

**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.

**MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Pursuant to Federal Rules of Civil Procedure 65(a) and (b), Petitioner moves this Court for entry of a temporary restraining order and for a preliminary injunction.

RULE 7.1 CERTIFICATE

Pursuant to D.C.Colo.L.Civ.R. 7.1, on September 3, 2025, Johnny Sinodis, counsel for Petitioner, conferred with Logan Brown, Assistant U.S. Attorney at the U.S. Attorney's Office for the District of Colorado and counsel for Respondents, to discuss the instant motion and a stipulated briefing schedule. Respondents oppose this Motion. The parties have stipulated to a briefing schedule that will be filed, along with a proposed order, contemporaneously with this Motion.

INTRODUCTION

Petitioner, John Doe,¹ challenges 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 a temporary restraining order (TRO) directing his outright release from custody because he is neither a danger nor a flight risk. 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. Given Petitioner's prolonged incarceration, the nature of his claims and the likelihood that he will succeed on the merits, the irreparable harm he is suffering, and 28 U.S.C. § 1657(a), which calls for the prioritization of habeas petitions and actions seeking temporary or preliminary injunctive relief, he respectfully asks the Court to grant his request for a TRO as expeditiously as possible.

Petitioner is a twenty-five-year-old citizen and native of Nicaragua who fled to the United States to seek asylum after [REDACTED]

[REDACTED]. On January 7, 2025, Petitioner was permitted to enter the United States for the purpose of seeking asylum, withholding of removal, and protection under

¹ Petitioner has moved pursuant to Colo. R. Civ. P. 10(a) to file this matter pseudonymously. Dkt. 2.

the Convention Against Torture. Petitioner received a positive “credible fear” determination and has since been detained in ICE immigration jails as he pursues his meritorious asylum claim. Despite Petitioner’s best efforts to conclude his case expeditiously, the Immigration Court’s scheduling constraints have led to his hearing being repeatedly rescheduled.

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)].² Petitioner brings an as-applied constitutional challenge to the continued application of 8 U.S.C. § 1225(b)(1) to detain him without even a bond hearing given the particular facts and circumstances of his case.

Respondents interpret U.S.C. § 1225(b) to require mandatory detention without a bond hearing of all arriving aliens, including Petitioner, for the indefinite length of time necessary to complete removal proceedings, even if that time becomes unreasonably prolonged. *See Matter of M-S-*, 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.³ Furthermore, as discussed in more detail below, even if this

² 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.

³ *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/>. This policy 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).

parole process were an option, it would do nothing to protect Petitioner's constitutional rights.

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 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.

Were Petitioner to be provided with a bond hearing before a neutral decisionmaker, he would be released from custody because he is neither a flight risk nor a danger to the community. To the contrary, he is a highly educated individual with no criminal history, deep ties to the United States, and a strong application for relief from removal. Upon release, he intends to reside with his U.S. citizen aunt, near his numerous U.S. citizen and Lawful Permanent Resident family members.

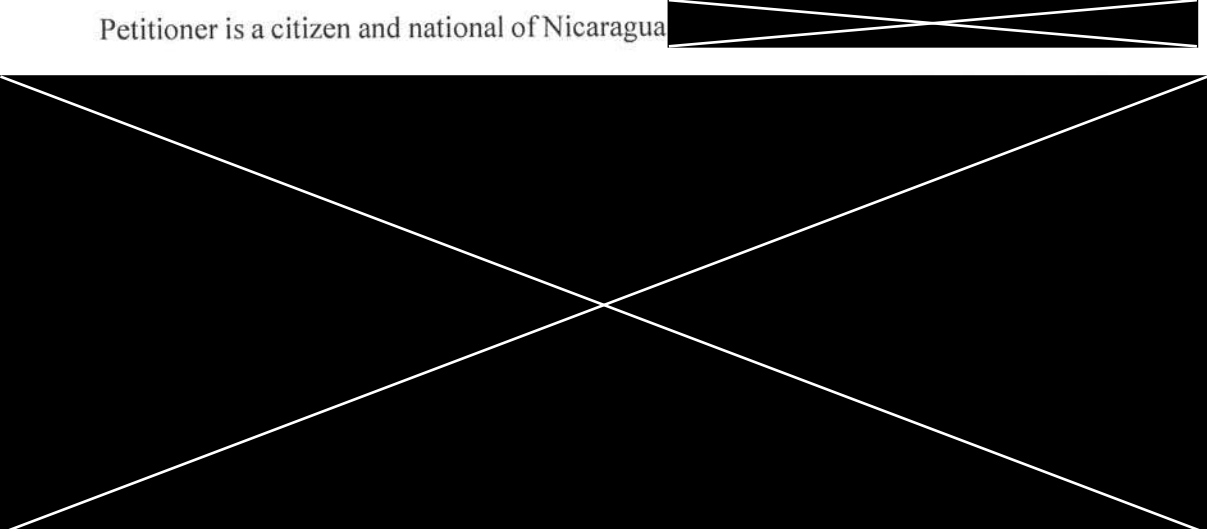
Each day that Petitioner is detained, both he and his family suffer irreparable harm, including the deprivation of his constitutional rights, emotional distress, and economic hardship. He will suffer even more devastating harms if he remains in custody, as he suffers from ongoing psychological issues, including anxiety and depression, that are worsening the longer he remains detained. These diagnosed psychological conditions stem from sexual abuse he suffered as a child and were exacerbated in 2024 when the Nicaraguan government persecuted and tortured his family.

Petitioner thus respectfully requests that this Court grant a TRO requiring his immediate release from confinement as Respondents 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. 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 incarceration by ICE. *L.G.*, 872 F. Supp. 3d at 1187.

STATEMENT OF FACTS

Petitioner is a citizen and national of Nicaragua



On January 7, 2025, Petitioner arrived at the San Ysidro Port of Entry, presented himself to a CBP officer, and asked to seek asylum. *Id.* He explained the life-threatening circumstances that compelled him to flee Nicaragua and showed the officer several of the documents he had brought in support of his claim for asylum. *Id.* 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).

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.⁴ 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.

On February 20, 2025, Petitioner appeared at his hearing, entered pleading in response to his NTA, and was rescheduled for a second hearing on March 27, 2025, before the Otay Mesa Immigration Court. *Id.* On February 23, 2025, 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 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). The immigration judge nevertheless granted DHS's motion. *Id.* at Ex. D (IJ Order Granting Change of Venue to Aurora Immigration Court). Petitioner's proceedings are now pending before the Aurora Immigration Court. *Id.*

On March 31, 2025, Petitioner appeared for his first hearing before the Aurora Immigration Court. 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. On May 5, 2025, that hearing was reset for August 7, 2025. *See* Sinodis Decl.

⁴ 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.

On May 28, 2025, Petitioner filed a motion to advance his merits hearing 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.*

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.*

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 witnesses. The matter was subsequently reset for August 27, 2025, at 8:30 a.m. *Id.*

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—a licensed psychologist and a university professor—were not available in the afternoon given that the hearing was supposed to begin at 8:30 a.m. *Id.* The court therefore reset the matter for September 22, 2025, at 1:00 p.m. *Id.*; *see also id.* at Ex. F (Petitioner's EOIR Case Portal)

Despite being incarcerated by ICE for more than seven months, Petitioner has yet to be provided with a constitutionally compliant bond hearing. 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

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)).

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. 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.

Petitioner has now been detained under 8 U.S.C. § 1225(b)(1) since January 7, 2025—over

seven months. Release on humanitarian parole 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

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 v. Sessions*, 872 F.3d 967, 990 (9th Cir. 2017) (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”).

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").

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 § 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. 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.

While the Supreme Court held in *Demore* that *brief* mandatory detention under § 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 Government evidence 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).⁵

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 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*).

In 2018, the Supreme Court held that the Ninth Circuit erred by interpreting 8 U.S.C. §§

⁵ 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.”).

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 Ninth Circuit 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 district court to adjudicate petitioner’s due process claims).

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).

Inadequacy of Administrative Remedies

Administrative relief is futile in Petitioner’s case. Because he is detained under 8 U.S.C. §

1225(b), he is statutorily ineligible for bond and can be subjected to continued prolonged 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.

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 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”).

LEGAL STANDARD

To obtain a TRO or a PI, Petitioner must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1255 (10th Cir. 2003) (citation omitted). All factors are satisfied here.

ARGUMENT

I. PETITIONER IS LIKELY TO SUCCEED ON HIS CLAIM THAT HE IS CONSTITUTIONALLY ENTITLED TO OUTRIGHT RELEASE, OR, AT A MINIMUM, A BOND HEARING

a. Petitioner’s Detention Has Become Prolonged and He is Constitutionally Entitled to Outright Release or a Bond Hearing

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. 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) 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 who had expressed a credible fear were eligible for bond notwithstanding § 1225(b), the 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 court also relied on information that the length of detention for asylum seekers was much longer than believed 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 to test the legitimate need for continued detention. *Id.* at 1174. *Padilla*’s reasoning 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*).

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 circuit court 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.

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).

b. The *Singh* Factors Confirm Petitioner’s Entitlement to a Bond Hearing

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 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) *appeal dismissed* (June 24, 2024) (applying multi-factor balancing test developed for § 1226(c) to detention under § 1231(a)(6)). The Court here should similarly apply the *Singh* balancing test, 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.

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 *Singh* test 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 providing Petitioner with a constitutionally compliant individualized bond hearing.

First, as explained above, Petitioner's detention beyond the six-month mark weighs in favor of granting him outright release or 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—and only a few days shy of eight—without any individualized determination as to whether detention is warranted is similarly unreasonable.

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. Were DHS to appeal the IJ’s decision to grant Petitioner asylum or other relief, 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 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.” *Villaescusa-Rios*, 2021 WL 269766, at *3 (quoting *Singh*, 2019 WL 3943960, at *6).

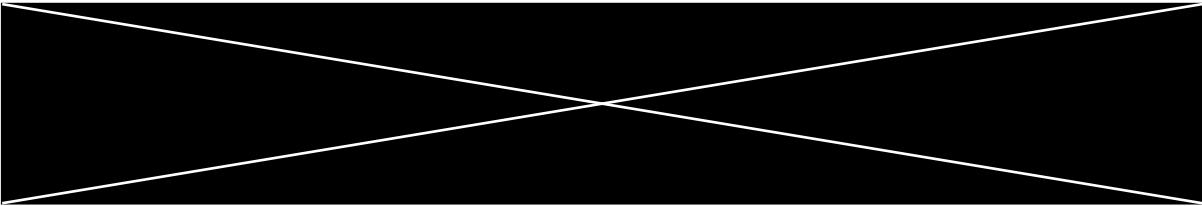
Third, the immigration jail where Petitioner is detained is not meaningfully different from a penal institution, and his conditions of confinement therefore weigh in his favor. *See Singh v. Garland*, No. 21-CV-00715 CMA, 2021 WL 2290712, at *4 (D. Colo. June 4, 2021), *appeal dismissed* (Aug. 5, 2021) (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. Several weeks ago, the Honorable Judge William J. Martinez found that “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 detained at the Aurora Facility, confirms these conditions. Sinodis Decl. at Ex. A (Petitioner's Declaration). This factor clearly weighs in favor of granting Petitioner a TRO.

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. The government, meanwhile, has contributed to extending the removal proceedings. Although Petitioner had already appeared before the Otay Mesa Immigration Court, ICE transferred 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 IJ advanced proceedings by one month to July 11, 2025, Petitioner's hearing has now thrice been continued because of the Immigration Court's practice of double and triple booking morning and afternoon dockets. *See id.* When Petitioner appeared on July 11, August 8, and August 27, 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.*

Finally, the sixth factor weighs strongly in Petitioner's favor, as the likelihood he will

ultimately be granted relief is high. Petitioner 



 by the Ortega regime, a government widely recognized for perpetrating human rights abuses against individuals deemed political enemies.⁶ 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 received a positive “well-founded fear” finding from asylum officials, which would “tend to suggest” that her claim is “colorable”).⁷ 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.

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

At a prolonged custody hearing, due process requires certain minimal protections to ensure

⁶ *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>.

⁷ 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.

a noncitizen's detention is warranted: (1) DHS must bear the burden 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.

To justify prolonged immigration custody, 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 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 (post-final order custody review procedures deficient because, *inter alia*, they placed the burden on the detainee).

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 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.”).

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.

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 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 (“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. 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 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.*

II. PETITIONER FACES IRREPARABLE HARM ABSENT RELIEF FROM THE COURT

Petitioner will suffer irreparable harm absent a TRO enjoining the government from continuing to detain him without a bond hearing. “[W]hen an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Awad v. Ziriax*, 670 F.3d 1111, 1131 (10th Cir. 2012) (internal citation omitted). Thus, a finding that Petitioner is likely to succeed on the merits of his due process claim also means that “he has carried [his] burden as to irreparable harm.” *Id.* at 995. The Ninth Circuit has also recognized the “irreparable harms imposed on *anyone* subject to immigration detention.” *Hernandez*, 872 F.3d at 995-96 (emphasis added). The record here illustrates the numerous irreparable harms that Petitioner will experience if ICE continues to detain him without the possibility of bond. Petitioner is an asylum seeker who has suffered extensive trauma since childhood and continues to struggle with mental health conditions caused by that trauma. The inadequate psychological care at the Aurora Facility and “abhorrent” conditions of confinement are worsening his mental state each day he remains detained. *Arostegui-Maldonado*, --- F.Supp.3d ----, 2025 WL 2280357, at *7 (emphasis added); Sinodis Decl. at Ex. A (Declaration of John Doe).

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST SHARPLY FAVOR PETITIONER

The balance of equities and public interest tip sharply in Petitioner’s favor. On one side of

the scale, Petitioner faces deprivation of his physical liberty, the violation of his constitutional rights, and deterioration of his mental health due to substandard living conditions and inadequate mental healthcare as his immigration proceedings drag onwards. On the other side, any harm to the government should the TRO be granted is negligible at best. Because Respondents' detention of Petitioner without a bond hearing is unconstitutional, it "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from [statutory and] constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). The fiscal costs associated with providing a bond hearing to Petitioner are also *de minimis*. See, e.g., *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal 2019) (noting "minimal cost of conducting a bond hearing").

Finally, the TRO sought here is in the public interest. Indeed, "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Awad v. Ziriox*, 670 F.3d 1111, 1132 (10th Cir. 2012). The public is also served by ensuring that the government does not expend its resources to detain individuals unnecessarily, and without adequate process. See *Hernandez*, 872 F.3d at 996 (noting "staggering" costs of immigration detention); *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

SECURITY

The Court should not require a bond under Fed. R. Civ. P. 65. A court has "wide discretion in the matter of requiring security and if there is an absence of proof showing a likelihood of harm, certainly no bond is necessary." *Continental Oil Co. v. Frontier Refining Co.*, 338 F.2d 780, 782 (10th Cir. 1964). There is no likelihood of harm to Respondents in this case. District courts routinely exercise this discretion to require no security in cases brought by incarcerated people.

See, e.g., Arostegui-Maldonado, --- F.Supp.3d ----, 2025 WL 2280357, at *16 (cleaned up) (“because this preliminary injunction enforces fundamental constitutional rights against the government, the court determines waiving the security requirement best accomplishes the purposes of Rule 65(c)”). This Court should do the same here.

CONCLUSION

For the reasons set forth above, the Court should grant a TRO and either order Petitioner’s outright release, conduct a bond hearing and decide whether Petitioner should be released and under what amount of bond, if any, if so, or order Respondents to, within seven days, provide Petitioner with a bond hearing before a neutral decisionmaker at which DHS bears the burden by clear and convincing evidence to show that his continued incarceration is justified even after considering alternatives to detention.

Dated: September 3, 2025

/s/ Johnny Sinodis
Johnny Sinodis
Attorney for Petitioner