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

12 **SAYMON TEKESTE ABRAHA**

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, **JEREMY CASEY**, Warden at
23 Imperial Regional Detention Facility,

24 Respondents.

Civil Case No:26-cv-3711-AGS-VET

**Amended Petition for a
Writ of Habeas Corpus**

INTRODUCTION

Saymon Tekeste Abraha has been detained pending his immigration proceedings for over 15 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. Abraha 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. Abraha was born in Eritrea. Exhibit A, Declaration of Saymon Tekeste Abraha at ¶ 1. He came to the United States to seek asylum from his home country because of his religious beliefs. *Id.* at ¶ 1. Mr. Abraha fears for his life if he is forced to return to Eritrea. *Id.* at ¶ 1.

Mr. Abraha came into the United States on March 15, 2025 near the San Diego, California. *Id.* at ¶ 2. He immediately turned himself into immigration authorities, was immediately detained by Border Patrol, and has been detained ever since. *Id.* at ¶ 2.

On January 13, 2026, Mr. Abraha was granted withholding of removal from Eritrea. *Id.* at ¶ 3. At the same time, his asylum case was denied. *Id.* at ¶ 3. He decided to file a motion to reopen his case, which was granted. *Id.* at ¶ 3. His motion was granted, and he is back in immigration court applying for asylum. *Id.* at ¶ 3. His next master calendar hearing is July 6, 2026. *Id.* at ¶ 3.

Mr. Abraha has previously filed a habeas petition under case 26-cv-2781-AGS-VET. *Id.* at ¶ 4. In that case, his habeas petition was denied because he had not yet been detained for the mandatory 90-day removal period. *Id.* at ¶ 4; *see Tekeste Abraha v. Casey*, No. 26-cv-2781-AGS-VET, ECF 8.

Currently, Mr. Abraha is in front of an immigration judge related to his pending asylum claim that was reopened. *Id.* at ¶ 3. If the immigration judge

1 denies his claim, he plans to appeal to the BIA. *Id.* at ¶ 5. If that is also denied, he
2 plans to appeal to the Ninth Circuit. *Id.* at ¶ 5. Mr. Abraha has never had a bond
3 hearing in front of an immigration judge. *Id.* at ¶ 6.

4 Mr. Abraha is struggling in detention. *Id.* at ¶ 7. He is having trouble
5 urinating, and the doctors haven't been able to help him. *Id.* at ¶ 7. His fear of
6 being deported is so strong that he has passed out and lost weight. *Id.* at ¶ 7.

7 LEGAL BACKGROUND

8 **I. The Fifth Amendment's Due Process Clause prohibits prolonged** 9 **immigration detention without a bond hearing.**

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

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

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

9 [t]he Fifth Amendment's Due Process Clause forbids the Government
10 to ‘depriv[e]’ any ‘person ... of ... liberty ... without due process of
11 law.’ Freedom from imprisonment—from government custody,
12 detention, or other forms of physical restraint—lies at the heart of the
13 liberty that Clause protects. *See Foucha v. Louisiana*, 504 U.S. 71, 80
14 (1992). And this Court has said that government detention violates
15 that Clause unless the detention is ordered in a *criminal* proceeding
16 with adequate procedural protections, *see United States v. Salerno*,
17 481 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).

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

22 Following *Zadvydas*, the Ninth Circuit applied similar reasoning to
23 § 1225(b). *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).
24 Employing the constitutional avoidance canon, the Ninth Circuit held that
25 § 1225(b) implicitly entitled detained immigrants to bond hearings every six
26 months. *Id.*

27 The Supreme Court overruled that precedent in *Jennings v. Rodriguez*,
28 holding that the statute does not entitle detainees to bond hearings or otherwise

1 impose “any limit on the length of detention.” 583 U.S. 281, 297 (2018). But
2 though *Jennings* held that § 1225(b) imposes no statutory limit on the length of
3 detention, it reserved the question of whether prolonged, mandatory detention
4 without bond hearings violates due process. *Id.* at 312.

5 Finally, the Supreme Court held in *Demore v. Kim* that at least some
6 statutes mandating detention during immigration proceedings do not
7 automatically violate the Due Process Clause. 538 U.S. 510, 513 (2003). *Demore*
8 addressed 8 U.S.C. § 1226(c), which mandates detention without a bond hearing
9 for persons with certain criminal convictions. *Id.* The Court upheld § 1226(c) in a
10 5-4 opinion based on (1) the government interests justifying the detention of
11 immigrants with certain, aggravated criminal convictions, and (2) the relative
12 brevity of detention in most cases, with the vast majority taking only about five
13 months. *Id.* at 517–31. Justice Kennedy supplied a deciding vote. His concurrence
14 left open the possibility that individual immigrants could be “entitled to an
15 individualized determination as to his risk of flight and dangerousness if the
16 continued detention became unreasonable or unjustified.” *Id.* at 532–33.

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

24 These Courts have relied on the due process concerns recognized in
25 *Zadvydas*. See, e.g., *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at
26 1113–17; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654,
27 at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it in *Jennings*’ wake,
28 those considerations raise “grave doubts that any statute that allows for arbitrary

1 prolonged detention without any process is constitutional or that those who
2 founded our democracy precisely to protect against the government's arbitrary
3 deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252,
4 256 (9th Cir. 2018).

5 Neither *Jennings* nor *Demore* undermines that conclusion. *Jennings* held
6 only that the statute itself did not impose any limits on detention. It “did not
7 foreclose as-applied constitutional challenges to detention under” mandatory-
8 detention statutes. *Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 209
9 (3d Cir. 2020). And *Demore* held only that conviction-based mandatory detention
10 during immigration proceedings does not necessarily violate due process,
11 particularly when the detention has an expected duration of about five months. *Id.*
12 at 208–11. As Justice Kennedy’s concurrence made clear, *Demore* does not
13 prevent immigrants from arguing that sufficiently prolonged detention violates
14 due process in their individual cases. *See id.*¹

15 Thus, this Court should hold that sufficiently prolonged detention violates
16 the Due Process Clause, as most courts have. *See, e.g., Gao v. LaRose*, No. 25-
17 CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul*
18 *Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal.
19 Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at
20 *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal.
21 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-cv-3467-JLS; *Raeva v. Mayorkas*,
22 25-cv-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No.
23 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025);

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 *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB (HC), 2025 WL 2420390, at *3
2 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D.
3 Wash. 2023).

4 **II. Courts have reached different conclusions about when immigration**
5 **detention becomes indefinitely prolonged, but Mr. Abraha would**
6 **prevail under any standard, including the *Banda* factors.**

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

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

23 *Banda*, 385 F. Supp. 3d at 1106. Applying these factors here shows that
24 Mr. Abraha’s detention has become prolonged.

25 First, the “most important factor,” the length of detention, favors Mr.
26 Abraha. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important
27 to bear in mind the context: The detention that is being examined here is the
28 detention of a human being who has never been found to pose a danger to the

community or to be likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts have granted bond hearings for persons detained between six and eleven months. *See Alizadeh v. Mullin*, No. 26-CV-2924-JLS-MPP, ECF 9 (S.D. Cal. June 5, 2026) (granting bond hearing for petitioner detained over six months); *Fofie v. Warden Otay Mesa Detention Center*, No. 26-CV-1900-JLS-MSB, ECF 14 at 5 (S.D. Cal. May 29, 2026) (granting bond hearing for petitioner detained over six months); *Bendekaca v. Brightman*, No. 26-CV-2934-JLS-BLM, 2026 WL 1400584, at 2 (S.D. Cal. May 19, 2026) (collecting cases); *Amando v. United States Dep’t of Just.*, No. 25-CV-2687-LL-DDL, 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025) (collecting cases). Mr. Abraha has been detained for over 15 months—nearly three times as long as other petitioners who have received relief. Exh. A at ¶ 6. This factor therefore strongly favors Mr. Abraha.

Second, Mr. Abraha has reason to anticipate significant future detention, as his case was just reopened and has the possibility of going on appeal to the BIA or to the Ninth Circuit. *Id.* at ¶ 5. All told, “[t]his process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d at 1119. Because “Petitioner’s future detention can last several more months or even years[,]” this factor favors Mr. Abraha. *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

Third, conditions of confinement weigh in favor of Mr. Abraha. “Petitioner’s confinement at [Imperial Regional Detention Facility] is ‘indistinguishable from penal confinement.’” *Abdul Kadir*, 2025 WL 2932654, at *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

Fourth and fifth, Mr. Abraha has not caused any unreasonable delays in his removal proceedings; thus, these factors are arguably neutral.

Sixth, regarding the likelihood that the removal proceedings will result in a final order of removal, Mr. Abraha’s motion to reopen his asylum application was

1 granted, meaning there is new evidence for the immigration judge to consider.
2 *See* 8 C.F.R. § 1003.23(b)(3) (specifying that a motion to reopen should present
3 new facts that are material and were not previously available). Mr. Abraha
4 therefore has a strong asylum claim and could likely win. Accordingly, under the
5 *Banda* factors, Mr. Abraha is entitled to release or a bond hearing.

6 **CLAIM AND PRAYER FOR RELIEF**

7 Accordingly, Petitioner respectfully requests that this Court order
8 Respondents to provide Petitioner with a hearing and individualized bond
9 determination at which the government shall bear the burden of establishing by
10 clear and convincing evidence that Petitioner poses a danger or flight risk. At this
11 hearing, the IJ should consider alternative conditions of release that could mitigate
12 any concerns about his flight risk and, separately, if bond is deemed necessary,
13 Petitioner's ability to pay bond. Finally, this Court should order that Respondents
14 make the audio of the bond hearing available to Petitioner and his counsel upon
15 request.

16 Respectfully submitted,

17 Dated: July 7, 2026

s/ Hannah Basalone

Hannah Basalone

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