

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
COVINGTON DIVISION**

BEATA SIEMIONKOWICZ,

Petitioner,

v.

JAMES A. DALEY, *in his official capacity
as Campbell County Jailer,*
TODD BLANCHE, *in his official capacity as
Attorney General of the United States,*
MARKWAYNE MULLIN, *in his official
capacity as Secretary of the Department of
Homeland Security,*
DAVID J. VENTURELLA, *in his official
capacity as Acting Director of Immigration
and Customs Enforcement,* and
SAMUEL OLSON, *in his official capacity as
Field Office Director, Chicago Field Office,
Immigration and Customs Enforcement,*

Respondents.

Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS**

PETITION FOR A WRIT OF HABEAS CORPUS

1. Petitioner Beata Siemionkowicz has spent over a year detained by Immigration & Customs Enforcement (ICE), without the opportunity to have a bond hearing where the government bore the burden of establishing that she poses either a flight risk or a danger to the community. This violates her constitutional rights, and she petitions this Court to issue a Writ of Habeas Corpus, ordering Respondents to show cause within three (3) days, providing their reasons, if any, as to why her detention is lawful and not a violation of the Fifth Amendment's Due Process Clause. 28 U.S.C. § 2243.

STATEMENT OF THE CASE

2. Although federal law allows for the arrest and detention of noncitizens pending a final removal decision, *see* 8 U.S.C. § 1226(a), the right to detain is limited by important constitutional safeguards. The Constitution—specifically, the Fifth Amendment’s Due Process Clause—prohibits detention without due process of law.

3. Petitioner has been detained for over 12 months, even though Respondents have not established by clear and convincing evidence that she is a danger to the community or a flight risk—a violation of her Fifth Amendment right to be free from detention without due process.

4. Because Petitioner is detained in violation of her constitutional rights, she asks this Court to issue a Writ of Habeas Corpus ordering Respondents to release her subject to any conditions this Court deems appropriate and necessary, or in the alternative, to release her within seven days unless the government schedules a custody redetermination hearing before an impartial immigration judge:

- (i) at which, to continue detention, the government bears the burden to establish by clear and convincing evidence that Petitioner presents a flight risk or danger to the community, after considering all alternatives to detention that could mitigate any risk that her release would present; and
- (ii) after which, the immigration judge must order Petitioner's release on appropriate conditions of supervision, taking into account her ability to pay a bond, unless the immigration judge issues a contemporaneous written decision setting forth the reasons for finding that Petitioner is a flight risk or a danger to the community.

JURISDICTION AND VENUE

5. Petitioner Beata Siemionkowicz is currently detained in Respondents' custody at the Campbell County Detention Center in Kentucky, where she has been detained for over one year.

6. This Court has jurisdiction under Article I, Section 9, clause 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241(a)(3); and 28 U.S.C. § 1331 (federal question jurisdiction).

7. Venue in this Court is proper because Petitioner is in custody within this district. *See* 28 U.S.C. § 2241(d).

PARTIES

8. **Petitioner Beata Siemionkowicz** is a native and citizen of Poland. She has been detained in DHS custody since approximately August 2, 2025.

9. **Respondent James A. Daley** is sued in his official capacity as the Jailer of Campbell County Detention Center, where Petitioner is detained. He is the immediate custodian of Petitioner.

10. **Respondent Todd Blanche** is named in his official capacity as Acting U.S. Attorney General. Respondent Blanche is a legal custodian of Petitioner.

11. **Respondent Markwayne Mullin** is named in his official capacity as Secretary of the Department of Homeland Security. Mullin is responsible for the enforcement of immigration laws and supervises Respondent Venturella. He is a legal custodian of Petitioner.

12. **Respondent David Venturella** is named in his official capacity as Acting Director of Immigration and Customs Enforcement. Respondent Venturella is responsible for overseeing immigration detention, supervises Respondent Olson, and is a legal custodian of Petitioner.

13. **Respondent Samuel Olson** is sued in his official capacity as the Field Office Director of the Chicago Field Office of U.S. Immigration and Customs Enforcement (ICE), which has administrative jurisdiction over Petitioner's detention. He is a legal custodian of Petitioner with authority to authorize her release.

STATEMENT OF FACTS

14. Beata Siemionkowicz is a 57-year-old lawful permanent resident of the United States who has resided in the Chicagoland area for nearly 30 years. During that time, she raised two daughters, now adults, who were both born in the United States and are U.S. citizens.

15. Petitioner is a citizen of Poland who has lived in the United States since she was admitted on a B1 visitor visa in November 1995. She became a lawful permanent resident in 2003. *See Ex. 1 (NTA).*

16. Petitioner was arrested by ICE on August 2, 2025, outside her daughter's home. She has now been detained in immigration detention for over 12 months, mostly at the Campbell County Detention Center, in conditions indistinguishable from criminal incarceration.

17. Petitioner has never received a custody hearing where the burden was on the government to justify her detention.

18. Prior to her arrest, Petitioner worked many years as a caregiver for several individuals.

19. In her three decades in the United States, Petitioner has two misdemeanor convictions for retail theft, both in Lake County, Illinois. In 2005, she was convicted of retail theft under \$150 and sentenced to court supervision.¹ In 2011, she was convicted of retail theft under

¹ Court Supervision is not a conviction under Illinois law but may count as one for immigration purposes.

\$300 and sentenced to conditional discharge. She has not been convicted or arrested for any crimes for over 15 years. *See* Ex. 2 (Bond Hearing Order).

20. Over a year ago in August 2025, Immigration Judge Kelly Johnson in the Memphis Immigration Court denied Petitioner’s request for bond, determining that she did not prove that she was not a “flight risk.” During that hearing, the burden of proof was placed on Petitioner and not the government. *See* Ex. 2 (Order on Bond Hearing).

21. In December 2025, IJ Johnson likewise denied Petitioner’s application for cancellation of removal for permanent residents. The decision is currently on appeal.

EXHAUSTION

22. Petitioner had a custody determination hearing and was denied release.

23. Unlike other legal remedies, the exhaustion of administrative or other remedies is not required to file a Habeas petition. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) (“Where Congress specifically mandates, exhaustion is required... But where Congress has not clearly required exhaustion, sound judicial discretion governs.”) (citation omitted).

24. Furthermore, “[t]he Sixth Circuit has noted that due process challenges,” like the one raised herein, “generally do not require exhaustion because the BIA cannot review constitutional challenges.” *Sanchez Alvarez v. Noem*, 807 F.Supp.3d 777, 784 (W.D. Mich. 2025) (citing *Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006)).

25. Further, EOIR lacks authority to rule on the constitutionality of the immigration statutes, and both the immigration courts and BIA lack jurisdiction to interpret issues beyond the scope of the INA and its corresponding regulations. *Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (BIA 2020) (“[W]e do not have the authority to entertain constitutional challenges to the statutes and regulations we administer.”); *Matter of G-K-*, 26 I. & N. Dec. 88 (BIA 2013) (same);

Matter of Valdovinos, 18 I. & N. Dec. 343, 345–46 (BIA 1982) (disclaiming jurisdiction to rule on the constitutionality of an immigration statute).

26. Requesting EOIR to review the constitutionality of Petitioner’s detention therefore “would be to demand a futile act.” *Houghton v. Shafer*, 392 U.S. 639, 640 (1968) (finding that requiring the petitioner to exhaust administrative remedies was futile because the Attorney General already decided that the rules were appropriately applied to the petitioner). No administrative mechanisms exist through which Petitioner can seek a neutral review of whether her ongoing and prolonged detention is justified. Further exhaustion is not required.

27. EOIR, which houses the nation’s immigration courts and appellate body, has already rejected the argument that DHS must shoulder the burden by clear and convincing evidence to justify further detention in bond hearings. *See Matter of R-A-V-P-*, 27 I. & N. at 803 (concluding that the noncitizen’s “assertion that the DHS should bear the burden . . . lacks merit because we have clearly held that [the statute] places the burden of proof on the [noncitizen] to show that he merits release on bond”) (emphasis added) (citations omitted); *Matter of Fatahi*, 26 I. & N. Dec. 791, 795 n. 3 (BIA 2016) (finding that the BIA has “consistently held that [noncitizens] have the burden to establish eligibility for bond while proceedings are pending”).

28. Petitioner has not appealed the denial of release on bond to the BIA because it would be futile to do so, given that Petitioner is seeking to vindicate her constitutional rights. *Azalyar v. Raycraft*, 814 F.Supp.3d 926, 931 n.5 (S.D. Ohio 2026) (declining “to impose a prudential exhaustion requirement here, both as a matter of discretion and because this petition presents a substantial constitutional question” (internal quotation omitted)); *Gonzalez v.*

O'Connell, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that “the BIA has no jurisdiction to adjudicate constitutional issues.”).

LEGAL BACKGROUND

29. Petitioner has been detained in ICE custody for over 12 months, even though the government has never established that her detention is justified. Her prior custody redetermination hearing violated due process because the burden was unconstitutionally placed on her to demonstrate that she was *not* a danger to the community or a flight risk. *See, e.g., Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). Moreover, whatever process was due to justify her initial detention, she has now been detained for over 12 months, which, by any measure, constitutes unreasonably prolonged detention and necessitates either her release, subject to appropriate conditions, or a new custody hearing where the burden is on the government to justify her continued detention by clear and convincing evidence. *See, e.g., Velasco Lopez v. Decker*, 978 F.3d 842, 855-57 (2d Cir. 2020); *Lopez-Campos v. Raycraft*, 175 F.4th 713, 734 (6th Cir. 2026).

A. The Due Process Clause Forbids Immigration Detention Without Adequate Procedural Protections.

30. It is “well-established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This fundamental due process protection “applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.* at 693. Under these due process principles, detention must “bear [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

31. Due process therefore 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.” *Id.* at 690 (internal quotations omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 538.

32. Moreover, habeas review based on due process contentions is “not limited to evaluating the lawfulness of detention when it is first imposed,” but may extend to “the legality of [noncitizens’] ongoing detention.” *Velasco Lopez*, 978 F.3d at 850. This requirement for ongoing review flows from the recognition that, “whatever process might be required in the initial decision to detain, ‘as the period of . . . confinement grows,’ so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention.” *Id.* at 853 (quoting *Zadvydas*, 533 U.S. at 701).

B. Due Process Requires a New Custody Redetermination Hearing Because § 1226(a) Custody Redetermination Hearings Unconstitutionally Place the Burden on the Noncitizen.

33. The immigration judge found that Petitioner was subject to detention under 8 U.S.C. § 1226(a), the statutory provision authorizing discretionary detention of noncitizens pending removal decisions. When a noncitizen is not subject to mandatory detention, the Attorney General has discretion to continue to detain the individual or may release the individual either on “bond of at least \$1500,” or on conditional parole. 8 U.S.C. § 1226(a)(1)-(2). After ICE makes the initial decision to detain a noncitizen, the noncitizen may request a custody redetermination hearing from an IJ. Although § 1226(a) does not indicate whether the government or the noncitizen bears the burden of proof in a custody redetermination hearing, the BIA has held that “[t]he burden

is on the alien to show to the satisfaction of the [IJ] that he or she merits release on bond.” *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

34. Numerous federal courts have held that placing the burden on the noncitizen in § 1226(a) custody redetermination hearings violates due process. *See, e.g., Hernandez-Lara*, 10 F.4th at 41 (“[U]nder section 1226(a), due process requires the government to either (1) prove by clear and convincing evidence that [a noncitizen] poses a danger to the community or (2) prove by a preponderance of the evidence that [a noncitizen] poses a flight risk.”); *Hulke v. Schmidt*, 572 F. Supp. 3d 593, 602 (E.D. Wisc. 2021) (“join[ing] the ‘growing chorus of district courts’ that have ‘concluded that due process requires the government bear the burden of proof at § 1226(a) bond hearings’”); *Quintanilla v. Decker*, No. 21 CIV. 417 (GBD), 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021) (noting that all courts in the district to address the question have held that, “where the Government seeks to detain a noncitizen pursuant to its discretionary authority under Section 1226(a), the Due Process Clause requires the Government to bear the burden of proving, by clear and convincing evidence, that the noncitizen poses a risk of flight or danger to the community.”); *Aparicio-Villatoro v. Barr*, No. 6:19-CV-06294-MAT, 2019 WL 3859013, at *7 (W.D.N.Y. Aug. 16, 2019) (“[T]he Fifth Amendment’s Due Process Clause requires the Government to bear the burden of proving, by clear and convincing evidence, that detention is justified at a bond hearing under § 1226(a).”); *Darko v. Sessions*, 342 F. Supp. 3d 429, 436 (S.D.N.Y. 2018) (“[I]n accordance with every court to have decided this issue, the Court concludes that due process requires the government to bear the burden of proving that detention is justified at a bond hearing under § 1226(a).” (internal quotations and citation omitted)); *Linares Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (same); *Diaz-Calderon v. Barr*, 535 F. Supp. 3d 669, 676 (E.D. Mich. 2020) (“Detention based on dangerousness, without an adequate

showing by the government, would be antithetical to the Fifth Amendment’s Due Process Clause protections.” (internal quotation marks omitted)); *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211, at *12 (D. Colo. July 2, 2019) (finding the noncitizen “is entitled to an individualized bond redetermination hearing in which the Government is required to establish that continued detention [under § 1226(a)] is justified by clear and convincing evidence”).

35. Relying on a long line of Supreme Court and circuit court jurisprudence in analogous areas of law where the government seeks to detain people, such as civil commitment and pretrial detention, these courts have held that petitioners’ due process rights were violated when the burden was placed on them in § 1226(a) custody redetermination hearings. *See, e.g., Hernandez-Lara*, 10 F.4th at 41 (placing the burden on the government at a § 1226(a) bond hearing to prove a noncitizen is a flight risk “balances the competing interests as fairly as it does in a criminal bail hearing”); *E.V. v. Raycraft*, No. 4:25-CV-2069, 2025 WL 3122837, at *12 (N.D. Ohio Nov. 7, 2025) (“Many courts also place the burden on the Government to show by clear and convincing evidence that a noncitizen should remain in detention. The reasoning for this burden shift is because the [noncitizen’s] potential loss of liberty is so severe . . . he should not have to share the risk of error equally.” (internal quotations and citation omitted)); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *11 (W.D. Tex. Oct. 21, 2025) (“The consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner’s continued detention by clear and convincing evidence.”) (collecting cases).

36. Notably, while constitutional challenges to the placement of the burden on the noncitizen in § 1226(a) custody redetermination hearings have often arisen in the context of prolonged detention, *see infra* ¶¶ 56-57, the decisions cited above stand for the broader proposition

that placing the burden on the noncitizen in § 1226(a) custody redetermination hearings is unconstitutional regardless of the length of detention. *See Hernandez-Lara*, 10 F.4th at 39 (holding that “the government must bear the burden of proving dangerousness or flight risk in order to continue detaining a noncitizen under section 1226(a)”); *Quintanilla*, 2021 WL 707062, at *3 (granting habeas petition and ordering new custody redetermination hearing with burden on the government to justify detention by clear and convincing evidence, where petitioner had been detained for three months).

37. Although Petitioner has been afforded a custody determination hearing in the past, she has never had a hearing where *the government* bore the burden to prove she is a flight risk or a danger to the community. *See Guerra*, 24 I. & N. Dec. at 40. On this basis alone, this Court should follow numerous others in holding that due process requires a new custody redetermination hearing in which the government bears the burden to justify further detention by clear and convincing evidence. *See Hernandez-Lara*, 10 F.4th at 41; *Quintanilla*, 2021 WL 707062, at *3; *Aparicio-Villatoro*, 2019 WL 3859013, at *7; *Darko*, 342 F. Supp. 3d at 436; *Linares Martinez*, 2018 WL 5023946, at *5.

C. Due Process Requires a New Custody Redetermination Hearing Because Siemionkowicz’s 12-Month Detention Has Become Unreasonably Prolonged.

38. Even if this Court declines to reach the issue of whether it is broadly unconstitutional to place the burden on the noncitizen in custody redetermination hearings generally, Petitioner is entitled to a new custody redetermination hearing where the burden is on the government to justify her continued detention because her 12-month detention has become unconstitutionally prolonged.

39. Courts have overwhelmingly held that, regardless of what process is due for an initial, short-term period of detention, once detention has become prolonged, due process requires

a custody redetermination hearing in which the government bears the burden of proving by clear and convincing evidence that further detention is justified. *See, e.g., Velasco Lopez*, 978 F.3d at 855-57; *M.T.B. v. Byers*, Civ. No. 2:24-028-DCR, 2024 WL 3881843, at *5 (ordering bond hearing where petitioner detained under § 1226(c) “has already been deprived of a liberty interest based on his prolonged detention” and noting that “[r]equiring him to bear the burden of proof at his bond hearing would create an unacceptably high . . . risk of erroneous deprivation of his liberty interest.” (internal quotations omitted)); *Jimenez v. Decker*, No. 21-CV-880 (VSB), 2021 WL 826752, at *6 (S.D.N.Y. Mar. 3, 2021); *Ibarra-Garcia v. U.S. Immigr. & Customs Enf’t*, No. C20-740-RAJ-MLP, 2020 WL 7264872, at *4 (W.D. Wash. Oct. 9, 2020), *report and recommendation adopted*, 2020 WL 7260534 (W.D. Wash. Dec. 10, 2020); *Arana v. Decker*, No. 20 CV 4104-LTS, 2020 WL 7342833, at *5 (S.D.N.Y. Dec. 14, 2020); *J.G. v. Warden, Irwin Cty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1335 (M.D. Ga. 2020); *Diaz-Ceja v. McAleenan*, No. 19-CV-00824-NYW, 2019 WL 2774211, at *10 (D. Colo. July 2, 2019), *appeal dismissed*, No. 19-1321, 2019 WL 8128251 (10th Cir. Nov. 5, 2019).

40. Prolonged detention without justification by the government runs so afoul of the Constitution that courts have found that it violates due process even for those subject to mandatory detention under 1226(c). *See, e.g., M.T.B.*, 2024 WL 3881843, at *5; *Vargas v. Beth*, 378 F. Supp. 3d 716, 727 (E.D. Wis. 2019) (“When the length and conditions of detention raise due process concerns, the government must prove that continued detention is necessary to achieve its purpose, i.e. to protect against flight or dangerousness.”), *appeal dismissed*, No. 19-1965, 2019 WL 6133750 (7th Cir. July 18, 2019); *Reid v. Donelan*, 390 F. Supp. 3d 201, 215 (D. Mass. 2019), *aff’d in part*, 17 F.4th 1 (1st.Cir. 2021); *Portillo v. Hott*, 322 F. Supp. 3d 698, 709 (E.D. Va. 2018); *Baez-Sanchez v. Kolutwenzew*, 360 F. Supp. 3d 808, 815–16 (C.D. Ill. 2018); *Misquitta v. Warden*

Pine Prairie ICE Processing Ctr., 353 F. Supp. 3d 518, 524–25 (W.D. La. 2018); *Hernandez v. Decker*, No. 18-CV-5026 (ALC), 2018 WL 3579108, at *10 (S.D.N.Y. July 25, 2018) (collecting cases).

41. In addressing the merits of a detainee’s due process claim based on prolonged detention, and whether the constitution requires additional procedural protections, courts typically apply the three-factor balancing test provided in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See, e.g., Velasco Lopez*, 978 F.3d at 851; *Resendiz v. Noem*, No. 4:25-CV-00159-GNS, 2025 WL 3527284, at *6 (W.D. Ky. Dec. 9, 2025) (“To determine whether a civil detention violates a detainee’s due process rights, a court applies the three-part balancing test articulated in [] *Mathews v. Eldridge*.”). In addition, “[t]he Sixth Circuit has discussed that the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), regarding the adequacy of process, applies in the context of immigration detention.” *Quintero v. Noem*, No. 1:25-CV-1394, 2025 WL 3458504, at *8 (W.D. Mich. Dec. 2, 2025). *See U.S. v. Silvestre-Gregorio*, 983 F.3d 848, 852–56 (6th Cir. 2020) (“If this court has previously addressed the due-process claim, then we are bound by precedent; if the claim is an issue of first impression, then we generally apply the three-factor test the Supreme Court set out in *Mathews v. Eldridge*[.]”).

42. The three *Mathews* factors are: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Velasco Lopez*, 978 F.3d at 335. “The ultimate balance involves a determination as to when, under our constitutional system, judicial-type procedures must be imposed upon administrative action.” *Id.* at 348.

43. Petitioner’s detention, which has now surpassed 12 months, is well within and in fact exceeds the length of detention that courts have considered “prolonged.” *See, e.g., Banegas v. Decker*, No. 21-CV-2359 (VEC), 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) (finding 9 months in detention to be prolonged); *Ashemuke v. ICE Field Off. Dir.*, No. C23-1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report and recommendation adopted*, 2024 WL 1676681 (W.D. Wash. Apr. 18, 2024) (11 months); *Pedro O. v. Garland*, 543 F. Supp. 3d 733, 749 (D. Minn. 2021) (11 months); *Maya v. Acuff*, No. 21-cv-755, 2021 WL 4903166 (S.D. Ill. Oct. 21, 2021) (10 months); *Misquitta*, 353 F. Supp. 3d at 524-25 (10 months). The *Mathews* factors weigh strongly in favor of a determination that Petitioner has suffered an unconstitutionally prolonged detention without a custody redetermination hearing consisting of adequate procedural safeguards.

i. The Private Interest in Being Free from Imprisonment

44. For Petitioner, the first *Mathews* factor, the private interest affected by the official action, is “the most significant liberty interest there is – the interest in being free from imprisonment.” *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Garcia v. Raycraft*, No. 1:25-CV-1281, 2025 WL 3122800, at *7 (W.D. Mich. Nov. 7, 2025) (“There is no dispute that Petitioner has a significant private interest in avoiding detention, as one of the ‘most elemental of liberty interests’ is to be free from detention.” (quoting *Hamdi*, 542 U.S. at 529)); *Velazquez v. Olson*, No. CV 25-205-DLB, 2026 WL 27349, at *8 (E.D. Ky. Jan. 5, 2026) (“Indeed, ‘[f]reedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause[.]’” (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992))). “Case after case instructs us that in this country liberty is the norm and detention ‘is the

carefully limited exception.” *Velasco Lopez*, 978 F.3d at 851 (quoting *U.S. v. Salerno*, 481 U.S. 739, 755 (1987)).

45. The deprivation of Petitioner’s liberty has been, and continues to be, substantial. Petitioner has spent over 12 months detained at Campbell County Detention Center, where she is held alongside criminally charged defendants and those serving criminal sentences, *despite* the fact that her detention is not the necessary result of a criminal adjudication. *Compare* 8 U.S.C. § 1226(a) *with id.* § 1226(c). *cf. Azalyar*, 2026 WL 30741, at *3 (“Respondents do not argue, and there is no question here, that [petitioner] does not fit into the categories outlined in § 1226(c). Therefore, Respondents cannot support a presumption of flight risk or danger.”). She has been incarcerated for 12 months “under conditions indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes.” *Velasco Lopez*, 978 F.3d at 850; *see also Garcia*, 2025 WL 3122800, at *7 (“The Court may also consider Petitioner’s conditions of confinement, i.e., whether a detainee is held in conditions indistinguishable from criminal incarceration.” (internal quotation marks omitted)); *Del Villar v. Noem*, No. 4:25-CV-00137-GNS, 2025 WL 3231630, at *6 (W.D. Ky. Nov. 19, 2025) (“When assessing the private interest, courts consider the detainee’s conditions of confinement, namely, whether a detainee is held in conditions indistinguishable from criminal incarceration.” (alteration and quotation omitted)).

46. If Petitioner is not released on bond, her detention has no end in sight. *See Hernandez-Lara*, 10 F.4th at 29 (“The exact length of detention under § 1226(a) is impossible to predict and can be quite lengthy.”). Petitioner’s immigration case is on appeal to the BIA. If the BIA denies all relief, she will have to appeal to the Sixth Circuit. *See Velasco Lopez*, 978 F.3d at 852 (“Detention under § 1226(a) is frequently prolonged because it continues until all proceedings

and appeals are concluded[,]” including “all inter-agency and federal court appeals, even where an individual has prevailed and the Government appeals.”); *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015) (holding that where a detention period extends beyond six months, including where an appeals process contributes to the duration, the “balance of interests at stake tip[s] in favor of [the detainee]’s liberty interests”); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) (“[W]e will not hold [petitioner’s] appeals and applications for discretionary relief against him.”).

47. When the Supreme Court has upheld detention “it has been careful to emphasize the importance of the relatively short duration of detention.” *Velasco Lopez*, 978 F.3d at 852 (citing *Demore*, 538 U.S. at 529, 123 (noting the relative brevity of detention under § 1226(c), which lasted roughly a month and a half in 85% of cases, and an average of four months in the minority of cases in which the noncitizen chose to appeal)). Petitioner has already been incarcerated for 12 months—nearly three times the longest duration considered by the *Demore* Court. Yet, if this Court does not intervene, Petitioner will languish in detention even longer—potentially much longer—without the government ever having demonstrated that her detention is justified. Accordingly, the Court should find that the private interest factor tips “sharply” in Petitioner’s favor. *Velasco Lopez*, 978 F.3d at 852 (upholding district court’s decision ordering a custody redetermination hearing with the burden on the government, when petitioner had been detained for 15 months).

ii. The Risk of Erroneous Deprivation of Liberty and the Probable Value of Additional or Substitute Procedural Safeguards

48. The second factor, the risk of an erroneous deprivation of Petitioner’s liberty absent a new hearing with the burden on the government, also weighs in favor of Petitioner. “Procedural due process rules are shaped by the risk of error inherent in the truth-finding process.” *Velasco*

Lopez, 978 F.3d at 852 (citing *Mathews*, 424 U.S. at 344). Accordingly, at this stage of the *Mathews* calculus, “the primary interest is not that of the Government but the interest of the detained individual.” *Id.* (citing *Hamdi*, 542 U.S. at 530).

49. Here, the risk of erroneous deprivation of Petitioner’s rights absent another hearing, this time with the burden reallocated, is high. Petitioner has been held for 12 months in ICE custody, including 9 months since her initial custody redetermination hearing. Her only prior hearing unconstitutionally assigned the risk of error to her, rather than to the government. *See Velasco Lopez*, 978 F.3d at 856–57. As courts have recognized, “proving a negative (especially a lack of danger) can often be more difficult than proving a cause for concern.” *Hernandez-Lara*, 10 F.4th at 31. Consequently, a detained individual “often starts out behind the eight ball in a bond proceeding, and the opportunities for prejudicial error abound.” *Id.*

50. In addition, Petitioner has now “tendered a factual record that the Government might find difficult to overcome if it had to demonstrate affirmatively that [Petitioner] poses a risk of flight or danger to the community necessitating his continued detention.” *Jimenez*, 2021 WL 826752, at *9 (internal citation and quotation omitted). Accordingly, “the risk of erroneous deprivation to [Petitioner] under the status quo is significant, and she stands a far better chance of securing bail if the burden of proof is instead placed on the Government.” *Jimenez*, 2021 WL 826752, at *9.

iii. The Government’s Interest

51. The third factor in the *Mathews* analysis is the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. While the government has an interest in ensuring that noncitizens do not abscond and do not pose a danger to others, the government has no legitimate

interest in the prolonged detention of noncitizens who pose neither such risk, or where such risk can be mitigated by less restrictive alternatives to detention. “On the contrary, shifting the burden of proof to the Government to justify continued detention promotes the Government’s interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854.

52. Shifting the burden of proof to the government to justify continued detention would not impose an undue administrative burden on the government, which has significant resources and access to sources of information that are not available to a detainee. *See Velasco Lopez*, 978 F.3d at 855 (“ICE and DHS can access the records of other federal agencies and local law enforcement and routinely do so for purposes of the merits proceedings.”); *Arana*, 2020 WL 7342833, at *5 (noting that any possible justification for placing the burden on the noncitizen near the commencement of detention “has diminished greatly at this point several months later, where the Government has had an opportunity to put in motion its considerable informational and investigative resources and the merits proceedings have been completed at the trial level”).

53. Moreover, “the longer detention continues, the greater the need for the Government to justify its continuation.” *Velasco Lopez*, 978 F.3d at 855. Petitioner has already been detained without justification by the government for over 12 months.

54. Finally, “[i]n striking the appropriate due process balance the final factor to be assessed is the public interest.” *Mathews*, 424 U.S. at 347. This consideration again cuts strongly in Petitioner’s favor. As the Second Circuit stated,

[w]hen the Government incarcerates individuals it cannot show to be a poor bail risk for prolonged periods of time, as in this case, it separates families and removes from the community breadwinners, caregivers, parents, siblings, and employees. The Government articulates no public interest that any of this serves and we see none.

Velasco Lopez, 978 F.3d at 855.

55. Petitioner has been incarcerated—locked away from her family—for over 12 months, despite the fact that the government has never demonstrated that she poses a danger to the community or a flight risk, much less that she poses such a risk now. This Court should follow numerous others in finding that due process requires that the government prove that Petitioner’s detention is justified by clear and convincing evidence.

Additional Procedural Protections Required by Due Process

56. For the reasons described above, this Court should follow nearly every court to consider the issue and order a new custody hearing where the burden is on the government to establish, by clear and convincing evidence, that Petitioner’s continued detention is justified and that any risk articulated by the government cannot be mitigated by appropriate conditions of release. Where the Supreme Court has permitted pretrial detention for criminal defendants or civil detention, it has relied on the fact that the government bore the burden of proof at least by clear and convincing evidence. *See Salerno*, 481 U.S. at 750 (upholding pretrial detention following a “full-blown adversary hearing,” requiring “clear and convincing evidence” and 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 (post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee).

57. Accordingly, whether courts broadly hold that the burden structure of § 1226(a) custody redetermination hearings is unconstitutional, or that prolonged detention without additional process is unconstitutional as applied to individual habeas petitioners, the consensus is that the Constitution requires, at a minimum, a new custody hearing where the burden

is on the government to demonstrate, by clear and convincing evidence, that further detention is justified.

58. Due process also requires consideration of alternatives to detention. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose where release conditions could mitigate any risk. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Here, Petitioner has been detained for over 12 months despite the fact that the immigration court has never considered whether conditions of release could achieve the same purpose—or put that burden on the government to show otherwise. Petitioner, during the pendency of her immigration court proceedings, is committed to remaining in Chicagoland and updating the appropriate courts of any change in her address. *Cf. Galan-Reyes v. Acoff*, 460 F. Supp. 3d 719, 725 (S.D. Ill. 2020) (ordering immediate release of habeas petitioner after 8-month detention and requiring that petitioner reside at a certain residence, provide his address and telephone information, quarantine for 14 days, and comply with any “Alternatives to Detention (ATD)” imposed by the Department of Homeland Security).

59. This Court should either order Petitioner's release, subject to any conditions this Court deems necessary and appropriate, *see Galan-Reyes*, 460 F. Supp. 3d at 725, or in the alternative, order a new custody redetermination hearing in which the burden is on the government to establish, by clear and convincing evidence, not merely that her continued detention serves a purpose, but also that any risk posed by her release cannot be mitigated by alternatives to detention.

60. Further, if a bond is granted, due process requires consideration of Petitioner's ability to pay the bond. *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017) (concluding that due process likely requires “consideration of the detainee's financial circumstances, as well

as of possible alternative release conditions . . . to ensure that the conditions of their release will be reasonably related to the governmental interest in ensuring their appearance at future hearings.”).

61. Finally, IJs issue written decisions on a request for release on bond only if either party appeals the decision. *See* Immigration Court Practice Manual § 9.3(e)(vii). However, due process requires that a denial of release on bond be accompanied by a contemporaneous set of written findings justifying the denial. *See De la Lana-Castellon v. INS*, 16 F.3d 1093, 1096, 1098 (10th Cir. 1994) (holding that due process requires a “decision maker to actually consider the evidence and argument that a party presents” and issue a non-boilerplate decision); Judge Henry J. Friendly, *Some Kind of Hearing*, 123 Penn. L. Rev. 1267, 1292 (1975) (calling a “written statement of reasons” an essential element of a constitutionally fair hearing and a “powerful preventive of wrong decisions”).

CLAIM FOR RELIEF

COUNT ONE

(Violation of the Fifth Amendment to the U.S. Constitution)

62. Petitioner re-alleges and incorporates by reference the paragraphs above.

63. The Fifth Amendment’s Due Process Clause forbids the government from depriving any person of liberty “without due process of law.”

64. Due Process requires that Petitioner be released from detention, subject to appropriate conditions of release, or in the alternative, that she receive a new custody redetermination hearing with additional procedural protections.

65. Petitioner’s initial custody redetermination hearing violated Due Process. Although Petitioner has in the past been afforded a custody redetermination hearing, she never has had a hearing where the government bore the burden to prove she is a flight risk or a danger to the

community. On this basis alone, this Court should hold that due process requires her release, subject to appropriate conditions, or that she receive a new custody hearing with additional procedural protections, including that the government bears the burden to justify further detention by clear and convincing evidence.

66. Alternatively, Petitioner is entitled to release, subject to appropriate conditions, or a new custody redetermination hearing where the burden is on the government to justify her continued detention by clear and convincing evidence, because her 12-month detention has become unreasonably prolonged.

67. This Court should thus grant Petitioner's petition for habeas corpus and order that Respondents either release her from detention or provide her the process due under the Constitution.

PRAYER FOR RELIEF

Petitioner Beata Siemionkowicz respectfully requests that this Court:

- i. Assume jurisdiction over this matter;
- ii. Hold a hearing if necessary;
- iii. Issue a writ of habeas corpus; determine that Petitioner's detention is not justified because she has been detained for over 12 months without due process of law; and order her release, with appropriate conditions of supervision;
- iv. In the alternative, issue a writ of habeas corpus and order Petitioner's release within seven days unless Respondents schedule a custody redetermination hearing before an impartial immigration judge at which, to continue detention, the government bears the burden to establish by clear and convincing evidence that Petitioner presents a flight risk or danger to the community, and that any risk posed by her

release cannot be mitigated by conditions of release; and the immigration judge must order Petitioner's release on appropriate conditions of release, taking into account her ability to pay a bond, unless the immigration judge issues a contemporaneous written decision stating the reasons for finding that Petitioner presents a risk that cannot be mitigated by alternatives to detention;

- v. Award Petitioner her costs and reasonable attorneys' fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and,
- vi. Grant such further relief as this Court deems just and proper.

Dated: September 9, 2026

/s/Bethany N. Baxter
One of Petitioner's Attorneys

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**pro hac vice motion forthcoming*

Attorneys for Petitioner

VERIFICATION

I, Hirsh M. Joshi, am counsel for Petitioner Beata Siemionkowicz in the above-captioned matter. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Petition for Writ of Habeas Corpus and that the factual statements contained therein are true and correct to the best of my knowledge, information, and belief, based upon my review of the administrative record, correspondence and communications with Petitioner, and other documents and information in my possession.

I make this verification on Petitioner's behalf rather than Petitioner's own verification because Petitioner is presently detained at the Campbell County Detention Center, Kentucky, which is located a substantial distance from counsel's office, and the logistical difficulty of transmitting documents to and obtaining a signed original from Petitioner at that facility within the time available does not permit Petitioner's personal verification of this Petition prior to filing.

Executed on this 8th day of September.

/s/Hirsh M. Joshi

Hirsh M. Joshi

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