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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Bashir Orgay,

Petitioner,

v.

Eric Rokowsky, Warden, Eloy Detention Center;

Christopher McGregor, Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security;

Todd M. Lyons, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi Noem, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and

Pamela Bondi, in her Official Capacity, Attorney General of the United States;

Respondents.

Case No.

A-[redacted]

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

Challenge to Unlawful Detention Under 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Bashir Orgay has been held in civil immigration detention for an unreasonably prolonged period while his removal proceedings remain pending. His continued detention violates the Due Process Clause of the Fifth Amendment because it has become

excessive in relation to any legitimate regulatory purpose. Petitioner entered the United States in January 2025, was placed in removal proceedings as an arriving noncitizen, and has remained detained at the Eloy Detention Center in Eloy, Arizona. On November 14, 2025, Immigration Judge Karen Schulz granted Petitioner asylum. Yet despite that grant of protection, Petitioner remains detained months later solely because the Department of Homeland Security chose to appeal.

2. This posture makes Petitioner's detention especially troubling. An Immigration Judge has already determined that Petitioner is eligible for asylum and granted that relief. Still, instead of releasing him, DHS appealed the grant of asylum to the Board of Immigration Appeals on December 1, 2025 and stated that it intends to file a separate written brief. No briefing schedule has yet issued, and the government's appeal has left Petitioner in open-ended detention with no defined end point.

3. The extraordinary length of Petitioner's detention is not attributable to dilatory conduct by Petitioner. Rather, it is the product of the government's own litigation choice to continue challenging the Immigration Judge's grant of asylum. DHS's notice of appeal confirms that it seeks reversal of the asylum grant and even reserves the right to raise additional issues after review of the complete record. Thus, Petitioner's detention is no longer serving any narrowly limited screening purpose; instead, it has become a mechanism for holding him in custody while the government pursues an indefinite appeal.

4. Petitioner's detention is even more alarming because he has documented medical vulnerabilities. ICE medical records reflect that he has Hepatitis B and requires ongoing medical monitoring and follow-up. Medical records note "chronic hepatitis B" and recommend continued laboratory monitoring and related follow-up care. Continued civil

detention under these circumstances imposes unnecessary and escalating harm.

5. Petitioner has also been denied any meaningful opportunity to obtain release. ICE reviewed his case and declined, "as a matter of discretion," to release him from custody. He therefore remains detained without bond, without parole, and without any constitutionally adequate individualized determination that his continued detention is necessary.

6. Civil immigration detention is permitted only for limited regulatory purposes. It may not become effectively indefinite or punitive simply because the government elects to continue litigating after an asylum grant. Because Petitioner's detention has become unreasonably prolonged, because removal is not imminent, because the delay is driven by the government's appeal, and because Petitioner has been denied any meaningful custody review, this Court should order his immediate release. In the alternative, the Court should order Respondents to provide a prompt bond hearing at which the government bears the burden of justifying continued detention.

JURISDICTION & VENUE

7. This Court has jurisdiction under 28 U.S.C. §§ 2241 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*; the All Writs Act, 28 U.S.C. § 1651; and the Fifth Amendment to the United States Constitution.

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

9. Although the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), rejected the statutory imposition of periodic bond hearings under the immigration detention statutes, it expressly preserved individual, as-applied constitutional challenges to prolonged

immigration detention. Accordingly, this Court has jurisdiction under 28 U.S.C. § 2241 to adjudicate Petitioner's Fifth Amendment due process challenge to the lawfulness of his continued detention.

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 Petitioner is detained within this district at the Eloy Detention Center. Furthermore, a substantial part of the events or omissions giving rise to this action occurred and continue to occur at ICE's Phoenix Field Office in Phoenix, Arizona, within this division.

PARTIES

11. Petitioner Bashir Orgay is a native and citizen of Somalia. He is currently detained at the Eloy Detention Center.

12. Respondent Eric Rokowsky is the Warden of the Eloy Detention Center where Petitioner is being detained. He is Petitioner's immediate legal custodian and thus a proper respondent in this matter. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

13. Respondent Christopher McGregor is the Field Office Director of the ICE Enforcement and Removal Operations (ERO) Phoenix Field Office and is the federal agent charged with overseeing all ICE detention centers in Arizona, including the Eloy Detention Center.

14. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is the federal agent charged with overseeing all ICE operations. He is sued in his official capacity.

15. Respondents Pamela Jo Bondi and Kristi Noem are, respectively, the Attorney

General of the United States and the Secretary of Homeland Security. As such, they are responsible for maintaining the immigration detention system. They are thus the ultimate legal custodians of Petitioner.

STATEMENT OF FACTS

16. Petitioner Bashir Orgay is a native and citizen of Somalia.

17. Petitioner entered the United States at the southern border in January 2025 to seek asylum. Petitioner was detained by ICE on that date.

18. On November 18, 2025, after considering testimony and documentary evidence, the Immigration Judge found Mr. Orgay credible concluded that Mr. Orgay had demonstrated eligibility for asylum and entered an order granting asylum relief. *See* **Exhibit A,** *IJ Decision.*

19. Despite this grant of protection, Mr. Orgay was not released from immigration detention.

20. Rather than release Mr. Orgay following the Immigration Judge's decision, DHS chose to appeal the asylum grant to the Board of Immigration Appeals ("BIA"). *See* **Exhibit B,** *Notice of Appeal.* The crux of the Department's arguments rely of undercutting Petitioner's credibility.

21. DHS indicated that it intended to file a written brief in support of its appeal. *Id.* To date, however, no briefing schedule has been issued, and there is no defined timeline for resolution of the appeal. As a result, Petitioner remains detained for an open-ended and indefinite period while the government continues to litigate.

22. Petitioner's continued detention is not the result of any delay or obstruction by Petitioner. Rather, it is solely the result of the government's decision to appeal the Immigration

Judge's ruling. The government has also reserved the right to raise additional arguments after reviewing the hearing transcript, further prolonging the appellate process. *Id.*

23. Petitioner has sought release from custody through available administrative channels. ICE reviewed his case but declined, "as a matter of discretion," to release him from detention. *See* **Exhibit C,** *Denial of Release on Parole.*

24. As a result, Petitioner remains detained without bond and without any meaningful opportunity for individualized review of his continued confinement.

25. Petitioner also suffers from a serious medical condition. ICE medical records confirm that he has been diagnosed with chronic Hepatitis B and requires ongoing monitoring and follow-up care. *See* **Exhibit D,** *Medical Records.* Continued detention under these circumstances places him at risk of worsening health and underscores the urgent need for relief.

26. As of the filing of this Petition, Petitioner has been detained for many months, including a substantial period after he was granted asylum. His continued detention is indefinite, unjustified, and no longer reasonably related to any legitimate governmental purpose.

ARGUMENT AND GROUNDS FOR RELIEF

I. GROUND ONE: PETITIONER'S DETENTION VIOLATES DUE PROCESS BECAUSE IT HAS BECOME UNREASONABLY PROLONGED AND CONSTITUTIONALLY EXCESSIVE.

27. Civil immigration detention implicates a fundamental liberty interest protected by the Fifth Amendment. Civil immigration detention is permissible only where it is reasonably related to a legitimate regulatory purpose, such as ensuring appearance at removal proceedings, protecting the community, or effectuating removal. It may not be punitive or excessive in relation to that purpose.

28. When detention becomes prolonged, due process requires courts to balance (1) the detainee's interest in private liberty; (2) the risk of erroneous deprivation of individual interests under existing procedures; and (3) the government's interest in limiting procedural burdens. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

29. When evaluating as-applied challenges to prolonged immigration detention in the Ninth Circuit, courts consider the length of detention, the foreseeability of release, the reasons for the prolonged detention, and the adequacy of the process provided in light of the length of detention. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018) (preserving the availability of as-applied constitutional challenges); *see also Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) (abrogated on other grounds by *Jennings v. Rodriguez*); *see also Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

30. Here, the balance of the due process equities demonstrates that Petitioner's ongoing detention is unreasonable.

(1) Length of Detention

31. The length of Petitioner's detention weighs heavily in favor of relief. Petitioner has been in ICE custody since January 2025 and has remained continuously detained for many months without any individualized bond hearing or meaningful opportunity to challenge the necessity of his confinement.

32. Petitioner's detention has continued even after he prevailed on the merits of his asylum claim. On November 14, 2025, the Immigration Court granted Petitioner asylum after finding that he met his burden for protection.

33. Despite this grant of protection, Petitioner was not released from detention. Instead, DHS appealed the Immigration Judge's decision to the Board of Immigration Appeals ("BIA"),

prolonging Petitioner's confinement.

34. As a result of the government's decision to appeal, Petitioner has remained detained for months after being granted asylum while the case continues to be litigated at the appellate level.

35. Continued detention becomes constitutionally suspect when it persists after a grant of relief and lacks a clear endpoint.

36. Detention that continues after an Immigration Judge has granted asylum is especially troubling because the detainee has already prevailed on the merits before a neutral adjudicator.

37. Mandatory detention of this duration—particularly in a post-asylum posture—without any individualized assessment of flight risk or dangerousness strongly favors granting relief.

(2) Foreseeability of Removal

38. There is no reasonably foreseeable end to Petitioner's detention.

39. The regulatory justification for detention under 8 U.S.C. § 1225 is that removal may occur if the applicant for admission is ultimately denied relief. That justification is significantly weakened here.

40. Petitioner has already demonstrated eligibility for protection before the Immigration Court. The Immigration Judge granted him asylum.

41. DHS has appealed that decision and indicated that it intends to file a written brief, but no briefing schedule has been issued.

42. Because the appeal process has no defined timeline, the duration of Petitioner's detention is open-ended and uncertain.

43. The government has also reserved the right to raise additional issues upon review of

the hearing transcript, further prolonging the appellate process.

44. As a result, Petitioner's detention no longer bears a reasonable relationship to the government's asserted interest in effectuating removal. Removal is not imminent and may not occur for a significant period of time, if at all.

45. Where removal is not reasonably foreseeable and immigration proceedings remain ongoing with no defined endpoint, prolonged detention without individualized review becomes constitutionally suspect.

(3) Delay Is Not Attributable to Petitioner

46. The prolonged duration of Petitioner's detention is not attributable to any delay caused by Petitioner.

47. Rather, the principal source of delay has been the government's own litigation decisions and the pace of administrative adjudication.

48. After the Immigration Judge granted asylum in November 2025, DHS chose to appeal that decision. Petitioner did not cause this appeal.

49. DHS has indicated that it intends to file additional briefing and has reserved the right to raise further issues after reviewing the record, ensuring continued delay.

50. Petitioner has no control over when—or how quickly—the BIA will issue a briefing schedule or adjudicate the appeal.

51. Ninth Circuit precedent treats such adjudicatory delay as government-caused delay for purposes of evaluating prolonged detention.

52. Because the prolonged duration of Petitioner's detention stems from the government's litigation choices—not from any dilatory conduct by Petitioner—this factor weighs strongly in favor of relief.

(4) Inadequacy of Process

53. The process provided to Petitioner is inadequate in light of the length and circumstances of his detention.

54. Petitioner has never received a bond hearing, an individualized flight-risk determination, a dangerousness assessment, or any meaningful opportunity to contest the necessity of his continued detention.

55. ICE has reviewed Petitioner's custody status and denied release "as a matter of discretion," leaving Petitioner detained without any adversarial hearing or procedural safeguards.

56. Mandatory detention without any opportunity for individualized review becomes constitutionally suspect as its duration increases.

57. The complete absence of meaningful procedural safeguards strongly favors granting relief.

(5) Petitioner's Serious Medical Conditions Intensify the Liberty Interest at Stake

58. The severity of the liberty deprivation caused by Petitioner's detention is further heightened by his medical condition.

59. Courts evaluating prolonged civil detention consider the real-world consequences of detention for the individual detainee. Where detention places a medically vulnerable individual at heightened risk of harm, the detainee's liberty interest becomes correspondingly stronger.

60. Petitioner has been diagnosed with chronic Hepatitis B, a serious infectious liver disease requiring ongoing monitoring and medical management.

61. Management of this condition requires consistent medical care, monitoring, and

follow-up, which are complicated by prolonged detention.

62. Because Petitioner's health condition increases the risks associated with continued confinement, his private interest in liberty weighs more heavily in the *Mathews* balancing analysis.

63. The Due Process Clause does not permit the government to subject a medically vulnerable civil detainee to prolonged detention where the regulatory justification for detention has substantially weakened.

(6) The Government's Interests No Longer Justify Continued Detention

64. The government's interests do not justify continued detention without additional process.

65. While the government has a legitimate interest in ensuring appearance and protecting the community, that interest is significantly diminished here.

66. An Immigration Judge has already determined that Petitioner is eligible for asylum.

67. Petitioner's continued detention therefore serves primarily to maintain custody while the government pursues appellate review of a decision it has already lost.

68. The Constitution does not permit DHS to impose prolonged civil detention as a default consequence of its own decision to appeal.

69. Less restrictive alternatives—including release on conditions or, at minimum, an individualized bond hearing—would adequately serve the government's regulatory interests.

II. GROUND TWO: PETITIONER'S CONTINUED DETENTION VIOLATES THE FIFTH AMENDMENT BECAUSE HIS SERIOUS MEDICAL CONDITIONS MAKE CIVIL DETENTION UNREASONABLY DANGEROUS AND EXCESSIVE.

70. Civil immigration detention must remain regulatory rather than punitive. The Due

Process Clause prohibits the government from detaining a civil detainee under circumstances that expose the detainee to a substantial risk of serious harm.

71. Freedom from physical restraint lies at the core of the liberty interest protected by the Fifth Amendment. When the government chooses to detain a civil detainee, it assumes responsibility for that person's safety and medical well-being.

72. Courts evaluating civil detention claims distinguish between conditions-of-confinement challenges and challenges to the fact of detention itself.

73. While general practice has counseled against it, the Supreme Court has not explicitly foreclosed the use of habeas corpus for conditions-of-confinement claims. *See Ziglar v. Abbasi,* 582 U.S. ___, 137 S. Ct. 1843, 1862 (2017) (leaving open the question of whether alien detainees challenging "large-scale policy decisions concerning the conditions of confinement imposed . . . might be able to challenge their confinement conditions via a petition for a writ of habeas corpus"); *Boumediene v. Bush*, 553 U.S. 723, 792 (2008) (declining to determine "the reach of the writ with respect to claims of unlawful conditions of treatment or confinement"); Bell v. Wolfish, 441 U.S. 520, 526, n. 6, (1979) (leaving for "another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement").

74. Here, Petitioner's claims can be viewed as challenging the fact, not simply the conditions, of his confinement. *See Preiser v. Rodriguez,* 411 U.S. 475, 500 (1973) (where an individual is "challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release," the proper remedy is a writ of habeas corpus).

75. The question therefore is whether continued detention—given the detainee's specific vulnerabilities—has become excessive in relation to the government's regulatory interests.

Petitioner's Medical Condition

76. Petitioner suffers from a serious chronic medical condition that requires ongoing monitoring and medical management.

77. ICE medical records confirm that Petitioner has been diagnosed with chronic Hepatitis B, a serious infectious liver disease that can lead to significant complications if not properly monitored and treated. *See* **Ex. D.**

78. Chronic Hepatitis B requires consistent medical evaluation, including laboratory monitoring and follow-up care, to assess disease progression and prevent long-term liver damage.

79. The management of this condition is inherently ongoing and requires reliable access to medical care, continuity of treatment, and appropriate monitoring.

80. Prolonged detention in a custodial setting complicates the consistent management of chronic medical conditions and increases the risk of delayed care, inadequate monitoring, and medical deterioration.

Detention Has Become Excessive in Light of Petitioner's Medical Vulnerabilities

81. The government's interest in civil immigration detention is limited to regulatory objectives such as ensuring appearance at proceedings and effectuating removal.

82. When detention exposes a medically vulnerable detainee to a substantial risk of serious harm, continued detention becomes excessive in relation to those regulatory purposes.

83. Courts evaluating civil detention under the Due Process Clause must determine whether detention remains reasonably related to a legitimate government objective or whether it has become punitive or excessive.

84. Here, continued detention of Petitioner—despite his serious medical condition and

the prolonged indefinite nature of his confinement—serves no legitimate regulatory purpose that cannot be achieved through less restrictive alternatives.

85. Petitioner has already been detained for an extended period while his immigration proceedings continue, and his continued detention places him at ongoing medical risk.

86. Because civil immigration detention may not expose a detainee to an unreasonable risk of serious harm, Petitioner's continued detention violates the Fifth Amendment.

PRAYER FOR RELIEF

87. Petitioner is being unlawfully detained in violation of the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. WHEREFORE, Petitioner respectfully requests that this Court:

a. Order Respondents to answer the petition on an expedited basis due to Petitioner's detained status;

b. Grant the Petition for writ of habeas corpus;

c. Issue an Order prohibiting the Respondents from transferring Petitioner from the district without the Court's approval;

d. Order Petitioner's immediate release from ICE custody;

e. Alternatively, order a prompt and constitutionally adequate custody hearing with DHS bearing the burden of proof;

f. Grant further relief as the Court deems just and proper.

Dated: March 18, 2026

Respectfully submitted,

/s/ Spencer C. Lee
Spencer C. Lee
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

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

Executed on this March 18, 2026, in Phoenix, AZ.

/s/ Spencer C. Lee
Spencer C. Lee
Attorney for Petitioner

CERTIFICATE OF SERVICE

This is to certify that on March 18, 2026, the foregoing PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF was served by certified mail, on:

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