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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

A.E.,

Petitioner,

v.

TONYA ANDREWS, Facility Administrator of  
Golden State Annex Detention Facility,

MOISES BECERRA, Director for the San  
Francisco ICE Field Office;

BENJAMINE HUFFMAN, Acting Secretary of  
the Department of Homeland Security

CALEB VITELLO, Acting Deputy Director U.S.  
Immigration and Customs Enforcement; and

JAMES R. MCHENRY III, Acting Attorney  
General of the United States,

Respondents, acting in their  
official capacity.

**VERIFIED PETITION FOR WRIT OF  
HABEAS CORPUS**

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## INTRODUCTION

1. Petitioner A.E. (“Petitioner” or “A.E.”) has been civilly incarcerated by Immigration and Customs Enforcement (“ICE”) at Golden State Annex—a for-profit detention facility run by The GEO Group, Inc. (“GEO”)—since September 2023 without any justification. The indefinite detention has been devastating and traumatizing for A.E., a law-abiding person who had never been previously incarcerated. A.E.’s detention is particularly troubling and unfounded given that ICE had already determined on two separate occasions that A.E. was neither a flight risk nor a danger to society—first when ICE granted A.E. parole upon his lawful entry into the United States in October 2022, and again in November 2023, when ICE reviewed his request two months after re-detaining him. To this day, A.E. remains in the dark as to why he is being incarcerated and separated from his family and community. A.E. files this petition to remedy his prolonged and baseless civil detention without a bond hearing in violation of his due process rights.

2. A..E. is a survivor of Russia’s military invasion and annexation of Chechnya. Declaration of A.E. (“A.E. Decl.”) ¶¶ 1–2. Fearing political persecution and forced conscription into the Russian army for the Ukraine war, A.E. fled to the United States with his family in October 2022. *Id.* ¶¶ 6–8. He was granted parole upon entry, allowing him to enter the country legally and remain for a specified period while he and his family pursue asylum. *Id.* ¶ 8. He resided in Sacramento with his family, where he maintained a stable job and took English classes while taking care of his family and community. *Id.* ¶¶ 8–14.

3. Then, on September 22, 2023, five ICE agents abruptly showed up at A.E.’s home unannounced, handcuffed him, and took him into custody without any notice or explanation. *Id.* ¶ 15. About two months later, on or about November 27, 2023, ICE granted A.E. parole for a second time, necessarily reaffirming that he was neither a flight risk nor danger.<sup>1</sup> *Id.* ¶ 16. However, when his family attempted to post bond, ICE refused the bond payment. *Id.* The only

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<sup>1</sup> See ICE DIRECTIVE NO. 11002.1, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* § 8.3, [https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf).

1 explanation A.E. received for the denial of the bond payment was from an ICE official who  
2 verbally told A.E. that the parole was a mistake, and purportedly based on A.E.'s "Russian"  
3 nationality. *Id.*

4 4. To date, no neutral adjudicator has reviewed whether A.E.'s civil detention is  
5 lawful.

6 5. A.E.'s prolonged detention without a neutral hearing violates his right to  
7 procedural due process. Accordingly, A.E. respectfully asks this Court to issue a writ of habeas  
8 corpus and order Respondents to afford him a bond hearing before an immigration judge, at  
9 which the government must justify his continued detention by clear and convincing evidence.  
10 Absent this Court's intervention, A.E.'s detention without review remains indefinite as he faces  
11 months, if not years of continued detention without a bond hearing.

#### 12 JURISDICTION

13 6. A.E. is currently detained in the custody of Respondents at the Golden State  
14 Annex facility in McFarland, California. Jurisdiction is proper over a writ of habeas corpus  
15 pursuant to Article 1 § 9, clause 2 of the United States Constitution (the Suspension Clause); 28  
16 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1331 (federal question). This action arises  
17 under the Due Process Clause of the Fifth Amendment of the United States Constitution. This  
18 Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory  
19 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

20 7. The federal habeas statute establishes this Court's power to decide the legality of  
21 A.E.'s detention and directs courts to "hear and determine the facts" of a habeas petition and to  
22 "dispose of the matter as law and justice require." 28 U.S.C. § 2243; *see also I.N.S. v. St. Cyr*,  
23 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a  
24 means of reviewing the legality of Executive detention, and it is in that context that its  
25 protections have been strongest.").



**VENUE**

8. Venue for the instant habeas corpus petition properly lies in this District because it is the district with territorial jurisdiction over Respondent Tonya Andrews, the Facility Administrator and *de facto* warden of the ICE contract facility at which A.E. is currently detained. *See Rasul v. Bush*, 542 U.S. 466, 478 (2004) (holding that “because ‘the writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody,’” proper federal district is dependent on the location of the custodian); *accord Rumsfeld v. Padilla*, 542 U.S. 426, 444–45 (2004) (holding that jurisdiction must be obtained by service within the territorial jurisdiction of the district court); *id.* at 451 (Kennedy, J., concurring) (explaining petition “must be filed in the district court whose territorial jurisdiction includes the place *where the custodian is located*” (emphasis added)).

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9. A.E. is not required to exhaust administrative remedies, and in any event, he has exhausted the *de minimis* administrative process available to him.

10. Exhaustion for habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). Prudential exhaustion may be waived if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result.” *Id.* at 1000 (citation and quotation marks omitted).

11. Here, A.E. has exhausted administrative remedies, which have proven inadequate, inefficacious, and futile. Requiring A.E. to pursue additional administrative remedies would also result in ongoing irreparable injury. A.E. has twice qualified for and obtained humanitarian parole under 8 U.S.C. § 1182(d)(5)(A), but both times, ICE suddenly reversed course without any explanation or lawful justification. Specifically, A.E. was first granted parole upon his entry on October 19, 2022, which was suddenly and baselessly revoked after he had spent nearly a year with his family and new community in Sacramento when ICE inexplicably detained A.E. His family and community swiftly rallied in support of a request for him to be re-released on

1 parole, submitting letters of support highlighting A.E.'s good moral character and his  
2 commitment to his community in Sacramento. In response to the request, ICE initially notified  
3 A.E. that parole had been granted but inexplicably revoked the parole when his family attempted  
4 to post bond—purportedly on the basis that the grant was a “mistake” and that ICE officers are  
5 not to release “Russians.” A.E. Decl. ¶ 16.

6 12. Further, A.E. has also sought administrative remedies by requesting a bond  
7 hearing with the judge in his immigration proceedings (“Immigration Judge”) in January 2024.  
8 But the Immigration Judge denied the request based on the determination that the Immigration  
9 Judge lacked jurisdiction.

10 13. A.E.'s experience epitomizes the Ninth Circuit's holding that “the discretionary  
11 parole system available to § 1225(b) detainees is not sufficient to overcome the constitutional  
12 concerns raised by prolonged mandatory detention.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1144  
13 (9th Cir. 2013), *abrogated on other grounds sub. nom. Jennings v. Rodriguez*, 583 U.S. 281  
14 (2018).

15 14. Requesting A.E. to wait and continue pursuing administrative remedies without  
16 relief from this Court would be futile and additionally inflict irreparable injury. *See, e.g.*,  
17 *Rodriguez-Figueroa v. Barr*, 442 F. Supp. 3d 549, 560 (W.D.N.Y. 2020) (declining to dismiss a  
18 habeas petition on exhaustion grounds because requiring petitioner to request parole before  
19 considering his petition would be futile); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139  
20 (N.D. Cal. 2018) (habeas petitioner “suffers potentially irreparable harm every day that he  
21 remains in custody without a hearing, which could ultimately result in his release from  
22 detention”). Every day spent in detention subjects A.E. to irreparable harm, as he is deprived of  
23 his liberty and remains in custody, separated from his wife, children, and community.  
24 Accordingly, the Court should decline to apply an exhaustion requirement and/or find that A.E.  
25 has exhausted the administrative process available to him.



**REQUIREMENTS OF 28 U.S.C. § 2243**

15. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless it finds A.E. is not entitled to relief. 28 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, 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).

17. Habeas corpus must remain a swift remedy. Accordingly, “the statute itself directs courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). In *Yong*, the court warned against any action creating the perception “that courts are more concerned with efficient trial management than with the vindication of constitutional rights.” *Id.*

**PARTIES**

18. A.E. is currently detained by Respondents pending removal proceedings. He was granted parole to enter and remain for two years, but after eleven months of being in the United States, his parole was suddenly and inexplicably revoked, and he was placed in detention on or around September 22, 2023. A.E. Decl. ¶ 15. On or around November 27, 2023, ICE issued a notification to grant a parole bond to A.E. based on the determination that he posed neither a flight risk nor a danger to the community. *Id.* ¶ 16. However, when A.E.’s family attempted to submit the bond payment, there were unable to do so and A.E. was verbally informed by an ICE officer that ICE would not be releasing any Russians. *Id.* A.E. has remained detained at Golden



State Annex since his arrest by ICE in September 2023 without any individualized inquiry into ICE's justification for his detention.

19. Respondent Tonya Andrews is the Facility Administrator (and *de facto* warden) of Golden State Annex in McFarland, California.<sup>2</sup> She oversees operations at Golden State Annex, where A.E. is detained. She is a corporate employee of The GEO Group, Inc., a private prison company that contracts with ICE to operate Golden State Annex. The Ninth Circuit has determined that the facility administrator is the "immediate" and legal custodian of noncitizens held by ICE at privately-run facilities in the Eastern District. *See Doe*, 109 F.4th at 1197–99. She is named in her official capacity.

20. Respondent Moises Becerra is the Field Office Director for the San Francisco Field Office of ICE Enforcement and Removal Operations ("ERO"). As such, Respondent Becerra is the federal official most directly responsible for overseeing Golden State Annex. He is the local ICE official who has legal custody of A.E. He is named in his official capacity.

21. Respondent Benjamine Huffman is the Acting Secretary of the Department of Homeland Security ("DHS") and is responsible for overseeing the Department and its sub-agency, ICE. He has ultimate responsibility for the detention of noncitizens in civil immigration custody. Secretary Huffman is a legal custodian of A.E. He is named in his official capacity.

22. Respondent Caleb Vitello is the Acting Director for ICE. Respondent Vitello is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. He is named in his official capacity.

23. Respondent James R. McHenry III is the Acting Attorney General of the United States and the head of the Department of Justice ("DOJ"), which encompasses the Board of Immigration Appeals ("BIA") and immigration judges as part of its sub-agency, the Executive Office for Immigration Review ("EOIR"). He is empowered to oversee the adjudication of

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<sup>2</sup> Pursuant to the Ninth Circuit's recent decision in *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024), Tonya Andrews is the proper respondent because she is the *de facto* warden of the facility at which Petitioner is detained. A petition for en banc rehearing is pending in that case, however, so the other respondents are named herein to ensure effective relief and continued jurisdiction in this case.

removal and bond hearings and by regulation has delegated that power to the nation's immigration judges and the BIA. He is named in his official capacity.

### **STATEMENT OF FACTS**

#### **I. A.E.'s Life Prior to His Arrival in the United States**

24. A.E. was born in 1993 in Grozny, capital of the Chechen Republic. A.E. Decl. ¶ 1. As a child, he lived through the 1994 and 1999 Chechen Wars, during which Russia invaded the Chechen Republic. *Id.* ¶ 2. A.E. and his family were threatened by Russian military officers with machine guns in their home. *Id.* He lived in a refugee camp with his family for almost three years because his home was razed and rendered unlivable. *Id.* Despite these challenges, A.E. worked hard to establish a stable life for himself and his family. *Id.* ¶ 3. As a young man, he moved to Moscow, where he obtained his PhD in Technical Sciences and subsequently worked as an engineer. *Id.*

25. A.E. spent his days in Moscow working and spending time with his family. *Id.* ¶ 4. A.E. married his wife in 2020. *Id.* ¶ 5. The couple has two young children. *Id.*

26. In or around September 2022, while A.E. was living in Moscow, Russian military agents came to his parent's home in Grozny and served conscription summonses naming him and his brother. *Id.* ¶ 6. A.E. refused because he politically opposes Russia's destructive war to usurp Ukraine's sovereignty. *Id.* Draft evasion is an offense carrying a five to ten-year prison sentence in Russia. In addition to incarceration, his refusal to submit to conscription make him a target for physical torture at the hand of Russian-backed Chechen authorities. *Id.* There are reports of abductions and mass detentions of Chechen men who are threatened with fabricated criminal cases if they refuse to report for the draft to fight in Ukraine.<sup>3</sup>

<sup>3</sup> See Haley Zehrung, *Chechen Security Forces Blackmailing Men Who Refuse to Fight in Ukraine*, KYIV INDEPENDENT (Jun. 9, 2023) <https://kyivindependent.com/rfe-rl-men-in-chechnya-forced-to-fight-for-russia/>; *Chechens Pressured By Authorities to Fight in Ukraine*, MOSCOW TIMES (Jun. 9, 2023), <https://www.themoscowtimes.com/2023/06/09/chechens-pressured-by-authorities-to-fight-in-ukraine-rights-group-a81451>.



**II. A.E. Lawfully Enters the United States to Apply for Political Asylum for His Own and His Family's Safety**

27. Fearing reprisal for rejecting the forced conscription into the Ukraine war, A.E. entered the United States via humanitarian parole on October 19, 2022 at San Ysidro, California, along with his parents, wife, and their two children. *Id.* ¶¶ 7–8. The family moved to Sacramento, California, and soon became close with their neighbors and community. *Id.* ¶ 8. His brother and his brother's family, who are also seeking asylum, moved to Sacramento, and the two families remain close. *Id.*

28. While in Sacramento, A.E. worked for a moving company, loading trucks and handling moving contracts. *Id.* ¶ 9. He worked long shifts on jobs that required him to be on call three to four days straight. *Id.* He has a good relationship with his manager, who has expressed that A.E. would be able to return to his job. *Id.*

29. Both back in Moscow and in Sacramento, A.E.'s family relied on him for financial support, as his job has always been the family's sole source of income. *Id.* ¶ 10. The family also relied on him for day-to-day needs as he is the only person in the family who speaks English and has a driver's license. *Id.* ¶ 11. For example, before his unjustified detention, A.E. handled much of the family's errands, going to the store to pick up food and other necessities, and was his mother's main caregiver. *Id.* ¶ 12. He drove his mother, who has health issues, to doctor's visits and picked up her medication. *Id.* Since A.E. was detained, the family has struggled to get by without his assistance and financial support. *Id.*

**III. A.E.'s Community Involvement in Sacramento**

30. Prior to his detention, A.E. had cemented a life in the Sacramento area, participating in community activities, volunteering at food banks, and was an active member of his mosque. *Id.* ¶ 13.

31. A.E. is also dedicated to perfecting his English so he can continue to integrate and contribute to his community in Sacramento. *Id.* ¶ 14. Upon arriving, he enrolled in English classes in Sacramento. *Id.* The class is specifically designed for immigrants learning English,



1 and A.E. made friendships with others in the class through their shared experiences adapting to  
2 life in their new home. *Id.* Despite his busy work schedule, A.E. attended the class after work  
3 almost every day. *Id.*

4 **IV. A.E.'s Unconstitutional Prolonged Detention at a Private ICE Facility.**

5 32. Upon entering the United States on October 19, 2022, A.E. was granted parole  
6 upon entry and served with a Notice to Appear (“NTA”) and charged with removability based on  
7 his lack of a visa. In March 2023, A.E. timely filed for asylum and withholding of removal.

8 33. However, on or around September 22, 2023, A.E.’s parole was suddenly revoked  
9 without notice. In the middle of the night, five armed ICE officers surrounded his house and  
10 seized him at his home in Sacramento in front of his entire family. *Id.* ¶ 15. The officers did not  
11 explain the situation to A.E. and offered no documentation. *Id.* They forced him against the wall  
12 outside his apartment door, handcuffed him, and marched him downstairs. *Id.* They then forced  
13 A.E. into the ICE vehicle, in his night clothes, still without explaining to A.E. what was  
14 happening. *Id.* He was not informed of his rights. *Id.* This all took place in front of his family  
15 who watched in tears as A.E. was driven away by the ICE officers. *Id.* He was placed in custody  
16 at Golden State Annex, a privately-operated detention center, and has been detained there since.  
17 *Id.* He is being held pursuant to 8 U.S.C. § 1225(b).

18 34. Soon after his detention, A.E. petitioned to ICE to reinstate his parole. *Id.* ¶ 16.  
19 His family and members of this community submitted letters in support of his parole request. *Id.*  
20 On or around November 27, 2023 ICE issued a notice, granting A.E. a parole bond. *Id.* That  
21 determination comported with his prior grant of parole and the finding that A.E. is neither a flight  
22 risk nor a danger to the community. However, when his family came to post bond, ICE officers  
23 notified them that the grant was a mistake and refused to accept his family’s bond. *Id.* ICE did  
24 not provide any formal justification for the revocation of the bond grant and the only explanation  
25 that was provided was when an ICE officer told A.E. that the officer’s supervisor gave  
26 instructions to not release any “Russians.” *Id.*

1           35.     Following this denial, A.E. directly requested a bond hearing with the  
2 Immigration Judge, which was denied on January 23, 2024, because the Immigration Judge  
3 determined that he lacked jurisdiction.

4           36.     During his prolonged detention, A.E.'s immigration case has continued slowly  
5 through the immigration system. He was granted asylum by the immigration court on February  
6 12, 2024, but DHS appealed, and the BIA reversed the decision and remanded for review under  
7 the Convention Against Torture ("CAT"). On November 14, 2024, the immigration court denied  
8 A.E.'s request for protection under CAT. His appeal of that decision is pending.<sup>4</sup>

9           37.     Detention has been especially difficult for A.E., who had never been previously  
10 arrested or imprisoned. *Id.* ¶ 17. The conditions are inhumane, with detainees not receiving  
11 proper food or medical care. For example, the facility has been unaccommodating of A.E.'s  
12 religious practices, feeding him pork despite his religious dietary restrictions, and initially  
13 refusing to allow him to pray. *Id.* He is also being held in an area with others who have criminal  
14 backgrounds, which has made A.E. feel unsafe. *Id.* ¶ 19.

15           38.     Further, his detention has created immense emotional and financial strain on his  
16 family. *Id.* ¶ 20. Being separated and not being able to help his wife, children, and mother have  
17 been painful for A.E., and he remains deeply concerned about their well-being while in  
18 detention. *Id.* Getting to the facility is very expensive for his family, who has only been able to  
19 come see A.E. once in December 2024. *Id.* That visit was the first time A.E. saw his children in  
20 sixteen months. *Id.*

21           39.     DHS and ICE have civilly incarcerated A.E. for well over a year without a neutral  
22 evaluation of whether his detention serves a valid civil purpose. He will remain detained,  
23 separated from his family and community with no end in sight, absent federal court intervention.

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28 <sup>4</sup> A.E.'s wife has separately applied for asylum, which if granted, would entitle A.E. to claim derivative asylum.  
Her application remains pending with USCIS.



### LEGAL FRAMEWORK

40. A.E. has a profound liberty interest in freedom from physical confinement. “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 the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (“both removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious”). Moreover, individuals who have been granted parole possess a significant liberty interest in their conditional release and avoiding reincarceration. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *accord Young v. Harper*, 520 U.S. 143, 152 (1997).

41. 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.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, due process requires that the government provide bond hearings to noncitizens facing prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due process” because “[b]ail is basic to our system of law.” *Jennings*, 583 U.S. at 330 (Breyer, J., dissenting) (internal quotations and citations omitted).

42. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim for relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (“individualized determination as to his risk of flight and



dangerousness” may be warranted “if the continued detention became unreasonable or unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the initial commitment requires additional safeguards); *Hutto v. Finney*, 437 U.S. 678, 685–86 (1978) (in the Eighth Amendment context, “the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards”).

43. In the context of parole revocation, due process requires that parolees receive an individualized hearing because they have a liberty interest in their conditional release. *See Morrissey*, 408 U.S. at 484 (holding that there is “no interest on the part of the State in revoking parole without any procedural guarantees at all”); *Young*, 520 U.S. at 152 (holding that individuals released into a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process).

44. Further, “the discretionary parole system available to § 1225(b) detainees is not sufficient to overcome the constitutional concerns raised by prolonged mandatory detention.” *Rodriguez*, 715 F.3d at 1144; *see also Zadvydas*, 533 U.S. at 692 (“[T]he Constitution may well preclude granting an administrative body the unreviewable authority to make determinations implicating fundamental rights.”) (internal quotation marks omitted); *Arechiga v. Archambeault*, No. 223CV00600CDSVCF, 2023 WL 5207589, at \*1 (D. Nev. Aug. 11, 2023) (granting a bond hearing for an individual held in prolonged detention under § 1225(b)); *Leke v. Hott*, 521 F. Supp. 3d 597, 603–04 (E.D. Va. 2021) (same); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 850, 852 (E.D. Va. 2020) (same).

## ARGUMENT

### **I. Due Process Requires That the Government Afford A.E. a Bond Hearing**

45. A.E.’s prolonged detention since September 2023, without *any* individualized review, violates his right to procedural due process. *See Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018). Further, since his abrupt parole revocation in September 2023, he has not been afforded a

1 post-deprivation hearing under *Morrissey*, which further violates his right to procedural due  
2 process. *See* 408 U.S. at 484.

3 46. Since *Jennings*, courts have evaluated as-applied constitutional challenges to  
4 prolonged immigration detention using the *Mathews v. Eldridge* test, which balances (1) the  
5 private interest threatened by government action; (2) the risk of erroneous deprivation of such  
6 interest, and the probable value of additional procedural safeguards; and (3) the government  
7 interest. 424 U.S. 319, 335 (1976); *see, e.g., Sho v. Current or Acting Field Off. Dir.*, 1:21-cv-  
8 01812 TLN AC, 2023 WL 4014649, at \*3–5 (E.D. Cal. June 15, 2023) (applying the *Mathews*  
9 test and granting bond hearing for individual held in prolonged detention); *I.E.S. v. Becerra*, No.  
10 23-cv-03783-BLF, 2023 WL 6317617, at \*8–9 (N.D. Cal. Sept. 27, 2023) (same); *Doe v*  
11 *Becerra*, No. 23-cv-02382-DMR, 2023 WL 5672192, at \*7–8 (N.D. Cal. Sept. 1, 2023) (same);  
12 *Rodriguez Picazo v. Garland*, No. 23-cv-02529-AMO, 2023 WL 5352897, at \*3–6 (N.D. Cal.  
13 Aug. 21, 2023) (same); *J.P. v. Garland*, 685 F.Supp.3d 943, 946–49 (N.D. Cal. Aug. 7, 2023)  
14 (same); *Hernandez Gomez v. Becerra*, No. 23-cv-01330-WHO, 2023 WL 2802230, at \*3–4  
15 (N.D. Cal. Apr. 4, 2023) (same); *Sales P. v. Kaiser*, No. 22-cv-03018-DMR, 2022 WL  
16 17082375, \*8–9 (N.D. Cal. Nov. 18, 2022) (same); *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020  
17 WL 510347, \*2–4 (N.D. Cal. Jan. 30, 2020) (same). Indeed, in a challenge to detention under  
18 the nonmandatory provision, the Ninth Circuit applied *Mathews* balancing because it “remains a  
19 flexible test” commonly applied by courts in the immigration context. *Rodriguez Diaz v.*  
20 *Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022).

21 47. Here, ICE continues to detain A.E. despite having previously found on two  
22 separate occasions that A.E. is not a danger or flight risk as to warrant detention—once when he  
23 was first granted parole to enter into the United States and again when ICE granted him the  
24 parole bond in November 2023. Indeed, throughout A.E.’s detention, ICE has never provided  
25 any justification as to why A.E. should remain detained. Thus, the *Mathews* factors clearly  
26 weigh in Petitioner’s favor.  
27  
28



**A. A.E. Has a Significant Private Interest in Liberty.**

48. For the first prong of the *Mathews* test, the Court must consider the private interest threatened by the governmental action. 424 U.S. at 335. Here, A.E.’s private interest “is the most significant liberty interest there is—the interest in being free from imprisonment.” *Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024) (cleaned up). A.E. has been detained without a single neutral review of his custody since September 2023, when ICE revoked his grant of parole. A.E. has spent over a year in ICE detention and will remain imprisoned pending the appeal of his denial of immigration relief. This length of detention without a hearing automatically “raises serious due process concerns.” *Id.* at 150 (“[A]ny immigration detention exceeding six months without a bond hearing raises serious due process concerns.”) (citing *Demore and Zadvydas*); see *Arechiga*, 2023 WL 5207589, at \*2 (“[i]n general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing.”) (quoting *Sibomana v. LaRose*, No.: 3:22-cv-933-LL-NLS, 2023 WL 3028093, at \*4 (S.D. Cal. Apr. 20, 2023))). Further, should the BIA return an adverse decision, he faces an indeterminate period of future confinement during any appeals to the Ninth Circuit. See *Diouf v. Napolitano*, 634 F.3d 1081, 1091–92 (9th Cir. 2011) (“When detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound.”); *Sho*, 2023 WL 4014649, at \*4 (considering the “prospect of further extended detention” as part of the private interest).

49. Additionally, in the context of parole revocation, individuals retain a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding reincarceration. In *Morrissey v. Brewer*, a case involving parole revocation, the court held that “the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others.” 408 U.S. at 482. This is true even when the freedom may ultimately be revocable should circumstances materially change. See *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196–97 (N.D. Cal. 2017).

50. *Morrissey*'s basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and numerous circuit courts. *See Young*, 520 U.S. at 152 (holding that individuals released into a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process); *Zadvydas*, 533 U.S. at 693 (holding that due process protects “all ‘persons’ within the United States . . . whether their presence here is lawful, unlawful, temporary or permanent” who face immigration detention). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted); *see also, e.g., Hurd v. Dist. of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (noting that “a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated” (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482)).

51. Here, A.E. has a liberty interest in being free from confinement, which has been challenged by his indefinite and unjustified detention and revocation of his parole. The burden on A.E.'s liberty is substantial: for over sixteen months, A.E. has been separated from his family and community and deprived of his freedom. Like people on parole, individuals like A.E. who await decisions in their immigration cases have a liberty interest in remaining out of custody on bond. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019) (finding that the petitioner had a substantial private interest in remaining on bond and enjoining ICE from re-arresting petitioner until a hearing is held) (citing *Morrissey*, 408 U.S. at 482); *Ortiz Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5517277, at \*2 (N.D. Cal. Sept. 14, 2020) (same); *Jorge M.F. v. Wilkinson*, No. 21-cv-14340JST, 2021 WL 783561, at \*3–4 (N.D. Cal. Mar. 1,



2021) (same); *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, at \*3–4 (N.D. Cal. June 4, 2018) (same). A.E. was never afforded a pre-deprivation or post-deprivation hearing on the revocation of his parole and/or his detention.

52. Moreover, punitive conditions in ICE detention “multiply the burden” on A.E.’s liberty and strengthen his interest in being free. *Doe v. Becerra*, 732 F. Supp. 3d 1091, 1089 (N.D. Cal. 2024) (“[H]arsh conditions multiply the burden on liberty for any given period.”). A.E. is being held in a setting equivalent to criminal corrections at a detention center with abusive conditions.<sup>5</sup> The conditions at Golden State Annex are inhumane—an assessment numerous courts (and reputable news organizations) have echoed.<sup>6</sup> Indeed, ICE and GEO, the company that operates Golden State Annex, have a history of inflicting abuse at the facility. For example, several immigrant rights organizations recently filed a complaint against the facility for excessive use of force, including retaliation against detainee-organizers.<sup>7</sup> “[T]he government’s choice to detain noncitizens like Mr. Doe in a crowded facility, with operations outsourced to a private contractor, informs the due process consideration of how long is too long.” *Doe*, 732 F. Supp. 3d at 1089.

<sup>5</sup> Immigrants at Golden State Annex have launched several labor and hunger strikes to protest the facility’s inhumane conditions, such as the use of solitary confinement, inadequate medical care and food, and other forms of retaliation. See Press Release, *California’s Immigration Detention Facilities Plagued by Human Rights Abuse, New Report Finds*, ACLU OF N. CAL., (Aug. 28, 2024), <https://www.aclunc.org/news/californias-immigration-detention-facilities-plagued-human-rights-abuse-new-report-finds>.

<sup>6</sup> Detainees at Golden State Annex have reported medical neglect and poor food quality that has resulted in food poisoning. Access to running water has also been sparse: detainees report that water is unavailable for up to 12 hours and that the tap water is unpalatable. Unsanitary conditions have led to detainees contracting infections, such as ringworm. See Victoria Valenzuela, *More Than 60 ICE Detainees on Hunger Strike Over “Inhumane” Living Conditions*, GUARDIAN (Aug. 26, 2024), <https://www.theguardian.com/us-news/article/2024/aug/26/immigration-customs-enforcement-ice-hunger-strike-california>. Golden State Annex was also fined \$100,000 in 2023 for unsafe working conditions: detainees were forced to clean the facility, including wiping black mold from showers, without protective equipment and proper instructions for using cleaning solutions. See Andrea Castillo, *California Fines Detention Center Operator \$100,000 Over Immigrants’ Working Conditions*, L.A. TIMES (Jan. 30, 2023), <https://www.latimes.com/politics/story/2023-01-30/detained-immigrants-alleged-unsafe-working-conditions-at-california-facility-fine>.

<sup>7</sup> Officers physically and psychologically assaulted an entire dormitory of detainees who had protested unlivable conditions at the facility, using brute force and pepper spray. Golden State Annex failed to provide medical care following this incident. See ACLU of N. Cal., Cal. Collaborative for Immigrant Just., & Lawyer’s Comm. for Civ. Rts. of S.F. Bay Area, *Complaint re Abuses Against People Detained at GSA* (Aug. 15, 2024), <https://www.ccijustice.org/gsa-a4-raid-crcl>.



53. For instance, A.E. had initially not been allowed to practice his religion: the facility had designated a small room for prayer, but the guards routinely prevented him and other Muslims using the room. A.E. Decl. ¶ 17. Further, as part of his religion, A.E., does not eat pork, yet Golden State Annex fed him pork for several meals. *Id.* Golden State Annex has also failed to provide adequate medical care to A.E. In or around June 2024, A.E. hurt his wrist, which became swollen, but was not provided any medical care other than ibuprofen. *Id.* ¶ 18.

**B. The Value of the Procedural Safeguard of a Bond Hearing is High**

54. The second prong of the *Mathews* test, the risk of erroneous deprivation of such interest through the procedures used and the probable value of additional procedural safeguards, weighs heavily in A.E.'s favor as well. 424 U.S. at 335.

55. “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.” *Diouf*, 634 F.3d at 1092. Since A.E. was first taken into custody by ICE and during the fifteen months that A.E. has been detained, he has never had a bond hearing, and thus has never been afforded process to evaluate or the opportunity to contest the necessity of his arrest and ongoing detention. *See Rajnish v. Jennings*, No. 3:20-CV-07819-WHO, 2020 WL 7626414, at \*9 (N.D. Cal. Dec. 22, 2020) (finding that the value added by a hearing is “great” where petitioner had been held for nine months since an “unconstitutional” initial bond hearing that “assigned the risk of error to him, not to the government”); *Jimenez*, 2020 WL 510347, at \*3–4 (finding that a writ of habeas corpus was warranted for an immigrant who had been detained for a year without a bond hearing).

56. Here, there is a clear substantial risk that A.E.'s detention and deprivation of liberty is erroneous as there has been no hearing or justification for his incarceration. The only purported reason that has been communicated to A.E. as the basis for his continued detention is his national origin, as informed verbally and in passing by an ICE officer. Thus, additional procedural safeguards, including a neutral, third-party review, would hold ICE to tangible justifications for A.E.'s prolonged detention.



**C. Respondents Have No Valid Interest that a Bond Hearing Would Harm**

57. The third *Mathews* factor also supports granting A.E.’s petition. Respondents have not and cannot articulate any legitimate interest served by A.E.’s indefinite detention without a hearing. *See Lopez-Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Henriquez v. Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at \*5 (N.D. Cal. June 14, 2022) (“[T]he Government’s interest in detaining Petitioner without providing an individualized bond hearing is low.”). While the government has legitimate interests in ensuring a noncitizen’s appearance in court and protecting the community, providing a bond hearing would “do nothing to undercut those interests.” *Black*, 104 F.4th at 153. At any ordered bond hearing, “the IJ would assess on an individualized basis whether the noncitizen presents a flight risk or danger to the community, as IJs routinely do for other noncitizen detainees.” *Id.* at 153–54.

58. Nor can the minimal cost of providing a bond hearing override the public interest in avoiding needless civil detention. As the Second Circuit reasoned in *Black*, “having to do something instead of nothing imposes an administrative and fiscal burden of some kind. But the Department of Justice reported an average cost of detaining noncitizens, in 2019, of \$88.19 per prisoner per day ... So, retaining and housing detainees imposes substantial costs as well. And, as far as we can tell, ICE may readily access the records of other law enforcement agencies for information bearing on its case for detention where necessary.” *Id.* at 154; *see also Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048, at \*6 (E.D. Cal. Sept. 8, 2023) (finding that the cost of providing a bond hearing is relatively minimal); *Lopez Reyes*, 362 F. Supp. 3d at 777 (finding that requiring the government to provide petitioner with another bond hearing does not significantly undermine the government’s interest in evaluating the evidence and making credibility determinations).

59. Moreover, requiring Respondents to justify A.E.’s detention “promotes the Government’s interest—one [courts] believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Black*, 104 F.4th at 154 (noting that “the public interest drives analysis of the third factor” under *Mathews*).

60. Further, courts have granted more burdensome remedies—pre-deprivation hearings in parole revocation cases. *See Ortega*, 415 F. Supp. 3d at 969–70 (finding that the petitioner had a substantial private interest in remaining on bond and enjoining ICE from re-arresting petitioner until a hearing is held); *Ortiz Vargas*, 2020 WL 5517277, at \*2 (same); *Jorge M.F.*, 2021 WL 783561, at \*3–4 (same); *Meza*, 2018 WL 2554572, at \*3–4 (same). Here, A.E. is requesting a lesser remedy—a post-deprivation hearing, which has less impact on the government’s detention prerogative than the pre-deprivation hearings other courts have ordered.

61. As noted, the government has not articulated any interest in detaining A.E. without an individualized bond hearing. The government has not given any reason to justify A.E.’s continued prolonged detention and has not shown that he presents a flight risk or danger to the community. Indeed, the government has twice determined the opposite—that it could be sure of A.E.’s safety towards the community and appearance at all immigration court hearings. Thus, applying the *Mathews* factors, this Court should find that due process entitles A.E. to an individualized bond hearing by an Immigration Judge.

## II. Standards for Bond Hearing to Comply with Due Process

62. A.E. requests a prolonged detention bond hearing before a neutral adjudicator in which the government bears the burden of proving his flight risk or danger by a clear and convincing evidence standard. *See Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake...are both particularly important and more substantial than mere loss of money.”) (internal quotation marks omitted), *abrogated on other grounds by Rodriguez Diaz*, 53 F.4th 1189; *see also Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus view” among District Courts concluding that after *Jennings* “where ... the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified”); *Gonzalez*, 2019 WL 330906, at \*6 (collecting cases applying *Singh* burden of proof for prolonged detention hearings post-*Jennings*); *Singh v. Barr*, 400 F.



1 Supp. 3d 1005, 1018–19 (S.D. Cal. 2019) (finding due process requires the government to bear  
2 the burden in immigration bond proceedings).

3 63. Due process also requires consideration of conditions to mitigate potential flight  
4 risk. The primary purpose of immigration detention is to ensure a noncitizen’s appearance  
5 during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to  
6 this purpose if there are alternative conditions of release that could mitigate risk of flight. *See*  
7 *Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979). ICE’s alternatives to detention program—the  
8 Intensive Supervision Appearance Program—have achieved extraordinary success in ensuring  
9 appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez*  
10 *v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a 99%  
11 attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Alternatives  
12 to detention must be considered in determining whether prolonged incarceration is warranted.

13 64. Finally, due process requires consideration of a noncitizen’s ability to pay a  
14 monetary bond. “Detention of an indigent ‘for inability to post money bail’ is impermissible if  
15 the individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms of  
16 release.’” *Id.* at 990 (citation omitted). It follows that—in determining the appropriate  
17 conditions of release for immigration detainees—due process requires “consideration of financial  
18 circumstances and alternative conditions of release” to prevent against detention based on  
19 poverty. *Id.* at 991.

### 20 CLAIM FOR RELIEF

### 21 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO** 22 **THE U.S. CONSTITUTION**

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

24 66. The Due Process Clause of the Fifth Amendment forbids the government from  
25 depriving any “person” of liberty “without due process of law.” U.S. CONST. AMEND. V.

26 67. To justify Petitioner’s ongoing prolonged re-detention, due process requires that  
27 the government establish, at an individualized hearing before a neutral decisionmaker, that  
28

1 Petitioner's detention is justified by clear and convincing evidence of flight risk or danger, even  
2 after consideration whether alternatives to detention could sufficiently mitigate that risk.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioner respectfully requests that this Court:

- 5 1) Assume jurisdiction over this matter;
  - 6 2) Issue a Writ of Habeas Corpus and order Respondents, unless they elect to release  
7 Petitioner, to schedule a hearing before an immigration judge where: (1) to continue  
8 detention, the government must establish by clear and convincing evidence that  
9 Petitioner presents a risk of flight or danger, even after consideration of conditions of  
10 supervision; and (2) if the government cannot meet its burden, the immigration judge  
11 order Petitioner's release on appropriate conditions of supervision, taking into  
12 account Petitioner's ability to pay a bond;
  - 13 3) Issue a declaration that Petitioner's ongoing prolonged detention violates the Due  
14 Process Clause of the Fifth Amendment;
  - 15 4) Award reasonable costs and attorney fees under the Equal Access to Justice Act  
16 ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis  
17 justified under law; and
  - 18 5) Grant such further relief as the Court deems just and proper.
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Respectfully submitted on January 24, 2025,

By: /s/ Hong-An N. Tran  
Hong-An N. Tran

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**Verification Pursuant to 28 U.S.C. § 2242**

I am submitting this verification on behalf of A.E.'s because I am one of A.E.'s attorneys. As A.E.'s attorney, I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 24, 2025.

/s/ Hong-An N. Tran

Hong-An N. Tran

*Attorney for Petitioner*