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

JAVIER ISAIS CHAVEZ,
Alien #[redacted]

Petitioner,

v.

PAM BONDI, in her official capacity as Attorney General

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,

RON MURRAY, in his official capacity as Warden of Mesa Verde Detention Center,

POLLY KAISER, in her official capacity as ICE Field Office Director,

Respondents

Case No.

MESA VERDE DETENTION CENTER

VERIFIED PETITION FOR HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

IMMIGRATION HABEAS CASE

ORAL ARGUMENT REQUESTED

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

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

I. INTRODUCTION

1. This is a Petition for the Writ of Habeas Corpus filed on behalf of Petitioner Javier Isais Chavez to remedy his unlawful detention. Petitioner is currently detained by Immigration and Customs Enforcement (ICE) at the Mesa Verde Detention Center pending removal proceedings. Petitioner entered the United States for the first time in 1989 as a lawful permanent resident, and he has been continuously present in the United States since then. *See* Exh. C. He made his home in Santa Barbara, California. He is married to a United States citizen and both of his parents are lawful permanent residents. *See* Exhs. F-I.

2. Petitioner was apprehended by ICE on April 27, 2023. Petitioner has been detained in immigration custody for over 22 months. Petitioner has filed motions for a bond hearing in Immigration Court. Petitioner has never been afforded a bond hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk.

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

4. Petitioner therefore respectfully requests that this Court issue a writ of habeas corpus, determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk

of flight or danger in light of available alternatives to detention, and order Petitioner's release, with appropriate conditions of supervision if necessary, taking into account Petitioner's ability to pay a bond.

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

II. PARTIES

6. Petitioner Javier Isais Chavez is 39-year-old native and citizen of Mexico, and he is currently detained by Respondents pending removal proceedings. *See* Exhs. A, D, E. He has been incarcerated by ICE since April 27, 2023, at the Mesa Verde Detention Center.

7. Respondent Pam Bondi, the Attorney General, is the highest-ranking official within the Department of Justice (DOJ). Respondent Bondi is responsible for the administration and enforcement of the immigration laws pursuant to 8 U.S.C.

§ 1103. Respondent Bondi is sued in her official capacity to the extent that 8 U.S.C. § 1102 gives her authority to interpret immigration law and adjudicate removal cases.

8. Respondent Kristi Noem, the Secretary of the Department of Homeland Security (DHS), is the highest-ranking official within the DHS. Respondent Noem, by and through her agency for the DHS, is responsible for the implementation of the INA, and for ensuring compliance with applicable federal law. Respondent Noem is sued in her official capacity as an agent of the government of the United States.

9. Respondent Ron Murray is the warden at Mesa Verde Detention Center. He is in charge of Petitioner's place of custody. He is a legal custodian of Petitioner and is sued in his official capacity.

10. Respondent Polly Kaiser is the Field Office Director of Immigration and Customs Enforcement for San Francisco. She oversees the custody of all Immigration and Customs Enforcement detainees at Mesa Verde Detention Center. Respondent Kaiser is a legal custodian of Petitioner and is sued in her official capacity as an agent of the government of the United States.

III. JURISDICTION AND VENUE

11. Petitioner is detained in the custody of Respondents at Mesa Verde Detention Center.

12. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331 (general federal question jurisdiction); § 1361 (mandamus), § 2241 (habeas corpus); and § 2243; and Art I., § 9, Cl. 2 of the United States Constitution (the Suspension Clause); and the common law. This Court may grant relief under the Declaratory Judgment Act, 28 U.S.C. § 2001 et seq.

13. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Congress has also preserved judicial review of challenges to prolonged immigration detention. *See Jennings*, 138 S. Ct. at 839-41 (holding that 8 U.S.C. §§ 1226(3), 1252(b)(9) do not bar review of challenges to prolonged immigration detention).

14. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the United States or officers or employees thereof acting in their official capacity or under color of legal authority; Petitioner is in the custody of Immigration and Customs Enforcement in Bakersfield, California, which is in the jurisdiction of the Eastern District of California; and there is no real property involved in this action.

IV. EXHAUSTION

15. Exhaustion is inappropriate where, as here, Petitioner is asserting a violation of his Fifth Amendment substantive due process rights. Because Petitioner asserts

constitutional substantive due process claims that are beyond the jurisdiction of the immigration court and Board of Immigration Appeals (BIA), exhaustion is not required. *Garcia-Ramirez v. Gonzales*, 423 F.3d 935, 938 (9th Cir. 2005) ("Because the BIA does not have jurisdiction to resolve constitutional challenges, … due process claims – other than those only alleging 'procedural errors' within the BIA's power to redress – are exempt" from exhaustion.).

16. Even if exhaustion were an option here, on habeas review pursuant to § 2241, exhaustion is merely prudential, rather than jurisdictional. *Arango-Marquez v. INS*, 346 F.3d 892, 897 (9th Cir. 2003). Courts retain discretion over whether to require prudential exhaustion and may exercise discretion to waive a prudential exhaustion requirement where "irreparable injury will result." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). Requiring Petitioner to exhaust administrative remedies will result in irreparable injury by subjecting him to continued violation of his constitutional rights.

V. STATEMENT OF FACTS

17. Petitioner, Javier Isais Chavez, is a noncitizen currently detained by Respondents pending immigration removal proceedings. *See* Exhs. A-B. During his proceedings, Petitioner pursued adjustment of status and a waiver of his inadmissibility under section 212(h) of the Immigration and Nationality Act (INA).

He has since been ordered removed, and he is currently challenging his removal on appeal before the Board of Immigration Appeals which remains pending. *See* Exhs. D-E.

18. Petitioner has been detained in DHS custody since April 27, 2024.

19. Petitioner has been detained by ICE for more than 22 months, and he has never been provided a bond hearing before a neutral decisionmaker to determine whether his prolonged detention is justified based on danger or flight risk.

20. Petitioner is a 39-year-old native and citizen of Mexico who entered the United States for the first time in 1989 as a lawful permanent resident when he was only 3 years old. *See* Exhs. A-C. He has been continuously physically present in the United States since that time.

21. On April 28, 2023, Petitioner was placed into removal proceedings with a Notice to Appear in which he was charged as removable under section 237(a)(2)(A)(iii) of the INA. *See* Exh. A. During his proceedings, he applied for adjustment of status and a waiver of his inadmissibility under INA § 212(h). In a decision dated October 21, 2024, the Immigration Judge denied his applications for relief and ordered him removed to Mexico. *See* Exh. D. He filed a timely appeal to the Board of Immigration Appeals, and that appeal remains pending. *See* Exh. E.

22. Petitioner is married to a United States citizen, Heather Lou Smith. *See* Exhs. F-G. Heather suffers from both physical and mental health conditions. *See* Exhs.

K-L. She has been diagnosed with Post-Traumatic Stress Disorder, Bipolar Disorder, Depressive Disorder, Adjustment Disorder, and stimulant dependence. She has a history of suicidal ideations and suicide attempts with the first being when she was only eight years old. *Id.* She has a history of substance abuse, including both alcohol and hard drugs. *Id.* Her physical health issues include back pain, migraines, and trouble breathing. *Id.*

23. Petitioner's mother and father are both lawful permanent residents of the United States. *See* Exhs. H-I. His father, Adan Isais, suffers from significant medical issues. His ongoing and active health concerns include Type 2 Diabetes, hypertension, peripheral arterial disease, thrombocytopenia, congestive heart failure, osteoporosis, anemia, and hyperlipidemia. *See* Exhs. O-P. His mother, Rocio Isais, suffers from Type 2 Diabetes with hyperglycemia, cervical polyps, colon polyps, hyperlipidemia, and a vitamin D deficiency. *See* Exhs. M-N.

VI. LEGAL BACKGROUND

24. "'It is well established that the Fifth Amendment entitles aliens 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*, 533 U.S. at 690; *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 (Kennedy, J., dissenting) ("both removable and inadmissible aliens are entitled to be free from detention that is arbitrary or capricious").

25. 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 quotation marks 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 528.

26. Following *Zadvydas* and *Demore*, every circuit court of appeals to confront the issue has found either the immigration statutes or due process require a hearing for noncitizens subject to unreasonably prolonged detention pending removal proceedings. *See Sopo v. U.S. Attorney Gen.*, 825 F.3d 1199 (11th Cir. 2016) (detention under 8 U.S.C. § 1226(c)); *Reid v. Donelan*, 819 F.3d 486 (1st Cir. 2016) (8 U.S.C. § 1226(c)); *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015) (8 U.S.C. § 1226(c)); *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015) (8 U.S.C. § 1226(c) and 8 U.S.C. § 1225(b)); *Diop v. ICE/Homeland Sec.*, 656 F.3d

221 (3d Cir. 2011) (8 U.S.C. § 1226(c)); *Diouf v. Holder (Diouf II)*, 634 F.3d 1081 (8 U.S.C. § 1231(a)); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003) (8 U.S.C. § 1226(c)) (requiring release when mandatory detention exceeds a reasonable period of time).

27. Recently, the Supreme Court held that the Ninth Circuit erred by interpreting Sections 1226(c) and 1225(b) to require bond hearings as a matter of statutory construction. *Jennings*, 138 S.Ct. at 830. Because the Ninth Circuit had not decided whether the Constitution itself requires bond hearings in cases of prolonged detention, the Court remanded for the Ninth Circuit to address the issue. *Id.* The majority opinion did not express any views on the constitutional question and left it to the lower courts to address the issue in the first instance.

28. 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." *Id.* at 862 (Breyer, J., dissenting) (internal quotations and citations omitted). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding that detentions under Section 1226(c) are typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief,

due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* 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); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) ("lesser safeguards may be appropriate" for "shortterm confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (in Eighth Amendment context, "the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards").

29. Consistent with this view, the federal courts have made clear that prolonged detention pending removal proceedings without a bond hearing likely violates due process. *See Jennings*, 138 S.Ct. at 869 (Breyer, J, dissenting) ("an interpretation of the statute before us that would deny bail proceedings where detention is prolonged would likely mean that the statute violates the Constitution"). In addition, numerous circuit and district courts have expressly found that the Constitution requires bond hearings in cases of prolonged detention. *See, e.g.*, *Diop*, 656 F.3d at 233; *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 544-50 (S.D.N.Y. 2014); *Monestime v. Reilly*, 704 F. Supp. 2d 453, 458-59 (S.D.N.Y. 2010).

30. Detention without a bond hearing is unconstitutional when it exceeds six

months. *See Demore*, 538 U.S. at 529-30 (upholding only "brief" detentions under Section 1226(c), which last "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the alien chooses to appeal"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months").

31. The recognition that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in our legal tradition. With few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term…" *Duncan v. State of La.*, 391 U.S. 145, 161 & n.34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment). The Court has likewise recognized the need for bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110 (2010) (14 days for re-interrogation following invocation of Miranda rights); *Cty. of*

Riverside v. McLaughlin, 500 U.S. 44, 55-56 (1991) (48 hours for probable cause hearing).

32. Even if a bond hearing is not required after six months in every case, at a minimum, due process requires a bond hearing after detention has become unreasonably prolonged. *See Diop*, 656 F.3d at 234. Courts that apply a reasonableness test have considered three main factors in determining whether detention is reasonableness. First, courts have evaluated whether the noncitizen has raised a "good faith" challenge to removal—that is, the challenge is "legitimately raised" and presents "real issues." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015).[1] Second, reasonableness is a "function of the length of the detention," with detention presumptively unreasonable if it lasts six months to a year. *Id.* at 477-78; *accord Sopo*, 825 F.3d at 1217-18. Third, courts have considered the likelihood that detention will continue pending future proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention unreasonable after nine months of detention, when the parties could "have reasonably predicted that Chavez–

[1] Notably, "aliens should [not] be punished for pursuing avenues of relief and appeals." Sopo, 825 F.3d at 1218 (citing *Ly*, 351 F.3d at 272). Thus, courts should notcount a continuance against the noncitizen when he obtained it in good faith to prepare his removal case. Instead, only "[e]vidence that the alien acted in bad faith or sought to deliberately slow the proceedings"—for example, by "[seeking] repeated or unnecessary continuances, or [filing] frivolous claims and appeals"—"cuts against" providing a bond hearing. *Id.*; *see also Chavez–Alvarez*, 783 F.3d at 476; *Ly*, 351 F.3d at 272.

Alvarez's appeal would take a substantial amount of time, making his already lengthy detention considerably longer"); *Sopo*, 825 F.3d at 128; *Reid*, 819 F.3d at 500.

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

34. To justify prolonged immigration detention, the government must bear the burden of proof by clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Where the Supreme Court has permitted civil detention in other contexts, it has relied on the fact that the Government bore the burden of proof at least by clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where "full-blown adversary hearing," requiring "clear and convincing evidence" and "neutral decisionmaker"); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient because, *inter alia*, they placed burden on detainee).

35. The requirement that the government bear the burden of proof by clear and convincing evidence is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). First, prolonged incarceration deprives noncitizens of a "profound" liberty interest. *See Diouf II*, 634 F.3d at 1091–92 (9th Cir. 2011). Second, the risk of error is great where the government is represented by trained attorneys and detained noncitizens are often unrepresented and frequently lack English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 763 (1982) (requiring clear and convincing evidence at parental termination proceedings because "numerous factors combine to magnify the risk of erroneous factfinding" including that "parents subject to termination proceedings are often poor, uneducated, or members of minority groups" and "[t]he State's attorney usually will be expert on the issues contested"). Moreover, detainees are incarcerated in prison-like conditions that severely hamper their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing. *See infra* ¶ 39. Third, placing the burden on the government imposes minimal cost or inconvenience, as the government has access to the noncitizen's immigration records and other information that it can use to make its case for continued detention.

36. 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 if there are alternative conditions of release that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive Supervision Appearance Program—has achieved extraordinary success in ensuring appearance at removal proceedings, reaching compliance rates close to 100 percent. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP "resulted in a 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings"). It follows that alternatives to detention must be considered in determining whether prolonged incarceration is warranted.

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

38. Evidence about immigration detention and the adjudication of removal cases provide further support for the due process right to a bond hearing in cases of prolonged detention.

39. Each year, thousands of noncitizens are incarcerated for lengthy periods pending the resolution of their removal proceedings. *See Jennings*, 138 S.Ct. at 860 (Breyer, J., dissenting). Among a class of immigration detainees in the Central District of California held for at least six months ("*Rodriguez* class"), the average length of detention was over a year, with many people held far longer. In numerous cases, noncitizens are incarcerated for years until winning their immigration cases. *Id.* (identifying cases of noncitizens detained for 813, 608, and 561 days until winning their cases). For noncitizens who have some criminal history, their immigration detention often dwarfs the time spent in criminal custody, if any. *Id.* ("between one-half and two-thirds of the class served sentences less than six months").

40. Noncitizens are detained for lengthy periods because they pursue meritorious claims. Among the *Rodriguez* class, 40 percent of noncitizens subject to Section 1226(c) won their cases, and two-thirds of asylum seekers subject to Section 1225 won asylum. *See id.* Detained noncitizens are able to succeed at these dramatically high rates despite the challenges of litigating in detention, particularly for the majority of detainees who lack counsel. *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 36 (2015) (reporting government data showing that 86% of immigration detainees lack counsel).

41. Immigration detainees face severe hardships while incarcerated. Immigration detainees are held in lock-down facilities, with limited freedom of movement and access to their families: "the circumstances of their detention are similar, so far as we can tell, to those in many prisons and jails." *Jennings*, 138 S.Ct. at 861 (Breyer, J., dissenting); *accord Chavez– Alvarez*, 783 F.3d at 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at 1218, 1221. "And in some cases the conditions of their confinement are inappropriately poor." *Jennings*, 138 S.Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland Security (DHS), Office of Inspector General (OIG), *DHS OIG Inspection Cites Concerns With Detainee Treatment and Care at ICE Detention Facilities* (2017) (reporting in-stances of invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches, long waits for medical care and hygiene products, and, in the case of one detainee, a multiday lock down for sharing a cup of coffee with another detainee)).

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

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

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

43. 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.

44. To justify Petitioner's ongoing prolonged detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that Petitioner's detention is justified by clear and convincing evidence of flight risk or danger, even after consideration whether alternatives to detention could sufficiently mitigate that risk.

45. Petitioner has spent more than 22 months in ICE custody. He has never been afforded a bond hearing. His appeal of the Immigration Judge's decision ordering his removal is pending before the Board of Immigration Appeals, indicating that without judicial intervention, he will remain detained for months longer. *See* Exh. E. Due process requires that Petitioner be immediately released because Respondents have detained him for longer that what the Court has found to be constitutionally permissible without a bond hearing.

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

SECOND CLAIM FOR RELIEF

VIOLATION OF THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION

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

48. The Eighth Amendment prohibits "[e]xcessive bail." U.S. Const. amend. VIII.

49. The government's categorical denial of bail to certain noncitizens violates the right to bail encompassed by the Eighth Amendment. *See Jennings*, 2018 WL 1054878 at *29 (Breyer, J, dissenting).

50. For these reasons, Petitioner's ongoing prolonged detention without a bond hearing violates the Eighth Amendment.

VIII. REQUEST FOR ORAL ARGUMENT

51. Petitioner respectfully requests oral argument on this Petition.

IX. PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter.
2. Issue a Writ of Habeas Corpus; hold a hearing before this Court if warranted; determine that Petitioner's detention is not justified because the government has not established by clear and convincing evidence that Petitioner presents a risk of flight or danger in light of available alternatives to detention; and order Petitioner's release, with appropriate conditions of supervision if necessary, taking into account Petitioner's ability to pay a bond.
3. In the alternative, issue a Writ of Habeas Corpus and order Petitioner's release within 30 days unless Respondents schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear

and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if the government cannot meet its burden, the immigration judge order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

4. Issue a declaration that Petitioner's ongoing prolonged detention violates the Due Process Clause of the Fifth Amendment and the Eight Amendment.
5. In the alternative, issue an order to Respondents to show cause as to why this Petition for Writ of Habeas Corpus should not be granted;
6. Award Petitioner reasonable costs and attorney's fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, and other statutes; and.
7. Grant any other and further relief that this Court deems fit and proper.

RESPECTFULLY SUBMITTED this 13th day of February, 2025

/s/ Mackenzie Mackins
Mackenzie Mackins, CA Bar # 266528
Mackins & Mackins, PC
14144 Ventura Blvd., Suite 305
Sherman Oaks, CA 91423
(O) (818) 461-9462
(E) mwm@mackinslaw.com

ATTORNEY FOR PETITIONER