IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

EDWIN AMILCAR MEJIA,

Petitioner,

v.

JEFFREY CRAWFORD, *in his official capacity as the Warden of the Farmville Detention Center*; ROBERT GUADIAN, *in his official capacity as the Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office*; DAREN K. MARGOLIN, *in his official capacity as the Director of the Executive Office for Immigration Review*; TODD LYONS, *in his official capacity as Acting Director of Immigration and Customs Enforcement*; KRISTI NOEM, *in her official capacity as the Secretary of Homeland Security*; PAMELA JO BONDI, *in her official capacity as the Attorney General of the United States*,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 26-66

INTRODUCTION

1. This petition arises out of the unlawful detention of Petitioner Edwin Amilcar Mejia ("Mr. Mejia"), a 45-year-old man who has been in the United States for nearly his entire life—since he was seven years old. For the past 19 months Mr. Mejia has been civilly detained by Immigration and Customs Enforcement ("ICE") while the Government attempts to deport him to El Salvador. He has had no opportunity to seek bond.

2. Unless this Court intervenes, ICE will continue to detain Mr. Mejia for years to come. ICE plans to detain Mr. Mejia until his asylum case is finished, and Mr. Mejia's asylum case has been ongoing for six years and has no end in sight. Indeed, an Immigration Judge ("IJ") finally granted Mr. Mejia asylum last spring, only for the Board of Immigration Appeals ("BIA") three weeks ago to reverse and remand for still additional proceedings, breaking all concepts of party presentation in the process: the BIA *sua sponte* required the IJ to consider a plethora of factual and legal issues that the Government never appealed on and many of which it conceded below. Mr. Mejia remains detained and is now awaiting new briefing and likely a new hearing before an IJ, just as he was when he started. The short story: Mr. Mejia is no closer to receiving an answer on his asylum application than he was six years ago, and will be forced to stay detained for likely years to come.

3. In the meantime, detention has destroyed Mr. Mejia's physical and mental well-being. Most of his time has been in a detention facility that "a group of senators called to be shut down last year due to 'well-documented horrific conditions.'" Tracee Wilkins and Rick Yarborough, *'Like Living In A Dark Room': Inside Overcrowded ICE Detention Centers*, NBC Washington (Mar. 12, 2025), available at https://perma.cc/X6R3-2A8L?type=image. Among the horrific conditions is a potentially-malignant mass around Mr. Mejia's kidney causing him severe, worsening pain; despite Mr. Mejia's urgent efforts to receive medical attention, he has been unable to receive any kind of diagnosis regarding the mass, much less treatment for it.

4. Mr. Mejia's prolonged detention is illegal. His detention arises under 8 U.S.C. § 1226(c), which requires mandatory detention without bond for certain non-citizens pending their removal proceedings. But clear precedent from this Court holds that mandatory detention without bond is an impermissible deprivation of liberty when it becomes unreasonably prolonged, and that

this violates one's due process rights. *See, e.g.*, *Portillo v. Hott*, 322 F. Supp. 3d 698 (E.D. Va. 2018); *Bah v. Barr*, 409 F. Supp. 3d 464, 467, 471 & n.9 (E.D. Va. 2019). And Mr. Mejia was previously discretionarily detained during his same asylum proceeding for another 30 months between 2018 and 2021, exacerbating the due process concerns of this case.

5. Under the factors this Court has repeatedly used in analyzing similar claims, Mr. Mejia's ongoing detention violates his due process rights. His detention (1) far exceeds detention lengths which the Supreme Court has previously held constitutional; (2) has been significantly prolonged by the Government's legal errors and administrative delays; (3) is unlikely to result in Mr. Mejia's removal; (4) is far longer than the time Mr. Mejia served for the drug possession convictions that required mandatory detention in the first place; and (5) has taken place in horrific conditions.

6. The injury Mr. Mejia has suffered is immense, and given his extraordinary circumstances, Mr. Mejia requests this Court order him released from detention. In the alternative, he requests an individualized bond hearing where the Government bears the burden of proving, by clear and convincing evidence, that continued detention is necessary because he poses a flight risk or danger to the community. *See Portillo*, 322 F. Supp. 3d at 709. Mr. Mejia further requests that the adjudicator consider his ability to pay bond and the suitability of alternative conditions of supervision, such as telephonic reporting. *See, e.g.*, *Black v. Decker*, 103 F.4th 133, 138 (2d Cir. 2024) (requiring these conditions).

JURISDICTION

7. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. §§ 2201-2202 (declaratory judgment); and the United States Constitution Article I, Section 9 (Suspension Clause).

8. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

9. Administrative exhaustion is not required where it would be futile, as is the case here. *See Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542 (E.D. Va. 1999). The Government has not afforded, and will not afford, Mr. Mejia a bond hearing because he is detained under Section 1226(c).

10. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Mr. Mejia is physically detained at the Farmville Detention Center in Farmville, Virginia, located in this district, the IJ decision granting him asylum was issued in this district and division, the ICE Enforcement and Removal Operations ("ERO") Washington Field office is located in this district and division, and events or omissions giving rise to this action continue to occur in this district. *See, e.g., Quispe-Ardiles v. Noem*, No. 1:25-cv-1382, 2025 WL 2783800 (E.D. Va. Sept. 30, 2025) (noting the Farmville Detention Center is "within this Court's jurisdiction").

PARTIES

11. Petitioner Mr. Edwin Amilcar Mejia is a native and citizen of El Salvador who has been in America almost uninterrupted since 1987. He has been in ICE custody since June 2024 and is currently detained at Farmville Detention Center.

12. Respondent Jeffrey Crawford is the Director of the Farmville Detention Center, a private facility that contracts with ICE to detain non-citizens. Mr. Crawford is responsible for overseeing the administration and management of Farmville. He is sued in his official capacity.

13. Respondent Todd Lyons is the Director for U.S. Immigration and Customs Enforcement. Mr. Lyons is a legal custodian of Mr. Mejia. He is sued in his official capacity.

14. Respondent Daren K. Margolin is the Acting Director of the Executive Office for Immigration Review and has ultimate responsibility for overseeing the operation of the immigration courts and the BIA, including bond proceedings. He is sued in his official capacity.

15. Respondent Robert Guadian is the Field Office Director of the ICE Enforcement and Removal Operations Washington Field Office. He oversees all ICE detention centers in Virginia, including Farmville Detention Center, and has the authority to make custody determinations for individuals detained there. Mr. Guadian is a legal custodian of Mr. Mejia. He is sued in his official capacity.

16. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). She supervises ICE, an agency within DHS responsible for the administration and enforcement of immigration laws, and she has supervisory responsibility for and authority over the detention and removal of non-citizens throughout the United States. Secretary Noem is the ultimate legal custodian of Mr. Mejia. She is sued in her official capacity.

17. Respondent Pamela Jo Bondi is the Attorney General of the United States. As the Attorney General, she oversees the Executive Office for Immigration Review, including all immigration judges and the BIA, and has authority over immigration detention. She is sued in her official capacity.

LEGAL BACKGROUND

18. Section 1226 of Title 8 of the United States Code governs the detention of aliens in removal proceedings "pending a decision on whether the alien is to be removed from the United States." Non-citizens with certain criminal convictions are subject to mandatory detention without bond under 8 U.S.C. § 1226(c).

19. Under the Fifth Amendment, no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. This protection extends to "aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693 (internal citations omitted).

20. In *Zadvydas*, the Supreme Court held that mandatory detention under a similar immigration statute would be "presumptively" unconstitutional after six months. *Id.* at 701. And in *Demore v. Kim*, the Supreme Court upheld the facial constitutionality of Section 1226(c)—the statutory provision here—based on a rationale that the "vast majority" of Section 1226(c) detentions last for a month and a half, and an average of five months in the remaining 15% of cases. 538 U.S. 510, 529-530 (2003). Justice Kennedy—who provided the necessary fifth vote in *Demore*—wrote a separate concurrence to emphasize that a non-citizen is "entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified," such as in cases of "unreasonable delay." *Id.* at 532-533 (Kennedy, J., concurring).

21. Following *Zadvydas* and Kennedy's *Demore* concurrence, in this Court it is "well-established that [non-citizens] detained under § 1226 must receive bond hearings if their lengthy detentions violate Due Process." *Bah*, 409 F. Supp. 3d at 467. Though there is no case law from the Fourth Circuit on this issue, this Court's long-standing precedent is consistent with that of the Second and Third Circuits. *See Black*, 103 F.4th at 138 ("[W]e conclude that a noncitizen's constitutional right to due process precludes his unreasonably prolonged detention under section 1226(c) without a bond hearing."); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 206 (3d Cir. 2020) ("Because his detention has become unreasonable, he has a due process right to a bond hearing . . . .").

22. In *Portillo v. Hott*, 322 F. Supp. 3d 698 (E.D. Va. 2018), this Court established a five-factor framework for determining when prolonged detention without bond becomes unreasonable and thus violates due process. Since then, this Court has consistently applied the *Portillo* factors in analyzing the lawfulness of prolonged detention under Section 1226(c). *See, e.g.*, *Abreu v. Crawford*, No. 1:24-cv-01782-MSN-WBP, 2025 WL 51475 (E.D. Va. Jan. 8, 2025); *Santos Garcia v. Garland*, No. 1:21-cv-742, 2022 WL 989019 (E.D. Va. Mar. 31, 2022); *Martinez v. Hott*, 527 F. Supp. 3d 824 (E.D. Va. 2021); *Deng v. Crawford*, No. 2:20-cv-199, 2020 WL 6387010 (E.D. Va. Sept. 30, 2020), *report and recommendation adopted*, No. 2:20-cv-199, 2020 WL 6387326 (E.D. Va. Oct. 30, 2020); *Songlin v. Crawford*, No. 3:19-cv-895, 2020 WL 5240580 (E.D. Va. Sep. 2, 2020); *Gutierrez v. Hott*, 475 F. Supp. 3d 492 (E.D. Va. 2020); *Urbina v. Barr*, No. 1:20-cv-325, 2020 WL 3002344 (E.D. Va. June 4, 2020).

23. The five *Portillo* factors are: "(1) the duration of detention, including the anticipated time to completion of the [non-citizen's] removal proceedings; (2) whether the civil detention exceeds the criminal detention for the underlying offense; (3) dilatory tactics employed in bad faith by the parties or adjudicators; (4) procedural or substantive legal errors that significantly extend the duration of detention; and (5) the likelihood that the government will secure a final removal order." *Portillo*, 322 F. Supp. 3d at 707. This Court has also considered a non-citizen's medical concerns and the conditions of their confinement in determining whether their continued detention is reasonable. *See Gutierrez*, 475 F. Supp. 3d at 498 n.8 (citing *Urbina*, 2020 WL 3002344, at *7 n.9).

24. The first *Portillo* factor, the duration of detention, is "the most important" factor. *Portillo*, 322 F. Supp. 3d at 708. Indeed, this Court has ruled for the petitioner even when this factor was the only one in the petitioner's favor. *See Songlin*, 2020 WL 5240580, at *21–22; *Sonko*

v. Bondi, No. 2:24-CV-656, 2025 WL 1662749, at *5 (E.D. Va. June 12, 2025), *report and recommendation adopted*, No. 2:24-CV-656, 2025 WL 1854729 (E.D. Va. July 2, 2025). This Court in *Bah* focused almost exclusively on the length of detention, finding detention unreasonable when it "far exceeds *Demore*'s one-and-a-half to five-month period and *Zadvydas*'s presumptively reasonable six-month period." 409 F. Supp. 3d at 471.

25. This Court has universally found that the first factor favors the non-citizen when their detention nears or exceeds one year. *Deng*, 2020 WL 6387010, at *18–19 (11 months); *Haughton v. Crawford*, No. 1:16-cv-634, 2016 WL 5899285, at *2 (E.D. Va. 2016) (12 months); *Portillo*, 322 F. Supp. 3d at 707-708 (14 months); *Mauricio-Vasquez v. Crawford*, No. 1:16-cv-422, 2017 WL 1476349, at *1 (E.D. Va. Apr. 24, 2017) (15 months); *Martinez*, 527 F. Supp. 3d at 836 (16 months); *Songlin*, 2020 WL 5240580, at *7 (16 months); *Urbina*, 2020 WL 3002344, at *6 (19 months); *Gutierrez*, 475 F. Supp. 3d at 497 (23 months); *Bah*, 409 F. Supp. 3d at 471 (24 months).

FACTUAL BACKGROUND

I. Mr. Mejia's Life in America and Persecution in El Salvador.

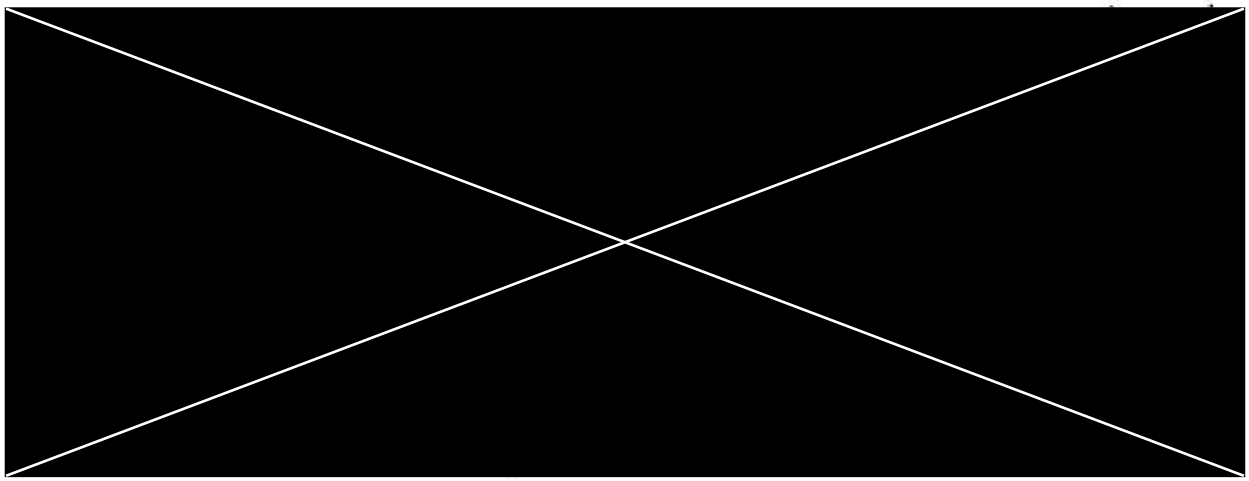
26. Mr. Mejia was born on [redacted], in El Salvador. Ex. 1 ¶ 7 (Mejia Decl.). In 1987, at the age of seven, Mr. Mejia came to the United States with his family, fleeing El Salvador's civil war. *Id.*

27. Except for a nine-month period described below, Mr. Mejia has lived only in the United States since 1987. *Id.* ¶¶ 1, 12, 17. His entire immediate family resides in America, including his three American daughters, his parents, and his siblings. *Id.* ¶ 8. Virtually his entire extended family lives in America as well, including 17 aunts and uncles and many dozens of cousins. *Id.*

28. Mr. Mejia received Temporary Protected Status through his father in 1991 at the age of 11. *Id.* ¶ 7. In 2014, Mr. Mejia became a legal permanent resident. *Id.*

29. In 2017, following two drug possession convictions and a minor identity theft conviction (giving his brother's name to police officers during a traffic stop),[1] DHS initiated removal proceedings against Mr. Mejia. *Id.* ¶ 10.

30. In August 2017, after an unsuccessful asylum petition based on Mr. Mejia's fear and expectation that he would be persecuted by gang members in El Salvador, Mr. Mejia was removed to El Salvador. *Id.* ¶¶ 11-12.



El Salvador. *Id.* ¶ 17. He returned to the only country he knew: the United States. *Id.* He left El Salvador in February 2018 and arrived in the United States in May 2018, having spent about nine months outside America. *Id.*

34. Mr. Mejia was apprehended by U.S. law enforcement in late 2018. *Id.* The Government issued Mr. Mejia a new Notice to Appear and initiated new removal proceedings against him. Ex. 3 (Notice to Appear).

[1] The IJ in its asylum grant (and consequently the BIA in its latest remand order) mistakenly stated that Mr. Mejia had a perjury conviction rather than an identity theft conviction. The perjury charge was ultimately amended to identity theft. *See* Ex. 2 at 5 (Conviction Information).

II. Mr. Mejia's Asylum Case Lasts for Six Years, Largely Because of the Government's Substantive Errors and Administrative Delays.

35. In February 2019, Mr. Mejia newly applied for asylum, withholding of removal, and protection under the Convention Against Torture, on the grounds he had suffered persecution by gang members in El Salvador and would continue to face such persecution in the future. Ex. 4 (Mejia I-589).

36. On December 4, 2019, the IJ denied all relief. *See* Ex. 5 (2019 IJ Asylum Denial). It reasoned *sua sponte* that Mr. Mejia could not file a second asylum application, even though both Mr. Mejia and the Government agreed he could under the "American Baptist Churches Settlement" that provides additional rights to Salvadorans in immigration cases. *Id.* at 5-6; *see Am. Baptist Churches v. Thornburgh,* 760 F. Supp. 796, 800, 806 (N.D. Cal. 1991). In the alternative, the IJ reasoned that gang members did not target Mr. Mejia "on account of his family membership," but instead for money, and that Mr. Mejia therefore could not show a required "nexus" between his persecution and any protected ground. Ex. 5 at 6-7.

37. Mr. Mejia appealed to the BIA. In May 2020, the BIA dismissed Mr. Mejia's appeal. The BIA affirmed the IJ's alternative "nexus" holding. Ex. 6 (BIA Affirmance of Asylum Denial). It reasoned that Mr. Mejia's persecutors were "exclusively motivated by the gang members' desire for financial gain and territorial control of his neighborhood," which it believed was therefore "unrelated to [Mr. Mejia's] family membership," *i.e.*, there was no nexus. *Id.* at 2.

38. Mr. Mejia appealed to the Fourth Circuit. On February 16, 2022, the Fourth Circuit granted DHS's unopposed motion to remand the case. Ex. 7 (4th Cir. Remand). In doing so, the Fourth Circuit proactively cited several cases for the BIA to consider to "revisit" its nexus holding that Mr. Mejia's persecution was not on account of his family. *Id.* at 1-2.

39. One of these cited cases featured nearly identical facts to Mr. Mejia's case—gang members extorting an individual because that individual's family had money—where the BIA had similarly denied asylum for a perceived lack of nexus. *See Perez Vasquez v. Garland*, 4 F.4th 213, 220 (4th Cir. 2021). In reversing, that Fourth Circuit case sharply criticized the BIA for "commit[ing] the same legal errors for which we have repeatedly admonished the agency"—and "applying a legally incorrect and excessively narrow approach to analyzing whether [an applicant] satisfied the statutory nexus requirement—one that we have rejected time and time again." *Id.* at 221-222 (quotations omitted). In explaining how many times it had rejected the BIA's similar reasoning, it cited seven cases going back to 2014, all but one decided before Mr. Mejia's BIA decision. *See id.* at 222.

40. The BIA did not act on the remand for seventeen months. On July 21, 2023, the BIA finally remanded the case back to the IJ to "reassess [Mr. Mejia's] claim in accordance with the Fourth Circuit's order and enter a new decision on his application for asylum and withholding of removal." Ex. 8 at 2 (First BIA Remand). By then, nearly four and a half years had elapsed since Mr. Mejia first filed his 2019 asylum application.

41. Nothing happened at the IJ level for another year. At some unknown point, Mr. Mejia's case was assigned a new IJ. *See* Ex. 9 at 24 n.3 (IJ Asylum Grant). The next substantive action on Mr. Mejia's asylum case happened on July 17, 2024, when a procedural master calendar hearing was held. *See* Ex. 10 (IJ July 17, 2024 Hearing). After some small continuances to give Mr. Mejia time to find an attorney and to conduct a competency hearing, the IJ eventually scheduled Mr. Mejia's asylum individual hearing for November 25, 2024. Ex. 1 ¶ 23. About a week before that hearing, Mr. Mejia obtained his current counsel, who then moved to continue the

hearing to six to eight weeks later. *See id.* The IJ granted the motion, and the two-day hearing took place on January 14, 2025 and February 18, 2025. Ex. 9 at 3.

42. At the new hearing, Mr. Mejia reaffirmed his original claims for asylum, withholding of removal, and protection under the Convention Against Torture, explaining he had been persecuted by gangs in the past and would continue to be. *See generally id.* at 2-8. Mr. Mejia also brought new claims for asylum, withholding of removal, and the Convention Against Torture, explaining he would be persecuted by the Salvadoran government. *See generally id.*

43. On April 7, 2025, the IJ granted Mr. Mejia asylum. *Id.* at 1-24. The IJ reviewed several thousands of pages of record evidence, expert testimony, and two days of hearings. *Id.* at 3-4. The IJ found Mr. Mejia credible. *Id.* at 10-11. It held he could apply for a second asylum application because he showed "changed circumstances which materially affect his eligibility for asylum"—specifically, Mr. Mejia showed he was persecuted in El Salvador. *Id.* at 12-13.

44. The IJ then held Mr. Mejia qualified for asylum. The IJ relied on Fourth Circuit case law to hold that (1) Mr. Mejia's harm amounted to persecution; (2) his family was a cognizable "particular social group" and thus a protected ground under asylum law; (3) Mr. Mejia demonstrated nexus between his persecution and his family; and (4) the Salvadoran government was unable or unwilling to help Mr. Mejia. *Id.* at 14-18. Having held that Mr. Mejia suffered past persecution, the IJ then held that the Government did not rebut the resulting presumption that Mr. Mejia had a reasonable possibility of facing future persecution. *Id.* at 18-20.

45. The IJ finally held that a grant of asylum was discretionarily warranted. *Id.* at 23-24. It noted Mr. Mejia's "extensive ties to the U.S." "weigh strongly in his favor." *Id.* at 22. It also explained that Mr. Mejia faced "likely harm" in El Salvador, including "possible" death. *Id.* at 23.

46. DHS appealed the asylum grant to the BIA. DHS appealed a single factual finding made by the IJ: whether Mr. Mejia still had a reasonable possibility of persecution in El Salvador. Ex. 11 at 1 (DHS BIA Appellate Brief).

47. On December 22, 2025, the BIA remanded his case back to the IJ. Ex. 12 (Second BIA Remand). The BIA did not address the sole issue that DHS appealed. Instead, the BIA *sua sponte* ordered the IJ to consider several non-jurisdictional issues that the Government chose not to appeal, many which it had even waived or forfeited before the IJ.

48. First, although the "Department did not argue that any statutory bars apply" to Mr. Mejia's case, Ex. 9 at 11, the BIA ordered the IJ to make factual findings regarding whether any of Mr. Mejia's crimes were "particularly serious crimes" that would statutorily bar him from asylum, Ex. 12 at 2-3.

49. Second, the BIA stated that a remand was "necessary" because of "intervening precedent issued by the Attorney General" that allegedly affected whether Mr. Mejia's family was a cognizable particular social group for purposes of asylum. *Id.* at 3. The BIA either did not know or failed to mention that the IJ's holding was based on controlling "Fourth Circuit precedent [that] has consistently recognized that membership in a nuclear family" is a "cognizable particular social group," Ex. 9 at 15-16; *see, e.g.*, *Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011) ("[T]he family provides a prototypical example of a particular social group.") (quotation marks omitted). And Fourth Circuit caselaw would control any contrary Attorney General precedent. *E.g.*, *Garcia v. Garland*, 73 F.4th 219, 230 n.7 (4th Cir. 2023) (The BIA "is obliged to apply the precedent of the relevant court of appeals in cases arising within the associated circuit—even if the Attorney General or the BIA itself disagrees with that precedent."). The Fourth Circuit has already explicitly held that the reinstated Attorney General opinion the BIA relied on as intervening

precedent—*Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019)—"conflict[s] with [Fourth Circuit] well-established precedent recognizing families as cognizable social groups." *Garcia*, 73 F.4th at 230 (citation modified).

50. Third, the BIA deemed a remand necessary so that the IJ could reconsider its "nexus" holding that Mr. Mejia's harm was on account of his family because of other "intervening" Attorney General precedent. Ex. 12 at 5. The BIA failed to mention that controlling Fourth Circuit precedent already held that nexus exists in situations identical to Mr. Mejia's—where gang members persecute individuals because these individuals have wealthier family members in America who can pay extortion threats. *Perez Vasquez*, 4 F.4th at 220-222; *Hernandez-Cartagena v. Barr*, 977 F.3d 316, 320-323 (4th Cir. 2020); *see infra* pp. 24-25. The BIA failed to mention that the Fourth Circuit had explicitly instructed the BIA to consider these exact cases when it remanded for the BIA to reconsider its earlier holding that there was no nexus in Mr. Mejia's case. *See* Ex. 7 at 2; *supra* pp. 10-11. It also failed to mention that the IJ relied on these Fourth Circuit cases to find nexus. Ex. 9 at 16-17. As explained above, these cases control and supersede any "intervening" Attorney General precedent. *Garcia*, 73 F.4th at 230 n.7.

51. Finally, the BIA asked the IJ to reconsider its holding that Mejia was discretionarily entitled to asylum, even though such denials are "exceedingly rare," showing past persecution and a well-founded fear of future persecution "outweigh[s] all but the most egregious adverse factors," and the IJ's discretionary grant should have been reviewed, if at all, for a mere abuse of discretion. *Zuh v. Mukasey*, 547 F.3d 504, 507, 512 (4th Cir. 2008) (quotation marks omitted); Ex. 12 at 5. The BIA asked the IJ to "consider the fact" that Mr. Mejia had his lawful permanent resident status revoked when he received his convictions. Ex. 12 at 5; *see supra* p. 9. And even though the Government agreed that Mr. Mejia "is not and has never been a gang member," Ex. 13 at 403:9-

10 (Feb. 18, 2025 Asylum Hr'ng Tr.),[2] and that a prior DHS document labeling him as one was inaccurate, the BIA nonetheless directed the IJ to "provide further findings of fact as to whether the respondent is in fact an MS-13 member." Ex. 12 at 5. The BIA did not mention that in previously denying Mr. Mejia's Convention Against Torture claim in 2019, Mr. Mejia's IJ had already found that Mr. Mejia "is not, nor has he ever been, affiliated with a criminal gang in the United States or El Salvador." Ex. 5 at 9.

52. Because the BIA remand is not a final order of removal, Mr. Mejia is unable to appeal it to the Fourth Circuit. *See* 8 U.S.C. § 1252(a)(1) (limiting judicial review to "review of a final order of removal").

53. Given its introduction of new issues, the BIA remand will almost certainly require new briefing and a new hearing before the IJ, which will take many months at minimum.

54. If the IJ grants asylum on remand, because the BIA did not resolve the one actual issue that DHS appealed, that same issue is likely to be appealed again and require a third BIA appeal. And if the IJ denies asylum, there will be a similar appeal to the BIA and (if that fails) the Fourth Circuit.

III. Throughout His Asylum Proceedings, Mr. Mejia Has Been Detained for Over Four Years, Including the Past 19 Months, in Horrific Conditions with Serious Medical Issues Neglected.

55. Mr. Mejia has been detained for a total of over four years, including his current detention of 19 consecutive months.

56. Mr. Mejia's first detention lasted 30 months, from August 2018 (when he was first apprehended by law enforcement after returning to America) to March 2021, when he was released

[2] *See also* Ex. 13 at 403:9-10 (DHS conceding that Mr. Mejia "has no gang related tattoos" and "no gang ties in El Salvador").

on his own recognizance. Ex. 1 ¶ 28. He spent this initial detention between Farmville Detention Center ("Farmville") in Virginia, Caroline Detention Facility ("Caroline") in Virginia, and then Stewart Detention Center ("Stewart") in Georgia. *Id.*

57. Mr. Mejia has struggled with substance abuse, and in late 2023, Mr. Mejia was arrested on two charges of possession of small amounts of controlled substances. *Id.* ¶ 29. He pleaded guilty and received a combined two-year sentence, with one year and one month suspended. *Id.* He ultimately served nine months in state custody. *Id.*

58. Mr. Mejia's second (and current) detention has lasted another 19 months, from June 2024 (when Mr. Mejia completed his nine-month sentence and ICE took him into custody under Section 1226(c)) to the present. *Id.* ¶ 30. After about seven months at Caroline, he was transferred to Farmville in December 2024, his current detention facility. *Id.* Mr. Mejia submitted a custody release request in April 2025, which ICE denied on the basis that Mr. Mejia was "subject to mandatory detention under" Section 1226(c). *Id.*; Ex. 14 (ICE Custody Review Decision).

59. Farmville—Mr. Mejia's current facility and where he has spent most of his detention—was "one of four facilities a group of senators called to be shut down last year due to 'well-documented horrific conditions.'" Wilkins and Yarborough, *supra* p. 2. These include "yellow drinking water, forced sleep deprivation, prolonged solitary confinement, inadequate medical care, limited access to legal counsel, and violent retaliation against those who complain." Press Release, Senator Elizabeth Warren, *Warren, Senators Urge Closure Of Inhumane Immigration Detention Centers* (May 15, 2024), *available at* https://perma.cc/Y2P5-8RF9.

60. At Farmville, about 98 people share six toilets—only three of which allow for bowel movements. Ex. 1 ¶ 32. These toilets are frequently broken and spill sewage onto the floor, which detainees must walk across and which then tracks into the sleeping area, which is also the

main living area. *Id.* Farmville does not provide hand sanitizer, hand soap, or paper towels in the bathroom. *Id.* The AC and fans are frequently broken and there is no air circulation in the facilities—the temperature is always hot, and extremely so in the summer months. *Id.* Detainees sleep in beds three to five inches apart from other beds; if they turn around in bed they are essentially face-to-face with other detainees. *Id.*

61. Detainees have regularly been served "spoiled, worm-infested food." Toby Sherman, *Virginia Detention Center Faces New Allegations Of Spoiled, Worm-infested Food*, 29 News (Oct. 29, 2025), available at https://perma.cc/KG7Z-FWPJ. Mr. Mejia saw such worms with his own eyes, and the conditions of the food has prompted at least one hunger strike by detainees. Ex. 1 ¶ 33.

62. The water at Farmville is hard and horrible. *Id.* ¶ 34. It has a weird, cloudy, persistent color. *Id.* Guards have told Mr. Mejia not to drink too much of it or else it will give him kidney stones. *Id.* The water fountain in the dual living/sleeping area has been broken for months. *Id.* There is an occasional leak from it—the water from that leak literally dissolved the concrete that it leaked onto. *Id.* That incident shocked even the guards. *Id.* When Mr. Mejia takes a shower, the water has a very strong smell of chlorine. *Id.*

63. Because of these conditions, Mr. Mejia and other detainees are sick multiple times a month. *Id.* ¶ 35.

64. There are frequent violent fights in these facilities. *Id.* ¶ 36. These facilities are full of large groups of gang members. *Id.* Mr. Mejia witnessed a gang fight that involved about 30-40 detainees in a full-out melee against each other. *Id.* There was blood everywhere in the area that houses all of the detainees; many individuals went to the hospital. *Id.*

65. Mr. Mejia also faces serious medical neglect. *Id.* ¶ 37. This includes the neglect of a potentially malignant mass in his body which is causing him debilitating pain but which doctors refuse to diagnose or treat. *Id.* Around November 2024, doctors at Caroline confirmed from a sonogram that Mr. Mejia has a growing mass right outside of his kidney. *Id.* Mr. Mejia was scheduled to have more detailed checkups but then was transferred to Farmville in December 2024. *Id.* Even though he then immediately and repeatedly brought the issue to the attention of Farmville's medical staff, he has been unable to convince those doctors to schedule a CT scan or biopsy to confirm whether the growth is cancerous. *Id.* The Farmville doctors claim that they first need Mr. Mejia's medical records from Caroline. *Id.* They have been waiting for those medical records for 12 months. *Id.* Unrelated to the medical records issue, the doctors also tell Mr. Mejia that ICE must approve any CT scan or biopsy. *Id.* That approval has also been pending for at least seven months. *Id.* Mr. Mejia's counsel has been unable to accelerate the process. *Id.*

66. Two months ago, in November 2025, things became much worse. *Id.* ¶ 38. For weeks Mr. Mejia constantly vomited with a nonstop cough. *Id.* He has a constant stabbing pain in his kidney right where the mass is. *Id.* [redacted] *Id.* He constantly wakes up with night sweats. *Id.* He has lost 14 pounds over the past two months. *Id.* He is nevertheless still unable to get his doctors to diagnose the mass or treat the problem. *Id.*

67. Although this petition only specifically details the conditions at Farmville because that is Mr. Mejia's current facility and where he spent most of his detention, the conditions at his other facilities were not better. *Id.* ¶ 39. Indeed, two of the most terrifying moments of his detention happened at other facilities. *Id.* In mid-2020 while at Stewart, ICE officers suddenly shipped Mr. Mejia to Texas. *Id.* They took Mr. Mejia and other detainees to a plane tarmac, where

a plane was ready to deport them to El Salvador. *Id.* Mr. Mejia told them that he had a stay of removal and that his asylum application was ongoing, but ICE officers said they were going to deport him anyway. *Id.* At the last moment Mr. Mejia's lawyer was able to reach these officers and stop them from deporting Mr. Mejia. *Id.* The experience was terrifying to Mr. Mejia, who felt certain he was going to die in El Salvador. *Id.*

68. A similar experience happened in early 2021, again at Stewart, when he was suddenly shipped away to Louisiana and again told he was going to be deported. *Id.* ¶ 40. He managed to contact his lawyer, who helped him stop the deportation right before he arrived at the airport. *Id.*

69. Mr. Mejia's detention has significantly deteriorated his mental health. *Id.* ¶ 41. He is constantly depressed and frequently feels hopeless and lonely. *Id.* He was diagnosed with PTSD, mood disorder, and anxiety. *Id.* And while even in prison there are programs, classes, or libraries that inmates can attend, none of that exists for detainees in Farmville. *Id.* There are often months in a row where detainees are not even allowed to go outside, which the facility blames on the weather and staff shortages. *Id.* Mr. Mejia frequently has days where he does not want to leave his bed or eat anything. *Id.* He often just wants to cry. *Id.* He gained 100 pounds in the last year alone, going from 170 pounds to about 270, prior to his weight suddenly plummeting in the last two months as described above. *Id.* Mr. Mejia is prescribed antianxiety and antidepressant medicines, but his medications are repeatedly delayed or withheld by the detention facilities, causing further severe mood swings, depression, irritability, lack of focus, anxiety, and migraines. *Id.*

ARGUMENT

A. Mr. Mejia's 19 Month Detention Violates Due Process Under the *Portillo* Test.

70. As explained above, this Court repeatedly evaluates the constitutionality of mandatory detention under 8 U.S.C. § 1226(c) using the five-factor test set out in *Portillo v. Hott,* 322 F. Supp. 3d 698. Each *Portillo* factor weighs heavily in Mr. Mejia's favor.

1. Mr. Mejia Has Been Detained for 19 Months.

71. The first *Portillo* factor looks at the "duration of detention, including the anticipated time to completion of [a non-citizen's] removal proceedings." *Portillo*, 322 F. Supp. 3d at 707. This is the "most important" factor. *Id.* The Supreme Court's main due process concerns have been about "prolonged detention." *Bah*, 409 F. Supp. 3d at 471 n.9; *see, e.g.*, *Zadvydas*, 533 U.S. at 692 (noting the "serious constitutional problem arising out of a statute" that would "permit[] an indefinite, perhaps permanent, deprivation of human liberty without any [procedural] protection").

72. In holding Section 1226(c) facially constitutional, the Supreme Court stressed that "the vast majority" of detentions under the statute end within "a month and a half," and the remaining minority end on average within "five months." *Demore*, 538 U.S. at 528-530. In *Zadvydas*, addressing the closely related immigration detention statute Section 1226(a), the Supreme Court held that detention longer than six months was presumptively unreasonable. *Zadvydas*, 533 U.S. at 701.

73. Mr. Mejia has been detained for approximately 19 months, "significantly longer than the one-, five-, and six-month boundaries described in *Zadvydas* and *Demore*." *Abreu*, 2025 WL 51475, at *5 (quoting *Portillo*, 322 F. Supp. 3d at 708). Mr. Mejia's detention is also longer than many detention periods that this Court has found unconstitutional. *See, e.g.*, *Deng*, 2020 WL 6387010 (11 months); *Haughton*, 2016 WL 5899285 (12 months); *Portillo*, 322 F. Supp. 3d at 706 (14 months); *Mauricio-Vasquez*, 2017 WL 1476349, at *4 (15 months) *Martinez*, 527 F. Supp. 3d

at 836 (16 months); *Songlin*, 2020 WL 5240580, at *7 (same); *Abreu*, 2025 WL 51475, at *5 (17 months and 13 months). And when Mr. Mejia's 2018-2021 detention under this same asylum proceeding is added, his total four-year detention significantly exceeds virtually all such cases in this district.

74. Mr. Mejia's detention also has no end in sight. His asylum case has been ongoing for six years. And because the BIA has now remanded for the IJ to consider a host of new factual and legal issues that will require new briefing and likely a new hearing, Mr. Mejia is effectively in the same procedural position that he was in six years ago when he first filed his asylum application.

75. Accordingly, Mr. Mejia's length of detention "weighs heavily in [his] favor as a prolonged and substantial burden on his liberty interest." *Abreu*, 2025 W 51475 at *5 (quoting *Portillo*, 322 F. Supp. 3d at 707-708).

2. Mr. Mejia's Civil Detention Exceeds his Criminal Detention for the Underlying Offense.

76. The second *Portillo* factor asks "whether the civil detention exceeds the criminal detention for the underlying offense." *Portillo*, 322 F. Supp. 3d at 707. When it does, that favors relief. *Id.* at 708.

77. Here, Mr. Mejia was sentenced to 11 months of state criminal custody and served only nine months. Ex. 1 ¶ 29; Ex. 2 at 1, 3. In contrast, he has served 19 months in his Section 1226(c) civil detention, and over four years when all his detention time is considered together. Ex. 1 ¶¶ 27-30. This factor therefore works strongly in his favor. *E.g.*, *Gutierrez*, 475 F. Supp. 3d at 497 (23-month difference "weighs heavily" in petitioner's favor); *Martinez*, 527 F. Supp. 3d at 836 (eight-month difference "cuts in Petitioner's favor"); *Urbina*, 2020 WL 3002344, at *7 (seven-month difference).

3. The Government Has Delayed Adjudication of Mr. Mejia's Asylum Application.

78. The third *Portillo* factor asks whether prolonged detention has occurred from Government-caused delay. *Portillo*, 322 F. Supp. 3d at 708.

79. Here, the BIA unreasonably caused significant delay to Mr. Mejia's asylum case by waiting *seventeen* months to remand to the IJ after the 2022 Fourth Circuit remand to the BIA. *See supra* p. 11; Ex. 7 (Feb. 16, 2022); Ex. 8 (July 21, 2023). Even worse, the only substance of the BIA remand order was an instruction for the IJ to make "an updated nexus finding in accordance with the Fourth Circuit's remand order." Ex. 8 at 2. Because there is no "valid justification" for waiting 17 months to give a simple mechanical remand order, "this factor weighs in favor of" Mr. Mejia. *Abreu*, 2025 WL 51475, at *6.

80. Additionally, it then took an additional year before the IJ took any further action on Mr. Mejia's case. *See* Ex. 10. Even giving the Government leeway because a new IJ was assigned, a year-long delay is unreasonable.

81. Mr. Mejia's asylum case may well have ended by now if the Government acted promptly at either of the above steps, which together caused a 29-month delay between the Fourth Circuit remand and any substantive action on his case.

82. Finally, the recent BIA remand only serves to create additional delay in resolution of Mr. Mejia's asylum case. The BIA failed to address the only actual issue that DHS had appealed: whether Mr. Mejia has a reasonable fear of persecution in the future. *See supra* p. 13. Instead, and without holding the IJ erred, the BIA remanded so the IJ could "consider" additional factual and legal issues that the Government did not appeal. *See supra* pp. 13-15. It did so even though the BIA follows the party presentation rule of generally refusing to consider new issues *raised on appeal*, let alone issues never appealed at all. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767

n.2 (BIA 2009); *Honcharov v. Barr*, 924 F.3d 1293, 1295 (9th Cir. 2019) (per curiam) (collecting cases where BIA has applied the party presentation rule). Indeed, in addition to not being appealed, some of these issues were even forfeited or conceded *to the IJ*, such as whether Mr. Mejia has particularly serious crimes, is a gang member, and whether his family is a particular social group. *See supra* pp. 13-15; *see also* Ex. 13 at 403-406 (only arguments DHS made before IJ). And the BIA's remand for the IJ to consider "intervening" Attorney General precedent is pointless, because binding Fourth Circuit law that the IJ relied on controls those same issues and would therefore supersede any such precedent. *See supra* pp. 13-14.

83. And because the BIA failed to address the actual issue on appeal, even if and when the IJ again grants Mr. Mejia asylum the Government will likely again appeal that same issue, guaranteeing another trip to the BIA.

84. Because there is no "valid justification" for requiring such a wasteful use of administrative time and resources—particularly when a man's ongoing life and liberty are on the line—this factor strongly favors Mr. Mejia. *Abreu*, 2025 WL 51475, at *6.

4. Procedural and Substantive Errors Have Extended Mr. Mejia's Detention by Years.

85. The fourth factor asks whether procedural or substantive errors have extended the duration of detention. *Portillo*, 322 F. Supp. 3d at 707.

86. Here, the IJ and BIA's substantive legal errors required a Fourth Circuit remand, delaying Mr. Mejia's asylum case for years and therefore prolonging his past and current detention.

87. The IJ and BIA initially wrongly denied Mr. Mejia asylum because of a purported failure to establish a "nexus" between his persecution and his family. *See Perez Vasquez*, 4 F.4th at 221 (explaining how a "nexus" is required between persecution and a protected ground); Ex. 5 at 6-7; Ex. 6 at 1-2. The IJ and BIA erroneously held that gang members did not target Mr. Mejia

because of his family, even though these gang members told Mr. Mejia they were targeting him because they knew he had family in America that could pay their demands. *E.g.*, Ex. 6 at 1-2.[3]

88. In remanding the case back to the BIA to "revisit" its nexus determination, the Fourth Circuit cited a case that explained how the Fourth Circuit had "rejected time and time again" the BIA's "legally incorrect and excessively narrow approach to analyzing whether [an applicant] satisfied the statutory nexus requirement." *Perez Vasquez*, 4 F.4th at 221; Ex. 7 at 2. That case explained how the BIA repeatedly committed "the same legal errors for which we have repeatedly admonished the agency," citing seven prior Fourth Circuit decisions going back to 2014, all but one decided before Mr. Mejia's BIA decision. *See Perez Vasquez*, 4 F.4th at 221-223 (collecting cases).

89. These Fourth Circuit cases explain that a protected ground need not "be *the* central reason or even a dominant central reason for the applicant's persecution." *Id.* at 221 (quotation marks omitted). Instead, "the operative question is whether the petitioner's membership in their family is a central reason why they, and not some other person, were targeted." *Id.* at 222 (cleaned up). Thus, even if persecution by a gang "was motivated by monetary gain," nexus still exists when the reason for that motivation was "inevitably intertwined with [an applicant's] familial relationship." *Id.* at 225.

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[3] The first IJ also erred in its alternative basis for denying asylum, incorrectly reasoning *sua sponte* that Mr. Mejia could not file a second asylum application, even though both parties agreed he could under the American Baptist Churches Settlement that provides additional rights to Salvadorans in immigration cases. *See* Ex. 5 at 5-6; *Am. Baptist Churches,* 760 F. Supp. at 800, 806. Even setting aside that error, this holding was erroneous because an asylum applicant can always submit a second asylum application when he shows "changed circumstances" that "provide[] additional support for" an asylum claim, such as a "new instance[] of persecution." *Zambrano v. Sessions*, 878 F.3d 84, 88 (4th Cir. 2017). Here, Mr. Mejia explained he suffered such a new instance of persecution in El Salvador. The BIA did not rely on this portion of the IJ's holding, and the post-remand IJ correctly relied on *Zambrano* to hold that Mr. Mejia could file a second asylum application. Ex. 9 at 12-13.

90. Two Fourth Circuit cases applied this long body of precedent in factual situations virtually identical to Mr. Mejia: gang members targeting an individual because that individual had family in America that could pay ransom demands. *Id.* at 222-223; *Hernandez-Cartagena*, 977 F.3d at 320-323. These cases explained that nexus existed because the gangs "specifically targeted [the asylum applicant], and not some other person, because they believed that *her* family had the 'ability to pay . . . the extorted demands.'" *Perez Vazquez*, 4 F.4th at 223 (quoting *Hernandez-Cartagena*, 977 F.3d at 321). "Thus," "'at least one central reason [the applicant] was targeted was her membership in her family.'" *Id.* (quoting *Hernandez-Cartagena*, 977 F.3d at 322).

91. Upon remand, and correctly relying on these precedents, the new IJ found that Mr. Mejia had demonstrated a sufficient nexus between his persecution and his family. *See* Ex. 9 at 16-17 (IJ Asylum Grant). DHS did not appeal the nexus finding. Ex. 11.

92. The legal errors by the IJ and BIA, which had to be corrected by the Fourth Circuit and the subsequent IJ on remand, effectively reset Mr. Mejia's asylum proceedings and nullified the first three years of his asylum case.

93. The BIA's recent remand is another legal error that will now add additional years of delay to Mr. Mejia's case. Although the BIA's remand order is unappealable, *see supra* p. 15, it would be reversible were an appeal possible. The BIA never explained why it *sua sponte* radically departed from time-honored principles of "[w]aiver and forfeiture [that] are an important part of any adjudicative system, whether judicial or administrative." *Honcharov*, 924 F.3d at 1295. At a bare minimum, this makes the BIA's actions arbitrary and capricious under the Administrative Procedure Act. *See, e.g.*, *Judulang v. Holder*, 565 U.S. 42, 52 (2011) (making clear that BIA actions are subject to review under the Administrative Procedure Act); *N.L.R.B. v. Lundy Packing Co.*, 68 F.3d 1577, 1583 (4th Cir. 1995) (agencies must explain why they "depart from established

policy"). And even without the APA, the BIA abused its discretion to remand the case of a detained individual to address issues that (1) the Government did not appeal and in many cases waived below; and (2) are remanded for the purpose of considering "intervening" Attorney General precedent that is superseded by controlling Fourth Circuit caselaw. *See supra* pp. 13-15; *see also Obioha v. Gonzales*, 431 F.3d 400, 408 (4th Cir. 2005) (BIA decisions on whether to remand, if appealable, are reviewed for an abuse of discretion).

94. Collectively, the Government's substantive legal errors and administrative delays are responsible for several years of delay in Mr. Mejia's asylum case.

95. Mr. Mejia's asylum case would have likely concluded long ago had these substantive errors and administrative delays not occurred. He therefore likely would not have been detained the past 19 months. This factor thus strongly favors Mr. Mejia.

5. The Government is Not Likely to Ultimately Remove Mr. Mejia.

96. The fifth and final *Portillo* factor considers the likelihood that the government will secure a final order of removal. *Portillo*, 322 F. Supp. 3d at 707.

97. That likelihood is low. Mr. Mejia's asylum grant rested on thousands of pages of record evidence, expert testimony, and two individual merits hearings. *See* Ex. 9 at 3-4. The ultimate 24-page grant conducted a thorough, comprehensive review of this complex record and correctly held that Mr. Mejia suffered past persecution and had a well-founded fear of persecution in the future. *See id.* at 1-24.

98. In reversing, the BIA did not actually find fault with any of the IJ's factual or legal findings. Instead, it simply wanted the IJ to consider some additional facts and purportedly intervening cases. The Government had not appealed any of these factual or legal issues for a reason: They are meritless. And the intervening BIA cases are contrary to binding Fourth Circuit caselaw. *See supra* pp. 13-14.

99. As a general matter, this Court may not be inclined to itself weigh the merits of Mr. Mejia's asylum claim. But at the very least, "given the favorable disposition at the IJ level," it is clear that Mr. Mejia "has a much stronger argument that a final removal order is unlikely to be forthcoming than does the average alien detained under Section 1226(c)." *Haughton*, 2016 WL 5899285, at *10.

6. The *Portillo* Factors on Balance Weigh in Favor of Finding a Due Process Violation.

100. Taken together, the *Portillo* factors weigh in favor of holding Mr. Mejia's prolonged detention under Section 1226(c) unconstitutional. Indeed, *every Portillo* factor favors Mr. Mejia.

101. Even should this Court hold that a factor is neutral or favors the Government, "the most important factor" is the amount of time Mr. Mejia has been detained. *Portillo*, 322 F. Supp. 3d at 708. Indeed, this Court has repeatedly held prolonged detentions unlawful even where the length of detention was the *only* factor that favored a habeas petitioner. *See Songlin*, 2020 WL 5240580, at *8; *Sonko*, 2025 WL 1662749, at *5.

102. Mr. Mejia's medical needs further underscore the urgency of relief. There is a high risk that Mr. Mejia's health will continue to deteriorate if he is detained for any longer. *See Gutierrez*, 475 F. Supp. 3d at 498 n.8 (acknowledging that medical issues are an "additional factor of legitimate concern [. . .] to incarcerated persons"). Mr. Mejia has a growing, potentially-cancerous mass that has not been diagnosed, much less treated. *See supra* p. 18. Mr. Mejia's detention thus violates not only his liberty—it possibly threatens his life.

B. The Court Should Order Mr. Mejia's Release or, at Minimum, an Individual Bond Hearing with the Burden on the Government to Justify His Detention.

1. This Court Should Order Mr. Mejia's Immediate Release.

103. Given the extraordinary circumstances presented here—over four years of detention (including the last 19 months of mandatory detention), a severe multi-year delay

attributable to the Government, an IJ's grant of asylum, and serious unresolved medical conditions caused by continued confinement—this Court should order Mr. Mejia's immediate release.

104. This Court has the authority to order Mr. Mejia's immediate release. *See Smith v. Bounds*, 813 F.2d 1299, 1301 (4th Cir. 1987) ("A district court enjoys wide discretionary authority in formulating remedies for constitutional violations."). And where a petitioner shows (1) unreasonably prolonged detention; (2) unusually severe "conditions of confinement"; (3) a lack of any flight risk; and (4) where "conditions on his release can ensure he will not be a danger to the community"—release is appropriate. *See, e.g.*, *Ochoa v. Kolitwenzew*, 464 F. Supp. 3d 972, 985–986 (C.D. Ill. 2020); *Garcia Diaz v. Acuff*, 507 F. Supp. 3d 991, 997 (S.D. Ill. 2020) (similar factors); *Diomande v. Wrona*, No. 05-73290, 2005 WL 3369498, at *3 (E.D. Mich. Dec. 12, 2005) (same); *see also Nunez-Pimentel v. U.S. Dep't of Homeland Sec. Immigr. Customs Enf't*, No. 1:07-CV-1915, 2008 WL 2593806, at *5 (M.D. Pa. June 27, 2008) (release appropriate where unreasonably lengthy three-year detention, petitioner prevailed at the IJ level, and it was possible "that the administrative and appellate process will be time-consuming"); *Victor v. Mukasey*, No. CIV. 3:CV-08-1914, 2008 WL 5061810, at *5 (M.D. Pa. Nov. 25, 2008) (similar).

105. As outlined above, Mr. Mejia has been subject to unreasonable, highly-prolonged detention.

106. Mr. Mejia's confinement has also been extraordinarily severe—with most of it taking place in a detention facility infamous for its "well-documented horrific conditions." *See* Wilkins and Yarborough, *supra* p. 2; *see also supra* pp. 16-19. It has destroyed his physical and mental health. *See supra* pp. 16-19. And it is causing ongoing, possibly irreparable medical damage, with an undiagnosed and untreated potentially-cancerous growing mass requiring immediate treatment that has been largely ignored. *See supra* p. 18. Under these circumstances,

even a weeks-long or months-long process to conduct a bond hearing could cause irreversible harm to Mr. Mejia. *See id.*

107. ICE has also already previously determined that Mr. Mejia is not a flight risk *in this very asylum proceeding*. In order to release him in 2021 when he was discretionarily detained, an officer was obligated to determine that Mr. Mejia was "likely to appear for any future proceeding." *See* 8 C.F.R. § 1236.1(c)(8). Mr. Mejia is the furthest possible thing from a flight risk—he already won asylum and therefore has a strong chance of winning it again. He also made no attempt to evade ICE for the over two years he was out of custody even when faced with an *adverse* asylum holding by the IJ and BIA. Mr. Mejia's whole family is in the United States, and he plans to stay in Fredericksburg, Virginia with his parents should he be released. Ex. 1 ¶ 46.

108. Similarly, ICE has already determined that Mr. Mejia poses no danger to the community. In order to have released him in 2021, an officer was obligated to determine that his "release would not pose a danger to property or persons." *See* 8 C.F.R. § 1236.1(c)(8). Nothing in the record suggests that Mr. Mejia's release poses any danger. As the IJ remarked, his "convictions do not involve violent activity." Ex. 9 at 22. His drug convictions are limited to personal possession, and he has been sober for over two years. *Id.*; Ex. 1 ¶ 42. And "conditions on [Mr. Mejia's] release can ensure he will not be a danger to the community." *Ochoa*, 464 F. Supp. 3d at 985-986.

109. An immediate release would rectify a gross constitutional violation, pose no negative consequences, and possibly save Mr. Mejia's life. This Court should order that he be allowed to go back home and seek immediate treatment.

2. Alternatively, this Court Should Order an Individualized Bond Hearing Where the Government Bears the Burden by Clear and Convincing Evidence that Detention Is Necessary.

110. If this Court does not find immediate release appropriate, due process demands at least an individualized bond hearing with adequate procedural safeguards to protect against the unconstitutional deprivation of Mr. Mejia's liberty.

111. In ordering a bond hearing, this Court should require (1) that the Government prove by clear and convincing evidence that Mr. Mejia is a flight risk and/or a danger to the community to justify his continued detention; and (2) that the adjudicator consider alternatives to detention and Mr. Mejia's ability to pay bond. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention conditional upon "full-blown adversary hearing" requiring "clear and convincing evidence" and "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on detained person).

112. Where a non-citizen has been subjected to unconstitutionally prolonged Section 1226(c) detention, this Court has repeatedly ordered individualized bond hearings where the Government bears the burden of justifying continued detention by clear and convincing evidence. *See Portillo*, 322 F. Supp. 3d at 709-710; *Gutierrez*, 475 F. Supp. 3d at 499; *Abreu*, 2025 WL 51475, at *7; *Deng*, 2020 WL 6387326, at *1; *Urbina*, 2020 WL 3002344 at *7.

113. "Because the alien's potential loss of liberty is so severe," a court should "protect that interest by holding the Government to a higher standard of proof." *German Santos*, 965 F.3d at 214. A clear and convincing evidence standard also tracks Supreme Court precedent: "Where an individual's liberty is at stake, the Supreme Court has consistently used this evidentiary standard for continued detention." *Black*, 103 F.4th at 157-158 (collecting cases). Additionally, to place the burden on Mr. Mejia at a bond hearing remedying the violation of his constitutional rights would be "inconsistent with having found his continued detention unconstitutional." *Jarpa v.*

Mumford, 211 F. Supp. 3d 706, 722 (D. Md. 2016). Placing the burden on him to prove "that he is neither a flight risk nor a danger would . . . logically mean that he is presumed validly and constitutionally detained" even after a court just found he was unconstitutionally detained. *Id.*

114. *Miranda v. Garland* is not to the contrary. There, the Fourth Circuit addressed the burden of proof in a materially different situation. It held that for bond hearings for non-citizens subject to discretionary Section 1226(a) detention—not mandatory detention under Section 1226(c)—placing the burden of proof on those non-citizens in deciding whether to *initially* detain them is not *per se* unconstitutional, nor was the failure to consider alternatives to detention or ability to pay bond. 34 F.4th 338, 365-366 (4th Cir. 2022). That is not Mr. Mejia's situation. *Miranda* did not address how due process might require more after a Section 1226(c) detainee has been unreasonably detained for years under *prolonged* detention. In addition, the *Miranda* petitioners raised a facial due process challenge arguing that *all* bond hearings needed such requirements, *id.* at 347-348, while Mr. Mejia simply raises an as-applied due process challenge to his specific unreasonably prolonged detention. *See, e.g.*, *Demore*, 538 U.S. at 530-533 (Supreme Court holding Section 1226(c) facially valid, while Justice Kennedy's separate concurrence clarifies as-applied challenges are still appropriate).

115. In a "prolonged detention" scenario like Mr. Mejia's, the more on-point circuit court precedent to inform this Court's decision on burden of proof comes from the Second and Third Circuits, both of which have held that the Government bears the burden of justifying prolonged detention under Section 1226(c) by clear and convincing evidence at a court-ordered bond hearing. *See Black*, 103 F.4th at 155-158 (the government must "justify continued detention by clear and convincing evidence"); *German Santos*, 965 F.3d at 213 ("We now hold that once detention under

§ 1226(c) has become unreasonable, the Government must put forth clear and convincing evidence that continued detention is necessary.").

116. Likewise, while *Miranda* held that it is not a constitutional obligation for *all* Section 1226(a) initial-detention bond hearings to consider alternatives to detention and the availability of bond, Mr. Mejia is bringing only an as-applied challenge regarding the procedural protections that are necessary to safeguard his liberty after a years-long, unreasonably prolonged Section 1226(c) detention. In the Section 1226(c) context of an unreasonably prolonged detention, on-point precedent from other circuit courts again guides the way. *See Black*, 103 F.4th at 159 ("The IJ does indeed have broad discretion in setting terms and can exercise that discretion by considering a multitude of relevant factors. Requiring that two of those factors be alternatives to detention and the non-citizen's ability to pay does nothing to constrain its discretion . . .").

117. As applied at least here, due process requires that a neutral adjudicator consider Mr. Mejia's ability to pay a bond and any alternative to detentions in addition to, or in lieu of, monetary bond. *See Bah*, 409 F. Supp. 3d at 472 (ordering bond hearing at which government "must prove . . . [that] no condition or combination of conditions, including electronic monitoring, will reasonably assure the appearance of the person and the safety of any other person"). The exact amount of bond "would be at issue only once [an adjudicator] has determined that [Mr. Mejia] does not pose a danger to the community." *Black*, 103 F.4th at 158. "At that point, refusing to consider ability to pay and alternative means of assuring appearance creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons." *Id.*

118. Considering alternatives to detention similarly safeguards the serious liberty issues at stake and has proven to be highly effective. For example, the Intensive Supervision Appearance Program ("ISAP")—one of ICE's principal monitoring programs—has achieved extraordinary

success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). With highly effective alternatives to detention at ICE's disposal, there is little to no justification for continuing to detain Mr. Mejia.

119. Mr. Mejia requests that this Court conduct the bond hearing itself. A district court has authority to do so. *See, e.g.*, *Leslie v. Att'y Gen. of U.S.*, 678 F.3d 265, 271 (3d Cir. 2012) (remanding to district court with instructions to conduct an individualized bond hearing); *Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) ("Indeed, the authority to conduct such hearing has long been recognized as an essential ancillary aspect of our federal habeas corpus jurisdiction.").

120. District courts regularly conduct a bond hearing themselves when a detainee's situation is "atypical and even more in need of constitutional scrutiny." *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 406 (E.D.N.Y. 2025); *Thaxter v. Sabol*, No. 1:14-CV-02413, 2016 WL 3077351, at *3 (M.D. Pa. June 1, 2016) (holding bond hearing because "Petitioner [was] rapidly approaching three years spent in executive detention" with conditions not meaningfully different "from penal measures"); *Centeno-Martinez v. Jamison*, No. CV 25-3593, 2025 WL 3157711, at *3 (E.D. Pa. Nov. 12, 2025) (holding bond hearing itself is "particularly" appropriate when "delay risks perpetuating the constitutional injury"). Indeed, while federal courts "certainly defer[] to the immigration courts with respect to their areas of expertise and jurisdiction, including decisions to commence proceedings, adjudicate cases, or execute removal orders," "federal courts are the arbiters of constitutional rights such as those at issue in the Petition." *L.G.M.*, 788 F. Supp. at 405 (citation modified); *accord Thaxter*, 2016 WL 3077351 at *3 (noting "deference to administrative,

or agency, decisionmakers is not presently mandated in this context, where the most basic threat of personal liberty is at issue").

121. Like these cases, Mr. Mejia's case is highly unusual—a six-plus year asylum proceeding and detention for four years in horrific, potentially life-threatening conditions with no end in sight. Given the severity and importance of his situation, this Court should ensure the protection of his constitutional rights itself. And remanding to the IJ to conduct a bond hearing in the first instance—which the Government could then appeal to the BIA—would be particularly inappropriate here when Mr. Mejia has shown years of serious delays and unreasonable errors by these same entities.

122. However, if this Court orders an IJ to hold a bond hearing in the first instance, Mr. Mejia respectfully requests that this Court order that Mr. Mejia's asylum IJ—the Honorable Abby Anna Batko-Taylor—conduct the hearing. Judge Batko-Taylor is very familiar with Mr. Mejia and his situation after granting him asylum; a new IJ would delay the process when time is of the essence, and otherwise introduce greater chance of error.

123. Finally, Mr. Mejia respectfully requests that he be ordered released pending any such bond hearing. Release pending a bond determination is a commonly-issued remedy where a habeas petitioner presents exceptionally severe health issues that could reasonably become worsened in the time it would take to hold a bond hearing and finish any related appeals. *See e.g.*, *Coronel v. Decker*, 449 F. Supp. 3d 274, 290 (S.D.N.Y. 2020). Here, given the severity of Mr. Mejia's situation (a growing mass around his kidney causing severe ongoing pain), Mr. Mejia should be allowed to be released so he can immediately seek an adequate diagnosis and treatment. *See supra* p. 8; Ex. 1 ¶ 48. Any continued delay in treatment could cause irreparable harm. *See supra* p. 8.

COUNT I

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

124. Mr. Mejia realleges and incorporates by reference the paragraphs above.

125. The Due Process Clause of the Fifth Amendment forbids the Government from depriving any person of liberty without due process of law. U.S. Const. Amend. V.

126. Civil immigration detention violates due process if its continuation is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690.

127. Mr. Mejia's 19-month detention is no longer reasonably related to the statutory purpose of ensuring his appearance for removal proceedings or preventing danger to the community, and therefore it has become unreasonable under this Court's *Portillo* test, which the Court has repeatedly used in analyzing similar claims. *See Portillo*, 322 F. Supp. 3d at 707.

128. Under the *Portillo* test, Mr. Mejia's ongoing detention violates his due process rights. His detention (1) far exceeds detention lengths which the Supreme Court has previously held constitutional; (2) has been significantly prolonged by the Government's legal errors and administrative delays; (3) is unlikely to result in Mr. Mejia's removal; (4) is far longer than the time Mr. Mejia served for the drug possession convictions that required mandatory detention in the first place; and (5) has taken place in horrific conditions.

129. Given Mr. Mejia's specific situation—including a four-year total detention taking place in "horrific" conditions and ICE's previous determination that he is neither a flight risk nor a danger to the community—due process requires his release. At a minimum, the Government should be obligated to establish at an individualized bond hearing that his detention is justified by clear and convincing evidence, taking into consideration his ability to pay and whether conditions of release might mitigate any risks of release.

PRAYER FOR RELIEF

WHEREFORE, Mr. Mejia respectfully requests that this Court:

a. Order that Mr. Mejia shall not be transferred outside the District of Eastern Virginia pending the Court's consideration of this Petition; and

b. Declare that his prolonged detention without a bond hearing violates the Due Process Clause of the Fifth Amendment; and

c. Issue a writ of habeas corpus and order Respondents to immediately release Mr. Mejia from custody; or,

d. Alternatively, issue a writ of habeas corpus ordering an individualized bond hearing conducted by this Court with the burden of proof on the Government to establish by clear and convincing evidence that Mr. Mejia poses a current flight risk or danger to the community, and considering alternatives to detention and Mr. Mejia's ability to pay a bond, within seven days after the Court's order; or

e. Alternatively, issue a writ of habeas corpus ordering that Respondents provide Mr. Mejia with an individualized bond hearing conducted by his asylum IJ—the Honorable Abby Anna Batko Taylor—where the burden of proof is on the Government to establish by clear and convincing evidence that Mr. Mejia poses a current flight risk or danger to the community, and where the IJ must consider alternatives to detention and Mr. Mejia's ability to pay a bond, within seven days after the Court's order; and

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

Dated: January 9, 2026

Respectfully submitted,

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**Pro hac vice application forthcoming*

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Counsel for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

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

Dated: January 9, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2026, I served this Petition for a Writ of Habeas Corpus and associated exhibits on the following persons by First Class Mail at the addresses indicated below:

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