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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Shaheen, Azam

Petitioner,

v.

Warden of Eloy Detention Center; John Cantu, Director of Phoenix Field Office for the U.S. Immigration and Customs Enforcement and Removal Operations ("ICE/ERO") Field Office ; Kristi Noem, in her official capacity, Secretary of the U.S. Department of Homeland Security; Todd Lyons, in his official capacity, Acting Director U.S. Immigration and Customs Enforcement; and Pamela Bondi, in her capacity, U.S. Attorney General of the United States;

Respondents.

Case No. **CV26-01925-PHX-SMB--MTM**

PETITION FOR WRIT OF HABEAS CORPUS

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

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner, Azam Shaheen is currently detained by Immigration and Customs Enforcement (ICE) at the Eloy Detention Center despite winning his immigration case on October 3, 2025. Petitioner was granted with Asylum under INA § 208, 8 U.S.C. § 1158.

2. Petitioner has been detained in immigration custody since January 2025, almost fourteen months even though no neutral decisionmaker has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk.

3. Respondents timely appealed on October 29, 2025; thus, no administratively final order of removal exists. Petitioner remains in pending removal proceedings before the BIA and is detained, if at all, under 8 U.S.C. § 1226(a), not § 1231.

4. An Immigration Judge granted Petitioner asylum, and the Department of Homeland Security filed a timely appeal to the Board of Immigration Appeals. Because the appeal remains pending, removal proceedings are ongoing and no administratively final order of removal exists. See 8 U.S.C. § 1101(a)(47)(B).

5. Detention therefore falls under § 1226(a), which governs custody "pending a decision on whether the alien is to be removed," rather than § 1231, which applies only after a final removal order. Nor does § 1225 apply, as Petitioner is no longer in an admission or expedited-removal posture following the Immigration Judge's grant of asylum. Accordingly, Petitioner's continued detention is discretionary detention under § 1226(a).

6. Petitioner's continued detention violates both the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. Once Petitioner was granted asylum,

he was no longer subject to removal, and DHS's detention authority under INA §§ 236 and 241 ceased to exist.

7. Petitioner is entitled to a bond hearing or immediate release because he is subject to the discretionary detention provision of 8 U.S.C. § 1226(a).

8. Respondents cannot remove Petitioner to his home country or to any third country because Petitioner has been granted asylum. Absent a bond hearing or this Court's intervention, Petitioner's detention will be effectively indefinite, despite the fact that removal is not reasonably foreseeable.

9. Petitioner's prolonged detention without a hearing on danger and flight risk violates the Due Process Clause of the Fifth Amendment.

10. Petitioner asks this Court to find that his prolonged incarceration is unreasonable and to order his immediate release.

11. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

JURISDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at Eloy Detention Center.

13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

14. 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.

15. Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830. 839-41 (2018) (holding that 8 U.S.C.§ § 1226(e), 1252(b)(9) do not bar review of challenges to prolonged detention immigration detention); *see also id.* at 876 (Breyer, J., dissenting)(8 U.S.C. §1252(b)(9) by its term applies only with respect to review of an order of removal) (internal quotation marks and brackets omitted).

16. Federal Courts also have federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Respondents' continued detention of Petitioner up to and past the 90-day removal period has adversely and severely affected Petitioner's liberty and freedom.

VENUE

17. 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 District of Arizona, the judicial district in which Petitioner currently is detained.

18. Venue is also properly 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 District of Arizona.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

19. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

20. Petitioner is a noncitizen who remains detained by Respondents despite having been granted asylum relief.

21. Respondent U.S. Immigration and Customs Enforcement ("ICE") is a law enforcement agency of the federal government of the United States tasked to enforce the immigration laws of the Unites States. ICE is charged with detaining and removing individuals from the United States under the authority and direction of the United States Department of Homeland Security.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

23. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

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

25. Respondent the Warden of Eloy Detention Center. Respondent Warden is charged with the overall administration of the Eloy Detention Center. ICE utilized the correctional facility to detain immigrants in their custody. He has immediate physical custody of Petitioner. Respondent Florence Correctional Center is sued in his official capacity.

FACTUAL BACKGROUND

26. Petitioner is a native and citizen of Bangladesh who arrived in the U.S. on or about January 2025. He is detained by Respondents pending immigration removal proceedings since then, almost fourteen (14) months.

27. Petitioner applied for Asylum, Withholding of Removal and Protection under the Convention against Torture before the EOIR. Petitioner was granted Asylum the under INA § 208 on October 3, 2025. He remained under the custody of ICE.

28. Petitioner has been detained for more than fourteen months without being informed of the specific legal basis for his detention.

29. Absent intervention by this Court, Petitioner cannot and will not be provided a bond hearing by a neutral decisionmaker to assess the propriety of Petitioner's continued detention.

LEGAL FRAMEWORK

I. PETITIONER IS DETAINED PURSUANT TO 8 U.S.C. § 1226(a)

30. Petitioner is detained under the discretionary detention statute, 8 U.S.C. § 1226(a). An Immigration Judge granted Petitioner's relief in December 2025, and the Department of Homeland Security ("DHS") filed a timely appeal to the Board of Immigration Appeals ("BIA"). Because that appeal remains pending, removal proceedings are ongoing and no administratively final order of removal exists. See 8 U.S.C. § 1101(a)(47)(B) (order becomes final only upon BIA affirmance or expiration of appeal period).

31. Two statutes within the INA principally govern the detention of non-citizens pending removal proceedings: 8 U.S.C. § 1225 and § 1226(a). Under § 1225, "in the case of an alien who is an applicant for admission, if the examining officer determines that an alien seeking admissions is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229(a) of this title." §1225(b)(2)(A). By contrast, 8 U.S.C. § 1226 governs the removal procedures for aliens "presents in the country," and gives the Attorney General discretion to release an alien on bond pending a removal decision. *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). Unlike § 1225, the text of § 1226 contains no reference to aliens who are "applicants for admission" or "seeking admission."

32. Detention therefore falls under § 1226, which governs custody "pending a decision on whether the alien is to be removed," rather than § 1231, which applies only after entry of a final removal order and commencement of the removal period.

33. Nor does § 1225 apply, as Petitioner is no longer in an admission or expedited-removal posture following the Immigration Judge's grant of asylum and entry into full removal proceedings before the immigration court.

34. Here, it is clear that Petitioner is detained under 8 U.S.C. § 1226(a); thus, his continued confinement during the pendency of his appeal before the BIA is unwarranted and inconsistent with the discretionary nature of § 1226(a) detention.

35. As stated above, despite being incarcerated by ICE for more than fourteen months has yet to be provided with constitutionally complaint bond hearing where the government must justify his detention by clear and convincing evidence.

II. PETITIONER PETITIONER'S CONTINUED DETENTION UNDER § 1226(a) HAS BECOME UNREASONABLY PROLONGED AND VIOLATES THE FIFTH AMENDMENT

36. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993). "Freedom from imprisonment – from government custody, detention or other forms of physical restraint —lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious").

37. 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 confinement" outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has

recognized only two valid purposes for civil detention – to mitigate the risks of danger to the community and to prevent flight. *Id*; *Demore*, 538 U.S. at 528.

38. Due process requires that the government provide bond hearings to noncitizens facing prolonged detention. "The Due Process Clause foresees eligibility for ability for bail as part of due process" because "[b]ail is basic to our system of law." *Jennings*, 138 Ct. at 862 (Breyer, J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld that mandatory detention of a noncitizen under § 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding at the time that detentions under §1226(c) are typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief, due process requires an individual determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) ("[I]ndividual determination as to his risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50(1972)(holding that "lesser safeguards may be appropriate" for short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978)(holding that, in the Eighth Amendment context, " the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards"); *Reid v. Donelan*, 17 F. 14th 1, 7 (1st Cir. 2021)(holding that " Due Process Clause imposes some form of reasonableness limitation upon the duration of detention" under § 1226(c))(internal quotation marks omitted).

A. Detention That Exceeds Six Months Without A Bond Hearing Is Unconstitutional.

39. Detention without a bond hearing is unconstitutional when it exceeds six months. *See Demore,* 538 U.S. at 529-30(upholding only "brief" detention under § 1226(c), which last "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the [noncitizen] chooses to appeal"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months."); *Rodriguez Diaz v. Garland*, 53 F. 4th 1189, 1091 (9th Cir.2022) ("[O]nce the [noncitizen] has been detained for approximately six months, continuing detention becomes prolonged"(quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011)); *Rodriguez v. Nielsen*, Case No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan 7, 2019)("[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond hearing").

40. The recognition that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in our legal tradition. With few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. 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 jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1996) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245; 249, 250-52 (1972) (recognizing six months as an outer limit of confinement without individualized inquiry of civil commitment). The Court has likewise recognized the need for

bright line constitutional rules in other areas of law. See *Maryland v. Shatzer*, 559 U.S. 98. 110 (2010) (holding that 14 days must elapse following invocation of Miranda rights before re-interrogation is permitted); *Cnty. Of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding that a probable cause hearing must take place within 48 hours of warrantless arrest).

III. DUE PROCESS REQUIRES IMMEDIATE RELEASE OR, AT MINIMUM, A CONSTITUTIONALLY ADEQUATE BOND HEARING

41. The removal proceedings have concluded in Petitioner's favor. DHS therefore lacks statutory authority to continue detaining Petitioner, and his ongoing detention violates both the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

B. Even Absent A Bright-Line Six-Month Standard, An Individual Bond Hearing is Required When Detention Becomes Unreasonably Prolonged.

42. Petitioner's detention, without any individualized review, is unreasonable under the *Mathews v. Eldridge* due process test. Alternatively, Petitioner prevails under the multi-factor reasonableness test the Third Circuit adopted in *Germen Santos v. Warden Pike Correctional Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

43. Each year, thousands of noncitizens are incarcerated for lengthy periods pending the resolution of their removal proceedings. *See Jennings*, 138 S. Ct. at 860 (Breyer, J., dissenting) (observing that class members, numbering in the thousands, had been detained "on average one year" and some had been detained for several years). For noncitizens who have some criminal history, their Immigration detention often dwarfs the time spent in criminal custody, if any. Id. ("between one-half and two-thirds of the class served [criminal] sentences less than six months").

44. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a locked down facility, with limited freedom of movement and access to Petitioner's family or support network: "[T]he circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez—Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir. 2016). "And in some cases the conditions of their confinement are inappropriately poor" including, for example, "invasion procedures, substandard care, and mistreatment, e.g. indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee." *Jennings,* 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Press Release, Off. of Inspector Gen., Dept. of Homeland Sec., *DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities* (Dec. 14, 2017); *see also* Tom Dreisbach, Government's own *experts found 'barbaric' and negligent' conditions in ICE detention*, NPR (Aug. 16, 2023, 5:01 AM) (reporting on the "negligent" medical care (including mental health care), 'unsafe and filthy' conditions, racist abuse of detainees, inappropriate pepper-spraying of mentality ill detainees and other problems that, in some cases, contributed to detainee deaths" contained in inspection reports prepared by experts from the Department of Homeland Security's Officer for Civil Rights and Civil Liberties after examining detention facilities between 2017 and 2019). Individuals at Golden State Annex Detention Facility have described receiving food contaminated with insects (including cockroaches, flies, and spiders), hair and other foreign object. *See* California Collaborative for Immigration Justice, Starving for Justice: *The Denial of Proper Nutrition in Immigration Detention*, at p.7 (April 2022), available a

https://www.ccijustice.org/starving-for-justice. At Mesa Verde Detention Facility, over 80% of detained individuals who responded to one survey said they had received expired food. *Id.*

45. The *Mathews* test for procedural due process claims balance (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 355 (1976); *see also Salesh P.*, 2020 WL 17082375, at *8 (collecting cases where judges in the Northern District of California applied the *Mathews* factors to habeas petitioner's due process claims. Here each factor weighs in Petitioner's favor, requiring this Court to promptly hold a hearing to evaluate whether the government can justify their ongoing detention.

46. First, Petitioner indisputably has a weighty interest in their liberty, the core private interest at stake here. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment…lies at the heart of the liberty [the Due Process Clause] protects."). Petitioner, who is being held in "incarceration-like condition," has an overwhelming interest here, regardless of the length of this immigration detention, because "any length of detention implicates the same" fundamental rights. *Rajnish v. Jennings*, No.3:20-cv-07819-WHO, 2020 WL 7626414, at *6 (N.D. Cal. Dec 22, 2020).

47. Second Petitioner will suffer the erroneous risk of deprivation of their liberty without an individual evidentiary hearing. The risk of erroneous deprivation of his liberty is high, as he has been detained since January 2025 without any evaluation of whether the government justify detention under their individualized circumstances. Petitioner was granted asylum relief. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf*, 634. F.3d at 1092. Conversely, "the probable value of

additional procedural safeguards – an individualized evaluation of the justification of his detention—is high, because Respondents have provided virtually no procedural safeguards at all." *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, *3 (N.D, Cal. Jan 30, 2020) (granting habeas petition for person who had been detained for one year without a bond hearing).

48. Third, the government's interest is very low in continuing to detain Petitioner without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at stake here is not the government's ability to continue to detain Petitioner, but rather the government's ability to continue to detain them for months on end without any individualized review. *See Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v. Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N. D. Cal. June 14, 2022. The cost of providing an Individualized inquiry is minimal. *See Henriquez*, 2022 WL 2132919, at *5. The government has repeatedly conceded this fact. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N. D. Cal. 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019); *Marroquin Ambriz*, 420 F.Supp.3d at 963.

49. In sum, the *Mathews* factors establish that Petitioner is entitled to an evidentiary hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards in this District and Circuit have repeatedly held that prolonged detention withhold hearing before a neutral adjudicator violates procedural due process for individuals who were held under the same detention status. See, e.g., *Romero Romero v. Wolf*, No.20-CV-08031-TSH, 2021 WL 254435, at *2, *5 (N.D. Cal. Jan. 26 2021)(holding that the petitioner's detention under § 1226(c) of just over one year without a custody hearing was "not compatible with due process" and granting habeas); *Jimenez*, 2020 WL 510347, at *1, *2, *4(holding that the petitioner's detention under §1226(c) of just over one year without a custody hearing violated his due process rights and

granting habeas); *Gonzales v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D. Cal. Jan.25, 2019)(holding that the petitioner's detention under § 1226 (c) for just over one year without a custody hearing violates his due process rights and granting habeas). This Court should so hold as well.

50. *Rodriguez Diaz v. Garland*, 53 F. 4th 1189 (9th Cir. 2022), does not disturb this result. In *Rodriguez Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of a noncitizen detained under a different detention statue, 8 U.S.C. § 1226(a), did not violate procedural due process. 53 F.4th at 1195. Unlike § 1226(c), § 1226(a) mandates that detained individuals receive an individuated bond hearing at the outset of detention and provides for further bond hearings upon a material change in circumstances. See 8 C.F.R. section 1003.19 The panel's decision in *Rodriguez Diaz* was predicted on the immediate and ongoing availability of this administrative process under § 1226(a). 53 F.4th at 1202 ("§ 1226 (a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions…"). Unlike the petitioner in *Rodriguez Diaz*, Petitioner has no statutory access to individualized review of his detention.

51. Alternatively, courts that apply a reasonableness test have considered four non-exhaustive factors in determining whether detention is reasonable. *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 210-22(3d Cir. 2020). The reasonableness inquiry is "highly fact-specific." Id. at 210. The most important factor is the duration of detention." *Id.* at 211; *see also Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D. Cal. Jan. 25, 2019) (concluding that the petitioner's detention under §1226 (c) for just over one year without a custody hearing weighed strongly in favor of finding detention unreasonable, and violated his due process rights and granting habeas). Duration is evaluated along with "all the

other circumstances," including (1) whether detention is likely to continue, (2) reasons for the delay, and (3) whether the conditions of confinement are meaningfully different from criminal punishment. *Id.* at 211.

52. As noted, Petitioner has been detained for a substantial length of time, and Petitioner's detention is likely to continue as Petitioner asserts their right to seek immigration relief. Noncitizens should not be punished for pursuing "legitimate proceedings" to seek relief. *See Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan.8, 2020) ("[I]t ill suits the United States to suggest that [Petitioner] could shorten his detention by giving up these rights and abandoning his asylum application."). Thus, courts should not count a continuance against the noncitizen when they obtained it in good faith to prepare their removal case, including efforts to obtain counsel. *See Hernandez Gomez*, 2023 WL 2802230, at *4 ("The duration and frequency of these requests [for continuance] do not diminish his significant liberty interest in his release or his irreparable injury of continued detention without a bond hearing."). Moreover, Petitioner's confinement and experiences at a facility operated by a private, for-profit prison contractor, demonstrate that their conditions of confinement are not meaningfully different from those of criminal punishment.

C. At Any Hearing, The Government Must Justify Ongoing Detention By Clear And Convincing Evidence.

53. At a bond hearing, due process requires certain minimum protection to ensure that a noncitizen's detention is warranted: the government must bear the burden of proof by clear and convincing evidence to justify continued detention, taking into consideration available alternatives to detention; and, if the government cannot meet its burden, the noncitizen's ability to pay a bond must be considered in determining the appropriate conditions of release.

54. 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*); Aleman Gonzalez v. Barr*, 955 F.3d 762, 781 (9th Cir. 2020*), rev'd on other grounds by Garland v. Aleman Gonzalez*, 142 S. Ct 2057, 213 L.Ed. 2d 102 (2022)("Jenning's rejection of layering [the clear and convincing burden of proof standard] onto § 1226 (a) *as a matter of statutory* construction cannot… undercut or constitutional due process holding in Singh."). *Doe v. Garland*, No. 3:22-CV-03759-JD, 2023 WL 1934509, at *2 (N.D. Cal. Jan.10, 2023) (applying *Singh* and holding that the government shall bear the burden in a constitutionally required bond hearing in the § 1226(c) context); *Pham v. Becerra*, No.23-CV-01330-WHO, 2023 WL 2802230, at *4 (N.D. Cal. Apr 4, 2023); *I.E.S. v. Becerra*, No.23-CV-02027-CRB, 2023 WL 3688097, at *9 (N.D. Cal. May 26, 2023); *Singh Grewal v. Becerra*, No.23-CV-03621-JCS, 2023 WL 6519272, at *8 (N.D. Cal. Oct. 4, 2023).

55. Where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the Government bore the burden of proof by at least clear and convincing evidence. *See United States v. Salerno*, 481 U.S.C. 739, 750, 752 (1987)(upholding pre-trail detention after a "full-blown adversary hearing" requiring "clear and convincing evidence" and "a neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81083 (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 ono detainee).

56. 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 v. Eldridge*, 424. U.S. 319, 335 (1976). First, "an individual's private interest in

'freedom from prolonged detention' is 'unquestionably substantial'" *See Rodriguez Diaz*, 53 F. 4th at 1207 (citing *Singh*, 638 F. 3d at 1208). Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unpresented and may lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 763(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 issue contested"). Moreover, detained noncitizens are incarcerated in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence and prepare for a bond hearing. Third, placing the burden on the government imposes minimal cost or inconvenience to it, 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.

D. Due Process Requires Consideration of Alternative To Detention.

60. Due process also requires consideration of alternative to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during civil removal proceedings. *Zadvydas,* 533 U.S. at 697. 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, 538-39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is excessive in relation to is legitimate purpose). ICE's alternatives to detention program—the Intensive Supervision Appearance Program – has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez v. Sessions*, 872 F. 3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99%

attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). Thus, alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

57. Due process likewise requires consideration of a noncitizen's ability to pay bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's appearance at trail could reasonable be assured by one of the alternate forms of release.'" *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir.1978) (en banc)). Therefore, when determining the appropriate conditions of release for people detained for immigration purposes, due process requires "consideration of financial circumstances and alternative conditions of release." *Id*; *see also Martinez v. Clark*, 36 F. 4th 1219, 1231 (9th Cir. 2022) ("While the government had a legitimate interest in protecting the public and ensuring the appearance of noncitizens in immigration proceedings, we held [in Hernandez] that detaining an indigent alien without consideration of financial circumstances related to the government's legitimate interests.' (citation omitted).").

58. Petitioner's continued detention is unlawful under 8 U.S.C. § 1226(a).

CLAIM FOR RELIEF

COUNT I

VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. 8 U.S.C. § 1226(a).

59. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

60. Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8.U.S.C. 1226(a), and he must be immediately released.

COUNT II

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

61. 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.

62. To justify Petitioner's ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decision maker, that Petitioner's detention is justified by clear and convincing evidence of flight risk or danger, taking into account whether alternatives to detention could sufficiently mitigate that risk.

63. For these reasons, Petitioner's ongoing prolonged detention without a hearing violates due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order Respondents to show cause within three days why the petition should not be granted;

c. Issue a Writ of Habeas Corpus directing Petitioner's immediate release;

d. Alternatively, issue a writ of habeas corpus and Respondents schedule a bond hearing before an immigration judge under 8 U.S.C. § 1226(a) within seven days;

a. Issue a declaration that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment;

b. Award Petitioner his costs and reasonable attorney's fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. section 2412; and

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

DATED: March 16, 2026.

Azam Shaheen
Print Name

AzamShaheen

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELOY IMMIGRATION COURT

Respondent Name:
SHAHEEN, AZAM

To:
WANG, XIAOTAO
147 W 35th St.
Suite 1008
New York, NY 10001

A-Number:
[redacted]

Riders:
In Removal Proceedings
Initiated by the Department of Homeland Security
Date:
10/03/2025

ORDER OF THE IMMIGRATION JUDGE

☑ This is a summary of the oral decision entered on 10/03/2025. The oral decision in this case is the official opinion, and the immigration court issued this summary for the convenience of the parties.
☐ Both parties waived the issuance of a formal oral decision in this proceeding.

I. Removability

The immigration court found Respondent ☑ removable ☐ inadmissible under the following Section(s) of the Immigration and Nationality Act (INA or Act): 212 (a) (7) (A) (i) (I) & 212 (a) (6) (A) (i)

The immigration court found Respondent ☐ not removable ☐ not inadmissible under the following Section(s) of the Act:

II. Applications for Relief

Respondent's application for:

A. Asylum/Withholding/Convention Against Torture

☑ Asylum was ☑ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

☐ Withholding of Removal under INA § 241(b)(3) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

☐ Withholding of Removal under the Convention Against Torture was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

☐ Deferral of Removal under the Convention Against Torture was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

☐ Respondent knowingly filed a frivolous application for asylum after notice of the consequences. *See* INA § 208(d)(6); 8 C.F.R. §1208.20

B. Cancellation of Removal

☐ Cancellation of Removal for Lawful Permanent Residents under INA § 240A(a) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

☐ Cancellation of Removal for Nonpermanent Residents under INA § 240A(b)(1) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

☐ Special Rule Cancellation of Removal under INA § 240A(b)(2) was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

C. Waiver

☐ A waiver under INA § was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

D. Adjustment of Status

☐ Adjustment of Status under INA § was ☐ granted ☐ denied ☐ withdrawn with prejudice ☐ withdrawn without prejudice

E. Other

III. Voluntary Departure

☐ Respondent's application for ☐ pre-conclusion voluntary departure under INA § 240B(a) ☐ post-conclusion voluntary departure under INA § 240B(b) was ☐ denied.

☐ Respondent's application for ☐ pre-conclusion voluntary departure under INA § 240B(a) ☐ post-conclusion voluntary departure under INA § 240B(b) was ☐ granted, and Respondent is ordered to depart by . The respondent must post a $ bond with DHS within five business days of this order. Failure to post the bond as required or to depart by the required date will result in an alternate order of removal to taking effect immediately.

☐ The respondent is subject to the following conditions to ensure his or her timely departure from the United States:

☐ Further information regarding voluntary departure has been added to the record.

☐ Respondent was advised of the limitation on discretionary relief, the consequences for failure to depart as ordered, the bond posting requirements, and the consequences of filing a post-order motion to reopen or reconsider:

If Respondent fails to voluntarily depart within the time specified or any extensions granted by the DHS, Respondent shall be subject to a civil monetary penalty as provided by relevant statute, regulation, and policy. *See* INA § 240B(d)(1). The immigration court has set
☐ the presumptive civil monetary penalty amount of $3,000.00 USD
☐ $ USD instead of the presumptive amount.
If Respondent fails to voluntarily depart within the time specified, the alternate order of removal shall automatically take effect, and Respondent shall be ineligible, for a period of

10 years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act, to include cancellation of removal, adjustment of status, registry, or change of nonimmigrant status. *Id.* If Respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of such a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply.

If Respondent appeals this decision, Respondent must provide to the Board of Immigration Appeals (Board), within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if Respondent does not submit timely proof to the Board that the voluntary departure bond has been posted.

In the case of conversion to a removal order where the alternate order of removal immediately takes effect, where Respondent willfully fails or refuses (1) to depart from the United States pursuant to the immigration court's order, (2) to make timely application in good faith for travel or other documents necessary to depart the United States, (3) to present themselves at the time and place required for removal by the DHS, or (4) conspires to or takes any action designed to prevent or hamper their departure pursuant to the order of removal, Respondent shall be subject to a civil monetary penalty for each day Respondent is in violation, pursuant to INA § 274D and 8 C.F.R. § 280.53(b)(14). If Respondent is removable pursuant to INA § 237(a), then Respondent shall be further fined and/or imprisoned for up to 10 years. See INA § 243(a)(1). Further, any Respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. 8 U.S.C. § 1326(a).

IV. Removal

☐ Respondent was ordered removed to

☐ In the alternative, Respondent was ordered removed to

☐ Respondent was advised of the penalties for failure to depart pursuant to the removal order:

> If Respondent is subject to a final order of removal and willfully fails or refuses (1) to depart from the United States pursuant to the immigration court's order, (2) to make timely application in good faith for travel or other documents necessary to depart the United States, (3) to present themselves at the time and place required for removal by the DHS, or (4) conspires to or takes any action designed to prevent or hamper their departure pursuant to the order of removal, Respondent shall be subject to a civil monetary penalty for each day Respondent is in violation, pursuant to INA § 274D and 8 C.F.R. § 280.53(b)(14). If Respondent is removable pursuant to INA § 237(a), then Respondent shall be further fined and/or imprisoned for up to 10 years. See INA § 243(a)(1). Further, any Respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. 8 U.S.C. § 1326(a).

V. Other

☐ Proceedings were ☐ dismissed ☐ terminated with prejudice
☐ terminated without prejudice ☐ administratively closed.

☐ Respondent's status was rescinded under INA § 246.

☐ Other:

Immigration Judge: Johnson, Jeremiah 10/03/2025

Appeal: Department of Homeland Security: ☐ waived ☑ reserved
Respondent: ☑ waived ☐ reserved

Appeal Due: 11/03/2025

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Respondent Name : SHAHEEN, AZAM | A-Number : [redacted]
Riders:
Date: 10/03/2025 By: Johnson, Jeremiah, Immigration Judge