UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

MBAREK ABAKCHOU, Petitioner, v. **JUAN BALTAZAR**, in his official capacity as warden of the Denver Contract Detention Facility (Aurora), **GEORGE VALDEZ**, in his official capacity as Field Office Director, Denver, U.S. Immigrations and Customs Enforcement, **DAVID VENTURELLA**, in his official capacity as Senior Official performing the duties of Director of U.S. Immigrations and Customs Enforcement, **MARKWAYNE MULLIN**, in his official capacity as Secretary, U.S. Department of Homeland Security, **TODD BLANCHE**, in his official capacity as Acting Attorney General of the United States, Respondents.	Civil Action No.: 1:26-cv-2395 **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

1. Petitioner Mbarek Abakchou ("Abakchou"), a Moroccan national detained by Immigration and Customs Enforcement ("ICE") at the Denver Contract Detention Facility (Aurora) in Aurora, Colorado, petitions this Court for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241, ordering his immediate release to remedy his unlawful detention by Respondents.

2. Abakchou is a rare language speaker—Western Saharan Hassaniya—for whom the government has been entirely unable to secure adequate interpretation for more than one year and

over seven Individual Hearings, causing his immigration proceedings to remain at a permanent standstill and his detention to become illegally unmoored from its prescribed statutory purpose.

3. 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. It is well established that "the Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). These protections afford Abakchou both substantive and procedural due process rights with regard to his detention.

4. In addition, both the Due Process Clause and the Immigration and Nationality Act ("INA") entitle Abakchou to a full and fair removal hearing. As such, the government has both a constitutional and statutory responsibility to provide Abakchou with a competent interpreter in his primary language, Western Saharan Hassaniya, at all hearings so that he can fully understand and meaningfully participate in the proceedings against him. Abakchou is seeking protection in the United States based on his fear of persecution and torture in Western Sahara, but he has been unable to pursue his asylum claim because of the lack of an interpreter in his removal proceedings. Instead, the government has repeatedly continued Abakchou's proceedings because it cannot find a Western Saharan Hassaniya interpreter and will not use available Western Saharan Hassaniya interpreters. Without an interpreter, Abakchou's case is at a standstill, and the government has no prospect of advancing his removal proceedings in the reasonably foreseeable future. Meanwhile, Abakchou languishes in detention. Recently, he was seen for chest pains in detention, which the provider at the detention center attributed to his mental health declining after prolonged detention, where is health has recently taken a turn for the worse.

5. Due process requires that detention "'bear[] a reasonable relation to the purpose for which the individual was committed.'" *Zadvydas*, 533 U.S. at 690 (cleaned up) (quoting *Jackson*

v. Indiana, 406 U.S. 715, 738 (1972)). That relationship does not exist if there is "no significant likelihood" that detention's purpose will be accomplished "in the reasonably foreseeable future." *Id.* at 701. The purpose of detention pending removal proceedings is preventing noncitizens "from fleeing prior to or during their removal proceedings," so the proceedings can be completed, and noncitizens can be "successfully removed" if ordered removed. *Demore v. Kim*, 538 U.S. 510, 527–28 (2003); *see also Zadvydas*, 533 U.S. at 690 (explaining the purpose is "ensuring the appearance" of noncitizens in immigration court). Here, the government is detaining Abakchou *without* advancing removal proceedings and has "no significant likelihood" of advancing his proceedings "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. The lack of a realistic prospect of "pursuing and completing" proceedings in the reasonably foreseeable future indicates "the detention is not to facilitate deportation or protect against risk of flight or dangerousness, but to incarcerate for other reasons." *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring). Because the government cannot proceed with Abakchou's removal proceedings in the absence of a Western Saharan Hassaniya interpreter and because there is no significant likelihood of the government finding such an interpreter in the reasonably foreseeable future, Abakchou must be released from detention because he is being deprived of his liberty without any justification, much less legally sufficient justification.

6. Abakchou respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, to remedy his unlawful detention by ordering his immediate release.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question jurisdiction); U.S. Const. art. I, § 9, cl. 2 (Suspension Clause); U.S. Const. amend. V (Due Process Clause); and 28 U.S.C. §§ 2201 & 2202 (Declaratory Judgment Act).

8. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and constitutionality of their detention. *See Zadvydas*, 533 U.S. at 687; *Demore*, 538 U.S. at 516–17. Abakchou's current detention, as imposed by Respondents, constitutes a "severe restraint[] on his individual liberty," such that he is "in custody in violation" of the law. *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because at least one Respondent is in this District, Petitioner is detained in this District, Petitioner's immediate physical custodian is located in this District, and a substantial part of the events giving rise to the claims in this action took place in this District. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("The federal habeas statute straightforwardly provides that the proper respondent to a habeas petition is 'the person who has custody over the petitioner") (citing 28 U.S.C. § 2242)).

PARTIES

10. Petitioner Abakchou is a native and citizen of Morocco who is seeking asylum and other humanitarian protections in the United States pursuant to federal statutory law and international treaties. He speaks Western Saharan Hassaniya.

11. Abakchou has been in the custody of U.S. Immigration and Customs Enforcement ("ICE") since on or about December 21, 2024.

12. Abakchou is currently detained by Respondents at the Denver Contract Detention Facility (Aurora), an immigration detention facility in Aurora, Colorado.

13. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility (Aurora), where Petitioner is currently detained. He is an employee of the GEO Group, a private prison company that contracts with ICE to run the Denver Contract Detention Facility (Aurora). He

is a legal custodian of Petitioner and is named in his official capacity.

14. Respondent George Valdez is the Field Office Director responsible for the Denver Field Office of ICE with administrative jurisdiction over Petitioner's immigration case. He is a legal custodian of Petitioner and is named in his official capacity.

15. Respondent David Venturella is the Senior Official performing the duties of Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.

16. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security ("DHS"). He is a legal custodian of Petitioner and is named in his official capacity.

17. Respondent Todd Blanche is the Acting Attorney General of the United States Department of Justice. He is a legal custodian of Petitioner and is named in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

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

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 of confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

20. "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).

21. Abakchou requests the Court issue an Order to Show cause and direct Respondents to file a response within three days, in light of the significant restraint on his liberty and the clear

Constitutional violations in this case.

ALL WRITS ACT AND TRANSFER OUTSIDE THE DISTRICT

22. The All Writs Act, 28 U.S.C. § 1651(a), empowers federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

23. Courts both within and outside this district invoke the All Writs Act to prevent the transfer of individuals detained within the judicial district. *See Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 948–49 (D. Colo. 2025) (listing cases).

24. Abakchou requests the Court invoke the All Writs Act to prevent his transfer out of the District of Colorado during the pendency of this habeas action.

EXHAUSTION OF REMEDIES

25. No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. § 2241. *See Moscato v. Fed. Bureau of Prisons*, 98 F.3d 757, 760 (3d Cir. 1996) ("[T]here is no statutory exhaustion requirement for habeas corpus petitions brought pursuant to Section 2241."). Abakchou's claims—that his detention is unconstitutional because it is not reasonably related to a legitimate governmental purpose and that he has not received constitutionally adequate process to justify such detention—are not subject to any statutory requirement of administrative exhaustion, and thus, exhaustion is not a jurisdictional prerequisite. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).

26. The Court should not impose any prudential exhaustion requirement because to do so would be futile since the agency does not have the power to decide Petitioner's constitutional claim and because Petitioner would be subjected to the irreparable harm of further unnecessary detention. *See Lyons v. U.S. Marshals*, 840 F.2d 202, 205 (3d Cir. 1988).

27. Furthermore, Abakchou has exhausted all available administrative remedies. He

moved for a bond hearing, and the Immigration Court refused to consider his request for bond. He repeatedly and consistently attempted to have the government proceed on his removal proceedings, filing a variety of motions in an attempt to ensure adequate interpretation or a ruling on the record of his case, and the government will not provide an appropriate interpreter and proceed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. WESTERN SAHARAN HASSANIYA INTERPRETERS IN IMMIGRATION PROCEEDINGS.

28. Since 2015, the Executive Office for Immigration Review ("EOIR"), which conducts removal proceedings and bond hearings, has contracted with SOS International, LLC ("SOS"), a private logistics company, to provide interpreter services during immigration hearings. *See SOS Int'l, LLC v. Pac. Media Workers Guild Commc'ns Workers of Am.*, No. 21-CA-178096, 2018 WL 1292639, at § II.A (N.L.R.B, Mar. 12, 2018); SOS, *Providing Immigration Court Interpreting Services for the U.S. Department of Justice* (hereinafter, "*Providing Immigration Court Interpreting Services*").[1] EOIR directly employs about sixty-three staff interpreter positions, primarily for Spanish interpretation, but relies on interpreters contracted through SOS to augment staff interpreters and to interpret proceedings in languages not covered by the staff interpreters. *SOS Int'l*, 2018 WL 1292639, at § II.C(1). Thus, outside of staff interpreters, SOS provides "all interpretation, sight, and document translation services" for EOIR. *See Providing Immigration Court Interpreter Services*.

29. Upon information and belief, SOS does not employ any interpreters of Western Saharan Hassaniya.

[1] https://www.sosi.com/case-studies/language-support-case-studies/providing-immigration-court-interpreting-services-for-the-us-department-of-justice/

II. PETITIONER'S FACTS AND PROCEDURAL HISTORY.

30. Petitioner Mbarek Abakchou is a man from southern Morocco who is seeking asylum in the United States. (Decl. of Karen S. Lucas ¶3)

31. Abakchou has been in immigration detention for over a year and four months since he was initially detained on or about December 21, 2024. (Decl. of Karen S. Lucas ¶5)

32. Abakchou has been detained for over a year and four months without access to accurate interpretation in his language. (Decl. of Karen S. Lucas ¶6)

33. The Department of Homeland Security could not conduct a credible fear interview for Abakchou because the government could not obtain a Western Saharan Hassaniya interpreter. (Decl. of Karen S. Lucas ¶7)

34. The Immigration Court has repeatedly been unable to provide accurate interpretation for Abakchou, causing his proceedings to remain at a standstill. (Decl. of Karen S. Lucas ¶8)

35. Over multiple Master Calendar Hearings in Immigration Court prior to when pro bono counsel appeared to represent him, Abakchou repeatedly told the Immigration Court that he could not understand the interpreter or could only understand a little of what the interpreter said. (Decl. of Karen S. Lucas ¶¶11–12)

36. As shown by his EOIR Courts & Appeals System ("ECAS") records, the Immigration Court twice dismissed Abakchou's removal proceedings—on February 5, 2025, and March 5, 2025, but ICE continued to detain him despite the absence of any lawful basis for doing so. (Decl. of Karen S. Lucas ¶13)

37. After pro bono immigration counsel began representing Abakchou in his removal proceeding in Immigration Court, counsel obtained a professional interpreter, Brahim Rquaibi, who is fluent in and whose native language is Western Saharan Hassaniya. Rquaibi holds undergraduate

and graduate degrees in linguistics and translation and interpretation in Arabic, English, and French, in addition to his native fluency in Western Saharan Hassaniya. (Decl. of Karen S. Lucas ¶¶14–15 & Ex. B)

38. Rquaibi provided two sworn declarations to the Immigration Court explaining the substantial phonetic and linguistic differences between Western Saharan Hassaniya (spoken in southern Morocco and the surrounding region of Western Sahara) and other Hassaniya dialects spoke in other countries, including for example Mauritania. These differences render Abakchou unable to effectively communicate with speakers of other Hassaniya dialects. (Decl. of Karen S. Lucas ¶16 & Ex. A)

39. With Rquaibi's assistance, on October 6, 2025, Abakchou timely filed a petition for asylum and other relief with the Immigration Court. (Decl. of Karen S. Lucas ¶17)

40. At a Master Calendar Hearing on October 7, 2025, Abakchou requested the Immigration Court set his petition for an Individual Hearing, and the Immigration Court set his first Individual Hearing for October 30, 2025. (Decl. of Karen S. Lucas ¶17)

41. On October 24, 2025, Abakchou filed more than eight hundred pages of evidence in support of his petition, including Abakchou's six page sworn statement, pictures, letters, and country conditions evidence all corroborating his past persecution and his well-founded fear of future persecution. (Decl. of Karen S. Lucas ¶18)

42. Abakchou moved that the Immigration Court procure Rquaibi's interpretation services or alternatively the services of another interpreter fluent in Western Saharan Hassaniya, and the Immigration Court granted the motion. (Decl. of Karen S. Lucas ¶¶19–20)

43. At the following three Individual Hearings—October 30, 2025; December 12, 2025; and January 23, 2026—the government did not provide a Western Saharan Hassaniya interpreter. (Decl. of Karen S. Lucas ¶¶21–38)

44. Following the first Individual Hearing, Abakchou moved on November 18, 2025, to have the Immigration Court decide his petition based on the written record, documenting the repeated lack of interpretation and requesting the Immigration Court accept his sworn statement as a true and accurate representation of his testimony. (Decl. of Karen S. Lucas ¶24)

45. While the government provided an interpreter at the January 23, 2026 Individual Hearing, that interpreter did not speak Western Saharan Hassaniya and Abakchou was unable to communicate with the interpreter, as set out in the sworn statements of Abakchou and Rquaibi. (Decl. of Karen S. Lucas ¶¶28–38)

46. The Immigration Court reset the Individual Hearing for March 24, 2026, and on March 7, 2026, Abakchou moved to terminate the proceeding due to the lack of an interpreter and the resulting lack of a fair proceeding or in the alternative, to rule on the written record. (Decl. of Karen S. Lucas ¶¶40–43)

47. The Immigration Court denied Abakchou's motion to terminate the proceeding, stating in the Immigration Court's order that the court "will identify an interpreter familiar with the Western Sahara dialect for the next hearing." (Decl. of Karen S. Lucas ¶44)

48. Abakchou's Individual Hearing was then rescheduled for March 25, 2026; April 24, 2026; and May 18, 2026, and never proceeded on any of those dates. (Decl. of Karen S. Lucas ¶¶45–58)

49. On the most recent date an Immigration Hearing was scheduled for—May 18, 2026—the Immigration Court provided an interpreter from Mauritania that Abakchou could not understand and who the Immigration Judge acknowledged was not the correct interpretation and was not the interpretation requested for the hearing. (Decl. of Karen S. Lucas ¶¶51–53)

50. Abakchou moved for a bond hearing and release on bond, but the Immigration Court denied the motion and the subsequent motion to reconsider. (Decl. of Karen S. Lucas ¶¶59–63)

51. Abakchou's status as the speaker of a rare language affects his removal proceedings and his entire experience in immigration detention. He cannot communicate with his jailers or his fellow detainees. He cannot understand what is said during his hearings and cannot present testimony or be cross-examined in support of his petition.

52. Petitioner's removal proceedings have been and remain at a standstill because the Immigration Court has not been able or willing to provide him with an interpreter who speaks his language, Western Saharan Hassaniya. Given the dearth of interpreters qualified to interpret from Western Saharan Hassaniya to English and given the number of opportunities and the time the government has had to obtain an interpreter of Western Saharan Hassaniya, there is no significant likelihood that this will change in the reasonably foreseeable future.

LEGAL FRAMEWORK

53. The Fifth Amendment's due process guarantee applies to all persons physically within the United States, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "The Fifth Amendment guarantee of due process applies to aliens facing removal." *Wei v. Mukasey*, 545 F.3d 1248, 1257 (10th Cir. 2008).

54. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976); *see also Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1292 (10th Cir. 2001) ("When facing deportation . . . aliens are entitled to procedural due process, which provides an opportunity to be heard at a meaningful time and in a meaningful manner." (internal quotations omitted)).

55. In the context of removal hearings, due process requires that the respondent "have an opportunity to be heard, to cross-examine witnesses against him, and to produce evidence," and that due process requirement is not met where the lack of translation or interpretation prevents the respondent from presenting his case. *Hadjimehdigholi v. I.N.S.*, 49 F.3d 642 (10th Cir. 1995); *see*

also Panjaitan v. Gonzales, 172 Fed. App'x 870, 872 (10th Cir. 2006) ("Implicit in this [due process] requirement is the expectation that proceedings be accurately translated and transcribed, consistent with federal regulations governing immigration proceedings."); Imm. Ct. Practice Manual § 3.10 - Interpreters (Feb. 10, 2026) ("Interpreters are provided at government expense to individuals whose command of the English language is inadequate to fully understand and participate in removal proceedings. . . . The immigration court will arrange for an interpreter both during the individual calendar hearing and, if necessary, the master calendar hearing.");[2] Imm. Ct. Practice Manual § 3.15(e) – Individual Calendar Hearing (Feb. 10, 2026) ("All witnesses . . . are placed under oath . . . . If necessary, an interpreter is provided."); [3] Dep't of Justice, Language Access in Immigration Court 1 (June 6, 2023) ("Noncitizens with limited proficiency in English routinely appear before [EOIR's] immigration courts. EOIR must ensure that every noncitizen who appears before an immigration court has a full and fair opportunity to present their case. For EOIR to meet this objective, noncitizens with limited proficiency in English must be provided with in-court interpretation into their preferred language." (internal citation omitted)).[4]

56. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690. Preventive detention, like the detention at issue here, is a "carefully limited exception" to the "norm" of liberty. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992).

57. To meet the requirements of the Due Process Clause, detention must "bear a reasonable relation to the purpose for which the individual was committed." *Zadvydas*, 533 U.S. at 690; *see also Reno v. Flores*, 507 U.S. 292, 305 (1993) (stating there must be "a 'reasonable fit' between

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[2] https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm
[3] https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm
[4] https://www.justice.gov/eoir/book/file/1586686/dl

governmental purpose . . . and the means chosen to advance that purpose"). In *Zadvydas*, the purpose of detention was to effectuate removal. The Court there held that if there was "no significant likelihood" that this purpose could be accomplished "in the reasonable foreseeable future," then detention did not "bear[] a reasonable relation to the purpose for which the individual was committed" and the individual needed to be released. *Zadvydas*, 533 U.S. at 701 (cleaned up).

58. Here, the purpose of Abakchou's detention is to subject him to removal proceedings to determine if should be removed from or granted permission to remain in the United States. But if there is "no significant likelihood" that Abakchou's removal proceedings will actually take place "in the reasonably foreseeable future" — as is the case here—his detention bears no "reasonable relation to the purpose for which he was committed, and due process requires his release.

59. Abakchou does not dispute the government's general right to pursue removal proceedings and to detain a person while doing so. Abakchou's claim is that his detention has tipped into an illegal due process violation because while he has been placed in detention to effectuate removal proceedings, those proceedings are not advancing, nor is it significantly likely that the proceedings will advance in the reasonably foreseeable future. Abakchou has been detained for over a year and four months and appeared at six Individual Hearings where the government failed to provide an interpreter despite its obligation to do so. The government's inability to provide an interpreter prevented Abakchou from participating in the proceedings, from presenting his case for asylum to the Immigration Court, and from otherwise moving forward with the proceedings. Abakchou even tried to provide his own interpreter through the services of Raquibi, to no avail. Given Abakchou's efforts, the time that has passed, and the government's numerous opportunities to provide an interpreter and proceed, there is "no significant likelihood" that Abakchou's removal proceedings will move forward "in the reasonably foreseeable future." *Zadvydas*, 533 at 701. It is the government's inability to move forward with Abakchou's removal proceedings *at all* because of the

inability to provide an interpreter that renders Abakchou's continued detention unconstitutional—because his detention is doing nothing to further the government's interest in completing removal proceedings.

60. While true that *Zadvydas* typically applies in post-removal detention situations, and not to detention pending removal, that is because detention pending removal typically has the "obvious termination point" of completion of the removal proceedings. *See Demore*, 538 U.S. at 527–28 (declining to apply *Zadvydas* to detention pending removal for this reason). But there is no such obvious endpoint when removal proceedings are at a standstill, as they are for Abakchou. *See Richards v. Choate*, No. 1:25-cv-03134 , 2025 WL 4474703, at *7 (D. Colo., Dec. 5, 2025) (Domenico, J.) (acknowledging that due process problems arise where a noncitizen's removal proceeding has been unreasonably delayed); *Bonilla Espinoza v. Ceja*, No. 1:25-cv-01120 (D. Colo., May 21, 2025) ("[I]t is arbitrary government delay in moving proceedings along that potentially triggers a due process problem."); *Khaibibov v. Aviles*, No. 15-1298, 2015 WL 3492512, at *3 (D.N.J. June 2, 2015) (holding that "[a] detainee stuck in pre-removal limbo for an indefinite period may nevertheless entitled to relief" under *Zadvydas*, but declining to apply *Zadvydas* in that case because the petitioner had not shown he was stuck in such a "procedural limbo"). "Pre-removal limbo" is precisely the situation Abakchou faces here where there has been no progress in his removal proceedings after more than one year and four months of detention, all due to the government's inability to locate and provide an interpreter.

61. Abakchou's situation is therefore covered by *Zadvydas*. There, the petitioners had already been ordered removed following the completion of removal proceedings, but the government could not identify a country willing to accept them for removal. *Zadvydas*, 533 U.S. at 684–86, 702. The Court held detaining a noncitizen under those circumstances could only be legally permissible where there is "a significant likelihood of removal in the reasonably foreseeable future." *Id.* at 700–

01. In other words, the *Zadvydas* petitioners were in post-removal limbo because the government could not find anywhere to send them. Here, analogously, Abakchou's removal proceedings cannot move forward because the government cannot find an interpreter.

62. In addition to *Zadvydas*, Abakchou's detention parallels that deemed unconstitutional in *Jackson v. Indiana*, 406 U.S. 715 (1972), where the Court explained that detention is unconstitutional if there is not "a substantial probability" that its purpose will be attained "in the foreseeable future." 406 U.S. at 738. Under *Jackson*'s framework, incompetent criminal defendants who are unlikely to become competent to be tried cannot be detained indefinitely as pre-trial detainees, with the decision holding

> [A] person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State either must institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant. Furthermore, even if it is determined that the defendant probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal.

Id. Similarly, here, the government cannot continue to detain Abakchou pursuant to his immigration proceedings where completion of the proceeding is not practicable attainable in the foreseeable future due to the lack of an interpreter and because there has been no progress towards completion of the proceeding over the course of an extended period of time and multiple Individual Hearings.[5]

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[5] In fact, DHS's own Advisory Committee on Family Residential Centers recommended that ICE generally refrain from detaining individuals who speak a language that ICE cannot accommodate given the likelihood of harm to their safety and prolonged detention. U.S. Dep't of Homeland Sec. Report of the DHS Advisory Committee on Family Residential Centers, 79 (2016), https://www.ice.gov/sites/default/files/documents/Report/2016/ACFRC-sc-16093.pdf ("[I]ndividuals who speak rare languages that pose these kinds of language access difficulties should be kept out of detention, to avoid the threats to their health and safety there and to reduce government costs related to identifying and providing interpretation for indigenous individuals, including the cost of their often prolonged detention while these services are located."). In doing so, the Advisory Committee drew an analogy to the need to accommodate those with mental disabilities, recognizing that LEP individuals

63. The very issue presented here—a failure to advance proceedings due to the lack of an interpreter for an individual with limited English proficiency—has prompted relief in other detention contexts. For instance, the United States District Court for the District of Arizona granted a criminal defendant's motion to dismiss his indictment after efforts to locate an interpreter who spoke the same indigenous dialect as the defendant were unsuccessful. *See United States v. Mejia-Perez*, No. CR 18-00062, 2018 WL 3015012, at *5–7 (D. Ariz., May 30, 2018), *report and recommendation adopted*, 2018 WL 3012215 (D. Ariz., June 15, 2018). As the Court explained, "[t]he due process clause [] prohibits trying the criminal defendant who lacks capacity to understand the proceedings," and this prohibition applies "not only to mental incompetents, but also to those who are hampered by their inability to communicate in the English language." *Id.* at *6.

64. The fact that the government may contend it is seeking a Western Saharan Hassaniya interpreter for Abakchou's proceedings is insufficient. *Zadvydas* explicitly rejected the view that detention would be permissible "as long as 'good faith efforts to effectuate . . . deportation continue.'" 533 U.S. at 702.

65. Abakchou also need not show that it would be "impossible" for the government to secure the appearance of an interpreter of Western Saharan Hassaniya. *Id.* In *Zadvydas*, the Court rejected a standard that would have required the petitioner "to show the absence of *any* prospect of removal—no matter how unlikely or unforeseeable." *Id.* Likewise, Abakchou need not show the absence of any prospect that his removal proceedings may move forward in the future. Rather, the standard here is whether the government is significantly likely to find an interpreter of Western Saharan Hassaniya in the reasonably foreseeable future. *Id.* at 701. As set forth herein, there is no

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without interpreters are also unable to navigate immigration proceedings. *Id.* at 80 n.168 ("In their inability to communicate and navigate the immigration system, people who speak rare languages are similar to those with mental disabilities, for whom the government is under court order to provide counsel.").

such significant likelihood.

66. Abakchou does not request any relief as to the merits of his removal proceedings. Abakchou will remain in removal proceedings once released from detention, and the government may then hold hearings in his removal proceedings at any future date when it can secure a Western Saharan Hassaniya interpreter to attend. Additionally, Abakchou's release from detention may be made subject to reasonable conditions of supervised release. *See Zadvydas*, 533 U.S. at 696 (noting the options were not "between imprisonment and the [noncitizen] 'living at large'" but rather "between imprisonment and supervision under release conditions that may not be violated").

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

67. Petitioner realleges and incorporates by reference each and every allegation stated above.

68. 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; *see also Demore*, 538 U.S. 510; *Zadvydas*, 533 U.S. 678; *Reno*, 507 U.S. 292.

69. Abakchou has languished in detention for over one year and four months and appeared seven times for an Individual Hearing on his asylum application, but his removal proceedings remain at a standstill due to the government's inability to provide an interpreter of Western Saharan Hassaniya.

70. Abakchou has undertaken every avenue available to him in Immigration Court of advancing his removal proceedings or securing his release—including identifying an available Western Saharan Hassaniya interpreter, moving to his asylum petition decided on the written record, and seeking release on bond—all to no avail.

71. Abakchou's continued detention violates his due process rights. His detention

results purely from the government's failure to procure a Western Saharan Hassaniya interpreter and bears no reasonable relationship to any legitimate governmental purpose. Moreover, he has not received any of the procedural protections that due process requires to justify the sustained deprivation of his liberty.

72. Abakchou poses no danger or flight risk, and to the extent a showing could be made otherwise, any concern about danger or flight risk can be addressed by imposing reasonable conditions of supervision.

73. For the reasons set forth herein, Abakchou's continued detention is unconstitutional.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;

2. Order under the All Writs Act that Petitioner not be removed from the District of Colorado while this petition is pending;

3. Order Respondents to show cause within three days as to why the writ should not be granted, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;

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

5. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;

6. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

7. Grant such further relief as this Court deems just and proper.

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COUNSEL FOR PETITIONER

Verification Pursuant to 28 U.S.C. § 2242

I submit this verification on behalf of Petitioner because I am an attorney representing Petitioner. I based this petition on documents provided by Petitioner and his immigration counsel, including their sworn declarations. Based on that evidence, I hereby verify that the statements made in the Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/Elliotte Quinn Date: May 29, 2026