UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Naveen KUMAR,

Petitioner,

v.

Laura HERMOSILLO, Acting Field Office Director of Enforcement and Removal Operations, Seattle Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; Bruce SCOTT, Warden of Northwest ICE Processing Center,

Respondents.

Case No. 2:26-cv-389

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

INTRODUCTION

1. Petitioner Naveen Kumar is a noncitizen in the custody of Immigration and Customs Enforcement (ICE) at the Northwest ICE Processing Center (NWIPC). He has been detained for more than nine months while he pursues his claims for protection from deportation.

2. After ordering him removed to India, an immigration judge (IJ) granted Mr. Kumar withholding of removal to India on August 25, 2025. A grant of withholding of removal means that Mr. Kumar demonstrated that his "life or freedom would be threatened" in his home country due to his "race, religion, nationality, membership in a particular social group, or political opinion," and as a result Respondents may not remove him there. 8 U.S.C. § 1231(b)(3)(A). Mr. Kumar satisfied this standard because of the terrible harm he was subjected to in India—and which he would continue to face—on account of his status as [redacted]

3. Despite the IJ's grant of withholding of removal five months ago, Respondents have continued to detain Mr. Kumar. In September, Respondents informed him that they would seek removal to Uganda, a country known for its severe mistreatment of [redacted] Only after Mr. Kumar filed a habeas petition challenging that effort, and only after this Court ordered relief, did Respondents move to reopen Mr. Kumar's removal proceedings to allow him to pursue protection from removal to Uganda. An IJ granted Respondents' motion to reopen on January 2, 2026, placing Mr. Kumar back in removal proceedings. At his first master calendar hearing since his proceedings were reopened, the IJ told Mr. Kumar that the government would designate additional countries of removal but no specific countries were mentioned.

4. While Respondents assess their options for removal, Mr. Kumar continues to languish in detention.

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

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

JURISDICTION

7. Mr. Kumar is in the physical custody of Respondents and ICE, an agency within Respondent Department of Homeland Security (DHS). He is detained at the NWIPC in Tacoma, Washington, which is under the direct control of Respondents and their agents.

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

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

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

11. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9) or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 293–96 (2018).

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VENUE

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

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

PARTIES

14. Petitioner Naveen Kumar is a citizen of India who entered the United States in May 2023. He is currently detained at NWIPC.

15. Respondent Laura Hermosillo is the Acting Director of the Seattle Field Office of ICE's Enforcement and Removal Operations division. As such, Ms. Hermosillo is Mr. Kumar's immediate custodian and is responsible for his detention. She is named in her official capacity.

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

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

18. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review

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and the immigration court system it operates is a component agency. She is sued in her official capacity.

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

FACTUAL ALLEGATIONS

20. Mr. Kumar is a citizen of India.

21. He entered the United States on May 15, 2023, seeking asylum. Decl. of Naveen Kumar ¶¶ 2–3.

22. He was apprehended by immigration authorities, issued a Notice to Appear, and subsequently released from custody. *Id.* ¶ 2.

23. Following his release, on June 23, 2023, Mr. Kumar filed a timely application for asylum and withholding of removal. *Id.* ¶ 3. In early 2024, he received a work permit. *Id.* Mr. Kumar then worked as an Uber and delivery driver. *Id.*

24. On April 15, 2025, Mr. Kumar was re-arrested at an ICE check-in in California. *Id.* ¶ 4; Decl. of Glenda M. Aldana Madrid, Ex. A (Form I-213).[1] In June 2025, he was transferred to NWIPC in Tacoma, Washington. Kumar Decl. ¶ 4.

25. At a merits hearing on August 25, 2025, an IJ in the Tacoma immigration court ordered him removed and granted withholding of removal to India. Ex. B (IJ order); Kumar Decl. ¶ 7.

[1] All references to exhibits are to those accompanying the declaration of Glenda M. Aldana Madrid, filed concurrently herewith.

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26. The IJ found that Mr. Kumar satisfied the requirements for withholding of removal because of his status as [redacted] and the harm he therefore faced in India. Kumar Decl. ¶¶ 8–9.

27. Neither Mr. Kumar nor DHS appealed the IJ's decision ordering removal and granting him withholding of removal. Ex. B at 4.

28. On September 2, 2025, one week after the IJ granted withholding, ICE gave Mr. Kumar a "Notice of Removal" to Uganda. Kumar Decl. ¶ 11; Ex. C (third-country removal notice).

29. The notice contained no additional information regarding DHS's intention to remove Mr. Kumar to Uganda, including an expected date of removal. *See* Ex. C.

30. It also contained no additional information of Mr. Kumar's right to seek protection from removal to Uganda or how to seek that protection. *Id.*

31. Mr. Kumar refused to sign the form, stating that he was afraid of being removed to Uganda on account of his status as [redacted] Kumar Decl. ¶ 12.

32. ICE policy permitted Mr. Kumar to be removed at any time, if the country of removal had provided blanket diplomatic assurances that removed persons would not be persecuted or tortured, or with only hours' notice of an interview where he would be expected to demonstrate entitlement to protection from removal. Fearing deportation to Uganda without any meaningful process, Mr. Kumar filed a petition for a writ of habeas corpus before this Court on October 21, 2025. *See Kumar v. Wamsley*, Case No. 2:25-cv-02055-KKE (W.D. Wash.). The petition sought the opportunity to contest removal to Uganda (and to any other third country) prior to removal there. Kumar Decl. ¶ 15.

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33. It was not until Mr. Kumar filed his habeas petition—on or about October 28, 2025—that ICE referred his case to United States Citizenship and Immigration Services (USCIS) for a fear screening to assess his fear of removal to Uganda.

34. USCIS initially scheduled Mr. Kumar for a fear screening on October 30, 2025. *Id.* ¶ 16.

35. Without explanation, USCIS rescheduled that October 30th screening to November 10th. *Id.* ¶ 17.

36. On November 10th, USCIS again rescheduled Mr. Kumar's screening. USCIS advised Mr. Kumar that the agency was rescheduling because they had been unable to contact his counsel. Mr. Kumar offered the officer his counsel's phone number, but the officer refused it. Mr. Kumar's counsel told him that USCIS did not contact him on that date. *Id.* ¶ 18.

37. Finally, on November 12, 2025, USCIS conducted the fear screening. *Id.* ¶ 19.

38. That same day, the asylum officer concluded that Mr. Kumar had "established that it is more likely than not that [he] will be persecuted in Uganda." Ex. D (Third-Country Screening Notice); Kumar Decl. ¶ 19.

39. Five days later, on November 17, 2025, the district court granted Mr. Kumar's habeas petition. The court ordered various procedural protections to ensure that Mr. Kumar received a meaningful opportunity to contest any third-country removal. Among other remedies, the Court ordered that if Mr. Kumar passed his fear screening to Uganda, Respondents "must move to reopen [his] removal proceedings to allow Petitioner to present a full claim for" withholding of removal and protection under the Convention Against Torture (CAT). *Kumar v. Wamsley*, Case No. 2:25-cv-02055-KKE, 2025 WL 3204724, *9 (W.D. Wash. Nov. 17, 2025).

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40. Neary a month later, on December 12, 2025, DHS filed a motion to reopen Mr. Kumar's removal proceedings. Ex. E (DHS motion to reopen). DHS moved to reopen "for the limited purpose of allowing DHS to recommend additional countries of removal, and for respondent to request full claim of relief under 8 U.S.C. § 1231(b)(3) [withholding of removal under the INA] and Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") [CAT protection] from those additional countries." *Id.* at 2. DHS noted that, "[s]pecifically, DHS intends currently to recommend removal of respondent to [*sic*] country of Uganda; however, DHS reserves the right to recommend removal to additional countries if DHS determines that such recommendation is appropriate." *Id.* DHS indicated its intention to continue to seek removal to Uganda despite this Court's description of that decision as "callous[]" and "inexplicabl[e]" given the "well-documented oppression of [redacted] in Uganda." *Kumar*, 2025 WL 3204724, at *5 & n.3.

41. DHS additionally acknowledged the grant of Mr. Kumar's petition for habeas corpus and noted it was following the procedures the court had ordered. Ex. E at 2.

42. On January 2, 2026, the IJ granted DHS's motion. Ex. F (Jan. 2026 IJ order).

43. On January 20, 2026, Mr. Kumar had his first master calendar hearing in immigration court since his removal proceedings were reopened. Kumar Decl. ¶ 22.

44. The IJ told Mr. Kumar that DHS would designate additional countries for removal and that Mr. Kumar should indicate if he was unwilling to be removed to any of them. *Id.* ¶¶ 22–23. Neither the IJ nor DHS mentioned specific third countries, and Mr. Kumar was not given any paperwork regarding a third country. *Id.* ¶ 23.

45. The IJ indicated Mr. Kumar would have 20-30 days to find an attorney. *Id.*

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46. Mr. Kumar has been scheduled for his second master calendar hearing on February 4, 2026. *Id.* ¶ 24.

47. Since his arrest by ICE more than nine months ago, Mr. Kumar has not received a bond hearing. *Id.* ¶ 33.

LEGAL FRAMEWORK

48. The Due Process Clause of the Fifth Amendment provides Petitioner with important protection against detention without procedures to determine if he is a flight risk or danger. As the Supreme Court has explained, "[f]reedom 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 v. Davis*, 533 U.S. 678, 690 (2001).

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

50. The Supreme Court has addressed the constitutionality of mandatory detention on one occasion. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court denied a facial challenge to mandatory detention under § 1226(c), which asserted that the statute was unconstitutional because it imposed mandatory detention without a custody hearing. However,

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the Supreme Court emphasized that such detention was typically "brief" in length and lasted "roughly a month and a half in the vast majority of cases . . . and about five months in the minority of cases in which the [noncitizen] chooses to appeal." 538 U.S. at 513, 530. The Court also upheld the statute in part because it was based on a voluminous congressional record that supported the need for detention as to individuals convicted of certain crimes. *See id.* at 518–20.

51. Notably, Justice Kennedy—who provided the fifth vote for the majority on the constitutional issue—penned a concurrence that reasoned detention may eventually become sufficiently lengthy that a hearing to justify it would become constitutionally required. *Id.* at 532–33 (Kennedy, J., concurring).

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

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

54. To guard against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted

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justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

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

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

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

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58. The recognition that six months constitutes a substantial period of confinement that qualifies as prolonged detention is deeply rooted in our legal tradition. With only a few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by a jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving 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).

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

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60. These principles have "[o]verwhelmingly[] [led the] district courts that have considered the constitutionality of prolonged mandatory detention—including . . . other judges in this District[ ] [to] agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Diaz Reyes v. Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903, at *3 (W.D. Wash. Aug. 7, 2020) (internal quotation marks omitted), *R&R adopted as modified*, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020); *see also Parada Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 1047578, at *4 (W.D. Wash. Jan. 17, 2025) (similar), *R&R adopted in part, rejected in part*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718 (W.D. Wash. Mar. 21, 2025); *Belqasim v. Bostock*, No. 2:25-CV-01282-LK-TLF, 2025 WL 3466971, at *7 (W.D. Wash. Oct. 28, 2025), *R&R adopted sub nom. Belqasim v. Hermosillo*, No. 2:25-CV-01282-LK, 2025 WL 3170929 (W.D. Wash. Nov. 13, 2025) (similar); *Toktosunov v. Wamsley*, No. 2:25-CV-1724-TL, 2025 WL 3492858, at *3 (W.D. Wash. Dec. 5, 2025) (similar); *Duvine v. Hermosillo*, No. C25-2583-SKV, 2026 WL 183374, at *2 (W.D. Wash. Jan. 9, 2026) (similar).

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

62. Courts assessing whether a detained noncitizen is entitled to a hearing as a matter of due process typically employ one of two tests: a multi-factor test or the test found in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Courts in this district generally employ a multi-factor test. *See*

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Djelassi v. ICE Field Off. Dir., 434 F. Supp. 3d 917, 929 (W.D. Wash. 2020); *Banda*, 385 F. Supp. 3d at 1106. Mr. Kumar merits a bond hearing under either test.

63. Under the multi-factor test, courts look to "(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings cause[d] by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal." *Banda*, 385 F. Supp. 3d at 1106 (citation omitted). The length of detention is the "most important factor." *Id.* at 1118.

64. The application of this test demonstrates Petitioner is entitled to a bond hearing. He has been detained more than nine months. Despite winning protection from removal more than five months ago, Mr. Kumar remains detained because the government insists on removing him to a third country. And the only third country to which DHS has sought removal to date is one to which his removal would plainly be unlawful, given his status as a gay HIV-positive man.

65. Now that removal proceedings have been reopened, Mr. Kumar is essentially starting removal proceedings anew. He has had only one master calendar hearing, and the government has not formally designated the intended countries of removal. Once it does, Mr. Kumar will apply for protection and will need to have a merits hearing. Removal proceedings are likely to take several months (at a minimum) just to receive a decision on those applications. And if Mr. Kumar is ordered removed, any BIA appeal will take many additional months to complete. If the BIA denies the appeal, Mr. Kumar is entitled to file a petition for review with the Ninth Circuit Court of Appeals, which is likely to last another year. Thus, Mr. Kumar is likely to face at least another year of detention, if not much longer.

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66. Courts regularly afford noncitizens a bond hearing after facing similar periods of detention. *See, e.g.*, *Banda*, 385 F. Supp. 3d at 1118 (noting that 17 months of detention was a "very long time" that "strongly favor[ed] granting" a bond hearing, and citing cases where bond hearings were granted at more than nine and ten months of detention); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) ("Petitioner has been in immigration detention since September 10, 2021—approximately one year. District courts have found shorter lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable."); *Babaveisi v. LaRose*, No. 25-CV-3746-GPC-SBC, 2026 WL 76565, at *6 (S.D. Cal. Jan. 9, 2026) (detention of "nearly ten months" favored granting bond hearing); *Cardozo v. Bostock*, No. 2:25-CV-00871-TMC-BAT, 2025 WL 2597521, at *5 (W.D. Wash. July 29, 2025) (same, for ten months), *R&R adopted in part, rejected in part*, No. 2:25-CV-00871-TMC, 2025 WL 2592275 (W.D. Wash. Sept. 8, 2025); *Maliwat v. Scott*, No. 2:25-CV-00788-TMC, 2025 WL 2256711, at *4 (W.D. Wash. Aug. 7, 2025) (collecting cases granting bond hearings at, inter alia, nine, ten, eleven, and twelve months of detention); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *1 (W.D. Wash. May 23, 2019), *R&R adopted*, No. 18-CV-01669-RAJ, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (detention of 13 months favored granting bond hearing); *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019) (detention of just over a year that would last several more months favored granting bond hearing); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (same, for seven months).

67. The punitive and restrictive conditions at NWIPC also support affording Mr. Kumar a hearing. Those conditions "are similar . . . to those in many prisons and jails," despite Mr. Kumar's ostensible status as a "civil" detainee. *Diaz Reyes*, 2020 WL 6820903, at *7 (alteration in original); *see also, e.g.*, *Parada Calderon*, 2025 WL 879718, at *4 (concluding this

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factor favored petitioner); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1100–033 (W.D. Wash. 2025) (reviewing extensive evidence regarding conditions of detention at NWIPC and agreeing with petitioner that "the conditions . . . at NWIPC are similar or possibly worse than those . . . penal institutions"); *id.* at 1103 (citing cases); *Toktosunov*, 2025 WL 3492858, at *5 (concluding this factor favored petitioner); *Duvine*, 2026 WL 183374, at *4 (same).

68. Indeed, for all intents and purposes, NWIPC is a prison. Mr. Kumar is confined inside in a restrictive setting, where he receives only 60 minutes of recreation time outside two-three times a week. Kumar Decl. ¶¶ 29–30. There, because of his religion, he faces significant limitations in his access to adequate food, and has lost about 24 pounds since entering detention. *Id.* ¶ 30. His detention has also restricted his access to [redacted] and greatly impeded his ability to administer his medication properly, as he is at the mercy of the detention staff's schedule and availability in order to take his medication. *Id.* ¶¶ 28, 32. Reports by independent outside entities have also documented problems with food, medical neglect, cleanliness, and other issues at NWIPC. *See* Univ. of Wash. Ctr. for Hum. Rts., Conditions at the Northwest Detention Center (last visited Feb. 2, 2026), https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/.

69. The delay factor also favors Mr. Kumar. He has not caused any delay in his case. By contrast, Respondents have caused significant delay. It took them nearly two months to refer his case for a fear screening after informing him of their intentions to remove him to Uganda; they then rescheduled that screening twice, further prolonging the process. And despite knowing he had passed his fear screening to Uganda the same day he was screened, it took them another month to file a motion to reopen his removal proceedings. Then, at Mr. Kumar's master calendar

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hearing more than a month later, Respondents did not designate countries of removal so that Mr. Kumar could begin preparing his application for protection from removal there.

70. Finally, Mr. Kumar intends to make a good faith defense to removal to Uganda based on the harm he is likely to face there given his status as [redacted]. Indeed, he has *already* passed a fear screening, where he demonstrated he was more likely than not to face persecution there. *See Toktosunov*, 2025 WL 3492858, at *5 (concluding this factor favored petitioner where he had won asylum before the IJ and the government had appealed).

71. As a result, due process demands that Mr. Kumar receive a bond hearing.

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

73. Here, Mr. Kumar's interest is at its zenith: he has a powerful interest in his physical liberty, as the Supreme Court, the Ninth Circuit, and this Court have repeatedly made clear. *See generally supra* ¶¶ 51–61.

74. Second, additional protections are warranted here. Respondents almost certainly believe that Mr. Kumar is detained under 8 U.S.C. § 1225(b)(2). That statute affords Mr. Kumar no protection whatsoever and requires his detention.

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

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

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77. Due process also requires certain minimal procedures at Mr. Kumar's bond hearing. First, the government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen's ability to pay a bond when determining the appropriate conditions of release.

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

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

80. First, prolonged incarceration deprives noncitizens of a profound liberty interest—one that always requires some form of procedural protections. *See Foucha*, 504 U.S. at

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80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

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

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

83. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted). Courts in this district regularly impose this requirement. *See, e.g.*, *Banda*, 385 F. Supp. 3d 1120–21 (requiring clear and convincing evidence); *Djelassi*, 434 F. Supp. 3d at 929 (same); *Diaz Reyes*, 2020 WL 6820903, at *9 (same); *Belqasim*, 2025 WL 3466971, at *12 (same); *Duvine*, 2026 WL 183374, at *6 (same).

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84. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved compliance rates close to 100 percent. *See Hernandez*, 872 F.3d at 991 (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

85. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires "consideration of financial circumstances and alternative conditions of release" to prevent against detention based on poverty. *Id.*; *see also, e.g.*, *Belqasim*, 2025 WL 3466971, at *13 (ordering bond hearing requiring the IJ to consider alternative conditions and ability to pay); *Duvine*, 2026 WL 183374, at *6 (similar).

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

86. Mr. Kumar alleges and incorporates by reference the paragraphs above.

87. 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.

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88. Mr. Kumar's detention—which has lasted more than nine months and is likely to last many more—constitutes prolonged detention and is not reasonably related to a legitimate government purpose.

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

90. For these reasons, Mr. Kumar's ongoing detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Mr. Kumar prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

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

c. Alternatively, issue a Writ of Habeas Corpus and hold a hearing before this Court if warranted; determine that Mr. Kumar's detention is not justified because the government has not established by clear and convincing evidence that he presents

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a risk of flight or danger in light of available alternatives to detention; and order Mr. Kumar's release, with appropriate conditions of supervision if necessary, taking into account his ability to pay a bond;

d. Issue a declaration that Mr. Kumar's prolonged detention without a hearing violates the Due Process Clause of the Fifth Amendment;

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

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

Respectfully submitted this 3rd of February, 2026.

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