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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **MEISAM ALIZADEH,**
13 **Petitioner,**

14 **v.**

15 **MARKWAYNE MULLIN, Secretary of**
16 **the Department of Homeland Security,**
17 **TODD BLANCHE, Acting Attorney**
18 **General, TODD M. LYONS, Acting**
19 **Director, Immigration and Customs**
20 **Enforcement, JESUS ROCHA, Acting**
21 **Field Office Director, San Diego Field**
22 **Office, CHRISTOPHER LAROSE,**
23 **Warden at Otay Mesa Detention Center,**
24 **Respondents.**

Civil Case No:26-cv-2924-JLS-MMP

Amended Petition for a
Writ of Habeas Corpus

INTRODUCTION

Meisam Alizadeh is an asylum seeker from Afghanistan who has been detained pending his immigration proceedings for over six months. This Court should “join[] the majority of courts across the country in concluding that [his] unreasonably prolonged detention under 8 U.S.C. § 1225(b) without an individualized bond hearing violates due process.” *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.). It should do so because Mr. Alizadeh satisfies the six-factor test set forth in *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019).

STATEMENT OF FACTS

Mr. Alizadeh was born in Afghanistan and is currently 18 years old. Exhibit A, Declaration of Meisam Alizadeh, at ¶ 1. He fled his country because he feared ethnic and religious persecution and came to the United States to seek asylum. *Id.* at ¶ 1. He is part of the Hazara community and practices Shi’a Islam. *Id.* at ¶ 1.

Mr. Alizadeh crossed into the United States on November 27, 2025, and was immediately arrested. *Id.* at ¶ 3. He was taken into custody and transferred to Otay Mesa Detention Center, where he passed his credible fear interview. *Id.* at ¶¶ 3–4.

Respondents placed Mr. Alizadeh in removal proceedings. *Id.* at ¶ 4. His next master calendar hearing is on June 10, 2026. *Id.* at ¶ 4. If he is ordered removed, Mr. Alizadeh plans to appeal the decision to the BIA. *Id.* at ¶ 4. If the BIA dismisses his appeal, he plans to appeal to the Ninth Circuit. *Id.* at ¶ 4.

Mr. Alizadeh has been detained for over six months. *Id.* at ¶ 5. If he loses his case, he will likely be detained for several more years. *Id.* at ¶ 5. He is having a very difficult time in detention. *Id.* at ¶ 6. Mr. Alizadeh has been diagnosed with depression and takes medication, but the detention conditions make it worse. *Id.* at ¶ 6.

LEGAL BACKGROUND

I. The Fifth Amendment’s Due Process Clause prohibits prolonged immigration detention without a bond hearing.

This habeas petition presents a question about whether and when the Fifth Amendment’s Due Process Clause countermands the government’s statutory authority to detain immigrants without bond hearings. Mr. Alizadeh is detained under one such statute, 8 U.S.C. § 1225(b). “Section 1225 applies to ‘applicants for admission’—noncitizens who ‘arrive[] in the United States,’ or are ‘present’ in the United States but have ‘not been admitted.’” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). It “applies to, among others, noncitizens initially determined to be inadmissible because of . . . lack of valid documentation.” *Id.* That includes persons who, like Mr. Alizadeh, seek asylum at or near the border. *See id.* at 1109–11 (describing a similar procedural history and finding that petitioner was detained under § 1225(b)). Such immigrants are detained under § 1225(b) not only during their initial proceedings, but also when they appeal to the BIA. *See id.* at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

This statutory scheme has left courts to grapple with the limits (if any) of that detention power: Does this statute permit the government to detain immigrants indefinitely, without ever having to prove at a bond hearing that they pose a risk of danger or flight? Three Supreme Court cases are potentially relevant to answering that question.

First, in *Zadvydas v. Davis*, the Supreme Court indicated that indefinite immigration detention raises serious due process concerns. 533 U.S. 678 (2001). *Zadvydas* involved a statute authorizing the government to detain immigrants after they are ordered removed. *Id.* at 683. For immigrants who cannot be removed, that statute had the potential to subject them to years, decades, or a lifetime in custody. *See id.* at 690. The Supreme Court held that if the statute “permit[ed] indefinite detention of an alien[,] [it] would raise a serious

1 constitutional problem,” because

2 [t]he Fifth Amendment's Due Process Clause forbids the Government
3 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of
4 law.’ Freedom from imprisonment—from government custody,
5 detention, or other forms of physical restraint—lies at the heart of the
6 liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80
7 (1992). And this Court has said that government detention violates
8 that Clause unless the detention is ordered in a *criminal* proceeding
9 with adequate procedural protections, *see United States v. Salerno*,
10 481 U.S. 739, 746 (1987), or, in certain special and ‘narrow’
nonpunitive ‘circumstances,’ *Foucha, supra*, at 80, where a special
justification, such as harm-threatening mental illness, outweighs the
‘individual's constitutionally protected interest in avoiding physical
restraint.’ *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

11 *Id.* Ultimately, however, the Court declined to decide whether a statute permitting
12 indefinite detention would violate the Due Process Clause. Instead, the Court
13 employed the constitutional avoidance canon to read implicit limits into the
14 statute, requiring release after detention became sufficiently prolonged. *Id.* at 699.

15 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
16 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
17 Employing the constitutional avoidance canon, the Ninth Circuit held that
18 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
19 months. *Id.*

20 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,
21 holding that the statute does not entitle detainees to bond hearings or otherwise
22 impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But
23 though *Jennings* held that § 1225(b) imposes no statutory limit on the length of
24 detention, it reserved the question of whether prolonged, mandatory detention
25 without bond hearings violates due process. *Id.* at 312.

26 Finally, the Supreme Court held in *Demore v. Kim* that at least some
27 statutes mandating detention during immigration proceedings do not
28 automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore*

1 addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing
2 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
3 5-4 opinion based on (1) the government interests justifying the detention of
4 immigrants with certain, aggravated criminal convictions, and (2) the relative
5 brevity of detention in most cases, with the vast majority taking only about five
6 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
7 left open the possibility that individual immigrants could be “entitled to an
8 individualized determination as to his risk of flight and dangerousness if the
9 continued detention became unreasonable or unjustified.” *Id.* at 532–33.

10 “In the wake of *Jennings*,” *Zadvydas*, and *Demore*, “district courts have
11 grappled with how to address due process challenges to prolonged mandatory
12 detention under § 1225(b).” *Banda*, 385 F. Supp. 3d at 1116. But after a full
13 evaluation, “[n]early all district courts that have considered the issue agree that
14 prolonged mandatory detention pending removal proceedings, without a bond
15 hearing, will—at some point—violate the right to due process.” *Id.* (cleaned up)
16 (collecting cases).

17 These Courts have relied on the due process concerns recognized in
18 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
19 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
20 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
21 those considerations raise “grave doubts that any statute that allows for arbitrary
22 prolonged detention without any process is constitutional or that those who
23 founded our democracy precisely to protect against the government’s arbitrary
24 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
25 256 (9th Cir. 2018).

26 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
27 only that the statute itself did not impose any limits on detention. It “did not
28 foreclose as-applied constitutional challenges to detention under” mandatory-

1 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
 2 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
 3 during immigration proceedings does not necessarily violate due process,
 4 particularly when the detention has an expected duration of about five months. *Id.*
 5 at 208–11. But many persons detained under § 1225(b)—like Mr. Alizadeh—do
 6 not have criminal convictions. And as Justice Kennedy’s concurrence made clear,
 7 *Demore* does not prevent immigrants from arguing that sufficiently prolonged
 8 detention violates due process in their individual cases. *See id.*¹

9 Thus, this Court should hold that sufficiently prolonged detention violates
 10 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-
 11 CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul*
 12 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal.
 13 Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
 14 *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
 15 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*,
 16 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No.
 17 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);
 18 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
 19 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.
 20 Wash. 2023).

21
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 24
 25 ¹ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
 26 591 U.S. 103 (2020), is also inapposite, because it addressed only immigrants’ due
 27 process rights in deportation proceedings—i.e., the process due when noncitizens
 28 seek to stay in the country instead of being removed. *See Lopez-Arevelo v. Ripa*,
 No. EP-25-CV-337-KC, 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025). It
 does not purport to hold that immigrants have no constitutional right to due process
 before the government holds them indefinitely in immigration detention. *Id.*

1 **II. Courts have reached different conclusions about when immigration**
 2 **detention becomes indefinitely prolonged, but Mr. Alizadeh would**
 3 **prevail under any standard, including the *Banda* factors.**

4 Though courts agree that due process mandates a bond hearing when
 5 detention grows unreasonably prolonged, they disagree about how to assess
 6 whether a particular migrant's detention has reached that point. *Sanchez-Rivera v.*
 7 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
 8 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Because it
 9 incorporates nearly all the factors, many courts have found it “most appropriate to
 10 apply the *Banda* test to Petitioner's detention here under § 1225(b), as other
 11 courts within this district have done in the past.” *Sandesh v. Noem*, 26-cv-846-
 12 JES-DDL, Dkt. 13 at 5 (Mar. 5, 2026 S.D. Cal). The *Banda* factors include:

- 13 (1) the total length of detention to date;
- 14 (2) the likely duration of future detention;
- 15 (3) the conditions of detention;
- 16 (4) delays in the removal proceedings caused by the detainee;
- 17 (5) delays in the removal proceedings cause by the government; and
- 18 (6) the likelihood that the removal proceedings will result in a final order
 19 of removal.

20 *Banda*, 385 F. Supp. 3d at 1106. Applying these factors here shows that
 21 Mr. Alizadeh's detention has become prolonged.

22 *First*, the “most important factor,” the length of detention, favors Mr.
 23 Alizadeh. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is
 24 important to bear in mind the context: The detention that is being examined here
 25 is the detention of a human being who has never been found to pose a danger to
 26 the community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F.
 27 Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond
 28 hearings for persons detained between six and eleven months. *See Fofie v.*

1 *Warden Otay Mesa Detention Center*, No. 26-CV-1900-JLS-MSB, ECF 14 at 5
 2 (S.D. Cal. May 29, 2026) (granting bond hearing for petitioner detained over six
 3 months); *Bendekaca v. Brightman*, No. 26-CV-2934-JLS-BLM, 2026 WL
 4 1400584, at 2 (S.D. Cal. May 19, 2026) (collecting cases); *Amando v. United*
 5 *States Dep't of Just.*, No. 25-CV-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D.
 6 Cal. Nov. 4, 2025) (collecting cases); *Ashemuke v. ICE Field Off. Dir.*, No. C23-
 7 1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report*
 8 *and recommendation adopted*, No. C23-1592-RSL, 2024 WL 1676681 (W.D.
 9 Wash. Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*, 324
 10 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No.
 11 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) (“more
 12 than nine months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at
 13 *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”). Mr. Alizadeh has been
 14 detained for nearly this long. Exh. A at ¶ 3. This factor therefore favors Mr.
 15 Alizadeh.

16 *Second*, Mr. Alizadeh has reason to anticipate significant future detention,
 17 as he has not received a final order in his case. If he receives an order of removal,
 18 he plans to appeal to the BIA and will likely go to the Ninth Circuit. *Id.* at ¶ 4. All
 19 told, “[t]his process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d
 20 at 1119. Because “Petitioner’s future detention can last several more months or
 21 even years[,]” this factor favors Mr. Alizadeh. *Abdul Kadir v. Larose*, No.
 22 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

23 *Third*, conditions of confinement weigh in favor of him. “Petitioner’s
 24 confinement at [Otay Mesa Detention Center] is ‘indistinguishable from penal
 25 confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F.
 26 Supp. 3d at 773).

27 *Fourth and fifth*, Mr. Alizadeh has not caused any unreasonable delays in
 28 his removal proceedings; thus, this factor is arguably neutral.

