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FILED

AUG 08 2024

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY CLERK

6 PRO SE

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

9
10 Sokhean Keo

11 [Full Name / Nombre Completo]

12 (A# 027-35-1321)

14 Petitioner,

15 v.

16 Warden of the Mesa Verde ICE Processing
17 Center, Current or Acting Field Office
18 Director, San Francisco Field Office,
19 United States Immigration and
20 Customs Enforcement; Current or Acting
21 Director, United States Immigration and
22 Customs Enforcement; Current or Acting
23 Secretary, United States Department of
24 Homeland Security; and Current or
25 Acting United States Attorney General,
26 Respondents.

Case No. 1:24-cv-00919-HBK (HC)

17 Petition for Writ of Habeas Corpus

RECEIVED

AUG 08 2024

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY CLERK

23
24 **PETITION FOR WRIT OF HABEAS CORPUS**
25 PURSUANT TO 28 U.S.C. § 2241

26 Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to
27 remedy Petitioner's unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner¹ is currently detained by Immigration and Customs Enforcement (“ICE”) at the January 6, 2023 [escriba el nombre del centro de detención donde está detenido] detention center pending removal proceedings.

2. Petitioner has been detained in immigration custody for over 18 [escriba el número de meses que ha estado detenido] months even though no neutral decisionmaker—whether a federal judge or immigration judge (“IJ”)—has conducted a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk.

9 3. Petitioner's prolonged detention without a hearing on danger and flight risk
10 violates the Due Process Clause of the Fifth Amendment.

11 4. Petitioner therefore respectfully requests that this Court issue a writ of habeas
12 corpus, determine that Petitioner's detention is not justified because the government has not
13 established by clear and convincing evidence that Petitioner presents a risk of flight or danger in
14 light of available alternatives to detention, and order Petitioner's release, with appropriate
15 conditions of supervision if necessary, taking into account Petitioner's ability to pay a bond.

16 5. Alternatively, Petitioner requests that the Court issue a writ of habeas corpus and
17 order Petitioner's release within 30 days unless Respondents schedule a hearing before an IJ
18 where: (1) to continue detention, the government must establish by clear and convincing
19 evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives
20 to detention that could mitigate any risk that Petitioner's release would present; and (2) if the
21 government cannot meet its burden, the IJ shall order Petitioner's release on appropriate
22 conditions of supervision, taking into account Petitioner's ability to pay a bond.

¹ Petitioner respectfully requests that the Court use his initials, rather than his full last name, in any opinion in his case, as suggested by the Committee on Court Administration and Case Management of the Judicial Conference of the United States. See Memorandum Re: Privacy Concern Regarding Social Security & Immigration Opinions (May 1, 2018), available at https://www.uscourts.gov/sites/default/files/18-cv-1-suggestion_cacm_0.pdf; see also *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 n.1 (N.D. Cal. Apr. 14, 2021).

JURISDICTION

6. Petitioner is detained in the custody of Respondents at Mesa Verde [escriba el nombre del centro de detención donde está detenido] detention center.

7. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure Act. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

8. Congress has preserved judicial review of challenges to prolonged immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C. §§ 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); *see also id.* at 876 (Breyer, J., dissenting). (“8 U.S.C. § 1252(b)(9) . . . by its terms applies only with respect to review of an order of removal”) (internal quotation marks and brackets omitted).

VENUE

9. Venue is proper in this District under 28 U.S.C. § 1391 because at least one Respondent is in this District and because Petitioner is presently detained under the authority of Warden of the Mesa Verde ICE Processing Center and the Director of the San Francisco ICE Field Office, Respondents in this action.

10. Respondent Warden of the Mesa Verde ICE Processing Center directs the detention center in Bakersfield, CA where Petitioner is in custody.

11. Respondent Acting or Current Director of the San Francisco ICE Field Office resides in this district for venue purposes because their official duties are performed in this district. Mesa Verde is controlled by the San Francisco Field Office of ICE Enforcement and Removal Operations (“ERO”). The San Francisco Field Office of ICE ERO is responsible for carrying out ICE’s detention operations at this detention center and for adjudicating requests for release from those detained there.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to

// (Remainder of page intentionally left blank)

1 show cause (“OSC”) to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28
2 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return “within
3 *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
4 (emphasis added).

5 13. Courts have long recognized the significance of the habeas statute in protecting
6 individuals from unlawful detention. The Great Writ affords “*a swift and imperative remedy* in
7 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis
8 added); *see also Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (explaining that habeas statute
9 requires expeditious determination of petitions).

PARTIES

10 14. Petitioner is a noncitizen currently detained by Respondents pending ongoing
11 removal proceedings.

12 15. Respondent Warden of the Mesa Verde ICE Processing Center directs the
13 detention center in Bakersfield, CA where Petitioner is in custody. They are a legal custodian of
14 Petitioner. They are named in their official capacity.

15 16. Respondent Acting or Current Attorney General of the United States is the most
16 senior official in the U.S. Department of Justice (“DOJ”). They have the authority to interpret the
17 immigration laws and adjudicate removal cases. They delegate this responsibility to the Executive
18 Office for Immigration Review (“EOIR”), which administers the immigration courts and the
19 Board of Immigration Appeals (“BIA”). They are named in their official capacity.

20 17. Respondent Acting or Current Field Office Director of the San Francisco ICE Field
21 Office is responsible for the San Francisco Field Office of ICE with administrative jurisdiction
22 over Petitioner’s case. They are a legal custodian of Petitioner and are named in their official
23 capacity.

24 18. Respondent Acting or Current Director of ICE is responsible for ICE’s policies,

1 practices, and procedures, including those relating to the detention of immigrants. They are a
2 legal custodian of Petitioner and are named in their official capacity.

3 **STATEMENT OF FACTS**

4 19. Petitioner is a noncitizen currently detained by Respondents pending immigration
5 removal proceedings. Petitioner is pursuing the following claims in removal proceedings [*escriba*
6 *todos los aplicaciones de alivio que usted esta presentando en su caso de deportacion*]:

7 C.A.T — Adjustment of Status
8 (212) h waiver

9
10 20. Petitioner has been detained in DHS custody since January 6, 2023
11 [*escriba el mes y año en que comenzó su detención por ICE*].

12 21. Petitioner has not been provided a bond hearing before a neutral decisionmaker to
13 determine whether their prolonged detention is justified based on danger or flight risk.

14 22. Pursuant to 8 U.S.C. § 1226(c), the Immigration Court lacks jurisdiction and
15 authority to provide Petitioner with a bond hearing to determine whether Petitioner's detention is
16 justified. There is no statutory or regulatory pathway for Petitioner to seek a bond hearing before
17 a neutral decisionmaker.

18 23. Absent intervention by this Court, Petitioner cannot and will not be provided with
19 a bond hearing by a neutral decisionmaker to assess the propriety of Petitioner's continued
20 detention.

21 24. Additional facts that support Petitioner's entitlement to relief are [*escriba datos*
22 *adicionales sobre su detención que deseé que el juez sepa*]:

23 I have not given a chance to present a bond hearing with a lawyer.
24 Therefore, my bond hearing was postponed. I believe prolonged detention
25 is unfitted for my health. I have chronic migraine, chronic kidney disease,
26 high cholesterol, high blood pressure, and an ear surgery that needed to be
27 fix. Being prolonged detained my health are declining rapidly. I have

1 been detained for 18 plus month. I was convicted for assault with a
2 firearm when I was 21 year old. I am now 47 year old living with
3 regret for the wrong choices I made 27 year ago. I am profoundly
4 sorry for what I have done to an innocent family. I have come to
5 understand I can not change the past I can only change the person
6 I was. There is nothing I can say or do to reverse the stupidity I
7 have caused upon my victims. In my incarceration I have molded
8 myself into a better man. Moreover, I have accomplished many re-
9 habilitation classes. I graduated my G.E.D, I have 3 college
10 degree First: liberal Art Social & behavioral sciences, Second: Art
11 & Humanities, Third Psychology degree AA for transfer. I am in an
12 Honor Society member #20838840 in PHI THETA KAPPA and I am on
13 a president & Dean list. Right now I am still developing monumental
14 growth by going to CRC classes at Mesa Verde. My mom 80 plus
15 year needed to be taken care of everyday, she have many health issue
16 with high blood pressure, high cholesterol, mobility impaired, partially
17 blinded and many more. My son served 6 plus year in the army that
18 needed me physically and mentally especially when he get deploy I can
19 take care my 4 month old grandson. I graduate with a 3.85 GPA
20 in college with many rehabilitation classes. My incarceration have
21 taught me the value of life. I graduated as entrepreneur in Baylor
22 University for career readiness. Most importantly I am a better version
23 of myself. My goals is to get in a 4 year University and get my
24 Psychology degree, help my community and family. I have trans-
25 formed myself into a better father, a son, a brother and a better man.
26 I have prepared for this moment importantly my fiancee Sidaury Chum
27 got an open heart surgery lately and needed me and we are getting married
28

LEGAL BACKGROUND

2 25. ““It is well established that the Fifth Amendment entitles [noncitizens] to due
3 process of law in deportation proceedings.”” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
4 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government
5 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the
6 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718
7 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
8 unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection
9 applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721
10 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be
11 free from detention that is arbitrary or capricious”).

12 26. Due process requires “adequate procedural protections” to ensure that the
13 government’s asserted justification for physical confinement “outweighs the individual’s
14 constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690
15 (internal quotation marks omitted). In the immigration context, the Supreme Court has
16 recognized only two valid purposes for civil detention—to mitigate the risks of danger to the
17 community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

18 27. Due process requires that the government provide bond hearings to noncitizens
19 facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due
20 process” because “[b]ail is basic to our system of law.” *Jennings*, 138 S. Ct. at 862 (Breyer, J.,
21 dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory
22 detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner’s
23 concession of deportability and the Court’s understanding at the time that detentions under
24 Section 1226(c) are typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has
25 been detained for a prolonged period or is pursuing a substantial defense to removal or claim to
26 relief, due process requires an individualized determination that such a significant deprivation of
27 liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to

1 his risk of flight and dangerousness" may be warranted "if the continued detention became
 2 unreasonable or unjustified"); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding
 3 that detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir.*,
 4 *Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that "lesser safeguards may be appropriate"
 5 for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the
 6 Eighth Amendment context, "the length of confinement cannot be ignored in deciding whether
 7 [a] confinement meets constitutional standards"); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir.
 8 2021) (holding that "the Due Process Clause imposes some form of reasonableness limitation
 9 upon the duration of detention" under section 1226(c)) (internal quotation marks omitted).

10 **A. Detention That Exceeds Six Months Without A Bond Hearing Is
 11 Unconstitutional.**

12 28. Detention without a bond hearing is unconstitutional when it exceeds six months.
 13 *See Demore*, 538 U.S. at 529-30 (upholding only "brief" detentions under Section 1226(c),
 14 which last "roughly a month and a half in the vast majority of cases in which it is invoked, and
 15 about five months in the minority of cases in which the [noncitizen] chooses to appeal");
 16 *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for
 17 more than six months."); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1091 (9th Cir. 2022) ("[O]nce
 18 the [noncitizen] has been detained for approximately six months, continuing detention becomes
 19 prolonged" (cleaned up) (quoting *Diouf v. Napolitano*, 634 F.3d 1081, 1091 (9th Cir. 2011)));
 20 *Rodriguez v. Nielsen*, Case No. 18-CV-04187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7,
 21 2019) ("[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond
 22 hearing").

23 29. The recognition that six months is a substantial period of confinement—and is the
 24 time after which additional process is required to support continued incarceration—is deeply
 25 rooted in our legal tradition. With few exceptions, "in the late 18th century in America crimes
 26 triable without a jury were for the most part punishable by no more than a six-month prison
 27 term." *Duncan v. Louisiana*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the

1 Supreme Court has found six months to be the limit of confinement for a criminal offense that a
 2 federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*,
 3 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a
 4 benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407
 5 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without
 6 individualized inquiry for civil commitment). The Court has likewise recognized the need for
 7 bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110
 8 (2010) (holding that 14 days must elapse following invocation of *Miranda* rights before re-
 9 interrogation is permitted); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding
 10 that a probable cause hearing must take place within 48 hours of warrantless arrest).

11

12 **B. Even Absent A Bright-Line Six-Month Standard, An Individualized Bond
 13 Hearing Is Required When Detention Becomes Unreasonably Prolonged.**

14 30. Petitioner’s detention, without *any* individualized review, is unreasonable under
 15 the *Mathews v. Eldridge* due process test. Alternatively, Petitioner prevails under the multi-factor
 16 reasonableness test the Third Circuit adopted in *German Santos v. Warden Pike Correctional
 Facility*, 965 F.3d 203, 211 (3d Cir. 2020).

17 31. Each year, thousands of noncitizens are incarcerated for lengthy periods pending
 18 the resolution of their removal proceedings. *See Jennings*, 138 S. Ct. at 860 (Breyer, J.,
 19 dissenting) (observing that class members, numbering in the thousands, had been detained “on
 20 average one year” and some had been detained for several years). For noncitizens who have
 21 some criminal history, their immigration detention often dwarfs the time spent in criminal
 22 custody, if any. *Id.* (“between one-half and two-thirds of the class served [criminal] sentences
 23 less than six months”).

24 32. Petitioner faces severe hardships while detained by ICE. Petitioner is held in a
 25 locked down facility, with limited freedom of movement and access to Petitioner’s family or
 26 support network: “[T]he circumstances of their detention are similar, so far as we can tell,
 27 to those in many prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord*

1 *Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 478 (3d Cir. 2015); *Ngo v. INS*, 192
2 F.3d 390, 397-98 (3d Cir. 1999); *Sopo v. U.S. Att'y Gen.*, 825 F.3d 1199, 1218, 1221 (11th Cir.
3 2016). “And in some cases the conditions of their confinement are inappropriately poor”
4 including, for example, “invasive procedures, substandard care, and mistreatment, *e.g.*,
5 indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case
6 of one detainee, a multiday lock down for sharing a cup of coffee with another detainee.”
7 *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Press Release, Off. of Inspector Gen.,
8 Dept. of Homeland Sec., *DHS OIG Inspection Cites Concerns With Detainee Treatment and*
9 *Care at ICE Detention Facilities* (Dec. 14, 2017)); *see also* Tom Dreisbach, *Government's own*
10 *experts found 'barbaric' and 'negligent' conditions in ICE detention*, NPR (Aug. 16, 2023, 5:01
11 AM) (reporting on the ““negligent” medical care (including mental health care), ‘unsafe and
12 ‘filthy’ conditions, racist abuse of detainees, inappropriate pepper-spraying of mentally ill
13 detainees and other problems that, in some cases, contributed to detainee deaths” contained in
14 inspection reports prepared by experts from the Department of Homeland Security’s Office for
15 Civil Rights and Civil Liberties after examining detention facilities between 2017 and 2019).
16 Individuals at Golden State Annex Detention Facility have described receiving food
17 contaminated with insects (including cockroaches, flies, and spiders), hair, and other foreign
18 objects. *See* California Collaborative for Immigrant Justice, *Starving for Justice: The Denial of*
19 *Proper Nutrition in Immigration Detention*, at p. 7 (April 2022), *available at*
20 https://www.ccijustice.org/_files/ugd/733055_c43b1cbb3da341b894045940622a6dc3.pdf. At
21 Mesa Verde Detention Facility, over 80% of detained individuals who responded to one survey
22 said they had received expired food. *Id.*

23 33. The *Mathews* test for procedural due process claims balances: (1) the private
24 interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest
25 and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v.*
26 *Eldridge*, 424 U.S. 319, 335 (1976); *see also* *Salesh P.*, 2022 WL 17082375, at *8 (collecting
27 cases where judges in the Northern District of California applied the *Mathews* factors to a habeas
28

1 petitioner's due process claims). Here, each factor weighs in Petitioner's favor, requiring this
2 Court to promptly hold a hearing to evaluate whether the government can justify their ongoing
3 detention.

4 34. First, Petitioner indisputably has a weighty interest in their liberty, the core
5 private interest at stake here. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment... lies at
6 the heart of the liberty [the Due Process Clause] protects."). Petitioner, who is being held in
7 "incarceration-like conditions," has an overwhelming interest here, regardless of the length of his
8 immigration detention, because "any length of detention implicates the same" fundamental
9 rights. *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at *6 (N.D. Cal. Dec.
10 22, 2020).

11 35. Second, Petitioner will suffer the erroneous risk of deprivation of their liberty
12 without an individualized evidentiary hearing. The risk of erroneous deprivation of their liberty
13 is high, as they have been detained since January 6, 2023 [escriba el mes y año en
14 que comenzó su detención por ICE] without any evaluation of whether the government can
15 justify detention under their individualized circumstances. "[T]he risk of an erroneous
16 deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial."
17 *Diouf*, 634 F.3d at 1092. Conversely, "the probable value of additional procedural safeguards—
18 an individualized evaluation of the justification for his detention—is high, because Respondents
19 have provided virtually no procedural safeguards at all." *Jimenez v. Wolf*, No. 19-cv-07996-NC,
20 2020 WL 510347, *3 (N.D. Cal. Jan. 30, 2020) (granting habeas petition for person who had
21 been detained for one year without a bond hearing).

22 36. Third, the government's interest is very low in continuing to detain Petitioner
23 without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at
24 stake here is not the government's ability to continue to detain Petitioner, but rather the
25 government's ability to continue to detain them for months on end without any individualized
26 review. *See Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v.*
27 *Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). The

1 cost of providing an individualized inquiry is minimal. *See Henriquez*, 2022 WL 2132919, at *5.
2 The government has repeatedly conceded this fact. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d
3 762, 777 (N.D. Cal. 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019);
4 *Marroquin Ambriz*, 420 F. Supp. 3d at 964.

5 37. In sum, the *Mathews* factors establish that Petitioner is entitled to an evidentiary
6 hearing before a neutral adjudicator. Unsurprisingly, courts applying these standards in this
7 District and Circuit have repeatedly held that prolonged detention without a hearing before a
8 neutral adjudicator violates procedural due process for individuals who were held under the same
9 detention statute. See, e.g., *Romero Romero v. Wolf*, No. 20-CV-08031-TSH, 2021 WL 254435,
10 at *2, *5 (N.D. Cal. Jan. 26, 2021) (holding that the petitioner's detention under § 1226(c) of just
11 over one year without a custody hearing was "not compatible with due process" and granting
12 habeas); *Jimenez*, 2020 WL 510347, at *1, *2, *4 (holding that the petitioner's detention under §
13 1226(c) of just over one year without a custody hearing violated his due process rights and
14 granting habeas); *Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D.
15 Cal. Jan. 25, 2019) (holding that the petitioner's detention under § 1226(c) for just over one year
16 without a custody hearing violates his due process rights and granting habeas). This Court should
17 so hold as well.

18 38. *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), does not disturb this
19 result. In *Rodriguez Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of
20 a noncitizen detained under a different detention statute, 8 U.S.C. § 1226(a), did not violate
21 procedural due process. 53 F.4th at 1195. Unlike § 1226(c), § 1226(a) mandates that detained
22 individuals receive an individualized bond hearing at the outset of detention and provides for
23 further bond hearings upon a material change in circumstances. *See* 8 C.F.R. § 1003.19€. The
24 panel's decision in *Rodriguez Diaz* was predicated on the immediate and ongoing availability of
25 this administrative process under § 1226(a). 53 F.4th at 1202 ("Section 1226(a) and its
26 implementing regulations provide extensive procedural protections that are unavailable under
27 other detention provisions . . ."). Unlike the petitioner in *Rodriguez Diaz*, Petitioner has no
28

1 statutory access to individualized review of his detention.

2 39. Alternatively, courts that apply a reasonableness test have considered four non-
 3 exhaustive factors in determining whether detention is reasonable. *German Santos v. Warden*
 4 *Pike Cnty. Corr. Facility*, 965 F.3d 203, 210-22 (3d Cir. 2020). The reasonableness inquiry is
 5 “highly fact-specific.” *Id.* at 210. “The most important factor is the duration of detention.” *Id.* at
 6 211; *see also Gonzalez v. Bonnar*, No. 18-CV-05321-JSC, 2019 WL 330906, at *1, *5 (N.D.
 7 Cal. Jan. 25, 2019) (concluding that the petitioner’s detention under § 1226(c) for just over one
 8 year without a custody hearing weighed strongly in favor of finding detention unreasonable, and
 9 violated his due process rights and granting habeas). Duration is evaluated along with “all the
 10 other circumstances,” including (1) whether detention is likely to continue, (2) reasons for the
 11 delay, and (3) whether the conditions of confinement are meaningfully different from criminal
 12 punishment. *Id.* at 211.

13 40. As noted, Petitioner has been detained for a substantial length of time, *supra* ¶ 20
 14 and Petitioner’s detention is likely to continue as Petitioner asserts their right to seek
 15 immigration relief, *supra* ¶ 19. Noncitizens should not be punished for pursuing “legitimate
 16 proceedings” to seek relief. *See Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3
 17 (N.D. Cal. Jan. 8, 2020) (“[I]t ill suits the United States to suggest that [Petitioner] could shorten
 18 his detention by giving up these rights and abandoning his asylum application.”). Thus, courts
 19 should not count a continuance against the noncitizen when they obtained it in good faith to
 20 prepare their removal case, including efforts to obtain counsel. *See Hernandez Gomez*, 2023 WL
 21 2802230, at *4 (“The duration and frequency of these requests [for continuances] do not
 22 diminish his significant liberty interest in his release or his irreparable injury of continued
 23 detention without a bond hearing.”). Moreover, Petitioner’s confinement and experiences at a
 24 facility operated by a private, for-profit prison contractor, demonstrate that their conditions of
 25 confinement are not meaningfully different from those of criminal punishment. *See supra* ¶¶ 10,
 26 24, 32.

27
 28

1 **C. At Any Hearing, The Government Must Justify Ongoing Detention By Clear
2 And Convincing Evidence.**

3 41. At a bond hearing, due process requires certain minimum protections to ensure
4 that a noncitizen's detention is warranted: the government must bear the burden of proof by
5 clear and convincing evidence to justify continued detention, taking into consideration available
6 alternatives to detention; and, if the government cannot meet its burden, the noncitizen's ability
7 to pay a bond must be considered in determining the appropriate conditions of release.

8 42. To justify prolonged immigration detention, the government must bear the
9 burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk.

10 *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d
11 762, 781 (9th Cir. 2020), *rev'd on other grounds by Garland v. Aleman Gonzalez*, 142 S. Ct.
12 2057, 213 L. Ed. 2d 102 (2022) ("Jennings's rejection of layering [the clear and convincing
13 burden of proof standard] onto § 1226(a) *as a matter of statutory construction* cannot . . .
14 undercut our constitutional due process holding in *Singh*."); *Doe v. Garland*, No. 3:22-CV-
15 03759-JD, 2023 WL 1934509, at *2 (N.D. Cal. Jan. 10, 2023) (applying *Singh* and holding that
16 the government shall bear the burden in a constitutionally required bond hearing in the §
17 1226(c) context); *Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D.
18 Cal. Mar. 31, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-CV-01330-WHO, 2023 WL
19 2802230, at *4 (N.D. Cal. Apr. 4, 2023) (same); *Martinez Leiva v. Becerra*, No. 23-CV-02027-
20 CRB, 2023 WL 3688097, at *9 (N.D. Cal. May 26, 2023); *I.E.S. v. Becerra*, No. 23-CV-03783-
21 BLF, 2023 WL 6317617, at *10 (N.D. Cal. Sept. 27, 2023) (same); *Singh Grewal v. Becerra*,
22 No. 23-CV-03621-JCS, 2023 WL 6519272, at *8 (N.D. Cal. Oct. 4, 2023) (same); *Gomez v.*
23 *Becerra*, No. 23-CV-03724-JCS, 2023 WL 6232236, at *9 (N.D. Cal. Sept. 25, 2023) (same);
24 *Henriquez v. Garland*, No. 23-CV-01025-AMO, 2023 WL 6226374, at *4 (N.D. Cal. Sept. 25,
25 2023) (same); *Rodriguez Picazo v. Garland*, No. 23-CV-02529-AMO, 2023 WL 5352897, at *7
26 (N.D. Cal. Aug. 21, 2023) (same).

27 43. Where the Supreme Court has permitted civil detention in other contexts, it has
28 relied on the fact that the Government bore the burden of proof by at least clear and convincing

1 evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial
2 detention after a “full-blown adversary hearing” requiring “clear and convincing evidence” and
3 “a neutral decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down
4 civil detention scheme that placed burden on the detainee); *Zadydas*, 533 U.S. at 692 (finding
5 post-final-order custody review procedures deficient because, *inter alia*, they placed burden on
6 detainee).

7 44. The requirement that the government bear the burden of proof by clear and
8 convincing evidence is also supported by application of the three-factor balancing test from
9 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). First, “an individual’s private interest in
10 ‘freedom from prolonged detention’ is ‘unquestionably substantial.’” *See Rodriguez Diaz*, 53
11 F.4th at 1207 (citing *Singh*, 638 F.3d at 1208). Second, the risk of error is great where the
12 government is represented by trained attorneys and detained noncitizens are often unrepresented
13 and may lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 763 (1982) (requiring
14 clear and convincing evidence at parental termination proceedings because “numerous factors
15 combine to magnify the risk of erroneous factfinding” including that “parents subject to
16 termination proceedings are often poor, uneducated, or members of minority groups” and “[t]he
17 State’s attorney usually will be expert on the issues contested”). Moreover, detained noncitizens
18 are incarcerated in prison-like conditions that severely hamper their ability to obtain legal
19 assistance, gather evidence, and prepare for a bond hearing. *See supra* ¶ 32. Third, placing the
20 burden on the government imposes minimal cost or inconvenience to it, as the government has
21 access to the noncitizen’s immigration records and other information that it can use to make its
22 case for continued detention.

23 **D. Due Process Requires Consideration Of Alternatives To Detention.**

24 45. Due process also requires consideration of alternatives to detention. The primary
25 purpose of immigration detention is to ensure a noncitizen’s appearance during civil removal
26 proceedings. *Zadydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if
27 there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*,

1 441 U.S. 520, 538–39 (1979) (civil pretrial detention may be unconstitutionally punitive if it is
2 excessive in relation to its legitimate purpose). ICE’s alternatives to detention program—the
3 Intensive Supervision Appearance Program—has achieved extraordinary success in ensuring
4 appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez*
5 *v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99%
6 attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Thus,
7 alternatives to detention must be considered in determining whether prolonged incarceration is
8 warranted.

9 46. Due process likewise requires consideration of a noncitizen's ability to pay a
10 bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the
11 individual's 'appearance at trial could reasonably be assured by one of the alternate forms of
12 release.'" *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th
13 Cir. 1978) (en banc)). Therefore, when determining the appropriate conditions of release for
14 people detained for immigration purposes, due process requires "consideration of financial
15 circumstances and alternative conditions of release." *Id.*; see also *Martinez v. Clark*, 36 F.4th
16 1219, 1231 (9th Cir. 2022) ("While the government had a legitimate interest in protecting the
17 public and ensuring the appearance of noncitizens in immigration proceedings, we held [in
18 *Hernandez*] that detaining an indigent alien without consideration of financial circumstances
19 and alternative release conditions was 'unlikely to result' in a bond determination 'reasonably
20 related to the government's legitimate interests.' (citation omitted).").

CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

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

48. 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.

49. To justify Petitioner's ongoing prolonged detention, due process requires that the

1 government establish, at an individualized hearing before a neutral decisionmaker, that
2 Petitioner's detention is justified by clear and convincing evidence of flight risk or danger,
3 taking into account whether alternatives to detention could sufficiently mitigate that risk.

4 50. For these reasons, Petitioner's ongoing prolonged detention without a hearing
5 violates due process.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Petitioner respectfully requests that this Court:

- 8 1) Assume jurisdiction over this matter;
- 9 2) Issue a Writ of Habeas Corpus, hold a hearing before this Court if warranted,
10 determine that Petitioner's detention is not justified because the government has
11 not established by clear and convincing evidence that Petitioner presents a risk of
12 flight or danger in light of available alternatives to detention, and order
13 Petitioner's release (with appropriate conditions of supervision if necessary),
14 taking into account Petitioner's ability to pay a bond;
- 15 3) In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release
16 within 30 days unless Respondents schedule a hearing before an immigration
17 judge where: (1) to continue detention, the government must establish by clear
18 and convincing evidence that Petitioner presents a risk of flight or danger, even
19 after consideration of alternatives to detention that could mitigate any risk that
20 Petitioner's release would present; and (2) if the government cannot meet its
21 burden, the immigration judge order Petitioner's release on appropriate
22 conditions of supervision, taking into account Petitioner's ability to pay a bond;
- 23 4) Issue a declaration that Petitioner's ongoing prolonged detention violates the Due
24 Process Clause of the Fifth Amendment;
- 25 5) Award Petitioner his costs and reasonable attorneys' fees in this action as
26 provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- 27 6) Grant such further relief as the Court deems just and proper.

1

2 August 2, 2024

3 Date [Fecha]

4 Sokhean Keo

5 Printed Name [Nombre Impreso]

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8 

9 Signature [Firma]

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11

12 Detained in ICE Custody at: [check one / marque uno]

13 **Mesa Verde Detention Facility**, 425 Golden State Ave, Bakersfield, CA 93301

14 **Golden State Annex**, 611 Frontage Road, McFarland, CA 93250

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