

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Dick Perry Chimel,	)	
	)	
Petitioner,	)	Case No.
v.	)	
	)	
TODD M. LYONS, <i>in his official capacity</i>	)	PETITION FOR WRIT OF HABEAS
as the Acting Director, Immigration and	)	CORPUS PURSUANT TO 28 U.S.C. § 2241
Customs Enforcement, U.S. Department of	)	
Homeland Security;	)	
	)	
ROBERT CERNA, <i>in his official capacity</i>	)	
as Field Office Director of the ICE Dallas	)	
Field Office of Enforcement and Removal	)	
Operations, U.S. Immigration and Customs	)	
Enforcement; U.S. Department of Homeland	)	
Security;	)	
	)	
CHARLOTTE COLLINS, <i>in her official</i>	)	
<i>capacity</i> as warden of the T. Don Hutto	)	
Detention Center;	)	
	)	
KRISTI NOEM, <i>in her official capacity</i> as	)	
Secretary, U.S. Department of Homeland	)	
Security; and	)	
	)	
PAMELA JO BONDI, <i>in her official</i>	)	
<i>capacity</i> as Attorney General of the United	)	
States;	)	
	)	
Respondents.	)	
	)	

INTRODUCTION AND PRELIMINARY STATEMENT

1. Petitioner Dick Perry Chimel (“Petitioner”) is a 40-year-old citizen of the Republic of the Congo who entered the United States lawfully on September 17, 2024, on a B-2 visitor visa. On May 17, 2025, Immigration and Customs Enforcement (“ICE”) apprehended Petitioner in Portland, Maine and has detained him ever since. Petitioner is currently held at the T. Don Hutto Detention Center in Taylor, Texas pursuant to 8 U.S.C. § 1226(a).

2. Petitioner's wife, Rachely Louisette Nkondi (nee Makanga), filed a timely Form I-589, Application for Asylum and for Withholding of Removal, with U.S. Citizenship and Immigration Services ("USCIS") on October 28, 2024, prior to the expiration of their authorized stay. Petitioner and the couple's children are derivatives on that application. Petitioner has no criminal history and no adverse immigration history beyond the alleged overstay. He has a fixed residence, immediate family in the United States, and substantial community ties in Portland, Maine.
3. Petitioner has had four custody proceedings before the Immigration Court on May 29, 2025, June 12, 2025, June 23, 2025, and August 5, 2025. His request for bond was denied on June 23, 2025 on the ground that he was a "flight risk." A subsequent motion for redetermination based on ineffective assistance of prior counsel was denied on August 5, 2025 on the ground that Petitioner had not shown materially changed circumstances.
4. On November 26, 2025, the Immigration Judge ("IJ") conducted Petitioner's merits hearing on his applications for asylum, withholding of removal, and protection under the Convention Against Torture. The IJ took the matter under advisement and indicated a written decision would follow. As of the filing of this Petition, no decision has issued, and Petitioner remains detained with no definite end date.
5. Compounding the indefinite nature of Petitioner's confinement, USCIS issued Policy Memorandum PM-602-0192 on December 2, 2025. That memorandum directs USCIS to place an adjudicative hold on all pending asylum applications, regardless of nationality, and to hold or re-review many immigration benefit requests filed by nationals of certain "high-risk" countries, including the Republic of the Congo. As a result, the administrative

path to adjudication of Petitioner's family's affirmative asylum case has been frozen, and the duration of Petitioner's detention is unforeseeable.

6. After more than eight months in ICE custody, Petitioner's continued detention has become unreasonably prolonged, indefinite, and disconnected from any legitimate civil detention purpose. Petitioner seeks immediate release, or in the alternative, a constitutionally adequate custody hearing at which the Government bears the burden to prove, by clear and convincing evidence, that continued detention is necessary because Petitioner poses a flight risk or a danger to the community.

CUSTODY

7. Petitioner is in the custody of ICE at the T. Don Hutto Detention Center, 1001 Welch Street, Taylor, Texas 76574. He is therefore "in custody" within the meaning of 28 U.S.C. § 2241. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
9. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
10. Federal district courts have jurisdiction to hear habeas petitions by noncitizens challenging the lawfulness and constitutionality of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008).

11. Venue is proper in the United States District Court for the Western District of Texas because at least one Respondent is in this District, Petitioner is detained in this District, and Petitioner's immediate physical custodian is in this District. *See* 28 U.S.C. § 1391(b).

EXHAUSTION

12. There is no statutory exhaustion requirement for a habeas challenge to immigration detention under 28 U.S.C. § 2241. *See Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007) ("Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal."); *Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017). Exhaustion is also not required where it would be futile or where a petitioner would suffer irreparable harm absent immediate judicial review. *See McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).
13. "Where Congress has not clearly required exhaustion, sound judicial discretion governs." *McCarthy v. Madigan*, 503 U.S. at 144. In exercising that discretion, a court must weigh an individual's interest in accessing the court against the institutional interests in exhaustion: protecting agencies' authority and promoting judicial efficiency. *Id.* at 145–46.
14. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v. American-Arab Anti-Discrimination Comm'n*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be "finding exhaustion futile where the agency does not have jurisdiction to review constitutional claims").
15. Even if the Court were to consider requiring exhaustion as a prudential matter, further

action with the agency is unnecessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *McCarthy v. Madigan*, 503 U.S. 144, 147-48 (1992) (holding that an administrative remedy is inadequate when it “lacks institutional competence to resolve the particular type of issue presented, such as the constitutionality of a statute” or where the “challenge is to the adequacy of the agency procedure itself”).

PARTIES

16. Petitioner Dick Perry Chimel is detained at the T. Don Hutto Detention Center in Taylor, Texas. He is from the Republic of the Congo.
17. Respondent Charlotte Collins is the Warden of the T. Don Hutto Detention Center and Petitioner’s immediate physical custodian, sued in her official capacity.
18. Respondent Robert Cerna is the Field Office Director of ICE Enforcement and Removal Operations, Dallas Field Office, sued in his official capacity.
19. Respondent Todd M. Lyons is the Acting Director of ICE, sued in his official capacity.
20. Respondent Kristi Noem is the Secretary of Homeland Security, sued in her official capacity.
21. Respondent Pamela Jo Bondi is the Attorney General of the United States, sued in her official capacity.

STATEMENT OF FACTS

22. Petitioner is a citizen and national of the Republic of the Congo. He last entered the United States on September 17, 2024, using a B-2 visitor visa, with authorization to remain through March 16, 2025.

23. Petitioner is married to Rachely Louisette Nkondi (nee Makanga). They have four

children: [REDACTED] (born in

Portland, Maine). Petitioner's wife and children reside at [REDACTED]

24. On October 28, 2024, Ms. Nkondi filed Form I-589 with USCIS. Petitioner and the couple's three oldest children are derivatives on the application.

25. The family fled the Republic of the Congo due to [REDACTED] Ms. Nkondi was an active member of [REDACTED] and suffered severe harm by authorities, including [REDACTED]. Petitioner assisted Ms. Nkondi [REDACTED] On information and belief, Petitioner and Ms. Nkondi [REDACTED]

26. Petitioner completed biometrics on November 27, 2024. Petitioner diligently pursued lawful status and applied for employment authorization. Petitioner received an Employment Authorization Document ("EAD") on July 23, 2025, valid through July 22, 2030.

27. On May 17, 2025, ICE arrested Petitioner in Portland, Maine based on an alleged overstay and placed him in immigration detention. Petitioner has no criminal history.

28. Petitioner's detention has caused severe hardship to his wife and four minor children, who have relied on community support while Ms. Nkondi recovers from childbirth and receives medical and psychiatric treatment.

29. Petitioner has extensive community ties in Portland, Maine, including through his children's school and through Tree of Life Gospel Church, where he served as

congregation secretary. A U.S. citizen sponsor, Anya Rosenberg, has provided an affidavit of support and has helped coordinate substantial community support.

30. Petitioner appeared for four custody proceedings and bond requests: May 29, 2025; June 12, 2025; June 23, 2025; and August 5, 2025. Bond was denied on June 23, 2025 on the basis of flight risk. The bond hearing was held on June 23, 2025, at 8:30 a.m. Prior counsel did not file supporting evidence in advance of the hearing. Instead, the evidence was filed after the hearing was scheduled to begin—on June 23, 2025, at 9:06 a.m. Prior counsel submitted seven exhibits: (1) Petitioner's passport; (2) Petitioner's biometrics receipt notice for the pending Form I-589 application before USCIS; (3) the birth certificate of Petitioner's U.S. citizen son; (4) the birth certificate and driver's license of Ms. Rosenberg; (5) proof of Ms. Rosenberg's address; (6) an affidavit of Ms. Rosenberg prepared by prior counsel; and (7) Ms. Rosenberg's paystubs.
31. Prior counsel failed to submit readily available evidence central to the bond determination, including documentation of Petitioner's fixed address; family ties—including his wife and three other children; ties to his church and school community; and records relating to the family's pending asylum application with USCIS. These materials had been provided to prior counsel.
32. At the bond hearing, prior counsel appeared unfamiliar with key facts necessary to advocate for Petitioner's release. Prior counsel was unaware of the circumstances of Petitioner's apprehension, despite having received the Form I-213 prior to the first scheduled bond hearing. Prior counsel also misstated basic biographical information, including Petitioner's country of birth and place of residence. Prior counsel further incorrectly represented that Petitioner had a valid work permit, was currently employed,

and had a letter from an employer—facts that pertained to a different noncitizen, not Petitioner. When the Court inquired about Petitioner’s wife, prior counsel did not know her name and was unable to provide any information regarding her asylum claim.

33. On July 18, 2025, undersigned counsel informed prior counsel that undersigned counsel intended to present allegations regarding prior counsel’s representation to the New York State Bar. Prior counsel did not respond. On July 28, 2025, undersigned counsel filed a formal complaint with the Attorney Grievance Committee, Supreme Court, Appellate Division, New York, New York. That complaint remains pending.
34. On July 30, 2025, undersigned counsel filed a motion for bond redetermination pursuant to *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988). The Immigration Court scheduled Petitioner’s fourth bond hearing for August 5, 2025. On that date, the Immigration Judge denied Petitioner’s request for redetermination of custody status, finding that Petitioner failed to demonstrate materially changed circumstances since the prior bond redetermination hearing. *See* 8 C.F.R. § 1003.19(c). The Immigration Judge further concluded that prior counsel’s representation was not ineffective, notwithstanding the deficiencies that contributed to the denial of Petitioner’s bond request.
35. On November 26, 2025, the IJ held Petitioner’s merits hearing and took the matter under advisement. As of the filing of this Petition, Petitioner remains detained with no decision issued and no defined end date.
36. On December 2, 2025, USCIS issued Policy Memorandum PM-602-0192, which directs an adjudicative hold on all pending asylum applications (Form I-589) regardless of nationality and imposes holds or re-review on many immigration benefit requests filed by nationals of designated “high-risk” countries, including the Republic of the Congo. The

memorandum has further delayed and rendered uncertain the adjudication timeline relevant to Petitioner and his family.

37. Petitioner has now been detained for more than eight months. In light of the prolonged duration of detention, the lack of any final decision in his removal proceedings, and policy-driven administrative delays that make a prompt resolution unlikely, Petitioner seeks immediate habeas relief.

LEGAL BACKGROUND

38. Petitioner is detained under 8 U.S.C. § 1226(a), which authorizes civil detention “pending a decision on whether [a noncitizen] is to be removed from the United States.” Detention under § 1226(a) is discretionary, not mandatory, and its only legitimate purposes are to mitigate flight risk and prevent danger to the community.
39. The Fifth Amendment’s Due Process Clause protects all persons within the United States, including noncitizens, from deprivation of liberty without due process of law. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Both procedural and substantive due process limit civil immigration detention. Detention must remain reasonably related to a legitimate, nonpunitive purpose and cannot become arbitrary or indefinite. *Id.* at 690.
40. Although 8 U.S.C. § 1226(a) does not indicate which party bears the burden of proof at a bond hearing and does not specify the amount of evidence that would satisfy the burden, numerous federal circuits have relied upon procedural due process protections to place that burden on the government, particularly where the detention becomes prolonged. For example, the First Circuit has placed the burden of proof on the government in all immigration bond hearings. *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27–41 (1st Cir. 2021). The Second Circuit has held that due process requires the government to bear the

burden of proof in bond hearings when detention is prolonged. *Velasco Lopez v. Decker*, 978 F.3d 842, 851, 855–57 (2d Cir. 2020). And, while the Ninth Circuit permits the burden to be placed on the immigrant in some circumstances, *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1193–94, 1203–14 (9th Cir. 2022), it has also mandated additional procedures in immigration court for immigrants who cannot afford bond, *see Hernandez v. Sessions*, 872 F.3d 976, 984 (9th Cir. 2017).

41. An “overwhelming consensus” of federal district courts, including multiple courts within the Fifth Circuit and specifically within the Western District of Texas, have held that due process requires the government to prove by clear and convincing evidence that an immigrant held under Section 1226(a) is a flight risk or danger to the community. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025) (citing *Velasco Lopez*, 978 F.3d at 855 n.14 (citations omitted)); *see also Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Trejo v. Warden of ERO El Paso E. Montana*, No. EP-25-CV-401-KC, 2025 WL 2992187 (W.D. Tex. Oct. 24, 2025); *Ordonez-Lopez v. U.S. Dep’t of Homeland Sec.*, No. EP-25-CV-470-KC, 2025 WL 3123828 (W.D. Tex. Nov. 7, 2025); *Barros v. Noem*, No. EP-25-CV-488-KC, 2025 WL 3154059 (W.D. Tex. Nov. 10, 2025); *Cortina v. De Anda-Ybarra*, No. EP-25-CV-00523-DB, 2025 WL 3218682 (W.D. Tex. Nov. 18, 2025); *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526 (W.D. Tex. Nov. 20, 2025).

42.

ARGUMENT

I. PROLONGED AND EFFECTIVELY INDEFINITE UNDER § 1226(a) VIOLATES DUE PROCESS

43. Even where the Immigration and Nationality Act authorizes discretionary detention, the Constitution limits the duration and procedures governing civil confinement. “Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. When the government deprives a person of life, liberty or property, it must do so “in a fair manner.” *United States v. Salerno*, 481 U.S. 739, 746 (1987).
44. Courts evaluate the adequacy of procedures afforded to a detained person by weighing: (1) the private interest affected; (2) the risk of erroneous deprivation under existing procedures and the value of additional safeguards; and (3) the Government’s interest and burdens of additional procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
45. On the first *Mathews* factor, “civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections.” *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (freedom “from government . . . detention . . . lies at the heart of the liberty [the Due Process] Clause protects.”). Petitioner’s interest in liberty is profound and grows with each additional day of confinement.
46. Prolonged and indefinite detention enhances an immigrant’s interest in freedom from ongoing detention. Indeed, a “detainee’s interest in receiving due process protections grows larger with every day in detention.” *Ayobi v. Castro*, No. SA-19-CV-01311-OLG, 2020 WL 13411861 (W.D. Tex. Feb. 25, 2020) (Garcia, J.) at *6. And courts have used six months as a benchmark for determining when the length of a detention becomes

suspect. *See Velasco Lopez*, 978 F.3d at 852 (citing *Zadvydas*, 533 U.S. at 701). But that presumption of reasonableness for detention lasting less than six months is based on the “assumption that [the Government] followed the process prescribed by its regulations to ensure that continued detention was justified.” *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 636 (D. Mass. 2018). Courts analyzing immigrants’ protectable liberty interest have determined that it is appropriate to put the burden of proof on the government in bond hearings because “the [noncitizen’s] potential loss of liberty is so severe that he should not have to share the risk of error equally.” *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *10 (citations and internal quotation marks omitted).

47. Second, the risk of erroneous deprivation is high where a person remains detained without a constitutionally meaningful opportunity to secure release, especially after prolonged detention and where earlier bond proceedings were affected by deficient representation and incomplete evidentiary development. It is “self-evident that allocating the burden of proof to the government to affirmatively justify Petitioner’s continued detention—as opposed to forcing Petitioner to again prove a negative—is a reasonable approach to mitigate the risk of erroneous deprivation of his due process rights.” *Ayobi v. Castro*, No. SA-19-CV-01311-OLG, 2020 WL 13411861 (W.D. Tex. Feb. 25, 2020) (Garcia, J.)(citing *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018)); *see also Velasquez Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729, at *6–9 (D.N.M. Sept. 17, 2025); *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024)).

57. On the third *Mathews* factor, the government has a general interest in enforcing immigration laws and a particular interest in ensuring that noncitizens do not abscond or

commit crimes. *Velasco Lopez*, 978 F.3d at 854 (citing *Zadvydas*, 533 U.S. at 690). Yet the government has no legitimate interest in the continued detention of noncitizens who are “neither dangerous nor a flight risk.” *Velasco Lopez*, 978 F.3d at 854. Moreover, the Government routinely conducts custody hearings, such that requiring a constitutionally adequate hearing with the proper burden of proof would impose only minimal additional administrative burden. Recognizing this, numerous courts have found that the government’s legitimate interests are not substantially undermined by a requirement to justify a noncitizen’s detention by clear and convincing evidence. *Velasco Lopez*, 978 F.3d at 854; *Ayobi*, 2020 WL 13411861, at *6

58. “When the Government incarcerates individuals for prolonged periods of time, it separates families and removes from the community breadwinners, caregivers, parents, siblings, and employees.” *Velasco Lopez*, 978 F.3d at 855. Doing so serves “no public interest.” *Id.* Yet this is precisely what Respondents are doing to Petitioner—separating him from his four minor children and overwhelmed wife for no legitimate civil purpose.
57. Petitioner has been detained for more than eight months, has no criminal record, has a fixed residence and immediate family in the United States, has substantial community support, and has viable claims for protection that are pending before the Immigration Court and USCIS. His detention has become unreasonably prolonged and, due to adjudicative delays and the absence of any definite timeline for resolution, effectively indefinite.

II. PROCEDURAL DUE PROCESS REQUIRES A NEW CUSTODY HEARING WITH THE BURDEN ON THE GOVERNMENT

48. Due process requires that, once detention becomes prolonged and there is no reasonably foreseeable end to confinement, the Government must justify continued detention at a

hearing that satisfies constitutional standards. Many courts have held that due process requires the Government to prove by clear and convincing evidence that continued detention is necessary because a noncitizen is a flight risk or danger to the community. *See, e.g., Hernandez-Lara v. Lyons*, 10 F.4th 19, 27-41 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851, 855-57 (2d Cir. 2020).

49. District courts within the Fifth Circuit, including within the Western District of Texas, have likewise required new custody proceedings with the burden placed on the Government and the clear-and-convincing standard. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025).
50. Because Petitioner's detention is prolonged and increasingly indefinite, due process requires a new custody hearing at which the Government bears the burden of proof by clear and convincing evidence. Due process also requires that Petitioner be afforded adequate and meaningful representation by counsel at any new custody hearing, so that the hearing provides a realistic opportunity to present evidence, challenge the Government's allegations, and meaningfully contest continued detention.

III. SUBSTANTIVE DUE PROCESS PROHIBITS DETENTION THAT IS NO LONGER REASONABLY RELATED TO A LEGITIMATE PURPOSE

58. Civil immigration detention must remain nonpunitive and reasonably related to its purposes. *Zadvydas*, 533 U.S. at 690. Due process rights under the Fifth Amendment protect a liberty interest in "[f]reedom from imprisonment." *Zadvydas*, 533 U.S. at 690. That freedom "lies at the heart of the liberty that [the Due Process] Clause protects." *Id.* Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only

within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *Salerno*, 481 U.S. at 755). Where detention becomes indefinite, excessive in relation to its purposes, or disconnected from the goals of ensuring appearance or protecting the community, it violates substantive due process.

59. Where immigration detention is not mandated by statute, its only legitimate purposes are mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *see also Addington v. Texas*, 441 U.S. at 426 (“The [government] has no interest in confining individuals involuntarily if they . . . do not pose some danger.”).

51. Petitioner is not a danger to the community and does not present a meaningful flight risk. He has an established residence and immediate family in the United States, a community sponsor, and strong incentives to appear because of his pending claims for protection and his lawful work authorization. The Government’s continued detention of Petitioner under these circumstances serves no valid purpose and has become arbitrary.

IV. FEDERAL COURTS MAY REVIEW AGENCY FLIGHT RISK DETERMINATION AS MIXED QUESTIONS OF LAW AND FACT

52. 8 U.S.C. § 1226(a) governs the detention of immigrants “pending a decision on whether [they are] to be removed from the United States.” People detained under Section 1226(a) are allowed to request bond hearings. 8 C.F.R. § 236.1(d)(1).

53. The BIA has identified the following factors for IJs to consider when determining flight risk or danger to the community: “(1) whether the immigrant has a fixed address in the United States; (2) the immigrant’s length of residence in the United States; (3) the immigrant’s family ties in the United States; (4) the immigrant’s employment history; (5) the immigrant’s record of appearance in court; (6) the immigrant’s criminal record, including the extensiveness of criminal activity; the recency of such activity, and the

seriousness of the offenses; (7) the immigrant's history of immigration violations; (8) any attempts by the immigrant to flee prosecution or otherwise escape from authorities; and (9) the immigrant's manner of entry to the United States.” *Matter of Guerra*, 24 I & N Dec. 37, 40 (BIA 2006). IJs are free to give more weight to some *Guerra* factors than others “as long as the decision is reasonable.” *Id.*

54. Federal courts review EOIR’s findings on danger to community or flight risk under the abuse of discretion standard as mixed questions of law and fact. *See Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024) (citing *Wilkinson v. Garland*, 601 U.S. 209, 212 (2024) “[t]he application of a statutory legal standard ... to an established set of facts is a quintessential mixed question of law and fact”).
55. In *Martinez*, a Ninth Circuit panel initially held that the agency determination of danger to the community was discretionary and therefore unreviewable under 8 U.S.C. § 1226(e). *Martinez v. Clark*, 36 F.4th 1219 (9th Cir. 2022), cert. granted, judgment vacated, 144 S. Ct. 1339 (2024). The petitioner appealed to the Supreme Court, which remanded the case to the circuit court for further consideration in light of its decision in *Wilkinson v. Garland*, which held that the application of the “exceptional and extremely unusual hardship” standard for cancellation of removal to a given set of facts is a reviewable question of law. *Martinez v. Clark*, 144 S. Ct. 1339 (2024) (citing *Wilkinson*, 601 U.S. at 209). On remand, the Ninth Circuit determined that the application of the *Guerra* factors to determine whether a person presents a danger is analogous to the “exceptional and extremely unusual hardship” standard from *Wilkinson* and therefore presents a reviewable mixed question of law and fact. *Martinez*, 124 F.4th at 783–84. The same analysis applies to the application of the *Guerra* factors to a flight risk question.

56. A court “abuses its discretion if it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *Klick v. Cenikor Found.*, 94 F.4th 362, 368 (5th Cir. 2024) (quoting *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 638 (5th Cir. 2005)).

V. PETITIONER IS SUFFERING ACTUAL PREJUDICE AS A RESULT OF THE CONSTITUTIONAL VIOLATION

60. To succeed on an as-applied due process claim, a party must show actual prejudice as a result of the constitutional violation. *United States v. Kidd*, 127 F.4th 982, 988 (5th Cir.), cert. denied, 145 S. Ct. 2804 (2025). Courts have noted that “common sense” suggests a petitioner will suffer actual prejudice where he, rather than the government, bears the burden of proof at a bond hearing, but has also analyzed the record of a bond hearing to make that determination. *Ayobi*, 2020 WL 13411861, at *8; *see also Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 693 (D. Mass. 2018)(concluding that an IJ “could well have found that [the noncitizen] was not dangerous based on a single misdemeanor conviction” if the burden of proof were on the government).

61. The proper remedy for Petitioner is immediate release or, in the alternative, this Court issuing an order setting constitutionally adequate bond or directing a prompt custody hearing that complies with due process. In exercising that power, this Court may conduct its own bond hearing or otherwise determine adequate bond. *See Jimenez v. Cronen*, 317 F. Supp. 3d at 658 (“it is most appropriate that the court exercise its equitable authority to remedy the violations of petitioners’ constitutional rights to due process by promptly deciding itself whether each should be released” and ordering bond hearings); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025) (ordering respondents to release petitioner “subject to the conditions of her preexisting

Order of Supervised Release.”)

CLAIM FOR RELIEF

COUNT ONE

Fifth Amendment Substantive and Procedural Due Process

62. Petitioner realleges and incorporates by reference the allegations of fact set forth in the preceding paragraphs.
63. Petitioner’s ongoing detention violates his substantive due process rights because his liberty is being restricted without sufficient and constitutionally permissible justification. *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).
64. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
65. Petitioner has a fundamental interest in his liberty. As applied here, Petitioner’s continued civil detention no longer bears a reasonable relationship to any legitimate detention purpose under 8 U.S.C. § 1226(a). Petitioner has no criminal history and no negative immigration history; he has a fixed residence with his wife and four minor children (including a U.S. citizen child), strong community and church ties, and lawful employment authorization. These facts demonstrate that the only permissible detention purposes under § 1226(a)—preventing danger and ensuring appearance—are not present. *See Zadvydas*, 533 U.S. at 690–91; *Demore v. Kim*, 538 U.S. 510, 528 (2003). Further, Petitioner has been detained since May 17, 2025, has already completed his individual

merits hearing on November 26, 2025, yet remains detained without a decision and without any definite timeline for adjudication. Given recent policy changes affecting adjudication of Petitioner's immigration relief, Petitioner's detention has become prolonged and has also become effectively indefinite and without a reasonably foreseeable end.

66. Accordingly, because Petitioner's continued detention is prolonged, effectively indefinite, and unjustified by any legitimate civil purpose, it violates his substantive due process rights under the Fifth Amendment.
67. Moreover, the Immigration Judge's refusal to reconsider custody—finding no materially changed circumstances and rejecting Petitioner's ineffective assistance claim—has effectively foreclosed any meaningful administrative mechanism for reassessing detention, thereby compounding the indefinite nature of Petitioner's confinement and further severing it from any legitimate civil purpose.

REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

57. Assume jurisdiction over this matter and issue an Order to Show Cause pursuant to 28 U.S.C. § 2243;
58. Order Respondents not to transfer Petitioner outside the Western District of Texas while this Petition is pending;
59. Declare that Petitioner's continued detention violates the Fifth Amendment's Due Process Clause;
60. Grant the writ and order Petitioner's immediate release from ICE custody under appropriate conditions of supervision;
61. In the alternative, order a constitutionally adequate custody hearing within seven (7) days at which the Government bears the burden to prove by clear and convincing evidence that

Petitioner's continued detention is necessary because he is a flight risk or danger to the community; and

62. Grant such other and further relief as law and justice require.

Dated this 11th day of February, 2026.

Respectfully submitted,

/s/ Brenda M. Villalpando

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Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent the Petitioner, Dick Perry Chimel, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief under 28 U.S.C. § 2242 or under the U.S. Constitution are true and correct to the best of my knowledge.

Dated this 11th day of February, 2026.

/s/Brenda M. Villalpando

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Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on February 11, 2026, I filed this Petition for Writ of Habeas Corpus using the CM/ECF system.

Respectfully submitted,

/s/Brenda M. Villalpando

Brenda M. Villalpando

Counsel for Petitioner