UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JAIR MARIN MORALES, Petitioner, v. SAMUEL OLSON, Field Office Director, Chicago Field Office, U.S. Immigration and Customs Enforcement, in his official Capacity; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, in his official capacity; TODD BLANCHE, Acting U.S. Attorney General, in his official capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; MISTY MACKEY, Warden, CoreCivic Midwest Regional Reception Center, in her official capacity, Respondents.	)	Civil Action No.: 26-cv-3099-JWL

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

1. Petitioner Jair Marin Morales, who suffers from post-traumatic stress disorder and has a history of seizures, is in the physical custody of Respondents at CoreCivic Midwest Regional Reception Center in Leavenworth, Kansas. He has been detained by Immigration and Customs Enforcement ("ICE") for over fourteen (14) months without ever receiving a bond hearing to determine whether his detention is justified. This prolonged detention without a bond hearing violates Mr. Morales's constitutional rights.

2. Petitioner is 25 years old and has lived in the United States since May 15, 2016. He fled to the U.S. with his mother following [redacted]

3. Following his entry to the United States, Petitioner resided in Indianapolis, Indiana with his mother, attending school and later working assembling furniture to help support his mother. In November of 2024, Petitioner was arrested following a traffic stop and pled guilty to unlawfully carrying a handgun and possession of a narcotic drug on January 15, 2025. For the firearm conviction, Petitioner received a one-year suspended sentence. For the narcotic drug conviction, Petitioner received a two-year sentence with 602 days of the sentence suspended. Accounting for the time spent in jail between his arrest and the entry of his guilty pleas, Petitioner was released from jail on January 16, 2025.

4. Subsequently on January 16, 2025, the Department of Homeland Security ("DHS") initiated removal proceedings against Petitioner by filing a Notice to Appear with the Chicago Immigration Court and detained Petitioner as he left the jail.

5. On March 14, 2025, Petitioner filed U.S. Citizenship and Immigration Services ("USCIS") Form I-589, Application for Asylum and for Withholding of Removal, and for relief under the Convention Against Torture ("CAT").

6. Petitioner is represented by counsel in his removal proceedings. He is eligible and has applied for relief under the Immigration and Nationality Act ("INA") and the CAT. On January 15, 2026, the Immigration Judge in the removal proceedings denied Petitioner's applications for Withholding of Removal and deferral under the INA and CAT. Petitioner

appealed this decision on February 6, 2026, to the Board of Immigration Appeals ("BOA"), and remains in the physical custody of Respondents pending the appeal.

7. Meanwhile, humanitarian reasons continue to justify Petitioner's presence because the conditions in Mexico that form the underlying basis for his asylum claim remain fundamentally unchanged, and Petitioner is neither a flight risk nor a danger to the community.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released from the physical custody of Respondents, or in the alternative, order his release unless he receives a prompt custody hearing before the Immigration Judge where the burden is on the government to establish, by clear and convincing evidence, that his continued detention is justified and that any risk posed by his release cannot be mitigated by alternatives to detention.

JURISDICTION

9. Petitioner is in physical custody of Respondents in this District.

10. 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). District Courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by the DHS. *See Jennings v. Rodriguez*, 583 U.S. 281, 292-296 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

11. 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.

VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the District of Kansas, the judicial district in which Petitioner currently is detained.

13. 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 Kansas.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. 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

16. Petitioner Jair Marin Morales is a citizen of Mexico who has resided in the United States since approximately May 15, 2016. He has been in immigration detention since January 16, 2025.

17. Respondent Samuel Olson is the ICE Field Office Director for the Chicago Field, which includes the State of Kansas. As such, Samuel Olson is Petitioner's custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

18. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

19. Respondent Todd Blanche is the acting Attorney General of the United States. He 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. He is sued in his official capacity.

20. Respondent Todd Lyons is the Acting Director of ICE. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also a legal custodian of Petitioner. He is sued in his official capacity.

21. Respondent Misty Mackey is the Warden of CoreCivic Midwest Regional Reception Center in Leavenworth, where Petitioner is currently detained. She is an immediate custodian of Petitioner. She is sued in her official capacity.

FACTUAL BACKGROUND

22. Petitioner is a 25-year-old national of Mexico. He entered the United States with his mother on May 15, 2016, as a minor, seeking asylum.

23. Petitioner seeks protection under the INA and CAT because he suffered past persecution and has a well-founded fear of future persecution and torture on account of [redacted]

[redacted]

24. Prior to entering the United States, Petitioner resided in Acapulco, Guerrero [redacted]

[redacted]

25. From a very young age until obtaining approximately seven years of age, Petitioner experienced several medical seizures.

26. While residing in Acapulco, Petitioner regularly [redacted]

27

28

[redacted]

29. [redacted]

30. [redacted]

31. [redacted]

32. [redacted]

33. After arriving in the United States, Petitioner and his mother moved to Indianapolis, as they have family in that city and were told that that there were opportunities for work.

34. Petitioner attended school in Indianapolis. However, after attempting to intervene on behalf of a friend who was being bullied for being homosexual, Petitioner was struck on the head and again lost consciousness and experienced a seizure.

35. Because of this incident and because Petitioner perceived that his mother was struggling to earn enough money to support them, Petitioner dropped out of school and began working

at a furniture company assembling furniture. This was physically demanding labor that caused Petitioner to develop serious back pain.

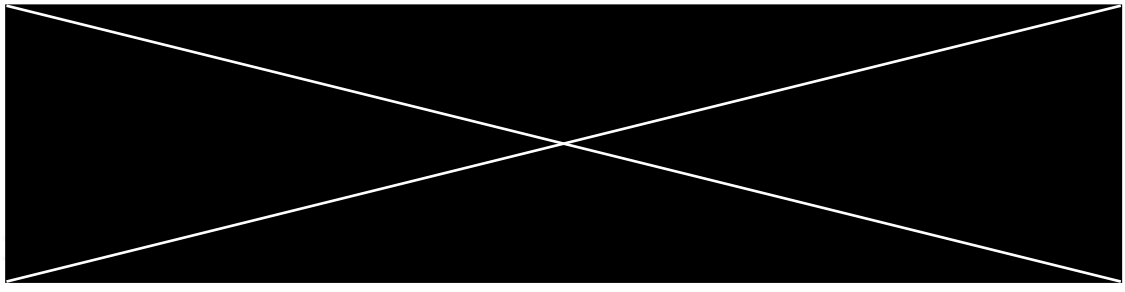
36. Petitioner also developed intense anxiety stemming from a fear of having to return to Mexico. This anxiety caused Petitioner to experience regular trembling episodes, about twice a month. The anxiety and pain also caused Petitioner to develop insomnia.

37. Petitioner then began using marijuana to help ease his anxiety.

38. In July of 2023, Petitioner survived a random shooting in his neighborhood. The shooting occurred at approximately 3:30 a.m. Petitioner had been sitting in his car outside the home he shared with his mother, as he was unable to sleep and wanted to listen to music without disturbing her. When the shooting stopped, he ran back inside the home to check on his mother, and they discovered bullet holes in his car and covering their home.

39. This incident increased Petitioner's anxiety significantly. In an attempt to assuage this fear, he obtained a firearm from a friend. Petitioner kept the firearm in his vehicle and never used it.

40. Around the same time, he confided in a neighbor about his anxiety, and the neighbor [redacted]



41. Petitioner was involved in a car accident on November 13, 2024. When police arrived on the scene, they searched his car and discovered marijuana, the oxycodone pills, and the firearm, and arrested Petitioner.

42. Petitioner pled guilty to unlawful carrying of a handgun and possession of a narcotic drug. He received what the Immigration Judge described as "a largely suspended sentence," (a three-year total sentence, all but 128 days of which was a suspended sentence with Petitioner on probation) but was taken into ICE custody on January 16, 2025, as he left the jail.

43. Before the Immigration Judge, on March 14, 2025, Petitioner filed form I-589, Application for Asylum and for Withholding of Removal, and for relief under the CAT. Petitioner subsequently requested four continuances totaling 3.5 months to await adjudication of his request for U visa certification (Form I-918 Supp B) from the Indianapolis Metropolitan Police Department ("IMPD"), based on the July 2023 shooting of which he was a victim. U visa certification from law enforcement is a requirement to apply for U non-immigrant status. Prior to his detention, Petitioner had hired private counsel and requested U visa certification from IMPD. Petitioner had to re-file his request for certification subsequent to his detention because USCIS issued a new version of Form I-918 Supp B and it was unclear if it would accept the earlier version. The Immigration Judge granted his requests for continuance, finding that he had established good cause.

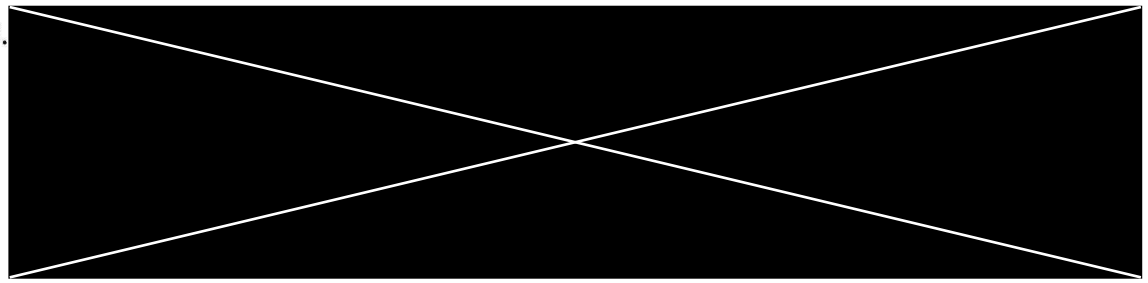
44. Ultimately, Petitioner's individual merits hearing on his Form I-589 Application for Asylum and for Withholding of Removal and protection under the CAT began on October 21, 2025. After four hours, the Immigration Judge continued the hearing; rescheduling the hearing for November 19, 2025.

45. Following the conclusion of the merits proceedings, the Immigration Judge did not issue a decision for two months – until January 15, 2026 – denying all relief for Petitioner.

46. At this proceeding, Petitioner's expert witness, Dr. Lori Garfinkle, testified that Petitioner suffered from Post-Traumatic Stress disorder and anxiety stemming from his experience with violence, threats, and trauma in Mexico, and the Immigration Judge found this testimony to be credible.

47. The Immigration Judge found Petitioner's unlawful carrying of a weapon to be a particularly serious crime, despite the fact that there was no evidence that Petitioner had ever done anything with the weapon other than keeping it in his vehicle.

48. On February 6, 2026, Petitioner appealed this immigration decision to the BIA, and the appeal remains pending. The BIA has not yet issued a briefing schedule.

49. 

50. Petitioner did not graduate high school and, prior to his detention by Respondents, has always resided with his mother. Petitioner desperately wishes to be reunited with his mother in Indianapolis, so that they can return to supporting each other.

51. Petitioner remains detained at CoreCivic Midwest Regional Reception Center Leavenworth in Leavenworth, Kansas. He is represented by counsel in his removal proceedings. He has attended all of his immigration court hearings and continues to seek relief.

52. Petitioner remains unlawfully detained. Absent relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

EXHAUSTION OF REMEDIES

53. Petitioner is not required to exhaust administrative remedies before seeking relief from this Court.

54. There is no exhaustion requirement because no administrative agency exists to adjudicate a petitioner's constitutional challenges. *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994). Neither an Immigration Judge nor the BIA can rule on a petitioner's constitutional claims. *See Matter of C--*, 20 I&N Dec. 529, 532 (BIA 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); s*ee also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

55. Here, exhaustion is futile because the detention statute does not provide for a bond hearing for individuals incarcerated pursuant to 8 U.S.C. § 1226(c) and Immigration Judges lack jurisdiction to render an individualized custody determination. 8 U.S.C. § 1226(c); *Valerga v. Holder*, No. 13-CV-03014-PAB, 2014 WL 103551, at *3 (D. Colo. Jan. 9, 2014) (determining exhaustion to be futile for persons in immigration detention whose cases are determined to be subject to mandatory detention under 8 U.S.C. § 1226(c)).

LEGAL BACKGROUND

I. Petitioner's Prolonged Mandatory Detention Violates Due Process.

56. It is "well-established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore*, 538 U.S. at 523 (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 liberty" that the Due

Process Clause protects. *Zadvydas*, 533 U.S. at 690. This fundamental due process protection "applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693. Under these due process principles, detention must "bear [a] reasonable relation to the purpose for which the individual [was] committed." *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

57. Due process therefore requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal quotations 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 538.

58. In *Demore*, the Supreme Court found that 8 U.S.C. § 1226(c), the statute authorizing mandatory detention without a bond hearing for noncitizens with certain criminal history, can withstand constitutional challenges when detention is limited to "the *brief* period necessary for . . . removal proceedings." *Demore*, 538 U.S. at 513 (emphasis added). Notably, the Court reached that conclusion relying on the government's representation that mandatory detention under 8 U.S.C. § 1226(c) lasts "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 alien chooses to appeal." *Id.* at 530. Petitioner has already been detained over fourteen (14) months in immigration custody without a bond hearing – almost three times the longest duration considered by the *Demore* Court. Petitioner has been detained over

two times the six-month presumptive limit to the reasonable duration of post-removal detention set by the Supreme Court in *Zadvydas*. 533 U.S. at 701.

59. Since *Demore*, courts around the country have held that, regardless of what the statute authorizes at the outset of detention, once mandatory detention becomes unreasonably prolonged, due process requires a bond hearing in which the government bears the burden of proving that further detention is justified. *See, e.g.*, *Black v. Decker*, 103 F.4th 133, 149 (2d Cir. 2024); *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203, 211-213 (3d Cir. 2020); *Martinez v. Ceja*, 2024 WL 5168143 (D. Colo. Dec. 19, 2024); *Daley v. Choate*, 22-cv-03043-RM, 2023 WL 2336052 at *4 (D. Colo. Jan. 6, 2023) (collecting cases); *M.D.F. v. Johnson*, 2020 WL 7090125 (N.D. Tex. 2020); *Vargas v. Beth*, 378 F. Supp. 3d 716, 726 (E.D. Wis. 2019), *appeal dismissed*, No. 19-1965, 2019 WL 6133750 (7th Cir. July 18, 2019); *Duncan v. Kavanagh*, 439 F. Supp. 3d 576, 588 (D. Md. 2020); *Ikharo v. Att'y Gen. of the United States*, No. 1:18-cv-385, 2019 WL 3227834, at *6 (S.D. Ohio 2019); *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1116 (W.D. Wash. 2019); *Laub v. Sec'y, Dep't of Homeland Sec.*, No. 1:18-cv-499, 2019 WL 95919, at *3 (S.D. Ohio 2019).

60. Courts generally consider iterations of the following four factors to determine whether a noncitizen's prolonged mandatory detention without a bond hearing violates Due Process: (1) the duration of detention; (2) the likelihood of continued detention; (3) reasons for delay; and (4) conditions of confinement. *M.D.F.*, 2020 WL 7090125, at *1 (citing *German Santos*, 965 F.3d at 211-213); *Daley*, 2023 WL 2336052 at *2. On balance, these factors weigh in favor of a grant of relief to Petitioner.

Duration of detention and likelihood of continued detention

61. The duration of Petitioner's detention supports the finding that his mandatory detention without a bond hearing has become unconstitutionally prolonged. There is not a bright-line rule that establishes when an individual's mandatory detention becomes unconstitutional. However, Petitioner's detention, which has now surpassed fourteen (14) months, far exceeds the length of detention that numerous courts have considered "prolonged." *See, e.g.*, *Vargas*, 378 F. Supp. 3d at 727 (finding nine-month mandatory detention unreasonably prolonged); *Maya v. Acuff*, No. 21-CV-755, 2021 WL 4903166 (S.D. Ill. 2021) (ten months); *Favi v. Kolitwenzew*, No. 20-CV-2087, 13 4880-0566-1847 2020 WL 2114566, at *8 (C.D. Ill. 2020) (nine months, and noting this to be "significantly longer than the 90-day average assumed in [*Demore*]"); *Misquitta v. Warden Pine Prairie ICE Processing Ctr.*, 353 F. Supp. 3d 518, 524-25 (W.D. La. 2018) (ten months); *Ochoa v. Kolitwenzew*, 464 F. Supp. 3d 972 (C.D. Ill. 2020) (eleven months); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (seven months); *Hernandez v. Decker*, No. 18-CV-5026, 2018 WL 3579108, at *8 (S.D.N.Y. 2018) (nine months); *Sheikh v. Choate*, 22-cv-1627-RMR, 2022 WL 17075894 (D. Colo. July 27, 2022) (finding that the first factor strongly favored the petitioner whose detention lasted nearly thirteen months); *Portillo v. Hott*, 322 F. Supp. 3d 698, 709 (E.D. Va. 2018) (fourteen months).

62. The consistent precedent from this and other circuits shows that Petitioner's fourteen (14) month long detention is unreasonably long. At minimum, Petitioner will remain detained until the Board of Immigration Appeals issues its decision, which could be months from now as the Board has not even issued a briefing schedule yet. Moreover, Petitioner would remain detained for the duration of any appeal to the circuit court, remand to the

Immigration Judge, or additional appeals by either party to the BIA. *See German Santos*, 965 F.3d at 212 (noting that BIA appeal alone "could take months," and if petitioner were to lose at the BIA, he could petition the circuit court which would "add months more" in detention). Absent this Court's intervention, Petitioner's already prolonged detention will continue for several additional months, if not years. Accordingly, this factor "strongly supports a finding of unreasonableness." *Id.*

Reasons for delay

63. Delays in Petitioner's removal proceedings have largely been beyond his control and cannot be held against him. Courts ask whether the reasons for delays are due to "careless or bad-faith errors in the proceedings." *German Santos*, 965 F.3d at 211 (internal quotations omitted). Delays caused by an individual's good-faith challenges to removal, however, cannot be held against a detainee. *Id.*; *Ly v. Hansen*, 351 F.3d 263, 272 (6th Cir. 2003) (abrogated on other grounds by *Jennings*, 583 U.S. 281).

64. No unreasonable delays can be charged to Petitioner's litigation of his removal case. Although Petitioner requested continuances in his removal proceedings, those requests were necessary as Petitioner had to await the IMPD's adjudication of his request for U visa certification, based on the random July 2023 shooting of which he was a victim. Petitioner had no way to accelerate IMPD's completion of this process.

65. Indeed, Petitioner made a good-faith effort to expedite this process by obtaining private counsel and requesting U visa certification from IMPD prior to his detention by DHS. Petitioner had to re-file his request for certification subsequent to his detention because USCIS issued a new version of Form I-918 Supp B and it was unclear if it would accept

the earlier version. As before, Petitioner had no way to anticipate or control USCIS decision to issue a new version of the form to request U visa certification.

66. The Immigration Judge granted his requests for continuance, finding that he had established good cause.

67. The merits hearing in Petitioner's removal proceedings was not able to be completed on October 21, 2025, due to factors outside of Petitioner's control – specifically, the DHS's lengthy cross-examination of Petitioner.

68. Almost two months passed between the conclusion of the merits hearing on November 19, 2025, and the Immigration Judge issuing a ruling denying all relief on January 15, 2026. This factor was also outside of Petitioner's control.

69. Petitioner timely appealed on February 6, 2026. The appeal remains pending and the BIA has not yet issued a briefing schedule over two months after the filing of the appeal. This factor is again outside of Petitioner's control.

70. Petitioner's requests for continuance were made in good faith and, like all other delays in the proceedings, were ultimately based on factors outside of his control. Therefore, this factor also weighs in his favor.

Conditions of confinement

71. The conditions of Petitioner's confinement weigh heavily in favor of finding that his prolonged mandatory detention is unreasonable and this unconstitutional. Detention under § 1226(c) is civil in nature, and conditions of confinement resembling a penal institution weigh towards finding that prolonged detention without a bond hearing is unreasonable. *German Santos*, 965 F.3d at 211. Further, courts assign greater weight to the conditions of

confinement as the length of an individual's detention grows. *Id.*; *Ochoa*, 464 F. Supp. 3d at 985.

72. The conditions of Petitioner's detention are indistinguishable from criminal incarceration.

73. In addition, Petitioner suffers from various medical conditions which are exacerbated by the conditions of his confinement. Petitioner has a history of seizures, including seizures triggered by head trauma, and suffers from Post-Traumatic Stress Disorder, Anxiety, and Insomnia. He is experiencing several conditions of anxiety and depression, for which he is taking no medication. In particular, he is often not able to fall asleep at night until 4:00 or 5:00 a.m., which negatively impacts his physical and mental health.

74. In sum, the relevant factors all illustrate that Petitioner's prolonged detention without a bond hearing is unreasonable, and thus, unconstitutional. He has been mandatorily detained for over fourteen (14) months and will remain detained for months, if not years, pending the appeal of the ruling in his removal case to the BIA. Finally, the conditions of his confinement are no different from criminal incarceration and have negatively affected his physical and mental health.

II. This Court Has Authority to Order Release and Release is an Appropriate Remedy.

75. After determining that a petitioner's prolonged detention has become unreasonable, habeas courts have authority to order release subject to any conditions the court deems appropriate. *See Malam v. Adducci*, 452 F. Supp. 3d 643, 661 (E.D. Mich. 2020) (citing *Swann v. Charlotte–Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15–16 (1971) ("[o]nce a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies")); *Galan-Reyes v. Acoff*, 460 F. Supp. 3d 719, 725 (S.D. Ill. 2020) (ordering immediate release of

habeas petitioner after 8-month detention during COVID pandemic, and requiring that petitioner reside at a certain residence, provide his address and telephone information, quarantine for 14 days, and comply with any conditions imposed by the Department of Homeland Security).

76. Here, several factors strongly support Petitioner's release as the most appropriate remedy. Petitioner's ongoing detention and length of future detention are of particular concern in light of his community ties, the conditions of his confinement, and his medical and mental health conditions. Additionally, Petitioner is currently appealing his case to the BIA, where the Board has not yet issued a briefing schedule. As discussed below, Petitioner is neither a danger to the community nor a flight risk. As such, release is the most appropriate remedy in this matter.

III. In the Alternative, Due Process Requires a Custody Hearing at which the Government Bears the Burden of Justifying Petitioner's Ongoing Detention.

77. For the reasons discussed above, Petitioner should receive an order granting his release. Alternatively, and at minimum, due process requires a bond hearing for Petitioner. *See* cases cited *supra* ¶ 36 *see also, e.g.*, *Vargas*, 378 F. Supp. 3d at 727 ("When the length and conditions of detention raise due process concerns, the government must prove that continued detention is necessary to achieve its purpose, i.e. to protect against flight or dangerousness."); *German Santos*, 965 F.3d at 213; *M.D.F.*, 2020 WL 7090125, at *2; *Portillo*, 322 F. Supp. 3d at 709; *Misquitta*, 353 F. Supp. 3d at 524–25; *Hernandez*, 2018 WL 3579108, at *10 (collecting cases).

78. At a bond hearing, due process requires certain minimal protection to ensure that Petitioner's continued detention is warranted. The Government must bear the burden of

proof and show by clear and convincing evidence that continued detention is justified. *See, e.g.*, *German Santos*, 965 F.3d at 213-14 (ordering bond hearing in immigration court for petitioner mandatorily detained under 1226(c) at which the government must show flight risk or danger by clear and convincing evidence); *M.D.F*, 2020 WL 7090125, at *2 (same). Imposing this burden is also consistent with case law from around the country ordering bond hearings for detained individuals subject to prolonged detention in similar contexts. *See, e.g.*, *Velasco Lopez v. Decker*, 978 F.3d 842, 855-57 (2d Cir. 2020) (finding that prolonged detention under § 1226(a) violates the constitution and requires a bond hearing in which the government bears the burden of proving by clear and convincing evidence that further detention is justified); *Jimenez v. Decker*, No. 21-CV-880 (VSB), 2021 WL 826752, at *6 (S.D.N.Y. Mar. 3, 2021) (same); *J.G. v. Warden, Irwin Cty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020) (same); *Diaz-Ceja v. McAleenan*, No. 19-CV-00824-NYW, 2019 WL 2774211, at *10-12 (D. Colo. July 2, 2019), *appeal dismissed*, No. 19-1321, 2019 WL 8128251 (10th Cir. Nov. 5, 2019) (same).

79. Petitioner is not a danger to the community. While Petitioner has convictions for the possession of narcotics and unlawful carry of a firearm, he has taken responsibility and served time for his actions. Petitioner began using the oxycodone to self-medicate his anxiety, Post-Traumatic Stress Disorder, and pain, without realizing the gravity of accepting the medication without a prescription. Further, there is no evidence that Petitioner did anything with the firearm other than keeping it in his vehicle. Petitioner now understands the gravity of accepting the oxycodone and firearm unlawfully, as he did not at the time he obtained them.

80. Petitioner is not a flight risk. Due to the hardship and trauma Petitioner has experienced throughout his life, he will not be able to provide for himself without the support of his family in Indianapolis. Further, given their shared hardship, Petitioner has a particularly strong sense of loyalty to his mother, and desires nothing more than to be reunited with her so that they may return to supporting one another.

81. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 690. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

82. Further, if a bond is granted, due process requires consideration of Petitioner's ability to pay the bond. *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017) (concluding that due process likely requires "consideration of the detained noncitizens' financial circumstances, as well as of possible alternative release conditions . . . to ensure that the conditions of their release will be reasonably related to the governmental interest in ensuring their appearance at future hearings"); *cf. Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) ("We have no doubt that in the case of an indigent, whose appearance at trial could reasonably be assured by one of the alternate forms of release, pretrial confinement for inability to post money bail would constitute imposition of an excessive restraint.").

83. Finally, Immigration Judges issue written decisions on a request for release on bond only if either party appeals the decision. *See* Immigration Court Practice Manual § 9.3(e)(vi). However, due process requires that a denial of release on bond be accompanied by a

contemporaneous set of written findings justifying the denial. *See De la Lana-Castellon v. INS*, 16 F.3d 1093, 1096, 1098 (10th Cir. 1994) (holding that due process requires a "decision maker to actually consider the evidence and argument that a party presents" and issue a non-boilerplate decision); Judge Henry J. Friendly, Some Kind of Hearing, 123 Penn. L. Rev. 1267, 1292 (1975) (calling a "written statement of reasons" an essential element of a constitutionally fair hearing and a "powerful preventive of wrong decisions").

CLAIMS FOR RELIEF
COUNT I
Violation of Fifth Amendment Rights to Due Process

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

85. The Fifth Amendment's Due Process Clause forbids the government form depriving any person of liberty "without due process of law."

86. Petitioner, who suffers from Post-Traumatic Stress Disorder, insomnia, and a history of seizures, has been detained for over fourteen (14) months without ever receiving a bond hearing justifying his detention. He remains detained indefinitely in conditions indistinguishable from criminal incarceration, pending his appeal. Petitioner's ongoing detention without ever receiving a bond hearing has become unreasonably prolonged in violation of the Constitution.

87. Due Process requires that Petitioner be released from detention, subject to appropriate conditions of release, or in the alternative, that he receive a bond hearing at which the government bears the burden to justify further detention by clear and convincing evidence.

88. The Court should thus grant Petitioner's petition for habeas corpus and order that Respondents release him from detention. Alternatively, the Court should order that the

government provide Petitioner with a bond hearing consistent with the procedures requested above.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Pursuant to 28 U.S.C. § 2243, issue an Order to Show Cause or Order to Answer ordering Respondents to show cause within three days why the writ should not be granted;

c. Declare that Petitioner's prolonged detention violates the Due Process Clause of the Fifth Amendment;

d. Issue a writ of habeas corpus and order Petitioner released subject to any conditions this Court deems necessary and appropriate. In the alternative, order Petitioner's release within seven days unless Respondents schedule a custody hearing at which, to continue detention, the government bears the burden to establish by clear and convincing evidence that Petitioner presents a flight risk or danger to the community, and that any risk posed by his release cannot be mitigated by conditions of release; and the Immigration Judge must order Petitioner's release on appropriate conditions of release, taking into account his ability to pay a bond, unless the Immigration Judge issues a contemporaneous written decision stating the reasons for finding that Petitioner presents such a risk.

e. Enjoin Respondents from moving Petitioner outside the jurisdiction of this Court pending adjudication of this Petition;

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

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

DATED this 22nd of April, 2026

Respectfully submitted,

/s/ Brian J. Madden
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Attorneys for Petitioner

This petition was read to me in Spanish, a language that I know and understand. I declare under penalty of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.
Executed on 4/17, 2026.

Esta peticion me fue leída en español, un idioma que conozco y comprendo. Declaro bajo pena de perjurio, conforme a las leyes de los Estados Unidos, en 28 U.S.C. § 1746, que lo anterior es verdadero y correcto.

Ejecutado el 4/17, 2026.

X _____
Jair Marin Morales