://on.wsj.com/2mtjnUP>; see also *Jennings*, 583 U.S. at 343 (Breyer, J., dissenting) (“The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did. And, as I have pointed out, thousands of people here are held for considerably longer than six months without an opportunity to seek bail.”).

to his risk of flight or dangerousness.” 538 U.S. at 532 (Kennedy, J., concurring); *see also id.* at 532-33 (“Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary to then inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.”). Since *Demore*, the time that each immigrant spends in detention has risen substantially. *See, e.g., Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 234 (3d Cir. 2011) (explaining that mandatory detention becomes more constitutionally “suspect” as it extends beyond the brief detention periods considered by the Supreme Court in *Demore*).

49. In 2018, the Supreme Court held that the Ninth Circuit erred by interpreting Sections 1226(c) and 1225(b) to require bond hearings as a matter of statutory construction. *Jennings*, 583 U.S. at 299-300. Because the Ninth Circuit has not decided whether the Constitution itself requires bond hearings in cases of prolonged detention, the Court remanded for the Ninth Circuit to address the issue. *Id.* at 312. The majority remanded to the lower courts to address the constitutional question in the first instance but expressed “grave doubts 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). Since then, the Ninth Circuit has affirmed that, as a matter of due process, certain noncitizens may be due habeas relief in the form of a constitutionally compliant bond hearing. *See, e.g., Avilez v. Garland*, 69 F.4th 525, 539 (9th Cir. 2023) (remanding proceedings to the district court to adjudicate petitioner’s due process claims).

50. Like the Supreme Court, the Tenth Circuit has not yet ruled on the constitutionality of

prolonged detention under 8 U.S.C. §§ 1225(b) or 1226(c). The Third Circuit in *Diop* held as a constitutional matter that due process prohibits mandatory detention under § 1226(c) for an unreasonable period of time. *Diop*, 656 F.3d at 232 (“[T]he constitutionality of [detention without a bond hearing] is a *function of the length of the detention*. At a certain point, continued detention becomes unreasonable, and the Executive Branch’s implementation of § 1226(c) becomes *unconstitutional* unless the Government has justified its actions at a hearing inquiring into whether continued detention is consistent with the law’s purposes of preventing flight and dangers to the community.”) (emphasis added).

Petitioner Is, At A Minimum, Entitled to a Bond Hearing

51. Petitioner’s continued detention without any process is contrary to our understanding of fairness and justice, and in violation of his Fifth Amendment Due Process rights.

Prolonged Detention

52. Petitioner’s prolonged detention of over seven months without a bond hearing violates due process. Due process requires that the government provide bond hearings to noncitizens whose detention has become prolonged.

53. As noted above, the Supreme Court and the Tenth Circuit have not yet considered the constitutionality of prolonged detention under 8 U.S.C. § 1225(b) or the other immigration detention provisions. However, the District Court for the Western District of Washington has directly considered the constitutionality of § 1225(b)(1)(B)(ii) on several occasions in *Padilla v. ICE* and, in doing so, repeatedly expressed serious doubts about the constitutionality of that section. Most recently, Judge Pechman determined that asylum seekers have a right to bond hearings, concluding that “Due Process protects against immigration detention that is not reasonably related

to the legitimate purpose of effectuating removal or protecting against danger and flight risk.” *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (citing *Zadvydas*, 533 U.S. at 690–94). In concluding that noncitizens, like Petitioner, who had established a credible fear were eligible for bond notwithstanding § 1225(b), the district court distinguished *Demore*. Judge Pechman concluded that, compared to the class of noncitizens at issue in *Demore* for which “the voluminous Congressional record ... justified denying bail given the substantial rate at which such individuals either reoffended or absconded,” there were “no similar public safety concerns or flight risk that might apply to those, like Plaintiffs, with bona fide asylum claims and who desire to remain in the United States.” *Padilla*, 704 F. Supp. 3d at 1173 (citing *Demore*, 538 U.S. at 518–20). The district court also relied on information that the length of detention for asylum seekers was much longer than that at issue in *Demore*. *Padilla*, 704 F. Supp. 3d at 1173. Judge Pechman found that asylum seekers had adequately alleged a due process claim given that they had a liberty interest in freedom from confinement and there were not adequate procedures in place to test the legitimate need for continued detention. *Id.* at 1174. The reasoning in *Padilla* applies with even greater force to Petitioner, who has been detained for more than seven months (nearly twice the length of time discussed in *Demore*).

54. Detention without a bond hearing is unconstitutional when it exceeds six months. *See Demore*, 538 U.S. at 529–30 (upholding only “brief” detentions under Section 1226(c), which last “roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the [noncitizen] chooses to appeal”); *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted the constitutionality of detention for more than six months”). A bright-line rule that detention becomes prolonged at six months is consistent with Supreme

Court and Ninth Circuit precedent. *See Diouf II*, 634 F.3d 1085, 1091-92 (9th Cir. 2011) (“When detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound.”); *Demore*, 538 U.S. at 529-30; *Zadvydas*, 533 U.S. at 701.

55. The recognition that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in our legal tradition. With 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. State of La.*, 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 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 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).

Singh Balancing Test

56. Even if the Court declines to impose a bright-line rule that six months of detention without any form of due process is necessarily prolonged, there is ample authority to support granting Petitioner a bond hearing in his particular circumstances. In prolonged detention cases, district courts have treated and analyzed as-applied challenges to 8 U.S.C. § 1225(b) detention similarly to as-applied challenges raised by noncitizens detained under § 1226(c). *See, e.g., Jamal A. v. Whitaker*, 358 F.Supp.3d 853, 858 (D. Minn. 2019) (noting that “it is not clear what, if anything, turns on” any Due Process differences between “aliens detained under § 1225(b)(2)(A) . . . [and] aliens detained under other provisions[,]” as “neither group of aliens can be detained indefinitely”

and “most courts seem to apply pretty much the same factors”); *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025) (reasoning that the test applied to § 1226(c) applies equally to noncitizens detained under § 1225(b)). Courts in this district have also recognized there is “little substantial distinction between the liberty interest of noncitizens detained” pursuant to the various mandatory detention statutes because “[r]egardless of the stage of the proceedings, the same important interest is at stake—freedom from prolonged detention.” *Juarez v. Choate*, 2024 WL 1012912, at *6 (D. Colo. Mar. 8, 2024) (applying multi-factor balancing test developed for § 1226(c) to detention under § 1231(a)(6)). The Court should employ the same reasoning to apply the *Singh* balancing test to Petitioner’s mandatory detention under § 1225(b) if it were not inclined to find that there exists a six-month bright line rule at which detention without a bond hearing becomes unconstitutionally prolonged.

57. In this District, “the vast majority of judges” have applied a multi-factor balancing test established in *Singh v. Choate* “when assessing a noncitizen petitioner’s constitutional challenge to prolonged detention without a bond hearing.” *Arostegui-Maldonado v. Baltazar*, --- F.Supp.3d ---, 2025 WL 2280357, at *6 (D. Colo. Aug. 8, 2025) (collecting cases). The test established in *Singh* considers:

- (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.

No. 19-CV-00909-KLM, 2019 WL 3943960, at *5 (D. Colo. Aug. 21, 2019). Each factor weighs in favor of, at a minimum, providing Petitioner with an individualized bond hearing before a neutral decisionmaker.

58. First, as explained above, Petitioner's detention beyond the six-month mark weighs in favor of granting him outright release or, at a minimum, an individualized bond hearing. Various district courts, including in this district, have ordered noncitizens be provided a bond hearing once detention surpasses six months. *See e.g., Arostegui-Maldonado*, --- F.Supp.3d ----, 2025 WL 2280357, at *6 ("even if the Court were to only consider the period of time that Maldonado has been consecutively detained—roughly eight months—it would still be sufficient to trigger scrutiny" because the "pertinent consideration" is whether detention has passed the six-month threshold); *Perez v. Decker*, No. 18-CV-5279, 2018 WL 3991497, at *6 (S.D.N.Y. Aug. 20, 2018) (holding that detention under § 1225(b)(2)(A) longer than nine months was "unreasonable" and that the noncitizen's due process rights "require[d] him to be afforded...an individualized bond hearing"); *Gordon v. Shanahan*, No. 15 CV. 261, 2015 WL 1176706, at *3 (S.D.N.Y. Mar. 13, 2015) (eight months of detention without individualized bond hearing unreasonable); *Daley v. Choate*, No. 22-CV-03043-RM, 2023 WL 2336052, at *3 (D. Colo. Jan. 6, 2023) (citing cases finding detention of eight or nine months unreasonable without individualized bond hearing); *Villaescusa-Rios v. Choate*, No. 20-CV-03187-CMA, 2021 WL 269766, at *3 (D. Colo. Jan. 27, 2021) (same). Petitioner's detention for more than seven months without any individualized determination as to whether detention is warranted is similarly unreasonable.

59. Second, Petitioner's case may take several more months to conclude before the IJ, not including any appeal to the BIA that might be taken by DHS. For this factor, "[c]ourts examine the 'anticipated duration of all removal proceedings'—including administrative and judicial appeals—when estimating how long detention will last." *Villaescusa-Rios*, 2021 WL 269766, at *3. Petitioner's next hearing is not until September 22, 2025. Even if the proceedings were to

conclude and the IJ were to grant him asylum on that date, were DHS to pursue an appeal of the IJ's decision, removal proceedings would remain pending before the BIA for approximately six more months, during which time DHS would continue to claim the authority to incarcerate Petitioner with the possibility of even a bond hearing. *See Sinodis Decl. at Ex. G (FOIA Results for BIA Appeal Processing Times)* (showing BIA appeals in detained cases take on average 190 days to resolve). Thus, while "his detention will definitely terminate at some point, ... that point is likely to be many months or even years from now." *Id.* (quoting *Singh*, 2019 WL 3943960, at *6).

60. Third, the immigration jail where Petitioner is detained is not meaningfully different from a penal institution, and his conditions of detention therefore weigh in his favor. *See Singh v. Garland*, No. 21-CV-00715 CMA, 2021 WL 2290712, at *4 (D. Colo. June 4, 2021), *appeal dismissed* (Aug. 5, 2021) (concluding third *Singh* factor looks to whether conditions of immigration detention are "meaningfully different" from penal institutions and that the factor favored petitioner where respondents failed to explain how immigration detention centers "differ from penal confinement"); *Viruel Arias v. Choate*, No. 1:22-CV-02238-CNS, 2022 WL 4467245, at *2 (D. Colo. Sept. 26, 2022) (same); *cf. Hernandez*, 872 F.3d at 993.

61. Just this month, the Honorable Judge William J. Martinez found that "the conditions at the Aurora Facility strongly resemble penal confinement. More than that, they are abhorrent. That is, they *more than* resemble penal confinement." *Arostegui-Maldonado*, --- F.Supp.3d ----, 2025 WL 2280357, at *7 (emphasis added). Judge Martinez based this finding on the petitioner's uncontested testimony that the facility is overcrowded with little room for exercise, its air condition system frequently fails, no physical contact visits are permitted, and medical and psychological care is limited and inadequate. *Id.* Petitioner, who is currently detained at the Aurora Facility,

reports experiencing these same conditions. Sinodis Decl. at Ex. A (Declaration of John Doe). This factor clearly weighs in favor of granting Petitioner an individualized bond hearing.

62. The fourth and fifth factors similarly weigh in Petitioner's favor. Petitioner has done nothing to cause delay in his removal proceedings, and in fact has sought to expedite his proceedings so that he may present his strong asylum claim as quickly as possible. Despite Petitioner's best efforts, his proceedings have dragged on due to administrative delays as his detention has become prolonged. The government, meanwhile, has contributed to extending the removal proceedings. Although Petitioner had already appeared before the Otay Mesa Immigration Court, ICE made the decision to transfer him to the Aurora Detention Facility on February 23, 2025, thus requiring proceedings to begin anew before a new IJ. Petitioner opposed DHS's motion to change venue to the Aurora Immigration Court on the basis that (1) proceedings had already begun in Otay Mesa and (2) transfer would cause unnecessary delay, but the IJ nevertheless granted DHS's motion. Sinodis Decl. at Ex. D (IJ Order Granting Change of Venue). Upon arrival at Aurora, Petitioner's first merits hearing was scheduled for nearly six months later in August 2025. *See id.* On May 28, 2025, Petitioner therefore filed a motion to advance his merits hearing, noting his desire to resolve and conclude his removal proceedings as expeditiously as possible given his strong claim for relief. *See id.* at Ex. E (Motion to Advance). Although the Aurora Immigration Court did in fact advance proceedings by one month to July 11, 2025, Petitioner's hearing has now been thrice continued because of the Immigration Court's practice of double and triple (or more) booking morning and afternoon dockets. *See id.* When Petitioner appeared on July 11, 2025, August 8, 2025, and August 27, 2025, the IJ had other matters booked for the same day that severely limited the amount of time it could devote to Petitioner's case. *Id.*

63. Finally, the sixth factor weighs strongly in Petitioner’s favor, as the likelihood he will ultimately be granted relief is high. Petitioner comes from a prominent political family in Nicaragua that has been targeted by the Ortega regime as political opponents. This targeting has included the kidnapping and disappearance of his parent, a former high-ranking official in the Nicaraguan government. Petitioner has a strong, well-documented asylum case based on the persecution of him and his family by the Ortega regime, a government widely recognized for perpetrating human rights abuses against individuals deemed political enemies.⁵ An asylum officer has already found Petitioner’s claims have merit—indeed, the officer determined Petitioner has a credible claim to Withholding of Removal and protection under the Convention Against Torture, which have a *higher* standard of proof than asylum. *See* Sinodis Decl. at Ex. B (CFI Determination); *see also* *Juarez*, No. 1:24-CV-00419-CNS, 2024 WL 1012912, at *7 (finding this factor favored petitioner because she previously received a positive “well-founded fear” finding from asylum officials, which would “tend to suggest” that her fear-based claim is “colorable”).⁶ As Petitioner is likely to prevail on his asylum case, this factor similarly weighs in favor of granting him an individualized bond hearing so that he does not remain indefinitely in detention as proceedings slowly progress.

Due Process Requires Certain Minimal Protections at a Prolonged Detention Bond Hearing

⁵ *See, e.g., Flores Molina v. Garland*, 37 F.4th 626, 634 (9th Cir. 2022) (recognizing “the broader context of mass killings and violent reprisals by the Ortega regime and its affiliates against protestors”); “Nicaragua’s deepening repression: UN experts call for urgent global action,” United Nations Human Rights Office of the High Commissioner (Feb. 26, 2025), <https://www.ohchr.org/en/press-releases/2025/02/nicaraguas-deepening-repression-un-experts-call-urgent-global-action>.

⁶ To the extent it would aid the Court in fully evaluating this factor to review Petitioner’s evidentiary submissions in support of his asylum claim, Petitioner can readily supply those materials to the Court upon request. The submissions are voluminous and contain highly sensitive personal identifying information, so Petitioner does not attach them here. If the Court determines it would be beneficial to review those materials, Petitioner requests the opportunity to brief why those materials should be provided under seal or for *in camera* review.

64. At a prolonged detention custody hearing, due process requires certain minimal protections to ensure a noncitizen's detention is warranted: (1) DHS must bear the burden of proof by clear and convincing evidence to justify continued detention; and the neutral adjudicator must take into account (2) alternatives to detention, (3) the length of detention, and (4) the noncitizen's ability to pay a bond.

65. To justify prolonged immigration detention, the government must prove by clear and convincing evidence that the noncitizen is danger or flight risk. *See Singh*, 638 F.3d at 1203; *L.G.*, 744 F.Supp.3d at 1182-85. Where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the government bore the burden of proof by at least clear and convincing evidence. *See id.* at 1205 (holding that the government must prove flight risk or dangerousness by clear and convincing evidence); *see also Foucha*, 504 U.S. at 81-83 (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 the burden on the detainee).

66. Although the Tenth Circuit has not addressed the appropriate burden of proof in a bond hearing where the noncitizen has been detained for a prolonged period, other circuit courts of appeal have held that the government must bear the burden of proof in that circumstance. The Ninth Circuit has held that "due process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money." *Singh*, 638 F.3d at 1204 (internal quotations omitted). Two other circuit courts of appeal have also held that the government must bear the burden of proof. *See Velasco Lopez v. Decker*, 978 F.3d 842, 847 (2d Cir. 2020); *Hernandez-Lara v. Lyons*, 10

F.4th 19 (1st Cir. 2021). Further, various courts in this district have found that due process demands that the government must bear the burden to justify civil detention from the outset of removal proceedings, not to mention when detention has become prolonged. *See, e.g., Daley*, No. 22-CV-03043-RM, 2023 WL 2336052, at *3 (“the majority of the Courts in this District have allocated the burden of proof to the government, to ‘show by clear and convincing evidence’ that the non-citizen poses a flight risk or is a danger to the community”); *Diaz-Ceja v. McAleenan*, No. 19-CV-00824-NYW, 2019 WL 2774211, at *10 (D. Colo. July 2, 2019) (“the current scheme of placing the burden on Petitioner to prove that he should be released on bond contravenes due process requirements”); *L.G.*, 744 F. Supp. 3d at 1185 (noting that the “government does not explain what the fiscal or administrative burden would be if it was required to carry the burden at a bond hearing.”).

67. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether prolonged civil incarceration is warranted. *L.G.*, 744 F. Supp. 3d at 1187.

68. In addition, due process requires that the neutral adjudicator consider the length of detention when rendering a bond determination. *See Rodriguez v. Robbins*, 804 F.3d 1060, 1089 (9th Cir. 2015), *rev’d sub nom. Jennings v. Rodriguez*, 583 U.S. 281 (2018) (holding that an “IJ therefore must consider the length of time for which a non-citizen has already been detained”); *see also Diouf II*, 634 F.3d at 1091 (explaining that “the due process analysis changes” as “the period

of confinement grow” and that longer detention requires more robust procedural protections).; *Singh*, No. 19-CV-00909-KLM, 2019 WL 3943960, at *5.

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.’” *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). It follows that—in determining the appropriate conditions of release for immigration detainees—due process requires “consideration of financial circumstances and alternatives to conditions of release” to prevent against detention based on poverty. *Id.*

CLAIMS FOR RELIEF

Count 1

Violation of Fifth Amendment Due Process Clause – As-Applied Challenge to Mandatory

Detention: Challenge to Detention Authority

70. The foregoing allegations are realleged and incorporated herein.

71. “[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The two permissible purposes of civil immigration detention are to prevent danger to the community or flight risk. *See Zadvydas*, 533 U.S. at 690.

72. Here, however, Petitioner’s detention serves neither purpose. Given his deep family connections to the United States and his lack of criminal history anywhere in the world or any other indication that he poses a danger or flight risk, there is no *legitimate* justification for his

detention, rendering his detention punitive and unconstitutional. The Due Process Clause therefore requires Petitioner's immediate release.

Count 2

Violation of Fifth Amendment Due Process Clause – As-Applied Challenge to Mandatory

Detention: Entitlement to Bond Hearing

73. The foregoing allegations are realleged and incorporated herein.

74. The Fifth Amendment's Due Process Clause forbids the government from depriving any "person" of liberty "without due process of law." U.S. Const. amend. V.

75. The Due Process Clause permits civil immigration detention only where such detention is reasonably related to the government's interests in protecting the community from danger or preventing flight and requires strong procedural protections to ensure that a noncitizen's detention is necessary to serve those interests. Petitioner does not fall within *Demore's* narrow exception to the general requirement of an individualized hearing to ensure that civil detention serves legitimate purposes. 538 U.S. at 526.

76. The only process Petitioner has available to him is to either request a bond hearing, which is futile given his statutory ineligibility under 8 U.S.C. § 1225(b)(1), or to request discretionary release by ICE, the agency that saw fit to detain him without bond in the first place.

77. Due process requires, at a minimum, an individualized bond hearing before a neutral decisionmaker in light of Petitioner's profound interest in freedom from incarceration, the likelihood that he would be granted bond if provided a bond hearing, and the minimal burden on the government of conducting a bond hearing. *Matthews*, 424 U.S. at 335.

78. Petitioner's detention without an individualized hearing pursuant to 8 U.S.C. § 1225(b)(1) therefore violates due process. Given the length of his detention, the lack of process provided to him by DHS, and the fact that Petitioner is neither a danger nor a flight risk, the Court should grant Petitioner's outright release. Should this Court find that it cannot directly release him, Petitioner is constitutionally entitled to an individualized bond hearing before a neutral decisionmaker where the government must prove that his detention is justified by clear and convincing evidence of danger or flight risk, even after consideration of whether alternatives to detention could sufficiently mitigate that risk. The Court should conduct the constitutionally compliant bond hearing, as it has the expertise to do so. If the Court is not inclined to conduct such a bond hearing, then a hearing should be conducted by a neutral decisionmaker. Furthermore, if bond is set—as opposed to release on an order of own recognizance or pursuant to alternatives to detention—the Court or, alternatively, a neutral decisionmaker must consider Petitioner's ability to pay the bond when determining the amount of bond to be required.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Denver Field Office and/or the District of Colorado pending the resolution of this case;
3. Order Respondents to show cause within three days why the petition should not be granted, *see* 28 U.S.C. § 2243;
4. Declare that Petitioner's incarceration by Respondents violates the Due Process Clause of the Fifth Amendment and issue a writ of habeas corpus or injunction and order Petitioner's

release;

5. In the alternative, declare that Petitioner's incarceration by Respondents violates the Due Process Clause of the Fifth Amendment and issue a writ of habeas corpus or injunction and conduct a bond hearing before a neutral decisionmaker to determine whether his continued detention is necessary where Respondents bear the burden to establish, by clear and convincing evidence, that his continued detention is necessary because he is a danger or such a flight risk that no amount of bond would ensure his future appearance;

6. In the alternative, declare that Petitioner's detention without a bond hearing pursuant to 8 U.S.C. § 1225(b)(1) violates the Due Process Clause of the Fifth Amendment and order Respondents to release Petitioner from detention within seven days unless Respondents schedule a hearing before an IJ at which: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of current flight or danger sufficient to justify his continued detention, and the IJ is required to consider whether alternatives to detention could mitigate any such risks, as well as consider the length of Petitioner's detention thus far; and (2) if the government cannot meet its burden, the IJ orders Petitioner's release on appropriate conditions of supervision, taking into account his ability to pay a bond;

7. Award Petitioner his costs and reasonable attorney's fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable statute; and

8. Grant such further relief as the Court deems just and proper.

Dated: August 29, 2025

/s/ Johnny Sinodis
Johnny Sinodis
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this August 29, 2025, in San Francisco, California.

/s/ Johnny Sinodis
Johnny Sinodis
Attorney for Petitioner