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DETAINED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELTON EMMANUEL MUGENI,

Petitioner,

v.

CHRISTOPHER J. LAROSE, or his successor, Senior Warden of the Otay Mesa Detention Center; PATRICK DIVVER, or his successor, Field Office Director, Enforcement and Removal Operations, San Diego Field Office, U.S. Immigration and Customs Enforcement; DAVID J. VENTURELLA, or his successor, Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, or his successor, Secretary, U.S. Department of Homeland Security; and TODD BLANCHE, or his successor, Acting Attorney General of the United States,

Respondents-Defendants.

Case No.: **'26CV4243 RBM MSB**
A#: [redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

CHALLENGE TO PROLONGED MANDATORY IMMIGRATION DETENTION WITHOUT AN INDIVIDUALIZED CUSTODY HEARING; REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PRELIMINARY STATEMENT

1. Petitioner Elton Emmanuel Mugeni ("Mr. Mugeni") petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241, for an order to show cause under 28 U.S.C. § 2243, and for declaratory and case-specific injunctive relief to remedy his prolonged civil immigration detention at Otay Mesa Detention Center in San Diego, California.

2. This petition challenges custody only. It does not ask this Court to decide removability, admissibility, asylum, withholding of removal, protection under the Convention Against Torture ("CAT"), firm resettlement, or any other merits issue committed to the Immigration Court and the Board of Immigration Appeals ("BIA"). It asks whether Respondents may continue physically confining Mr. Mugeni for more than seven months without any neutral, individualized determination that detention is necessary to address danger or flight risk.

3. Mr. Mugeni has been continuously detained since December 18, 2025. As of writing, that confinement has been continuous for over two hundred days without a bond hearing, custody redetermination, or any adversarial proceeding at which Respondents were required to justify continued incarceration.

4. For purposes of this petition, Mr. Mugeni proceeds on the premise that 8 U.S.C. § 1225(b)(1)(B)(ii) supplies the Government's initial detention authority after his positive credible-fear determination. The claim is constitutional and as applied: whether continued detention for more than seven months without any neutral custody hearing has become unreasonably prolonged. It does not ask this Court to rewrite § 1225(b) or to create ordinary bond jurisdiction under § 1226(a).

5. The immigration merits process has not ended Mr. Mugeni's confinement, and no reliable date presently guarantees release or removal. On July 17, 2026, the Immigration Judge denied asylum and withholding under INA § 241(b)(3) ("statutory withholding") but granted withholding of removal

under the Convention Against Torture ("CAT withholding"). Mr. Mugeni timely appealed the mixed decision, and BIA review is pending.

6. Merits adjudication and custody adjudication answer different questions. The immigration court decides whether Mr. Mugeni may be removed or qualifies for protection; a custody hearing determines whether physical confinement is presently necessary to address an individualized danger or flight risk. Mr. Mugeni has never received the latter.

7. Mr. Mugeni's protection case is substantial and has already resulted in a grant of relief. After a full merits hearing, the Immigration Judge found him generally credible, found that [redacted] and concluded that he is more likely than not to be tortured if returned to Uganda. The Immigration Judge therefore granted CAT withholding. Mr. Mugeni timely appealed the decision. The CAT withholding grant confirms the gravity of his claims and gives him every reason to appear and pursue review.

8. Government processing records found no wants or warrants and identify no criminal history. Mr. Mugeni is not detained under the criminal mandatory-detention statute, 8 U.S.C. § 1226(c). No neutral adjudicator has ever found him dangerous or likely to flee, and Respondents have never carried a burden of proving that no condition or combination of conditions can reasonably mitigate any individualized concern.

9. Reported decisions in this District recognize that detention under § 1225(b), although mandatory at the outset as a matter of statutory construction, remains subject to an as-applied Fifth Amendment challenge when confinement becomes unreasonably prolonged without neutral custody review. *See Gao v. LaRose*, 805 F. Supp. 3d 1106, 1110-12 (S.D. Cal. 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772-74 (S.D. Cal. 2020).

10. The totality of the present record warrants review: more than seven months of continuous detention, no custody hearing, an uncertain endpoint, penal-like conditions, no improper delay by Mr.

Mugeni, a grant of CAT withholding and pending BIA appeal, and no criminal history or individualized danger finding. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-20 (W.D. Wash. 2019).

11. The requested relief is narrow and individualized. Mr. Mugeni asks the Court to order his release under reasonable conditions. In the alternative, he asks for a prompt hearing before a neutral Immigration Judge at which Respondents bear the burden of proving by clear and convincing evidence that continued detention is necessary because no less restrictive condition can reasonably address a demonstrated danger or flight risk. The hearing must include individualized consideration of alternatives to detention and, if monetary bond is imposed, ability to pay.

JURISDICTION

12. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), the federal habeas statute, and federal law governing declaratory and injunctive relief.

13. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241(c)(3) because Mr. Mugeni is in federal custody in violation of the Constitution and laws of the United States. Section 2241 permits relief when a person is "in custody in violation of the Constitution or laws or treaties of the United States."

14. Federal habeas review has historically been strongest when used to test Executive detention. *INS v. St. Cyr*, 533 U.S. 289, 301, 314 (2001). It remains available to challenge unlawful immigration custody. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003).

15. This Court also has jurisdiction under 28 U.S.C. § 1331 because the claims arise under the Fifth Amendment. The Court may grant declaratory relief under 28 U.S.C. §§ 2201-2202, issue orders necessary to protect its jurisdiction under 28 U.S.C. § 1651, and enter case-specific equitable relief.

16. This petition does not seek review of a final order of removal and does not ask the Court to determine whether Mr. Mugeni may remain in the United States. It challenges the collateral legality of present physical confinement and the absence of a constitutionally sufficient custody process.

17. The REAL ID Act channels review of removal orders to the courts of appeals, but it does not eliminate habeas jurisdiction over detention claims independent of removal merits. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9th Cir. 2006), abrogated on other grounds by *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

18. Section 1252(g) does not apply because Mr. Mugeni does not challenge a decision to commence proceedings, adjudicate a case, or execute a removal order. *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999). His claim concerns the constitutionality of detention procedures and duration.

19. Section 1252(f)(1) likewise does not bar individualized habeas relief. *Garland v. Aleman Gonzalez* restricts certain classwide injunctions but does not eliminate a district court's authority to grant case-specific relief to a person detained within the District. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550-54 (2022).

VENUE

20. Venue is proper in this District under 28 U.S.C. § 1391(e) and Local Civil Rule HC.1 because Mr. Mugeni is detained at Otay Mesa Detention Center in San Diego County, California, within the Southern District of California.

21. The immediate physical custodian is located in this District, and the restraint challenged here continues here. A habeas petition challenging present physical confinement is properly filed in the district of confinement. *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004).

22. This District is the proper and efficient forum because Mr. Mugeni's immediate custodian, detention facility, counsel access, and the challenged restraint are located here.

CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241 AND 2243

23. Mr. Mugeni is "in custody" for purposes of 28 U.S.C. § 2241 because Respondents hold him at Otay Mesa Detention Center under federal immigration authority. He cannot leave and remains under Respondents' legal and physical control.

24. Section 2243 requires prompt judicial action. The Court must award the writ or issue an order directing Respondents to show cause unless the petition demonstrates on its face that relief is unavailable. A return ordinarily must be made within three days, with any enlargement limited by the statute.

25. Habeas is designed to provide a swift and effective remedy against unlawful restraint. *Fay v. Noia*, 372 U.S. 391, 400 (1963). Prompt review is especially important where every additional day extends civil confinement without a neutral necessity determination.

26. Because transfer could disrupt counsel access, complicate jurisdiction, and frustrate effective relief, Mr. Mugeni requests an order maintaining him within this District while the Court resolves this petition, absent advance notice and leave of Court.

PARTIES

27. Petitioner Elton Emmanuel Mugeni is a native and citizen of Uganda, born on [redacted]. His Alien Registration Number is [redacted]. He is presently detained at Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154.

28. Respondent Christopher J. LaRose, or his successor, is the Senior Warden of Otay Mesa Detention Center and Mr. Mugeni's immediate physical custodian. He is named in his official capacity.

29. Respondent Patrick Divver, or his successor, is the Field Office Director for Enforcement and Removal Operations, San Diego Field Office, U.S. Immigration and Customs Enforcement

("ICE"). He is responsible for ICE custody operations and custody decisions affecting Mr. Mugeni in this District and is named in his official capacity.

30. Respondent David J. Venturella, or his successor, is the Senior Official Performing the Duties of the Director of ICE. He has authority over ICE detention policy and subordinate custody officials and is named in his official capacity.

31. Respondent Markwayne Mullin, or his successor, is the Secretary of the U.S. Department of Homeland Security ("DHS"). DHS includes ICE and administers the detention authority invoked against Mr. Mugeni. He is named in his official capacity.

32. Respondent Todd Blanche, or his successor, is the Acting Attorney General of the United States. The Attorney General has authority over the immigration courts and the Board of Immigration Appeals through the Executive Office for Immigration Review. He is named in his official capacity.

EXHAUSTION

33. No statutory exhaustion requirement bars this petition. Mr. Mugeni seeks judicial review of an ongoing constitutional deprivation - prolonged detention without a neutral custody hearing - that the immigration court lacks authority to remedy under the Government's own classification.

34. Under *Matter of M-S-*, a person placed in full removal proceedings after a positive credible-fear determination remains subject to § 1225(b)(1) detention and an Immigration Judge lacks ordinary bond jurisdiction. *Matter of M-S-*, 27 I&N Dec. 509, 515-19 (A.G. 2019). The BIA has likewise treated applicants for admission detained under INA § 235 as outside Immigration Judge bond authority. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218-19 (BIA 2025).

35. Mr. Mugeni nevertheless attempted to obtain bond review. Through undersigned counsel, he requested a bond hearing, and on April 10, 2026, the parties appeared before Immigration Judge Eugene H. Robinson, Jr. After DHS objected that the Immigration Court lacked bond jurisdiction,

Judge Robinson agreed that the Immigration Court lacked authority to adjudicate the request, and the request was withdrawn. Mr. Mugeni has thus never received a custody hearing.

36. Requiring another request to an adjudicator who is bound to disclaim jurisdiction would be futile. Exhaustion is excused where administrative relief is unavailable, inadequate, or futile and where delay threatens irreparable injury. *Laing v. Ashcroft*, 370 F.3d 994, 1000-01 (9th Cir. 2004).

37. DHS parole under 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5 is not an adequate substitute. Parole is a discretionary decision made by the detaining agency, not an adversarial hearing before a neutral decisionmaker at which the Government must prove current necessity. It provides no guaranteed evidentiary hearing, no clear-and-convincing burden, and no equivalent record for review.

38. The agency cannot conclusively decide whether its own prolonged confinement violates the Fifth Amendment, and an administrative appeal cannot restore the months of liberty already lost. Immediate habeas review is therefore appropriate.

39. To the extent Respondents rely on any later custody determination or changed statutory authority, they should identify it in the return, produce the operative decision, and explain why it supplies constitutionally adequate process. No unidentified or unavailable administrative remedy defeats jurisdiction.

FACTUAL BACKGROUND

A. Encounter, Processing, and Continuous Detention

40. On December 18, 2025, Border Patrol encountered Mr. Mugeni approximately one mile west of the San Ysidro Port of Entry and about fifty yards north of the United States-Mexico international boundary. Officers transported him to the Imperial Beach Station for processing.

41. Government processing records identify Mr. Mugeni as a Ugandan national, record that he expressed fear of return to Uganda, and show that he was placed in DHS custody. He has remained continuously confined at Otay Mesa Detention Center since December 18, 2025.

42. USCIS conducted a credible-fear interview on January 8, 2026. Mr. Mugeni received a positive credible-fear determination, after which DHS initiated full removal proceedings under INA § 240 rather than immediately removing him through expedited procedures.

43. DHS served charging documents alleging inadmissibility under INA §§ 212(a)(7)(A)(i)(I) and 212(a)(6)(A)(i). Mr. Mugeni has appeared through counsel and pursued protection in the immigration court.

44. As of the date of writing, Mr. Mugeni has spent over two hundred days in civil detention. He has never received a hearing at which a neutral adjudicator determined whether he poses a danger or flight risk or whether conditions of release could reasonably protect the Government's interests.

B. Merits Decision Granting CAT Withholding and Pending BIA Appeal

45. Mr. Mugeni timely pursued asylum, statutory withholding, and CAT withholding based principally on actual and imputed political opinion arising from [redacted] On July 17, 2026, the Immigration Judge denied asylum and statutory withholding but granted CAT withholding.

46. Mr. Mugeni reports that [redacted].

47. Mr. Mugeni returned to Uganda [redacted]. He escaped and fled

Uganda a second time. His mother, Lyaka Grace, has supplied declarations corroborating [redacted]

[redacted]

48. Medical records and photographs document injuries and treatment during Mr. Mugeni's flight. Country-conditions evidence describes arrests, enforced disappearances, military detention, torture, and violence against NUP members and supporters. A country-conditions expert, Leonce Byimana, has explained why Mr. Mugeni's history and profile create an individualized risk if returned.

49. The Immigration Judge found Mr. Mugeni firmly resettled in South Africa and denied asylum on that basis. Mr. Mugeni disputes that ruling based on his temporary South African status, provisional asylum-seeker status in Brazil, and Mexican residence that he contends became unusable after police robbed and harmed him and took his passport and residence card. The Immigration Judge also denied statutory withholding, but separately granted CAT withholding after finding that he would more likely than not be tortured if returned to Uganda.

50. The protection litigation therefore is substantial and procedurally complex. It has required multiple filings, witness preparation, expert and country-conditions evidence, and a separate firm-resettlement brief. The merits proceeding resulted in CAT withholding and a pending administrative appeal, but did not terminate custody, and no date certain presently ends the restraint.

51. The Immigration Judge's order reflects that both parties reserved appeal. Mr. Mugeni timely filed the required Notice of Appeal documents on July 20, 2026, and BIA review of the merits decision is now pending. Respondents continue to hold him without a neutral custody determination. If Respondents contend that an administratively final order has since entered, they should identify the order, its date, any pending appeal or stay, and the exact current statutory authority for detention.

C. No Criminal History or Evidence of Danger

52. Government processing records state that no wants or warrants were found. The available record reflects negative criminal-history checks and identifies no conviction, pending criminal charge, violent conduct, disciplinary history, or national-security concern that would establish danger.

53. Mr. Mugeni is not alleged to fall within 8 U.S.C. § 1226(c), and the Government has not invoked criminal mandatory detention. His confinement rests on immigration processing and the pendency of civil protection proceedings.

54. No neutral adjudicator has found Mr. Mugeni dangerous. No neutral decisionmaker has heard testimony, reviewed a custody record, considered conditions, or required the Government to prove that detention remains necessary. The absence of a hearing is the constitutional injury; it is not evidence that detention is justified.

D. Strong Incentives to Appear and Feasible Conditions of Release

55. Government records identify Houston, Texas as Mr. Mugeni's intended destination upon release and identify a sponsor in Houston as his point of contact. His counsel can provide Respondents with a confirmed residence and contact information before release and can ensure compliance with reporting requirements.

56. Mr. Mugeni has two children in South Africa and longstanding family responsibilities. Community support letters describe him as peaceful, responsible, spiritual, hardworking, and supportive of others. Those ties and responsibilities provide powerful incentives to comply with immigration proceedings.

57. Mr. Mugeni has filed detailed applications, supplied corroboration, appeared for scheduled proceedings, obtained CAT withholding, and timely initiated BIA review. Flight would abandon the appellate process and expose him to the harm he seeks to avoid. His conduct demonstrates an intention to litigate through lawful channels.

58. Any legitimate appearance concern can be addressed through less restrictive means, including a reporting schedule, telephonic or electronic check-ins, GPS monitoring if truly necessary, travel restrictions, surrender of documents, a designated residence, and reasonable monetary bond calibrated to ability to pay. Respondents have never established why those measures would be inadequate.

E. Medical Concerns and Penal-Like Conditions

59. During credible-fear processing, Mr. Mugeni reported a physical condition related to torture and stated that the detention facility had been notified. Detention medical records also document a persistent head injury or lump associated with trauma and intermittent headaches, along with other treatment needs.

60. Mr. Mugeni is held in a secure detention facility under conditions that closely resemble penal confinement. He cannot leave, work, live with family, freely obtain outside care, or prepare his case under ordinary community conditions. Courts in this District have recognized that comparable immigration detention conditions weigh toward requiring process in the prolonged-detention analysis. *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020).

61. The confinement compounds prior trauma, separates Mr. Mugeni from family and community support, restricts access to evidence and witnesses located abroad, and imposes practical burdens on consultation with counsel. These harms intensify as detention continues without a necessity finding.

F. Likely Future Duration and Absence of Detainee-Caused Delay

62. The July 17 merits order did not produce release. It granted CAT withholding while denying asylum and statutory withholding; Mr. Mugeni's appeal is now pending before the BIA, and judicial review may follow. No certain date presently guarantees an end to custody.

63. A noncitizen may lawfully pursue review without forfeiting the right to a meaningful custody process. The Government cannot convert the exercise of statutory and constitutional rights into a reason for indefinite confinement. *See Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019).

64. Mr. Mugeni has not engaged in dilatory tactics. He has complied with filing requirements, developed evidence, appeared through counsel, and responded to issues raised by DHS and the immigration court. Time spent preparing a bona fide protection case is not improper delay.

65. Respondents control the place and basic terms of confinement, the availability of parole, transportation to hearings, and much of the scheduling apparatus. Even if ordinary litigation time is not blameworthy, the Constitution still requires a neutral custody mechanism when aggregate detention becomes unreasonable.

LEGAL BACKGROUND

A. Section 1225(b) Supplies Initial Authority but Does Not Resolve the Constitutional Question

66. Section 1225(b)(1)(B)(ii) states that a person found to have a credible fear "shall be detained for further consideration of the application for asylum." The Attorney General has interpreted that language to continue through full removal proceedings and to preclude ordinary Immigration Judge bond jurisdiction. *Matter of M-S-*, 27 I&N Dec. at 515-19.

67. The Supreme Court has held that § 1225(b) is mandatory as a matter of statutory construction and cannot be rewritten to contain an implicit six-month limit or periodic bond-hearing requirement. *Jennings v. Rodriguez*, 583 U.S. 281, 297-303 (2018). That statutory holding is the premise, not the end, of this petition.

68. *Jennings* expressly declined to decide the constitutional challenges to prolonged detention and remanded them for consideration in the first instance. *Id.* at 312. The Court therefore preserved

as-applied due process review even while rejecting constitutional avoidance as a method of statutory interpretation.

69. The statutory holding in *Jennings* does not answer the as-applied constitutional claim presented here. This petition accepts § 1225(b) as the initial detention authority and asks what process the Fifth Amendment requires after detention becomes unreasonably prolonged in the circumstances of a particular person.

B. Prolonged Civil Detention Is Subject to As-Applied Due Process Review

70. Freedom from physical restraint lies at the core of the liberty protected by the Fifth Amendment. Civil detention is constitutionally exceptional and must remain reasonably related to a legitimate nonpunitive purpose. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *United States v. Salerno*, 481 U.S. 739, 747-51 (1987).

71. *Department of Homeland Security v. Thuraissigiam* addressed the scope of habeas and due process for review of an expedited-removal determination and a claimed right to remain in the country. *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 107, 138-40 (2020). Mr. Mugeni does not seek admission through habeas or review of a removal decision; he challenges the necessity and procedures of present physical confinement after DHS placed him in full proceedings following a positive credible-fear finding.

72. *Shaughnessy v. United States ex rel. Mezei* involved exclusion at Ellis Island against a national-security backdrop and does not establish that modern civil immigration detention may continue for any duration without individualized process. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212-15 (1953). The Supreme Court has repeatedly applied constitutional limits to immigration custody. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 527-30.

73. Reported decisions in this District have held that mandatory detention under § 1225(b), though initially lawful, may violate due process when it becomes unreasonably prolonged without a

neutral custody hearing. *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1110-12 (S.D. Cal. 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772-74 (S.D. Cal. 2020).

74. That rule does not impose a universal statutory deadline. It applies the Fifth Amendment to the facts before the Court and asks whether continued confinement remains reasonable without a hearing. The analysis is individualized, flexible, and fully consistent with *Jennings*.

C. The Banda Factors Govern the Reasonableness Inquiry

75. Courts in this District commonly evaluate six factors: (1) total length of detention; (2) likely duration of future detention; (3) conditions of confinement; (4) delays caused by the detainee; (5) delays caused by the Government; and (6) the likelihood that proceedings will result in a final removal order. *Banda*, 385 F. Supp. 3d at 1117-20; *Gao*, 805 F. Supp. 3d at 1111.

76. The total length of detention is the most important factor because the constitutional concern grows with time. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019). No single number creates a categorical rule; the Court evaluates duration in context. Here, 217 days without any custody hearing is constitutionally significant when combined with uncertain future detention and restrictive conditions. *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1111-12 (S.D. Cal. 2025).

77. The second factor examines the entire anticipated course of proceedings, including administrative and judicial appeals. A claimant should not be forced to choose between abandoning good-faith protection claims and remaining incarcerated without a necessity hearing. *Banda*, 385 F. Supp. 3d at 1119.

78. The third factor asks whether conditions resemble penal confinement. The more restrictive and prison-like the setting, the stronger the need for process. Id. The fourth and fifth factors examine actual responsibility for delay rather than treating legitimate litigation steps as misconduct.

79. The sixth factor does not authorize the district court to adjudicate immigration merits. It asks only whether the person has asserted substantial defenses or whether removal is virtually certain.

Banda v. McAleenan, 385 F. Supp. 3d 1099, 1120 (W.D. Wash. 2019). Where protection applications are pending and supported by a positive credible-fear determination, expert evidence, and corroboration, the factor is at least neutral.

D. A Constitutionally Adequate Hearing Requires Meaningful Procedures

80. Once due process requires a hearing, the procedures must be tailored to the profound liberty interest, the risk of erroneous detention, and the modest governmental burden of an individualized inquiry. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

81. Because the Government seeks to continue a severe civil restraint and Mr. Mugeni has never received any neutral custody hearing, the remedial hearing should place on Respondents the burden of proving present necessity by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011), abrogated on other grounds by *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

82. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201-04, 1209-10 (9th Cir. 2022), is materially distinguishable: the detainee there had received an initial neutral bond hearing, could present evidence, had appeal rights, and could seek later review based on changed circumstances. Mr. Mugeni has received none of those safeguards.

83. A meaningful hearing must consider alternatives to detention and, if monetary bond is contemplated, ability to pay. Otherwise, a nominal release order may operate as continued detention based solely on poverty. *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017).

84. The adjudicator should make specific findings, and Respondents should preserve a complete record for counsel and review. Those elementary safeguards discipline decisionmaking, permit meaningful oversight, and reduce the risk that generalized assumptions substitute for evidence.

E. Case-Specific Habeas Relief Remains Available

85. The traditional remedy for unlawful custody is release. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Where the constitutional defect is the absence of a custody hearing, courts may order a prompt hearing with defined safeguards and require release if the hearing does not occur.

86. This form of relief is individual, does not enjoin the operation of the immigration statutes as to anyone else, and does not dictate the outcome of removal proceedings. It is therefore consistent with *Aleman Gonzalez*, 596 U.S. at 550-54, and the district court's habeas authority.

ARGUMENT

A. The Petition Presents a Cognizable As-Applied Due Process Challenge

87. Congress's use of mandatory language in § 1225(b) does not eliminate constitutional review of the manner and duration of Executive detention. The Court retains habeas jurisdiction to test whether present physical custody complies with the Fifth Amendment.

88. *Jennings v. Rodriguez*, 583 U.S. 281, 297-303, 312 (2018), rejected a statutory construction that implied periodic bond hearings but expressly left constitutional challenges for separate consideration. The claim here follows that framework: it accepts the statute's initial mandate and challenges the constitutionality of continued detention as applied.

89. Mr. Mugeni does not seek review of removability, admissibility, or the merits of any protection application. He asks only whether over two hundred days of detention without any neutral determination of danger, flight risk, or the adequacy of release conditions is constitutionally permissible.

90. Reported decisions applying a fact-specific analysis examine total duration, likely future duration, conditions, responsibility for delay, Government delay, and the posture of removal defenses rather than imposing a categorical calendar rule. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-

20 (W.D. Wash. 2019); *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1110-12 (S.D. Cal. 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772-74 (S.D. Cal. 2020).

91. The Court can resolve that custody question and grant individualized habeas relief without deciding or interfering with the immigration merits. The requested remedy preserves the Government's authority to detain if it proves that no less restrictive condition can reasonably address an actual risk.

B. Existing Procedures Do Not Adequately Protect Mr. Mugeni's Liberty

92. Mr. Mugeni's private interest is freedom from physical incarceration. The deprivation is complete and continuous: each day he remains locked in a secure facility, separated from family and community, unable to work, and limited in obtaining care and preparing his protection case.

93. The existing process creates a high risk of erroneous detention. The immigration merits hearing addresses protection and removability, not whether confinement is necessary. The parole process is controlled by the detaining agency, is discretionary, and does not require a neutral evidentiary hearing or a clear-and-convincing showing.

94. Without a hearing, the Government may continue detention based on category alone even when the individual has no criminal history, no danger finding, strong incentives to appear, and feasible release conditions. That categorical approach cannot test present necessity and therefore creates precisely the risk that procedural due process is designed to prevent.

95. The additional governmental burden is minimal. Immigration Judges regularly conduct custody hearings, assess documents and testimony, impose reporting and monitoring conditions, and create records. The Government already possesses the relevant identity, immigration, criminal-history, and contact information.

96. A neutral hearing also advances the Government's legitimate interests by distinguishing people who genuinely require detention from those who can safely comply under conditions. Due

process does not eliminate detention where necessary; it requires reliable proof before liberty is denied for an extended period.

C. The Banda Factors Establish That Detention Has Become Unreasonable

97. First, duration strongly favors Mr. Mugeni. He has been detained for over two hundred days without any custody hearing. Duration is the most important factor, and it weighs heavily when no neutral process has ever tested continued necessity. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1118 (W.D. Wash. 2019); *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1111-12 (S.D. Cal. 2025).

98. The inquiry is not governed by a rigid seven-month line. The constitutional question turns on the total circumstances. Here, detention has exceeded seven months, with zero neutral review and uncertain future duration, making the present case stronger than its calendar count alone.

99. Second, the likely duration of future detention favors Mr. Mugeni. This factor asks how long detention is likely to continue absent judicial intervention, including the anticipated duration of administrative and judicial appeals. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1119 (W.D. Wash. 2019). The Immigration Judge granted CAT withholding but denied asylum and statutory withholding. Mr. Mugeni's BIA appeal and potential judicial review leave no date certain for release or removal and may extend custody for many additional months.

100. Third, the conditions of confinement favor Mr. Mugeni. The more civil detention resembles penal confinement, the stronger the need for a bond hearing. *Banda*, 385 F. Supp. 3d at 1119. Mr. Mugeni is held in secure confinement at Otay Mesa, deprived of ordinary movement, work, family life, and independent medical access, and his documented torture-related physical concerns and prior trauma magnify those penal-like burdens. See also *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020).

101. Fourth, delay attributable to Mr. Mugeni does not weigh against him. This factor examines whether the detainee used dilatory tactics or acted in bad faith to prolong the proceedings.

Banda, 385 F. Supp. 3d at 1119-20. Mr. Mugeni timely pursued his protection applications, addressed the firm-resettlement issue, obtained corroboration, and prepared witnesses and expert evidence. Those are ordinary, good-faith litigation steps directed toward a fair adjudication, not obstruction or manufactured delay.

102. Fifth, the Government-delay factor does not support continued detention. This factor examines the nature and extent of delay attributable to immigration officials, the immigration court, or other Government actors; delay caused by an entity other than the detainee weighs toward a finding of unreasonableness. *Banda*, 385 F. Supp. 3d at 1120. Even assuming the present record does not establish bad-faith or undue delay by Respondents, the factor is at most neutral and cannot convert more than seven months of unreviewed custody into reasonable detention.

103. Sixth, the likelihood-of-removal factor is at minimum neutral and does not favor Respondents. This factor asks whether the noncitizen has asserted defenses to removal; a good-faith challenge makes categorical detention increasingly unreasonable, and when the court cannot predict the merits, the factor is neutral. *Banda*, 385 F. Supp. 3d at 1120. The Immigration Judge found Mr. Mugeni generally credible, found that [redacted], and granted CAT withholding based on a finding that future torture is more likely than not. His BIA appeal is pending. Removal is therefore not sufficiently certain to justify continued categorical detention without individualized review.

104. On balance, the most important factor and several additional factors favor Mr. Mugeni, while none establishes that continued detention without a hearing is necessary. The aggregate detention has crossed from brief processing custody into prolonged incarceration requiring individualized due process.

D. Individualized Evidence Supports Release or Conditions Short of Detention

105. Nothing in the available record establishes danger. Government checks found no wants or warrants, and no criminal conviction or violent conduct is identified. A generalized statutory category cannot substitute for individual proof.

106. Mr. Mugeni has powerful reasons to appear: an actual grant of CAT withholding, a pending BIA appeal, retained counsel, a record of participation, children and family obligations, and community support. Failing to appear would forfeit the legal process he has pursued for months and expose him to the danger he seeks to avoid.

107. A stable release plan can be verified before release. Reporting, geographic restrictions, electronic check-ins, document surrender, and proportionate monitoring can address any specific concern. The Constitution requires consideration of those less restrictive tools before continued incarceration.

108. If a monetary bond is imposed, it must be individualized and affordable. An unaffordable bond would be detention by another name and would not satisfy the Court's remedial purpose. *Hernandez*, 872 F.3d at 990-91.

109. The Government remains free to present actual evidence of danger or flight risk. What it may not do is avoid any burden, any neutral forum, and any consideration of alternatives while confinement continues month after month.

E. Release or a Prompt Constitutionally Adequate Hearing Is the Proper Remedy

110. Because the constitutional violation is ongoing, the Court may order immediate release under reasonable conditions. Release is particularly appropriate where the Government has already had more than seven months to assess risk and has never obtained a neutral finding that detention is necessary.

111. At minimum, the Court should order an individualized hearing within seven days. A short deadline is warranted by 28 U.S.C. § 2243, the time already spent in custody, and the simple custody-focused nature of the required inquiry.

112. At that hearing, Respondents must prove by clear and convincing evidence that Mr. Mugeni poses a present danger or flight risk and that no condition or combination of conditions can reasonably mitigate the proven concern. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011).

113. The Immigration Judge must consider nonmonetary alternatives, ability to pay, and the actual release plan; must make individualized findings; and must create a complete record available to Mr. Mugeni and counsel. The hearing may not rest on the proposition that § 1225(b) itself conclusively requires continued detention, because the hearing is the remedy for the as-applied constitutional violation.

114. If Respondents do not provide the required hearing within the Court's deadline, Mr. Mugeni should be released under reasonable conditions. A remedy dependent entirely on agency delay would not cure the unlawful restraint.

115. The Court should also preserve jurisdiction, prohibit transfer outside this District without notice and permission, and require a status report identifying the hearing date, decision, findings, and resulting custody status.

116. None of this relief revisits the immigration merits. It ensures only that prolonged civil confinement is justified through constitutionally reliable procedures while the BIA reviews the Immigration Judge's mixed decision.

CLAIMS FOR RELIEF

COUNT ONE: Violation of the Fifth Amendment - Procedural Due Process

117. Mr. Mugeni realleges and incorporates the preceding paragraphs.

118. Mr. Mugeni possesses a fundamental liberty interest in freedom from physical restraint. Respondents have deprived him of that liberty continuously since December 18, 2025.

119. The procedures presently available do not provide a neutral hearing, do not place a burden on the Government, do not require consideration of alternatives, and do not generate a reliable record of individualized necessity.

120. Under the current duration and circumstances of detention, the absence of those safeguards creates an intolerable risk of erroneous confinement and violates the Due Process Clause of the Fifth Amendment.

121. The violation is ongoing each day Respondents continue detention without a constitutionally adequate hearing or release.

COUNT TWO: Violation of the Fifth Amendment - Unreasonably Prolonged Mandatory Detention

122. Mr. Mugeni realleges and incorporates the preceding paragraphs.

123. Although § 1225(b) supplied initial detention authority for purposes of this petition, its application becomes unconstitutional when mandatory detention is unreasonably prolonged without individualized review.

124. Mr. Mugeni has been detained for over two hundred days, faces uncertain future custody, is held under penal-like conditions, has not caused improper delay, has received CAT withholding, and has a pending BIA appeal. No adjudicator has found detention necessary.

125. Continued mandatory confinement without a bond hearing is no longer reasonably limited to brief processing or initial adjudication and is excessive in relation to the Government's legitimate interests.

126. Respondents' present application of § 1225(b) therefore violates the Fifth Amendment as applied to Mr. Mugeni.

COUNT THREE: Violation of the Fifth Amendment - Substantive Due Process and Excessive Civil Confinement

127. Mr. Mugeni realleges and incorporates the preceding paragraphs.

128. Civil detention must remain reasonably related to a legitimate regulatory purpose and may not become punitive or excessive. *Salerno*, 481 U.S. at 747-51; *Foucha*, 504 U.S. at 80.

129. Respondents have confined Mr. Mugeni for more than seven months without proving that he is dangerous, likely to flee, or unsuitable for less restrictive conditions. Category alone does not establish the continuing necessity of physical incarceration.

130. As detention lengthens without a necessity determination or reliable endpoint, the restraint becomes excessive in relation to processing and appearance interests and imposes punishment-like consequences on a civil detainee.

131. To the extent procedural relief alone is inadequate, continued detention violates substantive due process and requires release under reasonable conditions.

REQUEST FOR ORDER TO SHOW CAUSE WITHIN THREE DAYS AND CASE-SPECIFIC INJUNCTIVE RELIEF

132. Section 2243 commands expedited review. Because this petition presents a live constitutional challenge to ongoing custody and does not show on its face that Mr. Mugeni is ineligible for relief, the Court should issue an Order to Show Cause requiring a return within three days or within the shortest period the Court finds supported by good cause.

133. The requested injunction is narrow, individual, and custody focused. It would require release or constitutionally adequate process only for Mr. Mugeni and would leave all removal and protection questions to the tribunals Congress designated.

134. The Court need not decide asylum, withholding, CAT, firm resettlement, removability, or admissibility. It need decide only whether Respondents may continue prolonged physical confinement without proving individualized necessity before a neutral decisionmaker.

135. Transfer outside the District could impair counsel access, complicate jurisdiction, and frustrate effective relief. Maintaining the status quo pending adjudication imposes little burden and protects the Court's ability to grant meaningful habeas relief.

136. The public interest favors lawful, accurate, and individualized custody decisions. A prompt hearing protects liberty while preserving the Government's ability to detain if it proves that no less restrictive measure can address an actual danger or flight risk.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant the following relief:

a) Assume jurisdiction over this matter;

b) Issue an Order to Show Cause requiring Respondents to show cause within three days why the writ should not issue;

c) Declare that Mr. Mugeni's continued detention without individualized custody review violates the Due Process Clause of the Fifth Amendment as applied;

d) Issue a writ of habeas corpus ordering Respondents to release Mr. Mugeni under reasonable conditions of supervision;

e) In the alternative, order Respondents to provide a meaningful individualized custody hearing before a neutral Immigration Judge within seven days;

f) Order that, at the hearing, Respondents bear the burden of proving by clear and convincing evidence that Mr. Mugeni presents a current danger or flight risk and that no condition or combination of conditions can reasonably mitigate the proven concern;

g) Order the Immigration Judge to consider all less restrictive alternatives to detention, Mr. Mugeni's proposed residence and support, and his ability to pay before imposing any monetary bond;

h) Order Mr. Mugeni's release under reasonable conditions if Respondents fail to provide the required hearing within the Court's deadline;

i) Prohibit Respondents from transferring Mr. Mugeni outside the Southern District of California during this action absent advance notice to counsel and leave of Court;

j) Require Respondents to maintain reasonable access to counsel, confidential legal calls, legal materials, medical care, and communications necessary to litigate this petition and the immigration case;

k) Order Respondents to identify and produce the current statutory custody authority, all operative custody and parole determinations, and any final immigration order they contend affects the detention analysis;

l) Require Respondents to file a prompt status report stating the hearing date, the decision and findings, and Mr. Mugeni's resulting custody status; and

m) Grant such other and further relief as the Court deems just, equitable, and proper.

Dated: July 24, 2026

Respectfully submitted,

//s// John Wells
John Wells
Attorney for Petitioner