UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Jesus Bento CARDOZO, Relson FERNANDES, Yassine BELHAJ, Marouane BOULHJAR, Mouloud Ben KHADAJ,

Petitioners,

v.

Drew BOSTOCK, Field Office Director of Enforcement and Removal Operations, Seattle Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela Bondi, U.S. Attorney General; Bruce SCOTT, Warden of Northwest ICE Processing Center,

Respondents.

Case No. 3:25-cv-5394

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

INTRODUCTION

1. Petitioners Jesus Bento Cardozo, Relson Fernandes, Yassine Belhaj, Marouane Boulhjar, and Mouloud Ben Khadaj are noncitizens in the custody of Immigration and Customs Enforcement (ICE) at the Northwest ICE Processing Center (NWIPC). All of them have been detained for over six months pending removal proceedings—without *ever* receiving even an initial hearing in their native language.

2. Petitioners have languished in detention simply because the Executive Office for Immigration Review (EOIR) has failed to secure interpretation services for their removal proceedings.

3. The Due Process Clause of the Fifth Amendment forbids such arbitrary and prolonged detention. Respondents have never justified Petitioners' continued detention at a hearing before a neutral decisionmaker with any evidence of danger or flight risk.

4. Accordingly, Petitioners ask this Court for a writ of habeas corpus to vindicate their right to due process and to seek relief from their continued arbitrary detention. They ask the Court to declare their continued detention unconstitutional as applied to them, and to order their release or alternatively, a bond hearing where the government must prove that any continued detention is justified by clear and convincing evidence.

JURISDICTION

5. Petitioners are in the physical custody of Respondents and ICE, an agency within the Department of Homeland Security (DHS). They are detained at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington, which is under the direct control of Respondents and their agents.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

7. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

8. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the All Writs Act, 28 U.S.C. § 1651.

9. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), 1252(f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Western District of Washington, the judicial district in which Petitioners are currently in custody.

11. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Washington.

REQUIREMENTS OF 28 U.S.C. § 2243

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

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

13. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (Habeas corpus is "a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.").

PARTIES

14. Petitioner Jesus Bento Cardozo is a citizen of India who entered the United States in October 2024. He is currently detained at NWIPC.

15. Petitioner Relson Fernandes is a citizen of India who entered the United States in October 2024. He is currently detained at NWIPC.

16. Petitioner Yassine Belhaj is a citizen of Morocco who entered the United States in September 2024. He is currently detained in NWIPC.

17. Petitioner Marouane Boulhjar is a citizen of Morocco who entered the United States in August 2024. He is currently detained in NWIPC.

18. Petitioner Mouloud Ben Khadaj is a citizen of Morocco who entered the United States in September 2024. He is currently detained in NWIPC.

19. Respondent Drew Bostock is the Director of the Seattle Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Bostock is Petitioners' immediate custodian and is responsible for their detention. He is named in his official capacity.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

20. Respondent Kristi Noem is the Secretary of the DHS. She is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioners' detention. Ms. Noem has ultimate custodial authority over Petitioners and is sued in her official capacity.

21. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention of noncitizens.

22. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

23. Respondent Bruce Scott is employed by the private corporation GEO Group, Inc., as Warden of the NWIPC, where Petitioners are detained. He has immediate physical custody of Petitioners. He is sued in his official capacity.

FACTUAL ALLEGATIONS

Jesus Bento Cardozo

24. Jesus Bento Cardozo is a noncitizen from India who entered the United States in October 2024. Cardozo Decl. ¶ 1. Mr. Cardozo fled India based on his fear of persecution there. *Id.* ¶ 3.

25. He was apprehended shortly after entering the United States without inspection. *Id.* Upon information and belief, DHS issued Mr. Cardozo an expedited removal order under 8 U.S.C. § 1225(b)(1).

26. Since mid-November 2024, ICE has detained Mr. Cardozo at NWIPC. In total, he has already been detained over six months. *Id.* ¶¶ 1, 4.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

27. Upon his arrival in Tacoma, Mr. Cardozo was told he would receive a credible fear interview (CFI) under § 1225(b)(1). *Id.* ¶ 5.

28. Under § 1225(b)(1), DHS is authorized to order the expedited removal of noncitizens unless they demonstrate a credible fear of return to their country of origin in a CFI. Generally, if the individual passes the CFI, the person is placed into full proceedings before an immigration judge, where the person may apply for asylum and related protections.

29. In January 2025, after weeks of waiting for a CFI, DHS declined to administer Mr. Cardozo a CFI. Instead, the agency vacated Mr. Cardozo's expedited removal order and placed him directly into full removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 5.

30. In the months since Mr. Cardozo was placed into removal proceedings, he has *never* received a hearing before an immigration judge (IJ) with an interpreter who could translate into his native language and dialect. *Id.* ¶¶ 6–10.

31. Mr. Cardozo speaks a dialect of Konkani, a language spoken by some populations who live primarily on the western coast of India. *Id.* ¶¶ 2, 7–8.

32. Mr. Cardozo's first master calendar hearing (MCH) was held on February 5, 2025. *Id.* ¶ 6. Generally, during MCHs, IJs take pleadings, inform noncitizens of their rights, accept filing of applications, and manage case scheduling. A Hindi interpreter was present at the initial MCH. *Id.* Mr. Cardozo does not speak Hindi and was unable to communicate with the interpreter in Hindi. *Id.* His MCH was continued until a later date in February. *Id.*

33. At Mr. Cardozo's second MCH on February 21, 2025, a Konkani interpreter was telephonically present, but the interpreter did not speak Mr. Cardozo's dialect of Konkani. *Id.* ¶ 7. As a result, he was unable to communicate meaningfully with the interpreter and the hearing was again continued. *Id.*

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

34. At a third MCH on March 18, 2025, the telephonic interpreter again did not speak Mr. Cardozo's dialect of Konkani, even though he and other speakers of the same dialect were present at the hearing. *Id.* ¶ 8. Mr. Cardozo's MCH was again continued. *Id.*

35. On April 1, 2025, Mr. Cardozo attended a fourth ICH, where yet again, no interpreter who spoke his language was present. *Id.* ¶ 9. The IJ again continued the case. *Id.*

36. Mr. Cardozo had a fifth MCH on April 16, 2025, and once more, no interpreter who spoke Mr. Cardozo's language was present. *Id.* ¶ 10. Following that hearing, Mr. Cardozo received a notice from EOIR instructing him to inform the immigration court if he speaks a second language. *Id.* Mr. Cardozo's English is limited and insufficient to meaningfully present his case, and he does not speak any other language. *Id.*

37. Mr. Cardozo's detention has now lasted for over six months. Yet during that time, he has not received even one complete MCH in his native language.

38. Mr. Cardozo faces months—and likely a year or more—of continued detention just to present his asylum application, due to EOIR's continued failure to provide him with interpretation at his hearings.

39. The Tacoma Immigration Court considers Mr. Cardozo to be subject to mandatory detention under 8 U.S.C. § 1225(b). Accordingly, he has never received a hearing before a neutral decisionmaker where ICE was required to justify his continued detention by clear and convincing evidence.

Relson Fernandes

40. Relson Fernandes is a noncitizen from India who entered the United States in October 2024. Fernandes Decl. ¶ 1. Mr. Fernandes fled India based on his fear of persecution there. *Id.* ¶ 7.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

41. He was apprehended shortly after entering the United States without inspection. *Id.* ¶ 1. Upon information and belief, DHS issued Mr. Fernandes an expedited removal order under 8 U.S.C. § 1225(b)(1).

42. Upon his arrival in Tacoma in November 2024, Mr. Fernandes was told he would receive a CFI under § 1225(b)(1). *Id.* ¶ 7.

43. In January 2025, after weeks of waiting for a CFI, DHS declined to administer Mr. Fernandes a CFI. *Id.* Instead, the agency vacated Mr. Fernandes's expedited removal order and placed him directly into full removal proceedings under 8 U.S.C. § 1229a. *Id.*

44. In the months since Mr. Fernandes was placed into removal proceedings, he has *never* received a hearing before an immigration judge with an interpreter who could translate into his native language and dialect. *Id.* ¶¶ 8–12.

45. Like Mr. Cardozo, Mr. Fernandes speaks a dialect of Konkani. *Id.* ¶ 2. And like Mr. Cardozo, Mr. Fernandes was scheduled for MCHs on February 5, February 21, March 18, April 1, and April 16. *Id.* ¶¶ 8–12. An interpreter who speaks Mr. Fernandes' language was not present at any of these hearings. *Id.*

46. Mr. Fernandes attended all of the scheduled hearings, with the exception of the MCH held on February 21, 2025, due to testing positive for COVID-19. *Id.* ¶ 9.

47. Mr. Fernandes' detention has now lasted for over six months. *Id.* ¶ 1. Yet during that time, he has not received even an initial MCH with the required interpretation in his native language.

48. Mr. Fernandes faces months—and likely a year or more—of continued detention just to present his asylum application due to EOIR's failure to provide him with interpretation at his hearings.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

49. The Tacoma Immigration Court considers Mr. Fernandes subject to mandatory detention under § 1225(b). Accordingly, he has never received a hearing before a neutral decisionmaker where ICE was required to justify his continued detention by clear and convincing evidence.

Yassine Belhaj

50. Yassine Belhaj is a noncitizen from Morocco who entered the United States in September 2024. Belhaj Decl. ¶ 1. Mr. Belhaj fled Morocco based on his fear of persecution there. *Id.*

51. He was apprehended shortly after entering the United States without inspection. *Id.* Upon information and belief, DHS issued Mr. Belhaj an expedited removal order under 8 U.S.C. § 1225(b)(1).

52. Since September 2024, Mr. Belhaj has been detained in Mississippi, Nevada, and Washington. *Id.* ¶¶ 3–4, 6. In total, he has been detained for over seven months. *Id.* ¶ 1.

53. Mr. Belhaj was scheduled to receive a CFI while detained at a facility in Las Vegas, Nevada. *Id.* ¶ 3. However, the asylum officer was not able to conduct the interview due to the lack of an interpreter for Mr. Belhaj's native language, Moroccan Hassaniya. *Id.*

54. Mr. Belhaj also speaks Tega, a dialect spoken in his parents' hometown and not known throughout or outside Morocco. *Id.* ¶ 2.

55. In October 2024, DHS subsequently vacated Mr. Belhaj's expedited removal order and placed him directly into full removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 4.

56. In the months since Mr. Belhaj was placed into removal proceedings, he has *never* received a hearing before an immigration with an interpreter who could translate into his native language and dialect. *Id.* ¶¶ 4–6.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

57. Mr. Belhaj attended several MCHs before an IJ in Las Vegas. *Id.* ¶ 4. At Mr. Belhaj's initial MCH, an Arabic telephonic interpreter was present. *Id.* ¶ 5. However, Mr. Belhaj could not understand them. *Id.* Consequently, his hearing was continued. *Id.*

58. Mr. Belhaj then attended at least four additional hearings in Las Vegas, during which telephonic interpreters appeared for languages and dialects that he could not understand, such as Mauritanian Hassaniya, Darija, Tamazight, and Shilha. *Id.*

59. Around late January or early February of 2025, Mr. Belhaj was transferred to NWIPC. *Id.* ¶ 6. He has attended four additional MCHs before the Tacoma Immigration Court, on February 25, March 20, April 2, and May 1. *Id.* He was not provided with an interpreter in his native language at any of these hearings. *Id.*

60. Mr. Belhaj faces months—and likely a year or more—of continued detention just to present his asylum application due to EOIR's failure to provide him with interpretation at his hearings.

61. The Tacoma Immigration Court considers Mr. Belhaj subject to mandatory detention under § 1225(b). Accordingly, he has never received a hearing before a neutral decisionmaker where ICE was required to justify his continued detention by clear and convincing evidence.

Marouane Boulhjar

62. Marouane Boulhjar is a noncitizen from Morocco who entered the United States in August 2024. Boulhjar Decl. ¶ 1. Mr. Boulhjar fled Morocco based on his fear of persecution. *Id.*

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

63. He was apprehended shortly after entering the United States without inspection. *Id.* Upon information and belief, DHS issued Mr. Boulhjar an expedited removal order under 8 U.S.C. § 1225(b)(1).

64. Since August 2024, Mr. Boulhjar has been detained in California, Nevada, and Washington. *Id.* ¶¶ 3–4, 6. In total, he has been detained for over eight months. *Id.* ¶ 1.

65. Mr. Boulhjar was scheduled to receive a CFI while detained at a facility in Las Vegas, Nevada. *Id.* ¶ 3. However, the asylum officer was not able to conduct the interview due to the lack of an interpreter for Mr. Boulhjar's native language, a subdialect of Tachelhit. *Id.*

66. In October 2024, DHS subsequently vacated Mr. Boulhjar's expedited removal order and placed him directly into removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 4.

67. In the months since Mr. Boulhjar was placed into removal proceedings, he has *never* received a hearing before an immigration judge with an interpreter who could translate into his native language and dialect. *Id.* ¶¶ 4–7.

68. Between October and December 2024, Mr. Boulhjar attended several MCHs before an IJ in Las Vegas. *Id.* ¶ 4. At each hearing, a different interpreter appeared telephonically, but none of them spoke Tachelhit; instead, they spoke other languages, such as Arabic, Moroccan Darija, Berber, and Tamazigt. *Id.* ¶ 5. Consequently, Mr. Boulhjar's removal proceedings were terminated on December 13, 2024, due to the immigration court's failure to find an adequate interpreter. *Id.* ¶ 6.

69. Following the termination of his proceedings, ICE initially informed Mr. Boulhjar that he would be released on parole. *Id.* However, in February 2024, he was transferred to NWIPC. *Id.*

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

70. DHS issued Mr. Boulhjar another Notice to Appear for removal proceedings. *Id.* ¶ 7. He has since appeared for hearings before the Tacoma Immigration Court three times, on March 24, April 4, and May 1, 2025. *Id.* ¶ 7. Each time, the hearing was again continued for lack of an adequate interpreter. *Id.*

71. Mr. Boulhjar faces months—and likely a year or more—of continued detention just to present his asylum application due to EOIR's failure to provide him with interpretation at his hearings.

72. The Tacoma Immigration Court considers Mr. Boulhjar subject to mandatory detention under § 1225(b). Accordingly, he has never received a hearing before a neutral decisionmaker where ICE was required to justify his continued detention by clear and convincing evidence.

Mouloud Ben Khadaj

73. Mouloud Ben Khadaj is a noncitizen from Morocco who entered the United States in September 2024. Khadaj Decl. ¶ 1. Mr. Khadaj fled Morocco based on his fear of persecution there. *Id*. ¶ 3.

74. He was apprehended shortly after entering the United States without inspection. *Id.* ¶ 1. Upon information and belief, DHS issued Mr. Khadaj an expedited removal order under 8 U.S.C. § 1225(b)(1).

75. Since September 2024, Mr. Khadaj has been detained in California, Nevada, and Washington. *Id.* ¶¶ 4, 6. In total, he has been detained for over seven months. *Id.* ¶ 1.

76. Mr. Khadaj was scheduled to receive a CFI while detained at a facility in Las Vegas, Nevada. *Id.* ¶ 4. However, the asylum officer was not able to conduct the interview due to the lack of an interpreter for Mr. Khadaj's native language, a subdialect of Tachelhit. *Id.* ¶¶ 2, 4.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

77. DHS subsequently vacated Mr. Khadaj's expedited removal order and placed him directly into removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 5.

78. In the months since Mr. Khadaj was placed into removal proceedings, he has *never* received a hearing before an immigration judge with an interpreter who could translate into his native language and dialect. *Id.* ¶¶ 5–6. He has attended around nine MCHs in both Nevada and Washington, but each hearing was continued due to the lack of an adequate interpreter. *Id.* ¶ 5. He does not understand what is happening in his removal proceedings or these hearings. *Id.*

79. Mr. Khadaj faces months—and likely a year or more—of continued detention just to present his asylum application due to EOIR's failure to provide him with interpretation at his hearings.

80. The Tacoma Immigration Court considers Mr. Khadaj subject to mandatory detention under § 1225(b). Accordingly, he has never received a hearing before a neutral decisionmaker where ICE was required to justify his continued detention by clear and convincing evidence.

LEGAL FRAMEWORK

81. The Due Process Clause of the Fifth Amendment provides Petitioners with important protection against arbitrary detention without procedures to determine if someone is a flight risk or danger. As the Supreme Court has explained, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

82. The INA authorizes three basic forms of detention for noncitizens in removal proceedings. The first is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a). Individuals in § 1226(a) detention are entitled to a bond

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c). Second, the INA also provides for mandatory detention for noncitizens in expedited removal proceedings and others arriving in the United States. *Id.* § 1225(b). Last, the statute provides for detention for noncitizens who are subject to a final removal order. *Id.* § 1231(a)(6). *See also Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1111–13 (W.D. Wash. 2019) (providing overview of INA's detention authorities).

83. The Supreme Court has addressed the constitutionality of mandatory detention on one occasion. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court denied a facial challenge to mandatory detention under § 1226(c), which asserted that the statute was unconstitutional because it imposed mandatory detention without a custody hearing. However, the Supreme Court emphasized that such detention was typically "brief" in length and lasted "roughly a month and a half in the vast majority of cases . . . and about five months in the minority of cases in which the [non-citizen] chooses to appeal." 538 U.S. at 513, 530. The Court also upheld the statute in part because it was based on a voluminous congressional record that supported the need for detention as to individuals convicted of certain crimes. *See id.* at 518–20.

84. Notably, Justice Kennedy—who provided the fifth vote for the majority on the constitutional issue—penned a concurrence that reasoned detention may eventually become sufficiently lengthy that a hearing to justify continued detention is constitutionally required. 538 U.S. at 532–33 (Kennedy, J., concurring).

85. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Supreme Court again addressed the mandatory provision of § 1226(c), as well as the one at § 1225(b). There, the Court held that, as a matter of statutory interpretation, those sections did not require the government to provide a detainee subject to prolonged detention with a bond hearing. Significantly, the Court

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

did not reach the constitutional question of whether the Due Process Clause requires an opportunity to test the government's justification for detention once detention becomes prolonged.

86. Since the Supreme Court's *Rodriguez* decision, the Ninth Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

87. To guard against such arbitrary detention and to guarantee the right to liberty, due process requires "adequate procedural protections" that ensure the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

88. In the immigration context, the Supreme Court has recognized two primary purposes for civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*; *see also Demore*, 538 U.S. at 522, 528. The government may not detain a noncitizen based on other justifications.

89. As a result, where the government detains a noncitizen for a prolonged period while the noncitizen pursues a substantial defense to removal or claim to relief, due process requires an individualized hearing before a neutral decisionmaker to determine whether detention remains reasonably related to its purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an "individualized determination as to [a noncitizen's] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

unjustified"); *cf. Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–50 (1972) (noting that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (observing, in Eighth Amendment context, that "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

90. Detention without a bond hearing is unconstitutional when it becomes prolonged. *See, e.g.*, *Rodriguez*, 909 F.3d at 256; *see also Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months.").

91. The recognition that six months constitutes a substantial period of confinement that qualifies as prolonged detention is deeply rooted in our legal tradition. With only a few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by a jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil*, 407 U.S. at 249, 250–52 (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment).

92. In addition, both the Supreme Court and Ninth Circuit have long made clear that a significant time in civil detention warrants an opportunity to test the legality of that detention. As the Ninth Circuit has explained in the pretrial detention context—which, like here, involves civil detention—"[i]t is undisputed that at some point, [civil] detention can 'become excessively

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

prolonged, and therefore punitive,' resulting in a due process violation." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987)). That is especially true where the initial detention decision lacks significant (or any) safeguards, as is the case here. *See O'Connor v. Donaldson*, 422 U.S. 563, 574-75 (1975) ("Nor is it enough that Donaldson's original confinement was founded upon a constitutionally adequate basis, if in fact it was, because even if his involuntary confinement was initially permissible, it could not constitutionally continue after that basis no longer existed."); *McNeil*, 407 U.S. at 249–50 (explaining that as the length of civil detention increases, more substantial safeguards are required).

93. These principles have "[o]verwhelmingly[] [led the] district courts that have considered the constitutionality of prolonged mandatory detention—including . . . other judges in this District[ ] [to] agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Diaz Reyes v. Wolf*, No. C20-0377-JLR-MAT, 2020 WL 6820903, at *3 (W.D. Wash. Aug. 7, 2020) (internal quotation marks omitted), *R&R adopted as modified*, No. C20-0377JLR, 2020 WL 6820822 (W.D. Wash. Nov. 20, 2020); *see also Parada Calderon v. Bostock*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 1047578, at *4 (W.D. Wash. Jan. 17, 2025) (similar), *R&R adopted in part, rejected in part*, No. 2:24-CV-01619-MJP-GJL, 2025 WL 879718 (W.D. Wash. Mar. 21, 2025). Indeed, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990–91 (9th Cir. 2017)

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

94. Courts assessing whether a detained noncitizen is entitled to a hearing as a matter of due process typically employ one of two tests: a multi-factor test or the test found in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Courts in this district generally employ a multi-factor test. *See Djelassi v. ICE Field Off. Dir.*, 434 F. Supp. 3d 917, 929 (W.D. Wash. 2020); *Banda*, 385 F. Supp. 3d at 1106. Petitioners merit bond hearings under either test.

95. Under the multi-factor test, courts look to "(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings cause[d] by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal." *Banda*, 385 F. Supp. 3d at 1106 (citation omitted). The length of detention is the "most important factor." *Id.* at 1118.

96. The application of this test demonstrates Petitioners are entitled to a bond hearing. They have been detained well over six months and yet have not even received an *initial* MCH in their removal proceedings. Once that initial MCH happens, removal proceedings are likely to take six months to a year or more just to receive a decision on their asylum applications. And if Petitioners are ordered removed, BIA appeals typically take many additional months to complete. If the BIA the appeal is denied, Petitioners are entitled to file a petition for review with the Ninth Circuit Court of Appeals, which is likely to last another year. Thus, Petitioners all are likely to face at least another year of detention, if not much longer.

97. Courts regularly afford noncitizens a bond hearing after facing similar periods of detention. *See, e.g.*, *Banda*, 385 F. Supp. 3d at 1118 (noting that 17 months of detention was a "very long time" that "strongly favor[ed] granting a bond hearing); *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) ("Petitioner has been in immigration detention since

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

September 10, 2021—approximately one year. District courts have found shorter lengths of detention pursuant to § 1226(c) without a bond hearing to be unreasonable."); *Gonzalez v. Bonnar*, No. 18-cv-05321-JSC, 2019 WL 330906, at *5 (N.D. Cal. Jan. 25, 2019) (detention of just over a year that would last several more months favored granting bond hearing); *Martinez v. Clark*, No. C18-1669-RAJ-MAT, 2019 WL 5968089, at *1 (W.D. Wash. May 23, 2019), *R&R adopted*, No. 18-CV-01669-RAJ, 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019) (detention of 13 months favored granting bond hearing); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (same, for 7 months); *Liban M.J. v. Sec'y of DHS*, 367 F. Supp. 3d 959, 963 (D. Minn. 2019) (same, for 12 months).

98. The punitive and restrictive conditions at NWIPC also support affording Petitioners a hearing. Those conditions "are similar . . . to those in many prisons and jails," despite Petitioners' ostensible status as "civil" detainees. *Diaz Reyes*, 2020 WL 6820903, at *7 (alteration in original); *see also Parada Calderon*, 2025 WL 879718, at *4 (concluding this factor favored petitioner). Indeed, for all intents and purposes, NWIPC is a prison. Petitioners are confined inside in a restrictive setting and currently receive *no* outdoor time at all. Cardozo ¶ 14; Fernandes ¶ 13. Petitioners also report crowded conditions, leading to fights and tension among other detained persons. Cardozo Decl. ¶ 15; Fernandes Decl. ¶ 14. In addition, Petitioners have uniformly attested to poor food and hygiene at NWIPC. Cardozo Decl. ¶¶ 12–13; Fernandes Decl. ¶ 14; Belhaj Decl. ¶ 9; Boulhjar ¶ 10; Khadaj Decl. ¶ 13. Several of the petitioners also report difficulty in accessing medical care due to translation issues. Belhaj Decl. ¶ 8; Boulhjar ¶ 9; Khadaj Decl. ¶ 11. Further, Mr. Khadaj testifies to repeated sexual harassment, which he cannot report because none one can understand him. Khadaj ¶¶ 8–10. Reports by independent outside entities have similarly documented problems with food, medical neglect, cleanliness, and

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

other issues at NWIPC. *See* Univ. of Wash. Ctr. for Hum. Rts., Conditions at the Northwest Detention Center (last accessed May 6, 2025), https://jsis.washington.edu/humanrights/projects/human-rights-at-home/conditions-at-the-northwest-detention-center/.

99. The delay factor also favors Petitioners. Petitioners have not caused any delay in their cases, while EOIR has repeatedly failed to provide the basic due process protection of an interpreter at Petitioners' many continued MCHs.

100. Due process and the INA demand that every noncitizen in removal proceedings be afforded a full and fair opportunity to present their case. *See, e.g.*, 8 U.S.C. § 1229a(b); *Jacinto v. INS*, 208 F.3d 725, 727 (9th Cir. 2000) ("Due process requires that a[] [noncitizen] receive a full and fair hearing."); *Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002) (noting that any denial of one of the procedural protections set forth in § 1229a(b)(4) violates the "constitutional guarantee of due process").

101. That right to a full and fair hearing includes the right to adequate interpretation. *See, e.g.*, *Perez-Lastor v. INS*, 208 F.3d 773, 777–78 (9th Cir. 2000). By failing to provide that interpretation while subjecting Petitioners to ongoing, prolonged detention, Respondents effectively deny that right altogether, because it will eventually force Petitioners to give up their cases when their removal proceedings never progress.

102. Finally, Petitioners intend to make a good faith defense to removal based on the harm they are likely to face in their countries of origin. However, until now, they have been precluded from even hearing about their rights to apply for asylum and protection in immigration court, because EOIR has not provided an interpreter in their native language.

103. As a result, due process demands that Petitioners receive a bond hearing.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

104. Notably, this Court has previously issued habeas relief in nearly identical circumstances. In *Banda*, the noncitizen's case was repeatedly continued because an adequate interpreter was not present at the petitioner's hearings in removal proceedings. *See* 385 F. Supp. 3d at 1109–10. The Court there concluded that the noncitizen was entitled to a bond hearing after months of delays in the case due to the lack of an interpreter. *Id.* at 1107, 1120.

105. A similar result occurs under application of the test in *Mathews*. That test looks to (1) the petitioner's interest, (2) the value of additional procedural protections, and (3) any burden on the government in providing additional protections. 424 U.S. at 335.

106. Here, Petitioners' interest is at its zenith: they have a powerful interest in their physical liberty, as the Supreme Court, the Ninth Circuit, and this Court have repeatedly made clear. *See supra* ¶¶ 80, 85–92.

107. Second, additional protections are warranted here. The statute affords Petitioners no protection whatsoever and requires their detention. *See* 8 U.S.C. § 1225(b)(2).

108. Finally, any burden on the government is minimal. Bond proceedings are short, informal hearings where an IJ typically receives records and testimonial evidence at a hearing and issues an oral ruling. Such hearings do not entail any significant expenditure of government resources. *See* Imm. Ct. Practice Manual ch. 9.3(e).

109. Accordingly, application of the *Mathews* test also requires a bond hearing to justify further detention.

110. Due process also requires certain minimal procedures at Petitioners' bond hearings. First, the government must bear the burden of proof by clear and convincing evidence to justify continued detention. Second, the decisionmaker must consider available alternatives to

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

detention. Finally, if the government cannot meet its burden, a decisionmaker must assess a noncitizen's ability to pay a bond when determining the appropriate conditions of release.

111. To justify prolonged immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). The same is true for other contexts in which the Supreme Court has permitted civil detention; in those cases, the Court has relied on the fact that the government bore the burden of proof by at least clear and convincing evidence. *See Salerno*, 481 U.S. at 750, 752 (upholding pre-trial detention where the detainee was afforded a "full-blown adversary hearing," requiring "clear and convincing evidence" before a "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee); *see also Banda*, 385 F. Supp. 3d 1120–21 (requiring application of clear and convincing evidence standard).

112. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews*.

113. First, prolonged incarceration deprives noncitizens of a profound liberty interest—one that always requires some form of procedural protections. *See Foucha*, 504 U.S. at 80 ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

114. Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 762–63 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding," including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, Respondents detain noncitizens in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.

115. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

116. In light of these considerations, "[t]he overwhelming majority of courts to consider the question . . . have concluded that imposing a clear and convincing standard would be most consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted). Courts in this district regularly impose this requirement. *See Banda*, 385 F. Supp. 3d 1120–21 (requiring clear and convincing evidence); *Djelassi*, 434 F. Supp. 3d at 929 (same); *Diaz Reyes*, 2020 WL 6820903, at *9 (same).

117. Due process also requires that a neutral decisionmaker consider available alternatives to detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. Detention is not reasonably related to this purpose if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program (ISAP)—has achieved compliance rates close to 100 percent. *See*

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

Hernandez, 872 F.3d at 991 (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

118. Due process likewise requires consideration of a noncitizen's ability to pay a bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, in determining the appropriate conditions of release for immigration detainees, due process requires "consideration of financial circumstances and alternative conditions of release" to prevent against detention based on poverty. *Id.*

CLAIM FOR RELIEF
28 U.S.C. § 2241
Violation of Fifth Amendment Right to Due Process

119. Petitioners allege and incorporate by reference the paragraphs above.

120. 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.

121. Petitioners' detention—which has lasted over six months without a hearing in their own language—constitutes prolonged detention and is not reasonably related to a legitimate government purpose.

122. To justify Petitioners' ongoing prolonged detention, due process requires an individualized hearing before a neutral decisionmaker where the government must establish that continued detention is justified by clear and convincing evidence of flight risk or danger and that no alternatives to detention could sufficiently mitigate any risk that does exist.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

123. For these reasons, Petitioners' ongoing detention violates the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a Writ of Habeas Corpus and order Petitioners' release unless Respondents hold a custody hearing for each Petitioner before an immigration judge in their native language and dialect within 14 days. At that hearing, the government must establish by clear and convincing evidence that Petitioners present a risk of flight or danger and that no alternative to detention can mitigate any risk that his release would present. The Court should further order that if the government cannot meet its burden, the immigration judge must order Petitioners' release on appropriate conditions of supervision, taking into account their ability to pay a bond;

c. Alternatively, issue a Writ of Habeas Corpus and hold a hearing before this Court if warranted; determine that Petitioners' detention is not justified because the government has not established by clear and convincing evidence that Petitioners present a risk of flight or danger in light of available alternatives to detention; and order Petitioners' release, with appropriate conditions of supervision if necessary, taking into account his ability to pay a bond;

d. Issue a declaration that, as applied in this case, 8 U.S.C. § 1225(b) and Petitioners' prolonged detention under that statute violate the Due Process Clause of the Fifth Amendment;

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

e. Award Petitioners attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Respectfully submitted this 8th of May, 2025.

s/ Matt Adams
Matt Adams, WSBA No. 28287
matt@nwirp.org

s/ Leila Kang
Leila Kang, WSBA No. 48048
leila@nwirp.org

s/ Glenda M. Aldana Madrid
Glenda M. Aldana Madrid, WSBA No. 46987
glenda@nwirp.org

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
aaron@nwirp.org

NORTHWEST IMMIGRANT
RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 957-8611

Counsel for Petitioners